

# COMMISSIONER OF INCOME TAX vs. THANA ELECTRICITY SUPPLY LTD.

HIGH COURT OF BOMBAY

Dr. B.P. Saraf & U.T. Shah, JJ.

IT Ref. No. 500 of 1978

22nd April, 1993

(1993) 61 CCH 0361 MumHC

(1993) 112 CTR 0356 : (1994) **206 ITR 0727**

Legislation Referred to

Sections 33(6), 256, 260

Case pertains to

Asst. Year 1974-75

Decision in favour of:

Assessee

***Precedent—Supreme Court decision—Binding nature—Decisions of the Supreme Court are binding on all Courts, except, however, the Supreme Court itself which is free to review the same and depart from its earlier opinion if the situation so warrants—Ratio of the decision and not every expression found therein***

***Precedent—High Court decision—Binding nature—High Court are binding on the subordinate Courts and authorities or Tribunal under its superintendence throughout the territories in relation to which it exercises jurisdiction***

***Precedent—High Court decision—Binding nature—Single Judge is bound by decision of Single Judge or Division Bench of same High Court—Division Bench by Division Bench or Full Court decisions and incase of difference of opinion, question should be referred to larger Bench***

***Precedent—High Court decision—Binding nature on other High Courts—Decision of one High Court is not binding on another High Court, especially in reference jurisdiction in view of ss. 257 and 260***

***Interpretation—Beneficial interpretation—In order to apply beneficial interpretation, High Court of Bombay is not satisfied with the interpretation given by the Tribunal or the Calcutta High Court to s. 33(6) of the Act, accepting those decisions by applying the test of beneficial interpretation does not arise***

***Development rebate—Allowability—Tribunal was right in holding that s. 33(6) of the Act was not attracted and the assessee was entitled to development***

**rebate in respect of electric meters, no matter where they are installed whether in the office premises, residential accommodation, etc. or elsewhere—Rebate allowable, same not being hit by s. 33(6)**

Held :

*The law declared by the Supreme Court being binding on all Courts in India, the decisions of the Supreme Court are binding on all Courts, except, however, the Supreme Court itself which is free to review the same and depart from its earlier opinion if the situation so warrants. What is binding is, of course, the ratio of the decision and not every expression found therein.*

**(Para 17)**

*The decisions of the High Court are binding on the subordinate Courts and authorities or Tribunal under its superintendence throughout the territories in relation to which it exercises jurisdiction. It does not extend beyond its territorial jurisdiction.*

**(Para 17)**

*A Single Judge of a High Court is bound by the decision of another single judge or a Division Bench of the same High Court. It would be judicial impropriety to ignore that decision. Judicial comity demands that a binding decision to which his attention had been drawn should neither be ignored nor overlooked. If he does not find himself in agreement with the same, the proper procedure is to refer the binding decision and direct the papers to be placed before the Chief Justice to enable him to constitute a larger Bench to examine the question. A Division Bench of a High Court should follow the decision of another Division Bench of equal strength or a Full Bench of the same High Court. If one Division Bench differs with another Division Bench of the same High Court. It should refer the case to a larger Bench. Where there are conflicting decisions of Courts of co-ordinate jurisdiction, the later decision is to be preferred if reached after full consideration of the earlier decision.—Food Corporation of India vs. Yadav Engineer & Contractor AIR 1982 SC 1302 **relied on***

**(Para 17)**

*The decision of one High Court is neither binding precedent for another High Court nor for Courts or Tribunals outside its own territorial jurisdiction. It is well settled that the decision of a High Court will have the force of binding precedent only in the State or territories in which the Court has jurisdiction. In other States or outside the territorial jurisdiction of that High Court it may, at best, have only a persuasive effect. By no amount of stretching of the doctrine of stare decisis judgments of one High Court can be given the status of a binding precedent so far as other High Courts or Courts or Tribunals within their territorial jurisdiction are concerned. Any such attempt will go counter to the very doctrine of stare decisis and also the various decisions of the Supreme Court which have interpreted the scope and ambit thereof. The fact that there is only one decision of any one High Court on a particular point or that a number of different High Courts have taken identical views in that regard is not at all relevant for that purpose. Whatever may be conclusion, the decisions cannot have the force of binding precedent on other High Courts or on any subordinate Courts or Tribunals within their jurisdiction. That status is reserved only for the decisions of the Supreme Court which are binding on all Courts in the country by virtue of Art. 141 of the Constitution. If for the sake of uniformity, the decisions of any High Court are to be accepted as a binding precedent by all Courts including other High Courts and Tribunals in the country, the very distinction between the precedent value of Supreme Court decision and the High Court decision will be obliterated. Such a situation is neither contemplated by the Constitution nor it is in*

consonance with the principles laid down by the Supreme Court and the doctrine of stare decisis. A conjoint reading of ss. 257 and 260 of the IT Act clearly goes to show that the Act itself contemplates independent decisions of various High Courts on the question of law referred to them. It has visualised the possibility of conflict of opinion between different High Courts on the same question of law and has also made specific provision to take care of such a situation in suitable cases. In fact, in the light of the clear language of s. 260 of the Act, every High Court is required to give its own opinion on a particular question of law. It should not follow, as a matter of course with a view to achieve uniformity in the matter of interpretation, the decision of another High Court, if such decision is contrary to its own opinion. Because, such action will be contrary to the clear mandate of s. 260 of the Act. It will amount to abdication of its duty by the High Court to give "its decision" on the point of law referred to it. Decision of one High Court is not binding on another High Court.

**(Paras 17, 26 & 29)**

Reference was made by the assessee to the decisions of this Court wherein, emphasizing the need of uniform decisions, it was observed that decision of one High Court should be followed by another High Court. On a careful reading of the observations in the light of the questions which were before the Court for determination in those cases, it is difficult to accept these observations as the ratio decidendi of those decisions. These are observations by way of obiter dicta which, at the best, may have a persuasive efficacy but not the binding character of a precedent. Even that may not be correct. As these observations were made by the Court while emphasizing the necessity of maintaining uniformity in the matter of interpretation of all India statutes, they may be more appropriately termed as "casual observations".

**(Paras 23, 25 & 26)**

It is, clear that it is the satisfaction of the Court interpreting the law that the language of the taxing provision is ambiguous or reasonably capable of more meanings than one, which is material. If such Court does not think so, the fact that two different views have been advanced by parties and argued forcefully, or that one of such view, which is favourable to the assessee, has been accepted by some Tribunal or High Court, by itself will not be sufficient to attract the principle of beneficial interpretation. In the instant case, as the High Court of Bombay is not satisfied with the interpretation given by the Tribunal or the Calcutta High Court to s. 33(6) of the Act, accepting those decisions by applying the test of beneficial interpretation does not arise.—[Escorts Ltd. vs. Union of India](#) (1992) 108 CTR (SC) 275 : (1993) 199 **ITR** 43 (SC) **relied on**

**(Para 33)**

Sec. 33(6) is a non-obstante provision. It specifies the plant and machinery in respect of which deduction by way of development rebate shall not be allowed. The reference is to "any machinery or plant installed in any office premises or any residential accommodation, including any accommodation in the nature of guest house". The language is plain and simple. There is no ambiguity in it. In that view of the matter, if any plant and machinery is installed in any office premises or in any residential accommodation, etc., development rebate would not be allowable in respect thereof. One does not find any word or any expression in the above provision which may justify any restrictive interpretation of the above sub-section to confine its application only to office premises or residential accommodation "owned or occupied by the assessee". Trying to do so will amount to adding words to the statute which is not a permissible rule of interpretation. It may be mentioned that sub-s. (6) was inserted in s. 33 by Finance Act, 1965 w.e.f. 1st April, 1965. The Board, by its Circular No. 3-P (LXXVI-57) dt. 11th Oct., 1965, while explaining the above provision made it clear that the effect of this

provision was that development rebate will not be admissible in respect of machinery or plant such as air-conditioners, frigidairs, room heaters, electric fans, etc., installed in any office premises or residential accommodation including guest house. This circular of the Board makes it clear that the plant and machinery referred to s. 33(6) of the Act would mean only the plant and machineries of the types set out in its circular which are of use of the occupants of the office, residence or guest house. Electric meter, definitely, do not fall in this category. The meter is in fact necessary only for the purpose of measuring the consumption of electricity. It has no independent use of its own. In fact, it is not for the use in the office, residence, etc. It is necessary adjunct to the supply line of electricity and the last point where from starts the private line of the consumer. Though the meter is "plant and machinery" in the technical sense, in the context of s. 33(6) of the Act it cannot be said to be a plant or machinery installed in the office premises or residential accommodation, etc. Plant and machinery referred to in s. 33(6) of the Act will only mean those plants or machineries which are intended for use in the office or the residence. Meter does not meet this description. It will, therefore, not fall within s. 33(6) of the Act. That being so, though on different ground, the Tribunal was right in holding that s. 33(6) of the Act was not attracted and the assessee was entitled to development rebate in respect of electric meters, no matter where they are installed whether in the office premises, residential accommodation, etc. or elsewhere.—[CIT vs. Tinnevely Tuticorin Tea Investment Co. Ltd.](#) (1989) 179 **ITR** 550 (Cal) **dissented from**

**(Paras 35 & 36)**

Conclusion :

Supreme Court decisions are binding on all Courts except Supreme Court itself, in case review is warranted.

High Court decisions are binding on all subordinate Courts and Tribunals within its jurisdiction only.

Single Judge is bound by decision of Single Judge or Division Bench of same High Court; Division Bench by Division Bench or Full Court decisions and in case of difference of opinion, question should be referred to larger Bench.

Decision of one High Court is not binding on another High Court, especially in reference jurisdiction in view of ss. 257 and 260 of the IT Act, 1961.

In order to apply beneficial interpretation, High Court interpreting the provision should itself be satisfied that two views are possible.

Development rebate is allowable on the cost of meters installed by assessee electric supply company in office and residential premises of its customers, same not being hit by s. 33(6).

Counsel appeared:

Dr. V. Balasubramanian with P.S. Jetly, for the Applicant : Soly E. Dastur with P.F. Kaka with K.D. Mehta i/b Payme & Co., for the Respondent

**DR. B.P. SARAF, J.:**

By this reference under s. 256(1) of the IT Act, 1961 ("the Act"), the Tribunal has

referred the following question of law to this Court for opinion at the instance of the Revenue :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the claim of development rebate on the cost of meters installed by the assessee-company at the residential or office premises of its consumers, was not at variance with the provisions of s. 33(6) of the Act ?"

**2.** The assessee is an Electric Supply Undertaking and its business is to supply electrical energy to its consumers. For the asst. yr. 1974-75, the Income-tax Officer (ITO) determined the development rebate admissible to the assessee at Rs. 8,01,917 and allowed Rs. 5,59,744 against the total income available for the purpose. The development rebate determined by the ITO included a sum of Rs. 61,155 relating to the cost of meters installed by the assessee-company at the residential or office premises of its consumers. However, the order of the ITO was revised by the Commissioner of Income-tax ("the Commissioner") under s. 263 of the Act, as the Commissioner was of the opinion that the development rebate on the cost of meters installed by the assessee-company at the residential or office premises of the consumers had been erroneously allowed by the ITO in violation of the provisions of s. 33(6) of the Act. After issuing a show-cause notice to the assessee and on hearing the assessee's representative, the Commissioner directed the ITO to withdraw the development rebate in respect of the cost of the meters in question, as the meters were installed in the residential and office premises of the consumers. The assessee took the matter in appeal before the Tribunal. Before the Tribunal, it was contended on behalf of the assessee that s. 33(6) of the Act was applicable only in case of machinery and plant such as airconditioners and other machineries installed by the assessee in its own office premises or residential accommodation or guest houses. This contention of the assessee was accepted by the Tribunal. The Tribunal held that the office premises or residential accommodation including the guest house referred to in sub-s. (6) of s. 33 relates to the office premises or residential accommodation including the guest house of the assessee concerned, i.e., either belonging to the assessee or in its occupation on lease or licence, etc., and the restrictions contained therein does not apply to machinery and plant installed in the office premises or residential accommodation of persons other than the assessee itself. In that view of the matter, the Tribunal cancelled the order of the Commissioner and restored the order of the ITO.

**3.** Aggrieved by the order of the Tribunal, the CIT applied for the reference of the question of law arising out of the order of the Tribunal to this Court and the Tribunal, on being satisfied that a question of law did arise, has referred the question set out above under s. 256(1) of the Act to this Court.

**4.** Learned counsel for the Revenue submitted before us that the whole approach of the Tribunal to the issue was erroneous. The Tribunal, according to the counsel, while reading s. 33(6) of the Act had added thereto the words "belonging to it" to restrict the application thereof only to the machinery and plant installed in the offices premises or residential accommodation including any accommodation in the nature of the guest house belonging to the assessee or in occupation of the assessee whereas the section does not contain any such limitation. The counsel for the Revenue, therefore, submitted that the order of the Tribunal cannot be sustained on that ground itself. The further submission of the counsel for the Revenue was that on a plain reading of s. 33(6) of the Act, it is clear that the legislature has stated in no less a clear terms that no deduction by way of development rebate shall be allowed in respect of any machinery or plant installed in any office premises or any residential accommodation including accommodation in the nature of guest house. The only exception to this restriction is contained in the proviso thereto which admittedly has no application to the present case. That being the position, according to the counsel, the conclusion arrived at by the

Tribunal cannot be sustained.

**5.** The submissions of the learned counsel for the assessee, on the other hand, are as follows :

1. The Tribunal was correct in holding that s. 33(6) of the Act applies only to machinery and plant installed in the office and residential accommodation, etc., belonging to the assessee or in occupation of the assessee.

2. The Tribunal having taken such a view in regard to the interpretation of s. 33(6) of the Act, even if the High Court comes to a different conclusion on interpretation of s. 33(6) of the Act, it should accept the interpretation given by the Tribunal, that being an interpretation beneficial to the assessee. Reliance was placed in this connection on the decisions of the Supreme Court in CIT vs. Vegetable Products Ltd. 1973 CTR (SC) 177 : (1973) 88 **ITR** 192 (SC) and CIT vs. Naga Hills Tea Co. Ltd. 1973 CTR (SC) 329 : (1973) 89 **ITR** 236 (SC).

3. That similar controversy having been decided by the Calcutta High Court in CIT vs. Tinnevely Tuticorin Tea Invest Co. Ltd. (1989) 179 **ITR** 550 (Cal) and there being no decision of any other High Court to the contrary, this Court is bound to follow the decision of the Calcutta High Court and answer the question referred to it accordingly even if it holds a contrary view in the matter.

In support of this contention, reliance is placed on the decision of this Court in Maneklal Chunilal & Sons Ltd. vs. CIT (1953) 24 **ITR** 375 (Bom); CIT vs. Chimanlal J. Dalal & Co. (1965) 57 **ITR** 285 (Bom); CIT vs. Tata Sons Pvt. Ltd. 1975 CTR (Bom) 84 : (1974) 97 **ITR** 128 (Bom); CIT vs. Jayantilal Ramanlal & Co. (1982) 31 CTR (Bom) 324 : (1982) 137 **ITR** 257 (Bom) and CIT vs. Godavaridevi Saraf (1978) 113 **ITR** 589 (Bom).

**6.** On a careful consideration of the submissions of the learned counsel for the assessee, we find that before taking up the issue involved in the question of law referred to us in this case for consideration, it is necessary to first decide the last submission of the learned counsel that this Court, while interpreting an All India Statute like IT Act, is bound to follow the decision of any other High Court and to decide accordingly even if its own view is contrary thereto, in view of the practice followed by this Court in such matters. Because, if we are to accept this submission, it will be an exercise in futility to examine the real controversy before us with a view to decide the issue, as in that case, in view of the Calcutta decision, whatever may be our decision on the question of law referred to us, we would be bound to follow the decision of the Calcutta High Court and answer the question accordingly. This submission, in our opinion, is not tenable as it goes counter not only to the powers of this Court to hear the reference and decide the questions of law raised therein and to deliver its judgment thereon but also to the doctrine binding precedent known as stare decisis. We shall deal with the reasons for the same at some length a little later.

**7.** We have also carefully gone through the decisions of this Court referred to by the counsel for the assessee in support of his above contention. In our opinion, the observations in those decisions have not been properly appreciated. They have been too widely interpreted. There appears to be a misconception about the nature thereof and their binding effect. We shall also refer to those decisions and the relevant observations therein and discuss their nature. Before doing that, it may be expedient to briefly state the doctrine of binding precedent, commonly known as stare decisis. At the outset, it may be appropriate to point out the well-settled legal position that what is binding on the Courts is the ratio of a decision. There is a clear distinction between ratio of a decision, obiter dicta and observations from the point of view of precedent value or their binding effect. It will be necessary in this case to explain this distinction. But before we

do so, we may discuss the principle of binding precedent. This will take us to the question whose decision binds whom.

**8.** For deciding whose decision is binding on whom, it is necessary to know the hierarchy of the Courts. In India, the Supreme Court is the highest Court of the country. That being so, so far as the decisions of the Supreme Court are concerned, it has been stated in Art. 141 of the Constitution itself that :

"The law declared by the Supreme Court shall be binding on all Courts within the territory of India."

In that view of the matter, all Courts in India are bound to follow the decisions of the Supreme Court.

**9.** Though there is no provision like Art. 141 which specifically lays down the binding nature of the decision of the High Courts, it is well accepted legal position 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 and of the Supreme Court. Equally well settled is the position that when a Division Bench of the High Court gives a decision on a question of law, it should generally be followed by a co-ordinate Bench of the same High Court. If the co-ordinate Bench in the subsequent case wants the earlier decision to be reconsidered it should refer the question at issue to a larger Bench.

**10.** It is equally well settled that decision of one High Court is not a binding precedent on another High Court. The Supreme Court, in Valliamma Champaka Pillai vs. Sivathanu Pillai AIR 1979 SC 1937 dealing with the controversy whether a decision of erstwhile Travancore High Court can be made a binding precedent on the Madras High Court on the basis of principle of stare decisis, clearly held that such decision at best have a persuasive effect and not the force of binding precedent on the Madras High Court. Referring to the States Reorganisation Act, it was observed that there was nothing in the said Act or any other law which exalts the ratio of those decisions to the status of a binding law nor could the ratio decidendi of those decisions be perpetuated by invoking the doctrine of stare decisis. The doctrine of stare decisis cannot be stretched that far to make the decision of one High Court a binding precedent for the other. This doctrine is applicable only to the different Benches of the same High Court.

**11.** It is also well settled that though there is no specific provision, making the law declared by the High Court binding on subordinate Courts, it is implicit in the power of supervision conferred on a superior Tribunal that the Tribunals subject to its supervision would confirm to the law laid down by it. It is in that view of the matter that the Supreme Court in East India Commercial Co. vs. Collector of Customs AIR 1962 (SC) 1893 (at 1905) declared :

"We, therefore, hold that the law declared by the Highest Court in the State is binding on authorities or Tribunals under its superintendence, and they cannot ignore it....."

**12.** This position has been very aptly summed up by the Supreme Court in the Mahadeolal Kanodia vs. The Administrator General of West Bengal AIR 1960 SC 936 (at 941) as follows :

"Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if judges of co-ordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that

the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench."

**13.** The above decision was followed by the Supreme Court in *Baradakanta Mishra vs. B. Dixit* AIR 1972 SC 2466 wherein the legal position was reiterated in the following words (at 2469) :

"It would be anomalous to suggest that a Tribunal over which the High Court has superintendence can ignore the law declared by that Court and start proceedings in direct violation of it. If a Tribunal can do so, all the subordinate Courts can equally do so, for there is no specific provisions, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate Courts. It is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer."

**14.** Having decided whose decision binds whom, we may next examine what is binding. It is well settled that it is only the ratio decidendi that has a precedent value. As observed by the Supreme Court in *S.P. Gupta & Ors. vs. President of India & Ors.* AIR 1982 SC 149 (at 231), "It is elementary that what is binding on the Court in a subsequent case is not the conclusion arrived at in a previous decision but the ratio of that decision, for it is the ratio which binds as a precedent and not the conclusion". A case is only an authority for what it actually decides and not what may come to follow logically from it. Judgments of Courts are not to be construed as statutes [see *Amarnath Omprakash vs. State of Punjab* (1985) 1 SCC 345]. While following precedents, the Court should keep in mind the following observations in *Mumbai Kamgar Sabha vs. Abdulbhai* AIR 1976 SC 1455 (at 1467-68) :

"It is trite, going by Anglophonic principles, that a ruling of a superior Court is binding law. It is not of scriptural sanctity but is of ratio wise luminosity within the edifice of facts where the judicial lamp plays the legal flame. Beyond those walls and de hors the milieu we cannot impart eternal vernal value to the decision, exalting the doctrine of precedents into a prison house of bigotry, regardless of varying circumstances and myriad developments. Realism dictates that a judgment has to be read, subject to the facts directly presented for consideration and not affecting those matters which may lurk in the record. Whatever be the position of subordinate Courts casual observations, generalisations and sub-silentio determinations must be judiciously read by Courts of co-ordinate jurisdiction."

**15.** Decision on a point not necessary for the purpose of the decision or which does not fall to be determined in that decision becomes an obiter dictum. So also, opinions on questions which are not necessary for determining or resolving the actual controversy arising in the case partakes the character of obiter. Obiter observations, as said by Bhagwati, J. (as his Lordship then was) in *A.D.M. Jabalpur vs. Shiv Kant Shukla* AIR 1976 SC 1207, would undoubtedly be entitled to great weight, but `an obiter cannot take the place of the ratio. Judges are not oracles'. Such observations do not have any binding effect and they cannot be regarded as conclusive. As observed by the Privy Council in *Baker vs. R.* (1975) 3 All ER 55 (at 64), the Courts authoritative opinion must be distinguished from propositions assumed by the Court to be correct for the purpose of disposing of the particular case. This position has been made further clear by the Supreme Court in a recent decision in *CIT vs. Sun Engineering Works Pvt Ltd.* (1992)

107 CTR (SC) 209 : (1992) 198 **ITR** 297 (SC) at 320 where it was observed :

"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and, while applying the decision to a later case, the Courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings.

**16.** In the above decision, the Supreme Court, also quoted with approval the following note of caution given by it earlier in *Madhav Rao Jiwaji Rao Scindia Bahadur vs. Union of India* AIR 1971 SC 530 (at 578) :

"It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment."

It is thus clear that it is only the ratio decidendi of a case which can be binding—not obiter dictum. Obiter, at best, may have some persuasive efficacy.

**17.** From the foregoing discussion, the following propositions emerge :

(a) The law declared by the Supreme Court being binding on all Courts in India, the decisions of the Supreme Court are binding on all Courts, except, however, the Supreme Court itself which is free to review the same and depart from its earlier opinion if the situation so warrants. What is binding is, of course, the ratio of the decision and not every expression found therein.

(b) The decisions of the High Court are binding on the subordinate Courts and authorities or Tribunals under its superintendence throughout the territories in relation to which it exercises jurisdiction. It does not extend beyond its territorial jurisdiction.

(c) The position in regard to binding nature of the decisions of a High Court on different Benches of the same Court, may be summed up as follows :

(i) A Single Judge of a High Court is bound by the decision of another Single Judge or a Division Bench of the same High Court. It would be judicial impropriety to ignore that decision. Judicial comity demands that a binding decision to which his attention had been drawn should neither be ignored nor overlooked. If he does not find himself in agreement with the same, the proper procedure is to refer the binding decision and direct the papers to be placed before the Chief Justice to enable him to constitute a larger Bench to examine the question [see *Food Corporation of India vs. Yadav Engineer & Contractor* AIR 1982 SC 1302].

(ii) A Division Bench of a High Court should follow the decision of another Division Bench of equal strength or a Full Bench of the same High Court. If one Division Bench differs with another Division Bench of the same High Court, it should refer the case to a larger Bench.

Where there are conflicting decisions of Courts of co-ordinate jurisdiction, the later

decision is to be preferred if reached after full consideration of the earlier decisions.

(d) The decision of one High Court is neither binding precedent for another High Court nor for Courts or Tribunals outside its own territorial jurisdiction. It is well settled that the decision of a High Court will have the force of binding precedent only in the State or territories in which the Court has jurisdiction. In other States or outside the territorial jurisdiction of that High Court it may, at best, have only a persuasive effect. By no amount of stretching of the doctrine of stare decisis judgments of one High Court can be given the status of a binding precedent so far as other High Courts or Courts or Tribunals within their territorial jurisdiction are concerned. Any such attempt will go counter to the very doctrine of stare decisis and also the various decisions of the Supreme Court which have interpreted the scope and ambit thereof. The fact that there is only one decision of any one High Court on a particular point or that a number of different High Courts have taken identical views in that regard is not at all relevant for that purpose. Whatever may be conclusion, the decisions cannot have the force of binding precedent on other High Courts or on any subordinate Courts or Tribunals within their jurisdiction. That status is reserved only for the decisions of the Supreme Court which are binding on all Courts in the country by virtue of Art. 141 of the Constitution.

**18.** We shall now analyse the decisions of this Court on which reliance has been placed by the learned counsel for the assessee in support of his contention that the decision of any other High Court on an all India statute like IT Act, is binding even on this Court and on the Tribunals outside the jurisdiction of that High Court.

**19.** We may first refer to the decision of this Court in *Maneklal Chunilal & Sons Ltd. vs. CIT* (supra). Reliance was placed on the following observations at page 385 of the report (**ITR**) :

"A Special Bench of the Madras High Court has taken the view favourable to the Commissioner and contrary to the views suggested by Mr. Palkhiwala and in conformity with the uniform policy which we have laid down in income-tax matters, whatever our own view may be, we must accept the view taken by another High Court on the interpretation of the section of a statute which is an all India statute."

**20.** The counsel also referred to the decision of this Court in *CIT vs. Chimanlal J. Dalal & Co.* (supra) where for the sake of uniformity among the High Courts in the matter of interpretation of the IT Act, the decision of the Gujarat High Court was followed by this Court.

**21.** We have perused the above decisions wherein it is observed that "barring some exceptions, it has been the general policy laid down by this Court in income-tax matters that whatever our own view may be, we should follow the view taken by another High Court on the interpretation of a section".

Referring to the observations in *Maneklal Chunilal* (supra) quoted above, it was further observed (at 290) :

"This is the practice of this Court, and, as we have already stated, it has been generally followed by this Court, barring certain exceptions like where inadvertently the decision was not brought to its notice or where in the decision of the other Courts some relevant provision of law had been omitted to be considered. The decision of the Gujarat High Court is a very elaborate one, considering all the relevant provisions of law. This is, therefore, not a case in which we should depart from the aforesaid policy of this Court."

**22.** Reliance was also placed on the decision of this Court in *CIT vs. Tata Sons Pvt. Ltd.*

(supra), particularly on the following observations (at 131) :

"The practice and the policy established is that in these matters "whatever our own view may be we must accept the view taken by another High Court on the interpretation of the section of a statute which is an all India statute."

It was pointed out that this practice was followed in the above case in answering the reference.

**23.** Reference was also made by the counsel for the assessee to the decision of this Court in CIT vs. Jayantilal Ramanlal & Co. (supra), wherein, emphasizing the need of uniform decisions, it was observed that decision of one High Court should be followed by another High Court. Our attention was also drawn to a decision of this Court in CIT vs. Godavaridevi Saraf (supra) where it was observed that an authority like the Tribunal acting anywhere in the country has to respect the law laid down by the High Court, though of a different State, so long as there is no contrary decision of any other High Court on that question.

**24.** In reply, the learned counsel for the Revenue submitted before us that the aforesaid observations of this Court in the above decisions are observations by way of obiter dicta and not ratio decidendi of those cases. It was pointed out that in none of the above cases the Court was called upon to decide whether the decision of other High Courts are binding on this Court. The only issues before the Court were those raised in the questions referred by the Tribunal. While deciding the issues arising before it, the Court made the above observations only by way of obiter dicta. These observations cannot be held to be ratio decidendi of those cases. Referring to the observations in Godavari Devi (supra) that an all India Tribunal acting anywhere should follow the decision of the High Court even though of a different State so long as there was no contrary decision of any other High Court on the point, it was submitted by the counsel for the Revenue that this observation itself goes to show that the High Court was aware of the fact that different High Courts were not bound by decisions of each other and, as such, there may be contrary decisions of different High Courts on the same point. The learned counsel also submitted that the above observations, if held to be the ratio decidendi, go counter to the decisions of the Supreme Court, and the well settled doctrine of stare decisis.

**25.** We have carefully considered the various decisions referred to above in the light of the rival submissions of the learned counsel for the assessee and the Revenue. On a careful reading of the observations in the light of the questions which were before the Court for determination in those cases, we find it difficult to accept these observations as the ratio decidendi of those decisions. These are observations by way of obiter dicta which, at the best, may have a persuasive efficacy but not the binding character of a precedent. This is also evident from the decision of this Court in CIT vs. Jayantilal Ramanlal & Co. (supra) where at 265, after referring to earlier decisions it was observed :

"We are aware that the practice is not uniform among the High Courts, but nevertheless we are of opinion that it is a desirable one. Unless the judgment of another High Court dealing with an identical or comparable provision can be regarded as per incurium, it should ordinarily be followed."

[Emphasis, italicised in printing, supplied]

**26.** This Court in the above case, discussed the real issue before it at great length in the light of the facts of the case and ultimately decided to answer the question in line with the decisions of Kerala and Punjab & Haryana High Courts. The aforesaid observations leave no scope for doubt that the Court merely observed what according to it is desirable

and did not intend to lay down any principle of law making the decisions of other High Courts binding precedents for this Court. Any other construction of these observations in the above cases will lead to anomalous situation as it will have the effect of giving the decisions of any other High Courts the status of law binding on all Courts or Tribunals through out the country—a status which the Constitution, by virtue of Art. 141, has conferred only on the judgments of the Supreme Court. If for the sake of uniformity, the decisions of any High Court are to be accepted as a binding precedent by all Courts including other High Courts and Tribunals in the country, the very distinction between the precedent value of Supreme Court decisions and the High Court decisions will be obliterated. Such a situation is neither contemplated by the Constitution nor it is in consonance with the principles laid down by the Supreme Court and the doctrine of stare decisis.

**27.** From the above discussion, it is clear that the observations of this Court on which much reliance has been placed by the counsel for the assessee in support of his contention that the Calcutta High Court decision is binding on this Court are not the ratio of those decisions which may be binding. These observations, at the most, may be termed as obiter dicta. Even that may not be correct. As these observations were made by the Court while emphasising the necessity of maintaining uniformity in the matter of interpretation of all India statutes, in the words of Chagla, C.J. in *Mohandas vs. Sattanathan* (1954) 56 BLR 1156, they may be more appropriately termed as "casual observations". The distinction between the ratio decidendi and obiter dictum has been very beautifully explained by Chagla, C.J. in the above case (at 1160) in the following words :

"... an obiter dictum is an expression of opinion on a point which is not necessary for the decision of a case. This very definition draws a clear distinction between a point which is necessary for the determination of a case and a point which is not necessary for the determination of the case. But in both cases points must arise for the determination of the Tribunal. Two questions may arise before a Court for its determination. The Court may determine both although only one of them may be necessary for the ultimate decision of the case. The question which was necessary for the determination of the case would be ratio decidendi; the opinions of the Tribunal on the question which was not necessary to decide the case would be only an obiter dictum."

It was rightly held by Chagla, C.J. (at 1161) :

"It cannot be suggested that the doctrine of obiter dicta was so far extended as to make the Courts bound by any and every expression of opinion either of the Privy Council, or of the Supreme Court, whether the question did or did not arise for the determination of the higher judicial authority."

**28.** In the above decision, a distinction has also been drawn between obiter dictum, and casual observations made by the Court. Even in regard to the decisions of the Supreme Court, it was clearly held that it would be incorrect to say that every opinion of the Supreme Court would be binding on the High Courts in India. The only opinion which would be binding would be an opinion expressed on a question that arose for the determination of the Supreme Court. The above decision of this Court and various observations of Chagla, C.J. therein fully support our view that the observations of this Court about the practice of following the decisions of other High Courts are not binding.

**29.** Our conclusion that the decisions of other High Courts are not binding on this Court also gets full support from the scheme of Income-tax itself. We may refer in this connection to s. 260 of the Act which, so far as relevant, reads as follows :

"260.(1) The High Court or the Supreme Court upon hearing any such case shall decide

the questions of law raised therein, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and a copy of the judgment shall be sent under the seal of the Court and the signature of the Registrar to the Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment."

A plain reading of this section clearly goes to show what the High Court is required to do under this section is to decide the question of law raised in the case before it and to deliver "its judgment thereon containing the grounds on which such decision is founded". This Court, therefore, has to give its own decision and also the reasons thereof. While doing so, undoubtedly, the Court is free to follow the decision of any High Court it likes and instead of giving its independent reasoning, to adopt the reasoning given by the other High Court in its judgment. The Legislature itself was fully aware of the fact that in the process of deciding the questions of law under s. 260 of the Act, there may be a conflict of opinion of different High Courts in respect of a particular question of law and in that view of the matter, under s. 257 of the Act, has empowered the Tribunal to make a reference directly to the Supreme Court if it finds it expedient to do so on account of a conflict in the decisions of the High Courts. Sec. 257 reads as follows :

"257. If, on an application made under s. 256 the Tribunal is of the opinion that, on account of a conflict in the decisions of High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Tribunal may draw up a statement of the case and refer it through its President direct to the Supreme Court."

A conjoint reading of above provisions of the IT Act clearly goes to show that the Act itself contemplates independent decisions of various High Courts on the question of law referred to them. It has visualised the possibility of conflict of opinion between different High Courts on the same question of law and has also made specific provision to take care of such a situation in suitable cases. In fact, in the light of the clear language of s. 260 of the Act, every High Court is required to give its own opinion on a particular question of law. It should not follow, as a matter of course, only with a view to achieve uniformity in the matter of interpretation, the decision of another High Court, if such decision is contrary to its own opinion. Because, such action will be contrary to the clear mandate of s. 260 of the Act. It will amount to abdication of its duty by the High Court to give "its decision" on the point of law referred to it. We are, therefore, of the clear opinion that decision of one High Court is not binding on another High Court. We reiterate the propositions laid down by us in Paragraph 17 (supra).

**30.** Before we proceed to decide the question of law referred to us on merit, it is necessary also to decide the second submission of the learned counsel for the assessee that on interpretation of s. 33(6) of the Act, even if this Court takes a view which is against the assessee, in view of the fact that the Tribunal has taken a view in favour of the assessee and the Calcutta High Court has also taken a view in its favour we should adopt a view beneficial to the assessee following the decision of the Supreme Court in CIT vs. Vegetable Products Ltd. (supra) and CIT vs. Naga Hills Tea Co. Ltd. (supra). We have considered the submission. We have also carefully considered the decisions of the Supreme Court. We, however, find it difficult to accept this submission, as in our opinion, the observations of the Supreme Court in those decisions have been stretched too far. The Supreme Court in CIT vs. Vegetable Products Ltd. (supra), at 195, merely observed :

"If we find that language to be ambiguous or capable of more meanings than one, then we have to adopt that interpretation which favours the assessee, more particularly so because the provision relates to imposition of penalty."

**31.** Similarly, in CIT vs. Naga Hills Tea Co. Ltd. (supra), at 240, the Supreme Court had observed as follows :

"If a provision of a taxing statute can be reasonably interpreted in two ways, that interpretation which is favourable to the assessee, has got to be accepted. This is a well accepted view of law."

**32.** The above observations will be applicable only if the Court which is called up on to decide the issue is satisfied that two views are reasonably possible, one of them being favourable to the assessee. As observed by the Supreme Court in Escorts Ltd. vs. Union of India (1992) 108 CTR (SC) 275 : (1993) 199 **ITR** 43 (SC) (at 60) :

"In our view, there was no difficulty at all in the interpretation of the provisions. The mere fact that a baseless claim was raised by some over-enthusiastic assesseees who sought a double allowance or that such claim may perhaps have been accepted by some authorities is not sufficient to attribute any ambiguity or doubt as to the true scope of the provisions....."

**33.** It is, therefore, clear that it is the satisfaction of the Court interpreting the law that the language of the taxing provision is ambiguous or reasonable capable of more meanings than one, which is material. If such Court does not think so, the fact that two different views have been advanced by parties and argued forcefully, or that one of such view, which is favourable to the assessee has been accepted by some Tribunal or High Court, by itself will not be sufficient to attract the principle of beneficial interpretation. In the instant case, as we are not satisfied with the interpretation given by the Tribunal or the Calcutta High Court to s. 33(6) of the Act, in our opinion accepting those decisions by applying the test of beneficial interpretation does not arise.

**34.** We now turn to the merits of case before us and for that purpose to the question of law referred to us. The facts of the case have already been set out above. The controversy is in a very narrow compass. The answer hinges on the interpretation of s. 33(6) of the Act. Sec. 33(6) as it stood at the material time, so far as relevant, is in the following terms :

33.(6) Notwithstanding anything contained in the foregoing provisions of this section, no deduction by way of development rebate shall be allowed in respect of any machinery or plant installed after the 31st day of March, 1965, in any office premises or any residential accommodation, including any accommodation in the nature of a guest house :

Provided that .....

**35.** It is evident that s. 33(6) is a non obstante provision. It specifies the plant and machinery in respect of which deduction by way of development rebate shall not be allowed. The reference is to "any machinery or plant installed in any office premises or any residential accommodation, including any accommodation in the nature of guest house". The language is plain and simple. There is no ambiguity in it. In that view of the matter, if any plant and machinery is installed in any office premises or in any residential accommodation, etc., development rebate would not be allowable in respect thereof. We do not find any word or any expression in the above provision which may justify any restrictive interpretation of the above sub-section to confine its application only to office premises or residential accommodation "owned or occupied by the assessee". Trying to do so will amount to adding words to the statute which is not a permissible rule of interpretation. In that view of the matter, we find it difficult to agree with the decision of the Calcutta High Court in CIT vs. Tinnevely Tuticorin Tea Invest. Co. Ltd. (supra) wherein it has taken a view that the office premises or residential accommodation

referred to in sub-s. (6) of s. 33 relates to "the office premises or residential accommodation of the assessee concerned, i.e., either belonging to the assessee or in its occupation otherwise that is on lease or licence, etc."and that the disallowance contemplated by the s. 33(6) does not relate to plant and machinery installed in the office premises or residential accommodation of persons other than the assessee concerned.

**36.** We, therefore, take up the next submission of the learned counsel for the assessee, that is, whether the electric meters put up by the assessee, which is an Electric Supply undertaking, for the purpose of measuring the electricity consumed by the consumers not fall within the expression plant and machinery installed in residential or office accommodation as contemplated by s. 33(6) of the Act. In this connection, the learned counsel for the assessee referred to the Circular of the Board dt. 11th Oct., 1965 wherein it is stated that this sub-section was intended to deny development rebate in respect of plants and machineries such as airconditioners, frigidairs, room heaters, electric fans, etc. We find force in this submission, of the learned counsel for the assessee. It may be mentioned that sub- s. (6) was inserted in s. 33 by Finance Act, 1965 w.e.f. 1st April, 1965. The Board, by its Circular No. 3P (LXXVI-57) of 1965 dt. 11th Oct., 1965, while explaining the above provision made it clear that the effect of this provision was that development rebate will not be admissible in respect of machinery or plant such as airconditioners, frigidairs, room heaters, electric fans, etc., installed in any office premises or residential accommodation including guest house. This circular of the Board makes it clear that the plant and machinery referred to s. 33(6) of the Act would mean only the plants and machineries of the types set out in its circular which are of use to the occupants of the office, residence or guest house. Electric meter, definitely, do not fall in this category. The meter is in fact necessary only for the purpose of measuring the consumption of electricity. It has no independent use of its own. In fact, it is not for the use in the office, residence, etc. It is necessary adjunct to the supply line of electricity and the last point wherefrom starts the private line of the consumer. Though the meter is "plant and machinery" in the technical sense, in the context of s. 33(6) of the Act it cannot be said to be a plant or machinery installed in the office premises or residential accommodation, etc. Plant and machinery referred to in s. 33(6) of the Act will only mean those plants or machineries which are intended for use in the office or the residence. Meter does not meet this description. It will, therefore, not fall within s. 33(6) of the Act. That being so, we are of the clear opinion that the Tribunal was right in holding that s. 33(6) of the Act was not attracted and the assessee was entitled to development rebate in respect of electric meters, no matter where they are installed whether in the office premises, residential accommodation, etc., or elsewhere.

**37.** In view of our above conclusion, we answer the question referred to us in the affirmative, that is, in favour of the assessee and against the Revenue.

**38.** Under the facts and circumstances of the case, we make no order as to costs.

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