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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 5th day of June, 2012

Before

THE HON'BLE MR JUSTICE HULUVADI G RAMESH

Writ Petitions 12780 – 12782 / 2010 (T)

Between:

- 1 Smt A Kowsalya Bai, 58 yrs
W/o A S Lakshmana Rao
R/a # 2270, II Main, 4th Cross
RPC Layout, Hampinagar
Bangalore 560 040
- 2 Smt Parvathamma, 52 yrs
W/o Sri Basavaraj, R/a # 2791
II A Main, 6th Cross, Rajajinagar
Bangalore 10
- 3 Smt Sarvamangala, 58 yrs
W/o SriSiddappa, R/a # 58
7th Main, 3rd Cross, Vijayanagar
Bangalore 40

Petitioners

(By Sri Udaya Holla, Sr. Adv. For
M/s Holla & Holla, Adv.)

And:

- 1 Union of India – by its Secretary
Ministry of Finance, North Block
New Delhi

- 2 Chairman
Central Board of Direct Taxes
North Block, New Delhi
- 3 M/s Shriram Transport Finance Co Ltd
123, Angapanaikan Street
Chennai 600 001
- 4 M/s Shriram City Union Finance Ltd
123, Angapanaikan Street
Chennai 600 001 Respondents

(By Sri M V Seshachala, Adv. For R1-2;
Sri K Prasanna Shetty, Adv. For R3,4)

Writ Petitions are filed under Art.226/227 of the Constitution praying to declare that S.206AA of the Income Tax Act, 1961 is unconstitutional, etc.

The Petitions coming on for hearing this day, Court made the following.

ORDER

These petitions have been filed seeking for a declaration that S.206AA of the Income Tax Act, 1961 is unconstitutional and for costs.

It is stated, petitioners are small investors. For depositing their savings out of their meagre income, they approached respondents 3 and 4 , for earning better interest/returns. They do not have any source of income

other than their investment. It is also stated specifically, they do not have income exceeding the maximum taxable limit as per S.139 A of the Act. Petitioners even filed Form 15 G as required under S.197 A of the Act to enable the 3rd and 4th respondents not to deduct tax at source as per S.193 of the Act.

According to the petitioners, the 3rd and 4th respondents have informed the petitioners that even Form 15 G filed by them cannot be accepted for the purpose of exemption from deduction unless their Permanent Account Number (PAN) is communicated, pursuant to the amendment to S.206AA of the Finance Act, 2009 based on which the 3rd and 4th respondents insisted for furnishing of PAN. The grievance of the petitioners is, persons like them (individual investors) are not assesseees and not assessed to income tax

The Parliament also being aware of the plight of such people who are not assessed to income tax but who invest their money for the purpose of survival and eking out their livelihood and that deduction of tax at source

on such small investments would cause undue hardship, introduced S.139 A1(i) of the Act in the year 1995 which enables such persons not assessable to income tax to file a declaration to that effect in the prescribed format, by which income tax would be deducted at source. S.206AA which is introduced has come into effect from 1.4.2010 as per Finance Act 2/2009, has a over riding provision to furnish PAN and as a consequence of which, persons who do not have assessable income are now compelled to obtain PAN or otherwise, the tax could be deducted as specified.

The grievance of the petitioners is, such a provision would cause great hardship and inconvenience. The introduction of S.206 AA is arbitrary and violative of Art.14 of the Constitution and accordingly, they pray to strike down the very S.206AA of the Act as unconstitutional.

Heard the Sr.Counsel representing the petitioners and the counsel representing the respondents.

It may be relevant at this juncture to extract the provisions of

S.139A(1) and S.206AA of the Act which read:

S.139A(1):: Every person -

- (i) if his total income or the total income of any other person in respect of which he is assessable under this Act during any previous year exceeded the maximum amount which is not chargeable to income tax; or
- (ii) carrying on any business or profession whose total sales, turn over or gross receipts are or is likely to exceed five lakhs in any previous year; or
- (iii) who is required to furnish a return of income under sub-section (4A) of S.139; or
- (iv) being an employer, who is required to furnish a return of fringe benefits under S.115 WD

and who has not been allotted a permanent account number shall, within such time as may be prescribed, apply to the Assessing Officer for the allotment of a permanent account number.

S.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 XVIII B (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 provisions of this Act; or
- (ii) at the rate or rates in force; or
- (iii) at the rate of twenty percent.

(2) No declaration under sub-section (1) or sub-section (1A) or sub-section (1C) of S.197A shall be valid unless the person furnishes his PAN 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 S.197 shall be granted unless the application made under that section contains the PAN of the applicant.

(5) The deductee shall furnish his PAN 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) Whether the PAN provided to the deductor is invalid or does not belong to the deductee, it shall be deemed that the deductee has not furnished his PAN to the deductor and the provisions of sub-section (1) shall apply accordingly.

The very intent of S.206AA is to make it conditional for every person who wish to have a transaction in the bank or financial institution including small investors/depositors, invariably to have a PAN. This runs contrary to what has been contemplated under S.139A of the Act which was introduced by the Legislature in its wisdom. What is not in dispute is, persons whose income is below the taxable limit need not have a PAN and also they need not furnish income tax declaration/returns. Of course, under the Finance Act, it is made clear that a person whose income is less than the taxable limit is not taxable. Such of the small investors who come forward to invest their savings from earnings as security for their future, by virtue of the present S.206AA of the Act, necessarily have to give their PAN. The poor and illiterate/uneducated persons are finding it difficult rather to approach the various government departments particularly the Income Tax Department go get their PAN. At the cost of repetition, I may observe it

may not be necessary for such persons whose income is below the taxable limit to obtain PAN. Such investments – savings from their earnings or by way of agriculture or any other source, in banking and financial institutions would also further the financial position from the point of the country's economy . But imposing condition to invariably go for a PAN on such small depositors would cause hindrance and discourage such small investors to come forward to invest their money for secured returns and as security for their future.

The difficulty expressed by the petitioners and similarly placed persons is, imposing condition to invariably go for PAN as per S.206 AA would run contrary to S.139A of the Act. It is also their grievance that filing Form 15G to seek exemption from deduction of income tax at source, also is not accepted by the 3rd and 4th respondents and acted upon unless the PAN is produced .

S.139A which is introduced way back in April 1991 is in vogue and this provision stands the scrutiny of Art.14 of the Constitution for

reasonableness. But, S.206AA which is contrary to S.139A appears to be discriminatory as if it is over riding S.139A introduced earlier. Though the intention of the Legislature is to bring the maximum persons under the net of income tax, when necessarily it provides for exemption up to taxable limit, it may not insist such persons whose income is below the taxable limit to compulsorily go for PAN. If any mischief of avoiding of tax or any other act of concealing the income is detected, that could be taken care of by penal provisions.

In that view of the matter, in view of the specific provision – S.139A of the Act, S.206AA of the Act is made inapplicable to persons and read down from the Statute for whose income is less than the taxable limit as per the Finance Act, 1991. However, it is made clear, S.206AA of the Act would of course, be made applicable to persons whose income is above the taxable limit. The banking and financial institutions shall not invariably insist upon PAN from such small investors like the petitioners as well as from persons who intend to open an account in the bank or financial institution.

With the above observations, petitions are allowed.

*Sd/-
Judge*

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