

**(1970) 08 AHC CK 0024**

**Allahabad High Court**

**Case No:** Income-tax Reference No. 88 of 1964

Abhai Ram Gopi Nath

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision:** Aug. 6, 1970

**Acts Referred:**

- Income Tax Act, 1922 - Section 23, 31(3)

**Citation:** (1971) 79 ITR 339

**Hon'ble Judges:** V.G. Oak, C.J; H.N. Seth, J

**Bench:** Division Bench

**Advocate:** P.N. Pachauri, for the Appellant; B.L. Gupta and R.R. Misra, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

V.G. Oak, C.J.

This reference raises the question of the true scope of a remand order u/s 31 of the Indian Income Tax Act, 1922. The assessee is a registered firm constituted by four partners, who are brothers. The assessment year is 1954-55. The Income Tax Officer noticed that in the account books of the firm for the corresponding previous year there were five credit entries. The first credit entry was for a sum of Rs. 8,502 in favour of the mother of the four partners. There were similar entries in the names of the wives of the four brothers. The total of the five amounts came to Rs. 42,117. The assessee's case was that capital was introduced by selling ornaments belonging to the five ladies. This explanation was not accepted by the Income Tax Officer. It was held that the alleged sale proceeds represented concealed income of the firm. However, the Income Tax Officer included in the assessment only one deposit, namely, that of Rs. 8,502 recorded in the name of Smt. Saraswati Devi, mother of the partners. Interest credited in favour of the ladies was also added.

2. The assessment order was challenged in appeal by the assessee. One of the grievances of the appellant was that the assessee did not get an opportunity to

examine the ladies to prove the assessee's case. The Appellate Assistant Commissioner thought that there was substance in this grievance. The case was, therefore, remanded for fresh assessment.

3. After remand the case was disposed of by another Income Tax Officer. He agreed with his predecessor-in-office that all the five credit entries represented income of the firm. He, therefore, assessed tax for all the five credit entries and also for the interest on the various amounts. This decision was upheld in appeal by the Appellate Assistant Commissioner and by the Appellate Tribunal.

4. Upon an application by the assessee, the following question of law has been referred to this court :

" Whether, on the facts and in the circumstances of the case, was the Income Tax Officer in making a fresh assessment in pursuance of the appellate order setting aside the assessment, empowered to include the deposits other than that of Rs. 8,502 in the name of Smt. Saraswati Devi, as the income of the firm ? "

5. Mr. P. N. Pachauri appearing for the assessee has urged that it was not open to the second Income Tax Officer to take up the question whether the four amounts credited in the names of the four wives represented income of the assessee. On the other hand, it has been urged for the department that this question was open before the second Income Tax Officer.

6. Whether the question was open or not largely depends upon the nature of the remand order. The operative part of the remand order ran thus :

" I have therefore no other alternative but to set aside the assessment on this ground and to direct the Income Tax Officer to make a fresh assessment after examining the ladies according to their wishes."

7. The remand order was passed under Clause (b) of Sub-section (3) of Section 31 of the Act. In disposing of an appeal the Appellate Assistant Commissioner may, in the case of an order of assessment, set aside the assessment and direct the Income Tax Officer to make a fresh assessment after making such further enquiry as the Income Tax Officer thinks fit or the Appellate Assistant Commissioner may direct.

8. The scope of such a remand order came up for consideration before this court in [J. K. COTTON SPINNING and WEAVING MILLS CO. LTD. Vs. COMMISSIONER OF INCOME TAX U. P.,](#) . . It was explained in that case that where on appeal from an assessment the Appellate Assistant Commissioner sets aside the assessment and directs the Income Tax Officer to make a fresh assessment the Income Tax Officer is bound by the directions of the Appellate Assistant Commissioner in making the fresh assessment. But subject to those directions, he has the same powers in a fresh assessment as he had originally in making an assessment u/s 23 of the Act. There are no restrictions at all on the power of the Income Tax Officer when he proceeds to make a fresh assessment, for the fresh assessment is nothing but a second

assessment in substitution of the one, set aside.

9. Mr. P.N. Pachauri relied upon a decision of this court in [Chittarmal Narain Dass Vs. Commissioner, Sales Tax](#), (Sales Tax-Reference No. 348 of 1966 decided on 3-1-1969). In that case the quantum of the turnover was not in dispute before the appellate authority. The only point in dispute related to the calculation of tax in respect of various items. The appellate authority, therefore, set aside the assessment order, and remanded the case for fresh assessment after re-checking the calculations. When the case was received upon remand, the Income Tax Officer added certain items on the ground that they represented concealed income. It was held by this court that no such addition could be made after remand.

10. It will be seen that in that case the remand order was expressly for checking the calculations. There is no such limitation in the present case. In the present case the Appellate Assistant Commissioner set aside the assessment, and directed the Income Tax Officer to make a fresh assessment after examining the ladies. The items in question were already on the record. For some reason, the first officer did not consider four items as income of the assessee-firm. The second officer took a different view of the matter. The second officer did not exceed the directions contained in the remand order. It cannot, therefore, be said that the second officer exceeded his jurisdiction in treating the four deposits as income of the assessee-firm.

11. We answer the question referred to this court in the affirmative, and against the assessee. The assessee shall pay the Commissioner of Income Tax, U.P., Rs. 200 as costs of this reference.