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.501/ASR/2014

(**निर्धारण वर्ष** / Assessment Year :2009-2010)

Tarlok Kumar, Prop. Hotel Shagun, New Basti, Gali No.1 Bathinda-151001 C/O: Sh. S.K.Bansal, Advocate Opp.A-Block Gurudwara, B-641, Ranjit Avenue, Amritsar-143001	Vs.	ACIT, C-1, Bathinda
स्थायी लेखा सं./PANNo. : **AAGAM 0541 H**		

(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

निर्धारिती **की ओर से** /Assessee by	:	Shri Tarun Bansal, Advocate
राजस्व **की ओर से** /Revenue by	:	Shri Charan Dass, DR

सुनवाई की तारीख / **Date of Hearing**	:	07/02/2020
घोषणा की तारीख/**Date of Pronouncement**	:	30/06/2020

आदेश / O R D E R

Per L.P.Sahu, AM:

This is an appeal filed by the assessee against the order of CIT(A), Bathinda, dated 30.05.2014, on the following grounds of appeal :-

1. *That the Id. CIT(A) wrongly confirmed addition of Rs.5,00,000/- in the name of Sh. Suresh Kumar as cash credit, and did not allow telescopic benefit out of amount surrendered at Rs.35 lacs during survey dated 21.01.2009.*
2. *That the Id. CIT(A) wrongly confirmed addition of Rs.6,00,000/- in the name of Sh. Rakesh Kumar as cash credit, and did not allow telescopic benefit out of amount surrendered at Rs.35 lacs during survey dated 21.01.2009.*
3. *That the ld.CIT(A) wrongly confirmed addition to Building Account at Rs.3,45,156/- without telescoping the amount surrendered at Rs.35 lacs in survey dated 21.01.2009.*
4. *That the revenue has not appreciated that the assessee cooperated and surrendered Rs.35 lacs in survey dated 21.01.2009 when it was the first year of business and no benefit of surrender was allowed to the appellant.*
5. *That the Ld. CIT(A) has not allowed depreciation on the Hotel Building valued at Rs.76,02,895/-, nor he has given any finding on*

disallowance of depreciation, on a specific ground taken before him.

6. *That the order is bad in law as well as on facts. The order may kindly be set aside modified or any other relief be allowed.*

2. Brief facts of the case are that the assessee was engaged in Hotel and Restaurant business and filed his return of income on 22.09.2009. A survey u/s.133A(1) of the Act was conducted at the business premises of the assessee, Hotel Shagun, Barnala By-pass on 21.01.2009 and during the course of survey Rs.960/- was found in cash and the assessee had offered to tax an amount of Rs.35,00,000/- as its undisclosed income for the assessment year 2009-2010 subject to no penal action under the I.T.Act, 1961. The assessee also admitted the undisclosed investment of Rs.35 lakhs in the hotel Shagun. Thereafter the AO issued statutory notices to the assessee. Finally, the AO framed the assessment assessing total income of the assessee at Rs.38,95,160/-.

3. Aggrieved by the order of AO the assessee appealed before the CIT(A) and the CIT(A) after considering the submissions of assessee and findings of AO dismissed the appeal of the assessee.

4. Further aggrieved, the assessee is in appeal before the Income Tax Appellate Tribunal.

5. Ground Nos.1, 2, 3 & 4 are arising out of the addition made by the AO u/s.69B of the Act at Rs.14,45,156/-(Rs.5,00,000+6,00,000 +3,45,156), therefore, they are disposed off together.

6. Ld. AR before us reiterated the submissions made before the lower authorities and in addition to this, ld. AR submitted that during the course of assessment proceedings, the accountant has filed wrong balance sheet and the matter was also could not present before the AO because some impounded papers relating to the consideration of hotel business was not related to this impugned assessment year. This matter was also taken up before the CIT(A) but the CIT(A) disposed off this matter by stating that the remand report is silent in this regard and he directed the AO to verify the fact the impugned records and to take a remedial action in accordance with the Income Tax Act, 1961 but till date no any remedial action has been taken by the AO. Ld. AR also requested for the telescoping from the surrendered amount of Rs.35 lakhs as surrendered during the course of survey proceedings against the addition made by the AO. Finally, ld. AR requested to send the matter back to the file of AO for further verification of the relevant assessee's expenses incurred by the assessee for construction of the hotel building which are placed on record and does not relate to the impugned assessment year but the additions have been made by the AO in this year.

7. On the other hand, ld.DR relied on the order of AO and submitted that the assessee had accepted during the course of survey proceedings of Rs.35 lakhs and paid the taxes subject to some conditions. The

assessee also could not justify the loan taken, which has rightly been decided by the CIT(A). During the course of appellate proceedings before the CIT(A), a remand report was called for from the AO on the basis of written submissions/objections made by the assessee. In the rejoinder the assessee could not substantiate the objections raised by the AO. Therefore, the order of the CIT(A) should be restored.

8. After hearing both the sides and perusing the entire material available on record and the order of authorities below and paper books filed by the assessee, we noted from the impounded paper obtained during the course of survey proceedings, it is clear that some of the expenditure which are not related to the impugned assessment year and this objection was also taken before the CIT(A) but the CIT(A) has not properly dealt this matter while deciding the appeal of the assessee. Therefore, as per our considered opinion, this matter should go back to the file of AO for further verification regarding the addition made on the hotel building. The AO is also directed to give telescoping from the surrendered if the assessee has paid taxes on the entire surrendered amount. If it is found otherwise, then the AO is directed to consider the amount on which the assessee has paid taxes thereon. The AO is also directed to grant depreciation if the assessee is eligible as per the Income Tax Act on the hotel building and if the depreciation was not claimed while calculating the taxable income of the assessee.

Needless to say, a reasonable opportunity of being heard be given to the assessee and the assessee is directed to cooperate with the AO for early disposal of the case. We order accordingly.

9. Now, a procedural issue comes before us that though the hearing of the captioned appeal was concluded on 07.02.2020, 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 90days. The question then arises whether the passing of this order, beyond ninety days, was necessitated by any "extraordinary" circumstances.

10. 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 wok 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 afew 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 June2020". 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 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 April2020, 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 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. "

11. 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."

12. 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/-	**Sd/-**
(RAVISH SOOD)	**(L.P.SAHU)**
न्यायिक सदस्य / JUDICIAL MEMBER	**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-
   Tarlok Kumar, Prop. Hotel Shagun,
   New Basti, Gali No.1 Bathinda-151001
   C/O: Sh. S.K.Bansal, Advocate
   Opp.A-Block Gurudwara, B-641, Ranjit Avenue,
   Amritsar-143001
2. प्रत्यर्थी / The Respondent-
   ACIT, C-1, Bathinda
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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(**Senior Private Secretary**)
ITAT Amritsar Bench, Amritsar