

IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR

BEFORE SH. N.K.CHOUDHRY, JUDICIAL MEMBER AND  
DR. A.L.SAINI, ACCOUNTANT MEMBER

**ITA No. 300/Asr/2017**  
Assessment Year: 2011-12

The Collector Land Acquisition,  
PHE Circular Road Project,  
Govt. Safa Kadal, Vs.  
Srinagar, Kashmir.

Income Tax Officer,  
Ward-TDS, Srinagar.

[PAN:AMRC1 1370C]

**(Appellant)**

**(Respondent)**

Appellant by: Written Submissions  
Respondent by: Sh. Charan Dass (Ld. DR)

Date of hearing: 28.11.2019  
Date of pronouncement: 30.12.2019

**ORDER**

**PER N.K.CHOUDHRY, JM:**

The instant appeal has been preferred by the assessee against the impugned order dated 17.01.2017 passed by the Ld. CIT(A)-J&K, Jammu u/s 250(6) of the Income Tax Act, 1961 (hereinafter called as 'the Act').

**2.** As per information u/s 133(6) of the Act, the compensation/enhanced compensation has been paid by the Collector, Land Acquisition, Srinagar for acquisition of land during the Financial Year: 2010-11 relevant for the Asst. Year 2011-12. It was observed by the Assessing Officer that in some of the cases Permanent Account Numbers (PAN's) were not furnished and the tax was deducted @ 10.2% instead of 20%, therefore, the assessee was

treated as assessee in default within the meaning of sec.201 r.w. sec.201 (ia) and Sec. 194L of the I.T. Act, 1961 qua persons mentioned in the list enclosed with the assessment order and consequently a demand of Rs.46,59,578/- was raised u/s 201 of the Act along with interest of Rs.9,37,989/- u/s 201(1) of the Act.

**3.** Aggrieved against the Assessment order, the assessee preferred the first appeal before the Ld. CIT(A) who vide impugned order affirmed the action of the AO, thereafter, on aggrieved, the assessee preferred the instant appeal.

**4.** In the written submissions, the assessee has claimed that the assessee/PR is a Government Department of J&K Government and during the financial year has compulsory acquired land and building from various residents for the public purpose. The PR while granting compensation for compulsory acquisition has deducted TDS @ 10.2% on the total amount paid to 42 persons. The complete details in the form of Name, address, PAN, amount paid, TDS deducted of all the persons to whom compensation was granted is enclosed, (list enclosed).

The ITO-Ward TDS has made the addition of Rs. 46, 59,578.00 by levying TDS @ 20% for non-availability of PAN,s, which is not correct, as the department has obtained copy of PAN,s from all persons to whom compensation has been paid. The assessee could not submit the copy of PAN,s before ITO-Ward TDS during TDS proceedings due to the facts, that the officers working in the department at the time of TDS deduction and at the time of submission of information before ITO-Ward TDS were different, which took some time, meanwhile the ITO- TDS has completed the

assessment. The PR has collected the copy of PAN,s from the person to whom compensation has been granted/paid. The PR has also filed the quarterly TDS return, which itself is conclusive, that the PR has collected PAN at the time of deduction of TDS, except for a few persons of whose PAN cards were not available.

It is apparent to mention, that TDS is not a Tax, but means of collecting tax, therefore there is no benefit at all to the PR in non-deduction/less deduction of TDS. The assessee is a government department and employees dealing with such files generally are not one, but get transferred often.

The PR though his counsel submitted complete details of persons to whom compensation of compulsory acquisition was granted along with copy of PAN,s of the persons, however the LD. CIT (appeal) has not considered the same, while framing the appeal order, therefore has not acted fairly and not done justice with the PR.

**4.1** Considering the peculiar facts and circumstances as the assessee is Govt. Officer and had no personal interest in not submitting the PAN whom compensation has been paid and it is also a fact that Officer working in the Department at the time of TDS deduction and at the time of submission of information before ITO-Ward TDS were different, which resulted into lapse of time. Though it is claimed by the assessee that the details have been submitted in the form of Annexures before the Ld. CIT(A), however, from the impugned order, it does not reflect so. Considering the peculiar facts and the circumstances and the intricacies involved and for the just decision of the case and for the end of litigation, we are inclined to set aside the orders passed by the authorities below and remit this issue

qua non-submission of PAN,s to the Assessing Officer for decision afresh while taking into consideration the details already submitted or to be submitted by the assessee, suffice to say while affording proper and reasonable opportunities of being heard to the assessee.

**4.** In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open Court on 30/12/2019.

Sd/-  
(DR. A.L.SAINI)  
ACCOUNTANT MEMBER

Sd/-  
(N.K.CHOUDHRY)  
JUDICIAL MEMBER

Dated: 30/12/2019.

/PK/ Ps.

Copy forwarded to:

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2. The Respondent
3. The CIT
4. Then CIT(Appeals)
5. SR DR, I.T.A.T. Amritsar
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By Order