

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE SHRI PRAMOD KUMAR, VP AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.1010/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2010-11)

Jamsetji Tata Trust Bombay House, Homi Mody Street, Mumbai-400001.	बनाम/ Vs.	ACIT (E) 1-1 Aayakar Bhavan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATJ0095N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Sukhsagar Syal
Revenue by:	Shri Shishir Dhamija (DR)

सुनवाई की तारीख / Date of Hearing: 04/02/2020
घोषणा की तारीख /Date of Pronouncement: 09/07/2020

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 24.12.2018 passed by the Commissioner of Income Tax (Appeals)-5, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2010-11

2. The assessee has raised the following grounds: -

- “1. *On the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals)-5 [CIT(A)] erred in upholding the penalty levied by the Assistant Commissioner of income tax (Exemptions)-1(1)(ACIT) under section 271(1)(c) of the Act.*

The appellant prays that the ACIT be directed to delete the penalty levied on the appellant.



2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that the order passed by the ACIT passing an order under section 271(1)(c) was not barred by limitation of time.*

The appellant prays that it be held the penalty order passed by the ACIT was barred by limitation of time.

3. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in concluding that the appellant had furnished inaccurate particulars of income.*

The appellant prays that it be held that the appellant has not furnished inaccurate particulars of income.

4. *The appellant craves leave to add, alter or modify any ground of appeal, if necessary."*

3. The brief facts of the case are that the assessee filed its return of income on 30.09.2010 along with the Income & Expenditure Account, Balance Sheet and Audit Report in Form No.10B claiming exemption u/s 11 & declaring total income to the tune of Rs. Nil. The case of the assessee was selected for scrutiny. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee and thereafter, assessment was completed assessing total income to the tune of Rs.7,14,42,46,454/- against the returned income of Rs. Nil. The AO held that the assessee has violated the provisions of Section 13(1)(d)(i), 13(1)(d)(ii) and 13(2)(h) of the I. T. Act, hence, denied the assessee exemption u/s 11 & 12 of the I. T. Act. The AO observed that the assessee sold 10,000,000/- shares of TCS for Rs. 537,10,53,576/- and reinvested by way of acquisition of 8%



cumulative redeemable preference shares of Tata Sons Ltd. of the value of Rs. 5,45,00,00,000/-. The assessee has also deposited short term deposit with bank of Rs.63,60,000,00/-. The AO noted that on 14.06.2001 the assessee received Corpus donation from Tata Sons Ltd of Rs. 1,52,50,000/- in the shape of 15,25,000 shares of Orchid Print India Ltd. (later known as ICS) of Rs. 10 each, total amounting to Rs. 1,52,50,000/-. In the assessment year 2003-04 to 2005-06, face value of shares were converted from Rs. 10 to Rs. 1 and assessee further got bonus shares as well. Thus the AO found that the assessee is in receipt of profit on sale of shares of TCS of Rs. 536,90,53,755/- which was shown directly in the balance sheet without routing through the income and expenditure account. The assessee has also received Rs. 5,48,62,380/- as dividend income on TCS shares and Rs. 142,51,36,643/- as dividend income on shares of Tata Sons Ltd apart from the dividend of Rs. 7,53,160/- from the units. The AO found that the sale proceeds of shares of TCS has been reinvested in the Tata Sons Ltd which is not public sector company, therefore, the investment of accumulated fund is not in conformity of section 11(5) of the Act. Thus the AO observed that the assessee is hit by the provisions of section 13(1)(d)(i) as well as section 13(2)(h) in terms of its investment in shares of Tata Sons Ltd and by provisions of section 13(1)(d)(iii) in terms of shares of TCS and Tata Sons Ltd held by the assessee. Accordingly, a notice u/s 142(1) was issued to the assessee. The assessee responded to the notice by its reply and explanation.



After considering the reply, the AO held that benefit of section 11(1A) is not available to assessee because of investment in shares of Tata sons Ltd as per section 11(1) and further the investment in shares of Tata Sons Ltd is not held as Corpus fund. The AO was also of the view that as per the proviso to section 13(1)(d) exempt assets from disqualification must be held by the trust as its Corpus as on 1.06.1973. Shares of TCS are held by assessee only from the AM. 2001-02, hence the assessee does not fulfill the conditions of holding of TCS shares in terms of the proviso to section 13(1)(d). Accordingly, the AO held that the assessee is hit by the provisions of section 13(1)(d)(i) in terms of investment in shares of Tata Sons Ltd and by provisions of section 13(1)(d)(iii) in terms of shares of TCS and Tab Sons Ltd held by it and exemption u/s 11 and 12 will not be allowable in respect of any income of the assessee's trust.

5. The CIT(A) has upheld the order of the AO and thereafter the assessee filed an appeal before the Hon'ble ITAT and the Hon'ble ITAT partly allowed the claim of the assessee. The Hon'ble ITAT has given the following finding as under.:-

"In the case in hand, though the assessee held the bonus shares of TCS for the duration which is within the time limit prescribed under clause (Ha) of the proviso to section 13(1)(d) the assessee converted the assets being bonus shares of TCS into the preferential share of Tata sons Ltd. It is not a conversion into the asset/investment permissible u/s 11(5) of the if Therefore, clause (iia) of proviso to section 13(1)(d) would not rescue the assessee from of section 13(1)(d) (iii) of the Income-tax Act. The intent behind the insertion of clause (Ha) of the proviso is to exit front non permissible investment, and to convert into permissible



investment and not to just change one non permissible investment to another non permissible investment. If it is permitted it will defeat the very purpose of object of the said clause of the proviso."

"The AO held that investment in shares of Tara Sons Ltd is in contravention of clause (10 of sub section 2 of section 13 because Tata Sons Ltd., is a concern in which the person referred in sub section 3 has substantial interest. Ld. Senior counsel though reiterated the assessee stand taken before the authorities below however he has contended that violation of section 13(2)(h) would not render the entire income of the trust lose exemption u/s 11. In support of his contention he has relied upon the decision of the Tribunal in the case of Tata Education Trust and Tata Social Welfare Trust (supra). As far as the violation of clause (h) of section 13(2) is concerned we find that the author of the assessee trust and its relative definitely have a substantial interest in the Tata Sons Ltd, therefore, the investment in the shares of Tata Sons Ltd is clear violation of clause (10 of section 13(2). We have given our serious thought on the issue and are of the view that violation of section 13(1)(d) and section 13(2)(h) would disqualify exemption of income from the investment in non-conforming of section 11(5) but not the entire income of trust if the other income of the trust otherwise fulfil the condition for exemption."

6. Subsequently, notice u/s 271(1)(c) was given and the assessee also submitted the reply, the explanation of the assessee was not found justifiable, therefore, the penalty 271(1)(c) was levied. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the order of the AO, therefore, the assessee has filed the present appeal before us.

ISSUE NO.1 & 3

7. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. These issues are in connection with the confirmation of the penalty levied by the AO. At the very outset, the Ld. Representative of the assessee has argued



that the penalty notice nowhere speaks about specific limb to levy the penalty because the particular charge was not tick off in the notice, therefore, in the said circumstances, the penalty is not liable to be sustainable in the eyes of law, hence the order of the CIT(A) confirming the penalty order of the AO is wrong against law and facts and is liable to be set aside. In support of these contentions the Ld. Representative of the assessee has placed reliance upon the law settled in ITA. No.1154/M/2014 in the case of **CIT-11 Vs. Samson Perinchery and the order of the ITAT, Mumbai Bench in ITA. No.2555/M/2012 vide order dated 28.04.2017 titled as Meherjee Cassinath Holdings P. Ltd. Vs. ACIT, Circle-4(2)**. However, on the other hand, the Ld. Representative of the Department has refuted the said contentions. The copy of notice dated 31.03.2015 is on the file in which the Assessing Officer nowhere specify any limb to levy the penalty because none of the charge was tick off in the notice. It is not in dispute that the penalty u/s 271(c) of the Act is leviable on account of the concealment of particular of income and on account of furnishing the inaccurate particulars of income. Both have different connotations. In this regard, the Hon'ble Supreme Court has appreciated the distinction between both the limb in the case **Dilip N. Shroff 161 taxman 218 (SC)**. As per the record, the assessment order speaks about levying the penalty on account of furnishing the inaccurate particulars of income but the notice nowhere specify any limb to levy the penalty. The notice is not justifiable in view of the



law settled by the Bombay High Court in the case of **CIT-11 Vs. Samson Perinchery**. At the time of argument, the Ld. Representative of the assessee has also placed reliance upon the finding of the Hon'ble ITAT in ITA. No. 2555/M/2012 titled as **Meherjee Cassinath Holdings P. Ltd. Vs. ACIT, Circle-4(2)**. The relevant para is hereby reproduced below: -

“8. We have carefully considered the rival submissions. Sec. 271(1)(c) of the Act empowers the Assessing Officer to impose penalty to the extent specified if, in the course of any proceedings under the Act, he is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income. In other words, what Sec. 271(1)(c) of the Act postulates is that the penalty can be levied on the existence of any of the two situations, namely, for concealing the particulars of income or for furnishing inaccurate particulars of income. Therefore, it is obvious from the phraseology of Sec. 271(1)(c) of the Act that the imposition of penalty is invited only when the conditions prescribed u/s 271(1)(c) of the Act exist. It is also a well accepted proposition that ‘concealment of the particulars of income’ and ‘furnishing of inaccurate particulars of income’ referred to in Sec. 271(1)(c) of the Act denote different connotations. In fact, this distinction has been appreciated even at the level of Hon'ble Supreme Court not only in the case of Dilip N. Shroff (supra) but also in the case of T.Ashok Pai, 292 ITR 11 (SC). Therefore, if the two expressions, namely ‘concealment of the particulars of income’ and ‘furnishing of inaccurate particulars of income’ have different connotations, it is imperative for the assessee to be made aware as to which of the two is being put against him for the purpose of levy of penalty u/s 271(1)(c) of the Act, so that the assessee can defend accordingly. It is in this background that one has to appreciate the preliminary plea of assessee, which is based on the manner in which the notice u/s 274 r.w.s. 271(1)(c) of the Act dated 10.12.2010 has been issued to the assessee-company. A copy of the said notice has been placed on record and the learned representative canvassed that the same has been issued by the Assessing Officer in a standard proforma, without striking out the irrelevant clause. In other words, the



notice refers to both the limbs of Sec. 271(1)(c) of the Act, namely concealment of the particulars of income as well as furnishing of inaccurate particulars of income. Quite clearly, non-striking-off of the irrelevant limb in the said notice does not convey to the assessee as to which of the two charges it has to respond. The aforesaid infirmity in the notice has been sought to be demonstrated as a reflection of non-application of mind by the Assessing Officer, and in support, reference has been made to the following specific discussion in the order of Hon'ble Supreme Court in the case of Dilip N. Shroff (supra):-

“83. It is of some significance that in the standard proforma used by the Assessing Officer in issuing a notice despite the fact that the same postulates that inappropriate words and paragraphs were to be deleted, but the same had not been done. Thus, the Assessing Officer himself was not sure as to whether he had proceeded on the basis that the assessee had concealed his income or he had furnished inaccurate particulars. Even before us, the learned Additional Solicitor General while placing the order of assessment laid emphasis that he had dealt with both the situations.

84. The impugned order, therefore, suffers from non-application of mind. It was also bound to comply with the principles of natural justice. (See Malabar Industrial Co. Ltd. v. CIT [2000] 2 SCC 718)”

9. Factually speaking, the aforesaid plea of assessee is borne out of record and having regard to the parity of reasoning laid down by the Hon'ble Supreme Court in the case of Dilip N. Shroff (supra), the notice in the instant case does suffer from the vice of non-application of mind by the Assessing Officer. In fact, a similar proposition was also enunciated by the Hon'ble Karnataka High Court in the case of M/s. SSA's Emerald Meadows (supra) and against such a judgment, the Special Leave Petition filed by the Revenue has since been dismissed by the Hon'ble Supreme Court vide order dated 5.8.2016, a copy of which is also placed on record.

10. In fact, at the time of hearing, the ld. CIT-DR has not disputed the factual matrix, but sought to point out that there is due application of mind by the Assessing Officer which can be



demonstrated from the discussion in the assessment order, wherein after discussing the reasons for the disallowance, he has recorded a satisfaction that penalty proceedings are initiated u/s 271(1)(c) of the Act for furnishing of inaccurate particulars of income. In our considered opinion, the attempt of the ld. CIT-DR to demonstrate application of mind by the Assessing Officer is no defence inasmuch as the Hon'ble Supreme Court has approved the factum of non-striking off of the irrelevant clause in the notice as reflective of non-application of mind by the Assessing Officer. Since the factual matrix in the present case conforms to the proposition laid down by the Hon'ble Supreme Court, we proceed to reject the arguments advanced by the ld. CIT-DR based on the observations of the Assessing Officer in the assessment order. Further, it is also noticeable that such proposition has been considered by the Hon'ble Bombay High Court also in the case of Shri Samson Perinchery, ITA Nos. 1154, 953, 1097 & 1126 of 2014 dated 5.1.2017 (supra) and the decision of the Tribunal holding levy of penalty in such circumstances being bad, has been approved.

11. Apart from the aforesaid, the ld. CIT-DR made an argument based on the decision of the Hon'ble Bombay High Court in the case of Smt. Kaushalya & Others, 216 ITR 660 (Bom.) to canvass support for his plea that non-striking off of the irrelevant portion of notice would not invalidate the imposition of penalty u/s 271(1)(c) of the Act. We have carefully considered the said argument set-up by the ld. CIT-DR and find that a similar issue had come up before our coordinate Bench in the case of Dr. Sarita Milind Davare (supra). Our coordinate Bench, after considering the judgment of the Hon'ble Bombay High Court in the case of Smt. Kaushalya & Ors., (supra) as also the judgments of the Hon'ble Supreme Court in the case of Dilip N. Shroff (supra) and Dharmendra Textile Processors, 306 ITR 277 (SC) deduced as under :-

“12. A combined reading of the decision rendered by Hon'ble Bombay High Court in the case of Smt. B Kaushalya and Others (supra) and the decision rendered by Hon'ble Supreme Court in the case of Dilip N Shroff (supra) would make it clear that there should be application of mind on the part of the AO at the time of issuing notice. In the case of Lakhdar Lalji (supra), the AO issued notice u/s 274 for concealment of particulars of income but levied



penalty for furnishing inaccurate particulars of income. The Hon'ble Gujarat High Court quashed the penalty since the basis for the penalty proceedings disappeared when it was held that there was no suppression of income. The Hon'ble Kerala High Court has struck down the penalty imposed in the case of N.N.Subramania Iyer Vs. Union of India (supra), when there is no indication in the notice for what contravention the petitioner was called upon to show cause why a penalty should not be imposed. In the instant case, the AO did not specify the charge for which penalty proceedings were initiated and further he has issued a notice meant for calling the assessee to furnish the return of income. Hence, in the instant case, the assessing officer did not specify the charge for which the penalty proceedings were initiated and also issued an incorrect notice. Both the acts of the AO, in our view, clearly show that the AO did not apply his mind when he issued notice to the assessee and he was not sure as to what purpose the notice was issued. The Hon'ble Bombay High Court has discussed about non-application of mind in the case of Kaushalya (supra) and observed as under:-

“...The notice clearly demonstrated non-application of mind on the part of the Inspecting Assistant Commissioner. The vagueness and ambiguity in the notice had also prejudiced the right of reasonable opportunity of the assessee since he did not know what exact charge he had to face. In this back ground, quashing of the penalty proceedings for the assessment year 1967-68 seems to be fully justified.”

In the instant case also, we are of the view that the AO has issued a notice, that too incorrect one, in a routine manner. Further the notice did not specify the charge for which the penalty notice was issued. Hence, in our view, the AO has failed to apply his mind at the time of issuing penalty notice to the assessee.”

12. *The aforesaid discussion clearly brings out as to the reasons why the parity of reasoning laid down by the Hon'ble Supreme Court in the case of Dilip N. Shroff (supra) is to prevail. Following the decision of our coordinate Bench in the case of Dr. Sarita Milind Davare (supra), we hereby reject the aforesaid argument of the ld. CIT-DR.*



13. *Apart from the aforesaid discussion, we may also refer to the one more seminal feature of this case which would demonstrate the importance of non-striking off of irrelevant clause in the notice by the Assessing Officer. As noted earlier, in the assessment order dated 10.12.2010 the Assessing Officer records that the penalty proceedings u/s 271(1)(c) of the Act are to be initiated for furnishing of inaccurate particulars of income. However, in the notice issued u/s 274 r.w.s. 271(1)(c) of the Act of even date, both the limbs of Sec. 271(1)(c) of the Act are reproduced in the proforma notice and the irrelevant clause has not been struck-off. Quite clearly, the observation of the Assessing Officer in the assessment order and non-striking off of the irrelevant clause in the notice clearly brings out the diffidence on the part of Assessing Officer and there is no clear and crystallised charge being conveyed to the assessee u/s 271(1)(c), which has to be met by him. As noted by the Hon'ble Supreme Court in the case of Dilip N. Shroff (supra), the quasi-criminal proceedings u/s 271(1)(c) of the Act ought to comply with the principles of natural justice, and in the present case, considering the observations of the Assessing Officer in the assessment order alongside his action of non-striking off of the irrelevant clause in the notice shows that the charge being made against the assessee qua Sec. 271(1)(c) of the Act is not firm and, therefore, the proceedings suffer from non-compliance with principles of natural justice inasmuch as the Assessing Officer is himself unsure and assessee is not made aware as to which of the two limbs of Sec. 271(1)(c) of the Act he has to respond.*

14. *Therefore, in view of the aforesaid discussion, in our view, the notice issued by the Assessing Officer u/s 274 r.w.s. 271(1)(c) of the Act dated 10.12.2010 is untenable as it suffers from the vice of non-application of mind having regard to the ratio of the judgment of the Hon'ble Supreme Court in the case of Dilip N. Shroff (supra) as well as the judgment of the Hon'ble Bombay High Court in the case of Shri Samson Perinchery (supra). Thus, on this count itself the penalty imposed u/s 271(1)(c) of the Act is liable to be deleted. We hold so. Since the penalty has been deleted on the preliminary point, the other arguments raised by the appellant are not being dealt with."*



8. In view of the above facts and circumstances, it is quite clear that the penalty is not leviable in accordance with law. Since the penalty is not sustainable on the issue of defective notice, therefore, we are not inclined to decide the matter of controversy on merits. In view of the said circumstances, we are of the view that the finding of the CIT(A) is wrong against law and facts and is not liable to be sustainable in the eyes of law.

9. It is a matter of record that the assessee filed the return of income on 30.09.2010 declaring total income to the tune of Rs.Nil and the claiming exemption u/s 11 & 12 of the Act. After the examination of the claim, the claim was not found in consonance with the provisions of Section 13(1)(d)(i) & 13(1)(d)(ii) of the Act, therefore, the claim of the assessee was declined and the penalty was initiated. Declining the claim of the assessee by the AO nowhere attracted the penalty being it is not a case of furnishing the inaccurate particulars of income and concealment of particulars of income, the assessee has fully disclosed each and every facts and thereafter claimed exemption u/s 11 & 12 of the Act. However, the same was declined. No penalty is leviable in the said circumstances and in this regard, we also find support of the decision in the case of **CIT Vs. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 (SC)**, **PCIT Vs. Rasiklal M. Parikh, ITA No. 169 of 2017**. We also noticed that the assessee filed an appeal before the Hon'ble High Court of Bombay by virtue of ITA. No.1430 of 2014 in



which the appeal of the assessee has been admitted on the basis of following substantial question of law.:-

(i) Whether the Tribunal was right in proceeding to hold that the income exempt under section 10 should be considered for purposes of computing the 85% application of income especially in view of the fact that it was not a question before it.

(ii) Whether on the facts, relevant law and in the circumstances of the case, the Tribunal was right in holding that the shares of TCS received in the year 2001-02 were held in breach of section 13(1)(d) of the Act.

(iii) Whether on the facts, relevant law and in the circumstances of the case, the Tribunal was right in holding that the sale proceeds arising from the sale of bonus shares of TCS were required to be converted into asset/investment permissible under section 11(5) and hence, clause (iia) of the proviso to section 13(1)(d) would not apply.?

10. When the appeal has been admitted by Hon'ble High Court of Bombay then no penalty is leviable in view of the decision of Jurisdictional High Court in the case of **CIT Vs. Aditya Biral Power Co. Ltd. ITA. No. 851 of 2014, CIT Vs. Nayan Builders & Developers (2015) 56 taxmann.com 335**. Taking into account all the facts and circumstances, we are of the view that that the finding of the CIT(A) is not justifiable, hence, we set aside the finding of the CIT(A) on these issues and delete the penalty.



ISSUE NO.2

11. Since the penalty has been deleted while deciding the issue no. 1 & 3, therefore, deciding this issue would only be academic in nature.

Reasons for delay in pronouncement of order

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

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



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

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

7. However, before we part with the matter, we must deal with one procedural issue as well. While hearing of these appeals was concluded on 7th January 2020, this order thereon is being pronounced today on 14th day of May, 2020, much after the expiry of 90 days from the date of conclusion of hearing. We are also alive to the fact that rule 34(5) of the Income Tax Appellate Tribunal Rules 1963, which deals with pronouncement of orders, provides as follows:

(5)The pronouncement may be in any of the following manners: —

(a) The Bench may pronounce the order immediately upon the conclusion of the hearing.

(b) In case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date for pronouncement.



(c) In a case where no date of pronouncement is given by the Bench, every endeavour shall be made by the Bench to pronounce the order within 60 days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of exceptional and extraordinary circumstances of the case, the Bench shall fix a future day for pronouncement of the order, and such date shall not ordinarily (emphasis supplied by us now) be a day beyond a further period of 30 days and due notice of the day so fixed shall be given on the notice board.

8. Quite clearly, “ordinarily” the order on an appeal should be pronounced by the bench within no more than 90 days from the date of concluding the hearing. It is, however, important to note that the expression “ordinarily” has been used in the said rule itself. This rule was inserted as a result of directions of Hon’ble jurisdictional High Court in the case of **Shivsagar Veg Restaurant Vs ACIT [(2009) 317 ITR 433 (Bom)]** wherein Their Lordships had, inter alia, directed that **“We, therefore, direct the President of the Appellate Tribunal to frame and lay down the guidelines in the similar lines as are laid down by the Apex Court in the case of Anil Rai (supra) and to issue appropriate administrative directions to all the benches of the Tribunal in that behalf. We hope and trust that suitable guidelines shall be framed and issued by the President of the Appellate Tribunal within shortest reasonable time and followed strictly by all the Benches of the Tribunal. In the meanwhile(emphasis, by underlining, supplied by us now), all the revisional and appellate authorities under the Income-tax Act are directed to decide matters heard by them within a period of three months from the date case is closed for judgment”.** In the ruled so framed, as a result of these directions, the expression “ordinarily” has been inserted in the requirement to pronounce the order within a period of 90 days. The question then arises whether the passing of this order, beyond ninety days, was necessitated by any “extraordinary” circumstances.

9. Let us in this light revert to the prevailing situation in the country. On 24th March, 2020, Hon’ble Prime Minister of India took the bold step of imposing a nationwide lockdown, for 21 days, to prevent the spread of Covid 19 epidemic, and this lockdown was extended from time to time. As a matter of fact, even before this formal nationwide lockdown, the



*functioning of the Income Tax Appellate Tribunal at Mumbai was severely restricted on account of lockdown by the Maharashtra Government, and on account of strict enforcement of health advisories with a view of checking spread of Covid 19. The epidemic situation in Mumbai being grave, there was not much of a relaxation in subsequent lockdowns also. In any case, there was unprecedented disruption of judicial work all over the country. As a matter of fact, it has been such an unprecedented situation, causing disruption in the functioning of judicial machinery, that Hon'ble Supreme Court of India, in an unprecedented order in the history of India and vide order dated 6.5.2020 read with order dated 23.3.2020, extended the limitation to exclude not only this lockdown period but also a few more days prior to, and after, the lockdown by observing that **"In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown"**. Hon'ble Bombay High Court, in an order dated 15th April 2020, has, besides extending the validity of all interim orders, has also observed that, **"It is also clarified that while calculating time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly"**, and also observed that **"arrangement continued by an order dated 26th March 2020 till 30th April 2020 shall continue further till 15th June 2020"**. It has been an unprecedented situation not only in India but all over the world. Government of India has, vide notification dated 19th February 2020, taken the stand that, the coronavirus "should be considered a case of natural calamity and FMC (i.e. **force majeure** clause) maybe invoked, wherever considered appropriate, following the due procedure...". The term '**force majeure**' has been defined in Black's Law Dictionary, as **'an event or effect that can be neither anticipated nor controlled'** When such is the position, and it is officially so notified by the Government of India and the Covid-19 epidemic has been notified as a disaster under the National Disaster Management Act, 2005, and also in the light of the discussions above, the period during which lockdown was in force can be anything but an "ordinary" period.*



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



thereon is being finalized, but then, in our considered view, no such exercise was required to be carried out on the facts of this case.

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

12. In the result, the appeal filed by the assessee is hereby ordered to be allowed.

Order pronounced in the open court on 09/07/2020

Sd/-

Sd/-

(PRAMOD KUMAR)
VICE PRESIDENT

(AMARJIT SINGH)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 09/07/2020

Vijay Pal Sing/Sr. PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai