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OPINION

Shri A, Asst. General Manager – Finance, M/s XYZ. Ltd., has requested for an opinion in respect of an Article published under the title "***Requirement to furnish Permanent Account Number under section 206AA of the Income-Tax Act, 1961".***

The aforesaid Article, published in The Chartered Accountant's Journal, has been authored by Shri B, a Chartered Accountant. Shri A has sought my opinion in respect of TDS rates applicable in relation to income under the head "*Salaries*", under section 192 of the Income-Tax Act, 1961 (the Act), r.w.s. 206AA of the Act.

In order to answer the aforesaid query, it will be necessary to refer to the provisions of section 206AA of the Act. For the sake of ready reference, section 206AA is reproduced as follows :

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.

From the aforesaid provisions of section 206AA(1), it may be seen that if any person entitled to receive **any sum or income or amount, on which tax is deductible under Chapter XVII-B**, does not furnish his PAN to the person responsible for deducting tax thereon, then 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.

It may, thus, be seen that the higher rate of TDS, at 20 per cent, will be applicable only in a case **where tax is deductible at source in respect of such sum, income or amount.**

In other words, the provisions of section 206AA will come into operation only where the sum, income or amount paid or payable, is subject to deduction of tax under any of the sections under Chapter XVII-B of the Act.

In para (B) of the aforesaid Article, the Author has given an example of section 194J of the Act, under which no tax is deductible at source if the fees for professional or technical services, etc. payable during the relevant financial year, do not exceed ¤ 30,000. In such a scenario, the Author has opined that the payer of sum / income / amount will not be liable to deduct tax at source, as per the provisions of section 206AA, even if the payee does not furnish his PAN to the payer / tax-deductor.

Unfortunately, the Author has not applied the same logic in respect of TDS under section 192 of the Act, in relation to income under the head "*Salaries*". In para (C) of the aforesaid Article, the Author has opined that the provisions of section 206AA of the Act will apply even in cases where the income chargeable under the head "*Salaries*" does not exceed the taxable limit.

It must be understood here that the logic applied by the Author to the aforesaid example in respect of TDS under section 194J will equally apply to a case where the income of the employee computed for TDS purposes under section 192 of the Act, is below taxable limit, **because no tax is deductible at source in such a case.**

In order to make the position absolutely clear in this regard, it would be appropriate to refer to Circular No.8 of 2010, dt.13.12.2010, issued by the CBDT [330 ITR (St) 22]. The aforesaid Circular relates to – *Income-tax deduction from salaries during the financial year (FY) 2010-11, under section 192 of the Income-Tax Act, 1961.*

Para (3) of the aforesaid Circular deals with : *Broad scheme of tax deduction at source from "Salaries*". Further, para 3.1 thereof, deals with *"Method of tax calculation*". For the sake of ready reference, the aforesaid para 3.1 is reproduced as follows :

3.1. *Method of tax calculation*

> *Every person who is responsible for paying any income chargeable under the head "Salaries" shall deduct income-tax on the estimated income of the assessee under the head "Salaries" for the financial year 2010-11. The income-tax is required to be calculated on the basis of the rates given above subject to provisions of section 206AA of the Income-tax Act and shall be deducted at the time of each payment.* ***No tax will, however, be required to be deducted at source in any case unless the estimated salary income including the value of perquisites, for the financial year exceeds Rs. 1,60,000 or Rs. 1,90,000 or Rs. 2,40,000, as the case may be, depending upon the gender and age of the employee***. (Emphasis added)

From the aforesaid para 3.1 relating to method of tax calculation, it may be seen that the income-tax deductible at source under section 192, in respect of salaries, is required to be calculated on the basis of the rates given earlier, subject to the provisions of section 206AA of the Act. **However, thereafter, it is clarified that no tax will be required to be deducted at source in any case unless the estimated salary income, including the value of perquisites, for the financial year exceeds the taxable limit.**

In this connection, we may also refer to para 4.8 of the aforesaid Circular, which specifically deals with section 206AA. For the sake of ready reference, the aforesaid para 4.8 is reproduced as follows :

4.8 Section 206AA

4.8.1. Finance (No.2) Act, 2009, w.e.f. 1.04.2010 has inserted section 206AA in the Income-tax Act which makes furnishing of PAN by the employee compulsory in case of payments liable to TDS. If employee (deductee) fails to furnish his / her PAN to the deductor, the deductor shall make TDS at a higher of the following rates :

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.

4.8.2. The deductor has to determine the tax amount in all the three conditions and apply the higher rate of TDS. ***This section applies to any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVII-B of the Income-tax Act****. As Chapter XVII-B covers all payments including salaries, salaries are also covered by section 206AA. In case of salaries there can be following situations :*

(a) Where the income of the employee computed for TDS under section 192 is below taxable limit.

(b) Where the income of the employee computed for TDS under section 192 is above taxable limit.

In first situation, as the tax is not liable to be deducted, no tax will be deducted*. In the second case, if PAN is not furnished by the employee, the deductor will calculate the average rate of income-tax, based on rates in force as provided in section 192. If the tax so calculated is below 20 per cent., deduction of tax will be made at the rate of 20 per cent. and in case the average rate exceeds 20 per cent., tax is to be deducted at the average rate. Education cess at 2 per cent, and Secondary and Higher Education Cess at 1 per cent. is not to be deducted, in case the TDS is deducted at 20 per cent. under section 206AA of the Income-tax Act.* (Emphasis added)

From the aforesaid para 4.8.2, it may be seen that in case of salaries there can be the following two situations :

(a) Where the income of the employee computed for TDS under section 192 is below taxable limit.

(b) Where the income of the employee computed for TDS under section 192 is above taxable limit.

It has been specifically stated in the aforesaid situation (a) that as the tax is not liable to be deducted, no tax will be deducted. In other words, where the income of the employee computed for TDS under section 192 is below taxable limit, no tax will be required to be deducted at source, even if the employee does not furnish his PAN to the employer.

Conclusion

In the light of the discussion in the preceding paras, it is clearly established that no tax is required to be deducted at source under section 192, r.w.s. 206AA of the Act, where the income of the employee computed for TDS purposes is below taxable limit, even if the employee does not furnish his PAN to the employer.

In view of the aforesaid reasons, the opinion of the Author in para (C) of his aforesaid Article is totally erroneous.

M/s XYZ Ltd., is advised to follow the aforesaid opinion provided by me, for the purposes of TDS under section 192 of the Act..

Place : Pune

Date : 22.3.2011 (S.K. Tyagi)

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