Commissioner of Income Tax, Vidarbha vs. Godavaridevi Saraf

Whether an Income Tax Tribunal sitting outside the State of Madras is bound to follow a Madras High Court decision declaring Section 140A(3) of the Income Tax Act, 1961 as unconstitutional, and whether the penalty imposed under that section can be sustain

Date of Order: September 27, 2026
Case Law No: GIB-BHC-1977-01
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

BACKGROUND

The assessee filed a return of income for the assessment year 1968-69 but failed to pay self-assessment tax within the prescribed time under Section 140A(1) of the Income Tax Act. The Income Tax Officer imposed penalty under Section 140A(3) for non-payment of self-assessment tax. The Appellate Assistant Commissioner reduced the penalty on appeal. In second appeal, the Bombay Income Tax Tribunal took note of the Madras High Court decision in A.M. Sali Maricar which had struck down Section 140A(3) as unconstitutional being violative of Article 19(1)(f) of the Constitution, and cancelled the penalty order on that basis. The Revenue challenged this before the Bombay High Court by way of a reference question.

CRUCIAL COURT OBSERVATIONS (Verbatim)

"*It is the settled position in law, in view of the decision of the Supreme Court in K.S. Venkataraman and Co. (P.) Ltd. v. 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 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 to 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.*"

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"*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.*"

"*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.*"

FINAL VERDICT

The Bombay High Court answered the reference question in the negative and in favour of the assessee, holding that the Tribunal was correct in setting aside the penalty order and was not required to independently go into the constitutionality of Section 140A(3), since it was duty-bound to follow the Madras High Court's declaration that the section was non-existent, there being no contrary High Court decision at the relevant time. Costs awarded to the assessee. □

ADDITIONAL FOOTNOTES

CASES REFERRED

Case	Citation	Relevance
A.M. Sali Maricar	[1973] 90 ITR 116 (Mad)	Madras HC struck down Section 140A(3) as unconstitutional — foundational precedent relied upon by Tribunal
K.S. Venkataraman and Co. (P.) Ltd. vs. State of Madras	[1966] 60 ITR 112; 17 STC 418 (SC)	Settled law that a statutory authority cannot question the vires of the statute under which it functions
East India Commercial Co. Ltd. vs. Collector of Customs, Calcutta	(Citation as in judgment)	An administrative Tribunal cannot ignore the law declared by the highest court in the State; obedience to superior court is implicit

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