IN THE ITAT AHMEDABAD BENCH 'A'

Income Tax Officer

v.

Dushyant Manilal Pandya*

WASEEM AHMED, ACCOUNTANT MEMBER
AND MS. MADHUMITA ROY, JUDICIAL MEMBER
IT APPEAL NO. 1979 (AHD.) OF 2017
[ASSESSMENT YEAR 2012-13]
JUNE 8, 2020

Section 253 of the Income-tax Act, 1961 - Appellate Tribunal - Appeals to (Monetary effect) - Assessment year 2012-13 - Revenue filed appeal against order of Commissioner (Appeals) in proceedings under section 271(1)(c) - Assessee raised a preliminary objection that since monetary effect in appeal filed by revenue was less than Rs.50 lakhs , in view of Circular No. 17 dated 08-08-2019, appeal so filed was not maintainable - Whether since revenue fairly admitted applicability of Circular No. 17 of 2019, instant appeal was to be dismissed being not maintainable - Held, yes [Paras 3 and 4] [In favour of assessee]

Circulars and Notifications : Circular No. 17, dated 08-08-2019

Tej Shah, AR *for the Appellant.* **Dileep Kumar**, Sr. DR. *for the Respondent.*

ORDER

Ms. Madhumita Roy, Judicial Member - The appeal filed by the Revenue for A.Y. 2025-13, arising out of order of the CIT(A)-2, Ahmedabad dated 13.06.2017, in the proceedings under section 271(1)(*c*) of the Income Tax Act, 1961; in short "the Act".

2. The grounds of appeal raised by the Revenue read as under:-

"1. That the Ld. CIT(A) has erred in law and on facts in deleting the penalty of Rs. 50,21,210/- u/s. 271(1)(*c*) of the Act levied by the Assessing Officer.

1.1 That the Ld. CIT(A)'s order is perverse since he has observed that the impugned penalty had been initiated for concealment of income or furnishing of inaccurate particulars, when the fact is that the AO in the Assessment order has clearly stated that the penalty u/s. 271(1)(*c*) of the Act was initiated for furnishing inaccurate particulars.

1.2 That the Ld. CIT(A) has failed to appreciate that reference in this regard is decision, the Hon'ble Bombay High Court in the case of *CIT* v. *Smt. Kaushalya and others* which was followed by the Hon'ble ITAT in the case of *Earthmoving Equipments Service Corporation* v. *DCIT* [ITA No. 6617/Mum/2014 dated 02.05.2017] wherein it was held that mere non-striking of the charge of initiation of penalty in the 274 notice does not render the penalty proceedings void if the assessment order shows the due application of mind.

1.3 The Ld. CIT(A) has also failed to appreciate that dismissal of the SLP by the Hon'ble Karnataka HC in the case of SSA's Emerald Meadows does not mean that it is a decision of the Hon'ble SC or that the said order of the Hon'ble Karnataka High Court has merged with the order of the Hon'ble SC.

1.4 That the Ld. CIT(A) has failed to appreciate that the notice u/s. 271(1)(*c*) r.w.s. 274 is just a show cause notice and any mistake/omission therein is curable under section 292B of the Act.

2. The Ld. CIT(A) has failed to appreciate that the order u/s. 271(1)(*c*) of the Act has been passed for furnishing of inaccurate particulars. The mere fact that the AO has also added some more words to that finding would not alter that fact. "

3. At the time of hearing of the appeal, it was submitted by the Ld.AR for the assessee that appeal filed by the Revenue is hit by recently issued CBDT Circular No.17 of 2019 dated 08/08/2019 revising the previous thresholds pertaining to tax effects. As per aforesaid Circular, all pending appeals filed by Revenue are liable to be dismissed as a measure for reducing litigation where the tax effect does not exceed the prescribed monetary limit which is now revised at Rs.50 Lakhs. In the instant case, the tax effect on the disputed issues raised by the Revenue is stated to be not exceeding Rs.50 lakhs and therefore appeal of the Revenue is required to be dismissed in limine.

4. The Learned DR for the Revenue fairly admitted the applicability of the CBDT Circular No. 17 of 2019. Accordingly, appeal of the Revenue is dismissed as not maintainable. However, it will be open to the Revenue to seek restoration of its appeal on showing inapplicability of the aforesaid CBDT Circular in any manner.

5. In the result, the appeal of the Revenue is dismissed.

6. Before parting we would like to make certain observation relating to the issue cropped up under present scenario of Covid-19 pandemic as to whether when the hearing of the matter was concluded on 02.03.2020 the order can be pronounced today i.e. on 08.06.2020. The issue has already been discussed by the Co-ordinate Bench in the case of *DCIT* v. *JSW Ltd.* (ITA Nos. 6264 & 6103/Mum/2018) pronounced on 14.05.2020 in the light of which it is well within the time limit permitted under Rule 34(5) of the Appellate Tribunal Rules, 1963 in view of the following observations made therein:

"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 8th January 2020, this order thereon is being pronounced today on the day of 14th 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* v. *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 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 15days 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 corona virus "should be considered a case of natural calamity and FMC (i.e. force majeure clause) may be invoked, wherever considered appropriate, following the due procedure...". The term 'force majeure' has been defined in Black's Law Dictionary, as 'an event or effect that can be neither anticipated nor controlled' When such is the position, and it is officially so notified by the Government of India and the Covid-19 epidemic has been notified as a disaster under the National Disaster Management Act, 2005, and also in the light of the discussions above, the period during which lockdown was in force can be anything but an "ordinary" period.

10. In the light of the above discussions, we are of the considered view that rather than taking a pedantic view of the rule requiring pronouncement of orders within 90 days, disregarding the important fact that the entire country was in lockdown, we should compute the period of 90 days by excluding at least the period during which the lockdown was in force. We must factor ground realities in mind while interpreting the time limit for the pronouncement of the order. Law is not brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to interpreted. The interpretation so assigned by us is not only in consonance with the letter and spirit of rule 34(5) but is also a pragmatic approach at a time when a disaster, notified under the Disaster Management Act 2005, is causing unprecedented disruption in the functioning of our justice delivery system. Undoubtedly, in the case of *Otters Club* v. *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 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."

7. On the basis of the observation made in the aforesaid judgment we exclude the period of lockdown while computing the limitation provided under Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963. Order is, thus, pronounced in the open court.

8. In the result, the appeal of the Revenue is dismissed.

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