
(1994) 09 DEL CK 0043
In the Delhi High Court
Case No : C. W. P. No. 2077 of 1994

S.R.F. Finance Ltd.

APPELLANT

Vs

Central Board of Direct Taxes and others

RESPONDENT

Date of Decision : 28-09-1994

Acts Referred:

Citation : (1994) 221 CTR 431 : (1994) 122 CTR 431 : (1998) 1 ILR Delhi 247 : (1998) ILR Delhi 247 : (1995) 211 ITR 861 : (1994) 76 TAXMAN 432

Hon'ble Judges : K. Shivshankar Bhat, J; D.K. Jain, J

Bench : Division Bench

Advocate : M.S. Syali, AdvG.C. Sharma, for the Appellant;

Judgement

K. Shivashankar Bhat, J.—The petitioner seeks the quashing of two Circulars Nos. 666 (see [1993] 204 ITR 40) and 681 (see [1994] 206 ITR 299 dated October 8, 1993, and March 8, 1994, respectively, issued by the Central Board of Direct Taxes ("C. B. D. T." or "the Board" for short). The other reliefs are consequential to this main relief. The petitioner is a finance company engaged in the business of leasing, hire purchase of articles such as vehicles, plant and machinery, etc. For the purpose of financing its business, the petitioner gets fixed deposits from the public. These fixed deposits are secured through various brokers who are paid brokerage at particular rates depending upon the scheme and duration of the deposits. The impugned circulars purport to explain the scope of section 194C of the Income Tax Act, 1961, and direct the authorities under the Act to give effect to the provisions of section 194C as against the commission agents, brokers, lawyers, chartered accountants and others. According to the petitioner, section 194C does not govern the amounts payable to the brokers. The petitioner further contends that section 194C is applicable only to the payments made to any person for any work and not the payments made as fee for services rendered or the commission paid to a commission agent or a broker. The respondents, on the other hand, rely on the language of section 194C to contend that even the professional services are covered by the term "any work"

referred to in section 194C of the Act and that the Supreme Court has given such an interpretation to the said provision in a decision referred as The Associated Cement Company Ltd. Vs. The Commissioner of Income Tax, Bihar, Patna and another, .

2. Having regard to the importance of the matter and the wide scope of the impugned circulars, several writ petitions are pending in various courts. In this court, there are a few more writ petitions filed on behalf petition, we permitted others interested in the subject-matter to intervene and, consequently, we had the benefit of hearing educative arguments addressed not only by learned counsel appearing in this writ petition, but also by several other learned advocates :

Re : Preliminary objections :

3. Dr. Narayanan raised two preliminary objections :

(i) The petitioner has ample remedy under the Income Tax Act to question the enforceability of section 194C; and

(ii) The petitioner does not suffer any injury u/s 194C.

4. All that the petitioner is required to do, is to deduct a percentage of the sum payable to another person, and hand it over to the State, towards the tax payable by the payee. The aggrieved person is the payee and not the contractor.

5. We are not impressed by these objections.

6. If the statutory authority acts without jurisdiction, the action could be challenged by approaching the High Court directly under article 226 of the Constitution. The aggrieved person need not wait for the lengthy statutory process of a decision by the statutory authority and then file appeal or revision there from, before seeking redress from this court. If the action proposed by the authority is without jurisdiction, the aggrieved person is entitled to an order of this court directing the authority not to take any action on the basis of the admitted facts which would not confer competence on the said authority to act in a manner not authorised by law.

7. In Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , the Income Tax Officer had issued notices to reopen the assessment. The material was totally lacking to lead to the formation of the requisite opinion by the Income Tax Officer, to issue the notices. At page 208, the court held :

"In the present case, the company contends that the conditions precedent for the assumption of jurisdiction u/s 34 were not satisfied and came to the court at the earliest opportunity. There is nothing in its conduct which would justify the refusal of proper relief under article 226. When the Constitution confers on the High Courts the power to give relief it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if

relief is refused without adequate reasons. In the present case, we can find no reason for which relief should be refused."

8. In the instant case, the petitioner is faced by the circulars issued by the Central Board of Direct Taxes, the highest authority in the hierarchical set up of the Income Tax Department. In view of sections 118 and 119, no Income Tax Officer would have the courage (or audacity) to ignore these circulars. It will be a futile exercise for any assessed to challenge the binding nature of these circulars, before the Income Tax Officers. The threat posed by the impugned circulars, is real and any person affected by them should not be denied access to this court to seek appropriate relief at the very moment the threat is posed against him.

9. As per article 265 of the Constitution of India, no tax shall be levied or collected except by authority of law. The words, "levy" and "collection" are words of wide amplitude in the context of this article, so as to cover any process employed to collect any amount purporting to be a tax. If the procedure employed is unauthorised, the process of collection will render it an illegal levy or illegal collection and, hence, unconstitutional.

10. Dr. Narayanan then contended that the petitioner in no way suffers any financial injury; he is statutorily directed to deduct a certain sum and pay it over to the State, towards the tax that may have to be paid by the payee; it is the payee who is deprived of the amount, who has to challenge this provision, because he is deprived of the amount due to him from the payer.

11. Learned counsel on both sides, as usual, referred to a few decisions, as to the requirements of the locus standi to file a writ petition.

12. It is unnecessary to burden this judgment with the precedents in support of a principle which seems to be too obvious. If the petitioner has to deduct and retain a part of the sum payable under a contract to another person and then hand over this retained sum to the State, necessarily he has to maintain a proper account of the payments with all its incidental nuisance; he may have to employ extra staff; he may have to pay more to his auditors; he may have to engage in paper work of many sorts, apart from being made the target of suspicion and investigation by the Income Tax Department. Jurisprudentially, this person is compelled to be the agent of the State to collect revenue for it - a status or employment he may not like. Every person is entitled to object to the creation of such a relationship of principal and agent. The State cannot impose itself on any person to be its collecting agent, except under a valid law.

13. In *Om Prakash Puri v. State of West Bengal* [1975] Tax LR 1894, the Bench of the Calcutta High Court also took a similar view. The following observations, at page 1896, of the High Court are self-contained :

"It is clear, Therefore, that the responsibility for collecting the entertainment tax from the person or customer liable to pay is that of the proprietor of a hotel or restaurant. It is he who has to keep regular accounts of taxes collected in the

prescribed manner and the Assessing Officer has the right to inspect the accounts maintained by him. It is he who is liable to make over to Government taxes collected by him and should he fail to do so he would be liable to the penalties provided for in section 6 of the Act. In these circumstances, we cannot hold that the appellants before us are not entitled to maintain the present application as they are directly concerned with the operation of the Act and may be prejudicially affected if there is any failure on their part as contemplated by the Act.

The foundation for exercising jurisdiction under article 32 or article 226 of the Constitution is ordinarily the personal or individual right of the petitioner himself, though in the case of some of the rights like habeas corpus or quo warranto, this rule may have to be relaxed or modified. But a personal right need not be in respect of a proprietary interest; it can also relate to the interest of a trustee. That apart, in exceptional cases, as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of authority can avail of a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof."

14. The preliminary objections are, accordingly, rejected.

15. On merits :

16. Section 194C reads as follows :

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),

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 sub-section (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."

17. This section was introduced in the year 1972. Immediately thereafter the scope of the said provision was explained by a circular bearing No. 86 dated May 29, 1972 (see [1972] 84 ITR 99. This circular stated that section 194C will apply only in relation to "works contract" and "labor contracts" and will not cover contracts for rendering of professional services by the lawyers, physicians, surgeons, engineers, accountants, architects, consultants, etc. In another circular bearing No. 93, dated September 26, 1972 (see [1972] 86 ITR 30, it was stated that service contracts not involving the "carrying out of any work" are outside the scope of section 194C. In the Finance (No. 2) Bill, 1967, section 194A was sought to be introduced. The relevant section in the Bill was as follows (see [1967] 64 ITR 109 :

"30. Amendment of Chapter XVII. - In Chapter XVII of the Income Tax Act, under the sub-heading "B - Deduction at source", -

(1) in section 193, the Explanation shall be omitted.

(2) after section 194, the following section shall be inserted, namely :-

"194A. Brokerage, commission, fees, etc. - (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of -

(i) brokerage or commission, or

(ii) fees or other remuneration for professional services (not being income chargeable under the head "Salaries"), or

(iii) interest other than "interest on securities",

shall, at the time of credit of such income to the account of the payee 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 Income Tax thereon at the rates in force :

Provided that no such deduction shall be made in a case where the person (not being a company or a registered firm) entitled to receive such income furnishes to the person responsible for making the payment an affidavit declaring that his total income assessable for the assessment year next following the financial year in which the income is credited or paid will be less than the minimum liable to Income Tax.

(2) The provisions of sub-section (1) shall not apply -

(i) in a case where the income referred to in clause (i) of that sub-section credited or paid at any one time does not exceed five hundred rupees or where the income referred to in clause (ii) or clause (iii) of that sub-section credited or paid at any one time does not exceed two hundred rupees;

(ii) in respect of any such credit or payment of such income made before the 1st day of October, 1967".

18. The Notes on Clauses explaining the above section stated that the person responsible for - paying by way of brokerage or commission or fees or other remuneration for professional services, etc., will be required to deduct there from Income Tax at the rate in force. But this proposal was withdrawn and the speech given by the Finance Minister on July 24, 1967, specifically stated that the proposal for deducting the tax at source from the brokerage and commission, fee for professional services and interest on loans, etc., was given up because it would involve considerable expenditure to earn brokerage, commission or professional fee and deduction of tax at source would result in hardship. Another consideration stated by the Finance Minister was that it would involve considerable administrative and clerical work.

19. Again, by the Finance Bill, 1987, section 194E was sought to be introduced requiring deduction of tax at source from "other incomes" which included commission or brokerage as well as fee for professional services, fee for technical services, rent, etc. This proposal was also not pursued and it was dropped when the Act was ultimately passed. In the proposed section 194E, there was a definition of professional services which was as follows (see [1987] 165 ITR 29 :

""Professional services" means services rendered by a person in the course of carrying on a legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or such other profession as is notified by the Board for the purposes of section 44AA;"

20. The above definition is a clear indication that rendering of a professional service is otherwise described as "carrying on of a profession" in contrast to the concept of "carrying out any work".

21. As per the Finance (No. 2) Act, 1991, section 194H was inserted with effect from October 1, 1991, to provide for deduction of tax at source from commission or brokerage, etc. This section had a very limited life and it was given up by virtue of the Finance Act, 1992, and the life of the said section was confined up to June 1, 1992. All the above several proposals, made one after the other to rope in the payments made to commission agents and professionals and brokers, etc., indicate that section 194C by itself did not cover those cases, as otherwise it was unnecessary for the Government to introduce those proposals. We have also referred to the speech of the Finance Minister indicating the hardship that may result by roping in these payments for deduction of tax at source as well as the expenditure that may have to be incurred by the Revenue to enforce such a provision. In the course of this order, we will be referring to the doctrine of contemporaneous expositio which permits the court to draw proper inferences from the contemporary expositions of the meanings of the relevant provisions of a statute.

22. Relying on State Bank of Travancore Vs. Commissioner of Income Tax, Kerala, , Dr. Narayanan contended that it is open to the Board to withdraw its earlier circulars granting concessions, prospectively. The impugned circulars are

traced to this power of the Board to withdraw the earlier circulars. In the same decision, the Supreme Court, also held that the executive circulars of the Board cannot override the provisions of the Act. In the instant case, the real question is whether the circulars issued are within the scope of section 194C, or whether, they override the said provision and, Therefore, the basis of Dr. Narayanan's contention is not correct.

23. If the impugned circulars fall within the ambit of section 194C, they cannot be nullified, only because, during the earlier years, the Board took a different view and expressed the same through the circulars issued earlier.

24. The Board has issued the impugned circulars, solely basing on its understanding of the judgment of the Supreme Court in *The Associated Cement Company Ltd. Vs. The Commissioner of Income Tax, Bihar, Patna and another*, . According to the Board, the Supreme Court has attributed a wide meaning to the relevant words found in section 194C and, Therefore, the words "carrying out any work" would include, the rendering of any service in pursuance of an engagement for the same.

25. After referring to the decision of the Supreme Court in *The Associated Cement Company Ltd. Vs. The Commissioner of Income Tax, Bihar, Patna and another*, , the Board states, in the impugned Circular No. 666 dated October 8, 1993 (see [1993] 204 ITR 40 :

"Thus, the provisions of section 194C are applicable to all types of contracts for carrying out any work, such as transport contracts, service contracts, labour contracts, material contracts as well as works contracts, etc."

26. It is practically repeated in paragraph 7 of Circular No. 681, dated March 8, 1994 (see [1994] 206 ITR 299.

27. Therefore, it has to be seen whether the inference drawn by the Board from the aforesaid decision of the Supreme Court is correct or not.

28. This also involves interpretation of section 194C, because, the presumption is that the Supreme Court must have meant to give a natural, ordinary and grammatical meaning to the provision in question, in the light of the words used therein.

29. In the course of its judgment, the Supreme Court is likely to make several observations and even if any one of them is a pure obiter dictum, it will be binding on the High Courts. But the observations of the Supreme Court are to be understood in the factual background of the cases in which the observations were made and in the light of the respective contentions raised before the court. In *Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others*, , the Supreme Court pointed out that "any observation in a judgment has to be read and understood in the context of facts of that particular case in respect of which such observation has been made."

30. In *Prakash Amichand Shah Vs. State of Gujarat and Others*, , this aspect has been elaborately stated by a Constitution Bench. At page 480, the court held :

"Before embarking upon the examination of these decisions, we should bear in mind that what is under consideration is not a statute or a legislation but a decision of the court. A decision ordinarily is a decision on the case before the court while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Hence, while applying the decision to a later case, the court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision. A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation."

31. It should be borne in mind that a judge while writing his judgment would be focusing his attention to the immediate problem before him. The court is concerned with the particular facts of the case. The law to be applied to these facts has to be identified and in some cases elaborated. The court may not envisage the possible constructions that are likely to be placed in future, on each and every sentence found in the judgment. Each sentence, normally, has a connection to the sentence preceding it and the idea contained in it normally emanates from the earlier process of consideration which leads into the next step. A sentence may reflect a particular reasoning. Every reason is a link to the ultimate conclusion, linking the thought process to each other, from its commencement to the end. Therefore, to lift a sentence from a judgment, as if it is an independent provision in a statute and emphasise it as declaring the law, will result in unanticipated and unexpected consequences.

32. In *Deputy Chief Controller of Imports and Exports, New Delhi Vs. K.T. Kosalram and Others*, , the Supreme Court observed :

"In our opinion, dictionary meanings, however helpful in understanding the general sense of the words, cannot control where the scheme of the statute or the instrument considered as a whole clearly conveys a somewhat different shade of meaning. It is not always a safe way to construe a statute or a contract by dividing it by a process of etymological dissection and after separating words from their context to give each word some particular definition given by lexicographers and then to reconstruct the instrument upon the basis of those definitions. What particular meaning should be attached to words and phrases in a given instrument is usually to be gathered from the context, the nature of the subject-matter, the purpose or the intention of the author and the effect of giving to them one or the other permissible meaning on the object to be achieved. Words are after all used merely as a vehicle to convey the idea of the speaker or the writer and the words have naturally, Therefore, to be so construed as to fit in with the idea which emerges on a consideration of the entire context. Each word is but a symbol which may stand for one or a number of objects. The context, in which a word conveying different shades of meanings is used, is of importance in

determining the precise sense which fits in with the context as intended to be conveyed by the author."

33. To highlight the manner in which the relevant words in section 194C are normally used, Mr. Syali referred to State of H. P. v. Associated Hotels of India Ltd. [1972] 29 STC 474 and pointed out that the Supreme Court used the two words, "work" and "service", to convey different concepts. At page 480, the relevant sentence was - "to constitute a taxable sale, the Revenue has to establish that there was a sale, distinct from the contract of work or service, of the property so passing to the other party".

34. Again, in the next page, the sentence was - "for, even in a contract purely of work or service, it is possible that articles may have to be used by the person executing the work and property in such articles or materials may pass to the other party".

35. Mr. Syali argued that the underlined (Here printed in italics) words in the above sentences truly reflect the normal usage of these words in English and the concept of "contract of work" is different from the concept of "contract of service". In other words, the idea conveyed by the word "work" is entirely different from the idea conveyed by the word "service".

36. Mr. Syali is right in pointing out the qualitative differences between the subject, referred to as "work" and the subject referred to as "service". The two words convey different ideas. In the former (i.e., "work"), the activity is predominantly physical; it is tangible. In the activity referred to as "services", the dominant feature of the activity is intellectual, or at least, mental. Certainly, "work" also involves intellectual exercise, to some extent. Even a gardener has to bestow sufficient care in doing his job; so is the case with a mason, carpenter or a builder. But the physical (tangible) aspect is more dominant than the intellectual aspect. In contrast, in the case of rendering any kind of "service", the intellectual aspect plays the dominant role. The vocation of a lawyer, doctor, architect or a chartered accountant (there are other similar vocations also) involves deep intellectual exercise and physical skill involved in their vocational activities is minimal. A dancer's performance no doubt involves physical movement; but all the movements are projections of the talent which is natural, or acquired by training. A surgery certainly involves physically visible and tangible work; but, inherently, it is the mental skill developed by the intellectual exercise that permeates the operation.

37. Language is a vehicle of conveying ideas. The English language has developed particular terms and usages to convey particular ideas. The same word may convey a different meaning when placed in a different context. Therefore, the meaning conveyed by a word has to be gathered from the context in which the word is used. The long established and recognised meaning of a word, cannot be understood as conveying a meaning different from its natural meaning unless there are strong reasons for it.

38. The word "work" may have different and wider meanings. But, here, we have to find out the real meaning of the word in the context of its setting in section 194C. The meaning attributable should fit into the clause "for carrying out any work". An architect is not engaged to carry out the work of drawing a sketch. A lawyer is not engaged to carry out the work of arguing a case; he is engaged, to "argue" a case or to "conduct" a case; he is paid a "fee" for the services rendered by him and not any "price" for the work done by him.

39. The decision of the Patna High Court (which was subsequently affirmed by the Supreme Court) is reported as Associated Cement Co. Ltd. Vs. Commissioner of Income Tax, . The bare facts, relevant for the present purpose are :

40. The petitioner-company was a manufacturer of cement for which it had to collect raw materials which were to be transported to the factory; the company, also, had to transport cement from place to place. The company entered into a contract with another person for loading packed cement bags in trucks and wagons; the rate payable to the said person was on the basis of the weight of the material loaded. The petitioner-company was served with notices to inform whether deductions had been made as provided u/s 194C; The petitioner denied its responsibility to make such deductions; but the petitioner's stand was rejected by the Commissioner. The order of the Commissioner was challenged before the High Court.

41. The petitioner contended that section 194C did not envisage deductions to be made out of the payments for rendering or doing any service and that the contract in question entered into for loading the goods, was a contract to avail of the services for loading the packed materials. This contention was not accepted by the High Court. The High Court held at page 448 :

"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."

42. The petitioner mainly relied on the difference between the concept of works contract and contract for sale of goods, that was prevalent during the relevant period; (until the Constitution was amended). In the case of a works contract, sale of goods was incidental and the dominant activity was rendering of services in bringing out the goods (as in the case of a contractor engaged to construct a

building).

43. The High Court did not accept the application of the above analogy to the case before it, having regard to the language of section 194C. The High Court pointed out, "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 Income Tax Act."

44. The above decision was affirmed by the Supreme Court in *The Associated Cement Company Ltd. Vs. The Commissioner of Income Tax, Bihar, Patna and another*, . The Central Board of Direct Taxes has understood this decision in a particular manner, resulting in the issuance of the impugned circulars. In the said case, it was argued before the Supreme Court on behalf of the petitioner that "the amount deductible u/s 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". The term "work" was to be confined to "works contract".

45. While rejecting this contention, the Supreme Court held (at page 439) :

"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) A 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.

(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."

46. Formulations 3 and 4 have no bearing on the present controversy. The answer to the basic question is found in formulation 2, which contains the crucial words of section 194C relevant for the present case. Therefore, while reading the following subsequent observations of the Supreme Court, formulation 2 shall have to be kept in mind (at page 439) :

"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 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 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 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."

47. The Revenue emphasises the following sentences found in the above passage :

"(i) "Any work" means any work; and not a "works contract" which has a special connotation in the tax law.

(ii) "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."

48. No doubt, the Supreme Court has said the word "work" referred to in section 194C has a "wide import". But this observation is found in the context of an argument (of the petitioner therein), that the said word "work" has to be confined to the concept of "works contract". The word "work" has a wider meaning because, it is not to be restricted to the term "works contract". The concept conveyed by the word "work" found in section 194C is not confined, limited or restricted to the concept of "works contract". The word "therefore", in the particular sentence clearly brings out the reason for the statement that the word "work" has a "wide import". From this, it cannot be inferred that the Supreme Court intended to give the word a meaning which the sentence in which it is found does not convey. The wider meaning is indicated according to the Supreme Court, because the section expressly includes supply of labour to carry out a work.

49. The entire paragraph in which the above observation of the Supreme Court is found, shall have to be read together; lifting one or the other sentence and reading the lifted portion separately would destroy the integrity of the paragraph. In the opening sentence of the paragraph, the scope of the discussion is indicated, when the Supreme Court said in the last part of the first sentence, ". .. 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".

50. The position becomes clear when the special connotation of the term "works contract" in the tax law is properly understood.

51. "Works contract" involves two elements - (i) the transfer of materials; and (ii) rendering of services in bringing out a tangible property out of the materials; for example, in the case of a building contract where, the contractor has to use his own materials for the construction, payment made to the contractor is for the transfer of materials used in the construction and towards the services rendered by him in constructing the building. Similarly, when a carpenter is asked to supply a table, the consideration payable to him comprises the cost of the timber and other materials used and the remuneration for the job of converting these materials into a table. However, if the timber and other materials are supplied and the carpenter is asked to make a table, he is paid towards his services in making the table. In the case of a building, if the contractor is engaged to perform the construction work, but the entire materials are supplied by the person engaging the contractor, the contractor is paid for supplying the labour and supervising the construction work. While the former type of cases fall within the category of works contract, the latter type are considered as contract for "services".

52. The concept of works contract loomed large, earlier, in sales tax law. In *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, , the Supreme Court held that the Legislature had no competence to levy sales tax on the sale of materials involved in a works contract. This necessitated an amendment to the Constitution to enable the levy of sales tax on the cost of goods supplied by the contractor, while executing the works contract. The history is narrated in detail, in *Builders Association of India and Others Vs. Union of India (UOI) and Others*, .

53. The narrow meaning attributed to the word "work" in section 194C as confined to works contract was rejected by the Supreme Court and in that context the court held that the term "any work" is a term of wide import, to include not only the work involved in the works contract but also the work resulting in other type of contracts where the contract requires "carrying out of any work".

54. One more factor makes the meaning of the section beyond the pale of any doubt. If the term "any work" in section 194C by itself covers any kind of service, the words found in the bracket, in sub-section (1) of section 194C will have to be treated as otiose or superfluous. Supply of labour to carry out any work, is a concept that falls within the concept of "service"; if so, why should Parliament include these words in the bracket, to give an expanded meaning to the term "any work". The Supreme Court in *The Associated Cement Company Ltd. Vs. The Commissioner of Income Tax, Bihar, Patna* and another, clearly pointed out that but for the specific inclusion of those words (i.e., "including supply of labour for

carrying out any work"), in section 194C, obtaining of supply of labour for carrying out the work would have fallen outside the word "work". The concluding part of the Supreme Court observation quoted above brings out the true purport of the term "any work" in section 194C.

55. "Any work", certainly is a term of wide import; but it is not so wide as to comprise within its scope the obtaining of the supply of labour to carry out the work, because, the latter concept is essentially, a concept falling within the sphere of "services". However, the term "any work" is wide enough to cover any kind of work which one can get carried out through another. The essentiality is that, it should be a "work" which is to be "carried out".

56. The petitioner invites fixed deposits, they are secured through various brokers and the brokers are paid brokerage. What is the "work" which the petitioner gets done through the broker ? The contract between the petitioner and the broker is that the broker will be paid brokerage if the latter gets fixed deposits to be kept with the petitioner. Can it be said that securing (or procuring) fixed deposits is "carrying out any work" ? In a loose sense, any activity can be referred as "work" and in that sense, a broker can be said to be "carrying out the work of getting fixed deposits". But, having regard to the normal usage, such a sentence would look artificial, crude and rustic. It will not be a language normally used while enacting a fiscal law.

57. A broker is engaged to procure something. He is carrying on the "business" of securing or getting something to another. An estate agent does not carry out the work of getting an estate; he carries on the business of searching and getting an estate. In the case of a broker, the employment he carries on is not a "work" but, a business or "services". A "broker" is a professional middleman and he carries on a "profession".

58. Any word in a taxing statute is not to be understood by reference to its several dictionary meanings. The word used in a fiscal law, is to be understood (in the absence of any definition) in its popular sense; the sense in which the relevant word is usually and normally understood. Further, the word or the collocation of words should fit into the structure of the sentence in which the word is used or collocation is formed.

59. It is most inappropriate to equate the rendering of a service to carrying out a work. That is why Parliament thought it expedient to expand the meaning of the word "work" by including in it the supply of labour. It is obvious that because the word "work" would not include within its amplitude the supply of labour, Parliament added the same by "including" the latter in the former, thereby giving the word "work" an extended meaning. The extended meaning cannot travel beyond the actual extended area; Parliament has stretched the scope of the word to some extent only.

60. The manner in which the relevant words were understood and the scope of section 194C was measured, immediately after its enactment, throws

considerable light on the point in issue.

61. The doctrine of contemporaneous expositio is not confined strictly to the interpretation of ancient statutes. There are several instances in which the Supreme Court applied the doctrine to interpret the recent fiscal legislations.

62. In *Indian Metals and Ferro Alloys Ltd., Cuttack Vs. The Collector of Central Excise, Bhubaneshwar*, , the duty levied on transmission poles had to be determined. Tariff item 26AA was introduced in the First Schedule to the Central Excises and Salt Act, with effect from April 24, 1962. By a notification issued immediately thereafter, the Government exempted "transmission poles" from the purview of tariff item 26AA, thereby clearly indicating that, but for the exemption, transmission poles would be covered by tariff item 26AA. In the year 1975, a residuary item was introduced in the First Schedule and the Revenue thereafter tried to charge the "transmission poles" to tax under the residuary item. Apart from other reasons, the Supreme Court applied the doctrine of contemporaneous expositio and observed that the consistent interpretation of tariff item 26AA, as applied by the Revenue, from the very beginning, was to hold that transmission poles fell within the said tariff item. At page 1033, the court held :

"However, even assuming that there could have been some doubt as to the intention of the legislation in this regard the matter is placed beyond all doubt by the Revenue's own consistent interpretation of the item over the years."

63. Thereafter, at page 1034, the court held :

"The Revenue is not being precluded from putting forward the present contention on grounds of estoppel. The practice of the Department in assessing the poles to duty (except in cases where they were exempt as the conditions in the exemption notifications were fulfilled)and the issue of notifications from time to time (the first of which was almost contemporaneous with the insertion of item 26AA) are being relied upon on the doctrine of contemporaneous expositio to remove any possible ambiguity in the understanding of the language of the relevant statutory instrument : See *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, , *State of Tamil Nadu Vs. Mahi Traders and Others*, , *Collector of Central Excise, Guntur Vs. Andhra Sugar Ltd., Venkatarayapurama*, and *Collector of Central Excise, Bombay-I and Another Vs. Parle Exports (P) Ltd.*, . Applying the principle of these decisions, that a contemporaneous exposition by the administrative authorities is a very useful and relevant guide to the interpretation of the expressions used in a statutory instrument, we think the assessed's contention that this products fall within the purview of item 26AA should be upheld."

64. In *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, , the speech made by the Finance Minister in Parliament while introducing the relevant provision, was referred to, as a relevant material in aid of the interpretative process. In the same decision, the Supreme Court referred to two circulars

issued in the year 1974 by the Central Board of Direct Taxes, "as they are clearly in the nature of contemporaneous expositio, furnishing legitimate aid." The relevant provision was actually added in section 52 of the Income Tax Act in the year 1964. The nature of the doctrine was explained by the Supreme Court at page 1932 as (at page 612 of 131 ITR) :

"The rule of construction by reference to contemporaneous expositio is a well established rule for interpreting a statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous. This rule has been succinctly and felicitously expressed in Crawford on Statutory Construction (1940 edition), where it is stated in paragraph 219 that "administrative construction" (i.e., contemporaneous construction placed by administrative or executive officers charged with executing a statute) generally should be clearly wrong before it is overturned; such a construction, commonly referred to as practical construction, although non-controlling, is nevertheless entitled to considerable weight; it is highly persuasive."

65. Thereafter, the court held (at page 612 of 131 ITR) :

"It is clear from these two circulars that the Central Board of Direct Taxes, which is the highest authority entrusted with the execution of the provisions of the Act, understood sub-section (2) as limited to cases where the consideration for the transfer has been understated by the assessed and this must be regarded as a strong circumstance supporting the construction which we are placing on that sub-section."

66. G. P. Singh, in Principles of Statutory Interpretation (5th edition) states at page 207 :

"Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporaneous expositio to interpret not only ancient but even recent statutes both in England and India."

67. In view of the recent trend of the decisions referred above, it is unnecessary to refer to an earlier decision relied upon by Dr. Narayanan, in The Senior Electric Inspector and Others Vs. Laxmi Narayan Chopra and Others, . The court referred to Coke as laying down that the maxim "contemporaneous exposition" was applied to construe ancient statutes, but not to interpret Acts which are comparatively modern. The court also pointed out that the fundamental rule of construction is to find out the "expressed intention" of the Legislature. The question before the Supreme Court pertained to the scope of the words used in the Electricity Act, 1910, and the Telegraph Act; the court held that it was necessary to extend the meaning of the words used earlier, to the new situations created by the developments that have taken place in the society, in order to advance the real intention of the law makers.

68. The decision of a two judge Bench of the Supreme Court in Doypack Systems Pvt. Ltd. Vs. Union of India (UOI) and Ors, , no doubt, supports the proposition advanced by Dr. Narayanan, to some extent. But, there the court had not referred to other decisions of the Supreme Court on this question.

69. A Division Bench of the Bombay High Court has already taken a similar view in Chamber of Income Tax Consultants and others Vs. Central Board of Direct Taxes and others, . The writ petition before the Bombay High Court was filed as a public interest litigation on behalf of the professionals challenging the impugned circulars issued by the Central Board of Direct Taxes. The High Court also referred to the earlier circulars issued by the Central Board of Direct Taxes in the year 1972, as to the scope of section 194C and the Finance Bill, 1987, whereby section 194E was sought to be introduced, but later given up. This exercise was considered as an indication that section 194C does not apply to payment of fees for professional services or technical services. As to the observations made by the Supreme Court in The Associated Cement Company Ltd. Vs. The Commissioner of Income Tax, Bihar, Patna and another, , the High Court held as under (at page 672) :

"A reading of the above observations of the Supreme Court in the context of the controversy before it makes it absolutely clear that the Supreme Court did not intend to give an extended meaning to the expression "any work" so as to include professional services within its ambit. The Supreme Court interpreted the expression "any work" to decide whether it was confined to works contract as argued by the appellant before it or it was applicable to labour contracts also. It is in this context that the Supreme Court observed that "any work" means any work and not only a "works contract". The above observation of the Supreme Court cannot be interpreted out of context to include payments made to professionals like advocates, solicitors, chartered accountants, tax practitioners, doctors, surgeons, engineers, etc., for the services rendered by them. Neither are such persons rendering professional services known as "contractors" or "sub-contractors" nor are payments made to them for the services rendered by them termed as "payment for carrying out any work" or for "supply of labour for carrying out any work" either in common parlance or in legal terminology. It will be a total misnomer to describe such professionals as "contractors" or "sub-contractors". If the contention of the Revenue in this regard is accepted, a solicitor or an advocate on record will have to be described as a "contractor" and counsel briefed by him in the matter a "sub-contractor". An interpretation which leads to such a ridiculous result cannot be a proper interpretation of the section.

It is a well-settled rule of construction that judgments must be read as a whole and the observations from the judgments should be considered in the light of the questions which were before the court. As observed by the Supreme Court in Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., , it is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Supreme Court divorced from the context of the question under

consideration and treat it to be the complete "law" declared by the Supreme Court. A decision of the Supreme Court takes its colour from the questions involved in the case in which it is rendered and, while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision. It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment."

70. In paragraph 12 of the judgment, the High Court applied the doctrine of contemporaneous expositio to the circulars issued by the Board in the year 1972, explaining the scope of section 194C.

71. While issuing the impugned circulars, the Central Board of Direct Taxes has missed the real purport of the decision of the Supreme Court in *The Associated Cement Company Ltd. Vs. The Commissioner of Income Tax, Bihar, Patna and another*, . Section 194C does not govern the payments of fees towards professional or technical services. The term "any work" in section 194C is aimed at the type of work resulting in tangible material and by virtue of the special inclusion, supply of labour to carry out any work also is brought into the net of tax deduction at the source. This inclusive clause ropes in the consideration for the "supply of labour". The word "supply" connotes the meaning of "procuring", "securing" or "bringing in", and not rendering of one's own professional or technical services.

72. The Board has no power to enlarge the scope of the statutory provision. Its powers are conferred to issue administrative instructions. The impugned circulars travel beyond the provisions of section 194C and have no legal force and are liable to be quashed. The authorities functioning under the Income Tax Act are not bound by them.

73. In the result, the two impugned Circular No. 666 (see [1993] 204 ITR 40) dated October 8, 1993, and No. 681 (see [1994] 206 ITR 299 dated March 8, 1994, are quashed to the extent the said circulars govern the payments to the commission agents and brokers for the services rendered by them; further, we declare that section 194C of the Income Tax Act does not operate on such payments and the respondents are restrained from enforcing them accordingly.

74. The writ petition is allowed. Rule made absolute. No costs.

75. Petition allowed.