
(1964) 08 MAD CK 0021
In the Madras High Court
Case No : Tax Case No. 45 of 1963

F.K. Hasheeb and Co.

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 19-08-1964

Acts Referred:

Income Tax Act, 1961 — Section 34

Citation : (1965) ILR (Mad) 168 : (1966) 17 STC 38

Hon'ble Judges : Ramamurti, J; Ramakrishnan, J

Bench : Division Bench

Advocate : T.T. Srinivasan, for the Appellant; G. Ramanujam, for Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramamurti, J.—The main point that arises for determination in this revision petition is whether the assessment made by the assessing

authority on 22nd October, 1959, could be modified only by the very assessing authority u/s 16 of the Madras General Sales Tax Act of 1959

(hereinafter called the Act) on the basis of an escaped turnover or whether the Deputy Commissioner is entitled to exercise his powers of revision

u/s 32 of the Act, on the basis that the order of the initial assessing authority is vitiated by errors of fact or law as escaped assessment.

2. The petitioners are dealers in hides and skins and the dispute relates to the assessment of their dealings for the assessment year 1954-55. By his

order dated 22nd October, 1959, the Assistant Commercial Tax Officer, III, Madras City, determined the net turnover of the petitioners at about

Rs. 12,866-7-7, after holding that as the petitioners are unlicensed dealers, the turnover relating to the purchase value of untanned hides and skins

and the sale value of tanned goods should not be taken into account in view of the Bench decision of the Madras High Court in Noor Mohammed

& Co. v. State of Madras [1956] 7 S.T.C. 792,. The said decision of the Madras High Court, however, was reversed by the Supreme Court in

State of Madras v. M. A. Noor Mohammed & Co. [1962] 1 S.C.R. 148 with the result that even in the case of an unlicensed dealer his turnover

relating to the purchase value of untanned hides and skins and the sale value of the tanned goods must be taken into account.

3. In view of this pronouncement of the Supreme Court in State of Madras v. M. A. Noor Mohammed & Co. [1962] 1 S.C.R. 148, the Deputy

Commissioner of Commercial Taxes, Madras, after following the necessary procedure and after issuing notice to the assessee revised the

assessment of the assessing authority. He fixed the assessable net turnover at Rs. 4,87,826-10-10.

4. As per the rules in force during the year 1954-55, the assessment had to be completed within a period of three years, i.e., for 1954-55, before

the expiry of 31st March, 1958. But before this period of three years had run out, the rule was amended by a notification dated 30th March,

1957, published in the Fort St. George Gazette on 1st April, 1957, extending the period to five years so that for the year 1954-55 the time limit

would be 1st April, 1960. The assessment made on 22nd October, 1959, was therefore well within time.

5. At the time of the assessment, the Madras General Sales Tax Act (Madras Act I of 1959) had come into force and the assessment proceedings

were therefore rightly taken under this Act. A contention was faintly raised by the learned counsel for the petitioners about the applicability of the

provisions of Act I of 1959, as well as about the scope of the repeal of the Madras General Sales Tax Act of 1939 by Madras Act I of 1959, but

in view of the provisions of Section 61 of the Act of 1959, as well as the provisions of the Amendment Act of 1963 (Madras Act X of 1963)

learned counsel did not persist in this argument.

6. In the course of his arguments he confined himself to the main point that this is a case to which Section 16 of the Act alone would apply under

which the assessment can be varied or modified by the original assessing authority alone, on the ground of an escaped turnover, and that the

Deputy Commissioner cannot exercise his powers of revision u/s 32 of the Act. He urged that the Full Bench decision of the Madras High Court in

State of Madras v. Louis Dreyfus & Co. Ltd. ILR [1956] Mad. 1285, is no longer good law by reason of two judgments of the Supreme Court,

in Maharajadhiraj Sir Kameshwar Singh Vs. The State of Bihar, , a decision rendered under the Bihar Agricultural Income Tax Act of 1938 and

the other in Maharaj Kumar Kamal Singh Vs. The Commissioner of Income Tax, Bihar and Orissa, arising u/s 34 of the Indian Income Tax Act.

7. Learned counsel drew our attention to the judgment of Veera-swami, J., in Writ Petitions Nos. 345 to 348, etc. of 1960, a batch of writ

petitions, and to two Bench judgments, one of Srinivasan and Venkatadri, JJ., dated 3rd April, 1963, in Tax Case No. 85 of 1962 and the other

of Jagadisan and Venkatadri, JJ., in Tax Cases Nos. 56 and 58 of 1963, dated 8th July, 1963, in which the effect of the judgments of the Supreme

Court referred to above upon the judgment of the Full Bench in State of Madras v. Louis Dreyfus & Co. Ltd. ILR [1956] Mad. 1285, came up

for consideration. In the view which we take of the facts of the instant case, we think it unnecessary to express a final opinion as to how far and to

what extent, the judgment of the Full Bench in State of Madras v. Louis Dreyfus & Co., Ltd. ILR [1956] Mad. 1285, requires reconsideration in

the light of the two judgments of the Supreme Court referred to above. At the same time we are of opinion that in view of the judgment of the

Supreme Court in State of Kerala Vs. Shri M. Appukutty, ; reversing the judgment of the Kerala High Court in Appukutty v. State of Kerala ILR

[1958] Ker. 1302, a case which arose under the Madras General Sales Tax Act (Act IX of 1939) and the Madras General Sales Tax Rules of

1939, Rule 17(1), and the judgment of the Supreme Court in Ghanshyamdas v. Regional Assistant Commissioner of Sales Tax AIR 1964 S.C.

710 , a case arising under the C.P. and Berar Sales Tax Act (Act XXI of 1947) many of the observations contained in the judgment of the Full

Bench in State of Madras v. Louis Dreyfus & Co., Ltd. ILR [1956] Mad. 1285, may require reconsideration.

8. In order to appreciate the scope of the arguments advanced by learned counsel, it is first necessary to refer briefly to the provisions of the

Madras General Sales Tax Act, 1939, and the Rules framed thereunder, as well as the Madras General Sales Tax Act, 1959, and the Rules.

Section 9 of the Act of 1939 provides the procedure for making assessments, i.e., filing of returns within the specified time, assessments including assessments by best judgment under certain contingencies. Section 11 gives the right of appeal to the aggrieved party (assessee) to the prescribed authority. Then there is the further right of appeal to the Appellate Tribunal. Section 12 confers certain powers of revision upon certain authorities above the rank of the assessing authority and this power of revision can be exercised either on an application or suo motu. This power of revision includes the power to call for and examine the record of any order passed or proceeding recorded by the assessing authority which is subordinate to the authority exercising the powers of revision and the revisional authority is entitled to exercise the power of revision for the purpose of satisfying itself as to the legality or propriety of such an order or as to the regularity of such proceeding and passing such order with respect thereto as it may think fit. Section 19 confers the power upon the Government to make the necessary rules for carrying out the purposes of the Act. Two sets of rules were framed, (i) The Madras General Sales Tax (Turnover and Assessment) Rules, 1939; and (ii) The Madras General Sales Tax Rules, 1939 (with which we are now concerned) containing provisions relating to licences, rebates, accounts and procedure for appeals and revisions. Rule 17(1) of the Madras General Sales Tax Rules, 1939, which is material, runs as follows:

17. (1) If for any reason the whole or any part of the turnover of business of a dealer or licensee has escaped assessment to the tax in any year or if the licence fee has escaped levy in any year, the assessing authority or licensing authority, as the case may be, subject to the provisions in Sub-rule (1-A) may, at any time within three years next succeeding that to which the tax or licence fee relates, determine to the best of his judgment the turnover which has escaped assessment and assess the tax payable in such turnover or levy the licence fee, after issuing a notice to the dealer or licensee and after making such enquiry as he considers necessary.

9. This rule was amended in 1957 enlarging the time-limit from three to five years. Rule 14(2) dealing with the powers of revision ran as follows :

The Commercial Tax Officer may, in his discretion, at any time, either suo motu or on application, call for and examine the record of any order

passed or any proceedings recorded under the Act by an Assistant or Deputy Commercial Tax Officer working under him, for the purpose of

satisfying himself as to the legality or propriety of such order or as to the regularity of such proceedings and may pass such order in reference as he thinks fit.

10. The Act of 1959 while repealing the earlier Act and the Rules made thereunder has incorporated the provision corresponding to Rule 17(1) in

the Act itself. Section 16 in the new Act (subject to certain changes which are not relevant to the purposes of our case) takes the place of Rule

17(1). Section 16 of the Act of 1959 reads as follows: -

Assessment of escaped turnover-(1) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment

to tax or has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, subject to the provisions of Sub-

section (2), at any time within a period of five years from the expiry of the year to which the tax relates, assess the tax payable on such turnover

after service of notice on the dealer and after making such enquiry as it may consider necessary.

(2) In making an assessment under Sub-section (1), the assessing authority may, if it is satisfied that the escape from assessment is due to wilful

non-disclosure of assessable turnover by the dealer, direct the dealer to pay, in addition to the tax assessed under Sub-section (1), a penalty not

exceeding one and a half times the tax so assessed :

Provided that no penalty under Sub-section (2) shall be imposed unless the dealer affected has had a reasonable opportunity of showing cause

against such imposition.

(3) The powers under Sub-section (1) may be exercised by the assessing authority even though the original order of assessment, if any, passed in

the matter has been the subject-matter of an appeal or revision. . J

(4) In computing the period of limitation for assessment of the escaped turnover under this section, the time during with the proceedings for

assessment remained stayed under the orders of a Civil Court or other competent authority shall be excluded"".

11. The power of revision (corresponding to Section 12 of the 1939 Act) is contained in Section 32 of the Act of 1959 which runs as follows:

(1) The Deputy Commissioner may, of his own motion, call for and examine an order passed or proceeding recorded by the appropriate authority

u/s 12, Section 14, Section 15, or Sub-sections (1) and (2) of Section 16 and make such inquiry or cause such inquiry to be made and, subject to

the provisions of this Act, may pass such order thereon as he thinks fit.

(2) The Deputy Commissioner shall not pass any order under Sub-section (1) if-

(a) the time for appeal against the order has not expired ;

(b) the order has been made the subject of an appeal to the Appellate Assistant Commissioner or the Appellate Tribunal, or of a revision in the

High Court; or

(c) more than four years have expired after the passing of the order.

(3) No order under this Section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

12. Section 33 also confers certain powers of revision upon the Deputy Commissioner but they are not relevant for the present enquiry.

13. The contention of learned counsel for the petitioner is that the assessing authority proceeded upon the view of the law that in the case of an

unlicensed dealer his turnover relating to the purchase value of untanned hides and skins and the sale value of tanned goods could not be taken into

account. The case is a clear case of an escaped turnover coming u/s 16 of the present Act corresponding to Rule 17(1) referred to above. He

urges that the power of an assessing authority to assess an escaped turnover u/s 16 is a distinct separate power, while the power of revision u/s 32

is a separate head of power altogether, and that the said two provisions, Section 16 and Section 32, are mutually exclusive and will have only

independent operation, and that if a case is governed by Section 16, Section 32 can have possibly no application. In other words, the power u/s

16 and the power u/s 32 are so mutually exclusive that they cannot co-exist, and that there can be no question of either Section 16 or Section 32

being applicable alternatively at the option of the department. In support of this contention, learned counsel naturally relied upon the Full Bench

decision in *State of Madras v. Louis Dreyfus & Co., Ltd.* ILR [1956] Mad. 1285 But, at the same time, he contended that the view of the Full

Bench regarding the precise import of assessment of escaped turnover requires reconsideration in view of the two judgments of the Supreme Court

referred to already. He urges that cases which under the view of the Full Bench would be cases of escaped assessment and not escaped turnover

should, after the judgments of the Supreme Court be viewed and dealt with, only as escaped turnover, with the result that in such cases the Deputy

Commissioner will have no powers of revision. The question, therefore, is whether such a wide area is covered by Section 16 of the Act, and

whether or not on the facts of the instant case, the Deputy Commissioner has got powers of revision.

14. We shall first briefly refer to the Full Bench decision in *State of Madras v. Louis Dreyfus & Co., Ltd.* ILR [1956] Mad. 1285, In that case the

assessing authority excluded the turnover of certain transactions on the ground that they were outside sales and made assessment on that basis. The

revising authority, however, took a different view, re-opened the assessment and sought to re-assess under Rule 14 on the ground that those

purchases also would be taxable. The assessee instituted the proceedings in question challenging the jurisdiction of the revising authority and

ultimately the following question was referred to the Full Bench:

Whether Rule 14 of the Madras General Sales Tax Rules is valid, and if so, whether the powers of revision thereunder can be exercised in cases to

which Rule 17 relating to escaped assessment is applicable ?

15. We are only concerned with the latter part of the reference. The argument on behalf of the State was that Rule 17(1) would apply only to

cases where the turnover of a dealer was not taken into account by the assessing authority either on account of concealment of such transaction by

the assessee or by reason of an inadvertent omission on his part or on the part of the assessing officer and such cases only could be regarded as

the turnover escaping assessment. The further argument of the State was, where the entire turnover was before the assessing authority and it was

considered by it but by some error of law or fact the authority regarded the turnover or any part thereof as not assessable or allowed some

exemption or allowance or deduction to which, however, the assessee was not entitled to under the provisions of the Act, such a case was not a

case of an escaped turnover but was a case of an improper or wrong order of assessment which was certainly capable of revision under Rule

14(2) by the revising authority.

16. On the other hand, the contention of the assessee was that Rule 17 should be given a wide and liberal interpretation and that it would cover all

cases, where, by reason of some error or omission on the part of the assessing authority, the assessee had been directed to pay a lesser amount of

tax than was properly payable by him. In support of this argument that a wide range of classes would come under the category of escaped

turnover, on behalf of the assessee, reliance was placed upon the analogous provision, Section 34 of the Indian Income Tax Act and the decisions

thereunder as to the proper meaning to be given to the words escaped assessment.

17. The assessee in that case, therefore, contended that u/s 34 of the Indian Income Tax Act if the assessing authority in the original order of

assessment had committed some mistakes of fact or law, he would be entitled to tax the income which has escaped assessment, and that applying

the same principle to cases under the Sales Tax Act, the assessing authority alone must be entitled to make the assessment under Rule 17 on the

basis of an escaped turnover even if the original turnover was considered by him but however excluded in the fixation of the tax liability on some

erroneous view either of fact or of law. The Full Bench did not accept this argument of the assessee. The argument of the assessee based upon the

analogous provisions of the Income Tax Act, Section 34, was rejected in the following terms at page 1296:-

The contention, however, raised on behalf of the assessee-respondents was that Rule 17 should be understood as applicable not merely to cases

of escaped turnover as set out above but also to every case where by reason of some error or omission on the part of the assessing authority the

assessee has been directed to pay a lesser amount of tax than was properly payable by him. In this connection the analogy of Section 34 of the

Income Tax Act and certain decisions interpreting the scope of that Section were strenuously pressed upon us. Reliance was particularly placed on

the decisions of this Court reported in Commissioner of Income Tax v. Raja of Parlakimidi (1925) ILR 49 Mad. 22., The Commissioner of

Income Tax Vs. Sheikh Abdul Kadir Marakayar and Co., and of the Privy Council in Commissioner of Income Tax, Bombay v. Khemchand

Ramdas [1938] 6 ITR 414. We do not propose to discuss the facts of these cases or refer to the observations in them as regards the proper

construction of Section 34 of the Income Tax Act because in our opinion there is no real analogy between Rule 17(1) of the Madras General Sales

Tax Rules and the provisions contained in Section 34 of the Income Tax Act. The scheme of the two enactments is wholly different. The language

employed in Section 34 of the Income Tax Act which has undergone serious changes from time to time is not identical with that in Rule 17 of the

Madras General Sales Tax Rules and the mere fact that both these provisions are designed to achieve a somewhat similar purpose is too slender a

foundation for the application of the cases construing one provision for determining the scope of the other. We therefore propose to confine our

attention to the language used in the two Rules 14(2) and 17(1) and gather the intention of the rule-making authority as expressed by words

employed.

18. Dealing with the relative application of Rule 14(2) and Rule 17(1) the Full Bench observed as follows (at page 1295):

The other question that has to be considered is thus formulated .in the order, of reference: "Whether the powers of revision thereunder [under Rule

14(2)] can be exercised in cases to which Rule 17 relating to escaped assessment is applicable". In the form in which it has been stated above, it is

capable of only one answer namely that the two rules are mutually exclusive and that in cases which fall within Rule 17(1) and where the

jurisdiction to reopen the assessment is vested in the assessing authority, the Commercial Tax Officer would not have power to pass such an order

under Rule 14(2). And this was in fact conceded by the learned Advocate-General who appeared for the State. The point however debated

before us-and we consider rightly-was the relative scope of Rules 14(2) and 17(1). The argument addressed to us by the learned Advocate-

General was that the two Rules 14(2) and 17(1) have to be read together to define the precise content of each and so read Rule 17(1) would be

applicable only to cases where the turnover of a dealer has been omitted to be taken into account by an assessing authority either because there

was a deliberate concealment of such transactions by the assessee or because of any inadvertent omission on his part or on the part of the

assessing officer. Only such cases could with propriety be termed cases where the turnover has escaped assessment. On the other hand, in cases

where the entire turnover of an assessee is before the assessing authority and is considered by it, and such authority by error of fact or law treats

the turnover or any part thereof as not assessable or grants a deduction or exemption to which the assessee is not entitled under the Act, the case

is not one of escaped turnover but of an improper or illegal assessment order which is revisable under Rule 14(2).

19. No doubt in a general sense both Rule 14(2) as well as Rule 17(1) serve a common purpose, viz., to gather revenue which has improperly

escaped but while Rule 14(2) is directed to the correction of improper or illegal assessment orders which have levied less or more tax than

justified, Rule 17(1) lays emphasis on escaped turnover. The distinction between the two provisions might be expressed by saying that Rule 14(2)

deals with escaped assessments and Rule 17(1) with escaped turnovers, notwithstanding that the latter also would mean that a lesser amount of tax

has been levied. So understood the two provisions would be completely reconcilable and the two jurisdictions—to revise assessments and to reopen

them—would each be assigned to the proper authority.

20. The learned Judges held that the true scope of Rule 17(1) (corresponding to the present Section 16) must be ascertained from the use of the

expression the escaped and that a turnover could be said to have escaped when it is not noticed by the officer either because it is not before him

by reason of inadvertence, omission or deliberate concealment on the part of the assessee or because of want of care on the part of the officer, the

turnover, though in the books of the assessee, had not been noticed by the authority. The Full Bench repelled the argument based upon Section 34

of the Indian Income Tax Act that if in the assessment order the turnover had been returned by the dealer but the assessing authority, however,

treated either the whole turnover or any part thereof as not taxable or subject to any exemption, that would be a case of an escaped turnover

which could be set right only by resort to the proceedings under Rule 17(1). The Full Bench was clearly of the view that the revising authority

would have undoubted jurisdiction to revise the assessment in such cases where it was not legal or proper, when the assessing authority had

erroneously treated a portion of the turnover as not taxable. The Full Bench also pointed out that such an extreme view that Rule 17(1) would

alone apply to such cases, would render the powers of revision under Rule 14(2) absolutely useless and futile and that it would be difficult to

conceive any case to which Rule 14(2) could apply at all. The Full Bench also took the view that there might be an intermediate class of cases in

which the entire turnover is before the assessing authority, but he fails to levy the tax upon the whole or any portion of it, taking the view that the

same is not taxable and on the view that certain deductions claimed by the assessee are allowable; but the assessing authority however fails to

make a specific reference to these matters in the assessment order in the sense that only the final result is reflected in the order without mentioning

the details as to how the computation was made. In such cases the Full Bench was clearly of the view that the records of the proceedings of the

assessing authority would include the entire file and therefore the revising authority would be competent to exercise its powers of revision under

Rule 14(2) regarding the legality or propriety of the order of assessment. In the instant case the assessing authority has specifically adverted to the

details in his order of assessment and has also mentioned the reasons as to why a part of the turnover was not liable to be taxed, and it therefore

does not come under the intermediate class of cases visualised by the Full Bench.

21. Learned counsel for the petitioner concedes and has to accept the position, that according to the view of the Full Bench, the Deputy

Commissioner would have jurisdiction to exercise the powers of revision u/s 32 and revise the order of the assessing authority which the Deputy

Commissioner considers as vitiated by errors of fact or law regarding the turnover concerning hides and skins. It is beyond question that mistakes

of fact committed by the assessing authority can be corrected by the Deputy Commissioner u/s 32 as powers of revision are obviously conferred

for such purposes. But, as observed earlier, learned counsel would contend that as a result of the two decisions of the Supreme Court the instant

case also would come only under the category of escaped turnover governed by Section 16, and that so understood the principle of mutual

exclusion of jurisdiction decided by the Full Bench should be applied, so as to rule out the powers of revision u/s 32 whenever Section 16 is

applicable to the same situation.

22. While dealing with this argument, it is necessary first to refer to the

judgment of the Supreme Court in Ghanshyam Das Vs. Regional Assistant

Commissioner of Sales Tax, Nagpur, , reversing the decision of the High Court in Regional Assistant Commissioner of Sales Tax and Others Vs.

Ghanshyamdas Chhotelal and Others, , which arose under the C.P. and Berar Sales Tax Act (Act XXI of 1947). The material portion of Section

11-A of that Act read as follows :

(1) If in consequence of any information which has come into his possession, the Commissioner is satisfied that any turnover of a dealer during any

period...has escaped assessment...the Commissioner may, at any time within three calendar years from the expiry of such period...proceed in such

manner as may be prescribed to...assess...the tax payable on any such turnover....

23. In that case a registered dealer submitted his return on 5th October, 1950, for the year 1949-50, i.e., 22nd October, 1949 to 9th November,

1950, for one quarter only and made default in respect of the other quarters. The Assistant Commissioner of Sales Tax issued a notice to the

assessee on 13th August, 1954, in respect of the turnover of the firm for the rest of the period, i.e., for the other three quarters. Two main

questions arose for decision : (a) Whether it was a case of turnover escaped assessment within the meaning of Section 11-A and (b) if so, when

would the period of three years specified u/s 11-A commence and terminate. The Supreme Court held that a turnover can be said to have escaped

assessment even in a case in which no assessment has been made at all. The department's contention was that if there has been no assessment at

all it was not a case of an escaped assessment but may be a case of post assessment detection of evasion of tax. The Supreme Court did not

accept this narrow view put forward by the department but held that the turnover could be properly said to have escaped assessment even when

no assessment at all has been made. The Supreme Court applied the principle underlying the analogous provisions of Section 34 of the Indian

Income Tax Act and the cases rendered thereunder, particularly Maharaj Kumar Kamal Singh Vs. The Commissioner of Income Tax, Bihar and

Orissa, , and Maharajadhiraj Sir Kameshwar Singh Vs. The State of Bihar, , (Supreme Court decisions already referred to). Regarding the

relevancy of the applicability of the reasonings contained in the decisions arising under the Indian Income Tax Act the Supreme Court stated the

matter thus (at page 770) :

It is true that the said decisions were given with reference to either Section 34(1) of the Income Tax Act or Section 14 of the Business Profits Tax

Act, but so far as the present enquiry is concerned the said sections are in pari materia with Section 11-A of the Act. In construing the meaning of

the expression escaped assessment in Section 11-A of the Act there is no reason why the said expression should bear a more limited meaning than

what it bears under the said two Acts. All the three Acts are taxing statutes and the three relevant sections therein are intended to gather the

revenue which has improperly escaped. A Division Bench of the Madras High Court in State of Madras Vs. S. Balu Chettiar and Others, ,

following the decision of a Full Bench of that Court, held that where an assessee did not file at any time a return of his turnover for a year and,

therefore, there was no assessment made, the turnover escaped assessment. It was observed therein :

Whether it was a case of omission or of deliberate concealment on the part of the assessee, he did not submit any return. It was his default that led

to the escape of the turnover for 1951-52 from assessment to the tax lawfully due. It was the whole of the turnover for that year that escaped

assessment."

23. In view of these observations of the Supreme Court about the relevancy and bearing of the cases arising under the Income Tax Act the view

taken by the Madras High Court that there is no real analogy between Rule 17(1) of the Madras General Sales Tax Rules and the provisions

contained in Section 34 of the Indian Income Tax Act and that the scheme of the two enactments is wholly different, cannot be regarded as

correct. Decisions of the Privy Council and the Supreme Court arising under the Income Tax Act would undoubtedly be useful and relevant for

determining the precise import of the words escapement of turnover and the ambit of the jurisdiction of the assessing authority u/s 16 in the matter

of assessment of escaped turnover.

24. We shall now examine the scope of , the decisions of the Supreme Court aforesaid. In Maharaj Kumar Kamal Singh Vs. The Commissioner of

Income Tax, Bihar and Orissa, , the Income Tax Officer, following an earlier decision of the Patna High Court, omitted to bring to assessment a

certain sum representing the interest and arrears of rent due to the assessee in respect of agricultural lands in the view that the amount was

agricultural income. Subsequently the Privy Council reversed the decision of the Patna High Court followed by the Income Tax Officer. Thereupon

the Income Tax Officer initiated reassessment proceedings u/s 34(1)(b) (after the amendment of 1948) to reassess the said sum. The Supreme

Court held that the word escaped in Section 34(1)(b) was not merely confined to cases where no return had been submitted by the assessee or

where income had not been assessed owing to inadvertence or oversight but would also cover a case where a return had been submitted and the

Income Tax Officer after applying his mind to the details held that a part of the income was not assessable to Income Tax. The matter was

explained thus by the Supreme Court at page 261 :

There is no doubt that a part of the assessee's income had not been assessed and, in that sense, it has clearly escaped assessment. Can it be said

that, because the matter was considered and decided on the merits in the light of the binding authority of the decision of the Patna High Court, no

income has escaped assessment when the said Patna High Court decision has been subsequently reversed by the Privy Council ? We see no

justification for holding that cases of income escaping assessment must always be cases where income has not been assessed owing to

inadvertence or oversight or owing to the fact that no return has been submitted. In our opinion even in a case where a return has been submitted, if

the Income Tax Officer erroneously fails to tax a part of assessable income, it is a case where the said part of the income has escaped assessment.

The appellant's attempt to put a very narrow and artificial limitation on the meaning of the word "escape" in Section 34(1)(b) cannot therefore succeed.

25. In *Maharajadhiraj Sir Kameshwar Singh Vs. The State of Bihar*, the question arose under the Bihar Agricultural Income Tax Act of 1938. In

that case the assessee had included in his return a particular item of income but the Agricultural Income Tax Officer omitted to bring that item to tax

in the original assessment in the view that it was exempt. Later on, the Agricultural Income Tax Officer issued a notice u/s 26 of the Act to include

that income also on the ground that it was liable to Income Tax and the question

arose whether the provisions of Section 26 of the Act were applicable to that case. Section 26 of the Act may be set out:

If for any reason any agricultural income chargeable to agricultural Income Tax has escaped assessment for any financial year, or has been

assessed at too low a rate, the Agricultural Income Tax Officer may, at any time within one year of the end of that financial year, serve on the

person liable to pay agricultural Income Tax on such agricultural income or, in the case of a company, on the principal officer thereof, a notice

containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 17, and may proceed to assess or

reassess such income, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-

section:

Provided that the tax shall be charged at the rate at which it would have been charged if such income had not escaped assessment or full

assessment, as the case may be.

26. The argument of the assessee was that despite the use of the opening words of the Section if for any reason the Section should not receive the

wide interpretation as contended for by the department but that the scope of the Section should be restricted so as to have no application to cases

where the whole income is returned by the assessee in his return but either the whole or a portion of it however is held by the assessing authority as

not being liable to tax. The assessee relied upon certain decisions in support of the contention including some of the Privy Council and of the

Supreme Court. On behalf of the department reliance was placed upon the decision of the Supreme Court earlier discussed in this judgment. The

Supreme Court took the view that in view of its clear pronouncement in *Maharaj Kumar Kamal Singh Vs. The Commissioner of Income Tax,*

Bihar and Orissa, , there was no necessity to consider in detail again the several decisions cited on behalf of the assessee. The contention of the

assessee that an earlier judgment of the Supreme Court in *Chatturam Horilram Ltd. Vs. Commissioner of Income Tax, Bihar and Orissa*, , took a

different view, and that that decision was more direct in point than the later decision of the Supreme Court in *Maharaj Kumar Kamal Singh Vs.*

The Commissioner of Income Tax, Bihar and Orissa, , was not accepted. Finally

the argument on behalf of the assessee that there would be escaped assessment only if there was some lacuna other than that attributable to the assessing authorities was not accepted and it was held that Section 34 (dealing with income escaping assessment) would apply alike to cases in which there is a concealment of the income by the assessee or cases in which on account of an error of law or fact the assessing authority excludes the income from assessment though contained in the return of the assessee.

27. Relying upon the aforesaid observations of the Supreme Court in the above two decisions, learned counsel for the petitioners contends that the words escaped turnover should similarly receive a wider meaning than the one indicated in the judgment of the Full Bench of the Madras High Court. To put it in different language learned counsel would contend that the instant case would be governed by Section 16 as a case of an assessment of escaped turnover, even though the details of all the transactions were mentioned in the return submitted by the assessee but a portion of the same however was excluded by the assessing authority.

28. We have examined with care the judgment of the Supreme Court in Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur, , in which Section 11-A of the C.P. and Berar Sales Tax Act came up for consideration. We are of the opinion that it does not help the assessee for the extreme contention urged on his behalf that whenever the true turnover has not been assessed to the tax Section 16 alone would be applicable ruling out Section 32 altogether. In that case the Supreme Court held that if an assessee did not submit a return and if the assessing authority assessed the turnover it was clearly a case in which the turnover has escaped assessment. It should not be overlooked that the Supreme Court had not to consider the relative jurisdiction of the assessing authority in juxtaposition with the jurisdiction of the appellate authority or the revising authority in a situation like the instant case. Further in that case no return at all was submitted by the assessee and there was no question of the assessing authority applying its mind to the return and excluding a portion of the turnover from an assessment by granting some exemption or deduction or allowance. The other two decisions of the Maharaj Kumar Kamal Singh Vs. The Commissioner of Income Tax, Bihar and Orissa,

and Maharajadhiraj Sir Kameshwar Singh Vs. The State of Bihar, , do not advance the contention of the assessee any further, as there also the

Supreme Court had only to deal with the jurisdiction and powers of the assessing authority without any reference to the powers of the appellate or

the revisional authority. Under the Income Tax Act there is no question of escapement of turnover, but it was only a case of income escaping

assessment. The view of the Supreme Court was that a wide meaning should be given to Section 34 of the Indian Income Tax Act in the matter of

assessing income which has escaped liability to Income Tax, so as to cover cases in which the Income Tax Officer had already applied his mind

and come to some conclusion.

29. These two decisions therefore cannot be regarded as authorities warranting the conclusion that if as a result of the wide meaning given to the

words turnover escaping assessment there should be any overlapping of jurisdiction of the assessing authority u/s 16 and the revising authority u/s

32, the latter would have no jurisdiction to correct the error committed by the assessing authority. With respect we agree with the view taken by

Jagadisan and Venkatadri, JJ., in the. unreported case, Tax Cases Nos. 56 and 58 of 1963 (though the view expressed by them regarding the

relevancy of the decisions under the Income Tax Act may not be correct in view of the judgments of the Supreme Court referred to above), that

the provisions of Sections 16 and 32 are not so mutually exclusive as to preclude a case falling u/s 16 of the Act being dealt with u/s 32. There may

be overlapping if a wide meaning is given to the words turnover escaping assessment. But that certainly cannot deprive the revising authority of its

revisional jurisdiction conferred under the plain terms of the section.

30. The other unreported decision of Srinivasan and Venkatadri, JJ., in Tax Case No. 85 of 1962 is an instance to show that there may be

overlapping between Section 16 and Section 32 in certain situations. In that case the assessing authority in his original order of assessment

committed certain errors and it was held that u/s 16 of the Act he can assess the turnover which was originally wrongly excluded from taxation.

The Bench gave an extended meaning to the words turnover escaped assessment in view of the decisions of the Supreme Court referred to above.

It must be observed that the Bench had not to consider the question as to

whether in that situation, the revisional authority, the Deputy Commissioner, could have exercised its powers of revision u/s 32 of the Act. We are of the opinion that under the present scheme of the Act, in which the entire machinery for assessment regarding the jurisdiction and powers of the original assessing authority as well as the appellate or the revisional authority have been incorporated in the Act itself, the question has to be decided upon the plain terms of the corresponding sections. It should be noticed that even under the old Act of 1939, by G.O. 193, dated 28th January, 1954, Sub-rule (3A) was added to Rule 17 to the effect that powers conferred under Sub-rules (1) and (3) of Rule 17 upon the assessing authority or the licensing authority may also be exercised by the appellate authority or by the revising authority within a period of five years next succeeding that to which the tax relates. This amendment makes the position clear that the Legislature did not visualise a clear-cut, well denned, mutually exclusive jurisdiction of the assessing authority as against the revisional authority, each being restricted to operate in its own field without any overlapping. In other words, Rule 17, Sub-rule (3A), visualises and specifically provides for the two jurisdictions co-existing with instances of overlapping. If Section 32 is construed in this background we are clearly of the opinion that the power of revision of the Deputy Commissioner is a separate and independent power which can be exercised whenever he is of the opinion that the original assessing authority has committed any error of law or fact. We are unable to see any force in the contention that the mere fact that the assessing authority also has got a power to reconsider his decision by correcting his mistakes, assuming that he has got such a power, should be construed as curtailing or negating the powers of revision expressly conferred upon the Deputy Commissioner. The fallacy in the extreme contention of the assessee will be seen by taking a simple illustration. Suppose the assessing authority in his considered view of the law or of the facts of the case excludes a portion of the turnover, its chances of reconsidering its decision on the basis of a turnover escaping assessment are very remote. The right of appeal is available to the assessee only, and not to the department. Yet, if the contention of the petitioner is accepted, it would be a case to which Section 16 alone would apply and the powers of revision u/s 32 cannot be

invoked at all, however erroneous the order of the assessing authority may be. It is impossible to countenance such a view which negatives the

powers of revision in such a situation. If the argument of learned coounsel for the assessee should be accepted, we are clearly of the opinion that it is

impossible to conceive of any case to which Section 32 would be attracted and it will have no place in the structure and scheme of assessment

under the Act. Such a view would be opposed to the well-settled rule of construction that there should be a harmonious reading of all the

provisions of the statute and no provision should be rendered as .serving no purpose, as a result of giving a wide construction to some other

provision. Every effort should be made to secure a harmonious reading and construction of the several sections of the Act as a whole.

31. This aspect of the two powers and jurisdiction co-existing was adverted to and emphasised by the Supreme Court in the case in State of

Kerala Vs. Shri M. Appukutty, , In that case the scope of Rules 17(1), (1-A), (3-A) and Section 12 of the Madras General Sales Tax Act of

1939 came up for consideration: The Supreme Court rejected the argument put forward on behalf of the assessee that the totality of the powers of

the Deputy Commissioner are contained in Section 12(2) and that unless there was a substantive proceeding pending in his file the Deputy

Commissioner had no power to assess an escaped turnover. While explaining the scope of the two powers and jurisdiction the matter was put thus

by the Supreme Court at page 799 :

Moreover Section 9 does not deal with escaped turnovers but is a provision for the determination of the turnover of a dealer in the first instance

nor can it be said that Rule 17 is in conflict with Section 12(2). That Section deals with another state of affairs and another jurisdiction, i.e., where

the Deputy Commissioner suo motu or on an application made calls for the record and determines the legality or propriety of an order made by one

of the subordinate officers. It cannot be said in view of Rule 17 that the power of revision by the Deputy Commissioner is limited to powers u/s

12(2). Rule 17 deals with a separate and independent jurisdiction in regard to the determining and taxing escaped turnovers. The provisions of

Section 12(2) are in no way in conflict with the powers conferred under Rule 17(1), 17(1 A) and 17(3-A).

32. From this it follows that Section 16 should not be construed as in any way delimiting or curtailing the powers of revision conferred u/s 32.

Reference may also be made to the recent judgment of the Supreme Court in *The State of Orissa Vs. Dabaki Devi and Others*, rendered under

the Orissa Sales Tax Act (Act XIV of 1947). Two questions arose in that case,

(i) relating to the power of reassessment in the case of an under-assessment or an escaped assessment u/s 12(7) and the power of revision u/s

23(3) and

(ii) the period of limitation for exercising the powers of revision u/s 23(3).

33. We are not concerned with the second question but the observations of the Supreme Court on the first question are useful and relevant in the

instant case as emphasising that the power of revision is a distinct and separate power different from the power to assess in the case of an under-

assessment or escaped assessment. Section 12(7) of the Orissa Act provides that if for any reason the turnover of a dealer has escaped

assessment or has been under-assessed the Collector may call for a return within 36 months of the end of the period in question and may proceed

to assess the amount of tax in the manner laid down in Sub-section (5). Section 23 provides for the right of appeal and the power of revision.

Section 23(3) provides that,

Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Collector may, upon application or of his own motion,

revise any order passed under this Act or the rules thereunder by a person appointed u/s 3 to assist him, and, subject as aforesaid, the Revenue

Commissioner may, in like manner, revise any order passed by the Collector.

34. In that case in an appeal by the assessee, the Assistant Collector of Sales Tax allowed certain deductions from the taxable turnover.

Subsequently the Orissa High Court delivered judgment in another case from which it followed that the view taken by the Assistant Collector was

wrong in allowing the deduction. Thereupon the Collector of Sales Tax acting u/s 23(3) of the Act, exercised the powers of revision. The argument

of the assessee that the impugned orders of the Collector in the purported exercise of the powers of revision u/s 23(3) of the Act were in

substance u/s 12(7) was not accepted. The Supreme Court (majority judgment) explained the position thus dealing with the relative scope of the

provisions, Section 12(7) and Section 23(3), at page 1417 :

The first contention urged on behalf of the State of Orissa is that the High Court is wrong in holding that an order of assessment of the revising

authority is necessarily one made u/s 12(7). The power of revision granted by Section 23(3) is clearly a distinct and separate power from the

power to assess after calling for a return in case of under-assessment or escaped assessment. The mere fact that in a particular case the revising

authority has by a fresh order of assessment made the dealer liable for tax in respect of which he can be said to have been under-assessed or to

have escaped assessment does not make the two powers one and the same. We therefore find it difficult to agree with the High Court that Section

12(7) includes also the reassessment made by the revising authority u/s 23(3).

35. We are, therefore, of the opinion that the power of revision can be exercised by the Deputy Commissioner u/s 32 to correct errors committed

by the assessing authority in his order of assessment, irrespective of the question as to whether the said errors could also be corrected by the

assessing authority himself. The power u/s 32 is a distinct separate power and its exercise cannot be controlled by any power which may inhere in

the assessing authority u/s 16.

36. Learned counsel relied upon the decision of the Andhra Pradesh High Court in *Berar Oil Industries, Akola v. State* ILR [1960] 1 A.P. 213. In

that case the assessee did not include in his return the purchases made through local dealers and his return was accepted. For the same year the

assessee was treated as a non-resident principal and three local dealers were assessed to sales tax as agents of the petitioner-assessee on the local

purchases made on his behalf. Those dealers contested their liability, and it was held that the assessee must be treated as a resident dealer as it had

a branch within the State and that therefore the local dealers could not be assessed as agents of the assessee. Pursuant to this decision, the Deputy

Commissioner of Commercial Taxes assessed the petitioner to additional tax on the turnover included originally in the assessments of the local

dealers. On revision it was contended on behalf of the assessee that the Deputy Commissioner had no jurisdiction to act u/s 12(2) of the Madras

Act of 1939 and that the only provision under which such escaped turnovers could be assessed was under Rule 17(1) of the Madras General

Sales Tax Rules. This contention was accepted. We are of the opinion that this Bench decision of the Andhra Pradesh High Court, far from

supporting the petitioner in this case, is really against him. The observations of the learned Judges clearly point out the distinction between a case in

which no return was submitted and a case in which on the return submitted the assessing authority, after applying its mind, excludes a portion of the

turnover. In the latter case the Andhra Pradesh High Court has clearly expressed the view that the power of revision can be exercised. Reference

may be made to the following observation at page 222 which makes the position clear :

According to the learned Government Pleader, Rule 14-A empowers the Deputy Commissioner to reassess the petitioners to tax in respect of the

escaped turnover. Rule 14-A, as is clear from the language, contemplates the case of a tax determined by the initial assessing authority. Where an

appellate or revising authority considers that the tax so determined is less than the correct amount of the tax payable by the dealer, it is open to the

revising authority to determine the correct amount of tax payable by the dealer after following the prescribed procedure. The very basis on which

power of revision envisaged by Rule 14-A could be exercised, therefore, should be with reference to the tax determined by the initial assessing

authority....As already pointed out, the revising authority is not an "assessing authority" and cannot make an assessment or re-assessment in

respect of an escaped turnover. His duties are purely revisional, that is, they are confined only to revise an order already passed by the initial

assessing authority.

37. In the course of the hearing, learned counsel for the petitioner laid considerable stress on the fact that in the instant case his client did not submit

any return, and that the original order of the assessing authority fixing the turnover at Rs. 12,866.77 was based only upon the accounts of the

assessee which had been checked and perused by the assessing authority. We do not think that this circumstance makes any difference as to rule

out the applicability of Section 32. Whether or not a return is submitted by the assessee, if the assessing authority applies his mind" to the business

dealings and transactions of an assessee and excludes certain items in the assessable turnover on an erroneous view of the law the revising authority

will have undoubted jurisdiction to exercise its powers of revision. What is of importance is the fact, that the assessing authority had applied its mind to all the dealings and transactions of the assessee.

38. We, therefore, hold that in the present case, the Deputy Commissioner had ample jurisdiction to exercise his powers of revision u/s 32 of the Act.

39. The revision petition is, therefore, dismissed. No costs.