

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.250/Del./2016
(Assessment Year : 2009-10)**

**ITA No.251/Del./2016
(Assessment Year : 2010-11)**

M/s. Firepro Wireless & Technologies vs. ACIT,
Private Limited, Central Circle 11,
D – 159, Okhla Industrial Area, Phase-I, New Delhi.
New Delhi – 110 020.

(PAN : AACCC6876D)

(APPELLANT)

(RESPONDENT)

**ASSESSEE BY : Shri R.S. Ahuja, Advocate
REVENUE BY : Shri S.S. Rana, CIT DR**

Date of Hearing : 27.11.2019
Date of Order : 29.11.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in both the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. Appellant, M/s. Firepro Wireless & Technologies Pvt. Ltd. (hereinafter referred to as the 'assessee') by filing the present appeals sought to set aside the impugned orders both dated

19.11.2013 passed by the Commissioner of Income-tax (Appeals)-
XXXI, New Delhi qua the assessment years 2009-10 & 2010-11 on
the grounds inter alia that:-

“ASSESSMENT YEAR : 2009-10

(A) That on the facts & circumstances of the case the learned ITO & the CIT(A) erred in :

1. Not reducing the amount of Rs. 24,69,20,357/- out of Rs.28,00,00,000/- that had been added on account of the bogus purchases since the actual purchase made from the same parties were Rs.3,30,79,643/-.

2. Upholding the Assessment & addition of Rs.1,00,000/- u/s 14A inspite of the fact that the Assessment for the year had abated in terms of section 153A & no incriminating material was unearthed in the course of search & seizure operations.

3. Enhancing the income of the assessee by making an addition of Rs. 1,00,000/- made u/s 14A.

4. Disallowing u/s 14A without the Assessing Officer giving any finding in the assessment order regarding the amount of actual expenditure incurred by the assessee to earn tax-free income.

5. Not following the orders of the jurisdictional High Court in this matter.

ASSESSMENT YEAR : 2010-11

That on the facts and circumstances of the case the learned ITO and the CIT(A) erred in :

1. Including Rs. 2,00,00,000 in the taxable income on account of bogus purchases although the same was not bogus and it was genuine purchases.

2. Upholding the Assessment & addition of Rs. 1,00,000/-u/s 14A inspite of the fact that the Assessment for the year had abated in terms of section 153A & no incriminating material was unearthed in the course of search & seizure operations.

3. Disallowing Rs.1,00,000 u/s 14A of Income Tax Act.

4. Disallowing u/s 14A without the Assessing Officer giving any finding in the assessment order regarding the amount of actual expenditure incurred by the assessee to earn tax-free income.

5. Not following the orders of the jurisdictional High Court in this matter.”

2. Briefly stated the facts necessary for adjudication of the issue at hand are : During the appellate proceedings, ld. CIT (A) from the assessment record of Tulip Group noticed that the assessee and other similar companies are direct or indirect investors in the flagship company of the group. Assessee has accounted sales of Rs.189.39 crores & Rs.3,00,17,053/- for AYs 2009-10 & 2010-11 respectively but without any income before tax from the trading activities. Ld. CIT (A) also noticed that net profit before tax was Rs.88.81 lakhs and Rs.79.48 lakhs which included difference of foreign exchange of Rs.52.89 lakhs and Rs.1.71 crores for AYs 2009-10 & 2010-11 respectively.

3. Assessing Officer (AO) also noticed that the assessee has made investment of Rs.2 crores each in for AYs 2009-10 & 2010-11 in the Tulip group companies. Ld. CIT (A), after calling upon the assessee to show cause as to why the disallowance under section 14A of the Income-tax Act, 1961 (for short ‘the Act’) should not be made @ 0.5% at the average value of the investment, invoked the provisions contained u/s 14A of the Act and made

disallowance of Rs.1,00,000/- each in AYs 2009-10 & 2010-11 being 0.5% of the average investment.

3. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

**GROUND NO.1 IN
ASSESSMENT YEARS 2009-10 & 2010-11**

5. Ground No.1 in AYs 2009-10 & 2010-11 is dismissed having not been pressed during the course of arguments.

**GROUNDS NO.2, 3, 4 & 5 IN
ASSESSMENT YEARS 2009-10 & 2010-11**

6. Ld. AR for the assessee contended that since no dividend has been earned by the assessee during the year under assessment, no disallowance can be made.

7. Ld. DR for the Revenue, on the other hand, relied upon the order of the Id. CIT (A).

8. Undisputedly, no dividend has been earned by the assessee during the years under assessment i.e. AYs 2009-10 & 2010-11. Ld. CIT(A) made disallowance of Rs.1,00,000/- each in both the

assessment years merely on the basis of presumption and assumptions that, “since the assessee’s main activity is investment, therefore, it cannot be denied that the funds has been utilized for investment activities.” When undisputedly no dividend income has been earned by the assessee during the year under assessment, no disallowance can be made.

9. Hon’ble Delhi High Court in the case of *Cheminvest Limited vs. CIT (2015) 378 ITR 33* has held that, “*In the absence of exempt income, disallowance u/s 14A of any amount was not permissible.*” So, we are of the considered view that since assessee has not earned any dividend income nor proved to have incurred any expenditure on the investment during the year under assessment, no disallowance can be made, hence disallowance of Rs.1 lakh each in AYs 2009-10 & 2010-11 is ordered to be deleted. Consequently, grounds no.2, 3 & 4 are determined in favour of the assessee.

10. Resultantly, the appeals filed by the assessee are allowed.

Order pronounced in open court on this 29th day of November, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 29th day of November, 2019/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XXXI, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.