IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B": HYDERABAD

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

<table>
<tr><th>ITA No.</th><th>A.Y.</th><th>Appellant</th><th>Respondent</th></tr>
<tr><td>831/H/2015 to 836/H/2015</td><td>2005-06 to 2010-11</td><td rowspan="2">Annapurna Business Solutions
6-3-866/A,
Suite No.401
Maheswari Mekins
Mayank Plaza
Greenlands Road
Begumpet
Hyderabad</td><td>Dy.Commissioner of Income Tax
Central Circle-3
Hyderabad</td></tr>
<tr><td>298/Viz/2016</td><td>2004-05</td><td>Asst.Commissioner of Income Tax
Circle-2(1)
Guntur</td></tr>
<tr><td colspan="4"></td></tr>
<tr><td>864/H/2015 to 869/H/2015</td><td>2005-06 to 2010-11</td><td>Dy.Commissioner of Income Tax
Circle-2(1)
Hyderabad</td><td rowspan="2">Annapurna Business Solutions
6-3-866/A,
Suite No.401
Maheswari Mekins
Mayank Plaza
Greenlands Road
Begumpet
Hyderabad</td></tr>
<tr><td>334/Viz/2016</td><td>2004-05</td><td>Asst.Commissioner of Income Tax
Circle-2(1)
Guntur</td></tr>
<tr><td colspan="4"></td></tr>
<tr><td>For Assessee</td><td>:</td><td colspan="2">Shri S.Rama Rao, AR</td></tr>
<tr><td>For Revenue</td><td>:</td><td colspan="2">Shri Y.V.S.T.Sai, CIT-DR</td></tr>
</table>

Date of Hearing : 18-10-2019
Date of Pronouncement : 17-12-2019

आदेश /O R D E R

Per Bench :

These appeals are filed by the assessee against the orders of the Commissioner of Income Tax (Appeals) [CIT(A)]-12,Hyderabad in I.T.A.Nos.

269 to 274/CIT(A)-12/Hyd/2014-15 dated 31.03.2015 for the Assessment Year (A.Y.) 2005-06 to 2010-11 and CIT(A) order No.ITA NO.277/CIT(A)-1/GNT/2011-12 dated 30.03.2016 for the A.Y.2004-05.

The Department had filed the appeals challenging the orders of the Ld.CIT(A). For the A.Y.2004-05 to 2006-07, the department challenged the order of the Ld.CIT(A) on two issues. Firstly, the department agitated for holding that the assessee is engaged in export of software and secondly for allowing the deduction of 70% of the profits u/s 10A. For the A.Y.2007-08 to 2010-11, the department raised one more issue i.e. deletion of addition made protectively in respect of the receipts of VLS IT services for H1B visa processing which were substantively assessed in the hands of the VLS IT Services.

In the assessee's appeal, the assessee agitated for restricting the deduction u/s 10A only to the extent of 70% of the profits instead of allowing 100%. For the sake of convenience, these appeals are clubbed, heard together and a common order is being passed as under.

2. First issue in these appeals is related to the deduction u/s 10A of the Income Tax Act, 1961 (in short 'Act'). Brief facts of the case are that a search and seizure operation u/s 132 of Income tax Act ('act' in short) was

conducted in the case of M/s Annapurna Business Solutions (in short 'ABS') on 16.09.2010. M/s ABS is the partnership firm instituted by partnership deed dated 02.01.2002. The firm has four partners with equal share of 25% each, namely Smt. Tunuguntla Annapurna, Smt.Tunuguntla Saritha, Sri Tunuguntla Jagan Mohan Rao and Sri Tunuguntla Nanda Kishore. The firm is engaged in the business of software development and providing services in information technology. It started operations originally from Guntur, but within short period of 10 months, it has shifted to Hyderabad. The firm is exporting the software products to USA based company namely M/s VLS Systems Inc., which is a company incorporated in USA, 100% share holding of the US based company is held by Sri Thunuguntla Nanda Kishore and his wife, Smt.T.Saritha. Shri T.Nanda Kishore is also called as Kris Nanda in US, thus both the concerns are family concerns of Tunuguntla family. During the course of search and seizure operations conducted in this case, it was noticed by the income tax department that the assessee is indulging in fabricating the evidences and claiming the software export. The Assessing Officer (AO) also alleged that the assessee has resorted to fraudulent ways to claim the deduction u/s 10A on the profits netted by the assessee under the Software Technology Parks of India (in short 'STPI') scheme.

2.1. During the course of search various documents were found and seized as per Annexures to the panchnama. One of such document is an agreement dated 08.01.2002 between VLS Systems Inc., and the assessee, which was submitted to Software Technology Parks of India (STPI) for getting it registered as 100% EOU. The AO observed that Shri Nanda Kishore has signed the agreements representing two different entities in different names i.e. in the name of T.Nanda Kishore representing the ABS and Kris Nanda representing VLS systems Inc., which the AO suspected that the assessee signed in different names to give an impression that the said agreement was executed by two different persons, despite the fact that both signatories are one and the same. The issue of signing the agreements in two different names was confronted with Shri Nanda Kishore during the course of search and in the statement recorded u/s 132(4) from 01.02.2013 to 04.02.2013. In response to question No.54 of the of the statement, Shri Nanda Kishore had stated that he could not recollect signing the agreement in two different names, later on he clarified that he is known as Nanda Kishore in India and people call him as Kris Nanda in USA.

2.2. The AO verified the agreements in detail and observed that as per the agreement, the assessee firm is required to supply the manpower to its client, VLS Systems Inc.. In para No.2 of the said agreement, the services to be rendered was reproduced as per which, on the request of VLS Systems Inc.(in short 'VLS'), vendors are required to provide services or persons recommended by vendor and selected by VLS (collectively 'contractors') to perform services. From the agreement, the AO further found that no product development, i.e. software development is envisaged in the said contract. However, for the purpose of the registration/renewal with STPI the assessee firm has submitted another agreement called 'Master Services Agreement' dated 06.06.2002 and in the said agreement there was a provision for development of software and IT Enabled services to the vendee(VLS). The AO observed that the said agreement dated 06.06.2002 was not available at the time of original registration or in the immediate years thereof. According to the AO this agreement of 06.06.2002 was an afterthought to support his claim for deduction u/s 10A as software developer. The AO came to conclusion that the agreement dated 06/06/2002 was neither originally available nor submitted to the STPI. The AO drawn such conclusion on the basis of the correspondence

retrieved by the Investigation team from the seized hard disk marked as Annexure A/ABS/PO-02/9, wherein, certain e-mail correspondence was found between Nanda Kishore and Hari Babu the employee of the assessee firm. As per the E-mail correspondence Mr. Nanda Kishore had asked the employee of ABS Shri Hari Babu to get the signature of Sri Jagan Mohan Rao on the agreement on behalf of the firm M/s ABS on 19.03.2008. Thus, the Ld.AO viewed that the said agreement dt 06.06.2002 was not available originally and it was prepared subsequently and sent for the signature of Shri Jagan Mohan Rao as per e-mail correspondence dt. 19.03.2008, which was confirmed by Shri Hari Babu (admin staff of ABS) to the Investigation Team. AO viewed that this was post script prepared by the assessee to mislead the authorities to claim the deduction u/s 10A.

2.3. Thirdly, the AO observed from comparing the invoices raised and the agreements entered into that agreements were entered for IT enabled services, whereas the invoices were raised for software development thus viewed that both the agreements and the invoices were apparently contradicting each other.

2.4. Fourthly, the AO found that VLS Inc has claimed to have sold its products to Megasoft Consultants Inc.,USA, whereas Megasoft Limited, the Indian Arm of the foreign company denied having purchased any software from M/s VLS Inc. As per the copy of the agreement submitted by Megasoft Ltd the contract agreement dated 14.09.2007 was for manpower supply.

2.5. Fifthly, the AO found the deviations during the post search enquiries from the assessee's submissions and the information collected from Megasoft Limited. VLS submitted an invoice No.20227 dated 05.05.2008 that was raised on Megasoft for ITRM customization for an amount of $100,000 and submitted to STPI vide letter dated 19.05.2008, whereas the same invoice No.20227 dt.05.05.2008 raised on Megasoft for customization was for an amount of $1000 to the department. Therefore, the AO viewed that there was malafide intention and manipulations for claiming the deduction u/s 10A.

2.6. Sixthly, the AO has recorded the statement from V.Hari Babu (staff of ABS) who has stated that the amounts in the invoice was changed at the behest of Sri Nanda Kishore as $1000/- to $1,00,000 for submission to

STPI. The AO also extracted the Email correspondence in the assessment order at para No.9 of page No.9 which supports the statement of Hari Babu.

2.7. The AO has asked the details of products developed by the assessee, Shri Nanda Kishore in his deposition stated that M/s ABS has developed number of projects over the years as per clients order. One of such product was ITRM, an applicant tracking and customer relationship management system. He stated that ITRM was developed in USA in the year 1997, later a newer version was developed starting in the year 2002 by the assessee firm. However, the AO disbelieved the assessee's submissions, and viewed that the assessee received foreign remittances from export of man power supply but not from software development. The AO further stated in the assessment order that there were evidences to believe that no software was developed by M/s ABS as there were lots of discrepancies with regard to product development and the year in which it was stated to be developed. The AO reproduced the Email correspondence in the assessment order between Kris Nanda and Hari Babu dated 07.10.2008 which reads as under :

> *"Attached is the updated project details document. The same has been updated in our website. Based on this, you can print the 7010 and any other invoices using this MEMS project, related documents and send it with Mohini.*

We will add the CUCS – Credit Union Compliance System details tomorrow, which can be used for other PO and Invoices (Ref. page Nos. 284 to 286 of Annexure)."

2.8 The AO was of the view that VLS and ABS are indulging in fabricating the evidences to claim computer software export and in fact no physical export of software was made and the assessee has resorted to fraudulent ways to claim deduction u/s 10A on its profits. The AO further observed that M/s ABS not maintained the time records or material like source code of the software developed to indicate that the firm was actually involved in developing software. During the course of search, no documentation was found to acknowledge that the firm has actually developed any code.

2.9. The AO was of the opinion that the assessee is actually involved in hiring of people for it's client M/s VLS Systems Inc., USA. M/s VLS Systems Inc., is a placement agency of software professionals in USA, as per the note submitted to the American Embassy for issue of visas to its prospective employees. From the seized material marked as Annexure A/AMS/PO-2/5, the AO found purchase orders and agreements entered with various US organizations specifying the software personnel requirements and the compensation amounts agreed. To meet the requirements, it recruits software professionals both from India and USA and place them with

various organizations in USA on contract basis. The AO further observed that the software personnel required at various organizations with specified skill set are either received directly by VLS, USA or through enquiries made by its employees either in India or in USA. Based on these requirements, the Indian arm M/s ABS scans the job portals like Monster.com. (Shri Kris Nanda has taken membership of Monster.com and signed as T.N.Kishore) and shortlists the personnel based on experience and skills. The shortlisted candidates are then put through initial interviews by technical recruiters locally and subsequently by the concerned organizations. The AO found one such agreement which is extracted in para No.10.8 of the assessment order which reads as under :

> *"....where as employee currently desires to be employed, by employer as Sr. Technical Recruiter, for the purpose assisting Employer to fulfil its contractual obligations to its clients, as well as assisting to identify and obtain new clients / new client business and assist employer in getting new solutions / IT contract staffing business, identify prospective candidates for project assignments at client sites as well as to identify prospective candidates for India operations and Employer desires to employer employee..."*

From the agreement, the AO observed that the bonuses are linked to dollar margin that the parent US company makes on placement of candidate selected by these technical recruiters of ABS. The AO further observed that the candidates selected by recruiters are taken to USA on H1B Visa. They are subsequently placed with various organizations on

hourly rate. Part of this hourly compensation is retained by M/s VLS and the balance is paid to the candidates. The candidate who opt to go to USA on H1B Visa have to pay certain amount as deposit for visa processing and the said amounts were collected and deposited into the bank accounts of Shri Hari Babu, employee of VLS IT Services and Shri R.Naresh, brother-in-law of Shri Nanda Kishore.. The AO observed that M/s VLS IT Services was created to enter into agreements with prospective H1B visa holders and the payment received on this account were not deposited into its account but deposited in third partly accounts. There were no employees on the rolls of M/s VLS, USA in India and also on the rolls of M/s Sri VLS IT Services. The entire work relating to identifying and recruiting software professionals for it's parent company is carried out by the assessee.

2.10. On the day of search, statements were recorded from various employees working at M/s ABS and most of them admitted that they were basically into recruitment and not into developing any software. The AO extracted the statement from Shri Samuel Kiran Kumar, Shri D.Sukumar. Both of them have stated that they are in the activity of recruitment of manpower. The Managing partner, Shri Nanda Kishore did not produce the particulars of sales by M/s VLS, USA of the software developed by its Indian

arm M/s ABS. The AO also found that percentage of profit shown by the company M/s VLS Inc., in the income tax returns filed with US authorities was 8.5 percent of gross profit and net profit of 2.1 %, whereas M/s ABS has declared the net profit of 90.40%. The AO compared the profits of the reputed software companies who have shown the net profit or operating profits to total cost from 4.32% to 70.68% as per the list compiled by the AO in page No.17. Therefore, the AO held that with all the above information, the assessee has neither developed any software nor made the software exports and fabricated the evidences to claim deduction u/s 10A. Thus, held that the assessee is not entitled for deduction u/s 10A, accordingly disallowed the exemption claimed by the assessee and taxed the entire profits. For the sake of clarity and convenience, we extract incomes computed by the AO for the impugned assessment years from A.Y.2004-05 to 2010-11 as under :

A.Y.	Returned Income	Assessed Income	Remarks
2004-05	24,74,310	4,11,62,448	
2005-06	50,53,680	7,50,81,605	In correct adoption of returned income
2006-07	54,13,290	4,62,53,332	
2007-08	42,19,372	12,35,02,448	In correct adoption of returned income
2008-09	60,43,941	6,46,25,873	In correct adoption of returned income
2009-10	83,81,380	10,38,57,509	In correct adoption of

			returned income
2010-11	129,99,407	12,25,01,521	In correct adoption of returned income

Except for A.Y.2004-05 and A.Y.2006-07, mistakes were crept in computation of assessed income. It appears that while computing the total income, the AO has adopted incorrect returned income. Hence, the AO is directed verify the computation of total income and pass necessary rectifications at the time of giving effect to this order.

3. Against the order of the AO, the assessee went on appeal before the CIT(A) and submitted point-wise clarifications before the Ld.CIT(A) with regard to various issues raised by the AO in the assessment order. The assessee submitted that it has never indulged in malpractices or the manipulations and it is a genuine software company. With regard to agreement dated 08.01.2002 between VLS Systems Inc., and the assessee firm, inrespect of signature of Shri T.Nanda Kishore he he could not give immediate reply due to the fear of legal repercussions if any though signed genuinely. He stated that his name is T Nanda Kishore and he is one of the partners of the assessee firm and he is also called as Kris Nanda in USA. Hence he submitted that he had signed the agreement with Indian name

for the Indian firm and the other one with name by which he is called in USA. He further clarified that he tried to clarify the position before the AO, but he could not get the opportunity in spite of making efforts. Therefore he submitted a letter in the office of the Director General of Investigation with clarification and he further stated that he did not commit any wrong by signing two different firms in different capacities with the name what he is called. The assessee further submitted in written submissions that he had approached the AO twice, but the AO refused to entertain the submissions of the assessee, hence he has filed the copy of the letter in the office of the Director General of Investigation (DG). Copy of letter was also enclosed in his letter furnished before the Ld.CIT(A) in Annexure -4 and submitted that there was no malafide intention in signing the agreement on behalf of both the parties in two different names which he is called commonly.

3.1. With regard to the agreement dt.06.06.2002 between the ABS and VLS, the assessee submitted that when ABS was asked by STPI, Hyderabad to submit the copy of the agreement between ABS and VLS for renewal of license. A new agreement with same old contents was signed and submitted to STPI due to misplacement of original agreement. He further stated that VLS also lost it's copy of original agreement in the fire accident.

Report of fire accident in USA along with e-mail communication between VLS and Hartford Insurance regarding insurance claims for loss was furnished before the Ld.CIT(A) in Annexure 5. This new copy of agreement was signed by Shri T.Nanda Kishore and Shri Jagan Mohan Rao on behalf of the ABS.

3.2. Regarding supply of ITRM software to Megasoft, USA. The assessee had enclosed the copies of agreement along with proof of negotiation of ITRM price and the signed copies of agreement along with proof of installing the ITRM software in Megasoft, USA Server in Virginia, USA clarifying the issues raised by Megasoft Solutions before the CIT(A) in Annexure-6. Regarding allegation of the AO that the assessee has not supplied the software to Megasoft the assessee clarified that the suspicion was based on the letter received from Megasoft India Ltd., from the Chartered Accountants M/s T.R.Rajendran & Co., Chennai. It has no relevance to the supply made by the assessee to VLS and VLS to Megasoft, since, the assessee had never claimed to have supplied the software to Megasoft India Ltd. The assessee further questioned the authority of the Indian Chartered Accountant to issue such letter without having any evidence. The assessee also furnished the information regarding the

receipt of US$1,41,458 from Megasoft USA, for supply of it's products. The assessee furnished the breakup of the payments stating that US$11,650 was paid by Megasoft USA towards ITRM software product license and its customization and US $127808 towards employees of VLS who worked in the sites of Megasoft, USA. Thus submitted that neither the amount nor nature of work / services rendered by VLS to Megasoft, USA were matching with the information furnished by the Indiand Chartered Accountant to the department, hence there is no truth in the information furnished by Megasoft India Ltd.

3.3. Regarding the allegation of AO on the use of Monster India.com, the assessee submitted that ABS has developed multiple products by hiring software engineers who are provided salary, benefits like 2 weeks vacation, one week sick leave, health and dental insurance, 401K and profit sharing and make work on client projects in USA. VLS is not a placement agency. ABS used Monster India membership to hire the employees who can work in ABS, Hyderabad office. Monster, USA was used by ABS employees in Hyderabad in the night shift to identify candidates in USA for software jobs given by VLS clients in USA. The same Monster USA account is used by technical recruiters in USA for IT software jobs in USA. Thus submitted

that the Monster.com was used for the purpose of it's own office of ABS and VLS, but not for recruitment of manpower supply to US companies.

3.4. With regard to non development of software by the assessee as alleged by the AO, the assessee submitted that the AO has landed in wrong conclusions on presumptions and surmises. The assessee stated that ABS has developed the software and the statements recorded from its employees viz., Shri Rachakonda Naresh, Shri Samul Kumar and Shri D.Sukumar, does not contain any evidence to show that the ABS has not developed the software as alleged by the AO. The assessee further submitted before the Ld.CIT(A) that it was engaged in the development of software and provided IT enabled services to it's client M/s VLS Systems Inc. Chantilly, VA, USA (VLS) but never recruited any manpower to the said organization or any other person either in USA or in India. The assessee also furnished various details of various software developed by it and supplied to VLS.

3.5. Regarding higher margin, the assessee submitted that the companies listed by the AO in the assessment order are into software services in India and other foreign countries and most of them have 25 – 50% of the

employees on Bench. Whereas, the assessee having no employees on Bench and all it's employees are full time developers of software and in ITES, there is no idle employee on ABS rolls, hence, the AO's observation that the salaries as percentage of revenue is very less compared to others is not justified. Further he submitted that rent cost and other running expenses were very less compared to other companies. There is no interest cost to the assessee. Therefore submitted that the profit in the assessee firm is more than other companies.

3.6. Written submissions filed by the assessee before the Ld.CIT(A) was sent to the AO and the AO submitted the remand report which was furnished to the assessee for rejoinder and the assessee has furnished the rejoinder to the Ld.CIT(A) clarifying various issues. The AO in the remand report objected for admission of additional evidence under Rule 46A with regard to registration of Monster.com. After considering the remand report, rejoinder and the arguments of the assessee, the Ld.CIT(A) given a finding stating that the AO did not bring any evidence which has impact on the activity of the assessee by signing differently as Nanda Kishore and Krish Nanda.

3.7. With regard to second issue of singing the agreement, the Ld.CIT(A) observed that by keeping the document with assessee itself, whom the assessee was misleading, is not clarified by the AO. Similarly, the Ld.CIT(A) observed that the AO mentioned that the agreement was only for supply of manpower and he had ignored the opening words of the sentence which starts with 'services'. The Ld.CIT(A) further observed that the AO should have examined what inference can be drawn from the membership of Monster.com., with regard to software development. Sale of software to Megasoft, anamoly in invoices , discrepancies regarding the development of product in different years etc., were given undue weightage by the AO for holding that the assessee is not exporting the software, which according to the Ld.CIT(A) do not have any direct impact on the claim of deduction u/s 10A. According to the Ld.CIT(A) the issues that have an impact which need to be examined are

(a) The act of development of software as shown in source codes and in email correspondence indicating the consultation and changes made in the course of development work.

(b) The act of export as evidenced in log sheets, STPI forms

(c) The adequacy or otherwise of infrastructure and expenditure to support the incomes

(d) The breakup of income and the expenditure claims.

3.8. The Ld.CIT(A) examined the above issues and found that the assessee firm is registered as STPI unit from 16.01.2002 and was having approvals for all the assessment years in question. The change of registered office from Guntur to Hyderabad and subsequently from Ameerpet to Begumpet was also approved. The date of commercial production was taken as 24.10.2002 by STPI. The firm furnished all approval documents in the course of appellate proceedings. The assessee firm filed the returns of income for the six assessment years in question both in original and in response to notice u/s 153A of the Act. The turnover breakup of software development and ITES services income was furnished in para No.10 of the Ld.CIT(A) order from A.Y.2005-06 to 2010-11 as under :

ITEM	A.Y.2005-06	A.Y.2006-07	A.Y.2007-08	A.Y.2008-09	A.Y.2009-10	A.Y.2010-11
Total turnover	38708384	45065555	68480351	39666281	60355222	74905950
Total expenses	3694422	4225517	10987314	12918125	15491657	16568641
Total income including interest income	40067642	46253328	61712409	32812097	53244950	71436236
Audit report for Sec.10A	35013962	40840038	57493037	26748156	44863565	58436829

Taxable Income	5053680	5413290	4219372	6063941	8381385	12999407
Party wise breakup of turnover (total)	37995318	44462281	68480352	39666281	56043569	74426023
IT Sales	7959095	10410572	8870676	13900739	18139440	27185715
ITES Sales	30036223	34051709	59609675	25765542	37904129	47240308

3.9. The assessee also furnished the clarifications regarding number of hours billed and its feasibility before the AO as per page No.18 of the assessment order for the A.Y.2010-11. The assessee also submitted the details of break up given to IT and ITES worked hours linking to the purchase order and invoice number for all the assessment years. The assessee furnished list of employees salary paid. The Ld.CIT(A) examined the above details and the sworn statements recorded from Sri Kishore Kumar on 16.09.2010 and source control logs for the A.Ys. 2008-09 and 2009-10 furnished by the assessee. *The Ld.CIT(A) also verified the FTP logs for transmission of the export of the software which was furnished by the assessee in 6000 pages by way of example for few logs for different years. The proof of transmission of software by FTP was part of initial filing of 1206 pages in 11 annexures.* Before the Ld.CIT(A), the assessee stated that the observation of the AO with regard to firm having only machinery worth Rs.5.09 lakhs and air conditions worth Rs.12,000/- is wrong and it has filed

the complete details of the assets worth 39.37 lakhs as against 5 lakhs mentioned by the AO. The Ld.CIT(A) verified the copies of export clearance certificate from STPI, agreement between VLS and its clients and association communication by email and the email communication to show software development and ITES provided etc. which were are also enclosed in the annexure-A. With regard to work hours for the F.Y. 2009-10, salary payments for the month of April 2008 runs into Rs.6,80,411/- per month. Annexure'C' containing program implemented / changed on VmACT product with IP addresses was placed in Annexure A-D of the appellate order. On going through various documents filed before the CIT(A) and the trial left in the computer, prior to the date of search, in most of the cases and part of seized hard discs, the Ld.CIT(A) found the software related activity and its export made by the assessee. Accordingly, the Ld.CIT(A) upheld the contention of the assessee that the assessee is engaged in software development and export of software and with regard to adequacy of infrastructure and expenditure to support the incomes of the assessee. However, the Ld.CIT(A), after examination of the total turnover, the expenditure incurred and the income declared by the assessee found that the expenditure of the assessee was very low when compared to the

comparable cases in this line of business. In the assessee's case, the Ld.CIT(A) observed that in the initial year, the expenditure was very low and it has increased to 32% in 2008-09 and again dipped subsequently. Therefore, the Ld.CIT(A) invoked the provisions of section 10A(7) r.w.s. 80IA(10) of the Act and viewed that estimation the extent of 70% of the profits declare is reasonable and accordingly allowed the exemption of 70% of the profits declared and the remining 30% of the profits are directed to be taxed. Accordingly, the Ld.CIT(A) partly allowed the appeal of the assessee in respect of deductions claimed by the assessee u/s 10A of the Act. Identical issue is involved for the A.Y. 2004-05 in I.T.A. No.298 also.

4. For the A.Y.2008-09 to 2010-11, additional issue involved is with regard to H1B visa processing fee, which was stated to be collected by the assessee firm and deposited in the accounts of V.Hari Babu, C.R.Naresh and Naga mohan Rao as discussed in the assessment order of VLS IT Services, Hyd. The AO assessed the said sums in the hands of VLS IT Services on substantive basis relying on agreements between VLS and VLS IT services and protectively in the hands of the assessee firm. The total income assessed by the AO in respect of H1B Visa processing in the hands of VLS IT Services, year wise is as under :

A.Y.	Addition made
2007-08	40,97,000
2008-09	50,65,620
2009-10	57,48,994
2010-11	47,64,850
2011-12	19,74,116

5. Aggrieved by the order of the Ld.CIT(A), the department has filed appeals for allowing exemption u/s 10A to the extent of 70% instead of denying the entire exemption claimed by the assessee and the assessee filed appeals challenging the order of the Ld.CIT(A) for taxing the profits to the extent of @30%.

6. During the appeal hearing, the Ld.DR assailing the order of the Ld.CIT(A) submitted that the assessee has neither developed any software nor it has infrastructure to develop the software as claimed by the assessee. The Ld.DR further submitted that in fact the assessee is engaged in the recruitment of manpower and supply of manpower to the parent company, VLS Systems Inc, therefore, argued that the claim made by the assessee with regard to software export is bogus. Referring to the statement recorded from Vaka Hari Babu, employee dated 16.11.2010, the Ld.DR argued that the assessee company is engaged in the processing of H1B visas but not in export of software. Referring to question No.12 of V.Hari Babu in

statement dt.16.11.2010, the Ld.DR stated that e-mail was sent by Shri Hari Babu to VLS Systems Inc. (Shri Kris Nanda) on the subject of H1B visa payments which shows that it has received H1B processing fee for an amount of Rs.1,10,000/- in respect of Bhargavi Mallay Joysula, Sitaram Malapaka and Jagan Mohan Naidu Sammeta which was deposited by Shri Hari Babu in the account of Shri Naresh, brother-in-law of Kris Nanda/ Nanda Kishore. Referring to question No.13, Ld.DR argued that Shri Hari Babu confirmed that the above persons i.e. M.Bhargavi and others are from India, but not from USA. In question No.14 Shri Hari Babu denied having Annapurna Business Solutions involved in H1B processing and he submitted that VLS IT Services carrying on the activity of H1B processing, but not ABS. Referring to Master Services Agreement dt.08.01.2002, which was placed in P.B. 125, the Ld.DR submitted that the agreement was entered for manpower recruitment, but not for software export and further submitted that the said agreement was signed by Shri T.Nanda Kishore on behalf of ABS and Kris Nanda on behalf of VLS Systems Inc., thereby submitted that both the firms VLS as well as ABS belong to the same person and signature in two different names is only with a malafide intention to fabricate the agreement in different identities in different capacities. The

Ld.DR taking our attention to various correspondences, the agreements and the salary payments made to various employees of the ABS, submitted that the assessee is engaged in the manpower recruitment, but not software. Though the assessee stated that the VLS IT, India is engaged in the manpower recruitment, there is no separate staff for VLS IT Systems, it is operating from the premises of Ameerpet and the entire operations are being carried out by the staff of ABS. In a nut shell, the Ld.DR argued that the assessee company is engaged in body shopping, but not in software development services, thus not entitled for deduction u/s 10A.

6.1. During the search, the department laid hands on the vendor service agreement dt. 08.01.2002, which was entered into by VLS IT Solutions, USA and the assessee company, ABS. The agreement was signed by Shri T.Nanda Kishore on behalf of M/s ABS and by Shri Kris Nanda on behalf of VLS Systems Inc. Since both the sides, the agreement was signed by Shri T.Nanda Kishore, Managing Partner of the assessee firm, during the course of search operations, the assessee was asked to explain the reasons for signing the agreement in two different names giving impression that two different persons had signed the agreements and the assessee has given very vague and evasive reply initially and later on submitted that he is

known as Kris Nanda in USA and T.Nanda Kishore in India, thus, he has signed in two different names. The Ld.DR argued that VLS Sytems Inc. and the ABS are owned by Shri T.Nanda Kishore and T.Saritha and the assessee is showing 100% identity mapping. During the course of search, another agreement was found in the premises of the assessee dated 06.06.2002, for project assignment services for providing business process outsourcing call centre and other related services. The DR submitted that the said agreement was signed by Shri Nanda Kishore and it does not bear signature of the second part. In the post search proceedings, the assessee signed the agreement on the same date of 06.06.2002 showing the signature of Nanda kishore and T.Jagan Mohan Rao to mislead the government authorities at various stages and the Ld.DR submitted that the agreement was also contrary to the invoices produced by the assessee. The Ld.DR further submitted that the assessee raised a bill in the name of Megasoft Consultants Inc. through its Indian arm Megasoft Ltd. None of the transactions were in the nature of software development, but are in the nature of hiring of software consultants on contract. The agreement dt.14.07.2007 was between two concerns, i.e. Megasoft Ltd and VLS Systems Inc. was for manpower supply, but not for software development

of the company. During the course of search, the department found mismatch of the amounts raised in invoices in the case of Megasoft Ltd., relating to claim of deductions u/s 10A vis-à-vis the invoice submitted before STPI. In this case invoice furnished before STPI for ITRM customization was $100,000 and $1,000 before the department. Thus, the Ld.DR submitted that the assessee has manipulated the invoices, which is evident from the mail extracts. It was also submitted by the Ld.DR that before US Embassy, VLS submitted a note for issue of visas to its prospective employees, thus submitted that the assessee is basically a placement agency to supply software professionals was admitted by the company itself. The Ld.DR further submitted that the purchase orders and agreements with various organizations of USA prove the fact that the software persons are recruited in India and USA and are placed with the organizations by VLS Systems Inc and received the compensations amounts on hourly rates. The Ld.DR further submitted that the assessee scans the job portals like Monster.com and Shri T.Nanda Kishore took membership of Monster.com and singed as T.Nanda Kishore. He shortlists the candidates with required skill tests after scanning the profiles available in the websites, put them through interview by technical recruiters locally and

thereafter by the concerned organizations. Evidence was also available in the form of agreements. The selected candidates are taken to USA on H1B Visa on hourly compensation and part of the compensation was retained by VLS Systems Inc and the balance was paid to the candidates. However, the assessee is not recording the fee in the books of accounts of the assessee. The amounts collected from various candidates as deposit for Visa processing fee are deposited in the accounts of the employees of the assessee. The Ld.DR argued that this activity is with an intention to camouflage the activity of manpower recruitment / supply as that of export of software services. The Ld.DR further submitted that the entity by name VLS IT Services was created to enter into agreements with prospective H1B visa holders. There are no employees in India on the rolls of M/s VLS, USA or VLS IT Services and all the related work is being done by the assessee. On the day of search statements of various employees was recorded and they stated that they are into recruitment work and not into the development of any software. Shri T.Nanda Kishore also failed to produce the details of any sale of software by VLS, USA from the software claimed to be exported by the assessee to VLS, USA.

6.2. The Ld.DR argued that the trading results of VLS Systems Inc. was not made available by the assessee to the AO and the assessee was showing more than 80% of the net profit out of the turnover which is highly impossible in this line of business. The AO collected the trading results of reputed companies listed in stock exchange, wherein, the profit margins were ranging from 10% to 66%. The Ld.DR further submitted that to earn such abnormal profits, the assessee must be in a possession of unique premium product or service but the same was not found on record.

6.3. The Ld.DR submitted that profile of the employees indicate salary received by them is not commensurating with the skills set as claimed by the assessee. Most of the employees have alias names which are normally used by the call centre operators, but no such activity was recorded by the assessee in its books. The Ld.DR further argued that except one or two employees, most of them have no skill for development of software. The Ld.DR further submitted that VLS IT Services, a firm in which Shri Jagan Mohan Rao and Shri T.Nanda Kishore are partners facilitates for the work of recruiting software professionals and visa processing and the amounts so collected were deposited either in the accounts of Hari Babu or Shri Naresh or Naga Madhav. Therefore, collections made by the VLS IT

Services are also the income of the assessee, because, it was the assessee who undertook all the work and the collection of fee by another entity to camouflage the activity of manpower supply to software services.

6.4. The Ld.DR further submitted that the Ld.CIT(A) in his order stated that there were number of stray factors like agreements signed by both the parties by the same person, service agreement kept by the assessee to mislead the agreement for supply of manpower, membership of Monster.com, the correspondence available in the course of search etc. does not establish that there was no software development work which is incorrect observation. The Ld.DR submitted that the Ld.CIT(A) was of the opinion that the factors such as issue of source codes, e-mail correspondence indicating consultation and changes in the course of development work, the act of export as evidenced in log sheets, STPI forms, adequacy of infrastructure, breakup of income and expenditure claims has an impact on export activities of the assessee. According to the Ld.DR All these issues required to be answered by the assessee and not by the AO. The Ld.DR further submitted that mere filing of softex forms before STPI prove the transmission of data but not indicate that there was real export of software. STPI is concerned with flow of foreign exchange

into India and STPI can read the contents of the transmitted data. As seen from the invoices on record, the same software is transmitted repeatedly. The Ld.DR submitted that appropriate proof would be in the form of sale or licensing of software by VLS Inc. at USA and linkage of development of such software by employees of the assessee. The Ld.CIT(A) tabulated the segment wise (IT and ITES) breakup of total turnover, total expenses, total income including interest income, claimed u/s 10A, taxable income for different years, while doing so, the Ld.CIT(A) failed to appreciate employee cost as the percentage of revenue is very low. The STPI logs and e-mails no way provide conclusive proof of claims of the assessee.

6.5. The Ld.CIT(A) invoked the provisions of 10A(7) r.w.s. 80IA(10) because the transaction is between the two parties, arranged in such a way that the assessee derived more than the ordinary profits expected in this line of business. The Ld.DR argued that the Ld.CIT(A) restricted the claim of exemption u/s 10A to 70%, however, the Ld.CIT(A) ought to have appreciated the fact that the assessee being engaged in the manpower services, not entitled for deduction u/s 10A of the Act. The Ld.CIT(A) overlooked the fact that the affairs of the VLS Inc and its financials were not disclosed by the assessee to prove the activity of software development or

sale or licensing at USA. More so, when there is cogent evidence that placing of people in third party companies at USA. The Ld.CIT(A) also failed to appreciate that if the assessee was really exporting software, there was no need to recruit software professionals and send them on H1B Visa to USA. Besides, there was no need to camouflage the activity through collection of money on account of M/s VLS IT Services, which have no employees and to deposit the amount in the accounts of the individual employees of the assessee. The Ld.DR further submitted that the Ld.CIT(A) has drawn the conclusion on development of products in different years. The assessee should have tabulated product wise, service wise, export bills with the value, manner of utilization of services by M/s VLS Systems Inc. either in its own installations or to its client at USA and furnish the confirmations from the client. The assessee did not furnish any such details. On the other hand, there was a systematic activity of recruitment of software professions and hiring them on hourly basis is available on record. The Ld.DR in detail explained the process of recruitment done by the assessee through VLS IT and VLS Systems Inc and further submitted that platforms like ITRM may be useful to the assessee and VLS Systems for their own recruitment work. The Ld.DR submitted that the entire

operation is nothing but body shopping and the assessee conducted the online interviews with vague USA names and also online aptitude tests etc. to arrange people to work at USA through VLS Systems for which the amount is received from VLS Systems Inc. The Ld.DR submitted that there is no evidence having made the export by the assessee, therefore, argued that there is no software export or software development by the assessee except body shopping, hence requested to set aside the order of the Ld.CIT(A) and allow the appeals of the department.

6.6. With regard to restriction of profits to the extent of 30%, the Ld.DR submitted that the Ld.CIT(A) is wrong in invoking section 10A(7) and 80IA(10), when there is no export of software at all. The Ld.CIT(A) ought to have disallowed the entire deduction claimed by the assessee and upheld the order of the AO, since there was no software export, except body shopping. Thus, argued that the Department to be allowed and dismiss the cross appeals filed by the assessee.

7. Per contra, the Ld.AR submitted that the department has disallowed the claim of deduction u/s 10A of the assessee on surmises and conjectures without any valid evidence. The assessee is engaged in the software

development and Information Technology Enabled Services, registered with STPI, Hyderabad, granted permission to the assessee firm in setting up of 100% export oriented unit vide letter dated 16.01.2002. Change in address was permitted by the STPI. The STPI granted extension of approval vide letter dated 12.06.2008 from 24.10.2007 to 23.10.2012. The grant of approval by STPI was based on the Master Service Agreement entered into between the assessee and VLS Systems Inc. USA. According to the Master Service Agreement, the assessee has software engineering resources and personnel to perform such software development services. The amount realized by the assessee for supply of software developed by it under ITES was received through banking channels and is certified by the STPI. The assessee supplied the software developed by it to VLS Systems Inc. It has developed the Information Technology Resource Management System (ITRM). The scope of project included in the following features besides HR application…

A) Quick TS/eIPS/Time Tracking – a Time tracking and Accounts Payable System;
B) Mems- Membership & Even Management System
C) VmAct – Innovative platform for Vendor Management, Contingent Workforce Management, Control your spending;
D) Temple Track – an application system aimed to serve the needs of any Religious Organisations; and

E) Parent Student Update – Software used for Student Test & Analytical Tool

Details of software exported by the assessee are ITRM, Quick TS/ EIPS/ Time tracking etc. The Ld.AR explained in detail with regard to above projects of HR applications during the appeal hearing. The Ld.AR further submitted that the assessee has developed all these applications using Microsoft technology including Visual Studio, C#.NET ASP.NET, Ajax, JQuery, JavaScript, HTML, XML, TFS (Team Foundation Server). The assessee further submitted that all these products are transferred using FTP (File Transfer Protocol), a tool to transfer the software and its associated documents from one computer /server in Hyderabad, India to a server in VA, USA. Each of these computers are assigned an IP address which is a unique number given to computer software. Each IP address is unique to each country and each state within the country. The logs of these can be found on each of these servers which tracks the date and time of each FTP transfer along with duration of transfer. Log is similar to a phone bill which lists the date and time stamp along with duration of the calls. Around 10 to 12 voice over IP phonse are used in calling the prospective clients in USA, on supporting these software are used. These are phones with the USA number which can be used from India. With these phones, the

assessee employee can call only the numbers in USA and not in India. The phone bills in each month in US$ were also recovered from the seized material. These phone bills show the list of calls made by the assessee employees to VLS clients on behalf of VLS. Few phone bills along with call data was submitted to the AO and the Ld.CIT(A). Few employees of the assessee firm who are taking care of customers in USA are given pseudo names for easy understanding of name which are familiar to USA citizens. All these products developed by the assessee are reported on monthly basis to STPI. A quarterly report of software development along with logs to show transfer of the software from Hyderabad to USA was recoded and submitted to STPI. The Ld.AR submitted that the activities of the assessee firm are approved by STPI to be software development and IT enabled services. The entire turnover is from supply of software development. No receipt in connection with the supply of personnel was admitted as its income. In fact the activity of supply of personnel i.e. VLS IT Services and the income from the said source is assessed in the assessment of VLS IT services. Therefore, the Ld.AR submitted that the income derived by the assessee is from software development of ITES and not from supply of manpower. With regard to allegation that profit margin is higher, the

Ld.AR submitted that utilization of 100% capabilities of employees without allowing the employees on Bench and quantum of rent contributed for increase in the income. The assessee further submitted that there was substantial interest income on its deposits and the assessee did not debit any interest as there were no borrowings. No financial charges were debited to P&L account and the managing partner himself is qualified and capable of rendering technical services and is able to manage the affairs of the firm and the profit element is higher in the case of the assessee.

7.1. With regard to other allegations raised by the AO, the Ld.AR submitted that Shri Nanda Kishore has signed as representative of Indian Firm as Shri T.Nanda Kishore and Kris Nanda representing US firm, since he was known in US circles as Kris Nanda and there is no malafide intention in signing differently. Representing VLS Systems.Inc. Shri Nanda Kishore has signed as Kris Nanda in the capacity of President, whereas in the case of ABS he is representing as partner. Initially he could not give the same reply, since he was not known the legal repercussions of signing the agreement in different capacities with different names. Later on he has submitted a letter in the office of the DG clarifying the position and regarding his representation of both the firms.

7.2. Regarding another agreement between ABS and VLS, the assessee clarified that the original agreement between the assessee and VLS was lost and they were required to submit the copy of the agreement for renewal of license. Therefore, new agreement was signed by Shri T.Nanda Kishore on behalf of VLS and Shri T.Jagan Mohan Rao on behalf of the assessee which was furnished later to the department.

7.3. Regarding sale of ITRM software to Megasoft Ltd., the Ld.AR submitted that the software was sold to Megasoft Inc. US, but not to Megasoft India Ltd., therefore the letter given by its Indian arm of Megasoft India Ltd., has no relevance on this issue. The Ld.AR submitted that the assessee has already furnished the invoices for sale of software to Megasoft before the Ld.CIT(A). With regard to the Ld.DR's contention that the employees ratio and the expenditure, the assessee submitted that there were no staff on the Bench and there was no payment of interest and the rent is very less in the assessee's case.

8. The Ld.AR argued that there is no case for invoking the provisions u/s 80IA(10) or 10A(7) of the Act. The transaction was not arranged to increase the profits, therefore, the question of deriving excess profits does not arise. The Ld.A.R submitted that the assessee has exported the software

and received the Foreign Exchange through Banking channels as per the agreed rate. Though the importer is assessee's close associate the US laws also restricts the payment to Arm's Length Price. There was no inflation or suppression of expenditure in the assessee's case and the entire expenditure was debited to the P&L account. Neither the AO nor the Ld.CIT(A) has made out a case that the assessee suppressed the expenses or shifted the expenses to the other concern to claim such deduction. In fact the AO taxed the entire income claimed as deduction u/s 10A and the Ld.CIT(A) blindly estimated the income without bringing any arrangement or the defects in the books of accounts of the assessee. The Ld.AR further submitted that even it is presumed that expenditure relatable to VLS IT systems has to be considered in the hands of the assessee firm, the same required to be allowed as deduction in the hands of VLS IT systems. The AO assessed the entire receipts as income in the hands of VLS IT Systems. Hence, argued that the Ld.CIT(A) committed an error in restricting the exemption to the extent of 70% and requested to set aside the order of the Ld.CIT(A) and dismiss the appeal of the revenue and allow the appeal of the assessee.

9. With regard to financials of VLS Inc., the assessee submitted that there is no provision to call for the financials of the VLS Inc since it is a foreign organization and it is for the department to make enquiries relating to the financials of VLS Inc. The financials of VLS Inc has no impact over the payment to the assessee merely because VLS Inc is a sister concern of the assessee. As stated already since the assessee company is engaged in the software development, the assessee company is in constant touch with the recruitment of software professionals for it's own use as well as for the VLS System Inc. Therefore, argued that the contention of the Ld.DR that software professionals are recruited by the assessee company to process the H1B is against the truth and without any basis. The Ld.AR argued that H1B Visas was processed by VLS IT Systems and the entire receipts deposited in individual accounts of the various persons were assessed in the hands of VLS IT Systems, hence, there is no case for again attaching the said expenditure/income to the assessee. The Ld.AR further submitted that the Ld.DR's argument that the collection of amounts from US based organization for placing of manpower is remitted to the assessee's account is baseless and without any evidence. With regard to tabulation of different products developed by the assessee firm in different years, the Ld.AR

submitted that the entire information of development of software was placed before the Ld.CIT(A) which was discussed in para No.17 of the order of the Ld.CIT(A). Therefore, the argument of the Ld.DR that the assessee has not furnished the details is far from the truth. Merely because VLS Systems Inc has declared before American Embassy that one of the activities are recruitment, it does not bar the VLS Systems Inc to import the software from India and it's Indian arm is not barred from exporting the software. Therefore, the contention of the department that since VLS Systems Inc has declared before American Embassy that it is a placement / recruitment agency cannot be made hindrance to the export activity of the assessee. The argument of the Ld.DR that the assessee company is engaged in the body shopping is purely on presumptions and surmises without any basis. The Ld.AR argued that except suspicions, the department has not brought on record any evidence to show that the assessee company is engaged in the body shopping. The Ld.AR reiterated the submissions made before the CIT(A) and stated that all the queries raised by the AO were suitably replied by the assessee before the Ld.CIT(A) and also in the course of appeal hearing before the ITAT. The activities of the assessee are export of software and no receipt in connection with the supply of personnel was

admitted as its income. Even with regard to Mega Soft, the Ld.AR submitted that the assessee had admitted the income of one thousand dollars and claimed deduction u/s 10A on one thousand dollars only, but not one lakh dollars as alleged by the department. The activity of supply of personnel is that of VLS IT Services and the income from the said sources was assessed in the hands of VLS IT Services by the AO substantially which was also confirmed by the Ld.CIT(A). Therefore, the issue with regard to supply of personnel is put at rest by assessing the income in the hands of VLS IT Systems. The Ld.AR argued that the assessee is in the activity of development and export of software, but not for the supply of personnel. Therefore, requested to allow the appeal of the assessee and set aside the orders of the Ld.CIT(A).

10. We have heard both the parties and perused the material placed on record. A search u/s 132 was carried out in the case of the assessee on 16.09.2010 and during the course of search, certain material was found by the AO which led the AO to believe that the assessee is making false claims for deduction u/s 10A. Firstly, the agreement dated 08.01.2002 between VLS Sytems Inc and the assessee firm which was submitted to the STPI for getting it registered as 100% EOU, wherein it was observed that Shri T

Nanda Kishore alias Kris Nanda has signed the Vendor Service Agreement between the two entities in two different names which led the AO to believe that the assessee is fabricating the evidences and has signed in two different names as T Nanda Kishore for the assessee and as Kris Nanda for VLS Systems Inc, thus viewed that it is a calculated ploy of the assessee.. For this query, the assessee has replied that he has signed the agreement representing ABS as T Nanda Kishore and on behalf of the VLS Systems Inc, he had signed as Kris Nanda, as he is called in US by name Kris Nanda. This issue was clarified by the assessee by a letter submitted in the office of Director General of Income Tax (Investigation) and submitted that there was no malafide intention. From the reply of the assessee, we do not see any malafide intention, since, the assessee was staying in US and called as Kris Nanda and there is no reason to suspect the signing of the agreement in the name of Kris Nanda / Nanda Kishore. Though the assessee filed letter in the office of Director General Investigation, no evidence was brought by the department to suspect the genuineness. Therefore, we hold that it is not a reason to suspect the activity of the assessee.

11. Secondly, the department found that there was no software development agreement envisaged in the agreement dated 08.01.2002.

However, the department found another agreement called Master Services Agreement dated 06.06.2002, wherein, there was a provision for development of software. The copy of the agreement was retrieved from the seized hard disk marked as A/ABS/PO-02/9. The AO suspected the agreement as fabricated one and viewed that the said agreement was not available originally and made subsequently as an afterthought to claim deduction u/s 10A as software developer. According to the AO, the agreement was prepared in 2008. In the instant case, search was conducted on 06.09.2010 and by the time the search was conducted, the agreement was available in the seized material in the premises of the assessee. The assessee replied that since the assessee has lost it's copy of the original agreement and it has to submit the copy of the agreement to STPI for renewal, he has asked the employee Mr.Hari to get the signature of Jagan Mohan Rao on the agreement on behalf of the ABS firm. This signed agreement was submitted to the STPI for renewal of registration. The original agreement was stated to be lost by VLS also in fire accident. The agreement signed by both the parties was furnished during the post search proceedings. The correspondence shows that the agreement was signed by Sri T.Jagan Mohan Rao during 2008. The assessee clarified that

the original agreement was submitted to the STPI at the time of registration and subsequently copy of agreement was prepared only for renewal of licence. As discussed the copy of agreement was available in the seized material in soft form. The department did not make any enquiries with the STPI and did not bring any evidence to show that the said agreement dated 06.06.2002 was not submitted to the STPI originally. Therefore, there is no reason to disbelieve the copy of the Services Agreement dated 06.06.2002 as fabricated one or made as an afterthought.

12. The third issue is with regard to invoices submitted to the STPI. The AO contended that the agreement was pertaining to IT Enabled Services, invoices raised and submitted to the STPI were related to export of software products. Since the assessee claims that it has sold the software products, the invoices raised are in tune with the activity of the assessee. Therefore, there is no reason to suspect the invoice raised by the assessee. The issue with regard to Megasoft Consultants Inc, the AO suspected the sale of software to Megasoft Consultants because of the reason that the Indian arm of Megasoft had denied the transaction. The assessee submitted that it has not sold the software product to Megasoft India Ltd and it has sold to Megasoft, US and the firm ABS on behalf of VLS submitted product

licence agreement between VLS and Megasoft to support that it sold the products to them on invoices raised on Megasoft. Since there was no direct evidence brought by the Department from Megasoft US, there is no reason to disbelieve the transaction. Similarly, in the case of amount of invoice raised, the assessee company raised invoice for an amount of one thousand dollars on Megasoft for customisation services and claimed the same for deduction u/s 10A. The assessee stated that the invoice of one lakh dollars were submitted to STPI for registration purposes which the department also did not make any objection before the STPI. Therefore, on this issue also, the department failed to prove that the assessee was not engaged in the software export.

13. With regard to products developed by ABS, the assessee submitted that none of the statements recorded from the employees contained any evidence to suggest that the ABS has not developed any software. The assessee has furnished before the Ld.CIT(A) copies of export clearance certificates from STPI, agreement between VLS and it's clients and communication by e-mail to show software development and ITES provided in product information for five products namely, ITRM, Parent update, MEMS etc., ABS and VLS employees letters in 1200 pages and called

for the remand report from the AO. Merely because of VLS Systems Inc has mentioned before American Embassy that the company was into placement services also, it is not barred from importing software from the assessee. Similarly, the assessee is not barred from exporting software to it's importing organization and no such material was brought on record. Therefore, on this issue, neither the department brought any evidence prohibiting the assessee to make exports or importing company to import the software. Though the Ld.AO held that the assessee is engaged in the body shopping, the entire receipts on account of recruitment of personnel were assessed in the hands of VLS IT Services substantively on the basis of agreements, thus the department has accepted that recruitment of manpower and personnel supply was the activities of VLS IT Services, but not of the assessee. Though the AO has alleged that the profit was abnormally high, the AO has not computed the income on account of export activity, referred the issue to TPO for Arms length and brought on record comparables and made the T.P.study. Instead taxed the entire income declared by the assessee, thus, there is no reason for justification to tax the entire income earned by the assessee denying the deduction claimed. Once, the AO has taxed the entire income admitted by the assessee without

computing the income or estimating the income, there is no reason to disbelieve the income earned by the assessee from the export activity. From the above, it is clear that the assessee has answered all the issues raised by the AO as well as the DR suitably in it's reply submitted to the Ld.CIT(A) which was not countered by the department. The issues raised by the AO such as signatures in two different names, agreement dated 06.06.2002, invoice on Megasoft, invoices raised by the assessee, the statements recorded from the employees, the staff position, percentage of income, reasons for membership with Monster.com, discrepancies regarding year of development of different products etc. at best are leads for suspicion or leads for investigation, but not a conclusive proof to hold that the assessee has not made the exports once the assessee places the evidences for transmitting the data and has approval from STPI. Unless the department establishes that the export itself was a bogus from the importer or importing country by making suitable enquiries or furnishes the evidence from the STPI it cannot be held that there was no exports. In the instant case, the assessee has placed evidence before the CIT(A) and also in two paper books containing the details of ITES worked hours, purchase orders, employee wise breakup, STPI clearance, inward

remittances etc. The assessee has developed the software and made export to VLS Systems Inc., USA which has imported the software from the assessee as per it's requirement and design. There was an evidence furnished by the assessee as observed from the Ld.CIT(A) order that the data was transmitted from India to USA and the export proceeds were realized through banking channels which was not in dispute. Neither the department furnished evidence from the importer that it has not made imports nor any evidence brought on record from the importing country with regard to bogus nature of exports made by the assessee. During the appeal hearing, as well as before the CIT(A), the assessee submitted that the assessee had exported the software to VLS Systems, i.e. ITRM (Information Technology Resource Management as per the Master Services Agreement). Quick TS/eIPS/Time Tracking, MeMs, VMAct, Temple Track, Parent Student Update etc. All the material about this product, development activities over 20 lakhs line of softex code, programming in lines of software with computer standards and design specifications are part of the seized material. The assessee submitted that the brief of all this activites was given to Ld.CIT(A) from the seized hard disk. On an average, there were 38 to 40 employees working in product development and

support employees who provided IT Enabled Services. The salaries of all these employees are deposited in their account and PF was paid. The proof of payment of PF was also provided to the AO.

14. During the appeal hearing, the Ld.AR submitted that for initial products, Visual Source Safe-VSS was used later on TFS was used. All the applications were developed by using Microsoft Technologies including Visaual Studio, C#Net, ASP.NET, Ajax, J Query, JavaScript, HTMS, XML, TFS (Team Foundation Servicer) and SQL server and all these products are transferred using FTP (File Transfer Protocol), a tool to transfer the software and its associated documents from one computer/server in Hyderabad, to a server in VA, USA. Each of these computers are assigned an IP address, which is a unique number given to a computer servicer. Each IP address is unique to each country and each state within the country. The logs of these can be found on each of the server which tracks the date and time of each FTP transfer along with duration of transfer. Log is similar to a phone bill which lists the date and time stamp along with duration of the call. Around 10 – 12 voice over IP phones were used in calling the prospective clients in USA on supporting these software were used. Few phone bills, along with date was submitted to the AO and the

Ld.CIT(A). Few employees of ABS who were customer facing in USA are given pseudo names for easy understanding of names which are familiar to USA citizens. All these products developed by ABS are on monthly basis to STPI. A quarterly report on the software development along with logs to show transfer of this software from Hyderabad Office to USA are recoded and submitted to STPI. However, the AO did not bring any evidence to disprove the claim of the assessee.

15. As per section10A of the Income tax Act the profits and gains derived by an undertaking from the export of articles or things or *computer software* for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee. The computer software is defined in the Income tax act as per which

> *(a) any computer programme recorded on any disc, tape, perforated media or other information storage device; or*
>
> *(b) any customized electronic data or any product or service of similar nature, as may be notified [55] by the Board, which is*

transmitted or exported from India to any place outside India by any means;

As seen from the order of the Ld.CIT(A), the assessee has transmitted the data from India to US through the infrastructure of STPI. STPI is a Government agency in India and established in 1991 under the Head of Communications and Information Technology that manages the Software Technology Park scheme. It provides physical infrastructure, including dedicated high speed connectivity to technology parks, freedom for 100% foreign equity investment and tax incentives. STPI provides physical hosting for the National Internet Exchange of India. STP schemes provide facilities for IT industry, helping them undertake software development and IT enabled services for 100% exports that include professional services. For that, data communication links have been established, providing high speed connectivity. The objective of STPI is encouraging, promoting and boosting the software exports from India. It also maintains internal engineering resources to provide consulting, training and implementation services. The salient features of STPI scheme was approval under single window clearance mechanism, 100% foreign export oriented scheme for undertaking software development for software

export using data communication link or in the form of physical exports including professional services. Once the unit is located in STPI, the assessee can make export in single window using the lines and infrastructure of STPI. As rightly held by CIT(A), the documentation prescribed by the STPI is sufficient to hold that the assessee made the exports. Softex forms are proof of transmission of data. Ld.DR also argued that Softex forms are proof of transmission of data. Mere transmission of data from India to outside India is sufficient to hold that the assessee has made the exports. In this case the assessee submitted the bundles of information with regard to transmission of data as observed from the order of Ld.CIT(A). Hence, the responsibility is more on the AO to prove that there was no software export with direct evidence. In the instant case, the department has not established that that there was no software export by the assessee from the STPI inspite of conducting the search. As seen from the orders of the lower authorities, the assessee has used the infrastructure made available by STPI for transmitting the data, the details of transmission of the data was submitted to the Ld.CIT(A) as well as the AO. The assessee submitted that the data was transmitted in FTP logs. The Ld.CIT(A) after verifying the information filed by the assessee given a

finding that the assessee has developed and exported the software. For the sake of clarity and convenience, we extract relevant part of the order of the Ld.CIT(A) in para No.9 to 10, 11 to 18 as under :

> "9.0. The appellant firm was registered at STPI from 16.01.2002 and was having approvals thereafter for all the asst. years in question. The change of registered office from Guntur to Hyderabad and subsequently from Ameerpet to Begumpet was also approved. Date of commercial production was taken as 24J0.2002 by STPJ. The company furnished all the approval documents in course of appellate proceedings.
>
> 10.0. For the six assessment years under question, the turnover of the company, the expenses claimed, the total income, income for 10A deduction as per Audit Report and the taxable Income returned by the company both in the originally filed returns and in the returns filed in response to notices u/s 153A is tabulated below. This turnover breakup also gives the breakup between the software development stage and the ITES services income.

ITEM	A.Y.2005-06	A.Y.2006-07	A.Y.2007-08	A.Y.2008-09	A.Y.2009-10	A.Y.2010-11
Total turnover	38708384	45065555	68480351	39666281	60355222	74905950
Total expenses	3694422	4225517	10987314	12918125	15491657	16568641
Total income including interest income	40067642	46253328	61712409	32812097	53244950	71436236
Audit report for Sec.10A	35013962	40840038	57493037	26748156	44863565	58436829
Taxable Income	5053680	5413290	4219372	6063941	8381385	12999407
Party wise breakup of turnover (total)	37995318	44462281	68480352	39666281	56043569	74426023
IT Sales	7959095	10410572	8870676	13900739	18139440	27185715
ITES Sales	30036223	34051709	59609675	25765542	37904129	47240308

> 11.0 in course *of* the appellate proceedings, clarifications were also sought regarding the number of hours billed and its feasibility (page 18 of the asst.

order *for* the AY 2010-11). The appellant submitted the details giving a break up of IT & ITES worked hours linking it to the purchase order and invoice number *as* well for all the asst. years in appeal. The relevant statement for AY 2010-11 is enclosed as Annexure A (one page). {page 31 of this order}.

12.0 The appellant also furnished the list of employees and salary paid along with details of PF credited for the AYs under question. Letters sent to the bank regarding *salary a*nd the salary sheet of April, 2008 is enclosed for the sake of immediate reference as Annexure B (5 pages). -(pages 32, 33, 34, 35, & 36 of this order}. The appellant had also filed copies of employment letters and employment agreement in support of the claim. All the details filed by the appellant are placed on record.

13.0 As claimed in the written submissions reproduced supra, the appellant also furnished copies of sworn statements from the employees *of* the firm wherein, they have clearly mentioned the work they have undertaken in software. Sworn statement of Sri Kishore Kumar recorded on 16.09.10 is perused and in this statement he has categorically stated that he is services team leader and had worked on enhancing and modifying IT cubes (AASA) and also works on task assigned by his project manager either through email or by phone. He stated that he modified and incorporated the changes in the programme and sends the modified version. He also mentioned that all the communications are by way of email.

14.0 Source control logs for the years 2008-09 and 2009-10 were filed by way of sample. For immediate and ready reference so as to get a feel of how this looks, three sheets are enclosed as ANNEXURE C (3 pages) (pages 37, 38 & 39 of this order}.

15.0 The appellant also stated that the AO had wrongly stated that there was no export of software without even verifying the record. It was submitted that FTP Lag actually gives data with complete addresses of the system from which software was transmitted and also the time and date of such transmission. The code address is also unique linking the country and station right down to the computer server system from which it was sent. It was mentioned that there are more than 6000 pages of FTP Log and by way of example few logs for different years were filed and for the sake of immediately reference two log sheets for FY 2008-09 are enclosed as ANNEXURE 0 (one page) {page 40 of this order} The proof of transmission of software by FTP was part of initial filing of 1206 pages in 11 annexures, which was sent to the AO for his remand report.

16.0 In the asst; order at page 19, it was also stated that the assessee firm had worth *only Rs.5.09* lakhs and air conditions worth Rs 12,000 only. The AO was thus questioning the very availability of infrastructure to take up such jobs. The appellant strongly contested this and furnished the complete details of infrastructure with copies of bills running into nearly 79 pages vide annexure 8 of the initial written submissions totaling nearly 1206 pages that was sent to the AD for remand report. From the information filed, it is seen that the appellant has computers and related infrastructure wortfrR.39.37 lakhs as against five lakhs mentioned by the AO.

17.0 Copies of export clearance certificate from STPI (121 pages), agreement between VLS and its clients and association communication by email (166 pages) email communication to show software development and ITES provided (683 pages) in product information for five products namely ITRM, Parent Update, MEMS etc., (60 pages), AS and VLS Employees letters (19 pages) were all part of submissions running into 1206 pages which was sent to the AO and where remand report was called for.

18.0 On going through the various documents filed and the trial left in the computer (prior to the date of search in most of the cases and part of seized hard disc and hence not an afterthought / insertion) through the emails and the time and date log and which was furnished through FTP log sheets, the software related activity and it export of the appellant cannot be denied. Thus, questions raised in para 8 at (a), (b) and (c) given hereunder for ready reference have to be answered in favour of the appellant.

(a) The act of development as shown in source codes.
(b) The act of export as evidenced in log sheets, STPI forms.
(c) The adequacy or otherwise of infrastructure and expenditure to support the incomes."

15.2. In the instant case, though the department has alleged that the assessee is not exporting the software, but engaged in the body shopping no conclusive evidence was brought on record to support the department's contention. As per the provisions of section 10A of the Act, the assessee engaged in the export of software is entitled for deduction of 100% profits

derived from the export of software. In the instant case, by providing various details, information, the assessee has proved that it was in the activity of software export and received foreign exchange on account of software export. No enquiries were made with the importing country, no evidence was brought on record from the STPI to establish that the assessee's claim is bogus. Therefore, we have no reason to disbelieve the export of software made by the assessee. Thus we hold that the assessee made export of software and entitled for deduction u/s 10A of the Act.

16. The next issue is invoking the provisions of section 10A(7) and 80IA(10) by the Ld.CIT(A). The assessee as well as the department have challenged the order of the Ld.CIT(A) on this issue. Though the Ld.AO in its order stated that the profit is very high in the assessee's case and the organizations carrying on similar line of business are deriving lesser profit, the AO did not compute the income from the business separately either by estimation or following the accounting principles. The AO also did not make transfer pricing study and the case was not referred to TPO for determination of Arms Length. The AO has to compare the case of the assessee with cases of identical facts but not on similar facts. In the instant case the assessee submitted that it has not paid the interest, less rent and

no idle employment. The AO has consider the identical facts and and bring the comparable cases for estimation of income. In the instant case neither the CIT(A) nor the AO made the above analysis and considered the profits of the assessee. The department has to make out case that the assessee has arranged the activity systematically to reduce the profit .There is no taxable entity in India which can absorb the expenditure of the assessee except the VLS IT systems and the entire receipts were taxed in the case of VLS IT systems. ABS is the only institution which is receiving the foreign exchange.

17. The assessee during the appeal hearing submitted that the assessee company utilized 100% capabilities of employees without allowing the employees on bench. The assessee has no idle employees on its rolls. Rent paid by the assessee is 0.5% of the revenue, whereas, in many other cases, it was about 5%. Apart from the above, the assessee has no interest costs since there were no borrowings. The department did not controvert the submissions of the assessee. The AO also did not refer the transactions to TPO at the time of assessment to determine the Arms Length Price. The issue with regard to determination of higher percentage of margin and invoking the provisions of section 10A(7) and 80IA(10) was considered by

ITAT Hyderabad in the case of DCIT Circle-8(1), Hyderabad Vs. Quick MD, Hyderabad in I.T.A. No.97/hyd/2015 in the order dated 26.08.2015 and dismissed the appeal of the department. For the sake of clarity and convenience, we extract relevant part of the order of the Tribunal from para 8 to 8.2 which reads as under :

> *"8. We have considered the submissions of the parties and perused the orders of revenue authorities as well as other materials on record. We have also carefully applied our mind to the decisions cited at the bar. The issue arising for consideration before us has two aspects, factual and legal. As far as the factual aspect is concerned, there is no dispute that assessee on a turnover of Rs. 83.49 crores has declared a profit of 81.36 crores, which works out to 97.40%. AO is of the view that assessee has declared unreasonably high rate of profit only for the purpose of claiming exemption u/s 10A of the Act. Therefore, invoking the provisions of section 10A(7) read with section 80IA(10) of the Act, AO has restricted the profit margin of assessee to 74% and computed exemption u/s 10A accordingly. However, as can be seen from the facts on record, assessee for bench marking price charged for international transactions with AE has conducted a TP study, wherein certain comparable companies having average arithmetic mean of 36.53% have been selected. TPO has also independently conducted analysis by selecting comparables on his own. The average arithmetic mean of comparables selected by TPO worked out to 52.69%. On a careful examination of the comparables selected by assessee, it is found that OP to sale ratio of the comparable companies fluctuates from as low as 11.88% to a high of 74.26%. Similarly OP to OC ratio of comparable companies selected by TPO indicates lowest OP to OC of 7.42% as against the highest OP to OC of 289.50%. Even, the comparable companies considered by AO indicate that OP to sales ratio of two companies is 85% and 88%, whereas, margin of another company is 51%. Thus, analysis of the profit margin of comparable companies selected by assessee, TPO and AO, as indicated above, would show that the profit margin is fluctuating from very low of 11.87% to a high of 88%. Therefore, considered in the aforesaid perspective, profit margin declared by assessee at 97.40% cannot be considered to be unreasonable or unbelievable considering other factors pointed out by assessee like limited nature of expenditure incurred by assessee and the amount of risk involved as well as niche business area. Moreover, when comparable companies selected by AO himself show profit margin of 88% and 85%, there is not much variance between profit margin shown by assessee. Further, it has been brought to our notice by ld. AR, which has not been controverted by ld. DR, in the subsequent*

AY also assessee has declared profit at 96% and has also paid taxes of about 15 crores since the tax holiday has already expired. Considered in the aforesaid perspective, AO's conclusion that only for the purpose of claiming higher exemption u/s 10A, assessee enhanced its profit margin, cannot be accepted.

8.1. As far as legal aspect is concerned, on plain reading of section 80IA(10), which is referred to in section 10A(7) of the Act, it is very much clear that the basic condition to be satisfied by AO is, he must establish it on record that assessee and its related party have arranged the business transaction in such a way that it produces more than the ordinary profit to the assessee carrying on the eligible business. Only when AO establishes on record such arrangement, he can proceed to estimate the profit of assessee at a reasonable rate. In the facts of the present case, on careful reading of the assessment order, we do not find any conclusive finding of AO that assessee and its AE have arranged business transactions in a manner to generate more than ordinary profit to assessee. At least, there is nothing mentioned in the assessment order to suggest that AO has satisfied such condition. Therefore, without establishing through positive evidence that assessee and its related party have arranged their business transaction in a manner to produce more than ordinary profit to assessee, AO cannot invoke the provisions of section 10A(7) read with section 80IA(10) on mere presumptions and surmises. The coordinate bench of this Tribunal while considering identical issue in case of Aquila Software Services Hyderabad Pvt Ltd. Vs. DCIT, ITA No. 423/Hyd/14, dated 30/06/2015, held as under:

> *"7. We have considered the submissions of the parties and perused the orders of revenue authorities as well as other materials on record. As far as the applicability of section 10A(7) is concerned, in our view, the issue has attained finality as the directions of ITAT in the earlier round of litigation has not been challenged by assessee or by revenue. Keeping this in view, we have to decide whether disallowance of deduction u/s 10A of the Act by applying the provisions of section 80IA(1) is valid. As can be seen, section 10A of the Act allows exemption at 100% of the profit earned by assessee from export of software. However, deduction u/s 10A is subject to 10A(7), which in turn refers to section 80IA(8) and 80IA(10) of the Act. Since 80IA(8) is not relevant for our purpose, there is no need to discuss the same. As far as the provisions contained u/s 80IA(10) is concerned, it reads as under: "Where it appears to the AO that, owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the AO shall, in computing the profits and gains of such*

eligible business for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom." On plain reading of the aforesaid provision, it is clear that as per the said provision three conditions have to be fulfilled. Firstly, there must be close connection between assessee carrying on the eligible business and the other person. Secondly, the business between assessee and such other closely connected person should be so arranged that business transacted between them produces more than the ordinary profits to assessee carrying on eligible business. If AO is satisfied with the aforesaid two conditions, then, as per the third condition, he may take the amount of profits as may be reasonably deemed to have been derived from transactions of such business in computing profits of such eligible business for the purpose of deduction under the said section. Considering the facts of the present case in the light of the aforesaid statutory provisions, it is to be seen that the first condition is fulfilled as assessee and its AE are related parties. However, as far as the second condition i.e. existence of arrangement between assessee and its related party by which these transactions so arranged has to produce more than the ordinary profits in the hands of assessee, whether has been fulfilled or not needs to be examined. On perusal of the assessment order, it is very much evident that only relying upon TP document of assessee wherein it is stated that average profit margin of comparable company is 15% as against 50% of assessee, AO has concluded that profit earned by assessee is not at arm's length. AO has not given a conclusive finding as to whether earning of such excess profit is as a result of business arrangement between the parties. Even, ld. CIT(A) has also not given any factual finding on the issue to conclusively prove that assessee and its related party has arranged their business affairs in such a manner that it will result in more than reasonable profit to assessee. Merely relying upon the fact that in the TP documentation the average margin of comparable companies are 15% where as the assessee has shown profit at 50%, the departmental authorities have reduced the deduction claimed u/s 10A by restricting the profit from the eligible business of assessee to 20% of the turnover. In our view, the Department having not fulfilled the conditions of section 80IA(10), disallowance in the present case is not justified. At the cost of repetition, it needs to be stated that only relying upon TP documentation, AO has inferred that the profit earned by assessee at 50% is more than the arm's length profit. However, without bringing material on record that the profit earned by assessee at 50% is not the profit ordinarily earned in similar line of business, it cannot be said that it is not at arm's length. Moreover, excess profit may be due to various reasons. Therefore, without analysing those factors, it cannot

be said that only because average profit earned by comparables is 15%, the profit earned by assessee at 50% is not reasonable. The Chennai Bench of the Tribunal in case of Tweezmen India Pvt. Ltd., Vs. Addl. CIT, 133 TTJ 308 while considering similar issue held that the provisions of section 80IA(10) do not give arbitrary power to AO to fix the profits of assessee. AO has to specify as to why he feels that profits of assessee are being shown at higher figure. AO has to further show as to how he has computed ordinary profits which he deems to be profit which assessee might be reasonably expected to generate. The Bench held that AO would be expected to use a comparable case to determine the possible ordinary profit which assessee could be expected to generate from his business. In the absence of any other substantial evidence with him, when using a comparable, assessee's own past and future performance would obviously be the best comparable. Comparing assessee's modus operandi of conducting its business with another when the same are not of equal terms would be a travesty of justice in so far as the financial charges. The use of plant & machinery, depreciation thereon, the location which would affect the cost of transportation as also the cost of labour, cost of power and fuel would have to be seen. The ITAT, Delhi Bench in case of AT Keatney India Ltd. Vs. Addl. CIT (supra), the facts of which are more or less identical to the facts of the present case, while deciding similar issue held as under: "11. Adverting to the facts of the extant case, we find that the AO simply relied on the TP study report submitted by the assessee to form a bedrock for the disallowance of the part of the amount of deduction u/s 10A, without firstly showing that there existed any arrangement between the assessee and its overseas related party, by which the transactions were so arranged as to produce more than the ordinary profits in the hands of the assessee. The assessment year under consideration is 2009-10. Neither the proviso to sub-section (10) existed at that time, nor such a proviso can be applied as we are dealing with an international transaction and not specified domestic transaction. Under these circumstances, we are of the considered opinion that the impugned order upholding the invocation of sub-sec. (10) of sec. 80IA cannot be countenanced to this extent. Ergo, it is held that the ld. CIT(A) erred in sustaining the disallowance made by the Assessing Officer by restricting the amount of deduction u/s 10A of the Act to Rs. 2.63 crore as against Rs. 8.22 crore claimed by the assessee. The impugned order on this issue is overturned and it is directed to allow deduction as claimed." Examining the facts of the present case in the light of the decisions referred to hereinabove, it is noticed that in the present case also AO has simply relied on the TP study report of assessee to conclude that the profit earned by assessee cannot be considered to be reasonable profit earned from eligible business and

on that basis has disallowed part of the deduction u/s 10A. Therefore, since AO has not conclusively proved the fact that there is an arrangement between assessee and its AE by which the transactions were so arranged as to produce more than the ordinary profits in the hands of assessee, disallowance of part deduction claimed by applying the provisions of section 80IA(10), in our view is not justified. Since ld. CIT(A) upheld the disallowance without examining the aforesaid aspect, order of ld. CIT(A) deserves to be set aside. The conditions of section 80IA(1) having not been fully complied by AO, disallowance of deduction claimed u/s 80IA(10), in our view is not justified. Accordingly, we delete the addition made by AO in this regard."

8.2. The principle decided as aforesaid by the coordinate bench clearly applies to the facts of the present case. Though, it may be a fact that ld. CIT(A)'s finding is cryptic and there is no discussion on the issue of assessee's claim of deduction u/s 10A, but, considering the fact that disallowance u/s 10A of the Act by AO is not valid in view of the reasons stated by us hereinbefore, no useful purpose would be served by setting aside the impugned order of ld. CIT(A). Accordingly, we dismiss the grounds raised by department."

17.1. In the instant case the AO has not made out a case for invoking the provisions to section 10A(7) and 80IA(10) and the issue was not referred to the Transfer Pricing Officer. The Ld.CIT(A) also blindly estimated the profits without bringing any comparable case on identical facts to hold that transactions were so arranged as to produce more than the ordinary profits in the hands of assessee. In the case decided by the coordinate bench in the case of Quick MD also, the profit was 97.40%. The Coordinate Bench decided the issue against the department on similar facts of the assessee's case. Since the facts are similar and the AO did not make out case, the transactions are so arranged to increase the profits. Hence we are unable to

sustain the order of the Ld.CIT(A) to restrict the profits to the extent of 70% instead of allowing 100% of profits for deduction u/s 10A. Accordingly, we set aside the order of the Ld.CIT(A) and direct the AO to allow the deduction of 100% profits as per law. The appeals of the revenue on this issue is dismissed and allow the appeals of the assessee.

18. The next issue in Department's appeal is with regard to receipts on account of recruitment of personnel. The AO has taxed the entire receipts in the hands of VLS IT Systems substantively and protectively in the hands of the assessee firm. The AO placed reliance on the agreements between the VLS Inc. and VLS IT Systems for making the substantive assessment in the hands of the VLS IT systems. The department has challenged the order of the Ld.CIT(A) for the A.Y.2007-08 to 2010-11. The Ld.CIT(A) confirmed the substantive assessment in the hands of VLS IT Systems and deleted the protective addition in the hands of the assessee. During the appeal hearing no material was placed before us to reverse the order of the Ld.CIT(A). Therefore, we uphold the order of the Ld.CIT(A) with regard to confirming the addition in the hands of VLS IT Systems relating to the receipts of manpower selection and dismiss the appeal of the revenue.

19. In the result appeals of the revenue are partly allowed and the appeals of the assessee are allowed.

Sd/-	Sd/-
(डि.एस. सुन्दर सिंह)	**(वी.दुर्गा राव)**
(D.S. SUNDER SINGH)	**(V. DURGA RAO)**
लेखा सदस्य/ACCOUNTANT MEMBER	**न्यायिक सदस्य/JUDICIAL MEMBER**

दिनांक /Dated : 17.12.2019
L.Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Annapurna Business Solutions, 6-3-866/A, Suite No.401, Maheswari Mekins Mayank Plaza, Greenlands Road Begumpet, Hyderabad
2. राजस्व/The Revenue - Dy.Commissioner of Income Tax, Central Circle-3 Hyderabad (ii) Asst.Commissioner of Income Tax, Circle-2(1), Guntur
3. The Principal Commissioner of Income Tax (Central), Hyderabad
4. The Commissioner of Income Tax (Appeals)-12, Hyderabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam