

(1974) 08 AP CK 0013

In the Andhra Pradesh High Court

Case No : Case Referred No. 9 of 1973

Commissioner of Income Tax

APPELLANT

Vs

K.S. Reddy

RESPONDENT

Date of Decision : 28-08-1974

Acts Referred:

Income Tax Act, 1961 — Section 144

Citation : (1976) 103 ITR 822

Hon'ble Judges : S. Obul Reddi, C.J;A.V. Krishna Rao, J

Bench : Division Bench

Advocate : K. Srinivasa Murthy, for the Appellant; B.V. Subbaiah, for the Respondent

Judgement

Obul Reddi, C.J.—The question referred for our decision is :

" Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the net profits should be estimated on the net amount received by the assessee, i.e., after deducting the cost of material supplied by the Government from the gross amount of the bills ? "

2. The assessee is a contractor executing works of various Government departments. He filed a return declaring an income of Rs. 20,852 from his contract business and from a printing press which he runs. It has been the assessee's case throughout that he has not maintained any accounts for the various contract works executed by him. He, however, produced receipts showing the amounts received by him from the Government for the various contract works executed by him. He supplied the following figures for the three assessment years in question :

Period Gross amount Materials supplied by the Govt. Net amount

Rs. Rs. Rs.

1. 1960-61 1,41,834 67,454 74,380

2. 1961-62 1,86,412 94,212 92,200

3. 1962-63 1,46,754 89,241 87,543

3. According to him, the total receipts mentioned in the statement related only to the actual receipts, etc., the gross value of the bills less the cost of materials. It was, therefore, his case that the assessing authority as well as the Appellate Assistant Commissioner erred in estimating his net profit on the gross value of the bills, which includes the material supplied by the Government. This contention of the assessee found favour with the Tribunal and the Tribunal, therefore, held that the assessee was liable to be taxed only on the net receipts as shown by him and not on the basis of the gross value of the bills. The Commissioner of Income Tax moved the Tribunal for reference u/s 66(1) of the Income Tax Act, but as that application was dismissed, he moved this court u/s 256(2) and this court directed the Tribunal to submit the statement of case and refer the question formulated by it to this court for decision.

4. Mr. Srinivasa Murthy, the learned counsel appearing for the revenue, contended that the decision of the Appellate Tribunal runs contrary to the view expressed by this court in its judgment in R. Cs. Nos. 52/62 and 36/66, dated 21st December, 1966 (V. D. RAJARATHANAM Vs. COMMISSIONER OF Income Tax, A. P.,), and that where an assessee does not at all place his accounts and says that he has no accounts at all to be placed, the estimate of his profits or income has to be made on the basis of the value of the total bills and not on the basis of the net amount received by him after deducting the cost of material supplied by the Government from the gross value of the bills.

5. A similar contention, as is now put forth by Mr. Subbaiah on behalf of the assessee, was raised before Chief Justice Jaganmohan Reddy (as he then was) and Justice Anantanarayana Ayyar in the abovesaid R.Cs., i.e., R.Cs. 52/62 and 36/66 and that was repelled by the learned judges observing :

" The contention of Mr. Ramachandra Rao is that the contract which the assessee has entered into with the Central Government was only to build and repair " Rashtrapathi Nilayam " and that the value of the contract does not include the materials which the Government supplied. Notwithstanding this, he says, the cost of the materials supplied was also included for the purpose of ascertaining the net profits on percentage basis. We do not know whether the contract was for the whole of the work including the materials and the Government gave a rebate of the cost of materials. There is, however, an indication in the finding of the Appellate Assistant Commissioner that the latter is the case."

6. After extracting the statement of the case, the learned judges further observed :

" The above extract gives an indication that the assessee was to receive the gross amount and had to furnish the materials himself but since the Government furnished the materials, an inference would arise that they must have deducted

these amounts from the payments, in which case the basis cannot be challenged.
"

7. In that view they upheld the order of the assessing authority. This is a case where the assessee at no time chose to produce the accounts to satisfy the Income Tax Officer, or the Appellate Assistant Commissioner, or the Tribunal as to the true profits or income derived by him from his contract works. He left the income to be estimated by the Income Tax Officer on the basis of his receipts. Therefore, the profits or the income made by the assessee had to be determined on the basis of the contracts as a whole and not on the value of the contracts after deducting the cost of the material supplied to him by the Government. A similar question, as in this case, arose in the case of BRIJ BUSHAN LAL Vs. COMMISSIONER OF Income Tax, PUNJAB., and the learned judges of the Punjab High Court justified the order of the Tribunal which held that the price of the stores supplied by the military authorities must be included before applying the flat rate to the assessee's receipts. Therefore, a flat rate of 10% of profit or income was applied in that case on the best judgment basis.

8. We are, therefore, of the view that the Tribunal was not justified in holding that the net profit should be estimated on the net income received by the assessee after deducting the cost of the material supplied by the Government from the gross amount. We, therefore, answer the reference against the assessee and in the negative. Reference answered accordingly with costs. Advocate's fee Rs. 250.