

**आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक**

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

श्री सी.एम.गर्ग, न्यायिक सदस्य एवं श्री एल.पी.साहु, लेखा सदस्य के समक्ष

**BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM**

**आयकर अपील सं./ITA No.392&393/CTK/2018**

(निर्धारण वर्ष / Assessment Year : 2014 – 2015 & 2015-2016)

M/s Orissa State Co-operative Handicrafts Corporation Limited D-2/3, Industrial Estate, Rasulgarh, Bhubaneswar	Vs.	ITO Bhubaneswar	Wardd-4(1),
स्थायी लेखा सं./PAN No. : <b>AAAAO 0096 K</b>			

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	None
राजस्व की ओर से /Revenue by	:	Shri M.K.Goutam, CIT-DR

सुनवाई की तारीख / Date of Hearing	:	20/02/2020
घोषणा की तारीख/Date of Pronouncement	:	05/06/2020

**आदेश / ORDER**

**Per L.P.Sahu, AM:**

These two appeals have been filed by the assessee against the order of CIT(A)-2, Bhubaneswar dated 18.09.2017 and 04.06.2018, for the assessment years 2014-2015 & 2015-2016, respectively.

2. Since the facts and issue involved in both the appeals are common, therefore, for the sake of convenience and brevity, both the appeals are heard together and decided by this consolidated order.

3. None appeared on behalf of the assessee even the case was called for second round of hearing. Therefore, we proceeded to dispose off the

appeal of the assessee after considering the submissions of ld.DR and the material evidence available on record.

4. The grounds taken by the assessee for the assessment year 2014-2015 in ITA No.392/CTK/2018 are as under :-

1. *For that, the order of the forum below is arbitrary, illegal, unjustified and erroneous and has been passed on improper application of mind, being devoid of merit as such deserves to be quashed in limine.*
2. *For that the addition of Rs. 15,73,018/- added towards interest earned, assessed as income from other sources deserves to be deleted on the ground that, interest earned by the appellant is income from business and eligible for deduction U/s 80P(2) of the Act, as per Statutory provisions & Legislative intentions.*
3. *For that the addition of Rs. 15,73,018/- added towards interest earned, assessed as income from other sources deserves to be deleted on the ground that, interest earned by temporary exploitation of operational funds as mandated by the authorities by the appellant is income from business and eligible for deduction U/s 80P(2) of the Act, as per Statutory provisions & Legislative intentions.*
4. *For that, the disallowance of ESI & EPF contributions to the extent of Rs. 11,320/- and Rs.56,400/- respectively totaling Rs.67,720/- deserves to be deleted on the ground that, although the payment has been made beyond the due date as provided in EPF Act, but well within the time for filing of return income in due date and thus should be allowed as a allowable deduction as per the pronouncements of Hon'ble Jurisdictional Tribunal & Hon'ble Courts.*
5. *For that, the appellant craves leave to add/alter/amend further grounds, if any, at the time of hearing of appeal.*

5. The grounds taken by the assessee for the assessment year 2015-2016 in ITA No.393/CTK/2018 are as under :-

1. *For that, the order of the forum below is arbitrary, illegal, unjustified and erroneous and has been passed on improper application of mind, being devoid of merit as such deserves to be quashed in limine.*

2. *For that the addition of Rs. 18,02,122/- added towards interest earned, assessed as income from other sources deserves to be deleted on the ground that, interest earned by the appellant is income from business and eligible for deduction U/s 80P(2) of the Act, as per Statutory provisions & Legislative intentions.*
3. *For that the addition of Rs. 18,02,122/- added towards interest earned, assessed as income from other sources deserves to be deleted on the ground that, interest earned by temporary exploitation (of operational funds as mandated by the authorities by the appellant is income from business and eligible for deduction U/s 80P(2) of the Act, as per Statutory provisions & Legislative intentions.*
4. *For that, the addition of Rs 1,13,818/- to the total income by 10% adhoc estimated disallowance of operative expenditures claimed, on pretext of on pretext of further verification & non maintenance of proper bills & vouchers deserves to be deleted on the ground that the expenditure having intrinsic and insegregable nexus with the work undertaken being solely for the business has to be allowed.*
5. *For that, the addition of Rs 1,15,770/- to the total deserves to be deleted on the ground that, not only it is unjustified on the facts and in the circumstances of the case as contrary to legislative intentions but also, unwarranted as per the statutory provisions.*
6. *For that, the appellant craves leave to add/alter/amend further grounds, if any, at the time of hearing of appeal.*

6. Brief facts of the case are that the assessee is a cooperative society engaged in promotion of handicrafts and handloom of Odisha and filed its return of income for the assessment year 2014-2015 on 18.09.2014 declaring total income at Rs.3,84,660/-. Similarly the assessee filed its return of income electronically for the assessment year 2015-2016 on 24.09.2015 declaring total income at Rs.47,20,800/-. The case of the assessee were selected for scrutiny under CASS and statutory notices were issued to the assessee. During the course of assessment proceedings, it was noticed by the AO the

assessee has received interest income and he has claimed addition u/s.80P(2)(d) of the Act and he has also brought forward loss to the tune of Rs.52,08,253/- which has been set off against the net profit of Rs.55,92,908/-. There was a total interest of Rs.18,48,769/-, which was to be treated as income from other sources instead of business income as claimed by the assessee. Therefore, the assessee cannot set off the eligible loss as per the provisions of Section 72(1) of the Act. In this regard, the assessee was asked to justify the claim of setting off of loss from the interest income, in response to which the assessee submitted as under :-

*"Wrong claim for adjustment of brought forward loss set off, as contended section 72(1) contemplates as stated in your notice. However, the provision of set off is dealt with by section 71. And section 71 does not contemplate any restriction on set off of business loss against any other income, except income under the head "salary". Therefore, there lies no inconsistency in claiming set off of carried forward business loss by the assessee".*

The above submissions of the assessee were not accepted by the AO.

The AO evaluated the byelaws and main object of the society and analyzed as under :-

*The bye-law of the co-operative society provides that, the main objective of the entity is to promote handicraft and handloom thereby has an objective of extending financial assistance to the artisans and eligible to get grants and subsidies under various Govt, sponsored schemes. Thus the entity in the course of carrying on of its normal business activity entitled to get funds from government and sale proceeds. In the process of doing business the management had parked the surplus funds in reserve fund in fixed deposits with bank. Therefore, under no circumstances the interest income can be termed as "income from other sources' being operational income of the assessee society. Therefore the ratio of Supreme Court decision does not apply as it is applicable to*

*parking of sale proceeds as temporarily parking of business receipts in specific. Therefore, the assessed is eligible for deduction under section 80P".*

Further it was noticed that the surplus funds were parked in the Odisha State Cooperative Bank Limited. He concluded that the Odisha State Cooperative Bank Limited is a urban commercial bank and does not fall under the purview of the cooperative society as referred in Section 80(P)(2)(d) of the Act. Therefore, the AO disallowed the deduction claimed u/s.80(P)(2)(d) of the Act of Rs.24,73,866/- and added the same to the total income of the assessee after relying on the decisions of ITAT Mumbai Bench in the case of Bandra Shiv Samrudhi CHS Ltd. passed in ITA No.1073/M/2012 and the decision of Hon'ble Supreme Court in the case of Totger's Co-operative sale Society Limited Vs. ITO 322 ITR 283(SC).

7. Further, it was noticed by the AO that the assessee had not deposited the amount of contribution towards ESI and EPF account, which was gathered from the audit report as per Annexure-IV. Therefore, he applying the provisions of Section 2(24)(x) and 36(1)(va) of the Act along with Section 43B of the Act and relying on the case laws as noted at page 7 of the assessment order, disallowed the claim of Rs.67,720/- and added the same to the total income of the assessee because these payments were not deposited in due date as per the respective Act.

8. Feeling aggrieved from the above order of AO, the assessee appealed before the CIT(A) and the CIT(A) has partly allowed the appeal of the assessee.
9. Feeling further aggrieved from the order of CIT(A), the assessee is in appeals before the Income Tax Appellate Tribunal.
10. The facts are same in both the appeals and additions were made by the AO are also under the similar heads, therefore, the statement of facts filed by the assessee before the CIT(A) for the assessment year 2015-2016 has been taken into consideration, which read as under :-

*The assessment for the Assessment Year 2015-16 of the assessee is completed Under Section 143(3) with a total addition of Rs. 20,31,710/- over returned income of Rs 47,20,800/-. The Ld Assessing Officer has made addition of Rs. 18,02,122/- on account of interest accrued under miscellaneous receipt treating it as Income from other sources rather than business and profession, Adhoc disallowance of expenses @10% to the tune of Rs 1,13,818/- and Income tax paid debited to profit and loss account Rs 1,15,770/-.*

*The Assessee is a Co-operative Society (Apex) carrying on its objective of promotion and development of handicrafts in the state of Odisha.*

**INCOME FROM OTHER SOURCES**

*The main objective of the Corporation is to organise & promote various handicraft industries on commercial basis along with procurement & marketing of Handicrafts & Art Textile products in & outside the country. For the purpose of attending this objective the Corporation undertakes export of handicrafts of Odisha, opening of sales emporium at suitable places, organise Trade Fairs & Exhibitions and undertakes special promotions measures for marketing in other states of India, where there is a potential of Odisha Handicrafts. Besides, the Corporation provides benefit to the Artisans by supply of raw materials through Raw Material Banks, Training Program, Design Development Program etc for Development of Handicrafts of the State.*

*The assessee carries on the above objective by incurring loan from Govt, and subsidies and grants receipts there from. In the instant case the assessee has a case identical to the decision incase of the United Commercial Bank's case [1957] 32 ITR 688 (SC), the bank which had*

*funds deposited with it by its customers and its own capital, could utilise the funds either by lending the same to others or by making various investments. Indeed, in the case of banks, it is compulsory to place some of the funds in securities. The question that would then arise would be whether the interest income is not also a part of the banking activity. If it is, then notwithstanding the fact that the charge of income-tax is under the head "Interest on securities", the income would be from banking and not from mere investment. **In the present case, the assessee claimed that it has funds which it derived from business and which are used only in business and for no other purpose. If they are spare funds, then they are deposited in banks and, hence, it is clear that this income is also business income.** To repeat what was said earlier, the company has not come from Italy to make bank deposits in India but has come to carry on business. If at any time it has spare funds it prefers not to keep the same idle but makes deposits in banks which give some income. This also is, therefore, business income, and for the purpose of set-off has not to be treated as separate from business income.*

*As a matter of fact the amounts kept in Fixed Deposit are mostly grant amounts which are meant for providing marketing assistance not immediately disposable in the form of marketing assistance to craftsmen and are also not available for otherwise use by the assessee. In order to secure/ensure the use of the grants in time these funds are kept in fixed deposit. In the usual course of business activities of the assessee, the assessee shall get grants and ensure its use and hence the Fixed Deposit is an inevitable part of the business. Therefore the receipts of the interest there from cannot be treated as income from other sources. In similar situation interest earned by co-operative credit societies are held to be business income. As in case of the Samarparn Co operative credit Society Ltd. vrs. ACIT by hon'ble Karnataka High Court. These deposits are rather short term call deposits which are held to be business income and is exempt U/s80P(2)(d) CIT v. Haryana Co-operative Sugar Mills Ltd. (1989) 180 ITR 631(Punjab), SLP dismissed : (1991) 187ITR (St.)152-53(SC). As regards interest earned from deposits with Nationalized banks, it is most humbly submitted that income from other sources is a residuary head of income and it is to be considered only when some item of income is not classifiable under any of the definite heads of income as per the Income Tax Act or an income cannot be chargeable under any other heads of income.*

*-CIT v. Basant Rai Takhat Singh, (1933) 1 ITR 197, 201 (PC)  
 -Bihar State Co-operative Bank Ltd. v. CIT (1960) 39 ITR 114, 122 (SC)  
 -Nalinikant Ambalal Mody v. S.A.L Narayan Row, (1966) 61 ITR 428, 431 (SC)*

*Income for the purposes of charge of income tax and computation of total income has been classified u/s 14 of the Income Tax Act in 5 heads of income Viz. Salary, Income from House property, profits and gains of business or profession, capital gains and income from other sources. In*

*the case of H.G Kothari v. CIT (1951)20 ITR 579 (Mad). It was held that Income which is specifically made chargeable under a distinct head cannot be brought to charge under a different head in lieu of or in addition to being charged under its specific head. Clause (id) of sub section (2) of section 56 of the Income Tax Act, lays down that Income by way of interest on securities, if the income is not chargeable to income tax under the head profits and gains of business or profession shall be chargeable to Income Tax under the head income from other sources.*

*Where a particular transaction is not in the ordinary course or line of business of the assessee, but is an isolated or single instance of a transaction, the onus to prove that the transaction is an adventures in the nature of trade is on the department-*

*Saroj Kumar Mazumdar v. CIT (1959)37 ITR 242,248 (SC)  
Dalmia Cement Ltd v. CIT (1976)105 ITR 633, 640 (SC) Commrs. of Inl. Rev. v. Reinhold (1953)34 Tax Cas. 389,393*

*In the instant case Ld. A.O had failed to make out any case to prove the interest income considered by the assessee as business income to be not a business income. Therefore the treatment of interest income as income from other sources by Ld A.O is only out of presumption and not tenable.*

**ADHOC DISALLOWANCE OF EXPENSES Rs 1,13,818/-:**

*THE ASSESSEE HAD INCURRED Rs 5,71,059/- packing material, Rs. 3,03,608/- as miscellaneous expenses, and Rs 2,63,513 under printing and stationery. The ld Assessing Officer also had not verified the details given by the assessee and also she sought the information on the last week of October 2017 and completed the assessment on 10/11/2017 hurriedly, ft is difficult to provide the full particulars of expenses. It is also a fact that non business purposes, the expenditure can be ruled out in absence of third party evidence. However in absence of any material against the fact that the expenses incurred are not unreasonable the disallowance is unreasonable and liable to be deleted.*

**DISALLOWANCE OF INCOME TAX EXPENSES Rs. 1,15,770/-:**

*The assessing officer had made this addition on the basis of presumption that the said expenditure being not allowable U/S 37 and being debited to profit and loss account is claimed by the assessee as deduction, however the said expenses has been added back in the computation statement accordingly the same is offered to tax without claiming deduction therefrom.*

*Therefore addition made on the basis of presumption is not tenable and liable to be deleted.*

10. Ld. DR relied on the order of authorities below and submitted that the assessee parked his surplus funds in OSCB Ltd, therefore, the interest warranted from the surplus funds in the form of FD is income from other sources, therefore, the deduction u/s.80P(2)(d) is not allowable and the set off of carry forward losses is also not to be allowed. The case laws relied on by the authorities below are fully applicable in the present facts of the case, therefore, the ld. DR submitted that the orders of authorities below should be upheld in respect of addition made on account of interest earned.

11. Ld.DR further submitted in respect of delay in contribution to EPF and ESI, the AO has rightly disallowed the claim of the assessee. The assessee has not deposited the EPF & ESI in due time, therefore, as per the date prescribed in the respective Act and the cases laws relied on by the authorities below is squarely applicable in the present facts of the case.

12. After hearing the submissions of ld. DR and considering the documents available on record, in respect of disallowance made u/s.80P(2)(d) of the Act and carry forward loss, we find from the statement of facts submitted by the assessee before the CIT(A) that the assessee is obtaining loan from Government for attaining the objects. The assessee keeps the fund in the manner of fixed deposit till the distribution of the said funds to the eligible recipients. However, it is

not clear from the orders of the authorities below that how much amount was kept as surplus fund and how much amount has been kept for the distribution to the eligible recipients and which has not been distributed till the date and kept as fixed deposit out of loan funds. Therefore, this matter is sent back to the file of AO to determine as to whether the assessee had actual surplus funds which has been made as fixed deposit. The AO is also directed to examine the source of fixed deposit. If it is found that the fixed deposit has not been made from surplus funds or it has been made from the own funds which were kept for marketing assistance not immediately disposable in the form of marketing assistance to craftsmen and are also not available for otherwise use by the assessee, the AO is directed to give the benefit of deduction u/s.80P(2)(d) of the Act to the assessee. Needless to say, the assessee shall be given reasonable opportunity of hearing. The assessee is also directed to cooperate with the AO for early disposal of the case. This ground of appeal of the assessee is allowed for statistical purposes.

13. With regard to disallowance of ESI & EPF contributions, we find that the Id. DR before us relied on the decision of Hon'ble Delhi High Court in the case of Bharat Hotel Ltd. (supra) and submitted that this issue should be restored to AO for verification. After hearing both the sides, perusing the entire materials available on record and the orders

of authorities below, we noticed that the assessee has not deposited the contribution of EPF and ESI within the due date as specified in that particular Act. We found substance in the submissions of the ld. DR that Section 36(1)(va) of the Act deals with the deduction in respect of the sum received by the assessee from any of his employees to which the provisions of sub-section 2(24)(x) of the Act applies, provided such sum is credited by the assessee to the employee's account in relevant fund on or before the due date. The 'due date' is defined under the Explanation to section 36(1)(va) of the Act by stating that the due date referred under the relevant Act and certainly not the due date for filing the return. We also found that this very similar issue has also been decided by this bench of the Tribunal in the case of Milind Gupta, ITA Nos.382&383/CTK/2017, order dated 27.09.2019, wherein the Tribunal has restored the issue to the file of AO to examine the contributions made with reference to the dates when they were actually made and grant relief to such of claim which qualified for such relief in terms of prevailing provisions of the Act. Accordingly, the issue in the present appeal, being similar to the issue decided by the Tribunal in the case cited supra, we also restore this issue to the file of AO to decide the same in the terms as observed by the Tribunal cited above. Thus, the ground of appeal of the assessee is allowed for statistical purposes.

14. Thus, ITA No.392/CTK/2020 is allowed for statistical purposes.

15. In appeal of the assessee i.e ITA No.393/CTK/2020 for assessment year 2015-2016, there are mainly three grounds have been raised by the assessee, namely, (i) against the addition of Rs.18,02,122/- towards interest earned assessed as income from other sources; (ii) against the addition of Rs.1,13,818/- made on adhoc basis and (iii) against the addition of Rs.1,15,770/- made on account of presumptive basis.

16. In this appeal, the ground raised against the addition made u/s.80P(2)(d) of the Act is similar to the ground raised by the assessee for the assessment year 2014-2015, wherein we have already to sent to the file of AO with the observations as stated above, therefore, this ground of appeal of the assessee is allowed for statistical purposes.

17. With regard addition made on adhoc basis, we find that during the course of assessment proceedings, the AO noticed that the assessee has incurred expenses under different heads i.e. packing materials, miscellaneous expenses and printing and statutory expenses but the assessee was failed to furnish the documentary evidence in support of his claim but these are the incidental expenses to be incurred by the assessee considering to the nature of business of the assessee but for want of production of desired evidence of expenses, the AO has rightly disallowed 10% of the total expenditure incurred which has been

upheld by the CIT(A) also. We also observe that if the assessee was unable to produce the required document before the AO, he had an opportunity to produce the same in support of his claim of expenses debited into the profit and loss account under the aforesaid heads before the CIT(A) but the assessee could not do so. Therefore, the CIT(A) has rightly upheld the action of AO. Accordingly, we do not see any reason to interfere with the observations of the CIT(A) in this regard and we uphold the same. This ground of appeal of the assessee is dismissed.

18. With regard ground raised by the assessee against the addition made on account of presumptive basis, it was observed by the AO during the course of assessment proceedings that the assessee has claimed the expenses as allowable expenditure claimed u/s.37(1) of the Act, however, the AO disallowed the same stating that the expenditure claimed by the assessee does not relate to the business of the assessee towards earning of the income as per Section 37(1) of the Act. It is also not an incidental expenses to earn the income of the assessee which rightly been confirmed by the CIT(A). Accordingly, we do not see any reason to interfere with the observations of the CIT(A) in this regard and we uphold the same. This ground of appeal of the assessee is dismissed.

19. Thus, ITA No.393/CTK/2020 is partly allowed for statistical purposes.

20. Now, a procedural issue comes before us that though the hearing of the present appeals were concluded on 20.02.2020, however, this order is being pronounced much after the expiry of 90 days from the date of conclusion of hearing. We find that Rule 34(5) of the Income tax Appellate Tribunal Rules, 1962, which envisages the procedure for pronouncement orders, provides as follows:

*34(5) The pronouncement may be in any of the following manners: -*

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

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

As such, “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 High Court in the case of Shivsagar

Veg Restaurant vs ACIT (2009) 319 ITR 433 (Bom), wherein, it was, *inter alia*, observed as under:

*“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 rules 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.

21. We also find that the aforesaid issue has been answered by a coordinate Bench of the Tribunal viz; ITAT, Mumbai ‘F’ Bench in DCIT, Central Circle-3(2), Mumbai vs JSW Limited & ors (ITA No.6264/Mum/18 dated 14.5.2020, wherein, it was observed 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 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 corona virus "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 inconsonance 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 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. "*

22. Respectfully following the above judicial decision of Hon'ble Bombay High Court and the Tribunal, we are of the considered view that the period during which the lockdown was in force shall stand excluded for the purpose of working out the time limit for pronouncement of orders, as envisaged in Rule 34(5) of the Appellate Tribunal Rules, 1963."

23. In the result, appeal of the assessee i.e ITA No.392/CTK/2020 is allowed for statistical purposes and ITA No.393/CTK/2020 is partly allowed for statistical purposes.

Order pronounced in the open court on 05/06/2020.

**Sd/-**  
**(C.M.GARG)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(L.P.SAHU)**

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 05/06/2020

*Prakash Kumar Mishra, Sr.P.S.*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant-  
M/s Orissa State Co-operative Handicrafts  
Corporation Limited  
D-2/3, Industrial Estate,  
Rasulgarh, Bhubaneswar
2. प्रत्यर्थी / The Respondent-  
ITO Wardd-4(1), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT,  
Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**आदेशानुसार/ BY ORDER,**

**(Senior Private Secretary)**

**आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack**