

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 9352/Del/2019
Assessment Year: 2006-07**

Standard Times Pvt. Ltd.,
Raj Kumar & Associates,
L-7A(LGF), South Extension
Part-2, New Delhi
PAN: AABCS3651B
(Appellant)

Versus DCIT, Circle 24(2),
New Delhi.

(Respondent)

Assessee by: Sh. Raj Kumar, C.A. &
Sh. J.P. Sharma, CA
Revenue by: Sh. Subhra Jyoti Chakraborty, CIT/DR

Date of hearing : 28.11.2023
Date of pronouncement: 07.12.2023

ORDER

PER SAKTIJIT DEY, VICE-PRESIDENT

This is an appeal by the assessee against order dated 30.09.2019 of learned Commissioner of Income-tax (Appeals)-8, New Delhi for the assessment year 2006-07.

2. Grounds raised by the assessee are as under :

“1. That under the facts and circumstances, there is no justification in law as well as on merits for repeating addition of Rs.1,03,10,479 made in the original asstt., also, the said figure is as per asstt. order u/s. 153A Dtd.30.12.11 which asstt. already stood set aside by Hon'ble ITAT.

2. That the Ld. A.O. committed serious error of law in examining the issue of stock in A.Y.2006-07 which could not had been examined in view of the specific directions of Hon'ble ITAT to decide only the issue raised in said appeal before ITAT and in A.Y.2006-07 the issue of stock was not raised before ITAT, thus A.O. exceeded his jurisdiction in examining the issue of stock and in making the addition of Rs.4,30,18,058/- and Ld. CIT(A) also erred in confirming the action of the A.O. as well as the addition made by the A.O.

2.1 That without prejudice, the inference for the addition as well as the calculations are erroneous and in view of submissions of assessee, no addition should had been made.

3. That the A.O. erred in charging tax @35 percent against correctly at 30 percent.”

3. In ground No. 1, the assessee has challenged addition of Rs.1,03,10,479/-.

4. Briefly, the facts relating to this issue are, the assessee is a resident corporate entity. A search and seizure operation under section 132 of the Income-tax Act, 1961 was conducted in case of the assessee on 30.07.2009. Pursuant to such search and seizure operation, proceeding under section 153A of the Act was initiated against the assessee. In course of assessment proceedings, the Assessing Officer, based on certain seized material marked as page

30-31 of Annexure A-8, found that it contains assessee's income to the tune of Rs.1,03,10,479/- from watch business during the period 01.01.2005 to 31.12.2005. As alleged by the Assessing Officer, when the assessee was confronted with the seized material, the contents of the document were admitted. The Assessing Officer further observed that the seized document is from Kachcha record of the assessee and the individual members of the family concerns. Further, alleging that the assessee did not produce books of account for verification, the Assessing Officer treated the amount of Rs.1,03,10,479/-, as mentioned in the seized document, to be income of the assessee and added back while framing the assessment under section 153A/144 of the Act. The assessee contested the aforesaid addition before learned first appellate authority and being unsuccessful there, went in further appeal before the Tribunal. While deciding the appeal, the Tribunal in order dated 30.03.2016 passed in ITA Nos. 1689 to 1693/Del/2014 restored the issue to the file of Assessing Officer for deciding afresh after affording adequate opportunity of being heard to the assessee. While complying with the directions of the Tribunal, the Assessing Officer in the impugned assessment order again made

identical addition alleging that despite various opportunities having been granted, the assessee failed to make any submission or produce the books of account. Though, the assessee contested the aforesaid addition before the first appellate authority, however, it was confirmed.

5. Before us, learned counsel appearing for the assessee submitted that though, the Tribunal has restored the issue to the Assessing Officer with a specific direction to re-examine it after providing due and reasonable opportunity of being heard, however, the Assessing Officer without complying with the direction of the Tribunal, has made the addition. Drawing our attention to the notice dated 06.12.2017 issued by the Assessing Officer, he submitted, the Assessing Officer has not at all conducted any enquiry on the issue and has simply made the addition. Thus, he submitted, the addition made is unsustainable.

6. Learned Departmental Representative relied upon the observations of the Assessing Officer and learned first appellate authority.

7. We have considered rival submissions and perused materials on record. On going through the original assessment order, it is very much clear that relying upon the seized documents the Assessing Officer has treated the disputed amount as the income of the assessee from watch business. Of course, he has alleged that the assessee has failed to furnish books of account and other documents to explain the seized documents. Be that as it may, even if there is a seized document with certain figures mentioned on it, *ipso facto* it cannot become assessee's income. Being conscious of this fact, the Tribunal while deciding assessee's appeal has restored the issue to the Assessing Officer for fresh adjudication. However, as it appears from the materials placed before us, in the fresh assessment proceedings in compliance with the directions of the Tribunal, the Assessing Officer has not at all examined the issue and has merely repeated the addition made by him in the original assessment order. This, in our view, is in utter disregard to the directions of the Tribunal. The Assessing Officer without following the mandate given to him by the Tribunal could not have made the addition. Therefore, in our view,

the addition made, being unsustainable, deserves to be deleted.

Accordingly, we do so.

8. In ground No. 2, the assessee has challenged addition of Rs.4,30,18,058/-.

9. We have considered rival submissions and perused materials on record. It is the case of the assessee that in the original assessment order, the Assessing Officer has made only one addition of Rs.1,03,10,479/- and no other additions. He submitted, assessee contested that addition upto the level of Tribunal and while disposing of assessee's appeal, the Tribunal restored the issue to the Assessing Officer for re-examination. Whereas, in the fresh assessment proceedings, the Assessing Officer has made a completely new addition, which was neither the subject matter of dispute in the original assessment order nor before the appellate forums. Thus, it is the submission of the assessee before us that since, the directions of the Tribunal to the Assessing Officer is in respect of a particular issue, the Assessing Officer could not have travelled beyond such direction and made a completely fresh

addition. In support of such contention, learned counsel has relied upon following decisions :

- (i) Lopamudra Misra vs. ACIT, 243 CTR (Ori)-66
- (ii) Bhagwandass Associates (2008) 12 DTR (Pune)(Trib) 195.
- (iii) Whiteline Chemicals vs. ITO (2013) 33 taxmann.com 37 (Gujrat HC).
- (iv) M/s. Gemini Oils Pvt. Ltd. vs. ITO (ITAT Mumbai) ITA No. 2563/Mum/2005.

10. Learned Departmental Representative submitted, since, the directions of the Tribunal was for *de novo* assessment, the Assessing Officer was free to examine all the issues, which are available before him. He submitted that since, at the time of assessment another seized document was available before the Assessing Officer, he proceeded to make addition based on such seized document.

11. We have considered rival submissions and perused materials on record. We have also applied our mind to the decisions relied upon. Undisputedly, while completing the original assessment vide order dated 30.12.2011, the only addition made by the Assessing Officer was of an amount of Rs.1,03,10,479/-. Undisputedly, while deciding assessee's appeal contesting such addition, the Tribunal in

order dated 30.03.2016 has restored the issue to the file of the Assessing Officer with the following directions :

“We thus in the interest of justice set aside the matter to the file of the Assessing Officer to decide the issues raised in the above appeals preferred by the parties afresh after affording adequate opportunity of being heard to the assessee. The grounds raised in the appeals preferred by the parties are thus set aside for the statistical purposes.”

12. From the aforesaid observations of the Tribunal, it is very much clear that only the issues arising in appeal filed by the assessee before the Tribunal were restored back to the Assessing Officer for deciding afresh. Certainly, there is no direction by the Tribunal to initiate *de novo* assessment proceedings, as learned Departmental Representative wanted to make us understand. Thus, from the aforesaid directions of the Tribunal it is very much clear that the Assessing Officer was given specific mandate to examine only the issue of addition of Rs.1,03,10,479/- and no other issue. Whereas, in the fresh assessment proceedings, the Assessing Officer has made a completely new addition, which was not part of the original assessment order and appeal before the Tribunal. Therefore, in our view, while making this addition, the Assessing Officer has exceeded

his jurisdiction and has not acted in compliance with the directions of the Tribunal. Therefore, in our view, the addition made is unsustainable. While coming to such conclusion, we are supported by the judicial precedents cited before us by learned counsel for the assessee. Accordingly, we direct the Assessing Officer to delete the addition.

13. In the result, appeal is allowed.

Order pronounced in the open court on 07.12.2023.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 07.12.2023

*aks/-