

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT**

**(BEFORE SHRI WASEEM AHMED, ACCOUNTANT
MEMBER & SHRI MADHUMITA ROY, JUDICIAL MEMBER)**

**ITA. No: 275 & 403/RJT/2018
(Assessment Year: 2014-15 & 2015-16)**

Shantilal Miltiport Infrastructure Pvt. Ltd. 5th Floor, City Point, Near Town Hall, Jamnagar-361 001	V/S	The Dy. Commissioner of Income Tax, Circle-1/JAM, Jamnagar
(Appellant)		(Respondent)

PAN: AACCS9873Q

Appellant by : Shri D. S. Varia, AR
Respondent by : Shri Suhas Mistry, Sr. D.R.

(आदेश)/ORDER

Date of hearing : 27 -02-2020
Date of Pronouncement : 01 -06 -2020

PER BENCH,

1. These appeals filed by the Assessee are directed against the order of the Ld. CIT(A), Jamnagar dated 19.06.2018 pertaining to A.Y. 2014-15

2. ITA 275/RAJKOT/2018 for A.Y. 2014-15 Shantilal Multiport Infrastructure Pvt. Ltd.
3. The assessee has raised the following grounds of appeal:
 01. *The Hon. Commissioner of Income Tax (Appeals)/Jam has erred in law as well as on facts by rejecting the appeal of the appellant on technical ground of not condoning delay in filing appeal within the time limit. The Hon. CIT(A)/ 3am. Ought to have consider the genuine reasons caused for delay in filing appeal within the time limit and ought to have decide the appeal on merits.*
 02. *The Hon. Commissioner of Income Tax (Appeals)/Jam as well as The Learned Dy. Commissioner of Income Tax, Circle-1, Jamnagar has erred in law as well as on facts in rejecting Application for Rectification of Mistake U/s. 154 of The I. T. Act, 1961 filed by the appellant.*
 03. *The Hon. Commissioner of Income Tax (Appeals)/Jam as well as The Learned Dy. Commissioner of Income Tax, Circle-1, Jamnagar has erred in law as well as on facts in not allowing Full Mat Tax Credit which is inclusive of Surcharge and Education Cess paid on Book Profit in earlier years from Tax Computed on Regular Income for the year under review which is inclusive of Tax Plus Surcharge and Education Cess. As a result erroneous tax demand of Rs. 5,53,463/- is raised by the CPC while processing the Return U/s. 143(1) and while passing Order U/s. 154 of The I. T. Act, 1961, the same requires to be deleted.*
4. At the outset we note that there was a delay in filing the appeal before the learned CIT (A) for two and half years which was not condoned by the learned CIT (A). Accordingly the appeal filed by the assessee was dismissed.
5. It was explained by the learned AR for the assessee that the assessee has filed online rectification application under section 154 of the Act against the intimation issued under section 143(1) of the Act. But the same was rejected vide order dated 15 June 2015.
6. The assessee subsequently made a rectification application under section 154 of the Act before the Id. CIT vide letter dated 28 July 2017 which was not considered till filing the appeal before the learned CIT (A) dated 12 December 2017. The rectification application filed before the Id. CIT dated 28th of July 2017

was disposed of vide order dated 13 June 2018 rejecting the rectification application of the assessee.

7. In view of the above the learned AR claimed that the assessee did not file the appeal before the learned CIT (A) under the bona fides believe that the rectification application shall be disposed of within the reasonable time. However, these applications were not disposed of then the assessee decided to approach to the learned CIT (A) by way of filing the appeal. Accordingly the learned AR prayed before us to direct the learned CIT (A) to condone the delay in filing the appeal and decide the issue on merit.
8. On the other hand, the learned DR did not raise any objection if the appeal filed by the assessee is set aside to the file of the learned CIT (A) for fresh adjudication as per the provisions of law on merit.
9. We have heard the rival contentions of both the parties and perused the materials available on record before us. Considering the nature of the delay as explained above, we note that there was sufficient cause which prevented the assessee from filing the appeal before the learned CIT (A). In our considered view the expression "sufficient cause" should be interpreted to advance substantial justice. Therefore, advancement of substantial justice is the prime factor while considering the reasons for condoning the delay.
10. It is also important to note that Hon'ble Supreme Court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471) laid down certain principles for considering the condonation petition for filing the appeal which are reproduced hereunder:

(1) Ordinarily, a litigant does not stand to benefit by lodging an appeal late

(2) Refusing to condone delay can result in a meritorious matter being thrown at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, commonsense and pragmatic manner.

(4) When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

(6) It must be grasped that the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

11. From the above judgment of the Hon'ble Apex Court, we note that the substantial justice deserves to be preferred rather than deciding the matter on the basis of technical defect.

12. We also note that there is no allegation from the Revenue that the appeal was not filed within the time deliberately. Therefore, we are inclined to prefer substantial justice rather than technicality in deciding the issue. In view of the above we hold that the learned CIT (A) should have condoned the delay and admitted the appeal filed by the assessee to decide the issue on merit. Accordingly we direct the learned CIT (A) to admit the appeal filed by the assessee and adjudicate the same on merit afresh as per the provisions of law. Hence the ground of appeal of the assessee is allowed for the statistical purposes.

13. Coming to the ITA No. 403/RAJKOT/2018 for A.Y. 2015-16.

14. The assessee has raised the following grounds of appeal:

01. *The Hon. Commissioner of Income Tax (Appeals)/Jam has erred in law as well as on facts by rejecting the appeal of the appellant on technical ground of not filing appeal against Intimation U/s. 143(1) or Order U/s. 154 of IT Act, 1961. Any deviation from Returned Income or deviation in tax liability by passing Order U/s. 143(3) of The I. T. Act, 1961 is an ultimate appealable order, which the Hon. CIT (A)/ Jam ought to have been decided on merits. The appellant was under bonafide belief that the Appeal filed against the Assessment Order passed U/s. 143(3) of the I. T. Act, 1961 shall be decided on merits.*
02. *The Hon. Commissioner of Income Tax (Appeals)/Jam as well as The Learned Dy. Commissioner of Income Tax, Circle-1, Jamnagar has erred in law as well as on facts in not allowing Full Mat Tax Credit which is inclusive of Surcharge and Education Cess paid on Book Profit in earlier years from Tax Computed on Regular Income for the year under review which is inclusive of Tax Plus Surcharge and Education Cess. As a result erroneous tax demand of Rs. 11,71,780/- is raised by the CPC while processing the Return U/s. 143(1) and while passing Order U/s. 143(3) of The I. T. Act, 1961, the same requires to be deleted.*

15. The 1st issue raised by the assessee is that the learned CIT (A) erred in not deciding the issue arising from the intimation under section 143(1) of the Act.

16. At the outset we note that the issue raised by the assessee in the ground of appeal is not arising from the order of the assessment framed under section 143(3) of the Act. As such, the assessee is aggrieved against intimation processed under section 143(1) of the Act. Therefore in our considered view the assessee should have preferred an appeal before the learned CIT (A) against the intimation processed under section 143(1) of the Act. The intimation processed under section 143(1) is an appealable order before the learned CIT (A). Accordingly, we do not find any infirmity in the order of the learned CIT (A) which is reproduced as under:

5.2 As can be seen from the above order u/s. 143(3) of the Act of the AO that the returned income of Rs. 7,60,39,478/- as shown by the appellant has been accepted by the AO and there is no any addition or disallowance or adjustment. If the written submission of the appellant and also facts and circumstances of its case are considered, then it is found that this is the order u/s. 143(1) of the ACIT, CPC, Bangalore wherein, the credit of surcharge and education cess of Rs. 8,50,945/- has not been allowed against the tax calculated on regular income and as a result of which erroneous demand of tax of Rs. 11,71,780/- has been raised. Thus the appellant was required to file the appeal against the order u/s. 143(1) of the ACIT GPC, Bangalore and not against the order u/s. 143(3) of the Act as in the order u/s. 143(3) of the Act, the return income as shown by

the appellant has been accepted as it is. The appellant has not filed appeal even against the rectification order dated 13/03/2018 of the JCIT (OSD) Circle-1/Jamnagar wherein, claim of the appellant with regard to allowance of surcharge and education cess has not been considered, Surprisingly no appeal either against the order u/s. 143(1) or against the order u/s. 154 of the Act has been filed by the appellant. The appellant has filed the appeal against the order u/s. 143(3) which is in no way related to disallowance of claim of credit of surcharge and education cess against the tax calculated on regular income of the appellant. In view of these facts, it is held that no appeal lies with the assessment order u/s. 143(3) of the Act of the appellant and therefore, the ground of appeal of the .appellant as reproduced in initial paragraph of this appeal order is hereby dismissed.

17. Before parting, we find important to mention that the assessee can seek the remedy before the learned CIT (A) against intimation processed under section 143(1) of the Act, after making the condonation petition as per the provisions of law.

18. In view of the above, we do not find any infirmity in the order of the learned CIT-A. Hence we do not find any reason to interfere in the said order. Thus the appeal of the assessee is dismissed.

19. 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 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.*

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 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 lockout was in force is to be excluded for the purpose of time limits set out in rule 34(5) of the Appellate Tribunal Rules, 1963. Viewed thus, the exception, to 90-day time-limit for pronouncement of orders, inherent in rule 34(5)(c), with respect to the pronouncement of orders within ninety days, clearly comes into play in the present case. Of course, there is no, and there cannot be any, bar on the discretion of the benches to refer 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.

20. In the result, ITA No.275/Rjt/2018 is allowed for statistical purposes whereas ITA No.403/Rjt/2018 is dismissed.

Order pronounced in Open Court on 01-06-2020

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad: Dated 01/06/2020 *True Copy*

Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.

9 ITA Nos. 275 & 403/RJT/2018
A.Y. 2014-15 & 2015-16

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5. The DR., ITAT, Ahmedabad.
 6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad