(1987) 01 MAD CK 0001

In the Madras High Court

Case No : Tax Case No. 598 of 1978 (Revision No. 193 of 1978)

Deputy Commissioner (CT), Coimbatore Division, Coimbatore APPELLANT

Vs

Pankaja Mills RESPONDENT

Date of Decision : 05-01-1987

Acts Referred:

Citation : (1989) 43 ELT 259

Hon'ble Judges : Swamikkannu, J;Bhaskaran, J

Bench : Division Bench

Advocate : K.S. Bakthavatsalam, Additional Government Pleader, for the Appellant; T.R. Rajagopalan, for the Respondent

Judgement

Swamikkannu, J.—This is a revision in which the Revenue has mainly stressed the point that the Tribunal has no jurisdiction to remand the

case for an assessment on certain grounds which were not specifically taken in the grounds of appeal before it or before the Appellate Assistant

Commissioner. In the instant case, the Tribunal has remanded the appeal to the assessing officer with the following observation :

But the authorised representative had urged that the assessing officer has not considered the sales returns and the sales turnover not fructified. This

issue had to be decided only after a close scrutiny of the accounts and the documents available with the appellant. Further, the appellant''s mill is a

sick mill and is under the control of the National Textile Corporation Ltd. Considering the above aspects, we hold that the appellant may be given

another chance to prove his claim and accordingly we set aside the levy of assessment and remand the case to the assessing officer with a direction

to check the accounts of the appellant afresh ....

The above observation of the Tribunal is attached on behalf of the Revenue. The learned Additional Government Pleader contends that when there

has been no specific ground taken by the assessee at the earlier stages, it is without jurisdiction that the Tribunal had made the aforesaid

observation and the order impugned has to be revised.

2. It is relevant in this connection to note that in State of Tamil Nadu Vs. Arulmurugan and Company, , it has been held as under :

In a tax appeal, the appellate authority is very much committed to the assessment process. The appellate authority can itself enter the arena of

assessment, either by pursuing further investigation or causing further investigation to be done. It can do so on its own initiative, without being

prodded by any of the parties. It can enhance the assessment, taking advantage of the opportunity afforded by the tax-payer''s appeal, even though

the appeal itself has been mooted only with a view to a reduction in the assessment. These are special and exceptional attributes of the jurisdiction

of a tax appellate authority. These attributes underline the truth that the appellate authority is no different, functionally and substantially, from the

assessing authority itself.

3. It is also relevant to note that it is not as if the grounds taken during the course of arguments should not be taken into consideration by the

appellate forum, though the said grounds have not been specifically incorporated in the memorandum of grounds of appeal. The basic principles of

natural justice require that a court or a quasi-judicial authority created under the provisions of special enactments, has to apply its mind to the

arguments advanced and points raised during the course of arguments. In that view, we do find that the learned appellate authority is correct and it

is within its limits in having directed the assessing officer to look into the documents that are produced and also apply its mind. We do not find any

infirmity in the order of the Tribunal. Therefore, this tax case revision is dismissed. No costs.

4. Petition dismissed.