

Novel Dynamic Jurisdiction vis-à-vis Judicial Precedents, Propriety & Decorum



Background The doctrine of judicial precedents is peculiar to the English system of administration of justice and since we in India have inherited the English system of administration of justice the doctrine of judicial precedents plays an important role in the administration of justice by Courts in India.

Novel Concept of 'Dynamic Jurisdiction' & Related Uncertainty The faceless schemes were rolled out with concept of 'Dynamic Jurisdiction' which has led to huge confusion not only in minds of legal professionals but also of tax authorities. The major issue being, which decisions are to be applied i.e., decision of Hon'ble HC or Tribunal where the Appeal Unit is located or decision of Hon'ble HC or Tribunal where PAN of the assessee lies.

In this regard Para C.(1) of S.O.3297(E) NOTIFICATION dated 25th September, 2020 is noteworthy

C. (1) "An appeal against an order passed by the National Faceless Appeal Centre under the said Scheme shall lie before the Income Tax Appellate Tribunal having jurisdiction over the jurisdictional Assessing Officer".

Therefore, in light of aforesaid notification the decisions of Hon'ble HC or Tribunal which must be applied while deciding an appeal or during assessment proceedings should be those of HC or tribunal which has jurisdiction over the Jurisdictional Assessing officer i.e., where the PAN of Assessee Lies and not where assessment or appeal unit is located.

Judicial Precedents, Propriety, Decorum and Discipline

The principles of the judicial discipline require that the order of the higher appellate Authority should be followed unreservedly by the subordinate authority.

The Supreme Court in the case of **Union of India v. Kamlakshi Finance Corpn. Ltd. AIR 1992 SC 711**; deliberately emphasized on the following "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 the 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 assesseees and chaos in administration of tax laws."

The Hon'ble Calcutta High Court in **Voest Alpine Ind. GmbH v. ITO & Ors. (246 ITR 745, 749 Cal.)** held that it is 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 judicial forum or a quasi-judicial forum or even in any administration field

In **CIT v. Ralson Industries Ltd. (288 ITR 322 SC)** the Hon'ble Supreme Court observed that when an order is passed by a higher authority, the lower authority is bound thereby keeping in view the principles of judicial discipline.

In the like manner, in the following cases, it has been held that judicial discipline demands that authorities subordinate to the Tribunal accept as binding, the decisions of the Tribunal:

- **Khalid Automobiles v. Union of India [1995] 4 SCC (Suppl.) 653;**
- **Rajendra Mills v. CIT [1971] 28 STC 483 (Mad.);**
- **Senthil Raja Metal v. CTO [1990] 79 STC 38 (Mad.);**
- **Agarwal Warehousing & Leasing Ltd. v. CIT [2002] 257 ITR 235 (MP).**

Perplexing Issues & Related Important Observations.

1. Later Bench vs Larger Bench

When matter covered by judgment of Bench of Supreme Court is referred to larger Bench the latest decision would apply and not order of reference to larger Bench. **Johnson Lifts Ltd. v. Dy. Commr. (CT) [2007] 7 VST 660 (AP)**

2. Divergent Decisions

Where there are two decisions of the superior court with different conclusions, it is the latter which would require to be treated as binding. It was so observed in **CGT v. Arunbhai Hargovandas Patel [2003] 264 ITR 586 (Guj.)** in the context of what constitutes gift. The High Court, while pointing out the difference in the facts had also held that even if the two decisions are taken as conflicting, it is the latter decision which would require to be followed.

3. Binding Precedence in absence of Decision of Jurisdictional High Court/Tribunal.

- a) the Hon'ble Bombay High Court in **CIT v. Smt. Godavaridevi Saraf [1978] 113 ITR 589** , held that unless a contrary decision is given by a competent High Court which is binding on the Tribunal in Bombay, it should respect the law laid down by another High Court. It observed as under: It should not be overlooked that the Income-tax Act is an All-India stature. Until a contrary decision is given by any other competent High Court, which is binding on a Tribunal in the State of Bombay, it has to proceed on the footing that the law declared by the High Court, though of another State, is the final law of the land.
- b) The Delhi High Court in the case of **CIT v. SAE Head Office Monthly Paid Employees Welfare Trust [2004] 141 Taxman 364/271 ITR 159** made the following observations-

"When in tax matters which are governed by an all-India statute, there is a decision of another High Court on the interpretation of a statutory provision, it would be a wise judicial policy and practice not to take a different view barring, of course, certain exceptions, like where the decision is sub silentio, per incuriam, obiter dicta or based on a concession or takes a view which it is impossible to arrive at or there is another view in the field or there is a subsequent amendment

of the statute or reversal or implied overruling of the decision by a higher court or some such infirmity manifestly perceivable in the decision."

c) **In Yucca Finvest (P.) Ltd. v. Dy. CIT [2006] 101 ITD 403**, it was held "Unless a contrary decision is given by the jurisdictional High Court which is binding on the Tribunal, it should respect the law laid down by another High Court."

d) **The ITAT, Panaji Bench in ITO v. Dilip Shirodkar [2004] 2 SOT 947**, also expressed the view that once a higher authority than the Tribunal has expressed a view, the Tribunal has to respectfully follow the same even though that decision may be of a non-jurisdictional High Court, it observed as under:". . . In the hierarchical judicial system that we have, better wisdom of the Court below has to yield to higher wisdom of the Court above and, therefore, once an authority higher than this Tribunal has expressed an opinion on that issue, we have to respectfully follow the same.

4. Extremely Slow Departure from Earlier View

- a) In **CIT vs. L. G. Ramamurthy (1977) 110 ITR 453 (Mad.)**, the court laid down the principle that "But what is relevant is not the personality of officers presiding over the Tribunal but the Tribunal as an institution. If it is conceded that simply because of the change in the personnel who manned the Tribunal, it is open to them to a conclusion totally contradictory to the conclusion which had been reached by earlier officers manning the tribunal on same set of facts it will not only shake the confidence of the public in judicial procedure as such, but it will totally destroy such confidence..... that will be destructive of the institutional integrity itself"
- b) Even the Supreme Court of India would not differ from its earlier decision merely because a contrary view appears preferable, as was held in the case of **Union of India v. Raghubir Singh [1989] 178 ITR 548 (SC)**.
- c) The Delhi High Court in the case of **DLF Universal Ltd. v. CIT [2008] 172 Taxman 107/306 ITR 271 (Delhi)** observed that " it is not only a matter of judicial propriety but also a matter of judicial discipline that one Bench of the Tribunal takes a view, another Bench on disagreement does not pass a contrary order but refers the matter to a larger Bench for getting the matter resolved."
- d) the Supreme Court in **S. I. Rooplal & Another vs. L. G. of New Delhi AIR (2000) 594 (SC); (2000) 1 SCC 644**. "At the outset, we must express our serious dissatisfaction in regard to the manner in which a coordinate Bench of the Tribunal has overruled in effect, an earlier judgment of the same tribunal. This is opposed to all principles of judicial discipline..... Precedents which enunciate rules of law from the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know for consistency in interpretation of law alone can lead to public confidence in our judicial system."
- e) It is also a healthy practice that one Bench of the tribunal should follow an earlier decision of another Bench, unless there is material change either in facts or law. This was so held by the Bombay High Court in **CIT vs. Goodlass NerolacPaints Ltd. (1991) 188 ITR 1 (Bom.)**. It must be remembered that there is only one Tribunal under the constitution and different Benches are constituted only for the sake of convenience of the litigating public.

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