Assessee couldn't be treated as an assessee-in-default if it rectified TDS defects during appellate proceedings

Summary – The Agra ITAT in a recent case of Executive Engineer Construction., (the Assessee) held that where assessee made short deduction of tax at source under section 194C due to incorrect PAN submitted by contractors, in view of fact that in course of appellate proceedings assessee rectified said defect and also paid requisite tax along with interest, impugned order holding assessee to be 'assessee-in-default' under section 201(1) was to be set aside

Facts

- In the course of survey proceedings, the Assessing Officer found that the assessee had failed to deduct and deposit TDS under section 194C during financial year 2011-12. It was also seen that the assessee had not been filing quarterly statement of Forms 24Q and 26Q for relevant year and hence, the assessee had rendered itself liable to be treated as an assessee-in-default under section 201(1).
- The Commissioner (Appeals) found that it was not a case where the assessee had not made TDS; that the assessee had made TDS by treating the contractors as having PANs at the rate of 2.25 per cent, however, the PANs for those contractors were not available, and, thus, the assessee should have made TDS at the rate of 20 per cent and that since the assessee also had not filed its quarterly statements in Forms 24Q and 26Q, it had rendered itself liable to be treated as an assessee-in-default under section 201(1). The Commissioner (Appeals) thus agreed with the stand of the Assessing Officer.
- On revenue's appeal:

Held

- The order under sections 201(1)/201(1A) was passed treating the contractors as having no PANs and working out short TDS at Rs. 3,27,460. Before the Commissioner (Appeals), the assessee filed written submissions, stating that the incorrect PANs had been rectified, whereafter, the total demand of Rs. 4,17,508 stood revised to that of Rs. 2,460. Supporting evidence in the shape of copies of quarterly statements for all the four quarters of the year were filed.
- The question is whether the Commissioner (Appeals) is correct. As admitted by the Commissioner (Appeals) herself, the assessee, after passing of the order dated 28-3-2014, had furnished quarterly statements and due taxes stand paid. If it is so, is the assessee entitled to be absolved of being treated as an assessee-in-default? The Department says that subsequent events cannot be taken into consideration.
- As per section 202, deduction of tax at source is only one mode of recovery. In the present case, as observed by the Commissioner (Appeals) herself, due taxes, including interest, have been, in fact, recovered. The fault in deduction stands rectified and also accepted by the Department, inasmuch as the outstanding demand now amounts to a total of Rs. 2,460. The rest of the demand no longer

survives. Recovery of taxes was made. As such, the Department has accepted the assessee's stand that it was not a case of no PANs, but that of mismatch of PANs. That being so, the assessee cannot be treated as an assessee-in-default.

- Coming to the question whether later incidents/developments can be considered or not, an appeal is a continuation of the assessment proceedings. An order under section 201(1) is an order assessing an assessee as an assessee-in-default. In first appeal, the assessee challenges such treatment. It is basic and trite that during the progress of proceedings from the taxing authority to the appellate authority, in order to make the right or remedy claimed by the assessee just and meaningful, the appellate authority itself, subject to all just exceptions, must examine and evaluate events and developments, if any occurring subsequent to the institution of the proceedings, and mould the relief accordingly.
- In the present case, clearly, this has not been done. Though the Commissioner (Appeals) has noted the assessee having, post the passing of the Assessing Officer's order, furnished the quarterly statements and paid requisite taxes along with interest, in spite thereof, the assessee has been held not absolved of being treated as an assessee-in-default. No reason for this has been ascribed which, in the facts and circumstances of the case and the legal position, is not tenable in law.
- Accordingly, the impugned order is reversed. The assessee is absolved of being treated as an assessee-in-default. The demand of Rs. 4,17,508, raised under section 201(1) and section 201(1A) is as reduced to that of Rs. 2,460, cancelled.
- In the result, the appeal is allowed.