

(2001) 03 KAR CK 0077

In the Karnataka High Court

Case No : Sales Tax Appeal No's. 13 to 15 of 1998

Shankar Construction Co.

APPELLANT

Vs

Additional Commissioner of Commercial Taxes, Belgaum Zone

RESPONDENT

Date of Decision : 30-03-2001

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 22 A

Citation : (2001) 124 STC 265

Hon'ble Judges : R. Gururajan, J; M.F. Saldanha, J

Bench : Division Bench

Advocate : S. Narayana, for the Appellant; B. Anand, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

M.F. Saldanha, J.—A point of law of some importance has been thrown up for decision in this set of appeals and we shall briefly summarise it as follows :

2. Whether the revisional authority exercising powers u/s 22A of the Act who is undoubtedly invested with the wide jurisdiction to pass in revision such orders as the circumstances of the case may justify, including an order enhancing or modifying the assessment or cancelling the assessment or directing a fresh assessment would be within its jurisdiction if in the course of exercising the revisional powers the authority effectively passes an order virtually of reassessment.

3. The facts are within a very narrow ambit and are hardly in dispute. The assessee is one Shankar Construction Company, Dharwar, who are civil contractors. Their assessments were concluded by the Deputy Commissioner of Commercial Taxes (Assessments) for the assessment years 1988-89, 1989-90 and 1990-91 on October 4, 1993, October 5, 1993 and October 7, 1993 respectively. Various exemptions claimed by the company were examined and after disallowing part of the exemptions claimed, the assessment was completed. The assessee was aggrieved by the disallowance and preferred an appeal before

the Joint Commissioner of Commercial Taxes (Appeals), Dharwar Division, which authority allowed the exemption on some more items and effectively refused certain reliefs in the appeals. The revisional authority with whom we are really concerned examined the two orders and issued a detailed notice to the assessee. The earlier part of the notice essentially sets out various reasons why the authority is of the view that the earlier orders require to be reviewed but what follows thereafter is a little unusual for cases of this type. The revisional authority has in terms indicated that he proposes to review the earlier orders along the lines set out and strangely enough, though he was issuing a show cause notice, he has indicated to the assessee that he proposes to revise the assessment and "conclude" the same. Strangely enough, a perusal of the latter part of the detailed notice will indicate that the revisional authority has effectively reassessed/carried out the process of reassessment, though he mentions that it is only "proposed" and set out what according to him should be the correct manner of concluding the issue relating to the taxes payable. We need to straightaway observe that it is a requirement of law that the revisional authority must issue a show cause notice and furthermore that this show cause notice must in terms convey to the assessee as to why precisely the authority proposes to revise the earlier orders or in other words set out the grounds of justification for the same and if the authority even indicates to the assessee what the department tentatively proposes to do, that would be even better and more salutary because the assessee would be put on specific notice and would be able to very correctly and comprehensively deal with the proposal for revisions. Where the revisional authority has gone wrong in this case is with regard to the second part of the notice wherein a virtual fresh assessment has been done and set out, and this in our considered view would be erroneous because it virtually means that the authority has prejudged the issue. We find considerable support in our view from the fact that the revisional authority has in the show cause notice not only stated that he proposes to revise but he has also used the word "conclude" and use of this expression, in unmistakable terms would indicate that the authority has already made up its mind. This is certainly erroneous in so far as the whole purpose of issuing the show cause notice is defeated if the authority has already decided what is required to be done. This is not a mere slip or a minor error but something of consequence and the revisional authorities in the department will take serious note of the guidelines that emerge from this judgment. We need to reiterate that whereas it is a requirement of law that the proposal for revision, the justification for the same and possibly the lines on which it is contemplated should be set out in the show cause notice that it must stop there and it should not for a moment even so much as convey to the assessee to whom the notice is directed that the authority has already prejudged the case or decided on its ultimate outcome.

4. Pursuant to the issuance of the show cause notice the assessee was heard and the revisional authority has revised the original assessment orders precisely on the lines as set out in the show cause notice. After doing this, the authority

has proceeded on the same lines as an assessing authority and has directed the assessing authority to raise the demands for tax. There is no doubt about the fact that the revisional authority has effectively done a fresh assessment. The clear question is, without going into the mechanics of whether the modalities in concluding this process were correct or not ; whether fundamentally, the revisional authority had the power to do this. In other words, was it open to the revisional authority to conduct a fresh assessment assuming this was required or whether the only course open to the revisional authority having arrived at this conclusion was to remand the case to the assessing authority after setting aside the appellate order and directing a fresh assessment.

5. Mr. S. Narayana, learned counsel who represents the appellants, did initially raise certain other issues touching the width of powers exercisable by the revisional authority when he submitted that since Section 22A specifically indicates that the records of the proceedings under Sections 20 and 21 alone could be revised that there is a limit beyond which the revisional authority cannot go backward. We do not propose to set out the submissions in detail or to deal with them in this case because even if that point requires examination, in our considered view, this is not the proceeding in which the court will do it. More importantly, the question which arose in the course of the arguments was as to whether, even if the appellate order is vulnerable or assuming the revisional authority has the jurisdiction to interfere with the original assessment, if these require revision whether the revisional authority could modify those orders or whether the authority is within its right to virtually recast them or in other words substitute those orders through a fresh assessment order. On the special facts of the present case since we do find that the revisional authority has in terms passed a fresh assessment order we have addressed ourselves to the limited question as to whether this was permissible in law. Mr. S. Narayana, who represents the assesseees has vehemently submitted that even though a very wide discretion is vested in the revisional authority that these powers fall short of allowing the authority to step into the shoes of the assessing officer and redo the entire assessment. His submission was that the revisional authority has the power of modification which in terms means that the quantum of tax payable can be enhanced or reduced even considering that the assessment could be cancelled and a fresh assessment could be directed, but it was his contention that if the conclusion was that the assessment is not capable of mere modification but it requires to be effectively reconstructed from scratch that this last function is beyond the jurisdiction of the revisional authority. He submitted that without going into the other heads, i.e., justification or otherwise for having interfered with the earlier two orders that on this ground alone, the revisional order stands vitiated in law and that it is liable to be quashed and a reassessment directed.

6. The learned Government Advocate seriously opposes any remand for a fresh assessment on the grounds as canvassed by Mr. Narayana because he submitted that the order in question is perfectly defensible. The learned Government Advocate advances an interesting argument which we were required to examine

very meticulously. First of all, he submitted that while issuing the show cause notice if the officer has been meticulous enough to set out what according to him are the errors/defects or the grounds on which the earlier orders require modification, that the officer has followed the correct procedure and requires to be complemented as against most other situations where cryptic show cause notices are issued without conveying to the party concerned as to what is the justification for the proposed revision. As far as this submission is concerned, we wholly endorse what the learned Government Advocate has pointed out. However, he submitted that it is equally desirable to put the assessee on notice by indicating the proposed revisions and if this is done by specifically setting out figures, that again it is a healthy practice which cannot be faulted. We need to indicate here that we can only partially approve of this argument because if the revisional authority puts forward what we would prefer to define as a draft proposal for revision, it would certainly be an excellent situation where the assessee is forewarned of what the department has in mind and is fully equipped to meet that case. There is a subtle distinction between putting out a draft proposal and informing the assessee, as has happened in the present case, that the earlier assessment orders are proposed to be replaced by a fresh one on the lines which are set out. This, latter view would be carrying the functions of the show cause notice a little too far. Also because the authority has committed the additional error of stating that he proposes to conclude the assessment along these lines. The learned Government Advocate still submitted that when a show cause notice is issued to the assessee it pre-supposes the fact that the assessee can still satisfy the revisional authority that what he proposes to do ought not to be done or should be modified, but we are a little hesitant in accepting this contention because the whole object of asking the assessee to show cause is in order to afford the assessee a full and complete opportunity of meeting the proposal in its entirety and if on the other hand, the assessee is confronted with the calculated assessment figures and the authority states in terms that it proposes to calculate the assessment on those lines then the vital function of affording the assessee the opportunity of showing cause which is an essential ingredient of the legal procedure is totally frustrated and reduced to a nullity. To this extent, we maintain that the errors indicated by us in the show cause notice are virtually fatal to the present revisional proceedings.

7. On the more important issue, the learned Government Advocate submitted that learned counsel Sri S. Narayana was wrong in contending that there are limits on the powers of the revisional authority in the matter of modifications that are to be done with regard to the earlier assessments. He drew our attention to the fact that Section 22A uses the expression "pass such orders thereon as the circumstances of the case justify" and it is his contention that this clause invests the revisional authority with unfettered powers which necessarily include substituting the earlier assessment order with a new one. Next, the learned Government Advocate reconstructed his argument by contending that the subsequent part of the section specifically refers to a situation where the

revisional authority may enhance or modify the assessment and the argument canvassed was that there are no limitations to the upward/downward changes that can be made and lastly, the learned Government Advocate pointed out to us that the authority can even cancel the assessment and direct a fresh assessment. His submission was that the revisional authority is invested with such wide sweeping and omnibus powers that the appellants learned counsel was not justified in arguing that the authority is totally precluded from replacing the earlier assessment order with an entirely new one. What the learned Government Advocate submitted was that if after a thorough examination and a hearing the revisional authority which is seized of the case decides that drastic modifications are required, that it is purely academic, totally unnecessary and in fact contra indicated to merely record findings with detailed revision as required possibly indicating the reasons therefore and to then go through the exercise of a remand than for the assessing authority itself to complete the exercise. Interestingly enough, the learned Government Advocate pointed out to us that apart from sending the litigation in circles which is also undesirable because there is every possibility that the assessing authority who is a subordinate officer and who may not grasp the significance of the remand, would possibly overlook some of the areas and again start off a chain litigation. In these circumstances, he vehemently defended the procedure adopted by the revisional authority in the present case. He did make certain submissions on merits with regard to the disallowance of the deductions, etc., but we do not propose to comment on those contentions because in our confirmed view these cases require to be remanded and it would be unfair to the parties for the High Court to make any observations on merits.

8. Dealing with the importance of Section 22A, we have recounted in some detail the areas of dispute between the counsel before us and the subtleties of the arguments canvassed by them. We do consider that the point of law raised is one of importance because it touches the all important question as to whether the revisional authority is invested with unfettered omnipotent powers or whether there is a definite limitation to the exercise of that power and if so what. While we have no hesitation in accepting the greater part of the submissions canvassed by the learned Government Advocate that the revisional authority does have wide powers exercisable in cases where the decision has been prejudicial to the interest of the revenue and in exercise of those powers modifications are permissible, and furthermore that if the authority is of the view that the assessment is required to be redone that such a direction can still be issued to the assessing officer, we need to at the same time uphold the argument canvassed by the appellant's learned counsel Sri S. Narayana that it is wholly impermissible for the revisional authority to step into the shoes of the assessing officer and to redo the assessment or pass a fresh assessment order. In the first instance, it is necessary to highlight the fact that the statutory powers are necessarily circumscribed by the wording of Section 22A and this section unequivocally indicates that if reassessment is necessary that the revisional

authority can only direct reassessment. We do not need to re-emphasize the fact that the Legislature obviously and in our opinion very correctly intended that everything short of a reassessment is permissible in the circumstances indicated by us but where a reassessment is necessary and the case will have to be remanded to the assessing authority. There is ample justification for upholding the submissions canvassed by Sri S. Narayana because it is quite elementary that when a fresh assessment is done there could always be grounds on which one of the parties is aggrieved and the law prescribes a corrective remedy by way of appeal, revision, etc. If the revisional authority which is a highly placed authority of the department, is to exercise the powers of doing a fresh assessment, then the right of appeal, revision, etc., is totally annihilated and this could never be the intention of the Legislature. It is therefore abundantly clear to us that the objection canvassed before us by the appellant's learned counsel is well-founded and that the same is liable to be upheld.

9. Having regard to the aforesaid position, since this is clearly a case in which the revisional authority exceeded its jurisdiction in virtually reassessing the cases, we have no option except to set aside the revisional order, remand the cases to the assessing authority with a direction that notice be issued to the assessee, they be heard and fresh assessment orders according to law be passed. We need to clarify here that this is a case in which we had occasion to hold that the show cause notice itself suffers from certain legal defects and that consequently, the show cause notice is also liable to be quashed. Normally, the court would have remanded the case to the revisional authority for issuance of a fresh show cause notice and a fresh decision. We have in the course of the hearing had occasion to satisfy ourselves of the fact that this is a case in which a reassessment is necessary and consequently, we set aside the earlier order and remand the cases to the initial assessing authority for passing fresh orders according to law.

10. In view of the aforesaid, the appeals succeed. In the circumstances of the case, there shall be no order as to costs.