



% 23.04.2008

Present: Mr. R.D. Jolly, Adv. for the Petitioner.
Mr. M.S. Syali, Sr. Advocate with Ms. Mahua C. Kalra,
Adv. for the Respondent.

+ ITA Nos.179/2007, 181/2007, 184/2007, 188/2007 and 190/2007

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The issues involved in these cases are identical to the issue involved in ITA No.603/2007 (Commissioner of Income Tax v. NHK Japan Broadcasting Corporation), which we have decided today.

Because a large number of cases were pending, we called for the file of all these cases so that we could pass one composite order. The files of these cases are available in Court and with the consent of learned counsel for the parties, these cases are disposed of in terms of the order passed by us today in ITA No. 603/2007.


MADAN B. LOKUR, J


MANMOHAN SINGH, J

APRIL 23, 2008
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* HIGH COURT OF DELHI : NEW DELHI

+ ITA No. 603 of 2007

% Decided on: April 23, 2008

Commissioner of Income Tax
Delhi-XVII
Mayur Bhawan
Connaught Circus
New Delhi

...Appellant

Through Mr. R.D. Jolly, Adv.

Versus

NHK Japan Broadcasting Corporation
6th Floor, Meridien Commercial Complex
8, Windsor Place
New Delhi

...Respondent

Through Mr. M.S. Syali, Sr. Advocate
with Ms. Mahua C. Kalra, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |



MADAN B. LOKUR, J. (ORAL)

The Revenue is aggrieved by an order dated 10th March, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'A' in ITA No. 3032/Del/2001 in respect of the financial year 1990-91.

2. After hearing learned counsel for the parties, we admit this appeal and frame the following substantial question of law for consideration: -

Whether the Income Tax Appellate Tribunal was correct in law in holding that the orders passed under Sections 201 (1) and 201 (1A) of the Income Tax Act, 1961 are invalid and barred by time having been passed beyond a reasonable period?

3. Filing of paper books is dispensed with.

4. Since the question arising in this appeal has arisen in a large number of other appeals, we have heard the matter in full and proceed to deliver judgment rather than merely admitting the matter for taking it up in due course.

5. The Assessee is a Government company of a foreign country and is carrying on business in India. In respect of its employees in India it pays salary in Indian rupees and also pays something called "global salary" to the employees in the home country. In respect of the salary



paid to the employees in India, the Assessee deducted tax at source with respect to the global salary, the Assessee did not deduct tax at source. On 19th November, 1998, a survey was conducted by the Revenue in the premises of the Assessee and these facts came to light for the first time.

6. The Assessee did not dispute its liability to deduct tax at source in respect of the global salary and there is no dispute about the fact that the tax due thereon was paid by the Assessee and interest was also paid.

7. Sometime in December, 1999, the Assessee was asked to explain why it should not be treated as an assessee in default and after it had filed its response, the Assessing Officer passed an order treating it as being in default for the purposes of Section 201 of the Income Tax Act, 1961 (for short the Act). The view taken by the Assessing Officer was accepted by the Commissioner of Income Tax (Appeals) [CIT(A)] but was reversed by the Tribunal.

8. The consequence of the Assessee being treated as an assessee in default is that it is liable to pay interest on the tax that it should have deducted at source and the Assessee may also be liable to penalty. As



mentioned above, the question whether interest has been paid or does not survive because the admitted position is that the Assessee has paid the interest. The apprehension of the Assessee is only with regard to penalty that may be imposed under Section 271C of the Act as also under Section 221 of the Act.

9. The Tribunal come to the conclusion, with which we agree, that the initiation of proceedings against the Assessee in treating it as in default, were not initiated within a reasonable period of time by the Revenue and that there must be some time limit within which the Revenue may initiate proceedings of this nature.

10. There is no dispute that Section 201 of the Act does not prescribe any limitation period for the Assessee being declared as an assessee in default.

11. Learned counsel for the Revenue relied upon *Bharat Steel Tubes Ltd. & Anr. V. State of Haryana & Anr.*, [1988] 70 STC 122 to contend that no period of limitation can be prescribed in a situation such as the present for initiating proceedings.

12. Learned counsel for the Assessee relied upon the *State of Punjab v. Bhatinda District Coop. MIL P. Union Ltd.*, (2007) 11 SCC 363 to



contend that if no period of limitation is prescribed, a statutory authority must exercise its jurisdiction within a reasonable period. What should be the reasonable period depends upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

13. Relying upon this decision, it is submitted by learned counsel for the Assessee that since Section 201 of the Act does not prescribe any period of limitation for initiating or for completing proceedings in declaring the Assessee as an assessee in default, exercise of jurisdiction should commence in so far as the statutory authority is concerned within a reasonable period of time.

14. We are unable to agree with learned counsel for the Revenue in as much as the decision relied upon by him deals with reasonable time for completing the assessment or for completing the task on hand.

15. In *Bharat Steel Tubes Ltd.* the question that arose before the Court (and which has been stated on page 130 of the Report) is whether an order of assessment under Section 11 (3) of the Punjab General Sales Tax Act, 1948 or Section 28 (3) of the Haryana General Sales Tax Act, 1973 could now be completed or it would be barred by limitation. In that case, the assessment proceedings had been unduly



delayed and the Supreme Court came to the conclusion that completing the assessment proceedings there is no period of limitation prescribed and that would depend upon the facts of each case. Considering the facts of the case, the Supreme Court gave a direction to the assessing authority to complete all the pending assessments within a period of four months from the date of delivery of the judgment.

16. In so far as *Bhatinda District Coop. MIL P. Union Ltd.* is concerned, the question that arose before the Supreme Court was regarding initiation of proceedings by exercise of jurisdiction by the statutory authority. The Supreme Court held that exercise of jurisdiction must be within a reasonable period of time and considering the provisions of the Punjab General Sales Tax Act, 1948, it was held that a reasonable period of time for initiating proceedings would be five years.

17. There is a qualitative difference between *Bharat Steel Tubes Ltd.* and *Bhatinda District Coop. MIL P. Union Ltd.* In the former case, the question pertained to completion of proceedings, while in the latter case it pertained to initiation of proceedings. We are concerned with



initiation of proceedings.

18. 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 year. This seems to be a reasonable period as accepted under Section 153 of the Act, though for completion of assessment proceedings. The provisions of re-assessment 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 purposes of this case.

19. 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.



20. The rationale for this seems to be quite clear - if there is a ¹¹ 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.

21. 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 Coop. 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.

22. Learned counsel for the Revenue submitted that the Department came to know that the Assessee was an assessee in default only in November, 1998 when a survey was conducted and it came to be known only then that when the Assessee had not deducted tax at source on the global salary. We are of the opinion that the date of knowledge is not relevant for the purposes of exercising jurisdiction in so far as the provisions of the Income Tax Act are concerned. If it were so, the limitation period, as for example prescribed under Section



147/148 of the Act would become meaningless if the concept knowledge is imported into the scheme of the Act.

23. The second part of the argument of learned counsel for the Revenue in this regard was that the question of limitation did not at all arise because the Assessee had itself admitted its liability and it voluntarily paid the tax and interest on that amount. Again, we are not in agreement with learned counsel for the Revenue in this regard.

24. It appears that the Assessee paid the tax voluntarily as well as interest thereon but the acceptance of the liability by the Assessee would not by itself extend the period of limitation nor would it extend the reasonable time that is postulated by the scheme of the Income Tax Act. The Assessee cannot be put, in a sense, in a worse position merely because it has admitted its liability. If the Assessee had denied its liability, the question that would have arisen would be whether the Revenue could have initiated proceedings after a lapse of four years. The answer to that would of course have to be in the negative in view of the reasons that we have already indicated above. The fact that the Assessee agreed to pay the tax voluntarily cannot put the Assessee in a situation worse than if it had contested its liability.



25. We may also note that under Section 191 of the Act, the primary liability to pay tax is on the person whose income it is that is the deductee. Of course, a duty is cast upon the deductor, that is the person who is making the payment to the deductee, to deduct tax at source but if he fails to do so, it does not wash away the liability of the deductee. It is still the liability of the deductee to pay the tax. In that sense, the liability of the deductor is a vicarious liability and, therefore, he cannot be put in a situation which would prejudice him to such an extent that the liability would remain hanging on his head for all times to come in the event the Income Tax Department decides not to take any action to recover the tax either by passing an order under Section 201 of the Act or through making an assessment of the income of the deductee.

26. For the reasons given by us, we are not inclined to disturb the order passed by the Tribunal and, therefore, we answer the question in the affirmative, in favour of the Assessee and against the Revenue and hold that the initiation of proceedings under Section 201 of the Act against the Assessee in respect of the assessment year 1990-91 was barred by limitation having been initiated beyond a reasonable period



of time of four years.

27. The appeal is disposed of accordingly.

Madan Lokur
MADAN B. LOKUR, J

APRIL 23, 2008
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Manmohan Singh
MANMOHAN SINGH, J