



IN THE INCOME TAX APPELLATE TRIBUNAL
"L" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI N.K PRADHAN, ACCOUNTANT MEMBER

ITA no.5283/Mum/2016
(Assessment Year : 2008-09)

Tech Mahindra Limited
(CA Satyam ASP Pvt. Ltd. since
Merged with Tech Mahindra Limited)
Gateway Building, Apollo Bunder
Mumbai 400 001 PAN – AAACM3484F

..... Appellant

v/s

Income Tax Officer
I.T. Circle-1, Mumbai

..... Respondent

Assessee by : Shri Karthik Natrajan
Revenue by : Shri M.V. Raj Guru

Date of Hearing – 13.06.2018

Date of Order – 22.06.2018

ORDER

PER SAKTIJIT DEY, J.M.

This is an appeal by the assessee against order dated 6th June 2016, passed by the learned Commissioner (Appeals)-58, Mumbai, for the assessment year 2008-09. Though, the issue in dispute in the present appeal is in relation to the order passed under section 201(1) and 201(1A) of the Income Tax Act, 1961 (for short "*the Act*") for alleged failure on the part of the assessee to withhold tax under

section 195 of the Act in respect of payment made to two overseas companies, however, in ground no.1, the assessee has challenged the order passed under section 201(1) and 201(1A) of the Act as barred by limitation. Since the limitation issue raised in ground no.1 is a purely legal and jurisdictional issue going to the root of the matter, we propose to address this issue at the very outset.

2. Facts which are relevant for deciding this issue briefly are, the assessee an Indian Company is engaged in the business of providing software solution to its clients. From the information furnished by the assessee in Form no.15CA/CB and other material on record, the Assessing Officer found that in pursuance to the agreement entered into by the assessee with two overseas companies, one in USA and the other in Israel, remittances have been made towards purchase of software license without withholding tax at source under section 195 of the Act. Therefore, the Assessing Officer issued a notice under section 201(1) of the Act on 27th January 2014, directing it to show cause as to why it should not be treated as an assessee in default. In reply to the said show cause notice, assessee appeared and filed its reply stating that the amount paid towards purchase of software being not in the nature of royalty, is not subject to deduction of tax at source under section 195 of the Act. The Assessing Officer however, did not find merit in the submissions of the assessee and held that the

payment made by the assessee towards purchase of software license is in the nature of royalty, hence, assessee was required to deduct tax at source under section 195 of the Act while making such payment. Thus, he passed an order under section 201(1) of the Act treating the assessee as assessee in default and raised tax demand under section 201(1)/ as well as charged interest under section 201(1A) of the Act aggregating to ₹ 8,65,956.

3. Being aggrieved of the aforesaid order passed by the Assessing Officer, assessee preferred appeal before the learned Commissioner (Appeals), inter-alia, on the ground that the order passed is barred by limitation.

4. Before the first appellate authority, it was submitted by the assessee that the provisions of section 201 of the Act as existed during the assessment year 2008-09 did not prescribe any period of limitation for initiation of proceeding under the said provision. However, it does not mean that in the absence of any limitation period prescribed under the statute the Assessing Officer can initiate proceeding under section 201 of the Act at any time. It was submitted, even in the absence of any limitation period prescribed under the statute the Assessing Officer must initiate proceeding within a reasonable period. It was submitted, since, the Assessing Officer has

initiated the proceedings and passed the order under section 201 of the Act after expiry of more than four years from the end of the financial year wherein the payment was made the order is barred by limitation. Referring to the proviso to section 201(3) of the Act which was brought to the statute by Finance Act, 2009 w.e.f. 1st April 2010, it was submitted, in respect of financial year commencing on/or before 1st day of April 2007, an order under section 201 of the Act can be passed at any time on/or before 31st Day of March 2011. Thus, it was submitted, the order passed by the Assessing Officer under section 201(1) and 201(1A) of the Act in March 2014, is barred by limitation. The learned Commissioner (Appeals) after considering the submissions of the assessee, however, did not find merit in them. Further, referring to the ITAT Mumbai Special Bench decision in case of Mahindra and Mahindra Ltd. v/s DCIT, [2010] 122 ITD 216 (Mum.). The learned Commissioner (Appeals) held that in case the proceedings under section 201(1) of the Act is initiated within a period of six years from the end of the relevant assessment year, then, it is held to be within time. He observed, since, the show cause notice in case of the assessee was issued on 27th January 2014, it is within the period of six years from the end of the relevant assessment year, hence, not barred by limitation. Further, he observed that the provisions of section 201(3) of the Act are not applicable to the assessee as it only relates

to payees / deductees who are residents of India. Thus, he rejected assessee's claim that the order is barred by limitation.

5. The learned Authorised Representative submitted, as per the provisions of section 201 of the Act applicable to the relevant assessment year, no time limit was prescribed for initiation and completion of proceedings. He submitted, considering the fact that the deductors / assesseees are put to much difficulty due to absence of limitation provision in section 201 of the Act which enabled the Assessing Officer to initiate and complete proceedings at any time, the Courts have interpreted the provisions of section 201 of the Act and have held that absence of limitation period under the said provision would not empower the Assessing Officer to pass order at any time. The Courts have held that in the absence of specific limitation period in the said provision, the Assessing Officer has to initiate proceeding within a reasonable period. Relying upon the decision of the Hon'ble Delhi High Court in CIT v/s NHK Japan Broadcasting Corporation, [2008] 305 ITR 137 (Del.), the learned Counsel for the assessee submitted that reasonable period for initiation of proceeding under section 201 of the Act was held to be four years from the end of the relevant assessment year. He submitted, if the ratio laid down in the aforesaid decision is applied to the facts of the assessee's case, the order passed under section 201 of the Act is barred by limitation as

the Assessing Officer has initiated proceeding in January 2014, i.e., after expiry of four years from the end of assessment year 2008-09. The learned Counsel for the assessee drawing our attention to the provisions of section 201(3) of the Act submitted that the proviso to the said section makes it clear that in respect of financial year commencing on or before 1st April 2007, an order under section 201 of the Act has to be passed before 31st March 2011. He submitted, though, from the language of section 201(3) of the Act it appears that the limitation prescribed therein is only applicable to resident deductees, however, the Hon'ble Delhi High Court in *Bharti Airtel Ltd. & Ors. v/s Union of India & Anr.*, in judgment dated 19th December 2016 in W.P. (C) no.2166 of 2012, have held that even in case of non-residents also reasonable period of limitation has to be read into the Act. Thus, he submitted, the order passed under section 201(1) of the Act being beyond the period of four years from the end of the relevant assessment year is barred by limitation, hence, deserves to be quashed.

6. The learned Departmental Representative relied upon the observations of the learned Commissioner (Appeals).

7. We have considered rival submissions and perused materials on record. We have also applied our mind to the decisions cited before us.

At the outset, it needs to be observed that the alleged failure on the part of the assessee to deduct tax at source under section 195 of the Act relates to payment made to two non-resident companies in the financial year 2007-08 relevant to the assessment year 2008-09. It is also a fact on record that the Assessing Officer has initiated proceedings under section 201(1) of the Act by issuance of show cause notice on 27th January 2014. Therefore, admittedly, the proceeding under section 201(1) of the Act was initiated after expiry of four years from the end of relevant assessment year i.e., A.Y. 2008-09. Undisputedly, the provision contained under section 201 of the Act which was applicable to assessment year 2008-09 did not prescribe any period of limitation either for initiation or for completion of proceedings under the said provision. The limitation period was prescribed under section 201 of the Act by insertion of sub-section (3) for the first time by Finance Act, 2009 w.e.f. 1st April 2010. As per the said provision, in respect of any payment made to a resident if there is failure to deduct tax at source no order shall be passed under section 201(1) of the Act after expiry of two years from the end of the financial year in which the statement under section 200 is filed and in any other case after expiry of six years from the end of financial year in which payment is made and credit is given. However, the proviso to sub-section (3) states that in respect of a financial year commencing

on/or before 1st Day of April 2007, an order under section 201(1) of the Act may be passed at any time on/or before 31s March 2011. We propose to deal with the applicability of proviso to sub-section (3) of section 201 of the Act at a later stage. Thus, it is clear from the facts on record as well as the provisions of section 201 of the Act as applicable to the impugned assessment year no limitation period was prescribed under section 201 of the Act either for initiation or for completion of the proceedings. Therefore, as held in judicial precedents, absence of limitation period will not empower the Assessing Officer to pass an order under section 201 of the Act at any time at his sweet will. The Hon'ble Courts have held that, even, in the absence of limitation period prescribed under a particular provision, the order has to be passed within a reasonable period. In the context of section 201 of the Act itself, the Hon'ble Delhi High court in NJK Japan Broadcasting Corporation (supra) approving the decision of the Tribunal has held that a period of four years would be reasonable period of time for initiation of proceeding under section 201 of the Act. The aforesaid decision of the Hon'ble Delhi High Court has been approved and followed in subsequent decisions of the Hon'ble Delhi High Court in case of Vodafone Essar Mobile Services Ltd. and Anr. v/s Union of India, [2016] 385 ITR 436 (Del.) and in CIT v/s C.J. International Hotels Pvt. Ltd., ITA no.57 of 2015. The Hon'ble

Jurisdictional High Court in Mahindra and Mahindra Ltd., 365 ITR 560 also followed the decision in NHK Japan Broadcasting Corporation (supra). We are also conscious of the fact that the Tribunal, Mumbai Bench, in Vodafone India Ltd. v/s ITO, ITA no.4511/Mum./2012 and Ors. dated 12th March 2018, following the decision of Hon'ble Delhi High Court in NJK Japan Broadcasting Corporation (supra) held that initiation of proceeding under section 201(1) of the Act after expiry of four years from the end of relevant financial year is barred by limitation. Thus, in view of the legal principal laid down in the decisions referred to above, the impugned order passed under section 201(1) / 201(1A) of the Act is clearly barred by limitation as the initiation of proceedings under the said provision was after expiry of four years from the end of the relevant financial year i.e., financial year 2007-08. That being the case, the order passed under section 201(1) and 201(1A) of the Act deserves to be quashed.

8. There is another aspect to this issue. As stated earlier, the provisions of section 201 of the Act was amended by Finance Act, 2009 by insertion of sub-section (3) w.e.f. 1st April 2010. The aforesaid provision prescribes period of limitation for completion of proceedings under section 201 of the Act. The proviso to sub-section (3) of section 201 of the Act provided that in respect of a financial year commencing on/or before 1st April 2007, no order under section 201 of

the Act can be passed after 31st March 2011. Though, the language employed in sub-section (3) of section 201 of the Act gives an impression that it is only applicable to resident deductees, however, the Hon'ble Delhi High Court in case of Bharti Airtel Ltd. (supra) have held that the said limitation period even in respect of non-residents can be read into the provision. Thus, going by the proviso to section 201(3) of the Act, in the present case the Assessing Officer could have completed the proceedings under section 201 of the Act not beyond 31st March 2011. The Hon'ble Gujarat High Court in Tata Teleservices Ltd. v/s Union of India, 385 ITR 497 (Guj.) have held that in respect of financial year 2007-08 and earlier years, only proceedings that were pending could be completed by 31st March 2011 and as such no fresh proceedings to be commenced for the said period. Undisputedly, in the facts of the present case, no proceedings under section 201 of the Act were pending before the Assessing Officer. By the time the proceedings under section 201 of the Act were initiated by issuing notice under section 201 on 27th January 2014, it has already become barred by limitation. That being the case, looked at from any angle, the impugned order passed under section 201(1) and 201(1A) of the Act being barred by limitation has to be quashed. Accordingly, we do so. Consequently, the impugned order of the learned Commissioner (Appeals) is reversed and set aside.

9. In view of our decision in ground no.1, the other grounds raised on merits have become redundant, hence, do not require adjudication.

10. In the result, assessee's appeal is allowed only on the ground of limitation.

Order pronounced in the open Court on 22.06.2018

Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 22.06.2018

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.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai