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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 17TH DAY OF APRIL 1998

PRESENT

THE HON'BLE MR. JUSTICE Y. BHASKAR RAO

AND

THE HON'BLE MR. JUSTICE S.R. BANNURMATH

CIVIL REVISION PETITION NO. 464 OF 1998

Between:

M/s. Madhuramane Estate,  
Mudigere,  
Chikkamagalur District,  
represented by its partner,  
Sri. M. Seetharam,  
aged 65 years,  
S/o. Late J. Venkatappa. .. PETITIONER

(By Sri. Sarangan - Adv. for  
Sri. S. Parthasarathy - Adv. for Petr.).

And

The State of Karnataka, through  
the Commissioner of Agricultural Income-tax,  
Karnataka, Vanijya Therige Karyalaya,  
Gandhinagar, Bangalore - 560 009. .. RESPONDENT

(By Sri. T.P. Nambiyar - HCGP - for  
Respt.).

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This C.R.P. is filed under Sec.55(1) of the KAIT Act,  
against the order dated 30.4.1997 passed in AIT No. 139/96  
on the file of the Karnataka Appellate Tribunal, Bangalore  
Camp at Mysore.

This C.R.P. having been heard and reserved for orders,  
this day, BHASKAR RAO J., made the following:

O R D E R

O R D E R

This Revision Petition is filed assailing the order of the Karnataka Appellate Tribunal, dated 30.4.1997.

2. The facts of the case are; that the petitioner is a Firm which is assessed to Agricultural Income-tax regularly under the Karnataka Agricultural Income-tax Act, 1957 (hereinafter referred to as the 'Act'); for the assessment year 1987-88 for which the relevant account year ended on 31st March, 1987, a return of income was filed in Form-3 declaring Nil net income. However, the assessment was made under Sec.19(4) of the Act holding coffee receipts on estimate at Rs.4,50,000/- income from minor crop at Rs.10,000/- and an estimated expenditure of Rs.5400/- per acre has been allowed against the Nil income declared. Thereafterwards, the joint Commissioner of Commercial Taxes issued a Notice under Sec.32-A of the Act to revise the assessment order and thereafter, he passed an order on 26.6.1996 under Sec.32-A(1) rejecting the contention urged by the petitioner and <sup>revised</sup> the order showing that the gross receipts from Coffee were taken at Rs.9,31,020/- and that there was an enhancement on the ground that income had escaped assessment which is prejudicial to the revenue.

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and also a sum of Rs.10,000/- concluded towards the income from minor crops estimated and the gross receipts is shown as 9,41,020/- and deducted expenditure of Rs.4,39,830/- and the balance of income to be taxed to Rs.3,95,654/- after giving all the deductions and divided the said income into two parts and directed to be determined the tax individually on each partner after transferring the same to their individual income. That order is challenged in this Revision Petition.

3. Learned Counsel for the petitioner contended that the Revisional Authority while exercising the Revisional power under Section 32-A of the Act, can only consider the record which is available in the file of the Assessing Authority and cannot look into any other records which was later found in the assessment order as it was not amounts to record. On the other hand, it is contended by the learned Counsel for the Revenue, that the record relating to particular assessment year can be treated as a record, though it is found later as assessment. The Revisional Authority can consider the same and pass appropriate orders. There is no bar under the Act or the Rules framed thereunder.

4. In view of the abovesaid contention, the important question that arise for consideration is:

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"Whether the record which discloses any fact regarding the income of the assessee regarding particular assessment year, though found later the assessment order is on record and if so, it can be considered by the Revisional Authority:"

5. To appreciate the above contention, it is relevant to extract Sec.32-A of the Act; which reads:

"32-A. Revisional powers of the Joint Commissioner:- (1) The Joint Commissioner may, of his own motion, call for and examine the record of any order passed or proceeding recorded under the provision of this Act by an Assistant Commissioner of Agricultural Income-tax or an Agricultural Income-tax Officer or any other Officer subordinate to him and again which no appeal has been preferred under Section 32, for the purpose of satisfying himself as to the legality or propriety of such order or as to the regularity of such proceeding in so far as it is prejudicial to the interests of Revenue and pass such orders with respect thereto as he thinks fit."

6. By reading the above Section, it is evident that the Record mentioned in the Section means any Record which is concerning the assessment of the assessee for the particular assessment year which is in dispute. Learned Counsel for the appellant relied on the Judgment of Allahabad High Court, in COMMISSIONER OF WEALTH-TAX v. RAJ NARAIN PRATAP NARAIN (HUF) (177 ITR 34), wherein, the Allahabad High Court has considered the meaning of

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Record which is as follows:

"The expression "record" in section 25(2) of the Act cannot mean the record as it stands at the time when the action under that Section is taken but it means the record as it stands when the assessment order was passed by the assessing officer.

By reading the above para, it is evident that the Record pertaining to the assessment year is a Record concerning the income of that assessee for the assessment relevant/year and can be taken. But the record is not concerned with the relevant assessment cannot be treated as a record and on that ground, the Revision power cannot be exercised. The next decisions relied on by the learned Counsel for the appellants are:

- (i) 96 STC 31 (Allahabad High Court)  
(A.K. CORPORATION AND ANOTHER v.  
STATE OF UTTAR PRADESH AND ANOTHER)

In this case, it has been held by the Allahabad High Court that, while exercising the power of revision, the revising authority must confine itself to the material available on the record of the assessing officer, and it cannot take into consideration any material which was not on the record of the assessing officer. The revisional power can be exercised only to satisfy the revising authority about the legality or the correctness of the orders passed under the Act on the basis of the

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existing material and not on subsequent information or material.

(ii) 96 STC 476 (Allahabad High Court)

(SHYAM LAL OM PRAKASH AND ANOTHER  
Vs. REVISING AUTHORITY AND OTHERS).

In this case, the revisional jurisdiction conferred by Section 10-B of the U.P. Sales Tax Act, 1948 is limited to the examination of the legality or propriety of an order passed by a subordinate officer. The legality or propriety of an order passed by such Officer has to be tested with reference to the material that is available on the record or with regard to any omission made by him, which, as an intelligent assessing officer, he should not have made. The word "record" used in Section 10-B has to be taken to mean the "record", as it existed at the time when the order sought to be revised was passed.

It has been held in this case that the Officer making the assessment could not be said to have acted illegally or with impropriety in not using the information because it was impossible to use information that did not exist. Section 10-B had been used in this case as a substitute for Section 21, because the limitation for invoking Section 21 had expired. Section 10-B could not be used for such a purpose. *UB*

(iii) 214 ITR 50 (Bombay High Court)

(GAMMON INDIA LIMITED v. COMMISSIONER OF  
INCOME-TAX)

In this case, it is observed that, the power of rectification of mistakes under Section 154 of the Income-Tax Act, 1961, is a limited power which is restricted to rectification of mistakes apparent from the record. Besides, it must be a mistake which is patent on the face of the record and does not call for detailed investigation of the facts or require an elaborate argument to establish it. A decision on a debatable point of law or failure to apply the law to a set of facts which remain to be investigated cannot be corrected by way of rectification. The expression "record" has not been defined in the Act. It has, therefore, to be construed and understood in the context in which it appears. Section 154 empowers the income-tax authorities to rectify mistakes which are "apparent from the record". "Record" in such a case would mean the Record of the case comprising the entire proceedings including documents and materials produced by the parties and taken on record by the authorities which were available at the time of passing of the order which is the subject matter of proceedings for rectification. The authorities cannot go beyond the records and look into fresh evidence or materials which were not on record at the time the order sought to be rectified was passed. *VR*

In all these Judgments, it is elaborately considered what is the meaning of the Record. In none of these decisions, it is held that, the Record which comprises the income of the assessee of the particular assessment year, though found after the assessment order, not a record and cannot be considered for the purpose of re-opening the assessment order revising the assessment by the Revisional Authority. Therefore, we are not able to agree with the learned Counsel for the petitioner. In the present case, from the records produced, it was found that the Firm has sold Coffee worth Rs.9,31,020/- which was not reflected in the petitioner's return or account. Therefore, the record found by the Authority is the record as per Section 32-A of the Karnataka Agricultural Income-tax Act and the same can be taken into consideration by the Revisional Authority and the Revisional Authority can revise the order on the basis of such report.

Therefore, we are not able to agree with the learned Counsel for the petitioner.

Accordingly, this Civil Revision Petition is dismissed.

Sd/-  
JUDGE

Sd/-  
JUDGE