

(1979) 06 MAD CK 0004

In the Madras High Court

Case No : Tax Case No. 12 of 1974 (Revision No. 12 of 1974)

The Deputy Commissioner (C.T.)

APPELLANT

Vs

Indian Refrigeration Industries Private Limited

RESPONDENT

Date of Decision : 13-06-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 98

Tamil Nadu General Sales Tax Act, 1959 — Section 12, 12A, 16, 21, 24

Citation : (1981) ILR (Mad) 1 : (1980) 46 STC 264

Hon'ble Judges : T. Ramaprasada Rao, C.J.;Sethuraman, J;Balasubrahmanyam, J

Bench : Full Bench

Advocate : The Additional Government Pleader, for the Appellant; V. Natarajan, for King and Partridge, for the Respondent

Final Decision : Dismissed

Judgement

Sethuraman, J.—I have perused the judgment prepared by Balasubrahmanyam, J., and I regret my inability to agree with it. The relevant

facts which have given rise to this tax revision case filed u/s 38 of the Tamil Nadu General Sales Tax Act, 1959, against the order of the Sales Tax

Appellate Tribunal (Additional Bench), Coimbatore, dated 15th November, 1971, are as follows:

2. The assessee is a dealer in electric motors and humidifiers. For the assessment year 1961-62, it reported a turnover of Rs. 2,06,934.83. There

were some sales returns, and after excluding them, the net taxable turnover came to Rs. 1,86,926.22. This sum was brought to tax by the order of

the Deputy Commercial Tax Officer, Coimbatore-7, dated 7th February, 1963. On 13th August, 1964, there was an inspection by the officers of

the department of the assessee's place of business and certain records were recovered which, when compared with the regular books, showed

that there was a suppression of a turnover of Rs. 22,602.87. The assessing authority took proceedings for bringing the amount of escaped turnover to tax by applying the provisions of Section 16 of the Act. Ultimately, on verification of the relevant records, it was found that the turnover, which could be taken as suppressed, came to only Rs. 1,930 and the assessment thereon u/s 16 was made on 3rd March, 1967. The total taxable turnover was taken as Rs. 1,88,856.22 comprising Rs. 1,86,926.22 originally assessed and Rs. 1,930 brought to tax under the reassessment proceedings. There was an appeal against this order before the Appellate Assistant Commissioner. In addition to disputing the taxation on Rs. 1,930, it was brought to his notice that the turnover assessed on 7th February, 1963, included sale of humidifiers of the value of Rs. 1,26,778.32 and that this sum was not properly brought to tax. The Appellate Assistant Commissioner observed that the assessment order taxing the said sum had been served on 15th February, 1968, and that if the assessee was aggrieved against that order of assessment, it ought to have preferred an appeal within the period allowed under the law, which it failed to do, and that it was not proper to contend that the sales of humidifiers were exempt from tax in the appeal against the reassessment before him. He therefore rejected the assessee's claim on this point.

3. The matter thereafter came before the Sales Tax Appellate Tribunal, and it was held that the claim for the exemption of the turnover relating to humidifiers had been raised even before the assessing officer before the assessment was finalised and that the claim could be urged in the appeal.

The Tribunal, therefore, deleted the sum of Rs. 1,19,035.52 from the taxable turnover. Though the claim of the assessee before the Appellate

Assistant Commissioner was for a larger amount of exemption, viz., Rs. 1,26,778.32, still the actual figure of exemption as granted by the Tribunal,

viz., Rs. 1,19,035.52, is not now in dispute. The assessee accepted the order of the Appellate Tribunal and it is the State, which has filed the present revision..

4. The learned Additional Government Pleader submitted that the sum now in dispute had actually been offered for assessment even at the original stage, and that the taxation of the said amount cannot be disputed in the appeal against the reassessment proceedings. For the assessee the

submission was that the original assessment order no longer existed after the reassessment order was passed, and that the assessee could, in the appeal against the reassessment, take up any objection to any part of the turnover so long as it was included in the reassessment. The point to be considered relates thus to the scope of an appeal against the reassessment proceedings.

5. Section 16 authorises assessment of escaped turnover. For the present purpose, it is enough to extract Section 16(1)(a), which runs as follows:

16. (1)(a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, 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, determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment.

6. Clause (b) of Section 16(1) provides for cases of reassessment where the rate of tax assessed at the original assessment was lower than that leviable under the provisions of the Act. Sub-section (2) of Section 16 authorises the levy of penalty in cases where the escape from assessment was due to wilful non-disclosure of assessable turnover by the dealer. Section 31 provides for an appeal to the Appellate Assistant Commissioner and it runs, to the extent material, as follows:

31. Any person objecting to an order passed by the appropriate authority under...Sub-sections (1) and (2) of Section 16...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 having jurisdiction.

7. The appeal to the Appellate Tribunal can be filed by any person objecting to the order passed by the Appellate Assistant Commissioner u/s 31.

It is in the context of these provisions that the question of the scope of the appeal to the Appellate Assistant Commissioner and to the Tribunal is to be examined.

8. As far as the Tribunal is concerned its powers are somewhat widely conferred so as to cover any order of the Appellate Assistant

Commissioner to which any person has an objection. When Section 31 is examined it will be found that an appeal is available to a person objecting

to an order passed by the assessing authority under Sub-sections (1) and (2) of Section 16, among other provisions set out therein. The objections

must be to the order passed by the appropriate authority under Sub-sections (1) and (2) of Section 16. Section 16, which has already been

extracted, confers a power to bring to tax the turnover which has escaped assessment. Strictly speaking, Section 16 would appear to contemplate

an order being passed dealing solely with the escaped turnover. Considered in the light of the language of this statutory provision, it is possible, or it

would be legal, for an assessing authority to determine only the turnover which has escaped assessment and bring that amount alone to tax, without

in any way incorporating any part of the original assessment order. Rule 18-A of the Tamil Nadu General Sales Tax Rules is the rule relevant to

Section 16 and it runs, so far as relevant, as follows :

18-A. After making assessment u/s 16...the assessing authority shall serve upon the dealer a notice in form B-8, if any amount is found to be due

from the dealer towards the assessment and the dealer shall pay the sum demanded at the time and in the manner specified in the notice.

9. Form B-8 reads, to the extent relevant, as follows :

Please take notice that you have been assessed/reassessed u/s 16(1)...of the Tamil Nadu General Sales Tax Act, 1959, to a tax of Rs. (Rupees)

(in words) only for the year ending 31st March and that this tax shall be paid within thirty days from the date of service of this notice by money

order to the undersigned...failing which the amount will be recovered as if it were an arrear of land revenue or fine imposed by a Magistrate and

you will also be liable to pay the penalty prescribed under Sub-section (3) of Section 24 of the Act.

(The other modes of payment specified in the form are omitted here).

10. The form is a common one both for turnover that had escaped assessment and for turnover which had originally been assessed at a lower rate;

With reference to both these aspects the form merely provides for the mention of the escaped turnover or the turnover assessed at a lower rate.

This part of the form itself reads as follows:

10. Thus, taking the statutory provision and the rule framed under the Act, it is

clear that the assessing authority would have only to give the amount of escaped turnover brought to tax under the reassessment proceedings. Though in the assessment order in practice the information regarding the turnover as originally assessed, if any, is also set out, the strict requirement of the law would be satisfied if the escaped turnover alone and the tax due thereon are mentioned in the order. Thus, without going into any authority, on the statutory provision, as it is, it is clear that the reassessment proceeding is confined to the escaped turnover and that the appeal against the reassessment proceeding can only be against the said turnover or any part thereof

11. This question as regards the scope of the appeal came up for consideration in *State of Madras v. Mettur Industries Limited* [1973] 32 S.T.C.

239. In the original assessments made u/s 12 of the Act, certain amounts relating to canteen sales for the years 1959-60, 1960-61 and 1961-62

were not brought to tax on the ground that they were not taxable. Similarly, certain other amounts were also exempted on the ground that they

represented inter-State purchases of cotton not taxable under the Act. Subsequently, the assessing authority invoked his power u/s 16 of the Act

and brought to tax only the canteen sales. Against this assessment of the canteen sales u/s 16, the assessee filed appeals before the Appellate

Assistant Commissioner, challenging only the taxation of the turnover relating to the canteen sales. The appeals having failed, the assessee took the

matter on appeal before the Sales Tax Appellate Tribunal. In those appeals also the assessee challenged only the addition to the taxable turnover

of canteen sales. The authorised representative of the department, at that stage, filed an application for enhancement of the original assessment, by

bringing to charge the purchase turnovers of cotton exempted by the assessing authority on the ground that they were inter-State purchases. His

point was that they were taxable. It may thus be seen that though the assessing authority had an opportunity to assess the turnover representing

inter-State purchases of cotton on the ground that the original exemption had wrongly been granted in the proceedings u/s 16, he did not do so nor

did the Appellate Assistant Commissioner exercise any powers of enhancement. It is only when the matter came before the Tribunal, for the first

time, the department sought to bring to tax the turnover, which had been

exempted by the assessing authority even in the original assessment. The Sales Tax Appellate Tribunal did not accept the enhancement application holding that the appeals filed by the assessee related to the turnover of canteen sales, which was the subject-matter of assessment u/s 16, and that the revenue could not seek to vacate the exemption granted by the assessing authority in its original orders of assessment, which were not challenged before the Tribunal. The State took the matter on revision to this Court, and it was held that only when the original order of assessment came before the Tribunal in some form or other, the revenue could seek to canvass the findings given by the assessing authority in that order, so far as they were against the revenue, but not in the appeals filed by the assessee against orders of reassessment, whose subject-matter would only be confined to the escaped turnovers. The State could not, it was held, seek to bring to tax the other items dealt with in the original assessment.

12. In *State of Tamil Nadu v. C. M. Tiles* [1976] 38 S.T.C. 440, a similar problem came up again for consideration. In the original assessment, the assessee was granted exemption on a turnover of Rs. 21,596.34 on the ground that it represented labour charges shown separately in the sale bills. The assessment was made on a turnover of Rs. 17,096.24. Subsequently, reassessment proceedings u/s 16 were initiated and the sum of Rs. 21,596.34 was brought in for assessment. That order was confirmed on appeal. When the matter came before the Tribunal at the instance of the assessee, it was held that both the turnover of Rs. 21,596.34, which was brought to tax in the reassessment, and Rs. 17,096.24, which was brought to tax in the original assessment, were not liable to be taxed. The legality of this order was attacked in this Court, and it was held that in the reassessment proceedings u/s 16 the subject-matter was only the escaped turnover and that no part of the turnover which was assessed in the original assessment formed part of the proceedings under that section and that, therefore, the appeal to the Appellate Assistant Commissioner and the further appeal before the Tribunal could only relate to the escaped turnover and not to the original turnover which was assessed. As the assessee had not disputed the determination of the taxable turnover as originally made, he could not, it was held, dispute the same in reassessment proceedings. The sum of Rs. 21,596.34 was deleted from the assessment, as it

was found that there was no justification for taxation and the other amount was retained.

13. Thus, these two decisions of this Court completely cover the point in issue in this case in favour of the revenue. However, the learned counsel

for the assessee relied on some decisions of the Supreme Court as suggesting that the view taken by this Court would no longer be good law. Two

decisions were primarily relied upon in support of the assessee's contention. The first of them is Commissioner of Sales Tax, Madhya Pradesh v.

H.M. Esufali H.M. Abdulali [1973] 32 S.T.C. 77. The assessee in that case was a dealer in iron and steel. He was assessed to tax primarily on the

basis of the returns filed by him. Subsequently, a flying squad of the department found a bill book showing certain sales, which had not been

entered in the assessee's regular account book, which had formed the basis of the assessment. Therefore, the assessing authority initiated

reassessment proceedings u/s 19(1) of the Madhya Pradesh General Sales Tax Act, 1958. In that reassessment, the assessing authority estimated

the escaped turnover at certain figures on the basis of ""best judgment"". One of the questions raised by the assessee before the High Court was

whether a ""best judgment assessment"" could at all be made u/s 19(1) of the Madhya Pradesh Act. It is this question which came to be considered

by the Supreme Court. At page 85, the Supreme Court referred to. the contention that in a reassessment u/s 19(1) of the Madhya Pradesh Act,

the Sales Tax Officer was not competent to make ""best judgment assessment"", as no such power was conferred on him under that section. It was

pointed out that even though Section 19 did not in specific terms confer on the assessing authority power to make ""best judgment assessment"", that

section contemplated Section 18 being invoked or applied and Section 18 authorised the ""best judgment assessment"" in certain circumstances. In

explaining that what could be done under the original assessment could also be done in the reassessment, the Supreme Court, at page 85, held as

follows :

What is true of the assessment must also be true of reassessment because reassessment is nothing but a fresh assessment. When reassessment is

made u/s 19, the former assessment is completely reopened and in its place fresh assessment is made. While reassessing a dealer, the assessing

authority does not merely assess him on the escaped turnover but it assesses him on his total estimated turnover. While making reassessment u/s

19, if the assessing authority has no power to make best judgment assessment, all that the assessee need do to escape reassessment is to refuse to

file a return or refuse to produce his account books. If the contention taken on behalf of the assessee is correct, the assessee can escape his liability

to be reassessed by adopting an obstructive attitude. It is difficult to conceive that such could be the position in law.

14. The observation that when reassessment is made u/s 19, the former assessment is completely reopened and in its place fresh assessment is

made cannot be divorced out of its context. Considered in the context in which the observation occurs, it would be clear that the only proposition

laid down there was that even in a reassessment under the Madhya Pradesh Act the assessing authority could exercise the powers of making an

assessment to the best of his judgment in the same manner as in the original assessment. The broad proposition that the reopening of the

assessment would result in the original assessment going overboard for all purposes cannot be spelt out from it.

15. The second decision of the Supreme Court on which the contention of the assessee was sought to be rested is reported in Deputy

Commissioner of Commercial Taxes v. H.R. Sri Ramulu [1977] 39 S.T.C. 177. The assessee was an excise contractor. He was assessed for the

assessment years 1959-60 and 1960-61 on 21st March, 1963. Under those orders the taxable turnover was determined after deducting what was

shown as ""shop rent"" and ""tree tax"". The Commercial Tax Officer initiated proceedings for reassessment, because he was of the view that some

items of turnover had escaped assessment. Even in the reassessment, the deduction for ""shop rent"" and ""tree tax"" was not disturbed. The

reassessment order came to be passed on 8th June, 1966. On 28th June, 1967, the Deputy Commissioner of Commercial Taxes sought to revise

the assessment by disallowing the deduction of ""shop rent"". The result was an enhancement of the assessment. It is this enhancement, which was

contested in the appeal before the Tribunal. The assessee failed before the Tribunal. The matter came before the High Court of Mysore. It was

held by the High Court that the order passed on 28th June, 1967, by the Deputy Commissioner was without jurisdiction, since it had been made

beyond the period of four years from the date of the assessment order dated 21st March, 1963. It may be seen that if the date of the reassessment order was alone relevant, then the revision would be within time. The matter was taken on appeal to the Supreme Court by the State and the point in issue was the starting point for computing the period of four years for the exercise of the powers of revision u/s 21(2) of the Act. It was held that the order made u/s 12A of the Act, and not the initial assessment order, that would be the starting point for computing the period of limitation. The reason explained appears to be that once an assessment was reopened, the initial order for assessment ceased to be operative and that the effect of reopening the assessment was to vacate or set aside the initial order of assessment and to substitute in its place the order made on reassessment. The initial order for assessment could not be said to survive, even partially, although the justification for reassessment arose because of turnover escaping assessment in relation to a part of the turnover, which was originally assessed. It was held that the result of reopening the assessment was a fresh order of assessment would have to be made including those matters in respect of which there was no allegation of the turnover escaping assessment. The order of the Deputy Commissioner was held to be legal.

16. The provisions of the Mysore Act have been extracted at page 179 of the Reports (39 S.T.C.) and they appear to be differently worded as compared to Section 16 of the Tamil Nadu Act. It is not possible, therefore, to apply the said decision to the facts herein and to hold that the earlier decisions of this Court no longer stated the law correctly.

17. If the contentions of the learned counsel for the assessee were to be accepted, then curious results would follow. Supposing the original assessment itself was pending at some stage either in appeal or in revision or in an appeal to the Supreme Court, and supposing with reference to a wholly different item of turnover the assessing authority was satisfied that the amount was liable to be brought to tax and, therefore, took proceedings for reassessment, then the logical effect of acceptance of the assessee's contention would be to set at naught the appeal or other proceedings that may be pending against the original assessment, as after all those appeals or other proceedings could survive only if the assessment itself survived, and if the assessment had gone, the appeals or other

proceedings would also stand effaced. The consequence would be that even a minor alteration in the assessment u/s 16 would destroy all the appellate proceedings or the proceedings in courts and the assessee would in that case have to start utilising the appellate or other machinery over again. This would involve waste of time and energy of not only the assessee but also of the hierarchy of authorities. This would hardly have been contemplated by the legislature in enacting Section 16. As I have already pointed out, the statutory provisions relating to this case do not support such a construction.

18. The Andhra Pradesh High Court in *Shaw Wallace & Co. Ltd. v. State of Andhra Pradesh* [1976] 37 S.T.C. 448 has taken the same view. In

that case, in the original assessment freight charges and value of unserviceable gunnies had been included. Deduction of these items was claimed in

the course of the reassessment. It was held that, as the assessee had not disputed these items by filing an appeal against the original assessment, the

dispute could not be raised in the reassessment.

19. That the proceedings taken against the original assessment do not abate on reassessment has been decided in *Madura Mills Company Ltd. v.*

State of Madras [1964] 15 S.T.C. 90. The assessee who was assessed on the canteen sales appealed against the assessment. This appeal was

kept pending to await a decision of the Supreme Court. When the appeal was so pending, the Commercial Tax Officer in exercise of his powers of

revision brought to tax certain other items. There was an appeal against this order of revision which was not successful. The further proceeding in

this Court against the order of the Appellate Tribunal also failed. When the appeal against the original assessment was taken up, after the decision

of the Supreme Court, the appellate authority took the view that he had no jurisdiction to interfere with the original order of assessment, as it no

longer existed after its revision by the Commercial Tax Officer. The appeal to the Tribunal also failed. This Court held, on revision proceedings

against the order of the Tribunal, that the appeal survived for consideration. As the turnover in dispute was not taxable under a decision of the

Supreme Court, it was deleted from the assessment by this Court. This case clearly shows that the original assessment still held the field and could

be corrected in appeal or revision.

20. In fact, the decision of the Supreme Court in *State of Uttar Pradesh v. Manohar and Company* [1971] 28 S.T.C. 606 emphasises the

distinctive character or separate existence of the original assessment and the reassessment. In that case, the assessee was assessed originally u/s 18

of the U. P. Act. There was a reassessment in which some turnover which had escaped assessment was brought to tax. In the appeal against the

reassessment, the assessee disputed the application of Section 18. The High Court of Allahabad (per majority) accepted the assessee's

contention. The Supreme Court upheld the majority view regarding the application of Section 18 and observed at page 609 :

Now coming to the second question (which related to the validity of the application of Section 18), the fact that the assessee was illegally assessed

originally without challenge does not confer power on the department to continue that illegality in the reassessment proceedings. Section 18(4)

applies to assessments u/s 21 as well.... Further there can be no estoppel against statute. While dealing with question No. 2, it is not necessary for

us to decide as to the validity of the original assessment. In this appeal we are only concerned with the reassessment proceedings.

21. If the correct legal position was that the original assessment was no longer in existence, then their Lordships would have held that the entire

assessment, including what was originally assessed, was bad in law, as Section 18 was applied in both the proceedings, and the relief would not

have been restricted to the reassessment.

22. In my opinion, the contention of the assessee regarding the taxability of the sum in dispute, which was taxed in the original assessment (which

has become final), in the proceedings against the reassessment, cannot be accepted either in the light of the provisions of the Act under

consideration or in the light of the consistent view taken by this Court in several decisions. The law laid down by the Supreme Court in the

decisions rendered under statutes of other States noticed above does not warrant the acceptance of this contention. The only direct decision on the

point rendered in *State of Uttar Pradesh v. Manohar and Co.* [1971] 28 S.T.C. 606 is against it.

23. The result is that the revision has to succeed. There would be no order as to costs.

Balasubrahmanyam, J.-

24. This tax revision case arises under the Tamil Nadu General Sales Tax Act, 1959. The question, broadly stated, is: whether it is open to an

assessee, in an appeal against an order of reassessment, to take up matters which are already concluded against him in his original assessment.

25. The assessee who figure in this tax revision case are M/s. Indian Refrigeration Industries Private Limited, Coimbatore. They carry on business

in the supply and installation of humidifiers. They also deal in electric fans. Their assessments to sales tax were with the Joint Commercial Tax

Officer, Coimbatore VIII. The assessment for 1961-62 was made by him, in the ordinary course, by order dated 7th February, 1963. In that

assessment, the assessee's taxable turnover for the year was determined as under :

25. While determining the taxable turnover at Rs. 1,86,926.22, the assessing authority had included therein a sum of Rs. 1,26,778.32, which

represented the assessee's trading receipts in humidifiers.

26. The assessee did not appeal against this assessment. Nor did they otherwise object to any part of the turnover determined therein. They paid

the tax demand without question.

27. Subsequently, the Joint Commercial Tax Officer reopened the same assessment to bring to charge what he considered to be suppressed

turnover. And, overruling the assessee's objections, he passed an order of reassessment dated 3rd March, 1967, redetermining the taxable

turnover for 1961-62 as under:

28. The assessee appealed to the Appellate Assistant Commissioner against this order of reassessment. In the appeal, their objection related to

the inclusion of two amounts in the taxable turnover. They were : (i) Rs. 1,930, which was brought to charge, for the first time in the reassessment,

as suppressed turnover; and (ii) Rs. 1,26,778.32 representing the turnover in humidifiers, which figured both in the original assessment and in the

reassessment. As to the latter, the assessee's contention was that the amount represented receipts from indivisible works contracts for supply and

installation of humidifiers, and these fell outside the scope of the charge to sales tax altogether.

29. The Appellate Assistant Commissioner, however, dismissed the appeal on

both the points. While rejecting the assessee's claim for exemption of Rs. 1,26,778.32, on merits, the Assistant Commissioner further expressed the view that the proper course which the assessee should have pursued for getting relief was to have appealed against the original assessment in which the amount had been brought to tax, in the first instance.

30. On further appeal to the Sales Tax Appellate Tribunal, the assessee did not press their plea for deleting the addition of Rs. 1,930, but

reiterated their claim for exclusion of Rs. 1,26,778.32 from the taxable turnover. At the hearing, the State Representative raised a preliminary

objection to the Tribunal's entertaining this ground. He urged that it was outside the scope and subject-matter of the appeal. The Tribunal,

however, overruled this objection. And, on a consideration of the relevant contracts and invoices and of the case-law bearing on the subject, the

Tribunal held that the amount of Rs. 1,26,778.32 represented receipts from the assessee's works contracts of supply and installation of

humidifiers. They accordingly ordered the exclusion of the amount from the assessee's taxable turnover for 1961-62.

31. In this tax revision case filed by the Deputy Commissioner of Commercial Taxes u/s 38 of the Tamil Nadu General Sales Tax Act, 1959, the

order of the Tribunal is challenged as erroneous in point of law. The objection, however, is not directed against the finding on merits. The

contention, rather, is that in the events that happened, the Tribunal should have properly refused to entertain the assessee's ground of appeal

relating to the turnover of Rs. 1,26,778.32.

32. The learned Additional Government Pleader took the following line in argument. He said that under the scheme of the Act an assessment and a

reassessment are independent proceedings concluded by separate orders of the assessing authority. According to him, even the subject-matters of

the two proceedings are quite different. He said that whatever is brought to charge in the first instance is alone the subject-matter of the original

assessment, and whatever is assessed as turnover escaping assessment is alone the subject-matter of the reassessment. It followed, he said, from

this dichotomy that an appeal from an order of reassessment cannot properly comprise, within its scope, turnover which had already been brought

to charge under the original assessment.

33. In support of his contentions, the learned Additional Government Pleader cited two Bench decisions of this Court, *State of Madras v. Mettur*

Industries Ltd. [1973] 32 S.T.C. 239 and *State of Tamil Nadu v. C. M. Tiles* [1976] 38 S.T.C. 440. The Division Bench, which decided the later

case, of which one of us was a member, first referred to the earlier Bench decision and then proceeded to lay down what in their view was the

legal position of reassessments to sales tax and what was the scope of appeals filed by the assessee against such reassessments. They observed :

This Court has held in that decision that in the reassessment proceedings u/s 16 the subject-matter is only the escaped turnover and no part of the

turnover which was assessed in the original assessment forms part of the proceedings u/s 16 and that, therefore, the appeal and a further appeal

before the Tribunal could only relate to the escaped turnover and not to the original turnover which was assessed. If the assessee had not disputed

the original taxable turnover determined, he could not dispute the same in the reassessment proceedings.

34. The views expressed by this Court in the two cases, aforesaid, do not seem to reflect the latest learning on the subject. In two recent decisions

of the Supreme Court, it has been held that a reassessment once made no longer leaves the original assessment at large, but altogether supplants it.

In *Deputy Commissioner of Commercial Taxes v. H.R. Sri Ramulu* [1977] 39 S.T.C. 177, the Supreme Court stated the position thus :

The reason for that is that once an assessment is reopened, the initial order for assessment ceases to be operative. The effect of reopening the

assessment is to vacate or set aside the initial order for assessment and to substitute in its place the order made on reassessment. The initial order

for reassessment cannot be said to survive, even partially, although the justification for reassessment arises because of turnover escaping

assessment in a limited field or only with respect to a part of the matter covered by the initial assessment order. The result of reopening the

assessment is that a fresh order for reassessment would have to be made including for those matters in respect of which there is no allegation of the

turnover escaping assessment.

35. In another decision of the Supreme Court, *Commissioner of Sales Tax, Madhya Pradesh v. H.M. Esufali H.M. Abdulali* [1973] 32 S.T.C. 77,

the same idea was expressed in the following passage:

What is true of the assessment must also be true of reassessment, because reassessment is nothing but a fresh assessment. When reassessment is

made u/s 19, the former assessment is completely reopened and in its place fresh assessment is made. While reassessing a dealer, the assessing

authority does not merely assess him on the escaped turnover but it assesses him on his total estimated turnover.

36. It seems to me that in the face of these clear enunciations by the Supreme Court of the legal position as to the precise scope and effect of

reassessments the view expressed by this Court in *State of Tamil Nadu v. C. M. Tiles* [1976] 38 S.T.C. 440 and *State of Madras v. Mettur*

Industries Ltd. [1973] 32 S.T.C. 239, can no longer be regarded as authoritative. The Bench decisions of this Court were apparently not cited

before the Supreme Court. But it is clear, all the same, that the Supreme Court has rejected outright the argument, which had found favour with this

Court, that a reassessment is a distinct and separate order, that it only covers the amount escaping assessment and that even after a reassessment is

made the original assessment would still retain its distinctive character, identity and operative force. I think that the two Bench decisions of this

Court must be held to have been impliedly overruled by *Deputy Commissioner of Commercial Taxes v. H.R. Sri Ramulu* [1977] 39 S.T.C. 177

and *Commissioner of Sales Tax, Madhya Pradesh v. H.M. Esufali H.M. Abdulali* [1973] 32 S.T.C. 77.

37. The learned Additional Government Pleader sought to steer clear of the Supreme Court decisions by the gentle art of distinguishing cases. He

said that in the two decisions rendered by the Supreme Court, the taxing Acts under consideration were different, the sections were different and

the tax situations were also different. In neither case, he said, was there any occasion for the Supreme Court to go into Section 16 of the Tamil

Nadu General Sales Tax Act or the nature of the reassessments made thereunder. He accordingly urged that we should follow the authority of the

previous rulings of this Court on the subject.

38. It may be conceded that ordinarily a decision on the construction of a given statutory provision will be binding precedent only in cases where

the same point of construction is thereafter raised in the same statute. This

means that a decision under one piece of legislation may not be readily applied or adopted by the courts as authority for deciding a case arising under a different piece of legislation. It is accordingly a familiar argument heard in courts that the particular statute which calls for construction is not in pari materia with the provision which provoked the decision in the earlier case. But cases are not distinguished merely because the comparison discloses differences in the words employed, any more than they can be regarded as binding precedents merely because the legislature is seen to have used the same set of words. For a good deal would depend on the context of the words and on the general scheme and structure of the enactments in question. In most modern legislation there are quite a few provisions in which one may discern not only a common vocabulary, but also a certain basic framework and even certain identity of outlook. This is a common enough tendency to be found in taxing statutes. Courts have often found a comparative study of different tax laws a fruitful discipline, even if it were not, strictly speaking, a direct aid to statutory construction. This kind of task is now easily undertaken because of the large number of tax cases which go before our courts and the good number which get reported in the specialised law journals. Learned Judges who sit and dispose of tax revisions and tax references thus find themselves in a position to perceive broad trends which run right through case-law, albeit under different fiscal enactments. They are able to deduce general principles even from the ""bare bones"" of the statutes. And when tax principles thus get established, slowly but surely, by this kind of judicial process, they become authoritative expositions in themselves of the way in which the relevant taxing provisions have perforce to be construed. If the position were otherwise, courts would merely be adding their own contribution to the growing complexity of tax laws, instead of discovering unity in complexity.

39. It is in this sense that the two Supreme Court decisions, Deputy Commissioner of Commercial Taxes v. H.R. Sri Ramulu [1977] 39 S.T.C.

177 and Commissioner of Sales Tax v. H.M. Abdulali [1973] 32 S.T.C. 77, seem to me to be not only relevant but directly in point in the present

discussion. Quite apart from the position that we are all bound, under a constitutional imperative, to abide by and apply the law laid down by the

Supreme Court, howsoever it might have been laid down, it is quite clear from

these two judgments that a panoramic view of the nature and effect of the reassessment process provides the only proper perspective from which to consider the appropriate machinery provision in any given taxing Act.

40. Under every scheme of taxation, assessments represent the first stage in the machinery of enforcement. The legislature can only lay down, in general terms, the tax base and the tax rates. The process of assessment which comes afterwards is that which truly fixes the quantum of each taxpayer's liability. It is essential that such assessment should determine each citizen's contribution to the State to the very pie, if it is to be in accordance with the terms of the charging section. But even under the most efficient system of management of taxes, escapement of liability in individual cases, either in whole or in part, may not be ruled out. Where evasion, avoidance or suppression is subsequently discovered, there must be enabling provisions to bring the erring taxpayers to book and adjust or readjust their liability in line with the legislative charge. This explains the presence of back duty provisions in taxing statutes. Back duty or reassessment also serves another fiscal objective, namely, setting right inequality in burdens as between assessees belonging to the same tax brackets.

41. There is yet another general consideration that applies to taxes generally. Most modern taxes are recurring annual levies. The taxable subject or event may be income, it may be wealth, it may be gifts, it may be sales. But all these taxes are not only annual taxes; they also possess another characteristic in common. They adhere to the principle of aggregation. In the case of the tax on income, for instance, the tax is levied on the total income of the year. In the case of the tax on sales, it is levied on the total turnover for the year. Whatever be the object of charge, the assessment is always on a sum-total. It is often said that Income Tax is a single tax and not a collection of as many taxes as there are sources or heads of income. Likewise, it may well be said that sales tax, as levied in this country, is not a collection of as many taxes as there are sales. It is, on the contrary, a single tax on annual turnover. Even the exemption limit of tax is with reference to annual total turnover, up to a point. Again, even where the tax structure is based on differential rates, the rate schedules are applied not to individual items of sales, but only to the slices of total turnover

distinguished on the basis of description and classification of the goods dealt in. These, perhaps, are the reasons why some theoretical writers refer to sales tax, quite accurately, as turnover tax.

42. This basic characteristic of the tax being a recurring annual tax on aggregate turnover cannot, in our opinion, be lost sight of in any discussion about the nature and purpose of the process of assessment and reassessment. When the assessing authority computes the aggregate amounts for which a dealer sells goods during a year, he does so for making an assessment of the taxable turnover. If, in the process, he subsequently discovers that some items of sales had escaped his notice he is enabled by the statute to reopen the assessment if it has already been made. And, when he thereafter proceeds to make a reassessment, he does so for the purpose of redetermining the annual taxable turnover as a whole. To say in such cases that the assessing authority merely brings to charge certain stray or individual items of sales that had previously escaped charge would be to mistake the trees for the wood, and to get the reassessment process completely out of focus.

43. While discussing a subject of this kind, tax practitioners, revenue authorities and even learned Judges are used to bandy such expressions as "original" assessment or "initial" assessment, on the one hand, and "reassessment" or "supplementary" assessment, on the other. As part of the colloquy of tax practice, these descriptive epithets are handy and useful. But they are useful only to identify the particular proceedings or stage of the proceedings in the course of assessment. They cannot seriously affect or be allowed to obscure the legal position that for a given assessment year there can only be one single assessment of a dealer's taxable turnover.

44. Over the years, sales tax authorities have, perhaps unconsciously, subserved this principle of "one year, one assessment". This is reflected in the order of reassessment passed in this very case. The operative portion of the Joint Commercial Tax Officer's order, which I have extracted earlier in this judgment, does not depict the escaped turnover alone. On the contrary, it meticulously sets down the turnover which originally figured in the initial assessment. To this amount is added the amount of escaped turnover, in order to arrive at the grand total. The final figure of the aggregate taxable turnover thus arrived at is not merely an end-product of an

arithmetical addition ; it is the very basis on which the tax, as a whole, proceeds to be redetermined. It may be taken that this pattern of drawing up orders of reassessment is being followed invariably by the assessing officers in the State for a long time. This departmental practice, as I said, is quite in accordance with the real function of reassessment under the statute. It would indeed be a distortion of the statutory provision if the assessing authorities were to pass orders of reassessment displaying only the amounts comprising the escaped turnover, as if they alone occupied the field of reassessments.

45. These considerations, I believe, provide the rationale behind the principles laid down by the Supreme Court in Deputy Commissioner of

Commercial Taxes v. H.R. Sri Ramulu [1977] 39 S.T.C. 177 and Commissioner of Sales Tax, Madhya Pradesh v. H.M. Esufali H.M. Abdulali

[1973] 32 S.T.C. 77. In the former case, what was directly in point was whether an order of enhancement made by a Deputy Commissioner

sitting in revision was barred by limitation. The question arose under the Mysore Sales Tax Act, 1957. The Act fixed a time-limit for the exercise of

revisional power by the Deputy Commissioner. In that case, there were actually two orders of assessment passed by the assessing authority: one

was an original assessment; the other was a reassessment. The Deputy Commissioner's order of enhancement in revision related to certain items

which had already figured in the original assessment, and not added for the first time in the reassessment. If the date of the original assessment were

to enter into the reckoning, the Deputy Commissioner's order would be time-barred. It would, however, be within time if the computation were

made, with the date of the reassessment order as providing the starting point. Section 21 of the Mysore Sales Tax Act, 1957, laid down that ""in

relation to an order of assessment passed under this Act"", the revisional power of the Deputy Commissioner ""shall be exercisable only within a

period of four years from the date on which the order was passed"". It was contended before the Supreme Court that the subject-matter of the

enhancement by the Deputy Commissioner had already figured in the original assessment, and it was not the subject of the reassessment, and

hence the period of limitation under this section must be computed only from the date of the initial order of assessment. It was while considering

this argument that the Supreme Court set out to discover the real nature, purpose and scope of reassessments. They, no doubt, paid regard to the particular provisions of the Mysore Sales Tax Act, 1957, under which the appeal before them arose, but they founded their conclusion by reference to decisions bearing on similar provisions in other taxing enactments, from all of which they extracted something like a principle bearing on reassessments generally.

46. The earlier decision in *Commissioner of Sales Tax, Madhya Pradesh v. H.M. Esufali H.M. Abdulali* [1973] 32 S.T.C. 77 was under a

different sales tax enactment, the Madhya Pradesh General Sales Tax Act, 1958. The question for actual decision in that case was different. An

assessment under that Act was made on a dealer for a particular year. Later, on a surprise inspection of the dealer's account books, it was

discovered that certain items of sales had escaped assessment. The assessing authority thereupon reopened the assessment, but while making the

reassessment he did not confine his attention to the addition of just those suppressed items of sales which were actually brought to light during the

subsequent inspection. What he did was to invoke his powers of assessing turnover to the best of his judgment and proceed to estimate what he

considered to be suppressed turnover. The estimated figure was larger than the aggregate of the amounts noted down in the surprise inspection

report. The argument of the assessee was that the assessing authority, while reopening the assessment for bringing to charge escaped turnover, had

no power to make a "best judgment" reassessment based on his own estimate. In dealing with this contention, the Supreme Court went into the real

nature and object of reassessments and held that when once the initial assessment was reopened by the assessing authority, the reassessment that

followed was meant to take the place of the initial assessment.

47. In both the decisions of the Supreme Court aforesaid, copious citation was made to earlier cases bearing on corresponding reassessment

provisions under different sales tax enactments. There was a reference even to similar provisions in the Income Tax Act and decisions arising

thereunder. No question was raised or considered in either of these cases as to whether the reassessment provisions in the other statutes were in

pan materia. The court discussed the position rather as one of general principle,

and laid down the law on these terms.

48. In an early decision of the Supreme Court, I find a similar procedure having been adopted : Ghanshyamdas v. Regional Assistant

Commissioner of Sales Tax, Nagpur [1963] 14 S.T.C. 976. The Act under consideration in that case was the Central Provinces and Berar Sales

Tax Act, 1947. The question arose from a reassessment u/s 11-A of that Act. In the course of their judgment, the Supreme Court considered it

relevant to refer to the case-law bearing on Section 34 of the Indian Income Tax Act, 1922, and Section 14 of the Business Profits Tax Act,

1947. They observed :

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.

49. I accordingly feel bound by the two decisions of the Supreme Court in Deputy Commissioner of Commercial Taxes v. H.R. Sri Ramulu [1977]

39 S.T.C. 177 and Commissioner of Sales Tax, Madhya Pradesh v. H.M. Esufali H.M. Abdulali [1973] 32 S.T.C. 77. The sections which figured

in those cases are not in any material sense different from Section 16 of the Tamil Nadu General Sales Tax Act, 1959, under which the present

case has arisen. Section 12-A of the Mysore Sales Tax Act, 1957, for instance, which figured in Deputy Commissioner of Commercial Taxes v.

H.R. Sri Ramulu [1977] 39 S.T.C. 177 is in the following terms :

12-A. (1) Where for any reason the whole or any part of the turnover of a dealer has escaped assessment to tax or licence fee or has been

assessed at a lower rate 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 or licence fee relates, assess to the best of its judgment, the tax or licence

fee payable on the turnover referred to after issuing a notice to the dealer and

after making such enquiry as it considers necessary.

50. It might have been noticed that the enabling power conferred on the assessing authority under this section to reopen an assessment would

seem, on the surface, to be confined to "the turnover referred to", being a reference to the turnover which "has escaped assessment". The argument

which was addressed before the Supreme Court in *Deputy Commissioner of Commercial Taxes v. H.R. Sri Ramulu* [1977] 39 S.T.C. 177 and

which sought to place a restricted view of the reassessment was literally based on these words in the section. But that argument, as I have shown,

did not weigh with the court. Section 16 of the Madras General Sales Tax Act, 1959, is also similarly worded, for it speaks of turnover which has

escaped assessment" and empowers the assessing authority to determine "the turnover which escaped assessment". But these words, in isolation,

cannot control the scope of reassessment, in the context of the entire gamut of the provisions relating to the machinery of assessment, and in the

context of the general scheme of the Act. Having regard to the way the Supreme Court dealt with a similar position in *Deputy Commissioner of*

Commercial Taxes v. H.R. Sri Ramulu [1977] 39 S.T.C. 177, I think I would be justified in refusing to place a much too literal construction on the

words of the section and circumscribe the area of reassessment made by the assessing authority within the narrow confines of turnover escaping

assessment.

51. The learned Additional Government Pleader referred us to an earlier decision of the Supreme Court reported in *State of Madras v. Madurai*

Mills Co. Ltd. [1967] 19 S.T.C. 144 In that case, the Board of Revenue of this State sought to exercise its powers of revision u/s 12(3) of the

Tamil Nadu General Sales Tax Act, 1939, for the purpose of adding back in the taxable turnover a certain amount representing the value of cotton

purchased from outside the State by a textile mill engaged in the manufacture and sale of cotton yarn. These transactions had been the subject of

consideration even in the original assessment proceedings of the assessee-mill, but the assessing authority did not include them in the taxable

turnover. This assessment was subsequently revised by the Deputy Commissioner of Commercial Taxes u/s 12(2) of that Act, but that revision was

not in respect of the purchase, turnover in cotton, but in respect of some other

transactions of sales of empty drums. The date of the original assessment by the assessing authority was 28th November, 1952. The order in revision passed by the Deputy Commissioner was on 21st August, 1954. Subsequently, the Board of Revenue took proceedings to revise the assessment for the year bringing to charge the purchase turnover in cotton which the assessing authority had excluded from the assessment and which the Deputy Commissioner's order did not touch in his revision. The Board passed their order on 25th August, 1958. u/s 12(4) the Board can pass an order in revision from any order within a period of four years from the date on which the order was communicated to the assessee. In this case, the Board's order was clearly beyond four years from the service of the assessment order dated 28th November, 1952. It was, however, contended for the State that when once the assessment order was made the subject of a revision by the Deputy Commissioner, the order of assessment must be deemed to have merged in the Deputy Commissioner's order. On this theory of merger, it was contended that the period of limitation u/s 12(4) for a revision by the Board has got to be calculated from the date of the Deputy Commissioner's order in revision and not from the date of the assessment order. This contention, however, was rejected by this Court. The decision was affirmed by the Supreme Court in appeal. After addressing themselves to the assessment order in the case and the order passed in revision by the Deputy Commissioner, the court said that "in the circumstances of the present case, it cannot be said that there was a merger of the one in the other, because the question of exemption of the value of yarn purchased from outside the State of Madras was not the subject-matter of revision by the Deputy Commissioner". They observed that the doctrine of merger is not one of rigid and universal application. They rejected the theory that there is fusion or merger whenever there are two orders, one by an inferior tribunal followed in appeal or revision by another order of a superior tribunal. They said that it would all depend on the nature and subject-matter of the appellate or revisional order, and the scope of the statutory provision conferring the appellate or revisional jurisdiction.

52. The learned Additional Government Pleader urged that this decision must properly govern the present case. I must, however, reject this

contention as untenable. The decision in *State of Madras v. Madurai Mills Co. Ltd.* [1967] 19 S.T.C. 144 is clearly distinguishable from the kind

of case which is before us and which the Supreme Court dealt with in *Commissioner of Sales Tax, Madhya Pradesh v. H.M. Esufali H.M.*

Abdulali [1973] 32 S.T.C. 77 and *Deputy Commissioner of Commercial Taxes v. H.R. Sri Ramulu* [1977] 39 S.T.C. 177. The difference

between the two lines of cases lies in this : in the one case, an assessment is reopened by the assessing authority itself; in the other case, it is

reopened by a superior tribunal in exercise of its powers of revision. In the event, it is not surprising that the consequences also should be different.

In the former case, the original assessment is set aside and supplanted as a whole by the subsequent order of reassessment passed by the assessing

authority. In the latter case, it would depend on the nature of revisional power and the extent of the revision in any given case to find out whether or

not the original assessment loses its identity. In this sense, there is no point of contact, much less conflict, between *State of Madras v. Madurai*

Mills Co. Ltd. [1967] 19 S.T.C. 144 on the one hand and *Deputy Commissioner of Commercial Taxes v. H.R. Sri Ramulu* [1977] 39 S.T.C. 177

and *Commissioner of Sales Tax, Madhya Pradesh v. H.M. Esufali H.M. Abdulali* [1973] 32 S.T.C. 77 on the other. Each lays down a different

principle, dealing with a different fiscal or statutory situation.

53. The further question for consideration is, whether an appellate authority sitting in appeal from an order of reassessment can interfere with the

determination of the turnover, in the first instance, in the original assessment. The argument of the learned Additional Government Pleader on this

aspect of the scope of the appellate power was also based on *State of Tamil Nadu v. C.M. Tiles* [1976] 38 S.T.C. 440. The view expressed by

this Court in that case can be restated in terms of a simple syllogism : A reassessment only adds the escaped turnover, and it does not reassess

what is already assessed in the original assessment. The appeal is against the reassessment. Therefore, the appeal cannot deal with the turnover

assessed in the original assessment.

54. Whatever validity this syllogistic reasoning might have had at the time this Court adopted it, the moment the Supreme Court laid down their

principle in *Deputy Commissioner of Commercial Taxes v. H.R. Sri Ramulu* [1977]

39 S.T.C. 177, the whole major premise in this argument falls

to the ground. With it, naturally, the conclusion also must go by the board. For, on the principle that a reassessment truly sets aside the entirety of

the original assessment and brings about an overall fresh assessment of the taxable turnover and not merely of the amount brought to charge as

escaped turnover, it stands to reason that the appeal must also comprehend the entirety of the turnover.

55. But there is really something more to this view of the scope of the appellate jurisdiction than the dialectic of pitting one syllogism against

another. As a matter of general principle, an appeal, as it has often been described, is a retrial or a rehearing. This is particularly true in tax cases. I

have earlier shown how tax laws are devised to the end that no one who is subject to the charge is allowed to go scot-free or even get away with

an under-assessment. I have shown how this position is sought to be ensured by back duty and other machinery provisions. This is one side of the

picture in fiscal legislation. Equally manifest from the other side of the picture is the anxiety of modern legislatures to protect the subject against

overassessment and excessive taxation. This explains why an assessment is laid open to an appeal, or rather, to a succession of appeals, by

aggrieved assessees. The avowed object of tax appeals is also to bring about a precise adjustment of the individual's tax liability in accordance

with the terms of the charge. In this sense, therefore, there can be no question of debarring any assessee from questioning, in his appeal, any part of

the reassessment, which, on the authority of the Supreme Court, is the only assessment which would be in force against him for the year, the

original assessment being no longer extant.

56. This view of the scope of an appeal against a reassessment also fits in with the language of the relevant provisions of the Tamil Nadu General

Sales Tax Act, 1959. An assessment, in the regular course, has to be made under the Act in accordance with Section 12. Section 16 is the

provision which enables escaped turnover to be brought to charge. Section 31 provides for appeals to an appellate authority. What orders are

appealable orders are enumerated in Section 31. The enumeration is done by reference to the appropriate sections in the Act under which these

orders are passed. In that enumeration are found an order of assessment u/s 12

and an order of reassessment u/s 16. The language of Section 31 is : ""Any person objecting to an order passed by the appropriate authority u/s 12, Sub-sections (1) and (2) of Section 16...may...appeal against such order to the Appellate Assistant Commissioner having jurisdiction."" The expression ""against such order"", occurring in Sub-section (1) of this section, puts the order of reassessment exactly on a par with the order of assessment. Neither in this sub-section nor in Sub-section (3) of the same section, which lays down in what manner the Appellate Assistant Commissioner may dispose of an appeal, do we find any conditions or restrictions attached to the scope of an appeal against an order of reassessment. The Act provides for a further appeal to the Sales Tax Appellate Tribunal u/s 36. But even here the Act does not make any distinction between one appeal and another, according as the subject-matter of the appeal arises from an original assessment or a reassessment. I am, therefore, satisfied that there is no warrant in the language of Section 31 or 36 or any other provision in the Act to support the contention that in an appeal against a reassessment the assessee cannot question any part of the turnover which had already got included in the original assessment.

57. The learned Additional Government Pleader argued that since the assessees had allowed the inclusion of Rs. 1,26,778.32 in the original assessment to become final without having filed any appeal as against it, they were estopped from asking for relief in the appeal against the reassessment. I should have thought that such an argument as this might, perhaps, have been apposite if really the assessees had appealed from the original assessment on this point. Such an argument, in my view, can have no relevance in this case, because the first and the only time the assessees had appealed against the inclusion of Rs. 1,26,778.32 was in their appeal against the reassessment order. That they had not previously questioned this amount in any appeal against the original assessment is, therefore, a point in their favour, rather than against them. It need hardly be said that for an assessee who had once tried an appeal against a disputed turnover in the original assessment and failed, the Act does not provide for a second innings. This is clear not only from the general scheme of the Act, but also from Sections 31 and 33. Each section contemplates an appeal only once as respects a given turnover in dispute. The Act provides for

reassessments; it does not provide for reappeals.

58. For all the reasons stated above, I hold that the Tribunal was justified in entertaining the assessee's objection to the inclusion of Rs.

1,26,778.32 in the turnover for 1961-62. The Tribunal's decision, on the merits, was to the effect that the amount is not taxable, but this finding

has not been questioned by the petitioner in this tax revision case. Indeed, the matter is concluded in the assessee's favour by a decision of this

Court in their own assessment for a different year, as reported in Deputy Commissioner (C. T.), Coimbatore Division, Coimbatore v. Indian

Refrigeration Industries Private Limited [1971] 27 S.T.C. 427.

59. In the result, this tax revision case is dismissed with costs. Counsel's fee Rs. 250.

Order of Reference

The order of the Court was pronounced by

Sethuraman, J.

60. As we are not agreed in the conclusion regarding the decision on the question arising in the above tax case, we formulate the following question

on which there is a difference of opinion :

Whether the assessee could in the appeal against the reassessment proceedings challenge the assessability of the sum of Rs. 1,26,778.32 being the

turnover of humidifiers assessed in the original assessment, which he had not objected to in any appeal against it.

61. The matter will be placed before His Lordship the Chief Justice for appropriate orders as to directions for posting before any other learned

Judge.

62. In pursuance of the abovesaid order, the case came on for hearing before T. Ramaprasada Rao, C. J.

T. Ramaprasada Rao, C.J.

63. This is a tax case in which Sethuraman, J., and Balasubrahmanyam, J., differed and expressed different views on the question which arose in it.

It, therefore, became necessary for me to take it over as a third Judge to decide which of the different views should prevail.

64. The facts relating to the tax case have been fully set out by both the learned Judges and it is therefore sufficient for me to refer briefly to the

said facts instead of repeating them once over. The assessee is a dealer in humidifiers. For the assessment year 1961-62, the assessing officer originally determined the assessable turnover u/s 12 of the Tamil Nadu General Sales Tax Act (hereinafter referred to as the Act) at Rs. 1,86,926.22. On 13th August, 1964, it transpires that the taxing authorities inspected the business place of the assessee and on a check of the accounts and after due analysis, they found that the dealer had suppressed a turnover of Rs. 22,602.87. On 16th January, 1967, a notice u/s 16 of the Act was given to the assessee, in due form, to show cause why the taxable turnover should not be redetermined due to the discovery of suppression of sales. In his reply dated 31st January, 1967, the assessee apart from denying the liability u/s 16 of the Act, also claimed a deletion of a turnover of Rs. 1,39,344.23, which was originally brought to tax in the proceedings u/s 12 of the Act, which was undertaken by the assessing officer. That was on the ground that the presently disputed turnover related to works contracts. The assessing officer rejected the request for deletion of the turnover of Rs. 1,39,344.23, as originally assessed. But, with reference to the notice u/s 16, he passed an order that a sum of Rs. 1,930.00 alone was suppressed and he added this on to the originally assessed turnover of Rs. 1,86,926.22. He also levied a penalty of Rs. 73 on the escaped turnover of Rs. 1,930. The assessee appealed on 6th April, 1967, to the Appellate Assistant Commissioner and this time he claimed relief to the tune of Rs. 1,26,778.32 on the ground that this turnover related to works contract in connection with the installation of humidification plants. The Appellate Assistant Commissioner dismissed the appeal. On a further appeal by the assessee to the Sales Tax Appellate Tribunal, for reasons not very clear, the dispute raised before the Appellate Assistant Commissioner was again reiterated, but this time the assessee claimed relief on the same ground for a turnover of Rs. 1,20,965.52. He also challenged the order of the appellate authority, who confirmed the assessing officer's order u/s 16 of the Act. The Appellate Tribunal by its order dated 15th November, 1971, confirmed the addition of Rs. 1,930 on the ground that it escaped assessment but-deleted the turnover of Rs. 1,19,035.52, which was originally included by the assessing officer when he undertook to assess the assessee u/s 12 of the Act. Before the Tribunal a preliminary objection was raised by the State Representative that an

appeal in so far as it related to the relief for deletion of the turnover of Rs. 1,20,965.52, which was ultimately reduced to Rs. 1,19,035.52, was

outside the scope and subject-matter of the appeal. The Tribunal did not agree with the preliminary objection so raised. The present revision

petition has been filed by the Deputy Commissioner, Commercial Taxes, Coimbatore, u/s 38 of the Tamil Nadu General Sales Tax Act, 1959,

challenging the order of the Tribunal as erroneous. The objection is not on merits, but on the ground that the Tribunal ought to have refused to

entertain the assessee's ground of appeal relating to the turnover of Rs. 1,20,965.52.

65. The main contention of the learned Government Pleader before both the learned Judges was that under the scheme of the Act, an assessment

made u/s 12 of the Act and a reassessment made on the ground of suppression are independent proceedings concluded by separate orders of the

assessing authority and as the subject-matters in each of those proceedings under Sections 12 and 16 are different, the appeal before the Appellate

Tribunal could only be with reference to the escaped turnover brought to tax u/s 16 of the Act. The learned Government Pleader relied upon two

decisions of this Court reported in *State of Madras v. Mettur Industries Limited* [1973] 32 S.T.C. 239 and *State of Tamil Nadu v. C.M. Tiles*

[1976] 38 S.T.C. 440. No doubt, the Division Bench Judges in the cases cited above proceeded on the footing that the reassessment proceeding

u/s 16 is an independent proceeding and it could only relate to the escaped turnover and that no part of the turnover which was assessed in the

original assessment can be deemed or considered as being part of the original assessment proceedings u/s 12 of the Act. In that view, our Court

held that on a further appeal to the Tribunal in such matters the subject-matter could only relate to the escaped turnover and not to the original

turnover, which was brought to tax u/s 12 of the Act, and if the assessee did not dispute the original taxable turnover he could not dispute the same

in the reassessment proceedings.

66. Balasubrahmanyam, J., took the view that having regard to the decision of the Supreme Court in *Deputy Commissioner of Commercial Taxes*

v. H.R. Sri Ramulu [1977] 39 S.T.C. 177, the opinion expressed by our Court in *State of Madras v. Mettur Industries Limited* [1973] 32 S.T.C.

239 and State of Tamil Nadu v. C.M. Tiles [1976] 38 S.T.C. 440 is no longer good law. He also referred to another decision of the Supreme

Court, reported in Commissioner of Sales Tax, Madhya Pradesh v. H.M. Esufali H.M. Abdulali [1973] 32 S.T.C. 77, which conveyed the same

principle, different from the view expressed in the above decisions of our Court. For purpose of completion, I may refer to the view expressed by

the Supreme Court in Deputy Commissioner of Commercial Taxes v. H.R. Sri Ramulu [1977] 39 S.T.C. 177 as also the view of the Supreme

Court in Commissioner of Sales Tax, Madhya Pradesh v. H.M. Esufali H.M. Abdulali [1973] 32 S.T.C. 77, which Balasubrahmanyam, J., has also

extracted in his judgment.

67. In Deputy Commissioner of Commercial Taxes v. H.R. Sri Ramulu [1977] 39 S.T.C. 177, it was held :

The reason for that is that once an assessment is reopened, the initial order for assessment ceases to be operative. The effect of reopening the

assessment is to vacate or set aside the initial order for assessment and to substitute in its place the order made on reassessment. The initial order

for reassessment cannot be said to survive, even partially, although the justification for reassessment arises because of turnover escaping

assessment in a limited field or only with respect to a part of the matter covered by the initial assessment order. The result of reopening the

assessment is that a fresh order for reassessment would have to be made including for those matters in respect of which there is no allegation of the

turnover escaping assessment.

68. In Commissioner of Sales Tax, Madhya Pradesh v. H.M. Esufali H.M. Abdulali [1973] 32 S.T.C. 77, the Supreme Court observed :

What is true of the assessment must also be true of reassessment because reassessment is nothing but a fresh assessment. When reassessment is

made u/s 19, the former assessment is completely reopened and in its place fresh assessment is made. While reassessing a dealer, the assessing

authority does not merely assess him on the escaped turnover but it assesses him on his total estimated turnover.

69. In the light of the definite opinion of the Supreme Court, which said that when a reassessment is made u/s 16 of the Act, the former assessment

is completely reopened and in its place a *fresh assessment is made, the learned

Judge was of the view that the Tribunal was right in having allowed the ground to be taken by the assessee in relation to the concerned disputed turnover.

70. The only argument of the learned Additional Government Pleader was that in the Supreme Court decisions, Section 16 of the Tamil Nadu

General Sales Tax Act was not considered expressly, but on a comparison of the relative provisions which were considered by the Supreme Court

in the two decisions cited above, the learned Judge was of the view that the comparative provisions relating to reassessment under the State laws

considered by the Supreme Court in the above two decisions were almost similar, having regard to the context in which the words are used in the

relevant comparable sections in the other Acts and the general scheme and the structure of those enactments. He was of the view that the Supreme

Court has expressly laid down that the reassessment proceeding is merely a continuation of the original assessment proceedings and that the order

passed ultimately on reassessment, on the basis of escaped turnover u/s 16 would be the order which could be challenged by any assessee. He

thereafter considered in detail the scheme of taxation under tax laws and rightly observed that when the assessing officer proceeds to make a

reassessment, he does so for the purpose of redetermining the annual taxable turnover as a whole. In his own inimitable language he has said :

To say in such cases that the assessing authority merely brings to charge certain stray or individual items of sales that had previously escaped

charge would be to mistake the trees for the wood, and to get the reassessment process completely out of focus.

71. As the general principles in such circumstances have been clearly laid down by the Supreme Court, he was of the view that the Appellate

Tribunal was right.

72. On the other hand, Sethuraman, J., differing from the view taken by Balasubrahmanyam, J., allowed the tax case and for that purpose he relied

upon the decisions reported in *State of Madras v. Mettur Industries Limited* [1973] 32 S.T.C. 239 and *State of Tamil Nadu v. C. M. Tiles* [1976]

38 S.T.C. 440 and expressed the view that those two decisions completely cover the point in issue in favour of the revenue. He would not agree

with the assessee {sic} that the Supreme Court decisions, which prompted

Balasubrahmanyam, J., to differ from him, were distinguished by the learned Judge on the ground that the proposition laid therein would not support the view that by reopening an assessment it would result in the original being thrown overboard for all purposes. He also expressed the view that the provisions in the Mysore Sales Tax Act and the Madhya Pradesh Sales Tax Act are not in pan materia with the corresponding Section 16 of the Tamil Nadu General Sales Tax Act, 1959.

73. He also relied upon an observation made in *State of Madras v. Mettur Industries Limited* [1973] 32 S.T.C. 239, *State of Tamil Nadu v. C.*

M. Tiles [1976] 38 S.T.C. 440 and *Madura Mills Company Ltd. v. State of Madras* [1964] 15 S.T.C. 90, that the original assessment does not

abate on reassessment. He would also quote the ratio in *State of Uttar Pradesh v. Manohar and Company* [1971] 28 S.T.C. 606, in which the

Supreme Court emphasised the distinctive character or separate existence of the original assessment and the reassessment. The relevant Supreme

Court case arose under the Uttar Pradesh Sales Tax Act. In conclusion, Sethuraman, J., was of the view that the contention of the assessee

regarding the taxability of the sum in dispute, which was taxed in the original assessment (which has become final), in the proceedings against the

reassessment cannot be accepted in the light of the provisions of the Act and, particularly, in the view taken by the Supreme Court in *State of Uttar*

Pradesh v. Manohar and Company [1971] 28 S.T.C. 606. In those circumstances, differing from Balasubrahmanyam, J., he allowed the revision

petition.

74. As already expressed by me, I am in complete agreement with the observations of Balasubrahmanyam, J. It is no doubt true that in the

subterranean hierarchy of statutory tribunals set up under the Tamil Nadu General Sales Tax Act starting from the assessment officer and ending

with the Sales Tax Appellate Tribunal, which is invariably tested at the High Court level and at the Supreme Court level, a procedural distinction is

maintained between the original assessment and an assessment reopened u/s 16 of the Act. The reopening of an assessment is occasioned because

the initial order of assessment projects a mistake which is apparent on record. Even while issuing a notice of reassessment, it is not in dispute that a

reference has to be made to the original order and the word "reassessment" by

itself suggests that there is an effacement by necessity of the original assessment order. It is in this sense the Supreme Court in *Deputy Commissioner of Commercial Taxes v. H.R. Sri Ramulu* [1977] 39 S.T.C. 177 categorically said that if a reassessment is made, the original order ceases to be operative. The excerpt cited above from *Deputy Commissioner of Commercial Taxes v. H.R. Sri Ramulu* [1977] 39 S.T.C. 177, in my view, is the latest pronouncement on this subject which is directly in conflict with the opinion expressed by our Court in *State of Madras v. Mettur Industries Limited* [1973] 32 S.T.C. 239 and *State of Tamil Nadu v. C. M. Tiles* [1976] 38 S.T.C. 440. Even more distinctive and conspicuous is the opinion expressed by the Supreme Court again in *Commissioner of Sales Tax, Madhya Pradesh v. H.M. Esufali H.M. Abdulali* [1973] 32 S.T.C. 77. The Supreme Court has said that when a former assessment is reopened though it has become final, technically the assessing authority cannot be said to be merely assessing the assessee on the escaped turnover, but it assesses on his total estimated turnover. In this view, therefore, the attempt of the compartmentalisation by the learned Government Pleader of the original assessment order, which has become technically final, and the reassessment order as if they are distinct and separate, is no longer a plea which is open to the revenue. The superficial difference in the language deployed in the *Madhya Pradesh Sales Tax Act* and the *Mysore Sales Tax Act* cannot form the foundation for acceptance of the contention of the revenue. Balasubrahmanyam, J., was right when he said that for interpreting taxing statutes of various States it is only the general scheme and structure that has to be compared and courts ought not to attempt at meticulous and word to word comparison of the comparable and relevant sections in the different enactments. When in the instant case there was an inspection of the business place and a suppression of the turnover was detected and action was initiated u/s 16 of our State Act, then one should not shut his eye to the fact that by reassessing the assessee the taxing officer is bound to determine the taxable turnover for the assessment year in question as a whole. It would be a travesty of accepted procedure, if it is accepted that the assessing authority, while acting u/s 16, is merely expected to concentrate his attention on the escaped turnover and bring to tax such of those items which have so escaped and

conclude the issue. As it is an accepted canon in tax law that for a given year there can be only one assessment, which determines the taxable

turnover of the assessee, the dichotomy thought of by Sethuraman, J., as if there could be two distinct and separate assessments for a particular

assessable year does not appear to me to be an acceptable proposition in the light of the pronouncements made by the Supreme Court.

75. Balasubrahmanyam, J., in his judgment referred to the comparable provision in the Mysore Sales Tax Act, 1957. Though the language of

Section 12-A(1) of the Mysore Sales Tax Act is not in pari materia with Section 16 of the Tamil Nadu General Sales Tax Act, yet, having regard

to the pronouncements made by the Supreme Court, a too literal construction of the words deployed in the Mysore Act ought not to prevent a

court of law from culling out the real sense or meaning and purport of the section to hold that the reassessment is not necessarily confined to the

turnover relatable to the escaped turnover. Balasubrahmanyam, J., rightly rejected the contention based on the doctrine of merger as not being one

of universal application. In fact, the invocation of the doctrine of merger is not at all relevant in the instant case.

76. In the end, therefore, I am also of the view that as the reassessment order truly reflects the assessable turnover in its entirety and perspective

and as by such an order the original assessment order is virtually set aside, it stands to reason that the appeal before the statutory tribunals over

such a reassessment order should be deemed to enfold within its compass the entirety of the turnover. I am also in complete accord with the view

of Balasubrahmanyam, J., when he considered the scope of Section 31 of the Tamil Nadu General Sales Tax Act. The language of Section 31 is :

Any person objecting to an order passed by the appropriate authority u/s 12, Sub-sections (1) and (2) of Section 16...may...appeal against such

order to the Appellate Assistant Commissioner having jurisdiction.

77. The deployment of the expression ""against such order"" occurring in Sub-section (1) of Section 31 obviously treats the reassessment order on a

par with the original assessment order. When, therefore, the appellate authority is confronted with an appeal against an order made u/s 16 of the

Act, he has the unrestricted power to deal with the propriety or regularity of the original assessment order also. I agree with Balasubrahmanyam, J.,

that in an appeal against an order u/s 16 the assessee can question any part of the turnover which had already got included in the original

assessment. Sections 31 and 33 of the Tamil Nadu Act contemplate only one appeal and it could be against the reassessment order and if there

could be only one such appeal, it follows that the Tribunal was right in having entertained the assessee's objection to the inclusion of Rs.

1,19,035.52, which, according to the assessee, was wrongly included in the turnover when he was assessed u/s 12. On merits it is not disputed

that the inclusion of the above amount as if it is taxable turnover for the assessable year 1961-62 was not correct and, in fact, this finding has not

been questioned by the revenue in the tax revision case. The revenue, however, technically took up the objection that it was not open to the

appellate authority or the Appellate Tribunal to consider the taxability of the disputed turnover on the only ground that there was no independent

appeal against the original order of assessment. But, as in my view, there can be only one assessment and in a case where there has been a

reopening of an original assessment, the reassessment order can only be said to be the only assessment order, the assessee has a right to challenge

that order in all its aspects.

78. In conclusion I agree with Balasubrahmanyam, J., and dismiss the tax revision case, confirming the counsel's fee already fixed by the learned

Judge.

79. On the expression of opinion by the Chief Justice, as a third Judge, the case came for final disposal and the Court delivered the following

judgment on 13th June, 1979 :

The judgment of the Court was delivered by

Sethuraman, J.

80. In accordance with the provisions of Section 98 of the Code of Civil Procedure, as there was a difference of opinion on the question whether

the assessee could, in the appeal against the reassessment proceedings, challenge the assessability of a sum which had been included in the original

assessment and which the assessee had not objected to in any appeal filed against the said assessment, there was a reference to a third Judge. The

majority view now is that the assessee could agitate the matter in an appeal against the reassessment. The result is the revision petition will have to

be and is dismissed. There will be no order as to costs.