IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK

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

ITA No.335/CTK/2019
Assessment Year : 2014-2015

R.N.Sahoo & Others, 122A, Station Square, Unit-III, Bhubaneswar.	Vs.	DCIT, Circle 4(1), Bhubaneswar.
PAN/GIR No.AAEFR 2753 B		
(Appellant)	..	(**Respondent**)

Assessee by : Shri D.K.Sheth, AR
Revenue by : Shri J.K.Lenka, DR
Date of Hearing : 21/02/ 2020
Date of Pronouncement : 5 /06/2020

ORDER

Per C.M.Garg,JM

This is an appeal filed by the assessee against the order of the CIT(A)-2, Bhubaneswar dated 24.9.2019 for the assessment year 2014-15.

2. In Ground No.1 of appeal, the grievance of the assessee is that the ld CIT(A) was not justified in confirming the addition of Rs.60,00,000/- made u/s.68 of the Act by the Assessing Officer.

3. Facts in brief are that during the course of assessment proceedings, the Assessing Officer noticed that the assessee had received capital introduced from the partners in cheque/cash as under:

Sl.No.	Name of the partners	Total capital introduced (in Rs.)	Capital introduced in cash (in Rs.)
1.	Shri Milan Kr. Sahoo	35,39,270/-	30,00,000/-
2.	Shri Srinath Sahoo	28,47,050/-	20,00,000/-
3.	Shri Manish Kr Sahoo	3,00,000/-	3,00,000/-
4.	Shri Avinash Sahoo	3,50,000/-	3,50,000/-

4. The Assessing Officer accepted the capital introduction in cheques and disallowed the capital introduction of Rs.60,00,000/- received in cash, which was confirmed in first appeal by the ld CIT(A).

5. Ld A.R. submitted that all the partners who have introduced the amount in assessee firm are assessed to income tax in their individual capacity. He submitted that the names and address, PAN of the partners have been filed before the departmental authorities. He submitted that the partners have disclosed the aforesaid investment in the assessee's firm in their respective income tax returns. The capital introduction is owned by the partners, therefore, the addition cannot be added in the hands of the assessee firm. In support of this, reliance has also been placed on the following decisions:

i) CIT vs. Metachem Industries, 245 ITR 160
II) CIT vs. Burma Electro Corporation, 252 IT 344 (PH)

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

7. We have considered the rival submissions. On careful examination of facts, we are of the considered opinion that the basic requirements of section 68 have been discharged by the assessee by furnishing the relevant evidences. The evidences which were furnished by the assessee were confirmation letters of the partners, copies of I.T.Returns, PAN Nos, and income declared. By furnishing the above, the preliminary onus was discharged by the assessee. There is no dispute to the fact that all the partners have owned the introduction of capital in assessee's firm. The AO has not challenged the correctness of the evidences filed by the assessee. We find that this is a case where the partners have introduced

the capital, therefore, the issue is covered by the decision pronounced by Hon'ble M.P High Court in the case of Metachem Industries (supra), wherein, it has been held as under:

> "So far as the responsibility of the assessee is concerned, it is satisfactorily discharged. Whether that person is income tax payer or not or from where he has brought this money is not the responsibility of the firm. The moment the firm gives satisfactory explanation and produces the person who has deposited the amount, then the burden of the firm is discharged and in that case that credit entry cannot be treated to be income of the firm for the purposes of income tax. It is open for the AO to take appropriate action under section 69 of the act against the person who has not been able to explain the investment. In the present case, there is the concurrent finding of both the CIT(A) as well as of the Tribunal that the firm has satisfactorily explained the aforesaid entries."

8. In the case at hand, the assessee has discharged its onus satisfactorily by furnishing all the relevant evidences. Therefore, when the firm is disclosing capital introduction by the partner providing names and PAN nos of contributing partners, then no addition can be made in the hands of the firm. Hence respectfully following the decision of Hon'ble High Court in the case of Metachem Industries (supra), we reverse the findings of ld CIT(A) and direct the deletion of addition of Rs.60,00,000/- . This ground of the assessee is allowed.

9. Ground No.2 relates to adhoc disallowance made by the AO of Rs.18,46,646/-.

10. Ld counsel for the assessee submitted that the assessee has incurred Rs.92,33,232/- consisting of Rs.38,32,750/- as bed tea & breakfast expenses, Rs.2,74,727/- as electrical maintenance, Rs.27,94,015/- as lundry expenses, Rs.10,61,683/- as referral charges, Rs.9,30,578/- as room service & restaurant and Rs.3,39,479/- as mandap expenses. He submitted that the Assessing Officer

although not doubted the expenses incurred but made adhoc disallowance by disallowing 20% of the expenses, which is not correct and the adhoc addition be deleted,.

11. Replying to above, ld DR submitted that when the assessee was unable to furnish the relevant bills and vouchers and other related documents in support of the claim, the AO was correct in making adhoc disallowance. He submitted that for making the disallowance, the AO has referred several judicial pronouncements as stated in the assessment order. Hence, he urged to confirm the orders of lower authorities.

12. On consideration of the rival submissions, we observe that the assessee has incurred Rs.92,33,232/- under various heads of expenses and claimed the same as deduction. The Assessing Officer required the assessee to produce the bills and vouchers but the assessee only produced ledger copies of expenses showing the details of expenditure but failed to produce the relevant bills and vouchers. The onus is on the assessee to prove the genuineness of expenses claimed by furnishing relevant bills and vouchers. When the assessee is unable to produce the bills and vouchers, the Assessing Officer can make reasonable addition, as he deems proper. In this case, the assessee has produced ledger copies in support of various expenses incurred by him. The assessee is in the business of hotel and textile business and is bound to incur the above expenditure for smooth running of the hotel and textile business but has to keep the bills and vouchers for claiming the deduction, which is lacking in this case. However, keeping in mind the nature of business and expenditure incurred, we are of the view that the disallowance @ 20% is on higher side. Therefore, we restrict the

disallowance at 10% of Rs.92,33,232/-, which works out to Rs.9,23,323/-. This ground is partly allowed.

13. Ground No.3 of appeal relates to disallowance of interest of Rs.3,50,935/-.

14. After hearing the rival submissions, we find that interest claim was reduced to Rs.3,50,935/- on the interest loans but there is no nexus between the loan advance and loan incurred. But it was the onus was on the assessee to establish that no amount of interest-bearing loan was being used to extend interest free loan. Since the assessee was not properly show caused by the authorities below enabling him to explain his stand and to establish that no amount of interest bearing loan was used for advancing interest free loan, therefore, we deem it proper, as also candidly agreed by the ld D.R. to restore the issue to the file of the AO for afresh examination and verification after allowing due opportunity of hearing to the assessee. Hence, this ground is allowed for statistical purposes.

15. 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.

16. We find that the aforesaid issue after exhaustive deliberations had been answered 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.
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> 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. "

17. 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 lockdown 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."

18. In the result, appeal of the assessee is partly allowed for statistical purposes.

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 : R.N.Sahoo & Others, 122A, Station Square, Unit-III, Bhubaneswar
2. The Respondent. DCIT, Circle 4(1), Bhubaneswar
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT-2 , Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.

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By order

Sr.Pvt.secretary
ITAT, Cuttack