



## Higher tax demand under Section 206AA cannot be raised on account of an incorrect PAN mentioned in the TDS return

### Background

Recently, the Gujarat High Court in the case of Purnima Advertising Agency Pvt. Ltd.<sup>1</sup> (the taxpayer) held that higher tax demand under Section 206AA of the Income-tax Act, 1961 (the Act) cannot be raised on account of an incorrect Permanent Account Number (PAN) mentioned in the Tax Deducted at Source (TDS) return. The High Court observed that due to a large number of TDS statements and entries in such statements, it would be impossible to process individual claims of corrections, whether they are based on bona fide mistakes or otherwise. Neither the Act nor the tax department completely rules out the possibility of a genuine and bona fide typographical or even mechanical error. The High Court held that the tax department not permitting the taxpayer to correct the PAN of the deductee in the TDS statement is not acceptable.

### Facts of the case

- The taxpayer is a company registered under the Companies Act and is engaged in the business of advertisement. During the year under consideration, the taxpayer has made payments to various recipients, on which the taxpayer has deducted tax at 2 per cent.
- Subsequently, the taxpayer filed TDS returns for the Financial Year (FY) 2010-2011. While filing TDS returns for the second and third quarters there was an inadvertent error since the PAN of one deductee was wrongly mentioned. There was a typographical error while putting details in TDS statement. The taxpayer had not immediately noticed this error.

- During the course of processing TDS returns, the Assessing Officer (AO) found that the PAN indicated by the taxpayer in the declaration did not match with the actual PAN of the deductee. The PAN provided in the TDS return did not belong to that deductee and, therefore, in terms of Section 206AA(6)<sup>2</sup> of the Act, it would have the effect as if the deductee has not furnished the PAN to the deductor and the effect of provisions of Section 206AA(1)<sup>3</sup> is applicable. The AO held that the taxpayer who was required to deduct tax at the rate of 20 per cent had deducted the same at the rate of 2 per cent. Therefore, the AO raised a demand for the remaining tax after adjusting such tax deducted.

### High Court's decision

- Section 200(3) of the Act refers to the requirement of filing a TDS statement. This provision though does not refer to any mechanism for correction of such a statement, Section 200A(1) specifically refers to a TDS statement or a correction statement. Thus, clearly leaving the possibility of correcting a declaration once made by the taxpayer. Sub-clause (ii) of clause (a) of Section 200A(1) permits the tax authority to make an adjustment of an incorrect claim, apparent from any information in the statement.

<sup>2</sup> Under Section 206AA(6) of the Act, where such PAN number is either invalid or does not belong to the deductee, it would be deemed that he has not furnished his PAN to the deductor and accordingly, the provisions of Section 206AA(1) of the Act would apply.

<sup>3</sup> In terms of Section 206AA(1), when the person entitled to receive any sum on which the tax is deductible under Chapter XVII B fails to furnish the PAN, the tax would be deducted at a higher rate, in the present case at the rate of 20 per cent.

<sup>1</sup> Purnima Advertising Agency Pvt Ltd v. DCIT (Special Civil Application No. 18631 of 2014) – Taxsutra.com

- Neither the statute nor the department completely rules out the possibility of a genuine and bona fide typographical or even mechanical error. Looking to a large number of TDS statements and entries in such statements, it would be impossible to process individual claims of corrections, whether they are based on bona fide mistakes or otherwise.
- The taxpayer relied on the notification wherein tax department has formulated the scheme<sup>4</sup>. This notification contains detailed provisions for the processing of TDS statements. It also refers to a correction of the TDS statement. The scheme authorises the director general to specify the procedures and processes for the effective functioning of the cell where such declarations would be processed which includes the receipt of the corrected TDS statement.
- Even as per the tax department, the online system permits corrections limited to two alphabetical and two numerical errors in the PAN number. Such limited permission to correct is sought to be justified on two grounds. One is that if the error is genuine and bona fide in feeding the PAN number, it is unlikely that a typographical error would travel beyond such characters and the second is that looking to the millions of statements and entries being filed by the taxpayers across the country, it would open the flood gates, if corrections are permitted without any limit.
- Once the tax department recognises the possibility of errors and also makes provisions for making corrections, it would be wholly illogical to limit such corrections on arithmetical working out of only two alphabets or two numeric being found incorrect requiring change.
- An error in feeding an entry or a number may have multiple origins from the typographical error of data entry operation to mechanical failures or through pure oversight referring to one column of PAN instead of another while filling up and uploading the statement. It is not necessary nor possible to envisage different situations under which such errors could crop-up and need not necessarily be confined to limited figures on the letters of the PAN being incorrect.
- It is entirely one thing to suggest that the tax department would not accept any change once certain entries are uploaded, or at any rate no change would be permissible beyond a certain date. However, it is entirely another thing to suggest that the corrections may be permitted but should be limited to a number of characters where correction is needed.
- In the present case, Section 200A of the Act itself refers to correction TDS statement. The intimation sent to the taxpayer of the shortfall in TDS also referred to the possibility of correction but limited it to certain characters.
- In the instant case, the deductee has already discharged its full tax liability. If the full effect of the tax department's decision is allowed, the deductee would not get the benefit of 2 per cent of tax deducted by the deductor and already deposited with the government. Since the PAN does not match, the deductor would pay additional 18 per cent which although styled in the name of TDS, would be additional to what deductee would have paid by way of tax to the department.
- In the present case, with the payee having already discharged its tax liability independently, such an amount would remain in government coffers not accounted for by anyone's tax liability. Further, the tax department's contention was that the incorrect PAN could be corrected as long as a mismatch is up to two alphabets and two numeric characters are incorrect.
- The decision to limit the correction to limited characters is a policy decision which should be based on logical parameters. Nevertheless, putting the limitation of permitting corrections of only four characters has no rationale relation.
- Accordingly, it has been held that the decision of the tax department in not permitting the taxpayer to correct the PAN of the deductee in the TDS statement was not acceptable. The tax department shall verify the taxpayer's claim of actual deduction of tax at the prescribed rate in the case of deductee, verify that the PAN sought to be corrected by the taxpayer belongs to the said deductee and that the tax was actually deposited in the case of such a deduction.
- If these questions are answered in favour of the taxpayer, the tax department shall not insist on raising higher demand from the taxpayer of failing to deduct the tax at source in terms of Section 206AA(1) of the Act.

### Our comments

The issue with respect to the applicability of Section 206AA on quoting the wrong PAN due to inadvertent error has been a matter of debate before the Courts/Tribunal.

<sup>4</sup> Notification dated 15 January 2013 referred to as centralised processing of statements of tax deducted at source scheme, 2013

The Ahmedabad Tribunal in the case of Oil & Natural Gas Corporation Ltd.<sup>5</sup> held that the quoting of a wrong PAN due to inadvertent error does not attract provisions of Section 206AA of the Act since there was no intention on the part of the deductor or deductee to furnish the wrong PAN details. The Tribunal held that the system is erroneous to the extent if it restricts the deductor to revise its TDS statement within some parameters, which in this case was a correction of PAN details subject to the change of two alphabetical and two numerical characters. Therefore, the correction statement filed by the taxpayer needs to be accepted after ascertaining the correctness of the PAN furnished by the deductor.

However, the Jaipur Tribunal in the case of Office of XEN, PHED<sup>6</sup> held that where in the course of processing of TDS return, the taxpayer was found to have submitted the wrong PAN of a certain deductee and the AO was justified in raising demand under Section 201(1A) of the differential tax that the taxpayer deductor should have deducted by virtue of submission of incorrect PAN by the deductee.

The Tribunal in the present case while allowing a petition filed by the taxpayer directed the tax department to allow the taxpayer to correct the PAN of the deductee in the TDS statement. Higher tax demand under Section 206AA of the Act cannot be raised on account of an incorrect PAN mentioned in the TDS return.

The government's initiative of e-filing of TDS statement is a welcome initiative. However, sometimes it doesn't allow the correction where the mismatch is beyond two alphabets and two numeric characters. Taxpayers have been facing an issue where the volume of transactions is very high, and the chances of putting an incorrect PAN are also high. In such cases, the tax department may come out with suitable modification in such a TDS statement whereby the taxpayer can correct their TDS statement if the error is genuine and bona fide.

On the one hand, the government is introducing paperless income tax proceedings and TDS proceedings. However, on the other hand, tax officers are raising tax demand even in genuine and bona fide cases. It would be apt if appropriate and timely measures will be taken for restricting such errors while filing TDS statements. It will relieve the undue hardship faced by the taxpayers.



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<sup>5</sup> Oil & Natural Gas Corporation Ltd. v. DCIT [2016] 156 ITD 579 (Ahd)

<sup>6</sup> Office of XEN, PHED v. ITO [2016] 161 ITD 373 (Jaipur)

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