Supreme Court of India
State Of Kerala vs K. M. Charia Abdullah & Co on 5 October, 1964
Equivalent citations: 1965 AIR 1585, 1965 SCR (1) 601
Author: K Subbarao
Bench: Subbarao, K.

PETITIONER:
STATE OF KERALA

Vs.

RESPONDENT:
K. M. CHARIA ABDULLAH & CO.

DATE OF JUDGMENT:
05/10/1964

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1965 AIR 1585 1965 SCR (1) 601
CITATOR INFO :
RF 1968 SC 843 (2,8,9)
F 1976 SC1115 (7)
R 1976 SC1545 (15,17)
R 1976 SC2136 (12,14)
R 1987 SC 558 (6)
E 1989 SC1829 (21)

ACT:
Madras General Sales Tax Act (9 of 1939) s. 12(2)(1) and Madras General Sales Tax Rules, 1939, r. 14A-Scope of-If rule ultra vires the Act.

HEADNOTE:
The respondents submitted return of their turn-over under the Madras General Sales Tax Act, 1939, and claimed exemption in respect of certain transactions on the ground that they were commission sales exempted under the Act. The Deputy Commercial Tax Officer granted the exemption and assessed tax only on the rest of the turn-over. The Deputy Commissioner of Commercial Taxes, called for the record of the case and in exercise of the powers under s. 12(2) (i) of the Act and r. 14A of the Madras General Sales Tax Rules, directed fresh enquiry in respect of the exemption, issued a

notice calling upon the assessee to show cause against the proposed revision, heard objections and on the basis of fresh evidence came to the conclusion that the respondents did, not act as commission agents but carried on the business of outright purchase and sale in respect of the, entire turnover. He therefore revised the order of assessment. The assesses' appeal to the Sales Tax Appellate Tribunal was allowed. The State invoked the revisional jurisdiction of the High Court. The High Court held that in dealing with a proceeding under s. 12(2), the revising authority is restricted to the record before the assessing authority and the order passed on fresh evidence could not be sustained. It also held that r. 14A which authorised the revising authority to correct the amount of tax payable after making such enquiry as the authority considers necessary was ultra vires the Act. The State appealed to the Supreme Court and contended that the High Court had erred in declaring the rule ultra vires

HELD (per Shah and Sikri JJ.) : The order passed by the High Court declaring r. 14A to be ultra vires should be set aside and the proceedings remanded to the High Court for disposal according to law. [613 A].

Under s. 12(2) (i) the revising authority may call for the record of the order or the proceeding and the record alone may be scrutinised for ascertaining the legality or propriety of an order or the regularity of the proceeding. If after perusing the record the authority is prima facie satisfied about the illegality or impropriety or irregularity, it may under r. 14A, before passing an order, direct an additional enquiry. The validity of the rule even though it is directed to have effect as if enacted in the Act, is always open to challenge on the ground that it is unauthorised But there is nothing in the Act prohibiting the revising authority from making or directing a further enquiry before passing an order in revision, once it is satisfied on the record about the existence of the illegality, impropriety or irregularity. The Act, while conferring revisional jurisdiction under s. 12, leaves it to the State Government by rules framed under s. 19, to prescribe the procedure to be followed by the authority. A provision authorising the revising authority to make a further enquiry for effectively exercising his jurisdiction must be regarded as a provision validly conferring power unless it expressly or by clear implication nullifies, or is inconsistent with any provision of the Act. The matter should however be remanded to the High Court to make an enquiry whether in the circumstances of the

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case, the Deputy Commissioner was competent to proceed in the manner he had done and to pass the order in revision. For, while the revisional jurisdiction is not restricted only to cases of arithmetical errors, it would not invest the authority with power to launch upon enquiries at large

so as either to trench upon the powers which are expressly reserved by the Act or by the rules to other authorities, or to ignore the limitations inherent in the exercise of the power. [608 F, H; 609 A, D-E, G-H. 611 G-H. 612 A, D, H].
Per Subba Rao J. (dissenting) : Rule 14A in so far as it confers a power on the revising authority to make a fresh enquiry and to determine on the basis of the enquiry the correct amount of tax payable is void, because, while the jurisdiction under s. 12(2) is clearly limited to the scrutiny of the order passed or the proceedings recorded by the inferior authority, and the scope of the scrutiny is confined to the question of legality or propriety of the order or the regularity of the proceedings, the rule obviously enlarges the enquiry beyond the limits prescribed. [604 605 A-B].

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 466 of 1962.

Appeal by special leave from the judgment dated December 2, 1959 of the Kerala High Court in Tax Revision Case No. 1 of 1957.

V. P. Gopalan Nambyar, Advocate-General, Kerala and V. A. Seyid Muhammed, for the appellant.

A. V. Viswanatha Sastri and R. Gopalakrishnan, for the respondent.

SUBBA RAO J., delivered a dissenting Opinion. The Judgment Of SHAH and SIKRI JJ. was delivered by SHAH J. Subba Rao J. I regret my inability to agree. The facts are fully stated in the judgment of my learned brother Shah J. It would, therefore, be enough if only the relevant facts were stated. The respondents are dealers in pepper and other condiments. For the year 1950-51 they submitted their return under the Madras General Sales Tax Act, 1939, wherein they claimed exemption in respect of certain transactions on the ground that they were commission sales exempted under s. 8 of the said Act. The Deputy Commercial Tax Officer, Cannanore (Rural) gave the exemption claimed and assessed the tax on the turn-over relating to transactions other than those exempted. The Deputy Commissioner of Commercial Taxes, Coimbatore Division, called for the record of the case of the respondents for the said assessment year, and in exercise of the powers under s. 12(2) (i) of the Act directed a fresh enquiry in respect of the said exemption. He issued a notice on February 9, 1956, calling upon the respondents to show cause against the proposed revision of assessment. On the basis of fresh evidence, the Deputy Commissioner of Commercial Taxes came to the conclusion that the respondents did not act as commission agents but carried on the business of "outright purchase and We" in respect of the entire turnover. On that finding, he revised the order of the Deputy Commercial Tax Officer and assessed the respondents on a larger turnover.

The short question is whether the Deputy Commissioner of Commercial Taxes has jurisdiction under s. 12 (2) (i) of the Act, read with the relevant rule, r, 14-A, to make the order he did.

It is well settled that a subordinate provision, if inconsistent with the Act, must give way to the Act. Though there is an apparent conflict between a section of the Act and a rule made thereunder, an attempt should be made to reconcile them; that is to say, the rule may be so construe d, if the phraseology permits it, as to make it consistent with the Act. If it is not possible, the rule must be struck down.

It is obvious that the rule cannot override s. 12 of the Act. If s. 12 does not give jurisdiction to the revisional authority to make a fresh enquiry and decide the case on merits, r. 14-A cannot confer on him such power, for r.'14-A in that event comes into conflict with S. 12 of the Act and must, therefore, yield to it.

This leads us to the question whether the revisional jurisdiction conferred under s. 12 of the Act enables the authority concerned to make a fresh enquiry after issuing notice to the dealer concerned and determine the question of assessment on merits. The Act provides for appeals in some cases and revisions in other cases. Under s. 11 (1) of the Act any assessee objecting to an assessment made on him may, within 30 days from the date on which he was served with the notice of assessment, appeal to such authority as may be prescribed; under s. 11(3), the appellate authority may, after giving the appellant an opportunity of being heard, pass such orders on the appeal as such authority may think fit. Under s. 12(2) of the Act, the revisional authority may suo motu "call for and examine the record of any order passed or proceeding recorded under the provisions of the Act by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order, or as to the regularity of such proceeding, and may pass such order with respect thereto as he thinks fit." When the Legislature confers a right of appeal in one case and a discretionary remedy of revision in another, it must be deemed to have created two jurisdictions different in scope and content. When it introduced the familiar concepts of appeal and revision, it is also reasonable to assume that the well-known distinction between these two jurisdictions was also accepted by the legislature. There is an essential distinction between an appeal and a revision. The distinction is based on differences implicit in the said two expressions. An appeal is a continuation of the proceedings; in effect the entire proceedings are before the appellate authority and it has power to review the evidence subject to the statutory limitations prescribed. But in the case of a revision, whatever powers the revisional authority may or may not have, it has not the power to review the evidence unless the statute expressly confers on it that power. That limitation is implicit in the concept of revision. Section 12 (2) is no doubt wider in scope than s. 115 of the Code of Civil Procedure. Even so the revisional authority's jurisdiction is confined to the question of legality or propriety of the order or the regularity of the proceedings. The further limitation on that jurisdiction is that it can only exercise the same on the examination of the record of any order passed or proceedings taken by any authority. The section, therefore, not only limits the scope of its jurisdiction but also defines the material on the basis of which the said jurisdiction.is exercised. The general expression that the authority "may pass such order as he thinks fit" must necessarily be confined to the scope of the jurisdiction. The revisional authority, therefore, cannot travel beyond the order passed or proceedings recorded by the inferior authority and make fresh enquiry and pass

orders on merits on the basis of the said enquiry. If it is not construed in this manner, the distinction between appeal and revision would be effaced.

Bearing this distinction in mind let me look at r. 14-A. Rule 14-A of the rules does not make any distinction between an appellate and a revisional authority. It empowers the revisional authority to issue a notice to a dealer and determine the correct amount of tax after making such enquiry as it considers necessary. The said rule, therefore, confers a power larger than that conferred upon the revising authority under s. 12(2) of the Act. While the jurisdiction under s. 12(2) of the Act is clearly limited to the scrutiny of the order passed or the proceedings recorded by the inferior authority and the scope of the scrutiny is confined to the question of legality or propriety of an order or the regularity of such proceedings, r. 14-A obviously enlarges the enquiry beyond the limits prescribed and permits the revising authority to make a fresh enquiry and pass fresh assessment orders on the basis of the said enquiry. It is not necessary to particularize what kind of orders the revising authority can make and what are the defects that are comprehended by the expression "legality", "propriety" and .'regularity", They are well-known concepts. But the said defects can only be discovered from the said record and proceedings and not by a fresh enquiry. If so, it follows that r . 14-A insofar as it confers a power on the revising authority to make a fresh enquiry and to determine on the basis of the enquiry the correct amount of tax payable by an assessee is void. Therefore, the order of the High Court is correct. In the result, the appeal fails and is dismissed with costs. Shah J. The respondents are dealers in pepper and other condiments and have their place of business at Baliapatam, Malabar (North) District which formerly was part of the State of Madras, but since the reorganisation of States under the States Reorganisation Act, 1956, forms part of the State of Kerala. For the year 1950-51 the respondents submitted their return under the Madras General Sales Tax Act, 1939 showing a gross turnover of Rs. 67,38,710-10-11 in respect of their business, and claimed exemption in respect of turnover of the value of Rs. 50,83,441-14-4 on the plea that it represented commission sales which were exempt from tax by s. 8 of the Act. The Deputy Commercial Tax Officer, Cannanore (Rural) by order, dated February 19, 1952 granted exemption from tax on the commission sales covered by s. 8 and computed the net taxable turnover of the respondents at Rs. 16,84,060-11-9. By order, dated February 26, 1952 the Deputy Commercial Tax Officer assessed Rs. 26,313-7-3 as the tax payable on the taxable turn-over of the respondents. Some time before February 1956 the Deputy Commissioner of Commercial 'Taxes, Coimbatore Division, called for the record of the case Of the respondents for the assessment year in question in exercise of the powers under s. 12(2)

(i) of the Act and directed an enquiry into the validity of the claim about exemption in respect of the commission sales under s. 8 of the Act.

The Deputy Commissioner then issued a notice on February 9, 1956 calling upon the respondents to show cause against the proposed revision of assessment which would result in enhancement of tax. After hearing the objections raised by the respondents, by order, dated March 4, 1956, the Deputy Commissioner held that the respondents did not act as commission agents but "carried on business of outright purchase and sale" in respect of the turnover of Rs. 50,83,355-13-4 and on that view in purported exercise of the powers vested in him by S. 12 (2) (i) of the Act revoked the exemption granted by the assessing officer by his order, dated February 19, 1952, revised the order, dated

February 26, 1952 and assessed the respondents to pay tax on a total net turn-over of Rs. 67 ,67,4.16-9-1 for 1950-51. He directed the assessing officer to take further action in the matter and to recover the tax due.

Against that order, the respondents moved the Sales Tax Appellate Tribunal, Madras. The appeal of the respondents was heard by the Tribunal and by order, dated October 10, 1956 the Tribunal held that the assessing officer had in assessing the respondents in respect of transactions for which they had previously ,obtained exemption, acted in excess of his jurisdiction under s. 12 (2) (i) of the Act and his order was liable to be set aside. In coming to that conclusion the Tribunal held that rule 14-A of the Rules framed under the Act which was brought into force on January 1, 1948 could be applied only when the amount of tax payable is found to be less than the correct amount, thereby indicating that in rule 14-A the "emphasis is more on the arithmetical aspect rather" than on the merits of an assessment. In the view of the Tribunal, rule 14-A was "much more restricted in scope than s. 12 of the Act, and where a case is taken up under the general power of revision, one has to look at the scope of s. 12 to find out the extent of the general power, and not rule 14-A." Against the order passed by the Tribunal, the State of Kerala which had acquired jurisdiction in respect of the sales tax assessment of the respondents by virtue of the States Reorganisation Act, 1956, applied to the High Court of Judicature, Kerala. It may suffice to observe that no question about the vires of rule 14-A was raised by the assessees before the Taxing authorities, and the State was not interested in raising such a contention. But the High Court held that in dealing with a proceeding under s. 12(2) of the Madras General Sales Tax Act the revising authority is restricted to the record before the assessing authority and his order passed on fresh evidence could not be sustained. In the view of the High Court the expression "the record of any order passed or proceeding recorded" under s. 12(2) restricted the revising authority to the examination of the legality or propriety of the order of a subordinate officer or as to the regularity of the pro- ceeding of such authority and prohibited consideration of any other evidence, and rule 14-A made by the State Government in exercise of the power under s. 19 of the Act, which authorises the revising authority or the appellate authority to correct the amount of tax payable by the dealer after issuing a notice to the dealer and after making such enquiry as such appellate or revising authority considers necessary was ultra vires the Art.

The State of Kerala in this appeal contends that the High Court has erred in declaring rule 14-A ultra vires and in the disposing of its petition invoking the revisional jurisdiction of the High Court on that footing. To appreciate the argument it is necessary in the first instance to read the relevant provisions of the Act and rules framed thereunder. Section 9 of the Act deals with the procedure of the assessing authority and S. 10 deals with the payment and recovery of tax. Against an order of assessment an appeal lies under s. 11 to such authority as may be prescribed. By S. 12 as amended by the first sub-section, the Commercial Tax Officer is authorised either suo motu or on application in cases in which an appeal does not lie to him under s. 11, to exercise revisional jurisdiction. Sub-section (2) with which we are directly concerned in this appeal provides (2) The Deputy Commissioner may-

(i) suo motu, or

(ii) in respect of an order passed or proceeding recorded by the Commercial Tax Officer under subsection (1) or any other provision of this Act and against which no appeal has been preferred to the Appellate Tribunal under section 12-A, on application, call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order, or as to the regularity of such proceeding, and may pass such order with respect thereto as he thinks fit."

Sub-section (4), insofar as it is material, provides that in relation to an order of assessment passed under the Act, the power of the Deputy Commissioner under cl. (1) of sub-s. (2) shall be exercisable only within a period of four years from the date on which the order was communicated to the assessee. Sub-section (6) provides that no order may be passed under sub-ss. (1), (2) or (3) enhancing the assessment, without giving an opportunity to the assessee to show cause against the proposed enhancement. Sub-section (1) of S. 19 authorises the State Government to make rules to carry out the purposes of the Act. By sub-s. (2) it is provided :

> "In particular and without prejudice to the generality of the foregoing power, such rules may provide for-
>
> (j) the duties and powers of officers appointed for the purpose of enforcing the provisions of this Act;
>
> (k) generally regulating the procedure to be followed and the forms to be adopted in proceedings under this Act; and (1) any other matter for which there is no provision or no sufficient provision in this Act and for which provision is, in the opinion of the State Government, necessary for giving effect to the purposes of this Act."

Sub-section (5) of S. 19 provides that all rules made under this section shall be published in the Fort St. George Gazette, and upon such publication shall have effect as if enacted in the Act.

The Advocate-General for the State of Kerala contends that rule 14-A was validly made in exercise of the powers under s. 19 and that in any event the rule having by sub-s. (5) of s. 19 the effect as if it is enacted in the Act it is not liable to be declared invalid. The alternative ground advanced by the Advocate-General may be easily disposed of. The rules made under S. 19 and published in the Government Gazette have by the express provision to have effect as if enacted in the Act : but thereby no additional sanctity attaches to the rules. Power to frame rules is conferred by the Act upon the State Government and that power may be exercised within the strict limits of the authority conferred. If in making a rule, the State transcends its authority, the rule will be invalid, for statutory rules made in exercise of delegated authority are valid and binding only if made within the limits of authority conferred. Validity of a rule whether it is declared to have effect as if enacted in the Act or otherwise is always open to challenge on the ground that it is unauthorised. Turning then to the jurisdiction which the revising authority may exercise under S. 12(2), attention must first be directed to the phraseology used by the Legislature. The Deputy Commissioner is thereby invested with power to satisfy himself about the legality or propriety of any order passed or proceeding recorded by any officer subordinate to him, or the regularity of any proceeding of such officer, and

to pass such orders with respect thereto as he thinks fit. For exercising this power, he may suo motu or on application call for and examine the record of any proceeding or order. There is no doubt that the revising authority may only call for the record of the order or the proceeding, and the record alone may be scrutinised for ascertaining the legality or propriety of an order or regularity of the proceeding. But there is nothing in the Act that for passing an order in exercise of his revisional jurisdiction, if the revising authority is satisfied that the subordinate officer has committed an illegality or impropriety in the order or irregularity in the proceedings, he cannot make or direct any further enquiry. The words of sub-s. (2) of s. 12 that Deputy Commissioner "may pass such order with respect thereto as be thinks fit" mean such order as may in the circumstances of the case for rectifying the defect be regarded by him as just. Power to pass such order as the revising authority thinks fit may in some cases include power to make or direct such further enquiry as the Deputy Commissioner may find necessary for rectifying the illegality or impropriety of the order or irregularity in the proceeding. It is therefore not right baldly to propound that in passing an order in the exercise of his revisional jurisdiction, the Deputy Commissioner must in all cases be restricted to the record maintained by the Officer subordinate to him, and can never make enquiry outside that record.

It must be noticed that the Act while conferring upon the prescribed authority power to entertain an appeal under s. 11, and a petition in revision under s. 12 does not prescribe the procedure to be followed by the authorities. It is left to the State Government by rules framed under s. 19 to prescribe the procedure of the appellate and the revising authorities and a provision authorising the making of a further enquiry for effectively exercising the appellate or revisional power, would in the case of a taxing statute fall within the scope of the rules. Jurisdiction to revise the order or proceeding of a subordinate officer has to be exercised for the purpose of rectifying any illegality or impropriety of the order or irregularity in the proceeding. But in taking that course the procedure to be followed is prescribed by the rules, framed under s. 19(1) to carry out the purposes of the Act and as further illustrated by the head (1), (k) and (j) of sub-s. (2). In our view the amplitude of the power conferred by sub-s. (1) and illustrated by sub-s. (2) of s. 19 takes in the power to provide for making further enquiry enabling the revising authority to exercise his powers and unless the power so conferred expressly or by clear implication nullifies or is inconsistent with any provision of the Act, it must be regarded as validly exercised. Conferment of power to make further enquiry in cases where after being satisfied about the illegality or impropriety of the order or irregularity in the proceeding, the revising authority thinks it just for rectifying the defect to do so does not amount to enlarging the jurisdiction conferred by s. 12 (2). It is in this light that the provisions of rule 14-A may be examined. That Rule which was added with effect from January 1, 1948, provides :

> "Where the tax as determined by the initial assessing authority appears to the appellate authority under section 11 or revising authority under section 12 to be less than the correct amount of the tax payable by the dealer, the appellate or revising authority shall, before passing orders, determine the correct amount of tax payable by the dealer after issuing a notice to the dealer and after making such enquiry as such appellate or revising authority considers necessary."

It must be noticed that the power to determine the correct amount ,of tax after issuing a notice to the dealer and after making such enquiry as the authority considers necessary is vested by this rule in the appellate authority as well as the revising authority. It is usual in taxing statutes to confer such power upon the appellate and revising authorities. Under the Income-tax Act, 1922, by s. 31(2) the Appellate Assistant Commissioner was given the power before disposing of any appeal, to make such further inquiry as he thought fit, or cause further inquiry to be made by the Income-tax Officer. By s. 33 (4) the Appellate Tribunal was given power to pass such order in the appeal as it thought fit and that power included the power to direct additional evidence to be taken or to take evidence itself : M. L. Tewary v. Commissioner of Income-tax, Bihar and Orissa(1). By s. 33-A the Commissioner could on his own motion or an application presented within one year from the date of the order sought to be revised, call for the record of any proceeding under the Act in which an order had been passed by any authority subordinate to him and could make such inquiry or cause such inquiry to be made and subject to the provisions of the Act to pass such order thereon, as he thought fit. Similar provisions are now incorporated in the Income-tax Act, Act 43 of 1961. By s. 250(4) of-that Act the Appellate Assistant Commissioner is authorised before disposing of an appeal to make such further inquiry as he thinks fit or to direct the Income-tax Officer to make further inquiry and report the result of the same to him. Powers of the Income Tax Appellate Tribunal and the Commissioner are couched in the same terms as under the Act of 1922 : [see s. 254(1) and s. 263(1)]. It cannot therefore be said that a provision which confers upon the appellate or revising authority power to make such inquiry as such appellate or revising authority considers necessary in itself amounts to enlarging the (1) (1955) 27 I.T.R. 630.

revisional or appellate jurisdiction. The only difference between the Income-tax Acts and the Madras General Sales Tax Act is that whereas the power to entertain the appeal or revision application and to make orders for further enquiry in the hearing of the appeal or revision is wholly dealt with by the provisions of the Income-tax Acts, under the Madras General Sales Tax Act the revisional jurisdiction and appellate jurisdiction are conferred by the Act, but the power of the appropriate authority in the exercise of the jurisdiction when it appears to the appellate or revising authority that the correct amount of tax payable by the dealer has not been paid to make a further inquiry as the authority considers necessary is conferred by the rules. But that is no ground for regarding the conferment of power to travel outside the record of the subordinate taxing authorities as unauthorised. Investment of powers to make such inquiry as the appellate or the revising authority considers necessary can manifestly be invested by cls. (k) and (1) of s. 19 sub-s. (2) and if such power is invested the rule authorising the making of inquiry is not ultra vires.

The Madras High Court in the State of Madras v. The Madura Knitting Company Ltd.(1) has held that the powers given to the revising authority under s. 12(2) are not confined to errors patent on the face of the record, but would extend to probing further into the records like calling for despatch registers and other evidence.

But this is not sufficient to dispose of the appeal before us. The objection that rule 14-A was ultra vires was raised for the first time before the High Court. The Tribunal had merely held that rule 14-A must be so read as to deal with "the arithmetical aspect rather than on the aspect of the merits of an assessment." There is, however, no such restriction in either rule 14-A or in s. 12(2) of the Act. The

power to hold an enquiry to take additional evidence is a procedural power in aid of the exercise of the revisional jurisdiction and if the revisional jurisdiction is not restricted only to cases of arithmetical errors or as the Tribunal called it "arithmetical aspect", there is no reason to assume that the power under rule 14-A to make such enquiry as the appellate or the revising authority considers it just to order or to make would be so restricted. But the power conferred by rule 14-A by the use of the expression "making such enquiry as such appellate or revising authority considers necessary" must be read subject to the scheme of the Act. It would not invest the revising authority with power to launch upon enquiries at large so as either to trench (1) (1959) 10 S.T.C. 155.

upon the powers which are expressly reserved by the Act or by the Rules to other authorities or to ignore the limitations inherent in the exercise of those powers. For instance, the power to reassess escaped turn-over is primarily vested by rule 17 in the assessing officer and is to be exercised subject to certain limitations, and the revising authority will not be competent to make an enquiry for reassessing a tax-payer. Similarly the power to make a best judgment assessment is vested by S. 9(2)(b) in the assessing authority and has to be exercised in the manner provided. It would not be open to the revising authority to assume that power. The revisional power has to be exercised for ascertaining whether the order passed is illegal or improper or the proceeding recorded is irregular and it is in aid of that power that such orders may be passed as the authority may think fit. One of the inquiries in considering the legality or propriety of the orders passed by the subordinate officer which the revising or the appellate authority may make is about the correctness of the tax levied and if after perusing the record the authority is prima facie satisfied about the illegality or impropriety of the order or about the irregularity of the proceeding, it may in passing its order direct an additional enquiry. Neither s. 12 nor rule 14-A authorises the revising authority to enter generally upon enquiries which may properly be made by the assessing authorities and to reopen assessments.

We are at this stage not called upon to express any opinion about the correctness of the order passed by the Deputy Commissioner on the merits. The High Court has not investigated that question, and we have no materials before us which would justify us in launching upon an enquiry into this unexplored field. We have, however, thought it necessary to explain the restrictions inherent in the exercise of power under S. 12(2) read with Rule 14-A, because counsel for the respondents has urged before us that the enquiry made by the Deputy Commissioner is inconsistent with the scheme of the Act, in violation of the rules of natural justice, and in circumvention of the restrictions on the power to reassess. That is a matter which will demand investigation before the High Court. We desire only to impress that the view taken by us that rule 14-A is not ultra vires is not sufficient to dispose of the revision application filed before the High Court. The High Court will have to make enquiry whether in the circumstances of the case the Deputy Commissioner, Coimbatore Division,, was competent to proceed in the manner he has done and to pass the order which was impugned before the Sales Tax Appellate Tribunal. The border passed by the High Court declaring rule 14-A to be ultra vires is set aside, and the proceedings are remanded to the High Court to be dealt with according to law. There will be no order as to costs.

ORDER BY COURT In accordance with the opinion of the majority, the order of the High Court declaring rule 14-A to be ultra vires is set aside and the proceedings are remanded to the High Court to be dealt with according to law. There will be no order as to costs.

Appeal allowed and proceedings remanded.