

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: '1-2', NEW DELHI**

**BEFORE SH. AMIT SHUKLA, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No.6919/Del/2014
Assessment Year: 2009-10

M/s. Virage Logic International - India Branch Office, A-36, Sector-64, Noida, UP	Vs.	JDIT, Circle-2(2), International Taxation, New Delhi
PAN : AABCV8275E		
(Appellant)		(Respondent)

And

ITA No.7044/Del/2014
Assessment Year: 2009-10

DCIT, Circle -3(1)(2), New Delhi	Vs.	M/s. Virage Logic International India Branch Office, A-75, Sector-57, Noida
PAN : AABCV8275E		
(Appellant)		(Respondent)

Assessee by	Sh. Anubhav Rastogi, Adv.
Respondent by	Sh. S. Kumar Yadav, Sr.DR

Date of hearing	20.03.2018
Date of pronouncement	16.04.2018

ORDER

PER O.P. KANT, A.M.:

These cross appeals by the assessee and the Revenue are directed against order dated 21/10/2014 passed by the Ld.

Commissioner of Income Tax (Appeals), XXIX, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2009-10, raising respective grounds:

2. The grounds raised by the assessee in ITA No. 6919/Del/2014, are as under:

1. *The learned Commissioner of Income-Tax ('CIT(A)') has erred in facts and circumstances of case and in law by passing an order for Assessment Year 2009-10 which is bad-in-law.*
2. *The Ld. CIT(A) has grossly erred on facts and in law in partially confirming the adjustment of Rs. 35,919,343/- computed by the learned Assessing Officer ('Ld. AO') in the assessment order passed under section 143(3) of the Income-tax Act, 1961 ('the Act'), by holding that the international related party transaction of the Appellant with respect to the provision of software development services do not satisfy the arm's length principle as envisaged under the Act. In doing so the Ld. CIT(A) has erred:*

2.1 by not appreciating the fact that none of the conditions set out in section 92C(3) of the Act are satisfied in the present case;

2.2 by disregarding the economic analysis conducted by the Appellant to determine the Arm's Length price ('ALP') of the international transaction pertaining to software development services in compliance with section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 ('Rules') in the Transfer Pricing ('TP') documentation;

2.3 by disregarding multiple year/prior years' data as used by the Appellant in the TP documentation and holding that current year (i.e. FY 2008-09) data for comparable companies should be used despite the fact that the same was not necessarily available to the Appellant at the time of preparing its TP documentation;

2.4 by rejecting comparability analysis in the TP documentation/ Appellant's fresh search and in conducting a fresh comparability analysis based on application of the following additional/ arbitrary filters in determining the ALP for software development services;

- Rejection of companies whose data is not available for the current year (i.e. FY 2008-09);
- Rejection of companies whose turnover is less than Rs. 5 Crore.
- Rejection of companies whose service income is less than 75% of total operating revenues;
- Rejection of companies with related party transactions (income as well as expenditure combined) more than 25% of operating revenue;
- Rejection of companies with exports that are less than 75% of sales revenue;
- Rejection of companies that are effected by some peculiar economic circumstances;
- Rejection of companies with employee cost is less than 25% of the total cost;
- Rejection of companies with different FY ending.

2.5 by including high profit making companies in the final comparables set for benchmarking a low risk captive unit such as the Appellant, thus demonstrating an intention to arrive at a pre-formulated opinion without complete and adequate application of mind with a single-minded intention of making an addition to the returned income of the Appellant;

2.6 by including certain companies in the final set of comparables which are not comparable to the Appellant in terms of functions performed, assets employed and risks assumed;

2.7 by excluding certain companies on arbitrary/ frivolous grounds even though they are comparable to the Appellant in terms of functions performed, assets employed and risks assumed;

- 2.8 *by denying the benefit of a working capital adjustment while computing the ALP and thereby disregarding the law, international guidance and judicial precedents in this regard;*
- 2.9 *by ignoring the business/ commercial reality that since the Appellant (vis-a-vis its software development services) is remunerated on an arm's length cost plus basis, undertakes minimal business risks as against alleged comparable companies that are full- fledged risk taking entrepreneurs, and by not allowing a risk adjustment to the Appellant on account of this fact; and*
- 2.10 *by committing a number of factual / computational errors in selection/ rejection of proposed comparables and/ or in the operating profit margins of the comparables;*
- 2.11 *by disregarding judicial pronouncements in India while computing an adjustment to the transfer price of the international transaction entered into by the Appellant.*
- 2.12 *The Ld. CIT(A)/ AO has erred by not limiting the amount of adjustment to the lower end of the arithmetic mean as envisaged under second proviso to section 92C sub section 2 of the Act.*
- 2.13 *by ignoring the fact that the Appellant is entitled to tax holiday under section 10A of the Act on its profits and therefore would not have any untoward motive of deriving a tax advantage by manipulating transfer prices of its international transactions;*
3. *That the learned AO, on the facts and in the circumstances of the case and in law, has erred in*
4. *That given the facts and circumstances of the case and in law, the Ld. CIT(A)/ AO has grossly erred in confirming the action of the Ld. AO of initiating penalty proceedings under section 27i(i)(c) of the Act.*

The above grounds and sub-grounds are independent, mutually exclusive and without prejudice to each other.

The Appellant craves leave to add, alter, amend or withdraw any of the grounds of appeal, as may be considered necessary, either before or during the hearing of this appeal.

2.1 The grounds raised by the Revenue in ITA No. 7044/Del/2014 are as under:

1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the assessee is entitled to deduction u/ s 10A of the Income Tax Act, 1961 in respect of alleged 'export' of software.*
 - 1.1 *Whether the Ld CIT(A) has erred in not appreciating the fact that the transfer of software from the Branch Office to the Head Office of a foreign company is not in the nature of sale or export and therefore provisions of section 10A are not applicable in such a case.*
 - 1.2 *Whether the Ld CIT(A) has erred in not appreciating the fact that:*
 - a) *The deduction u/s 10A is allowable in respect of deduction of "profits and gains" derived from exports. However, since a transaction of transfer from the Branch Office to Head Office is only an internal transaction, it does not lead to "profits and gains" in the first place as no entity can earn "profits & gains" from a transaction with itself.*
 - b) *The taxable entity assessed by the Assessing Officer is not the Branch Office as a separate taxable unit in its own right deriving income from exports but a foreign entity which is being assessed in respect of its income from the operations/activities carried out through the Branch Office in India.*
 - c) *The registration of the Branch Office as an STPI unit and the submission of Softex Forms are requirements to*

ensure compliance with specific regulatory conditions under the STPI scheme and cannot by themselves be determinative of the actual nature of a transaction or entitlement to deduction u/s 10A of the Act which is allowable only when there are "profits & gains" derived from exports and all the other conditions precedent are satisfied.

- d) The accounts of the Branch Office and the Head Office get squared up when consolidated at the entity level and therefore, the transaction of the transfer of software (from Branch Office to the Head Office) and the payment of consideration for the same does not amount to sale or export.*
- e) The purpose of the determination of Arm's Length Price, under the Transfer Pricing Regulations, of a transaction between the Branch Office and Head Office is to prevent Base Erosion and bring to tax in India profits of the foreign entity attributable to the Functions Performed, Assets Utilized and Risks Assumed through the Branch Office in India. The Transfer Pricing exercise does not obliterate the fundamental fact that the Branch Office and the Head Office together constitute a single entity.*

1.3 Whether on the facts and in the circumstances of the case, the Ld CIT(A) has erred in not appreciating the fact that the true intention of legislature behind enshrining the deduction u/s 10A, as evident from subsection (3) thereof, was to bring in precious foreign exchange, which is not fulfilled in the present case, because the assessee being a foreign company is not retaining the sale proceeds in India except the tax on a fraction of the profit which is attributable to Indian branch of the foreign company.

1.4 Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the fact that in this case the Indian Branch Office has received in India only the remuneration fixed on man hour basis for preparation of software and not the actual sale proceeds of the software which had been sold by the Head Office.

- 1.5 *Whether the Ld. CIT(A) has erred in inferring from the provisions of section 80IA(8) and 80IA(10), referentially made applicable in terms of subsection (7) of section 10A, that transfer of software from Branch Office of a foreign company to its Head Office, amounts to export, not appreciating the fact that the provisions of section 80IA(8) and 80IA(10) apply to section 10A only "so far as may be" and, having been applied referentially for a limited purpose, cannot be invoked for the purpose of determining whether a transaction qualifies as sale or export in the first place.*
- 1.6 *Whether the Ld CIT(A) has erred in not appreciating the fact that the provisions of Section 80IA(8) have a specific purpose, namely, manipulation in the quantum of deduction allowable by the expedient of transfer of goods or services between the eligible business to any other business carried on by the same assessee (or vice versa) Extended to section 10A, the provision is meant to address the manipulation of quantum of allowable deduction to artificially increase the profits & gains of the eligible business engaged in exports.*
- a) *The Ld CIT(A) has erred in not appreciating the fact that the provisions of section 80IA(8) are applicable where an assessee has two or more businesses, the profits of which are otherwise separately computed, whereas, this distinction of eligible and non-eligible business/undertaking is not available in the present case, there being only one business, namely, business of the foreign entity which is carrying out part of its operations in India through a Branch Office.*
- b) *The Ld CIT(A) has erred in not appreciating that the intention of the legislature behind enshrining the provisions of section 80IA(8) was always to prevent manipulation of the allowable deduction by way of transactions between domestic entities only, as evident from the amended definition of "Market Value" in Explanation below section 801 A(8), in particular clause (ii) thereof, which refers to Arm's Length Price in respect of specified domestic transactions only.*

- 1.7 *Whether the Ld CIT(A) has erred in not appreciating the fact that the provisions of section 80IA(10) have a specific purpose, namely, manipulation in the quantum of deduction by the expedient of arranging a course of business between the assessee carrying on the eligible business and any other person closely-connected with the assessee. However, there being no two separate assessees in this case, this provision in also not applicable.*
- 1.8 *Whether the Ld. CIT(A) has erred in not appreciating the fact that in Section 10A of the Act there is no provision akin to explanation 2 to Section 80HHC and therefore there is no concept of deemed export under the provisions of Section 10A of the I.T. Act.*
2. *Whether on the facts and in circumstances of the case, the Ld. CIT(A) has erred in directing the Assessing Officer/Transfer Pricing Officer (AO/TPO) to exclude M/s Bodhtree Consulting Ltd from the list of comparables for the purpose of benchmarking the International Transaction and computation of Arm's Length Price in relation to software development services.*
 - 2.1 *Whether the action of Ld. CIT(A) in excluding M/ s Bodhtree Consulting Ltd from the list of comparables solely on the basis of abnormally high profits is erroneous and unsustainable in law, considering the settled position of law to the effect that no comparable can be excluded merely on the ground of abnormally higher profits, unless it is shown that such high profits were due to abnormal factors.*
3. *Whether on the facts and in circumstances of the case, the Ld. CIT(A) has erred in directing the Assessing Officer/Transfer Pricing Officer (AO/TPO) to include M/s Quintegra Solution Ltd in the list of comparables for the purpose of benchmarking the International Transaction and computation of Arm's Length Price in relation to software development services.*

- 3.1 *Whether the Ld. CIT(A) has erred in including M/s Quintegra Solution Ltd in the list of comparables solely on the basis that it was taken as a comparable in the preceding year, ignoring the detailed FAR analysis given by the TPO establishing that the two companies are functionally different.*

 4. *Whether on the facts and in circumstances of the case, the Ld. CIT(A) ,4,has erred in directing the Assessing Officer/Transfer Pricing Officer (AO/TPO) to include comparables for the purpose of benchmarking the International Transaction and computation of Arm's Length Price in relation to software development services.*
 - 4.1 *Whether the Ld. CIT(A) has erred in including M/s Akshay Software Technologies Ltd. in the list of comparables solely on the basis that it was taken as a comparable in the preceding year, ignoring the detailed FAR analysis given by the TPO establishing that the two companies are functionally different.*

 5. *The appellant prays for leave to add, amend, modify or alter any grounds of appeal at the time or before the hearing of the appeal.*
3. Briefly stated facts of the case are that the assessee is India Branch office of M/s Virage Logic International, which is a company incorporated in the USA and is a hundred percent (100%) subsidiary of Virage Logic Corporation. The company Virage Logic Corporation is a market leader in providing advanced embedded memory Intellectual Property (IP) for the design of complex integrated circuits. The assessee is engaged in the business of development of computer software for its Associated Enterprises (AEs). The business activity of the assessee has been summarized by the Ld. CIT(A) as under:

“2. The branch office was set up in India after obtaining necessary approval from the Reserve Bank of India (RBI) with the sole object of development and export of software. The branch office set up a Software Technology Park unit under the Software Technology Parks Scheme of the Government of India for establishing the unit therein per approval dated September 23, 1999. Since the date the branch was established, and also during the instant year, the business of the branch office was to develop and export of computer software to its head office in USA. Products delivered by Virage group consist of various software tools along with supporting files that contain design data for creating the requisite silicon IP (Memory or Logic elements). Since inception of India Branch Office in May 1999, the engineering site at India has been working on various following activities related to the IP products and platforms offered:

- Software development in C, C++ and TCL/Tk on our Embedded-IT range of software tools.
 - Development of programs and files that constitute our Memory Compilers or Logic libraries.
- EDA views in TCL/Tk programming language.
- Programming files in appellant's proprietary format that describes the physical, functional and timing behavior of the Memory or Logic elements.

All of the above files are developed on UNIX operating systems on Sun platforms or in the Windows NT environment. The created files are shipped overseas electronically via Internet.”

3.1 For the year under consideration, the assessee filed its return of income on 24/09/2009, declaring total income of Rs.1,05,08,672/-, after claiming deduction of Rs.1,26,28,052/- under section 10A of the Income Tax Act, 1961 (in short ‘the Act’).

The case was selected for the scrutiny and a notice under section 143(2) of the Act was issued and complied with. The Assessing Officer noticed international transactions carried out by the assessee with its AEs from Form No. 3CEB filed alongwith the return of income. The Assessing Officer referred the matter of determination of arm's length of international transaction to the Ld. Transfer Pricing Officer (TPO) vide letter dated 27/10/2011. The Ld. TPO passed an order under section 92CA of the Act on 29/01/2013 determining the arm's length price of international transaction of software development service at Rs.20,14,59,569/- as against Rs.16,55,40,226/- determined by the assessee and, thus, proposing an upward adjustment of Rs.3,59,19,343/-. In the final order passed under section 144C(3) of the Act on 08/05/2013, the Assessing Officer added the transfer pricing adjustment of Rs.3,59,19,343/- to the income of the assessee. The Assessing Officer also disallowed the deduction under section 10A of the Act claimed by the assessee in view of the stand taken in earlier years by the Department (Revenue). Aggrieved, the assessee filed appeal before the ld. CIT(A), who allowed the deduction under section 10A of the Act, however, on the issue of transfer pricing adjustment only part relief was allowed. Aggrieved, both the Revenue and the assessee are in appeal before the Tribunal, raising the grounds as reproduced above.

4. Before us, the Ld. Counsel of the assessee, only pressed ground No. 2.5 to 2.8 and 2.10 and, thus, the rest of grounds are dismissed as infructuous.

5. In the appeal of the Revenue ground No. 2 to 4.1 are related to transfer pricing issue. In the grounds raised by the assessee as

well as Revenue related to transfer pricing adjustment, inclusion/exclusion of certain comparables has been challenged. The assessee has challenged exclusion of 6 comparables, whereas the Revenue has challenged exclusions of 3 comparables by the Ld. CIT(A).

5.1 Before adjudicating the transfer pricing issues, brief background of the addition is discussed below:

- (a) The assessee in its transfer pricing study reported value of the international transaction of provision of software development services at Rs.16,55,40,226/-. For the purpose of benchmarking the transaction, the assessee carried out a search on databases and chose Transactional Net Margin Method (TNMM) as the most appropriate method and Operating Profit/Total Cost (OP/TC) as the Profit Level Indicator (PLI). The assessee selected 16 companies as comparable and worked out average PLI of 11.64 percent, by using multiple year data as compared to PLI of the assessee of 7.53%. The margin of the assessee being in the +/- range of 5% as prescribed under section 92C(2) of the Act, the assessee concluded that the international transaction is at arm's length. The Ld. TPO observed that the assessee should have used current year data rather than multiple year data of comparables. The filter applied by the assessee was also not found appropriate by the Ld. TPO. The Ld. TPO after considering the submission of the assessee, selected 10 comparables with their average PLI of 30.86% using current year data, as under:

S. No.	Company Name	OP/TC (%)
1.	Bodhtree Consulting (standalone)	69.80
2.	Cat Technologies (Standalone)	34.43
3.	Goldstone Technologies (Seg)	10.28
4.	Larsen & Turbo Infortech	21.33
5.	Mindtree Ltd.	27.36
6.	Persistent Systems Ltd.	37.77
7.	Tata Elxsi Ltd. (Seg)	16.88
8.	Thirdware	37.27
9.	FCS Software Solutions Ltd.	43.35
10.	RS Software India Pvt. Ltd.	10.15
	Average	30.86

- (b) The Ld. TPO denied the working capital adjustment to the margin of the comparables on the ground that the assessee did not demonstrate that the working capital deployed affected the margin earned by the assessee and the comparable. The Ld. TPO computed the arm's length price of the international transaction and transfer pricing adjustment as under:

<i>Total Cost</i>	:	<i>Rs.15,39,50,458/-</i>
<i>ALP at a margin of 30.68%</i>	:	<i>Rs.20,14,59,569/-</i>
<i>Price received</i>	:	<i>Rs.16,55,40,226/-</i>
<i>Difference</i>	:	<i>Rs.3,59,19,343/-</i>

- (c) The Ld. CIT(A) upheld the action of the Assessing Officer in using current year data for benchmarking international transaction. He also rejected the objections of the assessee regarding action of the Ld. TPO of rejecting/invoking certain filters for selection of comparables. As far as set of

comparables is concerned, the Learned CIT(A) directed the TPO:

- (i) to exclude 'Bodhtree Consulting Ltd.' from final set of comparables
 - (ii) verify corrected margin of 'FCS Software Solutions Ltd.' and;
 - (iii) include 'Akshay Software Technologies Ltd.' and 'Quintegra Solutions Ltd.' final set of comparables
- (d) The Ld. CIT(A) upheld the denial of working capital adjustment on the margin of comparable companies. The final set of comparables selected by the Ld. CIT(A) is reproduced as under:

Sr. No.	Name of Comparable	Unadjusted OP/TC%
1.	Cat Technologies Ltd.	34.43
2.	Goldstone Technologies (Seg.)	10.28
3.	Larsen and Toubro Infotech Ltd.	21.33
4.	Mindtree Ltd.	27.36
5.	Persistent Systems Ltd.	37.77
6.	Tata Elxsi Ltd. (Seg.)	16.88
7.	Thirdware Solutions Ltd.	37.27
8.	FCS Software Solutions Ltd.	15.61
9.	RS Software India Pvt. Ltd.	10.15
10.	Quintegra Solutions Ltd.	-6.65
11.	Akshay Software Technologies Ltd.	8.22
	Average	19.33

5.2 In the appeal effect giving order, the Assessing Officer computed the transfer pricing adjustment applying average PLI of 19.33% on the basis of the comparables finally selected by the Ld. CIT(A).

5.3 Before us, the assessee's objected to inclusion of following comparables by the Ld. TPO:

1. Cat Technologies Ltd.

- i. Before the Ld. TPO, the assessee submitted that the company was engaged in providing diversified services in the nature of legal processing services, human resource services, business process outsourcing services, medical transcription services and infrastructure services and thus, it was not functionally comparable to the assessee. The Ld. TPO rejected objection of the assessee on the ground that majority of the income of the company is from software development and consulting. The Ld. CIT(A) accepted the finding of the Ld. TPO and retained the company as comparable.
- ii. Before us, the Ld. counsel of the assessee referred to page No. 40, 11, 36 of the Annual Report Compendium and submitted that the company derived its income from training, software development and medical transcription receipts. He also referred to page No. 12 of the Annual Report Compendium and submitted that the company has entered into field of job placement portal during the year under consideration and it was well-placed in the market as leading Human Resource (HR) BPO service provider. The Ld. counsel submitted that in view of the diversified business activity and no separate segment of software development services, the

company could not be selected as comparable. The Ld. counsel also relied on the decision of the Tribunal in the case of Sun Life India service centre private limited versus DCIT (ITA No. 1489/Del/2014) wherein this company has been held to be non-comparable to an assessee providing contract software development services to its AE.

- iii. On the contrary, the Ld. DR supported the finding of the lower authorities and submitted that majority of the revenue is from software development and consulting services and revenue from medical transcription is less than 10% of the total revenue, therefore, the company should be retained as comparable.
- iv. We have heard rival submissions and perused the relevant material on record. On perusal of the Schedule IX, of financial statement of the company for the year under consideration, which is available on page 36 of the Annual Report Compendium, we find that income from operation consist of following streams:

Particulars	For the year ended on	
	31.03.2009 (Rs.)	31.03.2008 (Rs.)
<u>SCHEDULE-9</u>		
Income from Operation		
Training Income	244,107	1,172,040
Software Development & Consulting Services	84,939,375	48,395,187

Medical Receipts	Transcription	8,374,194	10,633,128
		93,557,676	60,200,354

- v. It is seen from the above revenue stream that major component of Rs. 8.49 crore is on account of software development and consulting services, whereas the transaction of the assessee is only of the software development services and no consulting or advisory services are included.
- vi. Further, on perusal of the expenditure, as available on page 30 of the Annual Report Compendium and relevant schedules on pages 36 and 37 of the Compendium, we find that expenses are not segregated according to the revenue streams and, therefore, it is not possible to have revenue and expenditure data relating to software development segment. Thus, in absence of segmental result of software development, the company cannot be compared at entity level, with the assessee who is a software development entity. We also note that the Tribunal in the case of Sun Life India Services Centre Private Limited (supra) has not found the company as comparable to the software development segment. The relevant finding of the Tribunal is reproduced as under:

“8.3 It is this total figure of Rs.9.36 crore which has been taken by the TPO. It shows that the TPO has included CAT Technologies Ltd. as comparable on entity level. On a perusal of the above detail of income of this company, it is apparent that it not only includes revenues from Medical transcription and

Training, but the major component of Rs.8.49 crore is income from 'Software Development and Consulting Services.' It is reiterated that the segment under consideration is 'Software development and maintenance support services' and the assessee has a separate international transaction of 'Provision of advisory services' with the transacted value at Rs.1.75 crore, whose ALP has been disjointedly determined by the TPO. When we come back to the revenues of CAT Technologies Ltd., it is seen that the major component of Rs.8.49 crore is on account of 'Software development and consulting services'. Since the segment of the assessee under consideration is only 'Software development and maintenance support services' independent of 'Advisory services', it becomes manifest that a company rendering both the software development and also advisory services, cannot be considered as comparable on entity level with the assessee's separate segment of software development maintenance support services. Be that as it may, CAT Technologies Ltd., has also earned Medical transcription receipts of Rs.83.74 lac and Training income of Rs.2.44 lac, both of which have been combined with the income from Software development and consulting services. One cannot ascertain with precision the contribution made by the income from Medical transcription and Training to the overall profitability of CAT Technologies Ltd., so that the other income may be segregated. As such, we fail to comprehend as to how the entity level comparison of this company with the assessee's 'Software development and maintenance services' segment can be construed as valid. This company is, therefore, directed to be excluded from the list of comparables.

- vii. In view of the aforesaid discussion, the Ld. TPO/AO is directed to exclude this company from the list of the comparables.

2. Mind Tree Ltd.

- i. According to the Ld. TPO, the company is a service company engaged in providing services related to software development and thus it is one of the comparable. The Ld. TPO rejected the contention of the assessee of extraordinary event of acquisition during

the year under consideration, on the ground that acquisition has not affected the operation of the company. He also rejected the contention of substantial R&D and patents owned by the company on the ground that patents are in the nature of a small improvements in the processes and none of them is a product patent. The Ld. CIT(A) observed that this company was selected by the assessee itself as comparable, however during proceedings before TPO challenged the comparability of this company. The Ld. CIT(A) upheld the finding of the Ld. TPO and retained the company as comparable.

- ii. Before us, the Ld. counsel referred to page 105 and 142 of Annual Report Compendium and submitted that the company has acquired stake in Aztecsoft and another company TES-PV (re-named as Mind Tree Technologies Private Limited) was merged through an order of Hon'ble High Court of Karnataka. According to the Ld. counsel restructuring/extraordinary circumstances, makes the company functionally dissimilar with the assessee. The Ld. counsel referred to profit and loss account of the company available on page 130 of the Annual Report Compendium and submitted that due to the extraordinary event, the turnover of the company has jumped by Rs 30 crores, and profit has jumped by Rs. 20 crores which is abnormal in view of the past performance of the company.

- iii. The Ld. counsel also referred to pages 122, 125 and 145 of the Annual Report Compendium and submitted that company is functionally in different lines service which include business process management, cloud computing services, infrastructure management services, product engineering and mobility solutions, and on this ground also the company need to be excluded from the set of comparables. The Ld. counsel referred to page 145 of the Annual Report Compendium and submitted that two segment of R&D services and IT services have been reported but expenses of Rs.226,78,00,043/- have not been allocated and, thus, segment results being distorted, the company cannot be compared at the segment level also.
- iv. In support of the contention for rejecting the company as comparable, the Ld. counsel also relied on the decision of the Hon'ble Andhra Pradesh High Court in ITA No. 233 of 2014 in the case of CIT-II Vs. Intoto Software (I) Pvt. Ltd.
- v. The Ld. DR on the other hand relying on the order of the Ld. TPO and the Ld. CIT(A) submitted that the Ld. Counsel of the assessee has failed to demonstrate the effect of extraordinary event of acquisition on the profitability of the company. He submitted that revenue from infrastructure management and tech support is only 3.4% of the total revenue breakdown and thus the company is predominantly software development service only.

- vi. We have heard the rival submissions and perused the relevant material on record. The Ld. counsel has sought exclusion of the company basically on two grounds. The first ground is extraordinary event and the second-ground is diversified functions. Regarding the extraordinary event, on page 121 of the Annual Report Compendium (page 24 of the Annual Report) it is mentioned as under:

“On December 17, 2007, MindTree Ltd. ('MindTree' or 'the Company') acquired 100% of the outstanding equity shares of TES PV Electronic Solutions Private Limited ('TES PV'), which was subsequently renamed as MindTree Technologies Private Limited (MTPL). In the current year, subsequent to the acquisition, the company, vide a scheme of amalgamation proposed to merge MTPL with itself. The approval from the High Court of Karnataka was received in January 2009 and the scheme was effective April 1, 2008. Consequently, the standalone MindTree results include that of MTPL.

During the year, the Company acquired 79.9% of the outstanding equity shares of Aztecsoft Limited (Aztec). Aztec is now a subsidiary of MindTree Limited. From the date of acquiring control (July 31, 2008), the revenues are consolidated. The Company has filed an application with the High Court for the merger of Aztec with the company effective April 1, 2009.”

- vii. It is evident from the above noting in the annual report of the company that the company TES PV electronic solutions Private Limited was already acquired on 17/12/2007 by the assessee and was a subsidiary of the assessee company during the year under

consideration. Similarly the assessee acquired equity shares of another company namely Aztecsoft Ltd during the year under consideration, and which was merged with the assessee only in the subsequent year corresponding to assessment year 2010-11. On perusal of the profit and loss account available on page 130 of Annual Report Compendium, we find that during the year profit before interest and depreciation and tax of the company's Rs.95,60,25,148/- as against the profit of Rs.153,55,42,134/- in immediately preceding year, thus, we do not find any increase in profit due to merger of subsidiary. Further, we find that decrease in profit before interest deprecation and tax, during the year under consideration was mainly due to increase in administrative and other expenses, on account of exchange loss. Thus, in our opinion, the event of acquisition has not increased the profit of the company abnormally, which may become one of the reason for its exclusion from the set of comparables.

- viii. The 2nd ground for exclusion of the comparable has been claimed as diversified functions of the company in the area of R&D services and there are unallocated expenses of more than Rs.226 crores. In this regard, we find it relevant to reproduce notes to the account, available on page 145 of the Annual Report Compendium, which reads as under:

“The Company’s operations predominantly relate to providing IT services in two primary business segments viz. IT Services and R&D Services. The company considers the business segment as the primary segment and geographical segment based on the location of customers as the secondary segment.”

- ix. In view of the above disclosure in the Annual Report of the company, it is evident that operations of IT services have been claimed related to business segments of IT services and R&D services. Thus in both the segments the function of the assessee is of software development only, which also get confirmed from the only revenue stream of income from software development. In such circumstances, the company is comparable at the entity level and thus there is no effect of unallocated expenses in segment reporting. In percentage breakup of service offerings, also services rendered are related to software development except in a small amount of 3.4% for infrastructure management and tech support, which is not significant. In absence of details of any revenue from other streams other than the software development, there is no valid ground for excluding this company from the set of comparables. Accordingly, we direct the Ld. TPO/AO, to retain this company as comparable.

3. Persistent System

- i. Before the Ld. TPO it was claimed that company derives income from sale of software services as well as sale of products and in absence of any segmental results, the company should be rejected. The Ld. TPO noted that company is predominantly a software service company providing outsourced product development service and thus there is a reference of product at various places in the Annual Report, which is no ground for rejection of the comparable. The ld. CIT(A) also observed that no expenses have been booked for software product development and FAR of the company being similar to the assessee, it is to be retained as comparable.
- ii. Before us also, the Ld. counsel reiterated that the company is a full-fledged software product development company. The Learned counsel referred to page 273 of the Annual Report Compendium and submitted that revenue of the company includes licensing of products. The Learned counsel also submitted that revenue in the profit and loss account has also been shown from sale of software services and products and, thus, the companies functionality dissimilar to the assessee and accordingly it should be excluded.
- iii. On the contrary, the Ld. DR relied on the finding of the Assessing Officer and the Ld. CIT-(A) in support of retaining the company as comparable.
- iv. We have heard the rival submission and perused the relevant material on record. We find that the Ld. TPO

has referred to various pages of the Annual Report of the company, containing 'company overview', 'our strengths' and concluded that reference to product was in respect of software product development services to independent software vendors and thus there is no sale of software product as such. The Ld. counsel failed to brought any material before us, contrary to the above finding of the Ld. TPO. Regarding the claim of the Ld. counsel that revenue consist of licensing of product, we find from page 273 of the Annual Report Compendium that in notes to account only method of revenue recognition in respect of revenue from licensing a product is mentioned, which is recognized on delivery of products and there is no mention of any revenue earned during the year from licensing of products. In view of aforesaid discussion, we are of the opinion that the company is functionally similar to the assessee and accordingly, we direct the Ld. TPO/AO to retain the company as comparable.

4. Thirdware Solutions Ltd:

- i. Before the Ld. TPO, the assessee made a claim that the company derives revenue from sources such as sale of license, software services, export from SEZ unit, revenue from subscriptions etc and thus cannot be compared at entity level. According to the Ld. TPO, the SEZ unit also exported software services and, thus, dominantly the company is in software development

service and sale of license is only 2.3 crores out of total sales of Rs 77.03 crores, which constitute 3% of total sales. The Ld. TPO also found the related party transactions (15.32%) below the threshold of 25%, and thus included the company as comparable. The ld. CIT(A) confirmed the action of the Assessing Officer and retained the company as comparable.

- ii. Before us, the Learned counsel submitted that revenue of the company consist of sale of license and subscription along with software services and no separate segmental result of software services are available in Annual Report of the company and, therefore, it cannot be compared with assessee at entity level being functionally dissimilar. The Learned counsel also relied on the decision of the Tribunal in the case of Sun Life India service Centre private limited versus DCIT in IT No. 1489/Del/2014, wherein the company has been held to be non-comparable to an assessee providing contract software development services.
- iii. On the contrary, the Learned DR relied on the finding of the Ld. TPO and the Ld. CIT(A).
- iv. We have heard the rival submission and perused the relevant material on record. On perusal of schedule 12 of financial statements, which is available on page 432 of the Annual Reports Compendium, sales of the assessee consist of following:

Schedules 12: Sales	As on 31.03.09	As on 31.03.08
Sale of Licence	23,237,588	3,916,427

Software Services	89,177,023	76,724,371
Export from SEZ Unit	478,572,420	263,971,033
Export from STPI Unit	162,900,630	168,863,049
Revenue from Subscription	16,433,714	9,293,874
	770,321,375	522,768,754

- v. It is evident from the revenue stream of the company that in addition to software services, the assessee is having income from sale of licenses and subscription. The activity or sale of license and subscription is functionally different from the activity of software services. On perusal of the Annual Report of the company, it is seen that only geographical segment reporting is available and no separate segment for software development services is reported. We also note that company has been excluded as comparable in the case of Sun Life India service Centre private limited (supra). The relevant finding of the Tribunal is reproduced as under:

“12.2 We have heard both the sides and perused the relevant material on record. It is observed from the Annual Report of this company that apart from revenue from ‘Software services’, this company has also earned revenue from ‘Sales.’ The TPO has considered entity level figures of this company for comparison. In view of the joining of the revenue from sales with the revenue from software services, this company ceases to be comparable with the assessee’s ‘Software development and maintenance services’ segment. Here, it is pertinent to mention

that this company was considered by the TPO as comparable in the immediately preceding year as well. The Tribunal vide its aforementioned order, has held it to be incomparable. Since no distinguishing features of the functional profile of this company and the assessee for the current year vis-a-vis the preceding year have been brought to our notice, following the precedent, we order for the removal of this company from e list of comparables.”

- vi. Thus, in view of non-availability of separate segment of software development services, the company is held to be functionality dissimilar, and accordingly, the Learned TPO/AO is directed to exclude the company from set of comparables.

5. Tata Elxsi Ltd.

- i. Before the Ld. TPO, the assessee submitted that company is engaged in non-comparable services, which included IT enabled and software product services and, therefore, the company needs to be rejected. According to the Ld. TPO, the services of product design, innovation design engineering, visual computing labs are sub segment of software development industry and, therefore, he selected the company as comparable. The Ld. CIT(A), affirmed the action of the Ld. TPO.
- ii. Before us, the Ld. counsel submitted that the company was excluded by the Tribunal in the case of the assessee for assessment year 2008-09 on the ground of functional dissimilarity and there being no change in functional profile of the assessee as well as the

company, the company should be excluded from the set of comparables in the year under consideration also. The Ld. counsel also referred to page 347 of the Annual Report Compendium and submitted that the business constituting the software development and service segment, included product design services of hardware and software, innovation design engineering with focus on mechanical design and visual computing labs division, which are functions different from software development. The Ld. counsel also drawn our attention to page 348 of the Annual Report Compendium and submitted that during the year the company has successfully animated commercial film co-produced by 2 leading Indian and overseas studios. The Ld. counsel also referred to page 361 of the Annual Report Compendium and submitted that design services included design of hardware products which is altogether different from the function of software development and accordingly, he requested to exclude the company from the set of comparables. The Ld. counsel also submitted that company has been excluded in the case of Sun Life India Service Centre Private Limited Vs. DCIT (supra) by the Tribunal as not comparable to an assessee providing contract software development services.

- iii. On the contrary, the Ld. DR submitted that the TPO has compared segment of software development services and not compared the company at entity level.

The Ld. DR submitted that in preceding year the company has been excluded on the ground of being engaged in Niche Product, whereas the assessee is also engaged in developing Niche products. The Ld. DR submitted that the assessee as well as the company both are engaged developing chipset software development and therefore the company is comparable at segment level.

- iv. We have heard the rival submission and perused the relevant material on record. We note that the Ld. TPO has compared the company at segment level. On perusal of the 361 of the Annual Report Compendium, we find that companies operation are broken into two business segments, i.e., (i) software development and services and; (ii) system integration and support. Further, we find that on page 348 of the Annual Report Compendium, details of activities under software development and service segment and system integration and support segment are given. Under software development and service segment, services of product design, innovation designing engineering service and visual computing lab are reported. Under the visual computing labs following activities carried by the assessee are reported:

“Visual Computing Labs:

VCL delivers 3D computer graphics, animation and special effects in the pre-production, production and

post-production of content for the film, television, gaming and advertising industry.

During the year, VCL successfully completed India's first full length fully animated commercial film, coproduced by two leading-Indian and overseas-studios. The film was released in 2008-09 amidst positive feedback for the quality of work produced, including nomination to the prestigious Visual Effects Society's Award for "Outstanding Animation in an Animated Motion Picture".

VCL is the first Indian studio to be nominated for such a prestigious award. During the year, VCL also commenced work on the next animated commercial film, again for a leading Indian studio. The film is scheduled for release in 2009-10.

During the year, VCL continued to deliver high end special effects for several prestigious domestic commercial film releases and Television Commercials. VCL was awarded the FICCI - BAF Award for best special effects in Commercials."

- v. It is seen that the company has completed full-length animated commercial film during the year under consideration. We note that no separate revenue and expenditure on this activity of making animated film is reported in the Annual Report. Since the activity of making animated film is functionally different from the activity of software development services and thus the segment of 'software development and services' of the company, cannot be compared with the functions of the assessee. Accordingly, the company being functionally dissimilar at segment level also. We, therefore, direct

the Ld. TPO/AO to exclude the company from the set of comparables.

6. L & T Infotech Ltd:

- i. The Ld. TPO selected the company, as according to him it is predominantly a software service provider. The Ld. CIT(A) observed that the company was selected by the assessee itself as comparable. He also observed that the assessee could not establish whether intangibles owned by the company are in the nature of product patents. He found the FAR of the company similar to the assessee, and hence retain the comparable.
- ii. Before us, the Learned counsel referred to page 63 of the Annual Report Compendium and submitted that during the year the company launched consulting service line and testing service line. The consulting service line included maximization of business value of IT, IT operation cost optimization, leveraging data for decision-making, IT organization post M&A and IT enabled business growth. According to the learned counsel the consulting services being functionally dissimilar to software development services, the company cannot be compared functionally with the assessee. The Learned counsel also drawn our attention to page 74 of the Annual Report Compendium, which is profit and loss account of the company and submitted that revenue of the company include software development service and products,

which cannot be compared with a software development revenue of the assessee. Alternatively, the Ld. counsel submitted that in case the company is retained as comparable, then its PLI need to be corrected. According to the Ld. counsel, the correct PLI of the company is 20.70% as against worked out by the Ld. TPO as 21.33%.

- iii. On the contrary, the Learned DR submitted that during the year under consideration there is no revenue from consulting service and only revenue shown is from software development services and product. The Learned DR referred to page 93 of the Compendium of the Annual Report and submitted that the revenue earned is from software development services in the field of financial, manufacturing and telecom and no revenue from sale of product is reported. The Learned counsel also submitted that expenses of the assessee are also related to software development activity and no product development expenses are debited under operating expenses. Accordingly, he submitted that the company can be safely presumed to be engaged in software development services only.

5.4 We have heard the rival submission and perused the relevant material on record. On perusal of profit and loss account available on page 74 of the Annual Report Compendium, the income has been shown from software development and products. Further, On perusal of page 93 of the Annual Report Compendium, we find that the entire activity of the company is

related to software development in different like verticals financial services, manufacturing and telecom. The Revenue from all the 3 verticals has been reported in note 18 to the notes on account, which is equal to the amount of revenue reported in profit and loss account. On perusal of the operating expenses, details of which is available on page 74 and 81 and 82 of the Annual Report, we do not find any expenses related to sale of products. Thus, in our opinion, the company is primarily engaged in providing software development services and there is no sale of products. The Ld. counsel relying on page 63 of the Annual Report has submitted that the company is providing services in the nature of infrastructure management and data warehousing. On perusal of page 63 of the Annual Report Compendium, we find that the company service offering are in the areas of application maintenance and development, enterprise resource planning, and a specialized services like data warehousing and business intelligence, testing services and infrastructure management services. We find that all these are the verticals in which the company is providing its services of software development and thus, contention of Learned counsel of functional dissimilarity are rejected. Accordingly, we direct, the Learned TPO/AO to include the company in the set of comparables, subject to the direction to take appropriate PLI of the company for computation of average PLI of the comparables. The assessee shall be provided adequate opportunity of being heard while computing the PLI of the company.

5.5 Thus, ground Nos. 2.5 to 2.7 and 2.10 of the appeal of the assessee are allowed partly for statistical purposes.

6. The Revenue in ground No. 2 has challenged exclusion of company M/s Bodhtree Consulting Ltd. by the Ld. CIT(A) from the set of comparables.

6.1 The Ld. TPO held that the company was having only segment of software development and engaged in providing solutions in the field of sharing data management, data warehousing etc., thus, he retained the company as comparable to the assessee. According to the Ld. CIT(A), the Ld. TPO has not considered extraordinary growth in the margin of the company. The Ld. CIT(A) observed that company has a growth of 353% in its net profit for the financial year 2008-09 and there is very high volatility in the profit of the company and, therefore, he directed to exclude the company from the final set of comparables.

6.2 The Ld. DR submitted that the ld. CIT(A) has not given any basis or referred the Annual Report for concluding that there is 300% growth in the profit and volatility in the profit of the company. According to him, increase in profit in one year cannot be basis for excluding the company, if it is otherwise functionally similar to the assessee.

6.3 The Learned counsel of the assessee, on the other hand, filed pages No. 12 and 25 of the annual report of the company and submitted that the company has recognized its revenue from software development on the basis of software developed and billed to the clients and due to which expenditure seems to have been debited in respect of software development in progress but the corresponding revenue has not been credited and due to which there is a volatility in the profit of the company on year-to-

year basis. The Ld. counsel submitted a chart of fluctuating margin of the company is under:

FY 2011-12	FY 2010-11	FY 2009-10	FY 2008-09	FY 2007-08	FY 2006-07
-10.87%	2.78%	34.39%	64.04%	21.00%	33.20%

6.4 The Learned counsel submitted that Tribunal, Bangalore bench in the case of M/s Mindteck (India) Ltd. Vs. DCIT in IT(TP)A No. 70/Bang/2014 has excluded the comparable on the reasoning that revenues from the software development is recognized on amount billed to clients and thus there is a possibility of expenditure being booked in earlier year.

6.5 In the rejoinder, the Ld. DR submitted that Annual Reports of the company of earlier years need to be examined to substantiate the claim that there is a volatility in the margin of the company and that too due to method of revenue recognition followed by the company in respect of software development services. Accordingly, he submitted that matter may be restored to the file of the Ld. TPO to decide the effect of revenue recognition of software development services on the margins of the company and then decide the issue of exclusion/inclusion of the company in the set of comparables.

6.6 We have heard the rival submission and perused the relevant material on record. The Ld. CIT(A) has excluded the company on the ground of 300% growth and volatility of the profit margin of the company in past years. However, we find that the Ld. CIT(A) has not referred any page of Annual Report for arriving at this factual finding. Further, the submission of the Ld. counsel

of assessee that there is a volatility in the margin of the company and that is due to the revenue recognition method followed by the company need verification from the Annual Report of the company. In view of aforesaid facts and circumstances, we feel it appropriate to restore the issue of inclusion/exclusion of the company from the set of the comparables to the file of the Ld. TPO/AO for deciding afresh. Thus, grounds No. 2 and 2.1 of the appeal of the Revenue are allowed for statistical purposes.

7. In grounds No. 3 and 3.1, Revenue has challenged inclusion of the company M/s Quintegra solutions Ltd as comparable.

7.1 The Learned TPO excluded the company from the set of comparables on the ground that it is functionally different company. Before the Id. CIT(A) the assessee submitted that the company is engaged in the provision of IT and software development services. The Ld. CIT(A) accepted the contention of the assessee and directed to include as comparable.

7.2 Before us, the Ld. DR submitted that page 40 of the Annual Report, the activity of the company during the year under consideration included computer software development and support services, computer software products and other information technology related services. He also referred to the copyrights of Rs.2,71,75,655/- held by the company to show that company has several products which it customizes for the clients and thus the company is functionally dissimilar to the assessee at entity level.

7.3 On the contrary, the Ld. counsel referred to page 40 of the Annual Report and submitted that the reporting as stated by the Ld. DR is in respect of 'Quintegra solutions Ltd., UK' and not in

respect of Quintegra solutions Ltd, India. He referred to page 21 of the Annual Report and submitted that there is only one segment of software services and no revenue for any other streams and, thus, the company is functionally similar to the assessee.

7.4 We have heard the rival submission and perused the relevant material on record. It is evident that argument of the Ld. DR that the company is engaged in sale of software products or ITes services, is not based on correct facts. Those arguments pertain to another group company i.e. Quintegra Solutions Ltd, UK and not in respect of Quintegra solutions Ltd, India. In our opinion, the Ld. DR has failed to establish that company is functionally dissimilar to the assessee. Accordingly, we uphold the finding of the Ld. CIT(A) in including the company as comparable. The ground number Nos. 3 and 3.1 of the appeal of the revenue are accordingly dismissed.

8. The next ground Nos. 4 and 4.1 of the appeal of the Revenue relates to inclusion of company M/s Akhay Software Technologies Ltd. The Learned TPO rejected the company as comparable in view of the turnover of Rs. 12.23 crores and no disclosure about related party transactions. The Learned CIT(A) included the company on the ground that the Learned TPO included the company as comparable in the immediately preceding year.

8.1 The Learned DR submitted that company is functionally dissimilar to the assessee and therefore it should be excluded as comparable.

8.2 The Ld. counsel of the assessee, on the other hand, referred to Annual report of the company and submitted that sales are

predominantly software services and, therefore, company is functionally similar to the assessee.

8.3 We have heard the rival submission and perused the relevant material on record. On perusal of details of sales available on page 20 of the Annual Report, it is seen that sales includes sale of products amounting to Rs.51,79,577/- alongwith software services of Rs.10,73,51,944 (exports) and Rs.97,89,962 (domestic). Since no separate segment of software development services is available, the company cannot be selected as comparable at entity level. Accordingly, we direct the TPO/AO to exclude the company from the set of comparables. The ground Nos. 4 and 4.1 of the appeal of the Revenue are accordingly allowed.

8.4 In view of our above finding on the issue of inclusion/exclusion of the comparables, the Ld. TPO/AO is directed to recompute the average PLI of the comparables and compute adjustments to the value of international transaction carried out by the assessee, if required so, in accordance with law.

9. Now, we take up the ground No.2.8 of the appeal of the assessee, challenging denial of benefit of working capital adjustment

9.1 The Learned counsel before us submitted that in the immediately preceding year, the Tribunal has restored the issue of working capital adjustment to the file of the Learned TPO/AO.

9.2 The Ld. DR could not controvert this finding of the Tribunal and did not object to restoring the matter to the Learned TPO/AO.

9.3 We have heard the rival submission of the parties and perused the material on record particularly the order of the Tribunal in ITA No. 6918/Del/2014 in the case of the assessee for assessment year 2008-09. The relevant finding of the Tribunal on the issue of working capital adjustment in margin of comparables is reproduced as under:

“9. Considering the submission advanced and the precedent relied upon in view of the above, we are of the view that it would be appropriate in the peculiar facts and circumstances restore the issue back to the TPO. While so restoring it is made clear that the onus for providing the relevant data warranting risk and capital adjustments if any in the comparables has to be provided by the assessee. The TPO thereafter considering the same shall pass a speaking order in accordance with law giving the assessee a reasonable opportunity of being heard in case any adverse conclusions are sought to be drawn.”

9.4 Respectfully, following the above finding the issue of allowing working capital adjustment in the year under consideration is also restored to the file of the Learned TPO for passing the speaking order in accordance with law after giving the assessee adequate opportunity of being heard. The ground No. 2.8 of the appeal of the assessee is accordingly allowed for statistical purposes.

10. In ground Nos. 1 to 1.8 of the appeal of the Revenue relates to deduction under section 10A of the Act, which has been allowed by the Ld. CIT(A).

10.1 At the outset, the Learned counsel of the assessee submitted that issue in dispute is covered in favour of the assessee by the order of the Tribunal in the case of the assessee for assessment

year 2008-09, wherein the Tribunal followed the order of the Hon'ble jurisdiction High Court in the case of the assessee itself.

10.2 The Ld. DR could not controvert this finding of the Tribunal.

10.3 We have heard the rival submission and perused relevant records including the order of the Tribunal in ITA No. 7043/Del/2014 in the case of the assessee for assessment year 2008-09. The relevant finding of the order of the Tribunal is reproduced as under:

“2.2. Learned Counsel for the Assessee at the outset submitted that the Departmental Appeal have been dismissed by the Hon'ble jurisdictional Delhi High Court in the case of Dy. Director of Income Tax vs. Virage Logic International reported in (2016) 389 ITR 142 (Del.) confirming the order of the Tribunal in allowing deduction under section 10A of the I.T. Act.

3. The Ld. D.R. did not dispute this proposition.

4. In view of the above, it is clear the Tribunal has already decided the issue of deduction under section 10A of the I.T. Act in favour of the assessee in preceding assessment years. The appeal of the Department have been dismissed by the Hon'ble jurisdictional Delhi High Court. The issue is, therefore, covered in favour of the assessee by order of the Tribunal as well as Hon'ble jurisdictional Delhi High Court. Ground No. 1 of appeal of Revenue is dismissed.”

10.4 Respectfully, following the above finding of the Tribunal in the case of the assessee itself, wherein the Tribunal has decided the issue of deduction under section 10A of the Act in the favour of the assessee in immediately preceding assessment year

following the decision of the Hon'ble jurisdiction High Court in the case of the assessee for earlier years. The issue is, therefore, covered in favour of the assessee by the order of the Tribunal as well as order of the Hon'ble Jurisdictional Delhi High Court. Thus, the grounds raised by the Revenue on the issue in dispute are dismissed.

11. In the result, the appeal of the assessee as well as the appeal of the Revenue are partly allowed for statistical purposes.

The decision is pronounced in the open court on 16th April, 2018.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 16th April, 2018.

RK/-(D.T.D)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi