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EY Tax Alert

Punjab & Haryana HC rules that limitation period does not apply to withholding tax proceedings



Executive summary

This Tax Alert summarizes a recent ruling of the Punjab & Haryana High Court (P&H HC) in the case of CIT v. HMT Ltd. (Taxpayer) [ITA No. 524 of 2009] on the issue of time limit for the Tax Authority to initiate action against the deductor in withholding tax proceedings.

The Taxpayer had paid arrears of salaries to its employees during tax years 1994-95 to 1996-97 on which it did not deduct tax. After a period of more than four years from the relevant tax years, the Tax Authority passed orders for recovering the shortfall of tax and consequential interest by treating the Taxpayer as an assessee-in-default (AID). The Taxpayer challenged the validity of such orders, *inter alia*, on the ground that they were barred by limitation and, in absence of any specific provision, the Tax Authority should have initiated action within a reasonable period of time. The P&H HC rejected the Taxpayer's contention and held that the orders were not barred by limitation of time since the Indian Tax Laws (ITL) did not provide for a specific limitation period for treating a taxpayer as an AID.

It may be noted that, pursuant to the amendment with effect from 1 April 2010, the ITL now provides a specific time limit for passing orders treating a taxpayer as an AID for default in withholding from payment to residents i.e., two years (four years in some cases) from end of the relevant tax year. This amendment was not noted by the P&H HC.

Background and facts

- ▶ Prior to 1 April 2010, the ITL did not contain any specific time limit for the Tax Authority to initiate action for default in withholding and for treating a taxpayer as an AID.
- ▶ From 1 April 2010, the ITL provides for the following time limits in case of withholding from payments to residents:
 - ▶ Two years from the end of relevant tax year in which withholding tax statement is filed.
 - ▶ In any other case, four years from the end of relevant tax year in which withholding obligation arose.There is still no specific time limit as regards withholding from payments to non-residents.
- ▶ The present case pertains to tax years prior to the amendment with effect from 1 April 2010.
- ▶ The Taxpayer is a Government of India (GOI) undertaking. The Taxpayer revised the pay scales of its employees pursuant to the revision made by the GOI with effect from 1 January 1992. The Taxpayer paid the arrears of the salaries based on the revised pay scales in tax years 1994-95 to 1997-98.
- ▶ The Taxpayer did not withhold tax under the relevant provision of the ITL while making payments of arrears of salaries.
- ▶ The Tax Authority issued a show cause notice (SCN) and passed orders on 20 December 2005 (i.e., after more than four years from the end of

the relevant tax year in which withholding obligation arose) treating the Taxpayer as an AID.

- ▶ The Taxpayer challenged the validity of such orders, *inter alia*, on the ground that they were passed after the expiry of four years from the end of the relevant tax year and, hence, were barred by limitation.
- ▶ The First Appellate Authority confirmed the Tax Authority's order.
- ▶ On further appeal, the Income Tax Appellate Tribunal (Tribunal) accepted the Taxpayer's contention and held that the orders were barred by limitation.
- ▶ Being aggrieved, the Tax Authority further appealed to the P&H HC.

Taxpayer's contentions

- ▶ It is true that the ITL, at the relevant point of time, did not contain provision for time limit for passing orders treating a taxpayer as an AID. However, that does not imply that such orders could be passed at any time. In absence of a specific time limit, such orders should be passed within a reasonable time^[1].

^[1] It appears that the Taxpayer relied upon certain Tribunal decisions which held that the Tax Authority should initiate action within four years of the relevant tax year in such cases.

Tax Authority's contentions

- ▶ There is no specific provision prescribing any time limit for passing the order for treating a Taxpayer as an AID for default in withholding tax.
- ▶ The Tax Authority relied on the Supreme Court's (SC) decision in the case of Hindustan Times Ltd. v. UOI^[2] (Hindustan Times ruling) wherein the SC held that, when no limitation is prescribed in the statute, a limitation cannot be implied and read into the provision.
- ▶ Reliance was also placed on decision of Kerala HC in the case of CIT v. Trichur Co-operative Bank Ltd.^[3]. In this case, the Kerala HC was concerned with an issue where a specific provision in the ITL, providing for time limit for commencing recovery proceedings for tax arrears, was omitted with effect from 1 April 1989. The Kerala HC held that, in view of the amendment, no specific time limit applied to the orders for recovery of tax arrears for the tax years for which limitation period fell after 31 March 1989.

^[2] [(1988) AIR SC 688]

^[3] [266 ITR 574]

HC's ruling

- ▶ The P&H HC upheld the Tax Authority's contention and held that the orders treating the Taxpayer as an AID, passed after four years from the end of relevant tax year, were not barred by limitation.
- ▶ The P&H HC relied on the Hindustan Times ruling for coming to such a conclusion. In this case, the SC was concerned with recovery proceedings initiated against an employer to recover shortfall in provident fund dues of employees. The recovery proceedings were initiated after a period of 14 years from the time they became due. The SC distinguished the circumstance before it from a case where a delayed action by a statutory authority is likely to deprive a person of a property which rightly and lawfully belongs to him. In the latter case, the SC had held that even if no statutory time limit is prescribed, such action should be taken within a reasonable time. The SC held that in context of belated action for recovery of provident fund dues, the employer gets to use the money which does not belong to it at all. The SC also noted that provident fund dues were for the ultimate benefit of employees and there was no provision by which employees could directly recover this amount. The SC, therefore, held that in absence of a statutory time limit, no time limit can be inferred and the principle of reasonable time limit cannot apply.
- ▶ In the present ruling, the P&H HC held that the above referred principles laid down in the Hindustan Times ruling applied to the facts of the

present case and, hence, the orders passed by the Tax Authority could not be set aside on grounds of delay. The P&H HC remitted the matter to the Tribunal to decide afresh, on merits, the issue of validity of the orders.

Comments

This ruling appears to be in conflict with the Delhi HC rulings in the cases of CIT v. NHK Broadcasting Corporation^[4] and CIT v. Hutchison Essar Telecom Ltd.^[5] where the Delhi HC had held that the proceedings for treating a payer as an AID should be initiated within four years from end of the relevant tax year. Furthermore, it also appears to be contrary to the ruling of the Special Bench of the Mumbai Tribunal in the case of Mahindra & Mahindra Ltd. v. DCIT^[6] which held that the proceedings should be completed within the specific time limits provided under the ITL for completing the assessment of income of deductees in whose hands the income is primarily taxable. Since the current provisions of the ITL provide a time limit in case of withholding from payments to residents only and do not provide any time limit in case of withholding from payments to non-residents, the controversy would have relevance in the context of default in withholding from payments to non-residents.

^[4] [305 ITR 137]

^[5] [323 ITR 230]

^[6] [30 SOT 374]

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