IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH,DELHI

Before SHRI A.D.JAIN,JM & SHRI A N PAHUJA,AM

ITA No.2742 to 2744/Del/2011
(Assessment Years:-2003-04to2005-06)

Assistant Commissioner of Income-tax,C i r c l e - 49 (1), New Delhi.	V/s	M/s. Catholic Relief Services, 139 – Shopping Complex, Z a m r u d p u r, New Delhi
(PAN: **AACFC6156D)**		
[Appellant]		[Respondent]

Assessee by :-	Dr. Ram Samujh,AR
Revenue by:-	Shri Shri Krishna , DR

Date of hearing	20-12-2011
Date of pronouncement	13-01-2012

O R D E R.

A. N. PAHUJA : These three appeals filed on 27th May, 2011 by the Revenue against a common order dated 30th March, 2011 for the assessment years 2003-04 to 2005-06 of the ld. CIT (Appeals)–XXX, New Delhi, raise the following similar grounds :-

" 1. On the facts and in the circumstances of the case as well as in law, the Ld. CIT(A) has erred in agreeing with the submission of the assessee that the revenue has not filed SLP on the issue of limitation and charging of tax and interest u/s 201(1)/201(lA) against the order of Delhi High Court in the case of NHK Japan Broadcasting Corporation in ITA No.6-03/2007 for F.Y. 1990-91 dated 23.04.2008 and therefore the order of High Court has become final. This observation is wrong, incorrect and contrary to the fact available on record as the revenue had not accepted the order of High Court in the case of NHK Japan Broadcasting Corporation and filed SLP against it which is still to be decided by the Apex Court (Ref:- Civil Appeal No-751 of 201 (arising out of SLP (C) no. 1455 of 2009) in the case of CIT vs. M/s. British Airways with Connected Civil Appeal No.754, 758, 759, and 764/2010 of NHK Japan Broadcasting Corporation arising

out of SLP (C) 4774/2009, 8146/2009, 8661/2009 and 6389/2009 respectively where apex court has kept open the issue on limitation vide its order dated 20.01.2010).

2 On the facts and in the circumstances of the case as well as in law, the Ld. CIT(A) has erred in holding that the Proviso to section 201 (3) in which the limitation is given upto 31.03.2011 is not applicable in this case. The Ld. CIT(A) has wrongly interpreted section 201 (3) wherein it is clearly provided that the order for a F.Y. 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 .

3. On the facts and in the circumstances of the case as well as in law, the Ld. CIT (A) has erroneously reached the conclusion that the since the order of Hon'ble Delhi High Court in the case of CIT vs. Hutchison Essar Telecom Ltd. (2010) 323 ITR 230 (DEL) was passed on 15.04.2010, after the insertion of section 201 (3) by finance act, 2009 the period of limitation is 4 years from the end of the relevant F.Y. The Ld. CIT(A) failed to note that the said order of Hon'ble High Court of Delhi did not take into cognizance the provision of newly inserted section 201(3) and relied totally on the decision of NHK Japan Broadcasting Corporation which was rendered before finance act, 2009. Further the revenue has not accepted the aforesaid order of High Court in the case of Hutchison Essar Telecom Ltd. And the proposal for filing SLP has been sent to DIT (L&R) in order to maintain the consistency on this issue.

4. The cancellation of the order by CIT(A) passed u/s 201(1)/201(1A) is bad in law therefore, the Hon'ble ITAT be requested to set aside the same and restore back the order of the AO.

5. The appellant craves leave to add, alter or amend any of the Grounds of appeal at the time of hearing. "

2. Facts, in brief, as per relevant orders are that in consequence of a search conducted on 11/09/2007 in the premises of the assessee, a U.S. based NGO, established in 1943 and engaged in aid and relief work in India for a number of years, it transpired that the assessee did not deduct tax at source on salary and perquisites of its following expatriate employees :-

S. No.	Name of the employee
1.	MARC D'SILVA
2.	ANNA HRYBYK
3.	FRANCIS MCLAOGHLIN
4.	CAROLINE BRENNAN
5.	CLODAGH J McCUMISKEY
6.	SARAH E CASHORE
7.	TSEGAYE KASSA
8.	JENNIFER POIDATZ
9.	CASSANDRA DUMMETT
10.	KRISTEN RICHARDSON
11.	KEVIN HARTIGAN
12.	STEPHEN HILBERT
13.	LEELA MULUKUTLA
14.	ALEX SCHEIN
15.	KIM WILSON
16.	SEAN CALLAHAN
17.	LORI VICHCHART
18.	MADELEINE SMITH
19.	PAUL BUTLER
20.	LEANNE HAGER
21.	WILL LYNCH
22.	LIONEL LAJOIS
23.	DOMINIOUE A. MOREL
24.	PROVASH BUDDEN
25.	SARA L YN BOWERS

3. On verification of TDS returns for the years under consideration, the Assessing Officer[AO in short]) asked the assessee to submit details of salary paid in India and outside India to the aforesaid 25 expatriate employees in the years under consideration. The assessee did not furnish the desired details and instead filed reconciliation statement of net salary and TDS deducted on such payments of expatriate employees and further contended that the initiation of proceedings was barred by limitation in view of the decision of the Hon'ble jurisdictional High Court in CIT Vs. NHK Japan Broadcasting Corporation, 172 Taxman 230. However, the AO did not accept the submissions of the assessee on the ground that the aforesaid decision had not been

accepted by the Department and SLP was pending before the Hon'ble Apex Court. While referring to amended provisions of section 201 by the Finance Act, 2009 with effect from 1.4.2010, the AO pointed out that order u/s 201(1) of the Act can be passed at any time on or before the 31st day of March, 2011 in respect of financial years expiring before 1st April, 2007. Since the assessee did not deduct tax at source from the salary paid to the aforesaid employees within the prescribed time, the AO treated the assessee company in default in terms of provisions of section 201(1) of the Act and accordingly, raised demand u/s 201(1) and 201(1A) of the Act as detailed hereunder :-

Sl.No.	**Financial Year.**	**T D S deductible[In ₹]**	**Interest u/s 201(1A)[In ₹].**
1	2002-03	55,54,681/-	63,18,450/-
2	2003-04	58,03,063/-	47,00,481/-
3	2004-05	.27,20,873/-	.19,20,644/-

4. On appeal, the ld. CIT (Appeals) concluded that the order passed on 27th April, 2010 under section 201(1) / 201(1A) of the Act for the FYs 2002-03, 2003-04 and 2004-05 was barred by limitation. The findings of the ld. CIT (Appeals) read as under :-

> *" 4. I have considered the arguments of Ld. AR and perused the impugned order dated 27.04.2010 passed uls 201(1)/201(1A) for the aforesaid years. I have also perused the legal provisions and case laws as relied upon by the Ld. AR. I find that the appellant is a liaison office situated in New Delhi of a U.S. based NGO established in 1943 having its operation in India for many years as an approved agency under the Indo-US bilateral agreement. I further find that the Ld. AR instead of explaining the merits of the case, he has emphasized the limitation matter. The Ld. AR relied on the decision of the Hon'ble Delhi High Court in the case of CIT vs NHK Japan Broadcasting Corporation 172 (Taxman) 230 which was decided following the principle laid down by Hon 'ble Apex Court in the case of State of Punjab v. Bhatinda Distt. Co-operative Mills (P) Ltd. (2007) 11 SCC 633 fixing the limitation period of 4 years, wherever no specific limitation is provided. According to AR, in appellant's case, the proceedings for financial year 2002-03 to 2004-05 relevant to assessment year 2003-04 to 2005-06 were barred by limitation because of the fact the proceeding in this case was initiated on 16.11.2009, which was beyond the period of 4 years from the end of financial year. Hence, the A.O was not justified to treat the assessee in default and levied the taxes uls 201(1) and charged the interest uls 201 (1A) in these years.*

4.1 0n going through the impugned order dated 27.04.2010, I find that the A.O has admitted the Ld. AR argument relating to limitation matter. 'Despite, he levied the taxes uls 201 (1) and charged the interest uls 201 (1A) with the observation, "The department has not accepted the decision of Hon 'ble High court of Delhi in the case of CIT vs NHK Japan Broadcasting Corporation and filed a SLP before the Hon 'ble Apex Court. The decision of the Hon 'ble Apex Court in respect of SLP that case is still pending. " In this regard, the Ld. AR brought to my notice that there were two decisions in the case of aforesaid NHK Japan Broadcasting Corporation by the Hon 'ble Delhi High Court, i.e. first, on the issue of taxes and interest uls 201(1)/201(1A) which was reported in 172 Taxman 230 and secondly, against the Citizen Individual Inhabitant Tax Act, which was a Japanese Law, which was reported in (2007)210CTR(Del)349. The SLP was filed against the second decision which has been decided by the Hon'ble Apex Court as reported in (2009) 225 CTR SC 258. The copy of all these three judgments have been placed in the paper book. On perusal of these judgments, I find that the Hon'ble Delhi High Court judgment given in aforesaid NHK Japan Broadcasting Corporation as reported in 172 (Taxman) 230 on the issue of levy of tax and charging of interest uls 201(1)/201(1A) has become final as no SLP was filed against it.

4.2 Further, on going through the impugned order dated 27.04:2010; I find that the A.O has relied on the newly inserted 'Proviso' to section 201(3) by the Finance Act, 2009 w.e.f. 01.04.2010. According to the A.O, in the light of newly inserted 'Proviso' to section 201(3) of the Income Tax Act, 1961, the order could be passed on or before 31.03.2011 in this case. In this regard, the Ld. AR relying on the Explanatory Circular for Finance (No 2) Act, 2009 for which the copy has been placed as Annexure 7 of paper book, argued that in the light of para 50.2 of Explanatory Note, the order on or before 31.03.2011 could be passed only in those cases where the proceedings were pending on or before 01.04.2007. Since in appellant case, the proceeding was initiated on 16.11.2009, i.e. later than the date 01.04.2007 as mentioned in the 'Proviso', the proceeding for these years were not pending on 01.04.2007. On perusal of impugned order dated 27.04.2010, I find that the A.O has himself mentioned in the order, "the assessee was further asked to file details of salary paid in India and outside India to all the 25 Expatriate employees for the period relevant to Financial Years 2001- 2002 to 2007-2008 vide order sheet entry dated 16.11.2009 "Thus, it is established that in. the appellant's case the proceedings uls 201(1)/201(1A) was not pending as on 0l.04.2007. Hence, the 'Proviso' to section 201(3) in which the limitation is given upto 31.03.2011 is not applicable in this case.

4.3 I further find that Hon'ble Delhi High Court in the case of CIT Vs. Hutchison Essar Telecom Ltd. (2010) 323 ITR 230 (Del) has held the proceedings u/s 201 (1)/201(1A) for A.Y 2002-03 as barred by limitation because in that case

proceedings was initiated beyond the period of four years from the end of the financial year. I further find that Hon'ble Delhi High Court has decided the aforesaid case vide order dated 15.04.2010 i.e. after insertion of new provision of section 201(3) by the Finance Act, 2009 w.e.f. 01.04.2010. Since the Hon'ble Delhi Court has decided the said case of Hutchison Essar Telecom Ltd. on 15.04.2010, i.e. after the date of application (0l.04.2010) of newly inserted provision of Section 201 (3) by holding period of limitation for 4 years, from the end of financial year, the date of limitation on or before 31.03.2011 is not applicable in those case where the proceeding on or before 01.04.2007 was not pending. In the light of facts and circumstances of the case, legal provision and case laws decided by Hon'ble Jurisdictional High Court and also by the Apex Court, I hold that the proceedings initiated on 16.11.2009 and order passed on 27.04.2010 under section 201(1) / 201(1A) in appellant's case for the financial year 2002-03 to 2004-05 relevant to A. Y 2003-04 to 2005 -06 respectively were barred by limitation. Hence, the taxes levied and interest charged u/s 201 (1)/201 (1A) vide order dated 27.04.2010 for the financial year 2002-03 to 2004-05 relevant to A.Y 2003-04 to 2005-06 are cancelled. "

5. The Revenue is now in appeal before us against the aforesaid findings of the ld. CIT (Appeals). The ld. DR while carrying us through the impugned orders invited our attention to the relevant provisions of section 201(3) , introduced by the Finance Act, 2009 with effect from 1.4.2010 and contended that in terms of proviso to section 201(3) of the Act, order for a financial year commencing on or before 1.4.2007 can be passed at any time on or before 31st day of March, 2011. Since proceedings in this case were initiated on 16/11/2009 in consequent of search u/s 132 of the Act, apparently the order passed by the AO was within the limitation and thus, the ld. CIT (Appeals) was not justified in quashing the said order on the ground that the same was barred by limitation.

6. On the other hand, the ld. AR on behalf of the assessee supported the findings of the ld. CIT (Appeals) while contending that no proceedings were pending before the AO as on 1.4.2007 nor the amended provisions , applicable with effect from 1.4.2010,had come in to force on the date of initiation of proceedings . To a query by the Bench, the ld. AR admitted that the said proviso was not considered by the Hon'ble Delhi High Court in their decision in CIT Vs. Hutchison Essar Telecom Ltd. [2010] 323 ITR 230 (Del.), which was decided on 15th April, 2010 i.e. after the insertion of amended provisions u/s201(1)(3) of the Act, even though the ld. CIT (Appeals) concluded that the

Hon'ble Delhi High Court having decided a similar issue in their order dated 15th April, 2010, were aware of the said amended provisions. To a further query by the Bench, neither the ld. AR on behalf of the assessee nor the ld. DR replied as to whether the proviso to the amended provisions of sec. 201(3) of the Act could enlarge the period for passing any order under section 201 of the Act beyond the period 4 years from the end of the financial year in which payment is made or credit is given as stipulated in section 201(3) of the Act.

7. We have heard both the parties and gone through the facts of the case as also the aforesaid decisions referred to by the ld. CIT (Appeals). Indisputably, the assessee ,in the instant case, did not deduct tax at source at the time of payment or credit of salary to the aforesaid exptariates nor paid TDS to the credit of Government before the search on 11.9.2007. The impugned orders do not reveal any finding as to whether or not any statement referred to in sec. 200 of the Act was filed by the assessee nor even the date(s) of payment of salary or TDS or date of credit for such TDS to the Government account are evident .However, the assessee stated before the ld. CIT(A that no such statement was filed while adhoc payment of ₹97,28,267/- towards TDS was made on 24.8.2010 and that salary was credited to the accounts of expatriates in USA. Apparently, a portion of TDS liability in respect of some of the employees appears to have been deposited after the order of the AO. As is apparent from the findings in the impugned order, the ld. CIT(A) has merely decided the appeal on limitation without going in to merits of the case nor the assessee seems to have explained the issues on merits before the ld. CIT(A). The issue before us is as to whether the AO was competent to initiate proceedings u/s 201(1)/201(1A) of the Act in the year 2009 for these three financial years 2002-03 to 2004-05. While referring to proviso in the newly inserted provisions of section 201(3) introduced by Finance Act, 2009 with effect from 1.4.2010, the AO concluded that he was competent to pass such orders for the aforesaid financial years at any time on or before 31.3.2011 while the ld. CIT(A),following the decisions of the Hon'ble jurisdictional High Court in NHK Japan Broadcasting Corporation (supra) & . Hutchison Essar Telecom Ltd.(supra) held that the order dated 27.4.2010 passed by the AO was barred by limitation .Indisputably, in

none of these decisions, the amended provisions of sec. 201(3) were considered. Moreover, the ld. CIT(A) observed that no SLP was filed in NHK Japan Broadcasting Corporation (supra) and therefore, the ratio of this decision has become final while in the grounds of appeal, the AO mentioned that on SLP filed by the Revenue, the Hon'ble Apex Court have disposed of the SLP while leaving the question of limitation open. Inter alia, the ld. CIT(A) concluded that since in the instant case the proceedings uls 201(1)/201(1A) were not pending as on l.04.2007, the 'Proviso' to section 201(3) was not applicable. Here , we may refer to the amended provisions of section 201(3) introduced by Finance Act, 2009 with effect from 1.4.2010,which read as under :-

> *" 201 (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) four 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. "*

7.1 The relevant extracts from the explanatory notes to the aforesaid newly inserted provisions, which have been referred to by the ld. CIT(A) in para of his order, read as under:

"50. Providing time limits for passing of orders u/s 201(1) holding a person to be an assessee in default

50.1 *Currently, the Income Tax Act does not provide for any limitation of time for passing an order u/s 201(1) holding a person to be an assessee in default. In the absence of such a time limit, disputes arise when these proceedings are taken up or completed after substantial time has elapsed. In order to bring certainty on this issue, specific time limits is provided in the Act within which order u/s 201(1) will be passed.*

50.2 *It has been provided that an order u/s 201(1) for failure to deduct the whole or any part of the tax as required under this Act, if the deductee is a resident taxpayer, shall be passed within two years from the end of the financial year in which the statement of tax deduction at source is filed by the deductor. Where no such statement is filed, such order*

can be passed up till four years from the end of the financial year in which the payment is made or credit is given. To provide sufficient time for pending cases, it is provided that such proceedings for a financial year beginning from 1st April, 2007 and earlier years canbe completed by the 31st March, 2011.

***50.3** However, no time-limits have been prescribed for order under sub-section (1) of section 201 where:-*

(a) the deductor has deducted but not deposited the tax deducted at source, as this would be a case of defalcation of government dues,

(b) the employer has failed to pay the tax wholly or partly, under sub-section (1A) of section 192, as the employee would not have paid tax on such perquisites,

(c) the deductee is a non-resident as it may not be administratively possible to recover the tax from the non-resident.

***50.4 Applicability** - This amendment has been made applicable with effect from 1st April, 2010 and will accordingly apply in relation to assessment year 2011-12 and subsequent assessment years."*

7.2 Before proceeding further, we may have a look at the decision in NHK Japan Broadcasting Corporation (supra) ,where in while relying upon the decision of the Hon'ble Apex Court in Bhatinda District Co-op. Milk Producers Union Ltd. [2007] 9 RC 637; 11 SCC 363. Hon'ble jurisdictional High Court held as under:

*"**14.** 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.*

***15.** In Bharat Steel Tubes Ltd.'s case (supra) 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.*

***16.** Insofar as Bhatinda District Co-op. Mill (P.) Union Ltd.'s case (supra) 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.*

17. *There is a qualitative difference between Bharat Steel Tubes Ltd.'s case (supra) and Bhatinda District Co-op. Mill (P.) Union of Ltd.'s case (supra). In the former case, the question pertained to completion of proceedings, while in the latter case it pertained to initiation of proceedings. We are concerned with initiation of proceedings.*

18. *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 re-assessment 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.*

19. *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.*

20. *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.*

21. *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. Mil (P.) Union Ltd.'s case (supra) 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.*

22. *Learned counsel for the revenue submitted that the Department came to know that the assessee was an assessee in default only in November, 1998 when a survey was conducted and it came to be known only then that when the assessee had not deducted tax at source on the global salary. We are of the opinion that the date of knowledge is not relevant for the purposes of exercising jurisdiction insofar as the provisions of the Income-tax Act are concerned. If it were so, the limitation period, as for example prescribed under section 147/148 of the Act would become meaningless if the concept of knowledge is imported into the scheme of the Act.*

23. *The second part of the argument of learned counsel for the revenue in this regard was that the question of limitation did not at all arise because the assessee had itself admitted its liability and it voluntarily paid the tax and interest on that amount. Again, we are not in agreement with learned counsel for the revenue in this regard.*

24. *It appears that the assessee paid the tax voluntarily as well as interest thereon but the acceptance of the liability by the assessee would not by itself extend the period of limitation nor would it extend the reasonable time that is postulated by the scheme of*

the Income-tax Act. The assessee cannot be put, in a sense, in a worse position merely because it has admitted its liability. If the assessee had denied its liability the question that would have arisen would be whether the revenue could have initiated proceedings after a lapse of four years. The answer to that would of course have to be in the negative in view of the reason that we have already indicated above. The fact that the assessee agreed to pay the tax voluntarily cannot put the assessee in a situation worse than if it had contested its liability.

25. *We may also note 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. Of course, a duty is cast upon the deductor, that is the person who is making the payment to the deductee, to deduct tax at source but if he fails to do so, it does not wash away the liability of the deductee. It is still the liability of the deductee to pay the tax. In that sense, the liability of the deductor is a vicarious liability and, therefore, he cannot be put in a situation which would prejudice him to such an extent that the liability would remain hanging on his head for all times to come in the event the Income-tax Department decides not to take any action to recover the tax either by passing an order under section 201 of the Act or through making an assessment of the income of the deductee.*

26. *For the reasons given by us we are not inclined to disturb the order passed by the Tribunal and, therefore, we answer the question in the affirmative in favour of the assessee and against the revenue and hold thatthe initiation of proceedings under section 201 of the Act against the assessee in respect of the assessment year 1990-91 was barred by limitation having been initiated beyond a reasonable period of time of four years.*

7.3 Subsequently, the Hon'ble Apex Court in their common decision dated 20.1.2010 in civil nos.751 to 766 of 2010 & others, including on an SLP filed by the Revenue in NHK Japan Broadcasting Corporation, concluded as under:

"The following substantial question of law arises for consideration in this batch of civil appeals:

"Whether the Income Tax Appellate Tribunal was correct in law in holding that the orders passed under Sections 201(1) and 201(1A) of the Income Tax Act, 1961 are invalid and barred by time having been passed beyond a reasonable period."

Having heard learned counsel on both sides, we are of the view that, on the facts and circumstances of these cases, the question on the point of limitation formulated by the Income Tax Appellate Tribunal in the present cases need not be gone into for the simple reason that, at the relevant time, there was a debate on the question as to whether TDS was deductible under the Income Tax Act, 1961, on foreign salary payment as a component of the total salary paid to an expatriate working in India? This controversy came to an end vide judgement of this Court in the case of Commissioner of Income Tax vs. Eli Lilly & Co. (India) Pvt. Ltd., reported in [2009] 312 I.T.R. 225. The question on limitation has become academic in these cases

because, even assuming that the Department is right on the issue of limitation still the question would arise whether on such debatable points, the assessee(s) could be declared as assessee(s) in default under Section 192 read with Section 201 of the Income Tax Act, 1961. Further, we are informed that the assessee(s) have paid the differential tax.They have paid the interest and they further undertake not to claim refund for the amounts paid. Before concluding, we may also state that, in Eli Lilly & Co. (India) Pvt. Ltd. (supra) vide Paragraph 21, this Court has clarified that the law laid down in the said case was only applicable to the provisions of Section 192 of the Income Tax Act, 1961.

Leaving the question of law open on limitation, these civil appeals filed by the Department are disposed of with no order as to costs."

7.31 Apparently, the Hon'ble Apex Court did not advert to the question of limitation nor even the ld. CIT(A) took cognizance of the aforesaid observations of the Hon'ble Apex Court.

7.4 Following the aforesaid decision, Hon'ble jurisdictional High Court in their decision dated 15.4.2010 in Hutchison Essar Telecom Ltd.(supra), held that the proceedings under section 201/201(1A) of the Act, can be initiated only within three years from the end of the assessment year or within four years from the end of the relevant financial year .

8. Since proceedings in this case have been initiated after the search on 16.11.2009, as concluded by the ld. CIT(A) and the amended provisions had not come in to force on the said date , the law prevailing as on the date was pronounced in the aforesaid two decisions of the Hon'ble jurisdictional High Court. In the light of view taken in the aforesaid decisions by the Hon'ble jurisdictional High Court , we have no alternative but to uphold the findings of the ld. CIT(A).Though, the Hon'ble Punjab & Haryana High Court in their decision dated 17.07.2011 in the case of CIT(TDS) v. M/s. H.M.T. Ltd. in ITA No.524 of 2009 and Hon'ble Calcutta High Court in their decision dated 30.08.2011 in the case of Bhura Exports Ltd. in ITA No. 118 of 2011 , have taken a contrary view, we are bound by the aforesaid decisions of the Hon'ble jurisdictional High Court, holding that in absence of any time frame in the statute, reasonable time limit was to be read into it,which was 4

years from the end of relevant financial years. In view of the foregoing, we are not inclined to accept the aforesaid contentions of the ld. DR and consequently, ground nos. 1 to 3 in the appeal are dismissed.

9. Ground no. 4 in the appeal being mere prayer nor any submissions having been made before us on this ground, does not require any separate adjudication while no additional ground having been raised before us in terms of residuary ground no. 5 in the appeal, accordingly, these grounds are dismissed.

10. In the result, these three appeals are dismissed.

Sd/-	Sd/-
(A.D.JAIN)	**(A.N.PAHUJA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

MEHTA

" Copy of the order forwarded to : -

1. Catholic Relief Services, 139 – Shopping Complex, Zamrudpur, New Delhi
2. Assistant Commissioner of Income-tax,C i r c l e - 49 (1), New Delhi.
3. CIT, concerned
4. CIT (Appeals)–XXX, New Delhi
5. DR, ITAT,'B' Bench.New Delhi.
6. Guard File

True Copy. By Order.

Assistant Registrar, ITAT.