

**IN THE INCOME TAX APPELLATE TRIBUNAL "E", BENCH
MUMBAI**

**BEFORE SHRI C.N.PRASAD, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.6104/Mum/2018
(Assessment Year :1985-86)**

M/s. Tata Steel Limited Bombay House 24, Homi Mody Street Fort, Mumbai-400001	Vs.	The Asst. Commissioner of Income Tax-2(3) Aayakar Bhavan, 5 th Floor Room No.522, Maharshi Karve Marg, Mumbai – 400 020
PAN/GIR No.AAACT2803M		
(Appellant)	..	(Respondent)

Assessee by	Shri Kirit Kamdar
Revenue by	Shri Manjunathaswamy, CIT DR
Date of Hearing	16/03/2020
Date of Pronouncement	08/07/2020

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.6104/Mum/2018 for A.Y.1985-86 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-6, Mumbai in appeal No. CIT(A)-6/IT-54/2017-18 dated 29/08/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s 254 of the Income Tax Act, 1961 (hereinafter referred to as Act) by the Asst. Commissioner of Income Tax 2(3), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the assessee is entitled for interest u/s. 244(1A) of the Act on the refund of Rs.23,91,54,333/- for the period 29/10/2013 to 21/11/2017 in the facts and circumstances of the case.

3. We have heard rival submissions and perused the materials available on record. To adjudicate the aforesaid issue, the following list of dates and events would be relevant:-

Date	Event
28/03/1998	Date of passing of assessment order
21/02/2003	Date of passing of Id. CIT(A)'s order
18/03/2005	Order passed by the Id.AO giving effect to the order of Id. CIT(A)
27/01/2009	Date of passing of ITAT order
26/03/2009	Order passed by the Id.AO giving effect to the Tribunal Order
07/12/2011	Order passed by the Id. AO u/s.154 of the Act against order giving effect to Tribunal order pursuant to assessee's application made u/s.154 Act for granting of interest u/s.244 of the Act.
28/08/2013	Rectification order passed by the Id. AO against the Section 154 order dated 07/12/2011 wherein interest u/s.244 of Rs.23,91,54,333/- was

	withdrawn by the Id.AO considering it as excess interest granted. Accordingly, the demand of Rs.23,91,54,333/- was raised pursuant to this order of the Id. AO.
29/10/2013	Date of payment of this demand in the following manner :- (a)Rs.12,46,90,985/- being refund of A.Y.2005-06 adjusted. (b) Balance amount of Rs.11,44,63,348/- paid on 29/10/2013
02/07/2014	Order of Id. CIT(A) against rectification order dated 28/08/2013 wherein the Id.CIT(A) upheld the action of the Id.AO.
26/07/2017	Date of ITAT order in respect of 154 proceedings dated 28/08/2013 against CIT(A) order dated 02/07/2014. In this order, this Tribunal had allowed the appeal of the assessee and dismissed the appeal of the revenue by holding that interest u/s.244 of the Act granted to the assessee cannot be withdrawn in the facts and circumstances of this case.
21/11/2017	Order passed by the Id. AO giving

	effect to the order of the Tribunal dated 26/07/2017
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3.1. From the aforesaid list of dates of events, it could be seen that the proceedings attained finality on 21/11/2017 wherein the Id. AO had passed order giving effect to the order of this Tribunal. In that giving effect order, the Id. AO had finally adjusted the refund of Rs.23,91,54,333/- against demand of A.Y.2009-10 raised on the assessee. These facts including the list of dates and events and the proceedings thereon are not controverted by the revenue before us. Now, the short point that arises for our consideration is whether the assessee is entitled for interest u/s.244 of the Act from the date of payment of taxes i.e.29/10/2013 and till the date such taxes were actually adjusted against the demand of some other assessment year i.e.21/11/2017. In other words, the issue to be decided by us is whether the assessee is entitled for interest u/s.244 of the Act for the period 29/10/2013 to 22/11/2017. It is not in dispute that the entire taxes were ultimately paid by the assessee on 29/10/2013 either by way of physical payment or by way of adjustment of refund as narrated hereinabove. We find that while giving effect to the order of the Tribunal order in the proceedings dated 21/11/2017 passed by the Id. AO, the Id. AO had finally determined the refund of Rs.23,91,54,333/- which was ultimately adjusted against the

demand of A.Y.2009-10. Hence, this is a case of assessee seeking interest on the taxes actually paid by him which ultimately resulted in refund vide proceedings dated 21/11/2017. This is not a case of assessee claiming interest on interest. Hence, we direct the Id. AO to grant interest u/s.244 of the Act on the sum of Rs.23,91,54,333/- for the period 29/10/2013 to 21/11/2017. Accordingly, the ground No.2 raised by the assessee is allowed.

4. The ground No.1 raised by the assessee is general in nature and does not require any specific adjudication.

5. It is pertinent to mention here that this order is pronounced after a period of 90 days from the date of conclusion of the hearing. In this regard, we place reliance on the decision of co-ordinate bench of this Tribunal in the case of JSW Ltd in ITA Nos. 6264 & 6103/Mum/2018 dated 14.5.2020, wherein this issue has been addressed in detail allowing time to pronounce the order beyond 90 days from the date of conclusion of hearing by excluding the days for which the lockdown announced by the Government was in force. The relevant observations of this tribunal in the said binding precedent are as under:-

7. However, before we part with the matter, we must deal with one procedural issue as well. While hearing of these appeals was concluded on 7th January 2020, this order thereon is being pronounced today on 14th day of May, 2020, much after the expiry of 90 days from the date of conclusion of hearing. We are also alive to the fact that rule 34(5) of the Income Tax Appellate Tribunal Rules 1963, which deals with pronouncement of orders, provides as follows:

(5) The pronouncement may be in any of the following manners :—

(a) *The Bench may pronounce the order immediately upon the conclusion of the hearing.*

(b) *In case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date for pronouncement.*

(c) *In a case where no date of pronouncement is given by the Bench, every endeavour shall be made by the Bench to pronounce the order within 60 days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of exceptional and extraordinary circumstances of the case, the Bench shall fix a future day for pronouncement of the order, and such date shall not ordinarily (emphasis supplied by us now) be a day beyond a further period of 30 days and due notice of the day so fixed shall be given on the notice board.*

8. *Quite clearly, “ordinarily” the order on an appeal should be pronounced by the bench within no more than 90 days from the date of concluding the hearing. It is, however, important to note that the expression “ordinarily” has been used in the said rule itself. This rule was inserted as a result of directions of Hon’ble jurisdictional High Court in the case of **Shivsagar Veg Restaurant Vs ACIT [(2009) 317 ITR 433 (Bom)]** wherein Their Lordships had, inter alia, directed that **“We, therefore, direct the President of the Appellate Tribunal to frame and lay down the guidelines in the similar lines as are laid down by the Apex Court in the case of Anil Rai (supra) and to issue appropriate administrative directions to all the benches of the Tribunal in that behalf. We hope and trust that suitable guidelines shall be framed and issued by the President of the Appellate Tribunal within shortest reasonable time and followed strictly by all the Benches of the Tribunal. In the meanwhile** (emphasis, by underlining, supplied by us now), **all the revisional and appellate authorities under the Income-tax Act are directed to decide matters heard by them within a period of three months from the date case is closed for judgment**”. In the ruled so framed, as a result of these directions, the expression “ordinarily” has been inserted in the requirement to pronounce the order within a period of 90 days. The question then arises whether the passing of this order, beyond ninety days, was necessitated by any “extraordinary” circumstances.*

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.

5.1. Respectfully following the aforesaid judicial precedent, we proceed to pronounce this order beyond a period of 90 days from the date of conclusion of hearing.

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

Order pronounced as per Rule 34(5) of ITAT Rules and by placing the pronouncement list in the notice board on 08/07/2020.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 08/07/2020
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai