

## S. Bhaskar Das Vs State of Karnataka and Another

**Court:** Karnataka High Court

**Date of Decision:** July 16, 1998

**Acts Referred:** Karnataka Agricultural Income Tax Act, 1957 â€” Section 32A

**Citation:** (2000) 48 KarLJ 399

**Hon'ble Judges:** S. R. Venkatesha Murthy, J; Ashok Bhan, J

### Judgement

@JUDGMENTTAG-ORDER

S.R. Venkatesha Murthy, J.-These revisions seek to challenge the order of the Deputy Commissioner of Commercial Taxes, Mysore under

Section 32-A of the Karnataka Agricultural Income-tax Act, 1957 (Annexure-B) setting aside the order of the Agricultural Income-tax Officer, III

Circle, Chickmagalur dated 29-4-1987 for the assessment years 1982-83 and 1983-84 and remanding the matter for fresh assessment.

2. The Deputy Commissioner for Commercial Taxes, exercising his jurisdiction under Section 32-A of the Act, noticed that the income disclosed

was at variance for both the years and was of the opinion that the matter was required to be examined afresh by the Agricultural Income-tax

Officer. The order of the Deputy Commissioner for Commercial Taxes was sought to be challenged before the Karnataka Appellate Tribunal on

the ground that the case came within the scope of the decision - Bidar Sahakari Sakkare Karkhane Limited v State of Karnataka, 1984 Kar. L.J.

(Tri. Supp.) 203 (HC), and therefore, the order Annexure-B was without jurisdiction. In these revisions, the same contention has been raised. In

Mahaveer Drug House v Assistant Commissioner of Commercial Taxes (Assessments-II), Gandhinagar, Bangalore and Another, (1994)93 STC

51 (Kar.), the same question came up for consideration by the Division Bench. The Division Bench has observed as follows: (headnote)

Section 21 of the Karnataka Sales Tax Act, 1957, which provides, for revision suo motu by the Commissioner, creates a superior and

supervisory jurisdiction unlike the jurisdiction under Section 12-A of the Act, which provides for assessment of turnover escaping assessment.

Initiation of proceedings under Section 21 is limited to the examination of the ""record of any order passed"" or ""proceeding recorded"". Under

Section 12-A, the jurisdiction is not confined to the "record" of the case. To this extent there is a difference between the two jurisdictions. Further,

if the examination of the record reveals any illegality, impropriety or irregularity in the proceedings, a superior officer normally should have the

power to intervene and take action to safeguard the interests of the Revenue. Unlike the assessee, the Revenue has no right of appeal against an

order of assessment; this purpose is substantially met by this provision. However, unless, the illegality, impropriety or the irregularity referred to

therein is not revealed by the examination of the record, but depends upon any material outside the said record, Section 21 cannot be resorted to;

the revenue then has to invoke other provisions of the Act, like Section 12-A.

If an Assessing Authority ignores a relevant fact on record and does not apply his mind to it, no doubt, to that extent, turnover escapes assessment.

This escapement makes the order illegal or improper; In such a situation, when the illegality, impropriety or irregularity is revealed from the existing

record" of the case, there is no reason to deny the jurisdiction under Section 21 to such a situation. However, if the order is the result of the non-

application of the mind of the Assessing Authority because the relevant material was not before the Court and there is nothing on record to indicate

that the Assessing Authority should have held further enquiry on the question before passing the assessment order, it would be a case for Section

12-A and not for applying Section 21. Again, if the records disclose that the Assessing Authority should have probed further on a claim made by

the assessee or on a matter relevant to the making of the assessment order, making an order of assessment without such a probe will be a case of

an incomplete enquiry and the assessment order would not be regular. The very purpose of Section 21 is to ensure that the Assessing Authority is

not prejudicial to the interests of the Revenue by the Assessing Authority is not prejudicial to the interests of the Revenue by an incomplete enquiry.

In the case of an unsatisfactory enquiry by an Assessing Authority before making the order of assessment, the same could be directed to be redone

by recourse to Section 21 of the Act. When wide powers are given under Section 21 of the Act the said provisions cannot be mutilated only

because some aspects of the said power also would fall under Section 12-A of the Act".

It is clear from the above observations that in the situation mentioned in Annexure-B, the Deputy Commissioner did rightly exercise the power

vested in him under Section 32-A of the Act. The Karnataka Appellate Tribunal has confirmed the order. In the circumstances, we are of the

opinion that there is no case made out for the exercise of revisional jurisdiction by this Court. It would be open to the revision petitioners to raise all

contentions regarding facts before the Assessing Authority. The revisions have no merit and are dismissed.