

Before Hon'ble Jawahar Lal Gupta & S. S. Sudhalkar, JJ.

EKONKAR DASHMESH TRANSPORT COMPANY REGD.,
LUDHIANA & OTHERS,—Petitioners.

versus

GENERAL BOARD OF DIRECT TAXES, UNION MINISTRY OF
FINANCE, NEW DELHI & ANOTHER,—Respondents.

C.W.P. No. 335 of 1995

31st May, 1995

Constitution of India, 1950—Arts. 226/227—Income Tax Act, 1961—S. 194-C—Whether carriage of goods amounts to carrying out 'any work' within meaning of S. 194-C of the Act.

Held, that Section 194-C provides for deduction of Income Tax on the sum credited to the account of or paid to a contractor in pursuance to a contract "for carrying out any work". According to Webster's Third New International Dictionary "Work is a very general word usable in a variety of contexts."

(Para 4)

Further held, that the expression 'works contract' has been loosely employed. A contract for carrying out any work is not necessarily a 'works contract'. So long as a contractor carries out any work in pursuance to a contract, the prescribed deduction from the income has to be made.

(Para 6)

Further held, that income accruing from a contract for the supply of labour for loading and unloading the goods on a vehicle shall be subjected to deduction but that resulting from the contract for transport wherein income may be much more is exempted from deduction. The provision does not warrant such a narrow construction.

(Para 6)

H. S. Sawhney, Sr. Advocate with Ms. Jasleen Sawhney,
Advocate, for the Petitioners.

R. P. Sawhney, Sr. Advocate with Mrs. Aradhana Sawhney,
Advocate, for the Respondents.

JUDGMENT

Jawahar Lal Gupta, J.

(1) Does carriage of goods amount to "carrying out" of "any work" within the meaning of Section 194C of the Income Tax Act, 1961 ? This is the short question that arises for consideration in this case.

(2) The petitioners are transport operators. They hold permits for carriage of goods and provide services of transportation. They allege that the provisions of Section 194-C which authorise the deduction of an amount towards income tax from a contractor 'for carrying out any work in pursuance of contract' with the Government or any of the authorities etc. mentioned in sub-clauses (a) to (i) of Clause (1) are not applicable in their cases. The petitioners question the validity of the circular No. 681 dated March 8, 1994 (only in so far as it applies to them) issued by the Central Board of Direct Taxes. They allege that the provisions of Section 194-C do not apply to the 'transport contracts' and that the directions to the contrary as issued through the impugned circular in spite of the clear stipulations contained in the circulars dated September 26, 1972 and March 20, 1973 are wholly illegal and without jurisdiction. Is it so ?

(3) Mr. H. S. Sawhney, learned counsel for the petitioners has contended that as stipulated in the circular dated May 29, 1972 which was clarified by circular dated September 26, 1972, "a transport contract cannot ordinarily be interpreted as a 'contract for carrying out any work' and as such no deduction in respect of income tax is required to be made from payments under such a contract". He submits that this position was reiterated by the Government,—vide its circular dated March 20, 1973. However, by totally misinterpreting the judgment of their Lordships of the Supreme Court in *Associated Cement Company Ltd. v. Income Tax Commissioner* (1), the respondents had wrongly taken the view that "the provisions of Section 194-C shall apply to all types of contracts for carrying out any work including the transport contracts....." On the other hand, Mr. R. P. Sawhney, learned counsel for the respondent-Department has submitted that the circular issued by the Board is in strict conformity with the provisions of the Act.

(4) Section 194-C provides for deduction of Income Tax on the sum credited to the account of or paid to a contractor in pursuance to a contract "for carrying out any work". According to Webster's Third New International Dictionary, "Work is a very general word usable in a variety of contexts". One of the meanings assigned to the word is 'the labour, task, or duty that affords one his accustomed means of livelihood'. *Prima facie*, transport of goods is a task carried out by the petitioners to earn their livelihood. It is a duty performed by them in pursuance to a contract. It may not involve supply of labour for loading and unloading. Yet, the petitioners carry out the work of transporting goods from one place to another.

(5) Mr. Sawhney refers to the circular dated September 26, 1972 to point out that it is only where there was a composite contract involving transport as well as loading and unloading that income tax could be deducted. However, in case of a contract for more transport of goods, the deduction was not permissible.

(6) It is true that in the aforesaid circular, a composite contract for transport of goods as well as supply of labour for loading and unloading has been described as a 'works contract'. We feel that the expression 'works contract' has been loosely employed. In Taxation Law, the expression 'works contract' has been used in contra-distinction to other contracts including that for the sale of goods. To illustrate, a contract for making of a painting is not one for sale of the canvass, paints and the frame. However, in our view, a contract for carrying out any work is not necessarily a 'works contract'. So long as a contractor carries out any work in pursuance to a contract, the prescribed deduction from the income has to be made. Still further, it looks anomalous to say that income accruing from a contract for the supply of labour for loading and unloading the goods on a vehicle shall be subjected to deduction but that resulting from the contract for transport wherein income may be much more, is exempted from deduction. The provision does not warrant such a narrow construction.

(7) Learned counsel for the petitioners has drawn our attention to the decision of the Bombay High Court in *Bombay Goods Transport Association and another v. Central Board of Direct Taxes and others* (Writ petition No. 1277 of 1994) decided on July 29, 1994 as well as the decision of the Calcutta High Court in *Calcutta Goods*

Transport Association and another v. Union of India and Others (2), decided on November 14, 1994. It has been held in these decisions that the Board has committed a manifest error in interpreting the judgment of the Supreme Court in the case of *Associated Cement Company (supra)*. The decision of the Supreme Court has been distinguished on the ground that the case "was limited to applicability of Section 194-C to labour contracts" and that "the various circulars of the CBDT were not before the Supreme Court. It has also been held that "the word 'work' has been used as a noun in Section 194-C and not as a verb". Accordingly, it has been concluded that it has to be "understood in the limited sense as product or result". With utmost respect, we are unable to accept the view taken by their Lordships. The end product may be the 'work' but the income derived by the contractor for "carrying out the work" is certainly covered by the provisions of Section 194-C and the prescribed deduction has to be made therefrom.

(8) It is true that the interpretation placed on the provision of a Statute by the authority which administers it is worthy of consideration. The subordinate authorities are normally bound by it. Courts can also use it for the purpose of finding out the true intention and meaning. However, in a case where the view taken by the authority or the Board is contrary to the plain language of the Statute, the circular cannot be used to evade the liability created by the Statute. The view expressed in the two circulars relied upon by the petitioners, does not appear to be in consonance with the plain language of Section 194-C. In our view, the Board committed no error in taking a clue from the judgment of their Lordships of the Supreme Court in the case of *Associated Cement Company (Supra)*.

(9) In view of the above, we are, though, reluctantly, constrained to differ with the view taken by the Bombay and Calcutta High Courts. In our view, the circular issued by the Board in so far as it provides that the 'transport contracts' fall within the mischief of Section 194-C, is legal and valid. The challenge to this provision in the circular cannot be sustained.

(10) As a result, the writ petition is dismissed *in limine*. In the circumstances of the case, we make no order as to costs.

J.S.T.

(2) Matter No. 1568/94, decided on November 14, 1994.