

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.543/Bang/2023
Assessment Year: 2013-14

DCIT Central Circle-2(3) Bangalore	Vs.	Shri Giriyappa Dayananda No.42, 16 th Cross, 8 th Main Malleshwaram Bangalore 560 003 PAN NO : AEPPD4632Q
APPELLANT		RESPONDENT

CO 1/Bang/2024 (Arising out of ITA No.543/Bang/2023) Assessment Year: 2013-14

Shri Giriyappa Dayananda No.42, 16 th Cross, 8 th Main Malleshwaram Bangalore 560 003 PAN NO : AEPPD4632Q	Vs.	DCIT Central Circle-2(3) Bangalore
APPELLANT		RESPONDENT

Assessee by	:	Sri Mahesh Kumar L., A.R.
Revenue by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	10.06.2024
Date of Pronouncement	:	10.06.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal by revenue and CO by assessee are directed against the order of CIT(A) dated 31.5.2023 for the assessment year 2013-14.

2. Revenue has raised following grounds of appeal:

- i. *Whether on the facts and circumstances of the case and in Law, the CIT(A) was correct in holding that the purchase of luxury watches were made by the assessee before the year 2007-08 without any supporting documents being made available by the assessee?*
- ii. *Whether on the facts and circumstances of the case and in Law, the CIT(A), the order of CIT(A) is perverse in accepting the unsubstantiated claims of the assessee as made before him during the appellate proceedings?*
- iii. *Whether on the facts and circumstances of the case and in Law, the CIT(A) had gravely erred in admitting additional evidence without following the procedure laid down in Rule 46A of the Income tax Rules and as such denying the Assessing Officer a valuable right?*
- iv. *Whether on the facts and circumstances of the case and in Law, the CIT(A) erred in admitting additional evidence without giving any reasons for such admission?*
- v. *Whether on the facts and circumstances of the case and in Law, the CIT(A) was correct in holding that 64 watches were purchased prior to 1-4-2007, although nothing was brought on record by the assessee to substantiate the claim?*
- vi. *Whether on the facts and circumstances of the case and in Law, the CIT(A) was correct in not adjudicating the matter relating to determining the taxability of 24 watches (para 9.1 of the order) and thus not giving any specific directions on the matter when ITAT had specifically directed the CIT(A) to examine the year of purchase and year of taxability of such investment?*
- vii. *Whether on the facts and circumstances of the case and in Law, the CIT(A) was correct in presuming that personal drawings were used by the assessee for purchase of watches during earlier year, although such submission of the assessee was totally unsubstantiated?*
- viii. *Whether on the facts and circumstances of the case and in Law, the CIT(A) was correct in abdicating its power by not conducting the relevant inquiries or asking the Assessing Officer to do so if it was of the opinion that valuation done at the time of search was not correct?*
- ix. *Whether on the facts and circumstances of the case and in Law, the CIT(A) was correct in accepting the claim of the assessee that provisions of Sec 69B of the Act were not applicable as the watches*

were personal effect and not meant for selling to make profit at a later stage without appreciating the fact that investment as in Sec 69B is not linked to any specific purpose and all investments or ownership of valuable article whether by way of personal possession or otherwise come within scope of same if the source of making investment or making purchase is not explained?

- x. *For the above grounds and any additional grounds that may be agitated during the course of hearing.*

2.1 Assessee has raised various grounds of appeal in the CO.

3. There was a delay of 125 days in filing the CO by assessee. The assessee filed a condonation petition explaining the delay as follows:

- a. *The Applicant submits that he had received the CIT-(A) order on 01/06/2023.*
- b. *The Applicant case was due for filing 60 days from date of order which ends on 31/07 / 20B.The applicant submits that he was not intended to file an appeal before this Hon'ble ITAT as there was substantial relief by Ld. CIT(A) order dated 31/05/2023 pursuant to remitting the file to Ld. CIT(A) by this Hon'ble CIT(A) for adjudication of grounds on year of chargeability (i.e., Ground 10 of CIT(A)). Further, the direction was given to make fresh order considering all the evidence to be provided by Applicant.*
- c. *The Id. CIT(A) passed an order by rejecting the valuation report used by Ld.AO which was produced by Search party, for not making any further enquiry etc.*
- d. *The Ld. AO after obtaining approval of Pr. CIT(C) vide order dated 01/06/2023 with a direction to file an appeal before this Hon'ble ITAT, appeal was filed on 01/08/2023.*
- e. *The appeal memo was made available to Applicant on 22/ 11/2023, and the assessee is filing this cross objection against the appeal fined by Ld. AO in this present case.*
- f. *The Applicant ought to have filed appeal before ITAT on or before 31/07 / 2023, but could not file as it was initially thought to settle the matter to buy a peace of mind by paying taxes. However, due to appeal preferred by Ld. AO / Pr. CIT(C), the appellant if preferring this cross-objection challenging various grounds along with additions made by Ld. AO.*

- g. *The Applicant has discussed with Professional and obtained advise to prefer to file this cross-objection and challenge entire addition as the liability if at all to have been made it relates to year of search should be made in AY 2014-15 (and not 2013-14). Hence, the applicant is preferring this Cross-objection.*
- h. *Though the applicant has filed within 60 days of receipt of appeal memo, with abundant caution filing this condonation of dela application to avoid any objection for filing delay cross objection. Hence, this application.*

4. We have heard the rival submissions and perused the materials available on record on delay in filing the CO belatedly. We find good and sufficient reason in filing this CO belatedly before this Tribunal. Accordingly, in the interest of justice, we condone the delay and admit the CO for adjudication.

4.1 After hearing both the parties, we are of the opinion that earlier the assessee came in appeal before this Tribunal in ITA No.2528/Bang/2019 dated 10.1.2022 wherein the Tribunal remitted the matter to the file of Id. CIT(A) by observing as follows:

“9. We have heard both the parties and perused the materials on record. Admittedly, the assessee raised ground No.8 before the CIT(A) as follows:

“The AO failed to appreciate that the very list made by the valuer indicates that the watches make and model which are several decades old and to treat the same as brought during the impugned asst. year is unacceptable in law and in facts and circumstances of the case.”

10. Corresponding to this ground, the assessee raised ground No.2(g) before us as follows:-

“2(g) Without prejudice, the addition made of Rs3.66,44,037/- during the year under consideration is bad in law & liable to be deleted as the same ought to have been assessed in the assessment year 2014-15 under the facts and circumstances of the case.”

11. Thus, the year of taxability of that investment has been disputed by the assessee both before the CIT(A) and before the Tribunal. The CIT(A) given a findings in a collective manner without giving specific finding with regard to asst. year in which said unexplained investment to be taxed. In our opinion, it is appropriate to go through the relevant evidences with regard to asst. year in which the said investment has been made by the assessee by examining the relevant payment made by the assessee. Hence, this issue in dispute is remitted to the file of the

CIT(A) to give findings with regard to ground No.8 before him. Needless to say that the assessee has to furnish necessary details with regard to purchase of this watches with reference to the date on which it was purchased by the assessee. With these observations, we remit this issue in dispute to the file of CIT(A) for fresh consideration. Since we have remitted the main issue with regard to year of chargeability to the file of CIT(A) at this stage we are refrain from adjudicating other grounds of appeal raised by the assessee before us, which are kept open.”

4.2 The Id. CIT(A) while adjudicating the above impugned issue, without proper examination the issue in dispute in proper perspective and no correlating the purchase of the watches in particular assessment year, he deleted the substantial addition in summary manner which is incorrect. It is the duty of the first appellate authority to call for the remand report from the Id. AO and to duly verify to which assessment years these purchase of watches relates to. Without reconciling the same, it is not possible to delete the addition. Being so, in the interest of justice, for proper verification, we remit the entire issue in dispute to the file of Id. AO to carry out necessary examination and decide thereupon.

4.3 The C.O. filed by the assessee is with regard to year of assessability of the value of watches. As the issue was already remitted to the file of Id. AO in the revenue appeal, the grounds raised by the revenue have already been adjudicated and the same decision is applicable to the CO filed by the assessee also.

5. In the result, appeal of the revenue and CO of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 10th June, 2024

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 10th June, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**