IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

(BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT & SHRI WASEEM AHMED, ACCOUNTANT MEMBER)

ITA. No: 2526/AHD/2017 **(Assessment Year: 2014-15)**

Gujarat Maritime Board, Sagar Bhavan, Sector 10A, Opp. Air Force Station, Gandhinagar-382010	**V/S**	**ACIT-(Exemption) Circle-1, Ahmedabad**
(Appellant)		**(Respondent)**

PAN: AABCG 6676L

Appellant by : Shri S.N. Soparkar & H.P. Singh, A.R. **Respondent by : Shri Virendra Ojha, CIT/ D.R.**

(आदेश)/ORDER

Date of hearing : 11 -02-2020
Date of Pronouncement : 01-06-2020

PER WASEEM AHMED, ACCOUNTANT MEMBER

1. This appeal filed by the Assessee is directed against the order of the Ld. CIT(A)-9, Ahmedabad dated 10.07.2017 pertaining to A.Y. 2014-15.

2. The assessee has raised following grounds of appeal:

1.Learned CIT (A) has erred in law and on facts in confirming the view taken by AO in holding that the activities carried out by the appellant were in the nature of business and confirmed computation of the excess of income over expenditure of previous year arising out of charitable activity of appellant as Income from business as per the manner prescribed u/s. 11(4) of the Act. Both the lower authorities have not appreciated the fact that the appellant has been granted registration u/s. 12A of the Act qualifying its income exempt from taxation as total expenditure (capital and revenue) incurred by the appellant is for "advancement of the object of general public utility".

2.Learned CIT (A) has erred in law and on facts in confirming the view taken by AO in holding that the appellant is covered by the first and the second proviso to Section 2(15) of the Act and hence, provisions of Section 13(8) would be applicable.

3.Learned CIT (A) has erred in law and on facts in upholding the contention of the AO that the activities carried out by the appellant are business in nature and erred further in not granting exemption benefit of 15% of its gross receipts.

4.Learned CIT (A) has erred in law and on facts in upholding the contention of the AO that the activities carried out by the appellant are business in nature and erred further in not granting deduction of "addition to assets" Rs. 145,96,81,521 as application of income.

5. Learned CIT (A) has correctly held that the Dividend income as exempt income of the appellant but erred in law and on facts in holding that the same was subject was appellant craves leave to add, amend, alter, edit, delete, modify or change all or any grounds of appeal at the time of or before the hearing of the appeal.

3. The only issue raised by the assessee is that the ld. CIT-A erred

4. The fact in brief is that the assessee is a trust constituted under the Gujarat Maritime Board Act, 1981 and engaged in the development and maintenance of small port in the state of Gujarat. The AO observe that the clause 38 and 39 of Gujarat maritime Board Act 1981 entitles the assessee to fix rate of services provided by it. Further AO observed that the assessee has earned income under the head as detailed below:

1. *Port Maintenance Facilities*
2. *Marine Services*
3. *Clearing, forwarding and stevedoring,*
4. *4. Storage Area and land rentals*
5. *Equipment and Harbour Craft rentals]*
6. *Ship Recycling Yard*
7. *Ship Building yard*
8. *Income from Other Port Services*
9. *GOG Administrative Charges @ 15%*

5. Accordingly the AO opined that the receipt describes above represent the activities carried out are in the nature of advancement of any other object of general public utility Therefore same is covered by the proviso to section 2 (15) of the Act.

6. The assessee contended that it does have any business undertaking and the proceeds collected against services were utilized for the furtherance of it charitable objective. Therefore the provision of proviso to section 2(15) does not apply. The assessee in this regard placed its reliance on Hon'ble SC judgment in case of Commissioner Sales Tax vs. Sai Publication [2002] 258 ITR 0070.

7. However, the AO disagreed with the contention of the assessee and held that the assessee is not carrying out any charitable activity as defined under section 2(15) of the Act. Accordingly, the AO denied the exemption to the assessee under section 11 of the Act.

8. Aggrieved assessee preferred an appeal to the learned CIT (A) who confirmed the order of the AO by observing as under:

> *5.2 I have carefully considered the rival contentions, observation of the A.O as well as the case law relied upon by the appellant. Identical issues with regard to applicability of proviso to sec.2(15) r.w.s. 13(8) of the Act were raised during the A.Y.2011-12 in the case of the appellant. CIT(A), Gandhinagar vide order No.CIT(A) GNR/383/2013-14 dated 7/5/2014 has dealt with the said issue. CIT(A), Gandhinagar has held as follows :-*
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> *"6.1 I have considered the facts of the case, assessment order including submission of the Appellant and the observation of the AO in the light of the provisions of the Act as applicable for the year under consideration. The effective ground is that the appellant is carrying out port service activity as per provisions of Gujarat Maritime Board Act, 1981, and therefore, it should be treated as 'charitable body' particularly when the registration under Section 12A is granted. In this connection, it is admitted position of law that definition of 'charitable purpose' is narrowed down by the Finance Act, 2008 by inserting first proviso- to that section. The relevant extract of the said provision is reproduced hereunder:*
>
> *"charitable purpose" includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) } and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:*
>
> *Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:*
>
> *Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty-five lakh rupees or less in the previous year"*
>
> *As per the aforesaid amended definition of "charitable purpose" it is quite clear that an assessee whose main activity is of object of general public utility in the nature of trade, commerce or business by charging cess or fees cannot be regarded as 'charitable body'.*
>
> *6.2 The aforesaid position of law is confirmed by Central Board of Direct Taxes'(CBDT) vide its Circular No. 11 of 2008 dated 19th December, 2008. In the said circular, CBDT has clarified that the activities in the nature of advancement*

of any other object of general public utility in the nature of trade, commerce or business, by charging cess or fee shall be excluded from the definition of 'charitable purpose, as provided in Section 2(15) of the Act. Further, CBDT has also directed to verify each fact of the case to arrive at the decision that such activity is not charitable in nature.

6.3 On careful consideration of details submitted by appellant along with audited accounts and Gujarat Maritime Board Act, 1981, it is observed that the main object of Appellant is to provide port service, which includes port infrastructure facilities and marine services, to the various business houses. None of the objects/activities of the Appellant falls within the definition of

(a) medical

(b) relief to poor

(c) education: and

(d) preservation of monuments or places or objects of artistic or historic interest.

Meaning thereby, the main object of the Appellant is of the advancement of object of general public utility. Further on perusal of the various schedules of income and expenditure accounts as reproduced by AO at para-5 and 9 of the assessment order, it is undisputed fact that income of Rs. 191,88,05,258 includes income from port infrastructure facilities, marine services, clearing, forwarding and stevedoring, storage rental, equipment rental, income from other port services and GoG Administrative charges, which suggests that Appellant is carrying out activity in the nature trade, commerce of business by charging cess or fees. Therefore, in the light of aforesaid Circular of CBDT and provisions of amended Section 2(15), the activity of Appellant does not fall within definition of 'charitable purpose'.

6.4 The Appellant has relied on the decision Himachal Pradesh Environment Protection and Pollution Control Board v/s CIT 9 ITR (Trib) 604 [2011]. However, the facts of the said case are different from the facts of the Appellant's case as much as in that case the main object of the assessee was preservation of environment which is a fourth limb of definition of 'charitable purpose' inserted by the Finance (No. 2) Act, 2009, w.r.e.f. 1-4-2009 whereas in the present case of the Appellant the main object is of the advancement of other object of general public utility as discussed elaborately herein above. As already discussed above, in the case of first four limbs of definition of charitable purpose, first proviso to Section 2(15) shall not be attracted, and therefore in the light of the said provision Hon'ble I.T.A.T. has decided the issue in favour of assessee in the case of Himachal Pradesh Environment Protection & Pollution Control Board.

6.5 The Appellant has also relied on the decision of Delhi High Court in the case of ICAI (347 ITR 99), the main object of assessee was of imparting education. The coaching classes and other diploma courses conducted by the assessee were held to be ancillary and incidental to the main object of providing main activity of providing education of chartered accountancy course. In that perspective, the Hon'ble High Court has decided the case in favour of ICAI. However, in the lights of the fact that the Appellant is carrying out advancement of other object of public utility in the name of trade, commerce or business by charging cess/fee, ratio of the said decision cannot be applied in the present case.

6.6 Further Appellant has relied on the decision of Hon'ble Ahmedabad I.T.A.T. in the case of Sabarmati Ashram Gaushala Trust (supra). In that case, the main object of the Trust was of relief to poor i.e. one of the first four limbs of definition of 'charitable purpose'. Therefore, the Hon'ble I.T.A.T. has decided the issue in favour of the assessee. Further, it is pertinent to note that the Hon'ble I.T.A.T. has categorically mentioned that the this decision is delivered in peculiar ; facts and circumstances of the case, and shall not be taken as a precedent for f charitable trusts doing business or trade under the garb of charitable activities. In view of these facts that the Appellant is carrying out activities in the nature of trade, , commerce or business, as aforesaid, this decision is not applicable in its case.

6.7 In view of the aforesaid legal position, I am of the considered opinion that the activity of the Appellant is in the nature of advancement of other object of general public utility in the nature of trade commerce and business by charging fees and therefore is not in the nature of 'charitable purpose' as defined in Section 2(15) of the Act. I also rely on the decision of Hon'ble Andhra Pradesh High Court in case of Andhra Pradesh State Seeds Certification Agency v/s CCIT 212 Taxman 493 [2013] wherein petitioner was registered under Andhra Pradesh Public Societies Registration Act and was carrying on functions of certification agency under Seeds Act, 1966 and the Hon'ble High Court has held that as the assessee was rendering j its services directly to clients/agents who were engaged in trading of certified seeds ; with profit motive hence activities were not for 'advancement of any other object of ' general public utility and hence not charitable in view of first proviso to Section , 2(15) of the Act. In the present case of the Appellant, it is admitted position that I there is a huge reserve & surplus and a/so Appellant earned substantial profit in the / year under consideration and therefore, profit motive of the Appellant is clear. Therefore, it is quite clear that the Appellant is engaged in trade, commerce or business and hit by first proviso to Section 2(15).

7. The Appellant has contended that as it is granted registration under Section 12A of the Act (which is in effect in the year under consideration), the deduction under Section 11 cannot be denied in view of the fact that it is carrying out activities as per its objects as enumerated in Gujarat Maritime Board Act, 1981. In this connection, it is pertinent to note the provision of sub-section (8) of Section 13 which reads as under:

Section 13:

Section 11 not to apply in certain cases.

"13. –

……

(8) Nothing contained in section 11 or section 12 shall operate so as to exclude, any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year.

As I have already decided the issue against the appellant with respect to applicability of first' proviso to Section 2(15) of the Act, as per provision referred herein above i.e. Section 13(8), the provision of section 11 is not applicable and no exemption can be granted under Section 11.

On holistic consideration of the facts discussed herein above, the AO was correct in computing total income treating the Appellant's activity as business income and denying benefits available under Section 11 of the Act. Thus, all the 5 grounds of appeal herein above are dismissed."

5.3 Respectfully agreeing with the decision taken by the CIT(A) for A.Y.2011-12, I am of the considered opinion that the appellant is covered by the first and second proviso to section 2(15) and hence sec. 13(8) would be applicable to the appellant. Accordingly, the appellant cannot get the benefit of sec.11 & 12 of the Act. The appellant will also not be eligible for accumulation @ 15% u/s 11(1)(a) of the Act. As the appellant is being treated as AoP and taxed as per the provisions of section 28 to 44 of the Act, the appellant cannot claim expenditure on fixed assets as application of income. As far as ground no. 3 is concerned the income of the appellant would be computed as per the provisions of section 28 to 44 of the Act. Accordingly, appellant would eligible to claim depreciation on the block of assets. AO is directed to calculate the same and allow the depreciation. The quantum spent on fixed asset would be capitalized. Accordingly, the ground of, appeal Nos. 1, 2 & 3, are hereby dismissed.

9. Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

10. The learned AR before us submitted that the issue involved in the case on hand has already been decided by this tribunal in the own case of the assessee in the ITA number 2991/Ahd/2013, 361, 1622/Ahd/2014, 829 and 830/Ahd/2017 for the A.Y. 2009-10 to 2013-14 vide order dated 30th July 2019 in its favour. Accordingly the learned AR prayed to allow the benefit of the exemption under section 11 and 12 of the Act.

11. On the other hand the learner DR vehemently supported the order of the authorities below.

12. We have heard the rival contentions of both the parties and perused the materials available on record before us. At the outset we note that the issue raised by the assessee in the present appeal has already been decided by this tribunal in favour of the assessee in its own case as contended by the learned AR for the assessee. The relevant extract of the order is reproduced below:

> *7. We have heard both the sides and perused the material on record. The assessee Gujarat Maritime Board is constituted under the provision of Gujarat Maritime Board, 1981 and established u/s. 3 of the act for the purpose of administering, controlling and managing minor ports in the State of Gujarat. As per section 4 of the act, the Board shall constitute of such member of board not being less than 5 and not more than 12 who shall be appointed by the State Government as mentioned in the section 4 of Gujarat Maritime Board Act, 1981. Section 73 for the Gujarat Maritime Act, 1981 state that all money received by it shall be credited to a fund called the general account of the miner ports and section 74 of the act state that amount credited to the general account u/s. 73 shall be applied by the board in payment of charges as specified in section 74 of the act. Under the Gujarat Maritime Board Act, 1981 rules and regulations has been established for the establishment of Gujarat Maritime Board, staff of the*

board, property and contract works and services to be provided at miner ports by the board, imposition and recovery of rates at ports, borrowing power of board, revenue expenditure, supervision and control of state government, penalties, miscellanous etc. After perusal of the various provisions of the Gujarat Maritime Board Act, 1981, it is observed that management and control of the assessee trust was with the state government and there was no profit motive which is categorically clear from the provision of section 73, 74 and 75 of the Gujarat Maritime Board Act, 1981. We have also gone through the judicial pronouncements referred by the ld. counsel on the issue in the appeal. In the case of the assessee itself, the Co-ordinate Bench of the ITAT vide ITA No. 2933/Ahd/2009 for assessment year 2003-04 adjudicated on 27th April, 2016 held that assessee is a charitable trust engaged in the advancement of any other object of general public utility enumerated in section 2(15) of the Income Tax act, is not business undertaking. The relevant part of the decision of the Co-ordinate Bench of the above referred case is reproduced as under:-

> *"7.5 From going through the above decision of the Co-ordinate Bench which is relied on the decision of Hon'ble Apex Court, that too in assessee's own case, i.e., CIT vs. Gujarat Maritime Board, reported in (2007) 295 ITR 561 (SC), wherein the Hon'ble Apex Court has observed that the appellant is established for the predominant purposes of development of minor ports within the State of Gujarat, the management and control of the Board is essentially with the State Government and there is no profit motive, as indicated by the provisions of section 73, 74 and 75 of the 1981 Act. The income earned by the Board is deployed for the development of minor ports in the State of Gujarat and therefore, they are entitled to be registered as charitable trust u/s 12A of the Income-tax Act, 1961. Therefore, respectfully following the decision of Hon'ble Apex Court and the Co-ordinate Bench, Ahmedabad (supra) in assessee's own case, we are inclined to believe that the assessee is a charitable trust carrying on activity of advancement of public utility without any profit motive and is required to be assessed as per the provisions of Section 11(1) of the Income-tax Act, 1961. Accordingly, this ground of the assessee is allowed."*

We have also gone through the decision of Co-ordinate Bench of the ITAT in the case of assessee itself vide ITA No. 36/Ahd/2011 pronounced on 28th Jan, 2012 wherein the issue was decided in favour of the assessee. The relevant part of decision is reproduced as under:-

> *"4. Having heard the submissions of both the sides, the provisions of section 12AA(3) prescribes that once a trust or an institution has been granted registration u/s. 2AA(3) and subsequently if the Commissioner finds that one of the condition, viz. the activity of*

> *the trust is not genuine or that the activity of trust not been carried out, then the Commissioner has power to cancel the registration granted u/s. 2AA(l) of IT Act. In the above cited decision of Ahmedabad Urban Development(supra), it was held that when under the Act a specific provision for cancellation of registration is prescribed and the cancellation is possible under specific condition then fulfillment of those conditions are necessary for invoking the jurisdiction u/s. 2AA(3). In the present case the reason for cancellation for registration was that the definition of charitable purpose u/s. 2(15) has been amended therefore the assessee has not carried out the activity as per the definition of "charitable purposes". This very issue has already been dealt with by the Respected Benches, therefore respectfully following these decisions we hereby reverse the view taken by the Id.Commissioner and direct not to cancel the registration u/s. 21AA(3) of the I. T. Act. Grounds raised by the assessee are hereby allowed."*

We have also gone through the decision of Hon'ble Gujarat High Court Vide 83 taxman.com 366 (Guj) CIT vs. Gujarat Industrial Development Corporation dated 28th June, 2017 wherein after following decision of Ahmedabad Urban Development Authority vide 83 taxman.com 78 it is held that claim of fees or cess is incidental to the object and purpose of the act and even the case would not fall under the second part of proviso to section 2(15) of the act. It is further held that as the activities of the assessee is for advancement of any other object of general public utilities, the same can be of or charitable purpose and therefore the asssessee corporation shall be entitled to exemption u/s. 11 of the act. In the case of the Ahmedabad Urban Development Authority vs. ACIT(E) 92017) 83 taxman.com 78, the Division Bench of the Hon'ble Jurisdictional High Court has held that the activity carried by the Ahmedabad Urban Development Authority cannot be said to be for commercial purpose and proviso to section 2(15) of the I.T. Ac shall not be applicable and that the said Ahmedabad Urban Development Authority shall be entitled to exemption u/s. 11 of the act. The Division Bench of the Hon'ble Gujarat High Court has also observed that merely because AUDA is charging fees and/or cess, the activities cannot be said to be in the nature of trade, commerce or business and consequently held that the proviso to section 2(15) of the act shall not be applicable and therefore the assessee is entitled to exemption u/s. 11 of the act. At para 27 of the decision of Hon'ble Gujarat High Court in the case of CIT vs. Gujarat Industrial Development Corporation, it is also held that the charitable activities require operational/running expenses as well as capital expenses to be able to sustain and continue in long run and the petitioner has to be substantially self sustaining in long term and should not depend upon Government. In other words, tax payers should not subsidize the said activities which nevertheless are charitable. In the concluding para in the case of CIT vs.

Gujarat Industrial Development Corporation 83 taxman 363 (Guj) Hon'ble Gujarat High Court has adjudicated the issue in favour of the assessee wherein it is held as under:-

> *"17. Applying the aforesaid decision to the facts of the case on hand and the objects and purpose for which the assessee-Corporation is established and constituted under the provisions of the Gujarat Industrial Development Act, 1962 and collection of fees or cess is incidental to the object and purpose of the Act, and even the case would not fall under the second part of proviso to Section 2 [15] of the IT Act. As the activities of the assessee is for advancement of any other object of general public utility, the same can be for "charitable purpose" and therefore, the assessee Corporation shall be entitled to exemption under Section 11 of the Act. No error has been committed by the learned Tribunal in holding so. We are in complete agreement with the view taken by the learned Tribunal."*

In the light of the above facts and findings, it is clear that the activities carried out by the assessee is for advancement of any other object of general public utility without any intention of the profit motive after considering the provision of the Gujarat Maritime Board Act, 1981 and fact of the case, it cannot be said that the activities carried out by the assessee are in the nature of trade commerce or business. It is observed that predominant object of the assessee is to administer control on miner ports in the State of Gujarat and there is no profit motive as demonstrated by the provision of section 73, 74 and 75 of the Gujarat Maritime Board Act, 1981. The Gujarat Maritime Board is under legal obligation to apply the income which arises directly and substantially from the business held under trust for the development of minor ports in the state of Gujarat. Further after following the decision of Hon'ble Gujarat High Court in the case of AUDA and GIDC, the fees collected by the assessee is incidental to the object and purpose of attainment of the main object for development of mining ports as enumerated in the provision of the Gujarat Maritime Board Act, 1981,therefore, we consider that activity of the assessee is for advancement of any other object of general public utility and not hit by the proviso to section 2(15) of the act, therefore, the assessee is entitled for exemption u/s. 11 of the act. Therefore, this ground of appeal of the assessee is allowed.

13. In view of the above we find that the issue involved has already been decided by this tribunal in the own case of the assessee in its favour. Accordingly we set aside the finding of the learned CIT(A) and direct the AO to allow the benefit of the exemption to the assessee under section 11 and 12 of the Act. Hence the ground of appeal of the assessee is allowed.

14. The issue raised by the assessee in the additional ground of appeal is that learned CIT (A) erred in applying the provisions of section 13(1)(d) of the Act with respect to the investment made in various Public-Sector Companies/Corporation.

15. At the outset we note that, the learned AR at the time of hearing has not advanced any argument with respect to the impugned ground of appeal. Therefore we do not find any reason to interfere in the order of the authorities below. Hence the ground of appeal of the assessee is dismissed.

16. Before we part with the issue/appeal as discussed above, it is pertinent to note that the clause (c) of rule 34 of the Appellate Tribunal Rules 1963 requires the bench to make endeavour to pronounce the order within 60 days from the conclusion of the hearing. However the period of 60 days can be extended under exceptional circumstances but the same should not ordinarily be further extended beyond another 30 days. In simple words the total time available to the Bench is of 90 days upon the conclusion of the hearing.

However, during the prevailing circumstances where the entire world is facing the unprecedented challenge of Covid 2019 outbreak, resulting the lockdown in the country, the orders though substantially prepared but could not be pronounced for the unavoidable reasons within the maximum period of 90 days. In such circumstances we find that the Hon'ble Mumbai Tribunal in the case of **JSW Limited *Vs* Deputy Commissioner of Income Tax in ITA No. 6103/MUM/2018 vide order dated 14-5-2020** extended the time for pronouncing the order within 90 days of time by observing as under:

> *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. To sum up, the appeal of the assessee is allowed, and appeal of the Assessing Officer is dismissed. Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Considering the above, we express to pronounce the order beyond the period of 90 days. Accordingly, we proceed to pronounce the order as on date.

17. In the result the appeal of the assessee is partly allowed.

Order pronounced in Open Court on	01 - 06 - 2020

Sd/- Sd/-

(RAJPAL YADAV)
VICE PRESIDENT **True Copy**

(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad: Dated 01 / 06 /2020

Rajesh

Copy of the Order forwarded to:-
1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad