

**HON'BLE SRI JUSTICE L. NARASIMHA REDDY
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

I.T.T.A No. 331 OF 2003

12-11-2014

BETWEEN

Commissioner of Income Tax – II, Hyderabad

...Appellant

And

M/s. U.B. Electronic Instruments Ltd., Hyderabad

.....Respondent

**HON'BLE SRI JUSTICE L. NARASIMHA REDDY
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

I.T.T.A No. 331 OF 2003

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JUDGMENT: (per the Hon'ble Sri Justice L. Narasimha Reddy)

The respondent is a company and an assessee under the Income Tax Act, 1961 (for short, 'the Act'). It has been submitting returns year after year disclosing the relevant information pertaining to the income, expenditure, deductions etc. As a part of its activity, the respondent raised loans from its associate companies of the UB Group. For some period, it was paying interest. When it started incurring losses, the respondent is said to have requested the creditors to waive the interest. Stating that

the loanees have waived the interest, it did not make any deduction of tax at source on the component of interest for the assessment years 1989-90, 1990-91 and 1991-92.

An audit report under Section 44AB of the Act was obtained in the assessment year 1991-92. The assessing officer took the view that amounts of Rs.1,88,301, Rs.6,15,208 and Rs.1,57,563 for the three assessment years referred to above ought to have been paid as interest and since the tax at source on the said interest was not deducted or paid as required under Section 201 of the Act, notice was issued. The respondent submitted explanation stating that the occasion to effect deduction of tax at source did not arise. Not satisfied with the explanation, the assessing officer passed an order dated 31-03-1999 under Section 201(1A) of the Act not only demanding tax but also levying interest for the amounts referred to above.

The respondent filed appeals before the Commissioner of Income Tax (Appeals) V (Central), Hyderabad. The appeals were dismissed on 25-08-2000. Aggrieved by that, the respondent filed ITA Nos.702 to 704/Hyd/2000 before the Hyderabad Bench 'B' of the Income Tax Appellate Tribunal, Hyderabad (for short, 'the Tribunal'). The appeals were allowed through order dated 19-08-2002. Hence, this appeal.

Heard Sri S.R. Ashok, learned Senior Standing Counsel for the appellant.

Section 201 of the Act imposes an obligation on not only an

assessee but also any person including the principal officer of a company to deduct tax at source on any amount that is paid by them to another. Failure to effect such deduction and remittance of the same to the department exposes them to the obligation not only for payment of the same on demand but also to pay the interest. The respondent no doubt was paying interest to its sister concerns on the loans borrowed by it year after year. However, for the three assessment years 1989-90, 1990-91 and 1991-92 it did not deduct any tax on the ground that it did not pay any interest at all. In the relevant assessment years, non-deduction of tax at source was not found fault with. It was only at a subsequent stage that a notice was issued proposing action under Section 201 of the Act. The defence of the respondent was that it did not effect deduction since the creditors have acceded to its request to waive interest on the ground that it incurred losses.

The assessing officer did not accept the contention of the respondent, and so did the Commissioner. The Tribunal however examined the matter from the point of view of limitation. It did take note of the fact that Section 201 of the Act or other analogous provisions did not prescribe any limitation for recovery of the amount representing deduction of tax at source. However, it treated four years period as constituting limitation for initiating steps under that provision.

For various steps that are required to be taken under the Act, the Parliament has prescribed the limitation. For example, Section 149 of the Act stipulates a period of four years from the

end of the relevant assessment year for the purpose of initiating proceedings under Section 148 of the Act where any income has escaped the assessment. Similarly, the power of suo motu revision can be exercised by a Commissioner against an order of assessment under sub-section (2) of Section 263 not beyond expiry of two years from the end of the financial year in which the order sought to be revised was passed. The examples can be multiplied. If for important and substantial proceedings like those under Section 148 of the Act and the suo motu proceedings under Section 263 of the Act limitation prescribed is four years and two years respectively, an ordinary and inconsequential step relating to deduction of tax at source cannot be permitted to be initiated beyond the period so stipulated.

By and large, four years is treated as the period within which any penal action can be initiated against an assessee. Failure to initiate steps within that period would disable the department to proceed against the assessee. The reason is not difficult to be discerned. 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 adjustment thereof in the activities of the subsequent years. However, if fairly long gap intervenes, it becomes difficult for making such adjustments, particularly when the activity is commercial in nature.

In the instant case, the assessment years are 1989-90,

1990-91 and 1991-92. It was nearly seven years thereafter that a notice was issued. For an assessee to be required to pay the amount, even if due five or six years preceding the demand, would be a serious problem. Several developments take place over the period, and the nature of relations undergoes change.

Obviously, because there was no precedent handed out by any High Court or Supreme Court, the Tribunal referred to an order passed by the Bombay Bench 'D' of the Tribunal in **Raymond Woollen Mills Ltd. vs. ITO**^[1]. The relevant portion was extracted in detail and it was demonstrated that the same situation obtains in the present case also. We are in full agreement with the view taken by the Tribunal and accordingly, the following questions framed in the appeal, viz.,

“1. Whether the Appellate Tribunal is justified in roping in the theory of reasonable period for passing the orders U/s.201(A) of the I.T. Act, in the absence of time limit being specified in the I.T. Act?

2. Whether the finding that the levy of interest U/s. 201 (1A) cannot be said to be within the reasonable time is legal and valid in spite of continuous breach or default committed by the assessee?

3. Whether the finding of the Appellate Tribunal that the levy cannot be said to be within the reasonable time is based on material on record?”

are answered against the department and in favour of the assessee.

There shall be no order as to costs.

L. NARASIMHA REDDY, J

CHALLA KODANDA RAM, J

12-11-2014

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