

Sec. 206AA couldn't be invoked if TDS was deducted as per provisions of DTAA: ITAT

Summary – The Pune ITAT in a recent case of Calderys France., (the Assessee) held that where tax has been deducted on strength of beneficial provisions of DTAA, provisions of section 206AA cannot be invoked by Assessing Officer to insist that tax deduction should be higher, i.e., 20 per cent

Facts

- The assessee, a foreign company, had received payment towards management services and IT support services rendered to Indian company. The assessee had offered the same for taxation in its return of income. The Indian entity, *i.e.*, Calderys had withheld taxes at the rate of 20 per cent from the payment made to the assessee since the assessee-company did not have any PAN at the time of receipt of said payments. However, in the return of income, the assessee claimed that the same was taxable at the rate of 10 per cent being royalty/FTS, as per article 13 of DTAA between Indian and France. Hence, the assessee in the return of income claimed refund.
- The Assessing Officer was of the view that the Indian entity had to withhold taxes on such payments as per provisions of section 206AA and since the assessee received PAN on 14-8-2012, the tax on the date of payment was to be deducted at higher rates as per provisions of section 206AA.
- The Commissioner (Appeals) held that while assessing the assessee's total income after it filed its return of income on 30-3-2013, the deductee had already obtained PAN on 14-8-2012. Therefore, according to the applicable law, the Assessing Officer was bound to apply the beneficial tax rate at the rate of 10 per cent under the DTAA and refund excess tax, if paid under the normal provisions of the law.
- On appeal:

Held

- The provisions of section 206AA cannot override the provisions of charging sections 4 and 5 and under section 90(2), it is provided that DTAA's would override domestic law, in cases where the provisions of DTAA's are more beneficial to the assessee. Hence, the same would also override the charging sections 4 and 5. Interpreting the provisions of the Act, therefore, where the tax has been deducted on the strength of beneficial provisions of DTAA, provisions of section 206AA cannot be invoked by the Assessing Officer to insist that the tax deduction should be higher *i.e.* 20 per cent. Accordingly, since the assessee had received PAN number, it was obliged to pay the taxes as per DTAA, *i.e.*, at the rate of 10 per cent of the payment received and if the payee had deducted the tax at the rate of 20 per cent under section 206AA, provisions of DTAA being more beneficial had to be applied.
- Applying the said principle to the facts of the present case, there is no merit in the grounds of appeal raised by the revenue and the same are dismissed.