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Madras High Court

Case No: W.A. No"s. 45 to 48, 66 to 71, 133 to 146, 164, 477, 478, 505 and 585 of 1996

Central Board of Direct Taxes and Another		APPELLANT
	Vs	
Saradha Transport and Others		RESPONDENT

Date of Decision: July 2, 2002

Acts Referred:

- Income Tax Act, 1961 - Section 194C

Citation: (2003) 180 CTR 468 : (2003) 260 ITR 297 : (2002) 3 MLJ 15

Hon'ble Judges: B. Subhashan Reddy, C.J; D. Murugesan, J

Bench: Division Bench

Advocate: T.C.A. Ramanujam, for the Appellant; V.P. Venkat, for respondents in W.A. Nos. 67 to 71, 137, 140 ot 146 of 1996, A. Muthukumaran, for respondent in W.A. No. 139 of 1996, K. Srinivasan, for respondent W.A. No. 136 of 1996 and C. Natarajan, for respondent in W.A. No. 66 of 1996, for the Respondent

Final Decision: Dismissed

Judgement

B. Subhashan Reddy, C.J.
The above batch of writ appeals have been filed questioning the orders of the learned single judge, in striking down Circular No. 681, dated March 8, 1994 (see [1994] 206 ITR (St.) 299), issued by the Central Board of Direct Taxes on the ground of it being ultra vires Section 194C of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. Section 194C of the Act obligates any person paying any amount due to a contractor in pursuance of a contract, to deduct a particular percentage of amount as Income Tax. This can be called as tax deduction at source. The assessees, who are transport contractors and entitled for payment for carriage of goods, were aggrieved by the action of the Income Tax authorities in seeking to deduct the amount at source by invoking Section 194C of the Act. Their contention was that the circular, which has been issued authorising

tax deduction at source was illegal and ultra vires, as the substantive law, i.e., Section 194C of the Act did not authorise any tax deduction at source for mere carriage of goods by transportation in motor vehicles. This contention found favour with the learned single judge. Accordingly, the said circular was set at naught.

3. Mr. T.C.A. Ramanujam, the learned standing counsel for Income Tax cases, submits that the judgment of the learned single judge is liable to be set aside. But, we do not accede to his contention for the reasons mentioned infra.

4. Section 194C was inserted by the Finance Act, 1972, with effect from April 1, 1972, authorising deduction of Income Tax at source, while making payments to contractors for the work done by them. The expression "work" has been explained in Explanation III to the above section, and mere carriage of goods was not at all included in the said Explanation. Interpreting the same, a Division Bench of the Bombay High Court in Bombay Goods Transport Association and another Vs. Central Board of Direct Taxes and others, took the view that the substantive provisions in Section 194C do not make mere transportation of goods exigible to deduction at source, and the circular cannot authorise for doing so and as such the circular is illegal and ultra vires the Act,

5. Of course, when the writ appeals were filed a SLP was pending before the Supreme Court against the above judgment of the Bombay High Court, but the Supreme Court has now decided in Birla Cement Works Vs. Central Board of Direct Taxes, affirming the view taken by the Bombay High Court.

6. The argument that inasmuch as the Finance Act, 1995, was enacted authorising the deduction even for mere transportation of goods, and as such, the circular is deemed to have been ratified by Parliament is also liable to be rejected, for the reason that the said Finance Act, 1995, which came into effect from July 1, 1995, is only prospective in operation and not retrospective. It is also clear from the judgment of the Supreme Court, cited supra. In view of the above, all the writ appeals are dismissed. No costs.