Principal Officer, Somani Iron And ... vs Income Tax Officer on 26 June, 2002

Equivalent citations: [2003]86ITD750(LUCK), (2003)81TTJ(LUCK)339

ORDER

P.N. Parashar, J.M.

1. These three appeals have been filed by the same assessee, namely, the Principal Officer, M/s Somani Iron & Steels Ltd., Kanpur, against a combined order of CIT(A), dt. 7th June, 2000, for the asst. yrs. 1993-94, 1994-95 and 1995-96.

2. The assessee appellant has taken eight grounds in each appeal. These grounds are common grounds except there being difference in the amount of aggregate payment (in the asst. yr. 1993-94 being Rs. 2,03,29,855 in the asst. yr. 1994-95 being Rs. 7,97,86,052 and in asst. yr. 1995-96 being Rs. 32,86,002) and the amount of demand on account of ITD and interest under Section 201(1A) being Rs. 8,28,277 in asst. yr. 1993-94, Rs. 26,60,865 in asst. yr. 1994-95 and Rs. 98,251 in asst. yr. 1995-96.

3. Since the grounds taken by the assessee are argumentative in nature, we do not consider it proper to reproduce the same in the body of this order. It may be pointed out that the assessee has taken eight similar grounds in all the three appeals, out of which ground No. 8 is additional ground. The application of the assessee for admitting the additional ground (ground No. 8) was considered and decided by us vide our order, dt. 7th Jan., 2002. The detailed order for rejecting the prayer of the assessee has also been noted on the order sheet dt. 7th Jan., 2002. Thus, only seven grounds are to be adjudicated in each of these appeals.

4. Shri S.K. Garg, FCA appeared on behalf of the assessee and made detailed submissions. On behalf of the Department, Shri D.K. Shrivastava, learned senior Departmental Representative (CIT-ITAT), appeared and made oral as well as written submissions. It may be pointed out that the assessee had filed a paper booK containing 372 pages. The assessee had also filed a brief synopsis of the case running into seven pages. This synopsis was submitted on 3rd Sept., 2001. In reply to the written submission of the assessee, the Department has also filed written submission dt. 14th Jan., 2002. These written submissions have been taken on record and are being considered, while adjudicating the issues involved in these three appeals.

5. Before taking up the issues involved in the grounds taken by the assessee in these appeals, we consider it proper to narrate the relevant facts relating to this matter, which are as under:

> 1) The assessee, a public limited company entered into three contracts with M/s GEC Alsthom India Ltd. for supply of equipments and setting up of 220 KVA electric sub-station. These agreements were as under:

(i) Agreement dt. 19th May, 1992 for design, manufacture, procurement and supply of equipments. A copy of this agreement is available at pp. 90 to 173 of the paper book with all relevant enclosures.

(ii) Agreement for installation of 220/33 KV. Electric sub-station inclusive of 60/75 MVA power transformer and Auxiliary Transformer at Somani Iron and Steels Ltd., Sonik, Unnao dt. 22nd Sept., 1992. A copy of this agreement with relevant annexure is available in the paper book at pp. 174 to 213.

(iii) Agreement for design, procurement and supply or equipments dt. 30th Sept., 1994. A copy of this agreement is available at pp. 214 to 234 of the paper book.

(a) The assessee made payments to the said party in the following manner :

F.Y. 1993-94 F.Y. 1994-95 F.Y. 1995-96 2,03,29,855 1,38,58,715 10,000 6,59,27,338 19,20,000 13,56,002 2,03,29,855 7,97,86,052 32,86,002

(b) The AO initiated proceedings under Section 201(1A) of IT Act, 1961, and required the assessee to show cause as to why liability for not deducting income-tax at source and for not remitting the same to the credit of the Central Government account, may not be fixed. In response, the assessee furnished reply dt. 23rd Feb., 1994, contending that the agreements were for supply/purchase of furnace at different sites. It was also submitted that the agreements were not under Indian Contract Act, but were contract under the Sale of Goods Act,

(c) The AO considered the contracts/agreements and also reply of the assessee and held that the terms of contracts fall within the meaning of Section 194C of the Act and, therefore, the liability of the assessee to deduct the income-tax at source was there. The AO further held that the assessee had defaulted with respect to the compliance of the provisions contained under Section 194C and under Section 201 of the Act and is, therefore, liable for income-tax deduction at source as well as interest leviable on the amount of income-tax deduction. He, thus, held that the assessee was liable for payment of income-tax deduction at source and interest totaling to Rs. 8,18,274 in asst. yr. 1993-94 to a sum of Rs. 2,67,865 in asst. yr. 1994-95 and to sum of Rs. 98,251 in asst. yr. 1995-96.

(d) The assessee challenged the orders of AO passed under Section 201/201(1A) of the Act for all the three years before the CIT(A). The submission of the assessee was that the contracts entered into by the assessee with M/s GEC India Ltd., were not for services, but were contracts for supply of material and, therefore, were covered by the Sale of Goods Act and the assessee had also paid excise duty and sales-tax on all the bills raised by the supplier. The learned counsel for the assessee also filed a letter dt.

30th June, 2000, before the CIT(A) in which again it was stated that none of the contracts were for supply plant and machinery on turnkey basis. Prior to it, another letter, dt. 21st June, 2000, was filed by the assessee company requesting that necessary inquiries may be made from GEC India Ltd. The learned CIT(A) made inquiry from GEC India Ltd., through Departmental sources and learnt that some dispute was going on between the assessee and M/s GEC India Ltd. before the Hon'ble High Court of Allahabad in which the Managing Director of the company had filed an affidavit dt. 22nd Feb., 1999. The learned CIT(A) after making reference to this affidavit held that in view of the contents of the affidavit, the contract was for completion of project on turnkey basis. He also noted that bills dt. 31st May, 1993, were also raised by the suppliers to the tune of Rs. 70 lakhs and these bills were for various kinds of works for assistance in setting up the project. The learned CIT(A) did not accept the contention of the assessee that the contracts were covered by sales of goods and no services was involved. On the other hand, he held that the company i.e., M/s GEC India had rendered services, which were for setting up the project on turnkey basis and also for parting with the technology and technical information like designs and drawings etc. According to him, therefore, the assessee was bound to deduct tax at source. Thus, he upheld the order of the AO regarding the liability of tax and interest levied by him in all the three assessment years. We consider it proper to reproduce paras 16, 17 & 18 of the order of the learned CIT(A), which are as under :

"16. I have discussed some of the clauses of the contract which shows that M/s GEC India was not only required to supply the equipment of a particular specification keeping in view the latest technology but detailed engineering documents of the equipment i.e., concerned technology is also to be given to the appellant by the GEC India Ltd. It was further required to carry out the performance test to carry out the cold run. On completion of the contract, the plant is to be operated under the supervision of the GEC India Ltd. for a certain period. The supplier is also to give details of necessary inputs in the form of lubricants, flushing oils, hydraulic fluids, chemicals etc. required during the start up, commissioning, initial filling and yearly requirement for normal operation.

17. In the body of order I have repeatedly used the expression "setting up of the project on turnkey basis". The turnkey basis, as stated above is supply of things which are ready to use. In other words, M/s GEC India has set up these three projects, carried out the cold run, performed all the functions as mentioned in para 16 above. Another feature is detailed drawings and engineering documents have also to be given to appellant, Therefore, it is clear that M/s GEC India Ltd. has performed one single service i.e., setting up of project on turnkey basis. T'his would certainly include some material also. The entire payment has been made by the appellant is for all the services alongwith machinery, drawing, designs, technical data which have not been split up. Even the layout plan has been designed by M/s GEC India personnel and bills have also been raised by M/s GEC India Ltd. and separate payment of Rs. 70 lacs has been made by the appellant.

> 18. I have, therefore, no hesitation in concluding that M/s GEC India Ltd. have rendered the services and that service is supply of project on turnkey basis and parting with the technology and technical information like designs and drawings. The bill has been raised for the machinery only. But the bill certainly includes the cost of above components also. Under the 'Sale of Goods Act' or in a normal sale, nobody parts with the technology, drawings, designs etc. The product alongwith its operational manual is only given. This is not so in the present case. Here the drawing, engineering details, setting up of plant, conducting trial runs, commissioning of plant is also part and parcel of the contract. The price for the same has been agreed upon in the contract, but while billing separate price has not been assigned to them. It is, therefore, a composite package which does consist of some material also, The entire package is inseparable and is accordingly considered as 'Rendering of one single service'. If it was only 'Sale of Goods', then this should have been sale of Goods only. The other services would not have come. In other words 'Sale of Goods' and when delivery takes place, thereafter services, like erection, installation, cold runs, commission etc. take place. The appellant was, therefore, bound to deduct tax at source. The tax and interest levied by the AO is, therefore, confirmed."

(e) The assessee has challenged the findings of the learned CIT(A) before us in these appeals.

In the setting of the above background, we proceed to consider the grounds of appeal taken by the assessee.

6. The stand of the assessee is that the contracts in pursuance of which the assessee made payments were not for carrying out "any work" within the meaning of Section 194C so as to attract the liability for deduction of tax at source and in the event of failure to do so the liability under Section 201(1)/(1A) of the Act.

6(1). In support of this stand, the assessee has raised following pleas in the grounds of appeal:

> (A) That the payment made by the assessee in pursuance of the contract entered into with M/s GEC India Ltd. were not covered under the provisions of Section 194C of the Act.
>
> (B) That the contract/contracts was/were basically for supply of equipment, plant and machinery and other accessories as were necessary for setting up the equipment, which was distinct from 'Work Contract".
>
> (C) The contracts provided terms and conditions with regard to satisfactory performance of the equipment and bills raised by the supplier of the equipment related to supply of commodity as manufactured by the supplier.
>
> (D) That the contracts in question were basically for supply of goods covered under the Sale of Goods Act and the provisions of Section 194C were not applicable to such

contract.

(E) That the mere fact that the supplier of the equipment was also required to render technical and technological assistance and was responsible for conducting trial runs in commissioning of the plant cannot be a ground to attract provisions of Section 194C.

(F) That the learned CIT(A) has not considered the aspect that labour inputs as were required in setting up the sub-station by using the 'equipment and. technology supplied by M/s GEC India, were provided by the assessee at its own cost.

(G) That the consideration, that the arrangements made by the supplier was in the nature of turnkey project was wholly irrelevant.

6(II). In the synopsis submitted by the assessee, these arguments have been elaborated and in support of these arguments, reference has been made to the following salient features of the agreements:

"(a) The contracts were for designing, development, manufacture and sale of a particular machine on one hand; and guarantee for its performance after erection and commissioning;

(b) Although erection and commissioning was not to be done by GEC Alsthom but as a matter of abundant precaution it was decided that their technical staff will supervise the erection and commissioning being done by the company (Principals) at its cost and risk.

(c) Right from civil work to all related electrical work etc, the appellant company made its own efforts and arrangements and also deputed some experts, consultants; and work force to perform the job. Thus, whether GEC Alsthom supervised the civil work, erection and commissioning or not, but at least they did not do any civil, electrical and mechanical work.

(d) After the erection and commissioning was completed GEC Alsthom were responsible to demonstrate actual performance at site and for this they were required to carry out cold and hot trial runs and demonstrate performance of desired standard;

(e) The GEC Alsthom also undertook to comply with standards laid down by UPSEB and other competent authorities concerned in the supply of all equipments and machinery.

(f) The GEC Alsthom also undertook to guarantee performance for 2 years after start of operation. "

6(III). On behalf of the assessee, detailed arguments have been submitted to support the contention that the provisions of Section 194C are not applicable in its case. In this regard, reliance has been placed on the following decisions:

> (1) Associated Cement Co. Ltd. v. CIT (1993) 201 ITR 435 (SC) (2) Chamber of Income-tax Consultants and Ors. v. CBDT and Ors. (1994) 209 ITR 660 (Bom) (3) S.R.F. Finance Ltd. v. CBDT (1995) 211 ITR 861 (Del) (4) All Gujarat Federation of Tax Consultants v. CBDT and Ors. (1995) 214 ITR 276 (Guj) (5) Madras Bar Association and Ors. v. CBDT and Ors. (1995) 216 ITR 240 (Mad) (6) Rakesh Raj & Associates v. CBDT and Anr. (1997) 223 ITR 282 (P&H) (7) Rajasthan Tax Constants Association and Ors. v. CBDT and Ors. (1998) 229 ITR 657 (Raj) (8) Birla Cement Works Ltd. v. CBDT and Ors. (2001) 248 ITR 216 (SC) (9) Bombay Goods Transport Association and Ors. v. CBDT and Ors. (1994) 210 ITR 136 (Bom) (10) Calcutta Goods Transport Association & Am. v. Union of India and Ors. (1996) 219 ITR 486 (Cal).
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> (11) V.M. Salgoancar & Bros. Ltd. v. ITO and Ors. (1999) 237 ITR 630 (Kar) (12) CBDT v. Cochin Goods Transport Association (1999) 236 ITR 993 (Ker) (13) Ekonkar Dashmesh Transport Co. v. CBDT and Anr. (1996) 219 ITR 511 (P&H).
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> (14) Hindustan Shipyard Ltd. v. State of A.P., JT (2000) SC 29.
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> (15) Vadilai Dairy International Ltd. v. Asstt. CIT, Order of ITAT dt. 13th Nov., 2000, in ITA No. 642 and 643/Pune/1999.

7 The stand of the Department is that the contract was for carrying out the work on 'turnkey' basis and, therefore, the provisions of Section 194C are clearly attracted.

7(1) In support of this stand, the Department has assigned following reasons:

> (A) That the agreements were basically for setting up of 220 KVA sub-station in the factory premises of the assesses, Thus, the contractor was asked to carry out the entire work on turnkey job basis.
>
> (B) That the assessee had himself stated before the Allahabad High Court in the affidavit of its Chairman that the job was to be done by the GEC India Ltd. on turnkey project basis.
>
> (C) That through second agreement dt. 22nd Sept, 1992, the assessee engaged the contractor for installation of 220/33KV Electric sub-station, for design, fabrication, procurement, supply, supervision of erection, commissioning and approval of design and drawing from UPSEB and these factors show that the contractor was interested with the entire work covering, designing, manufacturing procurement and supply etc. of the equipments.

(D) That the work was not for sale of goods per se or chattle qua.

(E) The agreements which were divided into three parts were in substance only that broken into three parts were in substance one composite agreement provided for a fixed price, schedule intensive work contract, in which the contractor was required to discharge a wide variety of responsibility including duty to design, engineering, procurement, installation, commission, performance test, cold/smooth runs, to train foreign and maintenance staff and several other services connected therewith. In these agreements, price was fixed not for individual items of goods and services, but for the entire work as a whole. Thus, these facts show that it was a turnkey job that was awarded to the contractor under the agreement.

(F) The agreements if construed as a whole, go to establish that they were for carrying out the work within the meaning of Section 194C(1).

(G) The provisions of Section 194J were not at all relevant, because the amendment inserted w.e.f. 1st July, 1995, was to attract liability of tax deduction at source under conditions mentioned therein.

7(II). In support of the above arguments, the Revenue has placed reliance on the following decisions:

(i) Associated Cement's case (supra).

(ii) Birla Cement Works v. CBDT and Ors. (supra)

(iii) State of HP v. Associated Hotels of India Ltd. (1972) 29 STC 474 (SC).

(iv) Vanguard Rolling Shutters & Steel Works v. CST (1977) 39 STC 375 (SC)

(v) Associated Cement Co. Ltd. v. CIT (1979) 120 ITR 444 (Pat)

8. In view of the arguments advanced by the parties before us in support of their respective contentions and in view of the grounds taken by the assessee in these appeals, and also in view of the material placed before us, we have to consider and decide the following issues :

I. Whether the GIG India Ltd. rendered services and whether on such services provisions of Section 194C are applicable ?

II. Whether the contracts/agreements entered into between the assessee and GEC India Ltd. were basically for 'carrying out work' so as to attract the provisions of Section 194 or III. Whether the work done by GEC India Ltd. was on the basis of Turnkey Project system ?

Issue No. 1 :

9. So far as the scope of Section 194C and definition of 'carrying out any work' is concerned, the issue has been considered by the Hon'ble High Courts and by the Hon'ble apex Court in several decisions, particularly, on the point as to whether provisions of Section 194C cover the activities and services rendered by the consultants and professional. In this regard, the CBDT had also issued circulars, particularly, Circular No. 86 dt. 29th May, 1972, Circular No. 93 and 108 dt. 26th Sept., 1972, circular dt. 8th March, 1994 and other circular letters. The ambiguity arose on account of interpretation of the decision of Hon'ble Supreme Court of India in the case of Associated Cement Co. Ltd. v. CIT (supra). The CBDT on the understanding of the said decision found that the provision of Section 194C were applicable to all types of contracts for carrying out 'any work', such as transport contracts, service contract, labour contracts, material contracts as well as works contract etc., The CBDT, thus, issued circular dt. 8th March, 1994, on the basis of said judgment of Hon'ble Supreme Court of India and pointed out that 'any work' is not restricted to works contract and is wide enough to cover up 'any work', which is carried out through a contractor in a contract This circular, which withdrew the earlier circular was declared to be invalid in large number of cases including the following cases :

(i) In the case of Chamber of Income-tax Consultants v. CBDT (supra), the Hon'ble Bombay High Court held that the Circular No. 681 of CBDT dt. 8th March, 1994, stating that tax to be deducted at source on payment of fee for services of professional like lawyer, CAs etc. was not valid. Hence, Section 194C is not applicable to professional fee. The Hon'ble Bombay High Court considered the entire history and various circular letters including amendments inserted in Section 194 and observed as under:

"The conclusion arrived at by us that Section 194C does not apply to payments made by way of professional fees also gets support from the fact that in the year 1987, in the Finance Bill, 1987, provision was sought to be made to provide for deduction of tax at source from payments by way of professional fees by insertion of a new section, viz., Section 194E. The said proposal was, however, dropped at the time of passing of the said Bill. The legislative intent of Section 194C becomes further clear from the fact that while incorporating Section 194H in the Act in the year 1991 to provide for deduction of tax at source in respect of payments made by way of commission, brokerage, etc., "payments made for professional services" were specifically excluded from the scope and ambit of the said section."

(ii) The Bombay High Court also considered the issue in the case of Bombay Goods Transport Associated and Ors. and held that the circular dt. 8th March, 1994. was based on erroneous reading of decision of Hon'ble Supreme Court of India in Associated Cement Company's case (supra).

(iii) In the case of Madras Bar Association v. CBDT,(supra) the Hon'ble Madras High Court also considered the relevant circular letters and held that circular No. 681 issued by CBDT is violative of Articles 14 and 265 of the Constitution of India and opposed to Section 194C. In so far as it requires

deduction at source from payments made by way of professional fee to Advocates, Solicitors, Tax Practioners and Chartered Accountants etc. for services rendered by them.

(iv) In the case of SRF Finance Ltd. v. CBDT (supra), the Delhi High Court held that while issuing Circular No. 681 dt. 8th March, 1994, CBDT had missed the real purport of the decision of Hon'ble Supreme Court of India in the case of Associated Cement Co. v. CIT (supra). It was also held that Section 194C of the Act does not govern the deduction of tax at source from payments of fee towards professional or technical services on the interpretation of the term 'any work'. The Hon'ble Court made the following observations:

> "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. To the extent that the circulars govern payments to commission agents and brokers for the services rendered by them, they travel beyond the provisions of Section 194C and have no legal force and the authorities functioning under the Act are not bound by them."

(v) The issue was also considered by Hon'ble Gujarat High Court in the case of All Gujarat Federation of Tax Consultants (supra) and it was held that the rendering of services in the course of one's own business of being required by others cannot be equated with carrying on any work for others under a contract, as contractor, merely because one had been paid fees/charges or consideration for any agreement. In the view of Hon'ble Court, before a person can be called a contractor within the meaning of Section 194C, his status must have nexus in its characteristic as carrying out work for another person as a contractor in the ordinary sense and not merely carrying on activities of his own business or profession in the ordinary course by charging fee, remuneration, freight etc. The relevant observations of the Hon'ble Court are being extracted below :

> "Hence engagement for professional service or services simpliciter which do not involve contract for carrying out any work itself, or a contract for labour for carrying out such services, are not within the purview of Section 194C of the Act as it exists. Therefore, the contract for advertising, contract of goods transport simpliciter, persons engaged in the business of brokers as commission agents without carrying any work for their principal or professionals rendering professional services by charging fees during the course of the profession, are not amenable to the provisions of Section 194C of the Act. The earlier Circular No. 86 dt. 29th May, 1972, and Circular No. 93 dt. 26th Sept., 1972, contemporaneously clarifying the ambit and scope of the provisions concerning service contracts held out the correct view and there was no justification for issuing instructions to alter the construction on the basis of the decision in the case of Associated Cement Co. (supra). Circulars Nos. 666 dt. 8th Oct., 1993, and 681 dt. 8th March, 1994, were liable to be quashed."

(vi) The matter was also considered by the Hon'ble Calcutta High Court in the case of Calcutta Goods Transport Goods Association v. Union of India (supra). After referring to the decision of Hon'ble Supreme Court of India in the case of Associated Cement's case relating to scope of tax deduction at source under Section 194C of the Act, the Hon'ble Court observed that the decision of Hon'ble Supreme Court of India has not been correctly understood or interpreted by the CBDT. According to the Hon'ble Court, the word 'work' has been used as a 'noun' in Section 194C, not as a Verb'. The Hon'ble Court also made following observations while interpreting the term 'work' :

> "The word "work" may be used in two senses; it may mean either the labour which a man bestows upon a thing, or the thing upon which the labour is bestowed. The fact that two meanings are possible to be given to a word means that there is an ambiguity in the word itself. Even assuming that the decision of the Supreme Court is not restricted to the facts of the case before it, it is clear that without the word "any work" being defined, the applicability of Section 194C to a given situation cannot be determined. The Supreme Court had observed that "any work" means any work. This does not take the matter any further. The Supreme Court has not gone on to clarify or explain or define the sense in which the word was being used by the Supreme Court. That the word "work" does not have the widest possible connotation is also clear from the fact that Parliament had sought to bring professional services and other such "works" in the wider sense within the net of tax deduction at source. If such "work" were already covered by Section 194C it was wholly unnecessary to introduce separate statutory provisions in this regard. The only conclusion that follows from this is that the word "work" is to be understood in the limited sense as product or result. The carrying out of work indicates doing something to conduct the work to completion or an operation which produces such result. That being so the mere transportation of goods by a common carrier does not affect the goods carried nor are the goods affected thereby and as such cannot be brought within the scope of Section 194C of the Act. Common carriers of goods by road are not liable to deduction of tax at source under Section 194C of the IT Act, 1961, and the provisions of the section are not applicable to them."

(vi) In the case of Rakesh Raj & Associates v. CBDT (supra), the Hon'ble Punjab and Haryana High Court considered the scope of Section 194C in the context of various circular letters and held that the Board had issued Circular No. 681 dt. 8th March, 1994, giving an erroneous and misconceived interpretation to the observation of the Hon'ble Supreme Court of India in the case of Associated Cement Co. Ltd, and, thus, the circular was not valid and was liable to be quashed. The Hon'ble Court also made following observations:

> "The impugned circular issued by the Board is held to be beyond the scope of Section 119 and the result of misreading of Section 194C of the Act. The Board had earlier taken a different view about the applicability of Section 194C while issuing directions in its two circulars dt. 29th May, 1972, and 26th Sept., 1972, but, later on, giving an erroneous and misconceived interpretation to the observations of the Supreme Court in Associated Cement Co. Ltd.'s case (supra), the Board issued unsustainable and

> illegal directions (Circular No. 681, dt. 8th March, 1994). The intention of the Legislature, while enacting Section 194C, is clear and unambiguous and it shall have to be seen in the background of subsequent legislative acts which have already been discussed earlier. Once a provision by way of enactment of Section 194E was attempted to be made in the Act in the year 1987, and since that effort did not materialize, a new provision ultimately came to be inserted in Section 194J in the year 1995, The impugned Circular No. 681 (see (1994) 206 ITR (St) 299), dt. 8th March, 1994, is, therefore, quashed."

(vii) In the case of V.M. Salgaocar & Bros, (supra), the Hon'ble Karnataka High Court also considered the scope of term 'any work' appearing in Section 194C of the Act and after considering the dictionary meaning of term 'work' and also other decisions, the Hon'ble Court observed as under:

> "The word "work" refers and comprehends the activities of the workmen and not the operation in the factory or on machines. It is the physical force which has been comprehended in the word "work". Section 194C(1) refers to carrying out of any work. If the Sub-section (1) is read as a whole then it could be interpreted that it is the work of labour which is done by the contractor or he may supply the labour to do the work as a sub-contractor. Sub-section (2) of Section 194C also refers to the contract for carrying out the work undertaken by the contractor or for supplying wholly or partly any labour which the contractor has undertaken to supply."

(viii) In the case of Rajasthan Tax Consultants Associates v. CBDT (supra), the Hon'ble Rajasthan High Court, following the decision of Delhi High Court in the case of High Court Bar Association v. CBDT (1995) 81 Taxman 324 (Del), and the decision of Hon'ble Madras Bar Association v. CBDT (supra), held that the expression 'any work' which was considered by the apex Court in the case of Associated Cement Co. Ltd. has to be understood in a particular context and the interpretation, which CBDT took was beyond the scope of Section 194C.

10. The Hon'ble Supreme Court of India considered the scope of the term "any work" appearing under Section 194C in the case of Birla Cement Works v. CBDT and Ors. (supra). The Hon'ble Court after referring to its earlier decision in the case of Associated Cement Co. Ltd. (supra), the circular of the Board No. 681 dt. 8th March, 1994, and the views of various Hon'ble High Courts for interpreting the said circular of the board held that the word 'work' means engagement in the performance of a task, duty or the like. Acc6rding to the Hon'ble Court, the term 'work' covers all forms of physical and mental exertion or both combined for the attainment of some object other than recreation or amusement. The Hon'ble Court observed that for attracting the provisions of Section 194C, following conditions have to be satisfied, namely, (i) there must be a contract between the person responsible for making payment and the contractor; (ii) the contract must be for carrying out "any work"; (iii) the work is being carried out through the contractor; (iv) consideration for the contract should exceed Rs. 10,000, i.e., the amount fixed by Section 194C and (v) the payment is made to the contractor for the work carried out by him.

11. So far as controversy regarding the nature of the work involved in carriage of goods, the Hon'ble Supreme Court of India upheld the view of Hon'ble Punjab & Haryana High Court taken in the case of Ekonkar Dashmesh Transport Co. v. CBDT (supra), wherein it was held that the circular issued by the Board, insofar as it provides that the Transport contracts fall within the mischief of Section 194C is legal and valid and the challenge to this provision in the circular cannot be sustained.

11.1 So far as the applicability of Expln. III is concerned, the Hon'ble Court was of the view that Expln. III is not clarificatory or retrospective in operation and Section 194C is not applicable to transport contracts i.e., contacts for carriage of goods before insertion of Expln. III. This view was taken on the basis of following observations made by the Hon'ble Court:

> "Two interpretations are reasonably possible on the question whether the contractor for carrying of goods would, come or not within the ambit of the expression "carrying out any work". One of the two possible interpretations of a taxing statute, which favours the assessee and which has been acted upon and accepted by the Revenue for a long period should not be disturbed except for compelling reasons. There can be no doubt that if the only view of Section 194C had been the one reflected in the impugned circular, then the issue of earlier circulars and acceptance and acting thereupon by the Revenue reflecting the contrary view would have been of no consequence. That, however, is not the position. Further, there are no compelling reasons to hold that Expln. III inserted in Section 194C w.e.f. 1st July, 1995, is clarificatory or retrospective in operation. We hold that Section 194C before insertion of Expln. III is not applicable to transport contracts, i.e., contracts for carriage of goods."

11.2 It may be pointed out that so far as the professional services are concerned by amendment inserted under Section 194J, which became effective from 1st July, 1995 fee for professional and technical services is also covered within the ambit of 194C for deduction of tax at source. However, as held by the Hon'ble Court while interpreting Expln. III to Section 194C, provisions contained in Section 194J, shall also operate prospectively and not retrospectively meaning thereby in relation to the contract for services liability for deduction of tax at source cannot arise before asst. yr. 1995-96,

12. In view of the analysis of legal position and case laws as discussed above, we are of the opinion that the contract entered into between the assessee and GEC India Ltd. was firstly not a contract for rendering professional services and secondly even if it be so, the provisions of Section 194C cannot be made applicable to the cases of rendering of professional services before the asst. yr. 1995-96. Since the assessment years involved in these appeals are asst. yr. 1993-94, 1994-95 and 1995-96, the provisions of Section 194C r/w Section 194J shall not be attracted to these assessment years.

13. It may be pointed out that the component of service is negligible as compared to the component of carrying out the work of other nature or if rendering of service is just incidental to supply or sale of material, then such negligible component cannot be a significant factor for deciding the nature of work, because it is the substance and predominant nature of the work, which has to be taken into account.

14. In view of the above discussion, we decide the issue No. 1 in negative. Issue No. 2

15. The crux of this issue is as to whether payments made by the assessee company were for "carrying out any work" within the meaning of Section 194C so as to attract the liability for deduction of tax at source or the payments were for supply of machinery and equipments only. In other words, whether the contract/contracts between the assessee and GEC India Ltd. were for carrying out any work or work contract or were for purchase and supply of goods.

16. The assessee has taken the stand that these agreements were basically sale agreements as these were meant for supply of the equipments etc., whereas the stand of the Department is that the agreements and contracts entered into between the assessee company and GEC were work contracts. The plea of the Department in this regard is that the agreements, though broken in three parts were in substance, one composite contract providing for a fixed price, scheduled intensive work agreements in which the contractor was required to discharge a wide variety of responsibilities including duties to provide for the design, engineering, procurement, supply, installation, commissioning, performance test etc. and to train and maintain staff and to render the services connected therewith. In this regard, further argument of the Department is that the agreements should be considered as a whole and in their entirety and if viewed from this angle, it will be obvious that these contracts were neither for supply of goods nor for services as such. Rather, they were for carrying out the "work" within the meaning of Section 194C of the IT Act, 1961.

17. After taking into account the rival stands of the parties before us and their respective contentions to support such stands and after considering the entire material on record including the agreements referred to above, we are of the view that agreements/contracts entered into between assessee company and M/s GEC India Ltd., were, in substance, and in form, the agreements for supply of goods and not the agreements for carrying on work or work of contract. We assign the following reasons in support of this finding.

18. At the outset, it may be pointed out that to determine the nature of a contract i.e., to ascertain as to whether a particular contract is a contract of sale or a contract of work or both, the nature of the transaction, the intention of parties, the form of agreement and other related circumstances are to be taken into account to determine the substance of the contract, which is a deciding factor for ascertaining its nature.

19. The test for determining the 'substance' has been laid out in Benjamin's "Sales of Goods" (4th Edition) in paras 1.042, in the following words :

> "Where the parties have not settled the question by the form of their contract, the decision whether the bargain is one for the performance of work or the sale of a chattel must be made by the Court. It is now well established that the Court does so by having regard to "the substance" of the contract--atleast which assumes that every contract must be in substance one or the other. This is a legitimate inquiry where the supply of the goods and the performance of the work are, to some extent at least, separate elements in the bargain; but it breaks down in the case where all the work

> goes into the making of the goods to be supplied, so that the two are inseparable. This point has unfortunately not been appreciated. In the former type of contract, the determination of "the substance" is a matter of degree, involving an assessment of the relative importance of the two elements; but in the latter type the designation of the contract as one of work or sale must depend upon either an arbitrary formula or a superficial impression."

(Quoted from the decision of Hon'ble Supreme Court of India in the case of Hindustan Shipyard Ltd. v. State of A.P. JT (2000) (8) 32, at p. 41) 20 In the case of Hindustan Shipyard Ltd. v. State of A.P. JT (2000) (8) p. 32, the Hon'ble Supreme Court of India has laid down the following test :

> "There may be three categories of contracts: (i) The contract may be for work to be done for remuneration and for supply of materials used in the execution of the work for a price: (ii) It may be a contract for work in which the use of the materials is accessory or incidental to the execution of the work and (iii) it may be a contract for supply of goods where some work is required to be done as incidental to the sale. The first contract is a composite contract consisting of two contracts one of which is for the sale of goods and the other is for work and labour. The second is clearly a contract for work and labour not involving sale of goods. The third is a contract for sale where the goods are sold as chattels and the work done is merely incidental to the sale."

21. In the context of above criterion, we proceed to examine the nature of the contracts executed by the parties, which are relevant in these appeals.

(i) The first contract is dt. 19th May, 1992, available at pp. 90 to 173 of the paper book. Some of the salient provisions and features, which support our finding recorded above are as under:

> "(i) In the contract, the assessee is referred to as purchaser and the GEC India Ltd. is referred and defined as supplier. The main clause of the contract is as under:
>
> "A. Supplier has offered and the Purchaser has entrusted to the 'Supplier', the work covering the design, detailed engineering, manufacture, procurement, supply and demonstration or performance guarantees of the equipment as defined in the Contract."

Now is hereby agreed and declared by and between the purchaser and the seller as follows:"

22. In para 1.4, scope of supply has been defined to mean the equipments and spares to be provided by the suppliers under the contract as indicated in Annexure 1. Annexure 1, which is available at p. 115 of the paper book contains the details of the equipment to be supplied by the suppliers. These details are as under

> Equipment Detail

1. Electric Arc Furnace UHP 50/60 Ton, EBT Arc Furnace with Booster Transformer of 42 MVA

2. Ladie Furnace Ladie Furnace with 10 MVA Transformer.

23. In Article 3 & 4 as well as in Article 5, the contract price, terms of payment and the liability to pay taxes and duty have been defined. These articles are being reproduced "Article 3: Contract price & Terms of payment In consideration of the Scope of Supply as per the Contract for Equipment Supply, Contract price as detailed in Annexure 2 shall become payable to the Supplier in accordance with the terms of payment specified in Annexure 2. The Supplier shall submit within 3 months of signing of the contract the break-up of contract price for the various units.

Article 4 : Contract Price is Firm and Fixed The Contract Price stipulated in Article 3 above shall not be subject to escalation for the entire contract delivery period except Price Variation on the Transoformers. For this price variation of Transformers, IEEMA PVC "e" Series Formulae for power transformers above 8 MVA upto and including 245 KV, will be applicable with base date 1st March, 1992, and subject to a ceiling of Rs. 15 lacs. The relevant IEEMA PVC 'E' Series Formulae for power transformers above 8 MVA upto and including 245 KV, will be applicable with base date 1st March, 1992, and subject to a ceiling of Rs. 15 lacs. The relevant IEEMA PVC formulae is enclosed in Annexure V In the event of delivery dates being postponed/not adhered to by reason of any default on the part of the supplier or their sub-suppliers, the Contractor's Price shall remain firm and fixed for the time extension due to such delays.

Article 5: Taxes, Duties, Levies, etc. The Contract Price is Inclusive of ED/ST (at the prevailing rates as on the date of letter of intent i.e., 28th Jan., 1992) and Supervision of Erection and Commissioning, ex Supplier's Works or ex Subcontractors' Works. A list of such items on which ED/ST is supposed to be charged, with the rates as prevailing on 28th Jan., 1992 will be submitted to the purchaser.

The Contract Price is based on concessional U.P. Sales-tax on supply of 'Kha' Forms by the purchaser for Transformers to be supplied from U.P. Any statutory increase or decrease in the same shall be to the Buyers' account. In case the 'Kha' Form is not given the actual sales-tax paid by supplier shall be reimbursed by Purchaser. "

24. In Articles 6.1 to 6.4, duties of suppliers and purchasers have been laid down. In Article 7(ii)(b), it has been laid down that supplier's representative shall accompany the carriers bringing the equipments to the purchaser's site.

25. Regarding delivery schedule, provision has been made in Article 8. In Article 9 with the contract, the warranty period has been laid down. It may be pointed out that the warranty clauses are similar to warranty clauses to sale of goods. For example, in Clause 9,2, the following condition is laid down :

"9.2. Supplier Warrants that the Equipment supplied are free from defects for a period of 12 months after commissioning (final acceptance) or 18 months from the date of receipt and acceptance of last major consignment at site whichever is earlier."

26. Regarding defective supply, enough care has been taken by laying down following conditions in Articles 9.5 to 9.7, which are as under:

"9.5 If the Supplier fails to repair or replace the plant within reasonable time, then in urgent cases, the Purchaser may after giving due notice to the Supplier repair or replace the same at the Supplier's sole risk and expense without prejudice to any other rights under the Contract. All direct expenses incurred by the Purchaser in such a case, shall be debited to the Supplier and recovered from them.

9.6 In respect of all bought out/proprietary items supplied by the Supplier under this Contract, all drawings and other engineering documents shall be supplied to the Purchaser, as provided by their sub-suppliers, Supplier shall also supply properly documented information such as detailed specification, unpriced Purchase orders, etc. to enable the Purchaser to directly procure such items from the concerned sub-supplier in future.

9.7 Purchaser shall have full right of access to all benefits free of cost for Know-how that are accruing to the Supplier by way of upgradation of technology, improvements & modernization in plants, equipment know-how and technology developed, by Supplier through their own in house R & D efforts upto a period of five (5) years from the date of successful commissioning."

"Performance guarantee has also been laid down in Article 10, which is as under :

"The Supplier warrants that the Equipment shall perform to the parameters laid down in Annexure 4. The Supplier shall demonstrate the performance of equipment as per the details given in Annexure 4."

27. In Article 16, the conditions regarding supply of items in shares have been laid down, just for reference, we may refer to the following conditions:

"Article 16: Spares/Consumables: Commissioning items:

The Supplier shall supply the plant equipment sufficient quantity of items/ spares required for start up and commissioning and final acceptance of the equipment.

These items shall be based on the Supplier experience in commissioning similar plants and shall be available at site alongwith the equipments. The supplier shall be responsible for having the required items at the site alongwith the equipment before commencement of the start up operation. Any surplus of commissioning spares/tools

> and tackles, etc., which has not been bought by the Purchaser shall be Supplier's property and Supplier will be free to take back such spares. However, the Purchaser shall have the option to purchase such spares at a reasonable list price."

28. In accordance with the Article 16.4, supplier undertook that supplies of necessary maintenance spares shall be made available by him to the purchaser.

29. In para 16.5, the following stipulation has been made regarding supply of spare parts:

> "16.5 All spare parts shall be properly documented and identified and full details such as technical specification/datalogues detailed description, unpriced purchase order copies, etc. shall be furnished to enable the Purchaser to procure the same directly from the sub-suppliers, if the Purchaser so desires."

30. Article 21 and 22 relate to supply of instructions manual and progress report etc.

31. The details of equipments to be supplied have been specifically given in Annexure "A", which carries following captions :

> "Scope of supply far electric are furnace (Hydraulic Regulations).

32. Likewise, details of other electrical equipments have also been given in the Annexure to the above mentioned agreement. A perusal of these details indicate that each item or equipment has been mentioned with minute details and specifications.

33. The contract price for the design and supply etc. and terms of payment has been given in Annexure 2.

34. The time of schedule has been given in Annexure III.

35. A perusal of Annexure II & in attached with contract goes to show that the contract price has been fixed in advance.

36. The second contract, which is for installation of 220/33 KV Electric supply sub-station inclusive of power transformer and Auxiliary transformer is dt. 22nd Sept., 1992, which is available at pp. 174 to 213 of the paper book. The main features of this contract are also similar to the first agreement. Hence we are not required to repeat the same.

37. It may be pointed out that in Annexure III to this contract, the contract price has been fixed at Rs. 3,31,000 net inclusive of all taxes. The terms of payments have also been given in this annexure.

38. The third contract is for design, manufacture, procurement of supply of equipment and it is dt. 30th Sept., 1994. The copy of this agreement is available at pp. 214 to 234 of paper book. In this agreement also, same terminology and same terms have been adopted. The contract price, the terms

of payment, the warranty period are similar in this agreement as in the other two agreements. The mode of payment has been given in Annexure 3, which is available at p. 233 of the paper book

39. The other salient feature in relation to these agreements relates to payments for purchases made. Annexure 'A' available at p. 235 of the paper book describes the items purchased, contract value and the Bills raised. These details, which are contained in annexure No. 1 are being reproduced below:

> Sl. Wo.
>
> Contract for purchase/sale of Contract value Bill raised against supply of equipment EBT/LRF 6,99,00,000.00 6,78,47,338.56 220KVA Substation 3,31,00,000.00 3,42,13,342.72 Fume Extraction System (FES) 41.00,000.00 38,23,998.13 Total 10,71,00,000.00 10,58,84,679.41

40. The assessee has also filed photo copies of bills and vouchers, which are available at p. 242 to 368. In these bills, price of various items has been given.

41. The assessee has also filed the bill dated 31st May, 1993, which is for a sum of Rs. 50 lakhs and which relates to various accessories in setting up of the purchase. Photocopies of these bills have been filed in the paper book. Invoice dt. 31st March, 1995, shows the total net sales at Rs. 5,10,578. The details of accessories supplied are mentioned in this bill. Likewise, in the other bills dt. 31st Aug., 1995, 4th Sept, 1995, 31st July, 1995, 31st Aug., 1996 etc., the details of items and prices thereof have been mentioned.

42. After examining the various clauses and stipulations of the agreements mentioned above and also Bills of payment and payment actually made, we are led towards irresistible conclusion that the agreements entered into between the assessee and GEC India Ltd. were agreements for sale or supply of goods and were not merely work contracts.

43. The issue relating to the nature of contract regarding manufacture and supply of ships came for consideration before the Hon'ble Supreme Court of India in the case of Hindustan Shipyard Ltd. v. State of AP (supra),

44. In that case, the Hon'ble Supreme Court of India has laid down the following test "14. The principles deducible from the several decided cases may be summed up as under:

> 1. It is difficult to lay down any rule or inflexible rule applicable alike to all transactions so as to distinguish between a contract for sale and a contract for work and labour.
>
> 2. Transfer of property of goods for a price is the linchpin of the definition of sale. Whether a particular contract is one of sale of goods or for work and labour depends upon the main object of the parties found out from an overview of the terms of the

contract, the circumstances of the transactions and the custom of the trade. It is the substance of the contract document/s, and not merely the form which has to be looked into. The Court may form an, opinion that the contract is one whose main object is transfer of property in a chattel as chattel to the buyer, though some work may be required to be done under the contract as ancillary or incidental to the sale, then it is a sale. If the primary object of the contract is the carrying out of work by bestowal of labour and services and materials are incidentally used in execution of such work then the contract is one for work and labour."

45. In that case, the contract was found to be a contract for sale of completely manufactured ship to be delivered after successfully priced in all respects to the satisfaction of the buyer. According to the report, such a contract was contract for sale of made-to-order goods i.e., ship for N. S. bill. If we apply the ratio of this decision to the facts of the case, then we come to the conclusion that it is contract of sale so far as the present agreement is concerned.

46. In the case of Vadilai Diary International Ltd. v. Asstt. CIT (supra) the Tribunal, Pune Bench, considered the case where the assessee company made payments to manufacturers of packing material, who manufactured such packing material as per assessee's specifications on which some printing was done by the manufacturer according to the requirements of the customers.

47. It was held that there was no work contract, since the main purpose in buying packing material was to obtain goods for the purpose of packing and the fact that incidentally some printing was required to be done by supplier was of no consequence. Hence, in view of this decision also, the agreements involved in these bills are to be treated as agreement for sale.

48. The submission of learned senior Departmental Representative was that decision in the case of Hindustan Shipyard (supra) was in different context and the definition of sale as appearing in Section 2(h) and 1 of Andhra Pradesh General ST Act, 1957 was involved. We are unable to agree with this submission because in that case, the nature of work contract and contract for sale was examined and the Hon'ble Supreme Court of India had laid down the principles on these supplies. Hence the ratio of that case is fully applicable to the present matter.

49. So far as the decision of Tribunal in Vadilai Diary International Ltd. v. Asstt. CIT (supra) is concerned, we are unable to agree with the contention of Shri D.K. Srivastava that this decision is not applicable.

50. After considering the entire relevant material including the agreements, the vouchers and payment bills and also considering the nature of equipments supplied and ancillary work of supervision, designing etc. done by the supplier company, we are of the opinion that the composite character of the transactions involved in the

three agreements was that of sale of goods. On perusal of the bills filed by the assessee which are available in the paper book at pp. 242 to 368, it is found that these basically relate to supply of material by the said company and disclose the price of net sale relating to various parts, equipments and goods. The sale bills also include the amount of sales-tax and excise duty etc. A reference, in this regard, may be made to the bill dt. 30th March, 1994 (p. 331), bill dt. 31st Oct., 1994 (p. 332) bill dt. 10th Nov., 1994 (p. 335) and other bills available from p. 335 to p. 368. In most of these bills, the amount of sales-tax and excise duty has been shown separately and has been included which shows that the bills relate to sale of goods and for such sales, the sales-tax and excise duty etc. was paid by the purchaser. If the total amount paid by the assessee is also examined and considered, then it is found that only a negligible or insignificant part of the amount is for the supervision charges or other ancillary activities not actually relating to price of goods sold and supplied to the assessee by the supplier company. It may also be pointed out that the civil work and some of the mechanical and electrical work also done by the assessee company though under supervision of the supplier company as per the terms of agreement. This also shows that the entire work was not done by the assessee. In any case, on consideration of the entirety of the facts and circumstances and the composite character of the agreements, dominant or predominant nature of contracts is found to be that of sale and not of work of contract.

51. If the ratio laid down in the case of Hindustan Shipyard Ltd. (supra) is applied to the facts of the present case, it is found that the supply of the material was the essence of the contract and the services and other materials provided by the Supplier company were only incidental to the contract of supply of goods. As held in the case of Hindustan Shipyard Ltd. (supra), the bill of material used in the installation of the plants etc. was on account of supply of the equipments. Thus, the agreements entered into by the assessee were basically agreements for sale and supply of goods and the supervision work and other activities were merely incidental to sale of goods. The transactions included in the three agreements, therefore, were not contracts for work or contracts of work.

52. In the case of Union of India v. Central India Machinery Mfg. Co. Ltd, (CIMMCO), (supra), on the basis of terms and conditions, the Hon'ble Supreme Court of India held that material procured or purchased by the company against 90 per cent billed, of which advance was taken from the Railways, did not before their use in the construction of the wagons pass to the Railways. It was held that the wagons were sold for a price and the contract was a contract for the sale of wagon and not a work contract. Thus, on the basis of the abovementioned facts and analysis of the relevant judicial decisions, it is found that the agreements were agreements for sale and not for carrying out work so as to attract the provisions of Section 194C.

53. This issue is, therefore, decided in favour of the assessee.

54. Grounds Nos. 3, 4 & 5 are decided in favour of the assessee. Issue No. 3: Ground No. 6:

55. Through this ground, it is pleaded that learned CIT(A) has not considered the relevant material submitted before him and therefore he has not correctly appreciated the nature of agreements.

56. At the time of hearing, the learned counsel for the assessee pointed out that in the installation of the equipments, the civil work and labour included were provided by the assessee itself at its own cost. In this regard, reference was made to the reply/letter dt. 30 June, 2000, submitted before the CIT(A), a copy of which is available at p. 1 to 3 of the paper book and also to the reply dt. 13th April, 1999, available at p. 4 to 7.

57. In this regard, the reference was also made to the reply/letters written by the assessee to the CIT(A) during the course of hearing of appeal by him. These letters are available at p. 1 to 13 of the paper book. The learned counsel for the assessee pointed out that the company was simply required to design, develop and manufacture and install the equipments and major civil work, electrical work was done by the assessee itself. In this regard, specific reference has been made to the following plea raised in reply to letter dt. 30th June, 2000 :

"Right from civil to all related electrical works etc., the assessee company made its own effort and arrangement and also deputed some experts, consultants and work force to perform the job. Thus, whether M/s GEC Alsthom India Ltd. supervised the civil work, erection and commissioning or not, but atleast they did not do any civil, electrical and mechanical work."

[Clause (c) on p. 2 of the letter dt. 30th June, 2000]

58. In view of the above referred reply also, it is clear that the entire work of installation was not carried out by the company, rather the company provided the equipments, supplied the same and also undertook to install the same at the premises of the assessee, but the civil work, etc. was carried out by the assessee. So, it cannot be said that the work done by GEC India Ltd, was on 'turnkey job basis'. Under these circumstances, in our opinion, the learned CIT(A) was not justified in taking the contract/or setting up of project on turnkey basis. The learned CIT(A) has laid much emphasis on the affidavit of Shri R.K. Somani, Managing Director of the assessee company filed before the Hon'ble High Court in a writ petition and has tried to draw inference from that affidavit that the work was in the nature of turnkey project. The learned senior Departmental Representative has also made reference to that affidavit. In our opinion, it is extraneous material filed in different context and cannot be a valid and relevant criterion for deciding the nature of contract, particularly, in view of the main features or salient features, which have been recorded by us in the body of this order.

59. Thus, in the totality of the circumstances, including the substance and the form of agreement, as well as the mode of payment, it is held that the work done by the company (GEC India Ltd.) was not on the basis of turnkey project, rather the work was for supply of goods. Hence, we are unable to concur with the findings recorded by the learned CIT(A) which are reversed by us. Consequently, Issue No. 3 is also decided against the Revenue by holding that the agreements entered into by the assessee and the suppliers were not for doing the work on 'turnkey project' basis.

60. In view of our findings on the issues listed above, all the grounds taken by the assessee in three appeals stand allowed. Since this order shall be applicable to all the three appeals, the demand of tax and interest of Rs. 8,18,274 in asst. yr. 1993-94, Rs. 2,67,865 in asst. yr. 1994-95 and Rs. 98,251 in asst. yr. 1995-96 stand deleted.

61. In the result, all the three appeals are allowed.