

आयकर अपीलीय अधिकरण, अमृतसर न्यायपीठ, अमृतसर
IN THE INCOME TAX APPELLATE TRIBUNAL AMRITSAR BENCH AMRITSAR
BEFORE SHRI L.P. SAHU, AM & SHRI RAVISH SOOD, JM

आयकर अपील सं./ITA No.648/ASR/2019

(निर्धारण वर्ष / Assessment Year :NA)

Krishiv Rama Foundation, House No.83, Ward No.1, R.S.Pura, Jammu-181102	Vs.	CIT(E), Chandigarh
स्थायी लेखा सं./PANNo. : AADTK 8135 H		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारित की ओर से /Assessee by	:	Shri P.N.Arora, Advocate
राजस्व की ओर से /Revenue by	:	Shri M.P.Singh, CIT-DR

सुनवाई की तारीख / Date of Hearing	:	06/02/2020
घोषणा की तारीख/Date of Pronouncement	:	30/06/2020

आदेश / ORDER

Per L.P.Sahu, AM:

The assessee has filed this appeal against the order of CIT(E), Chandigarh, dated 25.09.2019.

2. The sole issue involved in the present appeal of the assessee is with regard to rejection of application of assessee for grant of registration u/s.12A of the Act by the CIT(E).

3. Brief facts of the case are that the assessee filed application electronically in Form No.10A the Act on 10.03.2019 seeking registration u/s.12A of the Act, 1961. However, the CIT(E) rejected the application of the assessee holding that the assessee trust does not exist for the purpose of charity, rather it is working commercially, which is defeating its own aims and objectives.

4. Aggrieved from the order of CIT(E), the assessee has filed appeal before the Tribunal.

5. Ld. AR before us filed a paper book which is placed on record and submitted that the assessee trust has fulfilled both the conditions as required to allow the registration u/s.12A of the Act i.e. charitable activities and genuineness of the trust. Ld. AR also submitted that no proper and reasonable opportunity of being heard was provided to the assessee before passing the order. Therefore, ld. AR contended that the CIT(E) may kindly be directed to grant registration u/s.12A of the Act after affording reasonable opportunity of hearing to the assessee.

6. On the other hand, ld. DR relied on the order of CIT(E).

7. We have heard rival submissions of both the parties and perused the entire material available on record. The sole dispute involved in this appeal of the assessee is with respect to rejection of registration u/s.12AA of the Act. On perusal of the order of CIT(E), we find that the CIT(E) in its order observed that the assessee trust does not exist for the purpose of charity, rather it is working commercially, which is defeating its own aims and objectives. However, considering the prayer of the ld. AR of the assessee and looking to the facts and circumstances of the case, we provide one more opportunity to the assessee to substantiate its claim before the CIT(E) with proper evidence/documents and the CIT(E) is directed to consider the

submission of the assessee and pass the order accordingly after providing reasonable opportunity to the assessee. Thus, the sole issue agitated by the assessee is allowed for statistical purposes.

8. Now, a procedural issue comes before us that though the hearing of the captioned appeal was concluded on 06.02.2020, however, this order is being pronounced much after the expiry of 90 days from the date of conclusion of hearing. We find that Rule 34(5) of the Income tax Appellate Tribunal Rules, 1962, which envisages the procedure for pronouncement orders, provides as follows:

34(5) The pronouncement may be in any of the following manners: -

- (a) The Bench may pronounce the order immediately upon the conclusion of hearing.*
- (b) in case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date of 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 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.*

As such, “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 High Court in the case of Shivsagar Veg Restaurant vs ACIT (2009) 319 ITR 433 (Bom), wherein, it was, *inter alia*, observed as under:

“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 rules 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. We also find that the aforesaid issue has been answered by a coordinate Bench of the Tribunal viz; ITAT, Mumbai ‘F’ Bench in DCIT, Central Circle-3(2), Mumbai vs JSW Limited & ors (ITA No.6264/Mum/18 dated 14.5.2020, wherein, it was observed 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 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 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. “

10. Respectfully following the above judicial decision of Hon'ble Bombay High Court and the Tribunal, we are of the considered view that the period during which the lockdown was in force shall stand excluded for the purpose of working out the time limit for pronouncement of orders, as envisaged in Rule 34(5) of the Appellate Tribunal Rules, 1963.”

11. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in pursuance with Rule 34(4) of ITAT Rules, 1963 by putting the copy of the same on Notice Board on 30/06/2020 at Amritsar.

**Sd/-
(RAVISH SOOD)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-
(L.P.SAHU)**

लेखा सदस्य / ACCOUNTANT MEMBER

अमृतसर/ Amritsar; दिनांक Dated 30/06/2020

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. **अपीलार्थी** / The Appellant-
Krishiv Rama Foundation,
House No.83, Ward No.1,
R.S.Pura, Jammu-181102
2. **प्रत्यर्थी** / The Respondent-
CIT(E), Chandigarh
3. **आयकर आयुक्त(अपील)** / The CIT(A),
4. **आयकर आयुक्त** / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **अमृतसर**/DR, ITAT, Amritsar
6. **गार्ड फाईल** / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Senior Private Secretary)
ITAT Amritsar Bench, Amritsar