(1982) 07 MAD CK 0015

In the Madras High Court

Case No : W.A. No. 246 of 1981 against W.P. No. 6383 of 1980

R. Baluswami Chettiar APPELLANT

Vs

The Appellate Assistant Commissioner (CT), Pollachi and Another RESPONDENT

Date of Decision : 12-07-1982

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 14, 31, 33, 33(1)

Citation : (1983) ILR (Mad) 54

Hon'ble Judges : R. Sengottuvelan, J;G. Ramanujam, J

Bench : Division Bench

Advocate : S. Doraisamy, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Ramanujam, J.—This is an appeal filed by the appellant against the order of Mohan, J., in Writ Petition No. 6383 of 1980, dismissing the

case in limine.

2. The appellant herein reported a total taxable turnover of Rs. 12,54,765.27 in the A-2 returns for the assessment year 1977-78. However, they

did not produce the accounts for final check in spite of notices. Therefore, a notice to assess to the best of judgment on a taxable turnover of Rs.

18,82,152.00 was issued to the appellant. The assessee neither filed objections nor produced accounts. They applied for time for adjournment on

the ground that the connected records are not ready due to illness of the auditor. On the ground that the appellant is dragging on the production of

the account, the adjournment sought for by the appellant was refused and he was assessed on a best judgment basis on a total taxable turnover of

Rs. 18,82,152.00 under the Tamil Nadu General Sales Tax Act by an order dated

19th February, 1979. The appellant thereafter filed a petition

u/s 14 of the said Act on 16th March, 1979, to revise the assessment. He also filed a return along with a petition for reassessment in form A-1.

The appellant was asked to produce the accounts for 1977-78 but the appellant applied for adjournments. The assessee finally appeared on 25th

October, 1979, and produced the accounts only partly. On the ground that all the records had not been produced the matter was adjourned

ultimately to 18th January, 1980, and as the appellant neither appeared nor made nay representation has petition u/s 14 was rejected and the best

of judgment assessment made on 19th February, 1979, was confirmed. The appellant then filed an appeal before the Appellate Assistant

Commissioner against the rejection of his petition u/s 14 of the Act. The said appeal has been returned as not entertainable by him.

3. Aggrieved by the rejection of his appeal by the Appellate Assistant Commissioner as not maintainable, the appellant filed Writ Petition No.

6383 of 1980 before this Court for issue of a writ of certiorarified mandamus to quash the order dated 15th May, 1980, of the first respondent

and directing him to entertain the appeal. The said writ petition was dismissed by Mohan, J., at the admission stage on the ground that a revision

lies u/s 33 of the Tamil nadu General Sales Tax Act, as against the original best of judgment assessment and therefore when such an alternative

statutory remedy is available, the writ jurisdiction cannot be invoked.

4. The correctness of the said decision has been canvassed in this appeal. Since the writ petition was dismissed at the admission stage, the

respondents had no opportunity to file any counter and therefore they have now filed a counter-affidavit at the appellate stage. In the counter-

affidavit it has been stated that an appeal will not lie u/s 31 of the Act on the facts of this case, as the appellant''s petitioner was returned on the

ground that no fresh assessment order was passed u/s 14 of the Act. u/s 14 of the Act the cancellation of the earlier assessment and a fresh

assessment on the basis of the return submitted is contemplated and hence the order dismissing the application u/s 14 and confirming the original

order of assessment cannot be taken to be an order u/s 14 which is appealable u/s 31 of the Act. It has also been stated in the counter-affidavit

that it is open to the assessee to move the Deputy Commissioner u/s 33 of the

Act or to file an appeal to the Appellate Assistant Commissioner u/s

31 against the original best of judgment assessment order passed u/s 12. In view of the those two statutory remedies the petitioner cannot file an

appeal u/s 31 as against the order passed by the assessing authority rejecting his application u/s 14.

5. On the facts and circumstances of this case we are of the view that an appeal will lie to the Appellate Assistant Commissioner u/s 31(1) of the

Act, which reads as follows :

Any person objecting to an order passed by the appropriate authority u/s 4A, section 12, section 14, section 15, sub-sections (1) and (2) of

section 16, section 18, section 23, section 27, sub-section (4) of section 41 or sub-section (3) of section 42, may, within a period of thirty days

from the date on which the order was served on him in the manner prescribed, appeal against such order to the Appellate Assistant

Commissioner.

6. According to this section, any order passed u/s 14 is made appealable. In this case, though there was a best of judgment assessment u/s 12,

which is an appealable order u/s 31, he did not file an appeal but preferred to file a petition u/s 14 for reassessment. That petition for reassessment

was pending before the assessing authority, but was ultimately rejected on some ground. The rejection of the petition u/s 14 has to be taken as an

order passed u/s 14. Merely because the assessing authority has chosen to confirm his original best of judgment assessment made u/s 12, the

rejection of the petitioner''s application u/s 14 cannot be said to be an order u/s 12. The rejection of application u/s 14 can only be an order made

u/s 14. An application u/s 14 may either result in reassessment or in the confirmation of the original assessment. In either case the order passed is

appealable u/s 31. The view taken by the Appellate Assistant Commissioner that only in a case where the assessing authority actually modifies the

original order of assessment by way of reassessment, the appeal will lie u/s 31 cannot legally be sustained. The learned Judge has stated that since

a revision lies against the original order of assessment to the Deputy Commissioner u/s 33, which is an alternative remedy available to the

petitioner, the writ petition cannot be entertained. We do not see how a revision to the Deputy Commissioner will lie against the original order of assessment made u/s 12, when there is an appeal provided u/s 31. It is no doubt true, as pointed out in the counter-affidavit, that as against the

original assessment an appeal will lie to the Appellate Assistant Commissioner u/s 31. Having regard to the fact that the appellant instead of filing an

appeal took the alternative remedy by way of a petition u/s 14 for reassessment the rejection of his request for reassessment can be a subject-

matter of appeal u/s 31, for section 31 specifically refers to an order passed u/s 14. Since the refusal to reassess can only be an order made u/s

14, an appeal will definitely lie u/s 31.

7. In this view of the matter, we allow the writ appeal as well as the writ petition and quash the order passed by the Appellate Assistant

Commissioner (Commercial Taxes), Pollachi, dated 15th May, 1980, with direction to him to entertain the appellant''s appeal u/s 31 and dispose

of the same on merits.

8. No costs.

