

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH
(VIRTUAL COURT)

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री राजपाल यादव, उपाध्यक्ष
BEFORE: SHRI. N.K.SAINI, VP & SHRI , RAJPAL YADAV, VP

आयकर अपील सं./ ITA NO. 56/Chd/2020
निर्धारण वर्ष / Assessment Year : 2010-11

M/s Fateh Softech Pvt. Ltd. H.No. 2144, Sector-15C Chandigarh-160015	बनाम	The ITO Ward-1(4) Chandigarh
स्थायी लेखा सं./PAN NO: AAACF9857H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Parikshit Aggarwal, CA
राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 21/06/2021
उद्घोषणा की तारीख/Date of Pronouncement : 21/06/2021

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)-1, Chandigarh dt. 31/10/2019.

2. The Registry has pointed out that the appeal is barred by limitation by two days. The Assessee filed an application dt. 02/02/2021 for condonation of delay stating therein as under:

Subject: Prayer for condonation of delay in filing of appeal in ITA No. 56/Chandi/2020 in the case of Fateh Softech Pvt Ltd, PAN- AAACF9857H for A. Y. 201011.

Hon'ble Bench,

Kindly refer to the matter cited as subject above. The appellant assessee filed appeal before the Hon Tale ITAT on 13.01.2020. The present appeal is against the appellate order dtd. 31.10.2019 passed u/s 250(6) by Worthy CIT(A). The registry of the Hon'ble Bench has pointed out that there is a delay of 2 days in filing of this appeal. The facts behind the said delay and our prayer praying for condonation of the same are as under:

1. The present case relates to assessment framed u/s 143(3) r.w.s 147 of the Income Tax Act where-against assessee filed appeal before the Worthy CIT(A)-1, Chandigarh.

2. The above appeal was partly allowed by Worthy CIT(A) vide order dtd. 31.10.2019. This order was served on to the assessee on 13.11.2019.

3. Against the above-said order of Worthy CIT(A), 2nd appeal was filed before the Hon'ble ITAT, Chandigarh on 13.01.2020.

4. The registry of the Hon'ble ITAT has pointed out that there is a delay of 2 days in filing of this appeal.

5. As regards the reason for delay in filing of appeal before the Hon'ble ITAT, it is submitted that limitation period of 60 days from the date of receipt of order expired on 12.01.2020. However that being Sunday, the appeal was filed the next working day i.e. on 13.01.2020. However, the registry pointed out a defect that the appeal fee deposited by the assessee is short by Rs. 10. This amount was immediately deposited by the assessee on the next day i.e. on 14.01.2020.

6. Thereafter, the registry counted the date of filing of the appeal when the said balance appeal of Rs. 10 was deposited. If counted till the actual date of filing of the appeal on 13.01.2020, there is no delay.

7. The above facts led to delay in filing of the appeal before the Hon'ble Bench.

8. The above delay, if any, was caused due to reasons beyond the control of the appellant. Therefore, the delay caused was totally unintentional and bona-fide on part of the appellant. **A duly sworn & attested affidavit of the director of the appellant company, in this regard, is attached herewith.**

In the light of above facts and more so in the interest of natural justice, it is prayed that the delay in filing of the appeal may please be condoned. Further, the applicant undertakes to fully co-operate for the early disposal of the subject appeal. We shall be highly obliged.

3. During the course of hearing the Ld. Counsel for the Assessee reiterated the contents of the aforesaid application and submitted that the assessee filed the appeal with in time but there was short payment of Rs. 10/- which was deposited on the next day, therefore the delay if any in filing the appeal may be condoned.

4. The Ld. Sr. DR although objected the application for condonation of the delay but could not controvert the aforesaid contention of the Ld. Counsel for the assessee.

5. After considering the submissions of both the parties we are of the view that the short delay in this case may be condoned. Accordingly the appeal is admitted and the delay is condoned.

6. Following grounds have been raised in this appeal:

1. *That on law, facts and circumstances of the case, the Worthy CIT(A) in Appeal No. 10428/17-18 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 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.*

4. *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.*

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 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.*

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/- 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. 2010-11 as he lacked powers by virtue of limitation period to assessee A.Y. 2006-07.*

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 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.*

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 had erred in making addition of Rs. 1,10,000/- 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 operations is actually earned from other sources.

9. *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. 1,10,000/- ignoring the fact, that the similar agricultural income was allowed in the previous year assessment by the then Ld. AO.*

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

7. During the course of hearing the Ld. Counsel for the assessee at the very outset stated that the Ld. CIT(A) passed the impugned consolidated order for the A.Y's 2008-09, 2009-10, 2011-12 and the present A.Y. 2010-11. It was submitted that in all the years the reopening was done under section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'Act') by recording the similar reasons and the appeals for the aforesaid years except the year under consideration were subject matter of the assessee's appeal before the ITAT, SMC Bench, Chandigarh in ITA No. 54, 55 & 57/Chd/2020 for the A.Y's 2008-09, 2009-10 & 2011-12 respectively which were disposed off vide order dt. 24/05/2021 and the issue was decided in favour of the assessee, therefore it is a covered issue as the facts for the year under consideration are identical to the facts involved in the A.Y's 2008-09, 2009-10 & 2011-12 vis-à-vis, the year under consideration.

8. The aforesaid contention of the Ld. Counsel for the assessee was not controverted by the Ld. Sr. DR.

9. We have considered the submissions of both the parties and perused the material available on the record, it is noticed that an identical issue having similar facts had already been adjudicated by the ITAT, SMC Bench, Chandigarh in assessee's own case in ITA No. 54, 55 & 57/Chd/2020 for the A.Y's 2008-09, 2009-10 & 2011-12 respectively wherein the legal issue as well as the issue on merit have been decided in favour of the assessee, the relevant findings have been given in para 5 to 15 of the aforesaid referred to order dt. 24/05/2021 which read as under:

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 Id. 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 Id. CIT(A) confirmed the addition made by the AO.

14. Before this Tribunal, the Id. 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 Id 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.

Since the facts for the year under consideration are identical to the facts involved in the aforesaid referred to A.Y's and even the Ld. CIT(A) passed the consolidated order for the aforesaid referred to years as well as the year under consideration. So respectfully following the order dt. 24/05/2021 in assessee's own case in ITA No. 54, 55 & 57/Chd/2020 for the A.Y's 2008-09, 2009-10 & 2011-12 respectively, the reopening is quashed and the appeal is decided in favour of the assessee.

10. In the result, appeal of the Assessee is allowed.

(Order pronounced in the open Court on 21/06/2021)

Sd/-

**राजपाल यादव
(RAJPAL YADAV)**

उपाध्यक्ष / VICE PRESIDENT

AG

Date: 21/06/2021

Sd/-

**एन.के.सैनी,
(N.K. SAINI)**

उपाध्यक्ष / VICE PRESIDENT

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