

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.832 of 2017

Income Tax Officer, T D S Circle, Begusarai

... .. Appellant/s

Versus

Indian Oil Corporation Ltd., Chief Finance Manager Barauni Refinery, Post Office-Barauni Oil Refinery-851114 PANNO- (AAACI-1681G).

... .. Respondent/s

with

Miscellaneous Appeal No. 833 of 2017

Income Tax Officer, T D S Circle, Begusarai

... .. Appellant/s

Versus

Indian Oil Corporation Ltd., Begusarai.

... .. Respondent/s

Appearance :

(In Miscellaneous Appeal No. 832 of 2017)

For the Appellant/s : Smt. Archana Sinha @ Archana Shahi, Advocate
For the Respondent/s : Shri A.K.Rastogi, Sr. Advocate
Shri Parijat Saurav, Advocate
Ms. Smriti Singh, Advocate

(In Miscellaneous Appeal No. 833 of 2017)

For the Appellant/s : Smt. Archana Sinha @ Archana Shahi, Advocate
For the Respondent/s : Shri A.K.Rastogi, Sr. Advocate
Shri Parijat Saurav, Advocate
Ms. Smriti Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-07-2023

Heard Smt. Archana Sinha, learned Senior
Standing Counsel for the appellant-Income Tax Department and
Shri A.K.Rastogi, learned Senior Counsel for the assessee-
respondent.



2. The Revenue, in the two appeals before this Court, is on a question of law arising from the impugned orders of the Tribunal dated 13.04.2017; which question is reframed by us, as follows:-

Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal (hereinafter referred to as the 'Tribunal') was justified in setting aside the order passed by the Assessing Officer finding it to be beyond four years; deeming that to be a reasonable time, when there was no limitation provided under Sections 201(1) and 201(1A) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act')?

3. The subject assessment years are 2002-03 and 2003-04, from which the two appeals arise from a common order, on an identical issue, disposed off by us jointly.

4. The brief facts to be noticed are that the assessment orders, under Sections 201(1) and 201(1A) of the Act, in both the appeals, were passed on 27.04.2007. It is admitted that there was no limitation provided in the statute for an order to be passed under Section 201, deeming an assessee to be in default in respect of such tax, which is not deducted or paid or after deduction failed to pay such tax, as an employer, due from the employee.

5. In the present case, the orders were passed under Section 201 on 27.04.2007. The Tribunal found that the assessment orders were passed after four years from the financial years 2001-2002 and 2002-03; beyond a reasonable period as



discernible from the various provisions of the Act. The Tribunal also relied on judgments of the various High Courts; being that of Delhi, Himachal Pradesh, Bombay, Telangana, Andhra Pradesh, Karnataka and Gujarat, which set aside similar orders passed after four years. The Revenue relied on the decisions of the Calcutta High Court and the Punjab & Haryana High Court, which held that the period of limitation is not applicable as far as the tax deducted at source (TDS) is concerned.

6. There was an incidental issue of whether, when the Tribunal had, at the earlier instance, remanded the matter to the Assessing Officer; there occurred a merger of the order of the Assessing Officer with that of the Tribunal. Thus, disabling the assessee from raising the contention at the second instance. The Tribunal rightly found that the earlier order of the Tribunal specifically noticed the ground raised on limitation before the Assessing Officer at the first instance itself. The Tribunal remanded the matter without considering the issue and leaving it open to be agitated by the party, if on remand again the Assessing Officer passed an order prejudicial to the assessee. We fully agree with the Tribunal on this issue and no question of law arises therefrom.

7. Insofar as the reasonable time, as held by the Hon'ble Supreme Court, it is trite that when no period of



limitation is prescribed by a statute, even then the Department cannot pass orders after the expiry of a reasonable period. It has also been held in various decisions that the reasonable period can be understood from the provisions of the subject statute, disclosing the scheme of the statute, where limitation is provided with respect to other actions by the Department. The various High Courts, as referred to above, deemed reasonable time to be four years, as is coming out from the various provisions of the Income Tax Act itself.

8. True, the provision was amended bringing in a limitation of four years, in 2010 and then later extended to six years and seven years. Providing a specific period of limitation by the Union Parliament indicates, though it is not applicable to the subject assessment orders, the wisdom of the legislature. The presumable object behind that is not to leave the matter to the vagaries of the Department officials. It is also pertinent that at first the reasonable limitation period prescribed by the Union Parliament was four years; which was the reasonable time, as deemed by the various High Courts.

9. In this context, we refer to **Union of India v. Kaumudini Narayan Dalal;(2001) 10 SCC 231, Commissioner of Income Tax v. Narendra Doshi; (2004) 2 SCC 801, Commissioner of Income Tax v. Shivsagar Estate;**



(2004) 9 SCC 420 and Berger Paints India Ltd. v. Commissioner of Income Tax, Calcutta; (2004) 12 SCC 42.

The established principle is that, if the Revenue has not challenged a declaration of law laid down by a High Court and accepted it in the case of one assessee, then it is not open to the Revenue to challenge its correctness in the case of other assessees, without just cause.

10. We need not notice the various High Court decisions, which have been cited and elaborately considered in the order of the Tribunal.

11. We answer the question of law against the Revenue and in favour of the assessee and reject the appeals filed by the Revenue.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	NAFR
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