

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "SMC" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "SMC" CHANDIGARH

श्री संजय गर्ग, न्यायिकसदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपीलसं./ITA No. 54/CHD/2020

निर्धारणवर्ष / Assessment Year : 2008-09

M/s Fateh Softech Pvt. Ltd. H. No. 2144, Sector 15-C, Chandigarh	बनाम	Income Tax Officer, Ward-1(4), Chandigarh.
स्थायीलेखासं./PAN NO: AAACF9857H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपीलसं./ITA No. 55/CHD/2020

निर्धारणवर्ष / Assessment Year : 2009-10

M/s Fateh Softech Pvt. Ltd. H. No. 2144, Sector 15-C, Chandigarh	बनाम	Income Tax Officer, Ward-1(4), Chandigarh.
स्थायीलेखासं./PAN NO: AAACF9857H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपीलसं./ITA No. 57/CHD/2020

निर्धारणवर्ष / Assessment Year : 2011-12

M/s Fateh Softech Pvt. Ltd. H. No. 2144, Sector 15-C, Chandigarh	बनाम	Income Tax Officer, Ward-1(4), Chandigarh.
स्थायीलेखासं./PAN NO: AAACF9857H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing through video Conferencing

निर्धारित की ओरसे/Assessee by : Shri Parikshit Aggarwal, CA
राजस्व की ओरसे/ Revenue by : Smt. Meenakshi vohra, ACIT

सुनवाईकीतारीख/Date of Hearing : 04.03.2021
उद्घोषणाकीतारीख/Date of Pronouncement : 24.05.2021

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeals have been preferred by the assessee against the orders all dated 31.10.2019 of the Commissioner of Income Tax (Appeals)-1, Chandigarh [hereinafter referred to as 'CIT(A)']. ITA 54/CHD/2020 is taken up first for adjudication.

ITA 54/CHD/2020 for A.Y. 2008-09

2. In this appeal the assessee has taken following grounds of appeal:-

“ 1. That on law, facts and circumstances of the case, the Worthy CIT(A) in Appeal No. 10349/16-17 has erred in passing that order in contravention of the provisions of S. 250(6) of the Income Tax Act, 1961.

2. That on law, facts and circumstances of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO wherein Ld. AO had erred by issuance of notice u/s 148 of the Act and had further erred in continuation and completion of the said re-assessment proceedings u/s 147 of the Act even when the whole of the process was illegal and against the provisions of Income Tax Act and hence required to be declared void-ab-initio.

3. That on law, facts and circumstances of the case, Worthy CIT(A) has erred in completing the impugned assessment u/s 147 without the issuance of valid notice u/s 143(2) of the Income Tax Act, 1961.

4. That on law, facts and circumstances of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO wherein Ld. AO had erred in

making aggregate additions of Rs.3,25,000/- on issue in assessment finalized u/s 147 even when the re-assessment proceedings were initiated on an altogether different issue, the final addition is on a different issue and no addition on the issue on which re-opening was initiated has been made in the final re-assessment order.

5. That on law, facts and circumstances of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO wherein Ld. AO had erred in making the assessment in haste and without affording reasonable framed is against the principles of natural Justice and hence deserves to be quashed.

6. That on law, facts and circumstances of the case, the worthy CIT (A) has erred in confirming the action of Ld. Assessing Officer wherein Ld. Assessing Officer had acted with a biased and prejudice mind in framing the impugned assessment order and carrying out the re-assessment proceedings and therefore the said appeal is illegal and deserves to be quashed.

7. That on law, facts and circumstances of the case, the Worth CIT(A) ' has erred in confirming the action of Ld. AO wherein Ld. AO had adopted Rs. 32,84,000/- the Current Value of the construction exp. and added Rs. 2,05,000/- the proportionate const, exp., even though the construction activity was actually carried out in FY 2006-07 and that too by M/s ICRMS(P) Ltd., to whom the property was given on lease.

8. That on law, facts and circumstances of the case, the Worthy CIT (A) has erred in confirming the action of Ld. Assessing Officer wherein Ld. Assessing Officer had adopted Rs. 32,84,000/- as the construction exp. and added Rs. 2,05,000/- The proportionate const. Exp., even through the construction activity was actually carried out in FY 2006-07. The respondent has made this addition in A.Y. 2008-09 as he lacked powers by virtue of limitation period to assessee A.Y. 2006-07.

9. That on law, facts and circumstances of the case, the Worthy CIT (A) has erred in confirming the action of Ld. Assessing Officer wherein Ld. Assessing Officer on his own without making any reference to DVO had adopted Rs. 32,84,000/- as the construction Exp. And added Rs. 2,05,000/- the proportionate const. exp.

10. That on law, facts and circumstances of the case, the Worthy CIT (A) has erred in confirming the action of Ld. JCIT wherein the Ld. JCIT had erred in not conducting the relevant assessment proceedings fairly as the application moved by the appellant u/s 144A has been disposed off by the Ld. JCIT without granting any opportunity of being heard.

11. That on law, facts and circumstances of the case, the worthy CIT(A) has erred in confirming the action of Ld. AO wherein Ld AO had erred in making addition of Rs. 1,20,000/- ignoring the fact, submission and documents placed on record by erroneously holding that such income claimed by the appellant to have been earned from agricultural operation is actually earned from other sources.

12. That the appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before the disposal of the same. “

2. A perusal of the above grounds of appeal reveal that **ground No. 1 and 12** are general in nature, hence they need no specific adjudication.

Ground No. 2 to 6

3. The assessee through ground Nos. 2 to 6 has agitated the validity of the re-opening of the assessment u/s 147 read with 148 of the Act.

4. I have heard the rival submissions and perused the material available on record. The Assessing Officer (in short ‘AO’) recorded the following reasons for re-opening of the assessment :

Reason for reopening the case u/s 147/ 148 of the Income Tax Act. 1961

An information was received from the Deputy Director of-. Income- Tax (Investigation)-II, Chandigarh vide his office letter No. 3578 dated 02.03.2015 that above noted assessee had been evading rental income from House Property.

On perusal of return of the said assessee company for A.Y. 2008-09j it is observed that fixed assets have been shown at Rs.36,29,120/-but no income under any head has been shown except agriculture income of Rs.1,2G.GQM-

Therefore, I have reason to believe that the rental income from the-house property has escaped assessment within the meaning of section 147(a) of IT Act, 1961 for A.Y. 2008-09.

5. A perusal of the above reasons reveal that the AO observed that the assessee had shown fixed assets of Rs. 36.29 lacs but he had not offered any income from the said property except agriculture income of Rs. 1,20,00,000/-. This, in my view is a vague reason. Merely possession of a fixed asset does not mean that the assessee might have earned any income from the said asset which would have escaped assessment. Admittedly the assessee owns agricultural land where upon certain construction has been made by the assessee. It has been used for its own purposes. The reasons recorded by the Assessing Officer do not disclose that the assessee has used any of his assets for any business or rental purposes. The formation of belief by the AO in this case regarding the escapement of income of the assessee, in my view is based on just assumptions and presumptions and there was no reliable material available with the AO to form the belief that the income of the assessee had escaped assessment. In this view, re-opening of the assessment in this case, in my view is bad in law and the same is therefore quashed.

6. However, since the issues on merits are also involved, appeals relating to subsequent years also, therefore, I proceed to decide the issues on merits also.

Ground No. 7 to 10 :

7. The brief facts relating to the issue on merits are that the AO in this case received a report from the Punjab Vigilance Bureau that the construction/development work amounting to Rs. 32.84 lacs was carried out by the assessee on its property situated at village Siuank, Distt. SAS Nagar during the years from 2008 to 2011. On being show caused as to why the proportionate amount may not be added to his returned income for the year under consideration as investment from undisclosed sources, the assessee explained that the report relied upon by the AO was erroneous. That, infact, the property was initially on lease for two years with M/s ICRMS Pvt. Ltd. and as per agreement the M/s ICRMS Pvt. Ltd. has done all the construction on this property and at that time, the labour quarters on the property has been renovated to be made into toilets. As such, the details of cost on the construction of boundary, pathway, toilets, etc. may be sought from M/s ICRMS Pvt. Ltd. (under various litigations). That was proper Lease Agreement between M/s ICRMS Pvt. Ltd and Fateh Softech Pvt. Ltd. in this regard. That the copy of said Lease Agreement may be obtained from M/s ICRMS Pvt. Ltd. as Shri Jatinder Singh Dua (shareholder & director of ICRMS Pvt. Ltd.) has stolen the company records as detailed in FIR

286/13 and the orders of dismissal of bail application of JS Dua by ASJ, Chandigarh & Hon'ble High Court.

It was also pleaded that the construction otherwise had been done in the year 2006-07 and hence, no income can be added in the year under consideration even on proportionate basis. The assessee also relied upon the valuation report of the approved valuer M/s Nandini Associates to submit that the construction was made in the year 2006-07 and that the total estimated construction value of the property at that time was at Rs. 15787.70.

8. However, the AO did not agree with the above submissions and relied upon the report of the valuer submitted by the Punjab Vigilance Bureau and added an amount of Rs. 2.05 lacs proportionate to the expenses carried out during the year into the returned income of the assessee.

9. The CIT(A) confirmed the addition so made by the AO.

10. The assessee has thus come in appeal before this Tribunal.

11. I have heard the submissions and perused the material on record. First of all, it is seen that there was no evidence before the AO regarding the date of the construction of the property. Consequently, the value of the property has been made on estimation basis. The ld. counsel for the assessee has brought

my attention to the report of the Valuer obtained from Punjab Vigilance Bureau upon which the AO has relied upon, wherein, the year of construction has been mentioned as 2008 to 2011. The value of the property, however, has been assessed as on 3.3.2015. Therefore, the value of the property has been estimated in the year 2015 and the addition has been made on proportionate basis taking the value of the property as on 3.3.2015, whereas, it is own case of the department that the property has been constructed from 2008 to 2011. On the other hand, the assessee has produced the report of the approved valuer to submit that the value of the property was at approximately Rs. 15 lacs. Thirdly, construction of the property has been disputed by the assessee. The assessee before the AO has categorically mentioned that the construction in the shape of boundary, pathway and toilets was made by M/s ICRMS during the financial year 2006-07 as per the lease agreement of the assessee with the said company.

The assessee had further requested the AO to get all the details in this respect from M/s ICRMS company, however, the AO totally ignored the aforesaid request of the assessee and simply relied upon the report of the valuer attached alongwith the report of the Punjab Vigilance Bureau.

12. As observed above, the said valuation was done as per the value of the construction in the year 2015. In this case, even the AO did not make any independent query. Moreover, the AO in the circumstances was supposed to refer the matter to the Departmental Valuation Officer to get approximate date of construction of the property as well as value of the property on the date of construction. No such exercise has been done by the AO. The addition has been made just on estimation basis on the borrowed satisfaction of the Punjab Vigilance Bureau without any independent investigation in the matter by the AO. Such an addition made on the basis of mere suspicion, in my view, is not sustainable in the eyes of law. This addition is accordingly set aside.

Ground No. 11 :

13. Vide ground No. 11, the assessee has agitated the addition of Rs. 1.20 lacs made by the AO as "income from other sources" as against declared by the assessee as 'agricultural income'. The assessee had shown agricultural income of Rs. 1.20 lacs contending that the same was earned from the lease of the agricultural land. The assessee in this respect produced affidavit of one Mr. Kuldeep Singh S/o Shri Chhaju Singh from whom the agriculture income/Batai was received. However, the AO rejected the aforesaid affidavit of Shri Kuldeep Singh and held that the

aforesaid income of the assessee was not from agriculture activity and assessed the same as "income from other sources". The ld. CIT(A) confirmed the addition made by the AO.

14. Before this Tribunal, the ld. counsel for the assessee has submitted that the assessee has continuously been offering the agricultural land on Batai and that the aforesaid amount of Rs. 1.20 lacs was earned by the assessee from agriculture operations. The ld counsel has further submitted that during the subsequent years, the said lessee was examined by the AO and statement was also recorded and after having satisfied, no addition has been made in this respect in the subsequent years. Moreover, it has not been denied by the AO that the assessee is in possession of agricultural land and the lessee has admitted that he has paid aforesaid amount of Rs. 1.20 lacs as batai to the assessee. In view of this, I do not find any justification on the part of the AO to make the impugned addition. In view of this, the addition made by the AO on this issue is deleted.

15. In the result, the appeal of the assessee stands allowed.

ITA No. 55/CHD/2020 for A.Y. 2009-10

The assessee in this appeal has taken the following grounds of appeal :

1. *That on law, facts and circumstances of the case, the Worthy CIT(A) in Appeal No. 10636/16-17 has erred in passing that order in contravention of the provisions of S. 250(6) of the Income Tax Act, 1961.*
2. *That on law, facts and circumstances of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO wherein Ld. AO had erred by issuance of notice u/s 148 of the Act and has further erred in continuation and completion of the said re-assessment proceedings u/s 147 of the Act even when the whole of the process was illegal and against the provisions of Income Tax Act and hence required to be declared void-ab-initio.*
3. *That on law, facts and circumstances of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO wherein Ld. AO had erred in making addition of Rs. 8,21,000/- on issue in assessment finalized u/s 147 even when the re-assessment proceedings were initiated on an altogether different issue, the final addition is on a different issue and no addition on the issue on which re-opening was initiated has been made in the final reassessment order.*
4. *That on law, facts and circumstances of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO wherein Ld. AO had erred in making the assessment in haste and without affording reasonable opportunity to the appellant and therefore the impugned assessment framed is against the principles of natural justice and hence deserves to be quashed.*
5. *That on law, facts and circumstances of the case, the Worthy CIT (A) has erred in confirming the action of Ld. AO wherein Ld. AO had acted with a biased and prejudice mind in framing the impugned assessment order and carrying out the re-assessment proceedings and therefore the said appeal is illegal and deserves to be quashed.*
6. *That on law, facts and circumstances of the case, the Worthy CIT (A) has erred in confirming the action of Ld. AO wherein Ld. AO had adopted Rs. 32,84,000/- the Current Value of the construction exp. and added Rs. 8,21,000/- the proportionate const, exp., even though the construction activity was actually carried out in FY 2006-07 and that too by M/s ICRMS (P) Ltd., to whom the property was given on lease.*
7. *That on law, facts and circumstances of the case, the Worthy CIT (A) has erred in confirming the action of Ld. AO wherein Ld. AO had adopted Rs. 32,84,000/- as the construction exp. and added Rs. 8,21,000/- the proportionate const, exp., even though the construction activity was actually carried out in FY 2006-07. The respondent had made this addition in A.Y. 2009-10 as he lacked powers by virtue of limitation period to assessee A.Y. 2006-07.*
8. *That on law, facts and circumstances of the case, the Worthy CIT (A) , has erred in confirming the action of Ld. AO wherein Ld. AO on his own*

without making any reference to DVO had adopted Rs. 32,84,000/- as the construction exp. and added Rs. 8,21,000/- the proportionate const, exp.

9. *That the appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before the disposal of the same.*

16. A perusal of the above grounds of appeal reveal that ground **Nos. 1 and 9** of the grounds of appeal taken by the assessee are general in nature.

Ground No. 2 & 3 :

17. Vide ground Nos. 2 and 3, the assessee has agitated the validity of the re-opening of the assessment u/s 147 read with Section 148 of the Act. At the outset the ld. counsel for the assessee has invited my attention to the reasons recorded by the AO for forming belief for re-opening of the assessment.

Reasons for issuing notice under section 148 of the Income Tax Act, 1961

The assessee had filed its return of income for the A.Y. 2009-10 at NIL income and had shown agricultural income at Rs. 1,10,000/-. As per information received from the office of the Deputy Director of Income Tax (Investigation)-II, Chandigarh vide his letter dated 03.02.2016 and on the basis of report of Punjab Vigilance Bureau, it has been noticed that the assessee company has been using its assets for arranging marriage functions and after perusal of the Income Tax Return of the assessee, it has been noticed that the assessee is not showing any such income. Moreover, it has also been noticed that the assessee had also invested a sum of Rs. 32.84 lac on the construction/development of a farm house/resort at its land but no such expenses are reflected in the balance sheet of the company. Therefore, it is clear that the expenses have been met out from the income which has not been shown in the Return of income filed by the assessee.

Therefore, keeping in view the facts narrated above, I have reasons to believe that an income of Rs. 32,84,000/- has escaped assessment within the meaning of Section 147(a) of the Income Tax Act, 1961 for the A.Y. 2009-10.

18. A perusal of the above reasons recorded reveal that re-opening of the assessment has been made by the AO on the report of Investigation Wing that the assessee company has been using its assets for arranging marriage functions. However, the assessee has not offered any income from the above activity. Further it was noticed that the assessee had also invested a sum of Rs. 32.84 lacs on construction/ development of farm houses/resort at its land but no such expenses are reflected in the balance sheet of the company. Therefore, the AO formed the belief that the income of the assessee had escaped assessment.

19. The ld. counsel for the assessee, in this respect has submitted that the assessee does not own any marriage palace or resort as alleged by the AO. That there was no reliable information/document/evidences available with the AO to form the belief that the assessee has been running any marriage palace or had constructed a resort as has been alleged in the reasons recorded. He has further submitted that even otherwise, the AO has not made any addition on account of income from any marriage palace/resort.

The ld. DR on the other hand has relied upon the findings of the lower authorities.

20. I find that the reasons recorded by the AO are vague and are based on borrowed satisfaction. The AO after receipt of the alleged information was supposed to apply his mind and should have formed the belief based on some reliable evidences that the assessee owned any marriage palace/resort. Even after assessment, the AO has not made any addition on account of any ownership of the assessee of any marriage palace/resort. The AO did not have any material to form the belief that the income of the assessee had escaped assessment. Therefore, the re-opening of the assessment in my view is bad in law and the same is accordingly ordered to be quashed.

Ground No. 4 to 8 :

21. Vide ground Nos. 4 to 8 the assessee has agitated the addition of Rs. 8.21 lacs on proportionate basis for the year under consideration in respect of the alleged construction made by the assessee in the property totaling Rs. 32.84 lacs allegedly during the years 2008 to 2011. This issue has already been discussed and decided in earlier paras of this order while deciding the appeal of the assessee in ITA No. 54/CHD/2020 for assessment year 2008-09. The finding arrived therein will mutatis-mutandis apply for the year under consideration also. In view of this the proportionate addition of Rs. 8.21 lacs made by

the AO in respect of the alleged construction is ordered to be deleted.

22. In the result, appeal of the assessee stands allowed.

ITA No. 57/CHD/2020 for A.Y. 2011-12 :

The assessee in this appeal has taken the following grounds of appeal :

1. *That on law, facts and circumstances of the case, the Worthy CIT(A) in Appeal No. 10269/18-19 has erred in passing that order in contravention of the provisions of S. 250(6) of the Income Tax Act, 1961.*
2. *That on law, facts and circumstances of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO wherein Ld. AO had erred by issuance of notice u/s 148 of the Act and had further erred in continuation and completion of the said re-assessment proceedings u/s 147 of the Act even when the whole of the process was illegal and against the provisions of Income Tax Act and hence required to be declared void-ab-initio.*
3. *That on facts and circumstances and legal position of the case, Worthy CIT(A) has erred in completing the impugned assessment u/s 147 without the issuance of valid notice u/s 143(2) of the Income Tax Act, 1961.*
4. *That on law, facts and circumstances of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO wherein Ld. AO had erred in making the assessment in haste and without affording reasonable opportunity to the appellant and therefore the impugned assessment framed is against the principles of natural justice and hence deserves to be quashed.*
5. *That on law, facts and circumstances of the case, the Worthy CIT (A) has erred in confirming the action of Ld. AO wherein Ld. AO had acted with a biased and prejudice mind in framing the impugned assessment order and carrying out the re-assessment proceedings and therefore the said appeal is illegal and deserves to be quashed.*
6. *That on law, facts and circumstances of the case, the worthy CIT(A) has erred in confirming the action of ld. AO wherein ld. AO had adopted Rs. 32,84,000/- the Current Value of the construction exp.*

and added Rs. 8,21,000/- the proportionate const, exp., even though the construction activity was actually carried out in FY 2006-07 and that too by M/s ICRMS (P) Ltd., to whom the property was given on lease.

- 7. That on law, facts and circumstances of the case, the Worthy CIT (A) has erred in confirming the action of Ld. AO wherein Ld. AO had adopted Rs. 32,84,000/- as the construction exp. and added Rs. 8,21,000/- the proportionate const, exp., even though the construction activity was actually carried out in FY 2006-07. The respondent had made this addition in A.Y. 2011-12 as he lacked powers by virtue of limitation period to assessee A.Y. 2006-07.*
- 8. That on law, facts and circumstances of the case, the Worthy CIT (A) has erred in confirming the action of Ld. AO wherein Ld. AO on his own without making any reference to DVO had adopted Rs. 32,84,000/- as the construction exp. and added Rs. 8,21,000/- the proportionate const, exp.*
- 9. That the appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before the disposal of the same.*

23. A perusal of the above grounds of appeal reveal that ground **Nos. 1 and 9** are general in nature.

Ground No. 2 & 3 :

24. The assessee vide ground Nos. 2 and 3 has agitated the validity of the re-opening of the assessment u/s 147 read with Section 148 of the Act.

25. A perusal of the reasons recorded shows that the same are identical as recorded for re-opening of the assessment for assessment year 2009-10. As already held in the assessment year 2009-10, the re-opening of the assessment on the basis of invalid reasons in this appeal is also liable to be quashed. It is held accordingly.

Ground No. 4 to 8 :

26. Vide ground Nos. 4 to 8, the assessee has agitated the addition of Rs. 8.21 lacs on account of proportionate addition for the year under consideration in respect of the investment/construction of property valuing Rs. 32.84 lacs as per the report of the valuation office of Punjab Vigilance Bureau. This issue has already decided while deciding the appeal of the assessee for assessment year 2008-09 and in view of my finding given above, while deciding the appeal of the assessee for assessment year 2008-09, this issue is accordingly decided in favour of the assessee. The impugned addition made by the AO is therefore ordered to be deleted.

27. In the result, appeal of the assessee stands allowed.

28. In view of my findings given above, all the captioned three appeals of the assessee stand allowed.

Order pronounced on 24.05. 2021.

Sd/-

(संजय गर्ग)

(SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

“Poonam”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File