

July, 2018



AMLEGALS | Attorneys & Advisors | A Full Service Law Firm

TAX

Res judicata

Versus

Law of Consistency.

Legal intelligence Series

July, 2018



AMLEGAL'S | Attorneys & Advisors | A Full Service Law Firm

IN MATTER OF

Principal Commissioner of Income Tax v. M/s Quest Investment Advisors Pvt. Ltd

INCOME TAX APPEAL NO. 280 OF 2016 - High Court of Bombay

FACTS

The Respondent was engaged in the business of equity research, invest advisory services and running portfolio management services.

In the assessment year of 2008-2009, the Respondent showed professional income of Rs. 1.31 Crore and short term capital gain of Rs. 6 Crores.

The general practice was to set off all expenses against the professional business income.

But, the Assessing officer sought to allocate the expenditure between earning of capital gains and professional income.

Thus, an expenditure of Rs.88.05 lakhs claimed against professional income was

disallowed by the assessment order dated 15th November, 2010 under Section 143(3) of the Act.

Aggrieved by the abovementioned order, the Respondent appealed to the Commissioner of Income Tax Appeals (CITA). The appeal was dismissed.

In the tribunal, allowed of the Respondent was allowed on the basis of 'Principle of Consistency'.

The revenue further contested in High Court under **Section 260A of the Income Tax Act, 1961** challenges the order dated 20th May, 2018 passed by the Income Tax Appellate Tribunal for Assessment Year 2008-2009.



AMLEGAL'S | Attorneys & Advisors | A Full Service Law Firm

ISSUES

1. Whether the Tribunal was justified in deleting the disallowance made under Section 37(1) of the Income Tax Act, 1961 without paying heed to the facts of the case and the legal matrix as highlighted by the Assessing officer and the CITA?
2. Whether the Tribunal was justified in following the 'Principle of Consistency' without paying heed to the facts and the circumstances of the case?

OBSERVATION OF TRIBUNAL

The Tribunal only adhered to the 'Principle of Consistency'.

The Tribunal allowed the appeal of the Respondent on the following grounds:

1. For the assessment years 1995-96 to 2012-13, except for the years 2007-08 & 2008-09, there was no allocation of expenses between professional income and the earning on account of capital gain.
2. Failure of Revenue in not pointing out any distinguishing facts in the subject assessment year, which would warrant a different view from that taken in the earlier and subsequent assessment where no allocation of expenditure was done between various heads of income.
3. Followed the principle of Consistency as laid down by the decision of the Apex Court in **Radhasoami Satsang**



AMLEGAL'S | Attorneys & Advisors | A Full Service Law Firm

**Vs. Commissioner of Income Tax
[193 ITR 32].**

OBSERVATION OF HIGH COURT

The Honorable Court observed that the Revenue Authorities have *consistently over the years i.e for 10 years prior to Assessment Years 2007-08 and 2008-09 and for 4 subsequent years , accepted the principle that all expenses which has been incurred are attributable entirely to earning professional income.*

It observed that Revenue is precluded from taking a different stand in a case where assessment was accepted for previous and subsequent years and no differentiation was pointed out ever.

Therefore, the reliance on **Radhasoami Satsang(supra)** , though not an authority for general applicability, will not have any contrary effect in as much as facts will prevail for its applicability.

The Court relied upon the ratio of Apex Court in **Bharat Sanchar Nigam Ltd. Vs. Union of India [282 ITR 273]** as below:

“20. The decisions cited have uniformity held that **res judicata does not apply in matters pertaining to tax for different assessment years** because **res judicata applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is different.** *The courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. **The reason why courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of Res Judicata but because of the theory of precedent or the precedential value of the earlier pronouncement. Where facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a***



AMLEGAL'S | Attorneys & Advisors | A Full Service Law Firm

***different view.** This mandate is subject only to the usual gateways of distinguishing the earlier decision of where the earlier decision is per incuriam. However, these are fetters only on a coordinate Bench which, failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter to a Bench of superior strength or in some cases to a Bench of superior jurisdiction.”*

(emphasis supplied)

CONCLUSION

The ratio which evolves is as below::

- i) “Principle of res judicata” does not apply in matters pertaining to tax for different assessment years.**
- ii) The duty of the Revenue is to adhere to a consistent practice which has been accepted and followed.**
- iii) “Principle of Consistency” can be changed only if there**

is a change in law or facts – not otherwise.

The content is purely an academic analysis under “Legal intelligence series.

© Copyright AMLEGAL'S.

***Disclaimer:** The information contained in this document is intended for informational purposes only and does not constitute legal opinion, advice or any advertisement. This document is not intended to address the circumstances of any particular individual or corporate body. Readers should not act on the information provided herein without appropriate professional advice after a thorough examination of the facts and circumstances of a particular situation. There can be no assurance that the judicial/quasi-judicial authorities may not take a position contrary to the views mentioned herein.*

July, 2018



AMLEGAL'S | Attorneys & Advisors | A Full Service Law Firm



AMLEGAL'S - Attorneys & Advisors

An "ISO 9001: 2015" Certified Law Firm

206, Advait, Besides Sandesh,

Vastrapur, Ahmedabad - 380 015,

Gujarat, INDIA.

Website: www.amlegals.com

E-mail: info@amlegals.com.

Tele: +91 - 79 -4800 5359/4003 3359

AMLEGAL'S Associates & Affiliates

Ahmedabad | Bangalore | Chandigarh |

Chennai | Delhi | Hyderabad | Kolkata |

Mumbai | Singapore | UAE | China |
