

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH : BANGALORE**

**BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.1687/Bang/2019
Assessment year : 2010-11

The Dy. Commissioner of Income-tax, (TDS), Circle-2(1), Bengaluru.	Vs.	M/s Infosys Ltd., 44 & 97A, Electronic City, Hosur Road, Bengaluru-560 010.  PAN – AAACI 4798 L
APPELLANT		RESPONDENT

CO No.58/Bang/2019
Assessment year : 2010-11

M/s Infosys Ltd., 44 & 97A, Electronic City, Hosur Road, Bengaluru-560 010.  PAN – AAACI 4798 L	Vs.	The Dy. Commissioner of Income-tax, (TDS), Circle-2(1), Bengaluru.
APPELLANT		RESPONDENT

Revenue by	:	Shri Priyadarshi Misra, JCIT (DR)
Assessee by	:	Shri H Padamchand Khincha, C.A

Date of hearing	:	04.03.2020
Date of Pronouncement	:	06.03.2020

**ORDER**

*Per B.R Baskaran, Accountant Member :*

The appeal filed by the Revenue and the Cross-objection filed by the assessee are directed against the order dated 10/4/2019

passed by the Id CIT(A)-13, Bengaluru and it relates to the asst. year 2010-11.

2. The Revenue is aggrieved by the decision of Id CIT(A) in quashing the order passed by the AO u/s 201(1) and 201(1A) of the Act. The appeal of revenue is barred by limitation by 9 days. The revenue has moved a petition before the bench seeking condonation of delay. We heard parties on this preliminary issue. Having regard to the submissions made in the petition, we condone the delay and admit the appeal of revenue.

3. In the cross-objections the assessee has raised certain legal issues and is also challenging the quantification of the default amount.

4. The facts relating to the case are stated in brief :

The assessee is engaged in the business of providing business consulting information technology and outsourcing services. Information was received by the TDS Officer from the assessing officer that a disallowance u/s 40(a)(ia) of the Act was made in the hands of the assessee in the asst. order passed for asst. year 2010-11. It is pertinent to note that the disallowance u/s 40(a)(ia) of the Act is made for non-deduction of tax at source from certain expenditure. From the information so received, the TDS officer came to know that the assessee has failed to deduct tax at source from certain expenditure. Hence the TDS Officer initiated proceedings u/s 201(1) of the Act on 5/7/2016 asking the assessee to show cause as to why it should not be held to be as an assessee in default u/s 201(1). Subsequently the TDS officer raised a demand of Rs.28.73 lakhs u/s 201(1) and interest of Rs.26.14 lakhs u/s 201(1A) of the Act. The assessee filed appeal before Id

CIT(A) challenging the order so passed by TDS officer. Before Ld CIT(A), the assessee contended that the impugned order passed by TDS Officer is barred by limitation, as the proceedings have been initiated after expiry of four years from the end of the financial year under consideration.

5. It is pertinent to note that the financial year under consideration is financial year 2009-10. The assessee placed reliance on the decision rendered by Hon'ble Delhi High Court in the case of CIT vs. NHK Japan Broadcasting Corporation (305 ITR 137)(Delhi) and the decision rendered by Hon'ble Karnataka High Court in the case of CIT vs. Bharat Hotels Ltd (384 ITR 77)(Kar). And has contended before Ld CIT(A) that the proceedings u/s 201(1) of the Act should have been completed before 31/3/2014. However the TDS Officer has initiated proceedings only on 5/7/2016 and accordingly it was contended that the proceedings are barred by limitation.

6. The Finance (No.2) Act, 2009 had inserted sub-section (3) and (4) in sec.201 of the Act and as per sub-section (3), a time period of two years was prescribed for passing order u/s 201(1) of the Act. The assessee placed its reliance on the above amendment, but the same was rejected by Ld CIT(A) by holding that the said amendment is held to be applicable from AY 2011-12 onwards and the year under consideration was AY 2010-11. Accordingly, the Ld CIT(A) held that the time limit of four years prescribed by Hon'ble Delhi High Court in the case of NHK Japan Broadcasting Corporation

(supra). Accordingly the Ld CIT(A) held that the impugned order passed u/s 201(1) is barred by limitation.

7. For the sake of convenience, we extract below the operative portion of the order passed by Id CIT(A):-

*“Admittedly during the hearing on 22/04/2010, the AR submitted an alternative legal submission to Ground No. 2 on time barring assessment. The relevant portion of the submission is as under:*

*2.10 Even assuming without admitting that amendment to section 201(3) vide Finance Act (No. 2) of 2009 is not applicable to the present case, judicial precedents have held 4 years from the end of the financial year in which order is passed to be a reasonable time limit, some of them are as under:*

*2.11 The Delhi High Court in CIT v JVHK Japan Broadcasting Corpn (2008) 305 [TR 237 (DELHI) noted and held that-*

*"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 same, if not less Nevertheless, the Tribunal has given a greater period for commencement or initiation of proceedings.*

*We are not inclined to disturb the time limit of four years prescribed by the Tribunal and are of the view that in terms of the decision of the Supreme Court in Bhatinda District Co-op MIL P. Union Ltd. action must be initiated by the competent authority under the Income Tax Act, where no limitation is prescribed as in Section 201 of the Act within that period of four years,"*

*2.12 The Himachal Pradesh High Court in the case of CIT v Satluj Jul Vidyut Nigam Limited (2010) 345 ITR 552 (HP) relied on the Delhi High Court judgment in NHK Japan Broadcasting Corpn case observed as under.'*

*"We are in respectful agreement with the judgment of the Delhi High Court since it follows the law laid down by the Apex Court. The law is well settled that even if no period of limitation is prescribed, the statutory power must be exercised within a reasonable period. This reasonable period taking into consideration the various provisions of*

*the Income Tax Act has been held to be four years in a number of cases. We see no reason to extend this period any further."*

*2.13 The jurisdictional High Court of Karnataka had an occasion to address an identical issue on the time limit for initiating proceedings under section 201. The Honourable Karnataka High Court in CIT v Bharat Hotels Ltd (2016) 384 ITR 77 (Kar) after placing reliance on Delhi High Court decision in CIT v NHK Japan Broadcasting Corpn held as under:*

*"....we find that the Tribunal was correct in holding that the order passed under Sec.201 (1) and (1A) of the Act on 28.1.2008 for the assessment year 2002-03, would be barred by limitation as the period of limitation would be four years from the end of the financial year in question."*

*2.14 In the present case, proceedings under section 201 and 201(1A) for AY "2010-11 were completed vide order dated 30.11.2016. The impugned order is passed beyond the period of limitation of four years from the end of the financial year. Applying the dictum of jurisdictional High Court in the present case, the said order is bad in law and barred by limitation. Even if one were to go by the first notice dated 23.3.2016 issued by the Id. ACIT, TDS Circle 2(1), Bangalore initiating the proceedings under section 201(1)(1A), the said notice was also issued*

*after the limitation period of four years. Hence, the said notice was also invalid and time barred and consequently all the proceedings thereto including the order passed under section 201(1) and (1A) dated 30.11.2016 is also time barred, invalid, bad in law and hence liable to be quashed."*

*12. I have carefully gone through the statement of facts and the grounds of appeal raised and perusing the assessment order as well as the arguments and submissions put forward by the authorized representatives of the appellant, the issues which arise are answered as under:*

*13. Ground No. 1, is general in nature and therefore not taken up for specific adjudication.*

*14. Ground Nos. 2.1, 2.2 & 2.3 deal with the issue of the assessment order being barred by limitation. The impugned year under examination is Assessment-year 2010-11. Finance Act (No. 2) of 2009 inserted subsections (3) and (4) with effect from 1-4-2010. It provided that an order under section 201(l) for failure to deduct the whole or any part of the tax as required under the Act, if the deductee is a resident payer, shall be passed within two years from the end of the financial year in which statement of tax deducted at source is filed by the deductor. The assessee submits that the said amendment*

*is applicable to the year under appeal. Accordingly, it is argued that the time limit available for passing an order under section 201 expires on 31/03/2013 (being two years from the end of the financial year in which statement of tax deducted at source was filed - which is financial year 2010-11 in the present case. The said argument is not accepted Amendment made by the Finance (No 2) Act, 2009 with effect from 01/04/2010 is applicable from the assessment year 2011-12 and subsequent years. This is clarified in para 50.4 of Circular no. 5 of 2010 dated 3.6.2010 [Explanatory Notes to the provisions of The Finance (No.2) Act, 2009] which reads as under:*

*"50. Providing time limits for passing of orders u/s 201(1) holding ci person to be an assessee in default*

*50.1...*

*50.2...*

*50.4 Applicability - This amendment has been made applicable with effect from 1st April, 2010 and will accordingly apply in relation to assessment year 2011-12 and subsequent assessment years."*

*15. This is also confirmed by the Karnataka High Court in CIT v Bharat Hotels Ltd (2016) 384 ITR 77 (Kar). Relevant extracts of the decision are as under:*

*"... With regard to the applicability of the amendment made by the Finance Act, 2009 with effect from 01/04/2010, it was also clarified to be from the assessment year 2011-12 and subsequent years."*

*15.1 However, the same decision has held that prior to such amendment, an order under section 201 should be passed within four years from the end of the financial year in question. In the present case, the impugned order is passed beyond the period of limitation of four years from the end of the financial year. Even the first notice dated 23/03/2016 issued by the AO was beyond the said limitation period of four years.*

*16. It is clear from the submission made by the appellant that the above grounds are squarely covered in favour of the appellant in the decisions of Hon'ble High Court of Gujarat in the case of Tata Teleservices v. Union of India & 1 (S.C.A No 1623 of 2015, S CA No 2115 of 2015 and S CA No.4771 of 2015) (supra) & the jurisdictional Hon'ble Karnataka High Court in CIT v Bharat Hotels Ltd (2016) 384 ITR 77 (Kar) (supra) on which reliance has been placed by the appellant and Hon'ble Delhi High Court in the case of Oracle India (P.) Ltd v. the DCIT [2015] 63 taxmann.com 24 & Hon'ble Allahabad High Court in the case of Noida Power Company Ltd v. CIT (TDS) (Writ Tax No.150 of 2016). Respectfully following the above decisions, the appeal on the above grounds are allowed."*

8. Before us, the Ld D.R submitted that the Income tax Act has not prescribed any time limit for passing order u/s 201(1) of the Act. He submitted that the Hon'ble Supreme Court has held in the case of Uttam Namdeo Mahale vs. Vithal Deo & Ors (order dated 07<sup>th</sup> May 1997), that when no limitation has been prescribed under the Act, the order for eviction can be executed at any time. He submitted that though the above said decision has been rendered in the context of some other Act, the ratio of the said decision. Accordingly he submitted that the impugned order cannot be considered as barred by limitation.

9. The Ld A.R, however, submitted that the Hon'ble jurisdictional High Court has considered the decision rendered by Hon'ble Supreme Court in the case of Uttam Namdeo Mahale (supra) in the case of Bharat Hotels Ltd (supra) in paragraph 18 of its order and has held that the facts of the case before the Apex Court is different from the facts of the case in hand. Thereafter, in paragraph 24, the Hon'ble jurisdictional High Court has held that the period of limitation would be four years from the end of the financial year. Accordingly he submitted that the order passed by Ld CIT(A) does not call for any interference.

10. Having heard rival contentions, we are of the view that the order passed by Ld CIT(A) quashing the impugned order as barred by limitation does not call for any interference, as the Ld CIT(A) has followed the decision rendered by Hon'ble

jurisdictional Karnataka High Court. Accordingly, we uphold the order passed by Ld CIT(A).

11. With regard to the cross objection filed by the assessee, - the Ld A.R submitted that the same does not require adjudication, if the order of Ld CIT(A) is upheld. Accordingly, we dismiss the cross objection of the assessee, as it will not survive, since the impugned order passed u/s 201(1) is held to be barred by limitation.

12. In the result, the appeal of the revenue and the cross objection of the assessee are dismissed.

Order pronounced in the Open Court on **6<sup>th</sup> March, 2020.**

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**  
Bangalore,  
Dated, 6<sup>th</sup> March, 2020.  
/ vms /

**Sd/-**  
**(B.R Baskaran)**  
**Accountant Member**

Copy to:  
1. The Applicant  
2. The Respondent  
3. The CIT  
4. The CIT(A)  
5. The DR, ITAT, Bangalore.  
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation .....
2. Date on which the typed draft is placed  
before the dictating Member .....
3. Date on which the approved draft comes to Sr.P.S  
.....
4. Date on which the fair order is placed  
before the dictating Member .....
5. Date on which the fair order comes back to the Sr.  
P.S. ....
6. Date of uploading the order on  
website.....
7. If not uploaded, furnish the reason for doing so  
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8. Date on which the file goes to the Bench Clerk  
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Dictation note enclosed
9. Date on which order goes for Xerox &  
endorsement.....
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11. The date on which the file goes to the Assistant  
Registrar for signature on the order  
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dispatch of the Tribunal Order .....
13. Date of Despatch of Order.  
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