
(1955) 03 MAD CK 0017

In the Madras High Court

Case No : Tax Revision Case No. 99 of 1954

Kalam Somasundaram Chettiar and Sons Salem

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 31-03-1955

Acts Referred:

Constitution of India, 1950 — Article 236(1)(a), 286(1), 286(1)(a)

Citation : (1956) ILR (Mad) 636

Hon'ble Judges : Rajagopalan, J; Rajagopala Ayyangar, J

Bench : Division Bench

Advocate : S. Swaminathan, for the Appellant;

Final Decision : Dismissed

Judgement

Rajagopala Ayyangar, J.—This is a revision by the assessees against the order of the Sales-tax Appellate Tribunal in his assessment

proceedings for the year 1951-52.

2. The assessees carried on business at Salem in the manufacture and sale of ground-nut oil and cakes and are registered as such under, the

provisions of the Madras General Sales tax Act. During the year 1951-52 the assessees purchased groundnut of the value of Rs. 22,95,670 and

converted it into oil and oil cakes and effected a sale of these products. The gross turnover of the oil and oil cakes during the year was Rs.

43,59,133-3-1. The scheme of taxation in respect of groundnuts and groundnut oil under the Madras General Sales-tax Act is this: Under R. 4(2)

of the Madras General Sales-tax (Turnover and Assessment) Rules in the case of groundnuts, the gross turnover of a dealer for the purpose of

these rules is the amount for which the goods are sold by the dealer.

In cases, however, where a dealer purchases groundnuts and manufactures groundnut oil and cakes from the groundnut or kernel purchased by

him and who is registered as a manufacturer of groundnut oil under R. 18 of the Turnover and Assessment Rules, the manufacturer

is entitled to a deduction equal to the value of the groundnut or kernel purchased and converted by him into oil and cakes provided the amount for

which the oil is sold is included in his turnover.

So, generally speaking when a dealer as a manufacturer includes the sale value of the oil in his turnover, he is entitled to deduct therefrom the

purchase price of kernel or the groundnut, which has been utilised for the manufacture of the oil under R. 18(2).

3. Before the Deputy Commercial Tax Officer the assessee claimed exemption from tax in respect of their sale turnover to the extent of Rs.

42,44,102-15-1. This was made up of two items viz, (1) a claim to a deduction under R. 18 (2) mentioned above, that is, the purchased price of

the groundnut or kernel obtained by them which amounted to Rs. 22,36,371-13-1, and (2) a sum of Rs. 20,07,731-2-0 in respect of which the

claim was based on the sales to that extent being outside the State and so entitled to exemption under Art. 286(1)(a) of the Constitution.

The Deputy Commercial Tax Officer by his assessment order dated 27-3-1953 allowed some small deductions in the computation of the sale

turnover and also allowed to the assessee a deduction of Rs. 22,95,670 under R. 18(2). In regard to the other claim for excluding from the

turnover the amount of sales effected outside the State, he allowed a deduction in respect of Rs. 1,00,685-4-5 being the value of the goods sold

through commission agents at Bombay but disallowed the claim to exclude the rest of the turnover totaling Rs. 19,07,045-10-6. On these

calculations he determined the net turnover for the purpose of the sales-tax at Rs. 19,61,372-3-7, and assessed them accordingly.

4. The assessee took up the matter in appeal to the Commercial Tax Officer Salem, and there raised the contention that they were entitled to a

deduction of purchase turnover under R. 18(2) and that when oil extracted from the groundnut purchased was exported outside that State, they

were also entitled to have the sale price of such exported goods excluded from the assessment under the Sales-tax Act by virtue of the exemption

granted by Art. 236(1)(a) of the Constitution.

This appellate authority substantially dismissed the appeal and refused to grant to the assessee the benefit of the exemption conferred by Art.

286(1)(a) on the ground that they had already obtained relief under R. 18 and that to grant them reliefs both under R. 18(2) as well as under Art.

286(1)(a) would in effect be tantamount to a grant from the Government and not merely afford relief from the payment of tax.

The result of the decision was therefore that the assessee was held entitled to the deduction under R. 18 but they could not at the same time

claim to have the sale price of the commodities manufactured out of the goods so purchased excluded from their turnover because the sales took

place outside the State.

5. From this decision of the Commercial Tax Officer as the appellate authority, the assessee took the matter in further appeal to the Sales Tax

Appellate Tribunal. The contention raised by them there was while the lower authorities rightly granted them the deduction under R. 18(2) of the

Turnover and Assessment rules, they had erred in holding that the grant of such deduction was inconsistent with the claim to exemption under Art.

286(1)(a) on the turnover of the sales effected by them.

The view however which the Appellate Tribunal took on this matter was (1) that on a proper construction of the rules framed under the Sales-tax

Act in respect of the sales turnover of manufacture of oil, a dealer would not be entitled to exemption both under R. 18(2) and under Art. 286(1)

affirming the view of the Commercial Tax Officer and (2) that the claim of the assessee to an exemption under Art. 286(1)(a) was paramount and

the lower authorities had erred in not excluding from the turnover of the assessee their "outside sales".

As a result, the basis of the assessment had to be altered inasmuch as the assessee was held entitled to the exclusion from their turnover of the

price realised by the sales effected outside the State but that in respect of such turnover the purchase price of the relative groundnut or kernel could

not be deducted under R. 18(2).

Learned counsel for the assessee also raised before the Tribunal the contention that if they found that the assessee was entitled to exemption

under Art. 286(1)(a) the jurisdiction of the Tribunal was confined to their

allowing the appeal, notwithstanding that the assessee might not be entitled to both the deduction as well as the exemption and that inasmuch as both the lower authorities had granted to the assessee relief by way of deduction under R. 18(2) such a deduction could not be disturbed by the Tribunal.

This argument was however rejected and the Tribunal held that the entire assessment was before them by reason of the appeal which had been brought up by the assessee and that it was open to them to lay down the correct basis of the assessment and directed the assessing authority to effect the assessment in accordance with, these principles. It is against this order of the Tribunal which remanded the assessment proceedings to the Commercial Tax Officer on the basis mentioned earlier that this revision has been filed.

There is no challenge about the correctness of their view as regards the relative scope of the deduction and exemption open to an assessee under

R. 18(2) and Art. 286(1)(a), as same is in accordance with the view expressed by this Court in a decision in - In Re: Chandramouleswara Oil Co.,

Kurnool and Another, , where the following proposition was laid down:

If the assessee were exempted from paying tax on the sale turnover of the oil as the sale was outside the state, they cannot claim the benefit of the deduction under R. 18(2) of the Turnover and Assessment Rules.

But it is however the jurisdiction of the Tribunal to pass an order of remand which it did that is called in question by learned counsel for the

petitioners in this revision. We might mention that in accordance with the order of the Tribunal the Commercial Tax Officer has re-assessed the

assessee by allowing them the constitutional exemption under Art. 286(1)(a) by excluding from their turnover, sales effected outside the State but

not allowing the deduction to the assessee under R. 18(2) of the Turnover and Assessment Rules.

The result of the re-assessment on this footing has been that the net assessable turnover has been increased from Rs. 18,63,222-8-7 which was

the figure originally arrived at by the Commercial Tax Officer, to Rs. 23,34,550-9-1. We are not concerned now with the correctness of the latter

figure but only with the jurisdiction of the Appellate Tribunal to pass the order of remand in the form adopted by them.

6. The entire question turns upon the powers of the Sales-tax Appellate Tribunal under S. 12-A of the General Sales-tax Act. The relevant

portions of this section run in these terms:

12-A(1):-Any assessee objecting to an order relating to assessment passed

(i) by the Commercial Tax Officer whether on appeal under S. 11 or "suo motu" under S. 12, sub-S. (1) or (ii) by the Deputy Commissioner "suo motu" under S. 12, sub-s. (2).

may, if the assessee has not preferred an application for revision of the order under S. 12, sub-s. (2), or under sub-s. (3) of that section, as the

case may be appeal to the Appellate Tribunal within sixty days from the date on which the order was communicated to the assessee....

(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.

(5) Notwithstanding that an appeal has been preferred under sub-s. (1), tax shall be paid in accordance with the assessment made in the case:

Provided that the Appellate Tribunal may, in its discretion, permit the appellant to pay the tax in such number of instalments, or give such other

direction in regard to the payment of the tax, as it thinks fit;

Provided further that if as a result of the appeal any change becomes necessary in such assessment, the Appellate Tribunal may authorise the

assessing authority to amend the assessment, and on such amendment being made, the amount overpaid by the assessee shall be refunded to him

without interest, or the further amount of tax due from him shall be collected in accordance with provisions of this Act, as the case may be.

The argument advanced by Mr. Swaminatha Iyer, learned counsel on behalf of the petitioners was based upon the language of sub-s. (4) which

authorises the Appellate Tribunal "to pass such order "thereon" as it thinks fit". The expression "thereon" it is contended, limits the jurisdiction of

the Tribunal not merely to the assessment which is complained of but to the grounds upon which the order of the lower authorities is attacked by

the particular appellant. It is stated that it is not the entire assessment that is before the Appellate Tribunal at the stage of the hearing of the appeal

but only those portions of the assessment order which an appellant attacks.

7. Learned counsel based this argument mainly on certain decisions on the scope of S. 33(4) of the Indian income tax Act where words similar to

those in S. 12-A(4) of the General Sales-tax Act occur. But before referring to those decisions it is necessary to point out that under the Madras

General Sales-tax Act, it is the assessee and the assessee alone that has the right of; appeal to the Tribunal and that the State has no right of filing

an appeal or cross-objections against any order of the assessing authorities; as also that the income tax Act does not contain any provision such as

to be found in the second proviso, to sub-s. (5) which we have extracted above. We shall be dealing with the effect of these distinctions at a later

stage.

8. The first decision to which our attention was invited was that of the Bombay High Court in - " THE MOTOR UNION INSURANCE CO.,

LTD. Vs. COMMISSIONER OF Income Tax, BOMBAY., . S. 33(4) of the Indian income tax Act contains language almost identical with that

which is used in S. 12-A(4) of the General Sales-tax Act and runs thus:

The Appellate Tribunal may after giving both parties to the appeal an opportunity of being heard pass such orders thereon as it thinks fit, and shall

communicate any such orders to the assessee and to the Commissioner.

The facts of the case were as follows: The assessee, a non-resident company, incorporated in the United Kingdom carried on insurance business in

British India in lines other than life Insurance. The income tax Officer who was the assessing authority proceeded under R. 6 of the schedule and

included in its assessment an amount of Rs. 7615 as interest received by the company. The Appellate Assistant Commissioner on appeal

confirmed the assessment and the assessee appealed to the Tribunal.

The Tribunal held that the income tax Officer was wrong in applying R. 6 of the schedule but should have applied R. 8 with the result that the

income earned in the shape of interest was increased to Rs. 49,549. The question was whether the Appellate Tribunal was entitled to so enhance

the assessment. Dealing with the scheme of appeals under the Indian income tax Act, Kania J. as he then was. stated:

After the income tax Officer has made an order, if the assessee feels aggrieved, he can appeal to the Appellate Assistant Commissioner. The

powers of the Appellate Assistant Commissioner in such a case are defined in S.

31. Sub-s. (3), cl. (a) in terms provides that in disposing of an appeal the Appellate Assistant Commissioner may confirm, reduce, enhance or annul the assessment. He has also power under cl. (b) to set aside the assessment and direct the income tax Officer to make a fresh assessment, after making such inquiry as the income tax Officer thinks fit, or the Appellate Assistant Commissioner may direct... It is significant that there is no provision for appeal to the Appellate Assistant Commissioner by the Department against the assessment made by the income tax Officer.

Under S. 33 a right of appeal to the Appellate Tribunal is given, on the order made by the Appellate Assistant Commissioner. That right is given both to the assessee and to the Commissioner. Under sub-s. (3) the appeal has to be filed in the prescribed form and verified in the prescribed manner. Under sub-s. (4) the Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate the orders to the assessee and the Commissioner....

On behalf of the Commissioner it is urged that S. 33(4) does not circumscribe the powers of the Tribunal, and leaves the Tribunal at large to raise any question it pleases and decide the same. In our opinion, this argument is unsound. Apart from the statute it is elementary that if a party appeals, he is the party who comes before the Appellate Tribunal to redress a grievance alleged by him. "If the other side has any grievance he has a right to file a cross-appeal or cross-objections." But if no such thing is done, "the other party, in law, is deemed to be satisfied with the decision." (the underlining (here into " ") is ours).

He is, of course, entitled to support the Judgment of the first officer on any ground open to him, but he is not entitled to raise a ground so as to work adversely to the appellant and in his favour... The word "thereon" used in S. 33(4) only means "on the appeal", which must mean on the grounds raised in the appeal.

Read in that way, the sub-section only gives power to the Appellate Tribunal to give its decision and pass orders in respect of all grounds urged (which must be on behalf of the appellant) in respect of the decision appealed against. In deciding those grounds it can pass appropriate orders.

But, in our opinion, it is not open to the Tribunal itself to raise a ground or

"permit the party who has not appealed", to raise a ground, which will work adversely to the appellant, (underlining (here into " ") is ours).

It will be seen that the construction of the word ""thereon"" is related to the fact that the department has a right of appeal and that by not availing

themselves of such a right, they should be deemed to have acquiesced or agreed to abide by the decision of the lower authority. In this connection

we might refer to a decision of this court in - Sri Gajalakshmi Ginning Factory Ltd., Palladam Vs. The Commissioner of Income Tax, Madras, ,

where it has pointed out the relevancy of this feature in considering the powers of the income tax Appellate Tribunal.

8A. The decision of the Patna High Court In - Jagarnath Therani Vs. The Commissioner of Income Tax, , was next referred to. There the assessee

was carrying on business in the district of Purnea and had also branches at Calcutta and Jalpaiguri. In the assessment order in question the income

tax Officer at Purnea, who was the assessing authority reserved for future consideration the income derived from the Calcutta and Jalpaiguri

branches, and made an assessment in regard to the income derived by the assessee from his business in Purnea district.

The assessee appealed against this assessment to the Assistant Commissioner and this appellate authority while reducing the assessment on the

Purnea business enhanced the assessment as a whole by including in the assessable income that which was derived from Calcutta and Jalpaiguri

branches. The assessee then had a case referred to the High Court by the Commissioner of income tax as to whether the Assistant Commissioner

had the power to include a source of income which was not at all assessed by the income tax Officer.

The learned Judges held that as the income tax Officer who was the assessing authority had reserved for future consideration by himself as such

assessing authority, the income derived by the assessee from the Calcutta and Jalpaiguri branches, the subject matter of the appeal before the

Assistant Commissioner was the assessment in relation to the Purnea business alone and that in consequence the latter had no jurisdiction to travel

beyond and seek to assess the income from those sources which had been reserved for future consideration. We are unable to see how this

decision affords any assistance to the petitioners in the present case.

9. The last case that was referred to in this connection was that of the Lahore High Court in AIR 1936 897 (Lahore) . There the assessee was

carrying on business as a jeweller and for the year 1932-33 disclosed a gross income from sales of Rs. 26,553. The income tax Officer accepted

the figures of sales but enhanced the net profits available for assessment. Against this order the assessee preferred an appeal to the Assistant

Commissioner. The Appellate Authority acting under S. 31 issued a notice to the assessee to show cause why certain items of expenditure which

had been allowed by the taxing officer should not be disallowed and the income enhanced.

After hearing the assessee the appellate authority passed an order dismissing the appeal and enhancing the assessment by a sum of Rs. 4512.

Against the order of assessment as finally passed by the Appellate Authority the assessee preferred an appeal to the Commissioner of income tax

under the repealed S. 32. The Commissioner of income tax partially accepted the appeal and allowed a portion of the deductions which had been

granted by the income tax Officer, and the appeal was otherwise dismissed, on 3-9-1934.

On the same day the Commissioner of income tax issued a notice to the assessee to show cause why enhancement of the income from the sales of

jewellery should not be made and after receiving the explanation of the assessee passed an order in October 1934 in the purported exercise of his

powers of review under S. 33 and enhanced the income from the sales from Rs. 26,000 and odd to Rs. 50,000.

The question canvassed before the High Court was whether this order of enhancement by the Commissioner was within his jurisdiction. If the

income of Rs. 23,000 and odd which was added to the assessee was treated as income which had escaped assessment the same was not liable to

be included in the assessment because no notice was served on the assessee within one year of the end of the assessment year under S. 34 of the

Act as it then stood. The learned Judges held that when the Commissioner was dealing with an appeal under S. 32 he could pass orders only with

respect to the subject matter of the appeal and could not "suo motu" enhance the assessment which he had power to do under S. 33 but that the

latter provision was subject to the limitations provided in S. 34.

Reliance is placed upon a sentence in this judgment dealing with the power of the Commissioner as an appellate Authority being confined to the appeal before him and as not extending to assessing escaped income. But we are unable to find any useful analogy or assistance furnished by this case for the determination of the question arising in the present revision.

10. We are therefore unable to read these decisions as a conclusive judicial interpretation of the expression ""thereon"" occurring in S. 12(A) (4) of the General Sales-tax Act and confining the powers of the appellate authority to deciding for or against any particular point raised by the appellant.

It will be seen from the extracts quoted above that the content of that expression has been determined with reference to the context and in the light of the provisions of the income tax Act which confer a right of appeal on the Department equally with the assessee.

Under the provisions of the Madras General Sales-tax Act from any order of assessment passed by the Deputy Commercial tax Officer, appeals to the Commercial tax officer as well as to the Appellate Tribunal therefrom are open only to the assessee and not to the department, and the powers of the appellate authority to modify the basis of an assessment cannot be circumscribed by the consideration of the department having accepted the order of the lower authority in so far as it decided any point against it.

11. There is also one other matter to be considered in this connection and that is the light afforded by the second proviso to sub-s. 5 of S. 12-A of the Act. Sub-s. 5 is directed to the consequences of an appeal to the Tribunal and the order that might be passed in relation to the tax liability by this appellate authority. The body of the section enacts the usual declaration that an appeal does not by itself impede the enforcement of the orders appealed against. To this, two riders are added in the two provisos which follow. The first proviso empowers the Appellate Tribunal, in cases where they deem it proper, to permit the appellant to pay the tax in installments or in such other manner as the Tribunal might order. Upto this stage the enactment is dealing with the assessment order appealed against and the limitations subject to which an order could be enforced. The second proviso deals with the stage subsequent to the disposal of the appeal and enacts the consequences which might follow the order of the Appellate Tribunal.

There are two limits to this proviso. The first is concerned with cases where the Tribunal accept any of the grounds urged by the appellant and this

results in a reduction of his tax liability and in those cases, if, as a result of the enforcement of the assessment order either under the main part of

sub-s. 5 or in the manner contemplated by the first proviso, a larger amount has been collected from the assessee than is warranted by the

assessment as modified by the Appellate Tribunal, provision is made for the refund of the excess so collected.

The second limit is concerned with the other possibility namely the effect of the Tribunal's order necessitating the payment of a larger sum than was

originally assessed and provision is made for the collection of this sum in addition to the sum as originally determined. As this proviso undoubtedly

contemplates an order of the Tribunal leading to an enhancement in the assessment, the construction contended for by the learned counsel for the

petitioners that the only jurisdiction of the appellate Tribunal is either to accept or reject the grounds of appeal raised by an assessee in his

memorandum of appeal cannot be upheld.

Mr. Swaminathan urged that it was not a permissible rule of construction to widen the scope of an enacting part from implications to be gathered

from a proviso and relied upon a decision of the House of Lords in "West Derby Union v. Metropolitan Life Assurance Society", 1897 AC 647

(F), as authority for that proposition. The House of Lords was there considering the provisions of S. 2 of the Poor Laws Loans Act of 1871 under

which the Poor Law Board was given authority to borrow money at cheaper rate of interest, in order to pay off loans carrying a higher rate of

interest.

The section contained a proviso that loans made subsequent to the enactment could not be redeemed before their term without the consent of the

creditors. The Poor Law Board claimed a right to redeem loans made before the Act before the expiry of term stipulated in such loans. The

argument on which this power was supported was that the proviso indicated that the Board could redeem before the term without the consent of

the creditors and confined the protection only to those creditors who lent money subsequent to the enactment.

The House of Lords affirming the decision of the Court of Appeal held that the

proviso was really in the nature of a saving clause and not a true

proviso and rejected the claim of the Poor Law Board. This was really a case where the proviso had been introduced by way of abundant caution.

This matter has been referred to by Lord Herschell at page 656 where the learned Lord said:

My Lords I am satisfied that many instances might be given where provisos could be found in legislation that are meaningless because they have

been put in to allay fears when these fears were absolutely unfounded, and when no proviso at all was necessary to protect the persons at whose

instance they were inserted.

On the other hand, a later judgment of the House of Lords in - "Jennings v. Kelly", 1940 AC 206 (G) clearly lays down that there is no rule that

the terms of an enacting part have to be construed without reference to the provisos.

The proper course is to apply the broad general rule of construction, which is, that a section or an enactment must be construed as a whole, each

portion throwing light, if need be, on the rest (per Lord Wright at page 229).

12. The expression ""thereon"" in sub-s. (4) has no fixed or rigid meaning. It takes colour from the context and the terms of the proviso referred to

afford some light as to what the Legislature had in mind when enacting sub-s. (4) in the form in which it is found. This proviso undoubtedly enacts

that an order by the Appellate Tribunal on appeal might in certain cases conceivably result in the assessment being enhanced. Before leaving this

part of the case we might also refer to the terms of S. 12 which confers revisional powers on the Commercial Tax Officer, Deputy Commissioner

and the Board of Revenue.

Each of these authorities is empowered to call for and examine the record of any order passed or proceeding recorded by the subordinate

Authority and after satisfying itself as to the legality or propriety of such order or proceeding to pass such order "with respect thereto" as it thinks

fit. The words ""with respect thereto"" detached from the context are, it would be recognised, colourless and do not throw any light on the question

whether these revisional authorities have power to enhance the assessment but guidance on this point is afforded by the terms of sub-s. (6) which

runs thus:

No order shall be passed under sub-ss. (1), (2) and (3) enhancing any assessment, unless the opportunity has been given to the assessee to show cause against the proposed enhancement.

It will be noticed that this is really a limitation on a procedure enjoined with respect to a power which is assumed to exist without any positive provision conferring such power. In this connection the terms of S. 31(3) of income tax Act might be usefully referred to. The language there used is:

(3). In disposing of an appeal the Appellate Assistant Commissioner may, in the case of an order of assessment

(a) confirm, reduce, enhance or annul the, enhancement.

There is a proviso

Provided that the Appellate Assistant Commissioner shall not enhance an assessment or a penalty unless the appellant has had a reasonable opportunity of showing cause against such enhancement.

The framers of the General Sales-tax Act, it will be seen, have incorporated the proviso to S. 31 (3) of the income tax Act without introducing a

positive provision as is to be found in the enacting portion of that sub-section. Regard thus having had to the manner of drafting adopted by the

framers of the Madras General Sales-tax Act, we feel that effect has to be given to the implication arising from the second proviso to sub-s. (5)

that the Appellate Tribunal have a power to pass an order which might result in an enhanced assessment.

13. We might now sum up our conclusions:

(1) The appellate Tribunal have no authority to add a new item to the turnover and include therein what was not before the assessing authority for that would be a matter not assessed but omitted from the assessment.

(2) As the Appellate Tribunal are not the assessing authorities and have merely to determine facts giving rise to the tax liability and the law in

relation thereto, they are obviously empowered to allow an appeal and remand it for the assessment being computed in accordance with the facts,

as found and the law as laid down by them and this re-assessment has to be done by the assessing authorities.

(3) Where the basis of an assessment is challenged by an assessee and this is

accepted by the Tribunal and the matter is remitted to the assessing authorities, there has to be a reassessment in conformity with their order. In the normal cases this would result in the decrease of the tax liability of the appellant. The second proviso to sub-s. 5 enables the refund to be obtained by the assessee as a consequence of the re-assessment in accordance with the orders of the Appellate Tribunal.

14. But on the facts of the particular case the giving effect to the order of the Tribunal might result in an enhancement of the tax. The point raised by the petitioners in its ultimate analysis amounts to a denial to the Tribunal of the power to pass an order which if given effect to would result in an enhancement of the assessment. We are clearly of the opinion that this contention cannot be accepted not merely because of the second proviso to sub-s. 5 but also as such a view does not accord with any logical or intelligible construction of the relevant provisions of the Act.

To take the present case as an illustration, the petitioners as appellants before the Appellate Tribunal raised two points for the latter's

determination, viz, (1) that the Commercial Tax Officer erred in the view that an assessee was not entitled at the same time to both the reliefs

provided for by R. 18(2) of the Turnover and Assessment Rules and by Art. 286(1)(a) of the Constitution and (2) that the Commercial Tax

Officer erred in refusing to hold the sale turnover of oil sold outside the State as not falling within the exemption provided by Art. 286(1) (a). The

Tribunal was not bound to accept both these contentions.

The final result of their order was that they rejected the first of the above contentions raised on behalf of the appellants before them but accepted

the second. It meant that while the appellants were entitled to the exemption under the Constitution they were not entitled to the benefit of both the

deduction and the exemption as the Tribunal affirmed the view of the Commercial Tax Officer in this regard. In this situation the only order that

they could pass was one remanding it to the Commercial Tax Officer for making a computation on the basis suggested by them. In particular case

such a computation might have resulted in a diminution of tax liability.

In other cases, as in the present, it might result in an enhancement of the tax. The validity of their order cannot be judged by the result, that is, the

order cannot be held valid if it resulted in a reduction of tax liability but held

invalid and beyond their jurisdiction if the re-computation resulted in enhancing the tax. Whether the expression ""thereon"" in S. 12(A)(4) read in the light of the second proviso to sub-s. (5) would include the entire assessment order or only those grounds which are raised for consideration of the Appellate Tribunal by any particular appellant in the present case the claim to deduction under R. 18(2) of the Turnover and Assessment Rules and the constitutional exemption under Art. 286 (1)(a) were so interrelated to each other that it would not be possible for the Tribunal to pass any order on the appeal other than that which they have passed.

15. In the result, we hold that the order of the Appellate Tribunal was within their jurisdiction and that was the proper order to pass. The revision petition fails and is dismissed with costs. Advocate's fee Rs. 100/-.