

# KERALA HIGH COURT

M.P. Alexander & Co

Vs

Commissioner of Income-Tax

(M Menon,C.J. P G Nair, J.)

10.07.1966

## JUDGMENT

**Govindan Nair, J.**

1. The Income-tax Appellate Tribunal, Madras Bench, acting under Section 66(1) of the Indian Income-tax Act, 1922, has referred the following question:

"Whether, on the facts and in the circumstances of the case, the inclusion of any sum as profits on materials supplied by the Government under its agreement with the assessee is right in law? "

2. The assessee entered into two contracts for the execution of certain works for the State Government. The total amount of the first of these contracts is Rs. 5,52,191 and the second Rs. 2,24,109. These figures are made up of the cost of materials, Rs. 2,56,639 and Rs. 87,482, respectively, for the two contracts, supplied by the Government to the contractor. In terms of the agreement, Rs. 53,912 and Rs. 663, respectively, being the hire charges payable by the assessee and other charges which the contractor had to meet in executing the contract. The accounts of the assessee were rejected and such rejection was not disputed, before the Tribunal. An estimate was, therefore, made and the method adopted was to apply a percentage on the total turnover. In computing this turnover, the Tribunal accepted the case of the assessee that the amounts of Rs. 53,912 and Rs. 663 for the two years representing the hire charges should not be taken into account. The assessee had also contended before all the authorities that the amount of Rs. 2,56,689 and Rs. 87,482 should also be left out of account, because they represent the cost of the materials supplied by the Government. This contention of the assessee has been rejected and the question is whether on the facts and in the circumstances the computation of profits on the above amounts also will be justified in law.

3. 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 has contributed to the profits made. This is clear from the Tribunal's order as well as from the statement of the case. In the statement of the case, in paragraph 3, it is stated :

"The assessee was asked as to why the cost of materials and the hire charges had not been

taken into account. The assessee's explanation was that, while tendering the cost of materials supplied the hire charges were not considered, as no profit was made thereon."

4. In dealing with the contention what the Tribunal said is seen from paragraph 11 of its order, which is annexure " F " and which reads as follows:

"The position in the assessee's case is almost the same. We do not see any justification for the bifurcation of the receipts. The contract is one whole and the estimate is to be made on that basis. If the assessee purchased materials for fulfilling its contract with the P.W.D. it might have made an additional profit on the purchases and transfer of such materials to the contract. It may be that when this is not the case, the rate of profits to be estimated may have to be a little lower. But this is more than off-set by the fact that the assessee had not to find the finance for the purchase of the material and the fund being locked up in materials. The assessee is also saved the time in gathering materials, and in the expeditious completion of work there is considerable benefit to the assessee. If the assessee had purchased materials, then the estimate would have been on the gross receipts. Merely because the supplies are made by the Government, there is no justification for treating the receipts in a different manner. We, therefore, hold that the fiat rate of profit has to be applied on the gross receipts. The hire charges would appear to stand in a different category. We direct the officer to work out the profit on the gross receipts after excluding the hire charges amounting to Rs. 54,575. The rates adopted are reasonable and no interference is called for."

5. 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.

6. Annexures "D" and "F," two certificates that have been produced by the assessee, issued by the Executive Engineer, Building Division, Alwaye, and by the Executive Engineer, Panniar Division, Kallarkutty, clearly state that for estimating purposes 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 above, we feel that this is a case in which a conclusion has been reached without any material and against whatever material was available. The conclusion is unsustainable, supported as it is by no material.

7. In the light of the above, we answer the question referred to us in the negative, i.e., in favour of the assessee and against the department. We make no order as to costs.