

2001("the Ordinance") and Rule 4 of the Appellate Tribunal Inland Revenue Rules, 2010: -

"130. Appointment of the Appellate Tribunal: - (1) There shall be established an Appellate Tribunal to be called the Appellate Tribunal Inland Revenue to exercise the powers and perform the functions conferred on the Appellate Inland Revenue Tribunal by this Ordinance.

(2) The Inland Revenue Appellate Tribunal shall consist of a Chairman and such other judicial and Accountant Members as are appointed in such numbers and in the manner as the Prime Minister may prescribe by the rules.

(3).....

(4).....

(5).....

(6) The powers and functions of the Appellate Tribunal shall be exercised and discharged by Benches constituted from Members of the Tribunal by the Chairperson of the Tribunal.

(7) Subject to sub-section (8), a Bench shall consist of not less than two Members of the Appellate Tribunal and shall be constituted so as to contain an equal number of Judicial and Accountant Members, or so that the number of members of one class does not exceed the number of Members of the other class by more than one.

(8)

(8A).....

(8AA).....

(9)

(10).....

(11).....

(12) Subject to this Ordinance, the Appellate Tribunal shall have the power to regulate its own procedure, and the procedure of Benches of the Tribunal in all matters arising out of the discharge of its functions including the places at which the Benches shall hold their sittings."

Rule 4. Powers of Bench: - (1) A Bench shall hear and dispose of such appeals and applications made under the relevant Act or the Ordinance as are assigned by the Chairperson or any Member authorized by the Chairperson in this behalf.

(2) In the absence of Chairperson and the Member designated for the purpose, the Senior Member may transfer an appeal or an application from one Bench to another Bench."

It can be seen from the above provisions of law and rule that there shall be established an Appellate Tribunal to be called the Appellate Tribunal Inland Revenue to exercise the powers and perform the functions conferred on the Appellate Inland Revenue Tribunal by this Ordinance. Thus, the Federal Government is empowered to constitute an Appellate Tribunal to hear the appeals arising under the Ordinance or the Acts. The Appellate Tribunal consists of Judicial and Accountant Members. The Appellate Tribunal exercises and discharges powers through Benches constituted by the Chairman of the Appellate Tribunal as per Section 130 of the Ordinance. As per sub-section (12) of section 130 of the Ordinance, the Appellate Tribunal shall have the power to regulate its own procedure, and the procedure of Benches of the Tribunal in all matters arising out of the discharge of its functions including the places at which the Benches shall hold their sittings. Accordingly in exercise of the powers conferred by sub-section (12) of section 130 the Appellate Tribunal formulated the rules under the name and style of "The Appellate Tribunal Inland Revenue Rules, 2010" for smooth, fair and transparent running the daily affairs of the Tribunal. Rule 4 of the said rules clearly and expressly provides that it is sole prerogative of the Chairperson to entrust, allocate, assign the appeals and applications amongst the Benches of the Tribunal or the Chairperson has the power to authorize any Member in this behalf. Sub-rule (2) of Rule 4 further rescue the matter that in the absence of the Chairperson and the Member designated for the purpose, the Senior Member may transfer an appeal or application from one Bench to another Bench. It clearly emerges from the forgoing provisions of law and the rule that after entrustment of the appeals or application to the Bench in accordance with the aforesaid procedure, such Bench shall hear and decide the appeal or application, as the case may be. For the foregoing discussion, it appears that after entrustment of appeals and applications either by the Chairperson or the authorized Member to the Bench or in the absence of Chairperson or the Member designated for the purpose by the Senior Member, the relevant Bench shall hear and dispose of the appeal or application as the case may be.

By applying the aforesaid procedure, the answer to question No.(i) is in negative for the reason that entrustment of main appeal and application to the Bench by the competent authority is a sine qua non for hearing and disposal of appeal or application, as the case may be.

3. Now we come to question Nos. (ii) & (iii), it is our humble view that the entrustment of the main appeal prior to fixation of the stay application to the Bench is necessary for the reason that if the Bench does not hear the main appeal then how it can hear and decide only the stay application which is ancillary to the proceedings. Interim relief is the part of main appeal and it is immutable principle of law which cannot be lightly brushed aside that where a Court is competent to allow final relief, it has also got the jurisdiction to allow interim relief. Reliance may be placed on the judgment reported as Additional Collector-II Sales Tax, Lahore Vs M/s Abdullah Sugar Mills Ltd (2003 SCMR 1026). By following this principle it is essential to entrust the appeal and application simultaneously to the Bench and after that the said Bench shall hear and decide the matter. If this principle is not followed and the appeal is entrusted to one Bench and stay application to another Bench then the aforesaid principle of law would be violated which is not permissible in any cannon of interpretation. Further this kind of procedure may create difference of opinion amongst the Benches. For instance the Bench has granted the stay to the taxpayer and subsequently the application for extension in stay is filed by the same taxpayer on the same issue but fixed to another Bench, it may create difference of opinion between the Benches. Therefore, to avoid such anomaly it would be appropriate to fix all the applications to the concerned Bench having been already entrusted the main appeal by the competent authority.

4. As far as the last question i.e (iv) is concerned, under the law, the Registrar or any other person of the Tribunal cannot entrust the appeal and application to any Bench. According to rule 4 of the ATIR Rules, 2010 the Chairperson himself or Member authorize by him for the said purpose and in the absence of both, the Senior Member without any authorization can only transfer an appeal or an application from one Bench

to another Bench meaning thereby even the Senior Member has no authority to entrust the appeal and application to any Bench. Similarly in terms of sub-rule (2) of rule 32 of the ATIR Rules, 2010, on receipt of the stay application, the registrar or any other person authorized in this behalf, shall only fix the application for hearing as early as possible.


In the present case, the procedure as highlighted above has not strictly been adhered to by the office and only the miscellaneous application for stay has been fixed to this Bench for hearing and disposal thereof without first entrustment/allocation of appeal and miscellaneous application by the competent authority. Therefore, this Bench cannot entertain the miscellaneous application for stay alone without prior adopting the procedure enumerated above. Accordingly, the titled appeal alongwith miscellaneous application for stay is referred back to the AR (Roster) with the direction to place both the appeal along with miscellaneous application for stay before the Hon'ble Chairman for entrustment to any available Bench and thereafter the case be fixed as per law.

Sd/-
(M.M. AKRAM)
JUDICIAL MEMBER

Sd/-
(NADIR MUMTAZ WARRAICH)
ACCOUNTANT MEMBER

CERTIFICATE U/S 5 OF THE LAW REPORT ACT

This case is fit for reporting as it settles the principles highlighted above.


(M. M. AKRAM)
JUDICIAL MEMBER