A.F.R.

ORDER OD – 1 & 2

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA/72/2012
KAMAL MOOKERJEE & CO. (SHIPPING) PVT. LTD.
VERSUS
COMMISSIONER OF INCOME TAX CAL-III COMMISSIONERATE KOLKATA

WITH

ITA/73/2012
KAMAL MOOKERJEE & CO. (SHIPPING) PVT. LTD.
VERSUS
COMMISSIONER OF INCOME TAX CAL-III COMMISSIONERATE KOLKATA

BEFORE :

THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
AND
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

Date : 3rd April 2024.

Appearance:

Dr. Samir Chakraborty, Senior Advocate
Mr. Abhijit Biswas, Advocate
Mr. Bhaskar Sengupta, Advocate
... for the appellant.

Mr. Soumen Bhattacharjee, Advocate
Mr. Ankan Das, Advocate
Ms. Doyel Dey, Advocate
... for the respondent.

1. Heard Dr. Samir Chakraborty, learned senior advocate assisted by Sri Abhijit Biswas and Sri Bhaskar Sengupta, learned counsel for the appellant assessee and Sri Soumen Bhattacharjee, learned junior standing counsel for the respondent department.

2. This appeal was admitted by order dated 10th January 2012, on the following substantial questions of law:-

   i) Whether in the facts and circumstances of the case the Tribunal was right in holding that in respect of payments made to Calcutta Dock Labour Board by the appellant in terms of provisions of clauses 41(5) and 56(1) of the Dock Workers (Regulation of Employment) Scheme, 1970, framed under the Dock Workers (Regulation of Employment) Act, 1948, the provisions of Section 194C of the Income Tax Act, 1961 are attracted?

   ii) Whether in the facts and circumstances of the instant case the Tribunal was right in holding that the relief granted to the appellant by the Commissioner of Income Tax (Appeals) was devoid of legally sustainable merits?

Facts

3. Briefly stated, facts of the present case are that the appellant assessee is a registered employer under the Dock Workers (Regulation of Employment) Act, 1948 (hereinafter referred to as 'the Act 1948') read with the provisions of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1970 (hereinafter referred to as 'the Regulation Scheme 1970'). The appellant is engaged in the business of stevedoring and container freight services. In order to regulate the employment of dock workers as well as the dock workers registered employer, the

aforesaid Act 1948 and the Regulation Scheme 1970 have been enacted. During the assessment years in question i.e. assessment year 2005-07 and assessment year 2007-08, the appellant herein deposited a sum of Rs.2,22,58,795/- and Rs.1,56,31,495/- respectively with the Calcutta Dock Labour Board (hereinafter referred to as 'the Board') in discharge of its obligations under the Act 1948 and the Regulation Scheme 1970 for the purposes of disbursement of wages of its employees through the Board.

4. By assessment order dated 04.08.2008 under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act 1961) for the assessment year 2006-07 and by assessment order dated 21.12.2009 under Section 143(3) of the Act 1961 for the assessment year 2007-08, the assessing officer held that the main function of the Board is to provide labour to the stevedore i.e. the appellant herein and, thus, while making payment to the Board, the appellant assessee was bound to deduct tax at source under Section 194C of the Act 1961 but it failed to do so, therefore, Section 40(a)(ia) of the Act 1961 will be applicable. Consequently, he disallowed the aforesaid a sum of Rs.2,22,58,795/- for the assessment year 2006-07 and Rs.1,56,31,495/- for the assessment year 2007-08 representing the deposits made by the appellant assessee to the Board without deduction of tax at source under Section 194C. Thus, the amounts so disallowed became part of the total income of the appellant assessee and accordingly it was subjected to tax.

5. Aggrieved with the aforesaid assessment orders, the appellant assessee filed separate appeals against the assessment orders for the above-noted assessment years before the Commissioner of Income Tax (Appeals) which both were allowed. Aggrieved with the orders of the CIT(A), the revenue filed ITA No.199/Kol/2010 [assessment year 2006-07] and ITA No.1545/Kol/2010 [assessment year 2007-08] which both were allowed and the orders of the CIT(A) were set aside by the Tribunal returning a specific finding that the payments made by the appellant assessee to the Board were for supply of labour and thus Section 194C of the Act 1961 is clearly attracted. However, However, by the aforesaid two orders both dated 17th February, 2012, the ITAT has remanded back to the CIT(A) for statistical purposes.

6. Aggrieved with the aforesaid two orders of the ITAT both dated 17th February, 2012, the appellant/assessee has filed the present two appeals which both were admitted on the afore-noted substantial question of law.

Submission

7. Learned Counsel for the appellant/assessee has referred to and carried us to various provisions of the Act 1948 and the Regulation Scheme 1970 and the provisions of Section 194C of the Act 1961. He also referred to the law laid down by Hon'ble Supreme Court in Vizagapatnam Dock Labour Board Vs. Stevadores Association reported at (1969) 2 SCC 801 (paras 19 to 24), a judgment of this Court in Calcutta Dock Labour Board Vs. Payment of Wages Authority, reported at 1981-82 (86) CWN

113 and a judgment of the Hon'ble Supeme Court in Tarseem Singh Vs. Sukhminder Singh JT, reported at (1998) 3 SCC 471 (para 12). He also placed before us a judgment of Hon'ble Supreme Court in the case of Associated Cement Company Ltd. Vs. Commissioner of Income Tax & Anr. 1993 (201) ITR 435 (SC) and contended that this judgment has no application to the facts of the present case. He also carried us to the order passed by the CIT(A) and reiterated the findings recorded by the CIT(A) as a part of his submission. He concluded his argument by submitting that there is a contract between the appellant/assessee and the dock workers to whom the appellant employed and the role of the Board is to regulate the dock workers employment as per the statutory mandate contained in the Act 1948 and the Regulation Scheme 1970. He further submits that the Board merely allocates dock workers as a part of its statutory obligation under the Act 1948 read with the Regulation Scheme 1970. The deposits towards wages of the dock workers made by the appellant/assessee are on account of statutory mandate under the Act 1948 read with the Regulation Scheme 1970 for disbursement of wages of the dock workers. There is no element of either supply of labour by the Board to the appellant or any contract between the Board and the appellant for supply of labour/dock workers. He submits that in the absence of any contract for supply of labour and the dock workers being the employee of the appellant/assessee, Section 194C of the Act, 1961 is not attracted merely because the payments to the dock workers towards

wages have been made by the appellant through the Board because of statutory requirement. He submits that the orders passed by the ITAT which are impugned in both the above-noted appeals deserve to be set aside and both the present appeals deserve to be allowed.

8. Learned Counsel for the respondent has supported the impugned orders of the ITAT.

Discussion and findings

9. We have heard and carefully considered the submissions of learned counsels for the parties, perused the paper book and the provisions of the Act 1948, Regulation Scheme 1970, Section 194C of the Act 1961 and the judgments relied upon by the learned Counsel for the appellant/assessee.

10. It is undisputed that the appellant/assessee is a registered employer under the Act 1948 read with the Regulation Scheme 1970. It is also undisputed that the allocation of dock workers to the appellant/assessee is made by the Board in terms of the provisions of the Act 1948 read with Regulation Scheme 1970. **The main point of controversy involved in the present two appeals is as to whether the Board is a supplier of dock workers to the appellant/assessee and consequently, the payments made by the appellant/assessee to the dock workers through the Board shall attract the provisions of Section 194C of the Act 1961?**

11. The Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948) was enacted by Parliament for regulating the employment of the dock workers by the Board. Section 2(b)/(c)/(d)/(e) and Section 3 of the Act 1948 provides as under :

2.(b) "Dock worker" *means a person employed or to be employed in, or in the vicinity of, any port on work in connection with the loading, unloading, movement or storage of cargoes, or work in connection with the preparation of ships or other vessels for the receipt or discharge of cargoes or leaving port:*
(c)"employer", *in relation to a dock workers, means the person by whom he is employed or to be employed as aforesaid:*
(d) ***Government"*** *means. in relation to any major port, the Central Government and, in relation to any other port, the State Government;*
(e) *"**scheme**" means a scheme made under this Act.*

3. Scheme for ensuring regular employment of workers*-(1) provision may be made by a scheme lor the registration of dock workers and employers with a view to ensuring greater regularity of employment and for regulating the employment of dock workers, whether registered or not, in a port.*
(2) In particular, a scheme may provide
(a) for the application of the scheme to such classes of dock workers and employers as may be specified therein:
(b) ***for defining the obligations of dock workers and employers subject to the fulfillment of which the scheme may apply to them and the circumstances in which the scheme shall cease to apply to any dock workers or employers;***
(c) ***for regulating the recruitment*** *and entry into the scheme of dock workers, and the registration of dock workers and employers,*

including the maintenance of registers, the removal ether temporarily or permanently, of names from the registers and the imposition of fees for registration:

(d) ***for regulation the employment of dock workers*** *whether registered or not, and the terms and conditions of such employment, including rates of remuneration, hours of work and conditions as to holidays and pay in respect thereof:*

(e) for securing that. In respect of periods during which employment, or full employment, is not available for work, such workers will, subject to the conditions of the scheme, receive a minimum pay:

(f) for prohibiting restricting or otherwise controlling the employment/of dock workers to whom the scheme does not apply and the employment of dock workers by employers to whom the scheme does not apply:

(ii) for creating such fund or funds as maybe necessary or expedient for the purposes of the scheme and for the administration of such fund or funds:

Note: Every fund created or purporting to have been created and every provisions with respect thereto made or purporting to have been made under the principal Act before the commencement of this Act shall, for all purposes, be deemed to be, and to have always been, as validity and effectively created or made as if the provisions of section 3 of the principal Act, as amended by this Act, had been in force at all material times and accordingly, notwithstanding any Judgment, decree or order of any court. -

(a) all contributions to any such fund received or collected before the commencement of this Act shall be deemed to be and shall be deemed always to have been as validly received or collected as if the provisions of section 3 of the principal Act, as amended by this Act were in force at all material times;

(c) recoveries shall be made of all contributions to any such funds which have not been received or collected but which would have been received or collected if the provisions of section 3 of the principal Act. as amended by this Act, had been in force at all material times.

Explanation*:- For the removal of doubts it is hereby declared that no act or omission on the part of any person, before the commencement of this Act shall be punishable as an offence which would not have been so punishable, If this Act had not come into force.*

(g) for the training and welfare of dock workers. In so far as satisfactory provision therefore does not exist apart from the scheme:

(gg) for welfare of the officers and other staff of the board;

(h) for health and safety measures in places where dock worker are employed. In so far as satisfactory provision therefore does not exist apart from the scheme:

(i) for the manner in which, and the persons by whom, the cost of operating the scheme is to be defrayed:

(j) for constituting 14 the authority to be responsible for the administration of the scheme:

(k) for such incidental and supplementary matters as may be necessary or expedient for the purposes of the scheme.

(3) A scheme may further provide that a contravention of any provision thereof shall be punishable with Imprisonment for such term as may be specified but in no case exceeding three months in respect of a first contravention or six months in respect of any subsequent contravention, or with fine which may extend to such amount as may be specified but in no case exceeding five hundred rupees in respect of a first contravention or one thousand rupees in respect of any

subsequent contravention, or with both Imprisonment and fine as aforesaid."

12. Section 4 of the Act 1948 provides for making variation and revocation of Scheme. Section 5 provides for constitution of Advisory Committee. Section 5B provides that the Board shall be responsible for administering the scheme for the port or group for which it has been established and shall exercise such powers and perform such functions as may be conferred on it by the scheme. In exercise of its powers and the discharge of its functions, the Board shall be bound by such directions as the Government may, for reasons to be stated in writing, give to it from time to time. Section 5C provides for accounts and audit. Section 5E provides for submission of annual report and audited accounts of the Board together with auditor's report within time bound period and to lay it before each House of Parliament. Section 6 provides for appointment of inspectors for the purposes of the Act. Section 6A provides for power to order inquiry to investigate or enquire into working of a Board. Section 6B provides for power to supersede a Board. Section 6C provides for circumstances in which acts or processing of the Board and Advisory Committee shall not be invalidated. Section 8 provides for power to make rules. Section 9 is the saving clause. The Regulation Scheme 1970 has been framed by the Government of India in exercise of powers conferred under the Act 1948 and more particularly Section 3 thereof which has been reproduced above.

13. The object of the Act as well as the provisions of the Act and more particularly those afore-noted leaves no manner of doubt that the Act 1948 provides for regulation of employment of dock workers.

14. The Regulation Scheme 1970 has been enacted with the object of greater regularity of employment of dock workers by maintaining adequate number of dock workers and achievement of efficiency of performance in dock work and attainment of satisfactory levels of productivity by the dock workers. The aforesaid scheme relates to Port of Kolkata and applies to **registered dock workers** and their registered employers.

15. The words 'dock employer' and 'registered employer' both have been defined under clause 3(g) and (q) of the Regulation Scheme 1970 as under :

> *(g) "**dock employer**" means the person by whom a dock worker is employed or is to be employed.*
>
> *...*
>
> *(q) "**registered employer**" means an employer whose name is, for the time being entered in the employers' register"*

16. Clause 17 of the Regulation Scheme 1970 provides for maintenance of employers register and workers register. It is specifically provides that persons who have been licensed to function as stevedores by the competent authority of Calcutta Port Trust shall be deemed to have been registered under the scheme during the currency of the license. Clause 18 provides for classification of workers in registers. Clause 19 provides

for fixation of number of workers on the register. Clause 20 provides for registration of the existing and new workers on payment of fees and subject to certain conditions. Clause 21 provides for age of retirement of 58 years of any worker. Clause 23 provides for medical examination of workers. Clause 25 provides that registration fee of Rs.2 shall be payable to the Board for by each worker at the time of registration under the Scheme provided that those workers who had already been registered under the Calcutta Dock Workers (Regulation of Employment) Scheme, 1958, shall be exempted from payment of such fee. Clause 27 provides for service record for registered workers to be maintained by the administrative body in a form to be prescribed by the Board. Clause 28 provides for "records sheet" for registered employers to be maintained by the personnel officer in respect of each registered employer in a form prescribed by the Board. Clause 32 provides for employment in shifts. Clause 34 provides for guaranteed minimum wages in a month to any reserve pool workers as may be fixed by the Board for each year. Clause 40 provides for obligation of registered dock workers. **Clauses 41, 42, 45 and 56 have direct bearing on the controversy involved in the present two appeals**, **which are reproduced below** :

"41. Obligations of Registered Employers

(1) ***Every registered employer shall accept the obligations of the Scheme***.

(2) Subject to the provisions of Clause 31 and the relaxation given in Sub-Clause (2) of Clause 20, ***a registered employer shall not employ a worker other than a dock worker who has been allocated to him by the Administrative Body*** *in accordance with the provisions of item (g) of Clause 12.*

(3) ***A registered employer shall*** *in accordance with the arrangement made by the Administrative Body* ***submit all available information of his current and future labour requirements.***

(4) A registered employer shall lodge with the Administrative Body unless otherwise directed, particular of the tonnage handled by worker on piece-rate and such other statistical data as may be required in respect of the registered dock workers engaged by him.

(5) (i) ***A registered employer shall pay to the Administrative Body*** *in such manner and at such times as the Board may direct the levy* ***payable under Sub-Clause (1) of Clause 56*** *and* ***the gross wages due to pool workers****;*

(ii) ***A registered employer shall make payments as contributions to the Dock Workers Welfare Fund under Clause 59****;*

(iii) ***A registered employer shall pay to the Board the monthly Provident Fund subscriptions recovered form the wages of the workers and the contribution by the registered employers thereon****, repayment of Provident Fund loan and interest on Provident Fund loan within 15 days from the date of each recovery.*

(6) *A registered employer shall keep such records as the Board may require, and shall produce to the Board or to such persons as may be designated by the Board upon reasonable notice all such records and any other documents of any kind relating to registered dock workers and to the work upon which they have been employed and furnish such information relating thereto as may be set out in any notice or directions issued by or on behalf of the Board.*

(7) *Every registered employer shall maintain such gears, supervisory staff and other personnel and carry out such gears, supervisory staff and other personnel and carry out such minimum business per annum as may be specified in the licence for stevedoring to be issued by the Port authorities.*

(8) *A registered employer is permitted to use registered workers for the descriptions of stevedoring work specified in the Scheme only under a direct stevedoring appointment with the Shipowners, Shipping Companies, Steamer Agents, Charters of vessels, Shippers, Consignees or Masters of ships. The Board may at any time demand production of such appointment documents pertaining to work on any ship from any registered employer for the purpose of verification.*

(9) *Omitted.*

(10) ***A registered employer shall not pay a registered dock worker*** *anything in cash or otherwise* ***in excess of the wages normally and actually due to the worker****.*

42. Restriction on Employment

(1) ***No person other than a registered employer shall employ any worker on dock work nor shall a registered employer engage****, subject to the relaxation given in sub clause (4) (e) of Clause 20, for employment or employ a worker on dock work unless that worker is a registered dock worker.*

(2) Notwithstanding the foregoing provisions of this clause –

(a) where the Administrative Body is satisfied that –

(i) dock work is emergently required to be done ; and

(ii) It is not reasonably practicable to obtain a registered dock worker for that work: title Administrative Body may, subject to any limitations Imposed by the Board, allocate to a registered employer a person who is not a registered dock worker. In selecting such workers the local Employment Exchange Organization shall, as far as possible, be consulted;

Provided that, whenever unregistered workers have to be employed, the Administrative Body shall obtain, if possible, the prior approval of the Chairman to the employment of such workers and where this is not possible, shall report to the Chairman within 24 hours the full circumstances under which such workers were employed and the Chairman shall duly inform the Board of such employment at its next meeting :

(b) In the case referred to in Item (a), the person so employed as aforesaid by a registered employer shall, for the purposes of Sub-clauses (4), (5) and (6) or Clause 41 and Clauses 44 and 45 be treated In respect of that dock worker as if he was a dally worker.

(3) A registered worker in the reserve pool may provided he fulfils fully his obligations under Clause 40, take up occasional employment under employers other than those registered under the Scheme on those days on which he is not allocated for work by the Administrative Body.

45. Wages, Allowance and other conditions of Service of Workers in categories in Schedule-I

(1) Unless otherwise specifically provided for in the Scheme, ***it shall be an implied condition of the contract between a registered dock worker in the categories in Schedule-I and a registered employer*** *that the rates of wages, allowances and overtime, hours of work, rest intervals, holidays and pay in respect thereof and other* ***conditions of service shall be such as may be prescribed by the Board*** *for each category of workers subject to the provisions of Sub-Clauses (2) to (6).*

(2) The Board shall accept and implement the provisions in Schedule VI or any other Scheme that may hereafter be framed and approved by the Central Government.

(3) With regard to future Scheme, the Board shall appoint a Committee consisting of representatives of registered employers, Shipping Companies, workers and the Port authority and a nominee of the Central Government to determine the norms for output in respect of cargoes of different kinds, and/or Lines and/ or Zones. If the Committee is not able to prescribe agreed norms within a period of two months of having been asked to do so, the Chairman of the Board may determine such norms and submit them to the Central Government for approval. These norms shall be adopted as standard

output required of workers. The same procedure shall be followed if and when a revision of the norms considered necessary by the Board.

(4) The Board shall by regulations relate the wages earned to the actual output of workers as specified in Schedule VI. The regulations for any future Scheme shall be submitted to the Central Government for approval before implementation

(5) Omitted.

(6) The fixation of wage periods, time for payment of wages and deductions from wages shall be In accordance with the provisions of the Payment of Wages Act, 1936 (4 of 1936).

(7) The provisions contained in Sub-clause 3, the Central Notwithstanding Government may, If it so decides, set up such body as it may deem n t for reviewing the Scheme for any part thereof. The decision of the Central Government on the recommendations of the said body shall be final and binding.

56. Cost of Operating the Scheme

(1) ***The cost of operating the Scheme shall be defrayed by payments made to the Board by registered employers or their authorised agents as approved by the Board. Every registered employer shall pay to the Board such amount by the way of levy in respect of reserve pool workers together with and at the same time as or earlier than the payment of gross wages due from him under item (1) of Sub-Clause (5) of Clause 41****, as the Board may, from time to time, prescribe by a written notice to registered employers and the amount payable by way of such levy shall not be less than such amount as the Board may fix at the minimum payable by every registered employer.*

Provided that, where wages are payable to workers at an interval of less than a month, the Board may at its discretion allow the amounts, *other than gross wages, payable under this sub-clause to be paid monthly by such time as the Board may prescribe in this behalf.*

(2) In determining what payments are to be made by registered employers under Sub-clause (1), the Board may fix different rates of levy for different categories of work or workers, provided that the levy shall be so fixed that the same rate of levy will apply to all dock employers who are in the like circumstances.

(3) The Board shall not sanction any levy exceeding hundred per cent of the estimated total wage bill calculated on the basis of the dally time rate wage and allowances without the prior approval of the Central Government.

(4) ***A registered employer shall*** *on-demand make a payment to the Board* ***by way of deposit****, or provide such other security for the due payment of the amount referred to in sub-clause (1), as the Board may consider necessary.*

(5) The Administrative Body shall furnish, from time to time, to the Board such statistics and other information as may reasonably be required in connection with the operation and financing of the Scheme.

(6) If a registered employer fails to make the payment due from him under sub- clause (1) or under item (iii) of sub-clause (5) of Clause 41 or any other amount due and payable to the Board in any other capacity or account within the time prescribed by the Administrative Body, the Admn. Body shall serve a notice on the employer to the effect that unless he pays his dues within three days from the date of receipt of the notice, the supply of registered dock workers to him

shall be suspended. On the expiry of the notice period, the Administrative Body shall suspend the supply of registered dock workers to a defaulting employer and charge Interest on the amounts due at such rate and from such date as ite Board may decide until he pays his dues. If the employer falls to pay his dues within 45 days of the date of issue of the notice, his name shall be liable o be removed from the employers' register without prejudice to other rights of the Board for the recovery of the defaulted amount from such employer."

17. A conjoint reading of various provisions of the Act 1948 and the Regulation Scheme, 1970 and more particularly clauses 41, 42 and 45 thereof leads to an irresistible conclusion that under the Act and the Regulation Scheme 1970, the registered employer is bound to accept the obligation of the Scheme, he shall not employ any worker other than dock workers which has been **allocated to him by the administrative body**. Clause 42 completely prohibits employment of any worker on dock other than the registered employer. Thus, the registered employer can only employ dock workers and the conditions of service including payment of their wages have been regulated by various provisions of the Act 1948 and the Regulation Scheme, 1970. Clause 45 of the Regulation Scheme 1970, as afore-quoted, clearly stipulates a contract of employment between registered employer and dock workers. Rates of wages, allowances and overtime, hours of work, rest intervals, holidays and pay in respect thereof and other conditions of service as have been prescribed by the Board for each category of workers subject to the

provisions of sub-clauses (2) to (6). Thus, clause 45 leaves no manner of doubt that the contract of employment of dock workers is between a registered employer and the registered dock workers. It is statutory obligation incorporated under the contract that the registered employer has to pay wages etc. to the dock workers by remitting the amount to the administrative body for disbursement of his (employer's) own dock workers/employees. Thus, neither the Board nor its administrative committee supplies any dock workers to the registered employer but it is as per the Act and the Regulation so as to protect the interest of the dock workers and employer that the registered employer furnishes his requirement and the administrative committee allocates from amongst registered dock workers to a particular registered employer and they become employee on such terms and conditions as have been stipulated in the Regulation Scheme, 1970. Therefore, the findings recorded by the ITAT in paragraphs 8, 9 and 10 of the impugned order, is patently incorrect, perverse and contrary to the provisions of the Act, 1948 and the Regulation Scheme 1970. Consequently, the finding deserves to be set aside.

18. The dock works employed by the appellant/assessee are his employees as per scheme of the Act and Regulation Scheme 1970 and it is merely allocation of workers which have been made by the administrative committee of the Board as a part of their statutory obligation under the

Act, 1948 and the Regulation Scheme, 1970. The provision of section 194C of the Act 1948 is not attracted at all.

19. In the case of Vizagapatnam Dock Labour Board (supra) (para 19 to 24) the Hon'ble Supreme Court considered similar regulation scheme framed under the Act, 1948 and held that the Board is a statutory body charged with the duty of administering scheme, the object of which is to ensure grater regularity of employment for dock workers and to ensure that an adequate number of dock workers are available for the efficient performance of dock work. The Board is an autonomous body, competent to determine and prescribe the wages, allowances and other conditions of service of the dock workers. The purport of the Scheme is that the entire body of workers should be under the control and supervision of the Board. The registered employers are allocated workers by the Administrative Committee. The workmen who were allotted to the registered employers are to do the work under the control and supervision of the registered employers and to act under their directions. The registered employers desposit the wages due to the workers to the administrative body which in turn, as an agent of the registered employers, disburses the wages to the concerned workmen. The regulation scheme clearly shows that the registered employer to whom the labour force is allotted by the Board is the employer whose work of loading or unloading of ships is done by the dock workers allotted.

20. In Tarseem Singh Vs. Sukhminder Singh JT, reported at (1998) 3 SCC 471 (para 12) Hon'ble Supreme Court referred to the provisions of the India Indian Contract Act explained as under :

12. "Contract" is a bilateral transaction between two or more than two parties. Every contract has to pass through several stages beginning with the stage of negotiation during which the parties discuss and negotiate proposals and counter-proposals as also the consideration resulting finally in the acceptance of the proposal. The proposal when accepted gives rise to an agreement. It is at this stage that the agreement is reduced into writing and a formal document is executed on which parties affix their signatures or thumb b impression so as to be bound by the terms of the agreement set out in that document. Such an agreement has to be lawful as the definition of contract, as set out in Section 2(1) provides that "an agreement enforceable by law is a contract". Section 2(g) sets out that "an agreement not enforceable by law is said to be void".

21. Applying the principles as laid down by Hon'ble Supreme Court, as afore-noted, as well as specific provisions of the Act, 1948 and the Regulation Scheme, 1970, we are of the firm view that the contract of employment is between the appellant and the dock workers and not between the appellant and the Board. The Board has merely discharged its statutory obligation with regard to regulation of dock workers.

22. For all the reasons afore-stated, we find that Section 194C of the Act, 1961 has no application on facts of the present case with regard to payment of wages by the appellant/assessee to the dock workers through

the Administrative Committee/Board. There is no contract of supply of labour between the Board/Administrative Committee and the appellant/assessee i.e., the registered employer. The appellant/assessee was not liable to deduct tax at source under Section 194C while making payment of wages to its employees i.e. the dock workers through the Administrative Committee/Board constituted under the Act, 1948 read with Regulation Scheme, 1970. Consequently, the provisions of Section 40(a)(ia) of the Act, 1961 would also not come into play. The impugned order of the Tribunal deserves to be set aside.

23. For all the reasons afore-stated, the appeals (ITA/72/2012 and ITA/73/2012) are allowed. The impugned order dated 17.2.2012 in ITA No.199/Kol/2010 (A.Y. 2006-07) and the order dated 17.2.2012 in ITA No.1545/Kol/2010 (A.Y. 2007-08) passed by the Income Tax Appellate Tribunal, Kolkata, "A" Bench, Kolkata are hereby set aside. The substantial question of law as framed above are answered in favour of the assessee and against the revenue.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

S. Kumar/S. Das/As

A.F.R.