

Division bench of ITAT can't examine legal issue while giving effect to majority view

Summary – The Ahmedabad ITAT in a recent case of Jupiter Corporation Services Ltd., (the Assessee) held that At time of giving effect to majority view, it cannot normally be open to Division Bench of Tribunal to go beyond exercise of giving effect to majority views, howsoever mechanical it may seem

Facts

- In the course of penalty proceedings before the Tribunal, the Judicial Member confirmed penalty order whereas Accountant Member deleted same.
- Due to difference of opinion, the matter was referred to Third Member who also upheld the penalty order. He, thus, issued a direction to pass an order in accordance with majority view.
- The assessee raised a plea that in a similar case, the High Court had set aside penalty order, and, the decision of the Third Member was unsustainable in law inasmuch as it was contrary to the decisions of the Division Benches directly on the issue before the Third Member and the department also agreed that at the state of giving effect to the majority views under section 255(4), the Division Bench can take up any other issues, other than simply implementing the majority views on the basis of the views already expressed by the Division Bench Members and the Third Member, irrespective of relevance of such issues, even if any, to the appeal.

Held

- The legal position as it exists now, is that the decisions of the Division Benches bind the Single Member Bench, even when such Single Member Bench is a Third Member Bench.
- The Third Member is bound by the decision rendered by the Benches of greater strength. That is the legal position so far as at least the jurisdiction of Gujarat High Court is concerned but Delhi High Court had, in the case of *P C Puri v. CIT* [1985] 151 ITR 584 has expressed a contrary view on this issue which held the field till the benefit of guidance from jurisdictional High Court. The approach adopted by the Third Member was quite in consonance with the legal position so prevailing at that point of time.
- In the case of *B.T. Patil & Sons Belgaum Constructions (P.) Ltd. v. Asstt. CIT* [2013] 59 SOT 61 (URO)/34 taxmann.com 97 (Pune - Trib.), a coordinate bench of this Tribunal was in seisin of a situation in which by the time the Division Bench was called upon to give effect to the Third Member Bench Decision (reported as *B T Patil & Sons Belgaum Constructions (P.) Ltd. v. Asstt. CIT* [2010] 35 SOT 171 (Mum.), the Division Bench also had the benefit of guidance from High Court on that issue, and the assessee did obtain a direction from the High Court to take into account, *inter alia*, this judicial development as well.

- It was a case in which specific directions were issued by the High Court to take into account the subsequent judicial developments by way of adjudication on the issue in appeal by Courts. The Division Bench has, taking note of these directions and indicating their limitations in the light of these directions, have specifically observed that the Tribunal is bound to follow the directions and the court will do so accordingly. If the Division Bench had the powers to take note of the subsequent judicial developments, post the expression of views by different members constituting the Division Bench and the Third Member Bench, at the stage of giving effect to the majority views, there was no need to take note of High Court's directions and state that this is because of the High Court directions that the subsequent judicial developments are being taken note of. These directions were case specific and cannot be treated as a general interpretation of the scope of judicial work in the course of giving Third Member effect. No other judicial precedent, supporting the stand of the assessee, has been brought on record. In view of these discussions, at the time of giving effect to the majority view, it cannot normally be open to Division Bench of Tribunal to go beyond the exercise of giving effect to the majority views, howsoever mechanical it may seem. In the case of dissenting situations on the Division Bench, the process of judicial adjudication is complete when the Third Member, nominated by President, resolves the impasse by expressing his views and thus enabling a majority views on the point or points of difference. What then remains for the Division Bench is simply identifying the majority views and dispose of the appeal on the basis of the majority views. In the course of this exercise, it is not open to the Division Bench to revisit the adjudication process and start examining the legal issues. The Tribunal does, remains, and shall always remain, subject to the directions of the Court above. At this stage of proceedings under the scheme of the Act, any directions from, the Courts above, are to be loyally and unhesitatingly followed. In case anyone has grievances with the majority views, the aggrieved party can seek appropriate remedy against the same. That situation will come only when the majority view is implemented and a formal order is passed on the appeal. However, just because one of the parties before court has grievance with the majority views, notwithstanding the merits of such grievance, even if any, the court must not delay the judicial process of giving effect to the majority views.