ANDHRA PRADESH HIGH COURT

Addl. I.-T. Commr

Vs.

T.P. and Sons

Case Referred No. 25 of 1975

(B.J. Divan, C.J. Sambasiva Rao and Raghuvir, JJ.)

23.09.1976

JUDGMENT

B.J. Divan C.J.

1. This case was referred by myself and Raghuvir, J. to a Full Bench in view of the fact that the view taken by this High Court in *V. D. Rajaratnam v. Commr. of Income Tax*[1], and *Commr. of Income-tax v. K.S. Reddy*[2], is contrary to the view taken by the Madras High Court, Kerala High Court and Gujarat High Court and I myself sitting in the Gujarat High Court in a Division Bench specifically dissented from the view taken by this High Court in *Commissioner of Income-tax v. K.S. Reddy*[3], and under these circumstances we felt it desirable that the question is finally settled by a larger Bench.

2. The question, which has been referred to the High Court by the Income-tax Appellate Tribunal is as follows:

> 'Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in giving directions to the Appellate Assistant Commissioner that the value of the materials should not be taken into consideration for estimating the net income for the assessment years 1964-65 to 1967-68?"

3. We are concerned with assessment years 1964-65 to 1967-68. The assessee is a registered partnership firm and carries on business as railway contractors. The relevant years of account are the four years ending with Deepavali of each Hindu Calendar year. For the assessment year 1964-65, in the first instance the assessee filed a return disclosing an income of Rs. 47,535/- and the return was based on the books of account maintained by the firm. Subsequently, the assessee filed a revised return declaring total income of Rs. 1,04,609/- estimating the same at 10% of its receipts. The Income-tax Officer found that the accounts kept by the assessee-firm were not reliable. He found that the total receipts during the year amounted to Rs. 10,34,350/-. He also found that the assessee-firm had received materials of the value of Rs. 72,584/- from the Railway authorities. He estimated the total receipts at Rs. 11,10,000/- and estimating the gross profit at

15% thereon, he finally determined the total income at Rs. 1,03,611/-. Similarly, for subsequent years also,

[1]68 ITR 19 [3]103 ITR 822 (Andh Pra)

[2]103 ITR 822 (Andh Pra)

the Income-tax officer added the cost of materials supplied by the Railway authorities to the assessee-firm. The additions trade by the Income-tax Officer for all the four years were challenged in different appeals before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner took the view that the cost of materials should be included for the purpose of calculating the gross profit earned by the assessee-firm. He, however, held that the profit estimated by the Income-tax Officer for assessment years 1965-66 and 1966-67 was excessive and be reduced the amount of income by Rs. 5,000/- and Rs. 20,000/- respectively.

4. Against the decision of the Appellate Assistant Commissioner, the assessee took the matter on further appeal to the Income-tax Appellate Tribunal and before the Tribunal, the main controversy was whether, in law the amount of materials supplied by the Railway authorities could be included for the purpose of calculating the gross profits of the assessee. Relying on the judgment of the Kerala High Court in *M.P. Alexander and Co. v. Commr. of Income-tax*[4] the Tribunal held that there was no element of profit involved in the supply of the materials by the railway authorities to the assessee. It further held that the decision of the Andhra Pradesh High Court in *V.D. Rajaratnam v. Commr. of Income-tax5* was not applicable to the facts of the assessee's case. Therefore, at the instance of the Revenue, the question set out hereinabove has been referred for the opinion of this Court.

5. It is clear from the narration of the facts hereinabove set out that the books of account were not found reliable and correct by the Income Tax Officer; Under Section 145 (2) of the Income-tax Act, 1961, since the Income-tax Officer was not satisfied about the correctness on the completeness of the accounts of the assessee, he could make an assessment in the manner provided in Section 144. Section 144 provides for best judgment assessment and it enables the Income-tax Officer, after taking into account all relevant material which be has gathered, to make the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment. Thus Section 144 provides for best judgment assessment and if the conditions mentioned in Section 145 (2) are satisfied, as they were satisfied in the instant case the best judgment assessment could be made by the Income-tax Officer.

6. It must be pointed out that the best judgment assessment referred to in Section 144 is regarding the figure of income, which, in the opinion of the Income-tax Officer, is the proper figure of income and he makes the assessment of the total income to the best of his judgment after taking into account all relevant materials which he has gathered.

7. The principles to be followed by the Income-tax Officer or the Sales-tax Officer when making best judgment assessment, have been culled out by the Supreme Court in *The Commr. of Sales-tax, Madh. Pra. v. H. M. Esufali*[6], In Para 9 at p. 2269 of the report, Hegde, J. speaking for the Supreme Court, has pointed out that the law relating to 'best judgment assessment' is the same both in the case of income-tax assessment as well as in the case of sales-tax assessment. He has pointed out that the scope of 'best judgment' assessment under the Income-tax Law came up for consideration before the Judicial

[4](1973) 92 ITR 92 (Ker) [6] AIR 1973 SC 2266
[5](1968) 68 ITR 19
Committee as early as 1937 in *Commr. of Income-tax Central and U. P. v. Laxminarayan Badridas*[7], The following passage from the opinion of their Lordships of the Privy Council was cited with approval by the Supreme Court:

> "The officer is to make an assessment to the best of his judgment against a person who is in default as regards supplying information. He must not act dishonestly, or vindictively or capriciously because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose he must, their Lordships think, be able to take into consideration local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns by and assessments of the assessee, and all other matters which he thinks will assist him in arriving at a fair and proper estimate, and though there must necessarily be guess work in the matter, it must be honest guess work. In that sense too, the assessment must be to some extent arbitrary."

In *Raghubar Mandal Harihar Mandal v. The State of Bihar*[8], S.K. Das J. speaking for the Supreme Court at p. 778 (of S.T.C.) of the report observed:

> "No doubt it is true that when the returns and the books of account are rejected, the assessing officer must make an estimate and to that extent he must make a guess; but the estimate must be related to some evidence or material and it must be something more than mere suspicion."

Hegde, J. further pointed out that in *State of Kerala v. C. Velukutty*[9], Subba Rao J. (as he then was) observed at p. 244 of the report:

> "The limits of the power are implicit in the expression 'best of his judgment.' Judgment is a faculty to decide matters with wisdom truly and legally. Judgment does not depend upon the arbitrary caprice of a Judge, but on settled and invariable principles of justice. Though there is an element of guess work in a 'best judgment' assessment, it shall not be a wild one, but shall have a reasonable nexus to the available material and the circumstances of each case."

8. It is in the light of these principles mentioned by Hegde J., that we have to consider whether, in arriving at the best judgment assessment under Section 144, the Income-tax Officer in the instant case has followed the correct principles.

9. We may mention at the outset that, in this case, as shown by the material papers filed in this case, it was obligatory on the part of the assessee to obtain the cement required for the work from the railway authorities on the conditions laid down in the contract and that bazar cement was not allowed to be used. The conditions relating to the supply of cement are as follows:

"Issues will be made daily by the Railway in such quantities as are actually required for the operation in hand and in accordance with the quantities indicated

[7]5 ITR 170 [9](1966) 60 ITS 239 (SC)
[8]8 STC 770

against the relevant items. Deductions will be made for the bulk quantities of cement supplied from time to time, irrespective of the control over daily issues above referred to at an all inclusive rate of Rs. 120/- per ton. Cement left over on completion of the work will be adjusted in the final bill and will be taken over by the Railway."

The Chief Engineer (construction) South Central Railway Secunderabad has issued a certificate on October 23, 1972 to the following effect:

"This is to certify that in all types of contracts with the Railways the Contractor shall be supplied the cement, from and steel required for the work by the Railway only. Cement, iron and steel purchased in the Bazar by the contractor will not be allowed to be used. This is one of the standard conditions of all types of contracts with the Railways."

On January 29, 1969, the Divisional Engineer (construction) South Central Railway, Secunderabad, has issued the following certificate:

"This is to certify that for estimating purposes the contractors percentage of profit is calculated for labour charges and materials he has to obtain from sources other than Railway. No margin of profit is added for materials supplied by the Railway such as Iron, steel and cement etc."

10. It is true, as Mr. Rama Rao, the Standing Counsel for Income-tax Department, urged before us, that the certificates issued by the Railway Engineers are not binding on the Income-tax authorities; but, in our opinion, they do indicate exactly how the contract was entered into and on what basis the railway authorities and the assessee dealt with each other. It is clear to us that, if the Income-tax Officer has to assess the income of the assessee to the best of his judgment and since, in the instant case, he has to arrive at the figure of profits or gains from the business of the assessee to the best of his judgment, he must arrive at the figure of profits which the assessee is said to have earned from his contract with the railway authorities. The very fact that some materials, viz. cement, iron and steel were to be supplied by the railway authorities and it was not open to the contractor, the assessee herein, to purchase cement, iron and steel from outside or to use cement, iron and steel other than these supplied by the railway authorities, clearly goes to show that these items could never have entered into the making of profit by the assessee. It cannot be said that the cement, iron and steel supplied by the railway authorities contributed to the profit made by the assessee. The question therefore arises as to whether, in the light of the decisions of this High Court and of other High Courts, it can be said that the cost of materials in cases like the present one must be excluded before the profits are ascertained on the best judgment assessment.

11. The earliest decision in point of time is the decision of the Kerala High Court in *M.P. Alexander and Co. v. Commr. of Income-tax*[10], decided on July 10, 1966 by a Division Bench consisting of M.S. Menon C.J. and P. Govindan Nair, J. (as he then was). In that case, the assessee entered into two contracts for the execution of certain works for the

[10](1973) 92 ITR 92 (Ker)

State Govt. and the question was whether the cost of materials supplied by the Government should be included for the purpose of computation of profits earned by the assessee. In that case also, the accounts of the assessee were rejected and an estimate was, therefore, made, Govindan Nair, J. speaking for the Division Bench, observed:

> "We may state at the outset that these amounts have been included for applying the percentage on the basis that these amounts representing the cost of the materials had contributed to the profit made."

The learned Judge further observed:

> "It is clear that the Tribunal has proceeded on the basis that there is an element of profit involved even in the supply of materials by the State Government. Even so they were prepared to say that there was no such element involved in the hire charges. We are unable to discern any difference between these. Further, we are unable to see any material on the basis of which it was possible to postulate that the turnover represented by the cost of materials in any manner contributed to the profit of the assessee. If anything, the materials indicate that there is no such element of profit."

In that case also, as in the case before us, two certificates issued by the Executive Engineer, Building Division. Alwaye and by the Executive Engineer, Pannian Division, Kallarkutty, clearly stated that for estimating purpose the percentage of profit was calculated on the labour charges alone and that it was not calculated on the cost of departmental materials supplied for the work. In the light of the certificates, the Division Bench of the Kerala High Court felt that that there was a case in which a conclusion had been reached without any materials and against whatever material was available and hence the case was decided in favour of the assessee and against the Department on that issue.

12. The next decision in point of time is the decision of this High Court in *V. D. Rajaratnam v. Commr. of Income-tax*[11], That case was decided by a Division Bench consisting of Jaganmohan Reddy C. J. and Anantanarayana Ayyar J. There also, the question was whether estimation of profit on the gross amount instead of estimating on the net amount received by the assessee after deduction of costs of material supplied by the Government, was justified in law. Jaganmohan Reddy, C. J. pointed out that the assessee had not adduced any evidence in respect of that particular contention nor did the statement of case refer to that contention. It was contended on behalf of the assessee in that case that the contract which the assessee had entered into with the Central Government was only to build and repair "Rashtrapathi Nilayam" and that the value of the contract did not include the materials which the Government supplied. Jaganmohan Reddy, C. J. observed:

"We do not know whether the contract was for the whole of the work including the materials and the Government gave a rebate of the cost of materials. There is, however, an indication in the finding of the Appellate Assistant Commissioner that the latter is the case."

[11](1968) 68 ITR 19 (Andh Pra)

The Appellate Assistant Commissioner in that case found that the materials supplied by the departmental authorities were of such a nature that they could not be obtained by the assessee in the open market at the rates at which the Government supplied them, even if he could obtain them in the open market. According to Jaganmohan Reddy, C.J., the order of the Appellate Assistant Commissioner gave an indication that the assessee was to receive the gross amount and had to furnish the materials himself but since the Government furnished the materials, an inference would arise that they must have deducted these amounts from the payments, in which case the basis adopted by the Income-tax authorities could not be challenged and it was held that the cost of materials supplied by the Government should be included in the figure on the basis of which the percentage of profit could be worked out.

13. Thus, it is clear from what has been pointed out by Jaganmohan Reddy, C.J. that in that particular case, the contract was that the contractor should furnish the materials himself and for that purpose, he had to receive a particular gross amount, but since the Government had furnished some if the materials, the amount representing the cost of those materials was deducted before actual payments were made. Thus the decision in *V. D. Rajaratnam v. Commr. of Income-tax*[12], is based on facts totally, different from the facts of the case before us.

14. In *Brij Bushan Lal v. Commr. of Income Tax Punjab*[13], the same question came up for consideration before the Punjab and Haryana High Court. There the assessee was a contractor, who had carried on certain works for the M. E. S. Department of the Government and the question was whether the price of the stores supplied by the military authorities was to be included before applying the flat rate to the assessee's receipts. It was argued before the Punjab and Haryana High Court on behalf of the assessee that the materials supplied by the M.E.S. Department were the property of that department and were to be used only in the construction of the works undertaken by the assessee. These materials were to remain in the custody of the M. E. S. Department and the assessee could not be said to have made any profits with regard to them. According to the contracts, the cost of these materials was included in the amount of the contract and was deducted from the bills of the assessee after the works were completed. The Division Bench of the Punjab and Haryana High Court held that, if an assessee does not produce his accounts to satisfy the Income-tax Officer as to the true profits or income made by him from a contract and leaves it to him to determine on the best judgment basis, the profits or income made by the assessee, the Income- tax Officer naturally will calculate and determine the net income assessable on the basis of the value of the contract as a whole and not on the value of the contract after deducting the cost of the materials supplied by the department. The percentage of profit in such a case is not determined with reference to each item of the material involved in the performance of the contract but on the amount of the whole contract which cannot be divided into different parts according to the nature and source of supply of the materials used for that purpose. The Division Bench therefore held that no fault could be found with the order passed by the Income-tax Appellate Tribunal on that part of the case.

15. This judgment of the Punjab and Haryana High Court was followed by the same High

[12](1968) 68 ITR 19 (Andh Pra)

[13]81 ITR 497 (Punj)

court in *Commr. of Income-tax v. Brij Bhushan Lal, Ramesh Kumar*[14], The decision of the Kerala High Court in *M.P. Alexander and Co. v. Commr. of Income Tax, (1973) 92 ITR 92 (Ker)* (supra) was pointed out to the Division Bench but the Division Bench saw no reason to depart from the view taken in *Brij Bushan Lal v. Commr. of Income Tax*[15], It may be pointed out that, in the second case decided by the Punjab and Haryana High Court, the assessee was a registered firm having its income from contract business and the question was whether the value of the stores supplied by the Government was to be excluded or not in assessing the income of the assessee on the basis of the best judgment assessment and the question was decided in favour of the department and against the assessee.

16. In *Commr. of Income-tax v. K. S. Guruswami Gounder*[16] a Division Bench of the Madras High Court held that the cost of materials supplied to the contractor by the Government for the purpose of constructions on their behalf undertaken by him cannot be included in his total receipts for the purpose of computing the income of the contractor and that such income has to be calculated only on the actual receipts from the Government. The Division Bench observed:

> "It is not the case of the revenue that the obligation to supply the materials like cement, steel etc., was not undertaken by the Government even at the time of calling for the tenders. If the assessee gave its tender on the definite understanding that the department concerned is to supply the required materials for the construction of the buildings, the rates quoted by him would have been adjusted on that basis. Therefore, there is no question of the assessee purchasing the materials required for the buildings from outside and putting itself to a disadvantage. Admittedly, the materials supplied by the departments had been used in the construction of the buildings and the assessee did not, in fact, earn any profit in relation thereto. We are not, therefore, in a position to say that the turnover represented by the cost of the materials supplied, in any manner, contributed to the profit of the assessee."

The Madras. High Court noted that the Kerala High Court in *M.P. Alexander and Co. v. Commr. of Income Tax*[17], had also taken the same view. It must be pointed out that the Madras High Court came to this conclusion though it considered that the question referred to the High Court was one involving a question of fact; but having regard to the fact that they had considered the matter on merits, the question was answered against the Revenue.

17. In *Commissioner of Income Tax v. K.S. Reddy*[18], the assessee was a contractor assessed on the best judgment assessment basis on the net profit determined on the basis of the gross receipts which included the cost of material supplied by the Government and the best judgment assessment was made on the ground that he had not maintained any accounts. On a reference as to whether the net profits should be estimated on the net amount received by the assessee i. e. after deducting the cost of material supplied by the Government from the gross amount of the bills, a Division Bench of this High Court

[14](1976) 102 ITR 430 (Punj) [16](1973) 92 ITR 90 [18] (1976) 103 ITR 822 (Andh Pra)

[15](1971) 81 ITR 497 (Punj) [17](1973) 92 ITR 92 (Ker)

consisting of Obul Reddi C.J., and A.V. Krishna Rao, J., following the decision of the Punjab and Haryana High Court in *Brij Bushan Lal v. Commr. of Income Tax*[19], and following the earlier decision of this High Court in *V.D. Rajaratnam v. Commr. of Income-tax*[20] held that the income or profits made by the assessee must be estimated on the contract as a whole and not on the net receipts arrived at after deducting the cost of materials supplied by the Government, inasmuch as the assessee had not maintained any accounts, but left the assessment to be made by the Income-tax Officer on the basis of the receipts.

18. We have referred to the case papers in R.C. No. 9 of 1973, the decision in which is reported in (1976) 103 ITR 822 (Andh Pra). We find from the order of the Tribunal in that case that a certificate was issued by the Executive Engineer, Drainage Division. As per the terms of the tender, the contractor was bound to use the material supplied by the department and the contractor did not get any commission or profit on such supplies. Thus, the contract, which was for the construction of drainage and roads by the assessee in that particular case, was on the footing that certain materials were to be supplied by the department and it was not open to that particular contractor to use any outside materials of that category and he was bound to use the materials supplied by the department. The facts of that case were therefore different from the facts which were before Jaganmohan Reddy, C. J. and Anantanarayana, and Ayyar, J. in *V. D. Rajaratnam v. Commr. of Income Tax*[21]

19. The last judgment which requires to be noticed in this connection is the decision of the Gujarat High Court in *Trilokchand Chunilal v. Commr. of Income Tax*[22]. There also the question was whether the value of the material supplied by the railway authorities was to be taken into consideration in estimating the total receipts of the assessee. After considering the different authorities on the point and the terms of the contract, I had stated, speaking for the Division Bench of the Gujarat High Court:

> "We must make it clear that the question referred to us has to be decided in the light of clear perception and appreciation of what is generally provided in building contracts of the type before us. From the point of view of the question referred to us, contracts for building construction or of similar type can be divided into two broad categories. Category No. (1) will cover contracts where, at the time of entering into the contract, the contractor is told that some of the materials required for construction work will be supplied by the person or authority who entrusts the construction work to him and it is on that footing of such construction materials being supplied by the authorities or the other party to the contract, that the contractor enters into the contract for the construction quoting a particular figure for the entire contract. A sub-category of this first category of contracts is the type of contract where for notional purposes, a total figure is mentioned for the construction contract inclusive of materials and on the footing that the contractor is to supply all the materials for the construction work. However, at the time when the contract is entered into it is clearly agreed between the contracting parties that some of the building materials will be supplied by the other party to the contract,

[19](1971) 81 ITR 497 [21](1968) 68 ITR 19 (Andh Pra)

[20](1968) 68 ITR 19 (Andh Pra) [22](1976) 43 Taxation 90

that is, the person or authority entrusting the construction work to the contractor and that credit will have to be given by the contractor for the materials thus received and the rates at which the credit is to be given are also agreed upon between the contractor and the other party to the contract. We have designated this as a sub-category of category No. (1) because though notionally and on the face of it the contract has been entered into for a much larger amount and on the footing that the contractor is to supply all the materials because of the clear agreement between the parties about the materials to be supplied by the other party to the contract and also about rates at which those materials are to be supplied, it is clear that in fact and in substance the parties have entered into the contract where certain specified materials are to be supplied not by the contractor but by the other party to the contract and the contractor right from the beginning enters into the contract on this footing and puts forward his quotation and ultimately gets the contract for the amount where he does not take into consideration supply of those particular materials or rates for those materials. Category No. (2) of contracts is the type where right from the beginning, the contractor enters into the construction contract on the footing that he has to supply all the materials but while the contract is being executed, the other party to the contract supplies some of the materials and when the bill is finally paid, the other party to the contract claims credit for the price of the materials supplied to the building contractor. In that eventuality, it is really the total figure of the original contract or figure worked out in accordance with the terms of the original contract which will constitute the original receipts of the building contractor and the fact that instead of going into the market and purchasing the materials for himself, the contractor gets these materials from the party to the contract, does not enter into the picture so far as this aspect of the case is concerned. The question as to under which particular category, category No. (1) or category No. (2) set out above, a particular contract falls, will have to be decided looking into the substance of the transaction between the parties in each individual case. If the case falls under the first category, then it is obvious that the cost of the materials supplied by the other party to the contract cannot be taken into consideration in arriving at the figure of the total receipts of the contractor in respect of the particular contract for building construction. On the other hand, if the case falls on the facts and circumstances of the particular case, in the second category, then the total receipts of the building contractor in respect of that particular contract will be the total amount of the contract notwithstanding the fact that the other party to the contract has supplied some of the materials required for building p> construction work."

The Gujarat High Court pointed out that, on the facts of the case in *V. D. Rajaratnam v. Commr. of Income Tax*[23] it was a contract of the second category and not of the first category. The contract was as a whole and the contractor had to supply the materials but while the contract was being executed, some of the materials required for executing the contract were supplied by the Government. The Gujarat High Court specifically differed from the view taken by the Punjab and

Haryana High Court in *Brij Bhushan Lal v. Commr. of Income-tax*[24] and *Commissioner of Income Tax v. Brij Bhushan Lal Ramesh*

[23](1968) 68 ITR 19 (Andh Pra)

[24](1971) 81 ITR 497

Kumar[25] and the view taken by this High Court in *Commr. of Income Tax v. K. S. Reddy*[26]

20. The Gujarat High Court agreed with the conclusions of the Madras High Court in *Commr. of Income Tax v. K. S. Guruswami Gounder and K. S. Krishnaraju*[27] and of the Kerala High Court in *M. P. Alexander and Co. v. Commr. of Income-tax (1973) 92 ITR 92 Supra.*

21. In our opinion, the facts and circumstances of each case will determine as to whether the cost of materials can or cannot be taken into consideration in determining the profits of a particular contractor on the best judgment assessment basis. It must be borne in mind that what the Income-tax Officer has to determine is the profit of the assessee and the question whether the assessee was not maintaining his accounts properly, which was a fact which weighed with the Punjab and Haryana High Court in *Brij Bushan Lal v. Commr. of Income Tax*[28] and the Andhra Pradesh High Court in *Commr. of Income-tax v. K. S. Reddy*[29] is an irrelevant factor. With respect to the learned Judges who decided these cases, we are unable to agree with the conclusion reached by them. The question is of determining the profits which the assessee can be said to have earned and if the cost of materials supplied by the department concerned was never intended to contribute to the profits earned or to be earned by the contractor and, in fact, has not resulted in any profit for the assessee, it is difficult to understand how the cost of materials supplied by the other party to the contract can be taken into consideration for estimating the profit earned by the contractor. We agree with the reasoning of the Kerala High Court in *M. P. Alexander and Co. v. Commr. of Income Tax*[30] and of the Madras High Court in *Commissioner of Income-tax v. K. S. Guruswami Gounder and K. S. Krishnaraju*[31] nd of the Gujarat High Court in *Trilokchand Chunilal v. Commissioner of Income Tax*[32] We dissent from the view taken by the Punjab and Haryana High Court in *Brij Bhushan Lal v. Commr. of Income Tax*[33] and *Commr. of Income Tax v. Brij Bhushan Lal Ramesh Kumar*[34] and by this High Court in *Commr. of Income Tax v. K. S. Reddy*[35] Therefore, on the facts and in the circumstances of this case, we hold that the value of the materials supplied by the Railway authorities cannot be taken into consideration for estimating the net income for the assessment years 1964-65 to 1967-68. Hence the Tribunal was justified in law in giving directions to the Appellate Assistant Commissioner that the value of the materials supplied by the railway authorities should not be taken into consideration for estimating the net income for the assessment years 1964-65 to 1967-68.

22. The question referred to the High Court for its opinion is, therefore, answered in the affirmative i. e. in favour of the assessee and against the Revenue. The Commissioner of Income-tax will pay the costs of this reference to the assessee. Advocate's fee Rs. 250/-.

Answered in the affirmative.

[25](1976) 102 ITR 430 (Punj)

[26](1976) 103 ITR 822 (Andh Pra)

[27](1973) 92 ITR 90

[28](1971) 81 ITR 497

[29](1976) 103 ITR 822

[30](1973) 92 ITR 92

[31](1973) 92 ITR 90

[32](1976) 43 Taxation 90

[33](1971) 81 ITR 497

[34]102 ITR 430

[35](1976) 103 ITR 822.