आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM "DIVN" BENCH, VISAKHAPATNAM

श्री विजय पाल राव, उपाध्यक्ष एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI VIJAY PAL RAO, HON'BLE VICE PRESIDENT
S &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.9/Viz/2025
(निर्धारण वर्ष / Assessment Year :2012-13)

Nagesh Babu Valiveti, Vijayawada. PAN: ACCPV7063J (अपीलार्थी/ Appellant)	Vs.	Income Tax Officer, Ward-International Taxation, Vijayawada. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Sri C. Subrahmanyam, CA
प्रत्यार्थी की ओर से / Respondent by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	23/04/2025
घोषणा की तारीख/Date of Pronouncement	:	30/04/2025

O R D E R

PER S. BALAKRISHNAN, AM:

This appeal is filed by the assessee against the order of the Ld. Addl/JCIT(A), Thane in DIN & Order No. ITBA/APL/S/250/2024-25/1070848271(1), dated 03/12/2024 ("Ld. CIT(A)") arising out of the order passed U/s 201(1) & 201(1A) of the Act, dated 29/03/2019 for the AY 2012-13.

2. Brief facts of the case are that as per the information available with the Department, the assessee purchased an immovable property vide Document No.6985/2011, dated 24/11/2011 and paid Rs. 25 lakhs to the owner of the property Sri Jandhyala Bala Bhaskara Sastry, a non-resident Indian. The Ld. AO observed that since the assessee paid the amount of Rs. 25 lakhs to a non-resident towards purchase of immovable property, the assessee is under obligation to deduct tax U/s. 195 of the Act. Accordingly, the Ld. AO issued a show cause notice 21/03/2019 and called for reply of the assessee as to why the order U/s. 201(1) & 201(1A) of the Act should not be passed. However, there was no response from the assessee and therefore the Ld. AO treated the assessee as an assessee in default U/s. 201(1) of the Act and passed order U/s. 201(1) of the Act along with the interest U/s. 201(1A) of the Act. The assessee was also issued a recovery notice by the ITO, Ward – Int. Txn, Vijayawada on 27/01/2020. Aggrieved by the order and the recovery notice of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A), Thane.

3. The Ld. CIT(A) dismissed the appeal of the assessee by observing as follows:

> *"5.1. the appellant is on appeal before this office against the recovery notice issued by the ITO, Ward Int Txn, Vijayawada on 27/01/2020. Though the appellant has filed copies of Form 35, Statement of facts and grounds of appeal, he has not filed copy of order passed U/s. 201, as*

well as copy of challan of payment of the appeal fees inspite of numerous opportunities granted to him as discussed in preceding para."

The Ld. CIT(A) also stated that multiple opportunities were provided to submit documents and make submissions in response to the appeal. He therefore, held that the appeal is not maintainable while dismissing the appeal of the assessee by confirming the addition made by the Ld.AO. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us. The assessee has raised the following grounds of appeal:

"1. That, in light of the facts and circumstances of the case, the order passed U/s. 201(1) & 201(1A) of the Act 27/01/2020, which was upheld by the Ld. Addl/JCIT(A), NFAC, in order passed U/s. 250 of the Act on 03/12/2024, is contrary to the facts of the case and provisions of law.

2. The Ld. Addl/JCIT(A), NFAC erred in dismissing the appeal as not maintainable, citing the absence of the order passed U/s. 201(1) & 201(1A) of the Act, along with the challan for appeal fees, as not being enclosed with Form No. 35.

3. The Ld. Addl/JCIT(A), NFAC ought to have taken into account that the assessee relied on a tax practitioner assigned with the responsibility of handling the matter, and there was no deliberate neglect on the part of the assessee in failing to comply with the necessary procedural requirements for pursuing the case.

4. The assessee submits that, under the given facts and circumstances, he was denied a reasonable opportunity for a fair hearing, thus being deprived of natural justice.

5. The Addl/JCIT(A) failed to consider the fact that the NRI seller of the property filed a return of income declaring capital gains and duly paid taxes on the same. As a result, the assessee should not be treated as a defaulter, in light of the proviso to section 201(1) of the Act.

6. For the reasons mentioned above, any other grounds that may be raised during the course of the hearing, the appellant respectfully prays that the order passed by the Ld. Addl/JCIT(A) be set aside in the interest of justice.

4. The assessee has also raised an additional ground challenging the limitation period for the issuance of order U/s. 201(1) & 201(1A) of the Act which reads as under:

> *"The Ld. CIT(A) erred in not appreciating that no time limit was mentioned U/s. 201(1) of the Act for default in deduction of tax at source in respect of payments made to non-residents of India, but the judiciary in several cases held that the reasonable time limit of 4 years from the date of payment is applicable. Therefore, the Ld. CIT(A) erred in confirming the validity of the time barred order passed by the Ld. AO U/s. 201/201(1A) of the Act dated 29/03/2019, pertaining to AY 2011-12."*

5. Before going to the grounds raised on merits, the Ld. AR pleaded that the additional legal ground raised on the limitation period shall be considered. Accordingly, the Ld. AR submitted that the Ld. AO has passed the order U/s. 201(1) & 201(1A) of the Act on 29/03/2019 after a period of eight years from the AY in which the property was purchased by the assessee. The Ld. AR also contended that various High Courts and Tribunals have held that generally four years was treated as a period of time limit for initiating action U/s. 201(1) / 201(1A) of the Act. The Ld. AR submitted that the notice was issued after expiry of four years and hence not a valid notice. The Ld. AR also pointed out that the payment was made to NRI during the November, 2011 and hence the limitation period expires on November, 2015. The Ld. AR relied on the orders of the jurisdictional Coordinate Bench of ITAT in the case of Mr. Adabala Manmohan vs. ITO, Ward- Int. Txn, Visakhapatnam in ITA No. 135/Viz/2021 (AY 2011-12), dated 14/07/2022. Further, the Ld. AR

also submitted that the NRI has filed his income tax returns declaring the capital gains for the AY 2012-13 and the copy of the return filed by the NRI are placed at pages 4 to 8 of the paper book filed before the Tribunal. He therefore pleaded that the initiation of proceedings U/s. 201(1) & 201(1A) of the Act is bad in law and not justifiable.

6. Per contra, the Ld. DR heavily relied on the orders of the Ld. Revenue Authorities and pleaded that the order of the Ld. Revenue Authorities be upheld.

7. We have heard both the sides and perused the material available on record. The case of the Ld. AO is that the assesse has purchased a property from an NRI (Shri Jandhyala Bala Bhaskara Shastry),but has failed to deduct tax at source U/s. 195 of the Act while paying the sale consideration. This fact is not disputed by the Ld. AR. The only grievance of the assessee is that the Ld. AO passed order U/s. 201(1)/201(1A) on 29/03/2019 which is after a lapse of eight years from the end of the relevant assessment year, which is not valid in law as per the judicial pronouncements relied on by the assessee. Even though there is no time limit prescribed U/s. 201 of the Act for treating the assessee as an 'assessee in default' in respect of payment made to non-resident without deduction of tax at source as mandated U/s. 195 of the Act, we find from the decisions relied on by the Ld. AR that a time limit of four years have

been held to be reasonable for the purpose of invoking the provisions of section 201 of the Act for considering the assessee as "assessee in default". The identical issue has come up before this Tribunal in the case of Mr. Adabala Manmohan (supra) and this Tribunal while considering the decisions of Hon'ble Delhi High Court in the case of Bharti Airtel Limited & Anr Vs. Union of India & Anr and the decision of NHK Japan Broadcasting Corporation [305 ITR 0137], the decision of Hon'ble Supreme Court in the case of GE India Technology Centre and the decision of Hon'ble Bombay High Court in the case of Mahindra & Mahindra Ltd. [365 ITR 0560 (Bom)] held that the reasonable time limit for issue of notice u/s 201(1)/201(1A) is 4 years. In cases, where the notice is issued beyond 4 years, the Coordinate Bench of ITAT held that the same is barred by limitation. For the sake of clarity and convenience, we extract relevant part of the order of this Tribunal in para No.6 to 7 which reads as under:

> *"6. We have heard both the parties and perused the materials placed on record. The relevant provisions of section 201(1A) of the Act is reproduced as under: "201(1A) Without prejudice to the provisions of sub- section (1), if any such person, principal officer or company as is referred to in that subsection does not deduct 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 at 2 fifteen] per cent per annum on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid.]"*
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> *7. The Hon'ble Delhi High Court while deciding the writ petition in the case of Bharti Airtel& Another rendered the judgement considering the statement of Objects and Reasons of the Finance (No.2) Bill, 2009. In respect of time limit, Hon'ble Bombay High Court has considered the issue*

in detail and held that 6 years is reasonable period for initiating the action u/s 201 and 201(1A). The Hon'ble Delhi High Court in the decision relied upon by the Assessee considered the issue with regard to the limitation of time for initiating the proceedings u/s 201/201(1A) and held that 4 years is the reasonable time for initiating proceedings u/s 201/201(1A). While holding so, the Hon'ble High Court has relied on the decision of CIT Vs. NHK Japan Broadcasting Limited [305 ITR 137] and the CIT Vs. Hutchison Essar Telecom. Limited [323 ITR 330], Further, Hon'ble Delhi High Court has considered amendment made to Section 201 of the Act vide Finance Bill, 2009 and viewed that the Parliament did not make any amendment to the time limits for the non residents which indicates that the Parliament has accepted the judicial pronouncements for the limitation period already set out by the courts. The Hon'ble Delhi High Court also considered the decision of Hon'ble Supreme Court in the case of GE India Technology Centre Vs. CIT (2010) (10) SCC 29, wherein, the Hon'ble Supreme Court held that the proceedings should be initiated u/s 201/201(1A) within reasonable period and it cannot extend without limitation. After considering the decision of the Hon'ble Supreme court in GE India Technology and the Vodafone Essar Mobiles Ltd. the Hon'ble Delhi High Court followed its own decision in the case of CIT Vs. NHK Japan Broadcasting Limited (supra) and held that 4 years is the reasonable period for initiating the proceedings u/s 201/201(1A) of IT Act. The Ld. DR relied on the decision of Hon'ble Bombay High Court in the case of Mahindra & Mahindra Ltd. Considering the Hon'ble Supreme court decision in CIT Vs.Vegetable Products Ltd., 88 ITR 192 (SC) and CIT Vs. Karamchand Premchand Ltd (1960) 40 ITR 106, we are also of the view that the decision favourable to the assessee is required to be taken. Accordingly following the decision of Hon'ble Delhi High Court we hold that reasonable period is 4 years for initiating of proceedings u/s 201/201(1A). In the instant case the property was registered on 18.7.2007 and the assessee is liable to deduct the TDS during the F.Y.2007-08 and the 4 years time limit for initiating action u/s 201/201A expires before March 2012. In the instant case, notice u/s 195 treating the assessee as assessee in default was issued on 11.08.2013 beyond the 4 years of the financial year in which the assessee required to deduct tax at source. As held by Hon'ble Delhi High Court, the time limit for initiating the proceedings u/s 201 and 201(1A) is 4 years and it is barred by limitation. Therefore, following the decision of Hon'ble Delhi High Court, we are unable to sustain the orders of the lower authorities. Accordingly, the order passed u/s 201 / 201(1A) is set aside and the appeal of the assessee is allowed."

8. Similarly, the Hon'ble AP High Court in the case of M/ s U.B. Electronic Instruments Limited cited supra held that the 4 years is reasonable time. For ready reference, we extract relevant part of the order of the AP High Court which reads as under :

"By and large, four years is treated as the period within which any penal action cat-be initiated against an assessee. Failure to initiate steps within that period would disable the department to proceed against the assessee. The reason is not difficult to be discerned. With each passing year, the assessee is required to adjust his or her own affairs in such a way that the activity undertaken by it goes on smoothly. Incase, liability for the preceding one or two years is fastened, there can be scope for making adjustment thereof in the activities of the subsequent years. However, if fairly long gap intervenes, it becomes difficult for making such adjustments, particularly when the activity is commercial in nature. In the instant case, the assessment years are 1989-90, 1990-91 and 1991-92. It was nearly seven years thereafter that a notice was issued. For an assessee to be required to pay the amount, even if due five or six years preceding the demand, would be a serious problem. Several developments take place over the period, and the nature of relations undergoes change."

9. Respectfully following the judicial precedents as discussed in the earlier paras, we are of the considered view that treating the assessee as an assessee in default U/s. 201 of the Act is not valid in law. Further, on merits also it is noticed that in the instant case, Shri Jandhyala Bala Bhaskara Shastry has filed his return of income U/s. 139(1) of the Act for the AY 2012-13 admitting a total taxable income comprising of capital gain for Rs. 23,61,440/-, and has paid the tax accordingly. Since the non-resident has discharged his obligation with respect to payment of tax on capital gains, the assessee cannot be taxed once again for non-deduction of TDS U/s. 195 of the Act.

10. We therefore are inclined to quash the order of the Ld. CIT(A) both on the legal ground and the grounds raised on merits by the assessee.

11. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on 30th April, 2025.

Sd/-	Sd/-
(विजय पाल राव)	(एस बालाकृष्णन)
(VIJAY PAL RAO)	(S.BALAKRISHNAN)
उपाध्यक्ष/VICE PRESIDENT	लेखा सदस्य/ACCOUNTANT MEMBER

Dated :30/04/2025

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Nagesh Babu Valiveti, 27-34-49, Opp. Super Bazar Canteen, MG Road, Vijayawada-520002, Andhra Pradesh-520002.
2. राजस्व/The Revenue – Income Tax Officer, Ward-International Taxation, Vijayawada, Andhra Pradesh – 520002.
3. The Pr. Commissioner of Income Tax
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
5. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam