

Deductor couldn't be treated as an assessee-in-default if deductee was not liable to pay taxes due to losses

Summary – The Jabalpur ITAT in a recent case of National Highway Authority of India., (the Assessee) held that If recipient of income has no tax liability as per assessment framed under section 143(3) due to losses, then section 201 cannot be made applicable to assessee payee for non-deduction/delay in deposit of TDS

Facts

- The assessee had entered into contracts for development of National Highway with Korean company. The deductee Korean company, obtained orders under section 197(1) from its Assessing Officer which entitled the deductee to receive payment from the assessee after being subjected to TDS provisions under section 195(1) at a marginal rate.
- The assessee had made certain payments to the deductee in pursuance of four contracts awarded by it to the deductee and withheld tax at lower rate on the payments by virtue of certificate for lower deduction.
- Proceedings under section 201(1)/201(1A) had been initiated deeming the assessee as assessee-in-default with respect to short deduction of tax on the said payments.
- The assessee was subjected to provisions of section 201(1) and 201(1A).
- The Commissioner (Appeals) upheld the order of the Assessing Officer.
- On appeal, the thrust of arguments of assessee was that the recipient of income was not liable to tax and the return of income in the relevant assessment year duly incorporating the amount received from the assessee disclosed the net loss and even the tax already deducted at source were refunded by the Department with interest.

Held

- Assessment in the case of Korean company for the assessment year 2009-10 was completed under section 143(3), wherein the income was determined at a loss. Thus, it is clear that recipient of income from the assessee is not required to pay any tax in view of its losses for current year 2009-10. Once it is held that there is no tax liability on the recipient of income in respect of its entire income including the income paid by the assessee, there is no reason to treat the assessee in default under section 201(1) in respect of said payment.
- Accordingly, no occasion will arise for charging interest from the date on which such tax was deductible to the date on which such tax is actually paid.