

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI I BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)
and Ravish Sood (Judicial Member)]**

ITA No. 1524/Mum/14
Assessment year: 2009-10

Mott MacDonald Pvt Ltd
(Successor to Mott MacDonald Consultants
India Private Limited)
44, Khanna Construction House
Dr R G Thandani Marg, Worli
Mumbai 400 018 [AABCM0834G]

.....Appellant

Vs

**Deputy Commissioner of Income Tax
Circle 2(2), Mumbai**

.....Respondent

Appearances by

Aarti Vissanji for the appellant
Rignesh Das, Inder Solanki for the respondent

Dates of hearing of the appeal : February 24th, 2020
Date of pronouncing this order : May 27th, 2020

O R D E R

Per Pramod Kumar (Vice President):

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 31st January 2014, passed by the Assessing Officer under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961, for the assessment year 2009-10.

2. Grievances raised by the assessee are as follows:

1) The learned Assessing Officer erred in passing a conformity order accepting adjustment made by the learned Transfer Pricing Officer 1(9), Mumbai and also the directions of the learned Hon'ble DRP-I, Mumbai.

- 2) **The Hon'ble DRP-I Mumbai erred in confirming the action of the learned Transfer Pricing Officer 1(9) of arriving Arm's Length Price by using TNMM Method and rejecting the CPM Method used by the appellant company for the purpose of determining ALP.**
- 3) **The Hon'ble DRP-I Mumbai erred in confirming the order of the learned Transfer Pricing Officer and rejecting Non AE Comparables selected by the appellant.**
- 4) **The Hon'ble DRP-I Mumbai erred in confirming the order of the learned Transfer Pricing Officer which followed "pick and choose" out of the companies selected for TNMM.**
- 5) **The Hon'ble DRP-I Mumbai erred in Confirming the adjustments made of Rs. 1,80,00,639/- by learned Transfer Pricing Officer I (9), Mumbai however subject to certain relief.**
- 6) **The Hon'ble DRP-I Mumbai erred in not objecting to the benchmarking the International Transaction by the learned Transfer Pricing Officer of "purchase of raw materials & components" even though the assessee is not engaged in any such business but is in the business of providing engineering services.**
- 7) **The learned Assessing Officer/Transfer Pricing Officer erred in not passing an order giving effect to the directions of Hon'ble DRP-I to re-determine the mean PLI.**

3. To adjudicate on these grievances, which we will take up together, only a few material facts need to be taken note of. The assessee before us is a company, engaged in the business of, *inter alia*, providing engineering consultancy services relating to oil and gas sector. On 30th September 2009, the assessee filed its income tax return disclosing a taxable income of Rs 1,88,86,910 which was picked up for scrutiny assessment under section 143(3). In the ensuing scrutiny assessment proceedings, the Assessing Officer noted that the assessee has also shown international transactions, with its UK based associated enterprise- namely Matt McDonald UK, for providing engineering consultancy services for Rs 23,06,24,942. A reference under section 92CA(1) was, in this backdrop, made to the Transfer Pricing Officer for ascertainment of arm's length price. The TPO noted that the benchmarking of these transactions, as arm's length transactions, was done by the assessee on the basis of cost plus method. It was also noted that, according to the assessee, while the cost plus margin earned by the assessee, from these transactions, worked out to 17.91% on cost, the cost plus margin, on similar transaction, was 7.36% on cost. It was on the basis of this comparison that the intra AE transactions by the assessee were claimed to be at an arm's length price. The TPO, however, did not accept this claim of the assessee. He was of the view that while the volume of transactions with AE was Rs 23.06 crores, the transactions with non AEs (i.e. independent enterprises) was only Rs 12.08 crores. According to the TPO, "thus, there is significant

volume difference between AE and non-AE segments". The TPO further observed that "there is significant difference in functions performed, assets deployed and risks taken in respect of projects taken from the related parties and the services performed for the AE" even though he did not elaborate this stand any further. The next objection taken by the TPO, against adoption of cost plus method, was that "the projects with unrelated party have suffered because of the problem faced by client in respect of funding and environment clearance". Finally, the TPO's objection was that "some projects in the non-AE segment cater to the domestic market whereas the AE agreement purely caters to projects outside India" and that "the prevailing market conditions in which the buyer and seller of the services is located is an important consideration and has a bearing on the profit margin". The TPO then proceeded to reject the cost plus method (CPM) and proceeded to adopt transactional net margin method (TNMM) by observing as follows:

6.3 In view of the above material difference in the projects undertaken for the unrelated parties by the taxpayer and the services rendered to the AE, it is held that the benchmarking using the cost plus method (CPM) by taking the cost plus margin in the case of AE segment and non-AE segment of the taxpayer is not appropriate and is, therefore, rejected. On the facts and circumstances of the case, it is held that transactional net margin method (TNMM) is used as most appropriate method to benchmark the international transactions entered into by the assessee.

4. The TPO then proceeded to compute the arm's length price by computing OP/OC of the assessee, which was, as claimed by the assessee, was 19.17%. He then finally adopted the comparables as Alphageo India Pvt Ltd, Artefact Projects Ltd, Bengal SREI Infrastructure Development Ltd, Cethar Consulting Engineers Ltd, I Design Engineering Solutions Ltd, Kirolaskar Consultants Ltd, L&T Sargent & Lundy Ltd, L&T Valdel Engineering Ltd, Mahindra Consulting Engineers Ltd, and TCE Consulting Engineers Ltd. The arithmetic mean of OP/TC of these comparable companies was calculated at 28.47%. Accordingly, an ALP adjustment of Rs 2,85,62,102 was proposed by the TPO. Subsequently, however, this quantification of ALP adjustment was corrected, by way of an order under section 154, and the correct amount of ALP adjustment was taken at Rs 1,80,00,639. When the Assessing Officer issued a draft assessment order, incorporating the above ALP adjustment, the assessee raised objections before the Dispute Resolution Panel. Learned Dispute Resolution Panel rejected grievance of the assessee, so as far as rejection of cost plus method is concerned. The adopted of TNMM was thus confirmed. The DRP did give some relief on other issues, such as selection of comparable companies, so far as computation of ALP under TNMM is concerned, but, for our purposes, and for the reasons we will set out in a short while, we are not, at this stage, concerned about these aspects of the matter. Suffice to note that rejection of CPM, for benchmarking purposes, was upheld by the DRP, and, accordingly, the final assessment order contained the ALP adjustment of Rs 1,80,00,639 though with a rider that in view of the DRP directions, the matter regarding ascertainment of ALP is referred to the TPO

and the issue, as on now, “is pending at the end of the TP authority” and that “addition made on account of arm’s length price of Rs 1,80,00,639 is retained, subject to modification by the TPO”. The assessee is aggrieved of the order so passed by the Assessing Officer and is in appeal before us.

5. We have heard rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

6. The first issue that we need to adjudicate on is whether, on the facts and in the circumstances of this case, it was appropriate for the Transfer Pricing Officer to reject the cost plus method (CPM) to determine the arm's length price of the transactions with AEs, on the ground that the transactional net margin method (TNMM) to determine the ALP will be more appropriate on the facts of this case.

7. Section 92C(1) r.w.r 10C(2) provides the arm's length price in relation to an international transaction is to be determined by one of the prescribed methods, which is most appropriate method, having regard to (a) the nature and class of the international transaction ; (b) the class or classes of associated enterprises entering into the transaction and the functions performed by them taking into account assets employed or to be employed and risks assumed by such enterprises; (c) the availability, coverage and reliability of data necessary for application of the method; (d) the degree of comparability existing between the international transaction and the uncontrolled transaction and between the enterprises entering into such transactions; (e) the extent to which reliable and accurate adjustments can be made to account for differences, if any, between the international transaction and the comparable uncontrolled transaction or between the enterprises entering into such transactions; and (f) the nature, extent and reliability of assumptions required to be made in application of a method. Section 92C(2) provides that it is only the most appropriate method, as referred to in section 92C(1), which can be applied for determination of arm's length price, in the prescribed manner. Rule 10B(2), which is also very relevant in the present context, provides that the comparability of an international transaction with an uncontrolled transaction shall be judged with reference to the following, namely:— (a) the specific characteristics of the property transferred or services provided in either transaction; (b) the functions performed, taking into account assets employed or to be employed and the risks assumed, by the respective parties to the transactions; (c) the contractual terms (whether or not such terms are formal or in writing) of the transactions which lay down explicitly or implicitly how the responsibilities, risks and benefits are to be divided between the respective parties to the transactions; (d) conditions prevailing in the markets in which the respective parties to the transactions operate, including the geographical location and size of the markets, the laws and Government orders in force, costs of labour and capital in the markets, overall economic development and level of competition and whether the markets are wholesale or retail. Quite clearly, therefore, the choice of method on the basis of which arm's length price is determined is, therefore, not an unfettered choice on the part of taxpayer, and,

in our considered view, this choice has to be exercised on the touchstone of principles, governing selection of most appropriate method, set out in section 92C(1). The first step in determination of arm's length price is the selection of the right method of computing the arm's length price. Once the right method is selected under section 92C(1), the next step is application of the method so selected in computation of arm's length price - as is set out under section 92C(2). On both of these aspects of exercise of determining the arm's length price, however, the Assessing Officer has the overriding powers for course correction. These powers are set out in section 92C(3)(a) which provides that where, during the course of any proceeding for the assessment of income, the Assessing Officer is, inter alia, of the opinion that the price charged or paid in an international transaction has not been determined in accordance with sections 92C(1) and section 92C(2), the Assessing Officer may proceed to determine the arm's length price in relation to the said international transaction in accordance with sections 92C(1) and section 92C(2), on the basis of such material or information or document available with him. The Assessing Officer has the powers to determine arm's length price when the arm's length price computed by the taxpayer is not on the basis of correctly applying the method of computing the arm's length, in terms of the provisions of section 92C(2), as also when the method of selecting most appropriate method of computing the arm's length price is not determined in accordance with the scheme of things envisaged under section 92C(1). Once the pre-conditions for invoking the powers under section 92C(3) are satisfied, which includes the situation in which the Assessing Officer, on the basis of material, information or document in his possession, is of the opinion that the price charged or paid in an international transaction has not been determined in accordance with sub-sections (1) and (2) of Section 92C, "the Assessing Officer may proceed to determine the arm's length price in relation to the said international transaction in accordance with sub-sections (1) and (2) [of Section 92C].....". This provision is, however, subject to the condition, set out in proviso to Section 92C(3) to the effect that "an opportunity shall be given by the Assessing Officer, by serving notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the arm's length price should not be so determined on the basis of material, or information, or document in possession of the Assessing Officer". Of course, there are other situations, as set out in clauses (b), (c) and (d) of section 92C(3), in which the Assessing Officer can proceed to determine the arm's length price under section 92C(1) and (2), but, in the context of the situation that we are in seisin of, it is not really necessary to deal with the same. We may also add that while these powers are vested in the Assessing Officer under section 92C, in view of the Explanation below Section 92CA(7), the Transfer Pricing Officer, authorised by the Board, can exercise all or any the powers of the Assessing Officer specified in Section 92C and 92D.

8. In the light of the above analysis, it emerges that the Transfer Pricing Officer has the powers to modify the method of computing the arm's length price, the reasons for which are subject to judicial scrutiny, the manner in which the method of ascertaining the ALP can be modified by the TPO is as follows:

- The starting point of this exercise is the formation of prima facie view by the Transfer Pricing Officer that there is a violation of Section 92C(2) inasmuch method of computation of arm's length price is not the 'most appropriate method', in the light of the mandate of Section 92C(1) read with rule 10B(2) and rule 10C(2). It is only a prima facie view for the reason that if this is to be treated as a final view than the issuance of show cause notice to the assessee will be rendered a ritualistic formality.
- The view so formed by the Transfer Pricing Officer has to take into account the fact that not only the method adopted by the assessee has the shortcomings but also that the view that the Transfer Pricing Officer proposes is comparatively better view vis-à-vis entirety of the matter. It cannot therefore be a simple fault finding mission of the TPO for identifying limitations of the method of ascertaining arm's length price adopted by the assessee, but it also has to point out a better alternative 'more appropriate' to the case in question. In other words, the TPO is not only to demonstrate that the method selected by the assessee is not correct method of ascertaining the ALP, he is also to demonstrate that the method proposed by him is a better method of ascertaining the ALP.
- The Transfer Pricing Officer has to then put the assessee to notice about his prima facie view, take into account submissions of the assessee on his such views and then give his reasons in support of the proposition as to why the method of ascertaining arm's length price, as selected by him, is more appropriate method vis-à-vis the method adopted by him. Unless the method selected by the TPO is more appropriate a method of ascertaining the arm's length price adopted by the assessee, obviously it cannot be "most appropriate" method of ascertaining the arm's length price- as is the requirement of Section 92C(1).

9. Let us now revert to the facts of this case. The first reason for rejecting the CPM, on the facts of this case, was said to be "significant volume difference". As against transaction value of Rs 23.06 crores with the AE, the transaction value is 12.08 crores. Undoubtedly, there is a difference in volume but when we look at the scheme of Section 92C(1) read with Rule 10C, it is clear that what really matters is "the degree of comparability existing between the international transaction and the uncontrolled transaction and between the enterprises entering into such transactions" and one of the factors affecting such a comparability is volume, and it is in this context that volume difference is relevant. Nothing, therefore, turns on the difference *per se* in volume of transaction, but then that's the only case of the TPO. In any case, we do not think that the volume of difference is so material that it will affect the degree of comparability. The second objection taken by the TPO is that "there is significant difference in functions performed, assets deployed and risks taken in respect of projects taken from the related parties and the services performed for the AE" but then he

does not elaborate that point as to what are the differences in assets employed, functions performed and risks assumed. That's a valid reason for rejection of an ALP determination method as MAM, but one needs little more than such macro observations without any specifics, to support that approach. This is a sweeping generalisation made by the TPO and at no stage, including before us, there was even an effort to demonstrate as to what were these differences. The next objection taken by the TPO, against adoption of cost plus method, was that "the projects with unrelated party have suffered because of the problem faced by client in respect of funding and environment clearance". It is first of all an uncontroverted factual claim of the assessee that there were no such issues in the relevant financial year. The bigger question, as rightly raised by the assessee, is that in any case such problems have no bearing on profit element embedded in the revenue which is negotiated in advance. The funding and environmental issues may have impact on completion of a project or project milestones and thus have an impact on earnings of revenue but these things cannot be assumed to have impact on the profit element in the revenues which is what really matters for the present purposes. The last and final objection of the TPO was that "some projects in the non-AE segment cater to the domestic market whereas the AE agreement purely caters to projects outside India" and that "the prevailing market conditions in which the buyer and seller of the services is located is an important consideration and has a bearing on the profit margin". While on this aspect of matter, it is important to bear in mind that as rule 10B(2)(d) provides that comparability of a controlled transaction with uncontrolled transaction is to be judged, inter alia, in the light of conditions prevailing in the markets in which the respective parties to the transactions operate, including the geographical location and size of the markets, the laws and Government orders in force, costs of labour and capital in the markets, overall economic development and level of competition and whether the markets are wholesale or retail. Quite clearly, therefore, geographical difference, by itself, does not render an independent transaction uncomparable with controlled transaction. Geographical location, by itself, is not an important factor for deciding comparability of an uncontrolled transaction, its importance lies in being one of the factors which could affect the market conditions in which respective parties operate. Unless market conditions, in which uncontrolled transactions have taken place, are materially different vis-à-vis conditions in which international transaction has taken place, and such a difference is on account of geographical location of the market, geographical location of the market is of no consequence in judging comparability of an uncontrolled transaction for the purpose of ascertaining the ALP. In respect of consultancy services in such highly sophisticated area as oil and gas sector, the fact that the client is in jurisdiction A and B, by itself, does not make such factor on standalone basis. This objection of the TPO that merely because clients are located at different geographical location, the prevailing market conditions will be different proceeds on the unproven assumption that that the scope of such market as consultancy services with respect to oil and gas sector in India is based on location of the client and that, therefore, it has a bearing on the profit margin. Unlike the market for a physical product, the market for consultancy services of such a nature is unlikely to be restricted to national boundaries, and, therefore, location of some of the clients at one location or the other would not really matter. In any case, the stand of the TPO

was that some of the non-AEs are situated in India, and for this reason, these transactions should not have been treated as valid internal comparables is unsustainable in law, inasmuch as, all it can justify at best is exclusion of such transactions within Indian market, rather than rejecting the method, of ascertaining the ALP, itself. In our considered view, therefore, none of the reasons assigned by the TPO, for rejection of the CPM, was thus sustainable in law. Undoubtedly, the TPO does indeed have powers, under section 92C(3), where he is, *inter alia*, of the opinion that the most appropriate method for ascertaining the arm's length price has not been used for determination of arm's length price, to proceed with his determination of arm's length price in accordance with section 92C(1) and 92C(2), and, by implication, adopt what he perceives to be the most appropriate method. However, this can only be done by following the course laid down in proviso to Section 92C(3), i.e. by issuing specific show cause notice to that effect by the TPO, and the reasons so assigned for rejection of the most appropriate method, adopted by the assessee, are subject to judicial scrutiny. For the detailed reasons set out above, we find that the reasoning adopted by the TPO was incorrect and thus unsustainable in law. Accordingly, the impugned ALP adjustment of Rs 1,80,00,639 by rejecting the CPM method adopted by the assessee and by adopted the TNMM method, for ascertaining the arm's length price, must be deleted for this short reason alone.

10. Given these findings, it is not really necessary to examine as to whether or not specific show cause notice, requiring the assessee to show cause as to why the method of ascertaining the ALP as adopted by the assessee, was issued by the TPO or not, nor is it necessary to examine the suitability of TNMM method vis-à-vis CPM method on the facts of this case. We have also noted that, in terms of the provisions of Section 144C(13), "upon receipt of the directions issued under sub-section (5) [i.e. the DRP directions], the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153 or section 153B, the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received". The Assessing Officer thus has only one month from the end of the month in which the DRP directions are received to complete the assessment "in conformity with the directions" of the DRP. However, it would appear that by not giving effect to the directions of the DRP on the ground that relevant inputs are not received from the TPO and proceeding to pass the assessment order as originally proposed, the Assessing Officer ends up extending this statutory time limit. That does not seem to be a course permissible in law. An order passed under section 143(3) r.w.s 144C(13), which is not in conformity with the directions of the DRP- as in this case, may not perhaps meet any judicial approval. However, given the fact that we have deleted the impugned ALP adjustment itself, and that was the only addition in the impugned assessment, it is not really necessary to go into this aspect of the matter, as indeed all other issues raised in this appeal, at this stage. These issues are rendered wholly infructuous.

11. However, before we part with the matter, we must deal with one procedural issue as well. While hearing of this appeal was concluded on 24th February 2020, this order is being pronounced today on th 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 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.

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 15.03.2020 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.

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 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 lockdown 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 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.

15. In the result, the appeal is allowed 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/-
Ravish Sood
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, Dated the 27th day of May 2020

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