IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER

IT(SS)A No. 124/RJT/2017
(Assessment Year : 2012-13)

Shri Keshavlal Devkaranbhai Patel, 41- Ami Apartment, Opp. Girnar Cinema, Rajkot	Vs.	The Assistant Commissioner of Income-tax, Central Circle-1, Rajkot
[PAN No. ACW PP4 426 D]		
(Appellant)	..	**(Respondent)**

Appellant by	:	Shri M. J. Ranpura, AR
Respondent by	:	Shri Ranjeet Singh, CIT D.R.

Date of Hearing	19.02.2020
Date of Pronouncement	28.07.2020

O R D E R

PER Ms. MADHUMITA ROY – JUDICIAL MEMBER:

The instant appeal filed by the assessee is directed against the order dated 07.09.2017 passed by the Commissioner of Income Tax (Appeals)-11, Ahmedabad arising out of the penalty order dated 23.07.2014 passed by the ACIT, Central Circle-1, Rajkot under section 271AAA of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for the Assessment Year (A.Y.) 2012-13.

2. Assessee has raised three grounds consisting of mainly two issues, firstly ex-parte dismissal of appeal of the assessee and secondly imposition of penalty under section 271AAA of the Act.

3. Before going to the merit of the case, we shall restrict ourselves to the maintainability validity of ex-parte order passed by the Ld. CIT(A) in this case. As it emerges from the record that the Ld. CIT(A) has dismissed appeal of the assessee in violation of mandate provided in section 250(6) of the Act.

4. The Ld. Counsel for the assessee submitted that during the assessment proceeding and even before the First Appellate Authority assessee submitted his explanation on the issue but Ld. CIT(A) merely on the technical ground rejected the same being not having signature of the appellant, on recording that assessee was not interested in pursuing his appeal. It was also urged by the Ld. AR when the assessee was not present the appellate authority ought to have considered the case on the basis of material available on record. He, thus, prayed for setting aside the issue to the file of the Ld. CIT(A).

5. On the other hand, the Ld. DR supported the order of Revenue authorities.

6. We have heard the respective parties and also perused the relevant materials available on record. We have also considered the ex-parte order passed by the Ld. First Appellate Authority. We find that the order of the CIT(A) is very cryptic and does not discuss about the material already available on record before him. There is no valid and justifiable reasons given by the appellate authority in his order while dismissing the claim of the assessee. The CIT(A) has recorded in his order that assessee has filed written submissions in the office

on 29.08.2017 but without signature. Hence no consideration was made on it by the Ld. CIT-(A); neither we find any discussion in this regard in the order impugned. He dismissed the appeal of the appellant merely for want of prosecution even when the written submission was on record which was bearing no signature of the assessee. In that particular facts and circumstances of the case, in our considered opinion the Ld. CIT-(A) ought to have adjourned the matter and pass a further direction upon the assessee to file a written notes of submission, duly signed, afresh. It is the basic principle that justice is not only be done but it must also be seen to be done. In the absence of that, we find that the order impugned is not in consonance with the spirit and object of sub section 6 of section 250 of the act.

In that view of the matter, we find it fit and proper to set aside the issue is to the file of the Ld. CIT-(A) for fresh adjudication of the same. The assessee is also further directed to cooperate with the Ld. CIT for early disposal of the matter and not to prolong the same by taking unnecessary adjournments. Needless to mention that while adjudicating the matter of fresh the Ld. CIT-(A) shall give and opportunity of being heard to the appellant and to pass a speaking order thereon keeping in mind, inter alia mandate of the provision of section 250(6) of the act in order to rendered true and effective justice.

7. In the result, assessee's appeal is allowed for statistical purposes.

8. Before parting we would like to make certain observation relating to the issue cropped up under present scenario of Covid-19 pandemic as to whether when the hearing of the matter was concluded on 19.02.2020 the order can be pronounced today i.e. on 23.07.2020. The issue has already been discussed by the Co-ordinate Bench in the case of DCIT vs. JSW Ltd. (ITA Nos. 6264 & 6103/Mum/2018) pronounced on 14.05.2020 in the light of which it is well within the time limit permitted under Rule 34(5) of the Appellate Tribunal Rules, 1963 in view of the following observations made therein:

"7. However, before we part with the matter, we must deal with one procedural issue as well. While hearing of these appeals was concluded on 8th January 2020, this order thereon is being pronounced today on the day of 14th May, 2020, much after the expiry of 90 days from the date of conclusion of hearing. We are also alive to the fact that rule 34(5) of the Income Tax Appellate Tribunal Rules 1963, which deals with pronouncement of orders, provides as follows:

(5) The pronouncement may be in any of the following manners :—

(a) The Bench may pronounce the order immediately upon the conclusion of the hearing.

(b) In case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date for pronouncement.

> *(c) In a case where no date of pronouncement is given by the Bench, every endeavour shall be made by the Bench to pronounce the order within 60 days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of exceptional and extraordinary circumstances of the case, the Bench shall fix a future day for pronouncement of the order, and such date shall not ordinarily (emphasis supplied by us now) be a day beyond a further period of 30 days and due notice of the day so fixed shall be given on the notice board.*

8. Quite clearly, "ordinarily" the order on an appeal should be pronounced by the bench within no more than 90 days from the date of concluding the hearing. It is, however, important to note that the expression "ordinarily" has been used in the said rule itself. This rule was inserted as a result of directions of Hon'ble jurisdictional High Court in the case of Shivsagar Veg Restaurant Vs ACIT [(2009) 317 ITR 433 (Bom)] wherein Their Lordships had, inter alia, directed that "We, therefore, direct the President of the Appellate Tribunal to frame and lay down the guidelines in the similar lines as are laid down by the Apex Court in the case of Anil Rai (supra) and to issue appropriate administrative directions to all the Benches of the Tribunal in that behalf. We hope and trust that suitable guidelines shall be framed and issued by the President of the Appellate Tribunal within shortest reasonable time and followed strictly by all the Benches of the Tribunal. In the meanwhile(emphasis, by underlining, supplied by us now), all the revisional and appellate authorities under the Income-tax Act are directed to decide matters heard by them within a period of three months from the date case is closed for judgment". In the ruled so framed, as a result of these directions, the expression "ordinarily"

has been inserted in the requirement to pronounce the order within a period of 90 days. The question then arises whether the passing of this order, beyond ninety days, was necessitated by any “extraordinary” circumstances.

9. Let us in this light revert to the prevailing situation in the country. On 24th March, 2020, Hon’ble Prime Minister of India took the bold step of imposing a nationwide lockdown, for 21 days, to prevent spread of Covid 19 epidemic, and this lockdown was extended from time to time. As a matter of fact, even before this formal nationwide lockdown, the functioning of the Income Tax Appellate Tribunal at Mumbai was severely restricted on account of lockdown by the Maharashtra Government, and on account of strict enforcement of health advisories with a view of checking spread of Covid 19. The epidemic situation in Mumbai being grave, there was not much of a relaxation in subsequent lockdowns also. In any case, there was unprecedented disruption of judicial wok all over the country. As a matter of fact, it has been such an unprecedented situation, causing disruption in the functioning of judicial machinery, that Hon’ble Supreme Court of India, in an unprecedented order in the history of India and vide order dated 6.5.2020 read with order dated 23.3.2020, extended the limitation to exclude not only this lockdown period but also a few more days prior to, and after, the lockdown by observing that “In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of

action arises shall be extended for a period of 15days after the lifting of lockdown". Hon'ble Bombay High Court, in an order dated 15th April 2020, has, besides extending the validity of all interim orders, has also observed that, "It is also clarified that while calculating time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly", and also observed that "arrangement continued by an order dated 26th March 2020 till 30th April 2020 shall continue further till 15th June 2020". It has been an unprecedented situation not only in India but all over the world. Government of India has, vide notification dated 19th February 2020, taken the stand that, the corona virus "should be considered a case of natural calamity and FMC (i.e. force majeure clause) may be invoked, wherever considered appropriate, following the due procedure…". The term 'force majeure' has been defined in Black's Law Dictionary, as 'an event or effect that can be neither anticipated nor controlled' When such is the position, and it is officially so notified by the Government of India and the Covid-19 epidemic has been notified as a disaster under the National Disaster Management Act, 2005, and also in the light of the discussions above, the period during which lockdown was in force can be anything but an "ordinary" period.

10. In the light of the above discussions, we are of the considered view that rather than taking a pedantic view of the rule requiring pronouncement of orders within 90 days, disregarding the important

fact that the entire country was in lockdown, we should compute the period of 90 days by excluding at least the period during which the lockdown was in force. We must factor ground realities in mind while interpreting the time limit for the pronouncement of the order. Law is not brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to interpreted. The interpretation so assigned by us is not only in consonance with the letter and spirit of rule 34(5) but is also a pragmatic approach at a time when a disaster, notified under the Disaster Management Act 2005, is causing unprecedented disruption in the functioning of our justice delivery system. Undoubtedly, in the case of Otters Club Vs DIT [(2017) 392 ITR 244 (Bom)], Hon'ble Bombay High Court did not approve an order being passed by the Tribunal beyond a period of 90 days, but then in the present situation Hon'ble Bombay High Court itself has, vide judgment dated 15th April 2020, held that directed "while calculating the time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly". The extraordinary steps taken suo motu by Hon'ble jurisdictional High Court and Hon'ble Supreme Court also indicate that this period of lockdown cannot be treated as an ordinary period during which the normal time limits are to remain in force. In our considered view, even without the words "ordinarily", in the light of the above analysis of the legal position, the period during which lockout was in force is to excluded for the purpose of time limits set out in rule 34(5) of the Appellate Tribunal Rules, 1963. Viewed thus, the exception, to 90-day time-limit for pronouncement of orders, inherent in rule 34(5)(c), with respect to the pronouncement of orders within ninety days, clearly comes into play in the present case. Of course, there is no, and there cannot be any, bar on the discretion of the benches to re-fix the matters for clarifications because of considerable time lag between the point of time when the hearing is concluded and the point of time when the order thereon is being finalized, but then, in our considered view, no such exercise was required to be carried out on the facts of this case."

9. On the basis of the observation made in the aforesaid judgment we exclude the period of lockdown while computing the limitation provided under Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963. Order is, thus, pronounced in the open court.

10. In the result, assessee's appeal is allowed for statistical purposes.

This Order pronounced in Open Court on	**28/07/2020**

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 28/07/2020
TANMAY, Sr. PS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A) –
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,राजोकट/DR,ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, राजोकट / **ITAT, Rajkot**