

## Res Judicata in Tax Matters

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### Introduction

Finality to assessment facilitates the assessee to plan his affairs and to decide the business planning for long term strategies. The doctrine of Res Judicata is a potent tool in the hands of an assessee who wants to prevent the Assessing Officer from shifting his stand year – to – year on whimsical grounds.

However, tax authorities feel that there is no finality to any assessment as the principle of Res Judicata is not applicable to tax proceedings.

### Meaning

The word 'Res Judicata' is derived from Latin. It literally means, a thing adjudged. It is a rule that says a final judgment on the merits by a court having jurisdiction is conclusive between the parties to a suit as to all matters that were litigated or that could have been litigated in that suit. The principle of Res Judicata, in the eye of law, is that if on any facts and/or law, a particular decision is made, then subsequently if any suit on similar facts and/or law is to be decided between the same parties, it should be same as made earlier.

As per The Law Lexicon "Res adjudicata" means "A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment; a thing definitely settled by judicial decision, the thing adjudged".

This principle operates as a bar to try the same issue once over. The Apex Court in the case of **Sulochana Amma vs. Narayanan Nair** - (2002-TIOL-292-SC-MISC) held that this principle aims to prevent multiplicity of proceedings and accords finality to an issue, which directly and substantially had arisen in the former suit between the same parties or their privies, decided and became final, so that parties are not vexed twice over; vexatious litigation would be put to an end and the valuable time of the Court is saved. It is based on public policy as well as private justice.

Res Judicata does not merely prevent future judgments from contradicting earlier ones, but also prevents them from multiplying judgments, so a prevailing plaintiff could not recover damages from the defendant twice for the same injury.

### **Origin of Res Judicata**

"Res Judicata pro veritate accipitur" is the full Latin maxim which has, over the years, shrunk to mere "Res Judicata".

The concept of Res Judicata finds its evolution from the English Common Law system, being derived from the overriding concept of judicial economy, consistency, and finality. The rule of Res Judicata has a very ancient history; it was accepted by the Romans, Hindu jurists, Mohammedan jurists and commonwealth countries. It was known to Romans as 'one suit and one decision was enough for any single dispute'. To the Hindu jurists Res Judicata was known as 'Purva Nyaya' (former judgment).

### **Basis of Res Judicata**

The doctrine of Res Judicata is based on three maxims:

1. Nemo debet liti vexari pro eadem causa (no man should be vexed twice for the same cause);
2. Interest reipublicae ut sit finis litium (it is in the interest of the state that there should be an end to a litigation); and
3. Res Judicata pro veritate accipitur (a judicial decision must be accepted as correct).

### **Pre-requisites for Res Judicata**

The pre-requisites which are necessary for Res Judicata are:

1. There must be a final judgment;
2. The judgment must be on the merits;
3. The claims must be the same in the first and second suits;
4. The parties in the second action must be the same as those in the first, or have been represented by a party to the prior action.

### **Constructive Res Judicata**

'Constructive' means 'implied', "that which has not the character assigned to it in its own essential nature, but acquires such character in consequence of the way in which it is regarded by a rule or policy

of law” (Black). If a matter which might or ought to have been raised in an earlier proceeding, is not raised, the principle of constructive Res Judicata applies.

### **Source of Res Judicata in Indian Law**

Section 11 of The Code of Civil Procedure, 1908, defines “Res Judicata” as under:-

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

From the Civil Procedure Code, the Administrative Law witnessed its applicability. Then, slowly but steadily the other acts and statutes also started to admit the concept of Res Judicata within its ambit.

### **Principle of Res Judicata in tax matters**

The general principle of law is that no one should blow hot and cold on the same set of facts to reach different conclusions / findings in different years. The need for consistency is as important for revenue authorities as it is expected from the assessee. The common understanding is that, notwithstanding the public policy behind the rule, it has no relevance to tax disputes. It is said that a finding or an opinion recorded by an authority or even by a court of law for one assessment year has no binding effect on the issues in subsequent assessment years.

### **Views of Tribunal**

In the case of *Bramec Surie (P) Ltd . 1986 (25) ELT 79*, the Tribunal had held that issues already concluded in earlier proceedings **could be reopened in subsequent proceedings** for another period of time **if emerging fresh materials give a new dimension to the matter.**

### **Views of High Court**

The **Bombay High Court, in H.A. Shah and Co. vs. CIT (1956) 30 ITR 618 (Bom.)** has held that “the principle of estoppel or res judicata does not strictly apply to the Income Tax authorities” and yet declared that “An earlier decision on the same question cannot be reopened if that decision is not

arbitrary or perverse, if it had been arrived at after due inquiry, if no fresh facts are placed before the Tribunal giving the later decision and if the Tribunal giving the earlier decision has taken into consideration all material evidence.”

In **CIT vs. L. G. Ramamurthy (1977) 110 ITR 453 (Mad.)**, the court laid down the principle that “...what is relevant is not the personality of officers presiding over the Tribunal but the Tribunal as an institution. If it is conceded that simply because of the change in the personnel who manned the Tribunal, it is open to them to a conclusion totally contradictory to the conclusion which had been reached by earlier officers manning the tribunal on same set of facts it will not only shake the confidence of the public in judicial procedure as such, but it will totally destroy such confidence.....that will be destructive of the institutional integrity itself”.

#### **Views of the Apex Court**

The Supreme Court in **Amalgamated Coalfields vs. Janapada Sabha AIR 1964 SC 1013** have evinced a highly, balanced approach: “In considering this question, it may be necessary to distinguish between decision on questions of law which directly and substantially arise in any dispute about the liability for a particular year, and questions of law which arise incidentally or in a collateral manner ... the effect of legal decisions establishing the law would be a different matter. If, for instance, the validity of a taxing statute is impeached by an assessee who is called upon to pay a tax for a particular year and the matter is taken to the High Court or brought before this Court and it is held that the taxing statute is valid, it may not be easy to hold that the decision on this basic and material issue would not operate as res judicata against the assessee for a subsequent year”.

In **Radhasoami Satsang vs. CIT (1992) 193 ITR 321 (SC)** the Hon’ble Apex Court observed as under:

“So far as the proposition of law is concerned, it is well settled and needs no further discussion. In taxation matters, the strict rule of res Judicata as envisaged by Section 11 of the Code of Civil Procedure, 1908 has no application. As a general rule, each year's assessment is final only for that year and does not govern later years, because it determines the tax for a particular period. It is, therefore, open to the Revenue/Taxing Authority to consider the position of the assessee every year for the purpose of determining and computing the liability to pay tax or octroi on that basis in subsequent years.”

However, in an interesting comment, the Apex Court said, “We are aware of the fact that strictly speaking res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year *but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year*”.

### **Not pressing the ground**

There is no estoppel against law. No concession of law is permissible. An appellant having not pressed an issue before lower authorities, can still raise and agitate the same before the Tribunal-CIT vs. VMRP Firm (1965) 56 ITR 67 (74) (SC).

### **Conflicting stands by revenue**

The revenue cannot take conflicting stands. It has got the assistance of technical persons and should be consistent. It cannot discriminate between the assesseees. Seshasayee Paper and Boards Ltd. vs. CIT (2003) 260 ITR 419 (Mad.)

### **Conclusion**

From the above discussion, it is evident that, as a general rule, Res Judicata does not apply in tax matters, be it direct tax or indirect tax. As apparent, we come across periodical show cause notices with respect to same assessee on the same matter. However, the principles of consistency, natural justice and comity apply. Based on these, the tax payers can be ascertained of certain aspects in their favour.

Further, we can also understand that, the counter for Res Judicata can be appeal to a higher judicial forum.