

Assessee can't file writ against recovery notice if it didn't challenge intimation of demand issued u/s 200A: HC

Facts of the case - Construction Engineers v. Union of India - [2023] (Jammu & Kashmir and Ladakh)

Assessee-petitioner, a partnership firm, engaged in the business of construction of major projects including Bridges, Flyovers, Office Complexes, and other Roads and Buildings. Petitioner filed TDS returns in Form 26Q quarterly. While processing the TDS Returns, the Assessing Officer (AO) noticed that the assessee had not reported tax deductions in respect of salary payments.

Consequently, an intimation of outstanding demand under section 201(A) and a show-cause notice under section 221(1) was issued by the AO, to which the assessee did not respond. Since the demand was not contested, AO treated such demand as a formal demand and proceeded to recover the outstanding amount. AO issued a notice to the assessee's bank.

Aggrieved by the order assessee preferred a writ petition before the High Court of Jammu & Kashmir and Ladakh.

Decision of the case :

- The High Court held that the petitioner did not challenge the intimation issued by the AO under section 200A. The challenge to the notices issued under section 226(3) without challenging the intimation of demand made by AO under section 200A is not maintainable. The petitioner is only aggrieved by the notices issued upon the assessee's Bank, which holds money for and on account of the Assessee, to deposit the outstanding liability standing against the petitioner.
- Since no response was given by the petitioner to the intimation of demand, the intimation was treated as a notice of demand. There was a failure on the part of the petitioner to meet the demand and deposit the outstanding tax. The petitioner sought to contest the demand on merits that the entire tax deducted at source stood deposited and the demand raised was non-est in the eye of the law.
- If aggrieved by the intimation of demand issued by AO, the petitioner is well within its rights to file an appeal before the jurisdictional Commissioner (Appeals), and cannot straightway approach this Court by invoking its extraordinary writ jurisdiction under Article 226 of the constitution of India.
- It is needless to say that when a statute provides a mechanism for the redressal of grievances, the person aggrieved must go through the mechanism so provided. It is not permitted to rush to invoke the extraordinary writ jurisdiction when the statutory mechanism itself provides for the filing of statutory appeals and revisions.