

(1974) 12 CAL CK 0021

In the Calcutta High Court

Case No : Income-tax Reference No. 198 of 1971

Rakhal Chandra Banerjee

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 05-12-1974

Acts Referred:

Income Tax Act, 1961 — Section 256(1)

Citation : (1978) 113 ITR 419

Hon'ble Judges : Sabyasachi Mukharji, J; R.N. Pyne, J

Bench : Division Bench

Judgement

Sabyasachi Mukharji, J.—In this reference u/s 256(1) of the Income Tax Act, 1961, we are concerned with the assessment years 1964-65 and 1965-66 for which the relevant accounting years are the years ending on 31st March, 1964, and 31st March, 1965, respectively. The assessee is an individual. He carries on business of executing contracts for the Executive Engineer, North Bengal Construction Division, and the Executive Engineer, Torsa Bridge Construction. The assessee received gross amounts of bills amounting to Rs. 4,93,995 for the assessment year 1964-65 and Rs. 4,43,982 for the assessment year 1965-66. As the assessee did not maintain any books of account the Income Tax Officer applied net profit rate of 12.6 per cent. on the gross bill amounts received by the assessee in each of the two years under consideration and computed the total income for the two years. The assessee being aggrieved by the said order filed appeals before the Appellate Assistant Commissioner and contended that the cost of the materials supplied by the Government should have been deducted before applying the net profit rate and according to the assessee, there was no element of profit in the cost of materials supplied. The Appellate Assistant Commissioner found that the Government had supplied cement, iron rods, etc., costing Rs. 1,44,408 and Rs. 1,99,383 in the respective two years under consideration. According to the assessee, the cost of the materials should have been deducted from the gross amounts of bills for the purpose of determining the net profit earned by the assessee. The Appellate Assistant Commissioner was

of the view that the assessee did earn profits on the cost of materials supplied because certain materials, were supplied by the Government from the market at the prevailing prices. The assessee being aggrieved filed appeals before the Tribunal and urged that the departmental authorities were not justified in not excluding the value of materials supplied. The Tribunal, however, was of the opinion that the assessee had tendered for the contract as a whole including the cost of materials which were supplied by the Government and as such there was element of profit in respect of cost of materials also. In the premises, the Tribunal upheld the order of the Appellate Assistant Commissioner. On the aforesaid facts the following question has been referred to this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that a net profit rate as applied by the departmental authorities on the gross amounts of bills without deducting the cost of materials supplied by the Government was legally justified for the assessment years 1964-65 and 1965-66 ?"

2. Counsel for the assessee contended before us that there could not be any proposition of law that in a case of materials supplied in a tender where the materials were supplied by the Government, an element of profit had entered in the calculation. He further submitted that in so far as the Tribunal had held that there was an element of profit even in the cost of materials supplied as calculated by the Tribunal, the Tribunal was acting on surmise and guess without any evidence. Firstly, we have to observe that in this case the assessee had not maintained any books of account and the revenue applied a rate of profit of 12.6 per cent. on the gross amounts of bills received by the assessee. The assessee had tendered for the contract as a whole including the cost of materials which were subsequently supplied by the Government. There is no evidence on record to show that the assessee did not know about the supply of materials by the Government to be made or at what price. Furthermore, the gross profit has been computed on the total gross bill of the assessee. In the aforesaid background the Tribunal had come to the conclusion that the assessee, though tendered the contract as a whole, it must have included the cost of materials which were supplied by the Government as an element of profit in respect of cost of materials also. We are of the opinion that in the aforesaid background it cannot be said that the Tribunal was indulging in any surmise or acting without any proper evidence. Furthermore, we may point out that the question as referred to this court does not really challenge the findings of the Tribunal on this basis. Counsel for the assessee drew our attention to the decision in the case of Commissioner of Income Tax Vs. K.S. Guruswami Gounder and K.S. Krishnaraju (Contractors), and the decision in the case of M.P. Alexander and Co. Vs. Commissioner of Income Tax, . Facts of those cases were entirely different. In this connection, reliance may be placed in support of our conclusion on the decision of the Andhra Pradesh High Court in the case of V. D. RAJARATHANAM Vs. COMMISSIONER OF Income Tax, A. P., and also on the decision of this court in the case of Gopendra Krishna Saha Vs. Commissioner of Income Tax, .

3. In the aforesaid view of the matter, question referred to this court is answered in the affirmative and in favour of the revenue.

4. Each partly will pay and bear its own costs.

R.N. Pyne, J.

5. I agree.