



\$~45

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 11th February, 2015

+ ITA 85/2015
COMMISSIONER OF INCOME TAX-TDS..... Appellant
Through: Mr.Rohit Madan, Adv.

versus

MORADABAD TOLL ROAD COMPANY Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

%

1. The Revenue is aggrieved by the order of the Income Tax Appellate Tribunal (ITAT) dated 25.11.2011, inasmuch as the ITAT affirmed an order of the CIT (Appeals) to the effect that the treatment of the assessee's company as one in default for the purpose of proceeding under Section 201 of the Income Tax Act(hereinafter referred to as "the Act"), is barred by time.

2. The relevant facts are that the assessee company was sought to be treated as assessee in default for the Assessment Year (AY) 2002-03 and Financial Year (FY) 2003-04. The Assessing Officer (AO) sought to add back certain amounts and consequently demanded the relative sums of money. The assessee's position was that treating the assessee company as one in default irrespective of the past assessment years, by Order dated 4th



March, 2009 and the action under Section 201 is belated since its returns were filed much earlier. This contention was accepted by the CIT (Appeals), who followed the Division Bench ruling of this Court in *Commissioner of Income Tax vs. NHK Japan Broadcasting Corporation* (2008) 305 ITR 137 (Del) and *CIT vs. Hutchison Essar Telecom Ltd.* (2010) 323 ITR 230 (Delhi) and concluded the issue. In *NHK Japan* (supra) the Court had said that even though no specific period of limitation was prescribed for an action under Section 201 of the Act, the income tax authorities have to initiate proceedings within reasonable time and it was determined to be four years.

3. Learned counsel for the Revenue urges that the subsequent developments after *NHK Japan* (supra) have modified its ratio. He relies upon the amendment by which Section 201(3) was substituted with effect from 01.04.2010, whereby the period of limitation indicated was six years; and subsequently, by another substitution, w.e.f. 01.10.2014, by Finance Act No.2 of 2014, whereby the period of limitation was extended to seven years. As a result, the provision which exists as on date is as follows:

“201 (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 seven years from the end of the financial year in which payment is made or credit is given”

4. We have considered the arguments of the Revenue and are of the opinion that the previous judgment of this Court in *Commissioner of Income*



Tax (TDS)-I vs. C.J.International Hotels Pvt. Ltd. in ITA No.57/2015, decided on 09.02.2015, has discussed elaborately two reasons for the Court to reject the submissions;

(i) Section 201 itself was amended by introduction of Section 201(1A) of the Act; significantly that amendment was given retrospective effect from 01.04.1966;

(ii) The Parliament consciously did not amend Section 201 by inserting sub-section (3) with retrospective effect.

This amounts to an acceptance by the legislature of this Court's ruling, which was decided in an Appeal by Special Leave of Supreme Court. Although the Supreme Court left the issue open, we are of the opinion – that above the two reasons – and subsequent developments indicated by us render the decision in *NHK Japan* (supra) still a good law for the period prior to 01.04.2010.

5. For the above reason, no substantial question of law arises and consequently the appeal is dismissed.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

FEBRUARY 11, 2015

mr