

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B', NEW DELHI**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA Nos.895 to 897/Del/2017
Assessment Years: 2010-11 to 2012-13

M/s. Focus Energy Ltd., 3 rd Floor, Gopala Tower 25, Rajendra Place, New Delhi	Vs.	DCIT, Central Circle-19, New Delhi
PAN :AAACP1563C		
(Appellant)		(Respondent)

Appellant by	Shri Nippun Mittal, CA
Respondent by	Ms. Nidhi Srivastava, CIT(DR)

Date of hearing	29.07.2019
Date of pronouncement	30.07.2019

ORDER

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

These appeals by the assessee are directed against three separate orders dated 14/12/2016 passed by the Ld. Commissioner of Income-tax (Appeals)-27, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2010-11, 2011-12 and 2012-13 respectively. A common issue-in-dispute is involved in all the three appeals in same set of circumstances, and thus all these appeals were heard together and disposed off by way of this consolidated order for convenience.

2. In the grounds raised in all the three appeals, the disallowance under section 14A of the Income-tax Act, 1961 (in short 'the Act') is in dispute. The quantum of disallowance in the three assessment year is as under:

Assessment Year	amount of disallowance
2010-11	Rs.9,90,798/-
2011-12	Rs.9,90,798/-
2012-13	Rs.9,90,798/-

3. Briefly stated facts of the case are that in the case of the assessee's search and seizure action under section 132 of the Act was carried out on 22/03/2012. Consequently assessments for assessment year 2010-11 and 2011-12 were completed under section 153A of the Act on 30/03/2015 and assessment for assessment year 2012-13 was completed under section 143(3) of the Act on 30/03/2015. The assessee challenged the assessment orders before the Ld. CIT(A). Due to non-compliance of the notices issued by the Ld. CIT(A), all the three appeals were dismissed ex parte. Aggrieved, assessee filed appeal before the Tribunal and challenged the disallowance under section 14A of the Act.

4. Before us, the Ld. counsel of the assessee filed copy of return of income along with computation sheet for all the three assessment years and submitted that no exempted income was earned by the assessee in all the three assessment years and therefore, in view of the decision of the Hon'ble Supreme Court in the case of the Principal Commissioner of Income Tax Vs. GVK Project and Technical Services Ltd. reported in (2019) 106 taxmann.com 181 (SC), the disallowance might be deleted.

5. The Ld. DR, on the other hand, supported the order of the lower authorities.

6. We have heard the rival submission and perused the material on record in the light of the decision of the Hon'ble

Supreme Court cited by the Ld. counsel of the assessee. On perusal of the assessment orders in all the three assessment years and the copy of return of income along with computation sheet filed, it is evident that no exempt income was earned by the assessee in all the three assessment years. The Hon'ble Supreme Court in the case of GVK Project and Technical Services Ltd. (supra) has approved the decision of the Hon'ble Delhi High Court in the case of Cheminvest Ltd. Vs CIT (2015) 61 taxmann.com 118 (Delhi) wherein it is held that in absence of an exempt income, disallowance under section 14A of the Act is not permissible. In view of no exempted income in the case of the assessee for all the three assessment years, the disallowance made by the Assessing Officer and sustained by the Ld. CIT(A) is directed to be deleted. The respective grounds in all the three appeals raised accordingly allowed.

7. In the result, all the three appeals of the assessee are allowed.

Order is pronounced in the open court on 30TH July, 2019.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Dated: 30th July, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi