

**आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'C' BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ ITA No.2348/Chny/2017  
(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. Ambattur Developer (P.) Ltd. No. B-12, Ambattur Industrial Estate, Ambattur, Chennai – 600 058.	बनाम / Vs.	DCIT International Taxation-1(1), Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAECA-7490-D		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri D. Anand (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri P. Sajit Kumar (JCIT) –Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	07-12-2022
घोषणा की तारीख /Date of Pronouncement	:	04-01-2023

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2009-10 arises out of the order of learned Commissioner of Income Tax (Appeals)-16, Chennai dated 31.08.2017 in the matter an order passed by Ld. Assessing Officer (AO) u/s 201(1) / (1A) of the Act on 29.03.2016. The grounds taken by the assessee read as under:

1. That on the facts and in the circumstances of the case and in law, the order passed by the learned Commissioner of Income Tax (Appeals) ['CIT (A)'] is bad in law and it is on the basis of conjectures and surmises.
2. That on the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the action of the Assessing Officer (AO) in passing an order

under Section 201(1) and 201(1 A) of the Act which is barred by limitation as contemplated under section 201 (3) of the Act as applicable for AY 2009-10.

3. That on the facts and in the circumstances of the case and in law, the CIT(A) failed to appreciate that the time limit for initiation of proceedings under section 201(1) of the Act expired on 31.03.2012 and as such the notice issued under Section 201(1) of the Act on 14.03.2016 is void ab initio.

4. That on the facts and in the circumstances of the case and in law, the CIT(A) grossly erred in not appreciating that the order under section 201 (1) is passed belatedly on 29.03.2016 much after the expiry of the statutory time limit prescribed under the 201(3) of the Act as applicable for AY 2009-10, which is 31.3.2012.

5. Without prejudice to the above, that on the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the order of AO in holding that the payment to HBA International AC, is taxable in India and consequently tax should have been withheld.

6. Without prejudice to the above, that on the facts and in the circumstances of the case and in law, the CIT(A) erred in not appreciating that the payment is not chargeable to tax in India as per the DTAA between India and USA

7. The Appellant prays for leave to add, alter, amend, substitute, rescind, modify and/or withdraw in any manner whatsoever all or any of the foregoing grounds of appeal before or at the hearing of the appeal.

As is evident, the assessee is aggrieved by confirmation of certain demand raised by Ld. AO u/s 201 (1) / (IA). The assessee also submits that the order has been passed belatedly and therefore, the same is bad in law. To support the same, reliance has been placed on various judicial pronouncements, the copies of which have been placed on record. Having heard rival submissions and after perusal of case records, the appeal is disposed-off as under.

2. In order dated 29.03.2016 passed by Ld. AO u/s 201 (1) / (IA), it transpired that during financial year 2008-09, the assessee made payment to an overseas entity namely M/s HBA International AC as professional charges. The assessee did not deduct tax at source (TDS) and also could not furnish any document or copy of agreement etc. in support of its claim. However, the assessee submitted that order u/s 201(3) could not be passed after expiry of 4 years which was rejected by Ld. AO considering the decision of

Hon'ble Calcutta High Court in **Bhura Exports Ltd. vs. ITO (13 Taxmann.com 162)** wherein it was held that there was no time limit for passing a withholding tax order u/s 201 of the Act for period prior to 01.04.2010 since the Act did not prescribe any time limit for passing such an order. Similar was stated to be the decision of Hon'ble Punjab & Haryana High Court in **HMT Ltd. (15 Taxmann.com 85)**. Considering the same, Ld. AO held that the limitation was introduced by Finance Act, 2009 w.e.f. 01.04.2010 which would not apply to AY 2009-10 and therefore, the order could have been passed at any time. Accordingly, the assessee was deemed to be an assessee-in-default and a demand of Rs.22.05 Lacs was raised against the assessee u/s 201(1) & 201(IA). The Ld. CIT(A) confirmed the stand of Ld. AO against which the assessee is in further appeal before us.

3. From the fact, it emerges that the assessee has paid professional charges to a non-resident, which as per revenue, should have been subjected to tax deduction at source. However, a substantial plea raised before us is that the order should have been passed within a reasonable time of say 4 years as against the fact that the order has been passed by Ld. AO on 29.03.2016 (which is in 7<sup>th</sup> year from end of relevant financial year) and accordingly, the order should be construed to be barred by limitation since no time limit has been prescribed under the Act to pass such an order.

4. We find that the time limit of 4 years from end of financial year has been introduced u/s 201(3) w.e.f. 01.04.2010 to pass such an order and that too, in case the payment has been made by the assessee to a person resident in India and not a payment made to a

non-resident. In other words, still no time limit has been prescribed to pass such an order in case the payment is made to a non-resident. In our considered opinion, when statute do not prescribe any time limit to pass an order, the same should have been passed within a reasonable time otherwise the same would not withstand the legal scrutiny being violative of principle of natural justice and reasonableness.

5. The Hon'ble Bombay High Court in the case of **DIT vs Mahindra & Mahindra Ltd. (365 ITR 560)**, addressing the issue of reasonableness of time limit, held that even though Section 201 do not prescribe any limitation period for assessee being declared as assessee-in-default yet revenue is required to exercise the powers in that regard within a reasonable time.

6. The Bangalore Tribunal in **DCIT vs. Coffeeday Enterprises Ltd. (ITA Nos.2931/Bang/2018 & ors. order dated 16.12.2020)**, faced with similar situation, after considering various decision of Hon'ble High Courts, held as under: -

10.3 We have heard the rival submissions and perused the record. With regard to limitation for initiating action u/s 201 of the I.T. Act, upto assessment year 2009-10, there was no limitation provided u/s. 201(1) of the Act for initiating proceedings for failure to deduct tax at source. In the present case, the assessment year involved is 2011-12. It was only by the Finance Act, 2009 that sub-section (3) was inserted, initially providing for a period of limitation of two years from the end of the financial year in which the statement is filed; and four years from the end of the financial year in which the statement is filed; and four years from the end of the financial year in which the payment is made or credit is given. The provisions of section 201(3) amended by Finance Act, 2012 with retrospective effect from 01.04.2010 is applicable which 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 (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.

10.4 The question whether the order passed u/s. 201(1) and 201(1A) of the Act for the assessment year 2011-12, was barred by limitation was decided against the assessee by the CIT(A), on the reason that it is observed from the provisions of section 201(3) that the time limit period of six years is applicable for the failure to deduct whole or any part of the tax from the person resident in India and in the appellant's case the deductee is not an Indian resident company and therefore the time limit period of six years prescribed u/s. 201(3) will not apply to the present case. In view of the above, it is held that the order passed by the Assessing Officer is legally valid.

10.5 The learned DR submitted that the order passed u/s 201(1) and 201(1A) was not barred by limitation u/s 201(3) of the I.T. Act for the reason that the payee in the instant case is a non-resident, whereas, the limitation prescribed u/s 201(3) of the I.T. Act would apply only to payments made to Indian resident company. Section 201(3) and (4) was inserted by the Finance (No.2) Act, 2009 with effect from 01.04.2010 and it was later substituted by the Finance (No.2) Act, 2014 with effect from 01.10.2014. Prior to the time limit being prescribed by virtue of insertion of section 201(3), the Courts have held that when the statute does not prescribe the time limit for passing an order u/s 201(1) / 201(1A) of the I.T. Act, then reasonable time limit ought to be read into the provisions. The Special Bench of the Tribunal in the case of Mahindra & Mahindra Ltd. v. DCIT reported in [(2010) 122 ITD 216 (Mum.)] had held that order passed u/s 201(1) is akin to an order of assessment and the reasonable time limit for passing an order u/s 201(1) / 201(1A) would be same as the time limit prescribed for initiating and completion of reassessment u/s 147 of the I.T. Act. The Special Bench of the Tribunal was confirmed by the Hon'ble Bombay High Court in the case of Director of Income tax (International Taxation) v. Mahindra & Mahindra Ltd. reported in [(2014) 48 taxmann.com 150 (Bombay)]. The Special Bench order was considering payments made to non-residents. In our case also the payees are non-resident and that was the reason for the CIT(A) to hold that the time limit mentioned u/s 201(3) of the I.T. Act does not have application to this case. 10.6 When no time limit is prescribed under the statute for initiating and completion of a proceedings, the Hon'ble Kerala High Court in the case of Iswara Bhat v. Commissioner of Agricultural Income-tax [(1993) 200 ITR 238 (Ker.)] had held that the powers should be exercised within the reasonable time. The Hon'ble High Court was considering the powers of the Commissioner to exercise the revisionary jurisdiction. The Kerala Agricultural Income-tax Act, 1950 did not prescribe a time limit for initiating a suo moto revisional proceedings. However, the Hon'ble Kerala High Court held that the Commissioner has to pass an order within a reasonable time and what is a reasonable time limit depends on the facts of that particular case.

10.7 The Hon'ble Delhi High Court in the case of CIT v. NHK Japan Broadcasting Corporation reported in [(2008) 305 ITR 137 (Delhi)] had held that the order passed u/s 201 of the I.T. Act beyond four years was not reasonable and had quashed the same as barred by limitation. Similar view was taken by the Hon'ble Himachal Pradesh High Court in the case of CIT v.

Satluj Jal Vidyut Nigam Ltd. reported in [(2012) 345 ITR 552 (HP)]. As mentioned earlier, the learned DR submitted that the time limit prescribed in sub-section (3) of section 201 does not have application since the payee is a non-resident. The Hon'ble Bombay High Court in the case of Director of Income-tax (International Taxation) v. Mahindra & Mahindra Ltd. (supra) had held even if there is no time limit prescribed under the statute for passing an order u/s 201(1) / 201(1A) of the I.T. Act, a reasonable time limit should be read into the provision. The Hon'ble Bombay High Court had confirmed the Special Bench order of the Tribunal, wherein the time limit prescribed for initiating and completion of reassessment u/s 147 of the I.T. Act was upheld to be correct. The Hon'ble High Court was considering the following substantial question of law:-

“(1) Whether the Tribunal was justified in prescribing the time limit for initiation and completion of proceedings under sub-sections (1) and (1A) of Section 201 of the Income-tax Act, 1961 in the absence of any time-limit provided under the said Act? (2) Whether the Tribunal was justified in prescribing the time limit statutorily provided for initiation and completion of reassessment proceedings under Section 147 of the Income-tax Act, 1961 for the purposes of sub-sections (1) and (1A) of Section 201 of the said Act?”

In deciding the above question, the Hon'ble High Court confirmed the Special Bench order of the Tribunal by following the judgment of the Hon'ble Delhi High Court in the case of CIT v. NHK Japan Broadcasting Corporation (supra). 10.8 In the instant case, the financial year concerned is 2010-11 and notice for initiating proceedings u/s 201(1) / 201(1A) was issued on 19.03.2018. The orders u/s 201(1) / 201(1A) of the I.T. Act was finally passed on 31.03.2018, which is seven years from the end of the financial year. Therefore, it cannot be stated in facts of this case, the order u/s 201(1) / 201(1A) was passed within a reasonable time, going by the dictum laid down by the judicial pronouncement mentioned supra and the prescription of limitation mentioned u/s 201(3) and (4) of the I.T. Act. Similar view was taken by the Co-ordinate Bench, Cochin, vide order dated 10.04.2018 in ITA No.122/Coch/2017 for assessment year 2007-2008 in the case of M/s. U.S. Technology Resources (P) Ltd., wherein the present Accountant Member was the co-author of the said order. In view of the aforesaid reasoning, we hold that the order passed u/s 201(1)/ 201(1A) of the I.T. Act was barred by limitation in the facts and circumstances of the case. It is ordered accordingly

We find that similar facts exist before us in the present case and the above adjudication of Tribunal would squarely apply. Respectfully following the same, the order passed in 7<sup>th</sup> year from end of relevant financial year could not be held to be legally sustainable. We order so. The order is held to be bad in law and accordingly, quashed.

7. The appeal stands allowed in terms of our above order.

Order pronounced on 04<sup>th</sup> January, 2023.

**Sd/-**  
**(MAHAVIR SINGH)**  
**उपअध्यक्ष / VICE PRESIDENT**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखक सदस्य / ACCOUNTANT MEMBER**

चेन्नई / Chennai; दिनांक / Dated : 04-01-2023  
EDN/-

**आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :**

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