



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

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1954/Mum/2019

(निर्धारण वर्ष / Assessment Years: 2009-10)

Tata Motors Ltd. Bombay House 24 Homi Mody Street, Hutatma Chowk, Mumbai-400001.	बनाम/ Vs.	Dy. CIT (LTU)-2 29 th Floor, Centre-1 World Trade Centre Cuffe Parade, Mumbai-400005.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAC2727Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Yogesh Khawas
Revenue by:	Shri V. Justin (DR)

सुनवाई की तारीख / Date of Hearing: 04/03/2020

घोषणा की तारीख /Date of Pronouncement: 20/03/2020

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 30.01.2019 passed by the Commissioner of Income Tax(Appeals)-1, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2009-10.

2. The assessee has raised the following grounds: -

“
1.1 *Order passed u/s. 143(3) r.w.s 263 of the Act is invalid and bad in law*
On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in not adjudicating the ground raised by the appellant on the merits of the case on the reason that the main appeal preferred before the Hon'ble ITAT against the order u/s. 263 of the Act is pending for adjudication by the Hon'ble ITAT.

Without Prejudice to the above

Disallowance of expenses related to Nano Project at Singur Plant:

Rs. 43,82,54,995/-

2.1 *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in not adjudicating the ground raised by the appellant on the merits of the case on the reason that the main appeal preferred before the Hon'ble ITAT against the proceedings u/s. 263 of the Act is pending for adjudication by the Hon'ble ITAT.*

3. *Additional Disallowance u/s. 14A of the Act read with Rule 8D of the Income-tax Rules, 1962: Rs. 24,17,00,000/-*

3.1 *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in not adjudicating the ground raised by the appellant on the merits of the case on the reason that the main appeal preferred*



- before the Hon'ble ITAT against the proceedings u/s. 263 of the Act is pending for adjudication by the Hon'ble ITAT.*
4. *Additional Disallowance u/s. 14A read with Rule 8D of the Income Tax Rules, 1962, in computation of Book Profit u/s. 115JB of the Income-tax Act: Rs. 24,17,00,000/-*
 - 4.1 *On the facts and in the circumstances of the case and in law, the learned CIT(A) failed to appreciate and ought to have held that for the purpose of clause (f) to Explanation 1 of section 115JB(2) of the Act, only actual expense, if any, incurred for earning exempt income and debited to Statement of Profit and Loss account could be added to the book profit as per the provisions of section 115JB of the Act. The learned CIT(A) ought to have considered the Hon'ble Special Bench ruling in the case of ACIT vs Vireet Investments 58 ITR(T) 313 being relied upon by the appellant.*
 - 4.2 *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in law and on facts in affirming the action of the AO of making adjustment to book profit in respect of disallowance made u/s. 14A of the Act without appreciating the fact that the mechanism under Section 14A of the Act to compute the disallowance basis Rule 8D, is applicable only for computation of income under Chapter IV of the Act and cannot be applied for the purpose of computation of book profit u/s. 115JB of the Act.*
 - 4.3 *On the facts and in the circumstances of the case and in law, the learned CIT(A) ought to have appreciated that the provisions of Chapter XII-B of the Act is a separate code in itself and other provisions of the Act does not affect the computation of book profit under Chapter XII-B of the Act and hence the additional disallowance of Rs. 24,17,00,000 computed basis the Rule 8D cannot be imported into while computing the book profit u/s. 115JB of the Act.*
 - 4.4 *On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in law and on facts that the AO has not erred in making additional disallowance u/s. 14A of the Act r.w.r. 8D of the Rules in computation of book profit u/s. 115JB of the Act inasmuch as the AO has certainly exceeded its jurisdiction by enhancing the disallowance u/s. 14A r.w.r. 8D of the Act while computing book profit u/s. 115JB of the Act in the absence of any specific direction given by the Hon'ble CIT vide order passed u/s. 263 of the Act.*
 - 4.5 *On the facts and in the circumstances of the case and in law, the learned CIT(A) failed to appreciate and ought to have held that interest on R&D expenditure which is considered for computation of disallowance u/s. 14A of the Act r.w.r. 8D of the Rules was capitalized in books of account and same was not debited to Statement of Profit and Loss account, accordingly the same cannot be added back while computing book profit u/s. 115JB of the Act in the absence of any such adjustment as per Explanation 1 to section 115JB of the Act.”*

3. At the very outset, the Ld. Representative of the assessee has argued that the present appeal has been filed against the order passed by the CIT(A) in view of the provisions u/s 143(3) r.w. Section 263 of the Act and the Hon'ble ITAT has quashed the proceeding u/s 263 of the Act by virtue of order dated 03.09.2019, therefore, in the said circumstances, the order in



question nowhere remains in existence in accordance with law, hence, the appeal has become infructuous. However, on the other hand, the Ld. Representative of the Department has admitted this fact that the proceeding u/s 263 of the Act has been quashed by Hon'ble ITAT by virtue of order dated 03.09.2019. Since the order in question has been accrued in pursuance of order of the AO passed u/s 143(3) r.w. Section 263 of the Act dated 29.07.2016 and the proceeding u/s 263 of the Act has been quashed by Hon'ble ITAT by virtue of order dated 03.09.2019 in ITA. No.3727/M/2016, therefore, proceeding nowhere remains in existence and has become infructuous. Accordingly, the appeal is hereby dismissed being infructuous.

Reasons for delay in pronouncement of order

6.1 Before parting, we would like to enumerate the circumstances which have led to delay in pronouncement of this order. The hearing of the matter was concluded on 07/02/2020 and in terms of Rule 34(5) of Income Tax (Appellate Tribunal) Rules, 1963, the matter was required to be pronounced within a total period of 90 days. As per sub-clause (c) of Rule 34(5), every endeavor was to be made to pronounce the order within 60 days after conclusion of hearing. However, where it is not practicable to do so on the ground of exceptional and extraordinary circumstances, the bench could fix a future date of pronouncement of the order which shall not ordinarily be a day beyond a further period of 30 days. Thus, a period of 60 days has been provided under the extant rule for pronouncement of the order. This period could be extended by the bench on the ground of exceptional and extraordinary circumstances. However, the extended period shall not **ordinarily** exceed a period of 30 days.

6.2 Although the order was well drafted as well as approved before the expiry of 90 days, however, unfortunately, on 24/03/2020, a nationwide lockdown was imposed by the Government of India in view of adverse circumstances created by pandemic covid-19 in the country. The lockdown was extended from time to time which crippled the functioning of most of the government departments including



Income Tax Appellate Tribunal (ITAT). The situation led to unprecedented disruption of judicial work all over the country and the order could not be pronounced despite lapse of considerable period of time. The situation created by pandemic covid-19 could be termed as unprecedented and beyond the control of any human being. The situation, thus created by this pandemic, could never be termed as ordinary circumstances and would warrant exclusion of lockdown period for the purpose of aforesaid rule governing the pronouncement of the order. Accordingly, the order is being pronounced now after the re-opening of the offices.

6.3 Faced with similar facts and circumstances, the co-ordinate bench of this Tribunal comprising-off of Hon'ble President and Hon'ble Vice President, in its recent decision titled as **DCIT V/s JSW Limited (ITA Nos. 6264 & 6103/Mum/2018)** order dated 14/05/2020 held 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 timebound 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.*

Driving strength from the ratio of aforesaid decision, we exclude the period of lockdown while computing the limitation provided under Rule 34(5) and proceed with pronouncement of the order.

4. In the result, the appeal of the assessee is hereby dismissed.

Order pronounced in the open court on this 20/03/2020

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)
JUDICIAL MEMBER

Mumbai; Dated 20/03/2020
Vijay Pal Singh/Sr. PS



ITA No.1954/M/2019
A.Y. 2009-10

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.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai