

(1979) 04 J&K CK 0001
In the Jammu And Kashmir High Court

Capital Construction Enterprises	Vs	APPELLANT
Commissioner of Income Tax		RESPONDENT

Date of Decision : 17-04-1979

Acts Referred:

Citation : (1981) 130 ITR 649

Hon'ble Judges : Mufti Baha-Ud-Din Farooqi, J;G.M. Mir, J

Bench : Division Bench

Advocate : Subash Dutt, for the Appellant; K.N. Raina, for the Respondent

Judgement

M.B. Farooqi, J.—The assessee, M/s. Capital Construction Enterprises, Srinagar, is a registered firm carrying on business of executing

contracts and works on behalf of the Government. During the accounting period relevant to the assessment year 1972-73, the assessee derived

income from one such contract with the M.E.S. department. The ITO computed the assessee's income from the contract on estimate basis after

rejecting his account books. He estimated the income at 12 1/2% on an aggregate amount of Rs. 13,55,819 including the cost of cement and iron

supplied by the M.E.S. authorities and also the amounts of the deposit retained by them after rejecting the assessee's plea that the income was

liable to be computed only on the actual cash receipts amounting to Rs. 9,51,000. On appeal, the AAC upheld the order except as regards the

rate of profit which he reduced to 11%. The assessee went up to the Tribunal. Before the Tribunal, the assessee urged two points. Firstly, that the

rate of profit at 11% sustained by the AAC was excessive and, secondly, that whatever the rate, it should be applied only to the actual cash

receipts amounting to Rs. 9,51,000 and not to the gross receipts. The Tribunal

held that the rate of profit was liable to be applied to the gross

receipts and not to the cash receipts only. It further held that the rate of profit ought reasonably be fixed at 9% and not 11% as held by the AAC.

At the instance of the assessee, the Tribunal has referred the following question of law for our opinion :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the rate of profit should be applied to

the gross receipts for the assessment year 1972-73 ?

2. In coming to the conclusion, that where profits are being estimated, the rate of profit has to be applied on the gross receipts, the Tribunal was

influenced by a judgment of the Punjab and Haryana High Court in BRIJ BUSHAN LAL Vs. COMMISSIONER OF Income Tax, PUNJAB., ,

in which it was held that the cost of material supplied by the Government was liable to be included while estimating the profit to the contractor. In

Brij Bhushan Lal Parduman Kumar Vs. Commissioner of Income Tax , Haryana Himachal Pradesh and New Delhi III, , the Supreme Court,

however, disagreed with the view expressed by the Punjab and Haryana High Court and held that the cost of material supplied by the department

was not liable to be included in computing the income and profits of the assessee from the contract. Therefore, it must be held that the Tribunal

was not justified in holding that the cost of material supplied by the M.E.S. was liable to be included in computing the profits from the contract in

the present case. But the same cannot be said to be true about the deposits retained by the M.E.S. dept. Even the learned counsel for the

petitioner conceded that the same were liable to be included in the total receipts for the purpose of computing the profit of the assessee from the

contract.

3. We, therefore, hold that in computing the profits, the amount of deposits retained but not the cost of material supplied by the M.E.S. dept. is

liable to be included in the total receipts from the contract. We answer the question referred to us accordingly. In view of the divided success, we

leave the parties to bear their own costs.

Mir, J.

4. I agree.