The observations of the learned Judges support the approach as above. I have been in some doubt about the observation of the learned Judges in *M. Ratanchand Chordia's case* (1), that as no compensation for encumbrances has been provided, so the encumbrances referred to in section 12(2) of the Compensation Act are not within the meaning of the word 'encumbrances' as ordinarily used, but it is not necessary to go into this matter any further in the view that has been taken above that section 19(1) of the Compensation Act and rule 102 of the 1955 Rules provide clear intention of Parliament to keep alive enabling the Managing Officer to administer the same and thus taking the same out of the purview of sections 12(2), and 14(2) of the Compensation Act. This appears to have been done in the wake of clause (d) of rule 102, under which a lease can be cancelled, amended or varied by a Managing Officer for any sufficient reason to be recorded in writing. In that manner an encumbrance in the shape of a lease which could not be got rid of otherwise can be put an end to.

(10) In the result, the judgment and decree of the learned Single Judge is affirmed, and this appeal is dismissed, leaving the parties to their own costs.

RANJIT SINGH SARKARIA, J.—I agree.

K.S.K.

FULL BENCH

Before Harbans Singh, D. K. Mahajan, and S. S. Sandhawalia, JJ.

MADAN TARLOK SINGH AND OTHERS,—*Petitioners.*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 3759 of 1968

April 28, 1970

Constitution of India (1950)—*Article* 276, *entry* 82 *of List I and entry* 60 *of List II of Schedule VII—Scope of—Limitations for the applicability of Article* 276—*Stated.*

Punjab Professions, Trades, Callings and Employment Taxation Act (*VII of* 1956)—*Applicability of to the Union Territory of Chandigarh—Whether hit by Article* 276—*Act—Whether* ultra vires.

Held, (per majority Harbans Singh, and S. S. Sandhawalia, JJ. Mahajan, J., Contra), that Article 276 and entry 82 of List I and entry 60 of List II of Schedule VII of Constitution of India are designed to secure some safeguards against multiple taxation of the same income in the same hands by varying authorities. An attempt is made thereby to keep within limited confines both the incidence and the quantum of such double taxation. It is patent that Lists I and II of the seventh Schedule of the Constitution avoid over-lapping powers of taxation and proceed on the basis of allocating adequate sources of taxation for the Union of India and the States with the avowed object of limiting the problems of conflicting or competing taxation powers between the two. Entry 82 of List I makes it amply clear that parliament alone is entitled to levy a tax on incomes other than agricultural income. The State Legislature cannot encroach upon that field except within the narrow confines imposed by Article 276 of the constitution of India and against this article being in the nature of an exception the subject who is sought to be protected against multiple taxation must be strictly construed and all the requisite conditions laid therein must be fully satisfied before the State Legislature also enters the arena of levying taxes on the same income of the harassed tax-payer.

(Paras 18 and 19)

Held that the language of Article 276 of the Constitution spells out three clear limitations for its applicability. The first limitation is in regard to the subject of taxation and it lays down that the relevant tax to be saved must be in respect of professions, trades, callings and employments. Secondly a limitation is imposed on the quantum of the tax and it is laid down that such a tax shall not exceed Rs. 250 per annum. The third limitation pertains to the purpose of levying such a tax, namely, that it must be a tax for the pecuniary benefit of the State or a municipality, district board, local board or other local authority. If all these three conditions are satisfied then alone a tax on income levied by a state is saved from invalidity by the express terms of Article 276. **(Para 20)**

Held, that Union Territory of Chandigarh has no fiscal identity of its own. The whole of the proceeds of the tax levied under the Punjab Professions, Trades, Callings and Employment Taxation Act, 1956, goes directly to the Consolidated Fund of India. No part of it goes into any separate coffers of the Union Territory of Chandigarh. No separate identity or account of this amount is maintained when this is credited to the Consolidated Fund of India. Once it is credited to the Consolidated Fund of India, the custody, control and appropriation thereof vests in the Union of India. In the light of all this, therefore, it cannot possibly be said that the tax levied under the Act is for the benefit of the revenues of the Union Territory of Chandigarh. The paramount condition is the satisfaction of the requirement of Article 276 that the taxes must be for the benefit of the revenue of the State levying the tax and as long as that is not done the evil of unconstitutionality must continue to attach to such a statute. Hence the Act in its applicability to the Union Territory of Chandigarh is patently *ultra vires* Article 276 of the Constitution.

(Paras 25, 27 and 29)

Held, (per Mahajan, J. Contra.), that the administration of the Union Territory of Chandigarh vests with the Central Government under the Punjab Reorganisation Act, 1966, and a law validly passed by the Parliament regarding the Union Territory cannot be struck down merely on the ground that there is no Consolidated Fund of the Union Territory of Chandigarh. Article 276 does not talk of the tax being deposited in the Consolidated Fund of the State or Territory enacting the law. Moreover, the expression "taxes for the benefit of the State or a Municipality, District Board, Local Board or other Local Authority" in the Article merely emphasizes that the State has the power to impose taxes for, all taxes are levied for its benefit. The purpose of Article 276 was to save such taxes from being hit as constitutionally invalid inasmuch as these taxes are, in effect, taxes on income and, therefore, not within the ambit of the State legislature power. It is only the Parliament which has the authority to levy taxes on income. There is no provision in the Article that the tax collected in pursuance of this provision by the State or a Local Authority has to be expended for the benefit of those who pay it or for the benefit of the residents of the territory in which it is collected. Obviously, all taxes are collected for a purpose—the purpose being running of the administration and for providing other beneficient measures for the citizens. Hence the Act in its applicability to the Union Territory of Chandigarh is not *ultra vires* Article 276 of the Constitution. (Paras 7, 9 and 10)

Case referred by the Hon'ble Mr. Justice Harbans Singh and the Hon'ble Mr. Justice S. S. Sandhawalia, on 21st November, 1969, to a larger Bench for decision of an important quuestion of law involved in the case. The case was finally decided by a Larger Bench consisting of the Hon'ble Mr. Justice Harbans Singh, the Hon'ble Mr. Justice, D. K. Mahajan and the Hon'ble Mr. Justice S. S. Sandhawalia, on 28th April, 1970.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari mandamus *or any other appropriate writ order or direction be issued quashing the assessment of the petitioners to the levy of the professional tax and restraining the respondents from making recovery of deduction out of their salary bills.*

BALDEV SINGH KHOJI, ADN H. L. BANSAL, ADVOCATES, for the Petitioners.

C. D. DEWAN AND S. K. JAIN, ADVOCATES, for the Respondents.

JUDGMENT

MAHAJAN, J.—This order will dispose of Civil Writ Petition Nos. 3759 of 1968 and 470 of 1969. Both these cases were referred to a Full Bench by Harbans Singh and S. S. Sandhawalia JJ. That is how these cases have been placed before us for disposal.

(2) Initially, three points were urged before the Division Bench, namely :—

(1) That in view of the preamble of the Punjab Professions. Trades, Callings and Employment Taxation Act, 1956, (Punjab Act No. 7 of 1956), (hereinafter referred to as the Professions Tax Act), the Act does not apply to the Union Territory of Chandigarh, because no change has been made by the Adaptation Order in the preamble; and the Act only applies to the territories of the Punjab;

(2) That the Act has become *ultra vires* the Constitution with effect from the date of formation of the Union Territory of Chandigarh, in view of Article 276 of the Constitution of India; and, therefore, no tax can be levied on persons engaged in any trade, calling or profession;

and

(3) That the employees of the High Court are not serving under a State or under any Local Authority etc. and consequently section 7 of the Professions Tax Act and rule 8 framed under the said Act are not applicable to them and that recovery cannot be affected by deduction from their pay bills, as provided in the above-said rule; and that if tax is recoverable, it can only be recovered in the manner provided in rule 9.

The first two contentions are common to both the petitions and the third contention only arises in Civil Writ No. 3759 of 1968, which has been filed by the High Court employees.

(3) Before dealing with these contentions. it will be necessary to set out the pre'iminary facts: The Professions Tax Act was passed by the Punjab Legis'ature in the year 1956. This Act was valid'y passed by the Punjab Legislature in view of the provisions of Article 276 of the Constitution of India read with Entry No. 60, List II, Schedule Seventh of the Constitution of India. It is by reason of the subsequent events that the present controversy has arisen. The erstwhile State of Punjab, as it existed prior to 1966, was reorganized. with the result, that part of its territories were transferred to Himachal Pradesh; another part of its territories formed a new State of Haryana and certain territories around Chandigarh and including the town of Chandigarh were declared as Union Territory of Chandigarh. This was effected by the Punjab Re-organisaton Act, 1966, (herenafter referred to as the Re-organisation Act). This Act came into effect on the 1st of November, 1966

This Act is divided into ten parts. Part II deals with the re-organisation of the State of Punjab and Part X, with which we are concerned, deals with Legal and Miscellaneous Provisions. The relevant provisions in this part are sections 87, 88, 89 and 90. These provisions are reproduced below for facility of reference:—

"87. *Power to extend enactments to Chandigarh.*—The Central Government may, by notification in the official Gazette, extend with such restrictions or modifications, as it thinks fit, to the Union Territory of Chandigarh any enactment which is in force in a State at the date of the notification.

88. *Territorial extent of Laws.*—The provisions of Part II, shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Punjab shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day.

89. *Power to Adapt Laws.*—For the purpose of facilitating the application in relation to the State of Punjab or Haryana or to the Union territory of Himachal Pradesh or Chandigarh of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order. make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

Explanation.—In this section, the expression 'appropriate Government' means—

(a) as respects any law relating to a matter enumerated in the Union List, the Central Government; and

(b) as respects any other law,—

(i) in its application to a State, the State Government, and

(ii) in its application to a Union territory, the Central Government.

90. *Power to construe Laws.*—(1) Notwithstanding that no provision or insufficient provision has been made under section 89, for the adaptation of a law made before the appointed day, any court. tribunal or authority, required or empowered to enforce such law may, for the purpose of facilitating its application in relation to the State of Punjab or Haryana, or to the Union territory of Himachal Pradesh or Chandigarh, construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the court, tribunal or authority.

(2) Any reference to the High Court of Punjab in any law shall, unless the context otherwise requires, be construed, on and from the appointed day, as a reference to the High Court of Punjab and Haryana."

(4) The petition, that emerges after the reorganisation, is that the laws prevailing in the State of Punjab before its reorganisation. were to remain applicable to the reorganised territories, that is, the territories transferred to Himachal Pradesh; the territories declared as Union territories, the territories forming the State of Haryana; and to what left of undivided Punjab. That is how, the Professions Tax Act became applicable to the Union Territory of Chandigarh. The Chandigarh Administration has been recovering the same from the residents of the Union Territory who were covered by its provisions. So far as the State of Punjab is concerned, it has repealed this Act; and now in the territories of Punjab, no such tax is recovered.

(5) So far as the first contention is concerned, it presents no difficulty. The Act was applicable to the Union Territory of Chandigarh even before it was made such territory, for it was an integral part of the undivided Punjab. Moreover, the combined reading of sections 87 to 90 of the Reorganisation Act clinch the matter. The learned counsel for the petitioners were in fact, not serious about this contention. Their main purpose in advancing this contention was to buttressth second contention.

(6) The second contention is the real contention. The argument in support of the same proceeds thus. There is no doubt that under sections 87 to 90 of the Reorganisation Act the Profession Tax Act became applicable to the Union Territory of Chandigarh, but this would be of no use in view of Article 276 of the Constitution of India; inasmuch as a law imposing tax on professions, trades, callings or employments can only be imposed for the benefit of the State or of a Municipality, District Board, Local Board or other Local Authority. The realisation of the tax from the Union Territory of Chandigarh goes to the Consolidated Fund of the Union of India, there being no Consolidated Fund of the Union Territory as such. Therefore, there is a possibility of this revenue being utilized for purposes other than the purposes of the Union Territory. In this situation, it is urged that the applicability of the Act to the Union Territory of Chandigarh would be hit by Article 276, of the Constitution of India. It is not disputed that in view of the provisions of Article 246 of the Constitution of India, Parliament has the power to legislate with regard to items mentioned in List II of Schedule Seventh. It is also conceded that the Act, as adapated, will be deemed to have been passed by the Parliament. The only attack against the Act is the one already mentioned, namely, that there being no Consolidated Fund of the Union Territory of Chandigarh, the applicability of the Professions Tax Act will be hit by Article 276. Curiously enough, it was not disputed that the expenses to run the Chandigarh Administration are met out of the Consolidated Fund of the Union of India, to which Fund are credited the receipts from the impugned tax. It would, therefore, be quite legitimate to presume that, so far as the Union Territory of Chandigarh is concerned, the Consolidated Fund is the Consolidated Fund of the Union of India,—*vide* Article 266 of the Constitution.

(7) There is another way of looking at the matter. The validity of an Act has to be adjusted by the competence of the Authority enacting it. It is not dispute that the Act can be enacted by the Union Parliament for the Territory of Chandigarh even now in view of Article 246 of the Constitution of India. It would also be open to the Parliament to say that they are enacting the law for the benefit of the Union Territory of Chandigarh. In spite of this, the argument proceeds that even then as the tax will not be credited to the Consolidated Fund of the Union Territory of Chandigarh, there being no such Fund, the Act would be hit by Article 276. I am unable to agree with this contention. The administration of the Union Territory of

Chandigarh vests with the Central Government under the Reorganisation Act; and a law validly passed by the Parliament regarding the Union Territory cannot be struck down merely on the ground that there is no Consolidated Fund of the Union Territory of Chandigarh. Article 276 does not talk of the tax being deposited in the Consolidated Fund of the State or Territory enacting the law. Moreover, when a law is enacted, it is obviously enacted for the benefit of the State or Territory for which it is enacted. In any case, that intention has to be ascribed to the framers of the law.

(8) Even if I am wrong in my approach, there will be no different result, in view of the provisions of the Reorganisation Act, particularly section 88. For purposes of the Act and in relation to its application to the Union Territoy of Chandigarh, it must be assumed that there has been no-reorganisation. The deeming provision must be given its full play and even an unreal state of affairs must be treated as real. See in this connection the decision of the Supreme Court in *State of Bombay* v. *Pandurang* (1).

(9) If we turn to Article 276 of the Constitution of India, it will appear that the expression "taxes for the benefit of the State or a Municipality, District Board. Local Board or other Local Authority" merely emphasizes that the State has the power to impose taxes; for all taxes are levied for its benefit. The purpose of Article 276 was to save such taxes from being hit as constitutionally invalid; inasmuch as these taxes are, in effect. taxes on income; and, therefore, not within the ambit of the State legislative power. It is only the Parliament which has the authority to levy taxes on income. In this connection, reference may be made to the decision of the Supreme Court in *Bharat Kala Bhandar Ltd. (Private) and another* v. *Municipal Committee, Dhamangaon* (2), wherein the rationable for enacting section 142-A of the Government of India Act, 1935; and on which Article 276 of the Constitution now rests, in explained. The majority view in this decision, so far as it relates to our purpose, is as follows:—

> "* * The legislative spheres of the Provinces and the Centre came to be clearly demarcated in regard to items falling within Lists I and II of Schedule VII of the Government of India Act and now to those falling within the same

(1) A.I.R. 1953 S.C. 244.
(2) A.I.R. 1966 S.C. 249.

> lists of Schedule VII of the Constitution. Taxes on professions, trades, calling and employments are taxes on income and are thus outside the Provincial and now State List. They exclusively belong to Parliament and before that to the Central Legislature. Yet by a large number of laws enacted before the Government of India Act, 1935, local governments and local authorities were invested with power to impose taxes on such activities. Obviously this was in conflict with section 100 of the Government of India Act. When this was realised. the British Parliament enacted section 142-A, saving the power conferred by pre-existing laws, but limiting the amount payable to Rs. 50 after 31st March, 1939. This section has been substantially reproduced in Article 276 of the Constitution with the modification that the upper limit of such tax payable per annum would be Rs. 250 instead of Rs. 50. * * *"

The object of Article 276 of the Constitution was not to relegate the taxes realised, in pursuance of this provision, to fees. The distinction between "tax" and "fee" has been brought about in the decision of the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (3). "Tax" and "Fee", according to this decision, are—

> "a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered. This definition brings out the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it. The essence of taxation is compulsion. that is to say, it is imposed under statutory power without the taxpayer's consent and the payment is enforced by law. The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which, when collected, forms part of the public revenues of the state. As the object of a tax is not to confer any special benefit upon any particular individual there is no element of *'quid pro quo'* between the tax payer

(3) A.I.R. 1954 S.C. 282.

and the public authority. Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the tax-payer depends generally upon his capacity to pay." ;

"A fee is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases."

(10) There is no provision in Article 276, that the tax collected in pursuance of this provision by the State or a Local Authority has to be expended for the benefit of those, who pay it or for the benefit of the residents of territory in which it is collected. Obviously, all taxes are collected for a purpose—the purpose being running of the administration and other for providing other beneficient measures for the citizens. In paragraph 21(4) of the Return, it is clearly stated on affidavit, that the tax collected under this head is used for the benefit of the Union Territory. Therefore, even if a very limited and narrow interpretation is placed on Article 276, that also is satisfied.

(11) After giving the matter my careful consideration, I am unable to hold that the Professions Tax Act is *ultra vires* the Constitution.

(12) The last contention only arises in the case of High Court employees. Their contention has been dealt with in the referring order in the following manner: ——

"****** Section 7 of the Act provides a special method by which the recovery can be made in the case of 'persons serving under the State or Central Government or in the employment of local authority'. In their case, the tax, which each such person is liable to pay 'shall be deducted at the source in the manner prescribed with reference to his total gross income'. And Rule 9 of the Rules provides for the manner of payment of tax by persons other than the

persons in employment of Government or local authority. The contention on behalf of the petitioners, who are employees of the High Court, was that though they may be called persons appointed to public services and posts in connection with the affairs of the State, they are not serving under the State Government, and relying on the Supreme Court judgment in *Pradyat Kumar Bose* v. *The Hon'ble Chief Justice of Calcutta High Court* (4), it was urged that "the phrase—'persons serving under the Government of India or the Government of a State' seems to have reference to such persons in respect of whom the administrative control is vested in the respective executive Government functioning in the name of the President or of the Governor or of a Rajpramukh. The officers and staff of the High Court cannot be said to fall within the scope of the above phrase because in respect of them, the administrative control is clearly vested in the Chief Justice, who, under Constitution, has the power of appointment and removal and of making rules for the conditions of services." In that case, the point involved was, whether for the dismissal of the Registrar of the Original Side of the High Court prior consultation with the Public Service Commission was necessary, which would have been necessary if the Registrar could be said to be serving under the Government of the State. It was held that the Registrar was not serving under the Government of the State and consequently no such consultation was necessary. It was conceded by the learned counsel for the petitioners that this was only a technical and not very material point in the case, because once it is held that they are liable to pay the tax, the method by which recovery can be made is of only academic interest. * * * *".

(13) In my opinion, this contention must fail on two grounds, namely:—

(1) That this method of recovery was not objected to at the initial stages; and the employees have been suffering the

(4) A.I.R. 1956 S.C. 285.

deduction at source. The method of recovery does not deprive them of any right to or in property. The tax has to be paid. Either it is paid, as provided in Rule 9; or it is paid, as provided in Rules 10 and 11. The latter two Rules relate to deduction at source and are applicable to persons, who are covered by section 7 of the Act;

and (2) That the decision, in which the subordinate judicial was held not to be serving under the State, was rendered in a different context. It is not possible to conceive of an employee as not serving either in connection with the affairs of a State or the Union, as the case may be. The indicia, whether he is so serving or not, is furnished by the source from which he draws his salary. If he draws his salary from the Consolidated Fund of the Union, he is serving in connection with affairs of the Union; and if he draws it from the Consolidated Fund of the State, he is seving in connection with the affairs of the State.

Therefore, it would not be right to hold that the High Court employees fall in a category other than the one mentioned in section 7. I entirely agree with the view expressed by Harbans Singh, J. in the referring order, that this matter is really academic and is of no practical consequence. I would, therefore, reject this contention also.

(14) For the reasons recorded above, these petitions must fail; and are accordingly dismissed. But there will be no order as to costs.

Sandhawalia, J.—I have the privilege of persuing the judgment proposed by my learned brother Mahajan, J.and agree with him that the first of the three contentions raised on behalf of the petitioners must fail for the reasons recorded in the proposed judgment. I am equally agreed that the present case does not turn upon the now well-established distinction between 'a tax' and 'a fee' and indeed this distinction does not seem to be germane to the issues involved. However, regarding the crucial point of the vires of the Punjab Professions, Trades, Callings and Employments Taxation Act, 1956, (hereinafter referred to as the Professions Tax Act) because of its conflict with Article 276, I would, with great respect, differ from the conclusion arrived at by my learned brother.

(16) The facts appear fully in the judgment of Mahajan, J., and it is unnecessary to traverse the whole of the same ground again. The contentions raised before us are primarily legal and it may suffice to notice that the impugned Act was passed by the Legislature

of the erstwhile State of Punjab in 1956. The preamble thereof which remains unamended even in relation to the Union Territory of Chandigarh reads as follows:—

> "An Act to impose a tax on professions, trades, callings and employments for the benefit of the revenues of the Punjab State."

By the provisions of this Act a graded tax was levied on total gross incomes exceeding Rs. 6,000 to those above Rs. 20,000 per annum. The quantum of tax varied in accordance with the income from Rs. 120 to a maximum of Rs. 250 only. By the relevant provisions of the Punjab Reorganisation Act, 1956, and the notification issued thereunder this Act came to be applied to the Union Territory of Chandigarh on the 1st of November, 1966, at the time of the Reorganisation of the erstwhile State of Punjab. Recoveries authorised under the tax were sought to be made from the petitioners. It deserves notice that as far as the parent Act was concerned, it stands repealed in the adjoining State of Punjab. It is in this context that the primary contention has been raised on behalf of the petitioners that from the 1st of November, 1966, the Profession Tax Act as applied to the Union Territory of Chandigarh came in direct conflict with Article 276 of the Constitution and hence is *altra vires*. The following contention was hence plausibly raised before us:—

> "That the Act has become *ultra vires* the Constitution, with effect from the date of the formation of the Union Territory of Chandigarh in view of Article 276 of the Constitution, and, therefore, no tax can be levied on persons engaged in trades, callings or professions."

In my view the answer to the question above-said has to be evolved in the light of the three provisions of the Constitution, namely. Article 276 and entry No. 82 of List 1 of the Seventh Schedule and entry 60 of list II of the said Schedule. For facility of reference these provisions may first be set down—

> "276(1) Notwithstanding anything in article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum;

provided * * * * * *
* * * * * *

Entry 82 *of Seventh Schedule* (List I) Taxes on income other than agricultural income.

Entry 60 *of Seventh Schedule* (List II) Taxes on professions, trades, callings and employment."

(17) I would have wished to refrain from burdening this judgment, but it appears that a brief reference to the history of the above-said provisions is inevitable to understand their true meaning and import. All three are derived from the corresponding provisions of the Government of India Act, 1935 and we need go no further to trace their origin. As originally enacted, the Government of India Act contained the following entries in its seventh Schedule:—

"Taxes on income other than agricultural income (entry 54 List I); taxes on agricultural income (entry 41, List II); taxes on professions, trades, callings and employment (entry 46 of List II)."

These legislative entries in the Act were intended to be mutually exclusive. However, taking advantage of the unlimited power in entry 46 of List II, the United Provinces Government proposed to levy an employment tax on all salaries of Rs. 250 and above earned in the Province, whether received or receivable in or outside the Province. This employment tax was indeed an income-tax in disguise. Faced with this situation and similar complications, the British Parliament inserted section 142-A in the Government of India Act, 1935, and amended entry 46 of List II making it subject to section 242-A. It deserves pointed notice that Arcticle 276 is substantially the same as section 142-A of the Government of India Act except for the maximum amounts provided therein. Similarly entry 82 of List I and entry 60 of List II of the Constitution correspond to the relevant entries of the Government of India Act.

(18) From the above it appears that Article 276 and entry 82 of List I and entry 60 of List II are designed to secure some safeguards against multiple taxation of the same income in the same hands by varying authorities. In any case an attempt is made thereby to keep within limited confines both the incidence and the quantum of such double taxation. It is patent that Lists I and II of the Seventh Schedule of the Constitution avoid over-lapping powers of taxation and proceed on the basis of allocating adequate sources of taxation for the Union of India and the States with the avowed object of limiting the problems of conflicting or competing taxing powers between the two. This scheme of legislative lists as regards taxation has been borrowed by the Constitution from the Government of India Act, 1935.

(19) Entry 82 of List I makes it amply clear that Parliament alone is entitled to levy a tax on incomes other than agricultural income. The State Legislature cannot encroach upon that field except within the narrow confines imposed by Article 276 of the Constitution. This Article being in the nature of an exception (and against the subject, who is sought to be protected against multiple taxation) must be strictly construed and all the requisite conditions laid therein must be fully satisfied before the State Legislature also enters the arena of levying taxes on the same income of the harassed tax-prayer.

(20) The language of Article 276 of the Constitution spells out three clear limitations. The first limitation is in regard to the subject of taxation and it lays down that the relevant tax to be saved must be in respect of professions, trades, callings and employments. Secondly a limitation is imposed on the quantum of the tax and it is laid down that such a tax shall not exceed Rs. 250 per annum. The third limitation with which we are directly concerned pertains to the purpose of levying such a tax, namely, that it must be a tax for the pecuniary benefit of the State or a municipality, district board, local board or other local authority. If all these three conditions are satisfied then alone a tax on income levied by a State is saved from invalidity by the express terms of Article 276. In a nutshell, therefore the broad issue in the present case is whether all these three qualifications, limitations or tests stand satisfied. If they are the taxing statute is saved, if they are not, the Act is tainted with unconstitutionality because of its conflict with Article 276.

(21) We may clear the ground for the application of the above-said three criteria. It is fully conceded before us on behalf of respondents (as it was before the referring Division Bench as noticed in the judgment of my learned brother Harbans Singh, J.) that the tax imposed under the Professions Tax Act is in terms a tax on income. Even otherwise a reference to the statute, the proportion by which it is levied on the total gross income and the mode of levying the same hardly leaves any doubt on this score. We proceed, therefore, upon the accepted premises. that the Professions Tax Act levies a tax on income.

(22) A reference to the provisions of the Article 276 would show that two of the criteria above-noticed are patently satisfied. Undoubtedly this Act purports to be a tax in respect of professions, trades, calling or employment and in this respect is within the four corners of the requirement of Article 276. It also satisfies the limitation of quantum in so far as the maximum amount of tax imposed therein does not exceed Rs. 250 per annum. It is equally clear that this Act does not levy the tax for the benefit of a municipality, district board, local board or other local authority. As is admitted by the respondents, the tax is being levied allegedly for the benefit of a State. The question that remains, therefore, is whether the tax on income levied by the impugned Act is for the benefit of the revenue of the Union Territory of Chandigarh. To use the language of Article 276, is this Act a 'law of the legislature of a State relating to taxes for the benefit of the State.' These words of Article 276, therefore, are the clue to the question that arises for determination in the present case. These words, therefore, deserve a close examination and analysis. In my view they are not to be construed to mean generally as relating to every law for the benefit of the State. Truly construed they refer to a law relating to taxes which taxes in turn are for the benefit of the State levying them. The benefit therefore, is not a general benefit which might be deemed to accrue by any law, but is a benefit in the shape of revenue accruing to the particular taxing State. That this is the interpretation to be placed on these words is more than patent because when the provisions of Article 276(1) are read disjunctively, the relevant tax may be either for the benefit of a State or of a municipality, district board, local board or other local authority. Whilst generally as noticed by my learned brother Mahajan, J., it may well be said that all laws are enacted for the benefit of the State or the territory for which they

are enacted but can it be said that all laws are also for the benefit of a local authority ? The answer must be in the negative because a State law may well be to the detriment of a local authority as for instance it may even provide for its abolition. The word 'benefit', therefore, is directly and inextricably related to 'taxes' that is, what the Article visualises is a concrete financial and revenue benefit to the State or in the alternative to a local authority and not a general benefit which may be presumed to accrue from all legislation. This is more so when reference is made to the preamble quoted in the earlier part of the judgment which clearly refers that the Act is "for the benefit of the revenues of the Punjab State". Similarly the objects and reasons for this enactment which has been quoted below refers that the tax is being imposed with a view to augmenting the resources of the State for meeting the increased expenditure, etc.

(23) The issue, therefore, narrows down to this 'Does the Act and the taxes imposed thereunder confer any direct fiscal benefit on the Union Territory of Chandigarh?' If it does; it would be in conformity with Article 276 and if it does not, it would patently be an infraction thereof.

(24) There is no dispute the Union Territory of Chandigarh is a 'State' in view of section 2(58) of the General Clauses Act, 1897. Yet again part VIII of the Constitution containing Articles 239 to 241 would be attracted thereto. For the purposes of administration and revenue, however, Union Territories in India now seem to fall within two classes by virtue of the Government of the Union Territories Act, 1963. By the said Act,—*vide* section 2(h), Union Territory means any of the Union Territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman Deo and Pondichery. By section 47 of the same Act a provision is made for the creation of the Consolidated Funds of the Union Territories above-said in which all revenues received in a Union Territory by the Government of India or the Administrator of the Union Territory shall be credited. By sub-sections (2) and (3) of the said section, it is provided that moneys out of the Consolidated Funds of all Union Territories can be appropriated only in accordance with and for the purposes and also in the manner provided in this Act and further that the custody of the Consolidated Fund of the Union Territory shall be regulated by rules made by the Administrator of the said Union Territory with the approval of the President. By section, 3 of the said Act, provision is

also made for the creation of legislative assemblies for the Union Territories mentioned in section 2(h) referred to earlier. Admittedly the Union Territory of Chandigarh does not fall within the ambit of the Government of Union Territories Act, 1963, and no legislature or a Consolidated Fund of its own as provided for in section 47 of the above said Act. We had consequently pointedly asked the learned counsel for the respondents and it is conceded in reply that the Union Territory has no independent revenue of its own. It is further conceded that all taxes (including the one levied under the Professions Tax Act), revenues, loans and all moneys received on its behalf are credited to the Consolidated Fund of India created under Article 266 of the Constitution of India and there is no separate account or fund belonging to the Union Territory of Chandigarh to which these amounts can even be credited. To put it tersely therefore, though the Union Territory of Chandigarh has a legal identity in view of section 2(58) of the General Clauses Act, it has, however, no fiscal identity of its own.

(25) The clear position that emerges regarding the proceeds of the tax levied under the law enacted by the Professions Tax Act, therefore, is that the whole of this amount goes directly to the Consolidated Fund of India. No part of it goes into any separate Coffers of the Union Territory of Chandigarh. It is conceded that no separate identity or account of this amount is maintained when this is credited to the Consolidated Fund of India. Once it is credited to the Consolidated Fund of India, the custody, control and appropriation thereof vests in the Union of India. This is amply clear by the provisions of Article 266(3) which is as under:—

> "No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution."

The above provision has to be read in the light of Articles 114 and 115 of the Constitution which provide for the appropriation bills and the Supplementary, additional or excess grants under which the amounts may be withdrawn from the Fund above-said. It would thus appear that far from being a tax for the benefit of the Union Territory of Chandigarh, it is clearly being levied for the benefit of the Union of India. We had pointedly posed two questions to the learned counsel for the respondents, namely, whether after the tax levied under the Act has been credited to the Consolidated Fund

of India does the Union Territory of Chandigarh have any control or right of appropriation therefrom. The learned counsel for the respondents had to fairly concede that the Union Territory had no such power or control over the Fund whatsoever. Again regarding the issue whether the money expended for the administration of the Union Territory of Chandigarh was in any way proportionate to or related to the taxes collected within the same, the answer was an equally categorical negative. It has been conceded that the amounts spent on the Administration and other purposes of the Union Territory come in the shape of *ex gratia* grants from the Union of India and there is no conceivable connection, nexus or proportion of these grants to the revenues or taxes collected from the Union Territory of Chandigarh. Similarly there is no dispute that the Union Territory of Chandigarh can neither claim wholly nor a part nor any proportion of the tax levied under the Professions Tax Act.

(26) Two more tests on the point of the tax being for the benefit of the revenues of the Union Territory of Chandigarh may also be noticed. Speaking positively it is not denied that if the rates of tax provided in the Professions Tax in its lower levels are enhanced or the revenue therefrom is raised thereby the Union Territory of Chandigarh would not receive any direct proportional benefit therefrom. Negatively, if the tax is struck down as unconstitutional or it is repealed and not collected, that again would not in any way effect the allocation of finances made by the Union of India for the purposes of the Union Territory of Chandigarh.

(27) In the light of all this, can it possibly be said that the tax levied under the impugned Act is for the benefit of the revenues of the Union Territory of Chandigarh? It can hardly be so when it is virtually admitted that the Union Territory has no revenue of its own nor any separate coffers to which such a tax can go. On the contrary the tax goes into the Coffers of the Union of India and is wholly under its control. After all what is the benefit of a tax. For all practical purposes a "tax" is "money" and it is undeniable that the benefit of tax or money goes either to the person in whose coffers or pocket the money goes or who has the control or the power of appropriating the same. The word "benefit" has been defined in Bouvier's legal Dictionary as 'profit, fruit or advantage'. Does the Union Territory of Chandigarh have any direct profit or fruit or advantage of the proceeds of this tax? The answer appears to me

to be clearly in the negative. That being so the fundamental pre-requisite for the levying of a tax on income by a State, namely, the Union Territory of Chandigarh is lacking in the present case. Such an imposition could be saved only if it satisfied this necessary qualification of Article 276. It is consequently not saved by the said Article and not being in conformity with the provisions thereof is patently *ultra vires* of the same.

(28) It had been argued before us that the professions Tax Act when enacted in 1956 was a perfectly valid piece of legislation in the erstwhile State of Punjab and the subsequent bifurcation thereof would not make the provision unconstitutional. The Contention cannot, in my view be sustained. The preamble of the Act clearly stated that it was being levied at the said time for the benefit of the revenues of the erstwhile State of Punjab and there is no dispute that it was so. The object and reasons for the enactment of the bill in clear terms stated as follows:—

> "With a view to augmenting the resources of the State for meeting the increased expenditure on development, Government have decided to levy a Professional Tax, with effect from the current financial year, on higher income groups capable of paying a portion of their income for the good of the community at large."

So long as the proceeds of the tax went to the revenues of the taxing State, the conditions of Article 276 remained fully satisfied and the Act remained *intra vires*. Those conditions, however, are patently being violated when it is being levied in the Union Territory of Chandigarh and not even remotely being attributed to the benefit of the revenues of the said territory. This, as I have held above, is a clear infraction of Article 276. It appears axiomatic to me that if the Act comes in conflict with this provision of the Constitution, it must be struck down. Once it is so, no other Act, legal fiction or deeming provision in any other Act of the Parliament or the State can save it from the taint of unconstitutionality. It is now beyond the pale of all conroversy that all laws against the Constitution are void. Therefore, with the geatest respect to my learned brother, I do not think that section 88 or any other provision of the Punjab Reorganisation Act can save this Act from the taint of unconstitutionality. if it is voilative of Article 276. Section 88 in my view does not create any legal fiction that there would be deemed to be no reorganisation of the State. It merely says in reference to the territorial extent of

the laws that the provisions of part second of the Punjab Reorganisation Act shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies.

(29) The last argument on behalf of the respondents may also be noticed briefly. It was contended that merely because the Union Territory of Chandigarh has no Consolidated Fund of its own would not render the Professions Tax unconstitutional. The contention is not well-based. Undoubtedly there is no magic in a Consolidated Fund. This fund merely is an indicia to show the custody. control and the power to appropriate the money collected on behalf of the State. Such power could be shown by other indicia also. As already noticed, however, it is conceded that the Union Territory of Chandigarh has no other separate Fund or Coffers or account to which the revenues collected therein can be credited. There is nothing to show that the custody control and the power to appropriate the revenues or money collected in the territory vests in the local entity which is the Union Territory of Chandigarh. Had it been so it may well have been possible for the respondents to show that the tax was being levied for the benefit of the Union Territory of Chandigarh. As noticed in the earlier part of this judgment, the issue is whether the Union Territory of Chandigarh has a separate fiscal identity of its own part from that of the Union of India in the absence of the consolidated fund or any account to which the revenues collected within the Union Territory of Chandigarh may go. It is patent that the revenues collected therein vest directly in the Union of India alone which has the power of appropriation thereof. As long as that is so the condition laid down in Article 276 cannot be satisfied either by the extension of the law to the territory, or even by passing an Act of Parliament on behalf of the Union Territory of Chandigarh for the same purpose. The paramount condition is the satisfaction of the requirement of Article 276 that the taxes must be for the benefit of the revenue of the State levying the tax and as long as that is not done the evil of unconstitutionality must continue to attach to such a statute.

(30) I must in this context notice the acute paucity—nay virtually the total absence of direct authority on the point which rose for determination before us. Neither on behalf of the petitioners nor on behalf of the respondents has any case law having any direct

bearing on the above issue been cited. Nevertheless in fairness to the learned counsel for respondents I may mention that he faintly sought to rely on *Bharat Kala Bhandar Ltd. (Private and another* v. *Municipal Committee, Bhamangaon* (2) and *The Commissioner Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirrur Mutt* (3), to which a reference has been made by my learned brother Mahajan J., in his judgment. Reliance was also sought to be placed on *I. T. M. Kanniyan and other* v. *Income-tax Officer, Pondicherry and another* (5). But on a closer analysis of the said judgment I find that neither the facts nor the ratio thereof has any bearing on the point at issue.

(31) The third contention which has been raised on behalf of the petitioner arises only in Civil Writ No. 3759 of 1968, which has been moved by the High Court employees. This was as follows :

> "That the employees of the High Court are not serving under a State or under any local authority, etc., and consequently Section 7 of the Professions Tax Act and Rule 8 framed under the said Act are not applicable to them and that recovery cannot be effect by deductions from their pay bills as provided in the above said rules; and that if tax is recoverable it can be recovered in the manner provided in Rule 9."

In the light of the opinion that I have recorded above on the second contention this issue becomes wholly academic and hence of no consequence. I would, therefore, refrain from expressing any opinion whatsoever thereupon.

(32) In the light of the foregoing discussion I would hold that the Punjab Professions, Trades, Callings and employment Taxation Act, 1956, as applied to the Union Territory of Chandigarh is voilative of Article 276 and is hence *ultravires* of the Constitution. That being so both the writ petitions must succeed and are allowed, but I would propose no order as to costs.

HARBANS SINGH, J.—I agree with Sandhawalia J.

ORDER OF THE FULL BENCH

(33) By majority these petitions are accepted and the imposition of professional tax declared as null and void. There would be no order as to costs.

K.S.K.

(5) A.I.R. 1968 S.C. 637.