(1984) 11 PAT CK 0013

In the Patna High Court

Case No : Taxation Case No. 57 of 1975

Commissioner of Income Tax APPELLANT

Vs

S.P. Viz Construction Co. RESPONDENT

Date of Decision : 21-11-1984

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

Citation : (1986) 55 CTR 283 : (1987) 163 ITR 666 : (1987) 30 TAXMAN 509

Hon'ble Judges : Uday Sinha, J;S.K. Jha, J

Bench : Division Bench

Advocate : B.P. Rajgarhia, for the Appellant; None, for the Respondent

Judgement

1. A statement of the case has been submitted by the Income Tax Appellate Tribunal, ''A'' Bench, Patna, referring the following question of law for our opinion u/s 256(2) of the Income Tax Act, 1961, pursuant to the direction of this court :

"Whether, on the facts and in the circumstances of the case, the cost of materials supplied by the Department was liable to be included in the total receipts of the assessee for calculation of its profit for the assessment year 1968-69 ?"

2. The relevant facts are narrated in the statement of the case which are as follows. The assessee is a firm undertaking building contracts. For the assessment year 1968-69, it declared its receipts at Rs. 3,71,346 and net profits at Rs. 10,803 in connection with the work done by it for Hindustan Steel Ltd. and Durgapur Steel Plants. The Income Tax Officer found that the assessee had not maintained complete accounts and certain expenses on transport and miscellaneous items were not fully verifiable. There was also no day to day job account. He, therefore, estimated the gross receipts at Rs. 4,93,890 and applied a rate of net profit at 10%. He did not allow depreciation separately. A copy of the order of the Income Tax Officer has been marked annexure-A to the statement of the case.

3. On appeal, the Appellate Assistant Commissioner observed that no profit was

involved on the materials supplied by the companies concerned to the assessee and, as such, the rate of net profit at 10% should be applied on the net receipts of Rs. 3,71,346. He, therefore, estimated the net profit at Rs. 37,134 and also allowed depreciation on it. A copy of the first appellate order has been marked annexure-B to the statement of the case.

4. On further appeal before the Tribunal, by its order dated February 28, 1974, the Income Tax Appellate Tribunal, Patna Bench ''B'', partly allowed the departmental appeal and gave relief to the Revenue with regard to the matter of depreciation. At the same time, the Tribunal, on the facts found that the cost of materials supplied to the assessee by the companies concerned with whom the contract was entered into was not liable to be included in the total receipts for the calculation of its profits for the assessment year 1968-69, just as for the assessment for the previous year 1967-68, it was not allowed to be included.

5. After having heard Mr. B.P. Rajgarhia, learned senior standing counsel for the Revenue, we do not think there is any justification for interfering with the Tribunal''s order. The Tribunal has given findings of facts based on materials on record which have not been shown to be either perverse or based on no material on record or as not having been well instructed on matters of fact and law as was done by the Supreme Court in the case of The Commissioner of Income Tax, Bihar and Orissa, Patna Vs. S.P. Jain, . The finding of the Tribunal on facts being based on materials on record, there seems to be no scope for interference with the appellate order. Further more, the point has already been decided by a Bench of this court presided over by one of us in the case of Kalpnath Rai Vs. Commissioner of Income Tax and Another, . In that case, the principle of law has already been laid down, contrary to which there is no decision so far of any High Court, that in regard to assessment of profit arising out of works contract, if the stores/materials always remain the property of the Department and the contractor has merely the custody of it and he fixes or incorporates the same into the works, there is no theoretical possibility of any element of profit being involved in the turnover represented by the cost of such stores/materials. In the instant case, the finding of the Tribunal is in favour of the assessee with regard to the custody of the materials in question. We, accordingly, are constrained to follow a Bench decision of this court in Kalpnath Rai Vs. Commissioner of Income Tax and Another, .

6. In the result, therefore, the question referred to us is answered in favour of the assessee and in the negative. We hold that, on the facts and in the circumstances of the case, the cost of materials supplied by the two contracting parties (companies) was not liable to be included in the total receipts of the assessee for the assessment year 1968-69. In the circumstances of the case, however, we make no order as to costs.

