

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : C : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.247/Del/2016
Assessment Year: 2007-08

Firepro Wireless & Technologies Pvt. Ltd., C/o R.S. Ahuja & Co., CA, C-353, Defence Colony, New Delhi.	Vs.	ACIT, Central Circle-11, New Delhi.
--	-----	---

PAN: AACCC6876D

(Appellant)

(Respondent)

Assessee by	:	Shri R.S. Ahuja, CA
Revenue by	:	Ms Anima, Sr. DR
Date of Hearing	:	17.06.2021
Date of Pronouncement	:	05.07.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 19.11.2013 of the CIT(A)-31, New Delhi relating to assessment year 2007-08.

2. Facts of the case, in brief, are that the assessee is a private limited company which deals in computer hardware, making installment equipments and other IT related services. Consequent upon a search action u/s 132 of the IT Act, 1961 on 24th September, 2009 in the Tulip group of cases, the case of the assessee company

was centralized. In response to the notice u/s 153A issued on 29th April, 2010, the assessee filed its return of income on 29th October, 2010 declaring total income at Rs.9,86,715/-. During the course of assessment proceedings, the AO observed that the assessee company has made purchases for Rs.15 lakhs from M/s Jay Enn Infotech Pvt. Ltd., 105-A/2, Saraswati House, 27, Nehru Place, New Delhi. He observed that the assessee company is a group company of Tulip Group, and in the course of search proceedings under section 132, statement of Lt. Col. H S Bedi, CMD of the group, was recorded in which he had admitted that the group companies have been involved in making bogus purchase from some of the entities. In his statement recorded on 25th September, 2009, under section 132(4) of the Income Tax Act, 1961, Lt. Col. H.S. Bedi had made a declaration of Rs. 75 crores on account of bogus purchase made by different group companies. Declaration under section 132(4) was made in the names of M/s. Golf Technologies Pvt. Ltd., Firepro Wireless & Technologies Pvt. Ltd., & M/s. Pinewood Information System Pvt. Ltd. During the course of examining information filed on behalf of the companies in which declaration was made under section 132(4) of the Income Tax Act, 1961 it came to notice that these companies made substantial purchase from M/s. Jay Enn Infotech Pvt. Ltd., which had been admittedly declared as bogus and include in the amount of declaration.

3. The AO noted from the reply submitted in the case of M/s Golf Technologies Pvt. Ltd. that the purchases made from M/s. Jay Enn Infotech Pvt.

Ltd., are admitted as bogus. He noted that simultaneous survey action was carried out at the premises of M/s M/s. Jay Enn Infotech Pvt. Ltd., in which it was seen that this entity is nothing, but, a paper entity which is providing accommodation entries by issuing bogus sale bills on account of which the so-called buyer i.e., in whose name bill is issued could inflate its expenditure and reduce profits. He noted that in the course of the survey proceedings, no stock at the premises of M/s. Jay Enn Infotech Pvt. Ltd. was found. The AO, therefore, asked the assessee to substantiate and justify the purchase of Rs.15 lakhs from M/s Jay Enn Infotech Pvt. Ltd. In absence of any proper reply from the side of the assessee to substantiate the purchase, the AO made addition of the same to the total income of the assessee. Similarly, the AO made addition of Rs.1,00,121/- u/s 14A of the Act on the ground that the investment made by the assessee company were of Rs.2 crore and provisions of sub-section (1) of section 14A are applicable on such investments. Thus, the AO determined the total income of the assessee at Rs.25,98,921/-.

4. In appeal, the Id.CIT(A) upheld the action of the AO. So far as the addition of Rs.15 lakh is concerned, the Id. CIT(A) sustained the addition made by the AO by observing as under:

64.3.1 In this ground the appellant is agitating against addition of Rs. 15 Lakhs towards bogus purchases from M/s Jay Enn Infotech Pvt. Ltd. The AR has argued that the AO has not proved beyond doubt that the purchases from the said party were bogus. The disclosure made for A.Y. 2009-10 and 2010-11 in the appellant's case cannot be relevant for making disallowance for the current assessment year. He has argued that there was no material available on record or confronted to the assessee for the current^ assessment year during the assessment proceedings which proved that the purchases made by the

appellant were bogus. He has also argued that when the sales are not disturbed the purchases also should not be disturbed.

4.3.2 In the assessment order, the AO has mentioned about the simultaneous search and seizure operation on the members of the Tulip Telecom Group including the assessee company. Simultaneous actions u/s 132A were also conducted by the investigation Wing on the so called suppliers of goods to the members of the Tulip Group. M/s Jay Enn Infotech Pvt. Ltd. was also one of the companies who was covered by action u/s 133A. The results of the search and survey operations indicated that the group had indulged in taking accommodation entries. After giving several opportunities (and after seeking several details which did not come through), the authorized officers had confronted the Group with the adverse evidences. Due to such adverse evidences the Chairman of the Tulip Group had admitted that they were not in a position to substantiate the purchase from some 32 suppliers/companies and had surrendered Rs. 75 Crores in the hands of three companies of the Group including the appellant company. The surrendered income has been included by the appellant in the returns filed for A.Y. 2009-10 and 2010-11.

4.3.3 The AO has noted that during the current assessment shown purchases to the tune of Rs. 15 Lakhs from M/s Jay Enn Infotech Pvt. Ltd., which was one of the 32 companies in respect of which the surrender was made. The said supplier never appeared before the AO even during the assessment proceedings. The said party also had not come forward before the investigation wing to substantiate that it actually made sales to the members of Tulip Group of Companies. Thus it is noted that even though appellant had included the surrendered income in the returns filed for A.Y. 2009-10 and 2010-11, there was no such factor in the course of search and seizure operations. The appellant group had not been able to substantiate purchase for all the years covered by the search action in respect of those 32 companies. Thus the argument of the AR that the AO has not proved beyond doubt that the purchase from M/s Jay Enn Infotech Pvt. Ltd. during the current assessment year was bogus is not tenable under the law.

4.3.4 As regards giving opportunity/confronting with the adverse evidences, I am of the view that the same has been complied with by the AO. The assessment order clearly notes that the AO has sought the appellant's explanation vide order sheet entry dated 25.11.2011.

4.3.5 As noted by the AO in the assessment order, the CMD of the Tulip group to which the appellant company belongs, has admitted that they are unable to substantiate purchases by the group companies (including the appellant) made from some 32 companies (mentioned in his letter dated 18/01/2010) which list also included M/s. Jay Enn Infotech Ltd. The CMD of the Tulip group has made the said surrender only after several opportunities were given to the

group to produce the evidences and parties relating to the purchases and also only after he was confronted with the evidences collected from survey u/s 133A and enquiries on these so called suppliers. The appellant and other members of Tulip group companies were asked to prove the genuineness of purchases from the 32 parties which could not be established. The relevant surrender letter given by the appellant is reproduced below:

“We has been asked to produce the following parties along with their Books of Accounts:

- 1) Aadhar Technologies Pvt. Ltd.
- (2) Chip Set Solution Pvt. Ltd.
- (3) Direxxions Technologies Pvt. Ltd.
- (4) Easel Softech Pvt. Ltd.
- (V Enrore Technologies Pvt. Ltd.
- (6) Galaxy Telecommunicatio
- (2) Hitech Infotech & Power Solutions
- (8) Houston Technologies Ltd.
- (9) India Sales Corporation
- (10) Jay Inn Infotech Pvt. Ltd.
- (11) Kesho Industries
- (12) Life Time Infoways Pvt. Ltd.
- (13) M. S. Enterprises
- (14) Motto Softech Pvt. Ltd.
- (15) Net Communication Ltd.
- (16) New Horizons India Ltd.
- (17) Om Trading Company
- (18) Pearls Infosoft Pvt. Ltd.
- (19) Pious E.N.V. Technology Pvt. Ltd.
- (20) Quantum Net Technologies Pvt. Ltd.
- (21) RSR Networks Pvt. Ltd.
- (22) RX Infotech Pvt. Ltd.
- (23) SAT India Ltd.
- (24) Satya Sales Corporaiton
- (25) Software Technology Group International Ltd.
- (26) Standared Infoways Pvt. Ltd.
- (27) Technet Infotech Pvt. Ltd.
- (28) Technosoft Infosystems Pvt. Ltd.

- (29) Unex Technology Corportion
- (30) Vaishnavi Trading Co.
- (31) Victor Compusoft Pvt. Ltd.
- (32) Wilson Electro Products

We would like to submit here that it is not possible to immediately produce the above parties alongwith their books of accounts. All these are independent parties and it would take lot of time and efforts to persuade them to be present alongwith all the details. Further, we are not able to substantiate some of the purchases from a few of the above parties. In view of these constraints and to buy peace of mind we had already surrendered a sum of Rs. 30,00,000/- (Rupees Thirty Crores Only) and to this effect have already deposited an income tax of Rs. Three crores post searches at our offices.

4.3.6 Further, as per the order, the survey u/s 133A at the premises of M/s. Jay Enn Infotech Ltd. has also revealed that it was only an entry provider and not a real supplier. The details of the survey action and its result are elaborately discussed by the AO in the assessment order u/s 153A of its sister concern Tulip Telecom Ltd for A.Ys. 2005-06 to 2010-11 dated 29/12/2011 and also in the assessment order of M/s Jay Enn Infotech Ltd. for A.Y 2009-10 dated 29/12/2011.

4.3.7 Further, the AR has argued that the admission/surrender was for A.Y. 2009- 10 & 2010-11 and not relevant for A.Y. 2007-08 in the case of the assessee. I have perused the relevant assessment records. This is also not tenable on the facts. The party involved is one and same and the facts are also identical. The surrender has been made for A.Y. 2009-10 and 2010-11. However, the transactions involved the Other years covered by search assessments and the assessee had not come forward to give detailed year wise break up of purchases from these parties in spite of giving several opportunities by the investigating team. Moreover, the results of the survey at the premises of M/s Jay Enn Infotech Ltd. showed that the concerned company did not have any stock and had a huge cash balance in books (over Rs. 11.30 crores) without a rupee found at the premises. The said party was withdrawing cash after receipt of cheques from the beneficiaries & had returned them cash in exchange for a commission.

4.3.8 The contents of the assessment order of M/s Jay Enn Infotech Pvt. Ltd., describing the survey action u/s 133 A is reproduced below:

A simultaneous survey operation was conducted on M/s Jay Enn Infotech Pvt. Ltd. and M/s Binary Network Solution Pvt. Ltd. under section 133A of Income Tax Act, 1961 on 24/09/2009 at 105,A/2, Saraswati House - 27, Nehru Place, New Delhi with an action under section 132 on Tulip Group of cases. Smt. Nirmala Jain, mother of Sh. Sunil Jain, Director was available at the time of survey as Sh. Jain was

away for the treatment of his wife. During the course of survey proceedings certain incriminating documents in the form of blank cheque books, loose papers and electronic media was found and impounded. Smt. Nirmala Jain confronted on the basis of the material so found and impounded.

Three major discrepancies were found during the course of survey:

- > Cash as per books ran into crores but actual cash found was in thousands.
- > Blank signed cheque books were found.
- > Major discrepancies with respect to cash was found.

Smt. Nirmala Jain replied to every discrepancy that her son is looking after the business activities and only he can explain about them. Relevant portion of her statement is reproduced hereunder:-

Q8 During the course of survey, from the books of accounts available on computer, it is found that there is cash of Rs.11,31,24,258/- in M/s Jay Enn Infotech P. Ltd. And cash of Rs.3,87,06,505/- in M/s Binary Network Solution P. Ltd as on 24/09/2009. However on physical search cash of Rs.79,000/- only has been found. Please explain the discrepancy. Please also explain the contradiction that only M/s Binary Network Solution is conducting business in this premises.

A. My son Sunil Jain looks after the business. I can have only the supervision in his absence. My son is away to Mumbai for treatment of his wife who is suffering from cancer. When my son come back, he will explain the discrepancy.

Q. 9 During the course of survey, following stock was found on physical inventory in the two companies i.e.

M/s Jay Enn Infotech P. Ltd.	Rs. 2,40,000/-
M/s Binary Network Solution P. Ltd.	Rs. 13,23,673/-

However as per books of accounts there was following stock as on date.

M s Jay Enn Infotech P. Ltd.	Rs. (-)58,90,023/-
M s Binary Network Solution P. Ltd.	Rs. 1,12,71,109/-

The value of stock on physical inventory has been taken on cost on informed by you. Please explain the reason for negative stock and the discrepancy in stock.

A. As explained above, only my son can explain the discrepancy as I am not aware of these facts.

Q.10 I am showing you annexure A-13 and A-14 which are cheque books of M/s Macro IT System P. Ltd. and M/s Kanu Peripherals P. Ltd. Annexure A-13 containing blank cheque numbers 171691 to 171700 but signed by authorized signatories. Similarly annexure A- 14, contains cheque number 152729 to 152735 which are blank but signed by authorized signatories.

A. As I told you earlier, only son Mr, Sunil Jain can tell about it.

As mentioned above survey in the case of the assessee was conducted on the basis of information gathered in the course of search that the Tulip Group companies had been making some bogus purchases from the assessee company and raising only bills to procure accommodation entries. In the course of survey it was noticed that only meager stock was found at the premises of the assessee whereas in the books of accounts the stock figure was negative. This indicates that the assessee company had been providing accommodation bills and had no genuine sales. Sh. Sunil Jain never attended the proceedings in the course of survey nor in post survey inquiries. IN the course of assessment proceedings also, Sh. Sunil Jain never attended this office to explain about his business activities.

4.3.9 The AR has further argued that the appellant has not only debited purchases to P&L account but it has also credited P&L account with sale proceeds. If there are no purchases then there would not also be sales. Therefore, the disallowance of the purchases cannot be made. In this regard it is noted that the appellant has shown to have sold goods to its group concerns. Therefore, this argument is not acceptable. It is not the case of the assessee that the amounts have not been received in the form of sale proceeds. Since it is only the group concerns to whom the sales are shown to have been made, the credit entries in the P&L account cannot be ignored. Since the purchases from M/s Jay Enn Infotech Pvt. Ltd. have been admitted to be not substantiable, the disallowance made by the AO cannot be questioned. Further, the claim that all the payments have been made through banking channels is also of no relevance in view of the fact that the entry providers have returned the cash in exchange of the cheques received from the assessee. The books of accounts of the suppliers on the date of survey showed a very huge cash balance confirming that the suppliers had withdrawn cash after deposit of the cheques from the appellant and returned cash.

4.3.10 It is also seen that the invoices submitted during the appeal proceedings are computer printouts. There is no mention of how such huge quantity of material was delivered. In the invoices issued by the same party in the case of other concerns of Tulip group large quantity of computer peripherals like Routers, Modems, Switches, Converters have been shown to have been transported/dispatched by hand which is not believable on the very face of it. Such large quantity of goods had to be transported by some mode of vehicular transport which is missing in the cases. Further, Tulip Telecom Ltd. itself was an important partner of CISCO in India and there were no valid reasons for purchase of these products from an indelible company.

4.3.11 Considering the above factors I uphold the disallowance of Rs.15 lakhs being bogus purchases.

5. So far as the disallowance u/s 14A is concerned, he also upheld the action of the AO by observing as under:-

64.4.3 It is noted that the main business of the assessee appears to be investment activity. The assessment records of the Tulip group have been perused by me. The appellant and other similar companies of the group are direct or indirect investors in the flag ship company of the group. Even though the appellant has accounted sales of Rs. 64.03 crores there is hardly any income before tax from the trading activity. The net profit before tax was Rs. 9.86 lakhs which included other income of Rs.3,333. All the sales are mostly among the group companies. As against this the appellant has made investment of Rs. 2.00 Crores in the Tulip group companies mostly on the strength of sundry creditors of Rs. 6.42 Crores again mostly being sister concerns. Thus I am of the view that the appellant's main activity is the investment activity and it cannot therefore be denied that considerable manpower and resources have been utilized for investment activity. The appellant has not come forward to provide the likely breakup of expenses relating to- manpower and other resources used for investment activity, the income from which is not included in the total income. In view of this it has to be held that there is no substance in the appellant's submissions that no expenditure was incurred towards investment activity. Such submission is therefore, liable to be rejected. Rule 8D has been held to be applicable only for A.Y. 2008-09. However, in the absence of any other mode of computation of the likely expenditure on the investment activity in case of mixed funds & activity, I am of the view that, disallowance of Rs. 1,00,121/- u/s 14A can be made which is 0.5% of the average investment during the year. Hence the AO's action is confirmed though for different reasoning/ground.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

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

- 1) Addition of Rs.15,00,000 to the total income on account of bogus purchases even though considerable sales and purchases were recorded during the relevant assessment year.
- 2) Upholding the Assessment & addition of Rs. 1,00,121/-u/s 14A in spite 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.1,00,121 u/s 14A of the 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.
- (B) The Assessee craves leave to add, alter or amend the grounds of appeal at and before the hearing.ô

7. Ground of appeal No.1 raised by the assessee relates to the addition of Rs.15 lakhs on account of bogus purchase. The ld. Counsel submitted that the assessment year relates to A.Y. 2007-08 and no incriminating materials were found from the premises of the assessee during the course of search relating to this year. The assessee has already surrendered income on account of bogus purchases for A.Y. 2009-10 and 2010-11 and no surrender was made for A.Y. 2007-08 since no incriminating materials were found during the course of search for this particular year. Referring to various decisions, he submitted that in absence of any incriminating material found during the course of search for any particular year, no addition can be made merely on the basis of presumptions and surmises. In his second plank of argument, he submitted that the coordinate Benches of the Tribunal and different Benches of the High Courts are holding that in case of bogus purchases, no addition can be made on account of such bogus purchases and only profit element embedded in it can be added. He submitted that the assessee in the instant case has shown a profit of Rs.61,276/- from such bogus purchases which is evident from the order of the CIT(A). He submitted that if the purchase is

bogus, then, the sale is also bogus and since the assessee has already offered profit of Rs.61,276/- on account of such bogus purchases, no further addition is called for. He accordingly submitted that both legally and factually no addition on account of bogus purchase is justified.

8. The ld. DR, on the other hand, heavily relied on the order of the CIT(A). She submitted that since the assessee for the two subsequent assessment years had admitted bogus purchases, it cannot be said that the assessee for the impugned assessment year has not indulged in bogus purchases. Merely because the assessee has not surrendered any amount for the impugned assessment year on account of bogus purchases, it cannot be said that such purchase is not bogus. She accordingly submitted that the order of the CIT(A) which is a reasoned one should be upheld.

9. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, made addition of Rs.15 lakhs being the purchases made by the assessee company from M/s Jay Enn Infotech Pvt. Ltd., on the ground that the aforesaid seller was involved in giving bogus sale bills so as to enable the buyers to inflate their purchases and reduce their income. We find, the ld.CIT(A) upheld the action of the AO, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the ld. Counsel that no

incriminating material was found during the course of search for the impugned assessment year and, therefore, no addition could have been made on account of such bogus purchases. It is also his submission that the assessee has already declared profit on account of sale of the said alleged bogus purchases and, therefore, once the purchase is treated as bogus, the sale cannot be treated as genuine and the assessee cannot be made liable to tax twice.

10. We find some force in the above argument of the Id. Counsel for the assessee. As argued by the Id. Counsel and from the order of the lower authorities, it is seen that no incriminating material was found during the course of search to substantiate that the assessee was involved in making bogus purchases for this particular year. The coordinate Bench of the Tribunal in the case of one of the sister concerns of the group, i.e., Gulf Technologies Pvt. Ltd. vs. ACIT, vide ITA No.5565/Del/2012 and 5556/Del/2012, order dated 27th August, 2020, for A.Y. 2006-07 and 2007-08, under identical circumstances, following the decision of the Honöble Delhi High Court in the case of CIT vs. Kabul Chawla, reported in 380 ITR573 and PCIT vs. Meeta Gutgutia, reported in 325 ITR 526, has deleted the additions by quashing the assessment proceedings in absence of any incriminating material found during the course relating to A.Y. 2007-08.

10.1 Even otherwise, in view of the various decisions relied on by the Id. Counsel for the assessee, the entire bogus purchase cannot be added to the total income of the assessee and only the profit element embedded therein could have been added.

Since, in the instant case, the sale of the assessee has not been disturbed by the AO, treating the same as bogus, therefore, the entire bogus purchase could not have been added to the total income of the assessee. Since the assessee has already declared profit of Rs.61,276/- on account of sales against such bogus purchases which is more than the GP rate declared by the assessee at 1%, therefore, on this count also no addition is called for in the instant case. In our opinion, if the AO treats the purchase as bogus, then, the sales also is bogus and since such bogus purchase has been sold at a price higher than cost of such bogus purchase and the assessee has already offered income out of such bogus purchases, therefore, in our opinion, no separate addition on account of such bogus purchase is called for especially in absence of any incriminating material found during the course of search for the impugned assessment year. In this view of the matter, we set aside the order of the CIT(A) and direct the AO to delete the addition.

11. In grounds No.2 to 4, the assessee has challenged the disallowance of Rs.1,00,121/- u/s 14A.

11.1 After hearing both the sides, we find the AO disallowed an amount of Rs.1,00,121/- u/s 14A on the ground that the assessee is holding investment of Rs.2 crores during the impugned assessment year. The ld.CIT(A) sustained the addition, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the ld. Counsel for the assessee that no dividend has been received by the assessee during the impugned assessment year

from the investment of Rs.2 crore made in the Tulip group of companies. Further, it is also his submission that no interest expenditure has been debited to the Profit & Loss Account nor any loan has been raised during the year under consideration for making the investment. We find, before the AO as well as CIT(A) the submission of the assessee was that no dividend has been received during the year. However, both the lower authorities have gone on different directions while sustaining the addition. The Hon'ble Delhi High Court in the case of Cheminvest vs. CIT, reported in 378 ITR 33, has held that no disallowance u/s 14A can be made in a year in which no exempt income has been earned or received by the assessee. Similar view has been taken by the Hon'ble Delhi High Court in the case of PCIT vs. Oil Industries Development Board, vide ITA 197/2018, order dated 16th February, 2018 and in various other decisions relied on by the Id. Counsel for the assessee. Since, admittedly, the assessee in the instant case has not received any dividend income during the year, a fact stated before the lower authorities and not controverted by them, therefore, respectfully following the decision of the Hon'ble Delhi High Court in the case of Cheminvest (supra) and Oil Industries Development Board (supra), we are of the considered opinion that no disallowance u/s 14A is called for. The order of the CIT(A) on this issue is accordingly set aside and the grounds raised by the assessee are allowed.

12. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 05.07.2021.

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 05th July, 2021.
dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi