

LAW OF PRECEDENCE



Education Series- Part 2

Meaning of Precedent:

- A statement of law found in the decision of a Superior Court.
- Decisions based on question of law.
- The ratio in the decision is the essence.

Meaning of Rule of Precedence:

- Judgement of the superior court taken as rule for subsequent conduct.
- A pattern on which subsequent conduct is based.



Precedents: A source of “law” under Constitution of India

Article 141 of the Constitution lays down that the “law declared” by the Supreme Court is binding upon all the courts within the territory of India.

- The “law declared” has to be construed as a principle of law that emanates from a judgment, or an interpretation of a law or judgment by the Supreme Court, upon which, the case is decided.
- The “law declared” is the principle culled out on the reading of a judgment as a whole in the light of the questions raised, upon which the case is decided.

Object:

- The law of land should be clear, certain and consistent

Case law:

Union of India vs. Raghbir Singh (AIR 1989 SC 1933)

Observation:

- Precedent has the merit of promoting a certainty and consistency in judicial decisions.
- Enables organic development of law, besides providing assurance to the individual as to the consequence of transactions forming part of daily affairs

High Court as Court of record under Article 215 of the Constitution

Article 227 of the Constitution “*confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces*”.

Implication:

- All courts and Tribunals in the **respective State** will be bound by the decisions of the High Court.

Case law:

East India Commercial Co., Ltd. vs The Collector Of Customs 1962
AIR 1893

Held:

- Law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding.

The Principle of Stare Decisis

- The system of Judicial Precedent in Law is based on the idea of Stare decisis.
- It means to stand by matters that have been decided.
- Judges look at past decisions- “what has been decided” when they make a decision in a case.
- Judges have to follow (stand by) these previous decisions- they are known as “binding precedent”.

Elements of Precedents:

- Ratio Decidendi

- Obiter Dicta

**OBITER DICTA
VS.
RATIO DECIDENDI**



Ratio Decidendi:

- This the most important part of the judgment.
- It is the **reason or principle** upon which the case has been decided by the Higher Court.
- It creates a binding precedent.

**Only this much is binding
on the subordinate court**

Obiter Dicta

- This is not as most important as the Ratio Decidendi.
- Statement of law by court which go beyond the requirements of the particular case, i.e rule laid down is irrelevant or unnecessary for the purpose in hand.
- Does not create a binding precedent.
- Have the force of persuasive precedent only.
- **Exception:** Obiter Dictum of Supreme Court is binding on all courts.

Exceptions to Binding Precedent:

- **Consent Order:** Order passed in agreement with both the parties.
- **Per Incuriam:** literally translated as "through lack of care", refers to a judgment of a court which has been decided without reference to a statutory provision or earlier judgment which would have been relevant.
- **Sub Silentio:** Order wherein the important issue ignored or was not argued by counsel.

Applicability of Binding Precedents to different courts:



"You understand that not getting caught the first time isn't the same as setting a precedent."

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Conflicts of Issue between benches of High Courts even within a High Court : Decision of the Larger Bench shall

Case Law: **prevail**

Vodafone India Limited vs. Commissioner of Central Excise-Mumbai, 2015 TIOL-2098-HC-MUM-ST

Held:

- An interpretation of a statutory provision and equally a misinterpretation by one Bench of High Court would be binding on a co-ordinate Bench of that very High Court

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Contd...

- The subsequent bench cannot come to the opinion that a particular provision was misinterpreted and under that pretext seek to reinterpret it again.
- If the subsequent Bench is of the view that the statutory provisions are misconstrued and or misinterpreted, the only recourse available to it would be to refer it to a Larger Bench.

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Whether Decision of one High Court is binding on another Court?: **Negative**

Case Law:

Humayun Suleman Merchant vs. Chief Commissioner of Income Tax and Anr (2016 387 (ITR) 0421

Held:

- The Commissioner of Appeals did not disturb the order of AO. Tribunal dismissed the appeal. The Appellant approached High Court against the decision of Tribunal relying on the judgment of Karnataka High Court in the case of CIT vs Ramachandran Rao (ITA no. 494/2013) wherein the HC held that even where the assessee had not deposited the unutilized capital gain in terms of 54F (4), the benefit of it would still be available.

- The Bombay High Court did not accept the decision of Karnatak HC and held that the mandate of section 54F (4) of the Act is clear that amount which has not been utilized in construction and/ or purchase of property before filing the return of income must necessarily be deposited in an account duly notified by the Central Government so as to be exempted.

BINDING NATURE OF ORDERS OF TRIBUNAL:

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 here 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.

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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.

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.

Concluding remarks:

- When there is a difference of views between the coordinate benches of equal strength the matter should be referred to a larger bench.
- The Decision of the Larger bench shall prevail over the decision of smaller bench.
- Decision of a smaller bench prevails which deals with and explains the decision of Larger bench.
- If decision of coordinate Benches of equal strength differ, and the later decision does not notice or consider the earlier decision, then the Court may choose to follow that decision which is closer to the facts of the case at hand and deals more directly with the legal issue.
- If a court considering a particular provision of law is faced with two decisions, it will follow the one, which deals with the same or identical provision rather than the decision which deals with a similar but not an identical provision, even if the latter is by a larger Bench or a later judgment.

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