

**(1994) 03 AP CK 0044**  
**In the Andhra Pradesh High Court**  
**Case No : R.C. No. 65 of 1986**

Commissioner of Wealth-tax

APPELLANT

Vs

R.D. Shah

RESPONDENT

**Date of Decision :** 08-03-1994

**Acts Referred:**

Wealth Tax Act, 1957 — Section 27(1), 35, 35(1)

**Citation :** (1994) 2 ALT 45 : (1994) 207 ITR 271

**Hon'ble Judges :** T.C. Rangarajan, J; M.N. Rao, J

**Bench :** Division Bench

**Advocate :** S.R. Ashok, for the Appellant; Y. Ratnakar, for the Respondent

**Judgement**

M.N. Rao, J.—At the instance of the Revenue, the following two questions were referred to this court u/s 27(1) of the Wealth-tax Act, 1957 :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that the orders u/s 35 passed for the assessment years 1974-75 and 1975-76 were without jurisdiction ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that for purpose of exercising his jurisdiction u/s 35 of the Wealth-tax Act, the Wealth-tax Officer could not make a factual verification of the evidence already available on record ?"

2. Wealth-tax assessments in relation to the respondent herein were made on February 28, 1979, and February 28, 1980, for the assessment years 1974-75 and 1975-76, respectively. The assessee had agricultural lands in Kukatpally village, and in respect of those lands no additional wealth-tax was levied on the ground that they are situated beyond 8 kms. from the municipal limits of Hyderabad city. Subsequently, in September, 1982, at the instance of the assessing authority, the Inspector of the Department submitted a report, presumably after verification, that the distance between the lands and the municipal boundary was less than 8 kms. On the basis of that report, the

assessing authority sought to rectify the assessment u/s 35(1) of the Act. On receiving the notice, the assessee filed a reply on November 15, 1983, contending that the distance was more than 8 kms., and in support of that plea, he also filed a certificate issued by the sarpanch of the village, dated February 18, 1982, which was to the effect that the distance was more than 9.5 kms. Rejecting that contention, the assessing authority rectified the assessment and levied additional wealth-tax. The appellate authority confirmed that order. Later on, the Income Tax Appellate Tribunal found that the Inspector's report long after the assessment could not form part of the record and, therefore, on that ground there could not be a rectification u/s 35(1). At the instance of the Revenue, the above two questions were referred to this court.

3. Sri Ashok, learned counsel for the Revenue, contends that the "record" within the meaning of section 35(1) of the Act is not necessarily what was already in existence anterior to the date of the assessment; it can also comprehend matters that came to light long after the finalisation of the assessment. In support of this, he relied upon the decision of the Supreme Court in *Mahendra Mills Ltd. Vs. P.B. Desai*, Appellate Assistant Commissioner of Income Tax and Another, . We are not inclined to agree with Sri Ashok's contentions. Section 35(1)(a) of the Act, which is relevant, is in the following terms :

"35. (1) With a view to rectifying any mistake apparent from the record -

(a) the Assessing Officer may amend any order of assessment or of refund or any other order passed by him;. . ."

4. Admittedly, the report of the Income Tax Inspector regarding the distance between the lands in question and the municipal boundary was not on record when the assessments were finalised in 1979-80. What is meant by record ? In the case relied upon by *Mahendra Mills Ltd. Vs. P.B. Desai*, Appellate Assistant Commissioner of Income Tax and Another, , the question for consideration before the Supreme Court was whether the value of the pending stock of one year can be rectified u/s 35 of the Indian Income Tax Act, 1922, on the basis of a finding given by the Income Tax Tribunal for the earlier year in respect of the closing stock. The language of section 35 of the Indian Income Tax Act, 1922, is in pari materia with section 35 of the Wealth-tax Act. Taking the view that the decision of the Tribunal could not be treated as an extraneous or irrelevant factor for rectification of the mistake, the Supreme Court, after referring to certain earlier rulings, observed (at page 141) :

"It cannot be gainsaid that the mistake in regard to the opening stock for the assessment year 1960-61 being Rs. 8,04,121 was quite apparent when the Appellate Assistant Commissioner undertook to rectify his appellate order dated June 30, 1965, the correct figure of valuation finally determined by the Tribunal being Rs. 5,89,439. Thus considered, it is clear that for the purpose of ascertaining the true stock position the record of assessment for the assessment year 1959-60, including the Tribunal's decision, was not extraneous or irrelevant

to the record of the appeal and could legitimately be looked into for the purpose of correcting the mistake by the Appellate Assistant Commissioner."

5. The reasoning in the decision of the Supreme Court was based upon the earlier decision in *Maharana Mills (Private) Ltd. Vs. Income Tax Officer, Porbandar*, wherein it was observed (at page 357) :

"The words used in the section are "apparent from the record" and the record down not mean only the order of assessment but it comprises all proceeding son which the assessment order is based and the Income Tax Officer is entitled for the purpose of exercising his jurisdiction u/s 35 to look into the whole evidence and the law applicable to ascertain whether there was an error. . . ."

6. It is, no doubt, open to the assessing authority while acting u/s 35 to look into the whole evidence already in existence by the date of the assessment. But if the mistake discovered is the result of an enquiry made subsequent to the assessment it could not be said to form part of the record for the purpose of section 35. The same view was taken by the Karnataka High Court in *E.M. Vishwanathan Chettiar Vs. Agricultural Income Tax Officer*, wherein it was held (at page 247) :

"An apparent error must be from the records of the case and not an error discovered from other sources. Any error discovered as a result of investigation of other records or other sources will not constitute an apparent error on the face of the records which alone confers jurisdiction on the officer concerned to rectify any order."

7. We respectfully agree with the view of the Karnataka High Court.

8. In the result, we answer the two questions in the affirmative, in favour of the assessee and against the revenue. No costs.