Payer can't escape TDS liability on basis of Form 15G if amount of interest exceeds basic exemption limit of payee

Summary – The Guwahati ITAT in a recent case of Arihant Invest., (the Assessee) held that Payer of interest cannot justify non-deduction of tax at source by taking shelter of ultimate tax effects of payee

Facts

- The assessee-firm made payment of interest on unsecured loan but no deduction of tax at source was made.
- On being asked, the assessee submitted that the payee had furnished a declaration in Form 15G and had requested it not to deduct tax at source; that it was under *bona fide* belief that the provisions of section 197A relating to non-deduction of tax in certain cases applied to the instant case; and that the payee's 'income was below taxable limit and there was unabsorbed business loss'.
- The Assessing Officer found that the income credited/paid to the payee exceeded the maximum amount which was not chargeable to Income-tax and, therefore, the provisions of section 197A relating to non-deduction in certain cases did not apply to the instant case. He treated the assessee as an assessee in default and held him liable to pay further tax under section 201(1) including interest under section 201(1A).
- On appeal, the FAA upheld the order of the Assessing Officer.
- On second appeal:

Held

- Provisions of section 201(1) have to be interpreted in the manner they have been incorporated in the Act. A general rule in this regard can be told in simple language that deduct tax at source in case of doubt. In the instant case the assessee had paid interest amount to two parties without deducting taxes. Sub-section (1B) of section 197A (inserted with effect from 1-6-2002) has overriding effect over sub-section (1A) for those cases where 'the aggregate of the amounts of such incomes credited or paid or likely to be credited or paid during the previous year in which such income is to be included exceeded the maximum amount which is not chargeable to Income-tax'. In other words, if such income, *i.e.,* income of the nature referred to in sections 193, 194A and 194K exceeds the threshold of a particular sum during a particular year, the provisions of sub-section (1A) of section 197A shall not apply and the declaration in Form 15G becomes immaterial. It is clear that the assessee failed in its statutory obligation and, therefore, it is an assessee in default for the amount of tax not deducted under section 194A on payment of interest.
- So far as the assessee's contention that the payee's income was below taxable limit was concerned, persons who are bound under the Act to make tax deduction at source are not concerned with the

ultimate result of assessment. Besides, the deductors of tax at source are not supposed to step into the shoes of an the Assessing Officer, as an the Assessing Officer is not authorised to take over the role of a business while deciding the issue of incurring of an expenditure for running his business. Roles of both the parties are defined and nobody should cross the Laxman Rekha. The provisions of the Act envisage that wherever deductibility arises, the deductor may not deduct tax only in two conditions firstly, where the case falls under the purview of section 197A and secondly, where the Assessing Officer authorises him to do so by issuing a certificate under section 197 (read with rule 28AA) on an application made by the payee/deductee. In no other circumstances, the payer of interest can justify non-deduction of tax by taking shelter of ultimate tax effects of the payee. The assessee was not able to demonstrate that either of the two conditions existed in the matter under appeal. The FAA has given a categorical finding of fact that the assessee had failed to prove that the deductee included the amount received from the deductor in his return of income. In these circumstances, the order of the FAA does not suffer from any legal or factual infirmity.