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

Decided on: 13th February, 2015

+ ITA 93/2015

THE COMMISSIONER OF INCOME TAX-TDS Appellant

Through Mr. Rohit Madan, Adv.

versus

MORADABAD TOLL ROAD COMPANY Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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CM No.2563/2015

Exemption is allowed subject to all just exceptions.

The application is disposed of.

CM No.2564/2015

For the reasons stated in the application the delay in re-filing the appeal is condoned.

The application is disposed of.

ITA 93/2015

1. The Revenue is aggrieved by the order dated 25.11.2011 of the Income Tax Appellate Tribunal (ITAT) in ITA Nos.1682, 1683/De1./11, inasmuch as the ITAT affirmed an order of the CIT (Appeals) to the effect that the treatment of the assessee's company as one in default for the purpose of proceeding under Section 201 of the Income Tax Act, is barred by time.

2. The relevant facts are that the assessee company was sought to be as assessee in default for the Assessment Year (AY) 2002-03 and Financial Year (FY) 2003-04 and sought to add back certain amounts and consequently demanded, the relative sums of money. The assessee's position was that treating the assessee company as one in default irrespective of past assessment years by order dated 4th March, 2009 this was arrested that its returns were financed much earlier and that the action under Section 201 is belated. This contention was accepted by the CIT (A), who followed the Division Bench ruling of this Court in *Commissioner of Income Tax vs. NHK Japan Broadcasting Corporation* (2008) 305 ITR 137 (Del) and *CIT vs. Hutchison Essar Telecom Ltd.* (2010) 323 ITR 230 (Delhi) concludes the issue. In *NHK Japan* (Supra) the Court had said that even though no specific period of limitation was prescribed for action under Section 201, the Income Tax Authorities have to initiate proceedings within reasoned time as it was determined to be four years.

3. Learned counsel for the Revenue urges that the subsequent developments after *Japan Broadcasting* (supra) was decided determined its ratio. He relies upon the amendment by which Section 201(3) substituted with effect from 01.04.2010 and whereby the period of limitation indicated was six years and subsequently by another substitution w.e.f. 01.10.2014, by Finance Act No.2 of 2014, whereby the period of limitation was extended to seven years. As a result, the provision which exists as on date is as follows:

“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 seven years from the end of the financial year in which payment is made or credit is given”

4. We have considered the arguments of the Revenue and are of the opinion that the substantial time as extended in the previous judgment of this Court in *Commissioner of Income Tax (TDS)-I vs. C.J. International Hotels Pvt. Ltd.* (in ITA No.57/2015) decided on 09.02.2015, as discussed elaborately in a reasoned order of this Court, two reasons for the Court to reject the submissions;

- (i) Section 201 itself was amended, by introduction of Section 201(1) (A), significantly that amendment was given irrespective effect from 01.04.1966;
- (ii) The Parliament consciously did not amend Section 201 by inserting sub-section (3) with irrespective effect.

This amounts to acceptance by legislature of this Court ruling which was decided in an appeal by special leave of Supreme Court. Although the Supreme Court left the issue open, we are of the opinion – the two reasons – statutory developments indicated by us, render the decision in *NHK Japan* (supra) still good law for the period prior to 01.04.2010.

5. For the above reason, no substantial question of law arises and consequently the appeal is dismissed.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

FEBRUARY 13, 2015

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