

(1977) 09 BOM CK 0033

Bombay High Court

Case No: Income-tax Reference No. 366 of 1975

Commissioner of Income Tax
Vidarbha

APPELLANT

Vs

Godavaridevi Saraf

RESPONDENT

Date of Decision: Sept. 27, 1977

Acts Referred:

- Income Tax Act, 1961 - Section 254

Citation: (1978) 2 ELT 624 : (1978) 113 ITR 589

Hon'ble Judges: R.M. Kantawala, C.J; M.N. Chandurkar, J

Bench: Division Bench

Advocate: R.J. Joshi, V.A. Bobde, for the Appellant;

Judgement

Kantawala, C.J.

At the instance of the revenue the following question is referred to us for our determination :

"Whether, on the facts and in the circumstances of the case and in view of the decision in the case of A.M. Sali Maricar and Another Vs. Income Tax Officer and Another, the penalty imposed on the assessee u/s 140A(3) was legal ?"

2. The assessee submitted a return of income for the assessment year 1968-69 declaring therein income of Rs. 29,038 on August 30, 1969. Having regard to the provisions of section 140A(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), she was required to make self-assessment by September 29, 1969. The amount of tax payable by way of assessment was Rs. 4,342. The assessee did not pay the said tax till the Income Tax Officer made assessment for the assessment year 1968-69 by his order dated August 31, 1971. As no tax was paid by way of self-assessment, an opportunity to show cause why a penalty should not be imposed u/s 140A(3) was given to the assessee. She, however, did not offer any explanation. By his order dated October 22, 1973, passed u/s 140A(3), the Income

Tax Officer levied a penalty of Rs. 800.

3. Aggrieved by the order passed by the Income Tax Officer, she appealed to the Appellate Assistant Commissioner against the order of penalty. He took the view that this was a fit case for imposing penalty but he reduced the amount of penalty to the sum of Rs. 400.

4. In a second appeal before the Tribunal, the attention of the Tribunal was drawn to the decision of the Madras High Court in the case of [A.M. Sali Maricar and Another Vs. Income Tax Officer and Another](#), wherein that High Court held that section 140A(3) was violative of the provisions of article 19(1)(f) of the Constitution and the said section was struck down by that High Court as being unconstitutional. The Tribunal had no jurisdiction to go into the question of vires of particular provisions under the Act and proceeded on the footing that section 140A(3) was non-existent in view of the decision of the Madras High Court and cancelled the order of penalty. It, however, gave an alternative finding that in case the section was treated as in existence, then the order of penalty as varied by the Appellate Assistant Commissioner was to be confirmed. It is from this order of the Tribunal that the above question is referred to us at the instance of the revenue.

5. Mr. Joshi, on behalf of the revenue, submitted that when the Tribunal, in view of the decision of the Madras High Court in the case of [A.M. Sali Maricar and Another Vs. Income Tax Officer and Another](#), set aside the order of penalty, it impliedly held that section 140A(3) was unconstitutional as being violative of the provisions of article 19(1)(f) of the Constitution of India. His submission was that an authority, which is a creature of a statute, has no jurisdiction to go into the validity of the provisions of the statute under which it is constituted. He urged that it may be that so far as the Income Tax Tribunal situate in the State of Madras is concerned, the decision of the Madras High Court in the case of [A.M. Sali Maricar and Another Vs. Income Tax Officer and Another](#), may be treated as an authoritative precedent, but so far as the Income Tax Tribunal at Bombay is concerned, it is merely a persuasive precedent and unless, after following the said decision the Tribunal holds that the section is ultra vires, it cannot set aside the order of penalty.

6. It is the settled position in law, in view of the decision of the Supreme Court in [K.S. Venkataraman and Co. Vs. State of Madras](#), that an authority created by a statute cannot question the vires of that statute or any of the provisions thereof whereunder it functions. It must act under the Act and not outside it. If it acts on the basis of a provision of the statute which is ultra vires, to that extent it would be acting outside the Act. In view of this clear pronouncement of the Supreme Court, the Income Tax Tribunal in Bombay had no jurisdiction to go into the question of constitutionality of section 140A(3) of the Act.

7. Question then arises what is going to be the effect of a decision of the Madras High Court holding that section 140A(3) is unconstitutional as violative of article

19(1)(f) of the Constitution. A similar question came up for consideration before the Supreme Court in the case of [East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta,](#), wherein it was held that an administrative Tribunal cannot ignore the law declared by the highest court in the State. Taking into consideration the provisions of articles 215, 226 and 227 of the Constitution of India, it would be anomalous to suggest that a Tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceeding in direct violation of it. If a Tribunal can do so, for there is no specific provision, just like in the case of the Supreme Court making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer.

8. In view of this clear pronouncement of the Supreme Court, it is not controverted by Mr. Joshi on behalf of the revenue that an Income Tax Tribunal sitting at Madras is bound to proceed on the footing that section 140A(3) of the Act is non-existent in view of the pronouncement of the Madras High Court in the case of [A.M. Sali Maricar and Another Vs. Income Tax Officer and Another](#). Actually, the question of authoritative or persuasive decision does not arise in the present case because a Tribunal constituted under the Act has no jurisdiction to go into the question of constitutionality of the provisions of that statute. It should not be overlooked that the Income Tax Act is an All-India statute and if an Income Tax Tribunal in Madras, in view of the decision of the Madras High Court, has no proceed on the footing that section 140A(3) was non-existent, the order of penalty thereunder cannot be imposed by the authority under the Act. Until 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 140A(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. It is admitted before us that at the time when the Tribunal decided the question, no other High Court in the country had taken a contrary view on the question of constitutionality of section 140A(3). That being the position, it is not possible for us to take the view that the Tribunal in Bombay, when it set aside the order of penalty, went into the question of the constitutionality of that section and gave a finding that it is ultra vires following the decision of the Madras High Court. What the Tribunal really did was that in view of the law pronounced by the Madras High Court it proceeded on the footing that

section 140A(3) was non-existent and so the order of penalty passed thereunder cannot be sustained.

9. Accordingly, the question referred to us is answered in the negative, in favour of the assessee. The revenue shall pay the costs of the assessee.