

आयकर अपीलिय अधिकरण "C" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

MA No. 151/Mum/2016
Arising out of ITA No. 1994/Mum/2013
(निर्धारण वर्ष / Assessment Year : 2007-08)

Crompton Greaves Limited 6 th Floor, C G House Dr. A B Road, Worli Mumbai-400030	बनाम/ v.	CIT-6 5 th Floor, Aayakar Bhawan M K Road, Mumbai-400020
स्थायी लेखा सं./PAN :AAACC3840K		
(अपीलार्थी / Applicant)	..	(प्रत्यर्थी / Respondent)

Applicant by :	Shri Pradip Kapasi
Respondent by:	Smt. Pooja Swaroop

सुनवाई की तारीख / **Date of Hearing** : **16-02-2018**

घोषणा की तारीख / **Date of Pronouncement** : **11-05-2018**

आदेश / O R D E R

PER RAMIT KOCHAR, Accountant Member

This miscellaneous applications, filed by the assessee, being MA No. 151/Mum/2016 is arising out of appeal bearing ITA No. 1994/Mum/2013 for assessment year 2007-08 , wherein the assessee has sought recall of the tribunal order dated 01.02.2016 passed by Income-Tax Appellate Tribunal , C-Bench Mumbai , (hereinafter called "the tribunal") for the assessment year 2007-08 in ITA no. 1994/Mum/2013.

2. This M.A. has been filed by the assessee seeking recall of the order of the tribunal in ITA no. 1994/Mum/2013 dated 01-02-2016 . The learned counsel for the assessee pressed only one ground before the Bench that the tribunal order dated 01-02-2016 was passed beyond period of 90 days from the date of hearing and hence the same needed to be recalled for conducting fresh hearings before the Regular Bench in view of Rule 34(5) of the Income-tax(Appellate Tribunal) Rules, 1963 r.w.s 254(2) of the Income Tax Act, 1961

(hereinafter called "the Act"). The Ld. Counsel brought to the notice of bench that hearing in this case in ITA no. 1994/Mum/2013 for AY 2007-08 was concluded on 29.10.2015 while the order was pronounced on 01.02.2016 and hence pronouncement was beyond the period of 90 days. The Ld. Counsel for the assessee relied upon the decision of Hon'ble Bombay High Court in the case of Shivsagar Veg. Restaurant v. ACIT [2009] 317 ITR 433 (Bom), Hon'ble Bombay High Court decision in the case of Otters Club v. DIT (E) [Writ Petition no.2889 of 2016, dated 12.01.2017], decision of Hon'ble Supreme Court in the case of ACIT v. Saurashtra Kutch Stock Exchange Ltd. [2008] 305 ITR 227 (SC) and decision of Mumbai Tribunal in G. Shoe Exports v. ACIT reported in [2018] 89 taxmann.com 308 (Mumbai tribunal) to support its contentions.

3. The Ld. DR objected to the recalling of the order and prayed for dismissal of MA on the grounds that power of tribunal is very limited so far as Section 254(2) is concern.

4. We have considered rival contention and perused the material on record including cited case laws. We have observed that hearing in ITA no. 1994/Mum/2014 was held on 29.10.2015 for AY 2007-08 and the order was pronounced by tribunal on 01.02.2016 beyond the period of 90 days from the conclusion of the hearing. The recent decision of Hon'ble ITAT in the case of G. Shoe Exports v. ACIT (supra) which has elaborately dealt with this issue of pronouncement of order beyond 90 days is reproduced here under:-

"By way of this Miscellaneous Application the assessee seeks recall of the order of this Tribunal in ITA No.5736/Mum/2014 for A.Y. 2010-11, vide order dated 24.10.2016. During the course of hearing, the ld. Counsel of the assessee submitted that the ITA No. 5736/Mum/2014 and ITA No. 6209/Mum/2014 were cross appeals challenged by common order dated 24.10.2016. Hence, he pleaded for the recall of the entire common order for the reasons mentioned here-in-below.

2. *At the outset, it is the contention of the ld. Counsel of the assessee that these appeals were heard on 24.06.2010 and order was pronounced on 24.10.2016, i.e., four months after the date of hearing. In this regard, the ld. Counsel of the assessee has referred to the decision of Hon'ble Bombay High Court decision in the case of Shivsagar Veg. Restaurant v. Asstt. CIT [\[2009\] 317 ITR 433/176 Taxman 260](#), wherein inordinate delay in pronouncement of order was adversely commented upon.*

3. *Furthermore, the ld. Counsel pointed out that subsequent to the above decision, the ITAT Rules provide vide Rule 34(5) provide for a time limit of three months in passing the order.*

4. Hence, in view of the above, the ld. Counsel pleaded that the above order by the Tribunal should be recalled due to inordinate delay and heard afresh in accordance with the above judicial precedence.

5. Per contra, the ld. Departmental Representative could not dispute the case law mentioned hereinabove, however he pleaded that there is no mistake apparent from record, for which the order is to be recalled.

6. We have carefully considered the submissions and perused the records. We find that the Hon'ble jurisdictional High Court in the case of Shivsagar Veg. Restaurant (*supra*) has observed and directed as under:

11. Having said so, the inordinate unexplained delay in pronouncement of the impugned judgment has also rendered it vulnerable.
12. The learned counsel for the appellant has referred to various judgments of the Apex Court as well as of this Court and various other High Courts to show that only on the ground of delay in rendering the judgment for period ranging from four months to 10 months, judgments were held to be bad in law and set aside. It has been held time and again that justice should not only be done but should appear to have been done and that justice delayed is justice denied. Justice withheld is even worse than that. The Apex Court in the case of *Madhav Hayawadar Rao Hoskot v. State of Maharashtra* [1978] 3 SCC 544 has an occasion to take serious note of the prejudice normally caused to the litigant due to delayed delivery or pronouncement of the judgment for the reasons which are not attributable either to the litigant or to the State or to the legal profession.
13. In *R.C. Sharma v. Union of India* [1976] 3 SCC 754, the Apex Court after noticing absence of the provision in the Code of Civil Procedure in the matter of time frame in delivery of judgment, observed as under :

"Nevertheless, we think that an unreasonable delay between hearing of arguments and delivery of a judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But, what is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments. Justice, as we have often observed, must not only be done but must manifestly appear to be done." (p. 578)
14. Recently, the Apex Court in the case of *Anil Rai v. State of Bihar* [2001] 7 SCC 318 has also reconsidered the serious issue of delayed delivery of judgment by some of the High Courts and laid down certain guide-lines in the matter of pronouncement of judgments by the High Courts.
15. In the case of *Devang Rasiklal Vora v. Union of India* 2004 (3) BCR 450, the Division Bench of this Court to which one of us is a party (Daga, J.) had an occasion to issue directions to the President of the Central Excise and Gold (Control) Appellate Tribunal, Mumbai to frame and lay down the guidelines on the similar lines as were 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 said Tribunal. The similar guide-lines can conveniently be laid down for the Courts, Tribunals and quasi-judicial authorities prescribed under the Income-tax Act, 1961 ("Act" for short) so as to prevent delayed delivery of the judgment and/or order which at the end of the day results in denial of justice as happened in the instant case.

16. 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, 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

7. From the above, we find that the Hon'ble jurisdictional High Court in the case referred above has held that unexplained delay in pronouncement of the order renders it vulnerable. It was held that such judgments were bad in law and were to be set aside. It was expounded that justice should not only be done, but should appear to have been done and that justice delayed is justice denied. The Hon'ble High Court has also referred to Hon'ble Apex Court decision where serious note was taken of the prejudice caused to the litigant due to delay in delivery or pronouncement of the judgment for the reasons not attributable either with the litigant or to the state or to the legal profession.

8. Furthermore, we find that the ITAT Rules vide Rule 34(5) provide rules as for the delivery of judgments, which provide for a maximum period of 3 months for the pronouncement of judgement after completion of hearing. The said rule read as under:

Order to be pronounced, signed and dated

34. (1)

(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 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.

9. Furthermore, we note that the Hon'ble jurisdictional High Court in the case of *Otters Club v. DIT (E)*, in Writ Petition No. 2889 of 2016 vide order dated 12.01.2017 has held that the tribunal cannot pass the order beyond three months of the conclusion of the hearing of the appeal. The facts in the case and the decision by the Hon'ble jurisdictional High Court in brief are as under:

The Tribunal passed an order dated 3rd February, 2016 beyond a period of 90 days after the hearing of the appeal was concluded on 22nd September, 2015. The assessee claimed that this was in breach of Rule 34(5)(c) of the Income Tax Appellate Tribunal Rules, 1963 (Tribunal Rules) as also of the binding decision of this Court in *Shivsagar Veg. Restaurant v. ACIT*[317 ITR 433](#). It was also claimed that the delay has also resulted in prejudice to the parties as binding decisions of the coordinate benches though referred to were ignored in

the order dated 3rd February, 2016. HELD by the High Court upholding the plea:

- (i) *The order of the Tribunal while rejecting the rectification application does not dispute the fact that the order dated 3rd February, 2016 passed under Section 254(1) of the Act was passed beyond the period of 90 days from the date of conclusion of its hearing on 22nd September, 2015. However, it records that administrative clearance had been taken to pass such an order beyond the period of 90 days. We are at a loss to understand what is meant by 'administrative clearance' and the basis for the same. Besides when, how and from whom the administrative clearance was received, are all questions still at large. Mr. Suresh Kumar, the learned counsel who appears for all the respondents, including the Registry of the Tribunal is unable to shed any light on the same. Moreover, we are unable to comprehend the meaning of 'Administrative clearance' in the face of Rule 34 (5)(c) read with Rule 34(8) of the Tribunal Rules. It is clear that the above provisions mandate the Tribunal to pronounce its order at the very latest on or before the 90th day, after the conclusion of the hearing. In fact, this Court in Shivsagar Veg. Restaurant (supra) after referring to various decisions of the Apex Court directed the President of the Tribunal to frame guidelines to prevent delay in delivery of orders/judgments. It also directed all the revisional and appellate authorities (including Tribunal) under the Act to decide the matters heard by them within a period of three months from the date of the conclusion of the hearing. This is further compounded by the fact that the submission of the petitioner in respect of the entire issue being covered by orders of coordinate benches was according to the petitioner, lost sight of while passing the order dated 3rd February, 2016.*
- (ii) *In the above view, the impugned order rejecting rectification application has not considered the aforesaid Rules and the binding decisions of this Court. Therefore on the aforesaid ground alone, the impugned order is not sustainable.*

10. *From the above, it is abundantly clear that the orders have to be passed in variably within three months of the completion of hearing of the case. In this case, admittedly the order was passed beyond three months. No reason whatsoever for the delay has been recorded. As held by the Hon'ble jurisdictional High Court above, such delay is incurable and even administrative clearance cannot cure the same. As held by the Hon'ble Apex Court in the case of Asstt. CIT v. Saurashtra Kutch Stock Exchange Ltd. [\[2008\] 305 ITR 227/173 Taxman 322](#), any order of the tribunal without considering the decision of Hon'ble jurisdictional High Court or the Hon'ble Apex Court judgement even if not brought to the notice of the tribunal, results in the order of the tribunal being liable for rectification upon filing of an application under section 254(2) of the Act for containing mistake apparent from the record. Admittedly, in this case, the impugned common tribunal orders are not in accordance with the above two jurisdictional High Court's decision which clearly mandate that the order of the tribunal should be pronounced within a period of three months of the hearing of the appeal. The Income Tax Appellate Tribunal Rule 34(5) as mentioned hereinabove also provides the same. Hence, in accordance with the ratio of the above Hon'ble High Court and Hon'ble Supreme Court judgements, such decisions rendered after 3 months need to be recalled and heard afresh as they are liable for mistake apparent from record. Accordingly, we recall the afore-said common orders of the Tribunal due to delay beyond three months in pronouncing the order in accordance with the Hon'ble jurisdictional High Court decision as above. The registry is directed to fix the appeals in normal course for hearing.*

11. *In the result, this miscellaneous application filed by the assessee stands allowed."*

Respectfully following the aforesaid decision(s) of the tribunal which has elaborately discussed this issue w.r.t. pronouncement of the orders by tribunal and other decisions of Hon'ble Court(s) cited by the learned counsel for the assessee, we allow this MA filed by the assessee on this short ground of pronouncing of the order beyond a period of 90 days, keeping in view Rule 34(5) of Income Tax (Appellate Tribunal) Rule, 1963 r.w.s 254(2) of the Act. The order of the tribunal in ITA no. 1994/Mum/2013 dated 01-02-2016 for AY 2007-08 stood recalled. The Registry is directed to place the appeal in ITA no. 1994/Mum/2013 before Regular Bench for fresh hearing for which the date shall be notified to both the parties in advance by sending notices. We order accordingly.

5. In the result , MA of the assessee is allowed as indicated above.

Order pronounced in the open court on 11.05.2018

आदेश की घोषणा खुले न्यायालय में दिनांक: 11.05.2018 को की गई ।

Sd/-

(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated: 11.05.2018

Nishant Verma
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench, E
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI

MA NO. 151/MUM/2016
ARISING OUT OF ITA NO. 1994/MUM/2013