

HOW TO TACKLE CONFLICTING DECISIONS OF COURTS & TRIBUNALS?

READ AND READ



NO OTHER SOLUTION EXCEPT READING AND ANALYSING

S. K. PRANSUKHKA

EX-ITAT MEMBER

9331021771

Skp030@gmail.com

READING WHAT?



Text Laws

Parliament passes the Law- Judges Interpret

Jurisprudence-Case Laws Tribunals, High Courts, Supreme Courts

WHAT TO ANALYZE?



Facts are of paramount importance

Every Decision are rendered on its own facts

Decisions should be distinguished on facts (Very important)

Declaration of law or Statement of Law

ORDERS ARE HAVING FOLLOWING INGREDIENTS

Facts

Arguments of both sides, reliance on judicial precedents

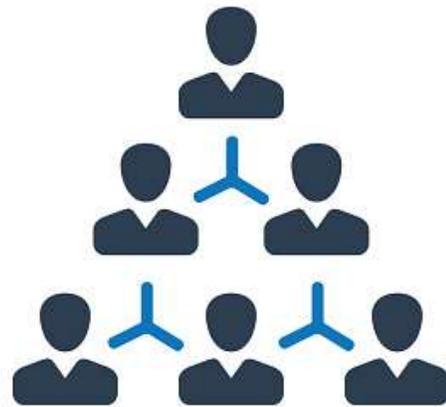
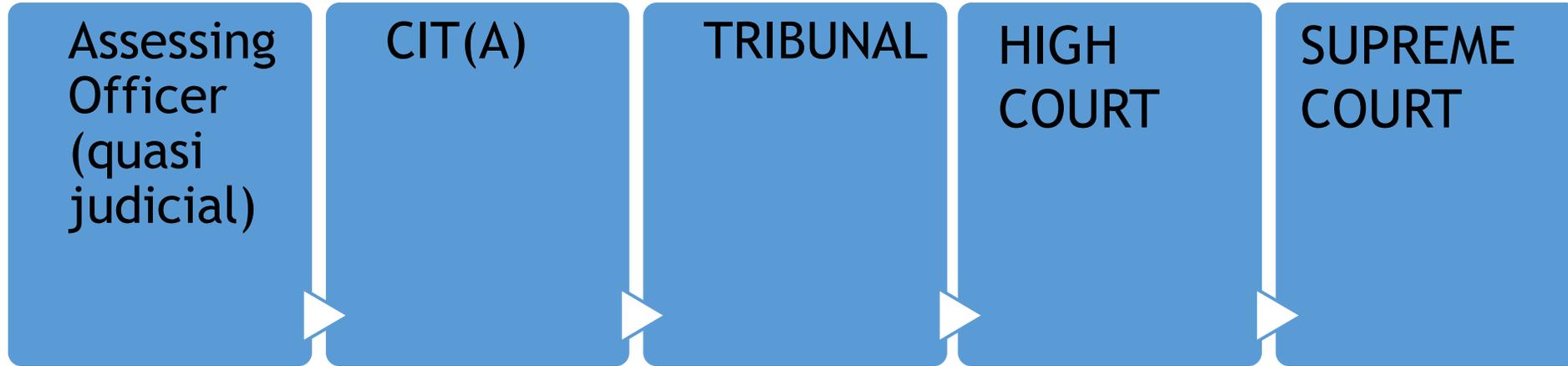
Operative Part

Ratio

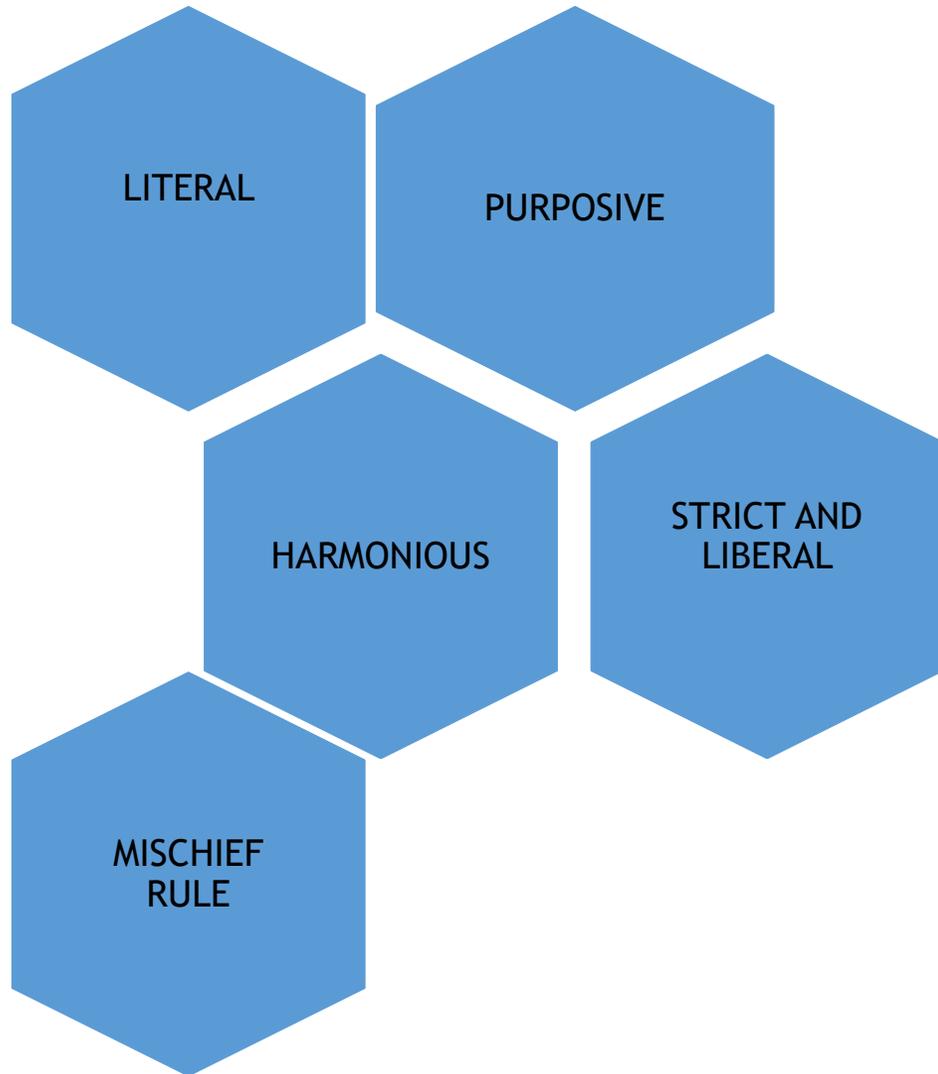
Decision



JUDICIAL HEIRARCHY FOR DIRECT TAXES



GENERAL PRINCIPLES OF INTERPRATION



LITERAL INTERPRETATION

- ▶ Literal interpretation is reading the words with their plain meaning . If such interpretation leads to only one precise meaning and no ambiguity or absurdity is noticed, that meaning should be adopted .
- ▶ When the plain meaning is profoundly clear , one should only read the statute
- ▶ SC in *Britannia industries ltd* 278 ITR 546 held that

“ When the language of the statute is clear and unambiguous , courts are to interpret the same in the literal sense and not to give a meaning which would cause violence to the provisions of the statute”



PURPOSIVE INTERPRETATION

- ▶ This rule is known as golden rule
- ▶ Before interpreting the statute ,one must read the purpose at the inception .If one interprets the statute without knowing, the purpose may come out with absurd interpretation .



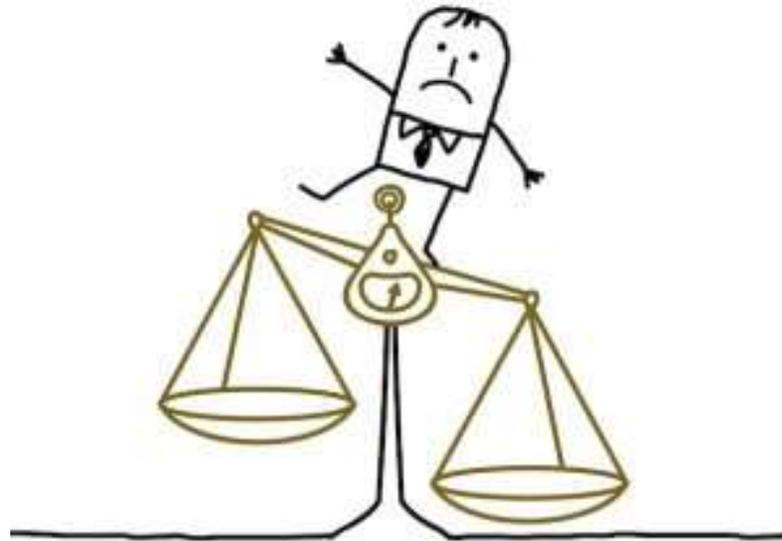
HARMONIOUS INTERPREATION

While interpreting the statute , a situation may arise where two or more provisions appear contradictory to each other .Since the statute has been framed with an intention not to convey two meanings , one should try on constructing those contradictory provisions in a way to give effect to both the provisions .



Strict and liberal interpretation :

- ▶ The question of strict or liberal interpretation arises only when there is any ambiguity .
- ▶ STRICT INTERPRATION in criminal laws , penal laws
- ▶ LIBERAL INTERPRATION labor and welfare laws
- ▶ The principle that fiscal statutes should be strictly interpreted does not rule out the application of principle of reasonable construction to give effect to the purpose .



MISCHIEF RULE

- ▶ This rule is so called as 'mischief rule' because it envisages that construction, by which the mischief is suppressed. This rule enables the judges more **discretionary power** than Grammatical Rule and golden rule, as it allows him to decide effectively on Parliament's intent.
- ▶ The mischief rule is a rule of statutory interpretation that attempts to determine the legislator's intention. Its main aim is to determine the “mischief and defect” of the statute. The mischief rule was established in Heydon's Case in 1584.



OTHER RULES

- ▶ *EJUSDEM GENERIS* : General words take its color from specific words
- ▶ *NOSCITUR SOCIIS*: when two or more words having analogous meaning are put together , they take their color from each other



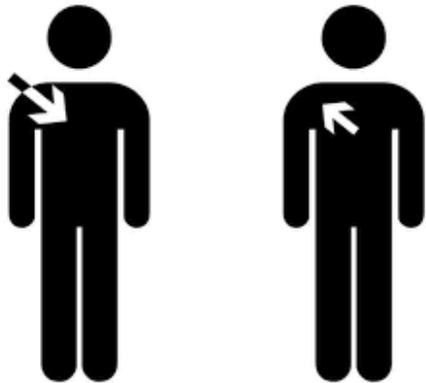
INTERNAL AND EXTERNAL AIDS TO INTERPRETATION

Internal aid to interpretation :

Embedded in the statute like preamble , marginal notes ,provisos, saving clauses , explanations , schedules , punctuations

External aid to interpretation :

External aids: not forming part of the statute : Dictionaries , textbooks , historical background , legislative history, judicial practice , FM speech



BINDING PRECEDENTS :

Constitution Bench SC in the case of *UOI V Raghbir singh 178 ITR 548* “ *The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions , and enables an organic development of the law , besides providing assurance to the individual as to consequence of transactions forming part of his daily affairs “*

AP HIGH COURT full bench in the case of *CIT V B R CONSTRUCTIONS 202 ITR 222* , relying on SC judgment in the case of *Mamleshwar Prasad V Kanhaiya lal* , has summarised the legal position as under

“ The effect of binding precedents in India is that decisions of the Supreme court are binding on all courts . Indeed , Article 141 of the constitution embodies the rule of precedent . All subordinate courts are bound by the judgment of the High courts . A single judge of High court is bound by another single judge and a fortiori judgments of benches consisting of more judges than one . so also, division bench is bound by another division bench and full Bench . A single judge or benches of High courts can not differ from earlier judgments of coordinate jurisdiction merely because they hold different view on the question of law for the reason that certainty and uniformity in the administration of justice are of paramount importance . But if the earlier judgment is erroneous or adherence to the rule of precedents results in manifest injustice , differing from earlier judgment is permissible . when a division Bench differs from another division bench , it has to refer the case to a full bench . A single judge can not differ from division bench except when the decision or judgment relied upon in that decision is overruled by a full bench or the supreme court , or when the law laid down by a full bench or the supreme court is inconsistent with the decision”



CONTINUED

▶ *Stare decisis*

Principles established by earlier decisions should be adhered to. However, the judicial view is that rules of stare decisis should be generally followed but such rule is not too rigid. Demands of changed facts and circumstances, dictated by forceful factors supported by logic, amply justify the need for a fresh look.

▶ *Ratio decidendi*

Means reasons given by the courts for deciding the issue before it. Ratio is binding.

What is of essence in the decision is ratio and not every observation found there in. Ratio alone has force of law, not any extract here and there.

SC in *Sun Engineering* 198 ITR 297 observed that “*while applying the decision to later cases, the court must carefully try to ascertain the true principle laid down by the decision of the supreme court and not to pick out words or sentences from the judgment divorced from the context of question under consideration*”



CONTINUED

Obiter dicta :

It is judicial comment made while delivering a judicial opinion but one that is unnecessary to the decision and therefore not precedential (Although it may be considered persuasive)

Pronouncements of law , which are not part of the ratio decidendi are classified as obiter dicta and are not authoritative .

In nutshell , obiter dicta is not binding but entitled to highest respect

Decision per incuriam :

A decision treated as per incuriam when it is given in ignorance of the terms of a statute or of a rule .

When a decision is rendered in ignorance of the provisions of a statute or any rule of law or previous decision of its own court or a binding decision of a higher court

Decision *Sub silentio* : A decision not expressed , not accompanied by reasons and not proceeding on a conscious consideration of an issue can not be deemed to be law declared to have a binding effect .



CONTINUED

When a precedent ceases to have binding effect

- ▶ If it is reversed or overruled by a higher court
- ▶ When it is affirmed or reversed on different ground
- ▶ When it is inconsistent with earlier decision of same rank
- ▶ When it is sub silentio
- ▶ When it is rendered per incurium

Supreme court

- ▶ Decision of Supreme court is binding on all courts
- ▶ Statement of law made by a division Bench of Supreme court is binding on the same or lesser number of judges
- ▶ If division Bench differs from another Bench , only course is to refer to Chief justice of supreme court to constitute a larger bench.
- ▶ If there are two contrary decisions of the same strength than also matter has to be referred to Chief justice of India for constituting larger bench



CONTINUED

Special leave :

- ▶ Under article 136 , SC has discretionary jurisdiction of granting leave to appeal and hearing of the appeal .
- ▶ If SPL is allowed and after hearing judgment is passed by SC , it becomes law of the land and acts as precedent .
- ▶ Order against which SPL filed shall merge in to SC order
- ▶ SPL may dismissed by NON SPEAKING and SPEAKING ORDER .

- ▶ If SPL is dismissed by non speaking than orders of lower court does not merge in SC order . It does not amount to precedent
- ▶ If SPL is dismissed with speaking order and supported by reasons , then also doctrine of merger would not attract because jurisdiction was not of appellate jurisdiction but discretionary jurisdiction . But reasons given by SC applicable on all subordinate courts as law of land but order appeal against is not disturbed .

SC decision retrospective or prospective :

As held by SC in *M.A Murthy 264 ITR 1*

- ▶ Decision of SC enunciating a principle of law is applicable to all cases irrespective of its stages of pendency because it is assumed that what is enunciated by the supreme court is the law from inception
- ▶ It is for the SC to indicate whether its decision shall operate prospectively

High courts

- ▶ Binding precedent : no express provision like article 141 .
- ▶ Under article 227 , High courts have superintendence over Tribunals
- ▶ Judgments of the High courts are binding on subordinate courts , tribunals and authorities functioning within territorial jurisdiction of High court
- ▶ Single judge , division bench , full bench
- ▶ Judgment of another High court is not binding on another court but have persuasive value .
- ▶ View favourable to the assessee CIT Vs Vegetable products .

TRIBUNALS

- ▶ Third member

*Thank
you*

