A M/S. BIRLA CEMENT WORKS

v.

THE CENTRAL BOARD OF DIRECT TAXES AND ORS.

FEBRUARY 28, 2001

B [S.P. BHARUCHA, N. SANTOSH HEGDE, Y.K. SABHARWAL, JJ.]

Income Tax Act, 1961—Section 194C.

Interpretation of Statute—Taxing Statute—Two interpretations reasonably possible—Amendment making Section applicable to transport contracts—
C *Previous circulars excluding transport contracts from scope of Section—Circular including transport contracts in scope of section for period just before amendment—Circular challenged—Held, interpretation favouring assessee and acted upon and accepted by Revenue for long period should not be disturbed except for compelling reasons—No compelling reasons for holding that amend-*
D *ment is clarificatory or retrospective in operation—Section before amendment not applicable to transport contacts—Held, circular to the extent it relates to transport contracts quashed.*

Words & Phrases—'Work' and 'carrying out any work'—Meaning of.

E **Appellant-Assessee manufactures cement which is transported through transport operators/companies. Appellant did not deduct tax at source from payments made by it to such transporters for the period from 1.4.1994 to 30.6.1995 and therefore, respondent initiated penalty proceedings against appellant in accordance with circular dated 8.3.1994 which**
F **prescribes fresh guidelines regarding applicability of Section 194C of the Income tax Act, 1961 to all types of contracts for carrying out any work including transport contracts.**

Appellant filed writ petition challenging legality and validity of circular dated 8.3.1994 on the ground that Section 194C was not applicable to
G **payments made to transport operators/companies as transportation of goods is not covered by words "any work" used in the Section; that by impugned circular CBDT has illegally withdrawn earlier circulars stating that Section 194C is not applicable to such transactions; and that Explanation III making Section 194C applicable to transport contracts from Ist**
H **July, 1995 was only prospective and does not cover disputed period. High**

Court dismissed writ petition holding that expression "carrying out any work" would include carrying goods; and that Explanation III was merely clarificatory. Aggrieved by the judgment of High Court, assessee has filed the present appeal.

Appellant contended that expression "carrying out any work" in Section 194C indicates doing something to conduct the work to completion or something which produces such result and by carrying goods, no work to goods is undertaken and does not affect goods carried thereby.

Allowing the appeal, the Court

HELD : 1. There is no controversy that according to the understanding of Revenue of Section 194C of the Income-tax Act from the beginning till issue of the impugned circular, the provision was not applicable to the payments made in respect of transport contracts. It is not disputed that prior to issue of the impugned circular, various circulars and clarifications were issued by the CBDT stating that the provisions of Section 194C were not applicable to payments made for carriage of goods to the transport operators. [201-H]

2. The question whether the expression "carrying out any work" would include therein carrying of the goods or not, was not in issue in Associated Cement Co.'s case. [204-D-E]

Associated Cement Co. Ltd. v. *Commissioner of Income-Tax and Anr.*, [1993] 201 ITR 435, explained and distinguished.

Bombay Goods Transport Association and Anr. v. *Central Board of Direct Taxes*, (1994) 210 ITR 136; *Calcutta Goods Transport Association* v. *Union of India*, (1996) 219 ITR 486; *V.M. Salgaocar and Bros. Ltd. and Ors.* v. *Income Tax Officer and Ors.*, (1999) 237 ITR 630, approved.

Central Board of Direct Taxes v. *Cochin Goods Transport Association*, (1999) 236 ITR 993 and *Ekonkar Dashmesh Transport Co. and Ors.* v. *Central Board of Direct Taxes and Anr.*, (1996) 219 ITR 511 overruled.

3. Two interpretations are reasonably possible on the question whether the contract for carrying of goods would come or not within the ambit of the expression "carrying out any work". One of the two possible interpretations of a taxing statute, which favours the assessee and which has been

A **acted upon and accepted by the Revenue for a long period should not be disturbed except for compelling reasons. There can be no doubt that if the only view of Section 194C had been the one reflected in the impugned circular, then the issue of earlier circulars and acceptance and acting thereupon by the Revenue reflecting the contrary view would have been of no consequence. That, however, is not the position. Further, there are no compelling reasons to hold that Explanation III inserted in Section 194C with effect from Ist July, 1995 making Section 194C applicable to transport contracts also is clarificatory or retrospective in operation. [206-C-D]**

Thus Section 194C before insertion of Explanation III is not applicable to transport contracts, i.e., contracts for carriage of goods. Hence the impugned circular to the extent it relates to transport contracts is quashed. [206-D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal NO. 5004 of 1997.

From the Judgment and Order dated 9.4.97 of the Rajasthan High Court in D.B.C.W.P. No. 1667 of 1995.

S. Ganesh, M.L. Patodi, Praveen Kumar for the Appellant.

T.L.V. Iyer, Ashok K. Srivastava, S.K. Dwivedi and Ms. Sushma Suri for the Respondents.

The Judgment of the Court was delivered by

Y.K. SABHARWAL, J. The legality of circular dated 8th March, 1994 (hereinafter referred to as the 'impugned circular') issued by the Central Board of Direct Taxes (CBDT) prescribing fresh guidelines regarding the applicability of Section 194C of the Income Tax Act, 1961 (for short, 'the Act') to the extent it relates to transport contracts, i.e., contracts for carriage of goods, is in issue in this appeal. The said circular, *inter alia*, states that the provisions of Section 194C shall apply to all types of contracts for carrying out any work including transport contracts. Section 194C provides for deduction of tax at source from payments to contractors and sub-contractors. Section 194C was brought into existence by the Finance Act, 1972 with effect from April 1, 1972. Various amendments have been made in that section since then but material part relevant for the present purposes reads as under :

"*Payments to contractors and sub-contractors.*

194C. (1) Any person responsible for paying any sum to any resident (hereinafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and_

(a) to (c)...

(d) any company; or

(e) to (j)...

shall at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to two per cent of such sum as income-tax on income comprised therein."

Soon after insertion of Section 194C, a circular dated 29th May, 1972 was issued, *inter alia*, stating that the provisions of Section 194C would apply only in relation to "work contracts" and "labour contracts" and will not cover contract for sale of goods. Another circular No.93 dated 26th September, 1972 was issued clarifying that the provisions of Section 194C will not be applicable to transport contracts. This circular, *inter alia*, states that a transport contract cannot ordinarily be regarded 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 made under such a contract. In the case of a composite contract involving transport as well as loading and unloading, the entire contract will be regarded as a "works contract" and income tax will have to be deducted from payments made thereunder. Where, however, the element of labour provided for loading and unloading is negligible, no income tax will be deductible. By letter dated 3rd February, 1982, in reply to a query from a transporter, Government of India stated that if the contracts are purely transport contracts involving only transportation of goods entrusted for carriage to the transport operators, provisions of Section 194C would not be applicable to such payments. There is no controversy that according to the understanding of Revenue of Section 194C, right from 1st April, 1972 till issue of the impugned circular, this provision was not applicable to the payments made in respect of transport contracts. It is not disputed that prior to issue of the impugned circular, various circulars and clarifications were issued by the CBDT stating that the provisions

of Section 194C were not applicable to payments made for carriage of goods to the transport operators.

The appellant manufactures cement. The cement manufactured by the appellant is transported to different destinations through transport operators/ companies. Since the appellant did not deduct the tax at source from the payments made by it to the transporters under Section 194C of the Income Tax Act, by letter dated 18th March, 1995 the Income Tax Officer required the appellant to deduct the tax at source from such payments in accordance with the impugned circular. According to the appellant, no deduction of tax at source was made from payment made to the transport operators/companies as Section 194C was not applicable to such transactions. It is, however, not in dispute that the appellant has paid the income tax. The question has cropped up in view of the penalty proceedings initiated by the department against the appellant which led to the filing of the writ petition by the appellant challenging the legality and validity of the impugned circular. The period in question is from 1st April, 1994 to 30th June, 1995.

The contention urged before the High Court was that Section 194C does not apply to payments made for transport charges for carrying of goods as transportation of goods is not covered by the words "any work" used in the section and by the impugned circular the CBDT has illegally withdrawn earlier circulars stating that Section 194C is not applicable to such transactions. It was also contended that Explanation III was only prospective and does not cover the period in question, i.e., 1.4.1994 to 30.6.1996. Rejecting these contentions, the High Court by the impugned judgment has held that the payment to the transporters for carriage of goods to different destinations is a payment for work which comes within the expression "carrying out any work" and is covered by Section 194C and, therefore, on such transactions, tax was deductible at source. It was held that the expression "carrying out any work" would include carrying the goods. Explanation III was held to be merely clarificatory and inserted in order to remove the doubts and clarify that Section 194C is applicable to such transactions also.

The impugned circular came to be issued because of the observations made by this Court in *Associated Cement Co. Ltd.* v. *Commissioner of Income-Tax & Anr.*, (1993) 201 ITR 435. The circular states that some of the issues raised in circular No.86 dated 29th May, 1972 and circular No.93 dated 26th September, 1972 need to be reviewed in the light of the judgment of this Court in *ACC's* case. The conclusion drawn by CBDT from this decision, as stated

in the impugned circular, is that this Court has held that the provisions of Section 194C would apply to all types of contract including transport contracts, labour contracts, service contracts etc. In the light of this judgment, the CBDT decided to withdraw earlier circulars and issued fresh guidelines directing that Section 194C shall apply to all types of contracts for carrying out any work including transport contracts. The impugned circular was made applicable with effect from 1st April, 1994.

In *ACC's* case (supra) the facts were that under the terms and conditions of an agreement between the Associated Cement Co. Ltd. and a contractor, the contractor was to be paid at a flat rate for loading packed cement bags into wagons and trucks. This rate was fixed on the basis of daily basic wages, dearness allowance etc. and clause 13 of the agreement stipulated reimbursement by the Associated Cement Co. Ltd. to the contractor in case of certain increase in the dearness allowance payable by the contractor to the workmen employed by him. The company paid the contractor the amount stipulated at a flat rate as well as amounts by way of reimbursement under clause 13. But the deduction of tax at source made by the company under Section 194C(1) fell short of the deductions required to be made thereunder. The claim of the company was that it was not liable to deduct any amount under the Section. The notices issued to the company to show cause why action should not be taken under Sections 276B(1), 201 and 221 for short deduction were challenged in the writ petition filed by the company in the High Court. The writ petition was dismissed by the High Court. On appeal, this Court held that Section 194C(1) had a wide import and covered "any work" which could be got carried out through a contractor under a contract including the obtaining of supply of labour under a contract with a contractor for carrying out any work. The section was not confined or restricted in its application to "work contracts". There was nothing in the language of the section which permitted exclusion of the amount reimbursed by the company to the contractor under clause 13 from the sum envisaged therein. The facts of the case and observations made in *ACC's* case make it clear that in the said decision, this Court was concerned with a work carried through a contractor under a contract which further included obtaining supply of labour under a contract with a contractor for carrying out its work which would have fallen outside the "work" but for its specific inclusion in the sub-section. Under these circumstances, it was said :

> "...there is nothing in the sub-section which could make us hold that the contract to carry out a work or the contract to supply labour to

A carry out a work should be confined to "works contract" as was argued on behalf of the appellant. We see no reason to curtail or to cut down the meaning of the plain words used in the section. "Any work" means any work and not a "works contract", which has a special connotation in the tax law. Indeed, in the sub-section, the "work" referred to therein
B expressly includes supply of labour to carry out a work. It is a clear indication of the Legislature that the "work" in the sub-section is not intended to be confined to or restricted to "works contract". "Work" envisaged in the sub-section, therefore, has a wide import and covers "any work" which one or the other of the organisations specified in the sub-section can get carried out through a contractor under a contract
C and further it includes obtaining by any of such organisations supply of labour under a contract with a contractor for carrying out its work which would have fallen outside the "work", but for its specific inclusion in the sub-section."

D It is evident that *ACC's* case (supra) was not in respect of transport contracts. The controversy therein was deduction of tax at source from payments made for loading and unloading of goods. The question whether the expression "carrying out any work" would include therein carrying of the goods or not, was not in issue in *ACC's* case. That is precisely the question in the present case. The decision in *ACC's* case has not been correctly
E understood by the CBDT. It would not be correct to come to the conclusion, as CBDT did, that question involved is covered by the decision in the case of ACC.

Section 194C was amended by the Finance Act, 1995 with effect from 1st July, 1995. Explanation III was inserted. So for relevant for present
F purpose, the said explanation reads as under:

> "*Explanation III.*- For the purposes of this section, the expression "work" shall also include :
>
> (a) ...
>
> G
>
> (b) ...
>
> (c) carriage of goods and passengers by any mode of transport other than by railways;
>
> H (d) ..."

In view of above, it is not in dispute that from 1st July, 1995 Section 194C is applicable to transport contracts as well. The question, however, is whether the aforesaid explanation is only clarificatory or it makes applicable the provisions of Section 194C to the types of contracts in question for the first time from the date of insertion of the explanation, i.e., 1st July, 1995.

The Rajasthan High Court in the judgment under challenge has followed the interpretation placed on Section 194C by Kerala High Court in *Central Board of Direct Taxes* v. *Cochin Goods Transport Association*, (1999) 236 ITR 993 and the *Punjab & Haryana High Court in Ekonkar Dashmesh Transport Co. & Ors.* v. *Central Board of Direct Taxes & Anr.*, (1996) 219 ITR 511. The contrary views expressed by the High Courts of Bombay, Calcutta, Karnataka, Gujarat, Madras, Orissa and Delhi quashing the impugned circular has been dissented in the judgment under challenge.

The key words in Section 194C are "carrying out any work". Learned counsel for the appellant contended that a word or collection of words should fit into the structure of the sentence in which the word is used or collection of words formed. The contention is that in the context of Section 194C, carrying out any work indicates doing something to conduct the work to completion or something which produces such result. The mere transportation of goods by a carrier does not affect the goods carried thereby. The submission is that by carrying the goods, no work to the goods is undertaken and the context in which the expression "carrying out any work" has been used, makes it evident that it does not include in it the transportation of goods by a carrier. In *Bombay Goods Transport Association & Anr.* v. *Central Board of Direct Taxes*, (1994) 210 ITR 136, the Bombay High Court quashing the impugned circular has held that the expression "carrying out any work" would not include carrying of goods. In *Calcutta Goods Transport Association* v. *Union of India*, (1996) 219 ITR 486, similar view has been expressed by the Calcutta High Court. It has also been pointed out in this decision that the Parliament had sought to bring professional services and other works within the net of tax deduction at source. If such "works" were already covered by Section 194C, it was wholly unnecessary for the parliament to introduce separate statutory provisions in this regard and, thus, it follows that the word "work" is to be understood in the limited sense as product or result. The carrying out of work indicates doing something to conduct the work to completion or an operation which produces such result. In *V.M. Salgaocar & Bros. Ltd. & Ors.* v. *Income Tax Officer & Ors.*, (1999) 237 ITR 630, the Karnataka High Court

A has concurred with the views expressed by the Bombay and Calcutta High Courts. The High Courts of Gujarat, Madras, Orissa and Delhi have also expressed similar views. On the other hand, as already noticed, Rajasthan High Court in the judgment under appeal has expressed the contrary view relying upon the decision in *ACC's* case (supra).

B Two interpretations are reasonably possible on the question whether the contract for carrying of goods would come or not within the ambit of the expression "carrying out any work". One of the two possible interpretations of a taxing statute, which favours the assessee and which has been acted upon and accepted by the Revenue for a long period should not be disturbed except C for compelling reasons. There can be no doubt that if the only view of Section 194C had been the one reflected in the impugned circular, then the issue of earlier circulars and acceptance and acting thereupon by the Revenue reflecting the contrary view would have been of no consequence. That, however, is not the position. Further, there are no compelling reasons to hold that Explanation III inserted in Section 194C with effect from 1st July, 1995 is D clarificatory or retrospective in operation. We hold Section 194C before insertion of Explanation III is not applicable to transport contracts, i.e., contracts for carriage of goods.

For the aforesaid reasons the appeal is allowed, the impugned circular E to the extent it relates to transport contracts is quashed. The parties are left to bear their own costs.

A.K.T. Appeal allowed.