

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

ITA No.5 of 2012

Date of Decision: 12th April, 2012

Commissioner of Income Tax (TDS)
Chandigarh

Appellant

Versus

M/s Satluj Jal Vidyut Nigam Ltd.,
V&PO Jhakri, District Shimla,
(Former NJPC) through its M.D.

Respondent

Appeal u/s 260A of the Income Tax Act, 1961

Coram

The Hon'ble Mr. Justice R.B.Misra, J.

The Hon'ble Mr. Justice Sanjay Karol, J.

For the appellant:

Mr.Vinay Kuthiala, Senior
Advocate with Ms. Vandana
Kuthiala, Advocate.

For the respondent:

Nemo

Sanjay Karol, J. (oral)

The present appeal is filed with the following
substantial question of law:-

“Whether on the facts and in the circumstances
of the case, the Hon'ble ITAT was right in law in
holding that the order u/s 201(1) & 201(IA)
passed by the A.O. beyond four years was
barred by time limitation when there is no such
provisions of time limitation for passing order u/s
201(1) & 201(IA) in the Income Tax Act, 1961.”

2. Briefly stated facts are that assessee
(respondent herein) is engaged in running a hydro-electric
power project within the State of Himachal Pradesh. Certain

lands were acquired by the Government for the purposes of setting up of the said project. With respect to the year 1996-97 certain amounts towards the enhanced amount of compensation and interest payable to the land owners were deposited by the assessee pursuant to directions issued by the High Court of Himachal Pradesh.

3. However, assessee did not deduct tax at source before making payment of interest to the land owners. As such, notices under Section 201 and 201 (1A) of the Income Tax Act, 1961 were issued to the assessee on 22.7.2003.

4. The Assessing Officer adjudicated the proceedings and held the assessee liable to pay penalty, interest and surcharge for non-compliance of statutory provisions. The matter was taken up by the assessee before various authorities and in terms of impugned order, learned Tribunal held that since notices were not issued within the period of limitation i.e. four years, hence claim and action of the Revenue is time barred.

5. We find that with respect to the same adjudication proceedings, involving identical substantial question of law, with respect to other financial years i.e. 1991-92 and 1992-93, this Court in ITA No. 12 of 2006, titled as Commissioner of Income Tax, Shimla vs. M/s Satluj Jal Vidyut Nigam Ltd., decided on 9.12.2009, has held as under:-

“A Division Bench of the Delhi High Court in
Commissioner of Income Tax Vs. NHK Japan

Broadcasting Corporation 2008 (305) ITR 137

taking note of the judgment of the Apex Court in State of Punjab and others Vs. Bhatinda District cooperative Milk Producers Union Ltd [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.

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 *Bhatinda District cooperative Milk Producers Union Ltd* 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:-

“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 *Bhatinda District Co-op. Milk Producers Union Ltd.* [2007] 9 RC 637; 11 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.”

We are in respectful agreement with the judgment of the Delhi High Court since it follows the law laid down by the Apex Court. The law is well settled that even if no period of limitation is prescribed, the statutory power must be exercised within a reasonable period. This reasonable period taking into consideration the various provisions of the Income Tax Act has been held to be four years in a number of cases. We see no reason to extend this period any further. Consequently, the question is answered in favour of the assessee and against the revenue.”

4. In view of the aforesaid settled position, with which we find no reason to differ, it cannot be said that any question of law, much less a substantial question of law, as framed by the Revenue, arises for consideration in the instant appeal. The matter already stands adjudicated by this Court and action of the Revenue cannot be said to be within the period of limitation prescribed under the Act. Consequently, the appeal is dismissed.

(R.B.Misra),
Judge.

April 12 , 2012
(C)

(Sanjay Karol),
Judge.