

(1979) 03 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2909 of 1978

Associated Cement Co. Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 08-03-1979

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Income Tax Act, 1961 — Section 226(3)

Citation : (1979) 11 CTR 211 : (1979) 120 ITR 444

Hon'ble Judges : S. Sarwar Ali, Acting C.J.; B.S. Sinha, J

Bench : Division Bench

Advocate : K.D. Chatterjee and K.N. Jain, for the Appellant; B.P. Rajgarhia and S.K. Sharan, for the Respondent

Judgement

B.S. Sinha, J.—The prayer, in this application under Articles 226 and 227 of the Constitution, is to quash annexs. 5 and 7, appended to it, as being illegal and without jurisdiction. There is also a prayer to issue a writ of mandamus to direct the respondents to refund Rs. 39,480, illegally recovered u/s 226(3) of the I.T. Act, 1961. Annexure 5 is a communication by the ITO, A-Ward, Jamshedpur (respondent No. 2), to the petitioner, directing it to state whether deductions u/s 194C of the I.T. Act for periods mentioned therein have been made in respect of contract work done by a contractor, S. P. Nag, and credited to the account of the Central Government within the prescribed time. It is further stated in it that if no deductions have been made cause should be shown why action u/s 226(3) be not taken for default as also penalty u/s 221 be not imposed and interest u/s 201 be not charged in respect of the default. Annexure 7 is a communication from the respondent No. 1, the CIT, stating that the denial of responsibility for making deductions u/s 194C was incorrect.

2. The Associated Cement Company Ltd., the petitioner, is a public limited company, registered under the Companies Act and has one of its factories known as Chaibasa Cement Works at Jhinkpani in the district of Singhbhum. The

company manufactures cement for which it collects various raw materials which are transported to its factory. It has also to transport cement from place to place. For these purposes, the company entered into a contract with one S. P. Nag for loading packed cement bags in trucks and wagons on terms and conditions incorporated in a letter dated November 5, 1973 (annex. 1). According to the terms, the payment to be made to Nag was at the flat rate of forty-one paise per ton of cement. This figure, it is said, was arrived at on the basis of daily wages, dearness allowance and house rent allowance per day per worker. A further stipulation in the contract provided that if excess payment had to be made to the workers on account of dearness allowance, annual increment, etc., as might be provided on the basis of the recommendations of the Second Wage Board, the same would be reimbursed by the company.

3. For the assessment years 1975-76, 1976-77 and 1977-78, the company subsequently made payments to Nag in accordance with the recommendations of the Second Wage Board. According to the company, these were in the nature of reimbursement on account of enhancement of dearness allowance, annual increment, etc., as recommended by the Second Wage Board. By the communication, copy of which is annex. 5, the respondent No 2 directed the company to inform whether deductions had been made as provided u/s 194C of the I.T. Act from the payments made to Nag and also whether the deducted amount had been deposited within the prescribed time in favour of the Central Government. If no such deductions and payments had been made the company was asked to show cause as referred above.

4. On receipt of this notice the company moved the CIT, Bihar, and denied responsibility for making deductions u/s 194C. This was rejected by the Commissioner on the ground that the stand of the company was not based on the correct interpretation of the provisions of the I.T. Act.

5. The first submission made on behalf of the company is that the payments made to Nag under the contract were not covered by Section 194C of the I.T. Act. According to Mr. Chatterjee, learned counsel appearing for the company, deductions u/s 194C(1) would only be made " for carrying out any work (including supply of labour for carrying out any work) " and not for rendering or doing any service. Mr. Chatterjee says that contract for carrying out a work is the same thing as works contract and for the application of Section 194C(1) the supply of labour must be for a collateral purpose, that is, for doing any work. In " carrying out any work ", Mr. Chatterjee argues, work is the resultant thing and not a manual doing of it. In other words, " carrying out any work ", according to learned counsel, must mean in this context something which is not merely manual in nature. In support of this submission reliance was placed on the case of Vanguard Rolling Shutters and Steel Works Vs. The Commissioner of Sales Tax, . According to learned counsel, the payments, in the instant case, were made to the contractor not for carrying on any work ; in substance it was a contract for service.

6. It would be relevant to read Section 194C(1) of the I.T. Act :

" 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."

7. Under this provision, the responsibility for deducting an amount equal to two per cent. of the payment made to the contractor arises only when the contract is " for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract ". In the present case, it is not disputed that the contract was for supply of labour. It has to be seen whether it was for carrying out any work. Loading of packed cement into trucks and wagons is certainly a work, as it is commonly understood, and even on the submission made on behalf of the company, the resultant thing is the accomplishment of the loading. In a very broad sense, a work done by one person is service rendered to another and, indeed, one of the dictionary meanings of the word " service " is work. In the case before us, by loading packed cement into trucks and wagons, work was being done by the contractor and, in a manner of saying, it was service rendered to the company. However, that does not make any difference as the contract was to supply labour " for carrying out a work " which was loading of packed cement into trucks and wagons.

8. The question that arose for consideration in the case of Vanguard Rolling Shutters and Steel Works Vs. The Commissioner of Sales Tax, was whether the contract was a works contract or a contract for sale of materials which was exigible to assessment under the U.P. Sales Tax Act, 1948. In that case, the assessee manufactured iron shutters according to the specifications given by the parties and fixed the same at the premises of the customers. In a particular assessment year, the assessee had received a certain sum in execution of such a contract and it was the claim of the assessee that the sum was received on the basis of a work contract which was not exigible to sales tax. It was held that where the contract is primarily a contract for work and labour and materials are supplied in execution of such a contract there is no contract for sale of materials

as it is a works contract. As it was only by bestowing work and labour upon them and by affixing them to the buildings in the case of window-leaves and wooden doors and windows that they acquire commercial identity, it was held that it was a works contract. In the present case, the contract was one which needed labour for its execution, namely, loading for which payments had to be made. Therefore, the only conclusion is that in the case before us the contract was for supply of labour for carrying out a work, namely, loading and, accordingly, the case would fall within the ambit of Section 194C(1) of the I.T. Act.

9. It was next contended that Section 194C(1) relates only to deductions from income. When there is a case where the money paid cannot be possibly construed as income, deductions cannot be made. In support of this submission, it was said that Section 194C falls in Chap XVII of the I.T. Act which provides for collection and recovery of tax from various incomes, as for example, salary, interest on securities, dividends, etc. It has been argued that in terms of a stipulation made in the agreement arrived at between Nag on the one side and the company on the other, the company had to reimburse Nag (the contractor) for extra payments made to the labourers in terms of the recommendation of the Second Wage Board. Those payments being in the nature of reimbursement were not income from which deduction could be made. I have already quoted Section 194C(1). This sub-section clearly provides that from any sum paid to the contractor, a deduction of an amount equal to two per cent. of "such sum" would be made as Income Tax on income comprised therein. It is obvious, therefore, that the requisite deduction has not to be made on any income of the contractor. It has to be made on the sum paid for carrying out any "work. Mr. Chatterjee conceded that when the payments were made to the contractor before the reimbursement the deduction had to be made from the total amount paid. If some subsequent sum had to be paid in pursuance of that very contract, in accordance with the terms of the agreement, there does not seem to be any reason why such subsequent payment should not also be clubbed with the earlier payment. As I have pointed out, the requisite deductions had to be made on "such sum" as is paid to the contractor.

10. In this context, Mr. Chatterjee had relied upon the case of Brij Bhushan Lal Parduman Kumar Vs. Commissioner of Income Tax, Haryana Himachal Pradesh and New Delhi III, . In this case, the question that fell for consideration was whether in the execution of a work the cost of materials, supplied by the Government for executing the work, could be taken into consideration, while estimating the profits of a contractor. In the facts of that case, it was held that in cases of "lump sum contracts" where in substance and in reality stores and materials supplied to the contractor by the department were fixed or incorporated into the work, the cost of such stores and materials could not be included in the turnover of the contractor as there was not even a theoretical possibility of any profit being made by the contractor from such stores or materials. This case has no bearing on the facts of the case before us, because u/s 194C(1) deduction has not to be made from profits made by the contractor, but

from the total payment made to the contractor for doing any work,

11. Lastly, Mr, Chatterjee submitted that Section 194C(1) was ultra vires Article 31 of the Constitution. He said that there is a distinction between an artificial assessee and a collector of tax inasmuch as an artificial assessee is in a position to show that he is not liable to assessment. He, in any case, does not part with his own property, but with the property that he holds on behalf of others. The company, as a collector of tax under the provisions of the I.T. Act, cannot show that he should have made no deductions and it becomes liable for the income of others. The liabilities are such in which it will have to pay penalty and interest and thus part with its own property. It can even be subjected to penal provisions.

12. It cannot be disputed that laws for taxation sometimes provide for collection of tax at a convenient point. For example, although the Sales Tax Act provides for tax to be imposed upon the sale of goods, the obligation for the collection of the tax is imposed not upon the buyer or the consumer but upon the seller who has to collect the sales tax from the buyer or the consumer. Similarly, u/s 194C(1), although the tax is to be paid by the contractor, the obligation is upon the person, responsible for paying any sum to the contractor, to make the requisite deduction from the payments made. Sub-sections (3), (4) and (5) of Section 194C provide the circumstances in which such deduction need not be made. Therefore, in cases which are not covered by sub"ss. (3) and (4), it is the duty of the person, responsible for paying any sum to the contractor, to make the requisite deduction from such sum as Income Tax on income. I am, therefore, of the view that it cannot be said that Section 194C(1) is violative of Article 31 of the Constitution.

13. Mr. Rajgarhia, for the revenue, referred to the cases Vallabhdas Manjibhai Dholakia and Others Vs. Commissioner of Income Tax, Gujarat III and Others, and Mahavir Metal Works P. Ltd and Another Vs. Union of India and Another, in support of the submission that Section 194C(1) did not infringe Article 31 of the Constitution. The question that fell for consideration in the first case was whether information relating to a contract which has to be furnished u/s 285A of the I.T. Act violated Article 19(1)(f) and (g) and Article 14 of the Constitution. It was held that there was no infringement of those articles by that section. In Mahavir Metal Works P. Ltd and Another Vs. Union of India and Another, the submission that Chap. XXA of the I.T. Act violated Articles 14, 19 and 31 was rejected.

14. For the reasons given, there is no merit in this application which is dismissed. I would, however, make no order as to costs.

S. Sarwarali, Actg. C.J.

15. I agree.