

IN THE INCOME TAX APPELLATE TRIBUNAL
“H” Bench, Mumbai
Before S/Shri B.R. Baskaran (AM) & C.N. Prasad (JM)

I.T.A. No. 1810/Mum/2014
(Assessment Year 2001-02)

Hathway Cable and Datacome Limited Raheja, 4 th Floor Corners of Main Avenue & V.P Road Santacruz West Mumbai-400 054. (Appellant)	Vs.	The Tax Recovery Officer (TDS)-1 Smt. K.G. Mittal Ayurvedic Hospital Building, Charni Road Mumbai-400 002. (Respondent)
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PAN No.AAACC6814B

Assessee by	Shri P.J. Pardiwalla & Shri Nitesh Joshi
Department by	Shri Ranadhir Gupta
Date of Hearing	1.6.2016
Date of Pronouncement	1.6.2016

O R D E R

Per B.R. Baskaran, AM :-

The appeal filed by the assessee is directed against the order dated 20.12.2013 passed by learned CIT(A)-14, Mumbai.

2. Grounds of appeal relate to the demand raised u/s. 201(1) and interest charged u/s. 201(1A) of the Act.
3. The assessee has also raised a ground urging that the order passed by the Assessing Officer is barred by limitation.
4. The facts relating to the relating to 'limitation' are discussed in brief. The revenue carried out a Survey operation u/s. 133A of the Act in a group concern of the assessee on 17.09.2003. The assessee was also operating from the very same premises and hence details pertaining to the assessee were also gathered. During the course of survey proceedings, the financial statements of

the assessee were also examined and it was noticed that the assessee has not deducted tax at source on the expenditure incurred as "Pay Channel Cost". The AO took the view that the assessee should have deducted tax at source u/s 194C of the Act

Accordingly, a show cause notice was issued to the assessee on 23.9.2003 and the same was served upon the assessee on 24.09.2003. Finally the AO (here 'TRO(TDS)') passed order on 28.3.2011 raising demand u/s 201(1) and charging interest u/s 201(1A) of the Act. The Ld CIT(A) also confirmed the order of the AO on majority of the issues, but gave partial relief with regard to the period for computing interest u/s 201(1A) of the Act.

5. In the appeal filed before us challenging the order passed by Ld CIT(A), the assessee has urged a legal issue before us, i.e., the contention of the assessee is that the order passed by the AO is barred by limitation. Since this is a legal issue and the facts relating thereto are already available on record, we admit the same. We have noticed in the preceding paragraph that the assessing officer has passed the impugned order on 28.3.2011 in pursuance of notice issued on 23.9.2003, i.e., he has passed the order after expiry of eight years from the date of issuing of notice. It is pertinent to note that the Income tax Act does not prescribe any time limit for initiation of proceedings u/s 201(1) and also for passing order after initiation of proceedings.

6. The Ld A.R relied on the decision rendered by the jurisdictional Hon'ble Bombay High Court rendered in the case of DIT Vs. Mahindra and Mahindra Ltd (2014)(365 ITR 560). The above said decision has been rendered by the Hon'ble High Court on the appeal filed by the revenue challenging the decision rendered by the Special bench.

The Special bench of Tribunal had rendered its decision on the issue of limitation period as under:-

- (a) *The proceedings u/s 201(1) can be initiated in the extended period of six years from the end of the relevant assessment year if the income by virtue of sum paid without deduction of tax at source by*

the payer chargeable to tax in the hands of the payee is equal to or more than one lakh rupees. If on the other hand such amount is less than Rs.1 lakh, then the lower period of four years as prescribed u/s 149(1)(a) from the end of the relevant assessment year available for initiation of proceedings u/s 201(1).

(b) The completion of proceedings u/s 201(1), that is the passing of the order under this sub-section, has to be within one year from the end of the financial year in which proceedings u/s 201(1) were initiated. The same time limits for initiation and passing of orders will be valid for the passing of order under section 201(1A) also.

7. The assessee challenged the first part of the decision (para (a)) and the Revenue challenged the second part of the decision (para(b)) supra. The Hon'ble High Court disposed of the appeal filed by the revenue by upholding the view taken by the Tribunal in para (b) supra with regard to the time limit for completion of the proceedings. It was stated that the appeal filed by the assessee is still pending before the Hon'ble High Court of Bombay.

8. Thus, we notice that the Hon'ble Bombay High Court has held that the proceedings initiated u/s 201(1)/201(1A) should be completed within one year from the end of the financial year in which proceedings u/s 201(1)/201(1A) were initiated. Admittedly, in the instant case, the assessing officer has passed the orders after expiry of eight years from the date of issuing of notice. Accordingly, the order passed by the AO is barred by limitation. Accordingly we set aside the order passed by Ld CIT(A), since the order passed by the AO is barred by limitation. Accordingly the same stands quashed.

9. In the result, the appeal of the assessee is treated as allowed.

Order has been pronounced in the Open Court on 1.6.2016.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 1/6/2016

Copy of the Order forwarded to :

1. The Appellant

2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai