

ANDHRA PRADESH HIGH COURT

State of Andhra Pradesh

Vs.

Sri Arisetty Sriramulu

T.R.C. No. 28 of 1955

(Viswanatha Sastri, Satyanarayana Raju and Krishna Rao, JJ.)

07.09.1956

JUDGMENT

Subba Rao, C.J.

1. The question in this case turns upon the interpretation of Section 12-A (6) (a) of the Madras General Sales Tax Act. A Division Bench of this Court held in *Chandaji Khubaji and Co. v. State of Andhra*¹, that under that section, a review could be ordered only if new facts not placed before the Tribunal on the previous occasion were brought to their notice subsequently but it could not apply to a case where new evidence was sought to be adduced to support basic facts already placed before the Tribunal. As the question now raised is important from the stand-point of assesseees under the Act in this State, we think in the interest of the finality, an authoritative decision on the interpretation of the section should be given by a Full Bench of this Court. We therefore, refer the following question to the Full Bench : "What is the correct interpretation of the provisions of Section 12-A (6) (a) of the Madras General Sales "Tax Act". JUDGMENT OF THE FULL BENCH.

Vishwanatha Sastri, J.

2. A petition for review of the order of the Sales Tax Appellate Tribunal was allowed by a majority and a sum of Rs. 65,623-13-0 was deleted from the turnover of the year 1948-49. According to the assessee, though an objection with regard to the liability of the sum of Rs. 65,623-13-0 to be assessed to tax had been raised before the Tribunal at the original hearing and the facts and materials relevant to a consideration of the objection had been placed before it, the Tribunal omitted to consider the objection and give its decision thereon. The assessee thereupon applied to the Tribunal under Section 12-A (6) of the Madras General Sales Tax Act for a review of its previous order and for deletion of the sum of Rs. 65,623-13-0 from the turnover. Objection was taken on behalf of the State that as no fresh pleas or facts were brought before the Tribunal, the order and findings of the Tribunal on the materials on record could not be canvassed afresh on a review application. The Chairman of the Tribunal was for dismissing the application for review because "no new facts, nay, no new contentions" were urged justifying interference. The first member recorded the

¹69 Mad LW (Andhra) 43
following opinion :

"It is a fact that in the appeal before the Tribunal, objection was taken to the inclusion of Rs. 83,649-13-0 (of which Rs. 65,623-13-0 was a part) but by oversight no orders were passed. This is a mistake apparent from the record brought to the notice of the Tribunal by means of this application. Under Rule 18(1) of the Madras General Sales Tax Rules, this mistake has to be rectified. We directed the deletion of the sum of Rs. 65,623-13-0 from the turnover". The second member stated that on account of the confused state of the accounts, vouchers and other papers, the Tribunal experienced considerable difficulty in arriving at a proper decision and expressed his conclusion as follows :

"This tribunal would be justified by the exercise of its inherent jurisdiction in reversing the order if it is shown that there had been an apparent error on the face of the record, as the ultimate object of the constitution of the Tribunal is to ensure justice to all concerned".

We also allowed the application for review so far as it related to the sum of Rs. 65,623-13-0 was concerned. In the result, the view of the majority prevailed and the sum of Rs. 65,623-13-0 was deleted from the turnover.

2. The State of Andhra preferred a revision petition to the High Court against the order of the Appellate Tribunal on the ground that, in the absence of a finding that any new pleas or new facts were brought to the notice of the Tribunal, the application for review was not maintainable and that the mandatory provisions of Section 12-A (6) require that a review could be allowed only on the basis of facts which were not before the Tribunal at the time of the original order. The objection was also raised that apart from Section 12-A (6), the Tribunal had no inherent jurisdiction to review its own order. The Division Bench before which the Revision Case came on for hearing, considered it desirable that the proper interpretation of Section 12-A (6) (a) of the Madras General Sales Tax Act should be decided by a Full Bench and referred the following general question :

"What is the correct interpretation of the provisions of Section 12-A (6) (a) of the Madras General Sales Tax Act"?

3. The Madras General Sales Tax Act will hereinafter be referred to as the "ACT". An assessee aggrieved by an order of assessment of the commercial Tax Officer or the Deputy Commissioner is given a right of appeal to the appellate Tribunal if he complies with the conditions prescribed by Section 12-A (1) to (3) of the Act. The Appellate Tribunal has to decide all questions of fact and law that arise in the appeal. The clauses of Section 12-A that are now relevant are these :

"Section 12-A.

4. The Appellate Tribunal shall, after giving both parties to the appeal a reasonable opportunity of being heard, pass such order thereon, as it thinks fit.

x x x x x

(6) (a) The Appellate Tribunal may, on the application either of the assessee or of the Deputy Commissioner, review any order passed by it under subsection (4) on the basis of facts which were not before it when it passed the order : Provided that no such application shall be preferred more than once in respect of the same order. xx xx x

(9) Every order passed by the Appellate Tribunal under sub-section (4) shall, subject to the provisions of Sub-section (6) and section 12B, be final; and every order passed by it under sub-section (6) shall, subject to the provisions of Section 12-B be final :

(4) Under section 12-B (1) the assessee or the Deputy Commissioner is given the right to prefer a revision petition to the High Court against the order of the Appellate Tribunal.

"On the ground that the Appellate Tribunal has either decided erroneously or failed to decide any question of law".

And under section 12-B (4) (a) the High Court is empowered :

"To determine the question or questions of law raised and either reverse, affirm or amend the order against which the petition was preferred, or remit the matter to the Appellate Tribunal with the opinion of the High Court on the question or questions of law raised or pass such other order in relation to the matter as the High Court thinks fit". Curiously enough though a revision lies to the High Court only, on the ground of an erroneous decision of law or a failure to decide a question of law, section 12-B (7) (a) provides as follows :

"The High Court may, on the application, either of the assessee or of the Deputy Commissioner, review any order passed by it under sub-section (4) on the basis of facts which were not before it when it passed the order".

The forum for a final determination of facts is the Appellate Tribunal and the High Court on revision has jurisdiction only to decide questions of law either wrongly decided or omitted to be decided by the Appellate Tribunal. And yet the High Court is empowered to review its orders on the basis of facts which were not placed before it at the original hearing of the Revision Petition. It will be observed that identical language is employed in Section 12-A(6)(a) and Section 12-B (7) (a) when specifying the ground for a review by the Appellate Tribunal and the High Court. There is one other statutory provision to which a reference may be made here. Acting under section 19 (2) (g) of the Act, the State Government has made the following rules –

"Rule 18(1). An assessing appellate or revising authority may, at any time within two years from the date of any order passed by him rectify any mistake apparent from the record :

Provided that no such rectification which has the effect of enhancing the assessment shall be made unless the assessing, appellate or revising authority has given notice to the dealer of his intention to do so and has allowed him a reasonable opportunity of being heard".

The provisions of the Act and the Rule referred to above are similar to Order 47 rule 1, Civil Procedure Code, relating to review of judgments of courts though they are not identical in their scope or content.

5. In *Chandaji Kubaji and Co. v. State of Andhra*, the learned Judges were of the opinion that "facts" within the meaning of Section 12-A (6)(a) do not also include the evidence necessary to establish them, and observed :

"There is an essential distinction between facts and the evidence to establish those facts. Otherwise we would have to attribute to the Legislature an intention to give two chances for each assessee to have his case heard by the Tribunal. He can argue his case on the material available with the off-chance of succeeding and if he fails he can ask for a second hearing by producing other evidence, which he has negligently or designedly failed to produce at the first hearing. To avoid this obvious result, the word 'facts' must be taken to mean something different from the evidence to establish those facts. They must relate to the basic facts sought to be proved to sustain a person's claim. If some such facts are omitted at the first hearing, the assessee or the Deputy Commercial Tax Officer, as the Case may be, may bring it to the notice of the Tribunal at a later stage. To illustrate, if, at the first hearing an assessee omitted to place before the Tribunal the fact that the goods purchased by him were delivered for consumption in a different stage, he may ask for a review of the order by bringing that fact and the necessary evidence to support that fact to the notice of the Tribunal. But, if that fact was pleaded even at the first instance, but not substantiated either because there was no evidence, or, the evidence adduced was not sufficient to support it, he cannot adduce further evidence to prove that fact. The additional evidence is not a new fact but it only relates to a fact that was already before the Tribunal".

These observations of the learned Judges have received our respectful consideration but we are of the opinion that they tend to unduly restrict the meaning of the words "on the basis of facts" found in section 12-A (6) (a) by confining them to "basic facts" or new pleas or defences put forward by the assessee at the stage of review and the evidence sought to be adduced by him in support of such new pleas or defences and by excluding fresh evidentiary matter in support of a plea or defence already advanced before the Tribunal at the original hearing but not substantiated by evidence at that stage. The word "facts" in section 12-A(6) (a) may be taken to have been used in the sense in which it is used in the law of evidence, that is to say as including the factum probandum or the principal fact to be proved and the factum probans or the evidentiary fact from which the principal fact follows immediately or by inference. "Facts" may be either "facts in issue" which are the principal matters in dispute or relevant facts which are evidentiary and which, directly or by inference, prove or disprove the "facts in issue". Whether a ground of non-liability to tax is raised but not substantiated by evidence or whether it is not raised at all, the reckoning in the Appellate Tribunal is the same so far as the assessee is concerned. He would be subject to tax in either case. The appellate Tribunal is empowered to grant a review on the basis of facts which were not before it when it passed the original order. Now these facts might be evidentiary and relevant to establish a plea of nonliability taken by the assessee at the original hearing but not substantiated by evidence or to plea of nonliability not taken at the original hearing but sought to be raised and supported by evidence at the stage of review. If, owing to the impossibility or impracticability of producing crucial documentary or oral evidence at the original hearing, an assessee's plea of non-liability to tax is rejected and that evidence is

subsequently forthcoming and is placed before the Appellate Tribunal at the time of review, the application for review would be one "on the basis of facts which were not before it when it passed the order" within the meaning of section 12-A (6) (a) of the Act. It will be an a fortiori case if pleas as to no liability to tax or "basic facts", in the language of the learned Judges in the case cited, had not been put forward at the original hearing and are put forward and sought to be supported by the evidence at the stage of a review. "Facts" include things or matters which form the basis of inference in either case.

6. The language of section 12-A(6)(a) is so wide and general that it might possibly lead to inconvenient results in that it might enable an assessee to get a further chance of hearing before the Appellate Tribunal on the strength of evidence which he negligently or designedly failed to produce at the first hearing. As the language used in section 12-A (6) (a) is clear and unequivocal and, in our opinion, capable only of one interpretation, we are bound to give effect to it in spite of the possibility of any inconvenience resulting therefrom. The inconvenience, if any, is not to the assessee for whose benefit the provision is intended. In any case, the remedy is with the Legislature. The corresponding legislation of other States has incorporated the provision in Order 47, Rule 1 Civil Procedure Code that an application for review is permissible only where there is a

"Discovery of new and important matter which, after the exercise of the diligence, was not within his (appellant's) knowledge or could not be produced by him at the time when the decree or order was made". Section 12-A (6) (a) of the Act does not contain any such limitations and their omission is significant. It is not for us to scan the wisdom or policy of the Legislature or to depart from the plain meaning of section 12-A (6) (a) by taking into account consideration of expediency or convenience. When section 12-B(7) (a) empowers the High Court, which has power to entertain a revision only when a question of law is wrongly decided or left undecided, to grant a review "on the basis of facts which were not before it when it passed the order" there is less reason for circumscribing the powers of the Appellate Tribunal which is the final judge of facts, in the manner in which it has been done in the decision cited.

7. The question was mooted during the course of the arguments as to the power of the Appellate Tribunal to review its order when all the evidence and materials were placed before it at the original hearing but the Tribunal by a mistake omitted to record its finding on an issue or point raised for its decision. It was argued for the assessee that even such a case would fall within section 12-A (6) (a) of the Act on the ground that the facts were not present to the mind of the Tribunal when its order was made. It might be that the Tribunal had considered the evidence and materials and heard arguments on the whole case but by a mistake or accident omitted to record its finding on a particular point. In such a case it could not be said that the facts were, not before it when it passed the order. The omission could be rectified under Rule 18(1) as a mistake apparent on the record or by a revision to the High Court and a remit to the Tribunal under section 12-B (4) of the Act for recording its finding on a consideration of the evidence. In this connection it has to be observed that the language of Rule 18(1) is wider than that of section 152, C. P. Code, and corresponds to the provision in Order 47, Rule 1 C. P. Code, allowing a review on the ground of "mistake or error apparent on the face of record". The mistake can be rectified

irrespective of how it occurred or whether it relates to an issue of fact or a point of law. The question whether a fact in issue has been proved when evidence for and against it has been recorded, is necessarily a pure question of fact and may not be open for determination by the High Court in revision but the High Court may, in appropriate case, remit it for a finding on that issue under Section 12-B (4) of the Act.

8. The learned Government pleader was at pains to convince us that there is no inherent power of review in subordinate courts and tribunals by citation of decided cases. There is no doubt some authority for this proposition. We are here concerned with the interpretation of a specific statutory provision empowering the Appellate Tribunal to grant a review and not with the inherent powers, if any, of the Tribunal. Reference was also made to the provisions of Order 20, Rule 3, Civil Procedure Code, to the effect that a judgment once pronounced and signed could not be altered or added to except as provided by Section 152 or on review, it is the power of review given by Section 12-A (6) (a) of the Act that is invoked here to modify the previous order of the Appellate Tribunal. Moreover, an order of assessment or an order of the Appellate Tribunal on appeal fixing the liability to tax in a particular year does not operate as *res judicata* or estoppel so as to prevent that decision from being reopened in assessments for subsequent years. Compare Commissioner of *Income Tax Madras v. Massey and Co., Ltd*². (B). Even in respect of the same year's assessment power is given to the assessing authority to bring under assessment any turnover that might have escaped tax at the time when the order of assessment was made. See Rule 17 of the Madras General Sales Tax Rules. Therefore, it is not right to treat an order of assessment to sales tax as it stood on the same footing as the judgment of a court in every respect.

Subba Rao, C.J.

9. Following the Full Bench decision in this case, this revision is dismissed with costs. Advocate's fee Rs. 100/-.

Revision dismissed.

²56 Mad LJ 451 (FB)