(2003) 09 AHC CK 0143

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 618 of 1994

Moradabad Chartered Accountants Association and Another APPELLANT

Vs

Central Board of Direct Taxes and Another RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

Income Tax Act, 1961 — Section 194C

Citation : (2004) 186 CTR 671 : (2003) 264 ITR 374

Hon'ble Judges : Umeshwar Pandey, J;Katju, J

Bench : Division Bench

Advocate : Vikram Gulati, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed for a writ of certiorari to quash the impugned circular dated March 8, 1994, annexure 1, to the petition. Heard learned counsel for the parties.

2. Petitioner No. 1 is a registered body representing the Moradabad Chartered Accountants. Petitioner No. 2 is a practicing advocate on the tax side at the Allahabad High Court.

3. The petitioners have filed this petition as a public interest litigation on behalf of the professional people who render services, e.g., lawyers, chartered accountants, legal advisers, doctors, engineers, architects, consultants, etc., who receive payment from persons who need their services and pay remuneration to them.

4. Section 194C was introduced in the Income Tax Act, 1961, with effect from April 1, 1972, making provision for deduction of tax at source on payment to contractors or sub-contractors in certain cases.

5. The aforesaid provision was amended from time to time and various circulars

were issued by the Central Board of Direct Taxes. The relevant part of Section 194C states :

"194C. Payments to contractors and sub-contractors.--(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 ; or

(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

(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

(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 u/s 3 of the University Grants Commission Act, 1956 (3 of 1956) ; or

(j) any firm,

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 ...

(ii) in any other case, two per cent. of such sum as Income Tax on income comprised therein."

6. The submission of learned counsel for the petitioner is that Section 194C only covers the cases of contractors and sub-contractors who carry out any work including supply of labour for carrying out the work. However, by the impugned circular dated March 8, 1994, deduction of tax u/s 194C has also to be made in respect of fees for professional service. It is submitted that Section 194C does not cover cases of payment of fees for professional service. It is alleged that the intention of the Legislature is very clear that any type of service such as professional service is not covered by Section 194C of the Act. It is alleged that Section 194C only applies to works contract or labour contract and will not cover

contracts for engagement for professional service. It is alleged that the word used in a statute has to take colour from the context in which it is used, and hence a person rendering professional services cannot be regarded as a contractor or sub-contractor. It is alleged that the relationship between a lawyer and his client or a doctor and his patient is entirely different in nature from the relationship between a principal and a contractor.

7. The impugned circular has referred to the decision of the Supreme Court in The Associated Cement Company Ltd. Vs. The Commissioner of Income Tax, Bihar, Patna and another, .

8. In our opinion the aforesaid decision has no relevance to the facts of the present case. In that decision the appellant entered into a contract with a contractor for loading packed cement bags from its plant into the truck and contracted to pay a certain amount. In that decision it was held that the word "any work" in Section 194C does not refer to a works contract only and it is not confined to a works contract. According to the Supreme Court the word "work" used in Section 194C(1) is wide enough to cover any work done in pursuance of a contract between a contractor and one of the bodies mentioned in that provision.

9. A bare perusal of Section 194C shows that the said provision really deals with contractors who are businessmen, e.g., building contractor, or contractor who does work of transportation or loading of goods, or for supply of materials. The context of that provision shows that it is not dealing with professionals like lawyers, doctors, accountants, etc., and it does not refer to payment of fees to professionals like lawyers, chartered accountants, doctors, engineers, etc.

10. One word can have several meanings and one meaning can have several words (synonyms). For instance the word "ball" can mean the ball with which children play. It can also mean a dance, and it can also mean having a fine time. We are of the opinion that the word "contractor" in Section 194C as used in the context of that provision refers to businessmen who do contract work, and not professionals, like lawyers, chartered accountants, doctors, engineers, etc.

11. We are fortified in the view, we are taking by the decisions in Chamber of Income Tax Consultants and others Vs. Central Board of Direct Taxes and others, ; Madras Bar Association and Others Vs. Central Board of Direct Taxes and Others, and All Gujarat Federation of Tax Consultants and Others Vs. Central Board of Direct Taxes and Others, .

12. We respectfully agree with the aforesaid decisions and hence we quash the impugned circular so far as it has been made applicable to professionals. The writ petition is allowed. No order as to costs.

