

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस. जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1795 & 1141/Chny/2017

निर्धारण वर्ष /Assessment Years : 2010-11 & 2009-10

आयकर अपील सं./ITA No.1210/Chny/2016

निर्धारण वर्ष /Assessment Year : 2008-09

M/s Sutherland Global Services
Private Limited,
No.45-A, Velachery Main Road,
Velachery, Chennai - 600 042.

PAN : AA ECS 8093 A

(अपीलार्थी/Appellant)

v. The Deputy Commissioner of
Income Tax,
International Taxation II(2),
The Income Tax Officer
(International Taxation) – II(1).
Chennai - 600 034.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Sh. Raghavan Ramabadran, Advocate

प्रत्यर्थी की ओर से / Respondent by : Dr. S. Pandian, JCIT

सुनवाई की तारीख / Date of Hearing : 24.07.2019

घोषणा की तारीख / Date of Pronouncement : 06.09.2019

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

All the three appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals)-16, Chennai, for the assessment years 2008-09, 2009-10 and 2010-11, confirming the orders passed by the Assessing Officer

under Section 201 of the Income-tax Act, 1961 (in short 'the Act'). Therefore, we heard all these three appeals together and disposing the same by this common order.

2. Shri Raghavan Ramabadrán, the Ld.counsel for the assessee, submitted that the assessee filed Statement on 31.12.2010 for the assessment year 2010-11 electronically for the fourth quarter. In respect of third quarter, the statement was filed on 15.01.2010. For the second quarter, it was filed on 15.10.2009 and for the first quarter, it was filed on 30.07.2009. Similarly, for the assessment years 2008-09 and 2009-10 also, the assessee filed the statements before two years. According to the Ld. counsel, the first quarter was filed on 11.10.2007 for the assessment year 2008-09 and for second quarter it was filed on 11.10.2007 and for third quarter, the statement was filed on 14.01.2008 and for the fourth quarter, it was filed on 13.06.2008. Referring to Section 201(3) of the Act as it stood at the relevant point of time, the Ld.counsel submitted that the time limit provided for passing order under Section 201 of the Act is two years from the end of the financial year in which the statement was filed. The order passed by the Assessing Officer is admittedly beyond the period of two years,

therefore, is barred by limitation. Referring to the order of the CIT(Appeals), more particularly page 10, the Ld.counsel submitted that the delay of four years period in passing order under Section 201 of the Act was a reasonable one. Therefore, he rejected the claim of the assessee. According to the Ld. counsel, when the Parliament fixed the time limit for passing the order at two years from the end of the financial year in which the statement was filed under Section 200 of the Act, the CIT(Appeals) is not justified in concluding that the order was passed within a reasonable period of four years. According to the Ld. counsel, the four years period is too long, therefore, it cannot be construed as reasonable one.

3. On the contrary, Dr. S. Pandian, the Ld. Departmental Representative, submitted that the CIT(Appeals) came to a conclusion on the basis of the judgment of Delhi High Court in NHK Japan Broadcasting Corporation (2008) 305 ITR 137 that the two years period has to be taken from the end of the assessment year in which the income was first assessable. Since no limitation was prescribed under Section 201 of the Act, according to the Ld. D.R., the delay of four years period was held to be reasonable by the

CIT(Appeals), therefore, he rejected the case of the assessee on limitation.

4. We have considered the rival submissions on either side and perused the relevant material available on record. Sub-section (3) of Section 201 of the Act as it stands now reads as follows:-

Consequences of failure to deduct or pay

201. (1)

(2)

(3) No order shall be made under sub-section (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 seven years from the end of the financial year in which payment is made or credit is given.

5. By Finance Act, 2014 with effect from 01.10.2014, provisions of sub-section (3) was amended. Before the amendment, sub-section (3) of Section 201 of the Act reads as follows:-

(3) No order shall be made under sub-section (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 seven years from the end of the financial year in which payment is made or credit is given.

(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.

6. In view of the above, when the assessee filed statement under Section 200 of the Act, the Assessing Officer was expected to pass order within two years from the end of the financial year in which the statement was filed. Therefore, this Tribunal is of the considered opinion that in view of the language employed by Parliament in sub-section (3) to Section 201 of the Act, the Assessing Officer cannot pass any order after expiry of two years before 01.10.2010. In this case, admittedly, the orders were passed beyond the period of two years after the date on which the statement under Section 200 of the Act was filed for the respective assessment year. Therefore, orders passed by the Assessing Officer are barred by limitation as claimed by the assessee. Accordingly, these orders cannot stand in the eye of law. In view of the above, the orders of both the authorities below are set aside and

the tax and interest demand for all the assessment years are deleted.

7. In the result, all the three appeals filed by the assessee are allowed.

Order pronounced in the court on 6th September, 2019 at Chennai.

sd/-

(एस. जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 6th September, 2019.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-16, Chennai
4. CIT (International Taxation), Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.