pension and other retirement benefits. However, it is made clear that any appointment made under this order shall be treated as new appointment for the purpose of seniority among the employees. This relief given is also without prejudice to the retrenchment and any other compensation, they may be entitled to under the provisions of the Industrial Disputes Act, 1947. The Act has set up suitable machinery for the adjudication of disputes which exist or are apprehended between an employer and his workmen. The mechanism of the Act is geared to conferment of regulated benefits to workman and resolution, according to a sympathetic rule of law, of the conflicts actual or protential between management and workman. One of the objects of the Act is to regulate conditions of employment. The writ petitioners can approach the appropriate authority for redress of their grievance, if any, before the authorities under the Act. With these observations, subject to reservations, the appeals filed by the State are allowed and the appeals and the writ petitions filed by the Workers are dismissed.

R.N.R.

Before G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME-TAX, AMRITSAR,—*Applicant.*

versus

VED PARKASH,—*Respondent.*

Income Tax Reference No. 31 *of* 1981

January 17, 1989.

Income Tax Act (XLIII of 1961)—*S.* 256—*Reference under S.* 256—*Jurisdiction of High Court—High Court has no power to declare any of the provisions of the Act* ultra vires *the Constitution.*

Held, that if the authorities under the Income Tax Act, 1961 are not possessed of the requisite jurisdiction to pronounce upon the constitutional validity of the provisions of that Act, no such jurisdiction can be deemed to have been conferred upon them merely on some other High Court having taken a contrary view with regard to their validity. There is an obvious inherent lack of jurisdiction in the Tribunal as also the High Court in a reference under S. 256 of the Act to examine and pronounce upon the constitutional validity of the said provisions. (Para 13).

Held, that the decision of a High Court is binding only upon the authorities and Tribunals, within its jurisdiction, no Tribunal beyond such jurisdiction, can, treat or hold as constitutionally invalid any provision of the Income Tax Act, 1961 solely for the reason that a High Court of another State, may have declared the said provision to be *ultra vires.* (Para 14).

Held, the remedy for questioning the vires of the provisions of the Income Tax Act, 1961 is under Article 226 of the Constitution. (Para 15).

Commissioner of Income Tax, Vidarbha *vs.* Smt. Godavaridevi Saraf (1978) 113 I.T.R. 589.
Commissioner of Income Tax, M.P. *vs.* Varjlal Manilal & Co., (1981) 127 I.T.R. 512. (Dissented from).

Reference under Section 256(1) *of the Income Tax Act,* 1961 *arising out of the order of the Tribunal dated* 5*th August,* 1980 *in I.T.A. No.* 830(*ASR*)/1979 *to refer the following question of law for the opinion of the Punjab and Haryana High Court Chandigarh:*

> *"Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that provisions of section* 140-*A*(3) of *Income-tax Act was* ultravires *of the constitution and accordingly the penalty of Rs.* 4000 *upheld by the AAC was not sustainable."*

L. K. Sood, Advocate, *for the appellants.*

S. S. Mahajan, Advocate, *for the respondents.*

B. S. Gupta, Sr. Advocate (Amicus Curie) with Sanjay Bansal, Advocate.

JUDGMENT

S. S. Sodhi, J.

(1) The matter here concerns the jurisdiction and competence of the authorities constituted under the Income Tax Act, 1961 (hereinafter referred to as "the Act"), namely by; the Income Tax Officer, the Appellate Assistant Commissioner and the Tribunal as also the High Court, in reference under section 256 thereof, to declare or treat any of its provisions to be *ultra vires,* the Constitution of India. This arises in the context of the provisions of section 140-A (3) of the Act, having been held to be *ultra vires* by the High Court of Madras in *A. M. Sali Maricar and another* v. *Income Tax Officer, Circle I*(1) *Nagapattinam and another* (1).

(1) (1973) 90 I.T.R. 116.

(1A) What had happened in the present case was that the assessee did not deposit an amount of Rs. 12,153 which was payable by him under Section 140-A (1) of the Act, within a period of one month of the filing of his return. A show-cause notice was consequently issued to the assessee calling upon him to explain why penalty be not levied upon him under Section 140-A of the Act. In reply, one of the points taken by the assessee was that Section 140-A(3) of the Act, had been declared to be *ultra vires* and therefore, no penalty could be levied under that provision. The Income Tax Officer did not accept this Explanation and accordingly held the assessee liable to a penalty of Rs. 5,000. In appeal, the Assistant Appellate Commissioner, reduced the penalty to Rs. 4,000. The Tribunal, however, set aside the penalty levied on the ground that the provisions of Section 140-A(3) of the Act had been declared to be *ultra vires* by the High Court of Madras in *A. M. Sali Maricar's case* (supra). This is the factual background leading to the following question being referred to this Court for its opinion :—

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that porvision of section 140-A(3) of Income Tax Act, was *ultra vires* of the constitution and accordingly the penalty of Rs. 4,000 up held by the AAC was not sustainable."

(2) The provisions of Section 140-A(3) of the Act being *ultra vires,* as per *A. M. Sali Maricar's case* (supra), appears to be lone such view as several other High Courts have since up held the constitutional validity of these provisions. Amongst such High Courts being that of Calcutta in *Gunny Exporters Pvt. Ltd* v. *I.T.O. and others* (2), Andhra Pradesh in *Kashiram* v. *Income Tax Officer, E. Ward, Circle II, Hyderabad* (3), Jammu & Kashmir in *Seva Ram* v. *Income Tax Officer and others* (4), Rajasthan in *Mewar Textile Mills Limited* v. *Income Tax Appellate Tribunal, Jaipur Bench, Jaipur and others* (5), Karnataka in *K. Sampangirama Raju* v. *Vth Income tax Officer and others* (6), and, Kerala in *Mary Issac* v. *Inspecting Assistant Commissioner* (7).

(2) 1976 Tax L.R. 603.
(3) (1977) 107 I.T.R. 825.
(4) (1983) 141 I.T.R. 933.
(5) (1985) 151 I.T.R. 127.
(6) (1988) 173 I.T.R. 609.
(7) (1987) 163 I.T.R. 341.

(3) The basic question that arises here is with regard to the jurisdiction of the Tribunal and the High Court in a reference under Section 256 of the Act to declare any of the provisions of the Income Tax Act to be *ultra vires* the Constitution.

(4) Considering the importance and complexity of the issues raised, Mr. B. S. Gupta, Advocate, when called upon, very willingly came forth to assist us in this matter with his usual competence and clarity.

(5) It will be seen that the Income Tax Officer, the Appellate Assistant Commissioner and the Tribunal as also the High Court, in a reference under Section 256 of the Act, are, but functionaries created by the Act. They cannot, therefore, on principle, enquire into the constitutional validity of any of its provisions. In dealing with this matter, the Supreme Court in *K. S. Venkataraman and Co. (P) Ltd.* v. *State of Madras* (8), observed :—

> "——It has been held by this Court that the jurisdiction conferred upon the High Court by section 66 of the Income Tax Act is a special advisory jurisdiction and its scope is strictly limited by the section conferring the jurisdiction. It can only decide questions of law that arise out of the order of the Tribunal and that are referred to it. Can it be said that a question whether a provision of the Act is *ultra vires* of the legislature arises out of the Tribunal's order? As the Tribunal is a creature of the statute, it can only decide the dispute between the assessee and the Commissioner in terms of the provisions of the Act. The question of *ultra vires* is foreign to the scope of its jurisdiction. If an assessee raises such a question, the Tribunal can only reject it on the ground that it has no jurisdiction to entertain the said objection or decide on it. As no such question can be raised or can arise on the Tribunal's order, the High Court cannot possibly give any decision on the question of the *ultra vires* of a provision.———"

(6) A similar view was expressed by the Supreme Court in its later judgment in *Senthilnathan Chettiar* (C.T.) v. *State of Madras* (9).

(8) (1966) 60 I.T.R. 112.
(9) (1968) 67 I.T.R. 102.

(6A) Following *K. S. Venkataraman and Co. (P) Ltd's case* (supra), a Division Bench of High Court of Bombay in *Dhrangadhra Chemical Works Ltd.* v. *Commissioner of Income Tax, Bombay City II* (10), held that the Supreme Court had consistently taken the view that in a reference under the Income Tax Act or any other Taxation statute, since the taxing authorities would have no jurisdiction to go into the vires of a statutory provision, order or notification, neither the High Court on a reference, nor the Supreme Court in an appeal from the decision of the High Court, will be entitled to go into such question.

(7) The Court further observed, "It was well-settled that the jurisdiction possessed by the High Court in exercise of its advisory jurisdiction in a taxing statute, was not the same as the one that had been conferred upon it under Article 226 of the Constitution of India, and therefore, when a question has to be construed in the exercise of its advisory jurisdiction, the jurisdiction is confined to assessment of income and tax under the provisions of the Act, but there is no jurisdiction to go into the question — whether the relevant provisions offend the fundamental rights, or are bad for want of legislature competence."

(8) There are observations to the same effect in the judgment of the High Court of Karnataka in *Mysore Breweries Limited* v. *Commissioner of Income Tax* (11).

(9) The other well-established principle, to be borne in mind is that the decision of a High Court is binding upon the authorities, Tribunals and courts functioning within its territorial jurisdiction, but such decisions have merely persuasive force in other jurisdictions. This view finds expression in *Patil Vijaykumar and others* vs. *Union of India and another*, (12) where it was observed, "Any decision of a High Court striking down a Parliamentary enactment or an all-India enactment, operates only in the territorial area of that High Court and does not operate in any other territorial area, however, incongruous that may be, unlike in the case of a decision rendered by the Supreme Court." Further, "Any decision rendered by a High Court either on the validity or the construction of an all-India enactment,

(10) (1975) 101 I.T.R. 491.
(11) (1987) 166 I.T.R. 723.
(12) (1985) 151 I.T.R. 48.

will only be binding on that High Court, the courts and the Tribunals functioning in the territorial area over which it exercises jurisdiction and not on other High Courts, and the courts and the Tribunals functioning in the territorial area of that other High Court....."

(10) A somewhat different theory, however, appears to have been expounded by the High Court of Bombay in Comimssioner of *Income-tax, Vidarbha* v. *Smt. Godavaridevi Saraf,* (13), namely; that once a provision is declared *ultra vires* by a competent High Court, that decision has to be accepted by the Tribunal wherever constituted, that is, even in the jurisdiction of another High Court. Implying thereby that the decisions of the High Courts would be binding upon Tribunals beyond their jurisdiction too. The Court, in this case, was dealing with a reference under section 256 of the Act, which was in the following terms :—

> "Whether on the facts and in the circumstances of the case and in view of the decision of the case in the case of *A. M. Sali Maricar,* (supra), the penalty imposed on the assessee under Section 140-A (3) was legal?"

The court observed:—

> "—Until a contrary decision is given by any other competent High Court, which is binding on a Tribunal in the State of Bombay, it has to proceed on the footing that the law declared by the High Court, though of another State, is the final law of the land. When the Tribunal set aside the order of penalty it did not go into the question of *intra vires* or *ultra vires.* It did not go into the question of constitutionality of section 140-A(3). That section was already declared *ultra vires* by a competent High Court in the country and an authority like an Income Tax Tribunal acting anywhere in the country has to respect the law laid down by the High Court, though of a different State, so long as there is no contrary decision of any other High Court on that question....."

(11) It will be seen that the above quoted view denotes a departure from the well-established principle that a decision of the High Court is binding only upon courts and Tribunals functioning within its

(13) (1978) 113 I.T.R. 589.

territorial jurisdiction, but is merely of pursuasive value elsewhere. Here it makes the judgment of the High Court binding upon courts and Tribunals in other jurisdictions too, though, it is to be treated to be so only for a limited period, namely; so long as there is no contrary decision of another High Court.

(12) The High Court of Madhya Pradesh, on its part in *Commissioner of Income Tax, M.P.* vs. *Vrajlal Manilal & Co.* (14), following *Smt. Godavaridevi Saraf's case* (supra), went a step further in arrogating to itself the jurisdiction, in a reference under Section 256 of the Act, to pronounce upon the constitutional validity of a provision of the Income Tax Act, namely; Section 140-A(3) thereof, on the ground that different High Courts had expressed conflicting views with regard to it. What had happened in this case was that relying upon the judgment in *A. M. Sali Maricar's case* (supra), the Tribunal cancelled the penalty levied under Section 140-A(3) of the Act. This order of the Tribunal was up-held by the High Court saying that as there was no contrary ruling when the Tribunal decided the appeal, it was bound to give effect to the Madras judgment. The court proceeded thereafter to examine for itself the constitutional validity of Section 140-A(3) of the Act by observing, "It is true that the question relating to the constitutional validity of the provisions of the Act. cannot, ordinarily be examined in a reference, but the position is different when as in the instant case, the constitutional validity has already been examined by three High Courts under Article 226 and one of them has declared the provision to be invalid." The provisions of Section 140-A(3) were thereafter pronounced upon as valid.

(13) With respect, we cannot subscribe to the view expressed by the High Court of Bombay in *Smt. Godavaridevi Saraf's case* (supra), or by that of the High Court of Madhya Pradesh in *Varajlal Manilal & Co's case* (supra), as in our understanding, if the authorities under the Income Tax Act, are not possessed of the requisite jurisdiction to pronounce upon the constitutional validity of the provisions of that Act, no such jurisdiction can be deemed to have been conferred upon them merely on some other High Court having taken a contrary view with regard to their validity. There is an obvious inherent lack of jurisdiction in the Tribunal as also the High Court in a reference under Section 256 of the Act to examine and pronounce upon the constitutional validity of the said provisions.

(14) (1981) 127, I.T.R. 512.

(14) Further, it is also our view that as the decision of a High Court is binding only upon the authorities and Tribunals, within its jurisdiction, no Tribunal beyond such jurisdiction, can treat or hold as constitutionally invalid any provision of the Income Tax Act, solely for the reason that a High Court of another State, may have declared the said provision to be *ultra vires*. To grant such power to the Tribunal or even to a High Court, in a reference under Section 256 of the Act, would again amount to conferring jurisdiction upon them to pronounce upon the constitutional validity of the provisions of the statute creating them, which would clearly be contrary to the well-settled position in law, in this behalf.

(15) This is not to say that there is no remedy for questioning the vires of the provisions of the Income Tax Act, 1961. Such remedy is undoubtedly there under Article 226 of the Constitution of India.

(16) The clear legal position that thus emerges is that unless and until the Supreme Court or the High Court of the State in question, under Article 226 of the Constitution of India, declares a provision of the Act to be *ultra vires*, it must be taken to be constitutionally valid and treated as such.

(17) This being so, there can be no escape from the conclusion that the Tribunal clearly fell in error in holding Section 140-A(3) of the Act to be *ultra vires*. The reference has thus to be answered in the negative in favour of revenue and against th assessee. As a consequence, the Tribunal shall decide the appeal of the assessee afresh on merits. This matter is disposed of accordingly. There will, however, be no order as to costs.

R.N.R.

Before G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX, JULLUNDUR.—*Applicant.*

versus

M/S SURI SONS, JULLUNDUR,—*Respondents.*

Income Tax Reference No. 19 *of* 1981

February 1, 1989.

Income Tax Act (XLIII of 1961)—*S.* 37—*Extension of running business—Creation of new asset—Purchase of plot for constructing*