Accordingly, we find no merit in these petitions. These are dismissed in limine. However, in the circumstances of these cases, we make no order as to costs.

J.S.T.

Before Hon'ble R. P. Sethi & Sat Pal, JJ.

THE COMMISSIONER OF INCOME TAX, AMRITSAR,—*Petitioner.*

versus

M/S LAKSHMI PRINTING CO., AMRITSAR,—*Respondent.*

Income Tax Case No. 162 *of* 1994.

30th September, 1994.

Income Tax Case—Income Tax Act, 1961—*S.* 256(2)—*Making of reference—Powers exercised under section are advisory in nature—High Court can require making of reference upon question of law not yet settled.*

Held, that it is acknowledged position of law that the powers exercised under sub-section 2 of Section 256 of the Act are advisory nature. Being a special jurisdiction, the High Court can require the making of reference upon a question of law which has not been settled or decided by it or by the Apex Court.

(Para 3)

Income Tax Act, 1961—*S.* 256(2)—*Mere admission of—Appeal in the Apex Court without a stay order cannot be held to be a question of law requiring the direction for making a reference in terms of sub-section* 2 *of Section* 256 *of the Act.*

Held, that the mere admission of appeal in the Hon'ble Supreme Court without even staying the operation of the Judgment of this Court cannot be held to be a question of law requiring the direction for making a reference in terms of the sub-section 2 of Section 256 of the Act.

(Para 3)

R. P. Sawhney, Senior Advocate with Aradhana Sawhney, Advocate, *for the Petitioner.*

None, *for the Respondent.*

ORDER

R. P. Sethi, J.

(1) Heard.

(2) By means of this application filed under sub-section 2 of Section 256 of the Income Tax Act (for short the 'Act') a prayer is

made that a direction be issued to the respondent-Tribunal to make a reference to this Court regarding the alleged question of law formulated before it. In view of the Full Bench judgment of five Judges of this Court in M/s Sovrin Knit Works 199 ITR 679, the present petition is not maintainable as the point of law sought to be referred stands already settled by the aforesaid judgment. Mr. R. P. Sawhney, Advocate, submits that after the grant of Special Leave Petition filed by the Revenue, a direction is required to be issued to the Tribunal for making reference to this Court, as according to him the admission of the appeal in the Supreme Court by itself makes a question, the subject matter of the appeal, to be an important question of law. The learned counsel has also relied upon 1966 I.T.R. 619 and 114 ITR 411 in support of his submissions and to urge that while deciding a petition under sub-section (2) of Section 256 of the Act the Court should not be concerned with the ultimate result which is likely to emerge.

(3) It is acknowledged position of law that the powers exercised under sub-section 2 of Section 256 of the Act are advisory in nature. Being a special jurisdiction, the High Court can require the making of reference upon a question of law which has not been settled or decided by it or by the Apex Court. In view of the Full Bench judgment of this Court in M/s Sovrin Knit Work's case (supra) no further action is required to be taken. The mere admission of appeal in the Hon'ble Supreme Court without even staying the operation of the judgment of this Court cannot be held to be a question of law requiring the direction for making a reference in terms of sub-section 2 of section 256 of the Act. The reliance of the learned counsel upon the aforesaid two judgments is misplaced.

(4) A Division Bench of this Court in *C.I.T.* v. *Shiv Parshad* (1) :

> "The Tribunal was right in declining to refer the case for the opinion of the High Court because the Court had already expressed an opinion on that law point and had dissented from the view taken by the Allahabad High Court and no useful purpose would be served by issuing a writ of *mandamus* under Section 256(2) because it had not been shown to the Court that the opinion already expressed by the Court in Anand Sarup's case was erroneous. Further, it would be a futile exercise for the Tribunal to refer the

(1) 146 I.T.R. 397.

matter to the High Court and if Tribunal declined, then to issue a *mandamus* to the Tribunal to refer the matter, because in either eventuality, the answer would be a forgone conclusion. In such a situation, it should be deemed that the case was stated to the High Court and following the earlier decision the High Court had answered the question on these lines.'

To the same effect are the judgments in *C.I.T.* v. *Indian Press Exchange* (2) and *C.I.T.* v. *Kerala S.R.T.C. Trust* (3).

(5) The Supreme Court in *C.I.T.* v. *Chander Bhan Harbhajan Lal* (4), held that where the question of law raised was not substantial and the answer to the question was self evident, the Court was not bound to require the Tribunal to refer the question. In the instant case, the answer to the question sought to be referred is self evident in view of the judgment of the Full Bench in *M/s Sovrin Knit Works' case* (supra).

(6) No merit. Dismissed.

J.S.T.

Before Hon'ble S. S. Grewal & M. L. Koul, JJ.

PARDEEP KUMAR,—*Petitioner.*

versus

STATE OF HARYANA & ANOTHER,—*Respondents.*

C.W.P. No. 3287 of 1994

23rd November, 1994

Constitution of India, 1950—Arts. 226/227—Recruitment to police force—Petitioner not fulfilling physical standard—Claiming relaxation in physical standard—No power of relaxation.

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(2) 176 I.T.R. 331.

(3) 167 I.T.R. 383.

(4) 1960 I.T.R. 188.