

A limitation period is applicable to section 201(1)/(1A) proceedings even though no time limit is prescribed

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In brief

The Bombay High Court (HC) in the case of **Mahindra & Mahindra** (the taxpayer) upheld the view of the Income-tax Appellate Tribunal (Tribunal) that the time limit for initiating and completing proceedings under section 201(1)/(1A) of the Income-tax Act, 1961 (the Act) was the same as the time limit available for initiating and completing of reassessment proceedings.

In detail

Facts

The taxpayer¹ appointed two non-residents, M/s Banque Paribas and Goldman Sachs (Asia) LLC, as lead managers for its Euro issues. Under the subscription agreement with the lead managers, the taxpayer paid marketing, underwriting and selling commission for the services rendered.

The Tax Officer (TO) held that the services rendered by the lead managers were technical services under section 9(1)(vii) of the Act and hence treated the taxpayer as a 'taxpayer-in-default' under section 201(1) of the Act for non-deduction of tax from payments made to the lead managers.

On appeal, the Commissioner of Income-tax (Appeals) [CIT(A)] upheld the TO's

order. On appeal before the Tribunal, the taxpayer raised an additional argument that in the absence of any provision in the Act, orders under section 201 of the Act were barred by limitation of four years from the end of the relevant financial year.

The Tribunal accepted the additional argument and held that the time limit for initiating and completing proceedings under section 201(1)/(1A) of the Act was the same as the time limit available for initiating and completing a reassessment proceeding.

Aggrieved by the order, the revenue appealed before the HC.

Issues before the Tribunal

Whether any time limit could be said to have been prescribed for initiating and completing proceedings under section 201 of the Act?

Taxpayer's contentions

The taxpayer contended that the order under section 201(1) of the Act was an order of assessment².

The time limit for the completion of an assessment was provided under section 153 of the Act, and hence such an order could not be passed after a period of two years from the end of the assessment year. In the absence of any period of limitation, every authority was bound to exercise its powers within a reasonable time³.

A period of four years from the end of the relevant financial year was a reasonable time for

¹ DIT(IT) v. Mahindra & Mahindra Limited [TS-404-HC-2014(BOM)]

² ITO v. Delhi Development Authority [2001] 171 CTR 546 (SC)

³ GOI v. Citadel Fine Pharmaceuticals [1990] 184 ITR 467 (SC); M. Srinivasa Rao v. ACIT [2007] 295 ITR 136 (Madras)

passing order under section 201(1) of the Act⁴.

Revenue's contentions

Assessment proceedings did not have any link with proceedings under section 201 of the Act, and hence the bar of limitation prescribed under section 153 of the Act could not be applied⁵.

The legislature in its wisdom had chosen not to prescribe any time limit for passing orders under section 201(1) of the Act. Any attempt on the part of the courts or the Tribunals to lay down any particular time limit would amount to legislation by the judiciary.

When no provision for limitation had been incorporated into the statute, the courts could not introduce such a limitation⁶.

High Court's ruling

Relying on various Supreme Court decisions⁷, the HC held that if no period of limitation had been prescribed, a statutory authority must exercise its jurisdiction within a reasonable period, which would depend upon the nature of the statute, rights and liabilities and other relevant factors.

Further, relying on the HC decisions in the cases of NHK-Japan Broadcasting⁸ and Hutchison Essar⁹, it was held that though section 201 of the Act did

not prescribe any limitation period for the taxpayer being declared as taxpayer-in-default, the Revenue still had to exercise its powers in that regard within a reasonable time.

The Bombay HC also distinguished its decision from the Calcutta HC decision in the case of Bhura Exports¹⁰, in which it had been held that there was no question of invoking a reasonable period of limitation when applying the provisions of section 201 of the Act.

The HC upheld the Tribunal's order and held that the time limit for initiating and completing the proceedings under section 201(1)/(1A) of the Act was the same as the time limit available for initiating and completing a reassessment proceeding.

The takeaway

This controversy relates to the pre-2010 period. With effect from April 1, 2010, section 201(3) (i) was introduced, which provides for the completion of proceedings within two years of the financial year (where withholding tax statements have been filed) in the case of non-deduction of taxes from payments to residents.

In the Finance Bill 2014, it has been proposed that section 201(3) (i) be deleted, and that any order treating a person as a taxpayer-in-default for not withholding tax on payments made to a resident, could be passed at any time within seven years from the end of the financial year in which the payment is made, or credit given.

However, since there is no time limit prescribed in case of payments made to non-residents, the above ruling should help in providing some guidance going forward on limitation in such assessment cases.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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⁴ Raymond Woollen Mills Ltd v. ITO [1997] 7 ITD 536 (Mumbai-Tribunal); CIT v. NHK-Japan Broadcasting Corporation [2008] 305 ITR 137 (Delhi)

⁵ CIT v. Blackwood Hodge India Pvt Ltd [1971] 81 ITR 807 (Calcutta)

⁶ Hindustan times v. UOI [1998] GJX-0005 (SC)

⁷ State of Punjab v. Bhatinda District Cooperative Milk Producers' Union Ltd [2007] 11 SCC 363; Santoshkumar Shivgonda Patil and others v. Balasaheb Tukaram Shevale [2009] 9 SCC 352; GOI v. Citadel Fine Pharmaceuticals [1990] 184 ITR 467 (SC)

⁸ CIT v. NHK-Japan Broadcasting Corporation [2008] 305 ITR 137 (Delhi)

⁹ CIT v. Hutchison Essar Telecom Ltd [2010] 323 ITR 230 (Delhi)

¹⁰ Bhura Exports Ltd v. ITO [2011] 13 taxmann.com 162 (Calcutta)

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