

**IN THE INCOME TAX APPELLATE TRIBUNAL “H”
BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 1376/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2012-13)

M/s Kewal Kiran Enterprises, B-101 Synthofine Estate Opp. Virwani Ind. Estate, Goregaon (East), Mumbai-400 063	बनाम/ Vs.	ACIT-31(2), R. No. 107, 1 st floor, C-13, Pratyakshkar Bhavan, BKC, Mumbai- 400 051
स्थायीलेखासं./जीआइआरसं./PAN No. AA AFK2525L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Ronak G. Doshi & Ms. Ayushi Modani, ARs
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Drop Singh Meena, DR
सुनवाईकीतारीख/ Date of Hearing	:	04.02.2020
घोषणाकीतारीख / Date of Pronouncement	:	08.07.2020

आदेश / ORDER

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) – 42 in

short referred as 'Ld. CIT(A)', Mumbai, dated 21.09.2017 for Assessment Year (in short AY) 2012-13.

2. The brief facts of the case are, the assessee filed its return of income for assessment year 2012 – 13 on 6.8.2012 declaring loss of ₹ 68,69,182/- and unabsorbed depreciation of ₹ 4,19,368/-. The case was selected for scrutiny and notices under section 143 (2) and 142 (1) of the Income Tax Act 1961 (in short Act) were issued and served on the assessee. In response assessee filed the relevant information as called for.

3. The assessee is in the business of investments and finance. During assessment proceedings, AO observed that assessee has paid interest on loan to the extent of ₹ 2,57,47,115/- and has received interest on loan and FDR to the extent of ₹ 2,21,71,232/-. When the assessee was asked to furnish details of loans taken including loans taken from persons specified in section 40 A (2) (b) of the Act. It was observed that assessee has taken loans of ₹ 23,61,47,024/- out of which assessee has taken loan from persons specified in section 40 A (2) (b) to the extent of ₹ 18,58,03,545/- and interest at the rate of 12% was paid on

such loans. Further, he observed that out of total loans received, interest at the rate of 12% was paid on loans amounting to ₹ 23,59,25,852/- and on the balance amount no interest was paid. When the assessee was asked to give the details of loans given to various parties, it is observed by AO that, assessee has given the loan and rate of interest charged is as below:

Rate of interest	Amount of Loan (in Rs.)
15%	3,60,00,000
14%	2,15,00,000
12.5%	90,00,000
12%	3,26,70,231
9%	1,95,00,000
Nil	2,99,80,000

4. It was noticed that assessee has not charged any interest on loan amount of ₹ 2.99 crores and assessee has explained that the above said loan was very old and the principal amount itself is not recoverable. As the assessee was making all efforts to recover the loan and therefore it is not charged any interest income based on the accrual system of accounting it follows. It also brought to

the notice of the AO to verify the details from the earlier assessment orders passed under section 143 (3) of the Act.

5. Assessing officer rejected the submissions of the assessee and observed that assessee has paid interest at the rate of 12% in respect of loan taken by it, but has not charged any interest on the loans granted of Rs. 2.99 crore and charged only 9% on ₹ 1.95 crores. It observed is that out of ₹ 1.95 crores, it includes 1.5 crore granted to M/s Mudra Finvest Guj. Ltd on 30.03.2012. Accordingly, he disallowed 12% of interest on Rs. 299.80 lakhs and 3% on ₹ 1.95 lakhs.

6. Further AO observed that assessee has debited ₹ 14,95,000/- in the profit and loss account towards professional and consultancy fees, which consisted of amortised professional charges of ₹ 11,70,000/- and professional fee of ₹ 3,25,000/- paid to Ms. Anisha Pankaj Jain. The assessee was asked to submit the details of professional and consultancy fees, it was also asked to correlate the professional charges paid with the loans arranged. It was also asked to produce the persons who rendered the services. In response assessee submitted copies of

Ledger account and bills and brought to the notice of the AO that professional charges paid in financial year 2009–10 and relevant TDS was deducted and paid. It was amortised for 3 years and the 3rd and final instalment is charged in this current year and the earlier year instalment was allowed in the earlier assessment year and it was also assessed under section 143(3) of the Act. Since assessee has not submitted any document for payment of such professional service charges without correlating the payment with loans arranged by the respective parties and even with regard to professional fees paid to Ms Anisha, a related party under section 40 A (2) (b) and assessee is not correlated the impugned payment with the services rendered by her. Accordingly, he disallowed the consultancy and professional charges.

7. Since the assessee is in appeal only on disallowance of interest expenses and professional fees paid, we extracted only these details from the assessment order, relevant for the present appeal.

8. Aggrieved with the above order, assessee preferred an appeal before Ld CIT(A). After considering the submissions of the assessee, Ld CIT(A) rejected the contentions of the assessee and gave partial relief in interest expenditure and sustained the disallowance on professional charges by observing as below:-

6.3.1 I have considered the submission of the appellant. During the year under consideration the appellant has earned interest income of Rs. 1,47,22,345/- from unsecured loans advanced during the year as against interest income of Rs. 1,71,07,0557/- earned during the preceding year FY 2010-11. Further, the interest income earned from fixed deposits/bank is Rs. 74,48,887/- during the year under consideration as against Rs. 41,63,215/- in the preceding year. Thus, the total interest income earned during the year is Rs. 2,21,71,232 as against interest of Rs. 2,12,70,270/- earned during the preceding year and the total interest income earned has increased by Rs. 9,00,962/-. However, the interest expenses on unsecured loans have gone up to Rs. 2,57,47,115/- during the year under consideration from Rs. 1,68,48,182/- in the preceding year. Thus, the interest expenses on unsecured loans have gone up by 88,89,933/- and the net interest income has fallen by Rs. 79,88,971/-. Whereas the net interest income was

Rs. 44,21,702 during the preceding year AY 2011-12, there is net loss of (-) Rs. 35,76,712/- during the year under consideration.

6.3.2 As per provisions of Section 40A(2)(a) "Where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person referred to in clause (b) of this sub-section, and the Assessing Officer is of opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him therefrom, so much of the expenditure as is so considered by him to be excessive or unreasonable shall not be allowed as a deduction"

6.3.3 Further, it is assessee's own submission that the rates of interest at which loans and advances are given, are decided as per business exigencies and market conditions and the rate of interest is fluctuating factor in the financial markets. Therefore, keeping in view the fall in the interest income earned during the year, the interest paid by the appellant to the relatives/ persons specified under section 40A(2)(b) of the action the loans received from the persons specified is definitely excessive. Hence, the disallowance made by

the AO is justified. However, in my view, there is no justification for making disallowance in respect of loans introduced during the earlier years, as my predecessor Id CIT(A) has allowed the claim of the appellant for AY 2010-11 for the reason that the end result of interest income was profit to the tune of Rs. 32.40 lacs. The above reasoning will apply to AY 2011-12 as well, when the end result of interest income was profit to the tune of Rs 44.22 lacs. However, this reasoning shall not be applicable to the year under consideration where the end result is net loss of (-) Rs. 35,76,712/-. Therefore, the AO is directed to restrict the disallowance to the amount of the loans introduced by the relatives/ persons specified under section 40A(2)(b) of the act, during the year under consideration, as given in Annexure 'F' of the Tax Audit Report, from the date of advancing of such loans by the persons specified to the appellant.

6.3.4 Further, it is observed that the unsecured loans have decreased from Rs. 15,03,74,776/- to Rs. 14,15,94,710/- during the year under consideration and fixed deposits have gone up from Rs. 6,67,48,661/- to Rs. 7,78,48,661/- during the year under consideration. The partner's capital has reduced from Rs. 6,26,94,971/- to Rs. 1,44,88,410/- during the year. Therefore, an inference can Indrawn that the funds

were used either for investment in fixed deposits or for business use. Therefore, in my view it would also be reasonable to restrict the disallowance of interest at the rate which is over and above rate of interest applicable to fixed deposits for the year under consideration.

7.3.1 I have considered the submission of the appellant. The main thrust of the arguments of the appellant is that the professional fees have been amortized over the period of two years and the expenses have been allowed by the AO in AY 2011-12, therefore applying the principles of consistency, the claim of appellant should be allowed. Further, the appellant has not brought on record any material to prove that any services were received by the appellant vis-a-vis payments for professional charges. Though, the appellant has claimed that the expenses have been allowed by the AO in AY 2011-12, however it has not produced the documents placed before the AO in support of the claim during AY 2011-12.

7.3.2 I have examined the Ledger extract produced by the appellant along with the supporting bills in respect of professional expenses and I find that all these bills issued by the respective parties for arranging loans

and advances are identical, computer generated and all are numbered as Bill No.3, and none of the bill provides any details of the parties from whom loans were arranged. The Ledger extract produced by the appellant also does not provide any details of the loans arranged by the respective parties to whom professional fees were paid. It is also observed that the loans appearing Annexure 'F' to Tax Audit Report are mainly introduced by the relatives/ persons specified under section 40A(2)(b) of the act, therefore there is no justification for payment in respect of these loans, Further, the remaining loans are also from a very limited number of persons, which could have been easily correlated if the services were actually rendered by the aforesaid parties, however, the appellant has not placed any such details which can correlate the services so rendered with the payments made.

7.3.3 The next contention of the appellant-is as regards Ms. Anisha Pankaj Jain i.e. she is a chartered accountant and she has been paid professional fees for maintaining books of accounts, filing Income Tax Return and TDS returns. To examine the claim of the Id. AR was requested to produced the aforesaid documents prepared by Ms. Anisha Pankaj Jain, however no books of accounts, Income Tax Return and TDS returns which were prepared by Ms. Anisha

Pankaj Jain were produced before me, to prove the claim. Therefore, it can be concluded that the appellant has failed prove the genuineness of this claim also.

7.3.4 Therefore, in the absence of any supporting evidence, I am inclined to agree with the view of the AO that the professional fees paid were neither wholly nor exclusively for the purpose of his business, hence are they not eligible for deduction either u/s 37 or any other section of the act.

9. Aggrieved with the above order, assessee is in appeal before us raising following grounds of appeal:

GROUND NO. I: DISALLOWANCE OF INTEREST EXPENSES:

1. On the facts and in the circumstances of the case and in law, Hon'ble CIT(A) erred in partly upholding the disallowance made by the AO by holding that interest expense paid to related parties is excess in nature.

2. The Appellant prays that interest expense is incurred for the purpose of business and no disallowance should be made.

GROUND NO. II: ENHANCEMENT:

1. *On the facts and in the circumstances of the case and in law, Hon'ble CIT(A) erred in upholding the disallowance made by the AO on altogether different ground than that of the AO which amounts to enhancement as per law.*

2. *The Appellant prays that enhancement made without providing an opportunity of hearing is in violation of section 251 (2) of the Act and hence bad in law.*

GROUND NO. III: DISALLOWANCE OF PROFESSIONAL FEES:

1. *On the facts and in the circumstances of the case and in law, Hon'ble CIT(A) erred in upholding the action of the AO by holding that professional fees paid were neither wholly nor exclusively for the purpose of business.*

2. *The Appellant prays that the said expenses have been incurred for the purpose of business and disallowance upheld is liable to be deleted.*

GROUND NO. IV: GENERAL:

The Appellant craves leave to add, alter, amend or vary all or any of the above grounds of appeal at any stage.

10. At the time of hearing, Ld AR submitted that the issue on disallowance of interest is covered in assessee's own case in ITA No. 3905/Mumbai/2014. He brought to notice observation of the assessing officer and decision of the Ld CIT(A) in page 5 of its order and he submitted that during the year, assessee has granted loans to the parties at the rate of 12% irrespective of whether related party or not. He brought to notice page 32 of paper book in which assessee has given transaction details and disbursement of loan and recovery of interest during this year. He further submitted that the disallowance made by the assessing officer relating to old debts and a loan granted to M/s Mudra Finvest on 30.03.2012, for 2 days. Further he submitted that assessee has charged interest at the rate of borrowing or 12% and he further brought to notice para 7 of ITAT order in assessee's own case. By referring to the assessee's own case, since the issue are similar, he submitted that the interest disallowed by the assessing officer may be deleted.

11. With regard to disallowance of professional charges, he submitted that assessee has incurred this expenditure two years back and claimed this expenditure on the basis of amortisation. In

the earlier 2 years this expenditure was allowed and only this year it was disallowed. He brought to our notice page 116 of paper book which contained the assessment order under section 143 (3) for assessment year 2011–12 in which AO has not made any disallowances. He also brought to our notice assessment order for assessment year 2009–10 in which assessing officer has not made any disallowances (refer page 114 of paper book). He submitted that part of amortisation of ₹ 1,170,000/- claimed this year and assessee has claimed only ₹ 3.25 lakhs during this year paid as professional charges. He brought to our notice findings of Ld CIT(A) in para 7.3.3. In which Ld CIT(A) observed that Ms Anisha is a chartered accountant and she was paid professional fees for maintaining books of accounts, filing income tax return and TDS returns. In order to verify the same Ld CIT(A) requested Ld AR to produce relevant documents to prove that Ms Anisha has performed the above claimed services. No documents were submitted before Ld CIT(A) and accordingly he sustained the addition. He submitted that Ms Anisha has extended the professional and consultancy services and she has claimed the

professional charges. He brought to our notice page 60 of the paper book in which a copy of the bill is attached.

12. On the other hand, learned DR submitted with regard to ground No. 1 that the facts in the present year is differentiable to the earlier assessment year and the case law referred by Ld AR is not applicable even though it is assessee's own case. He submitted that he relies on orders of revenue authorities with regard to ground No. 1 and ground No. 3.

13. Considered the rival submissions and material on record. We noticed that the assessee is in the business of finance and investment, it takes unsecured loans from relatives and others. It lends money to others for business purpose et cetera. During this year, AO observed that assessee has not charged any interest on loan granted by it to the extent of ₹ 2.99 crores and charged concessional rate of 9% to the loan granted by it to the extent of ₹ 1.95 crores. The assessing officer disallowed the interest by observing that assessee has employed the loan taken by it at the cost of 12%. However, we noticed that assessee has submitted before the tax authorities as below:

- a) Loan sanctioned to Mudra Finvest on 30.3.2012 and interest waived only for 2 days and charged the interest at the rate of 15% per annum in the subsequent assessment year.
- b) Regards to loan amount of ₹ 1.95 crores, it claimed that the loan was advanced to Mr Ashok Shah financial year 2008 – 09 and charged interest at the rate of 9% from assessment year 2009 – 10 to 2013 – 14. In the assessment year 2010 – 11, the AO made addition which was deleted by Ld CIT(A) and for the remaining years AO has not made any additions.
- c) Loan granted to Bharat Polyplast in financial year 2009 – 10 and interest was charged in financial year 2009 – 10 and financial year 2010 – 11 but the interest was never received. The principal amount was received in assessment year 2013 – 14 and the interest was written off in assessment year 2013 – 14.
- d) Loan granted to Mr Sha ChandanMal Fatehchand in financial year 2001 – 02 and it was charging interest at the rate of 12 to 15% on year to year basis. The interest

was charged of ₹ 6, 80, 000/- in financial year 2009 – 10, however the said interest was never received and submitted that the principal amount itself was doubtful to be recovered. Hence the interest was not charged for this assessment year and the interest and principal amount was written off in subsequent assessment year assessment year 2013 – 14.

- e) With regard to other loans, it was submitted that these loans were very old and in the nature of staff advances and hence interest was not charged.

14. It is important to note that the assessee is in the business of finance and the assessment has to be done in commercial terms of lending business. During this year, assessee has taken loan at the cost of 12% and lent the money to various parties. From the chart in the assessment order, we noticed that assessee has earned interest from 15% to 9%. The assessing officer allowed the interest rates charged or earned at the rate of 12% or more but made addition which is less than 12%. We noticed that in the case of Mudra Finvest, it has granted loan on 30.03.2012 and gave a waiver of 2 days interest. But charged the interest from 1st

of April 2012. It is part of business decision, the AO cannot interfere in business decisions.

14.1 Similarly loan advanced to Mr Ashok Shah, it was submitted that the loan was granted in financial year 2008 – 09 and AO made the similar addition that was made in AY 2010-11 and Ld CIT(A) has deleted the short interest charged by the assessee. However, we noticed the order of Ld CIT(A) in assessment year 2010-11. In the assessment year, assessee has borrowed and paid interest at the rate of 12% to its related parties and in the end result assessee has earned positive income. Therefore, Ld. CIT(A) has observed that it is in the interest of the assessee to earn the additional income. In that assessment year, assessee has shown positive income more than the expenditure. Therefore, there was no discussion as far as charging less interest than the interest paid.

14.2 However, we noticed that Mr Ashok Shah is not a related person under section 40A(2)(b) and this loan was sanctioned earlier assessment year and continued to be charged interest at 9%. Therefore, it can be termed as commercial decision and we

do not see any reason to interfere with the decision of the assessee. Accordingly, the interest charged is directed to be deleted.

15. With regard to loan granted to Bharat Polyplast and Mr Sha Chandan Mal, assessee granted loans to them in the earlier assessment year and the assessee could not recover interest and assessee has written off those interest and principal in the subsequent assessment year. When the principal itself is in doubtful and the interest cannot be declared as income in this assessment year. Similar issue came up before the coordinate bench in assessment year 2012 – 13, it was held that it is a settled law that it is the real income and not the hypothetical income which is to be taxed, in the case of Kolkata Metropolitan Development Authority, it is held that when the principal amount itself is not recovered and practically unrecoverable, deemed accrued interest on such loans and advances cannot be brought to tax. Accordingly the addition was deleted. By respectfully following the decision of the coordinate bench, we are inclined to delete the addition made in the present case.

16. We noticed that Ld AR submitted that this issue of interest is covered by the earlier ITAT order, we noticed that the issue and fact are different, therefore it is rejected.

17. With regard to other small advances, it was submitted that it is in the nature of staff advances and no details of such loan was submitted before us to appreciate the submission. We are directing the AO to verify the advances and if it is given to related parties, the interest may be sustained to the extent of 3% on the small advances and if it is for staff, it is directed to be deleted. Resultantly, ground no 1 raised by the assessee is **partly allowed**.

18. With regard to ground No. 2, at the time of hearing Ld AR submitted that assessee is not pressing this ground, accordingly it is **dismissed**.

19. With regard to ground No. 3, we noticed that assessee is claiming portion of the amortised amount during this year of ₹ 11,70,000/-. The assessee has paid professional and consultancy charges to 6 individuals in the assessment year 2010 – 11. When the AO asked the assessee to correlate the payment for

professional services received with the parties from whom loans were arranged and bring those parties to him. Assessee has not submitted any such details which correlates the professional services rendered by them but assessee always claimed that these expenditure was incurred in assessment year 2010 – 11 and the AO has allowed the above claim in the earlier assessment years. After considering the submissions, in our considered view it is on the assessee to prove the genuineness of the expenditure it is claiming. Even though this expenditure was incurred in the earlier assessment year, still when assessee claims a portion of the expenditure during this year, assessee has to submit relevant information in support of its claim that it is genuine and incurred for the purpose of business and the nature of the professional services received. In absence of any details submitted before any authority, we are inclined to reject the contention of the assessee and sustain the findings of the Ld CIT(A).

20. With regard to professional services received from Mrs Nisha, no doubt she is qualified to carry on professional services and may have served the assessee in maintaining books of account and other services. Since she is a related party, she must

have actually extended services to assessee. Since assessee has submitted copy of the bill from her, it shows that she has actually extended service. Since she is a qualified person, may be assessee might have taken professional guidance or advises from her in maintaining books of accounts and tax planning. It is common in the family run businesses, to take professional advices from qualified relatives and compensate to them. Considering the turnover of the assessee, the charges seems to be reasonable, we are inclined to allow the claim of the assessee. Accordingly, ground no 3 raised by the assessee is **partly allowed**.

21. In the result, the appeal filed by the assessee is **partly allowed**.

22. 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 coordinate 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 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 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 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 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 re-fix 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 noticeboard.

23. 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.

24. Order pronounced as per Rule 34(5) of ITAT Rules and by placing the pronouncement list in the notice board on 08.07.2020.

Sd/-
(Vikas Awasthy)
न्यायिकसदस्य / Judicial Member
मुंबई Mumbai; दिनांक Dated : 08.07.2020
Sr.PS. Dhananjay

Sd/-
(S. Rifaur Rahman)
लेखासदस्य / Accountant Member

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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