

**THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 15.04.2010

+ **ITA 422/2010 & ITA 621/2010**

**COMMISSIONER OF INCOME TAX** ... Appellant

- versus -

**HUTCHISON ESSAR TELECOM LTD** ... Respondent

**Advocates who appeared in this case:-**

For the Appellant : Ms. Rashmi Chopra

For the Respondent : Mr. Salil Kapoor, Mr. Sanat Kapoor, Mr. Ankit Gupta, Mr. Achin Geol and Ms. Swati Gupta.

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE V.K. JAIN**

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

**BADAR DURREZ AHMED, J (ORAL)**

1. These appeals filed by the revenue arise out of a common order dated 05.03.2009 passed by the Income Tax Appellate Tribunal in the appeal filed by the revenue and the cross objections preferred by the Respondent/Assessee.

2. In the said cross objections, the Respondent/Assessee raised the preliminary issue of limitation in as much as the proceedings under Sections 201 and 201(A) were initiated after the period of four years from end of the Financial Year in question had elapsed.

3. The Tribunal, following the decision of this Court in the case of

**CIT Vs. NHK Japan Broadcasting Corporation (Delhi): [2008] 305 ITR**

**137 (Delhi)** agreed with the contention of the Assessee and held the proceedings to be barred by time. Consequently the cross objections were allowed and the Revenue's appeal was dismissed. The Revenue aggrieved by the Tribunal's decision is in appeal before us by way of the present appeals.

4. We have examined the impugned decision as well as the decision of this Court in the case of *NHK Japan Broadcasting Corporation (supra)*, wherein it has been clearly indicated that although no specific period of limitation has been prescribed or indicated under Section 201 and 201(A), a reasonable time limit has to be adopted. In that context, it examined the provisions of Section 153(1)(a) and came to the conclusion :-

“ 18. In so far 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 assesment, which is two year 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 years. 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 purpose 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 much 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. Milk Producers Union Ltd. [2007] 9RC 637; 11SCC 363 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.”

(underlining added)

5. From the above, it is clear that the proceedings under Section 201/ 201(A) of the Income Tax Act, 1961 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.

6. In the present case, we are concerned with the Financial Year 2001-02 or the Assessment Year 2002-03. The proceedings under Sections 201/ 201(A) were admittedly initiated beyond the period of three years from the end of the relevant Assessment Year as also beyond the period of four years from the end of the Financial Year. Consequently, the Tribunal has correctly concluded that the proceedings were beyond time. No substantial question of law arises for our consideration. The appeals are dismissed.

**BADAR DURREZ AHMED,J**

**V.K. JAIN, J**

**APRIL 15, 2010**  
**savita**