(2000) 06 CAL CK 0001

In the Calcutta High Court

Case No : Writ Petition No. 1697 of 1998

Promod Kumar Saraf — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 30-06-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 229(3), 246(1), 246(2)
Finance Act, 1990 — Section 58
Income Tax Act, 1961 — Section 253(6), 260A, 260A(2)(b)
Wealth Tax Act, 1957 — Section 24, 26, 27(3), 27A, 27A(3)

Citation : 105 CWN 534

Hon'ble Judges : Samaresh Banerjee, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Samaresh Banerjee, J.—The petitioner who is a practising Advocate and also is an Income Tax Assessee has challenged the Constitutional validity of Section 260A{2)(b} of the Income Tax Act, 1961, which has been incorporated in this parent Act by Section 58 of the Finance Act. 1990 w.e.f. 1st October, 1998 as also Section 27A(3) of the Wealth Tax Act, 1957 incorporated in the parent Act by Section 72 of the Finance Act, 1998 also w.e.f. 1st October, 1998. Section 260A of the Income Tax Act, 1961 which has been brought about by way of such amendment provides for appeal to High Court with effect from 1st October. 1998 from order passed by Income Tax Appellate Tribunal. Section 260A(2)(b) which has also been brought about by way of such amendment provides that such appeal to the High Court will be accompanied by a fee of Rs. 10,000/- when such appeal is filed by an assessee. Similarly Section 27(3) of the Wealth Tax Act which has also been brought about by way of such amendment as aforesaid provides that the memorandum of appeal shall be accompanied by fee of 500/- if such appeal is filed by an assessee.

2. No provision, however, has been made for payment of fees if such appeal is filed by the revenue department whether under the Income Tax Act or under the

Wealth Tax Act

3. In this connection for the sake of convenience the aforesaid amended Sections of the Income Tax Act and the Wealth Tax Act, 1957 are quoted hereunder:

INCOME TAX ACT

260A. Appeal to High Court - (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal under this sub-section shall be -

(a) filed within one hundred and twenty days from the date on which the order appealed against is communicated to the appellantl;

(b) accompanied by a fee of ten thousand rupees where such appeal is filed by an assessee;

(c) in the form of. a memorandum of appeal precisely stating therein the substantial question of law involved.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall at the hearing of the appeal be allowed to argue that the case does not involve such questions :

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which -

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal by reason of a decision on such question of law as is referred to in sub-section (1).

WEALTH TAX ACT

27A. Appeal to High Court - The assessee or the Chief Commissioner or Commissioner may, within one hundred and twenty days of the day upon which he is served with notice of an order u/s 24 or Section 26 or Clause (e) of sub-Section

(1) of Section 35, file on or after the 1st day of October, 1998 an appeal to the

High Court.

(2) An appeal shall lie to the High Court from every order passed in appeal by the Appeallate Tribunal under sub-section (1) of Section 24 only if the High Court is satisfied that the case involves a substantial question of law.

(3) In an appeal under this section the Memorandum of Appeal shall precisely state the substantial question of law involved in the appeal, and where the appeal is made by the assessee, shall be accompanied by a fee of five thousand rupees.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard only on the questions so formulated and the respondent shall, at the time of hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such, question.

(6) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may aware such cost as it deems fit.

(7) Assessing Officer shall give effect to the order of the High Court on the basis of a certified copy of judgment delivered under sub-section (6).

It is the specific contention of the petitioner that the aforesaid amended provision of the Income Tax Act and the Wealth Tax Act which has provided for court fees for Rs. 10,000/- and Rs. 5,000/- respectively for preferring an appeal to the Hon''ble High Court from an order of the appropriate authority is beyond the legislative competence of the Union Legislature namely Parliament.

4. It is the further contention of the petitioner that under entry no. 77 of list (1) of the 7th Schedule of the Constitution (Union List) Parliament has the power to make laws with respect to and prescribe fees taken in the Supreme Court only, but Parliament has no power to prescribe fees for High Court and other courts under entry Nos. 96 or 97 of the list (I) (Union List) or under Entry No. 47 of list (III) of the 7th Schedule (concurrent list). It has been contended that the power to make laws with respect to and prescribe fees in courts, other than Supreme Court, has been reserved for the State Legislature under entry 3 of list (II) of the 7th Schedule of the Constitution (State List).

5. It has, therefore, been submitted that the power to make laws With respect to and prescribe fees in courts other than Supreme Courts having been reserved exclusively for the State Legislature under entry 3 of list (II) of the 7th Schedule of the Constitution (State List), Parliament had no legislative competence to

enact the aforesaid amended provision of the Income Tax Act and the Wealth Tax which prescribe court fees for preferring an appeal to the High Court from the order of the appropriate authority and, therefore, such enactments are ultravires the Constitution invalid and liable to be struck down.

6. It has been further submitted that the aforesaid amended provisions of the said Act exfacie make it clear that the fees prescribed thereunder for preferring an appeal to the High Court is nothing but court fees for preferring such appeal and therefore the same will form a part of the consolidated fund under Article 229(3) read with Article 284(b) of the Constitution.

7. Apart from challenging of the constitutional validity of such enactment on the ground aforesaid, the petitioner has also challenged the aforesaid enactment providing for payment of such fees on the ground that the same is clearly arbitrary, discriminatory and violative of Article 14 of the Constitution.

8. It has been contended, inter alia, that fees taken in courts deal with administration of justice and must have co-relation to the administration of justice. While levying fees the appropriate legislature is competent to take into account, of relevant factors like the value of the subject matter of the dispute, the various steps necessary in the prosecution of a suit or a matter, the entire costs of the up keep of courts and officer administering civil Justice, the vexatious nature of certain types of litigation''s as also other relevant factors but the legislature is not competent to compel a litigant to contribute to increase the general revenue. In other words the legislature cannot tax the litigation and there must be a broad co-relationship with a fee collected and the cost of administration of civil justice. It has been submitted that no such co-relation exists in the instant case.

9. It has been further submitted that Article 39A of the Constitution requires the state to secure that the operation of the legal system promotes justice on the basis of equal opportunity and to secure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

10. But in the instant case the exorbitant amount of fees prescribed for an assessee to prefer an appeal to the High Court while exempting the revenue from payment of such fees does not have the reasonable nexus with the object which it seeks to achieve, but it is wholly arbitrary and really tends to price justice out of the reach of small litigants.

11. It may be placed on record that despite service of notice of the present writ application upon learned Attorney General of India, none appeared on behalf of learned Attorney General of India at the time of hearing although the Union of India has contested the proceedings by filing affidavits.

12. The learned Counsel appearing for the respondents firstly has challenged the locus standi of the writ petitioner to move the present writ petition. It has been submitted neither the writ petition can be treated as a public interest litigation

nor the present application has been moved in a representative capacity and it does not appear from the pleadings made in the writ petitioner that the writ petitioner is in any way affected by the impugned amendment of the Wealth Tax Act and the Income Tax Act.

13. As to the merits of the case it is the contention of the respondents that the field of legislative capacity of the Union Parliament has to be given a broad and liberal meaning and not to be construed narrowly. Such broad power of the Union Parliament to enact the legislation in question is vested in the Union Parliament on a. construction of entry No. 22 of List (I) of 7th Schedule of the Constitution which relates to tax on income other than agriculture income; Entry No. 95 of the said schedule which deals with jurisdiction and power of all courts except the Supreme Court with respect to any of the matters in these lists and Entry No. 96 of the said List which refers to fees in respect of any of the matter in the said List but not fees taken in court. Entry No. 97 of the said List which refers to any other matter not enumerated in List II of List III including any Tax not mentioned in either of these Lists.

14. It has been contended further inter alia, that it will appear from the aforesaid Entries both in the List I as also in List II neither the Union of India nor a State has the power to legislate on court fees and therefore Entry 97 List 1, under which the Parliament has the residuary power to legislate on any matter not enumerated in List II or List III including any tax not mentioned in either of the said two Lists empowers Parliament to make the impugned legislation.

15. Alternatively, it was sought to be contended by the respondents that in deciding the question of legislative competence, the pith and substance of the legislation in question has to be seen and there may be overlapping in the field of legislation which has to be scrutinised to ascertain whether the legislature in enacting the legislation had the competence to do so. It was submitted that if the pith and substance of the impugned legislation is examined, it will appear the same is really a legislation for making provisions of appeal before the High Court against the order of appropriate authority and therefore, the Parliament certainly had the competence to legislate on such matter.

16. Referring to the recommendation of an Expert Committee constituted by the Government of India for recommending changes in the Income Tax Act which suggested the fee for filing appeals to the High Court to be fixed of Rs. 10,000/- and the Budget Speech of Hon''ble Finance Minister dated 1.6.1998 it was further contended that such high fees were imposed for the purpose of limiting and expediting litigation by discouraging frivolous litigation and therefore imposition of such fees for the purpose of preferring appeal cannot at all be said to be arbitrary.

17. As to the preliminary point raised by the respondents as to the locus standi of the present writ petitioner to move the writ application, I am unable to accept the contention of Mr. Some, learned counsel appearing for the respondents that

the present petitioner has no locus standi to move the writ application.

18. The petitioner is a practising advocate of this Hon''ble Court and specially practises on Direct Tax laws. He certainly therefore, even as a lawyer, has a real substantial interest in the matter of preference of all appeals to be filed in the High Court from the orders of the Tribunal.

19. In paragraph 21 of the writ petition it has also been pleaded that the writ application is made in public interest which has not been disputed by the respondents in their affidavit.

20. The petitioner is also an assessee under the Direct Tax Law and may prefer appeal against the order of the Tribunal of the appropriate authority if he is aggrieved by the order. Individually as an assessee although therefore he may not affected immediately by the impugned legislation till such time he may have an occasion to prefer an appeal, such apprehension is not remote but very much real.

21. As an assessee therefore also he can maintain the writ petition. There is substance in the contention of the writ petitioner that the assessee under the Direct Tax Law constitute a class of public who were certainly concerned with an impugned legislation and the dispute is not really a private dispute but it is a domain of public law affecting all assessees generally as it relates to very legislative competence of Parliament to levy such fees and also to involve the question of violation of fundamental rights of all assessees namely equality before law and equal protection of law under Article 14 of the Constitution as the impugned legislation while levying such fees for the assessees has exempted the revenue from paying such fees for filing appeal to the High Court.

22. Relying on the decision of the Supreme Court reported in 133 MR 239 (SC) (R.K. Garq''s case), R.K. Jain Vs. Union of India and Others, ; Jayamal Jayantilal Thakore Vs. Chief Commissioner of Income Tax and Others, and 19950 SCC 189 it has been rightly contended by the petitioner in public law domain that petitions under Articles 226 and 32 of the Constitution; have been entertained by the Supreme Court even if filed by an individual.

23. The matter therefore being of great public interest and impugned legislation having affected all assessees as a class, in my view, any member of the assessees can come forward and challenge the impugned legislation and need not wait till the question of filing appeal by him actually arises.

24. For the reasons stated above the writ petitioner therefore can certainly maintain the writ application.

25. As to the merits of the case after considering the respective submissions of the, parties it appears to this court that there cannot be any escape from the conclusion that the aforesaid fees for preferring appeal before the High Court prescribed by the impugned legislation is nothing but court fees and parliament clearly lacks the legislative competence to make such legislation:

26. Under Article 246(1) of the Constitution Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule of the Constitution.

27. Under Article 246(3) of the Constitution, the State Legislatures also have exclusive power to make laws for the state for any part thereto with respect to any of the matters enumerated in List II in the Seventh Schedule of the Constitution.

28. Under Article 246(2) of the Constitution both Parliament and the State have power to make laws with respect to any of the matters enumerated in List III of the Seventh Schedule of the Constitution (Concurrent List).

29. Examination of the various Entries in the aforesaid Lists I, II and III of the Seventh Schedule of the Constitution clearly indicate that under List I (Union List), Parliament has exclusive power relating to fees taken in the Supreme Court whereas the State under List II (State list) has the exclusive power to legislate on fees taken in the High Court

30. Entry 3 of List II of the Constitution (State list) gives exclusive power to the State Legislature to legislature inter alia on fees taken in all court except the Supreme Court, which obviously will include High Courts.

31. Entry 77 of list I (Union List) gives exclusive power to Parliament to legislate inter alia on fees taken in any court. It will therefore clearly appear from the aforesaid List I relating to fees taken in court, that Parliament has the power to legislate relating to only foes taken in the Supreme Court and in no other court. It has no power at all to legislate on fees taken in High Court, which power is exclusively reserved for the State Legislature of the Entry 3 of List II.

32. It is worth noting in this connection that apart from Entry 3 of List II, the only other Entry which empowers the State Legislature to legislate on fees in Entry 66, but the said entry empowers the Legislature to legislate the only on fees in respect of any of the matters in the list but not including fees taken in any court.

33. None of the Entries in List III of the Seventh Schedule of the Constitution (Concurrent List) also empowers either Parliament or the State Legislature to legislate on fees except Entry 47. But Entry 47 empowers the Parliament and the State Legislature to legislate only on such fees which does not include fees taken in any court.

34. There cannot be any doubt therefore relating to fees taken in the High Court it is only a State Legislature which is competent to legislate under Entry 3 of List II (State List) of the Constitution.

34. The impugned legislation whereby Parliament has prescribed the amount of fees for preferring an appeal in the High Court is clearly beyond the legislative competence of Parliament and therefore the same is liable to be struck down.

35. I do not find any merit in the submission of Mr. Some as none of the Lists I, II and III specifically deals with the Court Fees. Parliament has the jurisdiction to legislate on such fees under the residuary Entry 97 of List I which empowers Parliament to legislate on any other matter not enumerated in List II or List III.

36. Such residuary clause will come into play only if no provision is made for legislation in any matter either in List II or List III.

37. The Entry 3 of List II (State List) however empowers the State Legislature exclusively to legislate on the fees taken on all courts except the Supreme Court. Under such provision therefore the State Legislature has the exclusive jurisdiction to legislate relating to court fees taken on all courts including High Court but excluding Supreme Court.

38. The aforesaid Entry 3 of List II having reserved the power for legislation on Court Fees taken in all courts which will include High Court Parliament lacks the competence and power to legislate on the self-same matter under residuary Entry 97 of list 1.

39. I am also unable to accept the contention of Mr. Some that pith and substance of the impugned legislation to provide for appeal before the High Court against the order by any of the appropriate authorities under the Acts and the provision of fees is merely ancilliary thereto and in such event Parliament being competent to make such legislation in the matter of making provisions for appeal, simply, because there might have been some overlapping in the field of legislation, the same cannot be struck down by the court. Reliance has been placed in this connection in the decision of the Supreme Court in the case of Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others, , in the case of Kishan Lal Lakhmi Chand and Others Vs. State of Haryana and Others, and in the case of Southern Pharmaceuticals and Chemicals, Trichur and Others Vs. State of Kerala and Others, .

40. As per the stand taken by the respondents themselves in the affidavit-in-opposition the aforesaid provisions for imposing such heavy fees for preferring appeal to the High Court inter alia, was for discouraging frivolous litigation as per the report of the aforesaid Expert Committee and as per the Budget Speech of the Finance Minister, such provision was made for limiting the number of cases.

41. The impugned legislation therefore was made not only for making provision of appeal before the High Court but also for the avowed purpose of limiting the number of appeals by levying such huge amount of fees.

42. The legislation so far as it relates to levying of fees therefore can hardly said to be an ancilliary legislation, but an independent provision for limiting the number of appeals and the same being wholly beyond legislative competence of the Union Legislature, the same cannot be saved applying the principles of pith and substance.

43. Such legislation therefore clearly having been made for the avowed purpose

of discouraging allegedly frivolous litigations and therefore to limit the number of appeals, the main and substantial purpose of the enactment is to levy very high fees for discouraging the assessees to prefer appeal. It certainly therefore cannot be said that the impugned enactment has been made really for creating a forum of appeal and the encroachment on the power of State Legislature while prescribing fees of preferring such appeal in the High Court is merely incidental and therefore is saved by applying the doctrine of pith and substance.

44. Understanding the difficulty Mr. Some tried to resolve the same by arguing that by the impugned enactment the amount which is required to be paid for preferring the appeal in the High Court is not a fee.

45. It however appears to this court such argument of the learned Counsel for the Union of India is more of desperation than of substance.

Such amount is to be paid by an assessee for preferring an appeal, the same cannot but be Court Fees.

46. But even if the same is not Court Fees, the same being monies received or taken by or deposited with courts within the meaning of Article 229(3) read with Article 284(b) of the Constitution, the same shall form part of the Consolidated Fund of the State and are to be paid in the Public Accounts of the State.

47. Under Article 283(2) of the Constitution the payment of monies into Consolidated Fund of State and withdrawal of monies therefrom and all other matters connected with or ancillary thereto are to be regulated by laws made by the Legislature of the State. Under Article 246(3) of the Constitution, the State Legislature has exclusive power to make laws for such state with respect to matters enumerated in the State List

48. The Union of India in paragraph 4 of its affidavit-in-opposition has relied upon a report of Expert Group constituted by the Government of India, the report of which committee is said to be the basis of the impugned enactment. Chapter XI of the said report deals with High Court and fees for appeal wherein it uses the expression ''Fees'' and recommends that with a view to dissuade frivolous appeals by the assessee and also with a view to meet the cost of administration by the High Court, the fee for filing an appeal to the High Court was suggested to be fixed at Rs. 10,000/-. The Union Finance Minister in his Budgetary Speech also referred to imposition of such fees for better administration of justice in court and for limiting the appeals.

49. An attempt was also be made to argue that the same is tax.

50. It has however already been held by the Supreme Court that the State cannot tax litigation. In the case of The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd., (para 31) it has been held by the Supreme Court inter alia. that the appropriate legislature is free to levy a small fee in some cases and large fee in other, subject of course to the provision of Article 14. But one thing the Legislature is not competent to do and

that is to make litigants to contribute to the increase of general revenue, in other words it cannot tax litigation.

51. The provision of Section 260(A)(2)(b) of the Income Tax and Section 27A of the Wealth Tax Act therefore are ultravires the Constitution and liable to be struck down.

52. It also appears to this court that the imposition of such high fees for preferring appeal to the High Court is wholly arbitrary and discriminatory and is in gross violation of Article 14 of the Constitution.

53. As held by the Supreme Court in the aforesaid case reported in The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd., (para 29) that fees taken in Courts deal with the administration of justice and courts. Such fees therefore must have a co-relation to the administration of justice. While levying fee the appropriate legislature is competent to take into account all relevant factors, the value of the subject matter of the dispute, the various expenses necessary in the prosecution of a suit or matter, the entire cost of the upkeep of Courts and officers administering civil justice, the vexatious nature of certain types of litigation and other relevant matters and may levy a small fees or high fees.

A legislature in consideration was to levy low fees in some cases and a large fee in other. But there has to be a broad co-relationship with the fee collected and cost of administration of civil justice. In case of challenge it is for the state to justify such enhancement. The Supreme Court in the case of Central Coal Fields Ltd. and Another Vs. Jaiswal Coal Co. and Others, (para 2) deplored the practice of the state to insist on payment of court fee on a profiteering scale without co-relative expenditure on the administration of civil Justice which may smack of sale of justice denying equality before the law and affecting access to justice.

54. Under Article 39A of the Constitution the state has a Constitutional obligation to secure that the operation of the legal system promotes justice on a basis of equal opportunity and to secure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

55. The levy of court fee which tends to price justice out of the reach of many distressed litigants was held by the Supreme Court to be violative of Article 14 of the Constitution in the case of P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others, (paras 36 and 37).

56. The combined reading of Article 14 and 39A of the Constitution therefore requires the state to ensure that the operation of legal system promotes justice on the basis of equal opportunity. The imposition of high amount of fee of Rs. 10,000/- and Rs. 5,000/- to be paid even by small assessee seeking justice before the High Court against the order of the appropriate authority even in respect of a small amount although the same may involve the substantial question has no co-relation with the administration of justice and the

respondents have failed to satisfy the court how such co-relation exists. In fact it tends to take away access to justice out of the teach of many aggrieved small assessees, although the same permits the revenue to prefer an appeal to the High Court without any court fees.

57. The same is also therefore clearly discriminatory and violative of Article 14 of the Constitution as it denies equal opportunity to justice to those whose cases involve substantial question of law and therefore need to be decided by the High Court but who are unable to approach the High Court because of the prohibitive fees imposed. The aforesaid enactment is violative of Article 14 of the Constitution also for the reason it treats unequals as equals, namely affluent assessees and assesses with little nexus and has no relationship either with the quantum of income or tax involved in the appeal. Even in case of the assessee having small income and involving small amount of tax substantial question of law may be involved requiring interpretation of the Act Rules or Orders. But because of such exorbitant and prohibitive fees the small assessee would not be able to prefer an appeal. Thus justice by way of preferring appeal to the High Court against illegal order of an appropriate authority would be available only to the affluent class of the assessee, whereas revenue will always be free to prefer appeal without paying any court fees. No justification could be made for such discrimination in favour of the Revenue when revenue is one of the largest litigant before the High Court.

58. The same therefore clearly denies to the small assesses or assessees having lesser means equal opportunity before the law and equal production of law and therefore is in gross violation of the Article 14 of the Constitution.

59. The discriminatory nature of the levy of fees u/s 260A(2)(b) will be apparent when the same is compared to fees levied for appeals to Tribunal prescribed by the same Finance (No. 2) Act, 1998, in Section 253(6) of the Income Tax Act. In Section 253(6) of Income Tax Act different rates of fees are prescribed for different levels of ''total income'' with rate of one per cent of the assessed income where the total income is'' above Rs. 2 lakhs with upper limit of Rs. 10,000/-.

60. Although in the writ petition the writ petitioner has specifically pleaded that the imposition of the aforesaid exorbitant amount of fees is violative of Article 14 of the Constitution and the same are wholly discriminatory and would result in denial of justice to the assesees having no income, the same has not even properly denied by the respondents in the affidavit-in-opposition.

61. There has been merely a bold denial of the relevant averments made in the writ petition in respect thereof.

62. What is more from the averments made in the affidavit-in-opposition it will clearly appear that the main purpose of imposition of such high court fees was to discourage litigations and limiting the number of appeals. In the affidavit-in-opposition it has been stated by the respondents that an expert group

constituted by the Government of India for recommending changes in Income Tax Act submitted its recommendation in a report made by them in February, 1999 while inter alia, suggested an amendment of the said Act providing for direct appeal to the High Court instead of the existing system of reference to the Income Tax Appellate Tribunal. It was further stated that in the said recommendation the said Committee suggested Rs. 10,000/- as fees for filing appeals to the High Court and the rationale for the same was for discouraging frivolous litigation and for better administration of justice. It has further been stated in the affidavit that in accordance with the said recommendation the said Committee prepared a working draft of the Income Tax Bill which provided for appeal to the High Court which prescribed fees of Rs. 10,000/- and Government of India accepted such recommendation.

63. In the said affidavit the respondents have referred to an extract of the Budgetary Speech of the Union Finance Minister dated 1.6.1998 and has also annexed a copy thereof. In paragraph 96 of the said speech it was mentioned that legal measures were being proposed to limit and expedite litigation which include enhanced scale of fees for filing appeals before the Appellate Commissioner and the Income Tax Tribunal.

64. The fact therefore that the whole purpose of imposition of such huge amount of fees for preferring an appeal is for limiting the appeal is clearly admitted by the respondents.

65. The imposition of such high amount of fees for preferring appeal to the High Court therefore has got no relation with the purpose for which a fee is levied in a court namely for meeting the cost of administration of justice in courts but for the purpose of limiting the number of appeals by denying access to justice by way of appeal to the litigants having lesser means.

66. The same is therefore in gross violation of Article 14 of the Constitution and is liable to be struck down.

67. A faint attempt was made to argue that such recommendation having been made by a High Power Expert Committee and the impugned legislation having been made persuant to such recommendation of such a committee, the same cannot be said to be arbitrary.

68. It od not find any merit in such submission. How high the Committee may be because of the fact that the Committee may consist of experts, the same cannot be above the Constitution and therefore their recommendation has to be within the four corners of the Constitution and not beyond the same. When the Court does not hesitate to strike down an action even of State which is in violation of the Constitution or even a legislation when it is ultravires of the Constitution, it is idle to contend because the basis of the legislation is the recommendation made by High Power Committee the same should be allowed to remain although the same is ultravires the Constitution.

69. For the reasons stated above Section 260A(2)(b) of the Income Tax Act and Section 27A of the Wealth Tax Act as inserted by Section 58 of the Finance Act, 1998 with effect from 1.10.1998 are declared and held to be ultravires the Constitution being beyond the legislative competence of Parliament and is also ultravires Article 14 of the Constitution and cannot be enforced.

70. Although the said provisions thus having been held to be ultravires the Constitution are liable to be struck down, and since the court is informed that subsequently in the next Finance Act for the subsequent year the aforesaid provisions have been deleted, the question of striking down such provisions therefore do not arise.

71. My attention has been drawn that at the time of hearing of the present Writ Application an interim order was granted to the effect that the appeals which may be filed before our High Court during the pendency of the writ, may be filed on payment of usual court fees. Notwithstanding the aforesaid provisions of enhanced court fees, but on an underatking that in the event the writ petition fails the enhanced court fees have to be paid.

72. Now that this court has held that the said provisions of enhanced court fees are ultravires the Constitution and further such provisions have also been deleted in the present Act the aforesaid interim order has become infructuous and any assessee having given such undertaking automatically stands released from such undertaking.

73. There shall be no order as to costs.

74. The learned Advocate appearing on behalf of the Union of India prays for stay of operation of the order and judgment. The same is considered and refused. Let a signed copy of the operative portion of this order be communicated to the Registrar General and Registrar, Original Side for their information and necessary action.

