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

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND
SH.L.P.SAHU, ACCOUNTANT MEMBER

I.T.A .No.-970/Del/2014
(ASSESSMENT YEAR-2010-11)

DCIT, Central Circle-11, New Delhi **(Appellant)**	vs	Firepro Wireless & Technology Pvt.Ltd., C-160, Okhla Industrial Area, Phase-I, New Delhi-110020. PAN-AACCC6876D **(Respondent)**

Appellant by	Sh. Manoj Kumar Chopra, Sr. DR
Respondent by	None

Date of Hearing	03.05.2016
Date of pronouncement	10.06.2016

O R D E R

PER SMT. DIVA SINGH, JUDICIAL MEMBER

The present appeal has been filed by the Revenue assailing the correctness of the order dated 19.11.2013 of CIT(A)-XXXI, New Delhi pertaining to 2010-11 assessment year on the following grounds:-

1. *"The order of Ld.CIT(A) is not correct in law and facts.*
2. *On the facts and in the circumstances of the case, Ld.CIT(A) has erred in deleting the disallowance of Rs.40,11,036/- on account of purchases without giving an opportunity to the AO under Rule 46A of the IT Rules.*
3. *The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal."*

2. At the time of hearing, no one was present on behalf of the assessee. However, the Ld.Sr.DR submitted the appeal can be decided on the basis of material available on record as there is a violation of the statutory Rules which is evident from the record itself. The relevant facts of the case as emanating from the

assessment order are that the case of the assessee company was centralized consequent to a search u/s 132 of the Income Tax Act, 1961 on 24.09.2009. In response to the notice issued, return declaring an income of Rs.2,79,15,485/- was filed. The assessee was required vide notice u/s 143(2)/142(1) and questionnaire etc. to explain the discrepancies pointed out in the notices. In the present proceedings, we shall confine ourselves to the specific issue raised in the present appeal. The issue undue consideration is the addition of Rs.40,11,036/- made holding purchases as bogus to the said extent on the following reasoning:-

> ***7. Bogus Purchases***
>
> *"During the course of assessment proceedings, the assessee company was required to submit details of purchases made. A list in this regard has been submitted by the assessee company. From the list of purchases it has been perused that in the case of M.s Pride Technology Company, no address is mentioned in the list submitted. It is further reiterated that the assessee company did not file any further detail. In the absence of details in respect of the person from whom goods are purchased, it is not feasible to verify the genuineness of purchases. Therefore, the amount of purchases made from M/s Pride Technology Company are not considered genuine and disallowed. Amount of Rs.4011036/- is added back in the income of the assessee company. Penalty proceedings under section 271(1)(c) are initiated for furnishing inaccurate particulars of income and for concealing the particulars of income."*
>
> *(Addition made Rs.4011036/-)*

3. The Ld. Sr. DR inviting attention to para 4.4.2 of the impugned order submitted that the CIT(A) accepted *intoto* the submission of the assessee. Carrying us through the submissions in para 4.4.2 and the conclusions in para 4.4.3 he submitted that neither the CIT(A) has recorded any reasons justifying the admission of fresh evidences nor has he confronted the fresh evidences to the AO as per the statutory mandate. No attempts was made to obtain a Remand Report also. It was further submitted that the CIT(A) has also not cared to himself

examine the correctness and veracity of the evidences stated to be filed before him and in the absence of any discussion thereon and examination thereon and obtaining of the Remand Report and the reasons for admitting the same, it was his submission that there was a clear-cut violation of Rule 46A of the Income Tax Rules. Accordingly, it was his submission that the addition made by the AO deserves to be sustained as the deletion has been made contrary to Rules and facts and the finding cannot be upheld.

4. We have heard the submissions and perused the material available on record. On a consideration of the same, we find ourselves in agreement with the submissions of the Ld. Sr. DR in as much as clear-cut violation of Rule 46A is evident on record itself. Rule 46A reads as under:-

> ***46A.*** *(1) "The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer], except in the following circumstances, namely :—*
>
> *(a) where the [Assessing Officer] has refused to admit evidence which ought to have been admitted ; or*
>
> *(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer] ; or*
>
> *(c) where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal ; or*
>
> *(d) where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.*
>
> *(2) No evidence shall be admitted under sub-rule (1) unless the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.*
>
> *(3) The [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the [Assessing Officer] has been allowed a reasonable opportunity—*
>
> *(a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or*

(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the [Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.]"

5. In the facts of the present case, the CIT(A) after setting out the facts in para 4.4.1 that the AO in the absence of any details held that the genuineness of the purchases from M/s Pride Technology Company where neither address or details of the said supplier were provided made the addition holding the purchases to that extent as not verifiable. However, after considering the submissions of the assessee he accepted the arguments that the purchases made from the said party were in facts imports on which custom duty has been paid. Relying on copies of bills of entry, commercial invoice from M/s Pride Technology Company, Taiwan, and other documents not confronted to the AO held that the purchases from the said party were genuine. We find that in the facts of the present case that the Ld. CIT(A) has not cared to address under which clause of sub-Rule (1) of Rule 46A the evidence was being admitted. The Rule contemplates various situations under which the assessee can be permitted to lead fresh evidences in appeal before the CIT(A) namely (a); (b); (c) or (d) of sub Rule (1) of Rule 46A. Having satisfied the primary condition the law requires the CIT(A) in term of sub-Rule (2) of Rule 46A to pass an order in writing bringing on record the reasons for admission of the fresh evidences. Thereafter a duty is caste upon the First Appellate Authority in terms of Sub-Rule (3) of Rule 46A to confront the same to the AO for rebuttal for which a

reasonable opportunity is to be provided. The said exercise is found to be missing in the facts of the present case. In the afore-said peculiar facts and circumstances of the case, we find ourselves in agreement that there is clear-cut violation of Rule 46A. However, we do not agree with the Revenue's submission that the addition in the circumstances should be sustained as the procedural shortcoming can be rectified by restoring the issue back to the file of the CIT(A) by setting aside the order and directing the said Authority to first confront the fresh evidences taken on record to the AO and thereafter pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. Needless to say that meeting the specific requirements set out in Rule 46A. Accordingly the grounds of the Revenue are allowed.

6. In the result, the appeal of the Revenue is allowed for statistical purposes.

The order is pronounced in the open court on 10th of June, 2016.

Sd/-	**Sd/-**
(L.P.SAHU) **ACCOUNTANT MEMBER**	**(DIVA SINGH)** **JUDICIAL MEMBER**

Amit Kumar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI