
(1976) 08 GAU CK 0004

In the Gauhati High Court

Case No : Income-tax Reference No. 13 of 1975

Commissioner of Income Tax

APPELLANT

Vs

J.S. Serwarey

RESPONDENT

Date of Decision : 13-08-1976

Acts Referred:

Income Tax Act, 1961 — Section 256(1)

Citation : (1977) 107 ITR 566

Hon'ble Judges : M.C. Pathak, C.J.;D. Pathak, J

Bench : Division Bench

Advocate : G.K. Talukdar and D.K. Talukdar, for the Appellant; K.C. Bezbaruah, R.P. Agarwalla and R.L. Jain, for the Respondent

Judgement

M.C. Pathak, C.J.—The Income Tax Appellate Tribunal, Gauhati Bench, has referred the following question of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), to this court for decision :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the cost of materials supplied by the M.E.S. department was not liable to be included in the total receipts of the assessee for calculating its net profits for the assessment years 1965-66, 1966-67 and 1967-68 ?"

2. The facts, on the basis of which the abovementioned question of law has been referred, may be stated as follows. The assessee is a building contractor. He is a retired officer of the military engineering service and he started business of executing constructional contract works under the military authorities but he did not produce any books of account before the Income Tax Officer on the ground that he was not maintaining any account books.

3. The relevant assessment years are 1965-66, 1966-67 and 1967-68. In the assessment year 1965-66 the assessee filed a return declaring an income of Rs. 35,000 showing the total receipts from contract works at Rs. 3,45,025 and on which he estimated an income of Rs. 35,000 which was worked out at 10 per

cent. of the payments received from the M.E.S. department. The Income Tax Officer, after examining the various bank accounts, found that the total deposit of the assessee was Rs. 3,47,525 in the relevant assessment year. Before the Income Tax Officer the assessee admitted that he had received some materials supplied by the M.E.S. department and the value of such materials was deducted from the contract bills. The Income Tax Officer asked the assessee to furnish a statement showing the gross value of the bills in respect of each, contract executed during the year, the recovery made by the M.E.S. department from such bills on account of supply of materials from the department stock and net payment received against each contract, as the Income Tax Officer felt that this statement was necessary in order to arrive at the gross value of work executed by the assessee during the assessment year in question. The assessee could not file the full details but some statement was filed on the basis of which the Income Tax Officer came to the conclusion that roughly 10% of the value of the work represented deduction from bills on account of materials supplied by the M.E.S. authority from their own stores. In the absence of accurate figures furnished by the assessee regarding the value of materials supplied by the M.E.S. department, the Income Tax Officer estimated 10% of the net contract payments on account of the value of materials supplied by the M.E.S. department for which deductions were made from the bills and the Income Tax Officer added this amount to the net contract value to arrive at the gross value of the work executed by the assessee during that year. The Income Tax Officer thus held that the net receipts shown from contract work came to Rs. 3,47,525 and on this net receipt he took the value of the materials at 10% at Rs. 34,000 and thus he held that the gross receipt in the assessment year 1965-66 was Rs. 3,81,525, On this gross receipt he estimated the net profit at 12-1/2% for the assessment year 1965-66, which came to Rs. 47,690 before allowing depreciation.

4. Similarly, for the assessment year 1966-67 the Income Tax Officer estimated the profit at 12 1/2% on the gross contract receipts before allowing depreciation and thus calculated the income from contract work at Rs. 97,871 before allowing depreciation for the assessment year 1966-67.

5. For the assessment year 1967-68 the Income Tax Officer in the same way as in the preceding years calculated the net profit at 12 1/2% which came to Rs. 85,475 before allowing depreciation.

6. The assessee then preferred three appeals before the Appellate Assistant Commissioner. Before the Appellate Assistant Commissioner the contention of the assessee was that computation of the income should be made on the basis of net receipts and the cost of materials deducted from the bills should be left out of calculation as no profit accrued thereon. The Appellate Assistant Commissioner did not accept the contention of the assessee and by a consolidated order he rejected all the three appeals. While rejecting the appeals the Appellate Assistant Commissioner held that the income should be calculated at 11 1/2% on the gross receipts.

7. Being thus aggrieved, the assessee preferred three appeals before the Income Tax Appellate Tribunal. By a consolidated order the learned Tribunal came to a finding that the net profit has to be calculated on the net receipts, as found by the Income Tax Officer and the Appellate Assistant Commissioner and the addition of 10% relating to the value of the materials on the net value should be ignored in calculating the profits on the contract receipts and only net receipts should be taken into consideration for all purposes.

8. On the above facts, the abovementioned question of law has been referred.

9. The question that falls for determination is whether the value of the materials supplied by the M.E.S. department for performance of the contract under the M.E.S. department has to be taken into consideration in calculating the income of the assessee on estimate basis.

10. The assessee's contention was that the materials for the construction works were supplied under the terms of the contract by the M.E.S. department and, therefore, the assessee had no question of making any profit on the materials supplied by the M.E.S. department and hence this should not be taken into consideration while calculating the income of the assessee. In other words, the income calculated on percentage basis should be on the actual receipts from the bills of the assessee. This contention of the assessee was not accepted by the Appellate Assistant Commissioner. But the assessee's contention has been accepted, as it appears from the order of the learned Tribunal, by the Tribunal.

11. In its order the learned Tribunal has observed as follows :

"Moreover, in this case the learned counsel for the assessee has submitted before us that the materials were entrusted by the department to the assessee but the materials were utilised under the supervision of the department. The learned counsel for the assessee has also submitted before us that the department in the tender notice specifically pointed out that the materials mentioned therein will be supplied by the department and under such circumstances the tender is made by contractors keeping in view the supply of the materials on which no profit is estimated. There are no materials before us to accept the reasoning of the Appellate Assistant Commissioner that tenders are called and work order or acceptance are issued on the basis of the total value of the contract work at a certain margin allowed to the contractor on the total value and not on the net value. When the department undertakes to supply materials to the contractor, the department is bound to keep this fact in view while issuing tender notice. If the assessee gives the tender on the definite understanding that the department is to supply the required materials for the construction of the buildings, the rates quoted by him would have been adjusted on that basis. Under the circumstances we hold that there is no element of profit on the cost of materials supplied by the department. We, therefore, hold that the net profit will be calculated on the net receipts as found by the Income Tax Officer and the Appellate Assistant Commissioner and the addition of 10% relating to the value of materials on the

net receipts will be ignored in calculating the profits on the contract receipts."

12. Thus, it is found that the learned Tribunal has clearly held, on the facts and circumstances of the case, that there was no element of profit so far as the value of the materials supplied by the M.E.S. department to the assessee in performing the construction works is concerned.

13. The view held by the learned Tribunal, it may be pointed out, is supported by the decision of the Madras High Court in Commissioner of Income Tax Vs. K.S. Guruswami Gounder and K.S. Krishnaraju (Contractors), and the decision of the Kerala High Court in M.P. Alexander and Co. Vs. Commissioner of Income Tax,

14. Mr. G. K. Talukdar, the learned standing counsel for the department, referred to the decision of the Punjab and Haryana High Court in BRIJ BUSHAN LAL Vs. COMMISSIONER OF Income Tax, PUNJAB., We are, however, unable to agree with the view expressed in BRIJ BUSHAN LAL Vs. COMMISSIONER OF Income Tax, PUNJAB., and we respectfully differ from that view and we respectfully agree with the view expressed in Commissioner of Income Tax Vs. K.S. Guruswami Gounder and K.S. Krishnaraju (Contractors),

15. Accordingly, the question of law referred is answered in the affirmative and against the department. There will be no order as to costs.

D. Pathak, J.

16. I agree.