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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.3489 OF 2009

Director of Income Tax
(International Taxation),
107, First Floor, Scindia House,
Ballard Pier, Mumbai-400038. ..APPELLANT

-Versus-

M/s Mahindra & Mahindra Limited,
Mahindra Towers, Ground Floor,
Corporate Taxation, Worli Road No.13,
Worli, Mumbai-400018. ..RESPONDENT

.....

Mr.Suresh Kumar, for the Appellant/ Revenue.

Mr.J.D.Mistry, Senior Advocate a/w Mr.Nishant Thakkar i/by Mint & Conferes, for the Respondent/ Revenue.

.....

CORAM : S.C. DHARMADHIKARI
&
B.P. COLABAWALLA, JJ.

Reserved on : 16th June, 2014
Pronounced on : 03rd July, 2014

Judgment (Per S.C.Dharmadhikari, J.):

1 This Appeal under Section 260A of the Income Tax Act, 1961 challenges the order passed by the Income Tax Appellate Tribunal dated 09.04.2009. The Tribunal by the order under Appeal dealt with four Appeals of the Respondent/ Assessee. They arose from the order passed by the Commissioner of Income Tax (Appeals) dated 01.03.2000. The Assessment Year in question is 1998-1999. The Income Tax Appellate

Tribunal held that out of four Appeals, the Income Tax Appeal Nos.2606/M/2000 and 2614/M/2000 are repetitive. They were filed as and by way of abundant caution. They need not be separately adjudicated. Therefore, these Appeals were dismissed as infructuous.

2 The other two Appeals, namely, Income Tax Appeal Nos.2607/M/2000 and 2613/M/2000 were filed separately because they pertain to two Euro issues, namely, one in the Financial Year 1993 and other in 1996. It was gathered by the Revenue authorities that the Assessee came out with two Euro issues of the size of US $ 74.75 million and US $ 100 million in November, 1993 and July, 1996 respectively. The Assessee was called upon to furnish the details in connection with the payments made to various non-resident persons who were connected with bringing out these Euro issues. From such details the Assessing Officer, namely, Deputy Commissioner of Income Tax, TDS Circle, Mumbai-1, observed that M/s Banque Paribas was paid a sum of Rs.8,21,00,838/- as marketing, underwriting commission and selling commission. A further sum of Rs.88,74,971/- was paid as out-of-pocket expenses like travelling expenses, fee and disbursement of legal advisors, managers, telex, telephone etc.. The details of these two Euro issues have been more elaborately recorded in the order passed by the Assessing Officer under Section 195 of the Income Tax Act, 1961. As regards the first Euro issue, the Company came out with an Offering Circular dated 30.11.1993 offering 87,36,559 Global Depository Receipts (GDRs) representing 87,36,559 ordinary shares at an issue price of US $ 7.44 per GDR. It was further stipulated in the terms of the Offering Circular that each GDR would be issued in respect of one ordinary share with a par value of Rs.10 per share. The closing date in terms of the Offering Circular was fixed as

14.03.1993 by which time the delivery of GDR was stipulated to be made. M/s Banque Paribas were appointed as lead managers. Clause 5 of the Subscription Agreement with the lead managers deals with the commission payable to the lead managers. It provides that management and underwriting commission was to be paid at 1.5% of the issue price and selling commission at 2% of the issue price. Such commission was to be retained by the lead managers from the issue price of GDRs. Besides that the Assessee also agreed to bear and pay all expenses incidental to the performance of its obligations including the fees and expenses of its legal advisers and accountants, expenses in connection with the issue of the Deposited Shares, the cost of listing the GDRs and the Deposited Shares and the cost of any advertising agreed to by the Assessee in connection with the offer of GDRs. The Assessee further agreed to reimburse to the lead manager for its out of pocket expenses and disbursement incurred by it subject to the limit of US $ 1,75,000.

3 The second issue of US $ 100,000,000 was of 5% Convertible Notes due on July 9, 2001 convertible into GDRs. For this issue, the Subscription Agreement was entered into by the Assessee with Goldman Sachs (Asia) L.L.C.. These Notes were to be in the denomination of US $ 1000 each convertible, at the option of the holder thereof, into GDRs each representing one ordinary share of the company on or after 18.08.1996 until and including 09.06.2001. The closing date for this issue was fixed on 09.07.1996. Clause 4 of this Agreement deals with the Commission and Concession. It provides that in consideration of the agreement by the Managers to manage the issue of, and to subscribe for, the Notes, the Company shall pay to Goldman Sachs (Asia) LLC a combined management and underwriting commission of 1% of the aggregate

principal amount of Notes and further 1.50% as selling concession.

4 The Assessing Officer observed that the Assessee wanted to mop up foreign currency resources from international market for up gradation of its Indian operations, which was permitted by the Government of India subject to certain conditions. After scrutinizing the material before him, the Assessing Officer proceeded to examine the applicability of Section 9(1)(vii) of the Income Tax Act, 1961 (for short, I.T. Act) to see if technical, managerial or consultancy services were rendered by the lead managers in both these Issues by assisting, managing and underwriting. He considered the nature of services rendered by the lead managers. It was noted that the lead managers were closely associated with all the aspects of bringing out the Euro issues including the fixing of the price of the issue, analyzing the accounting results and resource basis of the company with a view to find out the strengths and weakness of the company, presenting them in proper format, updating the accounting results of the Assessee in tune with international Audit practices, getting them printed, putting up road shows and in totality marketing the issue successfully. These activities, in the opinion of the Assessing Officer required vast pool database of information about the potential investors, global trends of the investing institutions which was a very specialized job. He considered these services to be prima facie technical services covered under Section 9(1)(vii). The show cause notice under Section 201(1) and 201(1A) was issued requiring the Assessee to explain as to why it be not treated as in default for non-deduction of tax at source from these payments and the interest be accordingly charged. The Assessee filed a detailed reply which has been incorporated in the assessment order. The sum and substance of the Assessee's reply is that:-

(a) the name of the agreement with the foreign lead managers was a "Subscription Agreement" and hence it should be treated as an agreement for subscription.

(b) payment to foreign lead managers was on account of subscription and hence it could not be considered as a consideration for rendering of any technical and consultancy services.

(c) the subscription/ underwriting of any capital issue cannot take the colour of technical and consultancy services. Moreover since the lead managers were connected in the business of subscription/ underwriting of the capital issues, the services rendered by them could not be considered as professional services.

(d) the services rendered by the lead managers were in the nature of financial/ banking services and were not technical services.

(e) even if these could be considered as involving the technical services, experience, skill, it were not "made available to the Assessee". The judgment of the Honourable Supreme Court in the case of *CBDT and others v/s Oberoi Hotels (India) Pvt. Ltd.* [**(1998) 231 ITR 148 (SC)**] was claimed as not relevant to the facts of its case. The other judgment referred to by the Assessing Officer in its notice in the case of *GVK Industries Limited and another v/s Commissioner of Income Tax and another* [**(1997) 228 ITR 564 (AP)**] was also replied as not germane in the context of GDR/ FCCB issues.

(f) there was no payment from Indian company to the non-resident company for rendering of the impugned services. The lead manager had deducted and retained their commission from the subscription money and only the net amount was remitted to India.

5 The Assessing Officer did not agree with the submission

advanced on behalf of the Assessee and that is how the Assessee challenged his order before the Commissioner of Income Tax (Appeals). The order passed by the Assessing Officer was substantially upheld by the Commissioner of Income Tax (Appeals) resulting in the Assessee approaching the Income Tax Appellate Tribunal.

6 It appears that after the Appeals were filed an additional ground was raised on 18.05.2006 which reads as under:-

"Whether on the facts and circumstances of the case and in law, the order passed by the Assessing Officer under Section 195 of the Income Tax Act, 1961 is void ab-initio being barred by limitation?"

7 It appears that the Revenue made an application on 30.08.2006 before the learned President of Income Tax Appellate Tribunal for constitution of a Special Bench under Section 255(3) of the Income Tax Act, 1961 for consideration of the issue of limitation which was raised by the Assessee as an additional ground. This request of the Revenue was accepted and the learned President constituted a Special Bench for deciding the following question and also disposing of the Appeal:-

"Whether on the facts and circumstances and in law, an order under Section 195 r/w Section 201 of the Income Tax Act, 1961 is barred by limitation within four years from the end of the relevant Financial Year in the absence of any express provision in the Income Tax Act, 1961?"

8 The Income Tax Appellate Tribunal found that the issue of limitation goes to the very root of the exercise of jurisdiction in this case. It rejected the objections to raising of this ground and thereafter, dealt with the same extensively. By the order under challenge the Tribunal

inter-alia held as under:-

"(ii) Section 195(1) casts duty on the person responsible for paying or crediting to the account of a non-resident any sum chargeable to tax under this Act for deducting tax at source. On failure to deduct or pay to the Government after deducting, the person responsible is treated as Assessee in default u/s 201(1).

(iii) "Any such person" referred to in section 201(1) extends not only the person deducting and failing to deposit the tax but also the person failing to deduct the tax at source.

(iv) Where no time limit is prescribed for taking an action under the statute, the action can be taken only within a reasonable time by harmoniously considering the scheme of the Act.

(v) Tax recovery proceedings are initiated only after the passing of order u/s 201(1) and that too if the person responsible fails to comply with notice of demand u/s 156.

(vi) The order u/s 201(1) is akin to the assessment order. "Assessment" includes "reassessment".

(vii) The time limit for initiating the proceedings u/s 201(1) cannot be the same as that for the passing of order under this sub-section. Time for initiation is always prior to the time for completing the proceedings.

(viii) The reasonable time for initiating and completing the proceedings u/s 201(1) has to be at par with the time limit available for initiating and completing the reassessment as the assessment includes reassessment.

(ix) The maximum time limit for initiating the proceedings u/s 201(1) or (1A) is the same as prescribed u/s 149 i.e. four years or six years from the end of the relevant assessment year, as the case may be depending upon the amount of income in respect of which the person responsible is sought to be treated as Assessee in default.

(x) The maximum time limit for passing the order u/s 201(1) or (1A) is the same as prescribed u/s 153(2) being one year from the end of the financial year in which proceedings u/s 201(1) are initiated.

(xi) Any order passed under Section 201(1) or (1A) cannot be held as barred by limitation if it is not passed within

four years from the end of the relevant financial year."

9 It is the correctness of these findings which is an issue before us.

10 Mr.Suresh Kumar, learned counsel appearing in support of this Appeal tendered the reframed questions of law and termed them as substantial. He submits that in relation to questions (1) and (2) the Assessee has challenged the order of the Tribunal in Income Tax Appeal No.1968/2009 filed before this Court. That Appeal has been admitted particularly because it raises the issue of applicability of Section 201(1) and Section 201(1A) of the Income Tax Act, 1961. He submits that selfsame issue and question is raised in the instant Appeal. Therefore, it deserves to be admitted and tagged with the Assessee's Appeal, namely, Income Tax Appeal No.1968/2009.

11 Mr.Suresh Kumar submits that the Revenue has been urging before the Tribunal and equally before this Court that the impugned order and conclusion reached by the Tribunal is ex-facie erroneous and vitiated in law. It is submitted that there could not be any time limit leave alone period of limitation for the purpose of exercise of powers by the Authority. In such circumstances the Tribunal should not have fixed any outer limit. Mr.Suresh Kumar submits that the Assessee is aggrieved by the finding rendered by the Tribunal, namely, of six years limitation for invoking the provision. The Assessee is contending that it should not be six years, but four years. On the other hand, the Revenue contends that there cannot be any outer limit for exercise of powers. Mr.Suresh Kumar submits that the finding rendered by the Tribunal amounts to providing for limitation and

in the absence of any legal provision the Tribunal could not have fixed the time limit. Consequently, the Appeal deserves to be admitted.

12 On the other hand, Mr.J.D.Mistry, learned Senior Counsel appearing for the Assessee, submits that this Appeal has nothing in common to one which has been filed by the Assessee, namely, Income Tax Appeal No.1968/2009. He submits that the argument, that there should not be any limitation or restriction on exercise of powers, is an extreme one. The Assessee's Appeal is in relation to the finding on the point of time. The Tribunal has held that six years would be reasonable time within which the power can be exercised whereas the Assessee submits that it should not be six years, but shorter. Such an issue or question cannot be equated with the controversy raised by the Revenue, namely, that there should be no period of limitation at all.

13 Even otherwise, according to Mr.Mistry, the Tribunal has applied a settled principle of law. That has been applied in series of judgments of the Honourable Supreme Court and other High Courts. That principle is that when a statute is silent on the period or time for invoking any provision or exercising any power, then, what is required to be read in it is the principle or doctrine of reasonable time. Mr.Mistry submits that what would be the reasonable time depends on the facts and circumstances in each case. All that the Tribunal has held is that there is a reasonable time for invocation and exercise of the powers. That finding is in no way vitiated by any error of law apparent on the face of record or perversity. This Appeal, therefore, deserves to be dismissed.

14 After perusing the memo of Appeal and annexures thereto

including the impugned order we are of the view that this Appeal can be said to be raising essentially only two grounds which read as under:-

(1) Whether the Tribunal was justified in prescribing the time limit for initiation and completion of proceedings under sub-sections (1) and (1A) of Section 201 of the Income Tax Act, 1961 in the absence of any time limit provided under the said Act?

(2) Whether the Tribunal was justified in prescribing the time limit statutorily provided for initiation and completion of reassessment proceedings under Section 147 of the Income Tax Act, 1961 for the purposes of sub-sections (1) and (1A) of Section 201 of the said Act?

15 Upon perusal of the order impugned in this Appeal we are inclined to agree with Mr.Mistry. The bare and essential facts have already been noted by us above. The order of the Assessing Officer passed under Section 201(1) and 201(1A) dated 30.03.1999 treated the Assessee in default for non deduction of tax as per the provisions of Section 195 of the Income Tax Act, 1961 from the payment made to the lead managers and its associates in connection with the services rendered by them for Euro issues. The Assessee filed two Appeals and which were partly allowed by the Commissioner of Income Tax (Appeals) on 01.03.2000. That is how the matter was carried to the Income Tax Appellate Tribunal.

16 True it is that the Tribunal relied upon the order passed in the case of *Raymond Limited v/s Deputy Commissioner of Income Tax* reported in **(2003) 86 ITD 791 (Bom.)**, copy of which is at Annexure-F to the

memo of Appeal. Further, the Income Tax Appeal No.246/2004 has been admitted by this Court on 31.01.2005 against the order passed in the case of Raymond Limited (supra) by the Income Tax Appellate Tribunal dated 24.04.2002. However, we do not find that the extreme stand of the Revenue and taken before us has any connection with the controversy raised in the Income Tax Appeal No.246/2004 in case of Raymond Limited or the pending Appeal of the Assessee before us.

17 In relation to the argument that was canvassed before us by Mr.Suresh Kumar we find that the Tribunal may have rendered several findings, but if the finding on the point of limitation can be sustained and the Appeal could be disposed of only on that ground, then, on merits we would not be required to go into the correctness of the findings rendered by the Tribunal. In other words, if we are satisfied with the conclusions of the Tribunal on the point of limitation, then, all the contentions of both sides on merits can be kept open for being decided in an appropriate case. We clarify accordingly.

18 In paragraph 12.1 of the order the Tribunal considered the question as to whether the order under Section 195 r/w Section 201 of the Income Tax Act, 1961 is barred by limitation within four years from the end of the relevant financial year in the absence of any express provision in the Income Tax Act, 1961. The Tribunal held that the Authority must have firstly jurisdiction and on that assumption an inquiry can be held on the point of limitation. In the present case the Tribunal found that unless and until the Authority had jurisdiction the question of limitation for passing an order does not arise. That question is subsequent to the aspect of jurisdiction. If the Assessing Officer has jurisdiction to

pass an order under Section 201(1) only, then, it can be decided whether such an order passed is within the period of limitation or not. If there is no lawful jurisdiction for proceeding under Section 201(1), there cannot be any question of examining the limitation. The Tribunal proceeded on the footing that there is certain liability to deduct tax at source on the payments made to non residents and the Assessee has failed to discharge his duty. Thereafter, the Tribunal examined as to whether Section 201(1) applies to the case of non deduction of tax at source and concluded that there is no substance in the contentions of the Assessee's representative. It held that Section 201 refers to not only the person deducting and failing to deposit tax with the Government, but also encompasses the person failing to deduct tax at source. We do not bother ourselves with this conclusion and for dealing with the only contention raised before us.

19 From paragraph 14.1 onwards of the order under challenge the Tribunal dealt with the issue as to whether any time limit can be prescribed for passing of the order under Section 201(1) of the Income Tax Act, 1961. In relation to that the Tribunal considered the contentions of the Revenue that the Legislature in its wisdom had chosen not to prescribe any time limit for passing an order under Section 201(1) or 201(1A) of the Income Tax Act, 1961. The Revenue contended that the Court or Tribunal should not attempt to lay down any particular time limit as that would amount to placing undue restriction on exercise of power which is legitimately conferred and by law. In relation to that the Tribunal referred to the judgments relied upon by the Revenue.

20 The Tribunal then noted the argument of the Assessee that where no time limit is prescribed for exercise of power under a particular

section of the statute, then, it should be exercised within a reasonable time.

21 After referring to the provisions extensively from paragraph 14.2 onwards, the Tribunal analyzed them. The Tribunal then considered the judgments relied upon. It held in paragraph 14.4 as under:-

> *"14.4 If we look at the scheme of section 201(1) it is found that a duty has been cast upon the person responsible to make deduction of tax at source from any payment made on which tax is deductible. The failure to deduct or payment after deduction enables the authorities to treat him as assessee in default. This deduction of tax at source is only one mode of recovery. The deductee always remains responsible for the payment of tax on the amount which is paid to him with or without deduction of tax at source. Hence we do not find any match between the facts of the case of Hindustan Times Limited (supra) and others on similar lines, relied upon by the learned D.R. vis-a-vis the facts under consideration. On the contrary so many authorities have been cited on behalf of the Assessee, some of which have been referred to above in which it has been categorically held that the statutory power should be exercised within a reasonable time even if no time limit is prescribed. The same opinion has been expressed by the Hon'ble Supreme Court in the case of Mohamad Kavi Mahamad Amin Vs. Fatmabai Ibrahim [(1997) 6 SCC 71]. In view of the foregoing discussion we are of the considered opinion that there is no merit in the contention of the learned D.R. that in the absence of time limit specified u/s 201, action can be taken at any point of time. It is naturally so for the reason that time is the core of every action under law. If the legislature is silent in prescribing a particular time limit then the action can be taken within a reasonable time. The Ld. D.R., during the course of subsequent arguments, was fair enough to concede that the time limit may be specified, but requested that it should not be kept rigid at four*

years as has been held in the case of Raymond Woolen Mills Ltd. Vs. ITO [(1996) 57 ITD 536 (Bom.)]. Now the next question is that what can be the reasonable period for action u/s 201(1). There cannot be a particular time limit say two years or five years or ten years, which can be described as reasonable for all the actions under the Act, when no time limit is prescribed. The reasonable time for taking action under a particular section largely depends on host of factors, inter alia, the nature of proceedings, the character of the order etc.. In order to determine the reasonable time for taking action u/s 201, it is important to have a look at such necessary factors."

22 Thereafter, the Tribunal dealt with the nature of the proceedings under Section 201(1) and type of the order under Section 201(1). The Tribunal relied on the judgment of the Honourable Supreme Court [reported in **(2001) 252 ITR 772 (SC)** *ITO Vs. Delhi Development Authority*] approving the view of the Honourable Delhi High Court that the order under Section 201(1) is an order of assessment.

23 The Tribunal then dealt with what would be the reasonable time for passing an order under Section 201(1). The discussion in relation thereto is to be found in paragraph 17.1 onwards of the order under challenge. After referring to the rival contentions the Tribunal concluded in paragraphs 17.9 and 17.10 as under:-

"17.9 Section 201(1) declares that where the person responsible for paying any sum chargeable to tax under the provisions of this Act fails to deduct or after deducting fails to pay the tax as per the provisions of this Act, he shall be deemed to be an Assessee in default in respect of the tax. Further the Explanation to section 191, which will be discussed infra has direct impact on the liability of the person liable to deduct but failing to deduct or failing to pay after deduction

of tax at source. On going through the Explanation to section 191 in juxtaposition to section 201(1) it is divulged that the person responsible for deducting or failing to pay tax deducted at source is to be deemed to be an Assessee in default only if the payee of income has also failed to pay such tax directly. From the detailed discussion under the succeeding main head, we will also notice that where the payee is not liable to pay tax on the amount of income received by him without deduction of tax at source, then also the person responsible cannot be treated as assessee in default. To sum up the liability of the person responsible is dependent upon the deductee failing or otherwise to pay such tax directly. Thus the action u/s 201(1) is dependent on the outcome of the assessment of the payee and the time limit for passing order u/s 201(1) has to be viewed in the light of the fate of the assessment in the hands of the recipient. Logically the person responsible for paying sum chargeable to tax can be treated as assessee in default at any time prior to the assessment of the payee or the time available for the making of the assessment of the payee. If the persons responsible is deemed to be an assessee in default after the assessment of the payee or the time available for making assessment has expired then such amount of tax will be incapable of adjustment against tax liability of the payee and would require return to such person who has been treated as assessee in default. Thus both the initiation of proceedings u/s 201(1) as well as the completion of such proceedings by passing order have to be prior to the time limit within which the tax can be determined in the hands of the payee. It cannot be beyond such period. There may be different situations in the assessment of the payee. If the payee has included the amount received from payer in his total income but the tax has not been paid in full or part then the payer can be treated as assessee in default to the extent of the non payment of tax on the sum paid to him provided the tax is not recovered from the payee. If the payee has furnished the return of income without disclosing the sum paid by the payer on

which tax was deductible as per the provisions of the Act then the tax deductible at source can be recovered from the payer by treating him as assessee in default if the income has not been assessed in the hands of the payee. Still in another situation where the payee has not at all filed his return of income again the person responsible can be treated as assessee in default in respect of the tax on the sum paid by him in violation of the provisions of this Chapter. With this discussion there remains no difficulty in answering the question that how much time is available with the Revenue for treating the payer as assessee in default u/s 201(1). The obvious answer is that the maximum time limit available for assessment of the payee is the maximum time limit within which the payer can be treated as assessee in default. With the expansion of the scope of section 147, also roping in the cases of aassessment apart from reassessment, it is clear that the assessment of payee shall also include assessment made under 147. Thus, the maximum time limit for initiating and completing the proceedings u/s 201(1) has to be at par with the time limit available for initiating and completing the reassessment.

17.10 Proviso to section 143(3) states that no notice under clause (ii) shall be served on the assessee after expiry of 12 months from the end of the month in which the return is furnished. The time limit for completion of assessment u/s 143 or 144 has been prescribed u/s 153(1) as two years from the end of the assessment year in which the income was first assessable. The time limit for notice of assessment or reassessment u/s 147 has been prescribed u/s 149. This section, in turn, provides that no notice u/s 147 shall be issued for the relevant assessment year if four years have elapsed from the end of the relevant assessment year unless the case falls under clause (b). Clause (b) further states that no notice u/s 147 shall be issued if four years but not more than six years have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one

lakh rupee or more for that year. The present two-fold time limit for issuing notice u/s 149 has clear cut demarcation of its applicability in one situation or the other. Where the income chargeable to tax which has escaped assessment, by reason or under-assessment or no assessment, amounts to or is likely to amount to one lakh rupees or more for that year then the extended period of six years is available but if the amount of such income is less than Rs.1 lakh then the shorter period of four years is provided for. Section 153(2) deals with the time limit for the completion of assessment, reassessment or recomputation u/s 147. It provides that "no order of assessment, reassessment or recomputation shall be made u/s 147 after the expiry of one year from the end of the financial year in which notice u/s 148 was served". As we have held above that the order u/s 201(1) is akin to assessment and further the assessment includes reassessment, naturally the reasonable time limits for initiation and completion of action u/s 201(1) have to be similar to those available for assessment u/s 147. Accordingly, we hold that proceedings u/s 201(1) can be initiated in the extended period of six years from the end of the relevant assessment year if the income by virtue of sum paid without deduction of tax at source by the payer chargeable to tax in the hands of the payee is equal to or more than one lakh rupee. If on the other hand such amount is less than Rs.1 lakh then the lower period of four years as prescribed u/s 149(1)(a) from the end of the relevant assessment year is available for initiation of proceedings u/s 201(1). Going by the same logic and taking assistance from section 153(2), the completion of proceedings u/s 201(1), that is the passing of the order under this sub-section, has to be within one year from the end of the financial year in which proceedings u/s 201(1) were initiated. Same time limits for initiation and passing of orders will be valid for the passing of order u/s 201(1A) also. We hold accordingly."

24 Thereafter, from paragraph 17.11 the Tribunal dealt with the

contentions of the Assessee that the time limit for initiation and completion of the proceedings under Section 201(1) ought to be the period of four years. The cases relied upon have been referred to and in paragraph 17.14 it is held that the order passed under Section 195 r/w 201(1) or 201(1A) of the Income Tax Act, 1961 cannot be held as barred by limitation if it is not passed within four years from the end of the relevant financial year. With the correctness of this finding we are not concerned in this Appeal. Equally we are not concerned with the findings on the point of jurisdiction or liability under Section 201 in the present case.

25 We are only concerned with the correctness of the finding of the Tribunal, namely, reasonable time.

26 Mr.Mistry, learned Senior Counsel has placed before us the compilation of judgments essentially of the Honourable Supreme Court and which are followed by some of the High Courts. In the case of *State of Gujarat v/s Patel Raghav Natha and others* reported in **AIR 1969 SC 1297** the Honourable Supreme Court held as under:-

> *"11. The question arises whether the Commissioner can revise an order made under Section 65 at any time. It is true that there is no period of limitation prescribed under Section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised."*

27 In the case of the *State of Punjab and others v/s Bhatinda District Cooperative Milk Producers' Union limited* reported in **(2007) 11**

SCC 363, the Honourable Supreme Court followed this principle and applied it to even tax law. The Honourable Supreme Court in the context of revisional powers conferred by the Punjab General Sales Tax Act, 1948 enabling reopening of the assessment, followed the principle afore-quoted and held as under:-

> *"17. A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefor, the same would not mean that the suo motu power can be exercised at any time.*
>
> *18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors."*

28 Then, again in the case of *Santoshkumar Shivgonda Patil and others v/s Balasaheb Tukaram Shevale and others* reported in **(2009) 9 SCC 352**, the Honourable Supreme Court followed the ratio in the judgments of Patel Raghav Natha (supra) and the State of Punjab v/s Bhatinda District Cooperative Milk Producers' Union (supra) and reiterated the principle as referred above.

29 The same view appears to have been taken earlier also in the case of the *Government of India v/s Citadel Fine Pharmaceuticals and others* reported in **1990 (Vol.184) ITR 467 (SC)**.

30 Our attention has also been invited to two judgments of the Honourable Delhi High Court which are on the same principle and as to whether in the absence of any time limit the proceedings under Sections 201 and 201(1A) of the Income Tax Act, 1961 could be initiated at any

time. In following it's earlier judgment in the case of *Commissioner of Income Tax v/s NHK Japan Broadcasting Corporation* reported in **(2008) 305 ITR 137 (Delhi)**, the Delhi High Court upheld the view of the Tribunal and dismissed the Revenue's Appeal [*Commissioner of Income Tax v/s Hutchison Essar Telecome Ltd.* reported in **(2010) 323 ITR 230 (Delhi)**].

31 In the case of NHK Japan Broadcasting Corporation (supra), the Honourable Mr. Justice Madan b. Lokur (as His Lordship then was) speaking for the Bench answered the question directly posed before us in the following terms:-

> *"There is no dispute that Section 201 of the Act does not prescribe any limitation period for the assessee being declared as an assessee in default.*
>
> *Learned Counsel for the Revenue relied upon Bharat Steel Tubes Ltd. v. State of Haryana [1988] 70 STC 122 (SC) to contend that no period of limitation can be prescribed in a situation such as the present for initiating proceedings.*
>
> *Learned counsel for the assessee relied upon State of Punjab v. Bhatinda District Co-op. Milk Producers Union Ltd. [2007] 11 SCC 363 : [2007] 9 RC 637 to contend that if no period of limitation is prescribed, a statutory authority must exercise its jurisdiction within a reasonable period. What should be the reasonable period depends upon the nature of the statute, rights and liabilities thereunder and other relevant factors.*
>
> *Relying upon this decision, it is submitted by learned Counsel for the assessee that since Section 201 of the Act does not prescribe any period of limitation for initiating or for completing proceedings in declaring the assessee as an assessee in default, exercise of jurisdiction should commence insofar as the statutory authority is concerned within a reasonable period of time.*
>
> *We are unable to agree with learned Counsel for the Revenue inasmuch as the decision relied upon by him deals with reasonable time for completing the*

assessment or for completing the task on hand.

In Bharat Steel Tubes Ltd. [1988] 70 STC 122 (SC) the question that arose before the Court (and which has been stated on page 130 of the report) is whether an order of assessment under Section 11(3) of the Punjab General Sales Tax Act, 1948 or Section 28(3) of the Haryana General Sales Tax Act, 1973 could now be completed or it would be barred by limitation. In that case, the assessment proceedings had been unduly delayed and the Supreme Court came to the conclusion that for completing the assessment proceedings there is no period of limitation prescribed and that would depend upon the facts of each case. Considering the facts of the case, the Supreme Court gave a direction to the assessing authority to complete all the pending assessments within a period of four months from the date of delivery of the judgment.

Insofar as Bhatinda District Co-op. Milk Producers Union Ltd. [2007] 9 RC 637 : 11 SCC 363 is concerned, the question that arose before the Supreme Court was regarding initiation of proceedings by exercise of jurisdiction by the statutory authority. The Supreme Court held that exercise of jurisdiction must be within a reasonable period of time and considering the provisions of the Punjab General Sales-Tax Act, 1948, it was held that a reasonable period of time for initiating proceedings would be five years.

There is a qualitative difference between Bharat Steel Tubes Ltd. [1988] 70 STC 122 (SC) and Bhatinda District Co-op. Milk Producers Union Ltd. [2007] 9 RC 637 : 11 SCC 363. In the former case, the question pertained to completion of proceedings, while in the latter case is pertained to initiation of proceedings. We are concerned with initiation of proceedings.

Insofar 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 year.

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 purposes 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."

32 Mr.Suresh Kumar submitted before us that the Delhi High Court judgment does not take note of the principle that when there is no limitation prescribed by the statute, the Court cannot read into the provision any time limit or restriction. In that regard he relied upon the judgment of the Honourable Supreme Court in the case of *Ajaib Singh v/s Sirhind Cooperative Marketing Cum Processing Service Society Limited and another* reported in **(1999) 6 SCC 82**. The issue before the Honourable Supreme Court in that case was whether there is any period of limitation prescribed for initiation of proceedings under Section 33-C(2) of the Industrial Disputes Act, 1947. In that regard the Honourable Supreme Court noted the factual position, namely, that services of workman were terminated on 16.07.1974. He had issued the notice of demand only on

18.12.1981. However, it was not disputed that no plea regarding delay was raised by the Management before the Labour Court. It was also acknowledged that Article 137 of the Limitation Act, 1963 has not been specifically made applicable to the proceedings under the Industrial Disputes Act, 1947 seeking reference of Industrial Disputes to the Labour Court. Therefore, neither this provision nor any principle incorporated therein is applicable to the proceedings under the Industrial Disputes Act, 1947 and that is how the Honourable Supreme Court proceeded to analyze the ambit and scope of the proceedings under the special provision, namely, a Reference by the concerned workman under the Industrial Disputes Act, 1947. The judgment of the Honourable Supreme Court deals with a case where any provision in the nature of limitation or outer limit is prescribed for reference under the Industrial Disputes Act, 1947. The Honourable Supreme Court was not dealing with a case of exercise of powers enabling reopening of Assessment under the Income Tax Act, 1961 or any Taxing Statute. In fact, it was not deciding a case concerned with invoking of any suo-motu powers or reopening of assessment finalized under the Tax Law. Therefore, this judgment is clearly distinguishable on facts.

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 Corporation and Hutchison Essar Telecom (supra) would squarely apply.

34 The Section 201 of the Income Tax Act, 1961 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 sub-section (1A) 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 sub-section (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 –

(i) two years from the end of the financial year in which the statement is filed 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 153 and of Explanation 1 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.]"

35 Once same provisions are invoked in the present case, then, the Honourable 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/s Income Tax Officer (TDS), Ward 57(2)* in G.A. No.1319 and ITAT No.118 and IT Appeal No.116/2011 and IT 1163/2011 decided on 30.08.2011. 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.

38 As a result of the above discussion we are of the view that the present Appeal does not raise any substantial question of law. It is, accordingly, dismissed. There will be no order as to costs.

(B.P. Colabawalla, J) **(S.C. Dharmadhikari, J)**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1484 OF 2011

Director of Income Tax
(International Taxation). ..APPELLANT

-Versus-

M/s Larsen & Toubro (I) Ltd.. ..RESPONDENT

.....

Mr.Suresh Kumar, for the Appellant/ Revenue.
Mr.J.D.Mistry, Senior Advocate a/w Mr.Nishant Thakkar i/by Mr.A.K.Jasani, for the Respondent/ Revenue.

.....

CORAM : S.C. DHARMADHIKARI
&
B.P. COLABAWALLA, JJ.

Reserved on : 16th June, 2014
Pronounced on : 03rd July, 2014

Judgment (Per S.C.Dharmadhikari, J.):

1 In the light of our judgment and order passed in the companion Income Tax Appeal No.3489/2009 (*Director of Income Tax v/s Mahindra & Mahindra Limited*) and since the issue involved is also identical that we are of the opinion that this Appeal, which challenges the order of the Income Tax Appellate Tribunal dated 07.05.2010 in Income Tax Appeal Nos.1154/Mum/2000 and 1155/Mum/2000 (Assessment Year 1998-1999), does not raise any substantial question of law. For identical reasons this Appeal is also dismissed. No costs.

(B.P. Colabawalla, J) **(S.C. Dharmadhikari, J)**