

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

**Before: Shri Waseem Ahmad, Accountant Member  
and Ms. Madhumita Roy, Judicial Member**

**ITA No. 204/Rjt/2019  
Assessment Year 2015-16**

Chandrikaben Naranbhai Bhorania, Kunj Gali-1, Vivekanand Nagar, Ravapar Road, Morbi PAN:BLLPB8461R (Appellant)	Vs	The ITO, Ward-1, Morbi (Respondent)
---	----	--

**Revenue by: Shri Suhas Mistry, Sr. D.R.**  
**Assessee by: Shri Chetan Agrawal, A.R.**

Date of hearing : 27-02-2020  
Date of pronouncement : 02-06-2020

**आदेश/ORDER**

**PER BENCH:-**

This assessee's appeal for A.Y. 2015-16, arises from order of the CIT(A)-2, Rajkot dated 17-07-2019, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The assessee has raised following ground of appeal:-



6. Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.
7. The learned AR before us filed a paper book running from pages 1 to 18 and submitted that the cash balance shown as on 31 March 2015 cannot be treated as unexplained cash credit under section 68 of the Act. Therefore, the same cannot be added to the total income of the assessee.
8. On the other hand the learner DR vehemently supported the order of the authorities below.
9. We have heard the rival contentions of both the parties and perused the materials available on record before us. The 1<sup>st</sup> issue arises whether the provisions of section 68 of the Act can be attracted to the closing balance of cash shown by the assessee as on 31 March 2015. To our mind the answer stands negative. At this juncture we inclined to refer to the provisions of section 68 of the Act which reads as under:

***Cash credits.***

**68.** *Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :*

***Provided*** *that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—*

*(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*

*(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory;*

***Provided further*** *that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.*

10. The provisions of section 68 can be invoked with respect to the sum found credited in the books of accounts and the assessee offers no explanation about

the nature and source thereof or the explanation offered by him is not satisfactory. Thus it is very clear that the provisions of section 68 can be attracted in relation to the credit entries found in the books of accounts. In other words the closing cash balance shown at the end of the financial year cannot be subject matter of addition under the provisions of section 68 of the Act. Thus the addition made under 68 of the Act deserves to be deleted.

11. However, for the completeness of the understanding, we note that the assessee has declared her income from the activity of tailoring/embroidery which has been duly accepted by the revenue. Once the revenue disbelieved the activity of the assessee, then it has to disturb the entire income offered by the assessee in her return of income. For the income offered to tax from the activity of embroidery business, the revenue has not made any negative remark but for the cash balance shown by the assessee as on 31 March 2015 at Rs. 4,98,040/- the revenue doubts on the genuineness of the business activity of the assessee. In our considered view the revenue cannot give different treatment for part of the transaction of the assessee.

12. In view of the above we are not convinced with the finding of the authorities below. Therefore we set aside the finding of the learned CIT (A) and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

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

14. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 02-06-2020

Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER  
Ahmedabad : Dated 02/06/2020

Sd/-  
(WASEEM AHMAD)  
ACCOUNTANT MEMBER

