
(1987) 03 PAT CK 0020
In the Patna High Court
Case No : Taxation Case No. 122 of 1977

Bohi Construction Co.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 06-03-1987

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 260

Citation : (1987) 166 ITR 737

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, 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 Engineering Corporation ? "

2. During the year in question, the assessee was paid Rs. 16,90,765 for works executed for Heavy Engineering Corporation, Ranchi. The Income Tax Officer assessed the profits at 10% on the basis of the gross receipts. The assessee, being aggrieved by the order of the Income Tax Officer, appealed to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner dissected the amount paid to the assessee into two categories. A sum of Rs. 4,57,375 which was the value of the materials supplied by the Heavy Engineering Corporation to the assessee was deducted out of the total sum paid to the assessee. On the balance sum of Rs. 12,33,390, the Appellate Assistant Commissioner held that 12 1/2% of profit on that amount was reasonable. In regard to the balance of the sum of Rs. 4,57,375, the Appellate Assistant Commissioner assessed the

profit at the rate of 5%. The assessee, being aggrieved by the order of the Appellate Assistant Commissioner, 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% only on these."

3. The assessee did not dispute the calculations of the depreciation allowance by the Appellate Assistant Commissioner. In fine, the Tribunal upheld the order of the Appellate Assistant Commissioner. 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.

4. Learned counsel for the Revenue submitted that the Appellate Assistant Commissioner having assessed the taxable income at rupees twelve lakhs odd only, the assessee had received the benefit inasmuch as tax had been levied only on the net receipts. To that, learned counsel for the assessee has no objection.

5. Learned counsel for the assessee, however, contends that the calculation of profit on the basis of materials supplied albeit only at 5% was illegal. It was submitted that there was no question of any profit involved in the supply of materials to the assessee by the Heavy Engineering Corporation. Learned counsel for the assessee had 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 materials were to remain the property of the Department at all times. In the facts and circumstances of that case, their Lordships held that the value of the goods supplied to the contractor in the execution of the contract had to be deducted. This decision came up 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 materials always remains the property of the Department, yet, in actual practice, it may not be so and, therefore, the Department had got to consider whether, as a fact, the contractor had control over the materials or the Department had the control. The matter has to be determined in that light.

6. The decision of this court in the case of *Ramesh Chandra Chaturvedi Vs. Commissioner of Income Tax*, was dealt with 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 to the Tribunal for ascertaining the facts in the light of the decision of this court in the case of Ramesh Chandra Chaturvedi Vs. Commissioner of Income Tax, . The final order must abide by the terms of that decision. Since the matter has to be remanded to the Tribunal, the question referred to us need not be answered. There shall be no order as to costs.

7. Let a copy of this judgment be transmitted to the Assistant Registrar, income tax Appellate Tribunal, in terms of Section 260 of the income tax Act, 1961.