

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 1426 of 2009****TO****TAX APPEAL NO. 1429 of 2009****With****TAX APPEAL NO. 2252 of 2010****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI****Sd/-****and****HONOURABLE MR.JUSTICE G.R.UDHWANI****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

COMMISSIONER OF INCOME TAX (TDS)....Appellant(s)**Versus****ANAGRAM WELLINGTON ASSETS MANAGEMENT CO LTD....Opponent(s)****Appearance:****MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1****MR BS SOPARKAR, ADVOCATE for MRS SWATI SOPARKAR, ADVOCATE for the Opponent(s) No. 1****CORAM: HONOURABLE MR.JUSTICE KS JHAVERI**

and
HONOURABLE MR.JUSTICE G.R.UDHWANI

Date : 09/08/2016

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. By way of Tax Appeal Nos.1426 to 1429 of 2009, the revenue has challenged judgment and order of the Income Tax Appellate Tribunal, Ahmedabad Bench (For short, "the Tribunal") in ITA Nos.2677, 2678, 2679 & 3859/Ahd/2006 dated 19.12.2008, whereby the appeal filed by the revenue was dismissed and appeal filed by the assessee was allowed. By filing Tax Appeal No.2252 of 2010, the revenue has challenged the order of the Tribunal dated 9.4.2010 passed in ITA No.448/Ahd/2007.

2. Since the facts in these appeals are similar, facts of Tax Appeal No.1426 of 2009 are narrated in brief for the purpose of deciding these appeals. It was noticed by the Assessing Officer that assessee had paid rent of Rs.39,43,200/- to M/s.Anagram Finance Co. Ltd. for MD's accommodation during F.Y.1996-97 and not deducted tax at source of this rent payment. According to section 194-I, the tax is deductible from payment by way of rent, if such payment to the payee during the year is likely to be Rs.1,20,000/- or more. The Assessing Officer noticed that the assessee failed to deduct tax from rent payment of Rs.39,43,200/- which assessee had not deducted. Accordingly, the Assessing Officer passed order u/s. 201 & 201 (1A) and raised total demand of Rs.18,15,843/- on 22.3.2006.

2.1 The assessee preferred an appeal before the CIT (A)-X, Ahmedabad against order u/s. 201 (1) & 201 (1A) of the I.T.Act,

1961. The Ld.CIT (A) had observed that the order passed by the Assessing Officer is beyond the limitation period of four years from the end of the Financial Year of Assessment Year 1997-98. The CIT (A) relied the decisions of various Tribunals and deleted the demand raised by the Assessing Officer u/s.201 (1) and 201 (1A) of the I.T.Act.

2.2 The department preferred an appeal before the Appellate Tribunal and the Tribunal by relying upon the decision of the Delhi High Court in the case of M/s. NHK Japan Broadcasting Corpn. (2008) 217 CTR 392 (Delhi) held that where no limitation is prescribed as in Section 201 of the Act, action must be initiated within the period of four years and the orders having admittedly been passed beyond the period of four years of the F.Ys. relevant to the A.Ys. are held to be invalid and barred by time and dismissed all the appeals filed by the department for the A.Ys. 1997-98 to 1998-99. Against such orders passed in different appeals, present appeals are filed.

3. At the time of admitting these Appeals, following question of law was framed:-

TAX APPEAL Nos.1426 to 1428/2009

"Whether the Appellate Tribunal is right in law and on facts in confirming the order passed by CIT(A) in deleting the penalty levied u/s. 201(1) and interest charged u/s.201(1A)?"

TAX APPEAL Nos.1429/2009

"Whether the Appellate Tribunal is right in law and on facts in reversing the order passed by CIT (A) and thereby cancelling the order passed by the Assessing Officer u/s. 201 (1) of the I.T.Act?"

TAX APPEAL No.2252 of 2010

"Whether the Tribunal below committed substantial error of law in directing the Assessing Officer to delete the sum of Rs. 35,77,200/- levied under Section 201 of the Income Tax Act, 1961 ["the Act"] and further sum of Rs. 3,21,948/- charged as interest under Section 201[1A] of the Act, without appreciating the fact that no period of limitation is provided in the Act for passing orders under the above sections."

4. Mr.Bhatt, learned counsel for the appellant submitted that the Tribunal has committed an error in passing the impugned orders. He submitted that the Tribunal has committed an error in relying upon the decision of the Delhi High Court while passing the impugned orders. He submitted that Punjab and Haryana High Court in the case of **Commissioner of Income-Tax (TDS) v. H.M.T. Ltd.** reported in **[2012] 340 ITR 219 (P&H)** held that proceedings under Section 201 (1) and (1A) of the Act can be initiated at any time and it cannot be annulled on the ground of delay and laches. He has relied upon the observations made in paragraph 7, 8, 9 and 10 of the aforesaid judgment, which reads as under:-

"7. Learned counsel for the Revenue submitted that there is no specific provision prescribing any limitation for passing the order under sections 201(1) and 201(1A) of the Act. According to the learned counsel, in view of the apex court judgment in Hindustan Times Ltd. v. Union of India, AIR 1998 SC 688, where no limitation is prescribed, the rule that power should be exercised within reasonable time is not applicable in the to facts of the present case. Reference was also made to the judgment of of the Kerala High Court in CIT v. Trichur Co-operative Bank Ltd. [2004] 266, ITR 574 (Ker). It was urged that section 231 of the Act was omitted from April 1, 1989, and there no limitation prescribed for passing and order under section 201 (1) and 201(1A) of the Act

which are in the nature of effecting recovery of taxes from the assessee in default.

8. *On the other hand, learned counsel for the assessee supported the order passed by the Tribunal and reiterated the submissions made before the Tribunal.*

9. *We find considerable force in the submission of learned counsel for the Revenue. In Hindustan Times Ltd.'s case AIR 1998 SC 688, the employer had defaulted in making the payment of provident fund contributions. Notice was issued by the Department under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, on February 23, 1971, complaining of delay in remitting the provident fund amount for the various periods from July 1965 to November, 1968. After certain correspondence between the defaulter and the Department, order for recovery as damages and administrative charges was passed on May 7, 1980. A plea was raised on behalf of the defaulter that where no period of limitation is prescribed in a statute the same is required to be implied under law in order to be just and reasonable. The Hon'ble Supreme Court repelled the said contention holding that where the Legislature has not considered appropriate to prescribe limitation, it could not be read in such a provision. The legal position has been crystallised in the following terms (page 693) :*

"18. Now, the Act does not contain any provision prescribing a period of limitation for assessment or recovery of damages. The monies payable into the Fund are for the ultimate benefit of the employees but there is no provision by which the employees can directly recover these amounts. The power of computation and recovery are both vested in the Regional Provident Commissioner or other officer as provided in section 14B. Recovery is not by way of suit, initially, it was provided that the arrears could be recovered in the same manner as arrears of land revenue. But by Act 37 of 1953 Section 14B was amended providing for a special procedure under sections 8B to 8G. By Act 40 of 1973 section 11 was amended by making the amount a first charge on the assets of the establishment if the arrears of employer's contribution were for a period of more than 6 months. By Act 33 of 1988, the charge was extended to the employee's share of contribution as well.

19. In spite of these amendments, over a period of more than thirty years, the Legislature did not think fit to make any provision prescribing a period of limitation. This, in our opinion, is significant and it is clear that it is not the legislative intention to prescribe any period of limitation for computing and recovering the arrears. As the amounts are due to the Trust Fund and the recovery is not by suit, the provisions of the Indian Limitation Act, 1963, are not attracted. In *Nityanand M. Joshi v. Life Insurance Corporation of India* [1970] 1 SCR 396, it has been held that the Limitation Act, 1963, has no application to Labour Courts and, in our view, that principle is equally applicable to recovery by the concerned authority under section 14B. Further in *Bombay Gas Co. Ltd. v. Gopal Bhiva* [1964] 3 SCR 709 it has been held that in respect of an application under section 33C(2) of the Industrial Disputes Act, 1947, there is no period of limitation. In that context, it was stated that the courts could not imply a period of limitation. It was observed :

'It seems that where the Legislature has made no provision for limitation, it would not be open to the court to introduce any such limitation on the grounds of fairness or justice.'

The above decisions have been recently accepted in *Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker* [1995] 5 SCC 5 (at pages 20-22) to which one of us (Majmudar, J.) was a party while dealing with the applicability of section 29(2) of the Limitation Act, 1963, to courts or tribunals. We may also point out in this connection that several High Courts have rightly taken the view that there is no period of limitation for exercise of the power under section 14B of the Act.

20. It is true that a principle has been laid down in *State of Gujarat v. Patil Raghav Natha* [1969] 2 SCC 187, while dealing with suo motu revisional jurisdiction that though there is no period of limitation prescribed for exercise of that power, still such a power must be exercised within reasonable time. The said judgment has been applied in matters relating to section 6 of the Land Acquisition Act in a large number of cases, which were all referred to recently in *Ramchand v. UOI* [1994] 1 SCC 44. In our view, this line of cases cannot ordinarily apply to monies withheld by a defaulter, who holds them in trust.

21. The reason is that while in the above cases decided

by this court the exercise of powers by the authority at a very belated stage was likely to result in the deprivation of property which rightly and lawfully belonged to the person concerned, the position under section 14B of the Act of an employer is totally different. The employer who has defaulted in making over the contributions to the Trust Fund had, on the other hand, the use of monies which did not belong to him at all. Such a situation cannot be compared to the above line of cases which involve prolonged suspense in regard to deprivation of property. In fact, in cases under section 14B if the Regional Provident Commissioner had made computations earlier and sent a demand immediately after the amounts fell due, the defaulter would not have been able to use these monies for his own purposes or for his business. In our opinion, it does not lie in the mouth of such a person to say that by reason of delay in the exercise of powers under section 143, he has suffered loss. On the other hand, the defaulter has obviously had the benefit of the 'boon of delay' which 'is so dear to debtors', as pointed out by the Privy Council in *Nagendranath Dev v. Suresh Chandra Dev* [1933] ILR 60 Cal 1 (PC). In that case, it was observed that equitable considerations were out of place in matters of limitation and the strict grammatical construction alone was the guide. Sir Dinshaw Mulla stated :

'Nor in such a case as this is the judgment debtor prejudiced. He may indeed obtain the boon of delay, which is so dear to debtors and if he is virtuously inclined there is nothing to prevent his paying what he owes into court.'

The position of the employer in case of default under section 14B is no different."

10. Applying the above noted principles to the facts in hand, it cannot 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."

4.1 He has also relied upon the decision of the Calcutta High Court in the case of **Bhura Exports Ltd. v. Income-Tax Officer** reported in **[2014] 365 ITR 548 (Cal)**, wherein it is held as under:-

“14. In our opinion, if no period of limitation is prescribed under a statute for taking action under it and at the same time, the Limitation Act does not apply to such a statute, there cannot be any prohibition of the period of limitation for taking under the said statute unless there is any contrary intention expressed in the said statute.

15. In this connection, we may profitably refer to decision of a three-judge-Bench of the Supreme Court in the case of Uttam Namdeo Mahale v. Vithal Deo reported in AIR 1997 SC 2695 where the contention that in the absence of any period of limitation for filing application for execution under a given statute, a reasonable period of limitation should be applied and an application for execution filed after 12 years should not be entertained was turned down by making the following observations:

“Mr.Bhasme, learned counsel for the appellant, contends that in the absence of fixation of rule of limitation, the power can be exercised within a reasonable time and in the absence of such prescription of limitation, the power to enforce the order is vitiated by error of law. He places reliance on the decisions in State of Gujarat v. Patel Raghav Natha [1970] 1 SCR 335 ; AIR 1969 SC 1297; Ram Chand v. Union of India [1994] 1 SCC 44; [1993] AIR SCW 3479 and Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim (CA No. 5023 of 1985 decided on August 22, 1996). We find no force in the contention. It is seen that the order of ejectment against the applicant has become final. Section 21 of the Mamlatdar's Court Act does not prescribe any limitation within which the order needs to be executed. In the absence of any specific limitation provided thereunder, necessary implication is that the general law of limitation provided in Limitation Act (Act 2 of 1963) stands excluded. The Division Bench, therefore, has rightly held that no limitation has been prescribed and it can be executed at any time, especially when the law of limitation for the purpose of this appeal is not there. Where there is statutory rule operating in the field, the implied power of exercise of the right within reasonable

limitation does not arise. The cited decisions deal with that area and bear no relevance to the facts." (emphasise supplied by us).

16. Even if we go back earlier to the year 1984, a three-judge-Bench of the Supreme Court in the case of *Ishar Singh v. Financial Commissioner* reported in AIR 1984 SC 1719 by taking similar view held that no period of limitation would apply to the filing of an application under section 43 of the Pepsu Tenancy Act of 1955 since no such period was prescribed by that Act and the Limitation Act had also no application to a proceeding under the Pepsu Tenancy Act.

17. Under the Income-tax Act, there is no scope of applying the provisions of the Limitation Act as would appear from the fact that in section 260A itself, the power of condonation of delay in filing the appeal has been incorporated by the Legislature by introducing sub-section (2A) with effect from April 1, 2010, only and if the Limitation Act of its own had the application to such an appeal, there was no necessity of incorporation of such a provision in section 260A and that too, with effect from April 1, 2010. So far as the Income-tax Act is concerned, its scope and the nature has been defined by the Supreme Court in the case of *Rao Bahadur Ravulu Subba Rao v. CIT* reported in [1956] 30 ITR 163 (SC) thus (page 173) :

"To Sum up, the Indian Income tax Act is a self-contained Code exhaustive of the matters dealt with therein and its provisions show an intention to depart from the common rule, qua tacit per alium facit per se."

18. Therefore, in applying the provisions contained in section 201 of the Act where the previous bar of limitation was lifted by the amendment and there was no period of limitation fixed for exercising such power at the relevant point of time, no question of invoking a reasonable period of limitation arises.

19. We now propose to deal with the decisions cited by *Ms.Roy Chowdhury* in this regard.

20. In the case of *State of Punjab v. Bhatinda District*

Co-operative Milk Producers Union Ltd. (supra), a two-judge-Bench of the Supreme Court was dealing with a question as to what should be the period of limitation for taking suo motu action of revision under section 21 of the Punjab General Sales Tax Act in the absence of any period mentioned therein when under the said Act the period of limitation fixed for completing the assessment is three years which can be extended to maximum five years on recording reasons by the Commissioner. In such a case, the said Bench held that if no period of limitation is prescribed, the statutory authority must exercise its jurisdiction within a reasonable period. According to the said Bench, what should be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors. In that case, it was held that the revisional power should also be exercised within three years and in any event, should not exceed five years. With great respect to the learned judges of the Bench, we are unable to accept that decision as a precedent for the general proposition of law that when there is no period of limitation prescribed in a statute for exercising a power, that must be exercised in all cases within the reasonable period even in the absence of any intention of the Legislature to the contrary because the attention of the Bench was not drawn to the earlier decisions of the Supreme Court of larger Bench in the cases of *Uttam Namdeo Mahale v. Vithal Deo (supra)* and *Ishar Singh v. Financial Commissioner (Supra)* indicated by us above taking a contrary view.

21. In the Case of *CIT v. NHK Japan Broadcasting Corporation (supra)*, the Division Bench of the Delhi High Court by relying upon the decision of the Supreme Court in the case of *Punjab Bhatinda District Co-operative Milk Producers Union Ltd. (supra)*, held that the period prescribed under sections 147 and 148 of the Act should be reasonable period of time within which the power under section 201 of the Act is required to be exercised. For the selfsame reason of non-consideration of the decisions of the Supreme Court in the cases of *Uttam Namdeo Mahale v. Vithal Deo (supra)* and *Ishar Singh v. Financial Commissioner (supra)*, we are unable to accept the said view of the Delhi High Court as a correct view. Moreover, we have already pointed out that the provisions of sections 147 and 148 of the Act deal with a

situation where income escaped assessment whereas section 194A deals with the liability to deduct tax at the source although there may not be any escape of income from assessment in future. Therefore, in our opinion, the above Division Bench decision of the Delhi High Court does not reflect the correct position of law.”

4.2 In view of above observations of different High Courts, he contended that the view taken by the Tribunal is not correct and the same is required to be reversed. He submitted that so far as proceedings under Section 201 (1) of the Act are concerned, there is no limitation. He submitted that non-deduction of TDS would create a great loss to the exchequer and, therefore, this provision is required to be interpreted in favour of the revenue so that no revenue loss is caused. Accordingly, he prayed to allow present appeals.

5. Mr.B.S.Soparkar, learned counsel for the respondent submitted that relevant Assessment Years for the assessment in question are 1997-1998, 1998-99, 1999-2000 and the proceedings in question are initiated four years after the same. He submitted that in the case of **Commissioner of Income Tax v. NHK Japan Broadcasting Corporation** reported in **[2008] 305 ITR 137 (Delhi)**, Delhi High Court, which has been followed by all other Courts, Delhi High Court has considered the decision of the Supreme Court in the case of **Bhatinda District Co-op. Milk Producers Union Limited** **[2007] RC 637** and held that in such proceedings limitation period is applicable and such proceedings cannot be initiated beyond the period of four years. It is observed in paragraph 24 as under:-

“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 reason 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."

5.1 He has also relied upon the decision in the case of **Commissioner of Income-tax v. Satluj Jal Vidhyut Nigam Ltd.** reported in **[2012] 27 taxmann.com 186 (HP)**, wherein it is reported as under:-

"7. A Division Bench of the Delhi High Court in CIT v. NHK Japan Broadcasting Corpn. (2008) 305 ITR 137 (Delhi) taking note of the judgment of the apex court in State of Punjab vs. Bhatinda District Cooperative Milk Producers Union Ltd. (2007) 9 RC 637: 2007 11 SCC 363 held that though no period of limitation is prescribed for exercising power under section 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 under section 201 and 201(1A) of the Act? The Delhi High Court noted 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. 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 State of Punjab v. Bhatinda District Cooperative Milk Producers Union Ltd. [2007] 9 RC 637 ; [2007] 11 SCC 363, referred to above, came to the conclusion that a period of four years is a reasonable period in which power under section 201 of the Act should be exercised. The court held thus (page 140) :

"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 under section 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 State of Punjab v. Bhatinda District Cooperative Milk Producers Union Ltd. [2007] 9 RC 637 ; [2007] 1 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."

5.2 He has further relied upon the decision of the Bombay High Court in the case of **Director of Income-tax (International taxation) v. Mahindra & Mahindra Ltd.** reported in **[2014] 48 taxmann.com 150**, wherein the Bombay High Court has considered the decision of Calcutta High Court and observed in para 33, 35, 36, 37 as under:-

"33. If one carefully peruses Section 201 (1) and 201 (1A) of the Income-tax Act, 1961, then, the principle laid down in the Delhi High Court decisions in NHK Japan Broadcasting Corpn. Ltd. and Hutchison Essar Telecom Ltd. (supra) would squarely apply.

34.

35. Once same provisions are invoked in the present case, then, the Hon'ble Delhi High Court, with respect, rightly concluded that though Section 201 does not prescribe any limitation period for the assessee being declared as an Assessee in Default yet the Revenue will have to exercise the powers in that regard within a reasonable time. In such circumstances we are of the

view that the Tribunal's order in this case does not suffer from any error of law apparent on the face of record or perversity warranting our interference in appellate jurisdiction.

36. We are also shown the judgment of the Calcutta High Court in the case of *Bhura Exports Ltd. v. ITO (TDS)* [2012] 202 Taxman 88/ [2011] 13 taxmann.com 161. With respect and for the reasons indicated by us above we cannot agree with the view taken by the Division Bench of the Calcutta High Court. That decision overlooks the fundamental principles noted above. They need not be reiterated here.

37. However, we clarify that our order shall not have any impact on the Appeal which has been filed by the Assessee in this Court and which is stated to be pending. Our judgment and order shall not be construed as expression of any opinion as to what should be the reasonable time. In other words, whether it should be as indicated in the Delhi High Court Judgments or otherwise is an aspect which is kept open. Equally, once we uphold the view of the Tribunal on the point of limitation, then, we must also clarify that we have expressed no opinion on merits of the impugned deductions/ claims in that regard. Therefore, we do not express any opinion on the rival contentions particularly as to whether there is any liability in terms of Section 201 of the Income tax Act, 1961 in the present case."

5.3 He submitted that as per above decisions, the period of limitation is four years. He has also relied upon the decision of the Karnataka High Court in the case of **Commissioner of Income-tax, TDS v. Bharat Hotels Ltd.** reported in [2015] 64 taxmann.com 325 (Karnataka), wherein Karnataka High Court has considered its earlier decision and after considering decision of various High Court observed as under:-

"20. The law provides for time limit for completion of assessments and reassessment (Section 153) which is two years from the end of the assessment year (or three

years from the end of the financial year). As such, if at all the proceedings for failure to deduct or pay TDS were to be initiated, it ought to have been reasonably done within the limitation provided for completion of assessment under Section 153 of the Act. The period of assessment or reassessment under Section 147 of the Act would be a different case, as it relates to income escaping assessment and not a normal, regular assessment. It would, thus, be a special provision and would not be a guiding factor for considering reasonable period of limitation under Section 201.

21. The Delhi High Court in the case of NHK Japan Broadcasting Corpn. (*supra*) has considered all these aspects and then come to the conclusion, in paragraph 18 of the judgment, that three years from the end of the financial year would be a reasonable period for initiating proceedings under Section 201 of the Act. It was also held that the provisions for reassessment under Sections 147 and 148 of the Act would be on a completely different footing, and therefore, would not merit consideration. However, keeping in view the fact that the Tribunal, in various decisions, had taken the view that four years period would be a reasonable period of time to initiate action, the Delhi High Court held that where no limitation was prescribed (as under Section 201 of the Act), reasonable period would be four years. Following such decision of the Delhi High Court, the Tribunal also held that four years period would be a reasonable period for initiating action under Section 201 of the Act.

22. Much reliance was placed by learned counsel for the Revenue on the proviso added to sub-section (3) of Section 201 of the Act, which provides that such order for a financial year commencing on or before 1.4.2007 may be passed at any time on or before 31.3.2011. It is noteworthy that the words used in the said provision are 'may be passed', which means, it relates to something to be done in future, and not what has already been done, in which case, the words ought to have been 'may have been passed', which are not there.

23. In the memorandum explaining the provisions in the Finance (II) Bill, 2009, it was clearly stated that 'to provide sufficient time for pending cases, it is proposed that such proceedings for a financial year beginning from

1st April, 2007 and earlier years can be completed by the 31st March, 2011. As such, the memorandum itself clarified that the proviso is for pending cases, and not decided cases. The Circular dated 3.6.2010, issued by CBDT, also clearly specifies that the said proviso would be for pending cases and not for decided cases. With regard to the applicability of the amendment made by the Finance Act, 2009 with effect from 1.4.2010, it was also clarified to be from the assessment year 2011-12 and subsequent years. As such, it is clear that proviso to sub-section (3) did not legalize the cases where action had already been taken, but was meant for only such cases which were pending at the time of insertion of sub-section (3) to section 201 of the Act.

.....

28. *The Division Bench of this High Court, in the case of Solar Automobiles India (P) Ltd. v. Dy.CIT [2012] 17 taxmann.com 260/204 Taxmann 667 (Kar.) has, while dealing with a similar case, held in paragraph 9 of the judgment as under:*

“Insofar as payment of interest under S.194 A (sic 201 (1A) is concerned, the interest is payable for the period it is not paid after deduction. The principal liability of paying tax is that of the creditor and a statutory duty is cast on the debtor to deduct tax on the income of interest payable and remit the same to the company (sic-Government) irrespective of liability of the principal debtor. Unless the principal debtor (sic-creditor) files the return and pays tax, then the vicarious liability exists on the persons who should have deducted tax at source or ought to have deducted tax at source. The Revenue cannot collect tax on interest from both the principal and the agent. In that context, the order passed by the authorities holding that the assessee is liable to pay interest from the date of default till the date of order is erroneous. However, the authorities have to find out whether the creditor has filed the returns and paid the tax. If he has filed the returns and paid the tax, the liability of the assessee ceases from the day they have paid the tax.”

5.4 He has also relied upon the decision of the Delhi High Court in the case of **Vodafone Essar Mobile Services Ltd. v. Union of India** reported in **[2016] 67 taxmann.com 124 (Delhi)** and contended that while considering the provisions of Section 201, it has been held in favour of the assessee that four years' period is reasonable period.

6. We have heard learned counsel appearing on both sides. Before proceeding with the judgment, in view of above submissions, it is clear that there are two views of different High Courts with regard to the question involved in the present appeals. Therefore, it is appropriate to consider the provisions of Section 201 of the Act, which reads as under:-

"201. Consequences of failure to deduct or pay:- (1) Where any person, including the principal officer of a company,

(a) who is required to deduct any sum in accordance with the provisions of this Act; or

(b) referred to in subsection (IA) of section 192, being an employer does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident

- (i) has furnished his return of income under section 139;*
- (ii) has taken into account such sum for computing income in such return of income; and*
- (iii) has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:*

Provided further that no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.

(1A) Without prejudice to the provisions of sub-section (1). if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest.

(i) at one per cent, for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted: and

(ii) at one and one-half per cent, for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid, and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200:

Provided that in case any person. including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso to sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.

(2) Where the tax has not been paid as aforesaid after it is deducted. the amount of the tax together with the

amount of simple interest thereon referred to in sub-section (1A) shall be a charge upon all the assets of the person, or the company, as the case may be, referred to in subsection (1).

(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-

(ii) two years from the end of the financial year in which the statement is tiled in a case where the statement referred to in section 200 has been filed;

(ii) six 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 (ii) and of [Explanation I to section 153 shall, so far as may, apply to the time-limit prescribed in sub-section (3).

Explanation.- For the purposes of this section, the expression "accountant" shall have the meaning assigned to it in the Explanation to sub-section (2) of section 288."

7. It is true that it is the duty of the assessee to deduct TDS and the question is whether it is likely to cause any loss to the revenue if it is not deducted in time. If TDS is not deducted, it is required to be paid in the first installment of advance tax, which is required to be paid within four months from the date of filing of return. Therefore, even if the contention of Mr.Bhatt is accepted, loss that may be caused to the revenue is only to the tune of interest of four months on delayed payment of tax. Not only that when the declaration about this is made in the

return, it comes within the knowledge of the Assessing Officer even if the TDS is not deducted. Therefore, we are of the view that the period of four years is reasonable period and we concur with the view taken by the Delhi High Court. It is true that the Court cannot legislate the Act, however, the Assessing Officer also cannot be given unfettered powers, which he can exercise even beyond the reasonable period of four years. Therefore, in our view, period of four years is just and proper and the Tribunal has not committed any error while passing the impugned order. Therefore, all these appeals are dismissed. The questions posed for our consideration are answered in favour of the assessee and against the revenue.

Sd/-
(K.S.JHAVERI, J.)

Sd/-
(G.R.UDHWANI, J.)

*malek

