

आयकर अपीलीय अधिकरण  
IN THE INCOME TAX APPELLATE TRIBUNAL

मुंबई पीठ "एसएमसी "  
MUMBAI BENCH " SMC ", MUMBAI  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष  
SHRI G.MANJUNATHA, ACCOUNTANT MEMBER  
आअसं. 5923/मुं/2018 (नि.2015-16 व)  
ITA NO.5923/MUM/2018 (A.Y.2015-16)

Unitex Products Pvt. Ltd.,  
C/o. Kalyaniwalla & Mistry LLP,  
Esplanade House, 2<sup>nd</sup> Floor,  
29, Hazarimal Somani Marg,  
Fort, Mumbai 400 001  
PAN: AAACU0760G

..... अपीलार्थी /Appellant

बनाम Vs.

Income Tax Officer 2(3)(4),  
Room No.555, 5<sup>th</sup> Floor,  
Aaykar Bhavan, M.K.Road,  
Mumbai 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri M.M.Golwala

प्रतिवादी द्वारा/Respondent by : Ms. R. Kavitha

सुनवाई की तिथि/ Date of hearing : 20/02/2020

घोषणा की तिथि/ Date of pronouncement : 12/06/2020

आदेश/ ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-6, Mumbai (in short 'the CIT (A)') dated 24/04/2018 for the assessment year 2015-16.

2. The assessee in appeal has assailed the order of First Appellate Authority on two counts:-

- (i) Disallowance of administrative expenses Rs.7,57,473/-
- (ii) Disallowance of Rs.4,20,890/- paid to Coimbatore Municipal Corporation.

3. Shri M.M.Golwala appearing on behalf of the assessee submitted that administrative expenses were claimed on the basis of formula accepted by the Department in the past. The Id. Authorized Representative of the assessee submitted that out of total Administrative expenditure of Rs.2,63,36,457/-, the assessee had suo moto disallowed Rs.2,50,35,436/-. The assessee claimed administrative expenses of Rs.13,01,021/-. However, the Assessing Officer allowed only audit fee amounting to Rs.4,56,514/- and disallowed remaining expenditure of Rs.12,13,987/-. The CIT (A) granted partial relief to the assessee on the ground that in the past assessment years only 1.74% of the administrative expenses claimed by the assessee were allowed. The CIT (A) has erred in applying ratio of 1.74% as was in immediately preceding assessment year. The Id. Authorized Representative of the assessee referred to the table at Page-19 of the Paper Book giving details of administrative expenses allowed in the earlier assessment years. The Id. AR pointed that the ratio of expenditure claimed in the past is not uniform and ranges between 33.80 % to 1.74% during AYs 2010-11 to 2014-15. The Id. Authorized Representative of the assessee submitted that administrative expenses should be allowed to the assessee in line with computation in previous assessment years.

In respect of disallowance of amount paid to Coimbatore Municipal Corporation, the Id. Authorized Representative of the assessee submitted that Rs.4,20,890/- was paid towards regularisation charges of building. In the

receipt issued by Coimbatore Municipal Corporation, the amount was shown as service charges, labour welfare fund and rights charges. The Id.Authorized Representative of the assessee referred to the translated copy of receipt issued by Coimbatore Municipal Corporation at Page – 121 and the copy of receipt at page 122 of the Paper Book. The Id.Authorized Representative of the assessee pointed that the authorities below have erred in holding that the amount paid was in the nature of fine, hence not allowable. The Id. A.R submitted that the charges paid were not in the nature of any penalty but were towards regularization of the part of building.

4. On the other hand, Ms. R. Kavitha, representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of the assessee. The Id.Departmental Representative submitted that the charges paid to Coimbatore Municipal Corporation were penal in the nature and therefore, not allowable.

5. We have heard the submissions made by rival sides and have perused the orders of authorities below. The assessee in appeal has raised four grounds. In ground Nos.1 to 3 of the appeal, the assessee has assailed disallowance of administrative expenses Rs.7,57,473/-. The assessee is engaged in the business of leasing and renting of warehouse. The assessee has offered lease and rental income to tax under the head 'Income from house property'. After suo moto disallowance, the assessee claimed administrative expenditure of Rs.13,01,021/-. In assessment proceedings, the Assessing Officer allowed audit fee of Rs.87,034/- and rejected assessee's remaining claim of Rs.12,13,987/- on the ground that the expenditure is not incurred wholly and exclusively for the purpose of business. In first appellate proceedings, the CIT (A) granted part relief to the assessee by further allowing

expenditure of Rs.4,56,514/-. The CIT(A) granted part relief to the assessee on the ground that in the earlier assessment years i.e. 2010-11, 2012-13 and 2013-14, the assessee had disallowed 98.26% of the total administrative expenditure and claimed only 1.74% of such expenses. The CIT (A) applied the same ratio in the assessment year under appeal and allowed part relief to the assessee. We find that the findings of CIT (A) are contrary to the facts. The Id. Authorized Representative of the assessee has referred to the table (Page-19 of the Paper Book) giving details of the administrative expenses allowed in the past. A perusal of the table shows that from assessment year 2010-11 to 2014-15, the ratio of expenditure is not static. The ratio of Income from House Property to Total Income ranges from 66.20% to 98.26%. The ratio 1.74% is relevant to AY 2014-15 only. The ratio is much higher in preceding assessment years. The administrative expenditure has been apportioned accordingly. The contention of Id. Authorized Representative of the assessee is that in the assessment year under appeal suo-motu disallowance of the expenditure has been made by the assessee on the basis of formula accepted by the Department in preceding assessment years. Taking into consideration entirety of facts, we deem it appropriate to restore this issue back to the file of Assessing Officer for re-computation of allowable administrative expenditure in line with the formula accepted by the Department in assessee's case in the past. The grounds No.1 to 3 of the appeal are allowed for statistical purposes, accordingly.

6. In ground No.4 of the appeal, the assessee has assailed disallowance of Rs.4,20,890/- paid to Coimbatore Municipal Corporation. The contention of the assessee is that this amount has been paid as property tax/regularisation charges in respect of small portion of the building. The assessee has placed on

record copy of the receipt issued by Coimbatore Municipal Corporation at pages 121 and 122 of the Paper Book. A perusal of the same shows that the amount has been charged towards:-

(i) Service charges (Debris)	- Rs.1,07,000/-
(ii)Rights charges (L.F)	- Rs.1,28,400/-
(iii)Labour Welfare Fund(L.W.F)	- <u>Rs.1,85,490/-</u>
<b>Total:</b>	<b>- <u>Rs.4,20,890/-</u></b>

The above receipt issued by Coimbatore Municipal Corporation is not disputed by the Department. The heads of charges mentioned in the receipt indicate that the amount paid by the assessee is certainly not in the nature of penal charges. We do not agree with the findings of the authorities below that the amount paid is in the nature of fine. Accordingly, the findings of the CIT(A) on this issue are reversed and the amount paid by the assessee to Coimbatore Municipal Corporation is allowed. The ground No.4 of the appeal is allowed.

7. The appeal of the assessee is thus, allowed partly in the terms aforesaid.
8. This appeal was heard on 20/02/2020. As per Rule 34(5) of the Income Tax (Appellate Tribunal) Rules, 1963, (ITAT Rules, 1963), the order was required to be "ordinarily" pronounced within a period of 90 days from the date of conclusion of the hearing of appeal. The instant appeal was heard prior to the lockdown declared by the Hon'ble Prime Minister on 24-03-2020 in view of COVID-19 pandemic. The lockdown was forced due to extra ordinary circumstances caused by world wide spread of COVID-19. Thereafter, the lockdown was extended from time to time. Therefore, the pronouncement of order beyond the period of 90 days from the date of hearing is not under

“ordinary” circumstances. The Co-ordinate Bench of the Tribunal in the case of DCIT vs. JSW Ltd., ITA No.6264/Mum/2018 for A.Y 2013-14 decided on 14/05/2020, under identical circumstances, after considering the provisions of Rule 34(5) of the ITAT Rules, 1963, judgements rendered By Hon’ble Apex Court and the Hon’ble Bombay High Court on the issue time limit for pronouncement of orders by the Tribunal and the circumstances leading to lockdown held:-

*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 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 ITA No. 6103 and 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.*

Thus, in light of above facts and the decision of coordinate Bench, the present order is pronounced beyond the period of 90 days.

9. The appeal of the assessee is partly allowed. Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Order pronounced on Friday the 12<sup>th</sup> day of June, 2020.

Sd/-

(G.MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 12/06/2020  
Vm, Sr. PS(O/S)

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**