

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

**BEFORE SHRI LALIET KUMAR, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.6961/Mum/2012
(Assessment Year : 2003-04)**

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| M/s. Mahindra & Mahindra Limited Mahindra Towers Worli, Mumbai – 400 018 | Vs. | Assistant Commissioner of Income-Tax Circle – 2(2) Aayakar Bhavan M.K. Marg Mumbai – 400 020 |
| PAN/GIR No. AAACM3025E | | |
| (Appellant) | .. | (Respondent) |

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|------------------------------|-------------------|
| Assessee by | Ms. Urvi Mehta |
| Revenue by | Shri A Mohan |
| Date of Hearing | 04/03/2020 |
| Date of Pronouncement | 29/07/2020 |
| | |

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.6961/Mum/2012 for A.Y.2003-04 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-15, in appeal No.CIT(A)-15/Arr.12/12-13 dated 07/09/2012 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3)of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/12/2005 by the Id. Asst. Commissioner of Income Tax, Circle(2)(2), Mumbai (hereinafter referred to as Id. AO).

2. At the outset, we would like to state that this appeal is a recalled matter in as much as the ground No.12 raised by the assessee in the original appeal with regard to disallowance made towards provision for warranty of Rs.23,48,01,000/- while computing book profits u/s.115JB of the Act was not adjudicated by this Tribunal while disposing off the appeal originally vide order dated 21/03/2018. Accordingly, the miscellaneous application was preferred by the assessee before this Tribunal. We find that this Tribunal had disposed off the miscellaneous application in MA No.591/Mum/2018 dated 17/10/2019 by duly recalling the order dated 21/03/2018 only for the limited purpose of adjudication of ground No.12 raised by the assessee with regard to disallowance of provision for warranty of Rs.23,48,01,000/- vis-a-vis computation of book profits u/s.115JB of the Act.

3. We have heard the rival submissions and perused the materials available on record. We find that the assessee is a public limited company engaged in the business of manufacturing of Mahindra range of vehicles, agricultural tractors, implements, industrial engines, automotive pressings, industrial process control instruments, mechanical cleaning rakes, separation equipments, spares etc., In addition, it is also engaged in the business of dealing in property development / construction activities and transport solutions. The assessee carries out its business mainly through automotive division and tractor division having offices and factories at various places in the Country. The Id. AO had observed that assessee had made provision for warranty for F.Y.2002-03 as under:-

| <u>Division</u> | <u>Amount (Rs.in lakhs)</u> |
|---------------------|--------------------------------|
| Automotive Division | Rs.1324.81 Lakhs |
| Tractor Division | <u>Rs.1023.20 Lakhs</u> |
| Total | <u>Rs.2348.01 Lakhs</u> |

3.1. The assessee in its tax audit report stated that the said provision is not contingent liability and constitute deductible expenditure since, the same represent the accounting estimate arrived at scientific empirical basis. The assessee also submitted before the Id. AO that this provision is made on a scientific basis based on past history of the assessee. The Id. AO did not agree to the contention of the assessee and proceeded to disallow the sum of Rs.23,48,01,000/- both under normal provisions of the Act as well as under computation of book profits u/s.115JB of the Act.

3.2. We find that as far as disallowance made under normal provisions of the Act, ITAT had set aside to the file of the Id. AO vide page 16 of its order dated 21/03/2018 in para 8.1. We also find that there is absolutely no finding recorded by the Id. CIT(A) in his appellate order as to whether the provision has been made on a scientific basis based on past history of the assessee. Since, the same issue has been set aside to the file of the Id.AO under normal provisions of the Act, we deem it fit and appropriate in the interest of justice and fair play to remand this ground also to the file of the Id. AO as the decision in this case would be depending on the outcome of the decision taken by the Id. AO under normal provisions of the Act. Accordingly, the ground No.12 raised by the assessee is set aside to the file of the Id. AO for denovo adjudication in accordance with law.

4. 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 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 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. Of course, there is no, and there cannot be any, bar on the discretion of the benches to refix 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.

4.1. 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.

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

Order pronounced as per Rule 34(5) of ITAT Rules and by placing the pronouncement list in the notice board on 29/07/2020.

Sd/-
(LALEIT KUMAR)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated
KARUNA, sr.ps

29/07/2020

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