

Sethi Transport and ors. Vs. Central Board of Direct Taxes and ors.

Sethi Transport and ors. Vs. Central Board of Direct Taxes and ors.

SooperKanoon Citation : sooperkanoon.com/528294

Court : Orissa

Decided On : Feb-12-1996

Reported in : [1997]226ITR274(Orissa)

Judge : D.P. Mohapatra, Actg. C.J. and ;P.C. Naik, J.

Acts : [Income Tax Act, 1961](#) - Sections 194C

Appeal No. : Original Jurisdiction Case Nos. 7770 of 1994 and 456, 1411 to 1415 of 1995

Appellant : Sethi Transport and ors.

Respondent : Central Board of Direct Taxes and ors.

Advocate for Def. : A.K. Ray, Adv.

Advocate for Pet/Ap. : N.N. Mohanty, Adv.

Judgement :

D.P. Mohapatra, Actg. C.J.

1. The petitioners in these seven cases are individuals or firms engaged in the carriage of goods by trucks. In the writ application, they have prayed, inter alia, for a declaration that Circular No. 681 (see [1994] 206 ITR 299), dated March 8, 1994, issued by the Central Board of Direct Taxes (for short, 'the Board'), Ministry of Finance, Government of India, opposite party No. 1, is ultra vires articles 14 and

265 of the Constitution of India and Sections 44AE, 119 and 194C of the Income-tax Act, 1961 (for short 'the Act'), and for a direction not to make any deduction from the amount due to the petitioners under Section 194C of the Act. Since the facts and points of law involved in all the cases are similar, they were heard together with the consent of learned counsel for the parties and are being disposed of by this common judgment.

2. Circular No. 681 (see [1994] 206 ITR 299), dated March 8, 1994, relates to deduction of income-tax at source under Section 194C of the Act from payments made to contractors/sub-contractors. The Board issued the circular purportedly on the basis of the judgment rendered by the Supreme Court on March 23, 1993, in the case of Associated Cement Co. Ltd. v. CIT : [1993]201ITR435(SC) . In the said circular, the Board reviewed its previous circulars like Circular No. 86 (see [1972] 84 ITR 99), dated May 29, 1972, and Circular No. 93 (see [1972] 86 ITR 30), dated September 26, 1972, in the light of the judgment of the Supreme Court and also considered the decision of the Patna High Court in the case which was confirmed by the Supreme Court. The Board withdrew its Circulars Nos. 86 (see [1972] 84 ITR 99) and 93 (see [1972] 86 ITR 30) and paragraph 11 of Circular No. 108 and reiterated the Board's Circular No. 558 (see [1990] 183 ITR 158), dated March 28, 1990, and issued some fresh guidelines in regard to the applicability of the provision of Section 194C. The guidelines which are relevant for the purpose of the present cases are to the effect that the provisions of Section 194C shall apply to all types of contracts for carrying out any work including transport contracts ; the term 'transport contracts' would, in addition to contracts for transportation and loading and unloading of goods, also cover contracts for plying of buses, ferries, etc., along with staff (driver, conductor, cleaner, etc.).

3. The case of the petitioners is that they are owners of trucks who are engaged in the business of transportation of goods from different destinations on payment of hire charges for vehicles. The petitioners contend that they are not transport contractors and the work done by them does not come within the purview of Section 194C of the Act and, therefore, there is no liability for making any deduction at the time of payment of hire charge of the vehicles. Since the impugned circular of the Board purports to extend the statutory provision to them,

it is clearly ultra vires the provisions of the Act, particularly Section 194C. The petitioners contend that since the statutory provision of Section 194C does not apply to them, it is not permissible for the Board to extend the provision by Issuing mere executive instructions and that if it is intended that the petitioners should be brought within the purview of Section 194C, then necessary amendment in the statute ought to be made. In the absence of any such move, no liability for making such deduction at source can be attached by the executive instruction.

4. The contentions raised by the petitioners are refuted by the Department. The case of the Department, shortly stated, is that all that the Board has done under Circular No. 681 (see [1994] 206 ITR 299) is to clarify the legal position as laid down by the apex court in the case of Associated Cement Co. Ltd. : [1993]201ITR435(SC) and, therefore, the circular is neither illegal nor ultra vires the Constitution or the Act.

5. On the case of the parties discussed in the preceding paragraphs, the short question which needs to be decided is whether the impugned circular of the Board extending the provision of Section 194C of the Act to all transport contractors, relying on the decision of the Supreme Court in Associated Cement Co. Ltd. v. CIT : [1993]201ITR435(SC) , is sustainable in law.

6. Section 194C runs as follows :

' 194C. (1) Any person responsible for paying any sum to any resident (hereafter 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) the Central Government or any State Government ; or

(b) any local authority ; or

(c) any corporation established by or under a Central, State or Provincial Act ; or

(d) any company ; or

(e) any co-operative society,

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.

(2) Any person (being a contractor and not being an individual or a Hindu undivided family) responsible for paying any sum to any resident (hereafter in this section referred to as 'the Sub-contractor') in pursuance of a contract with the Sub-contractor for carrying out, or for the supply of labour for carrying out, the whole or any part of the work undertaken by the contractor or for supplying whether wholly or partly any labour which the contractor has undertaken to supply shall, at the time of credit of such sum to the account of the Sub-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 one per cent, of such sum as income-tax on income comprised therein.

Explanation. -- For the purposes of this section, where any sum referred to in Sub-section (1) or Sub-section (2) is credited to any account, whether called 'Suspense account' or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) No deduction shall be made under Sub-section (1) or subsection (2) from -

(i) any sum credited or paid in pursuance of any contract the consideration for which does not exceed ten thousand rupees ; or

(ii) any sum credited or paid before the 1st day of June, 1972 ; or

(iii) any sum credited or paid before the 1st day of June, 1973, in pursuance of a contract between the contractor and a co-operative society or in pursuance of a contract between such contractor and the Sub-contractor in relation to any work (including supply of labour for carrying out any work) undertaken by the contractor for the co-operative society.

(4) Where the Assessing Officer is satisfied that the total income of the contractor or the Sub-contractor justifies the deduction of income-tax at any lower rate or no deduction of income-tax, as the case may be, the Assessing Officer shall, on an application made by the contractor or the Sub-contractor in this behalf, give to him such certificate as may be appropriate.

(5) Where any such certificate is given, the person responsible for paying the sum referred to in Sub-section (1) or Sub-section (2) shall, until such certificate is cancelled by the Assessing Officer, deduct income-tax at the rates specified in such certificate or deduct no tax, as the case may be.'

7. In *Associated Cement Co. Ltd. v. CIT* : [1993]201ITR435(SC) , the Supreme Court ruled that no ambiguity is found in the language employed in the Sub-section. What is contained in the Sub-section, as appears from its plain reading and analysis, admits of the following formulations :

(1) A contract may be entered into between the contractor and any of the organisations specified in the Sub-section.

(2) Contract in Formulation-1 could not only be for carrying out any work but also for supply of labour for carrying out any work.

(3) Any person responsible for paying any sum to contractor in pursuance of the contract in Formulations-1 and 2 could credit that sum to his account or make its payment to him in any other manner.

(4) But, when the person referred to in Formulation-3 either credits the sum referred to therein to the account of or pays it to the contractor, he shall deduct out of that sum an amount equal to two per cent., as income-tax on income comprised therein.

8. The court held that there is nothing in the Sub-section from which the Board held that the contract to carry out a work or the contract to supply labour to carry out a work should be confined to 'works contract' as was argued on behalf of the appellant. The court saw 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. The court further observed that in the Sub-section the term 'work' expressly includes supply of labour to carry out a work which is a clear indication of the Legislature that 'work' in the Sub-section is not intended to be confined to or restricted to 'works contract'. The court laid down the principle in the following words (page 440) :

' 'Work' envisaged in the Sub-section therefore, has a wide importand covers 'any work' which one or the other of the organisations specified in the Sub-section can get carried out through a contractor under acontract and further it includes obtaining by any of such organisationssupply of labour under a contract with a contractor for carrying out itswork which would have fallen outside the 'work', but for its specificinclusion in the Sub-section,'

9. In the said decision, the Supreme Court also decided the controversy relating to the exact amount to be deducted from the dues of the contractor. That question, however, is not relevant for the purpose of the present case.

10. The Bombay High Court in the case of Bombay Goods Transport Association v. CBDT : [1994]210ITR136(Bom) , specifically considered the question of validity of the circular of the Board bearing No. 681 (see [1994] 206 ITR 299), dated March 8, 1994, requiring deduction of tax at source under Section 194C in the case of contracts for carriage of goods. The court held that such circular is illegal and without jurisdiction in so far as it requires deduction of tax at source under the section in the case of contracts for mere carriage of goods which do not include any other services like loading and unloading and are not connected with any work to be performed by the carrier. Referring to the decision of the Supreme Court in Associated Cement Co. Ltd. v. CIT : [1993]201ITR435(SC) , it was observed (page 150) ;

'. . . . the controversy before the Supreme Court was limited to the applicability of Section 194C to labour contracts. The various circulars of the Central Board of Direct Taxes were not before the Supreme Court. The Supreme Court interpreted Section 194C de hors those circulars. It did not approve the narrow construction of the expression 'any work' to include only 'works contracts'.'

11. The Bench took the view that the expression 'any work' used in Section 194C does not include transport contracts.

12. In the case of Advertising Agency Association of India v. CBDT : [1994]210ITR152(Bom) , the Bombay High Court also considered the effect of the decision of the Supreme Court in Associated Cement Co.'s case : [1993]201ITR435(SC) and held that the Supreme Court has in no way extended or amplified the scope of Section 194C of the Income-tax Act, 1961- It merely held that the said section is not confined to works contracts but also applies to labour contracts. The Supreme Court in that case was required to consider the question of applicability of Section 194C to labour contracts because the contention of the assessee was that the said section was applicable only to works contracts. It was this contention that was repelled by the Supreme Court. The court held that Circular No. 681 (see [1994] 206 ITR 299) is illegal and without jurisdiction in so far as it requires deduction of tax at source from payments to advertising agencies for professional services rendered by them.

13. The Madhya Pradesh High Court in the case of M.P. State Bar Council v. Union of India (Writ Petition No. 2259 of 1994, disposed of on August 24, 1995), referring to the decisions of the Supreme Court in the case of Associated Cement Co : [1993]201ITR435(SC) ; the Bombay High Court in Chamber of Income-tax Consultants v. CBDT : [1994]209ITR660(Bom) ; the Delhi High Court in S. R. F. Finance Ltd. v. CBDT : [1995]211ITR861(Delhi) and the Gujarat High Court in All Gujarat Federation of Tax Consultants v. CBDT [1994] 76 Taxman 307, held that Section 194C does not cover the professionals.

14. We have carefully perused the judgments in the aforementioned decided cases. We are in respectful agreement with the decision of the Bombay High Court that in Associated Cement Co.'s case : [1993]201ITR435(SC) , the Supreme Court only considered the point whether the expression 'any work' used in Section 194C is confined to 'works contracts' or not. The court did not specifically consider the question whether any other type of contract like carriage contract, advertisement contract, etc., comes within the purview of Section 194C. We are also in agreement with the view taken by the Bombay High Court that Section 194C does

not extend to contracts for mere carriage of goods. Therefore, the circular of the Board extending Section 194C to contracts for mere carriage of goods is based on a misreading and misconstruction of the judgment of the Supreme Court. Further, while purporting to clarify the legal position, as laid down by the Supreme Court, the Board has introduced a definition of the term 'transport contracts' which was not considered by the Supreme Court. The Board has also not given any other reason for reversing its previous circulars. We may add here that whether a particular case would come within the purview of Section 194C of the Income-tax Act or not depends upon the facts and circumstances of the case, the stipulations in the agreement between the parties, and other relevant factors. The Board's circular to the effect that transport contracts in general come within the purview of Section 194C is erroneous and illegal.

15. The writ petitions are disposed of on the above declaration. No costs.

P.C. Naik, J.

16. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com