* **THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**

AND

THE HON'BLE SRI JUSTICE N.TUKARAMJI

+ W.P.No.1513 of 2019

% 21.06.2023

 # Between:

Dr. Reddys Laboratories Limited,
Hyderabad.

…Petitioner

v.

The Deputy Commissioner of Income Tax I,
International Taxation, Aayakar Bhavan,
Basheerbagh, Hyderabad & another.

…Respondents

! Counsel for Petitioner : Mr. Deepak Chopra
Mr. Pratishtha Singh

^ Counsel for respondent No.1: Ms. K.Mamata Choudary,
Sr. Standing Counsel,
Income Tax Dept.,

Counsel for respondent No.2: Mr. Gadi Praveen Kumar,
Dy. Solicitor General of India

<GIST:

> HEAD NOTE:

? Cases referred

[2009] 30 SOT 374 (Mumbai)(SB)
[2014] 48 taxmann.com 150 (Bombay)
[2016] 76 taxmann.com 256 (Delhi)
371 ITR 314 (Andhra Pradesh)
[2012] 340 ITR 219 (Punjab & Haryana)
[2014] 365 ITR 548 (Calcutta)
AIR 1998 SC 688
305 ITR 137 (Delhi)
323 ITR 230 (Delhi)
385 ITR 436 (Delhi)

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N.TUKARAMJI

W.P.No.1513 of 2019

ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. Deepak Chopra and Mr. Pratishtha Singh, learned counsel for the petitioner and Ms. K.Mamata Choudary, learned Senior Standing Counsel, Income Tax Department for respondent No.1. We have also heard Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India for respondent No.2.

2. By filing this petition under Article 226 of the Constitution of India, petitioner has assailed legality and validity of the order dated 14.12.2018 passed by respondent No.1 under Sections 201(1) and 201(1A) read with Section 195 of the Income Tax Act, 1961 (briefly 'the Act' hereinafter).

3. Petitioner before us is a pharmaceutical company incorporated in the year 1984 and is engaged in the business of manufacture and sale of pharmaceutical products. It is also engaged in research and development of drug products.

Activities of the petitioner are undertaken through three core businesses *viz.*, pharmaceutical services and active ingredients, global generics and proprietary products.

4. It is stated that petitioner had entered into a Trademark Assignment Agreement (TAA) with two foreign companies *viz.*, USB Farchim SA, Switzerland (for short 'USB Switzerland') and USB Biopharma SPRL, Belgium (for short 'USB Belgium') for purchase of certain trademarks for identical territories including India. It is stated that petitioner had paid an amount of Rs.115,04,00,000.00 to USB Switzerland and an amount of Rs.244,16,00,000.00 to USB Belgium during the financial year 2015-2016 relevant to the assessment year 2016-2017 for purchase of the said trademarks.

4.1. A survey operation under Section 133A of the Act was carried out in the corporate office premises of the petitioner at Hyderabad on 30.12.2015 to verify Tax Deducted at Source (TDS) liability of the petitioner with respect to payments made by it to USB Switzerland and USB Belgium. During the survey

operation, it was found that petitioner had not deducted TDS on the remittances made by it during the financial year 2015-2016 to the two foreign companies. Pursuant to the survey, petitioner made its submission and also filed the trademark agreements with respondent No.1 on 04.01.2016 and 07.01.2016.

4.2. On 20.01.2016, respondent No.1 initiated proceedings under Section 201(1)/(1A) of the Act by issuing a notice to the petitioner to show cause as to why it should not be construed to be an assessee in default for failure to deduct TDS on payments made by it to the two foreign companies. It is submitted that in response to the show cause notice, petitioner had submitted reply on 11.02.2016 and also made certain other explanations. Petitioner contended that payments made to the two foreign companies were not taxable in India. Therefore, there was no question of deducting any TDS thereon. In such circumstances, petitioner cannot be treated to be an assessee in default. Therefore, provisions of Section 195 of the Act were not attracted.

5. According to the petitioner, it was only on 03.10.2018, it became aware that the two foreign companies had filed applications before the Authority for Advance Ruling (briefly 'AAR' hereinafter) seeking a ruling on the tax liability of the payments made to them on account of transfer of the trademarks. Petitioner brought this fact to the notice of respondent No.1 *vide* letter dated 08.10.2018 and requested respondent No.1 to keep in abeyance the proceedings initiated against it under Section 201 of the Act. Petitioner had also raised an objection as to limitation *i.e.,* initiation of proceedings was barred by limitation and that the reasonable period for passing an order under Section 201 of the Act had lapsed.

6. After hearing the matter, respondent No.1 passed the impugned order dated 14.12.2018 declaring that since petitioner did not deduct TDS as required under Section 195 of the Act on the taxable payments made to the two foreign companies during the financial year 2015-2016, it is deemed to be an assessee in default under Section 201(1) of the Act. Adverting to

Section 201(1A)(i) of the Act, respondent No.1 held that as no tax was deducted at source by the petitioner, interest would have to be levied @ 1% for the period for which the tax deduction was not made. Accordingly, the total tax payable by the petitioner after adding the interest was quantified at Rs.55,55,18,964.00.

7. It is stated that consequent upon passing of the impugned order, Additional Commissioner of Income Tax (International Taxation), Hyderabad initiated penalty proceedings under Section 271C of the Act *vide* show cause notice dated 21.12.2018.

8. It is in the above circumstances that the writ petition came to be filed seeking the relief as indicated above.

8.1. This Court *vide* order dated 15.02.2019 noted that two important issues arise for consideration in the writ proceedings; firstly, whether the period of limitation stipulated in Section 201(3) of the Act would apply to the petitioner especially when the same uses the expression 'a person resident in India'; and secondly, the impact of double taxation avoidance

agreement. In the meanwhile, respondent No.1 was directed not to take any coercive action against the petitioner.

9. It was thereafter that respondent No.1 has filed counter-affidavit as well as an interlocutory application being I.A.No.3 of 2019 for vacating the interim order dated 15.02.2019.

10. In his vacate petition -cum- counter-affidavit, respondent No.1 has at the outset questioned the maintainability of the writ petition. It is submitted that against the impugned order, appeal lies before the Commissioner of Income Tax (Appeals) (briefly 'CIT(A)' hereinafter) under Section 246A(1)(ha) of the Act. If the petitioner continues to remain aggrieved by any decision of CIT(A), it may prefer further appeal before the Income Tax Appellate Tribunal (briefly 'the Tribunal' hereinafter) under Section 253 of the Act and even thereafter if the petitioner continues to remain aggrieved, an appeal would lie on a substantial question of law before the jurisdictional High Court under Section 260A of the Act. Therefore, on the point of

alternative remedy, respondent No.1 seeks dismissal of the writ petition.

10.1. As regards the issue of limitation raised by the petitioner, it is stated that initially no time limit was prescribed by the statute for concluding the proceedings under Section 201 of the Act. Sub-section (3) to Section 201 of the Act was inserted by Finance (No.2) Act, 2009 *w.e.f.,* 01.04.2010 providing the time limit in case of payment to persons resident in India, which was four years. It is stated that the notes on clauses attached to the Finance (No.2) Bill, 2009 also clearly reflects the legislative intent that no time limit is sought to be prescribed where the recipient is a non-resident as it may not be administratively possible to recover the tax from a non-resident.

10.2. *Vide* the Finance Act, 2012, the period of four years in respect of resident Indians was replaced by six years.

10.3. *Vide* the Finance (No.2) Act, 2014, Section 201(3) of the Act was further amended *w.e.f.,* 01.10.2014 and as per the

amended provision, time limit of seven years has been prescribed for passing an order under Section 201(1) in the case of resident Indians.

10.4. However, no time limit was fixed for passing an order under Section 201(1) of the Act in the case of non-residents. Thus, legislature has deemed it prudent not to fix any time limit for passing of an order under Section 201(1) of the Act in case of non-residents.

10.5. Insofar the present case is concerned, the survey operation was carried out on 30.12.2015 and show cause notice was issued on 20.01.2016. Ultimately, order under Section 201(1) of the Act came to be passed on 14.12.2018 *i.e.,* within three years. Therefore, in such circumstances, it cannot be said that the order passed under Section 201(1) of the Act was passed belatedly or was beyond limitation.

10.6. Thereafter, respondent No.1 has also pleaded on the merits of the case in respect of which we are of the view that the same may not be gone into at this stage.

11. In the hearing held on 13.12.2022, this Court had referred to its earlier order passed on 15.02.2019 and also the fact that respondent No.1 had filed interlocutory application for vacating the stay order. However, this Court took the view that instead of hearing the interlocutory application, it would be more appropriate to hear the writ petition itself. It was thereafter that the writ petition was heard.

12. Mr. Deepak Chopra, learned counsel for the petitioner at the outset submitted that objection of respondent No.1 regarding maintainability of the writ petition on the ground of non-availing of alternative remedy provided under the statute is wholly untenable. He submits that petitioner has raised a fundamental question as to whether the impugned order is barred by limitation. Question of limitation goes to the root of the matter. It relates to jurisdiction. Therefore, even if the statute provides

for alternative remedy, that would be no ground to non-suit the petitioner for assailing the impugned order on such jurisdictional ground.

12.1. Adverting to the impugned order, learned counsel has drawn the attention of this Court to the provisions of Sections 4(2), 195 and 201 of the Act. He submits that though the legislature has not provided any limitation for passing of an order under Section 201(1) of the Act insofar non-resident is concerned, nonetheless it is a settled proposition that even in the absence thereof, proceedings have to be initiated and concluded both within a reasonable time.

12.2. While initiation of the proceedings under Section 201(1) of the Act may be within limitation, he submits that the impugned order passed is certainly beyond limitation having regard to the interpretation given to sub-section (3) of Section 201 of the Act by the Special Bench of the Tribunal at Mumbai in **Mahindra & Mahindra Limited v. Deputy**

Commissioner of Income Tax[1]**.** Referring to the said decision, learned counsel submits that Special Bench has held that going by the same logic as is evident from Section 153(2) of the Act, completion of proceedings under Section 201(1) of the Act that is passing of the order under the said provision has to be within one year from the end of the financial year in which those proceedings under Section 201(1) were initiated. This view of the Special Bench of the Tribunal in **Mahindra & Mahindra Limited** (1 supra) has been accepted by the Bombay High Court when the appeal filed by the revenue against the said decision in **Director of Income Tax (International Taxation) v. Mahindra & Mahindra Limited**[2] came to be dismissed by the Bombay High Court. He has also referred to a decision of the Delhi High Court in **Bharti Airtel Limited v. Union of India**[3] and submits that in the aforesaid decision, Delhi High Court had set aside the notices issued under Section 201(1) of the Act regarding non-deduction of TDS in respect of payments made to

[1] [2009] 30 SOT 374 (Mumbai)(SB)
[2] [2014] 48 taxmann.com 150 (Bombay)
[3] [2016] 76 taxmann.com 256 (Delhi)

non-residents. Those show cause notices were set aside on the ground that those were issued beyond a reasonable period; having regard to the harsh consequences, such a proceeding entails.

12.3. Learned counsel therefore, submits that the impugned order having been passed on 14.12.2018, the show cause notice being issued on 20.01.2016, is well beyond the reasonable period and therefore, the same should be set aside.

13. *Per contra*, Ms. K.Mamata Choudary, learned Senior Standing Counsel of the Income Tax Department representing respondent No.1 reiterated the preliminary objection that an order passed under Section 201(1) is an appealable order under Section 246A of the Act before the Commissioner of Income Tax (Appeals). Thus, petitioner has got an adequate and efficacious alternative remedy. Without availing such adequate and efficacious alternative remedy, petitioner has straightaway approached this Court under Article 226 of the Constitution of India and has sought for quashing of the impugned order both on the point of limitation as well as on merit. This, she submits,

is impermissible and on this ground itself, the writ petition is liable to be dismissed.

13.1. On the point of limitation, learned Senior Standing Counsel has drawn the attention of the Court to Section 201(1) of the Act including the various amendments made therein. She submits that initially no limitation was provided for passing an order under sub-section (1) of Section 201 of the Act both in respect of residents and non-residents. By the first amendment, a limitation of two years was introduced for resident Indian which was subsequently enhanced to four years. Thereafter, the limitation was extended to six years and finally to seven years. All this while, Parliament consciously did not provide for any limitation insofar non-resident Indians are concerned. This clearly reflects the legislative intent that there can be no limitation insofar passing of an order under Section 201(1) of the Act *qua* non-residents is concerned.

13.2. Adverting to the present case, learned Senior Standing Counsel submits that the impugned order has been passed within

four years from initiation of proceedings under Section 201(1) of the Act and that is certainly within a reasonable period. In fact, it was passed in a span of two years nine months from the end of the financial year in which the transaction took place. In support of her contention, she has placed reliance on a decision of this Court in **CIT v. U.B.Electronic Instruments Limited**[4] to contend that by and large four years is treated as the period within which any penal action can be initiated against the assessees/petitioners. Since in that case, the notices were issued after nearly seven years those were interfered with. She has also placed reliance on the decision of the Punjab and Haryana High Court in **CIT v. H.M.T. Limited**[5] and that of the Calcutta High Court in **Bhura Exports Ltd. v. Income Tax Officer (TDS)**[6]**.**

13.3. Learned Standing Counsel has also pointed out that though the Bombay High Court had dismissed the appeal of the revenue against the decision of the Special Bench of the Tribunal in

[4] 371 ITR 314 (Andhra Pradesh)
[5] [2012] 340 ITR 219 (Punjab & Haryana)
[6] [2014] 365 ITR 548 (Calcutta)

Mahindra & Mahindra (1 supra), that was on the ground that no substantial question of law arose in that appeal. But Bombay High Court kept open the question as to what can be a reasonable period for passing of an order under Section 201(1) of the Act. She has also distinguished the decision of the Delhi High Court in **Bharti Airtel Limited** (3 supra).

14. Submissions made by learned counsel for the parties have received the due consideration of the Court.

15. At the outset, we may advert to some of the relevant provisions of the Act having a bearing on the *lis*.

16. Section 4 of the Act deals with charge of income tax. As per sub-section (1) thereof, where any Central Act enacts that income tax shall be charged for any assessment year at any rate or rates, income tax at that rate or those rates shall be charged for that year in accordance with and subject to the provisions (including provisions for the levy of additional income tax) of the Act in respect of the total income of the previous year of every

person. Sub-section (2) clarifies that in respect of income chargeable under sub-section (1), income tax shall be deducted at source or paid in advance, where it is so deductible or payable under any provision of the Act.

17. Sub-section (1) of Section 195 says that any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest (not being interest referred to in Section 194LB etc.,) or any other sum chargeable under the provisions of the Act (not being income chargeable under the head 'salaries'), shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode whichever is earlier, deduct income tax thereon at the rates in force.

17.1. As per sub-section (2) of Section 195, where the person responsible for paying any such sum chargeable under the Act to a non-resident considers that the whole of such sum would not be income chargeable to tax in the case of the recipient, he may make an application in such form and manner to the assessing

officer, to determine in such manner as may be prescribed the appropriate proportion of such sum so chargeable and upon such determination, tax shall be deducted under sub-section (1) only on that proportion of the sum which is so chargeable.

18. Consequences of such non-deduction under Section 195(2) of the Act or such other provision is dealt with in Section 201 of the Act.

18.1. While dealing with Section 201 of the Act, it is necessary that we refer to the Section as it originally stood and also the changes brought in by various amendments from time to time. Original Section 201 of the Act as it stood read as under:

> **Consequences of failure to deduct or pay**
>
> 201.(1) If any such person and in the cases referred to in Section 194, the principal officer and the company of which he is the principal officer does not deduct or after deducting fails to pay the tax as required by or under this Act, he or it shall, without prejudice to any other consequences which he or it may incur, be deemed to be an assessee in default in respect of the tax:

> **Provided** that no penalty shall be charged under Section 221 from such person, principal officer or company unless the Income-tax Officer is satisfied that such person or principal officer or company, as the case may be, has willfully failed to deduct and pay the tax.
>
> (2) Where the tax has not been paid as aforesaid after it is deducted, it shall be a charge upon all the assets of the person, or the company, as the case may be, referred to in sub-section (1).

18.2. Thus, sub-section (1) of Section 201 of the Act provided that if there was failure to deduct tax at source or after deducting not paying the tax, the person concerned as well as the company including its principal officer would be deemed to be an assessee in default in respect of the tax. As per the proviso thereto, no penalty would be charged from such person, principal officer or company unless the Income Tax Officer was satisfied that such person or principal officer or company as the case may be had willfully failed to deduct or pay the tax.

18.3. Sub-section (2) thereof provided that where the tax had not been paid after it was deducted, it would be a charge upon all

the assets of the person or the company as the case may be, referred to in sub-section (1).

18.4. Thus, we find that no limitation was prescribed for passing an order under sub-section (1) of Section 201 of the Act and also an order under the proviso to sub-section (1) of Section 201 of the Act.

18.5. By the Finance (No.2) Act, 2009, which came into force *w.e.f.*, 01.04.2010, sub-sections (3) and (4) were inserted in Section 201 of the Act after sub-section (2). Sub-sections (3) and (4) as were inserted read as follows:

> (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
>
> (i) two years from the end of the financial year in which the statement is filed in a case where the statement referred to in Section 200 has been filed;
>
> (ii) four years from the end of the financial year in which payment is made or credit is given, in any other case:

> Provided that such order for a financial year commencing on or before the 1st day of April, 2007 may be passed at any time on or before the 31st day of March, 2011.
>
> (4) The provisions of sub-clause (ii) of sub-section (3) of Section 153 and of explanation 1 to Section 153 shall, so far as may, apply to the time limit prescribed in sub-section (3).

18.6. Thus, we find that sub-section (3) of Section 201 of the Act introduced for the first time limitation in passing an order under sub-section (1) of Section 201 of the Act in respect of an assessee in default for failure to deduct the tax from a person resident in India. In a case where statement has been filed, the limitation prescribed was two years from the end of the financial year and in any other case, the limitation prescribed was four years from the end of the financial year in which payment was made or credit was given.

18.7. Sub-section (4) of Section 201 of the Act clarified that provisions of Section 153(3)(ii) of the Act and Explanation 1 to Section 153 of the Act shall so far as may apply to the time limit prescribed in sub-section (3) thereof.

18.8. In the memorandum preceding enactment of Finance (No.2) Act 2009, it was mentioned that while time limit has been introduced for passing an order under Section 201(1) of the Act, no time limit has been prescribed for passing an order under sub-section (1) of Section 201 of the Act where amongst others, the deductee is a non-resident as it may not be administratively possible to recover the tax from a non-resident. This has also been clarified by Circular No.5 of 2010 issued by the Central Board of Direct Taxes (CBDT).

18.9. As already noticed above, the limitation was thereafter extended in respect of resident Indians to six years and finally to seven years. Sub-sections (3) and (4) of Section 201 of the Act as those provisions stand today read as follows:

> (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) The provisions of sub-clause (ii) of sub-section (3) of section 153 and of Explanation I to section 153 shall so far as may apply to the time limit prescribed in sub-section (3).

18.10. Thus, as per sub-section (3) of Section 201 of the Act, 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 expiry of seven years from the end of the financial year in which the payment is made or credit is given.

18.11. Since sub-section (4) of Section 201 of the Act refers to Section 153 of the Act, it would be apposite to briefly deal with the said provision. Section 153 of the Act deals with time limit for completion of assessment, reassessment and recomputation. Sub-section (3) thereof deals with a situation where a remand is made following an order by the Income Tax Appellate Tribunal under Section 254 of the Act or by the Commissioner under Sections 263 or 264 of the Act. In such a case, fresh assessment would have to be made by the assessing officer before expiry of nine months from the end of the financial year in which the

above orders were passed. Before proceeding further, we may mention that Section 153 of the Act as noticed above deals with the time limit for completion of assessment, reassessment and re-computation. Therefore, the intent behind sub-section (4) of Section 201 of the Act is that in the event of interference with an order passed under sub-section (1) of Section 201 of the Act by the appellate authorities, the time limit prescribed for completion of assessment *etc.,* under Section 153 of the Act would be applicable to an order to be passed under Section 201(1) r/w sub-section 3 of Section 201 of the Act.

19. Before proceeding further, a brief reference to sub-section (1A) of Section 201 of the Act would be in order. The said provision fastens liability on the assessee in default to pay interest for failure to deduct or pay the TDS.

20. Having said so, we may now deal with the decisions cited at the bar. Insofar the decision of this Court in **CIT v. U.B.Electronic Instruments Ltd** (4 supra) is concerned, this Court referred to various provisions of the Act including

Sections 148, 149 and 263 and thereafter observed that by and large four years is treated as the period within which any penal action can be initiated against an assessee as a consequence of non-deduction of TDS. This Court further observed that failure to initiate steps within such period would disable the department to proceed against the assessee. 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. In case liability for the preceding one or two years is fastened, there can be scope for making adjustments in the subsequent years. However, if a fairly long gap intervenes, it becomes difficult for making such adjustments particularly when the activity is commercial in nature. In that case, the assessment years were 1989-90, 1990-91 and 1991-92. It was nearly seven years thereafter that the impugned notices were issued. In such circumstances, this Court concurred with the view taken by the Tribunal and answered amongst others, the question that the Income Tax Appellate Tribunal was justified in applying the theory of reasonable period for passing the order under

Section 201(1A) of the Act in the absence of time limit specified in the Act.

20.1. We may mention that in the said case, when the impugned notices were issued or the order under Section 201(1) of the Act was passed by the assessing officer on 31.03.1999, the statute did not provide for any limitation either in respect of a resident Indian or a non-resident Indian.

21. In **CIT V. H.M.T. Limited** (5 supra), which was an appeal by the revenue under Section 260A of the Act, one of the substantial questions of law before the Punjab and Haryana High Court was whether on the facts and in the circumstances of the case, Tribunal had erred in law in allowing the appeal of the assessee by holding that four years was a reasonable period to issue show cause notice under Section 201 of the Act by the assessing officer to the assessee though no such limitation was provided under Section 201 of the Act. This appeal pertained to the financial years 1994-95 to 1997-98 and the order under

Section 201 (1)/(1A) of the Act was passed on 20.12.2005 when the statute did not provide for any limitation.

21.1. In the above context, Punjab and Haryana High Court followed the decision of the Supreme Court in **Hindustan Times Limited v. Union of India**[7] wherein Supreme Court held that when the Legislature has not considered it appropriate to prescribe limitation, it cannot be read in such a provision and based thereon, answered the above question in favour of the revenue by holding that it could not be concluded that the order passed by the assessing officer under Section 201(1) and 201(1A) of the Act was liable to be annulled on the ground of delay and laches.

22. Insofar the decision of the Calcutta High Court in **Bhura Exports Limited** (6 supra) is concerned, that pertains to the assessment year 2002-2003. In that case, assessee received notice dated 06.04.2006 issued by the Income Tax Officer alleging *inter alia* that assessee had paid interest on loan but had not deducted

[7] AIR 1998 SC 688

TDS from the payments made to the three companies for the financial year 2001-02 relevant to the assessment year 2002-03. It was thereafter that assessing officer passed an order dated 07.03.2008 treating the assessee to be in default and demanded a sum of Rs.21,64,471.00 as the tax payable. In appeal, both the appellate authorities affirmed the order of the assessing officer though the Tribunal reduced the amount of default.

22.1. Question before the Calcutta High Court was whether the assessing officer was competent to initiate proceedings under Section 201(1)/(1A) of the Act in the year 2007 for the assessment year 2002-03.

22.2. Calcutta High Court held that the time limit prescribed in Section 149 of the Act for taking action under Section 147 thereof by giving notice under Section 148 cannot have any application for taking action under Section 201 of the Act as it is not a case of income escaping assessment but a case of inaction

of a debtor to deduct tax on interest while making payment of interest in violation of Section 194A of the Act.

22.3. Calcutta High Court further posed the question that if in any given statute there is no period of limitation prescribed for taking action under that statute, whether such action should be taken within a reasonable period ?

22.4. Calcutta High Court opined that if no period of limitation is prescribed under a statute for taking action under it and at the same time the Limitation Act, 1963 does not apply to such a statute, there cannot be any prescription of a period of limitation for taking action under the said statute unless there is any contrary intention expressed therein.

23. This brings us to the decision of the Special Bench of the Tribunal in **Mahindra & Mahindra Limited** (1 supra). Special Bench was of the view that even though no limitation is prescribed under Section 201(1) of the Act, nevertheless the

order thereunder would have to be passed within a reasonable period.

23.1. We may mention that in that case, the assessment year under consideration was 1998-99 and the order under Section 201(1) of the Act was passed on 30.03.1999.

23.2. It was submitted before the Tribunal that a period of four years from the end of the relevant financial year would be reasonable for initiation of proceedings as well as passing of the order under Section 201(1) of the Act. Tribunal referred to different provisions of the Act, such as, Sections 147, 148, 149 and 153(2) and thereafter concluded that completion of proceedings under Section 201(1) of the Act *i.e.,* passing of the order under the said provision has to be within one year from the end of the financial year in which proceedings under Section 201(1) of the Act were initiated. Same time limit for initiation and passing of order would also be valid for passing of order under Section 201(1A) of the Act.

23.3. As noticed above, the above matter pertains to the assessment year 1998-99 when the time limit even in the case of resident Indians was not introduced.

24. When the revenue challenged this finding of the Special Bench of the Tribunal before the Bombay High Court in **DCIT v. Mahindra & Mahindra** (2 supra), Bombay High Court dismissed the appeal on the ground that no substantial question of law arose from the aforesaid order of the Special Bench of the Tribunal. While doing so, Bombay High Court declined to follow the decision of the Calcutta High Court in **Bhura Exports Limited** (6 supra). However, Bombay High Court clarified that the said decision should not be construed as an expression of any opinion as to what should be the reasonable time which was kept open. That apart, all contentions on merit were also kept open.

25. In **Bharti Airtel Limited** (3 supra), Delhi High Court was examining the legality and validity of show cause notice dated 31.03.2011 issued by the assessing officer to the assessee for non-deduction of tax with regard to payments made to non-

residents for the financial years 2001-2002 to 2010-2011. Delhi High Court by following its earlier decisions in **CIT v. NHK-Japan Broadcasting Limited**[8] as well as in **CIT v. Hutchison Essar Telecom Limited**[9] noted that the amendments brought into Section 201 of the Act by introducing limitation were silent about application of any period of limitation to amounts deducted and payments made to non-residents.

25.1. Applying the ratio in **Vodafone Essar Mobile Services Limited v. Union of India**[10], Delhi High Court held that the theory of reasonable period would have to be read into Section 201(3) of the Act and the reason given by the revenue for not providing such a period of limitation *i.e.,* administrative convenience cannot outweigh the harsh nature of the consequences which would expose the resident payers to the onerous responsibility of maintaining books and documents for an uncertain period of time. On such consideration, the impugned notices were quashed.

---

[8] **305 ITR 137 (Delhi)**
[9] **323 ITR 230 (Delhi)**
[10] 385 ITR 436 (Delhi)

26. With utmost respect, we are unable to agree with the views expressed by the Delhi High Court. As we have already seen, initially the statute did not provide for any limitation, be it a resident Indian or a non-resident Indian. Subsequently, by way of amendment, sub-section (3) was inserted in Section 201 of the Act. Presently, the limitation for passing of an order under Section 201(1) of the Act post the last amendment is seven years insofar a person resident in India is concerned. The present case covers the assessment year 2016-2017, which is well after the last of the amendments were made and when limitation period *qua* resident Indians is seven years.

27. We have also seen that the legislature has consciously not prescribed any time limit for an order under Section 201(1) of the Act insofar a non-resident is concerned; the reason being that if the deductee is a non-resident, it may not be administratively possible to recover the tax from the non-resident. Therefore, it would be wrong to read into Section 201(3) of the Act a period

of limitation insofar non-resident is concerned; doing so would amount to legislating by the Court which is not permissible.

28. At the same time, it must also be kept in mind that even though there is no limitation prescribed by the statute, the order under Section 201(1) of the Act *qua* non-resident has to be passed within a reasonable period.

29. Now the question is, what is a reasonable period in the absence of any statutory limitation ? In our considered opinion, there cannot be a straight jacket answer to such a question. What is a reasonable period would depend upon the facts and circumstances of each case. Therefore, as a general principle it may not be possible as well as feasible on the part of the Court to say definitely that a period of four years or one year would be the period of limitation for passing an order under Section 201(1) or 201(1A) of the Act when the legislature has consciously not prescribed any such limitation. But one thing is very clear, that is, when the legislature has prescribed a period of seven years as the limitation for a resident Indian, it would not be justified to read a

limitation of less than seven years in the case of a non-resident. The difficulty that would accrue to realisation of tax *qua* a non-resident would be much more than that of a person, who is a resident. In our view, limitation period of seven years prescribed for a resident Indian would be a useful guide to determine what would be a reasonable period in the case of a non-resident Indian.

30. In the instant case, it is seen that following a survey operation under Section 133A of the Act on 30.12.2015, it was detected that petitioner had made two payments to two foreign companies but did not deduct TDS under Section 195 of the Act. It was thereafter that the show cause notice was issued on 20.01.2016. It would be interesting to note that on the ground that the two foreign companies had filed applications before the AAR as to taxability of such transactions, petitioner had filed an application before respondent No.1 to keep the proceedings under Section 201 of the Act in abeyance. Such an action of the petitioner would run counter to its very contention that the

proceedings concluded by respondent No.1 was beyond limitation.

31. Be that as it may, such a contention was rejected by respondent No.1 and insofar limitation is concerned, respondent No.1 held that though the Act did not provide for any time limit for passing an order under Section 201(1) of the Act, nonetheless principles of natural justice would require that proceedings should be completed within a reasonable time. Respondent No.1 further noted that the survey was conducted on 30.12.2015, show cause notice was issued on 20.01.2016 and the proceedings came to be concluded on 14.12.2018 which was within a reasonable time.

32. We see no infirmity in the view taken by respondent No.1. We are therefore not inclined to entertain the writ petition. However, we refrain from expressing any opinion on merit *i.e.,* the second issue framed by this Court *vide* the order dated 15.02.2019 which would be gone into by the appropriate forum in an appropriate proceeding.

33. That being the position, it would be open to the petitioner to seek the remedy as provided under the Act.

34. Subject to the above, the writ petition is dismissed. No costs.

As a sequel, miscellaneous petitions, pending if any, stand closed.

UJJAL BHUYAN, CJ

N.TUKARAMJI, J

Date: 21.06.2023

Note:
LR copy
(B/o)
LUR