

ON RULE OF CONSISTENCY

I.A preliminary comment:

An appellate authority like ITAT or higher forum decides only on the basis of what is brought before it. What is not brought to the knowledge of the bench or the court cannot be adjudicated upon. If there is any failure on part of the DR or standing counsel or AR to bring a particular facet of law to the knowledge of the court or there is failure to highlight important factual aspects like accounting treatment followed by the assessee, then the adjudication is likely to be confined to the facts brought out and the law indicated. This does not mean that if there is any non appreciation of actual fact because full facts are not before the court or in application of correct law because the same is not pointed out with full fidelity, the same cannot be done in subsequent years.

II.A humbling judgment serving as a beacon is as follows:

Distributors (Baroda) P. Ltd. v. Union of India [1985] [155 ITR 120](#) (SC)

While dealing with the case of Distributors (Baroda) P. Ltd. v. Union of India [1985] [155 ITR 120](#) (SC), the hon'ble SC come to the conclusion that the view adopted by it in the case of Cloth Traders [1979] [118 ITR 243](#) (SC), does not lay down the correct law. In such a situation, at page 124 of the Report, the court observed : **To perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of justice Bronson in Pierce v. Delameter (A.M.Y. at page 18): " a judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead : and courageous enough to acknowledge his errors "**.

Further at page 140 of the Report, the court referred to the dissenting opinion of Justice Jackson in Massachusetts v. United States (333 US 611) : **'I see no reason why I should be consciously wrong today because I was unconsciously wrong**

yesterday'. Reference was also made to the observations of Lord Denning in *Ostime v. Australian Mutual Provident Society* [1960] AC 459, 480 : 'The doctrine of precedent does not compel your Lordships to follow the wrong path until you fall over the edge of the cliff'.

III. RES JUDICATA VIS A VIS CONSISTENCY through the prism of judicial decisions

1. *Kamlapat Motilal v. Commissioner of Income-tax* [1950] 18 ITR 812 (ALL.)

OCTOBER 26, 1949

"..... An assessment is inherently of a passing nature and it cannot provide an estoppel by *res judicata* in later years by reason of a matter being taken into account or not being taken into account by the Income-tax Officer in an earlier year of assessment."

2. *Dwarkadas Kesardeo Morarka v. Commissioner of Income-tax* [1962] 44 ITR 529 (SC)

JANUARY 25, 1961

The conclusion of the Tribunal was amply supported by evidence. It cannot be said that because in the previous years the shares were held to be stock-in-trade, they must be similarly treated for the assessment year 1949-50. **In the matter of assessment of income-tax, each year's assessment is complete and the decision arrived at in a previous year on materials before the taxing authorities cannot be regarded as binding in the assessment for the subsequent years.** The Tribunal is not shown to have omitted to consider the material facts. The decision of the Tribunal was on a question of fact and no question of law arose which could be directed to be referred under section 66(2) of the Income-tax Act.

The appeal therefore fails and is dismissed with costs.

3.K.K. Khullar* v.DCIT. [2009] 116 ITD 301 (DELHI)

JANUARY 18, 2008

As regards the issue of consistency of the assessments, the Supreme Court itself has mentioned in Radhasoami Satsang v. CIT [1992] [193 ITR 321/ 60 Taxman 248](#), that its findings should not be taken as a general proposition of law to be followed in every case as it was confined to the facts of that particular case. If a manifestly wrong decision has been taken by the Assessing Officer in one year or in a number of years, it will not bind the Assessing Officer in assessment of a subsequent year because there cannot be any estoppel against the law.

4.In *Bharat Sanchar Nigam Ltd. v. Union of India* [2006] 3 SCC 1, it was noted as follows:

"20. The decisions cited have uniformly held that *res judicata* does not apply in matters pertaining to tax for different assessment years because *res judicata* applies to debar Courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct. The Courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. The reason why Courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of *res judicata* but because of the theory of precedent for the precedential value of the earlier pronouncement. Where facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view.

But in tax cases relating to a subsequent year involving the same issue as an earlier year, the court can differ from the view expressed if the case is distinguishable or *per incuriam*.

5. Cosmopolitan Education Society v. Commissioner of Income-tax, Jaipur.* [2007] 162 TAXMAN 416 (RAJ.)

This cannot be disputed that enquiry for each assessment year is independent and necessary for the purposes of grant of exemption under section 10(22) of the Act, therefore, the submission of the learned counsel for the assessee that for the preceding year such exemption was allowed by the Tribunal and was upheld by the court is of no assistance to the assessee as far as present assessment year 1996-97 is concerned. Allowing the assessee's appeal merely following the decision of Tribunal as upheld by this Court for the immediately preceding year without allowing the first Appellate Authority to undertake such enquiry to give the findings of facts would not, in our opinion, subserve the purpose of section 10(22) of the Act. It is also well-settled that each assessment year in the Income-tax assessment proceedings is independent and principles of *res judicata* do not apply to the income-tax proceedings.

6. In the case of Municipal Corpn. of City of Thane v. Vidyut Metallics Ltd. [2007] 8 SCC 688, Hon'ble Supreme Court while holding that the strict rule of *res judicata* as envisaged by section 11 of C.P.C. has no application, their Lordships further held that as a general rule, each year's assessment is final for that year and does not govern later years because it determines the tax for a particular year. To reproduce relevant portion, to quote :

"14. So far as the proposition of law is concerned, it is well-settled and needs no further discussion. In taxation-matters, the strict rule of *res judicata* as envisaged by section 11 of the Code of Civil Procedure, 1908

has no application. As a general rule, each year's assessment is final only for that year and does not govern later years, because it determines the tax for a particular period. It is, therefore, open to the Revenue/Taxing Authority to consider the position of the assessee every year for the purpose of determining and computing the liability to pay tax or *octroi* on that basis in subsequent years. A decision taken by the authorities in the previous year would not estop or operate as *res judicata* for subsequent year [*vide Maharana Mills (P.) Ltd. v. ITO* 1959 Supp. (2) SCR 547 : AIR 1959 SC 881; *Visheshwar Singh v. CIT*(1961) 3 SCR 287; *Instalment Supp. (P.) Ltd. v. Union of India* (1962) 2 SCR 644; *New Jehangir Vakil Mills v. CIT*(1964) 2 SCR 971; *Amalgamated Coalfields Ltd. v. Janapada Sabha* 1963 Supp. (1) SCR 172; *Devilal v. STO* (1965) 1 SCR 686; *Udayan Chinubhai v. CIT* (1967) 1 SCR 913; *M.M. Ipoh v. CIT*(1968) 1 SCR 65, *Kapur Chand v. Tax Recovery Officer* (1969) 1 SCR 691; *CIT, W.B. v. Durga Prasad* AIR 1971 SC 2439; *Radhasoami Satsang v. CIT*(1992) 1 SCC 659 : AIR 1992 SC 377; *Society of Medical Officers v. Hope* 1960 AC 55; *Broken Hill Proprietary Co. Ltd. v. Municipal Council* 1925 All ER 675 : 1926 AC 94 : 95 LJPC 33; Turner on *Res judicata*, 2nd Edn., para 219, p. 193."

In the same judgment (*supra*), Hon'ble Supreme Court further proceeded to observe that, to quote :

"A decision reached in one year would be a cogent factor in the determination of a similar question in a following year, *but ordinarily there is no bar against the investigation by the Income-tax Officer of the same facts on which a decision in respect of an earlier year was arrived at.*" [Emphasis supplied]

7. All these issues are crystallized and taken care of in the judgment in the case of SMT. **SWAPNA ROY**[331 ITR 367(ALLD)].

8. In *S. Nagaraj v. State of Karnataka* 1993 Supp. (4) SCC 595, Sahai, J. stated :

"15. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. **Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice.** Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error.-----"

9. The assessment and the facts found are conclusive only in the year of assessment: the findings on questions of fact may be good and cogent evidence in subsequent years [the maximum limit to which rule of consistency may be applied], when the same question falls to be determined in another year, but they are not binding and conclusive.

10. Facts in one case cannot be used as a precedent to determine conclusion of facts in another-refer **RAMDAS AND ORS. vs STATE OF MAHARASHTRA** [2007] 7SCC170 (while discussing the principle of stare decisis). Likewise **PANDURANGA vs STATE OF HYDERABAD** (1955) SC 216.

11. 'Compelling and Substantial Reasons' justify departure from stare decisis esp if earlier decision is plainly erroneous/vital point not considered/law point ignored-so it has been ruled by a 5 JUDGE bench of the hon'ble SC-UOI and ANR vs RAGHUBIR SINGH(1989)178 ITR 548(SC)

12. Even after accepting a claim of amortization for 15 years the same was overturned. [KRISHAK BHARTI CO-OP.LTD VS DCIT(2013)350 ITR 24(DEL)].

IV.Conclusion:

Being an equitable principle,estoppel must YIELD TO THE MANDATE OF LAW.

Anadi Varma