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LEGAL THEORY II

Principles governing application of the
Doctrine of Precedent in Indian subordinate
Judiciary

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INTRODUCTION

Judicial Precedent is an independent source of law and is as important as custom and legislation. In fact this doctrine of judicial precedent is a unique feature of English law as also of the common Law countries.

According to Keeton “A judicial precedent is a judicial decision to which authority has in some measure been attached. It must be noted at once, however, that partly because of the high status which judges occupy in Political and Social organization and partly because of the importance of the issues which they decide, judicial decisions have at all times enjoyed high authority as indications of the law”

According to Salmond, the doctrine of precedent has two meanings namely (1) in a loose sense precedent includes merely reported case-law which may be cited and followed by the courts, (2) in its strict sense, precedent means that case law which not only has a great binding authority but must also be followed. Holdsworth supports the doctrine in its loose sense.

The justification of the binding rule of Judicial Precedent is based on several reasons. These are---(1) It is based on practical experience rather than on logic only. “The Judge” says Allen, “is the interpreter of social mind and he can easily adapt the law to the changing wants of those amongst whom the law is administered”. (2) It is based on convenience in the sense that it provides settled law and thus saves the labour of judges of the judges. (3) It helps the lawyers to take a cautious view of the development of law on the basis of past judicial experience.

Doctrine of precedent is recognized in Indian legal system also being a 'descendant' of the British legal system. The main principles of doctrine of precedent as applicable in India are;

a) All inferior and subordinate court is bound by the decision of the High courts to which they are subordinate. Decisions of other High court are of only persuasive value for the subordinate court. Thus High court can bind only those inferior courts which are within their territorial jurisdiction. As for example district courts of Delhi are bound to follow the precedent set by Delhi High Court, but not of Chandigarh High Court. Decision pronounced by the Chandigarh High Court is only of persuasive value for the District court at Delhi

b) In case there is a conflict between the decisions of two co-equal bench of the same High Court, then the decision later in time should be followed. However, apex court observed in **Indo Swiss Time Ltd. v. Umrao** A.I.R. 1981, Panch H, 213(F.B.) that the authority must be considered on the basis of rationale view and logic expressed therein and not merely on fortuitous circumstances.

c) Smallest bench of the High Court consists of single judge, division bench is of two judges and the bench consisted of more than two judges is called full bench. The decision of larger bench is binding on smaller as well as coordinate bench. Thus, a single judge bench should follow not only the decision of division bench and full bench' but also of coordinate single bench. In case single bench wants to take a contrary view, or he thinks that the decision, whether of division or single bench is worth of reconsideration, then he must refer the matter to Division Bench or place the relevant papers before Chief Justice to enable him to constitute a larger bench to examine the question. Similarly

Division Bench is obliged to follow the decision of full bench and co-ordinate bench. If division bench does not agree with the decision of the co-ordinate bench, then it may place the papers before Chief Justice.

. In common law legal systems, a precedent or authority is a principle or rule established in a previous legal case that is either binding on or persuasive for a court or other tribunal when deciding subsequent cases with similar issues or facts. The general principle in common law legal systems is that similar cases should be decided so as to give similar and predictable outcomes, and the principle of precedent is the mechanism by which that goal is attained. Black's Law Dictionary defines "precedent" as a "rule of law established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases." Common law precedent is a third kind of law, on equal footing with statutory law (statutes and codes enacted by legislative bodies), and regulatory law (regulations promulgated by executive branch agencies).

Position of Precedent in India

Under ancient Hindu Law the doctrine of precedent was recognised by Hindu law givers. Manu, the renowned law give of Hindus, advocated the theory of precedent in order to settle doubtful points of law. However it can be pointed out here that in ancient Hindu Law the term 'precedent' is not used in the modern sense of decision coming from a court.

It was during the British rule in India that the doctrine became very important. In 1813, Mr. Dorin suggested that statutory force to be given to this theory. He said "I think it should be enacted by a Regulation, that from a given period, the judgement of the

court shall be considered as precedents binding upon itself and on the inferior courts in similar cases which may arise thereafter.”

In the Nineteenth Century because of the popularity of the publication of the reports of the decided cases and digests the doctrine of precedent acquired a more significant place. It was, however, in the Twentieth Century that the doctrine of precedent got statutory recognition. Sec 212 of the Government of India act 1935 made the ‘Law declared by Federal Court and Privy Council to be binding on all Courts. It ran as follows-----

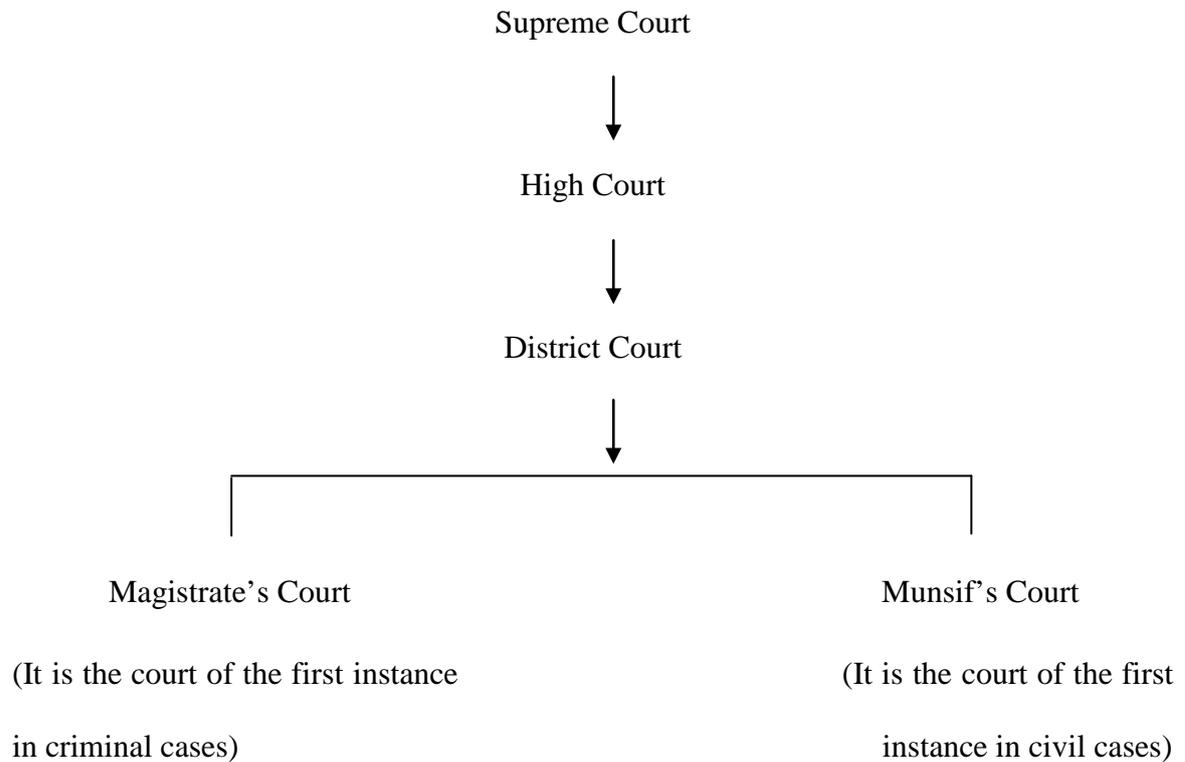
“The law declared by the Federal Court and by any judgement of the Privy Council shall, so far as applicable, be recognised as binding on, and shall be followed by, all courts in British India, and so far as respects the application and interpretation of this Act or any order in Council there under or any matter with respect to which the Federal Legislature, has power to make laws in relation to the State, in any Federal States”.

Doctrine of Precedent was evolved towards a necessary fulfilment of the goal of law, viz. Stability certainly and continuity. The doctrine is relatively modern in its origin. The practice of following precedents enables citizens to plan their conduct in the expectation that past decision will be honoured in the future. Certainty, predictability, and continuity are not the objectives of law, but they are important ones. Many disputes are avoided, and others are settled without litigation, simply because people have a good notion of how the courts will respond to certain types of behaviour.

The status of precedent in its historical aspects in British India. With independence and the adoption of the Indian Constitution, there was a move to a significant new legal landscape and a whole range of new perspectives generated by the constitutional context which led to a radical reorientation at the level of the Supreme Court in regard to the Court’s continuing obligation to follow the common law Doctrine of Precedent.

Hierarchy of Courts in India as follows-----

Position after 1950



Article 141 of the Constitution of India provides that the Law declared by the Supreme Court shall be binding on all the courts within the territory of India. In Article 141 the expression 'all courts' has been used. Now the question comes whether all courts include Supreme Court also. That is to say whether Supreme Court is bound by its own decision or not. The position was not clear before 1954. In 1954, an important case **Dwarkadas v. Sholapur Spinning and Weaving Co.** Came before the Supreme Court, where Mr. Justice Das expressed the view "Accepting that the Supreme Court is not bound by its own decision and may reverse the previous decision especially on

constitutional questions the Court will surely be slow to do so unless such previous decision appears to be obviously erroneous”.

The decisions of the Supreme Court of India are binding Article 141 of the Constitution of India gives a constitutional status to the doctrine of precedent in respect of law declared by the Supreme Court of India. Precedents which enunciate rules of law from the basis of administration of justice in India.¹ The decisions of the various High Courts are binding in the courts below them within their respective State limits. In **Bengal Immunity v/s State of Bihar**².

The Supreme Court held that it is not bound by its own decision. The Supreme Court in **A.R.Antulay v. R.S.Nayak**³ ignored the binding value of its own pronouncements.

¹ Tribuvan Das v Ratilal, Air 1968 SC 372

² AIR 1955 SC 661

³ AIR 1988 SC 1531.

CASE LAWS

The position became very clear after this and 1955 the Supreme Court in **Bengal Immunity Co. V. State of Bihar**⁴, overruled its own previous judgement of the State of **Bombay v. The United Motors Ltd.**⁵ In this case Supreme Court observed ---

“There is nothing in Indian Constitution which prevents the Supreme Court from departing from its previous decision if it the convinced of its error and its baneful effect on the feneral interest of the public”.

In **Sajjan singh v. State of Rajasthan**⁶, Gajendragadkar, C.J. while considering the question of precedent observed---

“It is true that the constitution does not place any restriction on our powers to review our earlier decisions or even to depart from them and there can be no doubt that in matters relating to the decisions of constitutional points which have a significant impact on the fundamental rights of citizens, we would be prepared to review our earlier decisions in the interest of public good.”

4 AIR 1955 SC 661

5 AIR 1953 SC 255

6 AIR 1965 SC 845

((Details are taken from the book Jurisprudence Legal Theory , page No. 120,Author Prof. Nomita Aggarwal)

Since 1955 Supreme Court has been overruling the earlier decisions whenever it deems fit.

In 1967, Supreme Court in **Golak Nath v. State of Punjab**⁷ overruled its two previous judgements **Sankari Prasad v. Union of India**⁸ and **Sajjan Singh v. State of Rajasthan**⁹. The most important instance of the rule that Supreme Court is not bound by its own decision is furnished by the case of **Kesavananda Bharati v. State of Kerala**.¹⁰ In a number of other cases supreme court has declared the mind on its point In Rahim Khan v. **Kursheed Ahmad**¹¹, Krishna Iyer J. observed---

“Precedents on legal propositions are useful and binding but the variety of circumstances and the peculiar features of each case cannot be identical with those of another and judgement of Courts on when and why on certain witnesses has been accepted or rejected can hardly serve as a binding decisions”.

In **Maganlal Chagganlal (Pvt.) Ltd. v. Municipal Corporation of Greater Bombay**¹² Supreme Court observed that if the previous decisions is erroneous and has given rise to public inconvenience and hardship, there is no harm in overruling such

7 AIR 1967 SC 1643

8 AIR 1965 SC 845

9 AIR 1967 SC 1643

10 AIR 1951 SC458

11 AIR 1975 SC 29012

12 AIR 1974 SC 2039 at p. 2044

(Details are taken from the book Jurisprudence Legal Theory , page No. 121,Author Prof. Nomita Aggarwal)

decision. In *Sushila Kesharbai and others v. Bai lilawati and others*¹³, the Court observed -----

“ The rule of precedent is not so imperative or inflexible as to preclude a departure there from in any case, and its application must be determined in each case by the discretion of the Court, and previous decisions should not be followed to the extent that error may be perpetuated and grievous wrongs may be result.”

In short the position of the Doctrine of Precedent in the Supreme Court of India can be stated as -----

Under Art. 141 of the Constitution the law declared by the Supreme Court shall be binding on all courts.

All Courts does not include the Supreme Court itself ----hence Supreme court is not bound by its own previous decision and can overruled its previous decision, particularly on Constitutional matters.

The trend of decisions of the Supreme Court is to overrule those cases which have caused hardship and which have been decided erroneously as it is clear from the above observation of Supreme Court that as a general rule Supreme Court does not want to listen to the decision where it is effect is baneful.

¹³ See *Saldeep Sahai srivastava v. Union of India* AIR 1974 SC 338

The High Court in India are bound by the law declared by the Supreme Court¹⁴. Decisions of Supreme Court are binding only so long as they have not been overruled by the Supreme Court. The decision of a High Court are binding on all Courts below it within its jurisdiction .The Judgement of a particular High Court, is not binding on other High Courts. The High Court are the courts of the co-ordinate jurisdiction. Therefore the decision of one High Court is only of persuasive value for other High Courts. **In State v. Ramprakash Puri**¹⁵, it is observed by the Court that-----

“A judgement of a High Court is not binding on other judges of the same Court or upon the Judges of any other High Courts. This is because of Section 43 and Section 165 of the Indian Evidence Act¹⁶ and also because of Article 219 of the Constitution of India and the oath taken by the High Court judges under that Article that they will act according to their judgement and not according to the judgement of the others. It is open to High Court Judge to agree with the judgement of another but if he does not agree, he must follow his own judgement.”

However, in practice the decisions of one High Court are cited in another High Courts and they have persuasive value. The Full Bench decision of one High Court command great respect in other High Courts.

¹⁴ See *Rehram Khurshid Resikak v. State of Bombay* AIR 1955 SC 123

¹⁵ AIR 1964 Guj 223

¹⁶ Section 43 of the Indian Evidence Act, 1872 provides that a judgement, order and decree, other than those mentioned in section 40,41,and 42 are irrelevant unless the existence of such judgement, order or decree is a fact in issue or is relevant under some other provisions of this Act. Section 165 of the Act provides that the judge may, in order to discover or to proper proof of relevant facts. (Details are taken from the book *Jurisprudence Legal Theory* , page No. 122,Author Prof. Nomita Aggarwal)

Regarding the question that is how far a High Court is bound by its own decision it can be said that High Courts are not bound by its own decision. In High Courts generally appeals are heard by a single judge (some appeals such as murder appeals, special appeals, etc. are heard by two judges. Different High Courts have their different rules in this respect). When an appeal involves some important and complicated point of law, it is referred to a larger Bench. A single judge constitutes the smallest Bench. A Bench of two judges is called the Division Bench. Three or more judges constitute a Full Bench. The decisions of a larger bench are binding on a smaller bench. A bench is not bound by decisions of another bench of equal authority.

In **Gaurishankar Govindram v. Raja Azam Sahab**,¹⁷ it was held that-----

“The decision of a Division Bench is binding on another Division Bench as much as it is binding on a single judge. A Division Bench cannot pronounce on the correctness of a decision of another Division Bench. If it is necessary to reconsider a Division Bench ruling the only course upon to a Division Bench is to make a reference to the Chief Justice with recommendation that the case be placed before a Full Bench.

In **Basanti Lal Shah V. Bhagwat Prasad**¹⁸ it was observed-----

“A Judge, sitting singly is not bound by the observations of a Division Bench which were made without considering an earlier decision of a Division Bench in which the Principles of law were laid down in a matter directly in issue, and he can follow the earlier decision which is in accord with its own opinion.

¹⁷ AIR 1956 Nag115

¹⁸ AIR 1957 All239

In Enatullah v. Kowsher Ali,¹⁹ it was observed-----

“ A decision of a Full Bench is binding on all Division Bench, unless it is subsequently reversed by a Bench specially constituted or by a rule laid down by the Judicial Committee of the Privy Council, and it is obvious that it might lead to serious results is a Division Bench, wherever it felt inclined to differ from a decision of a Full Bench, could refer the matter to a Special Bench and the Chief Justice was compelled to form such a Special purpose Bench whether he thought it necessary or not”.

The Directions issued by the Court in a decision constitute binding law under Article 141. This principle was reiterated by Supreme Court in **Vishaka v. State of Rajasthan** and **Khedat Mazdoor Chetna Sangath v. State of M.P.**

When the Supreme Court decides a principle it would be the duty of the High Court or Subordinate Courts to follow the decision. A judgement of the High Court which refuses to follow the decision and directions of the Supreme Court or seek to revive a decision of the High Court which has been set aside by the Supreme Court is a nullity, the Supreme Court observed in the matter of Director of Settlements, **A.P. v. M.R. Apparao** recently. The Supreme Court’s decision is binding on all courts and tribunals.

All Districts Courts, Magistrate Courts and Munsif Courts are bound by the decisions of Supreme Court and High Courts (within its jurisdiction) Again, Munsif’s Courts and Magistrate’s Courts are bound by the decisions of District Courts (within its jurisdiction)

¹⁹ (1956) 54 ILR

The Judicial committee of the Privy Council which acted as the highest court of appeal for courts in British India occupies the position of an archstone in the process that facilitated the reception of the common law doctrine of precedent into the judicial stream of court craftsmanship in India.

Stare decisis representing the apotheosis of a legalistic ideology believes that law should be founded upon such values as certainty consistency and continuity. In the process of adjusting stability with change the appellate judges often indulge in reasoning away the earlier case almost to vanishing point diluting the authority of the case distinguished. Legal advisers are left to wade through a morass of case law only to sink into a quick sand of uncertainty, until hopefully, the legislature rescues them, the courts have stood by helpless spectators of the engulfed citizens struggles. As Holmes says that judges do and must legislate but they can do so interstitially.

Despite the fact that the rule was sought to be strictly applied, the need so balance the demands for change with stability necessitated the adoption of several judicial techniques by the House of Lords. This orthodox methods of modify in the orthodox rule is by way of (1) analogy, (2) distinguishing the facts, (3) narrow or restricted interpretation (4) ascertainment of ratio decidendi, are all too well known to the judicial community.

Literal meaning of the term 'ratio decidendi' is "reason of decision". Other meanings are also given to this term, for example, the rule of law which is preferred by the judge as the actual basis of his decision, or the rule of law which permits others to interpret the judgement as being of binding authority. According to Keeton ratio decidendi of a decision is the principle of law formulated by the judge for the purpose of

deciding the problems before him. Ratio decidendi of a case is having a binding effect upon a subordinate court.

The term obiter dicta literally means statements by the way. In Halsbury Laws of England it has been defined as Statements which are not necessary to the decision, which goes beyond the occasion and lay down a rule that is unnecessary purpose in hand (usually term dicta) leave no binding authority on another Court, though they may have some merely persuasive efficacy. According to Keeton obiter dictum are observations made by the Judge but which are not essential for the decision reached. Obiter dicta generally has no binding effect.

CONCLUSION

Judicial precedent is a source of law. Constitution of India provides that the law declared by the Supreme Court shall be binding on all courts within the Territory of India.

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Stare decisis representing the apotheosis of a legalistic ideology believes that law should be founded upon such values as certainty, consistency and continuity. In the process of adjusting stability with change the appellate judges often indulge in reasoning away the earlier case almost to vanishing point diluting the authority of the case distinguished. Legal advisers are left to wade through a morass of case law only to sink into a quick sand of uncertainty, until hopefully, the legislature rescues them, the courts have stood by helpless spectators of the engulfed citizens struggles. As Holmes says that judges do and must legislate but they can do so interstitially.

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The Judicial committee of the Privy Council which acted as the highest court of appeal for courts in British India occupies the position of an archstone in the process that facilitated the reception of the common law doctrine of precedent into the judicial stream of court craftsmanship in India.

1.12 Sometimes, even looking at the importance of The Law of Judicial Precedents & Contempt of Court



The Law of Judicial Precedents & Contempt of Court
K. H. KAJI & MANISH K. KAJI, ADVOCATES

The authors, eminent practicing advocates, have written this invaluable guide on the law of Judicial Precedents, Judicial Discipline, Contempt and Res Judicata. Apart from explaining the law in a simple and succinct manner, the authors have cited a large number of landmark judgements to support the legal propositions

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The doctrine of judicial precedents, judicial discipline, contempt and *Res Judicata* have been evolved to ensure stability and certainty in law and deterrent action in case of its violation by subordinate Courts and Tribunals. Otherwise, any judge could take any view on the interpretation of the law resulting in chaos. The subject can be divided into four heads as discussed below: -

I. Judicial precedents

The subject of judicial precedents can be dealt with under the following heads: –

- [1] What is a precedent?
- [2] What is binding?
- [3] On whom it is binding;
- [4] When it is binding?
- [5] Remedy for curing the error in earlier decision.
- [6] Whether decisions of other courts are binding or only of persuasive value?
- [7] Decisions per incurium.
- [8] Decisions *sub silentio*.
- [9] Decisions *on* concession.
- [10] Decisions given *exparte*.

[11] Doctrine of *stare decisis*.

[12] Effect of retrospective amendment of law or validation statutes.

The observations made by the learned judge subvert the accepted notions about the force of precedents in our system of judicial administration. Precedents which enunciate rules of law form the foundation of administration of justice under our system. It has been held time and again that a single judge of a High Court is ordinarily bound to accept as correct judgments of Courts of Co-ordinate jurisdiction and of Division Benches and of the full Benches of his Court

II. Judicial discipline

This doctrine is allied to the doctrine of judicial precedent but is somewhat different in the context of the question – what does the judicial discipline require?

[1] Whether the Tribunals are bound by decisions of other Tribunals?

[2] In what circumstances they are not binding.

[3] Whether authorities lower to the Tribunals are bound to follow decisions of the Tribunals?

[4] Whether the Tribunals are bound to follow the decisions of other High Courts?

[6] Reference to larger bench and the binding effect of the decision of larger bench.

III. Contempt

[1] What is "Court"?

[2] What is Civil Contempt ?

[3] Whether law of civil contempt becomes applicable when the executive authority or even the Tribunal does not follow a binding precedent of the jurisdictional **High Court**?

[4] Whether it amounts to contempt when the lower authorities do not follow a decision of either jurisdictional or other Tribunals either in assessee's own case or in the case of another assessee?

[5] Exception to the above rule.

[6] The procedure for challenging the decision of the Tribunal or the High Court either in the case of the same party or in the case of another party without being guilty of contempt.

IV. Res Judicata

[1] The principle arises only if same issue decided earlier arises again between the same parties.

[2] Does this principle apply in tax matters in the case of the same parties in the subsequent year?

[3] Whether the doctrine applies when new facts come to light which may require fresh consideration of the earlier decision between the same parties?

The above topics will be now dealt with in detail.

At the outset, we must express our serious dissatisfaction in regard to the manner in which a co-ordinate 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

I. Judicial Precedents

1.1 What is a precedent?

The judgment of any Court, High Court or Supreme Court is a decision of the court in that particular case. It would bind the parties on the principle of *res judicata* but so far as its binding nature on other courts or other parties is concerned, it has been clearly laid down that what is binding as a judicial precedent is '*ratio decidendi*'. The expression '*ratio decidendi*' means the underlying principle, viz., the general reasons upon which the decision has been made. It has to be ascertained by analysis of the facts of the case and the process of reasoning involving the major premise consisting of rule of law, either statutory or judge made and a minor premise consisting of material facts of the case under consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it – *Krishna Kumar vs. UOI 1990 (4) SCC 207 at 226-27 (SC)*. There cannot be a judicial precedent on a question of fact. It is only the legal principle laid down on the basis of fact and the law that becomes judicial precedent.

1.2 It is also clear that the precedent is binding for what it explicitly decides and no more. The decision is an authority for what it decides and not what can be logically deduced therefrom. A slight distinction in fact or additional facts may sometimes make a lot of difference. Similarly, the words in a judgment are not used after weighing the *pros and cons* of all conceivable situations that may arise. Sometimes, when more than one judge delivers judgment deciding the issue on different grounds, it may be difficult to find out the *ratio decidendi* of the judgment so as to constitute a precedent. Mere observations or even *obiter dicta* (meaning pronouncement on a legal issue not required for deciding the case) are not binding but may have persuasive value. However, it has been clearly laid down that even *obiter dicta* in judgment of the Supreme Court is binding on all courts and Tribunals.

1.3 The following hierarchy of courts will now be dealt with on the issue of judicial precedent:

[a] Judgments of Supreme Court i.e. *ratio decidendi* and even *obiter dicta* are binding on all courts and Tribunals within the territory of India as laid down in Article 141 of the Constitution of India. Analysis of any judgment may show the following result:

[i] *Ratio decidendi* – reasons for deciding the legal point, which is binding.

[ii] Obiter dicta – decision on points not necessary to decide. It is binding.

[iii] Passing observations not required to decide the case but made in passing. They are not binding.

1.4 The Bombay HC quoted the following observations of Earl of Halsbury in the case of *Qumin vs. Leathem (1901) AC 495 (HL) in Blue Star Ltd. vs. CIT (1996) 217 ITR 514 520*.

“Every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there, are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

1.5 However, the question arises – whether decisions of the privy council prior to 1950 are binding as precedents on the Supreme Court. It has been held that they are not binding and had only persuasive value.

Supreme Court not bound by its own decisions

1.6 However, it must be pointed out that the Supreme Court while interpreting Article 141 examined the scope of the words “all courts in India ” and held that they do not include the Supreme Court itself. See *Bengal Immunity Co. vs. State of Bihar (1955) 2 SCR 603*. But the Supreme Court also will deviate from its earlier decisions only in exceptional cases. Such exceptions were laid down by the Supreme Court in *Union of India vs. Raghubir Singh (1989) 178 ITR 548 (SC)* in the following words :

1.7 The pronouncement of law by a Division Bench of the Supreme Court is binding on a Division Bench of the same or a smaller number of judges and in order that such decision be binding, it is not necessary that it should be a decision rendered by the full Court or a Constitution Bench of the Supreme Court.

1.8 The Supreme Court is not bound by its own previous decision. Like all principles evolved by man for the regulation of the social order the doctrine of binding precedent is circumscribed in its governance by perceptible limitations — limitations arising by reference to the need for, readjustment in a changing society, a readjustment of legal norms demanded in a changed social context. The court would, however, do well to ensure that although the new norm chosen in response to the changed social climate represents a departure from the previously ruling norm it must, nevertheless, carry within it the same principle of certainty, clarity and stability.

1.9 The Supreme Court of India should not differ from its decision merely because a contrary view appeared preferable. But if the previous decision is plainly erroneous, there is a duty of the court to say so and not perpetuate the mistake. A revision of its earlier decision would be justified if there were compelling and substantial reasons to do so. The earlier decision may be reviewed, for instance, (i) where an earlier relevant statutory provision had not been brought to the notice of the court, or (ii) if a vital point was not considered.

1.10 Whether the court should review depends on several relevant considerations, such as :

(a) What was the nature of the infirmity or error on the earlier occasion (i) did some patent aspects of the question involved remain unnoticed, or (ii) was the attention of the court not drawn to any relevant and material statutory provision or (iii) was any previous decision of the court bearing on the point not noticed?

(b) Is the court hearing the plea for review unanimous that there is such an error in the earlier view?

(c) Has the earlier decision been followed on subsequent occasions either by the Supreme Court or by the High Courts?

(d) What would be the impact of the error on the general administration of law or on the public good?

(e) Would the reversal of the earlier decision lead to public inconvenience, hardship or mischief ?

1.11 So far as the binding nature of judgments of Supreme Court *inter se*, it is clear that judgment of one bench is binding on another bench, of lesser or equal strength. However, if the Single Judge finds that judgment of Division Bench of two Judges is not correct, he can make reference to the Chief Justice to place the matter before another Division Bench of more Judges. Otherwise he is bound by the judgment of Division Bench of two judges. If the Division Bench of two judges differs from decision of another Division Bench of two Judges, it has to make reference to the Chief Justice to refer the matter to the bench of more than two Judges.

the issue, issue can be referred by the Chief Justice to the Bench of 5, 7, 9, 11 , 13 judges.

1.13 Similar would be the position at the level of the High Court and similar procedure is to be invoked for making reference to Bench of more Judges.

1.14 Though it may amount to a little deviation reference may be made the decision in the case of *Tribhuvandas vs. Ratilal* 70 Bom L. R. 73 in which the Supreme Court dealt with a very unusual situation created by Raju J. when he refused to be bound by the judgment of a single judge or of a Division Bench of the High Court of which he was a judge on the ground that to be so bound would amount to violating the judges oath and also S. 165 of the Evidence Act. He further held that a judgment delivered by a full bench on a reference made by a single judge or a division bench could be ignored, since such judgment would "not be a judgment at all" and "has no existence in law" because such a reference was tantamount to usurping the jurisdiction of the Chief Justice. The Supreme Court said:

The observations made by the learned judge subvert the accepted notions about the force of precedents in our system of judicial administration. Precedents which enunciate rules of law form the foundation of administration of justice under our system. It has been held time and again that a single judge of a High Court is ordinarily bound to accept as correct judgments of Courts of Co-ordinate jurisdiction and of Division Benches and of the full Benches of his Court. The reason of the rule which makes a precedent binding lies in the desire to secure uniformity and certainty in the law.

1.15 **Judgment per incurium**

The precedent may not be binding when the judgment is per incurium i.e. in ignorance of the law or contrary to the law or its own earlier decisions of own or by inadvertence.

1.16 Judgment without reasons

(1) If the judgment gives no reason for deciding a point, this would not be binding because what is binding is the reasons for the decision.

(2) If the law is amended, whether prospectively or retrospectively, such law has to be applied in spite of a precedent which is otherwise binding.

1.17 Judgments of other High Courts

Incidentally, another aspect requires consideration, viz., whether decision of another High Court is binding to all High Courts. It has been well accepted that though legally judgment of another High Court is not a binding precedent, judicial comity or judicial discipline is invoked by court that in respect of interpretation of Central Statutes a decision of another High Court should be followed though judge may have a different view.

1.18 The Gujarat HC had earlier explained the principles in the case of *Arvind Board & Paper Products Ltd. vs. CIT (1982) 137 ITR 635* in the following words :—

(1) "In Income tax matters which are governed by an All India Statute, when there is a decision of a High Court interpreting 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 incurium, obiter dicta* or based on a concession or takes a view which 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 High Court or same such or similar infirmity is manifestly perceivable in the decision." This principle is recently followed in *CIT vs. SAE Welfare Trust (2004) 192 CTR 70 (Del)*.

(2) The courts have however observed that this is not a universal rule and a judge of the High Court need not slavishly follow the judgment

of another High Court. In the case of *N.R. Papers and Board Ltd. vs. Dy. CIT (1998) 234 ITR 733 (Guj)* the court observed that “decisions of other High Courts have great persuasive value but if it becomes impossible to agree with or if there are no reasons and only pronouncement of legal principles, the court is free to give its own reasons not coinciding with conclusion reached by another court in graphic language. It is said that “the decisions of any High Court are after all not intended to be gag order for other High Courts and do not have the effect of freezing judicial thinking on the points covered by them”.

1.19 **Stare decisis**

At this stage, similar to judicial precedent, the principle of *stare decisis* is sometimes invoked to follow earlier judgment which has stood the test of time for a long time and accepted by every one. The same will be followed even if subsequently the court may think that it is not correct. Acceptance for long settled law would be the ground on which different view is not taken though it could be taken by that bench.

In *CIT vs. Balkrishna Malhotra 81 ITR 759* the Supreme Court held that if a decision has held the field for long and citizens as well as tax department have acted upon it, the Court will not disturb the law so laid down even if it comes to the conclusion that earlier decision was wrong.

1.20 **Sub silentio**

Similarly, the phrase ‘*sub silentio*’ would be used when a particular point of law involved in the decision is not perceived by the court or present to its mind, e.g., court decides in favour of one party on point A while it should have decided in favour of second party because of point B. In such a case, it cannot be considered as a decision on point B as the said point was passed on sub silentio i.e. without deciding.

1.21 **Legislative amendment**

The effect of subsequent legislative amendment on an earlier precedent can also be considered. It has been held that function of judiciary and the legislature are distinct and separate and, therefore, it is not possible for the legislature to supercede a judgment of the court. However, it has been laid down that the same result can be achieved by the legislature by altering the basis on which the court has based its decision. In such a

case, precedent is no longer binding or it loses its binding effect. It has been laid down that a legislature has no legislative power to render ineffective earlier judicial decision by making a law which simply declared the earlier decision as invalid and not binding because such power would not be a legislative power but a judicial power (*G.C.Kanengo vs. State of Orissa AIR 1995 SC 1655 at 1665*). However, it has been held that it would be permissible for the executive or the legislature to remove the defect which is the cause of the decision of the court. Such defect can be removed retrospectively and action can be validated but a mere validation with prospective effect without the defect being removed would be invalid in achieving validation.

1.22 A judgment of the High Court or the Supreme Court on a concession by the parties will not act as judicial precedent and will not be binding on the lower courts. But a judgment even though *ex parte* will be binding as a judicial precedent.

1.23 Sometimes, there are conflicting judgments of the same court and the question arises whether latter judgment or earlier judgment becomes a binding precedent. In such a situation, if the two decisions are delivered by a bench of equal strength, latter judgment may be followed. If however, the earlier judgment is of a larger bench, it is required to be followed and not the latter judgment of a bench of lesser number of judges. Sometimes, it also happens that the latter judgment does not refer to the earlier judgment of a bench of equal strength. In such a case, it may be open for the lower court to follow either of the two judgments.

1.24 Conflicting decision of Supreme Court or High Court—which one is a binding precedent?

(i) The Courts have attempted to lay down certain principles, when faced with conflicting decisions of the higher or same Court.

(ii) The Supreme Court itself held in *Union of India vs. KS Subramaniam AIR 1976 S.C. 2433* that the proper course for a High Court in a case where there are conflicting decisions of larger Benches of the Supreme Court and smaller benches of the Supreme Court, is to try to find out and follow the opinions expressed by larger Benches in preference to those expressed by smaller Benches of the Supreme Court. The practice has now crystallized into a rule of law declared by the Supreme Court. However High Court is

at liberty to say but with cogent reasons that the views expressed by the larger bench are not applicable to the facts of a given case.

(iii) However a question arises where the smaller Bench has taken note of a large Bench decision, but still gave a decision apparently in conflict with the decision of the larger Bench. The Calcutta HC seems to have taken a view that the above ratio may not be applicable to such a situation. See *Century Spinning Mfg. Co. Ltd. vs. State of West Bengal (1989) 73 STC 277*.

(iv) In *Nandanam Construction vs. Asst. Commissioner (1983) Tax L. R. 2816*, the A. P. High Court has taken the view that in the case of conflicting decisions of the Supreme Court rendered by two Benches of equal strength the subsequent or later decision should be followed. The Madras HC has also taken a similar view in *CIT vs. Nagi Reddi (1983) 144 ITR 62*.

(v) However the Punjab HC struck a different chord in *Indo Swiss Tune Ltd. vs. Umrao AIR 1981 Punj 213*. It opined that in such a situation the HC can follow the judgment which appears to it as laying down the law more elaborately and accurately. The mere incidence of time is a consideration which appears as hardly relevant.

(vi) It is submitted, with respect, that the above decision virtually confers powers on the High Court to decide whether Supreme Court was right or wrong in a particular decision. The A.P. High Court and Madras HC decisions appear to lay down the correct law, having regard to the rationale behind the doctrine of binding nature of precedents. See also 238 ITR 113 (Del.).

1.25 Sometimes, it also happens that the court even the Supreme Court decides the matter but stating that it should not be taken as a precedent. In such a situation, the said judgment does not operate as a binding judgment.

1.26 In a judgment delivered by a majority, it is not open to the lower court to follow the minority judgment however appealing it may be to the court. It may be remembered that sometimes the judge delivering the minority judgment in one case, in another case heard by a larger bench the same Judge reasserts his minority view taken in the earlier judgment

and the larger bench accepts that view. In such a situation, it becomes a majority judgment which is binding.

1.27 Dismissal of SLP

Controversy had arisen with regard to dismissal of Special Leave Petition by the Supreme Court and whether it becomes the decision of the Supreme Court confirming the decision of the High Court. The law is now clear. The following are the principles well recognized as regards the binding nature of the decision of the Supreme Court on Special Leave Petition:—

[1] If the court gives reasons while dismissing the SLP, it becomes law declared and, therefore, binding under Article 141 of the Constitution. However, this again depends on the reasons for dismissal *V.M Salgaokar vs. CIT (2000) 243 ITR 383(SC)*. Often, the Supreme Court dismisses the Special Leave Petition because the stakes are small or law may be subsequently amended after the lower court's decision and therefore does not require adjudication by the Supreme Court or it may be dismissed on the ground of delay. In such cases, even the dismissal of Special Leave Petition with reasons will not be a precedent. See *Hemalatha Gargya vs. CIT 259 ITR 1 (SC)*

[2] If however the Supreme Court dismisses the Special Leave Petition without reasons, it will not operate a binding precedent to other courts. The only effect of such dismissal is that for that particular High Court the decision has become final. However, the dismissal of the appeal by the Supreme Court even without reasons will be a binding precedent upholding High Court's decision unless by a speaking order either expressly or by necessary implication it dismisses the appeal on grounds similar to those mentioned earlier, as regards dismissal of SLP.

[3] In *V. M. Salgaokar vs. CIT (2000) 243 ITR 383*, the Supreme Court held that when an appeal is dismissed by the Supreme Court by a non speaking order, the order of the High Court or Tribunal from which the appeal arose merges with that of the Supreme Court.

[4] When the Supreme Court dismisses special leave petition with reasons, it might be taken as the affirmation of the High Court's views on merits of the case. There is no reason to dilute the binding nature of precedents in such cases.

Leading case on the subject of result of dismissal of SLP is the case of : *Kunhayammed vs State of Kerala (2000) 245 ITR 360(SC)*

1.28 The Gujarat High Court in a recent decision elaborately discussed the effect of dismissal of tax appeal by the High Court and dismissal of SLP by Supreme Court and has held that if the tax appeal is dismissed by the High Court on the ground that no substantial question of law is involved, such a decision of the High Court will be binding on the Tribunal and lower Authority: (*Nirma Industries Ltd. vs. Dy. CIT [2006] 283 ITR 402*).

1.29 Sometimes question arises whether an ex parte decision of the High Court or the Supreme Court becomes a binding precedent. The general view is that a reasoned judgment though ex parte deciding the point of law would constitute a binding precedent to the lower authorities.

The following cases may be referred to on this subject.

(1) *Vinay Extraction Pvt. Ltd. vs. CIT 271 ITR 450 (Guj)*.

What is binding?

It was observed that :

“Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations in a judgment must be read in the context in which they appear. Each case depends on its own facts and a close similarity between one case and another is not enough to place reliance on the other case because even a single significant detail may alter the entire aspect.

(2) *Arunbhai Hargovindas Patel , CGT vs. – (2003) 179 CTR 420 = 173 Taxation 182 (Guj.)*

If the views of the Supreme Court expressed in an earlier decision are explained in a subsequent decision of the Supreme Court, the explanation in the subsequent decision will have to be followed by the High Court, even if the subsequent decision is rendered by a smaller Bench of the Supreme Court.

(3) *G.M Mittal Stainless Steel (P), CIT vs. – (2003) 179 CTR 553 = 263 ITR 255 = 130 Taxman 67 (Guj.)*

Binding nature – Jurisdictional High Court decision – Is binding on the Revenue authorities within the State. Revenue authorities within the State cannot refuse to follow the jurisdictional High Court's decision on the ground that the decision of some other High Court was pending disposal before the Supreme Court.

(4) Binding nature of Supreme Court Judgments:

Article 141 of the Constitution of India provides that the Law declared by the Supreme Court shall be binding on all Courts within the territory of India. Thus the Law as interpreted by the Supreme Court is binding on all Courts and Tribunal in India *CWT vs. Aluminium Corporation of India 85 ITR 167 (172) (SC)*. The decision of the Supreme Court in taxation matters amount to a declaration of Law as contemplated by Article 141 of the Constitution of India. *Karamchand Premchand Pvt. Ltd. vs. CIT 101 ITR 46(52) (Guj.)*. The High Court cannot ignore a decision of Supreme Court on the ground that the relevant provision were not brought to the notice of the Supreme Court *Ballabhdas Mathurdas Lakhani vs. Municipal Committee AIR 1970. SC. 1002 ; Tata Iron & Steel Co. Ltd. vs. D.V Bapat Ito 101 ITR 392 (327)(Bom.)*. The Tribunal is bound to follow the principle of Law laid down by the Supreme Court. It is not open to the Tribunal to say that the Supreme Court decision was not relevant simply because, it was not under the statute under which the Tribunal is working. *M. Ravji vs. State of Gujarat 89 STC 228, 234 (Guj.)*.

(5) *Air Conditioning Specialists Pvt. Ltd. vs. Union of India & Ors. (1996)221 ITR 739 (Guj.)*

The Commissioner of Income Tax is a "Tribunal" subject to the supervisory jurisdiction of the High Court under Article 227 of the Constitution. Hence, he is bound to obey the law declared by the High Court. It is not open to the Commissioner of Income Tax to ignore the decision of the jurisdictional High Court or refuse to follow it on the ground that the verdict had not been accepted by the Department and that the matter was carried further and was pending before the Supreme Court. When a point is concluded by a decision of the Court, all subordinate courts and inferior Tribunals within the territory of the State

and subject to the supervisory jurisdiction of the High Court are bound by it and must scrupulously follow the said decision in letter and spirit.

(6) In *CIT vs. G. Dalabhai & Co – 226 ITR 922*, the Hon'ble Gujarat High Court has remarked – "Before parting with the case, we notice with anguish the language used by the Income Tax Officer in his assessment order saying that "with due respect to the decision of the Gujarat High Court, I do not follow the same'. The Income Tax Officer in not following the decision of the Gujarat High Court within whose supervisory territory he was functioning, is far from satisfactory, that is the least we can say. The minimum decorum of the system of hierarchy that Tribunals in the administration of justice and their judicial subordination to the High Court of the territory in which they function requires that they restrain in the use of proper expression while following or not following the decision of the High Court.

(7) *Bishnu Ram Borah and Another vs. Parag Saikia & Ors. AIR 1984 SC 898*

The board of Revenue any other subordinate tribunal is subject to the writ jurisdiction of the High Court under Article 226 of the Constitution. Just as the judgments and orders of the Supreme Court have to be faithfully obeyed and carried out throughout the territory of India under Article 142 of the Constitution, so should be the judgments and orders of the High Court by all inferior courts and Tribunals subject to their supervisory jurisdiction within the State under Arts. 226 and 227 of the Constitution. The Board of Revenue cannot refuse to carry out the directions of the High Court. (1961) 1 SCR 474, Foll. (Para 12)

(8) *New Sorathia Eng. Co. vs CIT 282 ITR 642 (Guj) –*

Failure by Tribunal to follow High Court Judgment amounts to contempt.

(9) In the case of *K.C.P. Ltd. vs. CIT (2000) 245 ITR 421 (SC)* it is held that a judgment is required to

be read in light of facts of the case and not as a statute.

(10) *Jain Exports vs. UOI (1988) 3 SCC 579*. Lays down the principle that in a tier system, decision of higher authorities are binding on lower authorities and quasi- judicial Tribunals are also bound by this discipline.

(11) *Special Duty Collector vs. Vasundhara Rao AIR 2008 SC 944 = 2007 14 SCC 165* – Applicability of law laid down by Supreme Court. High court distinguishing SC judgment and that too erroneously and not applying the same – criticized.

(12) *Subhash Chandra vs. Delhi Subordinate Service Selection Board (2009) 15 SCC 458 – Article 141* – Doctrine of stare decisis – binding effect of law declared by SC- Sc vis –a vis itself-Inter bench conflict-bench of two judges facing conflict between two constitution bench decisions and a three judge decision-whether three judge bench decision can be ignored-course permissible-norms of judicial discipline.

(13) *Sardar Associates vs. Punjab & Sindh Bank (2009) 8 SCC 257* - judgment of Constitution bench – Binding effect over a bench of two judges – Held : judicial discipline mandates it to be so binding.

(14) *Official Liquidator vs. Dayanand (2008) 10 SCC 1* – Binding effect of rulings of co-ordinate/ larger benches of HC reiterated – Cardinal importance of judicial discipline strongly emphasised – need for predictability and certainty in the law- impact of disrespect to constitution ethos and breach of judicial discipline spelt out.

(15) *Asst. Controller of Estate Duty vs. V. Devaki Ammal 212 ITR 395 (SC)*

Once a Division Bench of a High Court has held a particular provision of law to be constitutional and not violative of Article 14 of the Constitution of India, it is not open to another Division Bench to hold that the same provision of law is unconstitutional and violative of Article 14. Judicial discipline demands that one Division Bench of a High Court should, ordinarily follow the judgment of another Division Bench of that High Court.

In extraordinary cases, where the later Division Bench finds it difficult for stated reasons, to follow the earlier Division Bench judgment, the proper course is to order that the papers be placed before the Chief Justice of the High Court for constituting a larger Bench.

(16) *Tribhovandas Purshottamdas Thakkar vs. Ratilal Motilal Patel AIR 1968 SC 372* – Lays down the following principle regarding reference to a full bench:

When it appears to a Single Judge or a Division Bench that there are conflicting decisions of the same Court, or there are decisions of other High Courts in India which are strongly persuasive and take a different view from the view which prevails in his or their High Court or that a question of law of importance arises in the trail of case, the Judge or the Bench passes an order that the papers be placed before the Chief Justice of the High Court with a request to form a special or Full Bench to hear and dispose of the case or the questions raised in the case. For making such a request to the Chief Justice, no authority of the Constitution or of the Charter of the High Court is needed, and by making such a request a Judge does not assume to himself the powers of the Chief Justice. A Single Judge does not by himself refer the matter to the Full Bench : he only requests the Chief Justice to constitute a Full Bench for hearing the matter. Such a Bench is constituted by the Chief Justice. The Chief Justice of a Court may as a rule, out of deference to the views expressed by his colleague, refer the case : that does not mean however, that the source of the authority is in the order of reference. Again it would be impossible to hold that a judgment delivered by a Full Bench of a High Court after due consideration of the points before it is liable to be regarded as irrelevant by Judges of that Court on the ground of some alleged irregularity in the constitution of the Full Bench.

II. Judicial discipline

2.1 Similar to the position discussed above with regard to the binding nature of judicial precedent, allied doctrine of judicial discipline requires to be considered. It has been observed by the Supreme Court in the case of *Union of India vs. Kamalakshi Finance Corporation Ltd. AIR 1992 SC 711* that judicial discipline requires that decision of higher authority should to be followed in the case of quasi-judicial authority and, therefore, a lower officer is bound to follow the decision of the higher authority e.g. Assessing Officer is bound to follow the decision of the Tribunal particularly so in the case of the same assessee. This principle requires that decisions of higher authorities such as Tribunal should be followed by lower officers, viz., CIT(A) and Assessing Officer. Even decision of the Tribunal, not a jurisdictional Tribunal, is required to be followed by the lower authority. Sometimes, an argument is made and also put on record

that the Department has not accepted the decision of the Tribunal and Appeal has been preferred to the High Court. However, courts have repeatedly held that phraseology of not accepting the decision is obnoxious and unparliamentary in respect of the order of the higher authority. Unless, in Appeal the order of the higher authority is stayed, it operates as a valid binding decision to the lower authority not only in the case of the same assessee but also in other cases where the same law point is involved. If the Statute is an All India Statute, decisions of benches of the Tribunal at various places are considered as binding on the law point decided on the principle of judicial discipline.

2.2 The following are the observations of the Supreme Court from the decision in *S I Rooplal & Another vs. L. G. of New Delhi (2000) SCC 644*.

(1) "At the outset, we must express our serious dissatisfaction in regard to the manner in which a co-ordinate 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.

(2) The decision of the special (large) Bench of the Tribunal must be held to be a binding precedent for division benches otherwise the very purpose of constituting them will get frustrated. This of course is subject to the exception that if there is a High Court decision on the same issue and not noticed by the Special Bench, then the High Court decision will receive preference as was done in Chandulal Venichand's case 38 ITD 138.

(3) Similarly when there is only decision of one High Court (not jurisdictional High Court) Tribunal is bound to follow it on the reason of judicial discipline Godavaribai Saraf vs. CIT (1978) 113 ITR 589 (Bom.).

(4) However, the principles laid down earlier in this Article regarding situation in which earlier decision is not binding can equally apply to the binding nature of the decision of the higher authority and in such a situation, the decisions of higher authority will not be applicable and not required to be followed.

2.3 The following cases may be referred to:

(1) The Supreme Court in the case of *Synco Industries vs. Assessing Officer (2008) 299 ITR 444(SC)* held that it would lean in favour of predominant view of the High Court. It followed its earlier decision in case of *Virtual Soft Systems Ltd. vs. CIT (2007) 290 ITR 83 (SC)*.

Following other High Courts on Central Act :-

(2) *CIT vs. Chimanlal J. Dalal & Co. 57 ITR 285(Bom)*.

The judgment of the Gujarat High Court in *CIT vs. Kantilal Nathuchand 53 ITR 420 (Guj.)* doubted but followed for the sake of uniformity among the High Courts in the matter of interpretation of the Income- tax Act CIT, Bombay City.

(3) *CIT vs. Deepak Family Trust No. 1 and Others 211 ITR 575 (Guj.)*.

In Income Tax matters which are governed by an all India statute, when 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 exception like where the decision is sub silentio, per incurium, 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 or similar infirmity is manifestly perceivable in the decision.

(4) *CIT vs. L.G Ramamurthi and Anr – 110 ITR 453 (Mad.)*

CIT vs. Devaraj 73 ITR 1 (Mad.)

For the sake of uniformity, one Bench of the Tribunal is bound to follow the view expressed by another Bench of the Tribunal unless the earlier view is per incurium –

(5) *CIT vs. Goodlass Nerolac Paints Ltd. – 188 ITR 1 (Bom.)*

Tribunal should not come to a conclusion totally contradictory to the conclusion reached by the earlier Bench of the Tribunal. Where a Bench

differs from an earlier Bench, the matter should be referred to a larger bench.

2.4 Binding Nature of Orders of Tribunal :

(1) The first Appellate Authority or the Assessing Officer are bound by the orders of the Tribunal. Even where the assessee or the department has pursued the matter in reference proceedings, it does not act as a kind of stay of operation of the order of the Tribunal.

(2) The Assessing Officer cannot ignore the decision taken by the Tribunal in favour of the assessee and take a contrary view – *ITO vs. Siemens India Ltd. & Anr. 156 ITR 11 (Bom.), 28 STC 483 Sree Rajendra Mills Ltd. vs. CIT; 109 ITR 229 (Cal.), Russell Properties Pvt. Ltd. vs. A. Chowdhury, Addl. CIT, West Bengal & Others.*

(3) The Assessing Officer cannot refuse to follow the order passed by the Commissioner against the application u/s. 132(11) on the ground that the Commissioner had no jurisdiction over the matter –

Union of India vs. Pradip Kumar Saraf & Ors. 207 ITR 679 (Cal).

(4) *Union of India & Ors. vs. Kamlakashi Finance Corporation Ltd. – AIR (1992) 711 (SC)*

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 decision 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 assessee and chaos in administration of tax laws.

(5) *CIT vs. Ralson Industries Ltd. – (2007) 288 ITR 322(SC)*

When an order is passed by a higher authority, the lower authority is bound thereby keeping in view the principles of judicial discipline. This aspect of the matter has been highlighted by this Court in *Bhopal Sugar Industries vs. Income Tax Officer, Bhopal [AIR 1961 SC 182]* in the following terms (Page 622):

(a) "If a subordinate tribunal refuses to carry out directions given to it by a superior tribunal in the exercise of its appellate powers, the result will be chaos in the administration of justice and we have indeed found it very difficult to appreciate the process of reasoning by which the learned Judicial Commissioner while roundly condemning the respondent for refusing to carry out the directions of the superior Tribunal, yet held that no manifest injustice resulted from such refusal.

(b) It must be remembered that the order of the Tribunal dated April 22, 1954, was not under challenge before the Judicial Commissioner. That order had become final and binding on the parties, and the respondent could not question it in any way. As a matter of fact the Commissioner of Income-tax had made an application for a reference, which application was subsequently withdrawn. The Judicial Commissioner was not sitting in appeal over the Tribunal and we do not think that, in the circumstances of this case, it was open to him to say that the order of the Tribunal was wrong and, therefore there was no injustice in disregarding that order. As we have said earlier such a view is destructive of one of

the basic principles of the administration of justice."

III. CONTEMPT

3.1 The law of contempt comes down heavily on judicial or quasi-judicial authority who fails to follow a binding judicial precedent of the jurisdictional High Court or the Supreme Court. Such a contempt would amount to civil contempt and the Assessing Officer, first Appellate Authority and Tribunal would be guilty of civil contempt if it chooses not to follow a binding precedent of the jurisdictional High Court or the Supreme Court. A question of bonafide or unintended violation of the principle of binding judicial precedent may result in the court taking a lenient view but if the authority on flimsy ground fails to follow a binding decision of the High Court or the Supreme Court, such authority will be

guilty of civil contempt. The power to punish the civil contempt is conferred by the Contempt of Courts Act, 1952 and such powers are also conferred on High Courts under Article 215 of the Constitution of India. Reference to the contempt in this Article is limited to not following a binding precedent of a jurisdictional High Court or the Supreme Court. Non compliance with the decision of any court or the High Court or the Supreme Court by violating any interim order or final order of the court is not required to be dealt with in this Article. It may also be noted that the Tribunals do not have any power to commit any officer for contempt and application for contempt has to be made to the High Court in such a case.

“Under Contempt of Courts Act, 1971 “civil contempt” is defined in s. 2(b) thus: “Civil Contempt” means wilful disobedience to any judgment, direction, orders, writ, process of a Court”. Court is not defined by the Act.”

3.2 The following cases may be referred to:

(1) **What is Court ?**

In *Shaikh Mohammadbhikhan Hussainbhai vs. Manager, Chandrabhanu Cinema – 1986(1) GLR 1 (FB)* – It was held that industrial courts were Court within Contempt of Courts Act. However, in the case of *Alhar Co-op. Credit Service Society vs. Shamlal – 1995 (2) GLH 550 (SC) (para-4)*.

Supreme Court held the Labour Courts were not Courts within Contempt of Courts Act. Gujarat High Court once again in case of *Girishchandra R. Bhatt vs. Dineshbhai N. Sanghvi – 1996 (1) GLH 523 (paras 16, 18)* held that Labour Courts were not Courts. Subsequently in case of *Muljibhai Bhurabhai vs. Upendra Vyas – 200 (2) GLH 768*, the Gujarat High Court held that the Labour Courts where no Courts. However, in the latest judgment of *Jaisinh Jodhabhai Vaisya vs. L.A Zala, (2001) 2 GLH 68 (Paras 7.1, 8)*, Gujarat High Court once again held that Labour Courts were Courts observing that Muljibhai’s case was per incurium. It also referred to Supreme Court judgment in the case of *Income Tax Appellate Tribunal vs. V.K Agarwal & Anr. – (1999) 1 SCC 16*. wherein it was held that Income Tax Appellate Tribunal was a “Tribunal” subject to contempt jurisdiction. It referred to Article 215 of the Constitution.

3.2 *Income Tax Appellate Tribunal vs. V.K Agarwal & Anr. – 1999 AIR SC 452*

The Supreme Court has jurisdiction to punish for contempt of the Income Tax Appellate Tribunal. 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 the Supreme Court from the decisions and References made by the Tribunal. The mere fact that by Supreme Court taking *suo motu* cognizance of the contempt, the contemner, Law Secretary of Ministry of Law & Judiciary of Govt. of India 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.

3.3 *Palitana Sugar Mills (P) Ltd. vs. State of Gujarat – AIR 2007 SC 1701*

“It is well settled that the judgments of this Court are binding on all the authorities under Article 141 of the Constitution and it is not open to any authority to ignore a binding judgment of this Court on the ground that the full facts had not been placed before this Court and/or the judgment of this Court in the earlier proceedings had only collaterally or incidentally decided the issues raised in the show cause notices. Such an attempt to belittle the judgments and the orders of this Court to say the least is plainly perverse and amounts to gross contempt of this Court... Courts have held in a catena of decisions that where in violation of an order of this Court, something has been done in disobedience, it will be the duty of this Court as a policy to set the wrong right and not to allow the perpetuation of the wrong doing. In our opinion, the inherent power will not be available under section 151, CPC as available to us in such a case but it is bound to be exercised in that manner in the interest of justice and public interest.”

3.4 **General**

(1) 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. If in spite of the earlier exposition of law having been pointed out and attention drawn to that legal position, in utter disregard of that position proceedings are initiated (contrary to the law declared), 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. In a government which is ruled by rule of law, 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, organizations, 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 a futile exercise. After saying this Gujarat High Court made it clear that from the decisions of the Supreme Court the following propositions emerge:

(a) It is immaterial that in a previous litigation the particular petitioner before the Court was or was not a party, but if 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 Tribunals when it has been declared by the highest court in the State and they cannot ignore it either in initiating proceedings or decision on the rights involved in such a 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.

3.5 *Baradkanta Mishra vs. B. Dixit – AIR 1972 SC 2466*

It was observed that -

“The conduct of the appellant in 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 and respect of the High Court generally, but is also likely to subvert the Rule of law and engender harassing uncertainty and confusion in the administration of law. Our view that a deliberate and *mala fide* conduct of not following the binding precedent of the High Court is contumacious does not unduly enlarge the domain of contempt. It would not stifle a *bona fide* act of distinguishing the binding precedent, even though it may turn out to be mistaken”.

3.6 *K.L Parmar vs. C.M Lenya – 1994 (2) GLH 182 (para 4)*

Gujarat High Court again denounced the act of the Government authority in not following the binding judgment and law in following words :-

“It cannot be gainsaid that the judgments of this Court have binding effect throughout the State of Gujarat. It cannot be gainsaid that the respondent could not have bypassed or disregarded the judgments of this Court. It transpires from the communication to this petition that copies of the aforesaid three judgments were supplied to him. In that view of the matter, the respondent herein could not have bypassed or disregarded the said judgments except at the peril of contempt of this Court. This cannot be said to be a mere lapse on his part. There appears to be deliberate design on his part to disregard the aforesaid three judgments of this Court. In fact, as transpiring from the aforesaid three judgments, the same were rendered in the cases arising from the action taken by the same Authority. In that view of the matter, even if the petitioner had not submitted the copies of the aforesaid three judgments with his communication, the respondent was duty bound to be in know of these three judgments. He was required to follow them. The way he has bypassed and disregarded the aforesaid three judgments of this Court, he

could be said to have committed Contempt of this Court.”

IV Res Judicata

4.1 It has been said that every assessment year is independent but the principle applies when decision is arrived at in the earlier year but not followed in the subsequent year. It is true that strictly speaking this doctrine does not apply on the ground that every assessment year is an

independent proceeding. However, Tribunals and High Courts have laid down that decision of earlier year must be followed and accepted if the facts are the same and no new facts have come up which may require the authority to take a different view. In other words, in substance, the doctrine does apply if the facts are the same and the law has not been altered to the detriment of the assessee. It may also be that the earlier decision was arrived at in ignorance of the law through oversight or that the same is appealed against before a higher authority but mere pendency of appeal is not a ground not to follow the earlier decision. This disobedience may also amount to contempt.

4.2 All the discussion above relating to the decisions of the Apex Court will equally apply to the decisions of the High Court.

4.3 In *Siemens India Ltd. vs. ITO (1983) 143 ITR 120 (Bom)*, the Bombay HC held that merely because an appeal has been filed or a special leave application is pending against the HC decision, it does not denude the decision of its binding effect and until set aside that decision is binding on all upon whom it operates as a binding precedent unless the operation of that judgment is stayed by the Supreme Court. The Bombay HC also said that not to follow the decision of the jurisdictional High Court would be almost committing contempt of the Court. See also 156 ITR 11 (Bom.).

4.4 *Bharat Sanchar Nigam Ltd. & Anr. vs. Union of India & Ors (2006) 282 ITR 273 (SC)*

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 or precedential value of the earlier pronouncement. Where the 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. This mandate is subject only to the usual gateways of distinguishing the earlier decision or where the earlier decision is per incurium. However, these are fetters only on a co-ordinate Bench, which,

failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter to a Bench of superior jurisdiction.

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