

2. The applicant states that another Bench of the CAT (PB) while adjudicating on identical issue qua the same respondents in its judgment dated 04.05.2018 in OA-3730/2015 has allowed a similar claim.

3. In view of the two contradictory judgments passed on the same issue, the applicant presses that the matter may be referred to a Larger Bench to avoid multiplicity of litigations.

4. I find that the decision dated 04.05.2018 in OA-3730/2015 cited by the applicant was rendered subsequent to my decision in question dated 09.01.2018

5. In my view, the applicant cannot be permitted to take benefit of the decision which is *per incuriam* of the earlier decision and raise the issue of conflicting views taken by the Tribunal on the same point at this stage. Had it been earlier to my decision, the position would have been different. Since the decision in OA No.3730/2015 has been taken later i.e. on 04.05.2018, the applicant cannot seek any benefit of the same now.

6. In this regard, I rely on a decision of the Hon'ble Supreme Court in the case of **Sundeep Kumar Bafna vs State Of Maharashtra & Anr.**, [(2014) (16) SCC 623] wherein their Lordships have held as under:-

“15. It cannot be over-emphasized that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the *per incuriam* rule is of great importance, since

without it, certainty of law, consistency of rulings and comity of Courts would become a costly casualty. A decision or judgment can be *per incuriam* any provision in a statute, rule or regulation, which was not brought to the notice of the Court. A decision or judgment can also be *per incuriam* if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a Co-equal or Larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the *per incuriam* rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. **We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of *per incuriam*.** “

Hence, I hold that this MA is not maintainable. The same is accordingly dismissed. However, if the applicant is aggrieved by the decision of the Tribunal, he is at liberty to assail the same before the appropriate forum.

(Praveen Mahajan)
Member (A)

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