ON JUDICIAL DISCIPLINE, PRECEDENTS AND DEPARTURES

1.It is settled proposition of law that **an issue, which has not been considered by the Court while delivering a judgment, cannot be said to be binding** as a decision of the Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the Court must carefully try to ascertain the true principle laid down by the decision of the Court. **The Court should not place reliance upon a decision without discussing as to how the factual situation fits in with a fact situation of the decision on which reliance is placed, as it has to be ascertained by analyzing all the material facts and the issues involved in the case and argued on both sides.** The judgment has to be read with reference to and in context with a particular statutory provisions interpreted by the Court as the Court has to examine as what principle of law has been decided and the decision cannot be relied upon in support of a proposition that it did not decide (**Vide H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur & Ors. Vs. Union of India, AIR 1971 SC 530; M/s. Amar Nath Om Parkash & Ors. Vs. State of Punjab & Ors., AIR 1985 SC 218; Rajpur Ruda Meha & Ors. Vs. State of Gujarat, AIR 1980 SC 1707; C.I.T. Vs. Sun Engineering Works (P) Ltd., (1992) 4 SCC 363; Sarva Shramik Sangh, Bombay Vs. Indian Hume Pipe Co. Ltd. & Anr., (1993) 2 SCC 386;; Mehboob Dawood Shaikh Vs. State of Maharastra, (2004) 2 SCC 362; ICICI Bank & Anr. Vs. Municipal Corporation of Greater Bombay & Ors., AIR 2005 SC 3315; M/s. MaKhija Construction and Enggr. Pvt. Ltd. Vs. Indore Development Authority & Ors., AIR 2005 SC 2499; and Shin-Etsu Chemical Co. Ltd. Vs. Aksh Optifibre Ltd. & Anr., (2005) 7 SCC 234).**

CLASSIC CASES

2.In London Graving Dock Co. Ltd. vs. Horton (1951 AC 737 at page 761), Lord Mac Dermot observed:-

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge".

3.In Home Office vs. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech..... is not to be treated as if it was a statute definition: it will require qualification in new circumstances, Megarry, J. in (1971) 1 WLR 1062, observed: "One must not, of course, construe even a reserved judgment of Russell,J. as if it were an Act of Parliament".

4.And in **Herringion vs. British Railways Board (1972 (2) WLR 537) Lord Morris said:**

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. "

SUPREMACY OF FACT

5.The supremacy of fact stands well established in .State Financial Corporation & Anr. Vs. M/s. Jagdamba Oil Mills & Anr., AIR 2002 SC 834 wherein it was held that ''*Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper'.*'

6.In Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., AIR 2003 SC 511, the Hon'ble Supreme Court held that a decision is an authority for which it is decided and not what can logically be deduced therefrom. A little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. While deciding the said case the Court placed reliance upon its earlier judgment in Delhi Administration Vs. Manohar Lal, AIR 2002 SC 3088.

7.In Union of India Vs. Chajju Ram, AIR 2003 SC 2339, a Constitution Bench of the Hon'ble Supreme Court held as under:- "It is now well settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is equally well settled that a little difference in facts may lead to a different conclusion."

8.In Ashwani Kumar Singh Vs. U.P. Public Service Commission & Ors., AIR 2003 SC 2661, the Apex court held that a judgment of the Court is not to be read as a statute as it is to be remembered that judicial utterances have been made in setting of the facts of a particular case.

DEPARTURE:WHEN?

7.In Jawahar Lal Sazawal & Ors. Vs. State of Jammu & Kashmir & Ors., AIR 2002 SC 1187, Hon'ble Supreme Court held that a judgment may not be followed in a given case if it has some distinguishing features.

HOW TO READ A JUDGEMENT?

8.As held in **Bharat Petrolieum Corporation Ltd. & another vs. N.R. Vairamani & another (AIR 2004 SC 4778),** a decision cannot be relied on without disclosing the factual situation. In the same judgment the Hon'ble Apex Court also observed:- "Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision of which reliance is placed. **Observations of Courts are neither to be read as Euclid's Theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated.** Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. **Judges interpret statutes, they do not interpret judgment. They interpret words of statutes: their words are not to be interpreted as statutes".**

OTHER LEADING JUDGMENTS ON JUDICIAL PROPRIETY

1.National Textile Corporation Ltd. v.*CIT*[2008] 338 ITR 371 (MP)

14. It is apposite to refer at the outset, as to what Salmond—a great author on "Legal Jurisprudence" has said on the subject under consideration in his celebrated book on "Jurisprudence". In 12th Edition at p. 27, the author has commented on the subject 'The hierarchy of authority' as under :

> "28. *The hierarchy of authority.*—The general rule is that a Court is bound by the decisions of all Courts higher than itself. A High Court Judge cannot question a decision of the Court of Appeal, nor can the Court of Appeal refuse to follow judgments of the House of Lords. A corollary of the rule is that Courts are bound only by decisions of higher Courts and not by those of lower or equal rank. A High Court Judge is not bound by a previous High Court decision, though he will normally follow it on the principle of judicial comity, in order to avoid conflicts of authority and to secure certainty and uniformity in the administration of justice. If he refuses to follow it, he cannot overrule it; both decisions stand and the resulting antinomy must wait for a higher Court to settle."

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21. In our view, the Tribunal has full authority/jurisdiction to distinguish the decision when cited by any party be that of Supreme Court or/and High Court by pointing out its distinguishing features both on facts and law involved in the said decision. In other words, if the Tribunal feels that a decision cited by any party has no application to the facts of the case under consideration then the Tribunal has full jurisdiction to distinguish the said decision thereby not considering appropriate in the facts of that case to place any reliance on such

decision. However, the reasons as to why the decision relied on by any party has no application and which are those distinguishing features due to which the said decision can have no application have to be specifically stated in the order. Such distinction is permissible in law because counsel may in his wisdom place reliance on several decisions in support of his submissions. It is for the Court/Tribunal to decide as to why a particular decision has no application to the facts of a case under consideration. Indeed, here lies the application of mind of the author of decision to analytically discuss the cases on facts involved in the case cited by a party and then compare the same with the facts of the case before the Tribunal and then record the note of dissent. In doing this exercise, which is an integral part of judgment writing for recording a finding one way or other, the Court/Tribunal does not comment upon the *ratio decidendi* of the said decision nor holds that it does not lay down correct principle of law. On the other hand, the Tribunal accepts the decision as laying down the correct principle of law but respectfully records its dissent due to dissimilarity in facts of both the cases.

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2. CIT VS Smt. Meera Devi* [2012] 26 taxmann.com 132 (Delhi)

Argument of assessee

- The assessee contended that the principle of consistency and judicial discipline demanded that appeal of 'K' ought to have been allowed having regard to the order of the Tribunal in connected cases.

Argument of revenue

- The revenue argued that the approach of the Tribunal could not be faulted, in dismissing 'V' appeal of 'K'. However, the revenue submitted that the decision in 'M"s case on the other hand suffered from the infirmity as it did not discuss the individual facts and why fifth *Explanation* to section 271 (1)(*c*) was attracted.

EXCERPTS:

" 9 . Counsel for the assessee in both cases i.e. Kiran Devi and Meera Devi urged that the Tribunal fell into an error in not taking into consideration the fact that penalty proceedings were completely unwarranted in these cases. .....**Counsel highlighted the fact that the principle of consistency and judicial discipline demanded that Kiran Devi's appeals ought to have been allowed having regard to the order of the Tribunal in ITA 272,273 & 318/Del/2007 and connected cases, decided on 14.03.2008.** That interpretation was by a co-ordinate Bench of the Tribunal. In case another Bench felt that interpretation was incorrect judicial discipline demanded, that the latter Bench should have referred the appeals for consideration by a larger or special Bench. In support of this contention, learned counsel relied upon the decision reported as *Union of India* v. *Paras Laminates (P.) Ltd.* [1990] 186 ITR 722 (SC).

.....

14. .....They also argue that the Tribunal's previous order in the connected cases bound it and the doctrine of precedent as well as judicial discipline constrained it to follow that previous order. In case it wished to re-visit the reasoning, the proper course should have been to refer the matter to a larger Bench.

15. There is some authority for the assessees' argument that a Bench of a Tribunal should not depart from an earlier view expressed by it, in the interests of consistency and stability in the administration of law. **The Court is also aware that the Tribunal is a quasi-judicial authority, and is not a court of record. There are important exceptions to the doctrine of precedent, which reinforce the public interest in proper administration of justice. The first is that a decision is an authority for what it says, in the context of the facts. The second is that if the previous decision is *per incuriam,* the Tribunal, or court is not bound to consider it as a binding precedent.**

22. For the above reasons, the question of law in ITA Nos. 1217/2010, 1219/2010, 1221/2010, 1231/2010 and 1233/2010 is answered in favour of the revenue and against the appellant. The said appeals are, consequently, dismissed. For the same reasons, the questions of law in ITA Nos. 995/2010 and 997/2010 are answered in favour of the revenue. The said two appeals are consequently, allowed."

3.DCIT *v.*Honda Siel Cars India Ltd.* [2010] 38 SOT 471 (DELHI)

"4. We have considered the facts of the case and the submissions made before us. We find that the Hon'ble Supreme Court in the case of *Raghubir Singh* (*supra*) laid greater emphasis on the principle of consistency that it should not differ from its earlier decision merely because a contrary view appears to be preferable. **However, if the previous decision is plainly erroneous there will be a duty on the court to say so and not to perpetuate the mistake.** The Hon'ble Court also

furnished two illustrations-(*i*) where relevant statutory provision was not brought to its notice, (*ii*) if a vital point was not considered. Even if this decision is applied *mutatis mutandis* to the orders of the Tribunal, the revenue will have to show that either the relevant statutory provision was not brought to the notice or a vital point was not considered. ……."

4. CIT *v.*Hi Tech Arai Ltd. [2010] 321 ITR 477 (MAD.)

Excerpts:

3. We are not in a position to appreciate either of the contentions of the learned counsel for the petitioner. As far as the first contention is concerned, when the Tribunal by the impugned order has applied section 32(1)(*iia*) of the Act, to the facts involved in the case of the assessee and has found that the assessee is entitled for the additional depreciation claimed under the said provision, it cannot be held that simply because a co-ordinate Bench of the Tribunal had earlier taken a different view, the Tribunal on this occasion also ought to have followed the same. When we find that the Tribunal has applied the law correctly in the impugned order, there is no gainsaying that there was an earlier order by the co-ordinate Bench and therefore, for that reason, this time also the Tribunal should have blindly followed its own earlier decision even if such earlier decision did not reflect the correct position of the law.

IN CONCLUSION

.The following words of Lords Denning in the matter of applying precedents have become locus classicus:
Each case depends on its own facts and a close similarity between one

case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo, J.) by matching the colour of another. To decide, therefore, on which said of the line a case falls, the broad resemblance to another case is not at all decisive. Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the said branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it". (Emphasis supplied)

The same view was taken by the Hon'ble Apex Court in Sarva Shramik Sanghatana (K.V.), Mumbai vs. State of Maharashtra & Ors. AIR 2008 SC 946 and in Government of Karnataka & Ors. Vs. Gowramma & Ors. AIR 2008 SC 863.