

(1982) 11 KAR CK 0005
In the Karnataka High Court
Case No : WP. 40031/82

Puranikamath R.F.

APPELLANT

Vs

Commr. of Commercial Taxes

RESPONDENT

Date of Decision : 23-11-1982

Acts Referred:

Karnataka Entertainments Tax Rules — Rule 48

Citation : (1983) 100 KarLJ 30

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. The petitioner is a theatre owner in the name of "Ravi Chitra Mandir" at Laxmeshwar in Dharwar District. He was assessed by the Commercial Tax officer who is also the Entertainment Tax officer under the Karnataka Entertainments Tax Act, 1958 hereinafter referred to as the Act for various periods, under S. 6-B of the Act which provides for bringing to tax escaped assessment. 47 orders relating to 47 periods of assessment in the relevant period came to be passed. The petitioner filed a single appeal under the Karnataka Entertainments Tax Rules 1959. That appeal came to be dismissed as not maintainable by the appellate authority, namely, the Deputy Commissioner of Commercial Taxes in the area having jurisdiction over the area on the ground that separate appeals were required to be filed in respect of each of the orders passed by the Entertainment tax officer under S. 6-B of the Act. The petitioner preferred a single revision petition against the order of the appellate authority, the Deputy Commissioner of Commercial taxes, under R. 49 of the Rules. The Commissioner after hearing the counsel for the petitioner dismissed the revision petition agreeing with the findings of the Appellate authority. The Commissioner of Commercial taxes, held that separate appeals were required to be filed and therefore the Deputy Commissioner was not in error in rejecting the single appeal filed against the 47 orders.

2. Aggrieved by the Commissioner's order the sole respondent in these proceedings, petitioner has prayed that the impugned order of the Commissioner rejecting the revision petition be set aside.

3. The only ground urged by Mr. B.V. Katageri, learned Counsel for the petitioner before me has been that in all the 47 orders the only matter in controversy was whether on the facts of the case of the petitioner in respect of the 47 orders, S. 6-B of the Act was attracted and in the circumstance all the 47 assessment orders passed under S. 6-B should be treated as one and one appeal and one revision was adequate. He has placed reliance on the decision of the Supreme Court in the case of *Narahari v. Shankar*, AIR. 1953 SC 419. In that case from the decree of the trial court in favour of the plaintiff two separate appeals were taken by two sets of defendants. The appellate court allowed both the appeals and dismissed plaintiff's suit by one judgment and ordered that the copies of the judgment to be placed on the file of the other connected appeal. Two decrees were prepared. The plaintiff preferred two appeals. One of the appeals was time barred and on the principles of *res judicata* the High Court dismissed both the appeals. In that circumstance it was held that it was not necessary to file two separate appeals in that case. The question of *res judicata* arose only when there were two suits. As there was only one suit and both the decrees were in the same case and were based on the same judgment and the matter decided, the principle of *res judicata* was not attracted. It was also felt that the High Court of Hyderabad from which the appeal arose should have given the benefit of S. 5 of the Limitation Act to the plaintiff-appellant. In that judgment there is an observation made that when the matter in controversy is one and the same, a single appeal is maintainable. It is on that observation Mr. Katageri heavily relies upon. I think that observation is made with reference to the facts of the case which was before the Supreme Court. The law laid down in that case is definitely in conformity with S. 11 of the Civil Procedure Code which deals with the rule or principle of *res judicata*.

4. In the case on hand, we are concerned with the special provisions of a special taxing statute and the rules framed under the Act. It is not disputed by Mr. Katageri that unit of assessment under the Act is a period of 7 days or a week. The provision for appeal and revision are made under the rules framed under the Act. R. 48 reads as follows:

"48(1)(a) Any person aggrieved by an order passed by an Entertainments Tax officer under these rules may, within thirty days from the date of communication of such order, appeal to the Commercial Tax officer of the area concerned.

(b) Any person aggrieved by an order passed by a Commercial Tax Officer under Cl. (a) or under R. 42 of these rules may, within thirty days from the date of passing such order, appeal to the Deputy Commissioner of the Division concerned.

(2) Every order passed on appeal under sub-rule (1) shall, subject to the provisions under Rule 49 be final".

An appeal is provided for an order (emphasis is supplied). Therefore, against every assessment order passed in respect of the case to which the assessment order relates an appeal is provided for. It is not unknown to taxing statutes that

a unit of assessment constitutes a distinct and separate unit and assessment order in respect of that unit is an independent order which must be appealed separately even in cases where there are identical orders involving many assessment years in respect of the same asses. see. This is no different than what happens under the law relating to income tax, sales tax and wealth tax.

5. Mr. Katageri appears to have argued before the respondent commissioner that this High Court has the practice of admitting a common petition when a common grievance is made out and therefore the Commissioner should also permit the petitioner to prosecute a single revision against the various assessment orders which came to be dismissed by the appellate authority, as facts were similar and controversy was one and the same. But he has not been able to point out any particular instance or the decision of this Court which supports the contention advanced. The writ rules of this Court provide for a common petition being presented where facts and the question of law are identical. But they are all numbered as separate writ petitions and depending on the number of the petitioners, the court fee payable is charged on each of the petitions. Nothing more than that is permitted under the procedure of this Court.

6. I do not think the stand taken by the petitioner is correct. To contend that against 47 assessment orders, a single appeal is maintainable runs contrary to Rule 48 of the Rules. In this view of the matter, this petition is rejected without rule being issued.