(1979) 09 PAT CK 0008

In the Patna High Court

Case No : Taxation Case No''s. 159 and 160 of 1976

Ramesh Chandra Chaturvedi APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 10-09-1979

Acts Referred:
Income Tax Act, 1961 — Section 145(1)

Citation : (1980) 121 ITR 116

Hon'ble Judges : Shiveshwar Prasad Sinha, J;B.S. Sinha, J

Bench : Division Bench

Advocate : Kashi Nath Jain, Rameshwar Prasad No. 2 and A.B. Prasad, for the Appellant; B.P. Rajgarhia and S.K. Sharan, for the Respondent

Judgement

1. Patna Bench ''B'' of the Income Tax Appellate Tribunal has asked for the opinion of this court on the question :

"Whether, on the facts and in the circumstances of this case, the Tribunal was correct in holding that profit from contract business for the assessment years 1972-73 and 1973-74, was to be calculated on the gross receipts excluding the recoveries for the materials supplied by the Government department ?"

2. We have had some difficulty in understanding the question, particularly if it means that some part of the materials supplied to the assessee belonged to the Government department and always remained their property but used by the assessee in the execution of the contract. If this fact had been clearly indicated, it would have been easier to answer this question. The question, however, is restricted to the facts and circumstances of the case and, therefore, the facts and circumstances, as obtained in this case, are now being stated.

3. The assessee is a firm of contractors, registered under the I.T. Act. It is not known, however, as to what are the things which he undertook to execute as a contractor. The aforesaid question has been posed for the assessment years 1972-73 and 1973-74. For both these assessment years, assessment had been

made by recourse to proviso to Section 145(1) of the I.T. Act, 1961, because it was found that the accounts did not reflect the true state of his business affairs. There is no dispute on the question that in the circumstances, his profit has to be estimated by recourse to the said provision of the Act.

4. For the assessment year 1972-73, the total gross receipt from the various contracts executed amounted to Rs. 19,41,472. Similarly, the gross receipts for the assessment year 1973-74 amounted to Rs. 22,86,353. The assessee claimed that while estimating the profits the value of the materials should be excluded from the gross receipts. The value of the materials was stated to be Rs. 1,27,215 for the assessment year 1972-73 and Rs. 4,82,527 for the assessment year 1973-74. The ITO, however, refused the assessee''s contention and estimated its net profit at 10% of the gross receipts, without excluding the value of the materials from the gross receipts.

5. On appeal, the assessee succeeded before the AAC and the aforesaid amounts representing the value of the materials were directed to be deducted from his gross receipts for the purposes of estimating the assessee''s net profits. The reason which weighed with the AAC was that according to the terms of the contract between the assessee and the other party, the assessee had no option but to accept the materials supplied by the other party in execution of the contract. The AAC found that the deductions of the value of the materials had been made from the gross payment. On these grounds he held that on the value of the materials the assessee could not have earned any profit and, therefore, the net profit should be assessed not on the gross receipts but on the gross receipts less the value of the materials in each year.

6. The department being aggrieved by the orders of the AAC, appealed to the Tribunal which set aside the order of the AAC and restored the order of the ITO. The Tribunal was apprised of the terms of the contract and also of the total value of the contracts, as also of the value, of the materials said to be deducted out of the gross receipts. The Tribunal, however, found that in the absence of stock register for the materials received, either from the department or purchased by the assessee himself, the actual position relating to the materials obtained from the department was not ascertainable. The Tribunal further found that even with regard to the materials said to have been supplied by the department, whether they remained under the control of the department or under the control of the contractor was not known. According to the Tribunal, in such circumstances, it could not be said that the assessee earned no profits on the materials used in the contract. These are the relevant facts, on which the aforementioned question has been referred for the opinion of this court.

7. Mr. Rameshwar Prasad No. 2, appearing for the assessee, submitted that the assessee could not have had any profit on the materials used by it in the execution of the contract, because those materials were all supplied by the other party, in this case, certain departments of the State Government. According to Mr. Prasad, it was incumbent on the assessee to accept whatever materials were

delivered to it for use in the execution of the contract and in such a view of the matter, the assessee was wholly unconcerned with the value of such materials supplied to it. On the value of such materials, according to Mr. Prasad, no profit could have accrued to the assessee and, therefore, in determining the assessee''s net profit the value of such materials must be excluded from his gross turnover.

8. Mr. Rajgarhia, appearing for the department, however, submitted that the argument made on behalf of the assessee was wholly untenable in the absence of relevant facts, concerning the terms on which the materials, if any, were supplied to the assessee by the department concerned. Mr. Rajgarhia submitted that, may be that the entire materials used by the assessee in the contract might have been purchased by the assessee himself from the departments, or might have been purchased even from outside. On the use of such materials in the execution of the contracts, Mr. Rajgarhia submitted, an element of profit would always be present in the value of the materials used and, therefore, the Tribunal''s order restoring the ITO''s orders were valid and should be upheld. According to Mr. Rajgarhia, the question should be answered against the assessee.

9. There cannot be a hard and fast rule to determine the question as to whether the value of the materials should or should not be included in the gross turnover of an assessee who is a contractor, for determining his net profits. It all depends upon the manner in which the materials have come to be used in the execution of the contract. Generally contracts partake three forms-

(1) an overall contract wherein the contractor undertakes to execute the contract wholly supplying the labour and material, himself;

(2) works contract in which the contractor undertakes to supply only the labour. The contractor is not at all concerned with the materials used in the contract. He just puts the materials in the form in which he is asked to do and charges only for labour ; and lastly

(3) a lump sum contract.

10. The last form of contract can be sub-divided into further sub-heads, namely:--

(a) where the contractor is given to understand that the total value of the contract shall be of a certain amount and the materials to be used therein shall be roughly of so much value, a part of which is supplied by the department concerned to be exclusively used in the contract and part of which the contractor may himself acquire from his own resources ;

(b) where the department itself supplies the entire materials in the execution of the contract and pays to the contractor only for his labour, but all the same, in order to complete its accounts the department calculates the value of the contract on a lump sum basis, namely, the value of the materials supplied as also the payment made towards labour cost in the execution of the contract.

11. Now in all these distinct forms of contract, the answer to the question as to whether the value of the materials would figure for the purpose of ascertaining the contractor''s net profit would be different. For example, in an overall contract, net profit will have to be ascertained upon the entire value of the contract, including the value of the materials also. In a works contract, the value of the materials has to be wholly excluded, because the contractor has no concern whatsoever with the materials except for the purpose of putting them into the shape as desired by the person giving the contract. In a lump sum contract, so far as the first sub-head is concerned, that part of the value of the materials which the assessee arranged himself, has to be included in determining his net profits from the contracts. Now, so far as the supply of materials made by the department is concerned, it has again to be seen, whether the supply was made by the department to the assessee just as one selling its goods to a purchaser, or whether the supplies were made to the assessee keeping the ownership over the materials supplied by the supplier himself. In the latter case, the value of the materials cannot be included in the gross receipts from the contract, because the assessee had no control whatsoever over the materials. It was just given to it by the other party to be used in the contract and the assessee never got concerned about its value. Therefore, as observed earlier, no hard and fast rule can be laid down as to whether the value of the materials should or should not he included in a contractor''s turnover from business, for determining his net profits.

12. Now, in the instant case, we very much wanted to ascertain if the entire value of the materials, namely, materials worth Rs. 1,27,215 for the assessment year 1972-73 and Rs. 4,82,527 for the assessment year 1973-74, were in the nature of the supply made by the department keeping to itself the ownership of the materials supplied. The difficulty with which the assessee has faced, since the very beginning of these assessments, has been the absence of stock register for the materials received from the department or of materials purchased by the assessee itself. The absence of the issue register also matters in this regard. Keeping these facts in view, the Tribunal came to the conclusion that "...There are another circumstances to show that the materials were throughout under the control of the department and were not under the control of the contractor except for the purpose of using it in the construction. In such circumstances, we are of the view that the gross payment should be adopted as the basis for working out the profit..."

13. On the fact and in the circumstances of this case, therefore, we have got to answer the question in the affirmative and against the assessee. There will be no order as to costs.

