

TAX FLASH NEWS

15 April 2021

PAN is mandatory under Section 206AA even if the income of a person is below the taxable limit

Executive summary

The Karnataka High Court in the case of Smt. A. Kowsalya Bai¹ and others (taxpayers) dealt with the constitutional validity of Section 206AA of the Income-tax Act, 1961 (the Act) vis-à-vis the applicability of Permanent Account Number (PAN) to the persons whose income is below taxable limit. The High Court while overruling the decision of the Single Judge² held that the constitutional validity of the provision has to be tested on the grounds of legislative competence and violation of fundamental rights. The hardship or equity is not relevant in interpreting the provisions relating to taxation specially when the language used by the legislature is plain and unambiguous. Section 206AA is enacted as a measure to prevent the tax evasion. The government is trying to eliminate circulation of unaccounted money and is intending to set up a database which contains and monitor all the transactions which take place in India. Therefore, in order to gather the aforesaid database, the taxpayers have been asked to furnish PAN in all the transactions. Section 139A(1)(i) is not absolute and there are number of instances where persons are required to obtain PAN even if they do not fulfill the conditions mentioned in Section 139A(1)(i). Therefore, it was held that the persons whose total income are not chargeable to tax are also required to obtain PAN.

Facts of the case

The taxpayers are small investors, with income below the taxable limit prescribed under Section 139A. The taxpayers deposited savings from meager income with financial institutions and earned interest income on the same. Further, some of the taxpayers filed Form No. 15G as required under Section 197A, to enable non-deduction of tax at source. However, the balance of taxpayers were insisted by the tax department for production of PAN in pursuance of amendment to Section 206AA.

In view of the above background, the taxpayers filed a writ petition before the Karnataka High Court challenging constitutional validity of Section 206AA. The taxpayers contended that they should not be assessed to income-tax and such a provision would cause undue hardship to them. Further, introduction of Section 206AA is an arbitrary and violative of Article 14 of the constitution of India. Accordingly, they had requested to strike down the provisions of Section 206AA as unconstitutional.

The Single Judge held that Section 206AA is contrary to Section 139A. Therefore, provisions for higher rate of tax under Section 206AA for not obtaining PAN would not be applicable to persons whose income is below the taxable limit.

High Court decision

It is trite law that the constitutional validity of the provision has to be tested on the grounds of legislative competence and violation of fundamental rights³. Further, it is well settled legal proposition that hardship or equity is not relevant in interpreting the provisions relating to taxation specially when the language used by the legislature is plain and unambiguous⁴.

The rationale behind the introduction of Section 206AA is explained in the Memorandum explaining the provisions in the Finance (No.2) Act, 2009. Section 206AA is enacted as a measure to prevent the tax evasion.

The government is trying to eliminate circulation of unaccounted transactions and is intending to set up a database which contains and monitor all the transactions which take place in India. Therefore, in order to gather the aforesaid database, the taxpayers have been asked to furnish PAN in all the transactions.

¹ Union of India v. Smt. A. Kowsalya Bai (W.A. No.3477 of 2012 (T)) – Taxsutra.com

² Smt. Kowsalya Bai v. UOI [2012] 346 ITR 156 (Kar)

³ Public Services Tribunal Bar Association v. State of UP and Ors (2003) 4 SCC 104

⁴ State of Madhya Pradesh v. Rakesh Kohli and Anr (2012) 6 SCC 312

Section 139A(1)(i) provides that a person shall apply for allotment of PAN if his total income or total income of any other person in respect of which he is assessable under the Act during the year exceeded the maximum amount which is not chargeable to tax.

Section 139A(1)(i) is not absolute and apart from persons mentioned in the aforesaid clause, there are number of instances in Section 139A itself where persons were required to obtain PAN even if they do not fulfill the conditions mentioned in Section 139A(1)(i). Therefore, the conclusion recorded by the Single Judge Bench that the persons whose total income are not chargeable to tax need not obtain PAN, cannot be upheld.

The Single Judge has neither recorded a finding that a parliament do not have the legislative competence to enact Section 206AA nor recorded a finding that the aforesaid provision is violative of fundamental rights. The Principle of reading down a provision can be applied for the limited purpose of making a particular provision workable and to bring in harmony with the other provisions of the statute and has to be used keeping in view of the Scheme of the Act and to fulfill its purposes⁵.

In the facts of the present case, since the provision was either not unworkable nor was inconsistent with other provisions of the Act, the Single Judge could not have applied the principle of reading down merely on the basis of hardship or equity which are not relevant in the interpretation of the law relating to taxation.

Our comments

The provisions of Section 206AA read with Section 139A have created difficulties for certain persons whose income is below the taxable income. Further, no specific exceptions have been provided, in respect of such persons whose income is below the taxable limit. On this issue, the single Judge of the Karnataka High Court observed that Section 206AA runs counter to Section 139A and is discriminatory and therefore, provisions for higher rate of tax under Section 206AA for not obtaining PAN would not be applicable to persons whose income is below the taxable limit. However, a division bench of the High Court in the present case has overruled the decision of the single judge and held that PAN is mandatory under Section 206AA even if the income of a person is below the taxable limit.

It would be interesting to see how the Supreme Court will deal with this issue if this matter will reach before the Supreme Court.

Whether this decision will impact the non-resident taxpayers. Rule 37BC of the Income-tax Rules, 1962 provides that in the case of a non-resident, including a foreign company not having PAN, the provisions of Section 206AA shall not apply in respect of payments in the nature of interest, royalty, fees for technical services, dividend⁶ and payments on transfer of any capital asset, if the deductee furnishes the prescribed details and the documents to the deductor. Thus, in such scenarios a non-resident, including a foreign company will not be required to submit PAN. Further⁷ the provisions of Section 206AA shall not apply in respect of payments made to such non-residents if the provisions with respect to application of PAN (under Section 139A) do not apply to such person on account of specified situations⁸.



⁵ Calcutta Guj. Education Society & Anr. v. Calcutta Municipal Corporation & Ors [Appeal (civil) 5203 of 2000] (SC)

⁶ Inserted by the IT (Seventeenth Amendment) Rules, 2020, w.e.f. 24 July 2020.

⁷ Inserted by the IT (Nineteenth Amendment) Rules, 2020, w.e.f. 10 August 2020

⁸ Situations specified under Rule 114AAB

KPMG in India addresses:

Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House, Corporate
Road,
Prahlad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru

Embassy Golf Links Business Park,
Pebble Beach, 'B' Block,
1st & 2nd Floor,
Off Intermediate Ring Road, Bengaluru –
560071
Tel: +91 80 6833 5000

Chandigarh

SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai

KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram

Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2, Serilingampally
Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

1st Floor, Lodha Excelus,
Apollo Mills,
N. M. Joshi Marg,
Mahalaxmi,
Mumbai – 400 011.
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada

Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

home.kpmg/in



home.kpmg/in/socialmedia



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011
Phone: +91 22 3989 6000, Fax: +91 22 3983 6000

© 2021 KPMG Assurance and Consulting Services LLP, an Indian Limited Liability Partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

KPMG (Registered) (a partnership firm with Registration No. BA- 62445) converted into KPMG Assurance and Consulting Services LLP (a Limited Liability partnership firm) with LLP Registration No. AAT-0367 with effect from July 23, 2020.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

This document is meant for e-communication only.