

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 31ST DAY OF AUGUST 2018

PRESENT

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MRS.JUSTICE S.SUJATHA

I.T.A. No.263/2018

BETWEEN :

1. THE COMMISSIONER
OF INCOME-TAX, LTU
7TH FLOOR, BMTC BUILDING,
80 FEET ROAD, KORMANGALA,
BENGALURU-560095.
2. THE DEPUTY COMMISSIONER
OF INCOME-TAX, LTU,
7TH FLOOR, BMTC BUILDING,
80 FEET ROAD, KORMANAGALA,
BENGALURU-56095.APPELLANTS

(BY SRI DILIP, ADV. FOR SRI ARAVIND.K.V., ADV.)

AND :

- M/s. MINDTREE LTD,
(FORMERLY KNOWN AS KYOCERA
WIRELESS (INDIA) PVT.LTD.,]
GLOBAL VILLAGE, RVCE POST,
MYSORE ROAD,
BENGALURU-560059
PAN: AACCK 1293L.RESPONDENT

THIS INCOME TAX APPEAL IS FILED UNDER SECTION
260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER
DATED 22.09.2017 PASSED IN IT[TP]A No.1662/BANG/2013,
FOR THE ASSESSMENT YEAR: 2007-2008, VIDE ANNEXURE-D,

PRAYING TO: I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE. II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU IN IT[TP]A No.1662/BANG/2013 DATED: 22.09.2017, VIDE ANNEXURE-D, CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, LTU, BENGALURU.

THIS APPEAL COMING ON FOR ORDERS, THIS DAY,
S. SUJATHA, J., DELIVERED THE FOLLOWING:

J U D G M E N T

Mr. Dilip, Adv. for

Mr. Aravind.K.V., Adv. for Appellants – Revenue.

This Appeal is filed by the Revenue purportedly raising substantial questions of law arising from the Order of the Income Tax Appellate Tribunal, Bangalore Bench 'B', Bangalore, in **IT[TP]A No.1662/Bang/2013** dated **22.09.2017**, relating to the Assessment Year **2007-08**.

2. The substantial question of law framed by the Revenue in the Memorandum of Appeal is as under:

"Whether on the facts and in the circumstances of the case, the Tribunal is right in law in setting aside the findings of the Assessing Authority relating to inclusion of foreign travel

expenses, professional expenses and branch office expenses incurred in foreign currency from export turnovers well as from total turnover for the purpose of computing deduction under Section 10A of the Act by following the decision of this Hon'ble High Court in the case of CIT vs. Tata Elxsi?"

3. The issue is covered by the decision of the Hon'ble Supreme Court in the case of **Commissioner of Income-tax, Central – III vs. HCL Technologies Ltd.**, [2018] 93 Taxmann.com 33(SC).

4. The relevant portion of the judgment of the Hon'ble Supreme Court in the case of **HCL Technologies Ltd. (supra)**, is quoted below for ready reference:-

*"17. The similar nature of controversy, akin this case, arose before the Karnataka High Court in **CIT v. Tata Elxsi Ltd.** [2012] 204 Taxman 321/17/taxman.com 100/349 ITR 98. The issue before the Karnataka High Court was whether the Tribunal was correct in holding that while computing relief under Section 10A of the IT Act,*

the amount of communication expenses should be excluded from the total turnover if the same are reduced from the export turnover? While giving the answer to the issue, the High Court, inter-alia, held that when a particular word is not defined by the legislature and an ordinary meaning is to be attributed to it, the said ordinary meaning is to be in conformity with the context in which it is used. Hence, what is excluded from ‘export turnover’ must also be excluded from ‘total turnover’, since one of the components of ‘total turnover’ is export turnover. Any other interpretation would run counter to the legislative intent and would be impermissible.

18. XXXXXX

19. In the instant case, if the deductions on freight, telecommunication and insurance attributable to the delivery of computer software under Section 10A of the IT Act are allowed only in Export Turnover but not from the Total Turnover then, it would give rise to inadvertent, unlawful, meaningless and illogical result which would cause grave injustice to the Respondent which could have never been the intention of the legislature.

20. Even in common parlance, when the object of the formula is to arrive at the profit from export business, expenses excluded from export turnover have to be excluded from total turnover also. Otherwise, any other interpretation makes the formula unworkable and absurd. Hence, we are satisfied that such deduction shall be allowed from the total turnover in same proportion as well".

5. Having heard the learned counsel appearing for the Appellants-Revenue, we are therefore of the opinion that no substantial question of law arises in the present case. The Appeal filed by the Appellants-Revenue is liable to be dismissed and it is dismissed accordingly. No costs.

Copy of this Order be sent to the Respondent-Assessee forthwith.

**Sd/-
JUDGE**

NC.

**Sd/-
JUDGE**