(1975) 04 OHC CK 0016

In the Orissa High Court

Case No : Special Jurisdiction Case No''s. 162, 163 and 164 of 1974

Commissioner of Income Tax	APPELLANT
Vs	
Builders Union	RESPONDENT

Date of Decision : 03-04-1975

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 256(2)

Citation : (1975) 04 OHC CK 0016

Hon'ble Judges : R.N. Misra, J;N.K. Dass, J

Bench : Division Bench

Advocate : A. Pasayat, for the Respondent

Judgement

R.N. Misra, J.—These are three applications u/s 256(2) of the Income Tax Act (hereinafter referred to as "the Act") at the instance of the revenue asking for a direction to the Appellate Tribunal to state a case and refer the following two questions for the opinion of the court:

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in accepting the trading results including the expenses claimed by the assessee ?

(2) Whether, on the facts and in the circumstances of the case, when the accounts were admittedly defective the assessee''s books of account were liable to be rejected and estimate was called for ?"

2. The years of assessment are 1967-68, 1968-69 and 1969-70. The assessee undertakes execution of contracts and a large proportion of its work is executed through sub-contractors. In regard to the works undertaken by sub-contractors, under the agreements, the assessee was entitled to five per cent. of the net receipts. The Income Tax Officer completed the assessment by calculating the income of the assessee on adoption of five per cent. in regard to the works done through sub-contractors and by adopting 121/2 per cent. rate on the receipts relating to contract work taken directly by the assessee. In the assessment order

of 1967-68, the Income Tax Officer gave the following reason for rejection of accounts :

"However, as per A.A.C''s direction in earlier years regarding availability of reduced profit margin to the firm on account of alienation of a portion of profit to the sub-contractors, the uniform estimate of profit at the rate of 121/2 per cent. on the whole work cannot be made. Thus, in order to compute the income of the assessee, I deem it proper to allow deduction from the total profit, computed at the rate of 121/2 % of the gross receipts, certain amount on account on the element of sub-contractorship. This deduction is being calculated at the rate of 71/2% of the actual payment received by the sub-contractor........."

3. The Income Tax Officer rejected the entire claim of expenses in regard to the work of sub-contractors. The Appellate Assistant Commissioner gave some relief on these heads.

4. Before the Appellate Tribunal, the assessee contended that no grounds had been advanced for rejection of its accounts and, therefore, there was no occasion for adopting the estimates. Considering the stand of the assessee and that of the revenue, the Tribunal concluded by saying :

"We have considered the facts and submissions made by the parties concerned. There is no dispute with regard to the fact that substantial part of the contracts undertaken by the appellant were executed through sub-contractors and in relation to payment for such works the appellant was entitled to 5 per cent. of the total value of the bills. The value of contracts executed by the appellant itself in each of the years is quite small compared to the value of contract works executed by the sub-contractors. Thus, for instance, in the assessment year 1967-68, the value of the bills received on account of the execution of contracts on own account was only Rs. 5,30,776 as against the gross receipts of Rs. 60,92,958, in the assessment year 1968-69, the value of own contract work was Rs. 8,40,740 as against the gross receipts of Rs. 43,64,302 and in the assessment year 1969-70, the value of contracts on own account amounted to Rs. 2,40,767 against the total value of bills at Rs. 6,67,094. So far as the claim of the assesses for acceptance of the books of accounts and trading profit disclosed by it in own contract account is concerned, the Income Tax Officer in his orders, beyond stating that there has been no improvement in the accounts this year and similar observations as in earlier assessments and appeal orders applied and the proviso to Section 145 was attracted, has not pointed out or specified any particular defect noticed by him for the relevant years warranting rejection of the accounts. The departmental representative has also not placed before us any material to show that the accounts merited rejection except general statement that the accounts are liable to rejection as in the case of other similar contract works. The learned counsel for the assessee furnished before us a statement of contract profit and loss for each of the years under consideration, details of expenses under various heads against the bills and commission received, etc. The expenses related to materials, wages, labour organisation, transport charges, stores, water charges, freight and demurrage, electric charges, etc., and these are prima facie allowable expenditure against the receipts disclosed by the appellant. Neither the Income Tax Officer nor the Appellate Assistant Commissioner has tried to examine the details of expenses claimed by the appellant and found that any of the items of expenditure were either not genuine or inadmissible. On the other hand, the Appellate Assistant Commissioner has made an estimate of reasonable expenditure that could be allowed in respect of overall supervision and liaison work, etc. In the circumstances, we find considerable force in the appellant''s contention that the expenditure claimed as per books of account should have been allowed and there is no justification for resorting to estimate when the Appellate Assistant Commissioner has admitted the fact that the assessee having had the necessity to maintain establishment for various activities enumerated in his order. We, therefore, direct acceptance of trading results disclosed by the assessee including the expenses claimed by it and delete the additions sustained in each of the years. "

5. At the hearing, learned standing counsel is not in a position to indicate any factual error in the decision of the Appellate Tribunal. We have already extracted the reason given by the Income Tax Officer to resort to estimates by rejection of the book results. Those were rightly vacated by the Appellate Tribunal and taking all aspects into consideration the Tribunal concluded as a fact that the assessee''s claim for acceptance was acceptable and the book result should not have been disturbed. We are of the view that upon these findings of pure fact, no question of law arises.

6. The applications are accordingly rejected.

Das, J.

7. I agree.

