

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.992/M/2020
Assessment Year: 2011-12**

M/s. Advait Entertainment Pvt. Ltd., 101-C, Avantika Birla Lane, Juhu, Vile Parle (W), Mumbai - 400 049 PAN: AAGCA4809E	Vs.	ITO 16(1)(1), Aayakar Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri V.K. Tulsian, A.R.
Revenue by : Shri Satya Pinisetty, D.R.

Date of Hearing : 25.03.2021
Date of Pronouncement : 21.06.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 31.01.2020 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. The issue raised in ground No.1 by the assessee is that the Ld. CIT(A) has wrongly upheld the order of AO which is invalid and void ab-initio on the ground that the AO has failed to make the addition on those issues for which the Tribunal has set aside the appeal to the file of the AO and AO has made altogether different additions and thus exceeded his jurisdiction.

3. The facts in brief are that this is the second round of litigation. In the first round of litigation the Tribunal set aside the matter to the file of the AO by imposing cost of Rs.25,000/- on the assessee for not attending the proceedings in the 1st round and thus directing the AO to frame the assessment denovo vide order dated 09.03.2018 in ITA No.1284/M/2018. However, while framing the assessment the AO has made altogether different additions which were not subject matter of the set aside proceedings. Now the issue before us is whether the order of the AO and upholding thereof by Ld. CIT(A) is valid in law or not. The Ld. CIT(A) has justified the AO in making addition by observing and holding as under:

“6.2 I have perused the original assessment order dated 16.02.2015, order of the CIT (A) dated 04.01.2017, order of the Hon'ble ITAT, 'A Bench, dated 09.03.2018, written submission of the appellant filed in this office on 13.09.2019 and the paper book submitted by the appellant. I have also carefully gone through the Remand Report of the AO dated 25.09.2019 and rebuttal to the Remand Report filed by the AR of the appellant dated 03.12.2019 and 04.01. 2020. It is a settled principle of law that once an order is set aside completely and in its place, a fresh order is passed de-novo, then the earlier order loses its separate character. In the second round of assessment, there was no condition placed by the Hon'ble ITAT as to-how the AO has to complete the assessment order. There is nothing in the Income-tax law which prohibits an Assessing Officer to discuss and assess such income which have not been earlier discussed and assessed. Had it been so, the entire purpose of re-assessment would become irrelevant. The judgements cited by the AR are not relevant because in this case the ITAT has not remitted any particular issue but all the issues in assessment. It has also to be considered that Hon'ble ITAT had given clear direction to the assessee to co-operate during the process of assessment. Despite such clear directions, if the assessee chose to be non-cooperative during the assessment proceedings, it cannot challenged the manner in which the assessment has been finalized. On the basis of the above discussion, ground of appeal no. 5 is dismissed”

4. After hearing the rival parties and perusing the material on record, we observe that undisputedly the additions made in the set aside assessment order passed under section 144 read with section 254 of the Act dated 27.11.2018 were totally different than what have been restored by the tribunal to the file of the

AO vide order dated 09.03.2018 passed in ITA No.1284/M/2018. In our opinion the order of Ld. CIT(A) is not correct and the appellate order is not sustainable on the ground that AO have made all new additions than what have been restored to the file of the AO by the Tribunal. The case of the assessee is squarely covered by the following decisions in its favour by the decision of co-ordinate Bench of the Tribunal in the case of M/s. Gemini Oils Pvt. Ltd. in ITA No.2563/M/2005 A.Y. 1996-97 order dated 31.10.2012. The operative part whereof is reproduced as under:

“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.”

5. While passing the order in the case of M/s. Gemini Oils Pvt. Ltd.(Supra) the co-ordinate Bench of the Tribunal has relied on the various decisions of various High Courts as under:

1. CIT vs. Mansa Ram and Sons (1991) 190 ITR 453 Allahabad.
2. CIT vs. Hope Textile Ltd. (1997) 225 ITR 993 (MP)
3. CIT vs. Jawaharlal Nagpal (1998) 171 ITR 136 (MP)

In all these above decisions it has been held that the AO jurisdiction to make assessment with regard to the issues which are referred to the AO by the tribunal is very limited and confined to the set aside issues and AO has no power to add any other amount other than what has been restored. If the AO does so he exceeds the jurisdiction which he is not empowered under the law.

6. In view of these facts and circumstances and also the ratio laid down as discussed above, we are inclined to set aside the order of Ld. CIT(A) and hold that order passed by the AO is invalid and void ab-initio.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 21.06.2021.

Sd/-
(Amarjit Singh)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 21.06.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.