(1991) 06 OHC CK 0036

In the Orissa High Court

Case No : Special Jurisdiction Case No. 20 of 1983

B.P.R. Construction APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 28-06-1991

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (1992) 102 CTR 6 : (1991) 192 ITR 534

Hon'ble Judges : B.L. Hansaria, C.J;D.M. Patnaik, J

Bench : Division Bench

Advocate : B.K. Mahanti, P.K. Misra and J.P. Patnaik, for the Appellant; A.K. Ray, for the Respondent

Judgement

B.L. Hansaria, C.J.—The assessee is a partnership-firm and carries on contract works. It maintains its accounts as per mercantile system. It undertook the work of supply of stones during the years 1966-67 to 1968-69. A dispute arose regarding some claim of the assessee which was referred to arbitration in the year 1972. The arbitrator gave his award on November 5, 1976, and fixed a sum of Rs. 2,32,000 as payable to the assessee by way of compensation. The compensation as awarded was treated as the income of the accounting year which ended on March 31, 1977. The assessee took a point that the compensatioa was in the nature of a capital receipt and as such was not assessable as income. This contention was rejected by the Assessing Officer. On an appeal being preferred before the Commissioner of Income Tax (Appeals), the order of the Income Tax Officer was upheld. On further appeal to the Tribunal, the same view was taken. The assessee prayed for a reference which was rejected. On approach to this court u/s 256(2) of the Income Tax Act, 1961, the Tribunal was directed to refer the following question of law :

"Whether, on the facts and in the circumstances of the case, the award amount of Rs. 2,32,000 is in the nature of a revenue receipt ?"

Shri Mahanti, appearing for the assessee, has been fair in contending that the aforesaid amount of Rs. 2,32,000 cannot be regarded as in the nature of a capital receipt But his submission is that as the assessee is maintaining its accounts as per the mercantile system and the execution of the contract had taken place in the years 1966-67 to 1968-69, the compensation has to be treated as income for those years and not for the assessment year 1977-78, as was done by the Department. He has, therefore, prayed that we should answer the following question of law :

"Whether, on the facts and in the circumstances of the case, the amount of Rs. 2,32,000 which is relatable to the execution of the contract in the years 1966-67 to 1968-69 is taxable in the hands of the assessee for the year 1977-78?"

With the consent of learned counsel for the Department, we have taken up the aforesaid question for answer.

2. Shri Mahanti contends that, as the assessee was maintaining accounts as per the mercantile system, the income accrued in the years in which the contract was executed and as such could have been assessed for those years only. As to this, the first submission of Shri Ray is that, even as per the assessee, the income did not accrue in the years 1966-67 to 1968-69, as, otherwise, the assessee would have shown the same in its books of account as it was maintaining the same as per the mercantile system. This submission is met by Shri Mahanti by contending that if the income had, in fact, accrued in those years and the assessee had not shown the same in its books of account, the present would be a case of suppression of income in which eventuality it would have been open to the Department to start reassessment proceedings. The failure of the Department to do so cannot be covered up by treating the compensation in question as income for the assessment year 1977-78. We accept this submission of Shri Mahanti.

3. The important point, however, is as to whether the income in the present case can be said to have really accrued during the years 1966-67 to 1968-69. As the assessee was maintaining the mercantile system of accounting, the real question to be asked is when did the right to receive the amount accrue. This is what has been stated in The Commissioner of Income Tax, Madras Vs. A. Gajapathy Naidu, . As per this decision, in the mercantile system of accountancy, if the Income Tax Officer comes to the conclusion that the right to receive income accrued or arose in a particular accounting year, he shall include the same in the income in the assessment of the succeeding assessment year. The further observation in this case is that no power is conferred on the Income Tax Officer under the Act to relate back an income that accrued or arose in a subsequent year to an earlier year on the ground that the said income arose out of an earlier transaction.

4. Let us, therefore, see as to when the right to receive the compensation accrued. As to this, we entertain no doubt that the same accrued on November 5, 1976, when the award was made. The assessee could not have claimed this

amount before the same had been awarded. Before the award was made, the right to receive compensation has to be regarded as an inchoate right. From the order of the Income Tax Officer, we find that the assessee had advanced his claim to compensation before the arbitrator for certain inconvenience faced by it during the course of its business. The claim of the assessee as advanced before the arbitrator cannot be regarded to have clothed the assessee with the right to receive the amount claimed. In fact, the right came into existence for the first time when the award was made. On the facts of the case, we are, therefore, satisfied that though the assessee maintained the mercantile system of accounting, the compensation as awarded by the arbitrator cannot be said to have accrued during the years when the contract was executed. The claim made before the arbitrator ripened into a right for the first time when the award was made. The same having been made on November 5, 1976, the taxing authorities rightly regarded the compensation as income for the accounting year ending on March 31, 1977, and taxed it in the assessment year 1977-78.

5. We would, therefore, answer the question in the affirmative and against the assessee.

D.M. Patnaik, J.

6. I agree.

