

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 1916/Mum/2020 (A.Y. 2011-12)

Faith Finstock Pvt. Ltd.
214, Linkway Estate Premises CHS Ltd.
Chincholi Bunder, Malad (West),
Mumbai-400064

PAN: AAACF7046E

..... Appellant

Vs.

ITO-12(2)(1),
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

..... Respondent

Appellant by	:	None
Respondent by	:	Ms. Kavita Kaushik
Date of hearing	:	09/06/2022
Date of pronouncement	:	06/09/2022

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-20, Mumbai [hereinafter referred to as ('CIT(A)'] dated 29.11.2019 for the Assessment Year (AY) 2011-12. The assessee has raised the following grounds of appeal:

“1. That the learned CIT (A), Mumbai has grossly erred both in law and on facts in confirming the reassessment proceedings and also framing the assessment under section 143(3)/147 of the Act determining the income of the assessee at an income of Rs.40,25,000- as against returned income of Rs.69,879/-.

2. That the learned CIT (A) has grossly erred both in law and on facts in failing to appreciate that initiating the reassessment proceedings by issuing a notice under section 148 of the Act, without satisfying the statutory preconditions as envisaged under section 147 of the Act, and hence initiation of the reassessment proceedings is bad in law.

3. That the learned CIT (A) has grossly erred both in law and on facts in failing to appreciate that learned AO has initiated the reassessment proceedings by issuing a notice under section 148 of the Act, merely on the basis of the alleged information received from the DCIT. Central Circle 2(4), Mumbai without there being any tangible material for the formation of the reason to believe, and hence initiation of the reassessment proceedings is unsustainable in law.

4. That the learned CIT (A) has grossly erred both in law and on facts in confirming additions of Rs.40,25,000 and failing to appreciate that the amount received are advances received and not dividend income as alleged, as such, assumption of jurisdiction to make additions of the aforesaid sum as undisclosed income is wholly unsustainable in law.

5. That the learned CIT (A) has grossly erred both in law and on facts in failing to appreciate that reasons to believe are justifiable and to justify the reopening of the assessment, only reasons recorded has to be looked into, and since the reasons to believe has been recorded without appreciating the facts of the case and solely on the basis of the information received from the DCIT, Central Circle 2(4), Mumbai as such, assumption of jurisdiction is bad in law.

6. The learned CIT (A) has grossly erred both in law and on facts in confirming an addition of Rs.13,11,158/- as undisclosed Income.

7. The learned CIT (A) has grossly erred both in law and on facts in confirming an addition of Rs.27,13,842/- as income from Business and Profession.

8. That the learned CIT (A) has grossly erred both in law and on facts in failing to appreciate the adverse findings recorded by the learned AO are perverse and have been recorded without any material and hence such findings are vitiated and deserve to be deleted.

9. The learned CIT (A) has grossly erred both in law and on facts in disposing the appeal without providing to the appellant, a fair, proper and meaningful opportunity of being heard, violating the principles of natural justice and thus such an order is vitiated both on fact and in law.

10. The learned CIT (A) has erred in confirming the charging of interest of Rs. 11,56,641/- u/s 234B of the Income Tax Act, 1961.

11. The order passed by the learned CIT (A) is illegal, bad in law, ultra vires and contrary to the provisions of law and facts and is passed without application of mind and in violation of the principles of natural justice.

The above grounds of appeals are independent of and without prejudice to each other.

That the appellant craves leave to add, alter, amend or withdraw all or any grounds herein or add any further grounds as may be considered necessary either before or during the hearing of these grounds."

2. Brief facts of the case are that the assessee company filed its return of income on 29-09-2011 declaring total income at Rs 68,879/-. In consequent to search and seizure operation u/s 132 of the Act in the cases of Sterling Biotech Ltd (SBL) and group companies were conducted on 28-06-2011. In the vigilance report coupled with seized material it is observed that the key persons of this group i.e Shri Nitin Sandesara and Shri Chetan Sandeshra have floated number of bogus companies with the sole intentions of siphoning of funds and deletion of the taxable income of the group. In perusal of the seized material appraisal report, vigilance report etc it is observed that assessee company is one of such entity. **This fact assessee never denied.**

3. From the seized material mentioned (supra) it is seen that almost the entire holding of the group companies namely SBL and SIEL reported under the category

of public/non promoters group is held by these benami entities only (including assessee company). It is also seen that in its internal records, these holdings are clearly recognised as its own by the assessee company i.e. Sterling Group. Further the money invested in the shares of SBL and SIEL in the name of non promoter entities belongs to the group itself. The dividend payable to the non promoter share holding was loans found encashed by the assessee group only.

4. The seized material (annexure A-8,pg-185) show the hand written record of depositing the non-promoter dividend cheques for Rs 3,33,45,000/- in Andhra Bank, Fort, Mumbai. The entire sum of Rs 3,33,45,000/- towards non-promoters dividend cheque were credited in the account of these benami entities only (pg-190 of annexure-A.8) . In this list name of the assessee company was also there and have shown receipt of Rs 40,25,000/- as amount of dividend. On the analysis of the information on ITD application it was noticed that assessee have shown dividend income of Rs 27,13,842/- as against the amount of dividend deposited as mentioned (supra) of Rs 40,25,000/-. Hence the difference of Rs 13,11,158/- is added to the total income of the assessee.

5. Assessee counsel vide there letter dated 18-12-2018 admitted that assessee has received dividend of Rs 40,25,000/-. Another show cause was issued to the assessee to furnish the party wise details of expenses claimed in P & L account with TDS details. However the assessee had not furnished any details on this regards. Hence in the absence of any reply with evidence A.O brought the entire dividend income Rs 40,25,000/- to tax.

6. Being aggrieved with this order of A.O assessee preferred an appeal before the learned CIT (A)-20, Mumbai. The learned CIT (A) also sustained the order of A.O and the appeal of the assessee was dismissed.

7. Against this order of learned CIT (A) assessee further preferred an appeal before us.

8. We have gone through and considered the order of the A.O, learned CIT (A) and one submission of the assessee. This submission of assessee is undated without acknowledged and also not clear to whom it has been addressed. In the record before us we haven't found any paper-book, submission of the assessee before the authorities below and ITAT also. There is no Audit report with financials of the assessee found.

9. Despite the facts narrated above, being final fact finding authority it is our utmost duty to consider each and every material available on record. As mentioned (supra) other than a copy of undated and unaddressed submission of the assessee, we haven't found anything. The contents of the submissions we have gone through in addition to the order of the authorities below. The case as narrated by the authorities below as mentioned (supra) vis-a-vis the contents of the submissions, has no match and rather there is a 360 degree reversal of the facts narrated by the authorities below. But as mentioned (supra), in absence of any submissions and evidence filed before us, we are unable to verify the facts of the submissions of the assessee. To strengthen this, we are reproducing the contents of the assessee's submission herein below:

"FAITH FINSTOCK PRIVATE LIMITED
ASSESSMENT YEAR 2011-12
STATEMENT OF FACTS

The Appellant is a Private Limited Company. The Appellant had filed its return of income on 29/09/2011 declaring total income at Rs. 69,879/-. The case of the appellant was reopened and notice u/s. 148 of the Income Tax Act, 1961 (herein after referred as Act) was issued on 28.03.2018. Subsequently notice u/s. 142(1) of the act was issued and details required were submitted by the assessee in due course and assessment was completed on 28.12.2018.

Relevant extract of the reasons for reopening obtained from the Assessing Officer is reproduced as under:

"On the basis of information received from the office of the Dy.CIT Central Circle-2(4), Mumbai, the search and seizure operation u/s. 132 of the Act in the Group cases of Sterling Biotech Limited (SBL) was conducted on 28/06/2011 and Vigilance Report in this regard coupled with seized material, it is observed that the key persons of this group i.e. Shi Nitin Sandesara and Shri Chetan Sandesara have floated number of bogus companies with the sole intention of siphoning of funds and dilution of the taxable income of the group. On perusal of the seized/impounded materials, appraisal report, vigilance report etc., it is observed that M/s. Faith Finstock Pvt. Ltd. is one of such entity. From the seized materials, it is seen that almost the entire holding of the group companies namely Sterling Biotech Limited (SBL) and Sterling International Enterprises (SIEL) reported under the category of Public/Non-promoters group is held by these benami entities only. It is also seen that in its internal records, these holding are clearly recognized as its own by the assessee group i.e. Sterling Group. Further the money invested in the shares of SBL and SIEL in the name of non-promoter entities belongs to the assessee group, the dividend payable on the non-promoter shareholding was also found encashed by the assessee group only. The seized material Annexure A-8 in page 185 shows the handwritten record of depositing the non-promoter dividend cheques for Rs.3,33,45,000/- in Andhra Bank, Fort, Mumbai. The entire sum of Rs. 3,33,45,000/- towards non-promoters dividend cheques were credited in the account of the assessee group as per list in Page 190 of A-8 of search party No- 11. Following is the list of accounts maintained with Andhra Bank, Fort, Mumbai denoted by the numbers written above.

Sr No	Account No	Name of the Company	Amount of Dividend
01	47	Faith Finstock Private Ltd	Rs 40,25,000/-

In response to reason for re-opening mentioned above Appellant vide submission dated 10.12.2018 explained that assesses company has received Dividend of Rs. 27,13,842/- during the F.Y. 2010-11 which is properly accounted for in the books of accounts. The Dividend Income of Rs. 40,25,000/- as per your Notice dated 02.11.2018 is not an amount received from Sterling Biotech Limited as dividend, but the same is an advances/Loan Fund received from various parties. The details are as under.

Sr No	Name of Companies	Date	Cheque No	Amount
1	Dollex Capital & Finance Pvt. Ltd.	20/07/2010	008498	1,20,000
2	Transfer from Axis Bank to Andhra Bank	20/07/2010	133628	12,50,000
3	Fotosoft Multimedia Pvt. Ltd	20/07/2010	245006	7,15,000
4	LSV Investment & Properties Pvt.	20/07/2010	000138	7,60,000
5	Niranwal Credit & Holding Pvt. Ltd.	20/07/2010	259608	15,000
6	Staywell Trading Co. Pvt. Ltd.	20/07/2010	149210	3,00,000
7	Ved Surind Securities Pvt. Ltd.	20/07/2010	788453	60,000
8	Topflag Mercantile Co. Pvt. Ltd.	20/07/2010	020636	80,000
9	Ved Investment Trading Co. Pvt. Ltd.	20/07/2010	000195	6,55,000
10	Vartula Holding Pvt. Ltd.	20/07/2010	084460	70,000
TOTAL				40,25,000

And in support of the above submission, Appellant vide further submission dated 18.12.2018 submitted the Bank Statement highlighting the above transaction with parties mention above. So there is no acceptance from the appellant company admitting that the sum received from above parties is Dividend. Appellant vide letter dated 18/12/2018 also submitted copy of bank statements of all the parties from whom advances were received.

AO without considering the above submission and without giving any opportunity to the appellant made an addition of Rs.13,11,158/- to the income of the appellant as undisclosed income.

AO vide notice dated 02/11/2018 asked for the details of expenses debited to P&L account. Appellant vide letter dated 10/12/2018 submitted the details of expenses amounting to Rs.78,958/- debited to P&L account.

Expenses were in nature of statutory & revenue expenses necessary for maintaining the status of the company.

AO without considering the above submission claim that the above expenses deserved to be disallowed. Further AO assumed that there is no credit to the P&L account other than dividend income whereas there is an income of Rs.1,48,837/- from trading is offered for taxation during the year. AO has mentioned in the order that since there is no other income offered and all expenditure is to be disallowed entire dividend income of Rs.40,25,000/- is brought to tax. AO without appreciating fact that total expenditure claimed during the year was Rs.78,958/- and hence no amount more than Rs.78,958/- can be disallowed. Further appellant has claimed dividend income of Rs.27,13,842/- as exempt income u/s.10(34) , being dividend received from Indian company on which Dividend Distribution Tax is paid. AO without giving an opportunity to the appellant brought the entire dividend of Rs.27,13,842/- to tax as income from business and profession which is not justified at all according to provisions of the act.

The Appellant is in appeal before your honor against the aforesaid addition.”

10. It is astonishing and surprised for us that this undated, unaddressed and unacknowledged submission is there on our record carrying substantial facts relevant to decide the matter. There is no evidence before us whether this letter has been filed before the authorities below or not. Even in our record it is unacknowledgedly found. Still, to be just and fair we restore this matter back to the file of A.O to understand the whole chronology of facts and if found to be genuine, a *denovo* assessment is to be done keeping in view the evidences and explanations to be filed by the assessee.

11. In view of the above, we direct the A.O to do the denovo assessment considering our observation above and it is also directed to the assessee that appear before the A.O without fail with proper evidences and explanations.

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

Order pronounced in the open court on 6th day of September, 2022.

Sd/-

(SANDEEP SINGH KARHAIL)

JUDICIAL MEMBER

Mumbai, दिनांक / Dated: 06/09/2022

SK, Sr.PS

Copy of the Order forwarded to:

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

BY ORDER,

//True Copy//

(Dy. /Asstt. Registrar)
ITAT, Mumbai