IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.347/CTK/2019
Assessment Year : 2010-11

S.K.Minerals Handling Pvt Ltd., Station Road, barbil, Keonjhar	Vs.	ACIT, Circle 1(1), Aayakar Bhavan, Ainthapali, Sambalpur
PAN/GIR No.AAICS 5650 H		
(Appellant)	..	(**Respondent**)

Assessee by : Shri P.R.Mohanty, AR
Revenue by : Shri Subhendu Dutta, DR

Date of Hearing : 25 /02/ 2020
Date of Pronouncement : 5 /06/2020

O R D E R

Per C.M.Garg,JM

This is an appeal filed by the assessee against the order of the CIT(A), Sambalpur dated 26.8.2019 for the assessment year 2010-2011.

2. The sole grievance of the assessee in the grounds of appeal is that the ld CIT(A) is not justified in confirming the addition made u/s.14A of the Act by the Assessing Officer ignoring the fact that the assessee has not claimed any exempted income during the year under consideration.

3. We have heard the rival submissions and perused the record of the case. The Assessing Officer noticed that the assessee has earned dividend income and calculated the same as per sub-rule (2) of Rule 8D of the I.T.Rules and made

disallowance of Rs.10,81,553/-. On appeal, the CIT (Appeals) has confirmed the disallowance made by the Assessing Officer.

4. Before us, the learned Authorised Representative of the assessee has submitted that the assessee has not incurred any expenditure for earning the dividend income and, accordingly, has not claimed any exempt income. He has further submitted that there is no change in the investment portfolio of the assessee during the year under consideration, therefore, there cannot be any expenditure attributable to the income not forming part of the total income of the assessee being dividend income. Even otherwise, before making an addition under Section 14A of the Act, the Assessing Officer needs to arrive at proper satisfaction that the assessee has incurred certain expenditure for earning the exempt income. In the case of the assessee, the Assessing Officer has not arrived at a proper satisfaction and directly applied Rule 8D(2 without even giving any finding on the claim of the assessee that no expenditure has been incurred by the assessee for earning the dividend income. Thus, ld A.R. has pleaded that the disallowance made by the Assessing Officer and confirmed by the CIT (A) on account of dividend income is not called for and the same may be deleted.

5. Ld A.R. also relied on the decision of Hon'ble Delhi High Court in the case of Chemnivest ltd vs CIT, 378 ITR 33 (Delhi) and contended that which was followed by the Delhi Tribunal in the case of Rapid Estates Pvrt Ltd., in ITA No.4137/Del/2013 for A.Y. 2009-10 order dated 30.5.2016, wherein, it was held that no exempt income was earned by the assessee in the relevant assessment

year and since the genuineness of the expenditure incurred by the assessee was not in doubt, then no disallowance can be made u/s.14A of the Act.

6. Replying to above, ld D.R. supported the orders of the lower authorities.

7. On careful consideration of the rival submissions, we find that the Assessing Officer has made a disallowance by noting the fact that the assessee has made average investment as on 31.3.2009 at Rs.26,00,000/- and as on 31.3.2010 at Rs.4,50,60,000/- and calculated as per formula under sub-rule (2) of Rule 8D at Rs.10,81,553/- considering the interest expenses. Thus, it is clear from the assessment order that the Assessing Officer has not expressed any satisfaction that the assessee has incurred certain expenditure for earning the dividend income in question. There is no quarrel that section 14A postulates the disallowance of expenditure incurred for earning the exempt income which is not forming part of the total income of the assessee. It is also clear from the copy of the return filed by the assessee for assessment year 2010-2011 that no claim has been made in respect of dividend income. The formula given in the Rule 8D does not recognize the actual expenditure incurred by the assessee but it calculates the disallowance being 0.5% of the average investment therefore, this computation of disallowance cannot disregard and override the actual expenditure attributable for earning the exempt income. The reliance placed by ld A.R. of the assessee in the case of Cheminvest Ltd (supra) also support the case of the assessee. Accordingly, we set aside the orders of the authorities below on this issue and delete the disallowance made by the Assessing Officer of Rs.10,81,553/- made by the AO u/s. 14A by applying Rule 8D(2) and allow the grounds of appeal of the assessee.

8. Before parting, we may herein deal with a procedural issue that though the hearing of the captioned appeal was concluded on 7.2.2020, however, this order is being pronounced much after the expiry of 90 days from the date of conclusion of hearing. We find that Rule 34(5) of the Income tax Appellate Tribunal Rules, 1962, which envisages the procedure for pronouncement 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 hearing (b) in case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date of pronouncement. 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. As such, "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 High Court in the case of Shivsagar Veg Restaurant vs ACIT (2009) 319 ITR 433 (Bom), wherein, it was, inter alia, observed as under:

> " 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. We find that the aforesaid issue after exhaustive deliberations had been anwered by a coordinate Bench of the Tribunal viz; ITAT, Mumbai 'F' Bench in DCIT, Central Circle-3(2), Mumbai vs JSW Limited & ors (ITA No.6264/Mum/18 dated 14.5.2020, wherein, it was observed as under:

> " 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 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 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. "

10. We have given a thoughtful consideration to the aforesaid observations of the Tribunal and finding ourselves to be in agreement with the same, therein respectfully follow the same. As such, we are of the considered view that the period during which the lockout was in force shall stand excluded for the purpose of working out the time limit for pronouncement of orders, as envisaged in Rule 34(5) of the Appellate Tribunal Rules, 1963.

11. In the result, appeal of the assessee is allowed.

Order pronounced on 5 /06/2020.

Sd/-	sd/-
(Laxmi Prasad Sahu)	**(Chandra Mohan Garg)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Cuttack; Dated 5 /06/2020
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : S.K.Minerals Handling Pvt Ltd., Station Road, barbil, Keonjhar
2. The Respondent. ACIT, Circle 1(1), Aayakar Bhavan, Ainthapali, Sambalpur
3. The CIT(A)-, Sambalpur
4. Pr.CIT- ,Sambalpur
5. DR, ITAT, Cuttack
6. Guard file.

//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack