IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH 'D' MUMBAI

BEFORE SHRI D.MANMOHAN, VICE PRESIDENT AND SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 2563/Mum/2005
Assessment Year-1996-97

M/s. Gemini Oils Pvt. Ltd., 2nd Floor, Sadhana Rayon House, Dr. D.N. Road, Fort, Mumbai-400 001 PAN-	Vs.	The ITO 2(1)(4), Aayakar Bhavan, Mumbai-400 020
(Appellant)		(Respondent)

Appellant by: Shri Salil Kapoor &
Shri S.V. Pikale
Respondent by: Mrs. Rupinder Brat

Date of Hearing :11.10.2012
Date of pronouncement:31.10.2012

O R D E R

PER N.K. BILLAIYA, AM:

This appeal by the assessee is directed against the order of the Ld. CIT(A)-II, Mumbai dt.19.01.2005 pertaining to assessment year 1996-97. With this appeal, the assessee has challenged the correctness of the order of the Ld. CIT(A) by raising 9 grounds under the head "original concise grounds" of appeal and three additional grounds under the head "additional grounds" of appeal.

2. Briefly stated the facts of the case are that in the case of the assessee, the original assessment was made u/s. 143(3) by DCIT, Circle-3(2), Mumbai and the assessment order was passed on 30.3.1999. In that assessment, following additions were made:

1) Unaccounted Purchases - Rs. 50,00,000/-
2) Bogus work-in-progress - Rs. 1,95,000/-
3) Bogus Creditors - Rs. 1,16,73,100/-
4) Unaccounted cash credit - Rs. 1,03,593/-

3. The assessment order was assailed before the Ld. CIT(A) and CIT(A)-XLIII by his order dt. 28.2.2000 set aside the assessment for de novo consideration. The matter came back to the files of the AO and in the de novo assessment, the AO made the following additions:

1) Undisclosed investment u/s.69 in the form of Bogus purchases -Rs. 2,50,14,190/-
2) Creditors not payable (Opening balance In the account of Delhi parties -Rs. 50,03,000/-
3) Sundry Cash credit -Rs. 1,03,593/-

4. The assessee assailed this assessment before the Ld. CIT(A) on the ground that while framing the de novo assessment, the AO has travelled beyond the directions of the Ld. CIT(A) , given while setting aside the original assessment order. It was also contested before the Ld. CIT(A) that in the de novo assessment proceedings, the AO has altogether changed the colour of the additions made in the original assessment by making additions under new heads which were never there in the original assessment order. The contentions raised by the assessee were rejected by the Ld. CIT(A) who confirmed the assessment order.

5. The assessee is in appeal before us. The additional ground raised by the assessee pertains to the action of the AO which according to the assessee are in contravention to the directions given by the Ld. CIT(A) while deciding the original assessment order. Before going into the merits of the case, it would be pertinent to decide this issue first.

6. It is an undisputed fact that in the original assessment order dt. 30.3.1999, the additions made were as discussed in para-2 above. It is also an undisputed fact that in the subsequent assessment, the as additions have been made as discussed in para-3 above.

7. Let us first see what happened in the first ground of appeal. When the original assessment order was challenged before the Ld. CIT(A), the CIT(A) decided the issue as under:

a) **The addition of Rs. 50 lakhs** : The Ld. CIT(A) at page-3 para-4 thus held "no reasoning is given by the AO to arrive at such a large amount when the total profit in the transaction is merely Rs. 2,15,329/-. It is clear that the AO has not applied his mind while making such huge additions."

b) **On the addition of Rs. 1,95,000/-,** this is what the Ld. CIT(A) has said at page 3 para-5 of the appellate order "if at all any addition was to be made, the same should have been done in the earlier assessment year and no addition ought to have been done in A.Y. 1996-97. The only reason given is that the appellant failed to submit complete address of the parties concerned. It is thus clear that the AO has not inquired into the matter in adequate detail and merely made an addition u/s. 68."

c) **On addition of Rs. 1,16,73,100/-,** the Ld. CIT(A) at page-4 para-6 of the appellate order has held "most of the parties are stated to be located at Delhi. The AO seems to have sent letters to the parties which were stated to have been returned by the postal authorities. The AO accordingly considered all the parties as bogus. It is unfortunate that such large additions have been made without giving adequate opportunity to the appellant and the entire

assessment proceedings have been dragged on to the month of March, 1999, close to the limitation period."

d) **On addition of Rs. 1,03,593/-,** the Ld. CIT(A) at page-4 para-7 of the appellate order has thus held that " the addition of Rs. 1,03,593/- in the name of Gunjan Synthetics has also been done on account of absence of address. The AO has again taken the stand of non verification to make the above addition and treated the said Gunjan Synthetics as a non-genuine party"

8. The Ld. CIT(A) finally concluded at para-8 page-4 of the appellate order as under:

> *"A perusal of the above additions clearly show that the AO has made the assessment in a very casual manner without understanding the implications of making such heavy additions, and also not confronting the assessee with the evidence regarding return of letters by the postal authorities. The learned representative of the appellant Shri Makhija CA states that the addresses of the parties had been obtained 3 years earlier and that the appellant ought to have been given an opportunity to produce the new addresses of the parties concerned. Considering the heavy additions made and the necessity for making adequate enquiries into the matter, it is considered necessary to set aside the assessment for denovo consideration. The appellant will be given reasonable opportunity of being heard and present their say in the matter."*

9. A perusal of the above finding of the Ld. CIT(A) while deciding the original assessment clearly show that the set aside of the assessment for denovo consideration is only to consider the additions made by the AO as the finding of the Ld. CIT(A) mentioned hereinabove starts with " **a perusal of the above additions clearly show .....**" which means that the Ld. CIT(A) was referring to the additions made by the AO.

10. It is a settled law that the scope of the proceedings after remand will necessarily have to be determined with reference to the terms of the order

whereby the appellate authority has remitted the case to the AO. The AO has same powers in making fresh assessment as he had originally when making the assessment order u/s. 143 of the Act. However, this power can be used only when the First Appellate Authority set aside the assessment and direct the AO to make a fresh assessment, without imposing any restrictions or limitations as to how the fresh proceedings are to be conducted by the AO which means that as long as no restrictions have been placed by the Appellate authority on the scope of the proceedings after remand by directing a fresh assessment to be made by the AO, the AO is competent to redo the assessment in accordance with law after taking into account all matters and aspects that would be relevant in making the original assessment, which also means that it is open to the First Appellate Authority to limit the scope of the enquiry by the AO to any specific aspect or issue. It is well settled that an Appellate Authority while setting aside the case can give directions and lay down limits for the inquiry to be made by the assessing authority. When such a direction is made and limits are laid down, the power and jurisdiction of the assessing authority to deal with the case, after remand, depend on the specifications of the remand order, which means that the assessing officer has no jurisdiction to enter into any question which falls outside the limits laid down.

11. In the case of CIT Vs Mansa Ram and Sons (1991) 190 ITR 453 (All.) Hon'ble High Court has held that where the revisional order limits the AO's jurisdiction to make a fresh assessment with regard to only two items, the AO has no power to add other amounts or to make other additions to the assessee's income.

12. A similar view has been taken by the Hon'ble M.P High Court in the case of CIT Vs Hope Textiles Ltd. (1997) 225 ITR 993 (MP) wherein the Hon'ble High Court thus held that "that the Commissioner (Appeals) had in his remand order made a clear direction to the Assessing Officer to reconsider the case only in regard to the matter relating to the disallowance out of

machinery repairs. The Assessing Officer had, therefore, clearly travelled beyond the specifications of the remand order in making the additions and the appellate authorities were right in deleting the additions. The order of the Tribunal was based on a proper appreciation of the settled legal position and did not, therefore, give rise to any referable question of law".

14. A similar view has been taken in the case of CIT Vs Jawaharlal Nagpal (1988)171 ITR 136 (MP) in which the Court has held that "in the fresh assessment proceedings after the original assessment had been set aside, the ITO had no jurisdiction to tax new sources of income."

15. In short, the scope of the fresh assessment following the Appellate order depends on the subject matter of the appeal and the appellate order read as a whole in its proper context. If a subordinate Tribunal refuses to carry out directions given to it by a superior Tribunal in the exercise of its powers, the result will be chaos in the administration of justice. This ratio is laid down by the Hon'ble Supreme Court in the case of Bhopal Sugar Industries Vs ITO (1960) 40 ITR 618. No doubt in order to attract this principle, It is necessary that the order of the superior Appellate authority should be clear, certain and definite in its terms and without any ambiguity.

16. Let us now consider the above judicial discussion in the light of the order of the Ld. CIT(A) while disposing the original assessment order. A perusal of the findings of the Ld. CIT(A) clearly show that the CIT(A) was concerned with the additions made in the original assessment order. In the light of the additions made therein, the CIT(A) set aside the assessment for denovo consideration which clearly show that the directions of the Ld. CIT(A) for denovo assessment were restricted to the additions made by the AO in the original assessment order.

17. We have carefully perused the assessment order under appeal before us and we find that in the denovo assessment, the AO has travelled beyond

the directions of the Ld. CIT(A) by making additions which were not at all there in the original assessment proceedings. To sight a few instances in the original assessment order, the AO has made additions in respect of sundry creditors in the name of 5 parties holding that the sundry creditors shown by the assessee are not genuine which resulted into an addition of Rs. 11,67,360/- in the denovo assessment, The AO has made addition to the tune of Rs. 2,50,14,190/- u/s. 69 of the Act as bogus purchases made from these 5 parties. Another example, in the original assessment, the AO has made addition of Rs. 50,00,000/- as unaccounted estimated purchases and Rs. 1,95,000/- on account of opening work-in-progress whereas in the denovo assessment, the AO has made addition of Rs. 50,03,000/- on account of creditors not payable. The above example clearly show that the AO has travelled beyond the directions given by the Ld. CIT(A) while setting aside the original assessment order. As the AO has failed to carry out the legal duty to impose on him which has resulted into the destruction of a basic principle of natural justice, such action of the AO cannot be upheld.

18. The Ld. DR in the written submission has relied upon the decision of the Mumbai Tribunal in the case of ELEL Hotels and Investments ltd 2 SOT 659 stating that the powers of the CIT[A] are co=terminus with the powers of the Assessing Officer and CIT[A]can do what AO could do but has not done . However in the instant case the powers of the CIT[A] are not questioned but what has been questioned is the powers of the AO in framing a de novo assessment , when the original assessment is set aside laying down the boundaries for framing the set aside assessment . It would not be out of place to cite the decision of the Hon'ble Supreme Court in the case of Bhavna Chemicals ltd 239 ITR 507 wherein The Hon'ble Supreme Court declined to adjudge on the point of law that if the set aside assessment is made according to the directions of the ITAT it may result into enhancement of income . The Court thus Held "dismissing the appeal, that the Supreme Court was not inclined to go into the question at this stage. Since the matter had been remanded, the Income-tax Officer should make the assessment. If the

assessee felt aggrieved with the assessment, he could adopt the remedies provided by law wherein he could raise the present questions as well. Therefore, it was not necessary to examine the question of the power of the Tribunal in this matter"

19. In our considerate view, the additions made by the AO were not made in the original assessment and by making such addition the AO has travelled beyond the directions of the CIT(A), in the light of the discussions made hereinabove. The additional grounds raised by the assessee deserve to be allowed. Accordingly, we quash the order of the AO and reverse the findings of the Ld. CIT(A). As we have decided the appeal on the point of law by quashing the assessment order, we do not propose to decide the issue on merit.

20. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 31st day of October, 2012.

Sd/-	***Sd/-***
(D.MANMOHAN)	(N.K. BILLAIYA)
Vice President	Accountant Member

Mumbai, Dated 31st October, 2012
Rj

Copy to :
1. *The Appellant*
2. *The Respondent*
3. *The CIT-concerned*
4. *The CIT(A)-concerned*
5. *The DR 'D' Bench*

True Copy

By Order

Asstt. Registrar, I.T.A.T, Mumbai