

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

Reserved on: 24.08.2016

Pronounced on: 19.12.2016

+ **W.P.(C) 2166/2012**

BHARTI AIRTEL LTD. AND ANR.

.....Petitioner

Through: Sh. Ajay Vohra, Sr. Advocate with Sh.
Somnath Shukla, Advocate.

Versus

UOI AND ANR.

.....Respondents

Through: Sh. Rahul Chaudhary, Sr. Standing Counsel
with Sh. Raghvendra Singh, Jr. Standing Counsel and Sh.
Anup Kumar Kesari, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT

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1. The Petitioner, a telecommunications service provider, engaged the services of both domestic (resident) and foreign (non-resident) entities for providing interconnections to its users. The purview of this petition is restricted to the payments made to 'non-residents'. In engaging the non-resident entities for interconnections, some charges were accrued - which were paid by the Petitioner to those foreign entities. Based on these payments made, the second respondent issued several Show Cause Notices, in order to deem the Petitioner as an "assessee in default". Two of those notices, dated 31.03.2011 and 05.03.2012, (hereafter "impugned notices") are impugned in the present writ petition.

2. The respondents issued the Show Cause Notice dated 31.03.2011, for the period F.Y. 2001-2002 to 2010-2011, to the Petitioner asking it to show cause as to why it should not be deemed to be an assessee-in-default as it made payments on account of interconnection charges to various foreign entities without deduction of tax under Section 195 of the Act. Thereafter an additional Show Cause Notice dated 22.11.2011 was issued to the Petitioner in continuation of the earlier Show Cause Notice (dated 31.03.2011) referring to the interconnection charges to resident entities - and offering a final opportunity to explain as to why tax should not be charged from the petitioner under Section 201(1A) on account of failure to deduct tax at source on payments of interconnect usage charges to non-resident operators. A further notice, dated 05.03.2012 styled similarly on the same ground was issued for FYs 2001-2002 to 2006-2007.³ The issue raised in this petition is whether Section 201 of the Income Tax Act, 1961 (hereinafter 'the Act') would also apply to payments made to 'non-residents'. A second issue is whether the impugned notices are barred by limitation. In other words, whether, in light of a time limitation in the Section, one can be deemed to have been an assessee-in-default for non-deduction of tax, for payments made to foreign or - 'non-resident'. Once this issue is looked into, one may consider its impact on the impugned notices and whether they are barred by time.

4. The Petitioners essentially argue that Section 201 does not expressly mention 'non-residents', and only prescribes a time-limitation for deeming one to be an assessee-in-default for residents. In light of no express time limitation, the reasoning in an earlier decision, in *Commissioner of Income*

Tax v. NHK-Japan Broadcasting Ltd 2008 (305) ITR 137 (Del) and *Commissioner of Income Tax v. Hutchison Essar Telecom Ltd* [2010] 323 ITR 230 (Delhi) would set the limitation period at four years. It is submitted that the court had clearly ruled in those decisions that although the unamended Section 201 (3) did not prescribe a period of limitation, in respect of payments made to both domestic and foreign entities, recourse to the provision by issuing Show Cause Notice could be made within reasonable time. Similar judgments, reported as *Commissioner of Income tax v C.J International Hotel (P) Ltd* [2015] 372 ITR 684 (Del) and *Vodafone Essar Mobile Services Ltd. v Union of India* 2016 (385) ITR 436 (Del) are relied upon.

5. Mr. Vohra, learned senior counsel, argued that the decisions of this court, made a clear distinction between the period of limitation for initiation of proceedings on the one hand and limitation for completion of proceedings. The Court, after scrutinizing various limitation periods prescribed under Sections 147/148 and 153 of the Act, concluded that if there is a time limit for completing the assessment, then the time limit for initiating the proceedings must be the same. It was submitted that the reasoning in those decisions has not been disturbed and the amendment made in 2010 only reiterated that the power to issue Show Cause Notice is to be exercised within a defined time limit. Therefore, the fact that the amendment was made after the decisions and that they chose not to disturb the interpretation by courts, (which placed a time restriction within which Show Cause Notice could be issued, i.e. of reasonable time) in regard at least to deductions from payments to foreign entities, meant that the interpretation was to be left as it

is. Therefore, the income tax authorities could not validly claim jurisdiction to issue Show Cause Notice treating deductors as assesseees in default, under provisions of the Act.

6. It was also submitted that if the court were not to accept the construction given by the assessee, the result would be invalidation of the provision itself, because it seeks to treat one class of deductees or recipients more favourably than others. To the extent that this interpretation would lead to artificial distinction between domestic deductees and foreign deductees, whereas in reality they belong to one class and had always remained so, for purposes of treatment under Section 201, the distinction is invidious and amounts to impermissible classification, thus violative of Article 14 of the Constitution of India. It was submitted in this context that if the statute treated two individuals or entities as belonging to one class, for a particular purpose, there being no alteration in the situation, the sudden treatment of one category as belonging to another class, sub-serves no nexus with the object sought to be achieved by the enactment, i.e. the Income Tax Act.

7. Counsel for the assessee further urged that the reasons that persuaded the court to hold that Show Cause Notice is to be issued in reasonable time, for valid action, still apply. Reliance was placed on Section 153(1)(a) of the Income Tax Act, which prescribes the time limit for completing the assessment, (i.e. two years from the end of the assessment year in which the income was first assessable), which adds up to an overall time limit of three years from the end of the financial years. The provisions of reassessment under sections 147 and 148 of the Act fall in a different field. Keeping these facts in mind, in *NHK Japan Broadcasting (supra)*, it was ruled that four

years would be a reasonable period of time for initiating action, in a case where no limitation is prescribed. The Court had also held that "*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.*"

8. The revenue relied on *Bharat Steel Tubes Ltd. v. State of Haryana* 70 STC 122 (SC) and stated that the absence of any period of limitation in respect of non-resident remitters meant that Parliament made a conscious distinction between resident and non-resident beneficiaries, based on good reasons. It was submitted that there is sound *rationale* for such distinction because in the case of remittances to non-residents, the true nature of the transaction and whether deductions are to be made because income arises within the country or not cannot be easily gathered. The remitters – often times resident entities are not always forthcoming in disclosing particulars, the details of which or the true picture of which may be discernable later. Advisedly, Parliament did not prescribe any time limit for exercise of powers in respect of such transactions. It was argued that besides, *NHK Broadcasting (supra)* was decided in relation to cases after 1st April, 2010 and that the decision of this Court in *CJ International (supra)* did not examine the true import of the amended provisions.

9. The text of Section 201(1) and (3) of the Act read, when amended with effect from 1-4-2010, (by Finance Act 2012), reads as follows:

“201. (1) Where any person, including the principal officer of a company,—
(a) who is required to deduct any sum in accordance with the

provisions of this Act; or

(b) referred to in sub-section (1A) of section 192 being an employer, does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

[Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—

(i) has furnished his return of income under section 139;

(ii) has taken into account such sum for computing income in such return of income; and

(iii) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed]

Provided [further] that no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.]

(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) six 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."

10. The Petitioner relies on *NHK Japan Broadcasting Corporation* (*supra*) and the ruling that followed it, i.e. *Commissioner of Income Tax v Hutchison Essar Telecom Ltd*, [2010] 323 ITR 230 (Del) to submit that proceedings under Section 201 cannot be initiated beyond the period of four years. The revenue characterises this position as untenable since the two cases did not make a distinction between payments made to residents and non-residents. The Statement of Objects and Reasons of the Finance (No. 2) Bill, 2009 in relation to the amendment to Section 201 of the Act read as follows:

"Sub-clause (b) of clause 65 seeks to provide time limit for passing of order under sub-section (1) of section 201 in case of resident tax payers. It provides that no order shall be made under sub-section (1) of section 201, deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax in the case of a person resident in India, at any time after the expiry of 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. It further provides that in any other case such order shall not be made at any time after four years from the end of the financial year in which payment is made or WP (C) Nos.8535, 8536, 8537/2011 and credit is given. It further provides that such order for a financial year commencing on or before 1st day of April, 2007 may be passed at any time on or before the 31st day of March, 2011. The sub-clause also provides that the provisions of sub-clause (ii) of sub-section (3) of section 153 and of Explanation 1 to section 153 shall, so far as may apply to the time limit prescribed in proposed sub-section (3) of section 201."

11. The memorandum explaining the provisions of Finance (2) Bill, 2009, which was in the form of a circular issued by the Central Board of Direct

Taxes (CBDT), reads as under:

"f. Providing time limits for passing of orders u/s 201(1) holding a person to be an assessee in default. 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, it is proposed to provide for express time limits in the Act within which specified order u/s 201(1) will be passed.

It is proposed 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 proposed to provide that such proceedings for a financial year beginning from 1st April, 2007 and earlier years can be completed by the 31st March, 2011. 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.

It is proposed to make these amendments effective from 1st April, 2010. Accordingly it will apply to such orders passed on

or after the 1st April, 2010."

12. When *NHK Japan (supra)* and *Hutchinson (supra)* were decided, the amendment was not brought about and therefore the issue of existence of a period of limitation, did not arise. The court therefore, considered, on the basis of available authority, that a four year period was "reasonable period" as the outer limit for issuance of notice under Section 201. However, in the present case, Parliament consciously amended the Act. In doing so, it prescribed a limitation only for residents. Instead of actively barring the applicability of the provision on non-residents, did the Parliament choose to passively do so by remaining silent on non-residents and only amending the provision, for residents. The question is, whether the petitioner is right in contending that if the Act does not specify a time period, then a reasonable time period should be read into the Act. This contention is based on judgements which were delivered when the Legislature had not made a distinction between residents and non-residents. The question is when such a distinction exists, can one read a "reasonable time period" into the Act.

13. The amendment *ipso facto* is undoubtedly silent about the application of periods of limitation to amounts deducted and payments made to non residents. It is quite possible to argue that the demarcation and distinction between payments made to residents and non-residents through the amendment, can mean that where no period of limitation for Sections 200 and 201 has been prescribed, one cannot be read into the Act. However, the legislative history here becomes instructive; in that context extrinsic material, in the form of statements of objects and reasons, become relevant. At all material times, payments made to residents and non-residents were

treated alike. The revenue does not state what necessitated the distinction, made through the amendment for the first time. The only clue to be found to this silence is in that part of the circular quoted above, which states that limitation period for non resident's payment is unfeasible "*as it may not be administratively possible to recover the tax from the non- resident.*" However, that is not the reasoning given in the statement of objects and reasons.

14. It was argued that the basis and/or reasoning of not applying the limitation in respect of deduction from non-residents on grounds of administrative convenience is arbitrary, discriminatory and violative of Article 14 and 265 of the Constitution. They have submitted that the basis of 'administrative convenience' in respect of TDS provisions had already been rejected by the Supreme Court in the case of *GE India Technology Centre v. CIT* 2010 (10) SCC 29. Taking their argument forward, the Petitioner submitted that the provision lacked any intelligible differentia, with no basis in law to provide for period of limitation in the case of payments made to residents and for not providing a similar period of limitation in case of payments made to non-residents. The revenue's contention is that when Parliament consciously provided no period of limitation, even whilst doing so for domestic taxpayers, this court should not in effect, legislate a period of limitation.

15. This court is of opinion that the latest judgment, in *Vodafone Essar Mobiles Ltd. (supra)* provides a complete answer to the revenue's contentions. The Court had then ruled as follows:

"9. More recently in *CIT v. Calcutta Knitwears* [2014] 362 ITR 673, the Supreme Court had the occasion to deal with the correct position in law as to the initiation of Income-tax proceedings. Although, the context of the dispute was in respect of recording of a satisfaction note as to the initiation of proceedings against third parties under the erst while section 158BD of the Act which did not prescribe the period of limitation and left it to the discretion of the Assessing Officer to decide on being satisfied that such proceedings were required to be initiated, the court limited such discretion in the following terms (page 691 of 362 ITR):

44. In the result, we hold that for the purpose of section 158BD of the Act a satisfaction note is sine qua non and must be prepared by the Assessing Officer before he transmits the records to the other Assessing Officer who has jurisdiction over such other person. The satisfaction note could be prepared at either of the following stages : (a) at the time of or along with the initiation of proceedings against the searched person under section 158BC of the Act ; (b) along with the assessment proceedings under section 158BC of the Act ; and (c) immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person.'

10. An added reason why the submission of the Revenue is unacceptable is that had Parliament indeed intended to overrule or set aside the reasoning in *NHK Japan* (supra), it would have, like other instances and more specifically in the case of section 201(1A), brought in a retrospective amendment, nullifying the precedent itself. That it chose to bring section 201(3) in the first instance in 2010 and later in 2014 fortifies the reasoning of the court. Accordingly, the issue is answered against the Revenue."

17. It appears to the court that the above decision settles the question whether to declare an assessee to be an assessee in default under section 201 of the Act could be initiated for a period earlier than four years prior to March 31, 2011.

18. Mr. M. S. Syali, the learned senior advocate for the petitioners states that although the challenge in these petitions is also to the vires of the proviso to section 201(3) of the Act as inserted by the Finance (No. 2) Act, 2009, the petitioners would be satisfied if the interpretation sought to be advanced by them on the scope and ambit of proviso to sub-section (3) of section 201 of the Act is accepted by the court. In other words what has been canvassed on behalf of the petitioners is that the proviso to section 201(3) of the Act has to be read consistent with the law explained by the court in *CIT v. NHK Japan Broadcasting Corporation* (supra) and should be held not to permit the Department to initiate proceedings for declaring the assessees to be assessee in default for a period more than four years prior to March 31, 2011.

19. Mr. Dileep Shivpuri, the learned senior standing counsel for the Revenue, however, seeks to advance a different line of argument. According to him the action taken by the Department was pursuant to a decision in *CIT v. Idea Cellular Ltd.* [2010] 325 ITR 148 (Delhi) where the amounts paid to the channel partners for the pre-paid cards and other products was held to be "commission" by the court within the meaning of section 194H of the Act. It is stated that it is consequent upon the said decision that the Department issued the impugned notices to these petitioners and that this was permissible in terms of section 153(3)(ii) of the Act.

20. The above submission of Mr. Shivpuri cannot be accepted if section 153 is perused carefully. It reads as under :

'153. Time limit for completion of assessments and reassessments.— . . .

(3) The provisions of sub-sections (1), (1A), (1B) and (2) shall not apply to the following classes of assessments, reassessments and recomputations which may, subject to the provisions of sub-section (2A), be completed at any time— . . .

(ii) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to

give effect to any finding or direction contained in an order under section 250, 254, 260, 262, 263 or 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act."

21. In the first place, what the said provision does is to not apply the time limit of two years for completing the assessment from the end of the financial year "where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order . . . or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act". This can apply only to the assessee in whose case such an order is made by a court. For instance, if the above decision was qua Idea Cellular Ltd. then it certainly cannot form the basis for initiating proceedings qua other assessees.

22. Secondly there has to be a finding or directions as regards the issue in question, viz., the non-deduction of tax at source resulting in an assessee having to be declared an assessee in default under section 201 of the Act. In Rajinder Nath v. CIT [1979] 120 ITR 14 (SC), it was held that the existence of an order disposing of a case qua an assessee containing specific directions of the court was a sine qua non for invoking the powers under section 153(3)(ii) of the Act. Even in the case relied upon by Mr. Shivpuri, i.e., CIT v. Idea Cellular Ltd. (supra), there is no such finding or direction to the Department by the court requiring it to initiate proceedings for declaring the assessee to be an assessee in default. The court is, therefore, of the view that the reliance by the Department on section 153(3)(ii) of the Act and the decision in CIT v. Idea Cellular Ltd. (supra) to justify initiation of the proceedings in the present case against the petitioner is misconceived."

16. The court was conscious of the absence of any limitation period in respect of payments to non-residents, for the purpose of Section 195 read with Section 201. Yet, it was held that proceedings could be initiated within

reasonable time. The circular relied on by the revenue, furnishing a *rationale* for not providing limitation: "*as it may not be administratively possible to recover the tax from the non-resident*", was decisively rejected in *G.E. Technologies (supra)*, where the Supreme Court observed as follows:

"9. One more aspect needs to be highlighted. Section 195 falls in Chapter XVII which deals with collection and recovery. Chapter XVII-B deals with deduction at source by the payer. On analysis of various provisions of Chapter XVII one finds use of different expressions, however, the expression "sum chargeable under the provisions of the Act" is used only in section 195. For example, section 194C casts an obligation to deduct TAS in respect of "any sum paid to any resident". Similarly, sections 194EE and 194F, *inter alia*, provide for deduction of tax in respect of "any amount" referred to in the specified provisions. In none of the provisions we find the expression "sum chargeable under the provisions of the Act", which as stated above, is an expression used only in section 195(1). Therefore, this court is required to give meaning and effect to the said expression. It follows, therefore, that the obligation to deduct TAS arises only when there is a sum chargeable under the Act. Section 195(2) is not merely a provision to provide information to the Income-tax Officer (TDS). It is a provision requiring tax to be deducted at source to be paid to the Revenue by the payer who makes payment to a non-resident. Therefore, section 195 has to be read in conformity with the charging provisions, i.e., sections 4, 5 and 9. This reasoning flows from the words "sum chargeable under the provisions of the Act" in section 195(1). The fact that the Revenue has not obtained any information *per se* cannot be a ground to construe section 195 widely so as to require deduction of TAS even in a case where an amount paid is not chargeable to tax in India at all. We cannot read section 195, as suggested by the Department, namely, that the moment there is remittance the obligation to deduct TAS arises. If we were to accept such a contention it would mean that on mere payment income would be said to arise or accrue in India. Therefore, as

stated earlier, if the contention of the Department was accepted it would mean obliteration of the expression "sum chargeable under the provisions of the Act" from section 195(1). While interpreting a section one has to give weightage to every word used in that section. While interpreting the provisions of the Income-tax Act one cannot read the charging sections of that Act de hors the machinery sections. The Act is to be read as an integrated code. Section 195 appears in Chapter XVII which deals with collection and recovery. As held in the case of CIT v. Eli Lilly and Co. (India) (P.) Ltd. [2009] 312 ITR 225 the provisions for deduction of TAS which are in Chapter XVII dealing with collection of taxes and the charging provisions of the Income-tax Act form one single integral, inseparable code and, therefore, the provisions relating to TDS apply only to those sums which are "chargeable to tax" under the Income-tax Act. It is true that the judgment in Eli Lilly [2009] 312 ITR 225 was confined to section 192 of the Income-tax Act. However, there is some similarity between the two. If one looks at section 192 one finds that it imposes statutory obligation on the payer to deduct TAS when he pays any income "chargeable under the head salaries". Similarly, section 195 imposes a statutory obligation on any person responsible for paying to a non-resident any sum "chargeable under the provisions of the Act", which expression, as stated above, do not find place in other sections of Chapter XVII. It is in this sense that we hold that the Income-tax Act constitutes one single integral inseparable code. Hence, the provisions relating to TDS applies only to those sums which are chargeable to tax under the Income- tax Act. If the contention of the Department that any person making payment to a non-resident is necessarily required to deduct TAS then the consequence would be that the Department would be entitled to appropriate the moneys deposited by the payer even if the sum paid is not chargeable to tax because there is no provision in the Income-tax Act by which a payer can obtain refund. Section 237 read with section 199 implies that only the recipient of the sum, i.e., the payee could seek a refund. It must therefore follow, if the Department is right, that the law requires tax to be deducted on all

payments, the payer, therefore, has to deduct and pay tax, even if the so-called deduction comes out of his own pocket and he has no remedy whatsoever, even where the sum paid by him is not a sum chargeable under the Act. The interpretation of the Department, therefore, not only requires the words "chargeable under the provisions of the Act" to be omitted, it also leads to an absurd consequence. The interpretation placed by the Department would result in a situation where even when the income has no territorial nexus with India or is not chargeable in India, the Government would nonetheless collect tax. In our view, section 195(2) provides a remedy by which a person may seek a determination of the "appropriate proportion of such sum so chargeable" where a proportion of the sum so chargeable is liable to tax. The entire basis of the Department's contention is based on administrative convenience in support of its interpretation. According to the Department, huge seepage of revenue can take place if persons making payments to non-residents are free to deduct TAS or not to deduct TAS. It is the case of the Department that section 195(2), as interpreted by the High Court, would plug the loophole as the said interpretation requires the payer to make a declaration before the Income-tax Officer (TDS) of payments made to non-residents. In other words, according to the Department, section 195(2) is a provision by which the payer is required to inform the Department of the remittances he makes to non-residents by which the Department is able to keep track of the remittances being made to non-residents outside India. We find no merit in these contentions. As stated hereinabove, section 195(1) uses the expression "sum chargeable under the provisions of the Act." We need to give weightage to those words. Further, section 195 uses the word "payer" and not the word "assessee". The payer is not an assessee. The payer becomes an assessee-in-default only when he fails to fulfil the statutory obligation under section 195(1). If the payment does not contain the element of income the payer cannot be made liable. He cannot be declared to be an assessee-in-default. The abovementioned contention of the Department is based on an apprehension which is ill-founded. The payer is also an assessee under the

ordinary provisions of the Income-tax Act. When the payer remits an amount to a non-resident out of India he claims deduction or allowances under the Income-tax Act for the said sum as an "expenditure". Under section 40(a)(i), inserted, vide Finance Act, 1988, with effect from April 1, 1989, payment in respect of royalty, fees for technical services or other sums chargeable under the Income-tax Act would not get the benefit of deduction if the assessee fails to deduct TAS in respect of payments outside India which are chargeable under the Income-tax Act. This provision ensures effective compliance with section 195 of the Income-tax Act relating to tax deduction at source in respect of payments outside India in respect of royalties, fees or other sums chargeable under the Income-tax Act. In a given case where the payer is an assessee he will definitely claim deduction under the Income-tax Act for such remittance and on inquiry if the Assessing Officer finds that the sums remitted outside India come within the definition of royalty or fees for technical service or other sums chargeable under the Income-tax Act then it would be open to the Assessing Officer to disallow such claim for deduction. Similarly, vide the Finance Act, 2008, with effect from April 1, 2008, sub-section (6) has been inserted in section 195 which requires the payer to furnish information relating to payment of any sum in such form and manner as may be prescribed by the Board. This provision is brought into force only from April 1, 2008. It will not apply for the period with which we are concerned in these cases before us. Therefore, in our view, there are adequate safeguards in the Act which would prevent revenue leakage."

17. In this court's view, therefore, since *Vodafone Essar (supra)* considered the entire issue and noted that even recently a reasonable period was read into the Act, in relation to exercise of powers (although in a different context) accepting the petitioner's contention in the present case is based on precedent. Furthermore, the only reason cited by the respondent, i.e. administrative convenience, cannot outweigh the harsh nature of the consequence, which would expose resident payers to the onerous

responsibility of maintaining books and documents for an uncertain period of time. Given these considerations, the impugned notices are quashed. The writ petition is allowed in these terms; no costs.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

DECEMBER 19, 2016

