



TAX FLASH NEWS

Quoting of wrong PAN inadvertently does not attract provisions of Section 206AA of the Act

Background

Recently, the Ahmedabad Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Oil & Natural Gas Corporation Ltd.¹ (the taxpayer) held that quoting of wrong Permanent Account Number (PAN) due to inadvertent error does not attract provisions of Section 206AA² of the Income-tax Act, 1961 (the Act) since there was no intention on the part of the deductor or deductee to furnish wrong PAN details. The Tribunal held that the system is erroneous to the extent if it restricts the deductor to revise its Tax Deducted at Source (TDS) statement within some parameters, which in this case was a correction of PAN details subject to change of two alphabetical and two numerical characters. Therefore, correction statement filed by the taxpayer needs to be accepted after ascertaining the correctness of the PAN furnished by the deductor.

Facts of the case

- The taxpayer is a Public Sector Undertaking (PSU), and approximately 69 per cent of shares are held by the Government of India. The taxpayer has been calculating, deducting and depositing TDS as per the provisions of Income-tax Act, 1961 (the Act).
- During the first three quarters of Financial Year (FY) 2013-14, the taxpayer deducted tax at source from one of the contractors. The taxpayer was required to deduct at the rate of two per cent from the sum paid/credited to the said deductee.

¹ Oil & Natural Gas Corporation Ltd. v. DCIT (ITA No.1984, 1985 and 1986/Ahd/2015) – Taxsutra.com

² As per the provisions of Section 206AA of the Act in the cases when any sum is paid to deductee who does not furnish PAN, the deductor is liable to deduct TDS at rate specified in the relevant provisions of the Act or at the rates in force or at 20 per cent, whichever is higher calculated on the sum paid/credited to the deductee.

- The taxpayer deposited the tax and filed the quarterly TDS return in Form 26Q as per the Income-tax Rules, 1962 (the Rules). While filing the TDS statement, the taxpayer inadvertently mentioned wrong PAN of the deductee due to which Centralized Processing Cell (CPC) (TDS) treated the wrong PAN as no PAN.
- Accordingly, the Assessing Officer (AO) created demand for all the three quarters by imposing a burden of 18 per cent, i.e. 20 per cent as per 206AA of the Act less 2 per cent paid by the taxpayer.
- The taxpayer tried to rectify the mistake by filing correction statement, but the same was rejected for the reason that the system only allows the change of four characters, subject to the maximum of two numerical characters and two alphabetical characters. Whereas in the wrong PAN quoted by the deductor there were more than four changes and, therefore, correction statement was not accepted.
- The Commissioner of Income-tax (Appeals) upheld the order of the AO.

Tribunal's ruling

Correction in TDS statement

- The deductee was holding and possessing valid PAN and regularly filing the income-tax return and paying due taxes. However, due to internal processing guidelines between the income tax department and the CPC, the demand has been created for all the quarters.

- Under the TDS provisions, the duty to deduct tax is cast upon certain categories of taxpayers on payment/purchases from deductees, since such deductee either may not file their income tax return or may not disclose the actual income or may not/delay in depositing income-tax.
- As per provisions of the Act, the deductor is required to furnish details of various types of tax at source/collected from the deductees in prescribed formats. Earlier, these details had to be prepared and submitted manually, but with improvement in the information technology system, the quarterly TDS statement is furnished in soft-copy format and even online submission facilities are available. These TDS returns along with details of tax deposited by the deductor also provide ready-made details to the tax department and also help the deductee to claim the TDS deducted against its tax liability.
- In the present case, the taxpayer adhered to all the above requirements in case of all the deductees, except for one deductee which too is a regular taxpayer and a state government undertaking of which the invalid PAN has been mentioned.
- The main intent of the law for inserting provisions of Section 206AA of the Act is that various types of deductees are normally not filing a return of income and not possessing PAN, or intentionally providing wrong PAN so as to hide their income. To cope up with such deductees, this provision has been introduced so that deductor deducts 20 per cent of the payment/credit to deductees before making the payment from such deductees and deposit the same to the government.
- It cannot be the intent of the law to impose 20 per cent of TDS rate on deductees who are regularly filing their income tax returns and paying their due taxes. For this purpose, there were some changes made in the system of furnishing of quarterly TDS returns.
- Centralised processing of statement of TDS Scheme 2013 clearly gives an option to the deductor to correct the quarterly return(s) filed by it. This correction has not been restricted to any particular correction. Therefore, correction can be made by way of deleting the entry, adding of a deductee, change in details mentioned about the deductee, including his PAN, adding of TDS challans, etc., meaning that deductor can rectify any mistake which has been inadvertently made by it at the time of filing original return, and also that this correction statement can be filed multiple times.
- Accordingly, the deductee should be given a further opportunity of filing the correction statement to correct the given PAN details.
- Even from the perusal of the intimation under Section 200A of the Act issued by CPC (TDS) and TDS Reconciliation Analysis and Correction Enabling System (TRACES), it is clear that the system itself is prompting to correct the presence of invalid/no PAN entries through a correction statement and is not giving any reference of a particular type of restriction of correcting a particular PAN with regard to the number of characters.
- Further, the Punjab and Haryana High Court in the case of Superintendent of Police³ held that no penalty was leviable for quoting the wrong PAN since the taxpayer had rectified the mistake by furnishing the correct PAN as soon as it came to its notice. The revised PAN and statement were accordingly filed.
- The findings recorded by the CIT(A) does not indicate that there was any intention on the part of the deductor or deductee to furnish wrong PAN details. Therefore, it was held that the system is erroneous if it restricts the deductor to revise its TDS return/statement within some corners. Therefore, correction statement filed by the taxpayer needs to be accepted after ascertaining the correctness of the PAN furnished by the deductor.

Assessee in default

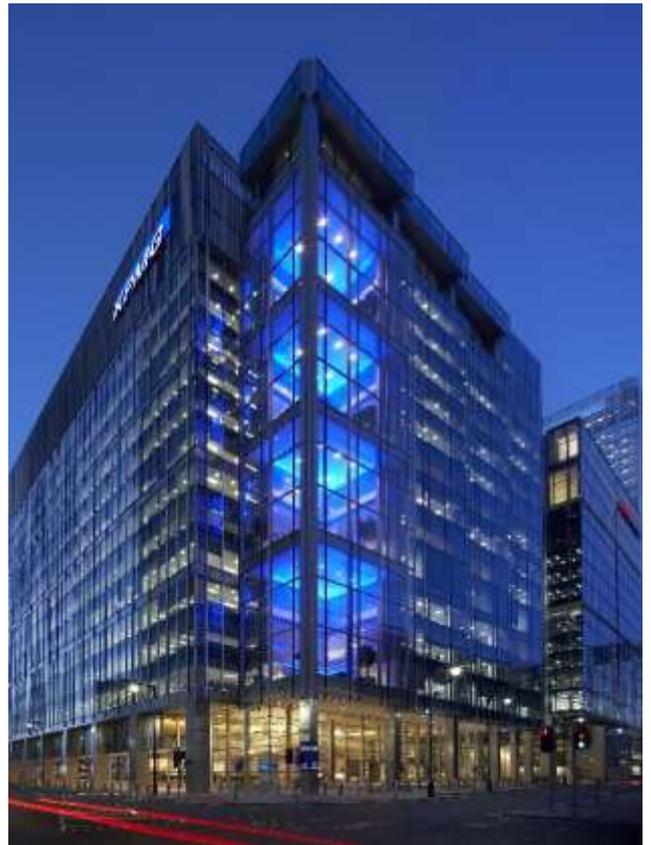
- In the present case, the taxpayer has deducted tax at two per cent of the sum paid/credited to deductee. However, due to the filing of wrong PAN of deductee, it has been deemed as 'assessee in default' and, accordingly, 18 per cent of remaining TDS has been demanded from the taxpayer.
- In the present case, the lower authorities did not provide an opportunity to produce requisite details of the deductee in the form of proof of furnishing of return under Section 139 of the Act, proof of tax paid by the deductee and certificate from the Chartered Accountant. Had the taxpayer been provided an opportunity as per the proviso of Section 201(1) of the Act referred above, then it may have filed requisite details of the deductee.
- Therefore, it has been held that the matter may be restored back to the file of CIT(A) with the direction to decide the matter after providing reasonable opportunity of hearing to the taxpayer so that it can furnish relevant details/information as required by the proviso of Section 201(1) of the Act.

³ CIT (TDS) v. Superintendent of Police [2013] 31 taxmann.com 32 (P&H)

Our comments

The Delhi Tribunal in the case of Skypack India Pvt. Ltd.⁴ held that when the taxpayer quoted incorrect PAN in TDS return due to inadvertent error on the part of the taxpayer itself or deductees, levy of penalty is unjustified. There is nothing to suggest that the incorrect PAN was mentioned willfully, or the PAN was false. Even if, there is any default, which resulted in the infraction of the law, the default is technical and venial which did not prejudice the interests of the revenue as no tax avoidance or tax evasion was involved.

The current decision of the Ahmedabad Tribunal shall be useful to those taxpayers who have inadvertently filled wrong PAN details in their TDS return and unable to revise their TDS statement.



⁴ Skypack India Pvt. Ltd v. ITO (ITA No. 2028/D/2011)

Ahmedabad

Commerce House V, 9th Floor,
902 & 903, Near Vodafone House,
Corporate Road,
Pralhad Nagar,
Ahmedabad – 380 051
Tel: +91 79 4040 2200
Fax: +91 79 4040 2244

Bengaluru

Maruthi Info-Tech Centre
11-12/1, Inner Ring Road
Koramangala, Bangalore 560 071
Tel: +91 80 3980 6000
Fax: +91 80 3980 6999

Chandigarh

SCO 22-23 (1st Floor)
Sector 8C, Madhya Marg
Chandigarh 160 009
Tel: +91 172 393 5777/781
Fax: +91 172 393 5780

Chennai

No.10, Mahatma Gandhi Road
Nungambakkam
Chennai 600 034
Tel: +91 44 3914 5000
Fax: +91 44 3914 5999

Delhi

Building No.10, 8th Floor
DLF Cyber City, Phase II
Gurgaon, Haryana 122 002
Tel: +91 124 307 4000
Fax: +91 124 254 9101

Hyderabad

8-2-618/2
Reliance Humsafar, 4th Floor
Road No.11, Banjara Hills
Hyderabad 500 034
Tel: +91 40 3046 5000
Fax: +91 40 3046 5299

Kochi

Syama Business Center
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682019
Tel: +91 484 302 7000
Fax: +91 484 302 7001

Kolkata

Unit No. 603 – 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata 700 091
Tel: +91 33 44034000
Fax: +91 33 44034199

Mumbai

Lodha Excelus, Apollo Mills
N. M. Joshi Marg
Mahalaxmi, Mumbai 400 011
Tel: +91 22 3989 6000
Fax: +91 22 3983 6000

Noida

6th Floor, Tower A
Advant Navis Business Park
Plot No. 07, Sector 142
Noida Express Way
Noida 201 305
Tel: +91 0120 386 8000
Fax: +91 0120 386 8999

Pune

703, Godrej Castlemaine
Bund Garden
Pune 411 001
Tel: +91 20 3050 4000
Fax: +91 20 3050 4010

Vadodara

iPlex India Private Limited
1st floor office space
No. 1004, Vadodara Hyper
Dr. V S Marg
Vadodara – 390007
Tel: 0265-2351085 / 2322607

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