

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. No.122/Coch/2017 & S.P. No. 27/Coch/2017
Assessment Year : 2007-08

M/s. US Technology Resources Private Limited, 721, Nila, Technopark Campus, Kariyavattom, Trivandrum-695 581. [PAN: AAACU 6085C]	Vs.	The Assistant Commissioner of Income-tax (International Taxation), Trivandrum.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Shri Raja Kannan, Adv.
Revenue by	Shri Shantham Bose, CIT(DR)

Date of hearing	03/04/2018
Date of pronouncement	10/04/2018

ORDER

Per GEORGE GEORGE K., JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of the CIT(A) dated 28/02/2017. The assessee has also filed Stay Petition in S.P. No.27/Coch/2017. The relevant assessment year is 2007-08.

2. The brief facts of the case are as follows:

The assessee is a company engaged in providing software development services towards customers based in India. The assessee-company had been

paying managerial service fees to its affiliate UST Global Inc., USA (USTG) from the assessment year 2007-08 to 2013-14 under the Managerial Services Agreement (MSA). For the assessment year 2007-08, the assessee had paid a total sum of Rs.82,11,622/- to USTG without deducting tax at source under section 195 of the I.T. Act. The Assistant Commissioner of Income-tax (international Taxation), Trivandrum (Assessing Officer) was of the view that these payments made by the assessee to non-resident company, namely USTG Inc, USA requires withholding of tax u/s. 195 of the I.T. Act. Therefore, the Assessing Officer passed an order u/s. 201(1) and 201(1A) of the I.T. Act, making the assessee liable for a total sum of Rs 16,82,683/- which includes interest u/s. 201(1A) of the Act amounting to Rs. 8,24,160/-.

3. Aggrieved by the order passed u/s. 201(1) and 201(1A) of the Act, the assessee preferred an appeal to the first appellate authority. It was contended before the first appellate authority that the assessee is not liable for deduction of tax at source u/s 195 of the I.T. Act with regard to the managerial services fees paid to UST Global Inc, USA. It was further contended by the assessee that the order passed u/s. 201(1) and 201(1A) of the Act is barred by limitation. The CIT(A) following the order of the Tribunal in assessee's own case in I.T.A. No. 222/Coch/2013 (order dated 27/09/2013) held that the assessee is liable for tax deduction at source u/s. 195 of the Act with regard to payment made by it for managerial services fees to UST Global Inc, USA. The plea of the assessee that

the order passed u/s. 201(1) and 201(1A) of the Act was barred by limitation was also rejected by the CIT(A).

4. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The Ld. Counsel for the assessee fairly admitted that the issue on merits is covered against the assessee by the order of the Tribunal in ITA Nos. 99-104/Coch/2017 for the assessment years 2008-09 to 2013-14 (order dated 29/01/2018) and also ITAT order in ITA No. 222/Coch/2013 (order dated 27/09/2013). However the Ld. Counsel for the assessee argued that the order passed u/s 201(1) and 201(1A) of the Act is barred by limitation, since it was passed beyond the period of six years from the end of the financial year in which the transaction was made. The Ld. Counsel for the assessee strongly relied on the judgment of the Hon'ble Bombay High Court in the case of Director of Income-tax (International Taxation) vs. Mahindra & Mahindra Ltd. reported in 365 ITR 560.

5. The Ld. DR on the other hand strongly supported the orders of the Assessing Officer and the CIT(A).

6. We have heard the rival submissions and perused the material on record. As regards the issue on merits, it was fairly admitted by the Ld. Counsel for the assessee that the matter is covered in favour of the Revenue by the orders of

the Tribunal in ITA No. 222/Coch/2013 (supra) and in ITA Nos.99-104/Coch/2017 (supra). In ITA No. 222/Coch/2013 (supra), the Tribunal held that the assessee is liable for tax deduction at source u/s. 195 of the Act with regard to the managerial services fees paid by the assessee to UST Global Inc, USA and therefore the Tribunal concluded that the said expenditure was rightly disallowed by the Assessing Officer, by invoking the provisions of sec. 40(a)(ia) of the I.T. Act. In ITA No. 99-104/Coch/2017, the Tribunal upheld the order passed u/s. 201(1) and 201(1A) of the Act for the assessment years 2008-09 to 2013-14. In view of the above orders of the Tribunal, on merits, we hold that the assessee was liable for withholding tax u/s. 195 of the Act in respect of payment made by it for managerial services fees.

6.1 The question whether the order passed u/s. 201(1) and 201(1A) of the Act for the assessment year 2007-08, was barred by limitation was decided against the assessee by the CIT(A), by observing as under:

10. "It is observed from the provisions of section 201(3) that the time limit period of six years is applicable for the failure to deduct whole or any part of the tax from the person resident in India and in the appellant's case the deductee UST Global Inc USA is a resident of United States of America and not an Indian resident company and therefore the time limit period of six years prescribed u/s. 201(3) will not apply to the present case. In view of the above, it is held that the order passed by the Assessing Officer is legally valid."

6.2 The CIT(A) held that the order passed u/s 201(1) and 201(1A) was not barred by limitation u/s 201(3) of the I.T. Act for the reason that the payee in the instant case is a non-resident, whereas, the limitation prescribed u/s 201(3)

of the I.T.Act would apply only to payments made to Indian resident company. Section 201(3) and (4) was inserted by the Finance (No.2) Act, 2009 with effect from 01.04.2010 and it was later substituted by the Finance (No.2) Act, 2014 with effect from 01.10.2014. Prior to the time limit being prescribed by virtue of insertion of section 201(3), the Courts have held that when the statute does not prescribe the time limit for passing an order u/s 201(1) / 201(1A) of the I.T.Act, then reasonable time limit ought to be read into the provisions. The Special Bench of the Tribunal in the case of *Mahindra & Mahindra Ltd. v. DCIT reported in [(2010) 122 ITD 216 (Mum.)]* had held that order passed u/s 201(1) is akin to an order of assessment and the reasonable time limit for passing an order u/s 201(1) / 201(1A) would be same as the time limit prescribed for initiating and completion of reassessment u/s 147 of the I.T.Act. The Special Bench of the Tribunal was confirmed by the Honble Bombay High Court in the case of *Director of Income-tax (International Taxation) v. Mahindra & Mahindra Ltd. reported in [(2014) 48 taxmann.com 150 (Bombay)]*. The Special Bench order was considering payments made to non-residents. In our case also the payees are non-resident and that was the reason for the CIT(A) to hold that the time limit mentioned u/s 201(3) of the I.T.Act does not have application to this case.

6.3 When no time limit is prescribed under the statute for initiating and completion of a proceedings, the Hon'ble Kerala High Court in the case of *Iswara Bhat v. Commissioner of Agricultural Income-tax [(1993) 200 ITR 238 (Ker.)]*

had held that the powers should be exercised within the reasonable time. The Hon'ble High Court was considering the powers of the Commissioner to exercise the revisionary jurisdiction. The Kerala Agricultural Income-tax Act, 1950 did not prescribe a time limit for initiating a suo moto revisional proceedings. However, the Hon'ble Kerala High Court held that the Commissioner has to pass an order within a reasonable time and what is a reasonable time limit depends on the facts of that particular case.

6.4 The Hon'ble Delhi High Court in the case of *CIT v. NHK Japan Broadcasting Corporation* reported in [(2008) 305 ITR 137 (Delhi)] had held that the order passed u/s 201 of the I.T. Act beyond four years was not reasonable and had quashed the same as barred by limitation. Similar view was taken by the Hon'ble Himachal Pradesh High Court in the case of *CIT v. Satluj Jal Vidyut Nigam Ltd.* reported in [(2012) 345 ITR 552 (HP)]. As mentioned earlier, the CIT had held the time limit prescribed in sub-section (3) of section 201 does not have application since the payee is a non-resident. The Hon'ble Bombay High Court in the case of *Director of Income-tax (International Taxation) v. Mahindra & Mahindra Ltd. (supra)* had held even if there is no time limit prescribed under the statute for passing an order u/s 201(1) / 201(1A) of the I.T. Act, a reasonable time limit should be read into the provision. The Hon'ble Bombay High Court had confirmed the Special Bench order of the Tribunal, wherein the time limit prescribed for initiating and completion of reassessment u/s 147 of the

I.T. Act was upheld to be correct. The Hon'ble High Court was considering the following substantial question of law:-

"(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?"

In deciding the above question, the Hon'ble High Court confirmed the Special Bench order of the Tribunal by following the judgment of the Hon'ble Delhi High Court in the case of *CIT v. NHK Japan Broadcasting Corporation (supra)*.

6.5 In the instant case, the financial year concerned is 2006-2007 and notice for initiating proceedings u/s 201(1) / 201(1A) was issued on 30.04.2014, i.e. more than seven years from the end of the financial year. The orders u/s 201(1) / 201(1A) of the I.T. Act was finally passed on 30.05.2016, which is more than eight years from the end of the financial year. Therefore, it cannot be stated in facts of this case, the order u/s 201(1) / 201(1A) was passed within a reasonable time, going by the dictum laid down by the judicial pronouncement mentioned supra and the prescription of limitation mentioned u/s 201(3) and (4) of the I.T.Act. In view of the aforesaid reasoning, we hold that the order passed

u/s 201(1)/ 201(1A) of the I.T. Act was barred by limitation in the facts and circumstances of the case. It is ordered accordingly.

S.P. No. 27/Coch/2017

7. Since we have disposed of the appeal of the assessee, the Stay Petition filed by the assessee has become infructuous and the same is dismissed as infructuous

8. In the result, the appeal of the assessee is allowed and the Stay Petition filed by the assessee is dismissed.

Pronounced in the open court on 10th April, 2018

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Place: Kochi

Dated: 10th April, 2018

GJ

Copy to:

1. M/s. US Technology Resources Private Limited, 721, Nila, Technopark Campus, Kariyavattom, Trivandrum-695 581.
2. The Assistant Commissioner of Income-tax (International Taxation), Trivandrum.
3. The Commissioner of Income-tax(Appeals)-III, Kochi.
4. The Pr. Commissioner of Income-tax, Trivandrum.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin

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