

**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**

ITA No.	A.Y.	Appellant	Respondent
1083/Hyd/15	2007-08	Sri VLS IT Services, HYDERABAD [PAN: ABHFS2094J]	Deputy Commissioner of Income Tax, Central Circle-3, HYDERABAD
1084/Hyd/15	2008-09		
1085/Hyd/15	2009-10		
1086/Hyd/15	2010-11		
1087/Hyd/15	2011-12		

For Assessee : Shri S.Rama Rao, AR
For Revenue : Shri Y.V.S.T.Sai, CIT-DR

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

ORDER

Per Bench :

These appeals filed by the assessee are directed against the orders of the Commissioner of Income Tax(Appeals)-12,Hyderabad, for the respective assessment years.

Condonation of delay:

2. These appeals of assessee have been filed with a delay of 74 days. Assessee has filed the affidavits, seeking condonation of delay in filing the appeals.

2.1. Considering the petitions for condonation of delay in respect of assessee and being satisfied with the reasonable cause for the delay, we hereby condone the delay in filing these appeals, which are admitted and being heard on merits.

2.2. Since the facts and issues involved in all these appeals are common and identical, except the amounts mentioned therein, all these appeals were heard together and are being disposed-off by way of this common order. For the sake of convenience, ITA No.1083/Hyd/2015 for the AY.2007-08 is discussed in detail hereunder.

3. Brief facts of the case are that, the assessee is a registered firm with Shri T.Nanda Kishore and Shri Jagan Mohan Rao as equal partners (50% each). There was a search and seizure operation u/s.132 of the Income Tax Act [Act], carried out in the premises of M/s.Annapurna Business Solutions (in short 'ABS'), a related firm and certain papers belonging to the assessee were seized. Accordingly, a notice u/s.153C of the Act was issued for the AYs.2007-08 to 2010-11. Assessment for these years were therefore completed u/s.144 r.w.s.153C of the Act. Assessment for the AY.2011-12 was completed u/s.144 of the Act. The incomes returned by the assessee and the assessment made along with details of the additions made in all the years under dispute are summarized as under:

S.No	AY.	Income Returned	Income assessed (Rs)	Addition made (Rs)	Nature of addition
1	2007-08	NIL	40,97,000	40,97,000	Deposits received for processing H1B Visa
2	2008-09	NIL	50,65,620	50,65,620	
3	2009-10	NIL	57,48,994	57,48,994	
4	2010-11	NIL	47,64,850	47,64,850	
5	2011-12	NIL	19,74,116	19,74,116	

4. During the assessment proceedings, the Assessing Officer (AO) found that the related and the main firm, M/s.ABS claimed that it was developing and exporting software to the country outside India and accordingly claimed the income as exempt u/s 10A of the act. It was found that the firm was not actually doing work with regard to development and export of software but was mainly recruiting software personnel and processing their H1B visas. This work, however, was done on paper using the assessee-firm's name viz., M/s.VLS IT Services. M/s.ABS was only doing the entire activity as the work was carried out by the employees of M/s.ABS. Agreements entered by M/s.VLS IT Services with its employees indicate that their bonuses were linked to the dollar margin that the parent US company makes on a placement of candidates selected by the technical recruiters of M/s.ABS.

4.1. It was also found by the AO that the main activity of M/s.VLS IT Services was to recruit and process H1B visa of selected candidates to be sent to USA. For going to USA, these people were required to pay certain deposits. These deposits were, however, deposited in bank accounts of relations and

confidential persons rather than in the bank accounts of either the assessee, M/s.VLS IT Services or M/s.ABS. Thus, the AO came to the conclusion that the assessee had no intention to show these amounts as income in any of the year.

4.2. When questioned, the Managing Partner of the assessee-firm, Shri T. Nanda Kishore denied that M/s.ABS has ever processed any H1B application or collected any money. It was also stated by him that the assessee-firm, M/s.VLS IT Services collected advances on a few occasions and the details of which were then processed for Visa purposes by and on behalf of the American Company, M/s.VLS IT Services Inc. The AO, however, concluded that the evidences found during the search indicates that Visa processing was done by M/s.ABS but amounts were not deposited in its accounts. Seized material indicated that the group is collecting deposits from prospective H1B applicants and the same was also admitted by Sri Hari BabuVaka, an official of M/s.ABS in his statement dt.16-11-2010. Therefore, the AO concluded that since the crucial document i.e., the agreement for processing, having been executed by the assessee-firm, the deposits so collected amount to income in the hands of the assessee-firm and brought to tax such amounts for various assessment years. The AO also assessed the income in the hands of the Annapurna Business Solutions protectively.

5. Aggrieved by the above assessment, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the substantive addition made in the hands of the assessee and

deleted the protective assessment in the hands of Annapurna Business Solutions. The year wise details of additions confirmed by the Ld.CIT(A) are as under :

S.No.	A.Y.	Amount confirmed
1.	2007-08	30,87,000
2.	2008-09	48,45,620
3.	2009-10	17,08,176
4.	2010-11	32,01,221
5.	2011-12	14,32,546

6. Aggrieved with the said order of Ld.CIT(A), the assessee is in appeal before the Tribunal.

7. At the time of hearing, Ld.AR vehemently supported the orders of CIT(A) and prayed the Bench that the AO made the addition of entire receipts instead of income hence requested to assess the income instead of confirming the entire addition. In this connection, he relied on the following case law:

- a. Travencore Rubber & Tea Co. Ltd., Vs. CIT (2000) [243 ITR 158 (SC)];
- b. CIT Vs. Saurashtra Cement Ltd., [325 ITR 422] (SC);
- c. Co-ordinate Bench decision of the ITAT, Mumbai in the case of ACIT Vs. Royal Western India Turf Club Ltd., (2016) [52 ITR(T) 235 (Mumbai Trib.)];
- d. Co-ordinate Bench decision of the ITAT, Kolkata in ITA No.797/Kol/2014, dt. 03-03-2017, in the case of ITO Vs. M/s.Energy Development Company Limited;

8. Per contra, the Ld.DR relied on the orders of lower authorities.

9. We have heard both the parties and perused the material placed on record. In the instant case, the AO made the additions as under :

S. No.	A.Y.	Income Returned	Income Assessed (Rs.)	Addition made	Nature of addition made
1.	2007-08	Nil	40,97,000	40,97,000	Deposits received for processing H1B Visa
2.	2008-09	Nil	50,65,620	50,65,620	
3.	2009-10	Nil	57,48,994	57,48,994	
4.	2010-11	Nil	47,64,850	47,64,850	
5.	2011-12	Nil	19,74,116	19,74,116	

And the Ld.CIT(A) confirmed the addition as under :

S.No.	A.Y.	Amount confirmed
1.	2007-08	30,87,000
2.	2008-09	48,45,620
3.	2009-10	17,08,176
4.	2010-11	32,01,221
5.	2011-12	14,32,546

We have gone through the orders of the Ld.CIT(A) and find that during the appeal hearing, the Ld.AR accepted the additions and failed to furnish the evidences before the Ld.CIT(A), hence the Ld.CIT(A) confirmed the addition partly.

9.1. For the A.Y.2007-08, out of total addition of Rs.40,97,000/- made by the AO, the Ld.CIT(A) allowed the relief of Rs.10,10,000/- and sustained the addition of Rs.30,87,000/-. The assessee before the Ld.CIT(A) requested

for relief of Rs.15,40,000/- and for balance amount failed to furnish any evidence and accepted for the addition. The Ld.CIT(A) examined the claim of the assessee in respect of Rs.15,40,000/- allowed the relief of Rs.10,10,000/-. During the appeal hearing, the Ld.AR did not place any evidence for claiming the expenditure or material to delete the addition sustained by the Ld.CIT(A). Therefore, we do not see any reason to interfere with the order of the Ld.CIT(A) and the same is upheld.

9.2. For the A.Y.2008-09, the assessee has accepted for addition of Rs.36,33,965/- out of the total addition of Rs.50,65,620/-, the Ld.CIT(A) allowed the relief of Rs.2,20,000/-. During the appeal hearing, the Ld.CIT(A) examined the claim of the assessee for exclusion of Rs.14,31,655/- and found that the sum of Rs.2,20,000/- required to be deleted as per the detailed discussion made by the Ld.CIT(A). During the appeal hearing, the Ld.AR did not bring any evidence for claiming the expenditure or material to delete the addition sustained by the Ld.CIT(A). Therefore, we do not see any reason to interfere with the order of the Ld.CIT(A) and the same is upheld.

9.3. For the A.Y.2009-10, the AO assessed the amount of Rs.57,48,994/-. The assessee contended before the Ld.CIT(A) that the sum of Rs.35,57,444/- was not taxable since the said amount was also considered in 2010-11 and accepted for balance amount of Rs.21,15,029/-. The Ld.CIT(A) examined the contention of the assessee and sustained the amount of

Rs.17,08,176/-. Since the assessee has accepted the said amount before the Ld.CIT(A) we find no reason to interfere with the order of the Ld.CIT(A) and the same is upheld.

9.4. For the A.Y.2010-11, the AO made the addition of Rs.47,64,850/- and the assessee has claimed to have refunded the sum of Rs.20,23,324/- and requested for relief. The Ld.CIT(A) has examined the explanation of the assessee and accepted the claim for a sum of Rs.15,63,629/- out of the addition of Rs.47,64,850/- and the amount of Rs.32,01,221/- was sustained. During the appeal hearing, the Ld.AR did not bring any evidence to controvert the finding of the CIT(A) or any evidence for expenditure. Therefore, the order of the Ld.CIT(A) is upheld and no interference is called for.

9.5. For the A.Y.2011-12, the AO made the addition of Rs.19,74,116/- and the Ld.CIT(A) deleted the addition of Rs.5,41,570/- and sustained the addition of Rs.14,32,546/-. No additional evidence was furnished before us to controvert the finding given by the Ld.CIT(A). Therefore, we do not find any reason to interfere with the order of the Ld.CIT(A). Accordingly, we uphold the order of the Ld.CIT(A).

10. To sum-up, we uphold the order of the Ld.CIT(A) and dismiss the appeals of the assessee.

Sd/-

**(D.S. SUNDER SINGH)
ACCOUNTANT MEMBER**

Hyderabad, Dated: 17-12-2019

TNMM / LR

Sd/-

**(V. DURGA RAO)
JUDICIAL MEMBER**

Copy to :

1. Sri VLS IT Services, C/o. Sri S. Rama Rao, Advocate, Flat No. 102, Shriya's Elegance, 3-6-643, Street No.9, Himayat Nagar, Hyderabad.

2.The Deputy Commissioner of Income Tax, Central Circle-3, Hyderabad.

3. CIT(Appeals)-12, Hyderabad.

4. The Pr.CIT(Central), Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File.