

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

**BEFORE SHRI PAWAN SINGH, JM &  
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 4848/Mum/2017  
(निर्धारणवर्ष / Assessment Year: 2012-13)

ACIT 25(3), R. No. 601, C-10, 6 <sup>th</sup> floor, PratykashkarBhavan, BandraKurla Complex (east) Mumbai-400 051	<b>बनाम/ Vs.</b>	M/s Vidhi Enterprises, 504, ParshwaKunj, Malviya Road Vile Parle (east), Mumbai-400 057
स्थायीलेखासं./जीआइआरसं./PAN No. AAGFV4334C		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Mrs Samatha Mullamudi, DR
प्रत्यर्थीकीओरसे/ <b>Respondentby</b>	:	Vijay Mehta, AR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	17.02.2020
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	08.07.2020

आदेश / ORDER

**PER S. RIFAUR RAHMAN (ACCOUNTANTMEMBER):**

The present appeals has been filed by the revenue against the order of Ld. Commissioner of Income Tax (Appeals)-37, Mumbai dated 05.04.2017 for AY 2012-13.

2. The brief facts of the case are, assessee filed its return of income on 23.09.2012 declaring total income of Rs. NIL. The return was processed under section 143(1) of the I.T. Act, 1961. Subsequently, the case was selected for scrutiny under CASS and the notices under section 143(2) and 142(1) were issued and served on the assessee. In response, AR of the assessee submitted the relevant information as called for.

3. The assessee firm is engaged in the business of construction activities. After verifying the various information submitted by the assessee, assessing officer observed that there was a survey operation under section 133A of the Act on the premises of M/s SS Enterprises, which is a group concern and sister concern of the assessee. During the course of survey, some incriminating documents were impounded which are basically related to cash transactions by the group concerns. Further assessing officer observed that assessee has taken loans and advances to the extent of Rs. 71,46,910/- from M/s Samir Enterprises. When the assessee was asked to explain why the transaction cannot be treated as bogus, in response, assessee submitted that it is not a fresh loan but this loan was taken in earlier assessment year, this loan was taken

by assessee through banking channel and assessee has paid the relevant interest to the party and also this loan was settled in the subsequent assessment year through banking channel only. Further, assessee submitted before assessing officer that he himself initiated the private proceedings by issue of notice u/s 133(6) from the address and PAN details submitted by the assessee, therefore assessing officer cannot initiate proceedings under section 68 of the Act.

4. Assessing officer rejected the submissions of the assessee and proceeded to make the addition under section 68 by observing that M/s Samir Enterprises are not doing any business and just providing accommodation entries and with reference to the assessment order passed in M/s Samir Enterprises case in which the other assessing officer has disallowed all the purchases declared by M/s Samir Enterprises in their books, therefore assessing officer relying on the above assessment order disallowed the loan along with interest expenditure claimed in the present assessment order on protective basis.

5. Further assessing officer observed that assessee has furnished the list of loan outstanding along with interest paid during the year.

In order to verify the genuineness of the transaction, notice under section 133(6) were issued to all the parties. Assessing officer observed that only 13 parties responded to the notice issued by the assessing officer and other 51 parties did not respond. Accordingly he brought on record the list of 51 parties in the assessment order and disallowed the principal loan outstanding to the extent of Rs. 3,72,42,936/- and interest to the extent of Rs. 1,44,79,733/-.

6. Aggrieved with the above order, assessee preferred an appeal before the Ld. CIT(A) and Assessee filed elaborate submission before the learned CIT(A).

7. With regard to loan from M/s Samir Enterprises, Ld CIT(A) after considering the submissions of the assessee, accepted the evidences submitted before him and he observed in his order that what it transpires from the assessment order that the AO has solely relied upon the assessment order u/s 143(3) of the Act of M/s Samir Enterprises and did not carry out any worthwhile independent enquiry in the matter. He observed that assessing officer totally ignored the documentary evidences submitted by the assessee. The AO in its assessment order admitted existence of

these details. Further he observed that assessing officer has not pointed out any defect in the above mentioned documentary evidences submitted during the assessment proceedings. Without pointing out any lacuna in the evidences submitted by the assessee, he observed that the sources and genuineness of the transaction cannot be doubted. According to learned CIT(A), merely based on the assessment order of M/s Samir Enterprises, without any corroborative evidence will not make the loan transactions as accommodation entries. Learned CIT(A) in para 5.12 observed that assessee has established identity and genuineness of this transaction and assessing officer has not found anything contrary to the submissions made by the assessee and he also observed that protective assessment cannot be independent of substantive assessment. The protective assessment is always successive to the substantive assessment therefore he rejected the findings of the assessing officer and he relied on the various case law to allow the grounds raised by assessee.

8. With regard to disallowance of loan and interest claimed by the assessee, he observed that during assessment proceedings, the assessee has submitted loan confirmations along with the relevant

details. In his view the identity of the creditors has been established as they are having PAN and they are regularly filing return of income. With regard to genuineness of the transaction and creditworthiness is established from the fact that both the acceptance and repayment of loan has been through banking channel. He also observed that in the assessment order, AO did not discuss the merit of submission made by the assessee and casually brushed aside the details filed by the assessee. According to him, assessee has furnished all the relevant details during the course of assessment proceedings and duly discharged its onus by furnishing the identity and address of the parties. Further assessee deducted tax at source on interest paid to various parties. The payment of interest on loan itself an evidence of loan being genuine. After considering the totality of facts and submissions, he allowed the grounds raised by the assessee for the principal loan as well as interest.

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

- 1. On the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in completely ignoring the finding made by the Assessing Office*

*in his impugned order in which he has relied on the findings made during the assessment proceedings of M/s Samir Enterprises wherein, the jurisdictional AO confirmed that M/s Samir Enterprises does not conduct any business activity and was merely passing accommodation entries.*

- 2. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in taking the view that AO did not make any worthwhile enquiry to verify the credit worthiness of M/s Samir Enterprises whereas assessment order u/s 143(3) of the Income Tax Act 1961 in the case M/s Samir Enterprises declaring it as a bogus entity was passed only after making investigation by an Assessing Officer of the Department.*
- 3. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in not considering the fact that AO had issued notices u/s 133(6) of the I.T. Act 1961 to lenders and reply was received from the lenders and therefore, identity, genuineness and creditworthiness of the lenders were never proved.*
- 4. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in accepting that assessee has discharged it onus by merely filing loan confirmations whereas assessee failed to prove prima facie identity of his creditors, the capacity of such*

*creditors to advance money and lastly genuineness of the transactions.*

- 5. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in accepting the entire transactions to be merely on the basis that the transactions were through banking channels when mere fact that transactions were carried through banking channels does not make them sacrosanct.*
- 6. The appellant prays that the order of Ld. CIT(A) on the above grounds be and that of the Assessing Officer be restored.*
- 7. The appellant craves leave to amend or to alter any ground or add a new which may be necessary.*

10. Before us, Ld DR submitted that M/s Samir Enterprises is an entry operator and the transaction with this firm is not genuine and cannot be believed. He brought to our notice para-5.3 of the assessment order and he supported the findings of the assessing officer. Further he brought to our notice para-5.1 of learned CIT(A) and submitted that learned CIT(A) has not appreciated the findings of the assessing officer and he brought to our notice para-5.11 of CIT(A) and submitted that learned CIT(A) agreed that M/s Samir

Enterprises is involved in bogus transactions still he separated the purchase transactions and loan transactions as 2 separate transactions. He objected to the findings of the learned CIT(A) to allow the grounds raised by the assessee even though M/s Samir Enterprises is involved in bogus transactions. A firm, which is involved in bogus transactions, will also involve in other unlawful activities. The doubtful assessee remains doubtful entity.

11. With regard to loan transactions, he submitted that assessee has not proved genuineness and creditworthiness of those parties with which it dealt. Merely submitting the account information and identity of the creditors does not prove the genuineness and creditworthiness of the creditors, he supported the findings of the assessing officer.

12. On the other hand Ld AR submitted that there was a survey operation conducted in M/s SS enterprises which is group concern and no incriminating material found with regard to transactions of the assessee. It is important to note that the AO has only made protective assessment and protective additions by heavily relying on the assessment order of M/s Samir Enterprises. He brought to our

notice detailed submissions made by the assessee before the learned CIT(A).With regard to addition of loan from M/s Samir Enterprises and also the loans taken from various parties and respective interest payments to them,he submitted that assessee has complied with all the procedure and maintained the proper documents in support of proving the identity, credibility and genuineness of the transaction. It was submitted before assessing officer during assessment proceedings and he had not considered while completing the assessment. He submitted that assessee has submitted all relevant documentation before the learned CIT(A) and learned CIT(A) has considered those information and passed the appropriate order.

13. Considered the rival submissions and material placed on record, with regard to alleged bogus loan from M/s Samir Enterprises, we notice that assessing officer has made the addition considering the assessment order of M/s Samir Enterprises in which the respective assessing officer has disallowed the bogus purchases. He observed that M/s Samir Enterprises was not doing any business and just providing accommodation entries. He rejected the submissions of the assessee even though assessee has submitted that the loan taken from M/s Samir Enterprises in the earlier assessment

year and also submitted relevant documents in support of the transaction.

14. Learned CIT(A) considered the submissions of the assessee and observed that assessing officers has merely relied on the assessment order u/s 143(3) of M/s Samir Enterprises without any corroborative evidence will not make the loan transaction, in question, as accommodation entries in absence of any corroborative evidence and the outcome of assessment order in the case of M/s Samir Enterprises and the conclusions drawn therein cannot be applied ipso facto to all other cases. Further he observed that protective assessment cannot be independent of substantive assessment and protective assessment is always successive to the substantive assessment accordingly relying on the above facts and case law he deleted the addition after considering the overall situation and facts on record and also, in our view, revenue has not brought on record anything new material in support of the findings of assessing officer. From the record, it is clear that the loan was not taken during this year and taken during earlier AY and through banking channel. Therefore, we are inclined to accept the findings

of the learned CIT(A) and accordingly ground raised by the revenue are dismissed.

15. With regard to other loans taken by the assessee, we notice from the record that assessee has taken loan during the year to the extent of Rs. 3,72,42,946/- and it has submitted the confirmation letters from all the parties during the assessment proceedings, except 2 creditors. The assessing officer has not verified the confirmation letters submitted during assessment proceedings and had not mentioned anything about it in assessment order. Further assessing officer has disallowed interest paid by the assessee during the year to the extent of Rs. 1,44,79,733/- which includes interest on the loan taken during the year to the extent of Rs. 25,42,121/- and balance of Rs. 1,19,37,612/- which is interest on loan taken during previous assessment years. We notice that assessee has deducted TDS on the above said interest and remitted the same. Since the assessee has paid the interest after deducting due tax and also assessee has submitted the identity creditworthiness and genuineness of the transaction before assessing officer. This fact was appreciated by the learned CIT(A) and also before us, no new document or any material brought on record by any authority in

contrary to the findings of learned CIT(A). Therefore, we are inclined to accept the findings of the learned CIT(A). Considering the overall situation in this case, we are inclined to accept the findings of Ld CIT(A) and dismiss the grounds raised by the revenue.

16. In the net result, the appeal filed by the revenue is **dismissed**.

17. 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 14<sup>th</sup> 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 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 19<sup>th</sup> 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 15<sup>th</sup> 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 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 refile 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.*

18. 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.

19. 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/-*

(Pawan Singh)

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,**

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**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**