

Section 251 empowers CIT (Appeals) to remit case back to Assessing Officer instead of deciding it

Summary – The Delhi ITAT in a recent case of Amity International School., (the Assessee) held that commissioner (Appeals) is empowered under section 251(1)(c) to remit case back to file of Assessing Officer instead of deciding it.

Facts

- The assessee filed an e-TDS statement. The Assessing Officer analyzed such statement and revealed defaults on account of non-payment of TDS on the amount deducted, the non/low deduction of TDS at prescribed rates and late payment of taxes.
- The Assessing Officer on the basis of justification report held the assessee in default and accordingly directed to pay an amount inclusive of interest.
- On appeal, the Commissioner (Appeals) noted that the assessee in fact had furnished the correction statement before the Assessing Officer, but, the Assessing Officer did not accept said statement because the assessee's corrections were not accepted by the NSDL.
- Further, against the observation of the Assessing Officer in his order that there was short deduction of tax of 18 persons working with the assessee, the Commissioner (Appeals) observed that the assessee had in fact furnished copies of 25 challans in support of its contention that there were in fact no short deduction of tax.
- Therefore, taking into consideration all the aforementioned facts, the Commissioner (Appeals) directed the Assessing Officer to verify the assessee's claim and allow credit of the same.
- Subsequently, the revenue contended that the Commissioner (Appeals) should have decided the issue rather than directing the Assessing Officer to verify the claim of assessee which according to it amounts to setting aside the order of the Assessing Officer.
- On appeal:

Held

- A perusal of the provision of section 251(1) reveals that Commissioner(Appeals) has the following powers while disposing of an appeal. As per section 251(1)(a) while deciding an appeal against an assessment order, he may confirm, reduce, enhance or annul the assessment; as per section 251 (1)(aa) while deciding an appeal against an order of assessment in respect of which the proceeding before the settlement commission abates under section 245 HA, he may confirm, reduce, enhance or annul the assessment; and as per section 251(1)(b) while deciding an appeal against imposition of penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty; and as per section 251 (1)(c), while deciding any other appeal which does not fall u/s 251(1)(a), aa, and b, the Commissioner (Appeals) has been empowered by law to pass "such orders as he thinks fit".

- In the instant case the order appealed before the Commissioner (Appeals) was passed by the AO under section 201 and that the Commissioner (Appeals) has been empowered by section 251 (1)(c) to pass such orders as he thinks fit while deciding the such an appeal. In the instant case the Commissioner (Appeals) has observed that the appellants had filed correction statement and furnished relevant documents of TDS to prove its claim before him and he also taken note of the fact that the AO has not accepted the said document because the appellants' correction statement were not accepted by the NSDL.
- When the Commissioner (Appeals) adjudicates an appeal preferred against an order passed under section 201, he draws his power from sub-section (1)(c) of section 251, which entails him to pass any order as he thinks fit and there is no restriction in the said power and therefore even he has powers to even set aside the said order impugned before him. However, it is found that in the instant case, the Commissioner (Appeals) has not set aside the Assessing Officer's order and the impugned order of the Assessing Officer which is passed under section 201/ 201A, whereas he has remitted the case back to the file of Assessing Officer to verify documents produced before him which was filed by the assessee to substantiate its claim and to allow the credit as per law. Therefore, there is no infirmity whatsoever in the direction passed by the Commissioner (Appeals) and therefore there is no merit in the said appeal preferred by the revenue, so the order of the Commissioner (Appeals) is upheld and the appeal of the revenue is dismissed.