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(1987) 03 PAT CK 0041

In the Patna High Court

Case No : Taxation Case No. 122 of 1977

Behl Construction Co. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 06-03-1987

Acts Referred:
Income Tax Act, 1961 — Section 256(1)

Citation : (1987) 33 TAXMAN 549

Hon'ble Judges : Uday Sinha, J;B.N. Agrawal, J

Bench : Division Bench

Advocate : Rameshwar Prasad No. 2, Amrendra Kumar Sinha and Amarnath Jha, for the Appellant; B.P. Rajgarhia and S.K. Sharan, for the Respondent

Judgement

1. This is a reference u/s 256(1) of the income tax Act, 1961 (''the Act''), in relation to the assessment year 1974-75. The assessee is a partnership firm. The question referred to us for our opinion is:

"Whether, on the facts, and in the circumstances of the case, the Tribunal was correct in holding that profit could be estimated with reference to the gross receipts which included certain materials supplied by the Heavy Engg. Corpn?"

During the year in question, the assessee was paid Rs. 16,90,765 for works executed for Heavy Engg. Corpn. (''the HEC), Ranchi. The ITO assessed the profits at 10 per cent on the basis of the gross receipts. The assessee being aggrieved by the order of the ITO appealed to the AAC. The AAC dissected the amount paid to the assessee tinder two categories. A sum of Rs. 4,57,375 which was the value of the materials supplied by the HEC to the assessee was deducted out of the total sum paid to the assessee. In the balance sum of Rs. 12,33,390, the AAC held that 12?% of profit on that amount was reasonable. In regard to the balance of the sum of Rs. 4,57,375 the AAC assessed profit at the rate of 5 per cent. The assessee being aggrieved by the order of the AAC levying tax on the income from the value of the materials supplied, i.e., Rs. 4,57,375 appealed to the Tribunal. The finding of the Tribunal reads as follows:

"The Appellate Assistant Commissioner, however, had been too fair in separating the cost of materials from the gross receipts and in applying a rate of 5 per cent only on these."

The assessee did not dispute the calculations of the depreciation allowance by the AAC. In fine, the Tribunal upheld the order of the AAC. Being aggrieved by the order of the Tribunal, the assessee moved the Tribunal for a reference to this Court. Hence, the present reference before us.

2. The learned counsel for the revenue submitted that the AAC having assessed the taxable income at Rs. 12,00,000 and odd only, the assessee had received the benefit inasmuch as tax had been levied only on the net amount of receipts. To that the learned counsel for the assessee has no objection.

3. The learned counsel for the assessee, however, contends that the calculation of profit on the basis of materials supplied albeit only 5 per cent was illegal. It was submitted that there was no question of any profit involved in the supply of materials to the assessee by the HEC. The learned counsel for the assessee has placed reliance upon the decision of the Supreme Court in Brij Bhushan Lal Parduman Kumar Vs. Commissioner of Income Tax , Haryana Himachal Pradesh and New Delhi III, where their Lordships have observed that the tendered documents showed that the property were to remain the property of the department at all times. On the facts and in the circum stances of that case, their Lordships held that the value of the goods supplied to the contractor in execution of the contract had to be deducted. This decision came for consideration before this Court in Ramesh Chandra Chaturvedi Vs. Commissioner of Income Tax, . Their Lordships laid down that there cannot be any hard and fast rule to determine the question as to whether the value of the materials should or should not be added to the gross turnover of an assessee, who is a contractor, for determining his net profits. Their Lordships observed that it all depended upon the manner in which the materials had come to be used in the execution of the contract. Thus, although the contract document may be showing that the property always remains the property of the department, yetin actual practice it may not be so and, therefore, the department had to consider whether as a fact the contractor had control over the materials or the department had the control. The matter has to be examined in that light. The decision of this Court in the case of Ramesh Chandra Chaturvedi (supra) was dealt and followed in Commissioner of Income Tax Vs. Azad Builders (No. 1), and between the same parties in Commissioner of Income Tax Vs. Azad Builders (No. 2), .

In that view of the matter, this matter also must be remanded back to the Tribunal for ascertaining the facts in the light of the decision of this Court in the case of Ramesh Chandra Chaturvedi (supra). The final order must abide by the terms of that decision. Since the matter has to be remanded back to the Tribunal, the question referred to us need not be answered. There shall be no order as to costs.

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