

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री दुव्वूरु आरएल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.Nos. 50, 51 & 53/VIZ/2021
(निर्धारण वर्ष/ Assessment Years: 2013-14, 2014-15 & 2015-16)**

ACIT – Circle – 1(1) Prathyakshakar Bhavan, Sector – 8 MVP Double Road, Visakhapatnam – 530017 Andhra Pradesh	v.	M/s. Alfa Electronic Services (India) Private Limited 49-22-5, Sri Sai Mansions Lalitha Nagar, Visakhapatnam – 530016 Andhra Pradesh [PAN: AAHCA3583E]
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व / Assessee Represented by	:	Shri C. Subrahmanyam, AR
राजस्व का प्रतिनिधित्व / Department Represented by	:	Dr. AparnaVilluri, Sr. AR.
सुनवाई समाप्त होने की तिथि / Date of Conclusion of Hearing	:	07.10.2024
घोषणा की तारीख /Date of Pronouncement	:	30.10.2024

आदेश /ORDER

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. The above captioned appeals are relating to same assessee, therefore for the sake of convenience all these appeals are clubbed, heard together and disposed off by this consolidated order. Since the grounds raised by the

assessee for all the three appeals are identical in nature, we take up the appeal in ITA No. 50/VIZ/2021 for the A.Y.2013-14 as a lead appeal.

ITA No. 50/VIZ/2021 (A.Y. 2013-14)

2. This appeal is filed by the revenue against the order of Learned Commissioner of Income Tax (Appeals)-1, Visakhapatnam [hereinafter in short “Ld.CIT(A)”] in ITA No. No. 10123/2017-18/CIT(A)-1/VSP/2019-20 dated 17.01.2020 for the A.Y.2013-14 arising out of order passed under section 143(3) of the Income Tax Act, 1961 (in short ‘Act’) dated 28.03.2016.

3. Brief facts of the case are that, the Assessee is engaged in the activity of Design and Development of various Electronic Systems belonging to Missiles, War Ships and War Air crafts etc., of Ministry of Defence assessee filed its return of income for the A.Y. 2013-14 admitting a total income of Rs.1,86,11,160/-. Subsequently, the case was selected for scrutiny under CASS and statutory notices under section 143(2) and 142(1) of the Act were issued and served on the assessee. Subsequently, a fresh notice under section 142(1) dated 22.06.2015 was issued and served on the assessee due to change in the incumbent. In response, assessee’s Authorized Representative appeared and filed submissions as called for from time to time. A survey under section 133A of the Act was carried out at the business premises of the assessee on 15.12.2015 and during the course of survey the Managing Director of the assessee-company was asked to prove the genuineness of three sub-contractors

whom the assessee engaged in the impugned assessment year namely M/s. BVL Micro Systems, M/s. Sai Industrial Minerals and Chemicals and M/s. Techcel Electronics & services. The Managing Director of the assessee during the statement recorded from him in the course of survey confirmed in sworn statement recorded under section 131 of the Act on 16.12.2015, agreed for the following disallowances: -

- | | | | |
|----|--|---|-----------------|
| a. | M/s. BVL Micro systems | : | Rs.59,69,400/- |
| b. | M/s. Sai Industrial Minerals and Chemicals | : | Rs.47,00,604/- |
| c. | M/s. Techcel Electronics & Services | : | Rs. 48,72,600/- |

4. Based on the statements recorded from the Managing Director during the survey operations, Assessing Officer made a disallowance amounting to Rs.1,55,42,604/- considering it as payment to bogus sub-contractors. Further, Assessing Officer also disallowed sum of Rs. 68,10,031/- in respect of VAT Payable under section 43B of the Act. In addition, Assessing Officer also further disallowed Rs. 6,59,500/- as confirmation of the closing balance of the creditor namely M/s. Electro Mech Engineering Services was not proved by the assessee. The Assessing Officer also disallowed a sum of Rs.1,57,404/- on account of delayed remittance of Employees Contribution to Provident Fund.

5. Aggrieved by the above disallowances, assessee filed an appeal before Ld.CIT(A). The Ld. CIT(A) observed that Assessing Officer has not found any incriminating material but has only relied on the sworn statement recorded from

the Managing Director of the assessee-company and therefore resorted to disallowing the sub-contractors' expenses amounting to Rs. 1,55,42,604/-. The Ld.CIT(A) directed the Assessing Officer to delete the addition made to the three sub-contractors. Further Ld. CIT(A) also deleted the disallowances made under section 43B of the Act for Rs. 68,10,031/-. The Ld. CIT(A) also deleted the addition of Rs.6,59,500/- under section 68 of the Act with respect to the Trade Creditor M/s. Electronic Mechanical Engineering Services. The Ld.CIT(A) also by relying on the decision of ITAT, Visakhapatnam Bench in the case of Hindustan shipyard limited in ITA No. 59/Vizag/2016 deleted the additions made on account of delayed payment of Provident Fund. The Ld.CIT(A) thus partly allowed the appeal of the assessee.

6. Aggrieved by the order of the Ld. CIT(A), revenue is in appeal before us by raising following grounds of appeal : -

“1. The Order of the Ld.CIT(A)-1, Visakhapatnam is erroneous on facts and in law.

2. The Ld.CIT (A) failed to appreciate the material evidence, such as presence of sub-contractors rubber-stamps/seals at assessee's premises, discrepancies between actual invoice copies and their ledger accounts, some portion of the sub-contractor payments being made in cash and non-cash payments being withdrawn immediately by self-cheques, sharing of the same business premises by assessee-company and one of the sub-contractors ,statements of sub-contractors and assessee at multiple times accepting the bogus nature of sub-contract works, one of the sub-contractor being the elder brother of the M.D of the assessee company etc, in correct context before deleting the addition of Rs.1,55,42,604/- , as the occurrence of all these events in assessee's case is well beyond preponderance of probabilities.

3. *The Ld.CIT (A) failed to give opportunity to the Assessing officer in the form of remand report before taking the decision regarding Bogus Sub-contractors. The Ld.CIT (A) accepted the version of assessee without any cross-examination of the assessee by the Assessing Officer. The Ld.CIT(A) did not appreciate the fact that money was transferred to the sub-contractors in the guise of contract work and was again withdrawn by the Assessee for self-appropriation*

4. *The Ld.CIT(A) is not justified in deleting the addition of Rs 6.59,500/- by mentioning that Assessing Officer has not disputed the purchases as the onus is on assessee to prove the creditworthiness and Identity of the creditors but the assessee failed to prove the same during the assessment proceedings.*

5. *The Ld.CIT(A) ought to have considered the recent judgments like Hon'ble Gujarat High Court judgment in the case of CIT Vs Gujarat State Road Transport Corporation (366 ITR 0170) before deleting the addition of Rs 1,57,404/-. (Disallowance towards late payment of employee's contribution to PF)*

6. *The appellant craves leave to add or delete or amend or substitute any ground of appeal before and or at the time of hearing of appeal.”*

7. Ground Nos.1 & 6 are general in nature and needs no adjudication.

8. Ground Nos. 2 & 3 are with respect of disallowances of Rs. 1,55,42,604/- being the payment to bogus nature of sub-contract works. The Ld.Departmental Representative [hereinafter in short “Ld. DR”] submitted that during the survey the rubber stamps of the contractors were found in the premises of the assessee. Further, Ld. DR submitted that assessee has made payments to bogus sub-contractors and has withdrawn the same by way of self-cheque. Further, she also submitted that additions made by the Assessing Officer is based on the sworn statement recorded from the Managing Director of the assessee-company

wherein he has admitted for the disallowances. She therefore pleaded that order of the Assessing Officer be upheld.

9. Per contra, Ld. Authorised Representative [hereinafter “Ld.AR”] fully relied on the order of the Ld. CIT(A).

10. We have heard both the sides and perused the material available on record. It is the case of the Assessing Officer that the payments to the sub-contractors i.e., M/s. BVL Micro systems; M/s. Sai Industrial Minerals and Chemicals and M/s. Techcel Electronics & Services, were not genuine. The Assessing Officer relied on the sworn statement recorded from the Managing Director of the Company and one of the sub-contractors Shri Swetha Chalapathi Rao of M/s.Techcel Electronics & Services. It is an undisputed fact the rubber stamps of the sub-contractors were found in the premises of the assessee during the survey operations. It is also an undisputed fact that the Managing Director in the sworn statement has accepted that he cannot satisfactorily answer the questions for the bogus sub-contract works invoices. The consistent reply by the Managing Director in the sworn statement is that he accepted the disallowances under duress in order to buy peace from the department could not be considered as a valid reason for the purpose of deleting the additions made by the Assessing Officer. Further, the Assessing Officer also observed that the assessee has withdrawn the amount with self-cheques which also not disputed by the Managing Director of the assessee-company. The Ld. DR has placed the

bank statements of the sub-contractors in the paper book submitted by the revenue which discloses the fact that amount paid by the assessee-company has been withdrawn immediately either on the same day or on the subsequent day by way of self-cheque. This proves that the assessee has engaged in raising bogus invoices for sub-contract works and the Assessing Officer has rightly considered the disallowances of the same in the assessment order. It is also found that the sub-contractors also not confirmed the contract works given to the assessee Company. Merely on the availability of the work order, payment details and TDS, it cannot be considered genuine that the expenditure has been incurred by the assessee-company for the sub-contracts undertaken by the assessee-company. Further it is also found that the Managing Director has repeatedly accepted the bogus nature of sub-contract works in the sworn statement. We are therefore of the considered view that the order of the Ld.CIT(A) should be set-aside on this issue and the grounds raised by the revenue is allowed. Accordingly, Ground Nos. 2 & 3 raised by the revenue are allowed.

11. With respect to Ground No. 4 on deleting the addition of Rs. 6,59,500/- where the confirmation of the creditor was not obtained by the assessee-company, Ld. DR submitted that assessee has not provided any confirmation of balance from the creditor and hence the disallowances made by the Assessing Officer should be upheld.

12. Per contra, Ld.AR submitted that M/s. Electro Mech Engineering Services is a Trade Creditor and the amount represents the closing balance at the end of the Financial Year. He relied on the order of the Ld. CIT(A).

13. We have heard rival contentions and perused the material available on record. It is the case of the Assessing Officer that the assessee has not provided any evidences regarding the credit balance available in the books of accounts in the ledger account of M/s. Electro Mech Engineering Services. Since the assessee failed to produce any confirmation of the above creditor, Assessing Officer made an addition of Rs. 6,59,500/- in the absence of any confirmation. We are therefore inclined to grant one more opportunity to the assessee to obtain confirmation from the Trade creditor and accordingly remit the issue back to the file of the Assessing Officer. Assessee is directed to produce the confirmation certificate from the above trade creditor to the Assessing Officer and the Assessing Officer is directed to decide the case on merit based on the material produced by the assessee. Therefore, this ground is allowed for statistical purposes.

14. With respect to Ground No. 5 on the disallowance of delayed payment of Employees Contribution to Provident Fund, it is a settled issue consequent to the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. v. CIT, [2022] 448 ITR 518 (SC), we therefore do not wish to interfere

with the order of the Assessing Officer and thereby set-aside the order of the Ld.CIT(A) on this issue.

15. In the result, appeal of the revenue is statistically partly allowed.

ITA No. 51/VIZ/2024 (A.Y. 2014-15)

16. This appeal is filed by the revenue against the order of Learned Commissioner of Income Tax (Appeals)-1, Visakhapatnam [hereinafter in short “Ld.CIT(A)”] in ITA No. No. 10148/2017-18/CIT(A)-1/VSP/2019-20 dated 17.01.2020 for the A.Y.2014-15 arising out of order passed under section 143(3) of the Income Tax Act, 1961 (in short ‘Act’) dated 29.12.2017.

17. Brief facts of the case are that, assessee is engaged in the activity of Design and Development of various Electronic Systems belonging to Missiles, War Ships and War Air crafts etc., of Ministry of Defence. The case was selected for scrutiny under CASS and notice under section 148 of the Act was issued on 16.04.2016. In response to notice under section 148 of the Act, assessee filed its return of income for the A.Y. 2014-15 admitting a total income of Rs. 36,49,961/-. However, the return of income filed by the assessee-company has become invalid as it is filed beyond the due date of filing. Further, a notice under section 142(1) of the Act dated 23.07.2015 along with questionnaire calling for certain information was issued. In response, assessee’s Authorized Representative appeared and filed submissions as called for from

time to time. A survey under section 133A of the Act was carried out at the business premises of the assessee on 15.12.2015 and during the course of survey the Managing Director of the assessee-Company was asked to prove the genuineness of three sub-contractors whom the assessee is engaged in the impugned assessment year namely M/s. BVL Micro Systems, M/s. Sai Industrial Minerals and Chemicals and M/s. Techcel Electronics & services. Managing Director of the assessee during the statement recorded from him in the course of survey confirmed in sworn statement recorded under section 131 of the Act on 16.12.2015, agreed for the following disallowances: -

- | | | | |
|----|--|---|----------------|
| a. | M/s. BVL Micro systems | : | Rs.42,42,860/- |
| b. | M/s. Sai Industrial Minerals and Chemicals | : | Rs.40,06,012/- |
| c. | M/s. Techcel Electronics & Services | : | Rs.9,30,000/- |

18. Based on the statements recorded from the Managing Director during the survey operations, Assessing Officer made a disallowance amounting to Rs.91,79,472/- considering it as payment to bogus sub-contractors and also made an addition of Rs. 1,59,54,474/-based on the profit found in the impounded material during the survey. Further, Assessing Officer also disallowed sum of Rs. 68,10,031/- in respect of VAT Payable under section 43B of the Act. In addition, Assessing Officer also further made an addition of Rs. 1,23,92,145/- towards disallowance of unsecured loans under section 68 of the

Act. Assessing Officer also disallowed a sum of Rs. 70,000/- on account of delayed remittance of Employees Contribution to Provident Fund.

19. Aggrieved by the above disallowances, assessee filed an appeal before Ld.CIT(A). Ld. CIT(A) observed that Assessing Officer has not found any incriminating material but has only relied on the sworn statement recorded under duress from the Managing Director of the assessee Company and therefore resorted to disallowing the sub-contractors' expenses amounting to Rs.91,79,472/-. The Ld.CIT(A) directed the Assessing Officer to delete the addition made to the three sub-contractors. Further Ld. CIT(A) also deleted the disallowances made under section 43B of the Act for Rs. 68,10,031/-. Ld.CIT(A) partly allowed the ground raised by the assessee in respect of unsecured loans. Ld. CIT(A) also by relying on the decision of the ITAT, Visakhapatnam Bench in the case of Hindustan shipyard limited (supra) deleted the additions made on account of delayed payment of Provident Fund. Ld.CIT(A) has partly allowed the appeal of the assessee.

20. Aggrieved by the order of the Ld. CIT(A), revenue is in appeal before us by raising following grounds of appeal : -

“1. The Order of the Ld.CIT(A)-I. Visakhapatnam is erroneous on facts and in law.

2. The L.d.CIT(A) failed to appreciate the material evidence. such as presence of sub-contractors rubber stamps and seals at assessee's premises, discrepancies between actual invoice copies and the recording of the same in ledger accounts. some portion of the sub-contractor payments being made in cash, payments being withdrawn immediately by

self-cheques. sharing of the same business premises by assessee-company and one of the sub-contractors statements of sub-contractors and assessee at multiple times accepting the bogus nature of sub-contract works. one of the sub-contractor being the elder brother of the M.D of the assessee company etc, in correct context before deleting the addition of Rs.91.79.472/-, as the occurrence of all these events in assessee's case is well beyond preponderance of probabilities.

3. *The Ld.CIT(A) ought to have considered the impounded financial statement, which has been used to obtain the Bank Loan. in determining the Book Profit and not justified in deleting the addition of Rs.1,23,04,513/-.*

4. *The Ld.CIT (A) failed to give opportunity to the Assessing officer in the form of remand report before taking the decision regarding Bogus Sub-contractors and impounded financial statement issues. The Ld.CIT(A) accepted the version of assessee without any cross-examination of the assessee by the Assessing Officer and did not appreciate the fact that money was transferred to the sub-contractors in the guise of contract work and was again withdrawn by the assessee for self-appropriation*

5. *The Ld.CIT(A) is not justified in deleting the addition based on unsecured loans, taken during the previous year 2013-14 for Rs.1,03,10,000/-, as the additional confirmations on few of the unsecured loans were presented before the Ld.CIT(A). whereas the Assessing officer was not given any opportunity to verify the same.*

6. *The Ld.CIT(A) is not justified in deleting the addition of Rs 1,57,404/-, Disallowance towards late payment of employee contribution to PF, and ought to have considered the judgments like Hon'ble Gujarat High Court judgment in the case of Ch Vs Gujarat State Road Transport Corporation (366 ITR 0170).*

7. *The appellant craves leave to add or delete or amend or substitute any ground of appeal before and or at the time of hearing of appeal.”*

21. Ground No. 1 and 7 is general in nature and needs no adjudication.

22. Ground Nos. 2 & 4 are relating disallowances of Rs. 91,79,472/- being the payment to bogus nature of sub-contract works. This ground is similar to ground Nos. 2 & 3 raised by the revenue in ITA No. 50/Viz/2021 for the A.Y.2013-14 and the decision rendered therein shall apply mutatis-mutandis for

the ground No 2 & 4 raised by the assessee. Accordingly, grounds raised by the revenue are allowed.

23. Ground No.3 is related to book profit of Rs.1,23,04,513/-based on the impounded financial statement, net of the profit admitted while filing the return of income under section 148 of the Act. Ld. DR submitted that assessee has engaged a Chartered Accountant who is not a statutory auditor of the Company but has signed the financial statements for the F.Y. 2013-14 for the purpose of obtaining bank loan from Federal Bank, Hyderabad amounting to Rs. 7.50 crores. Ld. DR further submitted that this financial statement signed by the Chartered Accountant Shri Ramachandra Rao was seized during the survey operations under section 133A of the Act. The Assessing Officer therefore based on the seized material made an addition of Rs. 1,59,54,474/-. It is therefore pleaded that the addition be sustained.

24. Per contra, Ld.AR relied on the orders of the Ld. CIT(A).

25. We have heard both the sides and perused the material available on record. It is a fact that assessee was engaged in unethical practice of creating Profit & Loss Account with higher profits from an Auditor who is not a statutory Auditor for the purpose of obtaining loan from Federal bank. Assessing Officer by relying on the impounded financial statements made an addition of Rs. 1,59,54,474/-, and these facts are not disputed by the assessee. The Ld. CIT(A) has erred in observing that the financial statements found and

impounded cannot be taken as real and the profit arrived there in does not represent real income. Ld. CIT(A) has drawn this conclusion without any material facts but purely relying on the submissions made by the assessee. It is also fact that the assessee filed return of income stating the profit at Rs.36,49,961/- as against the profit of Rs.1,59,54,474/- as per the impounded financial statements. It is also noticed that the assessee is engaged in unethical practice of filing a different Profit & Loss Account signed by an Auditor who is not a statutory auditor for the purpose of obtaining bank loan from federal bank. These facts prove that the assessee is maintaining two sets of books of accounts and hence we are of the considered view that the decision of the Assessing Officer in considering the profit as per the impounded financial statements needs to be upheld. Accordingly, we allow the ground raised by the revenue.

26. Ground No. 5 is with respect to deletion of addition of unsecured loans amount of Rs. 1,03,10,000/-. Ld. DR submitted that the assessee has taken unsecured loans from various parties but has failed to prove the identity, genuineness and credit worthiness of the parties. He therefore pleaded that since the three conditions specified under section 68 of the Act is not fulfilled addition made by the Assessing Officer be upheld.

27. Per contra, Ld.AR relied on the order of the Ld. CIT(A).

28. We have heard both the sides and perused the material available on record. Admittedly, Ld. CIT(A) has deleted the amount of Rs. 20,82,145/-

stating that it is an opening balance as in the beginning of the financial year. The remaining loan amount of Rs. 1,03,10,000/- which was taken from various persons as listed below:

Sl.No.	Name of the Person	Amount of loan (Rs.)
1.	Chakradhar Brahmans	8,80,000
2.	Gandhi	18,80,000
3.	Kumar Raja & Co.	60,00,000
4.	Padmabati Das	5,00,000
5.	Prabhakar	5,00,000
6.	Prasatma Kumar Das	5,00,000
	Total	1,03,10,000

29. Ld. CIT(A) has erred in allowing an amount of Rs. 60,00,000/- considering it as explained. Ld. CIT(A) in his observations held as follows: -

*“4.4.5 The appellant had failed to substantiate the loans in terms of identity, creditworthiness and genuineness before Assessing Officer. During the appellate stage, the appellant had claimed that no sufficient time was afforded by Assessing Officer. I have verified the ledger account and found that the loans are received through banking channels. The appellant had produced details of loans along with PAN No. AABCK5644G in the case of Kumar Raja & Co. which was assessed with Asst. Commissioner of Income Tax, Circle-3(1), Visakhapatnam. **Therefore, the loan of Rs.35,00,000/- is treated as unexplained.** Dr. K.Kumar Raja had admitted having given the loan of Rs.25,00,000/- by cheque No.643342 having PAN No.AFUPK0570L assessed with Asst. Commissioner of Income Tax, Circle-3(1), Visakhapatnam is also treated as explained. Thus, out of Rs.1,03,10,000/-, the appellant explained only Rs.60,00,000/-. The remaining amount of Rs.43,10,000/- is treated as unexplained. The loan to that extent is confirmed as not explained.”*

30. From the observations of the Ld. CIT(A) we find that he has considered Rs.35,00,000/- from Dr. K. Kumar Raja and Co., **as unexplained**. Further, he has contradicted himself by stating that Dr. K. Kumar raja has admitted giving

loan to the assessee by way of cheque and considering it as explained. Ld.CIT(A) has erred in aggregating the unexplained loan with that of the explained loan and allowed the total of Rs. 60,00,000/- as explained. We therefore find Ld. CIT(A) has erred in considering the unsecured loans without any verification of identity, genuineness and creditworthiness by merely stating the loans are received through banking channels. We therefore set-aside the order of the Ld.CIT(A) on this ground to the extent of Rs. 1,03,10,000/- and allow the ground raised by the revenue.

31. Ground No. 6 is relating to disallowances towards delayed payment of Employees Contribution to Provident Fund. This ground is similar to ground No.5 raised by the revenue in ITA No. 50/Viz/2021 for the A.Y. 2013-14 and the decision rendered therein shall apply mutatis-mutandis for the assessment year also. Accordingly, ground raised by the revenue are allowed.

32. In the result, appeal filed by the revenue is allowed.

ITA No. 53/VIZ/2021 (A.Y. 2015-16)

33. This appeal is filed by the revenue against the order of Learned Commissioner of Income Tax (Appeals)-1, Visakhapatnam [hereinafter in short “Ld.CIT(A)”] in ITA No. No. 10330/2018-19//CIT(A)-1/VSP/2019-20 dated 17.01.2020 for the A.Y.2015-16 arising out of order passed under section 144 r.w.s. 147of the Income Tax Act, 1961 (in short ‘Act’) dated 24.12.2018.

34. Brief facts of the case are that, the Assessee is engaged in the activity of Design and Development of various Electronic Systems belonging to Missiles, War Ships and War Air crafts etc., of Ministry of Defence. Survey under section 133A of the Act was carried out at the business premises of the assessee on 15.12.2015. During the course of Survey, audited financial statements pertaining to F.Y. 2014-15 relevant to the A. Y. 2015-16 were found which reflected a profit before tax of Rs. 1,61,75,884/-. Since assessee had not filed the return of income, notice under section 148 of the Act dated 28.09.2017 was issued and served on the assessee with the approval of the Joint Commissioner of Income Tax, Range-1, Visakhapatnam. In response to the notice, assessee filed its Return of Income for the A.Y.2015-16 on 21.10.2017 declaring total Income at Rs.20,95,620/-. Subsequently, notice under section 143(2) of the Act dated 06.11.2017 and notice under section 142(1) of the Act dated 28.08.2018 were issued along with questionnaire calling for certain information/details through ITBA portal. In response, assessee has not complied to the notices. In view of non-compliance to the notices, the assessee was served with a notice to show cause as to why the assessment proceedings should not be completed as per the provisions laid down under section 144 of the Act, 1961. In response, authorized representative of the assessee appeared and furnished computation of income, balance sheet and Profit & Loss Account of the assessee company and failed to submit any explanation with respect to the points raised in the show cause notice. Therefore, Assessing Officer

proceeded to complete the assessment under section 144 of the Act based on the material available on record.

35. Assessing Officer noticed that a survey under section 133A of the Act was carried out at the business premises of the assessee on 15.12.2015 and during the course of survey the Managing Director of the assessee-company was asked to prove the genuineness of three sub-contractors whom the assessee engaged in the impugned assessment year namely M/s. BVL Micro Systems & M/s. Sai Industrial Minerals and Chemicals. The Managing Director of the assessee during the statement recorded from him in the course of survey confirmed in sworn statement recorded under section 131 of the Act on 16.12.2015, agreed for the following disallowances: -

- a. M/s. BVL Micro systems : Rs.1,20,45,787/-
- b. M/s. Sai Industrial Minerals and Chemicals : Rs.1,27,33,168/-

36. Based on the statements recorded from the Managing Director during the survey operations, Assessing Officer made a disallowance amounting to Rs.2,47,78,955/- considering it as payment to bogus sub-contractors. Further, Assessing Officer also disallowed an amount of Rs.1,61,75,884/- adopting net profit before tax as per impounded financial statement.

37. Aggrieved by the above disallowances, assessee filed an appeal before Ld.CIT(A). The Ld. CIT(A) observed that Assessing Officer has not found any

incriminating material but has only relied on the sworn statement recorded from the Managing Director of the assessee-company and therefore resorted to disallowing the sub-contractors' expenses amounting to Rs. 2,47,78,955/-. The Ld.CIT(A) directed the Assessing Officer to delete the addition made to the three sub-contractors. The Ld. CIT(A) also deleted the addition of Rs.1,61,75,884/- made by the Assessing Officer based on the impounded financial statement.

38. Aggrieved by the order of the Ld. CIT(A), revenue is in appeal before us by raising following grounds of appeal: -

- “1. The Order of the Ld.CIT(A)-1, Visakhapatnam is erroneous on facts and in law.*
- 2. The Ld.CIT (A) failed to appreciate the material evidence. `discrepancies between actual invoice copies and their ledger accounts. Some portion of the sub-contractor payments being made in cash and non-cash payments being withdrawn immediately by self-cheques, sharing of the same business premises by assessee-company and one of the sub-contractors-statements of sub-contractors and assessee at multiple times accepting the bogus nature of sub-contract works. one of the sub-contractor being the elder brother of the M.D of the assessee company etc, in correct context before deleting the addition of Rs.2,47,78,955/-as the occurrence of all these events in assessee's case is well beyond preponderance of probabilities.*
- 3. The Ld.CIT(A) ought to have considered the impounded financial statement, which has been used to obtain the Bank Loan, in determining the Book Profit and not justified in deleting the addition of Rs.1.61,75.884/-*
- 4. The Ld.CIT(A) failed to give opportunity to the Assessing officer in the form of remand report before taking the decision regarding Bogus Sub-contractors and impounded financial statement. The Ld.CIT(A) accepted the version of assessee without any cross-examination of the assessee by the Assessing Officer and did not appreciate the fact that money was transferred to the sub-contractors in the guise of contract work and was again withdrawn by the assessee for self-appropriation*
- 5. The appellant craves leave to add or delete or amend or substitute any ground of appeal before and/or at the time of hearing of appeal.*

39. Ground No.1 & 5 are general in nature and needs no adjudication.

40. Ground No. 2 & 4 are relating Disallowances of Rs. 2,47,78,955/- being the payment to bogus nature of sub-contract works. This ground is similar to ground Nos. 2 & 3 raised by the revenue in ITA No. 50/Viz/2021 for the A.Y.2013-14 and the decision rendered therein shall apply mutatis-mutandis for ground No 2 & 4 raised by the assessee. Accordingly, grounds raised by the revenue are allowed.

41. Ground No. 3 is relating to deleting the addition of Rs. 1,61,75,884/- based on the impounded financial statement. This ground is similar to Ground No. 3 raised by the revenue in ITA No. 51/VIZ/2021 for the A.Y. 2014-15 and the decision rendered therein shall apply mutatis-mutandis for this assessment year also. Accordingly, ground raised by the revenue is allowed.

42. In the result, appeal filed by the revenue is allowed.

43. To sum-up, the adjudication of appeals is follows:

Sl.No.	ITA No.	Result
1.	ITA No. 50/VIZ/2021 (A.Y. 2013-14)	Partly Allowed
2.	ITA No. 51/VIZ/2021 (A.Y. 2014-15)	Allowed
3.	ITA No. 53VIZ/2021 (A.Y. 2015-16)	Allowed.

Order pronounced in the open court on 30th October, 2024.

Sd/-
(दुव्वूरु आरएल रेड्डी)
(DUVVURU RL REDDY)
न्यायिक सदस्य/JUDICIAL MEMBER

Dated: 30.10.2024
Giridhar, Sr.PS

Sd/-
(एस बालाकृष्णन)
(S. BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : M/s. Alfa Electronic Services (India) Private Limited
49-22-5, Sri Sai Mansions
Lalitha Nagar, Visakhapatnam – 530016
Andhra Pradesh
2. राजस्व/ The Revenue : ACIT – Circle – 1(1)
Prathyakshakar Bhavan, Sector – 8
MVP Double Road,
Visakhapatnam – 530017
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

//True Copy//

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam