IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)

ITA No. 5419/MUM/2018
Assessment Year: 2013-14

Yogini Mohit Sahita 17, Bharat Mahal, 86, Marine Drive, Mumbai-400002	Vs.	ITO, Ward-2(1)(3), Mumbai.
PAN No. ABOPS1562L **Appellant**		**Respondent**

Assessee by	:	Mr. Himanshu Gandhi, AR
Revenue by	:	Mr. Michael Jerald, DR
Last Date of Hearing	:	06/03/2020
Date of Pronouncement	:	27/07/2020

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2013-14. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-4, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under:

1. On the facts and circumstances of the case, the Ld. CIT(A) erred in confirming addition of Rs.25,00,000/- on account of relinquishment of right.

2. On the facts and circumstances of the case, the Ld. CIT(A) erred in treating capital receipt as capital gain.
3. On the facts and circumstances of the case, the Ld. CIT(A) failed to consider that when receipt is in nature of capital and does not fall in definition of income, then same cannot be taxed u/s 56(2) of the Income Tax Act.
4. On the facts and circumstances of the case, the Ld. CIT(A) failed to consider that capital gain cannot be computed when cost is absent.
5. On the facts and circumstances of the case, the Ld. CIT(A) failed to consider that when receipt was received for passing over the same, then no gain arises under capital gain.

3. Briefly stated, the facts of the case are that the appellant filed her return of income for the assessment year (AY) 2013-14 on 28.09.2013 declaring total income of Rs.61,82,830/-. During the course of assessment proceedings, the Assessing Officer (AO), on perusal of the capital account of the appellant found that an amount of Rs.25,00,000/- has been shown as received on account of "Mohit Sahita-Inheritance". On being asked to explain it, the appellant submitted before the AO the following:

"Note on MVS inheritance

On 15.03.2013 Rs.25,00,000/- received from Mr. H.M. Enterprises (Plaintiffs) through DD No. 320826 dated 11.03.2013. This was received for out of Court settlement of property disputes. This property was inherited jointly by Mohit Vitthaldas Sahita and his brothers. Yogini Sahita received the settlement on behalf of Mohit Vitthaldas Sahita. On 15.03.2013 the DD No. 320826 of Rs.25,00,000/- was deposited in Union Bank of India Account No. 319701010036078."

The appellant also filed before the AO the 'Consent Decree' and 'Consent Terms' dated 16.03.2013. The AO on perusal of the said documents observed

that (i) the entire amount as mentioned in the consent terms has been paid to the assessee and her relatives for vacating the said premises, (ii) the assessee and her relatives were in possession of the said premises and the aforementioned amounts have been paid to them for vacating the premises and to give up any claim in the said premises, (iii) the above sum of Rs.25,00,000/- is not any kind of inheritance in the hands of the assessee."

Thus observing, the AO held that the amount of Rs.25,00,000/- is nothing but consideration in respect of giving up claim, vacating the premises and handing over the possession of the said premises. Therefore, the AO came to a finding that the amount of Rs.25,00,000/- is nothing but capital gains, which has accrued to the assessee in lieu of relinquishment of rights in the said premises. Accordingly, the AO brought to tax Rs.25,00,000/- in the hands of the assessee as long term capital gains.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 07.08.2018, the Ld. CIT(A) has held that (i) simply based on the argument that the appellant did not have any right to relinquish, the receipt of money cannot be considered capital in nature, rather it would be considered as receipt of money without consideration by the assessee and provisions of section 56 would accordingly apply, (ii) that the appellant did not have right in the said property in terms of the oral family settlement and it is in respect of this right that M/s H.M. Enterprises anticipated certain interference in occupying the said property smoothly that the occupiers of the said building together with the assessee were paid sums as a result of an out of Court settlement, (iii) the appellant

was not occupier of the property, but as a part of family settlement, her brother stayed in the property which was earlier taken on license by Mrs. Saraswati Sahita ; if Mr. Vidyut Sahita did have right on the property, so would the assessee as she had all the legal rights to dispute the subsequent acquisition by M/s. H.M. Enterprises, (iv) for getting the premises vacant, M/s H.M. Enterprises had filed a suit against the occupier of said building and it was only on account of Court settlement, that the amount was paid, (v) it would also be the fact of the case that M/s H.M. Enterprises must have filed suit against all the occupiers and the amount has been paid as out of Court settlement to the occupier as well as to the assessee having right of occupancy in the said flat of the building Ganganagar, (vi) in the facts of the case, it cannot be said that the appellant did not have right of any kind in the said flat, (vii) the appellant is in receipt of money and that is not without reason ; she has received the money as a result of out of Court settlement and as a party who had right in the flat where her other family members stayed as a part of family settlement and which in turn was earlier occupied by the assessee's mother-in-law as a licensee.

The Ld. CIT(A) further observed that as per the provisions of section 49(1) of the Act, the cost with reference to mode of acquisition by way of succession, inheritance or devolution would be the cost of acquisition of the asset for which the previous owner of the property acquired it as increased by the cost of any asset incurred or borne by the previous owner or the assessee as the case may be.

Thus the Ld. CIT(A) confirmed the action of the AO in bringing to tax Rs.25,00,000/- as long term capital gains.

5. Before us, the Ld. counsel for the appellant submits that Smt. Saraswati Vithaldas Sahita was only license holder of the said flat. She has three sons namely Shri Vidyut Sahita, Mohit Sahita and Shailesh V. Sahita and appellant is the wife of Shri Mohit Sahita and thus the daughter-in-law of Smt. Saraswati Vithaldas Sahita. Referring to the term 'license' as defined in section 52 of the Indian Easements Act, 1882, it is stated by him that a license granted by the owner enables a licensee a right to do or continue to do certain specified things in or upon an immovable property; but not get any right or possession of immovable property and it is given to specific person and the same cannot be transferred to any other person or inherited by legal heir. In this regard, reliance is place in the decision in *Associated Hotels of India Ltd. v. R.N. Kapoor* (AIR 1959 SC 1262) stating that "under the aforesaid section, if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a license. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose".

It is stated that in the present case, the license was given to Smt. Saraswati Sahita and therefore, the appellant did not have any right in the said flat. It is also clarified by him that the appellant did not reside in the said flat.

Then reliance is placed by him on the decision in *CIT v. M. Appukutty 253* ITR 159 (Ker) stating that the amounts received by the assessee as

consideration for transfer of possessory rights was not chargeable to tax as capital gains and cannot be termed as transfer of tenancy rights. Also a catena of decisions including *B.C. Srinivas Setty* (1981) 128 ITR 294 (SC) is relied upon by him on the proposition that as the cost of adverse possession is absent, then computing provision of section 48 will not apply.

Finally, the Ld. counsel files and relies on the decision in *CIT v. Star Chemicals (Bom) Pvt. Ltd*. (ITA No. 1110 & 1153 of 2009) dated 14.08.2009 ; *Smt. Seetha S. Shetty* (ITA No. 807/Mum/2017) ; *Sonal A. Zaveri* (ITA No. 5968/Mum/2013); *Yashod Deora v. ITO* (ITA No. 835/Kol/2008 and ITA No. 281/Kol/2013).

6. On the other hand, the Ld. Departmental Representative (DR) submits that in the instant case, the entire amount as mentioned in the consent terms has been paid to the appellant and her relatives for vacating the said premises. The appellant received the amount Rs.25,00,000/- as the building in which the said flat was located namely Gangasagar was purchased by M/s H.M. Enterprises and for vacating the said premises, M/s H.M. Enterprises had filed suit against occupiers of Gangasagar building. Mrs. Saraswati Vithaldas Sahita occupied a flat at the 2nd floor of the building on license basis. Subsequent to the family settlement, Shri Vidyut Sahita family stayed in the said flat, and as a consequence of the out of Court settlement, M/s H.M. Enterprises paid money to all occupiers as also to the appellant being the daughter-in-law of M/s Saraswati Sahita to avoid any kind of dispute in future. The said sum was received by the appellant for not interfering possession of the building Gangasagar by M/s H.M. Enterprises. The Ld. DR further explains that the

appellant did have right in the said property in terms of the oral family settlement and it is in respect of this right that M/s H.M. Enterprises anticipated certain interference in occupying the said property smoothly that the occupiers of the said building together with the appellant were paid sums as a result of an out of Court settlement.

Further, the Ld. DR refers to para 5 of the 'Consent Terms' which is as under:

> "5. Defendant No2. Mr. Amit Mohit Sayta, does hereby confirm and declare that he does not have any right and whatever right he may have in respect of the Suit Premises, the same was relinquished in favour of the other Defendants. Hence, Defendant No 2 is not entitled to receive any payment, personally."

Thus the Ld. DR supports that the order passed by the CIT(A) be affirmed.

7. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decision are given below.

At this moment, we refer to the case laws relied on by the Ld. counsel.

In the case of *Star Chemicals* (Bom) Pvt. Ltd. (supra), the issue before the Hon'ble Bombay High Court was in the context of title which was acquired by adverse possession, which did not involve any acquisition costs. It was held therein that for want of acquisition cost, capital gain tax would not arise.

In the case of *Smt. Seetha S. Shetty* (supra), 62 acres of land was allotted by the Government of Maharashtra to 'Nagari Nivara Parishad' a public trust

for construction of houses for the members after the formation of one or more Co-operative Housing Societies. The assessee along with two others Shri Bhujang Babu Shetty and Smt. Rathna B. Shetty encroached upon the above piece of land. Nagari Nivara Parishad, the owner of the land filed Civil Suit No. 1251, 1252 & 1253 of 1991 against the above stated three persons. A consent decree dated 13.07.1999 was passed by Bombay City Civil Court, whereby the said three persons got absolute rights over 2000 sq. meters of land out of 62 acres allotted to 'Nagari Nivara Parishad'. On the application made by the Shettys, the City Survey Officer also transferred the property in their names. Subsequently, the Shettys entered into a development agreement dated 24.08.2005 with M/s Hekunt Real Estates P. Ltd. and received consideration of Rs.1.20 crores and a flat of 2000 sq. ft. (carpet area) was further to be given to Shettys within 20 months from the date of grant of commencement certificate. The Stamp Duty Authorities determined the value of the property at Rs.2,28,45,000/- whereas the registration was done for a value of Rs.2.30 crores only. The Tribunal held that :

> "8. Thus, it may be noted that after the amendment of 1995, certain assets like goodwill, tenancy rights etc. have been charged to tax by specifically providing that if there is no cost incurred by the assessee in this respect, the cost shall be taken as nil. However, we find that vide amendment, particular assets like goodwill, tenancy rights, trade mark etc. have been brought into the ambit of charging section. However, the rights obtained by way of adverse possession have not been included in the provision neither in the charging section 45 nor in the section 48 which provides mode of computation. There is no any provision regarding the charging of capital gains tax on an asset title to which has been acquired in recognition of rights of adverse possession. Even u/s 49, the cost of the asset with regard to certain mode

> of acquisition, such as by way of gift or will, by succession, inheritance or devolution or on any distribution of assets on the dissolution of a firm, body of AOP or liquidation of company etc.; the rights attained in an asset on account of adverse possession have not been included. Though the Parliament has made an amendment that in certain type of assets like goodwill, tenancy rights etc., the cost of acquisition would be taken as actual cost incurred and if no cost incurred, the same be taken at nil, however the said deeming section is applicable to the assets which have been specifically brought within the purview of the said provision. The assets or the rights which do not find mention in the relevant provision, cannot be brought within the ambit of charging section, in the light of the decision of the Hon'ble Supreme Court."

Thus the ITAT held that no capital gains are chargeable to tax in relation to assets acquired by way of adverse possession.

In the case of *Sonal A. Zaveri* (supra), the assessee along with her brother and sister was in possession of a flat which was owned by company known as Industrial Jewels P. Ltd. The said flat came in possession of the assessee, her brother and sister by virtue of 'Deed of Family Settlement' dated 09.11.2006. There were certain disputes in the larger family of which the assessee was part of and the said family controlled companies known as Industrial Jewels Pvt. Ltd., Hindustan Jewels Pvt. Ltd. and Acrysil Ltd. A family arrangement was entered into between the parties *vide* 'Family Settlement Agreement' dated 09.11.2006. As per clause 6(xvi) of the said family settlement, the assessee along with her brother and sister have to surrender their occupancy/possessory rights in the said flat and handover the vacant and peaceful possession of the said flat within a period of 90 days from the date of execution of the 'Family Settlement Deed'. In lieu of the surrender of

their occupancy/possessory rights, the assessee along with her brother and sister was to receive a lump sum amount of Rs.4,08,00,000/- as per the family settlement i.e. Rs.1,36,00,000/- each directly from the purchaser of the said flat. The said arrangement was entered into as the other faction of the family did not have adequate cash flow to pay to the assessee, her brother and sister for giving the vacant possession of the property. It was understood between the parties of the family settlement that the assessee, her brother and sister had a charge and an overriding title over the sale consideration of the said flat. The Tribunal, followed the decision of the Hon'ble Kerala High Court in the case of *M. Appukutty* (supra), the order of the Tribunal in *Mrs. Urmila Mahesh Nathani v. ITO* (ITA No. 5921/Mum/2012) for AY 2009-10, *Smt. Seetha S. Shetty* (supra) and allowed the appeal filed by the assessee.

In the case of *Yashod Deora* (supra), there was a residential flat in Mumbai bearing address Flat No. 1 Turf View, Hornby Vellard Estate, Worli, Mumbai (hereinafter) known as disputed flat. The flat was owned by M/s Mahabir Loather Boards Pvt. Ltd. (MLBPL for short) and this disputed flat was occupied by Mrs. Yashod Deora along with her husband Sri Pradeep Kumar Deora who was then Director/employee in MLBPL having address at 67/69 M.K. Mark Dariyanagar, House, marine Lines, Mumbai-400002, M/s Percept Advertising limited. (PAL in short) had purchased the disputed flat from MLBPL by virtue of a purchased deed dated 25.02.1997. Since the disputed flat was occupied by Mr. P.K. Deora therefore M/s Percept Advertising Ltd. entered into a settlement deed on 18.04.1997. By virtue of said settlement deed, Ms Percept Advertising Ltd., was to pay a sum of Rs.50 lakh and Mr. P.K. Deora agreed to surrender the right of the said disputed flat. Mr. P.K. Deora

agreed to vacate the disputed flat on 30.09.1998 and also agreed to pay monthly compensation of Rs.5,000/- till the date of vacation of the disputed flat. However Mrs. Yashod Deora did not vacate the disputed flat even after the expiry of the agreement dated 30.09.1997 as per the deed of settlement. M/s. Percept Advertising Ltd. filed an application (No.74 of 1998) before the Competent Authority division for the eviction of the disputed flat from Mr. P.K. Deora and Mrs. Yashod Deora.

The Tribunal held that there was no tenancy right available with the assessee which is, in fact, chargeable under the Income Tax Act under the head "income from capital gains". As the assessee was having adverse charge on the property and charge of tax on such transaction has nowhere been definite under the Act, the Tribunal deleted the addition made by the AO.

7.1 At this juncture, we turn to the 'Consent Terms' dated 16.03.2013 between the Plaintiffs (1) Smt. Dhairyabala Ashok Parikh, (2) Smt. Sarla Jayantkumar Mistry, (3) M/s H.M. Enterprises and Defendants (1) Smt. Yogini Mohit Kumar Sayta (the appellant), (2) Amit Mohitkumar Sayta, (3) Vidyut V. Sayta and (4) Sauras S. Sayta.

We will now refer to the 'Consent Terms' and the place of the appellant therein. As per it, the defendants admit and acknowledge that the original defendant viz. Mrs. Saraswati Vithaldas Sayta was only a licensee in respect of the flat on the 2nd floor in the building known as "Ganga Sagar" ("the Suit Premises") and did not have any other right, title or interest in the Suit Premises. The original defendant died on 25.09.1993. After the demise of the original defendant, Vidyut V. Sayta and the members of his family have been in

use and occupation of the Suit Premises to the exclusion of the other heirs and next-of-kin of the original defendant. Pursuant to and under the registered Deed of Conveyance dated 24.12.2010, M/s H.M. Enterprise has acquired from Smt. Yogini Mohitkumar Sayta (the appellant) and Amit Mohitkumar Sayta (the original landlord), the immovable property consisting inter alia "Ganga Sagar" (in which the suit premises are located). Then M/s H.M. Enterprises paid Rs.25,00,000/- to defendant No. 1 (the appellant) ; Rs.1,15,00,000/- to defendant No. 3 ; Rs.20,00,000/- to defendant No. 4 in consideration of entering into a settlement and vacating and handing over possession of the suit premises to plaintiff No. 3 (M/s H.M. Enterprises). M/s H.M. Enterprises admits and acknowledges receipt of vacant and peaceful possession of the suit premises from the defendants. The defendants declare and confirm to the Hon'ble Court of Small Causes at Mumbai that they have not created any right, title or interest or parted with possession of the suit premises in favour of any other person. Finally, the "Consent Terms" state :

> "8. The parties hereto withdraw all other claims and allegations made against each other either in the above Suit or otherwise in respect of the Suit Premises as also in respect of any other premises in the building known as "Ganga Sagar" where the Suit premises is situated. The above Suit shall stand disposed of in terms hereto."

7.2 Let us recapitulate the facts again. Smt. Saraswati Vithaldas Sahita occupies a flat at 2nd floor of the building known as Gangasagar on license basis. She has two sons namely Shri Vidyut Sahita and Shri Mohit Sahita. The appellant in the instant case is wife of Shri Mohit Sahita (daughter-in-law of Mrs. Saraswati Vithaldas Sahita). After demise of Mrs. Saraswati Vithaldas

Sahita, her son Shri Vidyut Sahita occupied the said flat with his family. The said building Gangasagar was purchased by M/s H.M. Enterprises. For vacating the premises, M/s H.M. Enterprises filed suit against the occupier of Gangasagar building. An out of Court settlement was made so that occupier could not interfere with possession of M/s H.M. Enterprises. The appellant being daughter-in-law of Smt. Saraswati Vithaldas Sahita received Rs.25,00,000/- for not interfering possessions of M/s H.M. Enterprises.

7.3 The Hon'ble Supreme Court in the case of *R.N. Kapoor* (supra) brought out the distinction between Lease and License in the following words:

> "There is a marked distinction between a lease and a licence. Section 105 of the Transfer of Property Act defines a lease of immoveable property as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised. Under s. 108 of the said Act, the lessee is entitled to be put in possession of the property. A lease is therefore a transfer of an interest in land. The interest, transferred is called the leasehold interest. The lessor parts with his right to enjoy the property during the term of the lease, and it follows from it that the lessee gets that right to the exclusion of the lessor. Whereas s. 52 of the Indian Easements Act defines a licence thus :
>
> > 'Where one person grants to another, or to a definite number of other persons, a right to do or continue to do in or upon the immoveable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.'
>
> Under the aforesaid section, if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a licence. The legal possession, therefore, continues to

be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful. It does not create in his favour any estate or interest n the property. There is, therefore, cleat distinction between the two concepts. The dividing line is clear though sometimes it becomes very thin or even blurred. At one time it was thought that the test of exclusive possession was infalliable and if a person was given exclusive possession of a premises, it would conclusively establish that he was a lessee. But there was a change and the recent trend of judicial opinion is reflected in *Errington v. Errington* [1952] 1 All E.R. 149, wherein Lord Denning reviewing the case law on the subject summarizes the result of his discussion thus at p. 155:

> 'The result of all these cases is that, although a person who is let into exclusive possession is prima facie, to be considered to be tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy.'

The Court of Appeal again in *Cobb v. Lane* [1952] 1 All E.R. 1199.considered the legal position and laid down that the intention of the parties was the real test for ascertaining the character of a document. At p. 1201, Somervell.. L. J., stated :

> '................ the solution that would seem to have been found is, as one would expect, that it must depend on the intention of the parties."

Denning, L. J., said much to the same effect at p. 1202:

> 'The question in all these cases is one of intention: Did the circumstances and the conduct of the parties show that all that was intended was that the occupier should have a personal privilege with no interest in the land ?'

The following propositions may, therefore, be taken as well-established: (1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form ; (2) the real test is the intention of the

parties-whether they intended to create a lease or a licence; (3) if the document creates an interest in the property, it is a lease;but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and (4) if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease. Judged by the said tests, it is not possible to hold that the document is one of licence. Certainly it does not confer only a bare personal privilege on the respondent to make use of the rooms. It puts him in exclusive possession of them, untrammeled by the control and free from the directions of the appellants. The covenants are those that are usually found or expected to be included in a lease deed. The right of the respondent to transfer his interest under the document, although with the consent of the appellants, is destructive of any theory of licence. The solitary circumstance that the rooms let out in the present case are situated in a building wherein a hotel is run cannot make any difference in the character of the holding. The intention of the parties is clearly manifest, and the clever phraseology used or the ingenuity of the document- writer hardly conceals the real intent."

In the case of *Sardar Pruthisingh vrs*. *Kanchanlal Purushottamdas Desai* in AIR 2001 Bom. 255, the Hon'ble Bombay High Court has observed that:

"19. The distinction between leave and licence had been well summarised in Haisbury's Laws of England, Fourth Edition, Volume 27 page 13. In determining whether an agreement creates between the parties the relationship of landlord and tenant or merely that of licensor and licensee the decisive consideration is the intention of the parties."

In *P.N.Amersey-HUF vrs. ITO* [2012] 20 taxmann.com 704 (Mum.), the Tribunal has summarized the legal position as under:

"(A) A lease is therefore a transfer of an interest in land. The interest transferred is called the leasehold interest. The lessor parts with his right to enjoy the property during the term of the lease, and it follows from it that the lessee gets that right to the exclusion of the lessor.

(B) If a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a licence. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful. It does not create in his favour any estate or interest in the property. If, however, exclusive possession to which a person is entitled under an agreement with a landlord is coupled with an interest in the property, the agreement would be construed not as a mere licence but as a lease."

Thereafter the Tribunal held that:

> "Where assessee was having substantial rights in property as tenant (sub-tenant) and it was not merely a licence holder, amount received on surrender of such tenancy/sub-tenancy rights would be taxable as capital gains."

7.4 In the instant case, Smt. Saraswati Vithaldas Sahita occupied the said flat at 2nd floor of the building known as Gangasagar on license basis. This is crystal clear from the 'Consent Term' before the Hon'ble Court of Small Causes at Mumbai, quoted at length earlier. After demise of Mrs. Saraswati Vithaldas Sahita, her son Shri Vidyut Sahita occupied the said flat with his family. The said building Gangasagar was purchased by M/s H.M. Enterprises. For vacating the premises, M/s H.M. Enterprises filed suit against the occupier of Gangasagar building. An out of Court settlement was made so that occupier could not interfere with possession of M/s H.M. Enterprises. The appellant

being daughter-in-law of Smt. Saraswati Vithaldas Sahita received Rs.25,00,000/- for not interfering possessions of M/s H.M. Enterprises.

The distillation of precedents must now be applied to the facts of the present case.

We are of the considered view that the ratio laid down in the decisions mentioned at para 7 & 7.3 hereinabove is applicable to the instant case. Following the same, we set aside the order of the Ld. CIT(A).

8. However, before we part with the matter, we must deal with one procedural issue as well. While hearing of these appeals was concluded on 06.03.2020, this order thereon is being pronounced today, 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. Let us in this light revert to the prevailing situation in the country. On 24th March, 2020, a nationwide lockdown was imposed 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".

The Hon'ble Bombay High Court itself has, vide judgment dated 15th April 2020, held that "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".

Viewed thus, the exception to 90 day time limit for pronouncement of orders inherent in Rule 34(5)(c) clearly comes into play in the present case.

9. In the result, the appeal filed by the assessee is allowed. Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/- Sd/-
(SAKTIJIT DEY) (N.K. PRADHAN)
JUDICIAL MEMBER ACCOUNTANT MEMBER

Mumbai;
Dated: 27/07/2020
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai