IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'SMC' BENCH, MUMBAI

[Coram: Pramod Kumar (Vice President) and Amarjit Singh, JM]

ITA No.366/Mum/2020
Assessment year: 2015-16

The Children Aid Society Employees Co-operative Credit Society Ltd. …… **Appellant**
Chembur Children's Home,
V N Purav Marg, Mankhurd, Mumbai
[PAN:AACAT3065B]

Vs

Income Tax Officer – 27(3)(4) ……**Respondent**
Mumbai

Appearances by
Kumar Kale *for the appellant*
Ms. Jothi Lakshmi Nayak *for the respondent*

Date of concluding the hearing: : February 14th , 2020
Date of pronouncement : July 09th, 2020

ORDER

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 26th November 2019, passed by the CIT(A) for the assessment year 2015-16.

2. Grievances raised by the appellant are as follows:-

Being aggrieved by the order dated 26.11.2019 passed by the learned Commissioner of Income Tax (Appeals)-40, Mumbai, ("Id. CIT(A)"] u/s 250 of the Income-tax Act, 1961 ("Act"), your appellant prefers this appeal, among others, on the following grounds of appeal, each of which is without prejudice to, and independent of, the other:

1. On the facts and in the circumstances of the case, and also in law, the Ld, CIT(A) erred in dismissing the appeal filed the appellant on the grounds of non-compliance by the appellant. Your appellant, therefore, prays that the impugned order be set aside.

2. On the facts and in the circumstances of the case, and also in law, the Ld. CIT(A) erred in confirming the addition of Rs.13,67,073/- made by the Ld. A,O. by disallowing deduction u/s. 80P(2)(a)(i) of the Act claimed by the appellant. Your appellant, therefore, prays that the deduction u/s.80P(2)(a)(i) be allowed.

3. When this appeal was taken up for the hearing, it was noticed that the learned CIT(A) has summarily dismissed the matter ex parte by observing as follows:-

Since the appellant had not filed any clarification before the A.O. the A.O held that the assessee is not eligible for deduction of Rs. 13,67,073/- u/s. 80P disallowed by the A.O is hereby confirmed as the appellant has neither attended nor filed any adjournment letter or filed any clarification even before the undersigned on the dated of hearing posted. Hence the appeal filed by the appellant is dismissed for non-compliance as well as on merits.

4. Learned CIT(A) did not deal with the facts as set out in the statement of facts filed before him, or with the grounds of appeal before him. It is only elementary that irrespective of whether someone appears before him to plead for the appeal, an appeal is to be decided on merits in the light of material on record. Obviously, that exercise is not carried out in the impugned order.

5. Explaining the position as learned Departmental Representative was asked whether he has any objection to the matter being set aside to the file of the CIT(A) for adjudication de nova, after giving yet another opportunity of hearing to the assessee, and in the light of, inter alia, material on record. Learned Departmental Representative graciously leaves the matter to the bench.

6. In view of the above discussions, we deem it fit and proper to remit the matter to the file of the CIT(A) for adjudication with direction as above. Ordered, accordingly.

7. However, before we part with the matter, we must deal with one procedural issue as well. While hearing of this appeal was concluded on 14th February 2020, this order is being pronounced today on 09th day of July, 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 the 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 15 days 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 coronavirus "should be considered a case of natural calamity and FMC (i.e. force majeure clause) maybe 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 refix 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.

11. In the result, the appeal is allowed for statistical purposes, in the terms indicated above. Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/- Sd/-

Amarjit Singh **Pramod Kumar**
(Judicial Member) (Vice President)

Mumbai, dated the 09th day of July, 2020

Nishant Verma Sr.PS

Copies to: *(1)* *The appellant* *(2)* *The respondent*
(3) *CIT* *(4)* *CIT(A)*
(5) *DR* *(6)* *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai