IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD ''B ' BENCH – AHMEDABAD
Before S/Shri Rajpal Yadav, JM, & Manish Borad, AM.

ITA No.1984/Ahd/2015	A.Y. 2014-15 (1st quarter of FY 2013-14)
ITA No.1985/Ahd/2015	A.Y. 2014-15 (2nd quarter of FY 2013-14)
ITA No.1986/Ahd/2015	A.Y. 2014-15 (3rd quarter of FY 2013-14)

Oil & Natural Gas Corporation Ltd., Hazira Plant, Surat, Gujaat.	Vs	Dy. Commissioner of Income-tax, Central Processing Cell-TDS, Ghaziabad.
(Appellant)		(Respondent)
PA No.AAACO1598A		

Appellant by	Shri S. N. Soparkar, AR
Respondent by	Smt. Smiti Samant, Sr.DR

Date of hearing: 22/9/2015
Date of pronouncement: 23/11/2015

O R D E R

PER Manish Borad, Accountant Member.

These are three appeals of assessee out of which one is directed against the order of CIT(A)-3, Surat in appeal No.CAS-3/TRFD/IV/5/2014-15 dated 14.5.2015 (1st quarter of FY 2013-14) and two appeals are directed against order of CIT(A)-3, Surat in appeal nos.CAS-3/TRFD/IV/16 & 17/2014-15 dated 6.4.2015 (2nd & 3rd quarters of FY 2013-14). Since the assessee is same and the issues involved in all these three appeals are identical, these were heard together and are being decided by this common order for the sake of convenience.

2. The common issue involved in these three appeals relates to TDS returns filed by the assessee for quarter 1, quarter 2 & quarter 3 of FY 2013-14 in which due to mistake in quoting correct PAN of the deductee in the TDS returns, DCIT, Centralized Processing Cell-TDS, has raised demands for quarter 1, quarter 2 & quarter 3 and interest. The details of demand and interest for each quarter are mentioned below :-

ITA No.	A.Y.	Quarter	Demand (Rs.)	Interest (Rs.)
1984/A/2015	2014-15	1st	35,97,360.80	3,59,730

ITA No.	A.Y.	Quarter	Demand (Rs.)	Interest (Rs.)
1985/A/2015	2014-15	2nd	7,25,162.20	65,360.00

ITA No.	A.Y.	Quarter	Demand (Rs.)	Interest (Rs.)
1986/A/2015	2014-15	3rd	7,20,622.20	43,234

3. The assessee has raised similar grounds of appeal for the three appeals (except with change of quarter) and the same read as under:-

1. The ld. CIT(A) has erred in law and in facts and circumstances of the case in upholding the order passed by the Dy. CIT, Centralized Processing Cell-TDS under section 154 for first quarter of financial year 2013-14, whereby ONGC's request for correction of PAN of the party and consequential deletion of demand for tax & interest u/s 201, was not accepted.

2. Without prejudice to the preceding ground, the ld. CIT(A) ought to have directed the Dy. CIT, Centralized Processing Cell-TDS, to verify whether the deductee had furnished its return of

income after including the amount paid to it by the appellant and paid the tax due and, if so, to not treat the appellant as an assessee in default in view of the Hon'ble Supreme Court's judgment in the case of Hindustan Coca Cola Beverage (P) Ltd. vs. CIT 293 ITR 226, and the proviso to sub-section (1) of section 201, inserted by the Finance Act, 2012 w.e.f. 01.07.2012.

3. The appellant craves permission to add, alter, amend, substitute, delete, and/or modify any ground(s) of appeal before or at the time of hearing.

4. Briefly stated facts are that the appellant-assessee i.e. O.N.G.C. Ltd. is a Public Sector Undertaking and approximately 69% of shares are held by the Government of India and the appellant has been calculating, deducting and depositing income deducted at source as per the provisions of Income-tax Act, 1961 (hereinafter referred to as the Act).

5. During quarters 1, 2 & 3 of F.Y. 2013-14 assessee deducted tax at source from one of the contractors namely Gujarat Energy Transmission Corporation Ltd., a Government of Gujarat Undertaking (in short GETCO Ltd.) and the assessee was required to deduct 2% from the sum paid/credited to the deductee i.e. GETCO Ltd. The appellant duly deducted and deposited the tax and filed the quarterly TDS return in form 26Q as per Income-tax Rules. In form no.26Q deductor who deducts the TDS is required to furnish the details of deductee including his PAN as well as amount of sum credited/paid and TDS deducted. Inadvertently the assessee mentioned wrong PAN of the deductee due to which Centralized Processing Cell –TDS

treated wrong PAN as no PAN and accordingly created demand for all the three quarters by imposing a burden of 18% as difference of low TDS deducted because 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 @ 20%, whichever is higher calculated on the sum paid/credited to the deductee.

6. The appellant-assessee tried to rectify the mistake by filing correction statement but the same was rejected for the very reason that the system only allows the change of 4 characters subject to maximum of two numerical characters and two alfa characters. Whereas in the wrong PAN quoted by the deductor there were more than 4 changes and, therefore, correction statement was not accepted.

7. Aggrieved, assessee went in appeal before CIT(A) which did not bring any relief to the assessee who has to put reliance on section 206AA of the Act which talks about deduction of TDS in cases when a deductee does not furnish PAN to deductor or furnishes incorrect PAN. CIT(A) has also appreciated the instructions made by Centralized Processing Cell in regard to correction of two alfa & two numerical characters to permit the genuine typing mistake and thereafter confirmed the demand raised by DCIT(CPC) TDS, Ghaziabad.

8. Aggrieved, the assessee is now in second appeal before the Tribunal. The ld. AR of the assessee has raised two folds of contentions in support of his grounds of appeal. In his first contention the ld. AR of the assessee submitted that deductor is a Government of India Undertaking and the deductee i.e. GETCO Ltd. is a Government of Gujarat Undertaking and deductor i.e. the assessee ONGC Ltd. has been regularly deducting and depositing the tax deducted at source and filing its TDS returns regularly and looking to the size of appellant's business there are thousands of deductees of whom the assessee is deducting tax and depositing the same to the Government. The rate of tax prescribed for deduction from payments to contractor i.e. GETCO Ltd. was 2% and the same was duly deducted and deposited but in the TDS return at the place of correct PAN of GETCO Ltd. it was AABCG 4029 R, inadvertently mentioned as AABCG 2412F and due to this small clerical mistake which was done on the part of assessee, differential TDS of 18% was imposed. The ld. AR further submitted that the correction statement was filed to make the correction in the PAN detail but to its surprise due to the internal policy of the Centralized Processing Cell which are not available in the Act and the Rules, the revised PAN details were not accepted as there was change in four numerical characters and one alfa character, whereas the system only allows changes of two alfa characters and two numerical characters. This sort of processing by TDS –Centralized Processing Cell of allowing correction upto 4 characters is totally uncalled for and against the natural justice because this harsh processing is only affecting the deductor and not the deductee as a deductee is being allowed full credit on revision of

returns. The ld. AR also submitted that the processing system of TDS returns keeps on changing, so much so that the correction system accepts the entry of deductee of whom no PAN was mentioned in the original return and now some new softwares have been developed which do not accept wrong PAN in the details furnished while filing TDS returns and many more changes have been made so as to ease the system of TDS return filing. The ld. AR relied on the decision of Hon'ble Punjab & Haryana High Court in the case of CIT (TDS), Chandigarh vs. Superintendent of Policy [(2013) 31 taxmann.com 32 (Punjab & Haryana)] in IT Appeal No.124 of 2012, wherein penalty under section 272B was imposed for invalid PAN of 196 deductees and thereafter assessee rectified mistake by furnishing correct PAN as soon as it came to its notice and thus the order of Tribunal was upheld which set aside the penalty order.

8.1 The ld. AR of the assessee in his second fold of contention has referred to the proviso to sub-section (1) of section 201 inserted by the Finance Act 2012 w.e.f. 1.7.2012 which reads as under –

201. [(1) Where any person, including the principal officer of a company,—

(*a*) who is required to deduct any sum in accordance with the provisions of this Act; or

(*b*) referred to in sub-section (1A) of section 192, being an employer,

does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

[**Provided** that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—

(*i*) has furnished his return of income under section 139;

(*ii*) has taken into account such sum for computing income in such return of income; and

(*iii*) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed]

Provided [**further**] that no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.]

[(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—

(*i*) at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and

(*ii*) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid,

and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200:]

[**Provided** that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso to sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.]

The ld. AR submitted that this proviso is applicable to the facts of assessee's case, the deductee i.e. GETCO Ltd. is a Government of Gujarat Undertaking and regularly filing its return of income and if an opportunity has been provided to the deductor then the same would have certainly proved that there is no loss to the Revenue as the deductee has duly paid its tax liability for the relevant Asst. Year including the sum paid by the deductor in its total income and, therefore, the deductor would not have been required to deduct tax @ 20% in place of 2%. The ld. AR further submitted that this proviso

is even helpful to those deductor whos have failed to deduct to deduct TDS and get relief from imposition of TDS liability if they are able to prove that the deductee is regularly assessed to tax and has paid the due taxes and the sum paid by the deductor has been included in the income of the deducted.

9. On the other hand, the ld. DR relied on the orders of CIT(A) and did not bring anything new before us.

10. We have heard the rival contentions, perused the material on record and gone through the judicial pronouncement referred hereto. First we will deal the issue in the light of first fold of contention raised by the ld. AR of the assessee that once the correction statement is allowed to be filed then it should not be restrictive in nature and should give full opportunity to the deductor to make all the corrections which he intends to make in the TDS quarterly return. The solitary issue involved in all these three appeals is that the assessee i.e. the deductor which is a Government of India Undertaking and is regularly filing TDS returns mentioning therein details of hundreds of deductees and due to some clerical unintentional mistake invalid PAN (AABCG 2414F) of a deductee who too is a Govt. of Gujarat Undertaking, is mentioned in the quarterly TDS statement of form no.26Q. The deductee i.e. GETCO Ltd. was holding and possessing valid PAN i.e. AABCG 4029R and regularly filing income-tax return and paying due taxes. However, due to internal processing guidelines between the Income-tax Department and the Centralized Processing Cell which allow rectification of PAN only to the extent f two alfa and

two numerical characters but the assessee's correction statement could not bring down the demand because there was change in four numerical characters and one alfa character and for this reason the demand has been created in all the quarters 1, 2 & 3 of F.Y 2013-14.

11. Before going further let us examine the intention of the Legislature in regard to insertion of provisions relating to tax deduction/collection at source. Through these provisions the duty and responsibility is casted upon certain categories of assessees, to deduct/collect tax on certain types of sum paid/purchases from deductees for the reasons that such deductee either may not file income tax return or may not disclose the actual income or may not/delay in depositing income-tax. As per provisions of the Act deductor is further required to furnish details of various types of tax at source/collected from the deductees in prescribed formats, wherein many details are required to be furnished. Earlier these details had to be prepared and submitted manually but since few years with the improvement in information technology system, the quarterly statement of TDS returns are 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 Department and also help the deductee to claim the TDS deducted against its tax liability. These special categories of deductors have to carry on this responsibility and duty along with their regular business activities. So to summarize following tasks need to be done by certain categories of assessees called deductors (including the appellant-assessee) in relation to TDS provisions:

(a) In order to ascertain from its books of account as to which payments/expenses are covered under TDS provisions.

(b) Check up monthly record for applying the TDS provisions when payments exceed certain thresh-hold limits mentioned in the Act.

(c) Collect PAN details from the deductee which normally are either verbally spoken by the deductee or sent by message/copy of PAN Card.

(d) Deductee does not have any mechanism to easily check the correctness of the PAN verbally spoken/received by message.

(e) To deduct the TDS/TCS at the applicable rates by the end of the month.

(f) To deposit the collected TDS normally within 7 days of the next month following the month in which tax has been deducted/collected.

(g) Collect various information at the end of the quarter for deductees of whom tax has been deducted/tax deducted at lower rate/no tax deducted for certain categories of deductees mentioned in the provisions of the Act.

(h) Furnish separate quarterly statement for salary, non-salary and tax collected at source.

(i) Furnishing the forms manually/electronically in the way provided by Centralized Processing Cell TDS which gets some changes regularly due to advancement in technology.

12. The appellant-assessee has adhered to all the above requirements in case of all the deductees except for one deductee which too is a regular tax payer and State Government Undertaking of which invalid PAN has been mentioned. The basic reason due to

which ld. CIT(A) could not bring any relief to the assessee was due to application of provisions of section 206AA which refers to furnish PAN and this section was introduced w.e.f 1st April, 2010 and reads as below :-

> "206AA. *Requirement to furnish Permanent Account Number.*—(1) Notwithstanding anything contained in any other provisions of this Act, any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereafter referred to as deductor), failing which tax shall be deducted at the higher of the following rates, namely:—
>
> (*i*) at the rate specified in the relevant provision of this Act; or
>
> (*ii*) at the rate or rates in force; or
>
> (*iii*) at the rate of twenty per cent.
>
> (2) No declaration under sub-section (1) or sub-section (1A) or sub-section (1C) of section 197A shall be valid unless the person furnishes his Permanent Account Number in such declaration.
>
> (3) In case any declaration becomes invalid under sub-section (2), the deductor shall deduct the tax at source in accordance with the provisions of sub-section (1).
>
> (4) No certificate under section 197 shall be granted unless the application made under that section contains the Permanent Account Number of the applicant.
>
> (5) The deductee shall furnish his Permanent Account Number to the deductor and both shall indicate the same in all the correspondence, bills, vouchers and other documents which are sent to each other.
>
> (6) Where the Permanent Account Number provided to the deductor is invalid or does not belong to the deductee, it shall be deemed that the deductee has not furnished his Permanent Account Number to the deductor and the provisions of sub-section (1) shall apply accordingly.".

The main intent of the law for inserting this provision could have been the reasons that various types of deductees which are normally not filing return of income and not possessing PAN or intentionally provides wrong PAN so as to hide their income and to cope up with such deductees this provision was introduced so that deductor deducts 20% (at the rate applicable as per provisions of section 206AA) of the payment/credit to deductees before making the

payment from such deductees who do not furnish PAN and deposit the same to the Government so that even if such type of deductees do not file its income-tax return still some portion of tax is received by the Government at least to the extent of payments made by the deductors. But certainly it cannot be the intent of the law to impose 20% of TDS rate on deductees who are regularly filing their income-tax returns and paying their due taxes and for this purpose there were some changes made in the system of furnishing of quarterly TDS returns. Earlier TDS returns were submitted manually and the system of filing revised TDS returns/correction of details was not that smooth. However, to tackle the genuine problems arising in this detailed process of TDS deduction/collection, deposit of taxes, filing of quarterly returns, and to rectify clerical mistake made unintentionally by the deductee as well as to get relief from harsh impact of provisions of section 206AA of the Act arising due to quoting of wrong/no PAN. CBDT vide its Notification no.3/2013 (F.142/39/2012-SO (TPL) dated 15.1.2013 came up with Centralized Processing of statement of TDS Scheme 2013 which deals with various aspects of online filing and processing of TDS returns. This scheme discusses about furnishing of correction statement of tax deducted at source, processing of statement and rectification of mistake and the relevant portion of this scheme in this regard are mentioned herein below :-

Furnishing of correction statement of tax deducted at source

4. (1) A deductor shall furnish the correction statement of tax deducted at source in the form specified by the Director General-

(*a*) at the authorised agency through electronic mode; or

(*b*) online through the portal.

(2) The correction statement referred to in sub-paragraph (1) shall be furnished under digital signature or verified through a process in accordance with the procedure, formats, and standards specified by the Director General.

Processing of statements

5. (1) The Cell shall process the statement of tax deducted at source furnished by a deductor in the manner specified under sub-section (1) of section 200A of the Act after taking into account the information contained in the correction statement of tax deducted at source, if any, furnished by the deductor before the date of processing.

(2) The Commissioner may-

(*a*) adopt appropriate procedure for processing of the statement of tax deducted at source; or

(*b*) decide the order of priority for processing of the statement of tax deducted at source based on administrative requirements.

Rectification of mistake

6. (1) An Income-tax authority of the Cell may, with a view to rectifying any mistake apparent from the record under section 154 of the Act, on its own motion or on receiving an application from the deductor, amend any order or intimation passed or sent by it under the Act.

(2) An application for rectification shall be furnished in the form and manner specified by the Director General.

(3) Where a rectification has the effect of reducing the refund or increasing the liability of the deductor, an intimation to this effect shall be sent to the deductor electronically by the Cell and the reply of the deductor shall be furnished in the form and manner specified by the Director General.

(4) Where an amendment has the effect of reducing a refund already made or increasing the liability of the deductor, the order under section 154 of the Act passed by an Income-tax authority of the Cell shall be deemed to be a notice of demand under section 156 of the Act.

13. Further the power to specify procedure and processes for effective functioning of the Cell in an automatic and mechanized environment are given to the Director General as specified in point 11 to this Scheme. These procedure and processes as specified by Director General i.e. D.G. (I.T. System) who is appointed as such under sub-section (1) of section 117 of the Act are informed to an authorized agency which means the person authorized by the Director General to receive the statement of TDS or correction statement on TDS and this authorized agency runs portal of the Central Processing Cell. There is continuous communication between the Director General and authorised agencies for improving the TDS

mechanism as well as smooth working of portal and in this process various types of procedural check points are made but all these communications are not available to the assessee(s) as they are not mentioned in the Income-tax Act and Income-Tax Rules. The deductor comes to know about these check points when the TDS returns are presented for filing and further these check points are amended/rectified/removed as per the convenience of the system being appraised by the Director General and authorised agencies.

14. This scheme of Centralized Processing of statement of TDS clearly gives an option to the deductor to correct the quarterly return(s) filed by it and 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 thereby that deductor can rectify any kind of mistake which has been inadvertently made by it at the time of filing original return and also this correction statement can also be filed for multiple times. Applying the facts of the case of assessee to the above discussion made by us we are of a clear view that refusal of the various agencies not to accept change in character in PAN details filed by deductee in its correction statement was not correct and justifiable. So much so that the deductee should be given further opportunity of filing the correction statement to the correct PAN details which needs to be accepted. Even from the perusal of the intimation under section 200A issued by TDS Centralized Processing Cell and Traces (TDS reconciliation analysis and correction enabling system) available on

page 1 & 2 of the Paper Book mentioned in Note No.2 about PAN errors which read as below :-

(a) In case there is any PAN error in the TDS/TCS statement filed by you, refer communication for PAN Error/Justification Report for further details which can be viewed/downloaded from TRACES (www.tdscpc.gov.in).

(b) You are advised to correct the Invalid/No PAN entries in the TDS/TCS statement through a correction statement.

(c) You are advised to download consolidated TAN-PAN master from TRACES (www.tdscpc.gov.in) and use it for populating the PAN of deductees in TDS statement to avoid PAN errors.

(d) Specify PAN verification is also available on TRACES (www.tdscpc.gov.in)

From the above, it is cystal clear that the system itself is mentioning to correct the Invalid/No PAN entries through a correction statement and is not giving any reference of a particular type of restriction of correcting particular PAN with regard to number of characters.

14.1 Further in the judgment of Hon'ble Punjab & Haryana High Court in the case of CIT (TDS) vs. Superintendent of Police (supra) similar issue was dealt by the Hon'ble Court wherein it was observed as below :-

"3. The issue in this appeal relates to whether there was justifiable cause within the meaning of section 273B of the Act on the basis of which it could be said that sufficient cause had been shown by the respondent –Superintendent of Police in wrongly quoting PAN in respect of 196 employees of the department. The CIT(A) had recorded as under :-

"In the instant case as already observed the appellant deducted TDS correctly and revised PAN and filed the revised statement on form No.26Q, hence there is sufficient compliance of the provisions of section 139A. In view of the aforesaid discussion, it is held that ITO (TDS) was not justified to levy the penalty of Rs.19,60,000/- @ Rs.10,000/- per default. The penalty levied by the ITO (TDS) under section 272B(1) is deleted."

4. The Tribunal had come to the conclusion that there was sufficient cause on the part of the respondent while quoting PAN of the deductees and as such no penalty was leviable. The tax was deducted and deposited in time in the Government Treasury. The error was due to wrong quoting of PAN by the deductees t the assessee. The assessee had rectified the mistake by furnishing the correct PAN as soon as it came to its notice. The revised PAN and the revised statement were accordingly filed. Following findings recorded by the Tribunal may be read :-

"6. In the instant case, the only question before us is whether there was reasonable cause for alleged failure on the part of the assessee. In the instant case, the ITO (TDS) while going through the quarterly return in form no.26Q filed by the assessee noted that it has omitted to quote PAN/had quoted invalid PAN in 196 cases. As regards the reasonable cause, it was pleaded on behalf of the assessee that TDS was deducted and deposited in time in government Treasury. The default is only with regard to the wrong quoting of PAN of 196 of the deductees, such deductees quoted wrong PAN. However, correct PAN was given as soon as default was brought to the notice of the assessee. In this case, the CIT(A) has categorically observed that the assessee deducted TDS correctly and revised PAN and filed the revised statement on form no.26G, hence there was sufficient compliance of the provisions of section 139A. There is no dispute that the assessee quoted invalid PAN for 196 deductees which was corrected on being pointed out by ITO (TDS). In the instant case, failure to quote right PAN has occurred as the concerned depositor had misquoted PAN. There is also no dispute that the

PAN was corrected after ascertaining the same from the respective deductees."

5. The finding of the CIT(A) was upheld by the Tribunal with the following observations :-

"7. In the above case, the Tribunal held that cumulative analysis of section 139A and Rule 114B to 114D shows that an obligation to quote PAN/GIR number or to file Form No.60 is that of customer and not that of the bank. Considering the entire facts and circumstances of the present case, and also keeping in view the decision of ITAT, Ahmedabad 'D' Bench in the case of Financial Cooperative Benk Ltd. vs. ITO, Ward-2(3), Surat (supra), we hold that there was reasonable cause of the default if any committed by the assessee and hence no penalty under section 273B of the Act is leviable. In our view the ld. CIT(A) has correctly appreciated the facts f the present case as well as settled legal position and therefore, we do not find any valid ground in interfering with the order of CIT(A). Consequently, appeal filed by the revenue is devoid of any merit and deserves to be dismissed."

6. Learned counsel for the appellant was unable to show that the findings recorded by the CIT(A) as well as the Tribunal are erroneous in any manner. It was urged that there was no reasonable cause on the part of the assessee to furnish inaccurate PAN in form 24Q."

15. In the case of assessee also there has been no finding by ld. CIT(A) to show that there was any intention on the part of the deductor or deductee to furnish wrong PAN details. Therefore, in view of above discussion, we are of the view that the system is erroneous to the extent if it restricts the deductor to revise its TDS return/statement within some corners which in this case was correction of PAN details subject to change of two alfa and two numberical characters and, therefore, correction statement filed by

the assessee needs to be accepted after ascertaining the correctness of the correct PAN furnished by the deductor. Accordingly, the order of CIT(A) is quashed and assessee's ground of appeal is allowed with reference to the first first fold of contention made by the assessee.

16. Now we take up the issue in the light of second fold of contention of the ld. AR of assessee which refers to the application of proviso to sub-section (1) of section 201 of the Act. Even if we we have already allowed the appeal with reference to the ld. AR first fold of contention, we now examine the applicability of second fold of contention. For reference we again mention below the proviso to sub-section (1) of section 201-

201. [(1) Where any person, including the principal officer of a company,—

(a) who is required to deduct any sum in accordance with the provisions of this Act; or

(*b*) referred to in sub-section (1A) of section 192, being an employer,

does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

[**Provided** that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—

*(*i) has furnished his return of income under section 139;

(*ii*) has taken into account such sum for computing income in such return of income; and

(*iii*) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed]

Provided [**further**] that no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.]

[(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—

(*i*) at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and

(*ii*) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid,

and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200:]

[**Provided** that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso to sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.]

17. Applying the facts of the assessee's case wherein it is required to deduct tax and has deducted TDS @ 2% of sum paid/credited to GETCO Ltd. but due to filing of wrong PAN of deductee it has been deemed as assessee in default and accordingly 18% of remaining TDS (20% (-) 2%) has been demanded from the assessee. Had the assessee been provided an opportunity as per the proviso of sub-section (1) of section 201 of the Act referred abve then it may have filed requisite details of the deductee in form of proof of furnishing of return under section 139 of the Act, proof of taking into account such sum for computing income in such return of income of the deductee, proof of tax paid by the deductee and certificate from the Chartered

Accountant to this effect that the sum on which deductor was required to deduct TDS has duly been considered in the books of account for computing income of the deductee. Therefore, we accept the second fold of contention of the assessee and hold 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 assessee so that it can furnish relevant details/information as required by the above said proviso to sec.201(1) of the Act, as discussed above.

18. Ground No.2 is allowed for statistical purposes.

19. In the result, all the appeals are allowed for statistical purposes.

Order pronounced in the open Court on 23rd Nov 2015

Sd/-	Sd/-
(Rajpal Yadav)	(Manish Borad)
Judicial Member	Accountant Member

Dated 23/11/2015
Mahata/-
Copy of the order forwarded to:

1.	The Appellant
2.	The Respondent
3.	The CIT concerned
4.	The CIT(A) concerned
5.	The DR, ITAT, Ahmedabad
6.	Guard File

BY ORDER

Dy. Registrar, ITAT, Ahmedabad

1. Date of dictation: 18/11/2015
2. Date on which the typed draft is placed before the Dictating Member: 19/11/2015 other Member:
3. Date on which approved draft comes to the Sr. P. S./P.S.:
4. Date on which the fair order is placed before the Dictating Member for pronouncement: _____
5. Date on which the fair order comes back to the Sr. P.S./P.S.:
6. Date on which the file goes to the Bench Clerk: 23/11/2015
7. Date on which the file goes to the Head Clerk:
8. The date on which the file goes to the Assistant Registrar for signature on the order:
9. Date of Despatch of the Order: