

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

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

**ITA No. 137/Rjt/2018
Assessment Year 2013-14**

Smt. Namrata Hiren Lal Navapara, Khambhalia, Dist: Dwarka PAN: AFAPL7747Q (Appellant)	Vs	The ITO, Ward-1(4), Dwarka (Respondent)
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**ITA No. 138/Rjt/2018
Assessment Year 2013-14**

Smt. Daxaben Dilipbhai Lal, Navapara, Khambhalia, Dist: Dwarka PAN: AANPL4939Q (Appellant)	Vs	The ITO, Ward-1(4), Dwarka (Respondent)
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Revenue by: Shri Suhas Mistry, CIT-D.R.
Assessee by: Shri Chetan Agarwal, A.R.

Date of hearing : 28-02-2020
Date of pronouncement : 02-06-2020

आदेश/ORDER

PER BENCH:-

These two appeals filed by different assessees for A.Y. 2013-14, arise from order of the CIT(A), Jamnagar dated 21-02-2018, in proceedings under section 272A(1)(c) of the Income Tax Act, 1961; in short the Act.

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

"1. Learned CIT(A) has erred in law as well as on fact in confirming penalty of Rs. 10,000/- imposed by Ld. A.O. u/s. 272A(1)(c) of the Act."

3. The only issue raised by the assessee is that the learned CIT (A) erred in confirming the penalty of Rs. 10,000 imposed under section 272A(1) of the Act, by the AO on account of non-appearance in response to the notice issued under section 131 of the Act.

4. The facts in brief are that the assessee in the present case is an individual and she was issued a summons under section 131 of the Act dated 15th February 2016 for her personal appearance with the books of accounts. The summon was issued to the assessee in connection with the assessment proceedings in the case of Shri Mahesh Sunderji Raichura for the assessment year 2013-14. But the assessee failed to do so. Accordingly the AO levied the penalty of Rs. 10,000 under the provisions of section 272A(1) of the Act.

5. Aggrieved assessee preferred an appeal to the learned CIT (A). The assessee before the learned CIT (A) submitted that she could not personally appear due to her health issue. As such the assessee during the relevant time was pregnant. However the assessee claimed to have filed all the necessary evidences along with the covering letter to the AO in response to the summon

issued under section 131 of the Act. However the AO has not considered the submissions furnished by her in his penalty order.

6. However the learned CIT (A) disregarded the contention of the assessee on the reasoning that there was no supporting evidence for the health of the assessee. Accordingly the learned CIT (A) confirmed the order of the AO.

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

8. The learned AR before us reiterated the submissions as made before the learned CIT (A) whereas the learned 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. In the present case the penalty has been imposed under section 272A(1) of the Act for the reason that the assessee failed to appear before the AO in response to the summon issued under section 131 of the Act. Though the assessee before the learned CIT (A) claimed that, she has furnished the necessary details in response to summon issued under section 131 of the Act. But she failed to appear personally due to her health issue. However the learner CIT (A) disregarded the contention of the assessee by observing that there was no supporting evidence filed about the health issue of the assessee.

However we find that the learned CIT (A) in his order did not discuss the contention of the assessee that she has furnished the necessary details in response to summon issued under section 131 of the Act. In our considered view the act of the assessee furnishing the necessary details before the AO in response to summon issued under section 131 of the Act, has not been doubted by the learned CIT (A). Thus it is transpired that the assessee has made

substantial compliances by furnishing the necessary details. Considering the facts in the case on hand, the penalty imposed by the authorities below needs to be quashed. Accordingly we set aside the finding of the learned CIT (A) and direct the AO to delete the penalty imposed by him. Hence the ground of appeal of the assessee is allowed.

10. Coming to the ITA No. 138/AHD/2018 for the AY 2013-14 where the assessee has raised the following grounds of appeal:

"1. Learned CIT(A) has erred in law as well as on fact in confirming penalty of Rs. 10,000/- imposed by Ld. A.O. u/s. 272A(1)(c) of the Act."

11. At the outset we note that we have decided the identical issue in the case of Smt Namrata Hiren Lal in ITA No. 137/RJT/2018 in favour of assessee vide paragraph number. 9 of this order. For the detailed discussion, please refer the relevant paragraph. Respectfully following the same, we set aside the finding of the learned CIT (A) and direct the AO to delete the penalty imposed by him. Hence the ground of appeal of the assessee is allowed.

12. 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 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.

13. In the combined result, both the appeals of the different assessee are 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

आदेश क० त० ल० म अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot