

that (1) the 'work' for the carrying of which the sum is required to be credited to the account of or paid to a Contractor under Section 194C(1) of the Act is only a 'works contract' and hence deduction under that sub-section could arise only to the extent where the sum credited to the account of or paid to a Contractor for executing such 'works contract' is comprised of the element of income of the Contractor; (2) that the words 'on income comprised therein', appearing immediately after the words 'deduct an amount equal to two per cent of such sum as income-tax in the concluding part of the sub-section must be taken to mean the percentage amount deductible on the income received by the Contractor under the contract and not on the sum credited to the account of or paid to the Contractor.

Dismissing the appeal, this Court,

HELD: 1. There is nothing in sub-section (1) of Section 194C to show 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'. There is no reason to curtail or to cut down the meaning of 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. '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 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. [544 B-E]

Brij Bhushan Lal Parduman Kumar etc. v. C.I.T., Haryana, Himachal Pradesh and New Delhi, [1979] 2 S.C.R. 16, distinguished.

2. The words in the sub-section 'on income comprised therein' appearing immediately after the words 'deduct an amount equal to two per cent of such sum as income tax' from their purport, cannot be understood as the percentage amount deductible from the income of the Contractor out of the sum credited to his account or paid to him in pursuance of the contract. Moreover, the concluding part of the sub-section requiring deduction of an amount equal to two per cent of such sum as income-tax, by use of the words 'on income comprised therein' makes it obvious that the amount equal to two per cent of the sum required to be deducted is a

A deduction at source. Hence on the express language employed in the sub-section, it is impossible to hold that the amount of two per cent required to be deducted by the payer out of the sum credited to the account of or paid to the Contractor has to be confined to his income component out of that sum. [545 D-G]

B 2.1. There is also nothing in the language of the sub-section which permits exclusion of an amount paid on behalf of the organisation to the Contractor according to the terms and conditions of the contract in reimbursement of the amount paid by him to workers, from the sum envisaged therein. [545 G-H, 546-A]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2860(NT) of 1979.

From the Judgment and Order dated 8.3.1979 of the Patna High Court in Civil Writ Jurisdiction Case No.2909 of 1978.

D V.A. Bobde, R.F. Nariman, and Ms. Kamakshi (For Gagrat & Co.) for the Appellant.

Dr. S. Narayan, P. Parmeswaran and Manoj Prasad for the Respondents.

E The Judgment of the Court was delivered by

F VENKATACHALA, J. The short question which needs our decision in this appeal by special leave is whether a person who credits to the account of or pays to a contractor any sum payable by any of the organisations specified in section 194C(1) of Income Tax Act, 1961 - 'the Act' for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and the specified organisation is liable to deduct two per cent of such sum as income tax as required under that sub-section.

G The facts which have led to the need for our decision on the said question, are briefly these: The Associated Cement Company Ltd., the appellant, issued a letter dated 5th November, 1973 to Mr. S.P. Nag, contractor, Jhinakpani Containing the terms and conditions of a contract of loading packed cement bags from its Packing Plants Nos.1 & 2 into
H wagons or trucks. Under clause 12 of those terms and conditions, there

was a stipulation that the contractor shall be paid a sum for his work at a flat rate of 41 paise for such tonne of cement handled in Packing Plant No.1. and 30 paise for each tonne of cement handled in Packing Plant No.2. Clause 13 thereof, which contained a recital that the rate of loading in clause 12 had been worked out on the basis of daily basic wages of Rs.2.35 paise, D.A. of Rs. 1.21 paise and H.R.A. of Rs.0.50 paise, per day per worker stipulated a term of reimbursement by the appellant to the contract of the difference in D.A. over the amount of Rs.1.21 paise and annual increment etc. payable from month to month to every worker by him as per the Second Wage Board Recommendation. As the contractor carried out his work according to the terms and conditions in the contract during the years 1973-74 and 1974-75, the appellant made payments of the sums payable to him under clause 12 of the contract and the sums reimbursable to him under clause 13 thereof. But the deductions made under section 194C(1) of the Act by the appellant out of the sums paid or reimbursed to the contractor fell short of the deductions required to be made thereunder. As the appellant took the stand that it was not liable to deduct any amount under section 194(1), out of the sums paid on its behalf to the contractor as per clauses 12 & 13 of the contract, the Income Tax Officer, Jamshedpur, served on the principal officer of the appellant a notice dated 30th March, 1978 to show cause as to why action should not be taken against the appellant under sections 276B(1), 281 and 221 of the Act in respect of assessment years 1973-74 and 1974-75 for short deductions out of the sums paid to contractor without observing the requirement of section 194C(1) of the Act. Another notice dated 8th May, 1978 relating to the assessment years 1974-75 to 1977-78 of a similar nature, was also served on the principal officer of the appellant. The appellant, although impugned both the said notices in a Writ Petition filed under Articles 226 and 227 of the Constitution before the High Court of Judicature at Patna, that Writ Petition was dismissed by the High Court by its order dated 8th March, 1979. The appellant has, therefore, filed this appeal by special leave before this Court seeking the quashing of the notices which it had unsuccessfully impugned before the High Court, in its Writ Petition.

It was argued by Mr. V.A. Bobde, the learned senior counsel appearing for the appellant, that the amount deductible under section 194C(1) out of the sums credited to the account of or paid to a contractor would arise only when such sums are paid, on account of a contractor executing a works contract, that is, a contract which produces a tangible property.

- A According to him, the 'work' for the the carrying of which the sum is required to be credited to the account of or paid to a contractor under section 194C(1) of the Act is only a 'works contract' and hence deduction under that sub-section could arise only to the extent where the sum credited to the account of or paid to a contractor for executing such 'works contract' is comprised of the element of income (profit) of the contractor,
- B as held by this Court in *Brij Bhushan Lal Parduman Kumar etc. v. Commissioner of Income Tax, Haryana, Himachal Pradesh and New Delhi-III*, [1979] 2 SCR 16 and not otherwise. It was also his argument that the words in the sub-section 'on income comprised therein', appearing immediately after the words 'deduct an amount equal to two per cent of such sum as
- C income-tax' found in the concluding part of that sub-section, must be taken to mean the percentage amount deductible on the income received by the contractor under the contract and not on the sum credited to the account of or paid to the contractor in pursuance of the contract. These arguments were, however, strongly refuted by Dr. S. Narayan, the learned counsel for the Revenue. It is how, the question mentioned at the outset needs our
- D decision.

Section 194C(1) of the Income Tax Act on the proper construction of which the decision on the aforesaid question should necessarily rest, runs thus:

- E "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 -
- F (a) the Central Government or any State Government; or
- (b) any local authority; or
- (c) any corporation established by or under a Central,
- G State or Provincial Act; or
- (d) any company; or
- (e) any co-operative society; or
- H (f) any authority, constituted in India by or under any law,

engaged either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both; or

A

(g) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India; or

B

(h) any trust; or

(i) any University established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956),

C

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."

D

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, admit of the following formulations:

E

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

F

(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 a 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.

G

(4) But, when the person referred to in Formulation-3 either credits the sum referred to therein to the account

H

A 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.

B Thus, when the percentage amount required to be deducted under the sub-section as income-tax is on the sum credited to the account of or paid to a contractor in pursuance of a contract for carrying out a work or supplying labour for carrying out a work, of any of the organisations specified therein, 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 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 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 expressly includes supply of labour to carry out a work. It is a clear indication of legislature that the 'work' in sub-section is not intended to be confined to or restricted to 'works contract'. 'Work' envisaged in the sub-section, therefore, has 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 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.

F In *Brij Bhushan* (supra) this Court was concerned with the question whether the cost of materials supplied by the Government for being used in execution of works is liable to be taken into consideration while estimating the income or profits of a contractor. That question was answered by this Court, thus:

G "It is true that ordinarily when a works contract is put through or completed by a contractor the income or profits derived by the contractor from such contract is determined on the value of the contract as a whole and cannot be determined by considering several items that go to form such value of the contract but in our view where certain stores/material is supplied at fixed rates by the Department to the Contractor solely for being used or

fixed or incorporated in the works undertaken on terms and conditions mentioned above, the real total value of the entire contract would be the value minus the cost of such stores/material so supplied. Therefore, since no element of profit was involved in the turnover represented by the cost of stores/material supplied by the M.E.S. to the assessee firms, the income or profits derived by the assessee firms from such contracts will have to be determined on the basis of the value of the contracts represented by the cash payments received by the assessee firms from the M.E.S. Department exclusive to the cost of the material/stores received for being used, fixed or incorporated in the works undertaken by them."

The above decision cannot be of any help to the appellant for it does not lay down that the percentage amount deductible under section 194C(1) should be out of the income of the contractor from the sum or sums credited to the account of or paid to him. The words in the sub-section 'on income comprised therein' appearing immediately after the words 'deduct an amount equal to two per cent of such sum as income-tax' from their purport, cannot be understood as the percentage amount deductible from the income of the contractor out of the sum credited to his account or paid to him in pursuance of the contract. Moreover, the concluding part of the sub-section requiring deduction of an amount equal to two per cent of such sum as income-tax, by use of the words 'on income comprised therein' makes it obvious that the amount equal to two per cent of the sum required to be deducted is a deduction at source. Indeed, it is neither possible nor permissible to the payer to determine what part of the amount paid by him to the contractor constitutes the income of the latter. It is not also possible to think that the Parliament could have intended to cast such impossible burden upon the payer nor could it be attributed with the intention of enacting such an impractical and unworkable provision. Hence, on the express language employed in the sub-section, it is impossible to hold that the amount of two per cent required to be deducted by the payer out of the sum credited to the account of or paid to the contractor has to be confined to his income component, out of that sum. There is also nothing in the language of the sub-section which permits exclusion of an amount paid on behalf of the organisation to the contractor according to clause 13 of the terms and conditions of the contract in reimbursement of the amount

A

B

C

D

E

F

G

H

- A** paid by him to workers, from the sum envisaged therein, as was suggested on behalf of the appellant.

For the foregoing reasons, our decision on the question under consideration, is held in the affirmative and in favour of the Revenue.

- B** In the result, this appeal fails and is dismissed directing the appellant to pay the costs of the respondent - the Revenue in this appeal. Advocate's fee is fixed at Rs.3,000.

T.N.A.

Appeal dismissed.