

AO rightly raised demand on deductor on its failure to apply 20% TDS rate when payee had furnished wrong PAN: ITAT

Summary – The Jaipur ITAT in a recent case of Office of XEN, PHED., (the Assessee) held that AO rightly raised demand on deductor on its failure to apply 20 per cent TDS rate when payee had furnished Wrong PAN

Facts

- The assessee was a Govt. Department. During relevant year it made certain payments under section 194C and the TDS was deducted well in time and also deposited the same into the account of Central Govt.
- One of the recipient 'L' submitted wrong PAN to assessee. Due to such mistake, the Assessing Officer raised a demand including the interest under section 201(1A) by applying 20 per cent TDS rate in place of rate prescribed under section 194C.
- The Commissioner (Appeals) confirmed the action of the Assessing Officer.
- On second appeal:

Held

- In terms of section 139A(5A), every person receiving any sum or income or amount from which tax has been deducted under the provisions of Chapter XVIIB, shall intimate his Permanent Account Number to the person responsible for deducting such tax under that Chapter. Further, under section 139A(5B) where any sum or income or amount has been paid after deducting tax under Chapter XVIIB, every person deducting tax under the chapter shall quote the Permanent Account Number of the person to whom such sum of income or amount has been paid by him in all the statements prepared and delivered in accordance with the provisions of section 200(3) of the Act.
- On perusal of the provisions of section 206AA, it is clear that primary onus is on the person entitled to receive income on which tax is deductible at source to furnish his PAN and in case such PAN is invalid or does not belong to the said person by virtue of deeming fiction, it has been stated that he has not furnished his PAN to the deductor. In such a scenario, the onus shifts on the person responsible for deducting the tax that he shall deduct the tax at the rate specified in the relevant provisions of the Act or at the rate of 20 per cent whichever is higher.
- In the instant case the PAN of 'L' was found to be incorrect by the Assessing Officer hence the Assessing Officer applied the rate of 20 per cent as against rate of 2 per cent provided under section 194C. The assessee has mentioned that they have tried to contact 'L' but he could not provide his correct PAN and that's why the assessee could not file the correction statement. Thus, even though

the primary onus is on 'L' to furnish his correct PAN to the assessee, what is equally important is that the assessee should verify at the time of making payments or at the time of credit in his books of account whether 'L' has submitted his correct PAN.

- In the instant case, the assessee had failed to discharge its obligation to verify the correct PAN and it was only at the time of processing of the TDS return that the department has noticed the submission of incorrect PAN and thereafter raised the impugned demand. What is important is that the exercise to file TDS returns should be such that it contains correct and accurate data and it is only then that the processing of such data can happen properly and credit can be given to the income recipient.
- Given the non obstante nature of provisions as contained in section 206AA(1) of the Act which overrides section 194C there was no infirmity in the order of the Assessing Officer in raising demand of the differential tax that the assessee should have deducted by virtue of submission of incorrect PAN by 'L'. At the same time, the assessee shall be at liberty to recover the said amount from 'L'. With the above observations the ground taken by the assessee is disposed off.
- In the result the appeal filed by the assessee is dismissed.