

TAX FLASH NEWS

18 June 2021

National Faceless Appeal Centre (Delhi) is bound by the decision of the High Court having jurisdiction over taxpayer's assessing officer

Executive Summary

Recently, the Agra Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Mahadev Cold Storage¹ (the taxpayer) held that the National Faceless Appeal Centre (NFAC) is bound by the decision of the High Court having jurisdiction over taxpayer's assessing officer. The Tribunal observed that an appeal against an order passed by NFAC shall lie before the Tribunal having jurisdiction over the jurisdictional Assessing Officer (AO). Thus, the appeal against the Agra Bench of the Tribunal shall lie before the Allahabad High Court. Accordingly, the decision rendered by the Allahabad High court is not only binding on the Tribunal but also on NFAC, (though sitting in Delhi) which is deciding the case pertaining to Allahabad High Court Jurisdiction.

Facts of the case

The taxpayer is engaged in the business of storage of potatoes in cold storage. During the Assessment Year (AY) 2018-19, the taxpayer filed its tax return declaring income from business. The AO disallowed the expenditure on contribution to Employee State Insurance Corporation (ESIC) and Provident Fund (PF) not credited to employees account on or before the due date. NFAC upheld the decision of AO relying on the decision of the Gujarat High Court in the case of State Road Transport Corporation², and ignored the favourable decision of the Allahabad High Court (jurisdictional high court) in the case of Sagun Foundry (P) Ltd.³. The Allahabad High Court had held that employee contribution, actually paid by the employer into the relevant fund before the due date for filing of return of income for the relevant AY, is allowable as a deduction in the relevant year.

Tribunal's decision

On a perusal of the order of NFAC, it has been observed that the NFAC, had relied upon the decision of the Gujarat High Court in the case of State Road Transport Corporation and ignored binding decision of the Jurisdictional High Court in the case of Sagun Foundry (P) Ltd. The approach of the NFAC, is not correct and is against the scheme of the notification issued by the CBDT for creating the centralised NFAC and also against the settled principle of precedent.

The government had introduced Faceless Appeal Scheme and made it effective from 25 September 2020 vide CBDT Notification⁴. From the perusal of the CBDT Notification, it was clear that, before passing final appellate order in appeal, it passes through various stages of scrutiny.

In the present case, the AO is situated within the jurisdiction of Agra (falling within the jurisdiction of Allahabad High Court). The first appellate authority notes down that there is jurisdictional High Court in favour of the taxpayer. However, NFAC chooses to dismiss the appeal of the taxpayer by following the non-jurisdictional decision in the case of State Road Transport Corporation. Though it needs no verdict that the decision of the jurisdictional High Court shall be binding on the authorities/Tribunal/courts situated in the territorial jurisdiction of the High Court. However, even if there are conflicting decision of Jurisdictional high Court and non-jurisdictional high court then also the Jurisdictional High Court decision shall be binding on the quasi-judicial authorities/ courts/ tribunal situated within the state.

National Judicial academy had published one article on 14 September 2018 written by Hon'ble Justice (Retired) B.S. Chauhan of SC wherein it was specified that a decision made by a higher court is binding and the lower court cannot overturn it. The court not to overturn its own precedent unless there is a strong reason to do so. In Union of India v. Raghubir Singh⁵, the Supreme

¹ Mahadev Cold Storage v. JAO (ITA No. 41 & 42/Agr/2021, AY 2018-20) – Taxsutra.com

² CIT v. Gujarat State Road Transport Corporation Ltd. [2014] 366 ITR 170 (Guj)

³ Sagun Foundry (P) Ltd. v. CIT [2017] 78 Taxman 47 (All)

⁴ CBDT Notification No. 76 and 77 of 2020

⁵ Union of India v. Raghubir Singh, AIR 1989 SC 1933

Court held that the binding precedent is necessary to be followed in order to maintain consistency in judicial decision and enable an organic development of the law.

From the above article it is clear that the decision of the High Court is binding on the Courts/Tribunal situated within the territorial jurisdiction of the High Court. Binding nature of jurisdictional High Court decision on the Tribunal working under its umbrella, traces its origin to Article 227 of the Constitution, which provides the supervision and control of all the Tribunal/auction other authority situated within the jurisdiction of the High Court. The Supreme Court in the case of East India Commercial Co. Ltd.⁶ observed 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. Subsequently, the Supreme Court reiterated the aforesaid position once again in *Baradakanta Mishra v. Bhimsen Dixit*⁷.

The Tribunal held that though, centralised NFAC, had been created by the notification by the CBDT, however it should be ensured that whenever any appellate order is passed by NFAC either by of draft order, or by way of review the draft order or final appellate order, then decision of jurisdictional High Court, having the jurisdiction over the AO should be followed and applied by the NFAC. Merely because there is some conflicting decision of a non-Jurisdictional High Court, the relief should not be refused to the taxpayer. As per the Notification, an appeal against an order passed by the NFAC under the said Scheme shall lie before the Tribunal having jurisdiction over the jurisdictional AO. Thus, the appeal against the Tribunal (Agra in present case) shall lie to the Allahabad High Court and therefore the decision rendered by High court is not only binding on the Tribunal but also on NFAC, (though sitting in Delhi) which is deciding the case pertaining to Agra Tribunal Jurisdiction (Allahabad High Court Jurisdiction).

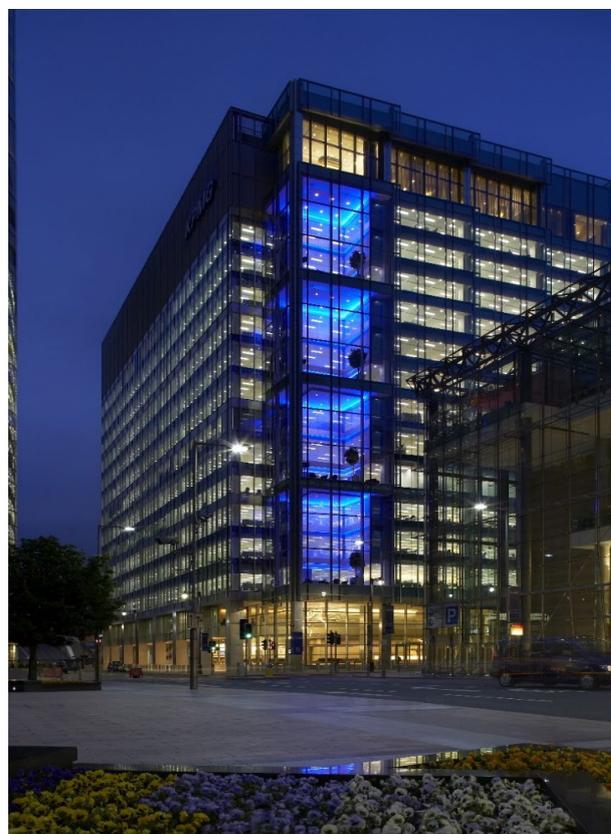
A good intentioned and well thought notification issued by the CBDT for NFAC, is not yielding the desired result on account of incorrect application of law. As notified by the CBDT in the notification it would be using the artificial intelligence and data analytic for the smooth functioning of NFAC, in our view this should be used in all aspects. Further, the Tribunal expect the CBDT to take appropriate remedial measures at the earliest and issue comprehensive guidelines for NFAC and give relief to the honest taxpayer. Accordingly, the Tribunal held that NFAC, is bound by the binding decision of the Jurisdictional Allahabad High Court, as the AO is situated, within the territorial and subjective jurisdiction of High Court. Hence, the appeal of the taxpayer allowed respectfully following the decision of jurisdictional High Court.

Our comments

The binding nature of a Court's decision has been a matter of debate before the Courts/Tribunal. Some of the courts⁸ have held that a High Court's decision is binding in other jurisdictions also in the absence of jurisdictional High Court decision. Relying on such decisions the Tribunal in the case of R K P Company⁹ observed that there cannot be any dispute on the fundamental proposition that in the hierarchical judicial system, better wisdom of the court below has to yield to higher wisdom of the court above, and therefore, the Tribunal have to humbly bow before the views expressed by the Higher Courts.

After introduction of faceless assessment / appeal regime, there was no clarity on whether decisions of the jurisdiction of the taxpayer/AO will apply and bind the taxpayer or the decisions of the jurisdiction where NFAC is situated will apply. This is the first decision post introduction of faceless appeal scheme where the Tribunal has held that NFAC is bound by the decision of the High Court having jurisdiction over taxpayer's AO. This decision will provide clarity to taxpayers as well as to the tax department (NFAC).

The Tribunal has also observed that a good intention of notification issued by CBDT for introduction of NFAC is not yielding the desired result on account of incorrect application of law. Therefore, CBDT should take appropriate remedial measures and issue comprehensive guidelines for NFAC and give relief to honest taxpayers.



⁶ East India Commercial Co. Ltd. v. Collector of Customs AIR 1962 SC 1893
⁷ Baradakanta Mishra v. Bhimsen Dixit AIR 1972 SC 2466

⁸ CIT v. Godavari Devi Saraf [1978] 113 ITR 589 (Bom), ACIT v. Aurangabad Holiday Resorts Pvt Ltd [2009] 118 ITD 1 (Pune)
⁹ R K P Company v. ITO [ITA No. 106/RPR/2016] (AY 2010-11)

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