Relaxation from deduction of tax at higher rate under section 206AA.

37BC. *(1) In the case of a non-resident,*
not being a company, or a foreign company (hereafter referred to as 'deductee') and not having permanent account number
the provisions of section 206AA shall not apply
in respect of payments in the nature of
interest, royalty, fees for technical services and payments on transfer of any capital asset,
if the deductee furnishes the details and the documents specified in sub-rule (2) to the deductor.

(2) The deductee referred to in sub-rule (1), shall in respect of payments specified therein, furnish the following details and documents to the deductor, namely:—

(i)	*name, e-mail id, contact number;*
(ii)	*address in the country or specified territory outside India of which the deductee is a resident;*
(iii)	*a certificate of his being resident in any country or specified territory outside India from the Government of that country or specified territory if the law of that country or specified territory provides for issuance of such certificate;*
(iv)	*Tax Identification Number of the deductee in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or the specified territory of which he claims to be a resident.***]**

Section 206AA, notes on clauses thereto and relevant circulars i.e. 5/10 dated 3-Jun-2010 and 3/2014 24-Jan-2014

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.

(7) The provisions of this section shall not apply to a non-resident, not being a company, or to a foreign company, in respect of—

(i) payment of interest on long-term bonds as referred to in section 194LC; and -

(ii) any other payment subject to such conditions as may be prescribed.

Notes to clauses

Clause 68 seeks to insert a new section 206AA after section 206A of the Income-tax Act relating to requirement to furnish Permanent Account Number.

The proposed sub-section (1) of the said section specifies that any person who is entitled to receive any sum or income or amount on which tax is deductible under Chapter XVIIB (hereinafter referred to as the deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereinafter referred as the deductor), failing which tax shall be deducted at the rate mentioned in the relevant provisions of the Act or at the rate in force or at the rate of twenty per cent, whichever is higher.

The proposed sub-section (2) of the said section provides that the declaration filed under section 197A shall not be valid unless the person filing the declaration furnishes his Permanent Account Number in such declaration.

The proposed sub-section (3) of the said section provides that 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).

The proposed sub-section (4) of the said section provides that no certificate under section 197 shall be granted unless it contains the Permanent Account Number of the applicant.

The proposed sub-section (5) of the said section provides that the deductee shall furnish his Permanent Account Number to the deductor and both shall indicate the same in all correspondence, bills, vouchers and other documents which are exchanged between them.

The proposed sub-section (6) of the said section provides that where the Permanent Account Number provided by the deductee is invalid or it does not belong to the deductee, then it shall be deemed that Permanent Account Number has not been furnished to the deductor and tax shall be deducted under sub-section (1).

This amendment will take effect from 1st April, 2010.

Circular 5/2010 | F. No. 142/13/2010-(SO) TPL | dated 3-June 2010

51. Improving compliance with provisions of quoting PAN through the TDS regime

51.1 Statutory provisions mandating quoting of Permanent Account Number (PAN) of deductees in Tax Deduction at Source (TDS) statements exist since 2001 duly backed by penal provisions. The process of allotment of PAN has been streamlined so that over 75 lakh PANs are being allotted every year. Publicity campaigns for quoting of PAN are being run since the last three years.
51.2 The average time of allotment of PAN has come down to 10 calendar days. Therefore, non-availability of PAN has ceased to be an impediment. In a number of cases, the non-quoting of PANs by deductees is creating problems in the processing of returns of income and in granting credit for tax at deducted at source, leading to delays in issue of refunds. In order to strengthen the PAN mechanism, a new section 206AA has been inserted in the Income Tax Act to provide that any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor shall deduct tax at source at higher of the following rates:
(i) the rate prescribed in the Act;
(ii) at the rate in force i.e., the rate mentioned in the Finance Act; or
(iii) at the rate of 20 per cent.

51.3 TDS would be deductible at the above-mentioned rates will also apply in cases where the taxpayer files a declaration in form 15G or 15H (under section 197A) but does not provide his PAN. Further, no certificate under section 197 will be granted by the Assessing Officer unless the application contains the PAN of the applicant.

51.4 These provisions will also apply to non-residents where TDS is deductible on payments or credits made to them. To ensure that the deductor knows about the correct PAN of the deductee, it is provided that both the deductor and deductee will mandatorily quote PAN of the deductee in all correspondence, bills and vouchers exchanged between them.

51.5 Applicability - This amendment has been made applicable with effect from 1st April, 2010 and will accordingly apply in relation to assessment year 2011-12 and subsequent assessment years.

CIRCULAR NO.03/2014 | F. No. 142/24/2013-TPL | 24th January, 2013

42. Exemption from requirement of furnishing PAN under section 206AA to certain non-resident bond holder. 42.1 Under section 194LC of the Income-tax Act, the payment of interest by an Indian company to a non-resident on money borrowed in foreign currency under a loan agreement or through issue of a long term infrastructure bond is subject to deduction of tax at the rate of 5 per cent instead of general rate of deduction of tax at the rate of 20 per cent. Under section 206AA of the Act, if such non-resident does not provide his Permanent Account Number (PAN) to the payer, then the tax is required to be withheld at the rate of 20 per cent.

42.2 Considering the practical difficulties in obtaining PAN by the nonresident bondholders, section 206AA has been amended to provide that provisions of section 206AA of the Income-tax Act shall not apply to interest paid to a non-resident on long-term infrastructure bonds referred to in section 194LC of the Income-tax Act.
42.3 Applicability: - This amendment takes effect from 1st June, 2013.

1995] 83 TAXMAN 263 (KAR.) United Breweries Ltd. v. ACIT WRIT PETITION NOS. 38379 AND 38380 OF 1993 dated AUGUST 26, 1994

.....

4. In the light of these pleadings and contentions advanced before me the following points arise for consideration :

(1) As to the jurisdiction of the second respondent.
(2) The effect of section 9 of the FERA on payments to be made.
(3) Applicability of section 195 to the guarantee commission payable to Vijay Mallya.

Point No. 3 :

13. Chapter-XVII provides for collection and recovery of tax under the Act. In the usual course after the order of assessment is passed the Assessing Officer will raise a demand by a notice in the prescribed form specifying the sum payable and such sum shall be payable by the assessee and under section 190 of the Act it is provided that notwithstanding that the regular assessment in respect of any income is to be made in a later assessment year, the tax on such income shall be payable by deduction at source or by advance payment, as the case may be. These provisions are enacted for the purpose of easy collection of taxes and to avoid evasion thereto by suitably tailoring the account. Under section 195 the tax has to be deducted at source from interest or other payment made in the case of non-resident only. The liability thereto would arise only in respect of payment made by a person to a non-resident. It certainly arises as soon as an entry is made in the books of account. In the present case, not only credit has been shown in favour of Vijay Mallya, but also debit entries have been made against the company and because of the difficulty arising under section 9 of the FERA, the same is kept under a separate heading nevertheless, noting this liability arising under the transaction. Therefore, even on the accrual basis it must and be held that the liability to pay arose on the date when the entries were made section 195 is attracted to the case.

14. Thus, I find no merit in these petitions. These petitions shall stand dismissed. Rule discharged.

Karnataka High Court - The Commissioner Of Income Tax vs M/S Hindustan Lever Ltd on 30 August, 2013

Assessee conducted sales promotion schemes

Some of those coupons indicated that on purchase of the packs/containers, they would get prizes, as indicated incoupons. The prizes that were offered were Santro Car, Maruthi Car, Gold chains, Gold Coins, Gold Tablas, Silver Coins, Emblems etc., The total amount of prizes distributed valued ` 6,51,238/- for the assessment year 2001-02 and ` 54,73,643/- for the Assessment Year 2002-03

...

...

4. Feeling aggrieved by the order passed by the Tribunal, the revenue filed present appeals. The substantial question of law on which both the appeals were Admitted by this Court are similar. We, therefore, quote the question of law framed in ITA No.142/2007, which reads thus:

"Whether the Tribunal was correct in holding that no TDS need be deducted in respect of a sum of Rs.54,73,643/- where gifts like car, gold, silver etc., were distributed to 3rd parties under price scheme without taking into consideration proviso to Section 194B and Section 2(24)(ix) of the Act and erroneously relying on a non-existent CBDT Circular No. 956.?"

15. In short, the conjoint reading of Section 201 and Section 194B would show that the person responsible to deduct tax at source, if he either fails to deduct or after deducting, fails to pay, is deemed to be an assessee in default, in respect of the tax. However, where the payment of the winnings is wholly in kind and not in cash at all, the question of deduction does not arise and in that eventuality, the only responsibility, as casts under Section 194B, is to ensure that tax is paid by the winner of prize before the prize/winnings is released in his favour.

16. Having so observed, in our opinion, initiation of the proceedings under Section 201 against the assessee, was without jurisdiction. We observe, that the authorities under the Act in such situation would not render remediless against such person who fails to ensure that tax is paid before the winnings is released in favour of its winner. In the Act, there are two provisions, namely Sections 271C and 276B. Section 271C empowers the Joint Commissioner to levy any penalty where an assessee fails to deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B or fails to discharge the obligation under the second proviso to Section 194-B. Similarly, Section 276B makes it an offence against the person who fails to pay to the credit of the Central Government the tax deducted at source as required by or under the provisions of Chapter XVII-B or the tax payable as required by or under the second proviso to Section 194B. Section 271C and Section 270B make reference to the second proviso to Section 194-B, i.e., the proviso as it stands today. The 1st proviso was deleted by the Finance Act, 1999, with effect from 01.04.2000. It is against this backdrop, we have no hesitation to hold that the proceedings against the person under section 201, such as the assessee in the present case, who fails to ensure payment of tax, as contemplated by proviso to Section 194B, before releasing the winnings, is not maintainable or the proceedings against such person is without jurisdiction.

Doctrine of reading down the law

1. While interpreting income-tax law, the Courts have occasionally applied the concept of 'reading down' in the context of the provisions of the Income-tax Act, 1961 ('the Act'). Resort to reading down is done where a legal provision; read literally, seems to offend the constitutional provisions concerning fundamental rights or is found to be outside the comp-etence of the particular Legislature. Maxwell on the *Interpretation of Statutes* under the caption, Restriction of Operation, has said :—

"Sometimes to keep the Act within the limits of its scope, and not to disturb the existing law beyond what the object requires, it is construed as operative between certain persons, or in certain circumstances, or for certain purposes only, even though the language expresses no such circumscription of the field of operation (page 109, 12th edition)".

The doctrine of reading down can be applied if the statute is silent, ambiguous or allows more than one interpretation. But where it is express and clearly mandates to take certain actions, the function of the Court is to interpret it plainly and declare *intra vires* or *ultra vires* without adding, altering or subtracting anything therein.

the concept of reading down encompasses within its ambit the widely known rule that in interpreting an enactment, the Court should have regard not merely to the literal meaning of the words used but it should also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress.

The Supreme Court in its latest decision in the case of *Arun Kumar* v. *Union of India* [2006] 155 Taxman 659 , has again reiterated the situations where the principle of reading down can be applied.

In this case, the Court was required to consider the validity of rule 3 of the Income-tax Rules, 1962 as amended *vide* Notification No. S.O. 940(E), dated September 25, 2001. The substituted rule revised the method of computing valuation of perquisites in the matter of rental accommodation provided by employers to the employees. It was contended by the writ petitioner that rule 3 is invalid on the ground that the amended rule does not provide for giving an opportunity to the assessee to convince the Assessing Officer that no concession is given by the employer to the employee in respect of accommodation provided and, hence, rule 3, has no application, as the amended rule is arbitrary, discriminatory or *ultra vires* article 14 and inconsistent with the provisions of section 17(*2*)(*ii*).

The Court did not accept the petitioner's contention and has said that (amended) rule 3 is in the nature of a machinery provision and applies only to cases where concession in the matter of rent is involved, respecting any accommodation provided by an employer to his employee.

In this context, the Court has observed on the doctrine 'reading down' as under :—

"51. In several cases, Courts have invoked and applied the doctrine of 'reading down' and upheld the constitutional validity of the Act.
52. In *Olga Tellis* v. *Bombay Municipal Corpn.* [1985] 3 SCC 545, the Supreme Court was called upon to decide constitutional validity of section 314 of the Bombay Municipal Corporation Act, 1888, which empowered the Commissioner to demolish illegal construction without notice. It was contended that the provision was arbitrary, unreasonable and violation of natural justice.

53. Holding the provision *intra vires* and 'reading' the doctrine of *audi alteram partem* therein, the Court stated :
'Considered in its proper perspective, section 314 is in the nature of an enabling provision and not of a compulsive character. It enables the Commissioner, in appropriate cases, to dispense with previous notice to persons, who are likely to be affected by the proposed action. It does not require and, cannot be read to mean that, in total disregard of the relevant circumstances pertaining to a given situation, the Commissioner must cause the removal of an encroachment without issuing previous notice. The primary rule of construction is that the language of the law must receive its plain and natural meaning. What section 314 provides is that the Commissioner may, without notice, cause an encroachment to be removed. It does not command that the Commissioner shall, without notice, cause an encroachment to be removed. Putting it differently, section 314 confers on the Commissioner the discretion to cause an encroachment to be removed with or without notice. That discretion has to be exercised in a reasonable manner so as to comply with the constitutional mandate that the procedure accompanying the performance of a public act must be fair and reasonable. We must lean in favour of this interpretation because it helps sustain the validity of the law. Reading section 314 as containing a command not to issue notice before the removal of an encroachment will make the law invalid.'" (p. 681)

However, in paras 55 and 58, the Court has mentioned about the limitations of the rule of reading down thus :

"55. But it is equally well-settled that if the provision of law is explicitly clear, language unambiguous and interpretation leaves no room for more than one construction, it has to be read as it is. In that case, the provision of law has to be tested on the touchstone of the relevant provisions of law or of the

Constitution and it is not open to a Court to invoke the doctrine of 'reading down' with a view to save the statute from declaring it *ultra vires* by carrying it to the point of 'perverting the purposes of the statute'." (p. 682)

HIGH COURT OF CALCUTTA - CIT, Kolkata - XI v. Crescent Export Syndicate* ITAT NOS. 20 & 30 OF 2013†, GA NOS. 190 & 319 OF 2013, APRIL 3, 2013

21. The language used in the draft was unclear and susceptible to giving more than one meaning. By looking at the draft it could be said that the legislature wanted to treat the payments made or credited in favour of a contractor or sub-contractor differently than the payments on account of interest, commission or brokerage, fees for professional services or fees for technical services because the words "amounts credited or paid" were used only in relation to a contractor or sub-contractor. This differential treatment was not intended. Therefore, the legislature provided that the amounts, on which tax is deductible at source under Chapter XVII-B payable on account of interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services or to a contractor or sub-contractor shall not be deducted in computing the income of an assessee in case he has not deduced, or after deduction has not paid within the specified time. The language used by the legislature in the finally enacted law is clear and unambiguous whereas the language used in the bill was ambiguous.

A few words are now necessary to deal with the submission of Mr. Bagchi and Ms. Roychowdhuri. There can be no denial that the provision in question is harsh. But that is no ground to read the same in a manner which was not intended by the legislature. This is our answer to the submission of Mr. Bagchi. The submission of Ms. Roychowdhuri that the second proviso sought to become effective from 1st April, 2013 should be held to have already become operative prior to the appointed date cannot also be acceded to for the same reason indicated above. The law was deliberately made harsh to secure compliance of the provisions requiring deductions of tax at source. It is not the case of an inadvertent error.

22. For the reasons discussed above, we are of the opinion that the majority views expressed in the case of Merilyn Shipping & Transports are not acceptable. The submissions advanced by learned advocates have already been dealt with and rejected.

[2012] 22 taxmann.com 157 (Kar.) HIGH COURT OF KARNATAKA - Smt. A. Kowsalya Bai *v.*Union of India* WRIT PETITION NOS. 12780 TO 12782 OF 2010 - JUNE 5, 2012

8. 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 virture 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.

9. The difficulty expressed by the petitioners and similarly placed persons is, imposing condition to invariably go for PAN as per S.206AA 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.

10. 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.

11. 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.

12. With the above observations, petitions are allowed.

Brij Lal v CIT 2010 328 ITR 477 SC

Analysis of the Act

7. Liability to pay advance tax arises under section 207. The said section is based on the principle "pay as you earn". It requires tax to be paid during the financial year. It has to be in respect of the total income of the assessee which would be chargeable to tax under the Act. The said total income is not as understood in section 2(45) but it is equated to "current income" for the purposes of Chapter XVII. After the Amending Act of 1987, advance tax is to be paid on the current income which would be chargeable to tax for the assessment year immediately following the financial year. Section 210 casts the responsibility of payment of advance tax on the assessee without requiring the assessee to submit his estimate of advance tax payable. Provision for payment of advance tax is mode of quick collection of tax. Thus, section 207 defines liability to pay advance tax in respect of incomes referred to in section 208. However, advance tax paid is adjustable towards the tax due. Advance tax is collected even before the income tax becomes due and payable. By its very nature, advance tax is pre-assessment collection of taxes either by deduction of tax at source or by payment of advance tax which has to be adjusted towards income tax levied on the total income. The above two methods of realization even before any assessment is authorized by section 4(2) are incorporated in Chapter XVII which deals with "collection and recovery". In fact, section 190(1) clarifies that this method of payment of tax will not prejudice

the charge of tax under section 4(1) nor will it modify the liability of the assessee to pay income tax pursuant to an assessment order. [See Modi Industries Limited, Modinagar and Others v. Commissioner of Income Tax, Delhi and Another, 216 ITR 759 at 780] At one point of time, section 209(1)(a)(iii) (relating to computation of advance 2 tax) provided that the income tax calculated on the total income with reference to which the demand for advance tax was made should be reduced by the amount of income tax deductible in accordance with sections 192 to 194, 194A and 195 on any income included in the total income.