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

+ W.P.(C) 3075/2015 & CM No.5493/2015

ORACLE INDIA PRIVATE LTD.

..... Petitioner

Through Mr M.S. Syali, Sr Advocate with Mr Mayank
Nagi, Mr Tarun Singh and Mr Chanakya
Sharma, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX

..... Respondent

Through Mr N.P. Sahni, Advocate.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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09.07.2015

This writ petition is directed against the notice dated 20.01.2015 issued under Section 201(1)/201(1A) of the Income Tax Act, 1961 pertaining to the Financial Year 2007-08 relating to the Assessment Year 2008-09. Earlier, for the same very Financial year, a notice had been issued under the same provisions on 17.02.2014. The objections were taken by the petitioner/assessee and an order disposing of the objections was passed. Ultimately, the matter was brought to this Court by way of WP(C) No.2061/2014 which was disposed of by an order dated 05.12.2014 to the following effect:-

“In this writ petition, the petitioner challenges the notice dated 17.02.2014 issued by DCIT - Circle 51 (1) under Section 201 of the Income Tax Act in respect of the Financial Year 2007-2008. The order dated 14.03.2014, pursuant to the said notice, is also under challenge.

One of the points raised by the petitioner was of limitation. The learned counsel for the petitioner drew our attention to Section 201(3) which has been introduced in the said Act with effect from 01.04.2010. The proviso to sub-Section (3) stipulates that an order can be passed at

any time on or before 31.03.2011. This makes it clear that insofar as the Financial Year 2007-2008 is concerned, in the circumstances of this case, no order can be made under sub-Section (1) of Section 201 after 31.03.2011. Since the notice itself had been issued on 17.02.2014, it is clearly time barred. Consequently, the impugned notice dated 17.02.2014, as also the order dated 14.03.2014, cannot survive. They are set aside.

The writ petition is allowed to the aforesaid extent. We make it clear that we have not examined the merits of the matter from any other stand-point. There shall be no order as to costs.

All pending applications also stand disposed of.”

From the above order, it is clear that this Court held that the said notice dated 17.02.2014 was time barred in view of the provisions of Section 201(3) as it then existed.

The present impugned notice has been issued on 20.01.2015 in an attempt to take advantage of the amendment to Section 201(3) which was brought into effect from 01.10.2014. Here, the period of limitation has been extended to seven years by the Finance (No.2) Act, 2014.

Mr Syali, the learned senior counsel appearing on behalf of the petitioner relied upon the Supreme Court’s decision in the case of **S.S. Gadgil v. Lal & Co.: 53 ITR 231 (SC)** which has been subsequently followed in several other decisions of the Supreme Court including **K.M. Sharma v. ITO: 254 ITR 772 (SC)** and **National Agricultural Cooperative Marketing Federation of India v. Union of India: 260 ITR 548 (SC)** to submit that the limitation prescribed by the Income Tax Act was not mere a period of limitation but that it imposes a fetter upon the power of the Assessing Officer to take action under the said provisions. In this context, it was submitted that since power in respect of Financial Year 2007-08 expired on 31.03.2011, it could not be revived unless the legislature specifically made a retrospective amendment to the same. The substitution

of Section 201(3) by the Finance (No.2) Act, 2014 was with effect from 01.10.2014 and not with retrospective effect. Mr Sahni appearing on behalf of Revenue submitted that if new information came to the knowledge of the Assessing Officer after the amendment of 2014 then the period of limitation would be seven years for completion of the assessment. However, we need not go into that aspect of the matter inasmuch as, in the present case, no new information has come and the impugned notice that was issued on 20.01.2015 was on the basis of the same information in respect of which the notice dated 17.02.2014 had been issued. Thus, those proceedings which had ended and attained finality with the passing of the order dated 05.12.2014 of this Court in WP(C) 2061/2014 cannot now be sought to be revived through this methodology adopted by the Assessing Officer. Even otherwise, insofar as the Financial Year 2007-08 is concerned, the period for completing the assessment under Section 201(1)/201(1A) has expired on 31.03.2015.

Therefore, looked at from any point of view, insofar as the facts of the present case are concerned, the impugned notice dated 20.01.2015 and subsequent order dated 17.03.2015 cannot be sustained. The same are set aside. The writ petition is allowed.

We make it clear that we have not expressed any view on the point raised by Mr Sahni that in case fresh or new information is discovered then the limitation would get extended upto seven years.

BADAR DURREZ AHMED, J

JULY 09, 2015
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SANJEEV SACHDEVA, J