NEUTRAL CITATION
2024:GUJHC:24763-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 20400 of 2023

[On note for speaking to minutes of order dated 01/04/2024 in R/SCA/20400/2023]

With
R/SPECIAL CIVIL APPLICATION NO. 20444 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 20427 of 2023

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UTTAR GUJARAT VIJ CO. LTD.

Versus

THE INCOME TAX OFFICER, WARD 2(1)(4)

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Appearance:
MR MANISH J SHAH(1320) for the Petitioner(s) No. 1
MRS KALPANA K RAVAL(1046) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 09/05/2024

COMMON ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

[1] This speaking to minutes is filed to correct the typographical error in para 9 of the order dated 1st April 2024, wherein instead of "ITA No.633/2013", ITA No.3441/Ahd/2015 is to be mentioned.

[2] It was further pointed out by learned advocate for the petitioner that in para 9, it was inadvertently mentioned that "the Coordinate Bench of the Tribunal, after considering the decision of

this Court, has held that the interest on staff loans and advances are part of the 'business income' only". It was pointed out that in ITA No.3441/Ahd/2015 in the case of Gujarat Energy Transmission Corporation Ltd, it was observed in para 5.2 of the Tribunal that the Tribunal has remanded the issue back to the Assessing Officer for deciding the same in accordance with the judgement of this Court in Tax Appeal No.63 of 2020 rendered in the case of Gujarat Urja Vikas Nigam Ltd vs. DCIT.

[3] On perusal of the above, it is true that in para 9 of the order dated 1st April 2024, the words "the Coordinate Bench of the Tribunal, after considering the decision of this Court, has held that the interest on staff loans and advances are part of the 'business income' only" are inadvertently mentioned. Therefore, para 9 of the order dated 1st April 2024 is substituted as under:

> **"In the case of Gujarat Energy Transmission Corporation Ltd (supra) in ITA No.3441/Ahd/2015 for Assessment Year 2012-13, the Coordinate Bench of the Tribunal restored the issue to the file of the Assessing Officer for deciding afresh according to the direction of this Court in the case of Gujarat Urja Vikas**

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Nigam Ltd vs. DCIT in Tax Appeal No.63 of 2020, after verification and examination of the details to be submitted by the assessee. In such circumstances, the decision of the Coordinate Bench of the Tribunal as well as this Court were binding upon the Tribunal resulting into mistake apparent on record."

[4] Registry to issue fresh writ after the aforesaid corrections in para 9 of the order.

(BHARGAV D. KARIA, J)

(NIRAL R. MEHTA,J)

CHANDRESH

Present Judgment is modified vide Order dtd. 09/05/2024 in R/SCA/20400/2023

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R/SPECIAL CIVIL APPLICATION NO. 20400 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 20427 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 20444 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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CORAM: **HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 01/04/2024

NEUTRAL CITATION
2024:GUJHC:24763-DB

COMMON RAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr. Manish J. Shah for the petitioner and learned Senior Standing Counsel Mr. Nikunt Raval for learned advocate Mrs. Kalpana K. Raval for the respondent.

2. Rule. Learned Senior Standing Counsel Mr. Nikunt Raval waives service of notice of rule on behalf of the respondent.

3. By these petitions under Article 226 of the Constitution of India the petitioner has challenged the order dated 17.05.2023 passed under section 254(2) of the Income Tax Act,1961 (for short 'the Act') in Misc. Application preferred by the petitioner being M.A. No. 100/Ahd/2022 in

ITA No. 445/Ahd/18 in Special Civil Application No. 20400/2023, M.A.No. 97/Ahd/2022 in ITA No. 2089/Ahd/2013, M.A.No. 99/Ahd/2022 in ITA No. 1751/Ahd/2016.

4. Brief facts of the case in all the three petitions are of the same assessee pertaining to the three different assessment years. Therefore, the same are heard together and are being disposed of by this Common order.

5. For the sake of convenience, facts of Special Civil Application No. 20400/2023 is considered as lead case. The petitioner-Company is owned by the Government of Gujarat carrying on business of distribution of electricity.

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5.1 For the Assessment Year 2013-14, the petitioner filed return of income on 30.09.2013 declaring total income of Rs. Nil after claiming set off of brought forward business loss and unabsorbed depreciation.

5.2 The case of the petitioner was selected for scrutiny assessment by issuing notice dated 04.09.2014 under section 143(2) and final assessment order was passed under section 143(3) of the Act on 29.12.2016. The Assessing Officer, while framing the assessment, treated the interest income received on staff loan and other advances along with the miscellaneous receipt as income from other sources as against the income from business or profession as declared by the

petitioner. Other additions were also made by the Assessing Officer. The Assessee preferred appeal before the CIT (A) who, by order dated 26.12.2017, disposed of the appeal by partly allowing the same. Challenging the order of the CIT(A), an appeal was preferred before the Income Tax Appellate Tribunal being ITA No. 445 of 2018. The petitioner raised the ground No.2 with regard to confirming the additions by CIT (A) with respect to interest income from staff loans and advances, fix deposits and advances to others amounting to Rs. 2,91,78,000/- as income from other sources as against the business income. The appeal was fixed for hearing before the Tribunal on 30.06.2022 and a chart was provided on behalf of the petitioner along with compilation of the

judgements running into 117 pages. Reliance was placed also on the judgement dated 16.03.2020 passed by this Court in Tax Appeal No. 63/2020 in case of **Gujarat Urja Vikas Nigam Ltd vs. DCIT** to demonstrate that this Court confirmed the order passed by the Tribunal in case of the said assessee wherein it was held that interest income from staff loan and advances is income from business or profession and not income from other source. It was also pointed out that the said judgement was followed by the Tribunal in case of Gujarat Energy Transmission Corporation Ltd in ITA No. 3441/Ahd/2015 by remanding the issue back to the Assessing Officer for deciding the same in accordance with the direction by this Court.

5.3 It is the case of the petitioner that in spite of pointing out such facts, the Tribunal passed a consolidated order dated 24.08.2022 in a bunch of appeals of the petitioner from Assessment Years 2010-11, 2012-13 to 2014-15 and wrongly distinguished the judgements relied upon on behalf of the petitioner on non-existent facts or by making incorrect observation in respect of the treatment of interest income received from staff loan and advances and the Tribunal also refrained from dealing with orders which were cited before it by the petitioner. The Tribunal remanded the issue of treatment of interest income received on staff loans and advances to the file of the Assessing Officer to decide afresh in light of the judgment of this Court dated

16.03.2020 in case of *Gujarat Urja Vikas Nigam Ltd vs. DCIT* (supra) in Tax appeal No. 63/2020. It was therefore, submitted by the petitioner that such mistake has crept into order passed by the Tribunal which is a mistake apparent from record.

5.4 However, the Tribunal by impugned order dated 17.05.2023 dismissed the Misc. Application No. 100/2022 stating that the petitioner is seeking review of the order dated 24.08.2022 which is not permissible under section 254(2) of the Act as the Tribunal has limited power of rectifying the mistake apparent from record.

6. Learned advocate Mr. Manish J. Shah for the petitioner submitted that the Tribunal ought to have considered the facts of the

case in light of the decision of this Court relied upon by the petitioner at the time of hearing as the Tribunal has not been able to show as to how there is no mistake apparent on record as pointed out by the petitioner by relying upon the decision of Orissa High Court with regard to aspect of interest on staff loan as to whether the interest on staff loan is business income or not.

6.1 It was therefore submitted that the issue as to whether the interest on staff loan is business income is no more *res integra* and therefore, the Tribunal could not have taken different view than what is held by this Court in case of *Gujarat Urja Vikas Nigam Ltd vs. DCIT* in Tax Appeal No. 63/2022. It is also

submitted that the Tribunal ought to have considered the decision the Coordinate Bench in case of **Dakshin Gujarat Vij Company Limited vs. DCIT** as held by this Court in case of **Sayaji Iron & Engineering Co. vs. Commissioner of Income Tax,** reported in 2002 121 Taxmann.com 43 Guj.

6.2 It was therefore submitted that by not considering the decision of the Coordinate Bench as well as jurisdictional High Court rendered on the identical facts would be a mistake apparent on record. Reliance was placed on the decision of this Court in case of **Dattani & Co. vs. Income Tax Officer** reported in 2014 14 Taxmann.com 360 to submit that the impugned order passed by the Tribunal is required to be quashed and set aside by

remanding the matter back to the Tribunal to pass appropriate order in the Misc. Application preferred by the petitioner.

7. On the other hand, learned Senior Standing Counsel Mr. Nikunt Raval for learned advocate Ms. Kalpana Raval submitted that the Tribunal has held in no uncertain terms that in the order dated 24.08.2022 there is no mistake apparent on record as the Tribunal has given detailed findings in Paragraph No. 10 of the said order and as such, the petitioners were seeking a review of the order which is not permissible under section 254(2) of the Act. It was submitted that the Tribunal has taken cognizance of the decision of the Orissa High Court and given its view on the aspect of interest on staff loan as

to whether it is business income or not which is an independent view after considering the decision of this Court, Orissa High Court and the Delhi Tribunal. It was pointed out that the Tribunal has drawn distinction on facts that in the said case, interest earned on the staff loan/advances was treated as business income noting the fact that they were given as mandatory incentive whereas such facts were not present in the case of the petitioner and after distinguishing the decision relied upon by the petitioner, the Tribunal has arrived at conclusion of remanding the matter back to the Assessing Officer for further consideration.

8. Having heard learned advocates for the parties it appears that it is not in

dispute that the petitioner has relied upon the decision of this Court in case of *Gujarat Urja Vikas Nigam Ltd vs. DCIT* in Tax Appeal No. 63/2020 wherein, the Tax Appeal was preferred by the Revenue on the aspect as to whether interest received on staff loan is business income or not for the purpose of consideration of disallowance under section 14A of the Act. The facts of the case of *Gujarat Urja Vikas Nigam Ltd vs. DCIT* and the facts of the case of the petitioner are identica and not different and as such, the Tribunal could not have relied upon the decision of Orissa High Court while distinguishing the facts of the case of the petitioner by ignoring the decision of the Jurisdictional High Court. More particularly, when the CIT and the

Tribunal in case of the *Gujarat Urja Vikas Nigam Ltd vs. DCIT* have held that interest income on staff loans is required to be treated as 'business income' instead of 'income from other sources' which is confirmed by this Court in the aforesaid Tax Appeal.

9. In case of Gujarat Energy Transmission Corporation Ltd (supra) in ITA No. 633/2013, the Coordinate Bench of the Tribunal, after considering the decision of this Court, has held that the interest on staff loans and advances are part of the 'business income' only. In such circumstances, the decision of the Co-ordinate Bench of the Tribunal as well as this Court were binding upon the Tribunal

resulting into the mistake apparent on record.

10. The Tribunal therefore ought to have considered such aspect while deciding the Misc. Application under section 254(2) of the Act which reads as under:

254. Orders of Appellate Tribunal:-

(1)… …. ….. ….

(2)The Appellate Tribunal may, at any time within2 [six months from the end of the month in which the order was passed], with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the 3 [Assessing Officer]:

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub-section unless the Appellate

Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard:

[Provided further that any application filed by the assessee in this sub-section on or after the 1st day of October, 1998, shall be accompanied by a fee of fifty rupees."

11. The Tribunal has held in the impugned order dated 24.08.2022 as under:

"8. As regard to Ground No.2 relating to treating interest income from staff loans and advances and other miscellaneous receipt from income from other sources and not as income from business and profession the Ld. AR submitted that in respect of interest income from staff loans and advances, the Hon'ble Orissa High Court in case of Odisha Power Generation Corporation Ltd vs. ACTI (ITA Nos. 1,2,3 of 2015 and ITA Nos. 24 & 25 of 2009 order dated 11.03.2022) held that the interest income earned by the company from advances given to its employees are considered to be part of business income. The Ld. AR also relied upon the decision of Ahmedabad Tribunal in case of Gujarat Energy Transmission Corporation Ltd vs. DCIT (ITA No.

34418/Ahd/2015 order dated 30.09.2020) wherein in the interest on staff loan advances were part of the business income and the Tribunal directed the Assessing Officer to verify the same in light of decision of Hon'ble Gujarat High Court in case of Gujarat Urja Vikas Nigam Ltd vs. CIT vide Tax Appeal No. 63/2020 order dated 16.03.2020. The Ld. AR also relied upon the decision of the Tribunal in case of DCM Estates and Infrastructure Ltd vs. DCIT (2007) 110 TTJ 604 (Del. Tri).

9. The Ld. DR relied upon the assessment order and the order of the CIT(A).

10. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Hon'ble Gujarat High Court in case of Gujarat Urja Vikas Nigam Ltd (Supra) has categorically held that the interest earned on loan and advances from deposits with Mega Power Project towards SITS sharing and power are directly related to business of the assessee. But the said component does not include interest on staff loan and advances. The decision in case of Odisha Power Generation Corporation Ltd (supra) has also not specifically mentioned the nomenclature of interest on staff loan and advances to the staff. Though the contentions of the

assessee therein were quoted by the Hon'ble Orissa High Court but whether the same was accepted or not is not mentioned in the order. Thus, both these decisions will not support the case of the assessee. The Decision of the Tribunal in case of DCM Estates and Infrastructure Ltd (supra) held that the interest earned on staff loan and advances is incidental to the assesse's business is factually incorrect as the loan and advances given to the employees are not the mandatory incentive given to the staff and cannot be stated as incidental to the business of the assessee. Thus, the decision is not applicable in the present case. Loans to staff members cannot be treated as business expenses and therefore interest earned on these loans and advances given to the staff members cannot be treated as business income. Thus, the disallowances to that extent is just and proper on part of the Assessing Officer and CIT (A). Thus, Ground No.2 is dismissed."

12. From the above observation of the Tribunal it is clear that though the Tribunal has referred to the decision of the Coordinate Bench as well as the binding decision of this Court which is a Jurisdictional High

Court and has relied upon the decision of the Hon'ble Orissa High Court on the ground that as per the view of the Tribunal, the interest earned on the staff loan and advances incidental to the assessee's business is factually incorrect as the loan advances given to the employees are not mandatory incentive given to the staff and cannot be termed as incidental to the business. The Tribunal could not have taken different view than what was already taken by the Coordinate Bench which is confirmed by this Court in Tax Appeal No. 63/2020. Thus, there is a mistake apparent on the face of the record in the order dated 24.08.2022 passed by the Tribunal which ought to have been considered by the Tribunal and the Misc. Application preferred by the petitioner

could not have been dismissed by observing as under:

> "4. We have heard both the parties and perused all the material available on record. The contention of the Ld. AR was that the Tribunal has not adjudicate/not considered the orders relied upon by the Ld. AR during the course of hearing as well as holding that non-applicability of the judgement of the Hon'ble Orissa High Court is a mistake apparent from record within the meaning of section 254(2) of the Act but the Tribunal has taken cognizance of the decision of Hon'ble Orissa High Court and has given its view on the aspect of interest on staff loans whether business income or not. The view taken by the Tribunal is independent view after considering the decisions of the Hon'ble Gujarat High Court and the Hon'ble Orissa High Court and the Delhi Tribunal. The Tribunal has categorically noted the distinction on facts that in the said cases the interest earned on staff loan/advances was treated as business income noting the fact that they were given as mandatory incentives. This fact being not demonstrated in the present case, therefore, all these decisions were held to be not applicable in the present case. This cannot be termed as

mistake apparent from record as the decisions cited by the Ld. AR were adjudicated and considered while expressing the view by the Tribunal in order dated 24.08.2022 and applicability of the decision of the Hon'ble Orissa High Court has also been taken into account after expressing our view. The ITAT has a limited scope/power of rectifying the mistake apparent from record within the meaning of section 254(2) of the Act. At this juncture, the assessee is seeking review of the order dated 24.08.2022 passed by the Tribunal which is not as per the provisions of section 254(2) of the Act. Thus, the present Miscellaneous Applications do not survive and hence are dismissed."

13. This Court in case of *Sayaji Iron & Engineering Co. vs. Commissioner of Income Tax* (supra)has held as under:

"In relation to the aforesaid approach of the C.I.T.(Appeals) and the Tribunal we cannot do better than reiterate what Madras High Court has stated in the case of C.I.T. vs. L.G.Ramamurthi and Others, 110 ITR 453 :

" No Tribunal of fact has any right

or jurisdiction to come to a conclusion entirely contrary to the one reached by another Bench of the same Tribunal on the same facts. It may be that the members who constituted the Tribunal and decided on the earlier occasion were different from the members who decided the case on the present occasion. But what is relevant is not the personality of the officers presiding over the Tribunal or participating in the hearing but the Tribunal as an institution. If it is to be conceded that simply because of the change in the personnel of the officers who manned the Tribunal, it is open to the new officers to come to a conclusion totally contradictory to the conclusion which had been reached by the earlier officers manning the same Tribunal on the same set of facts, it will not only shake the confidence of the public in judicial procedure as such, but it will also totally destroy such confidence. The result of this will be conclusions based on arbitrariness and whims and fancies of the individuals presiding over the courts or the tribunals and not reached objectively on the basis of the facts placed before the authorities.

If a Bench of a Tribunal on the identical facts is allowed to come to a conclusion directly opposed to

the conclusion reached by another Bench of the Tribunal on an earlier occasion, that will be destructive of the institutional integrity itself. That is the reason why in a High Court, if a single judge takes a view different from the one taken by another judge on a question of law, he does not finally pronounce his view and the matter is referred to a Division Bench. Similarly if a Division Bench differs from the view taken by another Division Bench it does not express disagreement and pronounce its different views, but has the matter posted before a Fuller Bench for considering the question. If that is the position even with regard to a question of law, the position will be a fortiori with regard to a question of fact. If the Tribunal wants to take an opinion different from the one taken by an earlier Bench, it should place the matter before the President of the Tribunal so that he could have the case referred to a Full Bench of the Tribunal consisting of three or more members for which there is provision in the Income-tax Act itself".

We are in respectful agreement with the aforesaid view.

14. Thus, in view of the above, when the Tribunal has not followed the decision on the identical facts by the Coordinate Bench which is confirmed by this Court, there is mistake apparent on the record which ought to have been considered by the Tribunal when it is pointed out being a mistake apparent on record. The Hon'ble High Court in case of **Air Conditioning Specialities (P.) Ltd. Vs. Union of India reported in (1996) 221 ITR 739 (Guj)** has held as under:

> "Having given anxious and thoughtful consideration, we are of the opinion that petition requires to be allowed. It is not disputed even by the Revenue that the point is concluded by a pronouncement of this court in the case of *Bharat Textile Works* [1978] 114 ITR 28.
>
> Mr. Thakore frankly admitted that above view is reiterated subsequently by this court in the case of *Chimanlal Patel* v. *CIT* [1994] 210 ITR 419.

In view of the above legal position, the petition requires to be allowed and the order passed by the second respondent which is clearly contrary to law, requires to be quashed and set aside.

We may, however, add that it was not open to the second respondent to ignore the law laid down by this court when it was an inferior Tribunal subject to the supervisory jurisdiction of this court. It was not proper on his part not to follow a binding decision of this court on the ground that the Department had not accepted that decision and had filed an appeal and the matter was pending in the Supreme Court. It cannot be disputed and is not disputed that the second respondent is a "Tribunal" subject to the supervisory jurisdiction of this court under article 227 of the Constitution. Hence, he is bound to obey the law declared by this court.

The apex court of the country in no uncertain terms held that the law declared by a High Court is binding on all subordinate courts and Tribunals within the territory to which it exercises the jurisdiction. In *Bhopal Sugar Industries Ltd. v. ITO*[1960] 40

ITR 618 (SC), the Income-tax Officer (subordinate authority) refused to carry out clear and unambiguous directions of the Income-tax Appellate Tribunal (superior authority). Deprecating it, their Lordships of the Supreme Court observed (page 622):

> "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. 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...."

A direct question arose before the Supreme Court in *East India Commercial Co. Ltd.* vs*Collector of Customs,* AIR 1962 SC 1893. In that case, proceedings were initiated by the Collector of Customs against the petitioner-company on allegations that it had violated conditions of licence and illegally disposed of goods and thereby committed an offence punishable under the Customs Act. The High Court confirmed the order of acquittal passed by the trial court

holding that it cannot be said that "a condition of the licence amounted to an order under the Act" and, therefore, no offence was committed by the company. The High Court also passed an order directing the seized/goods to be sold and the sale proceeds to be deposited in the court. After those proceedings, a notice was issued by the Collector on the company to show cause why the amount should not be confiscated and penalty should not be imposed. It was contended on behalf of the company that once the High Court decided that the breach of condition of licence could not be said to be a breach of order, the Collector had no jurisdiction to issue show-cause notice. It was submitted that the decision of a High Court on a point was binding on all subordinate courts and inferior Tribunals within its territorial jurisdiction. The notice was, therefore, liable to be quashed. The precise question before the Supreme Court was as to whether or not the decision rendered by a High Court would bind all subordinate courts and inferior Tribunals within its territorial jurisdiction. It was argued that there was no provision similar to article 141 of the Constitution making the law declared by a High Court

binding on all courts and Tribunals within its territorial jurisdiction. Considering relevant provisions of the Constitution and the power of High Court, Subba Rao J. (as he then was), observed (page 1905):

> "This raises the question whether an administrative Tribunal can ignore the law declared by the highest court in the State and initiate proceedings in direct violation of the law so declared. Under article 215, every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under article 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under article 227 it has jurisdiction over all courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. 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 provision, just like in the case of the 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. We, therefore, hold that the 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 above view has been reiterated by the Supreme Court in a number of subsequent decisions (see *M. Padmanabha Setty* v,*K.P. Papiah Setty*,AIR 1966 SC 1824 ;*Kausalya Devi Bogra v. Land Acquisition Officer*,AIR 1984 SC 892 and

Bishnu Ram Borah v.*Parag Saikia,* AIR 1984 SC 898).

In our opinion, the submission of learned counsel for the petitioner, is well-founded and deserves to be upheld. It is not even the case of the Department that the decision of this court in *Bharat Textile Works*'case [1978] 114 ITR 28 has been stayed by the Supreme Court. Hence, so far as this court is concerned, the point is concluded. It is settled law that unless and until the decision is reversed by a superior court, it holds the field. It also cannot be gainsaid that the second respondent is an inferior Tribunal subject to supervisory jurisdiction of this court and this court can exercise jurisdiction over him by invoking article 227 of the Constitution. In our considered view, therefore, it was not open to the second respondent to ignore the decision of this court or to refuse to follow, it on a specious plea of verdict being not accepted by the Department and that the matter was carried further and was pending before the Supreme Court.

In *Baradahanta Mishra* v. *Bhimsen Dixit,* AIR 1972 SC 2466, when a member

of the superior judicial service functioning as the Commissioner of Hindu Religious' Endowments, Orissa, refused to follow the decision of the High Court, contempt proceeding had been initiated against him and he was punished by the High Court. When the matter was carried by the appellant to the Supreme Court, dismissing the appeal and extending further the principle laid down in the decision of *East India Commercial Co. Ltd.'s* case, AIR 1962 SC 1893, the court held (page 2469):

> "The conduct of the appellant in not 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."

In this connection, we may emphasise that it would indeed be appropriate to keep in mind the following observations of Lord Diplock in *Cassell no Co. Ltd.* v. *Broome* [1972] 1 All ER 801, 874 (HL):

> "It is inevitable in a hierarchical system of courts that there are decisions of the supreme appellate tribunal which do not attract the unanimous approval of all members of the judiciary. When I sat in the Court of Appeal I sometimes thought the House of Lords was wrong in overruling me. Even since that time there have been occasions, of which the instant appeal itself is one, when, alone or in company, I have dissented from a decision of the majority of this House. But the judicial system only works if someone is allowed to have the last word and if that last word, once spoken, is loyally accepted."

We are very clear and we have no doubt in our minds that when a point is concluded by a decision of this court, all subordinate courts and inferior Tribunal within the territory of this State and subject to the supervisory jurisdiction of this court are bound by it and must scrupulously follow the said decision in letter and spirit. Since the second respondent has not decided the matter in accordance with law laid down by this court in the case of *Bharat Textile Works* [1978] 114 ITR

28 , the order passed by him requires to be quashed and set aside."

15. IN view of the above conspectus of law, the decision of the jurisdictional High Court is binding up on the Tribunal. In such circumstances, not following the binding decision is mistake apparent on record. The impugned orders are accordingly quashed and set aside. The matter is remanded back to the Tribunal to pass fresh orders in Misc. Application preferred by the petitioner in view of the observation made in this order. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(NIRAL R. MEHTA,J)

JYOTI V. JANI