

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “एकल सदस्यीय”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH ‘SMC’ CHANDIGARH**

**श्रीमती दिवा सिंह, न्यायिक सदस्य
BEFORE: SMT. DIVA SINGH, JM**

आयकर अपील सं./ITA No. 50,51 & 52/CHD/2020
निर्धारण वर्ष / A.Ys : 2009-10, 2010-11 & 2011-12

M/s Fateh Homes Pvt. Ltd., H.No. 2144, Sector 15-C, Chandigarh.	बनाम VS	The ITO, Ward 1(4), Chandigarh.
स्थायी लेखा सं./PAN No: AABCF0763F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Parikshit Aggarwal, C.A.

राजस्व की ओर से/Revenue by : Smt. Meenakshi Vohra, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 10.06.2021

उद्घोषणा की तारीख/Date of Pronouncement : 16.06.2021

Hearing conducted via Webex

आदेश/ORDER

The present appeals pertaining to 2009-10, 2010-11 and 2011-12 assessment years have been filed by the assessee wherein the consolidated order dated 31.10.2019 of CIT(A)-I Chandigarh are assailed on various grounds. However, in view of the fact that the order of the ITAT on the jurisdictional issue was now available and also in favour of assessee, the arguments by the parties, accordingly, were confined to ground No. 2 which was identical and common in each of these three appeals. For the sake of completeness, it be referred that though the consolidated order also includes 2013-14

assessment year, however, the issues therein are separate and distinct, hence this appeal has been adjourned.

2. It need also be referred that these appeals came up for hearing in the background where repeatedly adjournments were sought by the ld. AR stating that the specific issue i.e. the jurisdictional issue has been argued before the ITAT in a connected case on the same set of facts and circumstances and the order of the ITAT is awaited. Paper Books have been filed by the assessee thereafter and it has been claimed that the issue is covered in favour of the assessee. The appeal was adjourned so as to enable the ld. Sr.DR to go through the order of the Tribunal and to hear these alongwith identical appeals.

3. In the said background, the ld. AR on the date of hearing inviting attention to ground No. 2 raised by the assessee in the present appeal submitted that the said ground is identical in all the three years and this issue is fully covered in favour of the assessee by virtue of the order of the ITAT in ITA No. 54, 55 and 57/CHD/2020 dated 24.05.2021 in the case of M/s Fateh Softech Pvt. Ltd. , Chandigarh. The ld. Sr.DR Ms. Vohra agreed that the facts and circumstances qua ground No. 2 in each of these three appeals is identical. Accordingly, in the aforesaid factual background, ground No. 2 as raised in ITA 50/CHD/2020 was taken up for hearing.

4. For ready reference the ground is reproduced from ITA 50/CHD/2020 :

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.

5. The ld. AR inviting attention to the Paper Book filed on behalf of the assessee submitted that the reasons recorded for re-opening are set out in page 60 and are identical in each of the three appeals to the reasons as considered by the ITAT in its consolidated order. For the sake of completeness, the reasons recorded in ITA 50/CHD/2020 (identical in the remaining two appeals) are reproduced hereunder :

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 on 30.08.2010 at an income of Rs. 5,31,950/-. As per information received from the office of the Deputy Director of Income Tax (Investigation)-II, Chandigarh vide his letter dated 03.02.2016, it has been noticed that the assessee company made an addition of Rs. 68,98,376/- to the fixed assets during the F.Y. 2008-09 relevant to the A.Y. 2009-10. However, it has been noticed from the aforesaid letter of the Deputy Director of Income Tax (Investigation)-II, Chandigarh that no documentary evidence in support of genuineness and source of such investment was submitted by the assessee to him during the course of investigation. Thus, the additions made to the fixed additions by the assessee during the year remain unexplained.

Further, it has also been noticed that the assessee spent Rs. 2.95.Crores on the construction of a house situated at H. No. 59, Sector-4, Chandigarh from F.Y. 2007-08 to the F.Y. 2011-12 but as per final enquiry report submitted by the Punjab Vigilance Bureau, Punjab (on the basis of valuation report of a Govt. Approved Valuer), the actual amount spent on the construction is Rs. 72 lakh more than the amount claimed by the assessee. The proportionate extra amount spent during the F.Y. 2008-09 comes to Rs. 16,83,671/- which stand unexplained in view of the facts, narrated above.

Therefore, keeping in view the facts narrated above, I have reasons to believe that an income of Rs. 85,82,047/- has escaped assessment within the meaning of Section 147(a)

ANKJ
8/3/16
(ANKJT JAIN)

Income Tax Officer, Ward
1(4), Chandigarh

of the Income Tax Act, 1961 for the A.Y. 2009-10.

5.1 Referring to the said reasons recorded, it was his submission that the first para of the same would show that it was beyond the scope of re-opening as the reasons set out therein are that the sources of items reflected in the balance sheet were noticed to be lacking in documentary evidence supporting the genuineness. Referring to the second para of the reasons recorded, it was his submission that admittedly some Valuation Report has been relied upon to unsettle the assessee's claim. Referring to the decision of the Apex Court in the case of Sargam Cinema Vs. Commissioner of Income Tax 328 ITR 513 (S.C) it was his submission that such an action did not have judicial sanction and it was barred by the AO.

6. Ld. Sr.DR Ms. Meenakshi Vohra sought to intervene that the reason recorded and the formation of the belief is not the Valuation Report but report of the Punjab Vigilance Bureau and thus, decision of the Apex Court may not be attracted.

7. The ld. AR agreed that reliance has been placed on the Punjab Vigilance Bureau Report which has relied upon the valuation report of some approved Valuer. This issue identically has been considered by the ITAT in a connected case and he was only further supporting the decision of the ITAT. These very same reasons have been recorded as in the

facts of assessee's case came up for consideration before ITAT and have been extracted in para 17 considering which the issue has been dealt with at length in paras 18 to 21 thereby allowing the appeal of the assessee and quashing the re-opening. It was his submission that the position on facts, law and submissions thereon as far as the assessee is concerned, remain identical. Apart from the said finding, it was also his submission that it has been argued on merits that the AO did not refer the matter to the DVO right through the assessment stage or till date and no expert Valuer's Report was taken by him. He blindly relied upon a report based on estimation and even otherwise, this stand did not have legal leg to stand on.

8. The ld. Sr.DR fairly agreed that the ITAT has considered the very same reasons and thus, she would have nothing further to state except place reliance upon the orders of the authorities below. On query it was further agreed by her that the AO did not refer the matter to the DVO at any stage.

9. I have heard the submissions and perused the material on record. Considering the reasons as set out in page 60 of the assessee's Paper Book which has been the basis for re-opening the assessment in the present case, it is seen that the very same issue came up for consideration before ITAT in the case of M/s Fateh Softech Pvt. Ltd. , Chandigarh (supra).

On a consideration of the decision of the Apex Court in the case of Sargam Cinema (supra) it is seen that their Lordships in the facts of the said decision held that the AO could not have referred the matter to the Departmental Valuation Officer (DVO) without first rejecting the books of accounts of the assessee. Their Lordships therein took note of the fact that the Tribunal therein had recorded a finding that the books were never rejected. The said principle of law in the facts of the present case as argued and presented before the ITAT, it is seen has no relevance or applicability. Reverting back to the peculiar facts and circumstances considering the issue as decided by the ITAT vide paras 17 to 20 on facts which are identical, I find that the assessee's contentions are correct. It is seen that the issue stands concluded by the aforesaid finding of the ITAT in favour of the assessee. For ready reference, the same is reproduced hereunder :

“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.

10. Accordingly, in the absence of any change in facts, circumstances or position of law, the appeal of the assessee is allowed. The re-opening is held to be not maintainable and the impugned order is set aside and the assessment order is quashed.

11. Since in ITA 51 & 52/CHD/2020, there is no change in facts, circumstances or position of law, ground No. 2 raised therein which is identical to ground No. 2 as considered in ITA 50/CHD/2020, the appeals are allowed in respect to the said ground. The re-opening is held to be bad in law and the assessment orders are quashed setting aside the impugned order in both these years also.

12. In the result, appeals of the assessee are allowed. Said order was pronounced at the time of virtual hearing itself in the presence of the parties via Webex.

Order pronounced on 16th June,2021.

Sd/-
(दिवा सिंह)
(DIVA SINGH)
न्यायिक सदस्य/Judicial Member

“पूनम”

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

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar