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

BEFORE SHRI C. N. PRASAD, JM & SHRI S. RIFAUR RAHMAN, AM

आयकरअपीलसं./ I.T.A. No. 1206/Mum/2019
(**निर्धारणवर्ष** / Assessment Year: 2012-13)

Prakash Chandra Harilal Shah, Flat No. 803, 8th floor, B wing, Adinath Bldg, Neelkanth Enclave Opp-Shreyas Cinema LBS Road, Ghatkopar west, Mumbai-400 086	**बनाम**/ Vs.	CIT(A)-25, 4th floor Tower No. 6 Rly station commercial complex, Vashi Navi Mumbai-400 703
स्थायीलेखासं./जीआइआरसं./PAN No. AAPPS6547M		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ **Appellant by**	:	Shri Ashwin Kumar H. Shah, AR
प्रत्यर्थीकीओरसे/**Respondentby**	:	Shri Unavekar, DR

सुनवाईकीतारीख/ **Date of Hearing**	:	27.02.2020
घोषणाकीतारीख / **Date of Pronouncement**	:	15.07.2020

आदेश / O R D E R

PER S. RIFAUR RAHMAN (ACCOUNTANT MEMBER):

The present appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-25, Mumbai, dated 17.01.2019 for AY 2012-13.

2. The brief facts of the case are that assessee is an individual and filed its return of income on 31.08.12 disclosing therein the total income of Rs. 2,30,510/-. On information that assessee has received interest income of Rs. 1,82,620/- and same has not been offered for taxation in the original return of income. Therefore, the case was reopened u/s 147 after issuing notice u/s 148 of the Act. In response, assessee filed the return of income on 10.04.2017 declaring total income of Rs. 2,30,510/-. Subsequently, the case was selected for scrutiny and accordingly, notices u/s 143(2) and 142(1) were issued and served on the assessee. In response, AR of the assessee filed the relevant information as called for. After considering the submission of assessee, AO passed assessment order u/s 143(3) r.w.s. 147 of the Act thereby making additions, determining the total income at Rs. 2,30,510/-. Apart from this, penalty was also levied u/s 271(1)(c) of the Act.

3. Aggrieved by the above order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the

submission of the assessee, rejected the contention of the assessee and **dismissed** the appeal of the assessee.

4. Now before us, the assessee has preferred appeal by raising the grounds of appeal as under:-

> *1. CIT(A) has erred in observing that communication viz. notice u/s 142(1) dated 12/06/2017, reminder letter dated 27/06/2017 and show cause notice dated 13/07/2017 (collectively hereinafter referred to as 'the said notice and communication') was served to Appellant. CIT(A) ought to have observed that the said notice and communication is not served to Appellant and/or not delivered or transmitted to Appellant at the address viz. Flat No.803, 8th floor, 'B' Wing, Adinath Building, Neelkanth Enclave, Opp. Shreyas Cinema, L.B.S. Road, Ghatkopar (West), Mumbai -400086 though the said address was available in PAN database of the Appellant on* ***22/05/2017*** *and the last income tax return furnished by the Appellant on* ***10/04/2017.*** *CIT(A) has overlooked that Appellant has not furnished in writing any other address for the purposes of communication to the income-tax authority or any person authorized by such authority.*

2. The said notice and communication required to be served u/s 282 for imposing penalty u/s 271(1)(b) is not delivered or transmitted to Appellant at the address referred to in sub-rule (2)(a)(i), (2)(a)(iii), (2)(b)(ii) and (2)(b((iv) of Rule 127 of the Income Tax (18th Amendment) Rules, 2015.

3. Address of Appellant in the title of impugn order passed by CIT(A) is different from address of Appellant in cause title in Appeal Form No.35.

Proof of alleged service and/or delivery or transmission of the said notice and communication is not offered to the Appellant for his comment and criticism.

The observation of CIT(A) that Appellant had failed to attend and had also failed to furnish the details called for u/s 142(1) by A.O. is against the weight of evidence on record.

CIT(A) has erred in confirming the penalty of Rs. 10,000/- levied by A.O. u/s 271(1)(b) of the Act.

5. At the outset, Ld. AR appearing on behalf of the assessee submitted that notice u/s 142(1) of the Act was issued by the AO and assessee has complied the same, hence, penalty levied. In the

assessment order passed u/s 143(3) r.w.s. 147 of the Act, AO himself acknowledges that notice u/s 142(1) was issued and served on the assessee and in response, assessee has made his submission, through mail, which clearly indicates that assessee has participated in the assessment proceedings and completed with notices issued u/s 142(1) of the Act, therefore the penalty levied u/s 274 r.w.s. 271(1)(b) is not proper.

6. On the other hand, Ld. DR relied on the orders passed by the revenue authorities.

7. Considered the rival submissions and material placed on record, we notice that in the assessment order passed u/s 143(3) r.w.s. 147 of the Act, AO himself acknowledges that notice u/s 142(1) was issued and served on the assessee and in response, assessee has made his submission, through mail, which clearly indicates that assessee has complied the notices issued u/s 142(1) of the Act, therefore the penalty levied u/s 274 r.w.s. 271(1)(b) is not proper and justifiable. Accordingly, the grounds raised by the assessee are **allowed.**

8. In the net result, the appeal filed by the assessee stands **allowed.**

9. 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*
> *thehearing.*

(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 noticeboard.*

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 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 a few more days prior to, and after, the lockdown by observing that "**In case the limitationhas 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 suomotu 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.

10. 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.

11 Order pronounced as per Rule 34(5) of ITAT Rules and by placing the pronouncement list in the notice board on 15.07.2020.

Sd/-	*Sd/-*
(C. N. Prasad)	(S. Rifaur Rahman)
न्यायिकसदस्य / Judicial Member	लेखासदस्य / Accountant Member

मुंबई Mumbai;दिनांक Dated : 15.07.2020
Sr.PS. Dhananjay

<u>आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ **ITAT, Mumbai**