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No demand could be raised against deductor if deductee paid the taxes

Summary – The High Court of Patna in a recent case of Nai Rajdhani Path Pramandal., (the Assessee) held that No demand as envisaged by section 201(1) can be enforced against deductor if deductee has made payment of tax on amounts on which tax was to be deducted at source, by deductor

Facts

- The petitioner /assessee was a department of the State Government, constituted to construct and maintain roads and bridges in State of Bihar.
- As the assessee had not deducted income tax at source on the payments made to two Corporations, namely, BRPNNL and BSRDCL, demand under section 201(1) was raised against it.
- Having preferred an appeal before the Commissioner (Appeals) accompanied by an application for stay of demand so raised before the Commissioner, the petitioner also filed an application before the Assistant Commissioner (TDS) for stay of said demand. The Assistant Commissioner (TDS) rejected the request for stay on ground that filing of an appeal was not a sufficient reason to keep a demand in abeyance and attached the accounts of the assessee maintained with the District Treasury Officer, for recovery of the whole amount in dispute.
- On writ, the assessee contended that even assuming that the assessee was liable to make deduction at source on the payments, which had been made to aforesaid Corporations, since both the Corporations had filed their returns and, in terms of the assessments made, taxes had also been paid by them, the department ought not to proceed against the assessee under section 201(1) read with section 201(1A).

Held

- A careful reading of the **Circular No. 275/201/95-IT (B), dated 29-1-1997** clearly shows that no demand, as envisaged by section 201(1) can be enforced against the deductor if the tax, due to be paid by the deductee, has already been paid by the deductee.
- In the light of the provisions of section 201(1) if the deductees (*i.e.,* the Corporations) have made the payment of the tax on the amounts, which were to be deducted, at source, by the deductor (*i.e.,* the petitioner), such payments will not only absolve the deductees, but also the deductor. This position, emerging from the Circular aforementioned, has been amply clarified by the Supreme Court by pointing out, in *Hindustan Coca Cola Beverages (P.) Ltd.* v. *CIT* [2007] 293 ITR 226/163 Taxman 355, that when there is no dispute that the tax due has already been paid by the deductee-assessee, a proceeding, under section 201(1) read with section 201(1A) thereof is untenable and, therefore, cannot be continued against the deductor.
- Giving, the Circular, dated 29-1-1997 aforementioned issued by the Central Board of Direct Taxes, a statutory recognition, a proviso has been added to sub-section (1) of section 201.

- In the light of the said proviso, there can be no escape from the conclusion that a person, who fails to deduct, whole or part of the tax at source, shall not be deemed to be an assessee in default if in respect of such tax, the deductee has furnished his return of income under section 139 and, while furnishing the return, has taken into account such sum for computing income in such return of income and has paid the tax due on the income declared by him in such return of income coupled with a certificate to this effect from an accountant in such form as may be prescribed.
- Having, therefore, regard to the factual aspects of the instant case and the law relevant thereto, the Commissioner (Appeals) is duty bound to take up the appeal at the earliest and if it is found that the taxes, which were to be deducted, at source, by the petitioner while making payment to the said two Corporations, have been paid by the said two Corporations as deductees, the impugned demands raised by the Commissioner (Appeals) shall be set aside and the attachment of the account of the petitioner, maintained with the Government Treasury shall be vacated without delay.