NOTES & COMMENTS

LEGAL NATURE OF ADMINISTRATIVE INSTRUCTIONS UNDER THE INCOME TAX ACT

UNDER SECTION 5(8) of the Income Tax Act, 1922 (at present section 119 of the Income Tax Act of 1961), the Central Board of Revenue can issue instructions and directions to all officers and persons employed in the execution of the Act, and they are required to comply with those instructions and directions. It has been held by the Supreme Court in *Ellerman Lines* v. *Commissioner of Income Tax*,[1] that these instructions are of a binding nature, *i.e.*, they have statutory force and are legally enforceable. In holding so, the Supreme Court has deviated from some of its earlier decisions, *e.g.*, the one in *Raman and Raman* v. *State of Madras*;[2] also it has gone against the commonly accepted proposition that these instructions are not of a binding nature.

The language of section 5(8) of the Income Tax Act, 1922 is somewhat similar to that of section 43-A of the Motor Vehicles Act, 1939. The latter provision authorises the state government to issue such orders and directions (of a general character) to a transport authority as it may consider necessary in respect of any matter relating to road transport; and such transport authority "shall give effect to all such orders and directions." It was held by the Supreme Court in the *Raman* case that the directions issued under this statutory provision did not have the status of either law or of rules, as section 43-A conferred "administrative and not legislative" power. The main ground of the court's view was that the statute which provided for the issue of administrative directions also provided for the promulgation of rules (section 133) for which certain formalities, *e.g.*, prepublication of the draft rules, consultation, laying before legislature and publication of the rules in the gazette, were required to be observed. All these salutary precautions could be ignored if the directions issued under section 43-A were given the status of the law, for no such formalities were required while issuing directions. The court further held that it would also create an incongruity if the government could issue directions in respect of those very matters for which it could make rules under many restrictions. It was not necessary for the directions to be published and, if the government so desired, these might take the form of secret communications to the authorities concerned. The rules and directions could not thus be equated, otherwise the rule-making power would become redundant. Further, in the opinion of the court, the word "direction" used in the section was more appropriate

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1. A.I.R. 1972 S.C. 524.
2. A.I.R. 1959 S.C. 694.

for the control of administrative machinery and administrative functions of the government and of the tribunals, rather than laying down rules of the law affecting rights of parties. The court also noted that whenever the Act intended to affect the rights of the parties, the term "rules" was used. The declaration in section 43-A that the directions would be binding on the authorities concerned was also indicative of the fact that they were not laws, for if they were so, no such declaration was necessary.

In *Raman* case, the nature of administrative directions issued under a statutary provision and expressly made, by the statute, binding on administrative authorities was adequately and fully discussed. But in the *Ellerman* case the Supreme Court expressed a contrary view without any reference to the *Raman* case.

There are also other cases decided under the Wealth Tax and the Income Tax Acts, suggesting that the directions issued by the Board do not have statutory force. For instance, it was held by the Supreme Court in *Sirpur Paper Mills* v. *Wealth Tax Commissioner, Hyderabad*[3] that the Board could not issue directions or instructions to the wealth tax officer or the commissioner in exercise of his quasi-judicial function. If these directions would have had statutory force and the same status as the statutory rules, it was not necessary for the court to take the decision it took in the *Sirpur* case. It is trite law that the rules promulgated by a higher executive authority are binding on all quasi-judicial authorities and that there is no objection to the higher authority controlling the discretion or judgment of the lower quasi-judicial authority through rules.[4]

The Supreme Court in the *Ellerman* case, however, relied on its earlier judgment in *Naunit Lal C. Javeri* v. *Appellate Commissioner of Income Tax*.[5] In that case the court did observe that the instructions issued by the Board were binding, but the observation was made in passing, in a casual manner, as the legal effect of the circular of the Board to which reference was made by the Supreme Court was not in issue. The question involved there related to the constitutionality of a particular statutory provision (under the Income Tax Act), which the court decided without having regard to any of the circulars issued by the Board. It is safe to assert that since the legal effect of the circular was not in issue, the counsels on both sides did not argue about the point whether it was legally enforceable or not. Had the matter been argued (and assuming that the counsels would have done their research properly) there was no escape from the ruling in the *Raman* case.

It is not for the first time that the highest tribunal of the land has decided a case, in the area of administrative law, without reference to the previous case law relevant to the point at issue. Several other examples can be given when this has happened. For instance, in *Indian Airlines*

3. A.I.R. 1970 S.C. 1520.
4. See, *In Re Meera Sahib Tharanagar*, (1953) I.T.R. 451, for an income tax case.
5. A.I.R. 1965 S.C. 1375.

Corporation v. *Sukdeo Rai*,[6] Mr. Justice Shelat brushed aside an earlier decision,[7] to the contrary, on the point with which the court was concerned, stating that the earlier case was decided without bringing to the notice of the court the other relevant cases. Failure to consider the earlier decisions on the point involved in a case being decided by the court—whether attributable to the court or to the counsels—results in conflict of judicial opinion.[8] One of the reasons for such failures seems to be that in India we do not have a digest of administrative law. This is a desideratum. It is hoped someone would undertake the venture.

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6. A.I.R. 1971 S.C. 1828.

7. *Mafatlal* v. *State Road Transport Carporation*, A.I.R. 1966 S.C. 1364.

8. See also M.P. Jain and S.N. Jain, *Principles of Administrative Law* 236-41 (1971).

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