

Deductor was liable to pay interest on TDS default even if he wasn't an assessee-in-default as per sec. 201(1)

Summary – The Visakhapatnam ITAT in a recent case of Aayush NRI LEPL Health Care (P.) Ltd., (the Assessee) held that Levy of interest under section 201(1)(A) is automatic and mandatory

Facts

- A TDS survey under section 133A was conducted in case of assessee and it was found that the assessee had made the payments to one, DIS but did not deduct the TDS on the said payment.
- The Assessing Officer held that the assessee required to deduct the tax at source under section 194J and, accordingly, treated the assessee as assessee in default and levied interest under section 201 & 201(1A) for its failure to deduct the tax at source and non-remittance to Government account.
- On appeal, the Commissioner (Appeals) confirmed the action of the Assessing Officer in treating the assessee as the assessee in default. Further, the Commissioner (Appeals) having found that the deductee had filed the return of income and offered receipts from the assessee in the returns of income, the Commissioner (Appeals) allowed relief to the assessee for the interest imposed under section 201(1).

Held

- The assessee required to deduct tax at source on payments made to the DIS. The assessee has not deducted the tax at source and did not remit to the government account. There is no dispute with regard to the deductibility of tax at source. The Commissioner (Appeals) has decided in appeal that the assessee required to deduct tax at source on the payments made under section 194J, which is not disputed by the assessee. The assessee's argument was the deductee has already filed the return of income and the tax liability in the hands of the deductee was *nil*, and not liable to payment of any tax, thus no loss of revenue and hence, the interest under section 201(1A) does not attract in the assessee's case. He further argued that the interest under section 201 & 201(1A) is compensatory in nature and since the deductee's income was below taxable limit and need not pay any advance tax it contended that there is no loss to revenue and interest need not be charged under section 201(1)(A).
- The plain reading of the proviso to section 201(1A) makes it very clear that even though the assessee is not deemed to be assessee in default under first proviso to sub-section (1), the interest under clause (i) shall be payable from the date on which such tax is deductible to the date of furnishing of return of income by such a resident, therefore, the tax liability in the hands of the deductee has no relation or connection for charging the interest under section 201(1A). Mere non-deduction of tax at source and non-remittance to Government of India account attracts the interest under section 201(1A) and that is the reason for which the provision has been inserted to charge interest from the date of the tax deductible to the date of furnishing of return of income by the

resident. The charging of interest from the date of the tax required to be deducted till the date of furnishing of return of income by the deductee is automatic and mandatory. Therefore, the interest is chargeable from the date of such tax is deductible to the date of furnishing of return of income and the order of the Commissioner (Appeals) is upheld and the appeal of the assessee is dismissed.