
Importance of Judicial discipline in Income Tax Proceedings



Amit Kumar Gupta

Advocate (Delhi High Court)

Discipline refers to rule following behaviour, to regulation, order, control and authority. Discipline plays a vital role in adjudication. Just as we require discipline in our life for it to run smoothly in the same way discipline is required in our judiciary system so that justice is granted to all as it is committed by the constitution of the Country.

It has been rightly said that "there is no better test of the excellence of a government than the efficiency of its judicial system". Hence unless a Country adopts a fool proof justice delivery system, it cannot prevent internal conflicts and violent self-help of its citizens to secure justice. To provide Justice to its citizens, judicial discipline is to be followed by various Courts and adjudicating authorities.

Principles of judicial discipline require that orders of the higher appellate authorities are followed unreservedly by the subordinate authorities.

Article 141 of the Constitution of India stipulates that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. Thus, the general principles laid down, by the Supreme Court are binding on each individual including those who are not a party to an order. Just as judgments and orders of the Supreme Court have to be faithfully obeyed and carried out throughout the territory of India under article 141 of the Constitution, so should be judgments and orders of the High Court by all inferior courts and tribunals subject to supervisory jurisdiction within the State under articles 226 and 227 of the Constitution.

Role of Judicial Discipline in Income Tax

In Income Tax, the assessing officer should follow the instructions and orders of ITAT, High Court and Supreme Court. Similarly ITAT and High Courts must follow decisions of the Courts higher in hierarchy.

In Income Tax, if an officer under any level disregards the clear and straight forward direction of the judgement passed by the Supreme Court, High Court or ITAT then it would amount to creation of chaos in administration of tax laws and will also devoid assessee of Justice. Such denial is a denial of justice, and is furthermore destructive of one of the basic principles in the administration of justice based as it is in this country on a hierarchy of courts.

Unless there is a stay granted by the authorities from the higher forum, the order of the higher forum should be complied with. In case any appeal or special leave petition is filed against an order, the same will not entitle the authority not to comply with the order of the Higher Court. Mere filing of an appeal or special leave petition will not render the assailed judgement or order inoperative.

Important Judgements

Some of the important judgements where the Supreme Court has upheld the importance of Judicial Discipline

are as follows:

***Bhopal Sugar Industries Ltd. v. ITO* [1960]40 ITR 618 (SC)**

The hon'ble Supreme Court observed that (page 622 of 40 ITR) : ". . . the Income-tax Officer had virtually refused to carry out the clear and unambiguous directions which a superior tribunal like the Income-tax Appellate Tribunal, had given to him by its final order in exercise of its appellate powers in respect of an order of assessment made by him, such refusal is in effect a denial of justice, and is furthermore destructive of one of the basic principles in the administration of justice based as it is in this country on a hierarchy of courts. . . ."

***Union of India v. Namit Sharma* [2013] 38 taxmann.com 281/122 SCL 240 the Supreme Court explained:**

Under the scheme of the Act of 2005, it is clear that the orders of the Commissions are subject to judicial review before the High Court and then before the Supreme Court of India. In terms of article 141 of the Constitution, the judgments of the Supreme Court are law of the land and are binding on all courts and tribunals. Thus, it is abundantly clear that the Information Commission is bound by the law of precedence, i.e., judgments of the High Court and the Supreme Court of India. In order to maintain judicial discipline and consistency in the functioning of the Commission, we direct that the Commission shall give appropriate attention to the doctrine of precedence and shall not overlook the judgments of the courts dealing with the subject and principles applicable, in a given case. It is not only the higher court's judgments that are binding precedents for the Information Commission, but even those of the larger Benches of the Commission should be given due acceptance and enforcement by the smaller Benches of the Commission. The rule of precedence is equally applicable to intra-court appeals or references in the hierarchy of the Commission.

In the case or *Dr. H. Phunindre Singh v. K. K. Sethi* [1998] 8 SCC 640 the hon'ble Supreme Court held as under:

"Heard learned counsel for the parties. In our view, in the facts of the case, particularly when the order passed by the learned single judge of the High Court was not stayed by the Division Bench, the contempt petition should have been disposed of on merits instead of adjourning the same till disposal of the appeal, so that question of deliberate violation of the subsisting order of the court is considered and enforceability of the court's order is not permitted to be diluted. In the facts of the case, we feel that the contempt petition should be disposed of within a period of three months from the date of the communication of this order and we order accordingly. It is further directed that before disposal of the contempt petition, the pending appeal should not be taken up for hearing. The appeal is accordingly disposed of."

***Asit Kumar Das v. J. Panda, the Chief Post Master General* [Civil Appeal No. 1227 of 2015, dated 22-1-2015] order dated January 22, 2015 the hon'ble Supreme Court observed that"**

"it is trite that the filing of an appeal does not result in the assailed order becoming inoperative and unworthy of being complied with. There was, therefore, no justification for taking the contempt petition off the list of the High Court, albeit with permission granted for its relisting"

In Income Tax Appeal No. 293 of 2016 (*Pr. CIT v. Associated Cables Pvt. Ltd.*) Mumbai, decided on August 3, 2018, a Division Bench of the Bombay High Court held that ". . . Merely filing of a Special Leave Petition from the order of Hindustan Unilever Ltd. (supra) would not make the order of this court bad in law or give a licence to the Revenue to proceed on the basis that the order is stayed and/or in abeyance. . . ."

The Hon'ble Supreme Court in the case of ***Union of India v. Kamlakshi Finance Corporation Ltd.* 1992 taxmann.com 16/1991 (55) E.L.T.433 (S.C.)**, was held that "The adjudicating Officer acts as a quasi-judicial authority. He is bound by the law of precedent and binding effect of the order passed by the higher authority or Tribunal of superior jurisdiction. If his order is thought to be erroneous by the Department, the Department can as well prefer appeal in terms of the statutory provisions contained in the Central Excise Act, 1944.

The Hon'ble Apex Court in the Case of ***Gammon India Ltd. v. Commissioner of Customs 2011 (269) ELT 289***, where it was held that two Tribunals should not take differently divergent views, which will create judicial uncertainty in declaring the law involved in identical issues. 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. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement." We respectfully concur with these observations and are confident that all the Courts and various Tribunals in the country shall follow these salutary observations in letter and spirit"

In the case of ***Kishore Samrite v. State of Uttar Pradesh [2013] 2 SCC 398***, the hon'ble Supreme Court held as under "29. Judicial discipline and propriety are the two significant facets of administration of justice. Every court is obliged to adhere to these principles to ensure hierarchical discipline on the one hand and proper dispensation of justice on the other. Settled canons of law prescribe adherence to the rule of law with due regard to the prescribed procedures. Violation thereof may not always result in invalidation of the judicial action but normally it may cast a shadow of improper exercise of judicial discretion."

Mohan Lal Santwani v. Union of India [2022] 138 taxmann.com 292/287 Taxman 634/[2022] 449 ITR 476

Facts of the case

The assessee was issued a notice under section 148 for assessment year 2013-14 and thereafter assessment order was passed. The assessee filed a writ petition seeking a writ or order to quash notice under section 148 as also sanction authorizing issue of such notice and also impugned assessment order.

The High Court considering order in *Daujee Abhushan Bhandar (P.) Ltd. v. Union of India [2022] 136 taxmann.com 246/286 Taxman 623/444 ITR 41 (All.)* disposed writ petition directing the respondent-authority concerned to decide the objection of the assessee against the notice under section 148, in accordance with law on the point of date of issuance of notice.

Following said direction of the High Court, the respondent No. 4/Assessing Officer rejected objection of the assessee observing that though High Court had quashed such notices issued under section 148 on or after 1-4-2021 but department had filed SLP before the Supreme Court on this issue and therefore till outcome of issue pending before the Supreme Court, it could not be said that notice under section 148 issued to the assessee was not valid.

It was observed that:

Date & time of Generation of Notice u/s 148 in ITBA system by AO:

3/31/2021 9:01:29 PM

Date & time of Digital signing (DSC) in ITBA by AO:

3/31/2021 9:51:46 PM

Date & time of triggering of email automated by ITBA technical servers:

4-1-2021 5:30:08 AM

Date & time of delivery of email as per data in ITBA technical servers:

4/01/2021 5:30:10 AM

Held that:

From the averments made by respondent in the short counter-affidavit, it is evident that the notice under

section 148 of the Income-tax Act, 1961 for the assessment year 2013-14 was issued to the petitioner on April 1, 2021, whereas the limitation of issuing the notice expired on March 31, 2021. Thus notice under section 148 of the Income tax Act, 1961 was time barred and consequently it was without jurisdiction

The High Court having noticed that order passed by the respondent No. 4 in connection with disposal of objection of the assessee was highly contemptuous, whimsical and against all settled principles of propriety directed respondent No. 4 to file a personal affidavit to explain the things.

"In view of law laid down by the hon'ble Supreme Court and High Court, the principles of judicial discipline and propriety and binding precedent, we hold as under:

- (a) Judicial discipline and propriety are the two significant facets of administration of justice. 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 or that is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws.
- (b) 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 141 of the Constitution, so should be the judgments and orders of the High Court by all inferior courts and tribunals subject to supervisory jurisdiction within the State under articles 226 and 227 of the Constitution.
- (c) If an officer under the Income-tax Act, 1961 refuses to carry out the clear and unambiguous direction in a judgment passed by the hon'ble Supreme Court or High Court or the Income-tax Appellate Tribunal then in effect, it is denial of justice and is destructive of one of the basic principles in the administration of justice based on hierarchy of the court.
- (d) Unless there is a stay obtained by the authorities under the Income-tax Act, 1961 from higher forum, the mere fact of filing appeal or Special Leave Petition will not entitle the authority not to comply with the order of the High Court. Even though the authority may have filed an appeal or Special Leave Petition but either could not obtain a stay or the stay is refused, the order of the High Court must be complied with. Mere filing of an appeal or Special Leave Petition against the judgment or order of the High Court does not result in the assailed judgment or order becoming inoperative and unworthy of being complied with.

In view of the principles settled by the hon'ble Supreme Court and by High Courts in the judgments, we direct the respondents to maintain judicial discipline and follow the doctrine of binding precedent and be careful in future, having due regard to the authorities of the court, keeping in mind the judicial propriety and discipline."

Conclusion

After going through various judgements where Courts have explained the precedent and judicial discipline, it is lucid that not following the Orders of the higher forums will be an attempt to hamper the judiciary system in complete disregard of the higher authorities.

But it is very disheartening to see that the lower authorities confirm the additions of the assesseees regardless of the precedent on the subject. It is only on ITAT or at a higher level when they can expect Justice. These lower authorities fail to confirm to the judgements passed by the higher forums. This leads to breach of judicial discipline and propriety causing harassment to the assesseees on account of the failure to give effect to the order of the higher forums. This also leads to wastage and time of the assessee and the Courts and many a times the department has to refund the taxes of the assessee's along with interest when higher forums confirms the matter in assessee's favour, which is a heavy cost on the department.

