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

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
& SMT. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 414/Rjt/2015

(**निर्धारण वर्ष** / Assessment Year : 2012-13)

Deputy Commissioner of Income Tax Circle-1(1), Rajkot Room No.508, Aayakar Bhavan, Race Course Ring Road, Rajkot 360001	**बनाम**/ Vs.	**M/s Tirth Agro Technology Pvt. Ltd.** Plot No.B, Survey No.108/1, Gondal Road, N.H. 8B, Bhunava, Gondal, Rajkot
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCT6282F		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से /**Appellant by :**	Shri M. N. Mourya, CIT.D.R.
प्रत्यर्थी की ओर से / **Respondent by :**	Shri D. M. Rindani, A.R.

सुनवाई की तारीख / **Date of Hearing**	15/02/2020
घोषणा की तारीख /**Date of Pronouncement**	01/06/2020

आदेश/O R D E R

PER BENCH:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)-1, Rajkot (CIT(A) in short) dated 26/06/2015 relevant to Assessment Year (AY) 2012-13.

2. The Revenue has raised the following grounds of appeal:

> *"1. The Hon'ble CIT(A)-1, Rajkot has erred in law and on fact of the case in deleting the addition made by the AO of Rs.10,24,42,002/- on account of disallowance of job work expenses."*

2. The only issue raised by the Revenue is that the learned CIT (A) erred in deleting the addition made by the AO for Rs. 10,24,42,002/- on account of job charges.

3. The facts in brief are that the assessee in the present case is a private limited company and engaged in the business of agricultural equipments. The assessee in the year under consideration has incurred jobs work expenses amounting to Rs.33,67,20,932/- (Rs. 21,48,94,498.00 pertaining to Job work charges +Rs. 12,18,26,434/- pertaining to labour contractors charges). The AO out of such Job work charges conducted the enquiry with respect to certain job worker to whom Job work charges amounting to Rs.10,24,42,002/- were paid. The details of such parties stand as under:

S.No.	Name of the Party	Nature of work done	Amount of job work expenses
1.	Viharilal Ramlal Ram	Welding Job work	494402
2.	Vijay Hirabhai Ram	Hydraulic Press Job work	135565
3.	Balubha iBorkhetariya	Welding Job work	1391831
4.	Angadkumar Gupta	Welding Job work	1625833
5.	Shrilal Chauhan	Welding Job work	1706535
6.	Faruk M Laheji	Material Handling charges	1660404
7.	Sanjaygiri Aparnathi	Filling & Dubering Job work	1299654
8.	Baban Yadav	Welding & Press Job work	40252
9.	BirendraSinh	Plazma Parts Job work	142214
10.	Krishna Prasad Huseni	Welding & Press Job work	3404658
11.	Bhimsi Solanki	Turning Job work	1762750
12.	Ghanshyam Kher	Grinding Job work	1319260
13.	Shailendra Chauhan	Welding & Fabrication Job work	2217685
14	Noor Mohmmad Mansuri	Welding Job work	3041605
15	Chotabhal B Bavariya	Turning Job work	1131314
16	Yogesh L Bavala	Drilling Job work	5063978
17	Jitendra Kumar Rashbihari	Fitting job work	3638400
18	Imtiyaz Alikhan Pathan	Turning Job work	1196400

19	Ram Bahadur Paswan	Welding Job work	2815415
20	Mustafa Industries	Welding Job work	12680754
21	Shailesh Industries	Cutting Job work	101481
22	Mansar Industrial Services	Labour Charges	30970389
23	P B Dixit Enterprise	Labour Charges	24601223
TOTAL			102442002

However, the AO during the assessment proceedings doubted on the genuineness of the expenses for the reasons as discussed below:

i. The parties mention at serial No. 1 to 21 were maintaining saving bank accounts with the Union Bank of India. In most of the cases the assessee acted as the introducer in the opening of such bank account of the parties. Further verification of the bank statement of these parties, it was revealed that there was the immediate cash withdrawal from the bank after depositing the cheques into these accounts. Furthermore, all these parties were operating from the premises of the assessee for providing the so-called Job work services.

ii. The statements under section 131 of the Act, were recorded with respect to few of the parties namely Shri YogeshBavda, Shri Pravin M. Yadav, Shri Moharram Ali Ansari and Shri SanjaygiriAparnathi. From the statements, it was gathered that these workers were working as the employee of the assessee for the reasons as detailed under:

   a. These job workers did not have sufficient machineries and equipments to carry out the job work assigned by the assessee.
   b. The signatures of these parties as recorded in the statement furnished under section 131 of the Act, were not matching with other documents such as banking documents, bills issue by them to the assessee.

c. In most of the cases the bills raised by the job worker were identical and generated by the computer system.

In view of the above the AO doubted on the genuineness of the expenses claimed by the assessee under the head job work charges and accordingly show caused the assessee to justify its stand.

The assessee in response to such notice filed a reply dated 19 March 2015 which is summarized as under:

i. The outsourcing of certain activities in the manufacturing process is a common business practice. As a result of outsourcing of such job work, the turnover of the assessee has increased from 254.52 crores in assessment year 2011-12 to Rs. 447.75 crores in the year under consideration. The job work charges to sales for the year under consideration has reduced to 4.80% as against 11.43% in the assessment year 2010-11 which resulted increased in the gross profit margin for the year under consideration in comparison to the earlier assessment year.

ii. The impugned job work charges have been paid to the parties through account payee cheque and after deducting the tax under the relevant provisions of the Act. Thus the identity of the party cannot be doubted as the payment was made through the banking channel.

iii. Most of the job worker's have filed their respective income tax return showing the amount of income received from the assessee.

iv. The parties mention and serial No. 22 and 23 were registered Labour contractors and were engaged in supplying the labour as many as 200 to 250. These parties were registered under the Provident fund Act. These parties were maintaining regular books of accounts including monthly salary register which were also audited and they were also filing the income tax return.

v. The parties in their statements furnished under section 131 of the Act have not denied to have rendered job work services to the

assessee against the payment received from the assessee. The parties have also disclosed in the statement the manner in which the job charges was determined.

vi. The allegation that the bank account of the job workers were opened after the introduction of the assessee, the parties have immediately withdrawn the cash from the bank after depositing the cheque and these parties were operating from the premises of the assessee do not render the claim of the assessee as false.

vii. Similarly, the mismatch in the signature cannot be a ground to hold the job charges as bogus ones the transaction has been established based on other documents including in the statement furnished under section 131 of the Act. Furthermore, the computer-generated bills being identical cannot lead to draw an inference that the claim of the assessee is false more particularly where glaring evidences are available on record that assessee has undertaken the services of the job worker. Similarly the job workers were operating at the premises of the assessee for the reason that they were working on the heavy and bulky equipments which were manufactured at the premises of the assessee. As such it was not possible to transport such heavy and bulky equipments at the premises of the job worker.

viii. The assessee with respect to the job workers who either not responded to the notice issued under section 131 of the Act or notice were not served upon them file the copies of the income tax return of the job worker's, copies of the bills and ledgers, bank statements, balance sheet, profit and loss account, capital account in support of its contention. The assessee further claimed that non-reply of the notice issued under provision of the Act, cannot lead to draw an inference that the aforesaid parties were not genuine.

However, the AO disagreed with the contention of the assessee by observing that the increase in the turnover, gross profit cannot be the basis to justify that such expenses were genuine.

The AO further observed that the documents filed by the assessee in support of his claim towards the job charges are nothing but cooked up story. It is because there is mismatch in the signature of the parties made in the bank account in form viz a viz in the bills raised to the assessee. The AO in support of his contention placed the copy of the bank opening form and the bill in his order. Accordingly, the AO was of the view that all the cheque books of the parties were in the custody of the assessee which was used in showing the bogus bills. In view of the above the AO held that the expenses claimed by the assessee for Rs. 10,24,42,002/- under the head of the job work charges are not genuine. Thus he disallowed the same and added to the total income of the assessee.

4. Aggrieved assessee preferred an appeal to the learned CIT (A).

5. The assessee before the learned CIT (A) submitted that the parties appeared before the AO in response to the notice under section 131 of the Act have admitted the fact that they have signed the bills raised to the assessee as well as in the bank opening form. Furthermore, there are more glaring evidences such as the payment was made through account payee cheque after the deduction of TDS and Income Tax returns of the job workers.

The assessee also submitted that it was having cash credit facility in Union Bank of India therefore the bank accounts of the aforesaid parties were opened in the same bank account so as to facilitate easy transfer of payment.

Similarly, the cash was withdrawn from the bank immediately by the parties for meeting their day-to-day expenses with respect to the salary of the workers. Moreover, the assessee has nothing to do with the withdrawal of cash by the job worker.

There was no evidence brought on record by the AO that the cash withdrawn from the bank account of the job workers came to the assessee.

The assessee has reiterated the submissions as made before the AO during the assessment proceedings.

6. The learned CIT (A) after considering the submission of the assessee deleted the addition made by the AO by observing as under:

> *"In respect of the 23 jobwork parties, complete documentary evidences as mentioned above were furnished to the Assessing officer. The payments were made by account payee cheques after deducting due T.D.s. and there is no finding that any portion of these payments returned back to the Appellant Company.*
>
> *The Assessing officer has contended that the signature on the account opening forms and that on the bills is different and therefore there is presumption that the jobwork expenditure incurred in respect of 23 parties is bogus. The only contention of the Assessing officer to disallow jobwork expenses and treat it as bogus is because of change in signature in bank documents and alleged invoices provided to the Appellant Company. He has also observed that the jobwork party did not have any independent infrastructure to provide such services. Both these allegations have been adequately addressed and contended by the Appellant company in paper book filed before me and the arguments of the Appellant Company in respect of the same appears to be satisfactory and palatable. These cannot be made basis for concluding the expense as bogus.*
>
> *When the jobwork parties of whose statement were recorded u/s 131(1) of the Income Tax Act, 1961 themselves have confirmed that the sign on the bills and that on the account opening form is theres and therefore there is no ground of any other presumption. Even otherwise what is relevant for genuineness of claim of expenditure of jobwork is whether the jobwork parties have provided the services, received payment by account payee cheques, work done has been at competitive market prices and offered such income to tax, which is adequately substantiated by the Appellant Company.*
>
> *There is no evidence anywhere that these concerns gave bogus jobwork bills to the Appellant Company. There is nothing on record to show that any part of the fund given by the Appellant Company to these parties came back to the Appellant Company in any form. Even the statements recorded do not implicate the transactions with the assessee in any way.*
>
> *I find that the assessee has discharged its onus by adducing sufficient evidences. I also find that the job party is assessed to tax and the job charges received by them from the Appellant Company are included in their total job receipts. The job parties who were summoned and whose statement recorded u/s 131 have confirmed to the Assessing Officer that they have done job work for the Appellant Company. Sufficient evidences as mentioned above were furnished to Assessing Officer. In this way the Appellant Company has discharges its onus and proved that job work expenses are bona fide and genuine in its case.*

Merely by arbitrary presumptions it cannot be said that the amounts might have come back to Appellant Company. There is no such finding at all. There is no basis at all for this presumption. This renders the arbitrary presumption of the Assessing Officer to be completely baseless and unsustainable. In the absence of any such finding, the genuine expenditure incurred by Appellant Company for job work paid by account payee cheques cannot be disallowed.

Further, the Assessing officer himself has obtained the bank statements of all the jobwork parties directly from bank. The existence of these parties is thus justified by an external indirect confirmation obtained by the Assessing Officer. Since the banks have mandated the KYC documents, the existence of these parties cannot be rules out.

Further, in respect of parties to; whom summons was not served, the Assessing officer has during the course' of Assessment proceedings himself obtained the bank statements of the said parties. It is in the common knowledge of everybody that the bank account, now a days, could be opened only on submission of proper documents. The bank account copies collected by the assessing officer shows that the Appellant Company had made the payments to the above said parties by way of account payee cheques. Thus, it is seen that the transactions have been routed through the bank accounts. Further the Appellant Company has furnished the Income Tax Return, Bank passbook (wherever available), copy of ledger accounts, TDS deduction details of the above parties to prove their existence and bonafide of the transaction, Thus, it is seen that the Appellant Company has furnished many documents to prove the existence of the parties and bonafide of the transaction of jobwork and they have not been controverted by the assessing officer.

In such cases it would have been better that before embarking upon the path of proving the expenditure as bogus, the Assessing officer should have looked into the business results compared to the earlier years i.e comparision of Gross profit margins.

From the facts submitted, it is observed that Gross profit margin of the Appellant Company has increased from 15.05% in A.Y. 2010-11 to 20.93% In A.Y. 2012-13 which shows increase of 5.88%. For sake of argument, even if the expenditure is considered as bogus, what will happen to Gross profit ?

I find that the Appellant's case is covered by decision of Honorable Gujarat high court in the case of CIT 1 vs Avinash M. Jhawar (Tax Appeal no. 229 of 2009) and M.K. Brothers (1986) 52 CTR (Guj) 228.

I find that on similar facts the Ahmedabad Tribunal in case of Jhawar International Surat vs Income Tax Officer in ITA No.1938 & 2015/Ahd/2008 has allowed the claim by holding as under:-

> *"We have heard the rival contentions and gone through the facts and circumstances of the case. 'We have also perused the case records including the assessment order as well as the order of the CIT(A). We have also perused the paper book furnished by the assesses. We find that the assesses is an exporter of value added textile fabrics. We further find that the value addition work was got done from this job work party:*
>
> *We further find that the Assessee during the assessment proceedings has furnished following evidences in support of expenditure:-*
>
> - *Job charges invoices raised by job party.*
> - *Bank statements evidencing payments to the job party by account payee cheques,*

- *Copies of TDS certificates in respect of TDS deducted u/s 194C from this job party.*
- *Confirmation from this job party that they have done job work of Value addition and received payment for it.*
- *Ledger account copy of this Job party.*

We find that the assessee has discharged his onus by adducing sufficient evidences and it is well established law that assessee is required to prove his source only. Once the assessee proves his source (supply of service), addition cannot be made in his hand. We also find that the job party is assessed to tax and the job charges received by him from assessee are included in their total job receipts. The job party has confirmed to the A.O. that they have done job work for assessee. Sufficient evidences as mentioned above were furnished to A.O. In this way the assessee has discharges his onus and proved that job work expenses are bona fide and genuine in his case. In such situation, there remains no basis with A.O. to disbelieve the job work expenses in hands of assessee."

Respectfully following the aforesaid orders of the Honorable High Court &. Tribunal and based on appreciation of documents submitted and facts analyzed, I am of the view that the job work charges in question incurred by the Appellant Company cannot be said to be bogus.

In view of the above facts and the case laws discussed above, addition made by the Assessing officer is hereby deleted."

7. Being aggrieved by the order of the learned CIT (A), the Revenue is in appeal before us.

8. The learned DR before us reiterated the findings of the AO and vehemently relied on his order.

9. On the other hand the learned AR before us filed a paper book running from pages 1 to 245 and submitted that:

- *Company manufactures agricultural implements of various types and weights, for harvesting, planting etc. such as harvesters, tillers, diggers, mowers etc. It manufactured nearly 68,000 large and small items and made turnover of Rs. 447 crores (last year Rs. 254crores)*
- *Company has adopted practice if using contract labour and in-house job work sourcing instead of payroll workers for business expediency perceived by it; this is a well recognized practice in large industries*
- *Business expediency was explained during assessment as also to CIT-A*
- *It retained over 900 skilled and unskilled workers by this method as against only 39 supervisors; there were thus no workers on payroll, which itself goes to establish that without contracted workers, production and turnover* of any value (not to speak *of over*

Rs. 400 crores) could not have been achieved; thus this also proves that contractors did in fact render services and were present and required

- *Manufacture of products involves a large number of technical and manual processes; all of which was got done by contractors' workers, as shown in process flow chart and invoices*
- *Without such processes (for which payments are made), production could not have been achieved at all, which establishes need and expediency as also factum of services having been rendered and received*
- *When all technical infrastructure belongs to company and it has its own plant, it is obvious for contracted workers to come and work in company premises; this is no reason for disallowance at all*
- *All contractors who were examined have confirmed rendering of services and receipt of payments for the same, for which payments were made by bank and TDS was made*
- *Party-wise evidence in support of impugned expenditure was submitted which included itemized bills/rates/nature of work done, bank statements, accounts and ITRs of large contractors*
- *All are PAN holders with KYCs in Banks*
- *In two large contractors' cases, even their labour payment registers were produced, which proves deployment and payment to labourers by them*
- *Similar expenditure (mostly same parties even) in earlier and later years are allowed to company by the Dept. in scrutiny assessments*
- *While GP ratio has improved over years (15.05% in AY 10-11 to 20.93% in AY 12-13), impugned charges to turnover ratio has gone down (11.43% in 10-11 to 4.80% in AY 12-13), thus showing reasonability and absence of any unreal element as also rising book result*
- *Company was required to pay PF contribution in respect of job workers which proves their presence and existence for company work in its premises*
- *Labour insurance policy included such contracted workers*
- *Two of the large labour suppliers hold labour contractors registration under Contract Labour Act*
- *None of the persons have stated that any part of payment was returned to company and there is no such evidence either*
- *All issues raised by the AO were explained and replied to in detail by company in assessment with evidence and have been controverted*
- *AO's stand of holding the entire expenditure and that too on all contractors is based on surmises and on peripheral, insignificant factors with no cogent material; AO could not have ignored the factum of services being received and there being no other expenditure on wages and that too at a reasonable percentage; impugned disallowance formed only 2.5% of total expenditure of the company, which showed a substantial profit of over Rs. 48 crore; no company could survive without 900 workers needed for such scale of operations and it is inconceivable and improbable that a company would debit 'bogus' expenditure.*

Both the ld. DR and AR vehemently supported the order of the authorities below a favorable to them.

10. We have heard the rival contentions of both the parties and perused the materials available on record before us. The issue in the present case relates to the disallowance of the expenses claimed by the assessee under the head job work charges to the tune of Rs. 10,24,42,002/-. The AO was of the view that the impugned expenses are bogus or fictitious in nature and therefore the same was disallowed by him. However the learned CIT (A) was pleased to delete the addition in view of the fact that the transaction was carried out through banking channel, necessary documentary evidences were furnished substantiating genuineness of parties and transaction and furthermore similar expenses were claimed in the earlier years which were accepted by the revenue.

From the preceding discussion, we note that the entire basis of making the disallowance by the AO was that job worker has not sufficient equipment and machinery to perform required job, they are providing services from assessee premises and there was the mismatch in the signature of the job workers in the bank opening form and in the bills/invoices raised to the assessee. In our considered view the basis of disallowances by the AO are merely a suspicion and not the conclusive evidences especially in the circumstances where there are many more direct evidences available on record. Such evidences include the payment through banking channel after the deduction of TDS, copies of the income tax returns, confirmation in the statement recorded under section 131 of the Act, registrations under the Provident fund Act of the Labour contractors. Further the allegation of the AO for mismatch in the signature as discussed above and the job worker working from the premises of the assessee has been sufficiently addressed by the assessee. Accordingly, the learned CIT (A) has given very clear finding of on the issues raised by the AO. Similarly, the Job workers in their statement recorded under section 131(1) have confirmed that they provided services of job work, received charges based on competitive

market rate and offered the same for the taxation. The learned CIT (A) further given the finding that the there was no evidence brought by the Revenue suggesting that the amount paid to the job worker returned to the assessee in any manner.

On perusal of the details of the job work expenses incurred by the assessee in the earlier years, we find that the expenses for the year under consideration towards the job charges in relation to the sales has reduced significantly. Thus, in our considered view there is a direct relation between the amount of sales viz a viz the job work charges incurred by the assessee, therefore such turnover cannot be achieved without incurring the job work expenses.

It is also pertinent to note that, at the time of hearing the learned DR has not brought anything on record contrary to the finding of the learned CIT (A). Thus there cannot be any disallowance of the job work expenses as alleged by the AO. In holding so we find support and guidance from the judgment of Hon'ble Gujarat High Court in the case of CIT vs. Avinash M Jhawar in tax appeal number 2299 of 2009 wherein it was held as under:

> *"From the above discussion, it can be clearly seen that the entire issue has been decided by the Tribunal on the basis of evidence on record. The assessee had made payments for job work done through account payee cheques. There were other corroborative evidences to prove such evidence. The Assessing Officer has committed error in disallowing such claim. In addition to having made payments through A/c. Payee cheques, the assessee had also produced TDS Certificate in support of its claim. The Assessing Officer observing that such cheque payments could have been withdrawn and reverted back to the assessee were not based on evidence.*
>
> *We find no infirmity in the order of the Tribunal. Accordingly, Tax Appeal stands dismissed."*

In view of the above and after considering the facts in totality, we do not find any infirmity in the order of the learned CIT (A). Hence, we decline to interfere in the order of the learned CIT-A. Hence the ground of appeal of the Revenue is dismissed.

11. 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.

12. In the result, the appeal of the Revenue is dismissed.

This Order pronounced in Open Court 01/06/2020

Sd/-	Sd/-
(MADHUMITA ROY)	(WASEEM AHMED)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Ahmedabad: Dated 01/06/2020

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By ORDER

Deputy/Asstt.Registrar
ITAT, Rajkot