IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI
BEFORE SHRI B.R.BASKARAN, AM AND SHRI RAVISH SOOD, JM

ITA No. 4112/Mum/2016
(**निर्धारण वर्ष** / Assessment Year:2003-04)

Hathway C-Net Private Limited, Rahejas, 4th Floor, Corners of Main Avenue & V.P. Road, Santa Cruz (West) Mumbai- 400054	**बनाम**/ Vs.	The Tax Recovery Officer (TDS)-1 Smt. K.G. Mittal Ayurvedic Hospital Bldg, Charni Road-(West), Mumbai-400 002
स्थायी लेखा सं./जीआइआर सं./PAN No. AAACH8338K		
(अपीलार्थी /**Appellant)**	**:**	**(**प्रत्यर्थी / **Respondent)**

अपीलार्थी की ओर से / **Appellant by**	:	Shri Nitesh Joshi, A.R
प्रत्यर्थी की ओर से**/Respondent by**	:	Ms. Pooja Swaroop, D.R

सुनवाई की तारीख / **Date of Hearing**	**:**	16.01.2018
घोषणा की तारीख **/ Date of Pronouncement**	**:**	31.01.2018

आदेश / **O R D E R**

PER RAVISH SOOD, JUDICIAL MEMBER:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-14, Mumbai, dated 17.06.2014, which in itself arises from the order passed by the Tax Recovery Officer u/ss. 201(1)/201(1A) of the Income tax Act, 1961 (for short 'Act'), dated

28.03.2011. The assessee assailing the order of the CIT(A) had raised before us the following grounds of appeal:

"1. The appellant submits that the order under sections 201(1) and 201(1A) passed by the Assessing Officer beyond a period of one year from the end of the financial year in which proceedings under section 201(1) were initiated was barred by limitation. The Appellant submits that even if no period of limitation is prescribed, the statutory powers must be exercised within a reasonable time.

2. Without prejudice to what is stated above, the appellant submits that the order under sections 201(1) and 201(1A) passed by the Assessing Officer beyond a period of four years from the end of financial year was barred by time limitation. The appellant submits that even if no period of limitation is prescribed, the statutory powers must be exercised within a reasonable time.

3. (a) The appellant submits that the learned Commissioner of Income tax (Appeals) erred in upholding the action of the learned Tax Recovery Officer (hereinafter referred to as "the Assessing Officer") that payment for pay channel cost amounting to Rs.93,22,911/- made to distributor of signal is a contract for work and liable for deduction under section 194C of the Act and accordingly erred in holding that the assessee is an assessee in default under section 201(l) of the Act.

(b) The appellant submits that as regards payments for cost of pay channels, the payees merely distribute signals to the appellant and accordingly, there is no question of any involvement of "work".

(c) The appellant submits that the payment made for procurement of signals are not to any broadcasters or telecasters and accordingly, the provisions of section 194C are not applicable and therefore no tax was required to be deducted at source.

4. (a) The learned Commissioner of Income tax (Appeals) erred in upholding the action of the Assessing Officer of levying interest under section 201(1A) of the Act amounting to Rs. 2,15,528/- on the ground that payment of interest is mandatory.

(b) The learned Commissioner of Income tax (Appeals) erred in law in holding that though the assessee should not be held to be an assessee in default, the appellant would be liable to interest under section 201(1A) of the Act for the period commencing from the date on which tax was deducted to the date on which tax is actually paid.

5. The appellant submits that the Assessing Officer be directed:

(i) not to treat the payments made by the appellant to the distributors of signals as a contract for work falling within the purview of section 194C of the Act;

(ii) to delete the levy of tax under section 201(l) of the Act amounting to a sum of Rs. 1,95,781/-.

(iii) to delete the interest levied under section 201(1A) of the Act amounting to a sum of Rs.2, 15,528/-;

and to modify the order as per the provisions of the law.

6. *Each of the above grounds of appeal are independent and without prejudice to each other.*

7. *The appellant craves liberty to add, to alter and/or amend the grounds of appeal as and when given."*

2. Briefly stated, the facts of the case are that the assessee company which is engaged in the business of receiving and distributing local satellite channel programmes was subjected to a survey action under Sec.133A of the Act on 17.09.2003. During the survey proceedings the A.O observed that the assessee company had failed to deduct tax at source in respect of the following expenses:

Sr. No.	**NAME OF THE COMPANY**	**F.Y.**	**FEED CHARGES**	**PAY CHANNEL COST**
1.	M/s Hathway C.Net Pvt. Ltd.	2002-03	-	93,22,911/-

The A.O in the backdrop of his aforesaid observations, holding a conviction that the assessee had failed to deduct tax at source in respect of the aforesaid expenses, therefore, issued a show cause notice to the assessee to explain as to why it may not be treated as an assessee in default u/ss. 201(1)/201(1A) for failing to deduct tax at source under Sec. 194C in respect of the aforesaid payments. The assessee in its reply raised multiple contentions, viz. (i) that as the agreement entered into by the assessee with the distributors was a distribution agreement and not a broadcasting agreement, therefore, the provisions of Sec.194C r.w. Circular No. 681 and 714 of the CBDT were not applicable to the payments made by the assessee to the aforementioned parties; (ii) that as the provisions contained in Chapter XVIIB did not apply to payment of feed charges, therefore, the assessee company could not be held to be an assessee in default under the provisions of Sec. 201(1) and 201(1A) of the Act; (iii) that as

the payments made by the assessee had been subjected to taxes in the hands of the deductees/payees, therefore, as per Circular No. 8/2009 [F. No. 385/08/2009, dated 24.11.2009] and the judgment of the **Hon'ble Supreme Court** in the case of **M/s Hindustan Coca Cola Beverages Pvt. Ltd. Vs. CIT (2007) 293 ITR 226 (SC)** the recovery of the tax from the assessee was not permissible; and (iv) alternatively, it was submitted that as the assessee had sought a clarification with regard to applicability of TDS provisions from the CBDT, therefore, the proceedings may be kept in abeyance till the necessary clarification was received.

3. The A.O after deliberating on the aforesaid observations of the assessee did not find favour with the same. The A.O was of the view that as the assessee which remained under a statutory obligation to have deducted tax at source under Sec. 194C in respect of the feed charges and pay channel cost paid or credited during the year under consideration, viz. AY: 2003-04, had however failed to comply with the said statutory obligation, therefore, it was to be deemed as being an assessee in default under Sec. 201(1) of the Act. The A.O on the basis of his aforesaid observations raised a demand of Rs.1,95,781/- under Sec. 201(1) and Rs.2,15,528/- under Sec. 201(1A) in the hands of the assessee.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) taking support of the judgment of the Hon'ble High Court of Punjab & Haryana in the case of Kurukshetra Darpans (P) Ltd. Vs. CIT (2008) 217 CTR 326 (P & H), concluded that the payment of the licence fee as well as the feed charges by the assessee to the aforesaid parties to obtain the telecast signals could safely be held as a works contract, which thus did cast an obligation on the assessee to deduct tax at source on the same. The CIT(A) on the basis of his

aforesaid observations upheld the order of the A.O and concluded that the assessee was liable to deduct tax at source under Sec. 194C of the Act. However, the CIT(A) taking cognizance of the judgment of the Hon'ble Supreme Court in the case of *Hindustan Coca Cola Beverages Limited (supra)*, observed that to the extent the aforesaid payees/deductees had paid the taxes on the amount under consideration, the same would not be recoverable from the assessee. The CIT(A) however observed that the assessee would continue to be liable for payment of interest under Sec. 201(1A) for the period commencing from the date on which such tax was deducted to the date on which the same was paid. That in the backdrop of the aforesaid observations the CIT(A) directed the A.O to recompute the liability of the assessee under Sec. 201(1)/201(1A) of the Act.

5. The assessee being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. That at the very outset we may herein observe that the assessee while filing the appeal had moved an application seeking admission of the grounds of appeal nos. 1 and 2 as additional grounds of appeal under Rule 11 of the Appellate Tribunal Rules, 1993. We have deliberated on the additional grounds of appeal raised by the assessee and are of the considered view that as the same involve purely a question of law based on the facts available on record, therefore, keeping in view the judgment of the **Hon'ble Supreme Court** in the case of **National Thermal Power Ltd, Vs. CIT (1998) 229 ITR 383 (SC)** admit the same. In this regard we may herein observe that no objection was raised by the ld. Departmental Representative (for short 'D.R') at the time of admission of the aforesaid additional grounds of appeal.

6. Before proceeding further, we may herein observe that the present appeal filed by the assessee before us involves a delay of 658

days. The assessee explaining the reason for the aforesaid delay in filing of the appeal had filed an 'Affidavit', dated 15.06.2016 of Shri Vineet Garg, director of the assessee company. That Shri Vineet Garg in his affidavit had deposed that though the order of the CIT(A)-14, Mumbai was handed over to Mr. Pravin Kadam, Deputy Manager of taxation of the holding company, viz. Hathway Cable and Datacom Ltd on 28.06.2014, at 805/806, Windsor Off. CST Road, Kalina, Santa Cruz (E) Mumbai, however, he placed the aforesaid order of the CIT(A) in the file and failed to forward the same to the Chartered Accountant. It was claimed that in May, 2016 while going through the files of the assessee for A.Y. 2003-04, it emerged for the very first time that the order of the CIT(A) for the year under consideration, viz. AY. 2003-04 was though already received in June, 2014, but however, the same had inadvertently remained omitted to be delivered to the Chartered Accountant. The deponent had stated in the affidavit that the orders of the CIT(A) for the preceding years, viz. A.Ys 2001-02 and 2002-03 on the same issue as was there in the present appeal of the assessee, were already assailed by the assessee before the Income Tax Appellate Tribunal. That it is stated by the deponent that immediately on learning of the aforesaid order of the CIT(A) for AY: 2003-04, the counsel of the assessee was approached and briefed about the factual position. The assessee was informed by its counsel that the appeal involved a delay of 658 days. It is stated by the assessee that the aforesaid delay in filing of the appeal for the year under consideration, viz. A.Y 2003-04 with the Tribunal had occasioned on account of an inadvertent omission on the part of a member of the staff. It is stated by the deponent that in the backdrop of the facts leading to the delay in filing of the present appeal, the same in all fairness may be condoned, failing which a meritorious matter would be dismissed on account of technicalities.

7. That during the course of hearing of the aforesaid application seeking condonation of delay, it was submitted by the ld. Authorized Representative (for short 'A.R') for the assessee that the delay involved in filing of the present appeal had crept in absolutely on account of a *bonafide* mistake on the part of the Mr. Pravin Kadam, Deputy Manager (taxation) of the holding company, viz. Hathway Cable and Datacom Ltd. That in support of the aforesaid facts the affidavit of Shri Pravin Kadam, Deputy Manager (taxation) of the holding company, dated 24.06.2016 was also placed on record by the assessee. The ld. A.R in support of his contention that as the delay in filing of the present appeal was backed by a *bonafide* mistake on the part of the assessee and not on account of any lapses and laches, therefore, the delay involved did merit to be condoned, relied on the judgment of the **Hon'ble Supreme Court** in the case of **Ramnath Sao Vs. Gobardhan Sao, (AIR 2002 Supreme Court 1021)**. The ld. A.R taking us through the aforesaid judgment of the Hon'ble Supreme Court submitted that the Hon'ble Apex Court while condoning a delay of 130 days involved in the said appeal, had taken support of its earlier judgment in the case of **N. Balkrishnan Vs. M. Krishnamurthi (1998) 7 Supreme Court case**, wherein a delay of 883 days was condoned by the Hon'ble Apex Court. The ld. A.R took us through the observations recorded by the Hon'ble Supreme Court, and taking support from the same submitted that merely for the reason that some lapse was there on the part of the litigant in filing appeal within the stipulated time period would not justify the turning down of his plea and declining the admission of his appeal on the said count. It was submitted by the ld. A.R that the Hon'ble Apex Court had observed that where the explanation of the appellant does not smack of malafides or is not put forth as part of a dilatory strategy, the Courts must show utmost consideration to the suitor. It was thus submitted

by the ld. A.R that keeping in view the aforesaid observations of the Hon'ble Supreme Court, now when in the case of the present assessee the delay involved in filing of the appeal had arisen not on account of any malafide conduct or as a part of a dilatory strategy on the part of the assessee, but for the reason of a *bonafide* mistake on the part of the member of a staff who kept the order with himself, therefore, the delay in filing of the appeal in all fairness may therein be condoned. Per contra, the ld. D.R vehemently objected to the condonation of delay in filing of the appeal by the assessee. It was vehemently submitted by the ld. D.R that the reliance placed by the assessee on the judgment of the Hon'ble Supreme Court in the case of *Ramnath Sao (supra)* was misconceived, as the said judgment was passed in the case of an individual, while for the present assessee was a private limited company which had at its disposal the assistance of the Chartered Accountants/ Lawyers. It was averred by the ld. D.R that the inordinate delay of 658 days in filing of the present appeal could not be said to be *bonafide* in nature, as it was beyond comprehension that as to how the assessee remained unaware of the order of the CIT(A) for such a long period. It was submitted by the ld. D.R that as the application filed by the assessee for condonation of delay did not merit acceptance, therefore, the appeal of the assessee was liable to be dismissed on the said count itself. The ld. A.R in his rejoinder submitted that the material fact which would prove the *bonafide*s of the assessee as regards the delay involved in filing of the present appeal, could safely be gathered from the fact that on the same issue involved in the present appeal, the appeals of the assessee for the immediately two preceding years, viz. A.Y(s) 2001-02 and 2002-03 were already pending disposal before the Income Tax Appellate Tribunal. It was submitted by the ld. A.R that the assessee would not

have gained in delaying in filing of the present appeal, which had occurred for reasons beyond its control.

8. We have heard the authorized representatives for both the parties and perused the material available on record in context of the delay involved in filing of the present appeal before us. We find substantial force in the contention of the ld. A.R that the delay of 658 days involved in filing of the present appeal had occurred on account of an inadvertent mistake on the part of the Shri Pravin Kadam, Deputy Manager (Taxation) of the holding company of the assessee, viz. Hathway Cable Datacom Limited, who on account of *bonafide* mistake on his part had failed to deliver the order of the CIT(A) for the year under consideration, viz. A.Y 2003-04 to the Chartered accountant for taking the necessary action. We find that the facts as had been deposed by the Managing Director of the assessee, viz. Shri Vineet Garg are found duly supported by the affidavit of Shri Pravin Kadam (supra), who had categorically admitted the fact that he had inadvertently failed to deliver the order of the CIT(A) to the Chartered accountant. We are of the considered view that keeping in view the aforesaid facts, coupled with the fact that on the same issue which was involved in the case of the assessee for the immediately two preceding years, viz. A.Y 2001-02 and A.Y: 2002-03, the appeals of the assessee were pending disposal before the Tribunal, therefore, it can safely be concluded that the assessee would not have benefited from delaying the filing of the present appeal before us. We are of considered view that keeping in view the judgment of the **Hon'ble Supreme Court** in the case of **Ramnath Sao Vs. Gobardhan Sao (AIR 2002 Supreme Court 1201)** it can safely be concluded that now when the explanation of the assessee in respect of the delay in filing of the appeal before us does not smack of malafides or a dilatory strategy on

the part of the assessee, therefore, the said explanation cannot be merely turned down for the reason that delay is involved in filing of the appeal. We find that a similar view was earlier also taken by the **Hon'ble Supreme Court** in the case of **Collector Land Acquisition Vs. Mst. Kathiji and others (1987) 167 ITR 471 (SC)**. The Hon'ble Apex Court in the aforesaid case had concluded that a sufficient cause for the purpose of condonation of delay should be interpreted with a view to do even ended justice on merits in preference to an approach which scuttles a decision on merits. We are not persuaded to be in agreement with the view of the ld. D.R that as the case before the Hon'ble Supreme Court in the case of *Ramnath Sao (supra)* was that of an individual unlike that of the assessee which is case of a company having the advantage of assistance of the professionals, therefore, the same would not come to the assistance of the assessee. We are of the considered view that the revenue while raising the said contention had lost sight of the reason leading to the delay filing of the present appeal. The delay as explained by the assessee had admittedly occasioned on account of failure on the part of an individual employee to deliver the order passed by the CIT(A) to the Chartered Accountant. We are of the considered view that as the assessee had came forth with a *bonafide* explanation as regards the delay in filing of the appeal before us, therefore, the same merits acceptance on our part. We may herein observe that the ld. D.R had failed to place on record any material which could persuade us to conclude that the explanation of the assessee as regards the delay in filing of the appeal was not to be accepted. We thus keeping in view the aforesaid facts condone the delay of 658 days involved in filing of the present appeal.

9. We shall now advert to the additional grounds of appeal raised by the assessee before us. The ld. Authorized Representative (for short

'A.R') for the assessee had at the very outset submitted that as the order passed by the A.O under Sec. 201(1) and Sec. 201(1A) was beyond a period of one year from the end of the financial year in which the proceedings under Sec. 201(1) were initiated, therefore, the same was barred by limitation. The ld. A.R submitted that though no period of limitation was prescribed, but however, the statutory powers contemplated therein were to be exercised within a reasonable time. It was submitted by the ld. A.R that as the order under Sec. 201(1)/201(1A) passed by the A.O was beyond a period of one year from the end of the financial year in which the proceedings under Sec. 201(1) were initiated, therefore, the same was barred by limitation. The ld. A.R in support of his contention relied on the judgment of the **Hon'ble High Court of Bombay** in the case of **DIT Vs. Mahindra & Mahindra Ltd. (2014) 365 ITR 560 (Bom)**. It was submitted by the ld. A.R that the issue under consideration was squarely covered by the order passed by the coordinate bench of this Tribunal, viz. ITAT, Mumbai "H", Mumbai in the case of the assessee for A.Ys: 2001-02 and 2002-03, marked as ITA No. 6996/Mum/2014, and ITA No. 4261/Mum/2014, respectively (copy placed on record). The ld. A.R took us through Page 7-Para 2.3 of the aforesaid order of the Tribunal, wherein the Tribunal taking cognizance of the fact that the date of notice under Sec. 201(1)/201(1A) was 23.09.2003, but however, the order under Sec. 201(1)/201(1A) was passed on 28.03.2011, had relied on the judgment of the **Hon'ble High Court of Bombay** in the case **DIT Vs. Mahindra & Mahindra Ltd. (2014) 365 ITR 560 (Bom)** and observed that though no time limit has been specified in the Act, still the order must be passed well within a reasonable time and that has to be within a period of one year from the end of the financial year in which proceedings under Sec. 201(1) were initiated. It was further observed by the Tribunal that the same time limit would equally apply

for passing of the order under Sec. 201(1A) of the Act. The ld. A.R submitted that during the year under consideration, viz. A.Y 2003-04 the show cause notice was issued dated 23.09.2003, while for the order u/ss. 201(1) and 201(1A) of the Act was passed on 28.03.2011. It was submitted by the ld. A.R that keeping in view the identical facts involved in the case under consideration, as against those involved in the A.Ys. 2001-02 and 2002-03, the order passed by the A.O U/ss. 201(1) and 201(1A) could safely be held to be barred by limitation. The ld. A.R in order to drive home his aforesaid contention that the order passed by the A.O u/ss. 201(1)/201(1A) was barred by limitation, submitted that a similar view had also been taken by a coordinate bench of the Tribunal in the case of the holding company of the assessee, viz. ITAT, "H", Mumbai in the case of Hathway Cable and Datacom Ltd. Vs. TRO (TDS)-1 in ITA No. 1810/Mum/2014, dated 01.06.2016 (copy placed on record), as well as the order passed by the ITAT "H", Mumbai in the case of the sister concern of the assessee, viz. Hathway Nasik Cable Network Pvt. Ltd. Vs. TRO (TDS), in ITA No. 5190/Mum/2014, dated 15.02.2017 (copy placed on record). The ld. A.R in the backdrop of his aforesaid submissions averred that as the order passed by the A.O under Sec. 201(1)/201(1A) was barred by limitation, therefore, the order passed by the CIT(A) upholding the order of the A.O u/ss. 201(1)/201(1A) was liable to be vacated. Per contra, the ld. D.R submitted that as no limitation for passing of an order U/ss. 201(1)/201(1A) was provided in the Act, therefore, the A.O had rightly held the assessee as being in default under the said statutory provision. The ld. D.R further relied on the orders passed by the lower authorities.

10. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material

available on record. We are of the considered view that the issue involved in this case is squarely covered by the judgment of the **Hon'ble High Court of Bombay** in the case of **Director of Income tax (International taxation) Vs. Mahindra & Mahindra Ltd. (2014) 365 ITR 560 (Bom)**. We find that the Hon'ble High Court had held that even though Sec. 201 does not prescribe any limitation period for an assessee to be declared as an assessee in default, yet the revenue is required to exercise the powers in that regard within a reasonable time. The Hon'ble High Court in the backdrop of its aforesaid observations had upheld the order of the Tribunal by observing as under :

> *"30 Our attention has also been invited to two judgments of the Honourable Delhi High Court which are on the same principle and as to whether in the absence of any time limit the proceedings under Sections 201 and 201(1A) of the Income Tax Act, 1961 could be initiated at any Income Tax v/s NHK Japan Broadcasting Corporation reported in **(2008) 305 ITR 137 (Delhi)**, the Delhi High Court upheld the view of the Tribunal and dismissed the Revenue's Appeal [Commissioner of Income Tax v/s Hutchison Essar Telecome Ltd. reported in **(2010) 323 ITR 230 (Delhi)**].*
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> *31 In the case of NHK Japan Broadcasting Corporation (supra), the Honourable Mr. Justice Madan b. Lokur (as His Lordship then was) speaking for the Bench answered the question directly posed before us in the following terms:*
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> > *"There is no dispute that Section 201 of the Act does not prescribe any limitation period for the assessee being declared as an assessee in default.*
> > *Learned Counsel for the Revenue relied upon Bharat Steel Tubes Ltd. v. State of Haryana (1988) 70 STC 122 (SC) to contend that no period of limitation can be prescribed in a situation such as the present for initiating proceedings.*
> >
> > *Learned counsel for the assessee relied upon State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd. [2007] 11 SCC 363 : [2007] 9 RC 637 to contend that if no period of limitation is prescribed, a statutory authority must exercise its jurisdiction within a reasonable period. What should be the reasonable period depends upon the nature of the statute, rights and liabilities there under and other relevant factors.*

Relying upon this decision, it is submitted by learned Counsel for the assessee that since Section 201 of the Act does not prescribe any period of limitation for initiating or for completing proceedings in declaring the assessee as an assessee in default, exercise of jurisdiction should commence insofar as the statutory authority is concerned within a reasonable period of time.

We are unable to agree with learned Counsel for the Revenue inasmuch as the decision relied upon by him deals with reasonable time for completing the assessment or for completing the task on hand.

In Bharat Steel Tubes Ltd. (1988) 70 STC 122 (SC) the question that arose before the Court (and which has been stated on page 130 of the report) is whether an order of assessment under Section 11(3) of the Punjab General Sales Tax Act, 1948 or Section 28(3) of the Haryana General Sales Tax Act, 1973 could now be completed or it would be barred by limitation. In that case, the assessment proceedings had been unduly delayed and the Supreme Court came to the conclusion that for completing the assessment proceedings there is no period of limitation prescribed and that would depend upon the facts of each case. Considering the facts of the case, the Supreme Court gave a direction to the assessing authority to complete all the pending assessments within a period of four months from the date of delivery of the judgment.

Insofar as Bhatinda District Coop. Milk Producers Union Ltd. [2007] 9 RC 637 : 11 SCC 363 is concerned, the question that arose before the Supreme Court was regarding initiation of proceedings by exercise of jurisdiction by the statutory authority. The Supreme Court held that exercise of jurisdiction must be within a reasonable period of time and considering the provisions of the Punjab General Sales Tax Act, 1948, it was held that a reasonable period of time for initiating proceedings would be five years.

There is a qualitative difference between Bharat Steel Tubes Ltd. [1988] 70 STC 122 (SC) and Bhatinda District Coop. Milk Producers Union Ltd. (2007) 9 RC 637 : 11 SCC 363. In the former case, the question pertained to completion of proceedings, while in the latter case is pertained to initiation of proceedings. We are concerned with initiation of proceedings.

Insofar as the IncomeTax Act is concerned, our attention has been drawn to Section 153(1)(a) thereof which prescribes the timelimit for completing the assessment, which is two years from the end of the assessment year in which the income was first assessable. It is well known that the assessment year follows the previous year and, therefore, the timelimit would be three years from the end of the financial year.

This seems to be a reasonable period as accepted under Section 153 of the Act, though for completion of assessment proceedings. The provisions of reassessment are under Sections 147 and 148 of the Act

and they are on a completely different footing and, therefore, do not merit consideration for the purposes of this case.

Even though the period of three years would be a reasonable period as prescribed by Section 153 of the Act for completion of proceedings, we have been told that the Income Tax Appellate Tribunal has, in a series of decisions, some of which have been mentioned in the order which is under challenge before us, taken the view that four years would be a reasonable period of time for initiating action, in a case where no limitation is prescribed.

The rationale for this seems to be quite clear if there is a time limit for completing the assessment, then the time limit for initiating the proceedings must be the same, if not less. Nevertheless, the Tribunal has given a greater period for commencement or initiation of proceedings."

32 Mr.Suresh Kumar submitted before us that the Delhi High Court judgment does not take note of the principle that when there is no limitation prescribed by the statute, the Court cannot read into the provision any time limit or restriction. In that regard he relied upon the judgment of the Honourable Supreme Court in the case of Ajaib Singh v/s Sirhind Cooperative Marketing Cum Processing Service Society Limited and another reported in ***(1999) 6 SCC 82****. The issue before the Honourable Supreme Court in that case was whether there is any period of limitation prescribed for initiation of proceedings under Section 33C(2) of the Industrial Disputes Act, 1947. In that regard the Honourable Supreme Court noted the factual position, namely, that services of workman were terminated on 16.07.1974. He had issued the notice of demand only on 18.12.1981. However, it was not disputed that no plea regarding delay was raised by the Management before the Labour Court. It was also acknowledged that Article 137 of the Limitation Act, 1963 has not been specifically made applicable to the proceedings under the Industrial Disputes Act, 1947 seeking reference of Industrial Disputes to the Labour Court. Therefore, neither this provision nor any principle incorporated therein is applicable to the proceedings under the Industrial Disputes Act, 1947 and that is how the Honourable Supreme Court proceeded to analyze the ambit and scope of the proceedings under the special provision, namely, a Reference by the concerned workman under the Industrial Disputes Act, 1947. The judgment of the Honourable Supreme Court deals with a case where any provision in the nature of limitation or outer limit is prescribed for reference under the Industrial Disputes Act, 1947. The Honourable Supreme Court was not dealing with a case of exercise of powers enabling reopening of Assessment under the Income Tax Act, 1961 or any Taxing Statute. In fact, it was not deciding a case concerned with invoking of any suomotu powers or reopening of assessment finalized under the Tax Law. Therefore, this judgment is clearly distinguishable on facts.*

33 If one carefully peruses Section 201(1) and 201(1A) of the Income Tax Act, 1961, then, the principle laid down in the Delhi High Court decisions in NHK Japan Broadcasting Corporation and Hutchison Essar Telecom (supra) would squarely apply.

34 The Section 201 of the Income Tax Act, 1961 reads as under:

"201. Consequences of failure to deduct or pay:

(1) Where any person, including the principal officer of a company, –

(a) who is required to deduct any sum in accordance with the provisions of this Act; or

(b) referred to in subsection (1A) of section 192, being an employer, does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

[Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident –

(i) has furnished his return of income under section 139;

(ii) has taken into account such sum for computing income in such return of income; and

(iii) has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:]

[Provided further that] no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.]

[(1A) Without prejudice to the provisions of subsection (1), if any such person, principal officer or company as is referred to in that subsection does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,

(i) at one per cent. for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and

(ii) at one and one half per cent. for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid,

and such interest shall be paid before furnishing the statement in accordance with the provisions of sub section (3) of section 200:]

[Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the

provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso to subsection (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.]

(2) Where the tax has not been paid as aforesaid after it is deducted, the amount of the tax together with the amount of simple interest thereon referred to in sub section (1A) shall be a charge upon all the assets of the person, or the company, as the case may be, referred to in subsection (1).

[(3) No order shall be made under subsection (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of –

(i) two years from the end of the financial year in which the statement is filed in a case where the statement referred to in section 200 has been filed;

(ii) [six years] from the end of the financial year in which payment is made or credit is given, in any other case:

Provided that such order for a financial year commencing on or before the 1st day of April, 2007 may be passed at any time on or before the 31st day of March, 2011.

(4) The provisions of sub clause (ii) of subsection (3) of section 153 and of Explanation 1 to section 153 shall, so far as may, apply to the time limit prescribed in subsection (3).]

[Explanation. For the purposes of this section, the expression "accountant" shall have the meaning assigned to it in the Explanation to subsection (2) of section 288.]"

35. Once same provisions are invoked in the present case, then, the Honourable Delhi High Court, with respect, rightly concluded that though Section 201 does not prescribe any limitation period for the Assessee being declared as an Assessee in Default yet the Revenue will have to exercise the powers in that regard within a reasonable time. In such circumstances we are of the view that the Tribunal's order in this case does not suffer from any error of law apparent on the face of record or perversity warranting our interference in appellate jurisdiction.

36 We are also shown the judgment of the Calcutta High Court in the case of Bhura Exports Ltd. v/s Income Tax Officer (TDS), Ward 57(2) in G.A. No.1319 and ITAT No.118 and IT Appeal No.116/2011 and IT 1163/2011 decided on 30.08.2011. With respect and for the reasons indicated by us above we cannot agree with the view taken by the Division Bench of the Calcutta High Court. That decision overlooks the fundamental principles noted above. They need not be reiterated here."

We further find that involving the identical facts the coordinate bench of the Tribunal in the assesses own case for the A.Ys. 2001-02 and 2002-03, marked as ITA No. 6996/Mum/2014 and ITA No. 4261/Mum/2014, vide its order dated 07.09.2016, taking cognizance of the fact that though the notice u/ss. 201(1)/201(1A) was issued by the A.O on 23.09.2003, however, as the respective orders u/ss. 201(1)/201(1A) were passed by the A.O on 28.03.2011, which were beyond a period of one year from the end of the financial year in which the proceedings under Sec. 201 were initiated, therefore, the same were barred by limitation. We thus keeping in view the judgment of the **Hon'ble High Court of Bombay** in the case of **Director of Income tax (International taxation) Vs. Mahindra & Mahindra Ltd. (2014) 365 ITR 560 (Bom)** and finding ourselves to be in agreement with the view taken by the Tribunal in the case of the assessee for the aforementioned years, therefore, are of the considered view that the order passed by the A.O under Sec. 201(1A) as on 28.03.2011 being substantially beyond the period of one year from the end of the financial year in which the proceedings under Sec. 201(1)/201(1A) were initiated, therefore, the respective orders passed by the A.O U/ss. 201(1)/201(1A) are clearly barred by limitation. We thus in the backdrop of our aforesaid observations set aside the order of the CIT(A) and quash the order passed by the A.O U/ss. 201(1)/201(1A) of the Act.

11. The appeal of the assessee is allowed.

Order pronounced in the open court on 31.01.2018

Sd/-	Sd/-
(B.R. Baskaran)	(Ravish Sood)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 31.01.2018

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**