

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH 'SMC' "I (2)", NEW DELHI]**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 2708/Del/2018
Assessment Year: 2009-10

Arunachal Properties Pvt Ltd House no 11 Road No 63 West Punjabhi Baug New Delhi 110026 PAN : AAACA0751F	Vs	The Income tax officer Ward -3 (2) New Delhi
(APPELLANT)		(RESPONDENT)

Revenue by	Shri Jagdish singh Sr. D. R.;
Assessee by	Shri Salil Agarwal Advocate Shri sailesh Gupta Advocate

Date of hearing:	26/02/2020
Date of Pronouncement:	08/06/2020

ORDER

PER PRASHANT MAHARISHI, AM:

1. This appeal is filed by the assessee company against the order of THE COMMISSIONER OF INCOME TAX (APPEALS) – 1, New Delhi [The Ld CIT – A] dated 23/2/2018 for Assessment Year 2009 – 10 wherein he has upheld the order of the learned assessing officer on the merits as well as on the issue of reopening under section 147 of The Income Tax Act [The Act].
2. The assessee has raised following grounds of appeal:-
 1. That the learned COMMISSIONER OF INCOME TAX (APPEALS) has grossly erred both in law and on facts in sustaining an assessment

framed under section 143 (3)/147 of the act at an income of ₹ 1 89590/- as against the returned income being filed at ₹ 5 2131/-

2. That the learned COMMISSIONER OF INCOME TAX (APPEALS) has erred both in law and on facts in sustaining the initiation of proceedings under section 147 of the act and, further completion of assessment under section 143 (3) read with section 147 of the act without satisfying the statutory preconditions for initiation of proceedings and completion of assessment under the act

- 2.1 That the learned COMMISSIONER OF INCOME TAX (APPEALS) has further erred in law and on facts in sustaining the initiation of proceedings under section 147 of the act as there was no tangible material to form a belief that the income of the assessee company has escaped assessment.

- 2.2 That further, the reasons recorded were mere reasons to suspect and were just to make fishing and roving enquiries, such as no independent enquiry was conducted by the assessing officer before issuing such notice under section 148 and as such the proceedings so, initiated under section 148 was a mere pittance and was liable to be quashed as such.

3. That the learned COMMISSIONER OF INCOME TAX (APPEALS) has further erred in law and on facts in sustaining the addition of ₹ 1 37445/- on account disallowance of loss on account of future and options transactions in stock exchange.

- 3.1 That in doing so, the learned COMMISSIONER OF INCOME TAX (APPEALS) has completely ignored and arbitrarily brushed aside the documentary evidences filed by the assessee company and due enquiries being conducted by the assessing officer himself under section 131 of the act (which finds mention in the order of the assessment, but not given to

assessee for rebuttal), wherein the stockbroker has accepted the genuineness of the said losses and thus, the addition so made by learned assessing officer and sustained by the learned CIT (A) was based on mere suspicion and surmises and should be deleted, as such.

- 3.2 That in doing so, THE COMMISSIONER OF INCOME TAX (APPEALS) has failed to appreciate the fact that requested document/evidences were filed in explanation was tendered explaining the aforesaid business losses, but the learned ITO and CIT – A though accepted the gains from futures and options trading, however disallowed losses on base the decision on suspicion, surmises and conjectures and as such the disallowance of it should be deleted.
4. That the learned COMMISSIONER OF INCOME TAX (APPEALS) has erred in law and on facts in relying on judgments totally inapplicable on the facts of the assessee/appellant and further sustaining addition in the hands of the assessee company, without giving any fair and proper opportunity of being heard to the assessee company and passing the assessment in undue has, thereby, violating the principles of natural justice.
5. That the learned ASSISTANT COMMISSIONER OF INCOME TAX has erred both in law and on facts in living interest under section 234A, 234B and 234D of the act which is not leviable on the facts and circumstances of the case of the appellant company.
3. Brief facts of the case shows that assessee company filed its return of income on 28/7/2009 declaring an income of ₹ 5 2131/-. It was processed under section 143 (1) of the act.
4. Subsequently information was received from The Principal Director Of Income Tax (Investigation) Ahmadabad in respect of certain share brokers involved in the practice of client code modification whereby the beneficiary client who have taken contrived losses and sifted out profits during the

financial year 2008 – 09 relevant to assessment year 2009 – 10. Since the assessee company was also involved in the above practice and is one of the beneficiary which has reduced its income due to client code modification amounting to ₹ 1 34760/- through one broker namely M/s Crimson financial services Ltd during the financial year 2008 – 09 relevant to assessment year 2009 – 10, notice under section 148 was issued and served on the assessee on 29/3/2016. Assessee filed a letter dated 24/05/2016 asking the assessing officer to consider the original return filed on 28/7/2009 as return filed in response to notice under section 148 of the act. Assessee requested for the reasons of reopening, which were given to the assessee on 25/05/2016 and notice under section 143 (2) were issued. The assessee filed its objection on 1/6/2016 against the reopening of the assessment which was disposed of by letter dated 18/10/2016. The learned assessing officer sent verification letter on 8/11/2016 under section 133 (6) to Crimson financial services Ltd requiring it to file certain details which were filed on 10/11/2016 about the client code modification. The broker narrated the method of client code modification and stated that there is no record generated or maintained at the time of such modification and hence it is not possible to confirm whether any client code modification has been done in the above account or not. The assessee was also issued a show cause notice which was replied by the assessee on 22/12/2016. By that letter in para number 9 assessee relied on certain judicial precedent against the reopening of the assessment and in para number 10 it is submitted that assessee has placed certain orders through its brokers and the trades have been executed by the respective brokers and confirmed from time to time and assessee denied that there is no fictitious loss as alleged is booked by the assessee company. Assessee further submitted that on 16/12/2016 the list of client code modification was provided by the learned assessing officer to the assessee to show that the total loss of ₹ 1 34760 has been booked, it submitted that above list does not provide any trade number, trade time, order number, order time, trade modification

time, if any. Assessee also questioned the basis of the above information. The assessee also objected that cross-examination may kindly be provided of the person whose statement reliance is placed upon by the AO.

5. The learned assessing officer examined the reply of the assessee and noted all the transaction in a chart wherein 14 transactions are listed showing trade number, trade time, security, buy/sell option, quantity, gross rate per security, gross total, brokerage, service tax, securities transaction tax and total (net of brokerage, service tax and securities transaction tax). He noted that there are transactions in Rolta, HDFC bank and Nifty, where in there is client code modification and assessee has obtained contrived losses. Therefore, on the basis of that chart, he noted that the assessee company has contrived total loss of ₹ 1 34760. He further noted that actions u/s 133A of the income tax act at the premises of various brokers and clients across India on 23/3/2015 took place. He also referred to the investigation conducted by THE SECURITIES AND EXCHANGE BOARD OF INDIA in the client code modification methodology adopted for providing bogus losses. It was found that assessee is one of the beneficiaries of such client code modification. He on perusal of the dematerialized account of the assessee company noted that assessee has carried out transactions during the period from 12/01/2009 to 22/1/2009 in the whole financial year 2008 – 09 and only four contract notes were submitted. The assessee's client code was also modified in all four contracts as supplied by the assessee. He also carried out verification of characters/ numerical modified and the position in the computer keyboard also to note that these errors could not be attributed to human mistakes as complete replacement of one client code with another client code cannot be a human punching error. He also noted that in all the four contracts the client code was modified with only one party that is M/s TCG stock broking limited which is very unlikely that it was due to human error as on all the four occasions on different dates and times, the client code of assessee is replaced with the code of same another person on all the occasions. He further noted that Mr. Satinder Pal Gupta

is a common director in the broker of the assessee M/s Pee Aar securities Ltd and the assessee company and therefore it had the facility to change the client code at its convenience. In view of this, the learned assessing officer made an addition of ₹ 137455/- to the total income of the assessee on account of client code modification and there after determined the total income of the assessee at ₹ 189586/- against the returned income of ₹ 52131/-by passing an order on 22/12/2016 under section 147/143 (3) of the act.

6. The assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned COMMISSIONER OF INCOME TAX APPEALS. He passed an order on 23/2/2018 dismissing the appeal of the assessee against the reopening of the assessment as well as on the merits of the addition. Therefore assessee is in appeal before us.
7. The learned authorised representative filed a paper book and drew our attention to page number [4] and [5] of the paper book which is reasons n recorded based on a survey report and on the basis of information supplied by The Income Tax Investigation Directorate, Ahmadabad. He submitted that merely on the perusal of the above information received from the investigation wing the reopening has been made. He submitted that such a reopening of the assessment is bad and invalid. He referred to letter dated 1/06/2016 by the assessee to the assessing officer filing an objection for reopening of the assessment under section 148 of the income tax act stating that assessee company has duly placed all the orders with the broker with the client code correctly mentioned and assessee is also having possession of all these contract notes and assessee has not received any discrepancy in the said transactions from National stock exchange. It was further stated that in absence of any confirmation by the broker with whom the assessee company has made the transactions, observation made on the basis of some survey cannot be applied to the assessee company hence the reopening of the assessment is invalid. He further stated that the assessing officer has not brought on record any corroborative material, any

information other than the report of the investigation Department for reopening of the assessment and therefore reopening of the assessment is bad in law. He therefore submitted that reopening of assessment has been made merely on the basis of borrowed satisfaction and no inquiry made by ld AO. He relied on the decision of Bombay High Court in case of Coronation Agro industries versus DCIT 390 ITR 464, and decision of coordinate benches in ITA number 3059/del/2018 for assessment year 2009 – 10 and ITA number 2750/del/2017 dated 13/9/2017 where in following decision of Honourable Bombay high court, reopening is quashed. He further argued that there has to be a material even under section 143 (1) of the income tax act to reopen the case of the assessee and in this case there is no material available with the assessing officer. He further submitted that that suspicion alone cannot repose the reasons for reopening of the assessment. He otherwise submitted that the material relied upon by the assessing officer, if any, are totally unsupported. For this proposition he relied on the decision of the honourable Delhi High Court in 398 ITR 198. Therefore he objected to the actions of the learned assessing officer under section 148 of the act stating that reopening proceedings are bad in law as well as on the marriage the additions are not warranted. Thus on reopening he argued that reopening deserves to be quashed.

8. On the merits of the issue, he submitted the statement of accounts from Crimson financial services Ltd for the assessment year 2009 – 10 and copies of all the contract notes issued. It was also put to our attention that the assessee has mentioned before the assessing officer that it is the onus on the assessing officer to show that there is an escapement of income on the basis of the above evidence. He further referred to the letter dated 10/11/2016 mentioned by the Crimson financial services private limited to the assessing officer wherein it has been stated that there is no record generated/maintained at the time of client code modification and hence it is not possible to confirm whether any client code modification has been

made in the above account of the assessee or not. Therefore it was submitted that there is no confirmation from the broker or from any other party that the loss of ₹ 134760 incurred by the assessee is a contrived loss.

9. The learned departmental representative produced detailed survey report dated 24/9/2019 received from The Assessing Officer. He referred to the survey report dated 11/3/ 2016 received from Assistant Director Of Income Tax (Investigation), where he referred to several annexure attached to that particular survey report. He stated that the details of transactions where the assessee is a beneficiary and client code has been entered into by modifying the client code of the assessee. Therefore it was submitted that there is no infirmity in the action of the learned assessing officer to reopen the case of the assessee as there is a definite, concrete and attentive material found during the course of survey. He submitted that for the purpose of reopening of the assessment the assessing officer is required to frame a reasonable view about the escapement of income. He therefore submitted that the assessing officer had material which is tangible. He further stated that it is not merely a suspicion but the concrete information available with the revenue that the account of the assessee has been modified by changing the client code from the account of the assessee to the account of another company TCG stock broking private limited. He submitted that client code modification is possible and acceptable when one or two keys of a client code which are placed nearby on the computer keyboard may be mistyped by operator. In this case he submitted that the total client code which is not only comprising of one key but large number of keys have been modified, that too the code of the assessee with another client code of the same persons on all four occasions, shows that the transaction is bogus. Therefore it is apparent that assessee has incurred bogus loss and such loss has been received by changing the client code of the assessee and entering those transaction in the name of the TCG stock broking private limited, of same group of companies as that of broker.

10. We have carefully considered the rival contentions and perused the orders of the lower authorities. We also carefully gone through the reasons recorded by the assessing officer for reopening of the assessment. The assessing officer refers to the survey report dated 11/3/2016 with respect to the client code modification and assessee being beneficiary client has taken contrived losses and shifted out profits during the financial year 2008 – 09 to 2010 – 11. He also mentions that SEBI has conducted a probe into the modification of the client Codes by the brokers pursuant to observation of the finance ministry about many such modifications taking place in derivatives transactions at the National stock exchange. Therefore, a detailed investigation was carried out and on the basis of the data received from National stock exchange, after analysis of data received from NSE and after considering the contentions of 12 brokers and few of their clients across India, it was concluded that client code modification has been used as a tool for tax evasion. The assessee company has reduced its income by ₹ 1 34760 through one of the broker Crimson financial services. The learned assessing officer received above information and found that assessee has claimed the above loss which is not genuine. The basis of the above reason was a report of survey and the details of the transaction carried out by the assessee. The report shows that it is not a genuine error because of the reason that it is not wrong punching of one or two keys but, code has been replaced. Therefore, it cannot be considered as a genuine loss. There is no assessment of income of the assessee u/s 413 (3) of the act prior to issue of notice u/s 148 of the act. He perused the above information with the return of income filed by the assessee. He noted that assessee company has directors namely Mrs. Minakshi Gupta and Mr. Satinder pal Gupta. He found that there are no sales shown by the assessee. Only interest income is earned. Same is adjusted against expenses. Derivative loss is claimed in profit and loss account. On this basis he reopened the assessment. According to us, he has tangible information in the form of various reports of investigation, which is also

backed by SEBI report, there was no assessment on the assessee on the return filed, and he found that there is a derivative loss booked by the assessee. Such loss is not genuine as per those reports. Thus we do not find any reason to interfere with the order of the Id AO and CIT (A) in upholding reopening of assessment.

11. The decision of the honourable Bombay High Court in 390 ITR 464 Coronation Agro industries Ltd versus The Deputy Commissioner Of Income Tax dated 23 November 2016 which is relied by the Id AR clearly says as under :-

“3. The reasons in support of the impugned notice relies upon the information received from the Principal Director of Income Tax that the petitioner has benefited from a client code modification by which a profit of Rs.22.50 lakhs was shifted out by the petitioner's broker, resulting in reduction of the petitioner's taxable income. The only basis for forming the belief is the report from the Principal Director of Income Tax and the application of mind to the report of the Assessing Officer along with the record available with him. This information and application of mind has led the Assessing Officer to form a reasonable belief that there is not only an escapement of income but there has been failure to truly and fully disclose all material facts and information as the *modus operandi* of shifting profits was not known to the Revenue as not disclosed by the petitioner when the Assessing Officer passed the order in regular assessment proceedings.

4. We note that the reasons in support of the impugned notice accept the fact that as a matter of regular business practice, a broker in the stock exchange makes modifications in the client code on sale and / or purchase of any securities, after the trading is over so as to rectify any error which may have occurred while punching the orders. The reasons do **not indicate the basis for the Assessing Officer to come to reasonable belief that there has been any escapement of income on the ground that the modifications done in the client code was not on account of a genuine error, originally occurred while punching the trade.** The material available is that there is a client code modification done by the Assessee's broker but there is no link from there to conclude that it was done to escape assessment of a part of its income. *Prima facie*, this appears to be a case of reason to suspect and not reason to believe that income chargeable to tax has escaped assessment.

5. In the above view, *prima facie*, we are of the view that the impugned notice is without jurisdiction as it lacks reason to believe that income chargeable to tax has escaped assessment.”

[Underline supplied by us]

12. Hon high court held that there was no reasons mentioned by the AO in that case that CCM was not on account of genuine error. **In the present case the revenue has shown that it is not a genuine error as complete keys have been changed.** Therefore the decision of the honourable Bombay High Court does not apply to the facts of the case. It is also not a reason to suspect because altogether different keys replaced of client code clearly shows that it cannot be reason to suspect but an intended the change in the code of the client to transfer the profit or loss of one client to another client. The broker is also identified, director is also identified, and thus, in the present case complete information was found which gives a reason to believe that transaction is bogus. Ld AO also received the information that originally loss transaction were entered in to in the name of TCG stock broking Private Limited , which was later on shifted in assessee's account by mentioned assessee's PAN. Thus the decision of Honourable Bombay high court is altogether on different facts as are before us, hence, it is distinguishable on facts.
13. The learned authorised representative has also placed before us the two decisions of SMC benches which both relied upon the decision of the honourable Bombay High Court in 390 ITR 464 and has quashed the reopening of the assessment. However we have already dealt with this issue stating that honourable Bombay High Court dealt with a case where the AO could not show that the code replaced in that particular case was not a genuine error. However we have already held that in the present case the total client code completely changed as mentioned by the assessing officer which cannot be a genuine error or a punching error. Thus it is clearly proved that in case of the assessee it is contrived the loss only. In view of the above facts we are of the clear view that there is no infirmity in the reasons recorded by the learned assessing officer and in the reopening of the assessment under section 147 of the act. The assessing officer had tangible material, clear-cut information about the change of client code of assessee by TCG stock broking Ltd, exact nature of the changes are also

available, it was also known to him that it is not miss punching or but complete change of all the keys. Such finding was also backed by the survey report. Ld AR also relied heavily up on the decision of Honourable Delhi High court in [2018] 99 taxmann.com 409 (Delhi)/[2017] 398 ITR 198 (Delhi). However looking to the facts of the present case factual metrix heavily tilts on another decision of Honourable Delhi High court in [2019] 112 taxmann.com 204 (Delhi)/[2020] 268 Taxman 198 (Delhi) . hence reliance on the decision of Sahb Infrastructure does not help the case of assessee. In view of this, we do not find any infirmity in his action. Therefore ground number 2 of the appeal is dismissed.

14. As ground number three deals with the addition on its merit. The only argument of the assessee that it is placed on record all the documents and enter evidences in the shape of contract notes to discharge the burden. He therefore submitted that the loss has arisen in based on the above contract notes. It is also the claim that the share broker has categorically stated that he does not have any record of client code modification. On careful analysis of all the arguments submitted by the assessee we find that the client court has already been modified in the case of the assessee where the transactions belonged to some other company but were later on modified in the name of the assessee company. The assessee did not show that it has placed such orders before the broker; the assessee is merely showing the contract notes. Contract notes are merely colorable documents to show that client code modification was carried on. It merely justifies the transaction of obtaining loss. The assessee did not show anything that it has placed orders for purchase of the above securities before the broker, necessary deposit of margin was made, the rates at which assessee placed in order, the rates at which the necessary sales were purchased and thereafter loss has occurred to the assessee. In fact if the assessee has placed an order to the broker for purchase of the above shares, assessee should have given a margin to the broker. No such details were produced by the assessee. When the assessing officer has categorically shown that

there is a genuine allegation that the transaction entered into by the assessee of booking the loss is not genuine, the duty is cast upon the assessee to show that they are genuine. The assessing officer has categorically shown whole transactions with evidence to the assessee but assessee merely relied on the paperwork of client code modification. None of the evidences placed by the assessing officer were rebutted by the assessee. Further, the learned assessing officer has not relied upon the statement of the broker of the assessee because he did not confirm anything. Therefore, there is no requirement of giving is cross-examination because the addition has not been made on the basis of his statement. The assessee also did not show by producing the director and the broker that client code modification has been done for some genuine reasons. In view of this, we do not find any infirmity in the orders of the lower authorities in making the addition of ₹ 1 37455/- on account of client code modification as alleged bogus contrived loss of trained by the assessee. Accordingly we dismiss ground number three and four of the appeal.

15. Ground number five is with respect to the charging of interest which is consequential in nature and therefore same is dismissed.
16. This order is passed beyond 90 days of hearing due to extraordinary circumstances . Coordinate bench recently has dealt with this issue in 2020] 116 taxmann.com 855 (Mumbai - Trib.) where it has been held as under :-

11. However, before we part with the matter, we must deal with one procedural issue as well. While hearing of these appeals was concluded on 19th February 2020, this order thereon is being pronounced today on the day of 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.

12. 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 v. 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.

13. 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 work 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 15-3-2020 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.

14. 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 be 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 v. 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 be 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 refile 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."

17. We respectfully following that , pronounce this order.
18. In the result the appeal of the assessee is dismissed.

Order pronounced in the open court on : **08/06/2020**.

-Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Date : **08/06/2020**.

Copy forwarded to:

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order.	