

(1971) 09 SC CK 0037

In the Supreme Court Of India

Case No : Civil Appeal No. 1955(Nt) Of 1968

Commissioner of Income Tax, U.P.

APPELLANT

Vs

Bharat Engineering and Construction Co.

RESPONDENT

Date of Decision : 08-09-1971

Acts Referred:

Citation : (1972) 83 ITR 187 : (1972) 4 SCC 401 : (1972) 4 UJ 137

Hon'ble Judges : K. S. Hegde, J;A. N. Grover, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.S. Hegde, J.—The controversy in this appeal is whether a question of law arises from the order of the Tribunal. The Tribunal came to the conclusion that the cash credit entries totalling Rs. 2,50,000 brought to tax by the income tax Officer on the ground that they represented the income of the assessee-respondent from undisclosed sources was not correct. It came to the conclusion that, though the explanation given by the assessee in respect of those cash credit entries is not true, yet from the proved circumstances those cash credits could not be the income of the assessee. Aggrieved by the decision of the Tribunal, the Commissioner of income tax moved the Tribunal u/s 66(1) of the Indian income tax Act, 1922, to refer certain questions to the High Court for its opinion. The Tribunal rejected the application on the ground that its findings are findings of fact and that no question of law arose from them. Thereafter, the assessee moved the High Court u/s 66(2). That application was rejected by the High Court. Against that decision this appeal has been brought by special leave.

2. The assessee-company is an engineering construction company. It commenced business in May, 1943. In their account books, there are several cash credit entries in the first year of its business. We are concerned with only five of those cash credit entries. On June 1, 1943, there is a cash credit entry of Rs. 1,00,000. On July 6, 1943, there is a cash credit entry of Rs. 50,000. On August 30, 1943, there is a cash credit entry of Rs. 50,000. On December 2,

1943, there is a cash credit entry of Rs. 15,000 and on March 15, 1944, there is a cash credit entry of Rs. 35,000. These cash credit entries total up to Rs. 2,50,000. The income tax Officer called upon the assessee to explain those cash credit entries. The explanation given by the assessee was found to be false by the income tax Officer, the Appellate Assistant Commissioner and the Tribunal. But, all the same, the Tribunal felt that these cash credit entries could not represent the income or profits of the assessee-company as they were all made very soon after the company commenced its activities. In our opinion, though the order of the Tribunal is not happily worded, its finding appears to be that in the very nature of things the assessee could not have earned such a huge amount as profits very soon after it commenced its activities. A construction company takes time to earn profits. It could not have earned a profit of Rs. 1,00,000 within a few days, after the commencement of its business. Hence, it is reasonable to assume that those cash credit entries are capital receipts though for one reason or other the assessee had not come out with the true story as regards the person from whom it got those amounts. It is true that in the absence of satisfactory explanation from the assessee the income tax Officer may assume that cash credit entries in its books represent income from undisclosed sources. But what inference should be drawn from the facts proved is a question of fact and the Tribunal's finding on that question is final.

3. The High Court after careful examination of the various findings reached by the Tribunal has come to the conclusion that the Tribunal's findings are findings of fact. We agree with that conclusion.

4. In the result this appeal fails and is dismissed. In the circumstances of the case, we make no order as to costs.