

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री एन के चौधरी, न्यायिक सदस्य एवं श्री डि.एस.सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI N.K.CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.145/Viz/2020
(निर्धारण वर्ष/Assessment Year:2011-12)**

M/s Sravan Shipping Services (P) Ltd. Vs. Dy.Commissioner of
Plot No.12, IDA Income Tax (IT)
Block-A, Varun Associates Visakhapatnam
Beside Visakha Dairy, Mindi
Visakhapatnam

[PAN : AADCS1257P]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri G.V.N.Hari, AR
प्रत्यर्थी की ओर से / Respondent by : Shri B.Satyanarayana Raju, DR

सुनवाई की तारीख / Date of Hearing : 01.02.2021
घोषणा की तारीख/Date of Pronouncement : 05.02.2021

आदेश /ORDER

Per D.S.Sunder Singh, Accountant Member :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)], Hyderabad-10 in Appeal No.CIT(A), Hyderabad-10/10057/2019-20 dated 18.03.2020 for the Assessment Year (A.Y.) 2011-12.

2. All the grounds of appeal are against the order passed by the Dy.Commissioner of Income Tax (IT) u/s 201(1A) of the Income Tax Act, 1961 (in short 'Act') for charging interest of Rs.42,83,249/- and sustained by the Ld. CIT(A).

3. Brief facts of the case are that Dy.Commissioner of Income Tax (International Taxation)(in short 'AO') was having information regarding purchase of immovable property by the assessee, M/s Sravan Shipping Services Private Ltd., admeasuring 3.4 acres situated in Survey No.242/SC, 4B, 5,6, A to E in Pedagantyada, Visakhapatnam for a consideration of Rs.2,71,90,000/- from Smt.Gudla Kavitha, non-resident vide document No.1343/2010, registered on 24.04.2010 before the sub Registrar, Pedagantyada, Visakhapatnam. The AO has verified the status of return filing in the case of non-resident(NRI) and found that the NRI did not file the return of income and settled the issue opting for Income Declaration Scheme (IDS) on 30.09.2016 and paid the taxes of Rs.7,50,000/- as first instalment on 30.11.2016. Thus it is found that the tax liability of the NRI was settled under IDS scheme.

4. The AO further observed that the assessee has not deducted the tax at source as required u/s 195 of the Act for the payment made to the NRI,

therefore, issued show cause notice calling for the assessee's explanation of the assessee as to why the assessee should not be treated as assessee in default for non deduction of tax at source u/s 195 of the Act for the A.Y.2011-12 and consequent levy of interest u/s 201(1A) of the Act. The assessee filed explanation objecting for treating the assessee as assessee in default, since, the assessee has not entered into any agreement directly with non-resident, made the agreement with her representative Sri T.Nagi Reddy, an Indian and resident who was the power of attorney holder. The assessee further submitted that the payment was made in India in INR through account payee cheque and no remittance was made to any foreign country. Hence argued that there is no question of making TDS thus requested the AO not to treat the assessee in default u/s 195 and 201(1A) of the Act. However, the AO was not convinced with the explanation offered by the assessee and treated the assessee as assessee in default for the reasons mentioned in his order as under:

a) In point a, the AR of the assessee stated that the assessee had not entered into agreement directly with non-resident but with his representative Sri T. Nagi Reddy, who was an Indian resident. But, in this case the assessee, nonresident herself has signed the sale deed and power attorney was not given to any person.

b) In point b, the AR of the assessee stated that the provisions of section 195 apply only when any remittance is required to be made to any foreign country. But, section 195 of the act clearly says that any person responsible for paying to a non-

I.T.A. No.145/Viz/2020, A.Y.2011-12
M/s Sravan Shipping Services Private Ltd., Visakhapatnam

resident, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income tax there on at the rates in force.

c) In point c, the AR of the assessee explained the provisions of section 195(6) of the act, which is not applicable in this case as the payment was made to a non-resident in this case.

d) In point d, the AR of the assessee stated that the sale proceeds of land cannot be said to be a sum chargeable under the provisions of this act as sale proceeds is not income chargeable under the provisions of this act. But, in this case the long term capital gains arising out of sale proceeds are chargeable to tax.

5. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the order of the AO. The assessee also raised ground of limitation for passing the order u/s 201(1A) stating that the order passed by the AO was barred by limitation. However, the Ld.CIT(A) dismissed the ground of the assessee stating that there was no time limit prescribed under the law for passing the order u/s 201(1A).

6. Against which the assessee filed appeal before this Tribunal. During the appeal hearing, the Ld.AR submitted that the assessee has purchased the land which was registered on 24.04.2010 and the AO passed the order u/s 201(1A) on 22.03.2018, beyond the limit of 4 years which was held to be barred by limitation. The Ld.AR argued that as per the decisions of jurisdictional High Court in the case of U.B.Electronics Instruments Ltd. and

the decision of this Tribunal in the case of Sri Malla Appala Naidu and others in I.T.A. No.547-550/Viz/2017 dated 12.10.2018, the Tribunal held that four years as reasonable time for passing the order u/s 201(1A) in the case of NRI and the proceedings initiated beyond four years are held to be barred by limitation.

7. The Ld.DR supported the order of the lower authorities.

8. We have heard both the parties and perused the material placed on record. The Ld.AR relied on the decision of this tribunal cited supra on identical issue. The Tribunal in the case of Sri Malla Appala Naidu (supra) considered that four years as reasonable time and the proceedings initiated beyond four years are held to be barred by limitation. While delivering decision, ITAT followed it's own decision in Bheemarasetty Sunitha in ITA No.119/Viz/2016 dated 23.06.2007 and the decision of A.P.High court in U.B.Electronics Instruments Ltd ITTA No.331 of 2003 dated 12.11.2014. For the sake of clarity and convenience, we extract para No. 6 and 7 in Bheemarasetty Sunitha supra which reads as under :

"6. We have heard both the parties and perused the materials placed on record. The relevant provisions of section 201(1A) of the Act is reproduced as under:

“201(1A)¹ Without prejudice to the provisions of sub- section (1), if any such person, principal officer or company as is referred to in that subsection does not deduct 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 at² fifteen] per cent per annum on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid.]”

7. *The Hon'ble Delhi High Court while deciding the writ petition in the case of Bharti Airtel & Another rendered the judgement considering the statement of Objects and Reasons of the Finance (No.2) Bill, 2009. In respect of time limit, Hon'ble Bombay High Court has considered the issue in detail and held that 6 years is reasonable period for initiating the action u/s 201 and 201(1A).*

The Hon'ble Delhi High Court in the decision relied upon by the Assessee considered the issue with regard to the limitation of time for initiating the proceedings u/s 201/201(1A) and held that 4 years is the reasonable time for initiating proceedings u/s 201/201(1A). While holding so, the Hon'ble High Court has relied on the decision of CIT Vs. NHK Japan Broadcasting Limited [305 ITR 137] and the CIT Vs. Hutchison Essar Telecom. Limited [323 ITR 330], Further, Hon'ble Delhi High Court has considered amendment made to Section 201 of the Act vide Finance Bill, 2009 and viewed that the Parliament did not make any amendment to the time limits for the non residents which indicates that the Parliament has accepted the judicial pronouncements for the limitation period already set out by the courts. The Hon'ble Delhi High Court also considered the decision of Hon'ble Supreme Court in the case of GE India Technology Centre Vs. CIT (2010) (10) SCC 29, wherein, the Hon'ble Supreme Court held that the proceedings should be initiated u/s 201/201(1A) within reasonable period and it cannot extend without limitation. After considering the decision of the Hon'ble Supreme court in GE India Technology and the Vodafone Essar Mobiles Ltd. the Hon'ble Delhi High Court followed its own decision in the case of CIT Vs. NHK Japan Broadcasting Limited (supra) held that 4 years is the reasonable period for initiating the proceedings u/s 201/201(1A) of IT Act. The Ld. DR relied on the decision of Hon'ble Bombay High Court in the case of Mahindra & Mahindra Ltd.. Considering the Hon'ble Supreme court decision in CIT Vs. Vegetable Products Ltd., 88 ITR 192 (SC) and CIT Vs. Karamchand Premchand Ltd (1960) 40 ITR 106, we are also of the view that the decision favourable to the assessee is required to be taken. Accordingly following the decision of Hon'ble Delhi High Court we hold that reasonable period is 4 years for initiating of proceedings u/s 201/201(1A). In the instant case the property was registered on 18.7.2007 and the assessee is liable to deduct the TDS during the F.Y.2007-08 and the 4 years time limit for initiating action u/s 201/201A expires before March 2012.

I.T.A. No.145/Viz/2020, A.Y.2011-12
M/s Sravan Shipping Services Private Ltd., Visakhapatnam

In the instant case, notice u/s 195 treating the assessee as assessee in default was issued on 11.08.2013 beyond the 4 years of the financial year in which the assessee required to deduct tax at source. As held by Hon'ble Delhi High Court, the time limit for initiating the proceedings u/s 201 and 201(1A) is 4 years and it is barred by limitation. Therefore, following the decision of Hon'ble Delhi High Court, we are unable to sustain the orders of the lower authorities. Accordingly, the order passed u/s 201 / 201(1A) is set aside and the appeal of the assessee is allowed."

In the instant case, the transaction took place on 24.04.2010 i.e. in the financial year 2010-11 and the AO passed the order on 22.03.2018 by issue of notice u/s 195 on 18.09.2017. Thus, the action taken by the AO was more than six years from the end of the financial year in which the transaction took place. Thus, the assessee's case is squarely covered by the decision of Bheemarasetty Sunitha supra. Hence, we hold that the proceedings initiated by the AO are barred by limitation. Accordingly we set aside the orders of the lower authorities and allow the appeal of the assessee.

7. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 5th February, 2021.

Sd/-

(एन के चौधरी)

(N.K.CHOUDHRY)

न्यायिक सदस्य/ JUDICIAL MEMBER

Dated : 05.02.2021

L.Rama, SPS

(डि.एस.सुन्दर सिंह)

(D.S.SUNDER SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

I.T.A. No.145/Viz/2020, A.Y.2011-12
M/s Sravan Shipping Services Private Ltd., Visakhapatnam

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–M/s Sravan Shipping Services (P) Ltd., Plot No.12, IDA, Block-A, Varun Associates, Beside Visakha Dairy, Mindi, Visakhapatnam
2. राजस्व/The Revenue –Dy.Commissioner of Income Tax (IT), Visakhapatnam
3. The Commissioner of Income Tax (IT&TP), Hyderabad
4. The Commissioner of Income Tax (Appeals), Hyderabad-10
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam