**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"D" BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND**

**SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA no.4449/Mum./2018
(Assessment Year : 2014–15)

Deena Asit Mehta
67, 3rd Block, Poddar Chambers
S.A. Brelvi Road, Fort
Mumbai 400 001
PAN – AABPM6683M

……. Appellant

v/s

Dy. Commissioner of Income Tax
Circle–4(1)(1), Mumbai

……. Respondent

Assessee by : Shri Yogesh Thar
Revenue by : Smt. Jyotilakshmi Nayak

| Date of Hearing – 04.03.2020 | Date of Order – 22.07.2020 |
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**O R D E R**

**PER SAKTIJIT DEY, J.M.**

The aforesaid appeal has been filed by the assessee challenging the order dated 13th June 2018, passed by the learned Commissioner of Income Tax (Appeals)–9, Mumbai, for the assessment year 2014–15.

2. In grounds no.1 to 4, the assessee has raised the common issue of addition made on account of interest on interest free deposit received.

3. Brief facts are, the assessee is an individual. For the assessment year under dispute, the assessee filed her return of income on 22nd July 2014, declaring total income of ₹ 32,29,080. During the assessment proceedings, the Assessing Officer on perusing the Balance Sheet of the assessee found that she has received interest free security deposit of ₹ 2,74,85,940, towards property given on lease and license basis. Whereas, the assessee has received leave and license fee of only ₹ 9 lakh. He noticed that on the basis of similar facts in assessment year 2012–13, the Assessing Officer had estimated the interest on interest free security deposit @ 10% and added back to the income of the assessee under the head income from other source. Therefore, following the assessment order passed in assessment year 2012–13, the Assessing Officer estimated the interest on interest free security deposit @ 10% and made an addition of ₹ 27,48,594. The assessee contested the aforesaid addition by filing appeal before the first appellate authority.

4. After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) found

that while deciding dispute relating to similar addition made in assessee's own case in assessment year 2012–13, the Tribunal, though, has agreed with the Assessing Officer that notional interest on security deposit has to be treated as income of the assessee, however, the quantum of such interest was reduced from 10% to 9% by the Tribunal. Following the aforesaid decision of the Tribunal, learned Commissioner (Appeals) confirmed the decision of the Assessing Officer in computing the notional interest from 10% to 9%, thereby, granting partial relief to the assessee.

5. We have considered the rival submissions and perused the material on record. As could be seen from the facts on record, identical addition of interest on interest free security deposit was made by the Assessing Officer in assessee's own case in the assessment year 2012–13. When the dispute ultimately came up for consideration before the Tribunal in ITA no.3549/Mum./2016, the Tribunal vide order dated 9th February 2018, after considering the submissions of the parties and relevant facts and materials on record, though, upheld the decision of the Assessing Officer in computing interest on interest free security deposit received by the assessee, however, the quantum was reduced from 10% to 9%. The relevant observations of the Tribunal in this regard are reproduced herein below for better appreciation and clarity.

*"7. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decision are given below.*

*The assessee has declared Rs.4,80,000/- being leave and licence fees from office premises situated in Poddar Chambers under the head 'Income from Other Sources'.*

*The assessee is a tenant of the said premises and has granted leave and licence rights to the licensee. The assessee had also received security deposit of Rs.2,75,00,000/- from the licensee.*

*We now turn to the relevant documents filed by the Ld. counsel in the P/B. The lease agreement (page 52-65 of P/B) is made on 31.03.2012 and the term of the said lease is from 1.4.2012 to 31.03.2015. So it is not relevant for the financial year 2011-12 relevant to the impugned assessment year.*

*The leave licence agreement (page 61-64 of the P/B) is made on 18.11.2004 between the assessee and Asit C. Mehta Investment Intermediates Ltd. This has been renewed by the assessee from time to time. The assessee has renewed it vide letter dated 31.01.2012 for the impugned financial year. The relevant clauses of the original 'Leave and Licence Agreement' are extracted below:*

*"Leave and License Agreement"*

*This leave and license agreement is made at Mumbai this 18th day of November, two thousand and four by and between:*

*DEENA A. MEHTA, residing at 17, Abhilasha, August Kranit Marg, Mumbai400036, hereinafter called "the Licensor: [which expression shall unless it be repugnant to the context or meaning thereof be deemed and include heirs, executors, administrators and assignees] of the ONE PART:*

*And*

*ASIT C. MEHTA INVESTMENT INTERMEDIATES LIMITED, a company incorporated with limited liabilities under the Indian Companies Act, 1956 and having its Registered Office at Nucleus House, 5th Floor, Saki Vihar Road, Andheri (E), Mumbai 400072, "ACMIIL" hereinafter called "the Licensee" [which expression shall unless it be repugnant to the context or meaning thereof to mean and include its assignees of the OTHER PART*

*Whereas*

*1. The licensor is a tenant of G.R. Podar Foundation having office at Podar Chambers, S.A. Brelvi Road, Mumbai 400001 hereinafter called the foundation.*

*2. The foundation owns a building known as Podar Chambers situation at S.A. Brelvi Road, Mumbai 400001.*

*3. The Licensor as such tenant is entitled to use and occupy an office unit admeasuring approx. 850 sq. ft. along with lift of 100 sq. ft. bearing office No. 67A on the third floor of the said building [hereafter referred to as "the Premises"]*

*4. The Licensee has requested the Licensor to grant to it the temporary license to use and occupy part of the premises for a period of 33 (Thirty Three) months only which the licensor has agreed to do on certain terms and conditions mutually arrived at by and between them:*

*5. Mrs. Deena A. Mehta of the one part and M/s Asit C. Mehta Investment Intermediates Ltd. on the other part have agreed to enter into an agreement with regard to the above referred office premises to be effective from April 1, 2004.*

*6. M/s Asit C. Mehta Investment Intermediates Ltd. has authorized Mr. Kirit H. Vora, Whole-time Director, to sign and execute the agreement to be effective from April 1, 2004.*

*7. Whereas both the parties are desirous of reducing the terms and conditions into writing so as to safeguard their mutual benefits and understand their obligations and responsibilities.*

*NOW THIS AGREEMENT WITNESSTH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:*

*..... ..... ..... ..... ..... ..... ..... .....*

*4. The License hereby granted shall effective from April 1, 2004 and shall remain in force for a period of 33 months, i.e. upto and including December 31, 2006 and will end on that day under any circumstances.*

*5. The Licensee shall pay to the Licensor a lump sum license fee at the rate of Rs.40,000/- per month being the monthly fees for the use of said premises and for the furniture, fixtures, fitting and equipments in the said premises. This however, will not create any right, title or interest in the Licensed Premises in favour of the Licensee whatsoever. The Licensee shall not under any*

*circumstances challenge the same in any Court of law as not being fair fees in respect of the Licensed Premises. It is also agreed that the license fee does not include any taxes payable to any statutory or other authorities. Such taxes if any, will be re-imbursed by licensee to the licensor.*

*6. The Licensee agrees to keep with the Licensor the sum of Rs.75,00,000/- as security deposit, interest free, which will be refundable to the Licensee on vacating the subject Licensed Premises and on the Licensor being given peaceful possession thereof. The Licensor shall be entitled to deduct there from such amount as may be due to the Licensor on account of outstanding bills, repairs and replacement of furniture and fixtures, fees for overdue stay etc.*

*7. It is agreed that the fees shall be paid by the Licensee to the Licensor during the each month."*

*7.1 The first statute which is relevant for a leave and licence is the Indian Easement Act, 1882. Section 52 of the said Act defines a 'licence' as a right granted by one person to another to do something in or upon the grantor's immoveable property, which act would, in the absence of such a right, be unlawful. It further states that a licence must not amount to an easement or an interest in the property. Thus, a licence is only permission or a right to do something upon an immoveable property. It is solely a personal right or privilege granted to the licensee by the licensor. A licence does not confer any interest in the immoveable property. It is for this reason that a licensee cannot maintain an action for possession of the property in his own name. Thus the crux of a licence is that it is always a right or a permission and never transfers ownership of the property.*

*Under the leave and license agreement, the legal ownership and the possession of the property remains with the licensor, the assessee in the instant case.*

*7.2 Let us now turn to the receipt of interest-free security deposit by the assessee in the instant appeal. A similar issue arose in Streelite Electric Corporation (supra). The facts in that case are that the assessee earned rental income from letting facilities of factory, land, building and offices. The assessee had taken interest-free security of Rs.35 lakhs from two parties to whom the assets were leased out, but the assessee showed a very low rental income of Rs.1.50 lakhs as annual letting value in respect of those properties. There was no provision in the agreement for increase in rent from year to year. The Assessing Officer determined the annual value of Rs.7,80,000 by adding notional*

*interest of Rs.6,30,000 calculated at the rate of 18% per annum on Rs.35 lakhs taken as security deposit, to the value of Rs.1.50 lakhs shown by the assessee. The Commissioner (Appeals) deleted the notional interest of Rs.6,30,000. The Tribunal affirmed the order of the Commissioner (Appeals). On further appeal, their Lordships of the Hon'ble Punjab and Haryana High Court held as under:*

> *A perusal of the lease deeds and on a conjoint reading of all the documents and an analysis of factual aspect, the irresistible conclusion is that the security deposit of Rs.35,00,000 was disproportionate to the actual contractual rent of Rs.25,000 per month, i.e. total Rs.12,500 per month for land and building etc. and Rs.12,500 per month for furniture, fixture, plant and machinery etc. which amounts to 140 times of monthly rent and has no rationale with the agreed rent and the assessee had adopted a device to circumvent its taxable income. Further, rent deed did not contain any provision for increase of rent from year to year. Still further, the security deposit of Rs.35,00,000 where the value of the property let out was Rs.17.62 lacs, plant and machinery of Rs.1.69 lacs and furniture of Rs.48,673/- cannot be held to be justified as genuine transaction of the security deposit. Thus, the security deposit was a sham device to avoid tax and had no real basis with the actual rent that was received by the assessee.*
>
> *(Paras 12 & 13)*
>
> *The annual value of the property is deemed to be the rent which property might be expected to let from year to year or where the property is let and annual rent received or receivable is in excess of the sum, the amount so received or receivable. According to section 23(1)(b) where the property is actually let out, the actual amount of rent received or receivable shall form part of the income from house property. Ordinarily, the notional interest that may accrue on security deposit would not form part of income from house property. However, where payment of the security deposit is to circumvent real rent, the same shall fall within its ambit as income from house property. Interest on the security amount of Rs.35,00,000 will be treated as income of the assessee. Thus, in the facts, as noticed above, it is considered appropriate to hold that interest @ 9% per annum on the security amount of Rs.35,00,000 would be just to meet the ends of justice and the same will be treated as taxable income of the assessee under the head 'Income from house property' relating to the land and building.*

*(Paras 17 & 19)*

*Their Lordships concluded that where the security deposit is to circumvent real rent, the same shall fall within its ambit as income from house property; in the facts and circumstances, interest @ 9% per annum on security deposit of Rs.35,00,000, which was received by the assessee from the tenant, would be treated as taxable income of the assessee under the head 'Income from house property'.*

*7.3 We find that the instant case the security deposit of Rs.2,75,00,000/- is hugely disproportionate to the leave and license fees of Rs.4,80,000/- shown by the assessee. That said fees of Rs.40,000/- per month in the financial year 2004-05 still remains same in the assessment year 2012-13.*

*7.4 At this juncture, let us examine whether the clauses relating to 'Leave and License Fee' and 'Security Deposit' in the 'Leave & Licence Agreement' in the instant case are to be read separately or together. The Hon'ble Supreme Court vide order dated 23.03.2009 in Vimal Chand Ghevarchand Jain & ors. vs. Ramakant Eknath Jajoo, [Civil Appeal No. 1784 of 2009], while dealing with the construction of a commercial contract observed :*

*"A document, as is well known, must be construed in its entirety".*

*In assessing the true nature and character of a transaction, the label which parties may ascribe to the transaction is not determinative of its character. The nature of the transaction has to be ascertained from the covenants of the contract and from the surrounding circumstances. In National Cement Mines Industries Ltd. vs. CIT [1961] 42 ITR 69, Justice J.C. Shah (as His Lordship then was) speaking for the Hon'ble Supreme Court emphasized the following principles of interpretation to be adopted by the Court in construing a commercial transaction : "*

> *"The court has, on an appraisal of all the facts, to assess whether a transaction is commercial in character yielding income or is one in consideration of parting with property for repayment of capital in instalments. No single test of universal application can be discovered for solution of the problem. The name which the parties may give to the transaction which is the source of the receipt and the characterization of the receipt by them are of little moment, and the true nature and character of the transaction have to be ascertained from the covenants of the contract in the light of the surrounding circumstances."*

*7.5 The transactions must be viewed as a whole. It is not enough to examine the separate ingredients of a transaction; for the totality of a transaction may be different from the sum of its parts. Viewed as a whole, the transaction adopted by the assessee in the instant case was a device to reduce the tax burden. This is the germ of the "pre-ordained series of transactions".*

*The two issues i.e. 'Leave and License Fee' and 'Security Deposit' in the instant appeal are interconnected and part of the same transaction. To persuade the Tribunal to adopt, in relation to closely integrated situation, a step by step, dissecting approach, would be a denial rather than an affirmation of the true judicial process.*

*7.6 We find from the list of Directors of Asit C. Mehta Investment Intermediates Ltd, given to us by the Ld. counsel in response to a query by us, that the assessee (Licensor) is the Managing Director in Asit C. Mehta Investment Intermediates Ltd (Licensee). The receipt of Rs.2,75,00,000/- by the assessee as interest-free security deposit from the licensee-company in which she herself is the Managing Director cannot be ignored while computing the annual letting value.*

*7.7 Respectfully following the aforesaid judgment rendered by their Lordships of the Hon'ble Punjab and Haryana High Court narrated at para 7.2 hereinbefore, we are of the considered view that the security deposit in the instant case is to circumvent real rent and the same shall fall within the ambit of 'Income from House Property'. However, taking into account the facts and circumstances of the case against the backdrop of interest rate on term deposits offered by Public Sector Banks during the relevant period, we direct the AO to estimate interest on security deposit @ 9% in place of 10% on the amount of Rs.2,75,00,000/-done by him and bring the resultant amount as well as the leave and license fees to tax under the head 'Income from House Property'."*

6. The facts relating to the disputed issue in the impugned assessment year being identical to assessment year 2012–13, we do not find any reason to deviate from the finding of the Co–ordinate Bench while deciding the issue in assessment year 2012–13. Therefore, respectfully following the aforesaid decision of the Tribunal

in assessee's own case, we uphold the decision of learned Commissioner (Appeals) on the disputed issue. Grounds are dismissed.

7. In ground no.5, the assessee has challenged part disallowance of interest expenditure amounting to ₹ 1,93,400.

8. Brief facts are, during the assessment proceedings the Assessing Officer noticed that the assessee has claimed deduction of ₹ 2,45,196, towards interest paid while computing income under the head income from other sources. From the details furnished he found that the interest income earned by the assessee during the year was ₹ 51,796. Thus, he concluded that interest expenditure only to the extent of interest income can be allowed to the assessee. Therefore, after netting off the interest expenditure against interest income, he disallowed an amount of ₹ 1,93,400. While doing so, he further observed that similar disallowance made in assessment year 2012–13 was also upheld by the first appellate authority. The assessee contested the aforesaid disallowance before the first appellate authority.

9. After considering the submissions of the assessee in the context of Facts and material on record, learned Commissioner (Appeals) observed that similar disallowance made in assessment year 2012–13 was not contested by the assessee before the Tribunal. Further, he

observed that the interest expenditure of ₹ 1,93,400, being not an expenditure incurred for earning interest income or having direct nexus with such income, cannot be allowed.

10. We have considered rival submissions and perused the material on record. As it appears, though, similar disallowance was made by the Assessing Officer in assessment year 2012–13, which was confirmed by learned Commissioner (Appeals), however, the assessee did not contest such disallowance before the Tribunal. Even otherwise also, the assessee had not established on record that the interest expenditure of ₹ 1,93,400, is directly incurred for earning interest income. That being the case, we uphold the disallowance made by the Assessing Officer and confirmed by learned Commissioner (Appeals). This ground is also dismissed.

11. In ground no.6, the assessee has raised the issue of violation of rules of natural justice and in ground no.7, it has been urged that learned Commissioner (Appeals) has passed the order on conjuncture and surmises.

12. At the outset, we must observe that no submissions in respect of these grounds have been made by the assessee. Even otherwise also, on a perusal of the order passed by learned Commissioner (Appeals), we find that the assessee has been afforded reasonable opportunity of

being heard in course of the appeal proceedings. Therefore, the allegation of violation of rules of natural justice is unfounded. As regards the allegation that the first appellate authority has passed the order on conjuncture and surmises, that is also without any factual basis. A reading of the appeal order would make it clear that learned Commissioner (Appeals)'s finding are based on facts and well reasoned. Accordingly, these grounds are dismissed.

13. Ground no.8, being a general ground, does not require separate adjudication, hence dismissed.

14. Apart from main grounds, the assessee vide letter dated 13th January 2020, has raised an additional ground seeking directions to the Assessing Officer to allow set–off of business loss of the year against income from other heads. On a perusal of the facts on record, it is evident that the assessee has reported loss of ₹ 2,45,00,196, while computing income under the head business and profession. In fact, the Assessing Officer has also not disturbed the loss claimed by the assessee under the aforesaid head while determining the total income of the assessee. However, it appears that the Assessing Officer has not allowed set–off of business loss against the other heads of income while completing the assessment. As it appears from the facts on record, this issue was not raised by the assessee before learned

Commissioner (Appeals). This is evident from the grounds of appeal attached with Form no.35. Therefore, there was no occasion on the part of learned Commissioner (Appeals) to examine the issue. It is before the Tribunal the assessee has raised the issue by way of additional ground. Though, we admit the additional ground considering the fact that the Assessing Officer has also accepted the loss while computing the income of the assessee, however, whether such loss can be set–off against income from other heads is subject to verification by the Assessing Officer. Accordingly, we restore the issue to the file of the Assessing Officer for deciding afresh in accordance with law after providing due opportunity of being heard to the assessee. This ground is allowed for statistical purposes.

15. In the result, appeal is partly allowed for statistical purposes. Before we part, it is necessary for us to deal with a procedural issue relating to pronouncement of the order. The hearing of this appeal was concluded on 04.03.2020. As per rule 34(5) of the Income Tax (Appellate Tribunal) Rules,1963, ordinarily the appeal order has to be pronounced before expiry of ninety (90) days from the date of conclusion of hearing of appeal. However, on 24.03.2020 a nationwide lockdown was enforced by the Government of India in view of COVID–19 pandemic. Due to the unprecedented situation arising out of such lockdown all activities ceased and no normal official work could be

done. For this reason only the appeal order could not be pronounced within the period of 90 days. Being faced with a similar situation the Tribunal in case of DCIT V/s JSW Limited, ITA Nos.6264 & 6103/Mum/2018, dated 14th May 2020, after interpreting rule 34(5) of the Income Tax (Appellate Tribunal) Rules, 1963 as well as various decisions of the Hon'ble Supreme Court as well as the Hon'ble Jurisdictional High Court held that keeping in view the extraordinary situation prevailing due to the pandemic, the lockdown period has to be excluded for the purpose time limit fixed for pronouncement of order as per rule 34(5). The relevant observation of the Bench in this regard is reproduced hereunder for better clarity:–

> *"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 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 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 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."*

16. Following the aforesaid decision of the Coordinate Bench, we proceed to pronounce the order today the 22nd day of July, 2020 by placing in the notice board in terms of rule 34(4) of the Income Tax (Appellate tribunal) Rules, 1963.

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **SHAMIM YAHYA** | **SAKTIJIT DEY** |
| **ACCOUNTANT MEMBER** | **JUDICIAL MEMBER** |

**MUMBAI, DATED: 22.07.2020**

*Copy of the order forwarded to:*

*(1) The Assessee;*

*(2) The Revenue;*

*(3) The CIT(A);*

*(4) The CIT, Mumbai City concerned;*

*(5) The DR, ITAT, Mumbai;*

*(6) Guard file.*

True Copy
By Order

*Pradeep J. Chowdhury*
*Sr. Private Secretary*

Assistant Registrar
ITAT, Mumbai