‘Contempt of Court’

Meaning

Generally speaking, Contempt of Court is disobedience to the court, by acting in opposition to the authority, justice and dignity thereof. It represents a wilful disregard or disobedience of the court's order. It also denotes such conduct which tends to bring disrepute to the authority of the court and the administration of law. Thus, whenever an act of any person or body adversely affects the administration of justice or tends to impede its course, or shake public confidence in a judicial institution, the power to punish for Contempt can be exercised to up hold the dignity of the court of law and protect its proper functioning. It is a common parlance that where the superior court's order is disobeyed by the inferior court to which it is addressed, the latter court commits contempt of court for it acts in disobedience to the authority of the former court. The act of disobedience is considered as an act to undermine public respect for the superior court and endanger the preservations of the law and order.

As per Section 2(a) of Contempt of court Act 1971, **‘Contempt of court’ means civil contempt or criminal contempt;**

Where **‘Civil Contempt’** means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.

Criminal contempt means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner is any behavior or wrongdoing that conflicts with or challenges the authority, integrity, and superiority of the court.

Thus ‘criminal contempt’ under section 2(c), refers to not merely to publication by words, signs, etc. but also includes the act of doing whatsoever which scandalises or tends to scandalise or lowers or tends to lower the authority of any court [section 2(c)(i)] or an act which interferes or tends to interfere with, or an act to obstructs or tends to obstruct, the administration of justice in any manner [section 2(c)(iii)]. Therefore, any act can be punished with contempt which tends to interfere with the administration of justice or tends to lower the authority of any court.

The Hon’ble Supreme Court in **Brahma Prakash Sharma and Others v. The State of Uttar Pradesh 1954 AIR 10**, established that it is not necessary that there should in fact be an actual interference with the course of administration of justice but that it is enough if the offending publication is likely or if it tends in any way to interfere with the proper administration of law. Such insinuations as are implicit in the passage in question are derogatory to the dignity of the Court and are calculated to undermine the confidence of the people in the integrity of the Judges. Whether the passage is read as fulsome flattery of the Judges of this Court or is read as containing the insinuations mentioned above or the rest of the leaflet which contains an attack on a party to the pending proceedings is taken separately it is equally contemptuous of the Court in that the object of writing it and the time and place of its publication were, or were calculated, to deflect the Court from performing its strict duty, either by flattery or by a veiled threat or warning or by creating prejudice in its mind against the State.

In the case of C.K. Daphtary v. O. P. Gupta, AIR 1971 SC 1132, this court reject the contention that once the case is decided, even if the judgment is severely and even unfairly criticized, it should not be treated as contempt. The court said, "we are unable to agree ... that a scurrilous attack on a judge in respect of a judgment or past conduct has no adverse effect on the due administration of justice. This sort of attack in a country like ours has the inevitable effect of undermining the confidence of the public in the judiciary. If confidence in the judiciary goes, the due administration of justice definitely suffers"

Contempt under Indian Constitution

Article 129: Supreme Court to be a court of record

The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

Article 215: High Courts to be courts of record

Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

Thus, Article 129 and 215 of the Constitution of India are empowering courts (Supreme Court and High Court) to punish for every act of contempt. Article 129 empowers the Supreme Court, Article 215, on the other hand, empowers High Courts to punish people for their respective contempt.

In the case of Delhi judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat, AIR 1991 Supreme Court 2176, the Supreme court examined at length its power under article 129 to punish for contempt. "There is therefore no room for any doubt that this court has wide power to interfere and correct the judgment and orders passed by any court or Tribunal in the country. In addition to the appellate power, the court has special residuary power to entertain appeal against any order of any court in the country. The plenary jurisdiction of this court to grant leave and hear appeals against any order of a court and Tribunals confers power of judicial superintendence over all the courts and Tribunals in the territory of India including subordinate courts of Magistrate and District Judge. This court has, therefore, supervisory jurisdiction over all courts in India." Examining the powers of a court of record, it came to the conclusion that a court of record has inherent power to punish for contempt of all courts and Tribunals subordinate to it in order to protect these subordinate courts and Tribunals.

The powers of the Supreme Court can be summarized as under

Article 141:**Law declared by Supreme Court to be binding on all Courts** - The law declared by the Supreme Court shall be binding on all courts within the territory of India".

Article 142: Enforcement of decrees and orders of supreme court and orders as to discovery, etc.

(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as it necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the terrIncome tax officerry Of India in such manner as may be prescribed by or under any law made by Parliament and until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the terrIncome tax officerry of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself."

Article 144: Civil and Judicial Authorities to act in aid of the Supreme Court. - All authorities, civil and judicial, in the terrIncome tax officerry of India shall act in aid of the Supreme Court.

A bare reading of Article 129 clearly shows that this Court being a Court of Record shall have all the powers of such a Court of Record including the power to punish for contempt of itself. This is a constitutional power which cannot be taken away or in any manner abridged by statute. However Article 142 provides that this Court can punish any person for contempt of itself but this power is subject to the provisions of any law made by parliament. A comparison of the provisions of Article 129 and clause (2) of Article 142 clearly shows that whereas the founding fathers felt that the powers under clause (2) of Article 142 could be subject to any law made by parliament, there is no such restriction as far as Article 129 is concerned. The power under clause (2) of Article 142 is not the primary source of power of Court of Record which is Article 129 and there is no such restriction in Article 129.

Power of High Court

The High Court as court of record has got power to determine “questions about its own jurisdiction” and also got inherent power to punish for its contempt.

The Supreme Court in Delhi Judicial Service Association v. State of Gujarat AIR 1991 SC 2176 has held that both the Supreme Court and High Courts are Courts of record. Constitution does not define "Court of Record", but this expression is well recognized in judicial world. A Court of Record is "a Court whereof the acts and judicial proceedings are enrolled for a perpetual memorial and testimony" and has power of summarily punishing contempt of itself as well as subordinate Courts.

The Supreme Court in M.V. Elizabeth v. Harwan Investment and Trading AIR 1993 SC 1014, held that High Courts have unlimited jurisdiction, including jurisdiction to determine their own powers. This unlimited jurisdiction has been conferred on the High Courts since they are constitutional Courts of record. The State Legislature or Union Legislature has no power to curtail, modify or limit such jurisdiction and powers as defined in the body of the Constitution.

Section 10 of the Contempt of courts Act 1971 contains the Power of High Court to punish for contempts of subordinate courts

Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of courts subordinate to it as it has and exercises in respect of contempt of itself: Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860).

High Court cannot over rule decision of Supreme Court

As mentioned above, the article 141 of the constitution suggests that decision of the Supreme Court on any matter is binding on all courts and hence High courts have to abide by the decisions of the Apex Court. The High Court cannot question the correctness of the decision of the Supreme Court even though the point sought before the High Court was not considered by the Supreme Court.

In the case of Suganthi Suresh Kumar v. Jagdeeshan AIR 2002 SC 681, the Honorable Supreme Court has observed that it is impermissible for the High Court to overrule the decision of the apex court on the ground that the Supreme Court laid down the legal position without considering any other point. It is not only a matter of discipline for the High Courts in India, it is the mandate of the Constitution as provided in article 141 that the law declared by

the Supreme Court shall be binding on all courts within the terrIncome tax officerry of India.

Section 12 of the Contempt of court act contains the Punishment for contempt of court.

Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both: Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Limitation on Power to initiate contempt

Section 20 of the contempt of Court act 1971 states that "No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed".

The Supreme Court in Om Prakash Jaiswal v. G.K. Mittal AIR 2000 SC 1136, has interpreted the expression 'initiate any proceedings for contempt' in Section 20 of the Contempt of Courts Act 1971. It was held that the word 'initiate' means introductory steps or action or first move. Black's Law Dictionary was referred to and it was observed that 'initiation of contempt proceedings' takes place when the court applies its mind to allegation and decides to direct the alleged contemnor under Section 17 to show-cause as to why he should not be punished.

The powers of the Supreme Court to initiate contempt are not in any manner limited by the provisions of the Act. This Court is vested with the constitutional powers to deal with the contempt. Section 15 is not the source of the power to issue notice for contempt. It only provides the procedure in which such contempt is to be initiated and this procedure provides that there are three ways of initiating a contempt –

(i) suo motu

(ii) on the motion by the Advocate General/Attorney General/SolicIncome tax officerr General and

(iii) on the basis of a petition filed by any other person with the consent in writing of the Advocate General/Attorney General/SolicIncome tax officerr General. As far as suo motu petitions are concerned, there is no requirement for taking consent of any body because the Court is exercising its inherent powers to issue notice for contempt. This is not only clear from the provisions of the Act but also clear from the Rules laid down by this Court.

Important Judicial Pronouncements addressing 'Contempt of Court'

1. In **East India Commercial Co. Ltd. v. Collector of Customs, Calcutta, AIR 1962 SC 1893, 1905**, the Supreme Court held that an administrative authority or Tribunal cannot ignore the law declared by the highest court in the State. The Supreme Court pointed out that taking into consideration the provisions of articles 215, 226 and 227 of the Constitution it would be anomalous to suggest that a tribunal over which the High Court had superintendence can ignore the law declared by that court and start proceedings in direct violation of it, the result being that if a tribunal can do so, all the subordinate courts can equally do so on the ground that there is no specific provision, just like there is in the case of the Supreme Court, making the law declared by the High Court binding on subordinate courts. The Supreme Court further held that it is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should confirm to the law laid down by it, for such obedience would be conducive to their smooth working, while otherwise there would be confusion in the administration of law, and respect for law would irretrievably suffer. Where a High Court of another State has decided a point and the same point arises in the making of a provisional assessment, in my opinion, it is not open to the Income tax officer to ignore that decision, whatever may be the position in the making of a regular assessment, for, in a provisional assessment, an assessee has no opportunity to satisfy the Income tax officer about the correctness of that decision. The question is of the extent and nature of the powers of an Income tax officer while making a provisional assessment in a summary manner. If the Tribunal has decided a case in a particular way and the same point arises in provisional assessment, it is implicit from the nature of a provisional assessment that the Income tax officer should not take a different view, because there is no opportunity to the assessee to convince the Income tax officer why he should not take a view different from that taken by the Tribunal and no remedy is open to him to correct the view taken by the Income tax officer. It is not open to the

Income tax officer while making a provisional assessment to depart from the view taken by the Tribunal and strike out on a line of his own to the prejudice of the assessee. In Stumpp, Schuele & Somappa Pvt. Ltd. v Income tax officer [1976] 102 ITR 320, the Karnataka High Court set aside the notice issued under section 8 of the Surtax Act for reopening the assessment made. It was contended on behalf of the Department that the writ petition filed by the assessee was not maintainable as the assessee had an alternative remedy because they could file an appeal against any order passed in the reassessment proceedings. Overruling this preliminary objection, the court held that the Commissioner had already in another-case taken a view against the petitioners' case, which view had been set aside by the Tribunal in an appeal filed in that case and, therefore, the claim of the Department that there had been an under-assessment was contrary to the provisions of law and the preliminary objection to the maintainability of the petitions must be overruled.

In defining the limits of the power of the Income tax officer make a provisional assessment it is paramount to bear in mind that the object of such an assessment is to accelerate the collection of revenue and not to keep it pending until a regular assessment is made. This, however, does not mean that the revenue which has to be collected thereby should be contrary to law or collected on a basis which cannot stand in a regular assessment. A provisional assessment must be made in accordance with law. It cannot be arbitrary, because that would confer upon the Income tax officer the power to collect tax contrary to the provisions of law. Such collection must also be made bearing in mind the intrinsic nature of the provisional assessment, namely, that it is made in a summary manner, that the assessee has no opportunity of being heard or of leading evidence or of satisfying the Income tax officer that the prima facie view he has taken is erroneous, that the assessee has no right of appeal, no right to ask for stay pending the making of a regular assessment of the collection of any arbitrary excess tax assessed and that the assessee has no remedy whatever against provisional assessment save and except to approach the High Court under article 226 of the Constitution. In my opinion, the departure made in s. 7 of the Surtax Act from the language used in section 141 of the I.T. Act, though it may not confine the Income tax officer only to the position as shown in the return, does not at the same time authorize him to reject that return, in whole or in part, or to refuse to accept the factual position shown therein or the legal position as then prevailing. So far as the legal position is concerned, the Income tax officer would be bound by a decision of the

Supreme Court as also by a decision of the High Court of the State within whose jurisdiction he is, irrespective of the pendency of any appeal or special leave application against that judgment. He would equally be bound by a decision of another High Court on the point, because not to follow that decision would be to cause grave prejudice to the assessee. Where there is a conflict between different High Courts, he must follow the decision of the High Court within whose jurisdiction he is, but if the conflict is between decisions of other High Courts, he must take the view which is in favour of the assessee and not against him. Similarly, if the Income-tax Appellate Tribunal has decided a point in favour of the assessee, he cannot ignore that decision and take a contrary view, because that would equally prejudice the assessee. He can, however, reject claims which are clearly and indisputably untenable and about which a different view is not rationally possible.

2. **In Baradakanta Mishra v. Bhimsen Dixit, 1972 AIR 2466, Supreme Court**: the legal position regarding binding nature of the High Court's decision was once again reiterated by the Supreme Court, it is held that the conduct of the appellant in not following the previous decision of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore, comprehended by the principles underlying the law of contempt. The analogy of the inferior court's disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of contempt. Just as the disobedience to a specific order of the court undermines the authority and dignity of the court in a particular case, similarly any deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court generally, but it is also likely to subvert the Rule of Law and engender harassing uncertainty and confusion in the administration of law.

3. The Company Law Board relied on Sk. Mohammedbhikhan Hussain-bhai v. Manager, Chandrabhanu Chinema AIR 1987 Gujarat 209 and Canara

Bank v. Nuclear Power Corpn. of India Ltd. [1995] to hold that, in exercising its functions, the Company Law Board must, and does, act judicially, that its orders are appealable, that it is a permanent body constituted under a Statute, and that it was a "Court" within the meaning of section 10 of the Contempt of Courts Act. The Bench observed that the High Court, being the appellate authority of the Company Law Board, the latter must be deemed to be a Subordinate Court within the ambit of the Contempt of Courts Act and, therefore, the High Court could exercise powers of dealing with Contempt of the Company Law Board provided such Contempt was not punishable for offences under the Indian Penal Code. The Bench observed that the Company Law Board, in exercise of its inherent powers under Regulation 44, was empowered to invoke section 10 of the Contempt of Courts Act to punish the respondents for wilful disobedience of the orders of the Bench, in demolishing the disputed structures and that such a power could be exercised even in the absence of an enabling provision in the Companies Act for initiating action for violation of the orders of the Company Law Board, more so, when such Contempt was not an offence punishable under the Indian Penal Code.

4. In Hasmukhlal C. Shah v. State of Gujarat, (1978) 19 Guj LR 378, a Division Bench of Gujrat High Court observed that "In a Government which is ruled by laws, there must be complete awareness to carry out faithfully and honestly lawful orders passed by a Court of law after impartial adjudication. Then only will private individuals, organisations and institutions learn to respect the decisions of Court. In absence of such attitude on the part of all concerned, chaotic conditions might arise and the function assigned to the courts of law under the Constitution might be rendered futile exercise."

5. The Andhra Pradesh High Court in the case of State of A.P. v. CTO held as below: "The Tribunals functioning within the jurisdiction of a particular High Court in respect of whom the High Court has the power of superintendence under Article 227 are bound to follow the decisions of the High Court unless on an appeal to the Supreme Court, the operation of the judgment is suspended. It is not permissible for the authorities and the Tribunals to ignore the decisions of the High Court or to refuse to follow the decisions of the High Court on the

pretext that an appeal has been filed in the Supreme Court which is pending or that steps are being taken to file an appeal. If any authority or the Tribunal refuses to follow any decision of the High Court on the above grounds, it would be clearly guilty of committing contempt of the High Court and is liable to be proceeded against".

6. **In the case of PCIT v M/S. Khivraj Motors Pvt. Ltd, 2020, the Madras High Court condemned the revenue authorities for repeated litigation on the earlier settled issues and held that "***It appears that just to take a contrary view in favour of the Revenue; the authorities unnecessarily create a forum for litigation for the assessee by taking different and divergent views, despite there being binding precedents from the jurisdictional high Court. This tendency of the revenue authorities not to follow the judgments of superior Constitutional Courts deserves to be strongly deprecated by imposition of suitable costs on them.*

   We would have imposed costs on the Assessing Authority for not following the binding precedents of the Court, but, at the repeated request of the learned counsel for the Revenue, we are making it cost easy for the appellant Revenue with the hope that the Revenue will understand the ratios of the judgments clearly and apply the same in its letter and spirit truthfully".

7. ***The relevant observations of the Hon'ble Bombay High Court in the case of Subramanian, Income tax officer v. Siemens India Ltd (1985) (156 ITR 11) are extracted below:***

   The question that arose for consideration in this case is whether the Income tax officer is bound by the decision of a single judge or a Division bench of the court within whose jurisdiction he is operating even if an appeal has been preferred against such decision and is pending. The following observations of the Bombay High Court are extracted below:

   "So far as the legal position is concerned, the Income tax officer would be bound by a decision of the Supreme Court as also by a decision of the High Court of the State within whose jurisdiction he is functioning, irrespective of the

pendency of any appeal or special leave application against that judgment. He would equally be bound by a decision of another High Court on the point, because not to follow that decision would be to cause grave prejudice to the assessee. Where there is a conflict between different High Courts, he must follow the decision of the High Court within whose jurisdiction he is functioning, but if the conflict is between decisions of other High Courts, he must take the view which is in favour of the assessee and not against him. Similarly, if the Income tax Appellate Tribunal has decided a point in favour of the assessee, he cannot ignore that decision and take a contrary view, because that would equally prejudice the assessee."

There cannot be any dispute that the ratio of the decision of Jurisdictional High Court equally applies to the orders passed by the ITAT also vis-à-vis the authorities down below.

8. The Hon'ble Bombay High Court in case of **Legrand (India) Pvt. Ltd. V. Union of India 2007,** has held as under:.

a) It is immaterial that in a previous litigation the particular petitioner before the Court was or was not a party, but if a law on a particular point has been laid down by the High Court, it must be followed by all authorities and tribunals in the state;

b) The law laid down by the High Court must be followed by all authorities and subordinate tribunals when it has been declared by the highest Court in the State and they cannot ignore it either in initiating proceedings or deciding on the rights involved in such proceeding;

c) If in spite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal position, in utter disregard of that position, proceedings are initiated, it must be held to be a wilful disregard of the law laid down by the High Court and would amount to Civil Contempt as defined in Section 2(b) of the Contempt of Courts Act, 1971.

<u>ITAT is a court and its decisions are binding on subordinate Income Tax Authorities</u>

It is held through a series of judgement of Apex court and High Court that if an authority inferior to Tribunal does not follow or apply the view of the Tribunal, that authority would be committing contempt of the Tribunal. These authorities

read in the context of section 254(4) make it clear that the orders passed by the Tribunal on appeal are entitled to be followed and deserved great respect and they do not lose their authority even if a different view is expressed by another Bench of the Tribunal.

1) ***In the case of Cargo Handling Private Workers Pool V. DCIT (ITAT Vizag)*** *it is held that since the Income tax Appellate Tribunal is exercising judicial functions, it is now settled that it has all powers of Court, i.e. it can issue summons and exercise all the powers vested in the Income tax authorities under section 131 of the Income tax Act. Hence any proceeding before the Income tax Appellate Tribunal shall be deemed to be judicial proceedings.*

   It appears to be the impression/ misunderstanding of some tax officials that the orders of the ITAT, interpreting the law cannot be binding as it is a fact finding authority. However, this is not correct because the decision of a higher authority in the judicial hierarchy is binding on all the lower authorities below the line. Hence, the AO & CIT (A) are bound by the decision rendered by the jurisdictional Tribunal. Refusal to follow the order of the ITAT would render that authority guilty of committing contempt of Tribunal for which the concerned authority is liable to be proceeded against. If the decision of the Tribunal is found to be unacceptable to the authorities below, the right course to follow is to carry the matter in appeal to the High Court and to seek suspension of the operation of the order of the Tribunal. A person occupying the chair of CIT (A) is expected to be aware of judicial discipline and the binding nature of the Tribunal's order. To avoid harassment to the assessee and unpleasant circumstances, the CBDT should take appropriate steps to enlighten all officials to ensure that judicial discipline is maintained. Costs u/s 254(2B) can be granted only if frivolous appeals are filed and not in a case like this. However, the assessee is free to take proper steps for initiating contempt proceeding against the CIT(A).

2) In the case of ITAT v. V.K.Agarwal (235 ITR 175 (SC)), the respondent (Ex-Law Secretary, Ministry of Law and Justice, Government of India) initially raised a technical objection about the status of the Income tax Appellate Tribunal. The observations made by Hon'ble Supreme Court in this regard are extracted below:

   "Before examining the conduct of the first respondent, we would like to deal with the technical objections which were raised before us on behalf of the first respondent. The first respondent had initially contended that the Income tax

Appellate Tribunal was not a court, and was also not a court subordinate to the Supreme Court. Hence, the Supreme Court had no jurisdiction to issue a suo motu notice of contempt in respect of a matter pertaining to the Income tax Appellate Tribunal. However, subsequently, learned senior counsel for the first respondent conceded that the Income tax Appellate Tribunal did perform judicial functions and was a court subordinate to the High Court. Hence there is no need to examine any further, the contention that the said Tribunal is not a court."

The Hon'ble Supreme Court further held as under:

"This court has consistently held that the Supreme Court has power under this article to punish, not merely for contempt of itself, but also for contempt of all courts and Tribunals subordinate to it".

It was also submitted before us by learned senior counsel for the first respondent that although this court may have jurisdiction to punish for contempt, that jurisdiction should not be exercised in the present case. The appropriate authority to take action would be the High Court. We do not see much force in this submission. The Income tax Appellate Tribunal, although it may have Benches in different parts of the country, is a national Tribunal and its functioning affects the entire country and all its Benches. Appeals also lie ultimately to this court from the decisions and references made by the Tribunal. The mere fact that by this court taking suo motu cognizance of the contempt, the respondent would not be able to appeal to any other court, cannot be a ground for not exercising the power to punish for contempt of a national Tribunal."

3) **The DCIT Mumbai v. M/S. Birla Sun Life Insurance Co. LTD., 2018, ITAT Mumbai held that**

"In the light of the various decisions Jurisdictional High Court and ITAT the A.O. is directed to give appropriate relief to the appellant. Reliance is placed on the decisions of Hon. Apex Court in the cases of Ajay Gandhi Vs B. Singh (2004) (265 ITR 451) and ITAT Vs V.K. Agarwal (1999) (235 ITR 175) wherein the Hon. Apex Court has held that the Hon. ITAT is a "Court" and so interfering with administration of justice of the Hon'ble ITAT will amount to contempt of Court and so the A.O. is directed accordingly".

Hierarchical Discipline of Indian Judicial Authorities

In India all the authorities are bound by the decision of the Supreme Court as per article 141 of the Indian constitution. However, when there is no decision by the Hon'ble Supreme Court on a particular issue, the decision of the jurisdictional High Court is binding on all the authorities in that particular State. In the absence of the decisions by Supreme Court and Jurisdictional High Court, the decision of any High Court has to be followed by all the authorities in the country, until a decision of jurisdictional High Court or Supreme Court have been rendered. In the event of any conflicting decisions of the same forum, that decision which is in favour of the assessee has to be followed, as per jurisprudence.

The Hon'ble Calcutta High Court considered the issue of hierarchical discipline in the case of Voest Alpine Ind. GMBH vs. Income tax officer & Others (246 ITR 745). In this case, the Income tax officer while assessing the income of identical nature did not follow the decision rendered by Tribunal in an earlier year in which it was held that the income of the foreign company is not taxable in India. The Hon'ble High Court considered the action of the assessing officer as an act of "Hierarchical indiscipline". The relevant observations made by Hon'ble Calcutta High Court are extracted below:

"I have gone through the impugned notices as well as the impugned order passed by the Income tax officer concerned. I have no manner of doubt that the Income-tax Officer concerned had assessed income-tax on the same income which was fetched from the consultancy services.

I find the specific finding of the learned Tribunal that this income is not taxable and I also find from the finding of the learned Tribunal that the amount which was paid by way of advance tax is liable to be refunded. The learned Tribunal painstakingly considered all the points advanced before him on behalf of the Department.

Since the reference has been refused by the court so also previously by the Tribunal, at the present moment the findings of the learned Tribunal have reached finality. In my view, the venture which has been undertaken by the Income-tax Officer for making an assessment is absolutely an act of hierarchical indiscipline. This exercise is nothing short of setting the Tribunal's judgment at

naught. It is a well settled principle of law that the junior incumbent is supposed to obey and carry out the order and/or observations made by the superior authority, be it a judicial forum or a quasi-judicial forum or even in any administrative field.

Therefore, it is held that the impugned order passed by the Income-tax Officer is wholly without jurisdiction and the same is liable to be set asided".

The Hon'ble Bombay High Court in the case of Bank of Baroda v. H.C. Shrivatsava and Another (256 ITR 385) has also dealt with the impugned issue and the relevant observations are extracted below:

"At this juncture, we cannot resist observing that the judgment delivered by the Income-tax Tribunal was very much binding on the Assessing Officer. The Assessing Officer was bound to follow the judgments in its true letter and spirit. It was necessary for judicial unit and discipline that all the authorities below the Tribunal must accept as binding the judgments of the Tribunal. The Assessing Officer being an inferior officer vis-à-vis the Tribunal, was bound by the judgment of the Tribunal and the Assessing Officer should not have tried to distinguish the same on untenable grounds. In this behalf, it will not be out of place to mention that "in the hierarchical system of courts" which exists in our country, "it is necessary for each lower tier" including the High Court, "to accept loyally the decisions of the higher tiers". "It is inevitable in a hierarchical system of courts that there are decisions of the supreme Appellate Tribunal which do not attract the unanimous approval of all members of the judiciary. But the judicial system only works if someone is allowed to have the last word, and that last word once spoken is loyally accepted".

The Supreme Court in the matter of Asst. CCE Vs. Dunlop India Ltd (1985) 154 ITR 172 held that in our country hierarchical system of the courts exist where it is necessary that each lower tier, including the High Courts to accept loyally the decision of higher tiers. The better wisdom of the court below must yield to the higher wisdom of the court above.

In Sundarjas Kanyalal Bhathija V. Collector [AIR 1990 SC 261], the Honourable Supreme Court vide para 17 has observed as follows:

"17.It would be difficult for us to appreciate the judgment of the High Court. One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench. In a multi-judge court, the Judges are bound by

precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority. The judicial decorum and legal propriety demand that where a learned single Judge or a Division bench does not agree with the decision of a Bench of co-ordinate jurisdiction, the matter shall be referred to a larger Bench. It is a subversion of judicial process not to follow this procedure".

Power to punish for contempt.

The National Tax Tribunal shall have and exercise the same jurisdiction, powers and authority in respect of contempt of itself as the High Court has and may exercise such power or authority, for this purpose under the provisions of the Contempt of Courts Act, 1971 (70 of 1971), which shall have effect subject to the modification that—

(a) Any reference therein to a High Court shall be construed as including a reference to the National Tax Tribunal;

(b) any reference to the Advocate General in section 15 of the said Act shall be construed as a reference to such law officer as the Central Government may specify in this behalf :

Provided that such matters shall be heard by a Special Bench consisting of five members constituted by the Chairperson.

The Hon'ble Madhya Pradesh High Court in the case **Agarwal Warehousing and Leasing Ltd. v. Commissioner of Income Tax (257 ITR 235)** has held that the orders passed by the tribunal are binding on all the tax authorities functioning under the jurisdiction of the tribunal. While holding the same, it followed the decision of the Hon'ble Supreme Court in the case of UOI Vs. Kamlakshi Finance Corporation Ltd (AIR 1992 Supreme Court 711, 712) (SC) which has held as under:

"It cannot be too vehemently emphasized that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of appellate authorities. The order of the Appellate collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the Department in

itself an objectionable phrase and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to the assessees and chaos in administration of tax laws".

The Hon'ble Madhya Pradesh High Court further observed in clear terms as under:

"Obviously, the Commissioner of Income tax (Appeals) not only committed judicial impropriety but also erred in law in refusing to follow the order of the Appellate Tribunal. Even where he may have some reservations about the correctness of the decision of the Tribunal, he had to follow the order. He could and should have left it to the Department to take the matter in further appeal to the Tribunal and get the mistake, if any, rectified."

The Hon'ble Supreme Court in the case of **Kishore Jagjivandas Tanna v. Joint Director of Income Tax** held that in the facts of the present case, the Income Tax authorities did not dispute that they have to refund the seized amount. Further, considerable delay and failure to make the payment constitutes and is inseparable from the cause of action as the delay and negligence is on the part of the authorities. The appellant does Prayer for compliance of a valid and legal order passed cannot be equated with prayers made in repeated representations seeking a change of position. Acquiescence is not apposite to patience as acquiescence is not just standing-by, and refers to assent on being aware of the violation or reflects conduct showing waiver. Laches is this case would require sheer negligence of the nature and type which would render it unjust and unfair to grant relief. When, the liability to pay Rs. 4,99,900/- is acknowledged and accepted, then to deny relief by directing payment in terms of the order under Section 132(5) of the Act would be unjust, unfair and inequitable. Statute mandates the respondents to make payment . To be fair to the counsel for the respondents, it was conceded that an appropriate order may be passed to do justice.

Thus, the appeal of the assessee is allowed with the direction to the Income Tax authorities to pay Rs 4,99,900/- with interest as per law within a period of three months from the date on which the copy of this order is received. In case of failure to pay in time, the appellant would be at liberty to file a contempt petition against the officers concerned and also claim costs.

Conclusion

Thus there is no doubt, everyone must respect the decisions of courts and no one can interfere with the working of courts. The law relating to contempt has developed only on this broad basis. In spite of the above decisions the Income tax officers entrusted with the job of collection of taxes are issuing notices on the already settled issues by various courts and higher authorities which has increased the litigation manifolds due to which the Judiciaries are over flooded with innumerable writ petitions. As we all are aware of the proverb that "Justice delayed is justice denied". Thus, due to unnecessary litigation the genuine assessee suffered a lot. He has to spend handsome moneys in hiring the professionals and sometimes huge refunds got stuck with the department which led to closure of businesses and economy suffers as the resources are spent over an already settled issue which renders it a useless exercise. An effective system should be built so that Assessing Officers can be made accountable for the appeals filed by them in order to ensure that only genuine cases are being appealed. If they failed to do so, it would undermine the respect for the law laid down by Courts and the constitutional authority of Courts and their conduct would, therefore, be condemned by the principles underlining the law of contempt. The Assessing officers should be encouraged to file quality appeals, only if merited and should be condemned with huge fines for issuing notices and litigation on already settled issues which, in turn, would improve the rate of success of the cases and the department energy can be focused on valuable cases thus enhancing the resources and assessee confidence in the assessing mechanism of the Income Tax department..

It should be constantly borne in mind that the jurisdiction exercised by superior Courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and for maintaining the authority of law as is administered in the Court and thereby affording protection to public interest in the purity of the administration of justice. This is certain that power to punish for contempt is an extra-ordinary power which must be sparingly exercised but where the public interest demands it, the Court will not shrink from exercising it and imposing punishment even by way of imprisonment, in cases where a mere fine may not be adequate.