

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND SHRI SOUNDARARAJAN K, JUDICIAL MEMBER**

ITA Nos. and Assessment Year	Appellant	Respondent
ITA No.1460/Bang/2024 2018-19	The Income Tax Officer, Ward – 1, Koppal.	Shri. Mudiyyappa, 88 Malligevada, Post Hirekeda Gangavathi, Koppal – 584 119. PAN : BBRPM 7264 B
ITA No.1506/Bang/2024 2018-19	Shri. Mudiyyappa, Koppal – 584 119. PAN : BBRPM 7264 B	The Income Tax Officer, Ward – 1, Koppal.

Revenue by	:	Shri. Subramanian, JCIT(DR)(ITAT), Bengaluru.
Assessee by	:	Shri. Veeranna M. Murgod, CA.

Date of hearing	:	24.10.2024
Date of Pronouncement	:	19.12.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

These appeals filed by the Revenue as well as assessee against the Order passed by CIT(A) vide Order DIN ITBA/NFAC/S/250/2024-25/1065510358(1) dated 10.06.2024, challenging the Order passed by the CIT(A) regarding deletion/confirmation by CIT(A) against the addition made by the Assessing Officer(AO) as per their grounds of appeal.

2. Briefly stated, the facts of the case are that as per the risk management strategy formulate by the CBDT through ITBA software under the head “NMS”, it was noticed that assessee has not filed return of income

for the impugned Assessment Year. However, he has received contract receipts from M/s. SML Electricals Pvt. Ltd., to the tune of Rs.3,46,20,000/-, Nagaraju Sharath : Rs.49,00,000/-, M/s. Lanarsy Infra Ltd., : Rs.25,75,330/- and Ramesha : Rs.2,00,000/-. Accordingly, a notice was issued to the assessee after due compliance of the procedure for reopening to the case under section 148 of the Income Tax Act, 1961 (hereinafter called 'the Act'). Accordingly, the assessee filed return of income on 26.04.2022 under section 44AD of the Act, declaring income of Rs. 7,80,320 and claimed TDS of Rs.97,253/- and TDS credit claimed was allowed. During the course of assessment proceedings, several notices were issued to the assessee but there was no response and finally the assessee complied to the show cause notice dated 20.02.2023. From the Bank statement submitted by the assessee, it was noticed by the AO that he has received payment of Rs.20,50,000/- from M/s. SML Electricals Pvt. Ltd. only, however, in Form No. 26AS there are reflecting transaction to the tune of Rs.3,46,20,000/-, for the difference amount of Rs.3,25,70,000/- assessee submitted that he has requested M/s. SML for rectification of the mistake for amount reported in Form 26AS but it has not been done till date. The AO issued notice under section 133(6) of the Act to M/s. SML Electricals Pvt. Ltd., which was not responded till the completion of assessment. Accordingly, the AO treated the difference of Rs.3,25,70,000/- as undisclosed contract receipts and the amount received from Mr. Nagaraju sharath, M/s. Lanarsy Infra Ltd., and Mr. Ramesha noted supra (Rs.49,00,000 + Rs.25,75,330 + Rs.2,00,000) were also added to the total income of the assessee. accordingly the AO added into the income of Rs. .4,02,45,330/- and completed the assessment.

3. Aggrieved from the above Order, assessee filed appeal before the CIT(A). The CIT(A) deleted the addition made of Rs.3,25,75,000/- received from M/s. SML Electricals Pvt. Ltd., and upheld the other three additions made by the AO.

4. Aggrieved from the above Orders, both filed appeal before the Tribunal. The learned Counsel reiterated the submissions made before the CIT(A) and submitted that the CIT(A) has rightly deleted the addition made by AO towards payment of contract receipt from M/s. SML Electricals Pvt. Ltd. Assessee has received actual payment of Rs.20,50,000/- which is disclosed in the income tax return filed by the assessee and claimed TDS only to the extent of TDS made on gross contract receipts of Rs. 20,50,000/-. Several requests made for rectification for wrong reporting in Form 26AS to M/s. SML Electricals Pvt. Ltd., but till date it has not been rectified. The AO has also noted that the assessee has received payment of Rs.20,50,000/- from M/s. SML Electricals Pvt. Ltd. Therefore, he requested that the Order of the CIT(A) should be upheld. Alternatively he submitted that the revenue authorities have ample power to call for information as provided in the income tax act and requested that the AO may call information from the M/s. SML Electricals Pvt. Ltd.,. Further, in respect of other three additions, he submitted that these are the contract receipts which are reflected in Form 26AS under the head “contract payments” and contractee has deducted TDS under section 194C of the Act and these are disclosed in the income tax returns. Therefore, the CIT(A) should have accepted. However, the CIT(A) has wrongly upheld due to lack of evidences.

5. On the other hand, the learned DR relied on the Order of the AO. He submitted that as per Form No.26AS the amount received by the assessee is Rs.3,46,20,000/-. However, the assessee has disclosed a lower turnover in his computation. However, the CIT(A) has without making any further enquiry deleted the addition. The CIT(A) could have exercised his power to call for information from M/s. SML Electricals Pvt. Ltd., but he has not done. For the other additions made, there is lack of evidence submitted by the assessee for substantiating the turnover with sufficient documentary evidence, therefore he requested that the assessment order should be upheld.

6. Considering the rival submissions, we note that the assessee did not file return of income under section 139 of the Act and after receiving notice under section 148 of the Act, assessee filed return of income declaring turnover of Rs.97,25,330/- under section 44AD of the Act, and claimed TDS of Rs.97,253/-. We notice from Form 26AS that assessee has received contract receipts from M/s. SML Electricals Pvt. Ltd. and others noted supra and TDS is reflecting in Form 26AS but there is mismatch in the turnover reported in the income tax return with the contract receipts shown in Form 26AS. The AO has issued notice under section 133(6) of the Act to M/s. SML Electricals Pvt. Ltd., but there is no response received. The CIT(A) for the genuineness of contract receipt reported in Form 26AS by M/s. SML Electricals Pvt. Ltd could have also called report from the contractee M/s. SML Electricals Pvt. Ltd., however he has not done so and allowed this ground. The AO has noted that payment has been received from M/s. SML Electricals Pvt. Ltd., of Rs.20,50,000/-, however on perusal of the bank statement filed by the assessee we note that the transactions date reported in Form 26AS and date of payment of receipts in bank account are not

matched. As per Form 26AS, the transaction date is 31.03.2018. However, the assessee has received payment before 31.03.2018 on different dates. We further note that as per computation sheet prepared by the AO dated 27.03.2023, and for OGE passed on 18.06.2024, the AO has given TDS credit only of Rs.97,253/- as claimed by the assessee in his return of income. For other addition made by the AO and confirmed by the CIT(A), assessee is unable to file any documentary evidence for proof of contract receipts as observed by the CIT(A). Considering the facts of the case and in the interest of justice, we are remitting this issue back to the AO for *de novo* consideration and decide the issue as per law after giving reasonable opportunity of being heard to the assessee. We further direct the AO to get information from M/s. SML Electricals Pvt. Ltd., as per the provisions of the Act. Needless to mention assessee be granted sufficient opportunity of being heard and assessee is directed to co-operate with the Revenue and shall not seek unnecessary adjournment in the matter, for speedy disposal of the matter.

7. In the result, the appeals of the Revenue and assessee are allowed for statistical purpose.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(SOUNDARARAJAN K.)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated : 19.12.2024.
/NS/*

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.