

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER &  
SHRI RAMLAL NEGI, JUDICIAL MEMBER**

**ITA No. 457/Mum/2018  
(Assessment Years: 2009-10)**

**&**

**CO. No. 181/Mum/2018  
(Arising out of ITA No. 457/Mum/2018)**

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| DCIT, Circle – 5(1)<br>Room No. 1928, 19 <sup>th</sup><br>Floor, Air India Building<br>nariman Point, Mumbai -<br>21 | <b>बनाम/</b><br>Vs. | Cikura Properties Ltd.,<br>324, Master Mind IV, Royal<br>Palms, Aarey Milk Colony,<br>Goregaon (E), Mumbai – 65 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCC4109P  |                     |   |
| Appellant/Respondent   | ..                  | Respondent/Appellant  |

|                                   |                             |
|-----------------------------------|-----------------------------|
| अपीलार्थी ओर से/ Appellant by :   | Shri K. Madhusudan, CIT(DR) |
| प्रत्यर्थी की ओर से/Respondentby: | Shri Vijay Mehta, AR        |

|                                       |             |
|---------------------------------------|-------------|
| सुनवाई की तारीख/ Date of Hearing      | 04/03/2020  |
| घोषणा की तारीख /Date of Pronouncement | 06/08 /2020 |

आदेश / O R D E R

**PER RAJESH KUMAR- AM:**

The appeal of the revenue and cross objection filed by the assessee are arising out of the common order of the Ld. CIT(A)-53, Mumbai. The revenue has challenged the order of the Ld. CIT(A) on merit, whereas, the assessee has challenged the Jurisdiction

- 2 -

of the assessing officer (hereinafter called the AO) to frame assessment under section 143(3) r.w.s 147 of the Act. Firstly we are taking up for adjudication the appeal of the revenue. The grounds taken by the revenue are reproduced as under:

*“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has justified in deleting the protective additions in this case considering that the issue of substantive addition in the case of Shree Global Tradefin Ltd., has not reached finality”.*

2. The only issue raised by the revenue is against the order of the Ld. CIT(A) deleting the addition in the hands of the assessee, which was made on the protective basis by ignoring the fact that the issue of substantial addition in the case of Shri Global Tradefin Ltd., has not reached the finality and is pending in the Bombay High Court.

3. The facts in brief are that the assessee filed return of income u/s 139(1) of the Act on 24.09.2009 declaring income at Rs. Nil. A search action u/s 132(1) of the Act was conducted by the investigation wing on Jogia Group of Companies on 04.03.2010. In response to the notice u/s 153A of the Act, the return

**- 3 -**

of income was filed on 26.02.2011 declaring income of Rs. 14,15,00,000/- and the assessment was framed u/s 143(3) r.w.s 153A of the Act on 26.12.2011 determining the total income at Rs. 14,15,00,000/-. Thereafter, the case of the assessee was re-opened u/s 147 r.w.s 148 of the Act after the AO received information from investigation wing of the department that the assessee has invested Rs. 43,50,00,000/- with M/s Shree Global Trade Fin Ltd., as share application money. The said reopening was consequent to a survey conducted on Llyods Group of companies on 19.12.2012 and various information/details coming to the notice of the survey team. A notice u/s 148 of the Act dated 21.03.2014 was served on the assessee on 28.03.2014. The assessee filed a letter dated 02.04.2014 requesting the AO to treat the return filed u/s 153A on 26.02.2011 as return in compliance to notice u/s 148 of the Act. During the course of the assessment proceeding, the AO observed that during the year under consideration, the assessee has given Rs. 43,50,00,000/- by way of advance to M/s Shree Global Trade Fin Ltd. which was subsequently converted into share capital. The source of such advance was

- 4 -

examined during the course of survey and it was found that the assessee has received share application money of equivalent amount from 25 companies, the details whereof are given on para No. 2.2 of the assessment order. The specific finding of the AO as contained in para 4 of the assessment order are as under:

*"4 During the survey, statement of Shri Om Hari Halan was recorded on 19.12.2012 wherein he admitted that he is the whole and sole controller of all the 14 companies including Jogia Properties Group Concerns. And that his brother Shri Narayan Halan and Shri Bijay Basavatia are only namesake directors and did not know about the affairs of the 14 companies. Furthermore, he admitted that he had opened these companies (including Jogia Properties Group Concerns) to route the funds from the investing companies to the above companies and then to pass it on to Shree Global Trade fin Ltd and that no documentations of agreements or any paper work was ever made with any of the companies, mere cheques were received which were directly deposited in bank accounts. He has also accepted his inability to prove, inspite of being given repeated opportunities, the identity, genuineness, and creditworthiness of the various companies from whom funds have been shown in the books of companies managed by him. Additionally he also admitted that he has done this at the instance of Shri Babulal Agarwal*

- 5 -

3.1. The Ld. AO also discussed and dealt with the legal as well as the factual dimensions of the case and finally came to the conclusion that assessee has failed to establish the source of money and thus the same is required to be added u/s 68 of the Act. The AO also noted that the assessee and 13 other companies belonging to Jogia Group have taken share application money from 53 investor companies. During the year under consideration, the assessee has taken share application money from 25 companies which are included in the list of said 53 investor companies as referred to above. The AO noted that the money had been received by 14 companies including the assessee from 53 investor companies and same amount has been transferred by all 14 companies to one company namely M/S Shree Global Tradefin Ltd. Thus, the amounts have been transferred by 14 companies including assessee to M/S Shree Global Tradefin Ltd., and the flow of funds are clearly evident and discernible. The finding of the AO on this has been given in para 5.6.3. which is extracted below:

*"5.6.3 It is also pertinent to mention here the flow of funds as explained in the survey report which is as*

- 6 -

*follows: Money from different proprietorship concerns were transferred to some of the 53 investor companies. These 53 investor companies further invested as share application money into the 14 companies of the Jogiagroup including the assessee who further invested into the Shree Global Trade fin Ltd as share application money. On verification of the bank details of the assessee it is seen that the assessee has transferred or withdrawn from its bank account immediately after deposits were made into its account. Immediate withdrawal of money after deposits almost each and every time, speaks of the sinister motives of the assessee whether it is for not coming into the eyes of the regulatory authorities or to not show funds with unexplainable sources in its bank accounts, etc. However no details have been mentioned in the survey report regarding the source of funds in those proprietorship concerns or of some of the assessee 's investor companies. Also in absence of any details filed by the assessee regarding the source of funds of these concerns or how the unaccounted income of the Lloyds Steel Industries reached into their hands as asserted by the assessee, it is almost impossible to come to the conclusion that the source of the investments is actually of M/s Lloyds Steel Industries."*

3.2 On the basis of these findings, the AO added 43,50,00,000/- u/s 68 of the Act. The AO also added to the income of the assessee, commission @ 3% from Shree Global Tradefin Ltd., and accordingly addition of Rs. 1,30,50,000/- was made. Similar addition of Rs. 43,50,00,000/- was made to the income of Shree

- 7 -

Global Tradefin Ltd. on substantive basis, whereas, the addition in the assessee's hand was made on protective basis. In the second appellate proceeding, the Tribunal deleted the addition in the case of Shree Global Tradefin Ltd., in ITA No. 7310 to 7313/Mum/2017, vide order dated 15.10.2019 and there is no finding by the Coordinate Bench that the income is belonging to the present assessee.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the CIT(A) on legal issue as well as on merit. The Ld. CIT(A) upheld the reopening of assessment as the same was done on the basis of survey proceedings in which the department has come to know certain information concerning the share application money received by the assessee and accordingly held that the reopening was based upon the prima-facie belief that the income has escaped assessment and thus dismissed the legal issue raised by the assessee.

5. On the merit, the Ld. CIT(A) allowed the appeal of the assessee by observing that after receiving share application money from 25 companies, the assessee

**- 8 -**

gave the same amount to Shree Global Tradefin Ltd., and found that the funds were having one to one nexus between the amount received and paid by the assessee. The Ld. CIT(A) also reproduced the detailed chart showing movement of funds on page No. 124 to 176 of the appellate order and on the said basis came to the conclusion in para No. 8.9 on page No. 176 of appellate order that the conduit Jogia Group Entities have no financials to elicit any genuine investments, much less investment at huge premium of crores of rupees. He further held that these entities are merely conduit for transferring money to Shree Global Tradefin Ltd., immediately after receiving the same from 25 investing companies. The CIT (A) has also disposed of the appeal in the case of Shree Global Tradefin Ltd. simultaneously, in whose hand the same amount was added by the Assessing Officer on the ground that the ultimate destination of money has not been established as genuine. The CIT (A) gave a finding that the conclusion of the Assessing Officer to the effect that the source of money has not been established is correct. According to the CIT (A), the amount received from 53 companies were not genuine.

- 9 -

However, the CIT (A) was of the view that the said amount is to be taxed in the hands of the entity who is the ultimate destination of the money. Consequently, the amount is to be taxed in the hands of Shree Global Tradefin Ltd. The CIT (A) was of the view that the present assessee being the conduit, has transferred the money from various entities to Shree Global Tradefin Ltd. and, hence, the addition cannot be made in the hands of the present assessee. The finding of the CIT (A) in para 8.29 on page 191 is reproduced hereinbelow:

*"8.29 The AR has also contended that similar addition u/s. 68 is made in the cases of Shree Global Tradefin Ltd (SGTL) whose appeals are pending before me. While the amounts received through these entities are not genuine and credit worthiness is not there of the 54 entities, there is almost one to one correspondence between amount received by 14 entities and amount received through them by SGTL is the ultimate beneficiary who has received the money. Hence, it is only logical that the amount is assessed in the hands of SGTL. The assessing officer was queried on this and he has reported that the additions in the case of Jogia Group 8 cases be treated as protective addition. I am of the view that the additions must be made only in the hands of Shree Global Trade fin Pvt. Ltd since the Jogia Group entities are merely conduit entities and the money was raised and brought in for Shree Global Trade fin Pvt. Ltd Simultaneously, appellate orders are passed in those appeals also ho/ding the same. The*

- 10 -

*same view has been taken in the appellate orders of even date in the case of the appeals in SGTL before me."*

6. Based on the above, the CIT (A) held that the amount received as share application money at a premium during the year fails the test of creditworthiness and genuineness. The addition u/s. 68 of the Act was, accordingly, sustained in the hands of Shree Global Tradefin Ltd. and the same was deleted in the case of the assessee. The CIT (A) also deleted the consequential addition of Rs 1,30,50,000/- made by the Assessing Officer in the assessee's case under the head income from other sources.

7. The 1d AR submitted that , as noted by CIT (A), the assessee is merely a conduit, i.e. pass through entity, and the addition was made by the Assessing Officer on protective basis in the hands of the assessee which was also confirmed by the Assessing Officer to the CIT (A) as recorded by the CIT (A) in para 8.29 on page 191 which has been reproduced hereinabove. Further, the grounds of appeal filed by the Department clearly state that the addition was on

**- 11 -**

protective basis and the only reason for challenging to the order of ld. CIT(A) on the deletion of the addition by ld. CIT(A) is that the case of Shree Global Tradefin Ltd. has not reached finality. The ld. AR, in this regard, submitted that once it is held that the assessee has merely received money from 25 companies and passed on to M/S Shree Global Tradefin Ltd., there is no basis for making any addition in the hands of the assessee. The ld. AR stated that in any case, there cannot be double taxation of the same amount in two places. Thus, even by going on the basis of the reasonings of the Assessing Officer, the order of CIT (A) is bound to be upheld. It is further submitted that protective addition is always made whenever there is a doubt about the correct entity or correct assessment year. In a case where there is a doubt as to whom the income belongs to, then addition is made in the hands of two persons, i.e. on substantive basis in the hands of one person and on protective basis in the hands of the other person. The protective addition would become substantive, only and only if substantive addition is deleted by the appellate authority on the ground that

**- 12 -**

the income belonged to the person in whose hands protective addition has been made. However, the protective addition would not survive if (i) the substantive addition has been confirmed and (ii) substantive addition has been deleted on merits. The ld AR submitted that in the present case, the appeal in the case of Shree Global Tradefin Ltd. has been decided by the Hon'ble Tribunal in ITA Nos. 7310 to 7313/Mum/2017 dated 15.10.2018 a copy whereof is also placed on record and there is no finding in that case that the income is that of the present assessee. In fact, the merits of the addition has been discussed in the case of Shree Global Tradefin Ltd and, therefore , the protective addition in the case of assessee has been correctly deleted by CIT(A). Apart from the above, the factual findings given by the Assessing Officer to the effect that assessee has received the money from 25 companies and given it to Shree Global Tradefin Ltd., and thereby funds have been routed through the assessee clearly support the conclusion of the ld. CIT(A). The Assessing Officer has also referred to the flow of funds, and the fact of transfer of money immediately after the receipt

**- 13 -**

thereof to M/S Shree Global Tradefin Ltd. Even the findings of the ld. CIT (A) about one-to-one nexus, and the assessee being merely a conduit have not been disputed by the Department. In light of such clear factual findings, the conclusion of the CIT(A) that the addition cannot be made in the hands of the assessee is unassailable. Therefore, without prejudice to the contentions raised by the assessee in its cross objection before the Hon'ble Tribunal, it is submitted that even if the stand of the Assessing Officer is assumed to be right, no addition can be made in the hands of the assessee. The ld. AR therefore prayed that the order of ld CIT(A) being reasoned and speaking one so far as deletion of addition on merit is concerned and deserves to be affirmed by dismissing the appeal of the revenue.

8. The ld DR on the other hand strongly opposed the arguments of the ld. AR and re-iterated the facts of the case to make it more illustrative and lucid. The ld AR also filed written submissions narrating all the facts and his arguments. The ld. DR submitted that during a survey on 20.12.2012 on M/s. Lloyd Steel

**- 14 -**

Industries and Shree Global Tradefin. Ltd, a statements of Shri Babulal Agarwal, Shri Om Hari Lalan and Shri Mukesh Choksi were recorded. During the search, statements of Shri Mukesh Choksi and Shri Nilesh C. Shah were recorded. Shri Choksi accepted that he arranged accommodation entries in the form of unsecured loans to various entities. In the statement recorded during the survey, Shri Om Hari Lalan admitted that he was whole and sole controller of 14 companies, which received share application money from other entities. He also stated that is not in contact with the investor entities and cannot produce the directors of the companies and prove creditworthiness and genuineness of the share application money received. He also accepted that no documents or agreements or any paper work was made with any of the entities for the investments made in the 14 companies. He stated that only cheques were received which were deposited in the bank accounts of the 14 companies. After the survey in Shree Global Trade Fin. Ltd. in 2012, Department conducted search in Shri Pravinkumar Jain, a hawala operator. It was found during this search that several

**- 15 -**

of the 54 entities were controlled and managed by hawala operator Pravin Kumar Jain. Findings in the case of Pravin Kumar Jain are extracted by the CIT(A) on pages 95 to 114 of his order. Admission of Shri Pravin Kumar Jain and corroboration of findings of this search with other searches regarding the beneficiaries is been mentioned on pages 114 to 118 by the CIT(A) in his order. After considering all the materials, the CIT(A) disposed off the grounds relating to addition of Rs.43.50 cr. from page 123 of the order. Pages 124 to 161 contain the details of 14 companies and 54 entities. The observations made by the CIT(A) in paragraphs 8.6 to 8.15 of his order are not reproduced and the same may be treated as part of these submissions. Paragraphs 8.16 to 8.28 contain the case laws. As the CIT(A) was taking a decision simultaneously in the case of Shree Global Tradefin. Ltd. where addition was made on substantive basis and 8 of the investing companies before him (out of the 14) where additions were made on protective basis, he confirmed in Shree Global Tradefin. Ltd and deleted the protective additions made in the 8 company cases including the case of the assessee.

**- 16 -**

During the arguments before the Hon'ble ITAT, the AR accepted that the addition confirmed by the CIT(A) in the case of Shree Global Trade Fin. Ltd. has already been deleted by the ITAT. In the circumstances deleting the addition in the conduit company also by the ITAT is against the interest of the revenue and against the fairness of justice. It is a fact that by layering at three levels, the group has brought the unaccounted money of 541.95 crores into the system and not paid any tax anywhere. First the money was introduced in 53 entities, the source for the money is not explained. Creditworthiness and genuineness of these 53 investing entities are not proved. The Id. DR stated the present appellant is one of the companies, where the identities, creditworthiness and genuineness of the investors in the assessee company were not proved. The main controller Shri Om Hari Lalan has accepted that he has no documentation for source and creditworthiness. If adverse view is taken in the appeal of the department and the addition made by the AO is not restored, the Department will lose the tax due on the unaccounted money fraudulently introduced by the group. Further it is submitted a

- 17 -

bigger picture has to be taken while disposing of the protective addition because it is not a question of Rs.43.50 crores only, but it is a matter of unaccounted money introduced amounting to Rs.541.95 crores, which cannot be allowed to be brought into books without paying due tax. In the interest of revenue and justice, it is requested that the addition made in this case be confirmed by restoring the order of the AO and by setting aside the order of the CIT(A).

9. We have heard the rival contentions and perused the materials placed before us including the written submissions by both the sides and impugned order passed by Id CIT(A). The undisputed facts are that the assessee is a group company of Jogia Group and invested a sum of Rs. 43.50 Crores in M/S Shree Global Tradefin Ltd. The assessee received the equivalent sum from 25 companies as share application money and passed on the same to M/S Shree Global Tradefin Ltd. immediately as advance which was later on converted into share capital. The AO as well as CIT(A) recorded a findings that 25

**- 18 -**

companies who invested in the assessee company are included in the list of said 53 investor companies which have advanced money to 14 companies including the assessee and same amount has been transferred by all 14 companies including the assessee to one company namely M/S Shree Global Tradefin Ltd. Thus, the amounts have been transferred by 14 companies including assessee to M/S Shree Global Tradefin Ltd., and the flow of funds are clearly evident and discernible. As such, there is no doubt as to the source of money. The AO added 43,50,00,000/- u/s 68 of the Act on protective basis in the hands of the assessee and simultaneously similar addition of Rs. 43,50,00,000/- was made to the income of Shree Global Tradefin Ltd. on substantive basis on the ground that source of money was not proved. The AO also added to the income of the assessee, commission @ 3% on the total investments in Shree Global Tradefin Ltd., and accordingly addition of Rs. 1,30,50,000/- was also made. Both these additions were deleted by Id. CIT(A) by holding that the assessee is a pass through entity whereas the addition was confirmed in the hands of M/S Shree Global Tradefin

**- 19 -**

Ltd .Pertinent to note that in the appellate proceeding, the Tribunal deleted the addition in the case of Shree Global Tradefin Ltd., in ITA No. 7310 to 7313/Mum/2017, vide order dated 15.10.2019 and there is no finding by the Coordinate Bench that the said amount of Rs. 43.50 Cr belongs to the present assessee. We note from the perusal of the order of coordinate bench that the addition in the case of M/S Shree Global Tradefin Ltd. has been deleted on merit. Thus, the coordinate bench has not given any finding that the money belongs to the assessee. We also note that both the authorities below have recorded a findings of fact that there is one to one nexus between the funds received from 25 companies and advanced to M/S Shree Global Tradefin Ltd and the assessee is merely a conduit. As stated elsewhere in this order that in the case of the assessee, the addition was made on protective basis. The protective addition is always made whenever there is a doubt about the correct entity or correct assessment year. Thus , where there is a doubt as to whom the income belongs to, the addition is made in the hands of two persons, i.e. on substantive basis in the hands of one person and on

**- 20 -**

protective basis in the hands of the other person. The protective addition would become substantive, only and only if substantive addition is deleted by the appellate authority on the ground that the income belonged to the person in whose hands protective addition has been made. The protective addition does not survive if the substantive addition has been confirmed or substantive addition has been deleted on merits. In the present case before us the addition was made on protective basis while on substantive basis it was made in the case of M/S Shree Global TradefinLrd. The said substantive addition was deleted by the coordinate bench vide order dated 15.10.2015 passed in ITA No. 7310 to 7313/Mum/2017 dated 15.10.2018 on merits. In our considered opinion the protective addition has to go as the substantive addition was deleted on merits. We do not find nay force in the arguments/written submissions of the ld. DR that where substantive addition is deleted the protective has to restored to the AO as in the case of M/S Shree Global TradefinLtd , assessment has not attained finality. We are therefore inclined to dismiss the appeal of the revenue by upholding the order of CIT(A).

**- 21 -**

10. The assessee has also filed cross objection challenging the re-opening and assessment order on various grounds. Since we have dismissed the appeal of the revenue on merits, we are, therefore, not adjudicating the grounds raised by the assessee in the cross objections. Accordingly the cross objections are dismissed.

11. However, before we part with the matter, we would like to deal with one procedural issue as well. While hearing of this appeal was concluded on 4th March 2020, the order is being pronounced today on 6<sup>th</sup> day of August, 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 for the same within a period of 90 days of the conclusion of the hearing.

12. It is quite clear that 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 as the expression “ordinarily” has been used

- 22 -

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)] and has been duly considered by the Coordinate bench in the case of Joint Commissioner of Income Tax Vs M/s. Kansai Nerolac Paints Ltd. ITA No.3743/Mum/2016 Assessment year: 2010-11 wherein it has decided that for the extraordinary period the period of 90 days shall stand extended. The operative part is reproduced:-

*7. However, before we part with the matter, we must deal with one procedural issue as well. While hearing of this appeal was concluded on 13th February 2020, these orders are being pronounced today on 13<sup>th</sup> day of July, 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.*

- 23 -

(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

- 24 -

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

- 25 -

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

- 26 -

order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to interpreted. The interpretation so assigned by us is not only in consonance with the letter and spirit of rule 34(5) but is also a pragmatic approach at a time when a disaster, notified under the Disaster Management Act 2005, is causing unprecedented disruption in the functioning of our justice delivery system. Undoubtedly, in the case of *Otters Club Vs DIT* [(2017) 392 ITR 244 (Bom)], Hon'ble Bombay High Court did not approve an order being passed by the Tribunal beyond a period of 90 days, but then in the present situation Hon'ble Bombay High Court itself has, vide judgment dated 15th April 2020, held that directed "while calculating the time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly". The extraordinary steps taken suo motu by Hon'ble jurisdictional High Court and Hon'ble Supreme Court also indicate that this period of lockdown cannot be treated as an ordinary period during which the normal time limits are to remain in force. In our considered view, even without the words "ordinarily", in the light of the above analysis of the legal position, the period during which lockout was in force is to excluded for the purpose of time limits set out in rule 34(5) of the Appellate Tribunal Rules, 1963. Viewed thus, the exception, to 90-day time-limit for pronouncement of orders, inherent in rule 34(5)(c), with respect to the pronouncement of orders within ninety days, clearly comes into play in the present case. Of course, there is no, and there cannot be any, bar on the discretion of the benches to refix the matters for clarifications because of considerable time lag between the point of time when the

- 27 -

*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.*

13. Accordingly we exclude the period of Covid -19 being extraordinary period from the period of 90 days in terms of Rule 34(5) of the ITAT Rules.

14. The appeal of the revenue as well as cross objections are dismissed.

Order pronounced on 06.08.2020 under 34(4) of the ITAT Rules, 1963.

**Sd/-**  
**(RAMLAL NEGI)**  
**JUDICIALMEMBER**

**Sd/-**  
**(RAJESH KUMAR )**  
**ACCOUNTANT MEMBER**

Mumbai, Dated 06/08/2020

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

सत्यापित प्रति //True Copy//

1.

*ITA No. 457/Mum/2018, CO No. 181/Muml/2018.  
Cikura Properties Ltd., Mumbai*

**- 28 -**

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai