
(1985) 02 CAL CK 0018

In the Calcutta High Court

Case No : Income-tax Reference No. 43 of 1978

Commissioner of Income Tax

APPELLANT

Vs

P.N. Mukherjee

RESPONDENT

Date of Decision : 05-02-1985

Acts Referred:

Income Tax Act, 1961 — Section 145

Citation : (1986) 51 CTR 354 : (1986) 157 ITR 82 : (1986) 27 TAXMAN 612

Hon'ble Judges : Dipak Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Judgement

Ajit Kumar Sengupta, J.—The assessee has income from transport business, house property and other sources. For the assessment year 1962-63, the assessee received total bills amounting to Rs. 3,93,545 inclusive of a sum of Rs. 1,09,185 representing cost of materials supplied by the Government for construction of a polytechnic institute at Maldha. As no books of account were maintained by the assessee, the Income Tax Officer proceeded with the computation invoking Section 145 of the Income Tax Act, 1961. After including a sum of Rs. 13,027 to the total receipts, he applied a rate of 13.7 per cent. on the total receipts of Rs. 4,06,572 subject to a deduction of depreciation on trucks. Gross income prior to the adjustment of depreciation was arrived at Rs. 55,700. Total income was computed at Rs. 56,549 as against the income returned at Rs. 15,157.

2. Being aggrieved, the matter was taken in appeal to the Appellate Assistant Commissioner and it was contended on behalf of the assessee that the addition of Rs. 13,027 to the total receipts and the inclusion of the cost of materials supplied by the Government were not justified. A certificate from the Executive Engineer, Public Works Department, Jalpaiguri Division, was produced in support that no profit was allowed to the assessee on the cost of materials supplied by the Government. Further, it was claimed that the materials supplied were available even in the market at a cheaper rate and as such, even assuming for

argument's sake, the assessee had no scope of making any profits from the sale of those commodities (cement and M. S. rods). Accordingly, the Appellate Assistant Commissioner directed the Income Tax Officer to exclude the sum of Rs. 1,09,185 being the cost of materials supplied from the total receipts as computed by the Income Tax Officer for ascertaining the profits at the flat rate of 13.7%.

3. The Department preferred appeal to the Tribunal. The Tribunal upheld the order of the Appellate Assistant Commissioner with the following observations :

"7. As regards the Departmental appeal against the exclusion of the cost of materials, etc., we find from the order of the Appellate Assistant Commissioner that a certificate from the Executive Engineer, P.W.D., Jalpaiguri Division, was filed with the Appellate Assistant Commissioner justifying the assessee's claim that no profit was allowed to the contractor on the cost of materials supplied by the Government. This clearly vindicates the assessee's position so far as the nature of the particular contract jobs for which the materials were supplied is concerned. In the circumstances, we find that the Appellate Assistant Commissioner was fully justified in excluding the cost of materials from the gross receipts. As regards the other amount of Rs. 13,027, it represents a payment on account of security deposit and, as such, this amount too had been correctly excluded from the gross receipts as calculated by the Income Tax Officer."

4. On the aforesaid facts, at the instance of the Revenue, the following question of law has been referred to this court u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that in computing the assessee's business income on estimate, a flat rate of profit should be applied not on the amount of the gross bill, but on the net amount after deduction of the cost of materials supplied by the Government?

5. The question in this reference is whether the cost of materials is liable to be included before applying a flat rate to the assessee's gross receipts. A similar question came up for consideration before the Supreme Court in the case of Brij Bhushan Lal Parduman Kumar Vs. Commissioner of Income Tax , Haryana Himachal Pradesh and New Delhi III, . There the assessee, a registered firm, was a Military Engineering Services contractor, carrying on the business of executing contracts and works on behalf of the Government. For the execution of the works undertaken by the assessee, certain materials such as cement, coal, steel, etc., were supplied by the Government at the fixed rates specified in the respective contract. Such materials, though in the custody of the assessee, remained the property of the Government and any surplus had to be returned to the Government, and the Government was to give credit therefore at fixed rates at which they were supplied by the Government. After rejecting the book results, the Income Tax Officer sought to estimate the profits of the assessee at a percentage of the net cash payments received by the assessee against the

contracts as well as the cost of materials supplied by the Government. The Appellate Tribunal, however, held that the cost of materials supplied by the Government could not be added to the figure of cash payments received by the assessee as no profits could have arisen therefrom. On a reference, the High Court held that the cost of materials was liable to be included before applying a flat rate to the assessee's receipts.

6. There the Supreme Court, reversing the decision of the High Court, held that since, in substance and reality, materials supplied by the Government always remained the property of the Government and the assessee merely had custody and fixed or incorporated them into the works, there was not even a theoretical possibility of any element of profit being involved in the turnover represented by the cost of such materials. Since no element of profit was involved in the turnover represented by the cost of materials supplied by the Government to the assessee, the income or profits derived by the assessee from such contracts had to be determined on the basis of the value of the contracts represented by the cash payments received by the assessee from the Government exclusive of the cost of materials received for being used, fixed or incorporated in the works.

7. In our opinion, the principles laid down in the aforesaid decision of the Supreme Court would govern the present case. In this case also, the assessee was supplied with cement and M. S. rods by the Government which were utilised in the execution of the contract. A certificate from the Executive Engineer, Public Works Department, was produced to show that no profit was allowed to the assessee on the cost of materials supplied by the Government. It was also found that the market prices of those materials were lower than the scheduled rates at which these materials have been supplied by the Government. There was therefore no element of profit. Even where an assessment has been made on estimate by applying the provisions of Section 145 of the Act and a flat rate of profit is applied on the turnover, such turnover cannot include the cost of materials supplied by the Government as it does not involve any element of profit. In that view of the matter, the Tribunal was right in holding that the cost of materials supplied by the Government could not be included before applying a flat rate to the assessee's receipts.

8. We, therefore, answer the question in this reference in the affirmative and in favour of the assessee.

9. There will be no order as to costs.