

(2009) 12 SHI CK 0039
High Court of Himachal Pradesh
Case No: None

Commissioner of Income Tax

APPELLANT

Vs

Satluj Jal Vidyut Nigam Ltd.

RESPONDENT

Date of Decision: Dec. 9, 2009

Acts Referred:

- Income Tax Act, 1961 - Section 147, 148, 153, 201, 201(1A)

Hon'ble Judges: V.K. Ahuja, J; Deepak Gupta, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Deepak Gupta, J.

Both these appeals are being disposed of by this common judgment since the following identical question of law is involved in both the appeals:

i) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in holding that the order u/s 201 & 201(1A) passed by the A.O. beyond four years was barred by time limitation when there is no such provisions of time limitation for passing order u/s 201 & 201(1A) in the Income Tax Act, 1961?

2. Briefly stated the facts of the case are that the assessee is engaged in running hydroelectric power project in the State of Himachal Pradesh. Certain lands were required by the State of Himachal Pradesh on behalf of the assessee for setting up of a power project. In proceedings under the Land Acquisition Act, interest was payable to the land owners. According to the revenue, as per law the assessee was bound to deduct tax at source before making payment of interest to the said land owners. It is not disputed that the assessee deposited the amount payable to the land owners alongwith interest in appeals filed in the High Court of Himachal Pradesh in the financial year 1992-93 and some amounts were also deposited in the financial year 2002-2003. It is not disputed that the interest with regard to the amount deposited in the financial year 2002-03 was deducted at source. The present

appeals relate to the financial years 1991-92, 1992-93 corresponding to the assessment year 1992-93 and 1993-94 respectively. The notices u/s 201 and 201(1A) of the Income Tax Act, 1961 were issued to the assessee on 22.7.2003. The learned Tribunal held that the said notices were not within limitation since they have been issued beyond the period of four years and hence the claim of the revenue is time barred.

3. It is contended on behalf of the revenue that no limitation is prescribed under the Income Tax Act for taking action u/s 201 and 201(1A) and hence the order of the Tribunal holding that notices were time barred is illegal and liable to be set aside.

4. Mrs. Vandana Kuthiala, Advocate appearing on behalf of the revenue has placed reliance on the judgment of a Division Bench of the Kerala High Court in [Secretary, Sultan Battery Co-operative Housing Society Ltd. Vs. Commissioner of Income Tax](#), In that case the assessee had made payments to a contractor during the period April 1, 1986 to March 31, 1990 without deducting income tax at source in terms of Section 194C of the Act. The assessee deposited the tax in 1990 after substantial delay. The Assessing Officer demanded interest u/s 201(1A). It was contended on behalf of the assessee that the demand was barred by limitation. The Kerala High Court held as follows:

We feel there is no limitation u/s 231 so far as the demand of interest vide proceedings dated August 16, 1991, is concerned.

5. On the basis of the aforesaid judgment, it is contended by Mrs. Kuthiala that since the assessee till date has not deposited the tax which it was bound to deduct in terms of the Act applying the law laid down in this judgment, the claim of the revenue is within limitation.

6. Sh. M.M. Khanna, learned senior counsel appearing on behalf of the assessee has drawn our attention to a judgment of the Apex Court in State of Punjab and Ors. v. Bhatinda District cooperative Milk Producers Union Ltd. 2007 (11) SCC 363. That case arose out of proceedings under the Sales Tax Act. The Act provides for a revision. No limitation is prescribed for exercise of the revisional powers. The Apex Court held that even if no statutory period of limitation is provided, the authority vested with such powers must exercise the same within a reasonable period. The Apex Court held that revisional jurisdiction should normally be exercised within three years and in no case beyond five years. The Apex Court held as follows:

17. A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefor, the same would not mean that the suo motu power can be exercised at any time.

18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and

liabilities thereunder and other relevant factors.

19. Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in Sub-section (6) of Section 11 of the Act is five years.

7. A Division Bench of the Delhi High Court in [Commissioner of Income Tax Vs. NHK Japan Broadcasting Corporation](#), taking note of the judgment of the Apex Court in State of Punjab and Ors. v. Bhatinda District cooperative Milk Producers Union Ltd supra held that though no period of limitation is prescribed for exercising power u/s 201(1) and 201(1A) of the Income Tax Act, 1961 still if such power is not exercised within a reasonable period, the same would become time-barred.

8. In the case before the Delhi High Court, the assessee was a foreign company which carried on business in India. It had paid salary to its employees who were posted in India in two ways. Part of the salary was paid in India and part of the salary which was termed as "global salary" was paid in the home country of the employees. The assessee deducted tax at source in respect of the salary paid in India but did not deduct tax at source in respect of the salary paid in the home country of the employees. It was found that this was not proper and in fact, the assessee was bound to deduct tax even on the salary paid in the native country of the employees. The assessee in fact did not dispute its liability in this regard. The question which arose before the Delhi High Court was whether any period of limitation is applicable to proceedings u/s 201 and 201(1A) of the Act? The Delhi High Court noted that u/s 191 of the Act, the primary liability to pay tax is on the person whose income it is that is the deductee. A duty is cast upon the person who makes the payment to deduct tax at source but it does not wash away the liability of the person whose liability it is to pay the same. It is still the liability of the earner of the income or the deductee to pay the tax. The liability of the deductor in that sense is vicarious. The Delhi High Court after referring to a number of judgments including the judgment Bhatinda District cooperative Milk Producers Union Ltd referred to above came to the conclusion that a period of four years is a reasonable period in which power u/s 201 of the Act should be exercised. The Court held thus:

In so far as the Income Tax Act is concerned, our attention has been drawn to Section 153(1)(a) thereof which prescribes the time limit for completing the assessment, which is two years from the end of the assessment year in which the income was first assessable. It is well known that the assessment year follows the previous year and, therefore, the time limit would be three years from the end of the financial years. This seems to be a reasonable period as accepted u/s 153 of the Act, though for completion of assessment proceedings. The provisions of

reassessment are under Sections 147 and 148 of the Act and they are on a completely different footing and, therefore, do not merit consideration for the purpose of this case.

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 the 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. Milk Producers Union Ltd. [2007] 9 RC 637 : 11 SCC 363 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.

9. 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. Consequently, the question is answered in favour of the assessee and against the revenue.

10. Both the appeals are accordingly dismissed. No order as to costs.