

(1949) 10 AHC CK 0013

Allahabad High Court

Case No: Miscellaneous Case No. 423 of 1945

K. S. RASHID and SONS, IN RE.

APPELLANT

Vs

RESPONDENT

Date of Decision: Oct. 13, 1949

Acts Referred:

- Income Tax Act, 1961 - Section 23(3)

Citation: (1950) 18 ITR 539

Final Decision: Dismissed

Judgement

This case raises a very short point. Messrs. K. S. Rashid & Sons were military contractors, who used to supply to the messes various kinds. The assessee was one of the favourite contractors and had a very large number of contracts. For the assessment year 1941-42 and the previous year 1940-41 the assessee produced his books. As regards four of the contracts, the assessee claimed that he had given sub-contracts to others and had, therefore, to pay the sub-contractor some rebate. The Income Tax department had been accepting in pervious years the claim of the assessee that he had been privately sub-letting some of the contracts as it was not possible for him to look after all the contracts and this had continued ever since 1921-22 to the assessment year 1940-41 and even subsequent to the assessment year in question 1941-42. In the years previous to the assessment year 1941-42 and in the years subsequent to the year 1941-42, the Income Tax department had always accepted the assessee's claim that some of the contracts had been sub-let.

In the assessment year in question 1941-42 the Income Tax Officer required the assessee to disclose the names of the sub-contractors to enable the Income Tax Officer to verify the claim of the assessee that some of the contractors had been sub-let. The assessee refused to disclose the names of the sub-contractors on the ground that under the rules of the military department it was not permissible to sub-let military contracts, and the sub-contractors, if their names were disclosed, might find themselves in trouble. The assessee relied on an order of the then

Commissioner of Income Tax, dated the 28th of November, 1934, in a previous assessment where a similar question had been asked and the assessee had refused to answer the question. The commissioner had observed as follow : - "The Income Tax Officer must seek other avenues for the discovery of the names of sub-contractors than the assistance of the assessee".

The Income Tax Officer and the Appellate Assistant Commissioner held that the assessee was bound to disclose the names of the sub-contractors, and inasmuch as he had refused to disclose the names of the sub-contractors, they had no means of verifying the claim of the assessee that he had sub-let some of the contracts. The Income Tax Officer and the Appellate Assistant Commissioner rejected the claim of the assessee that he had sub-let any of the four contracts and decided to assess him on all the contracts at the same flat rate.

When the matter came up before the Tribunal, the Tribunal was of the opinion that the assessee's claim, that he had sub-let some of the contracts to others, must be accepted. The Tribunal was also of the opinion that the assessee was a very respectable person and in regard to other entries, which were perhaps bigger entries, no mistake was found by the Income Tax authorities. The Tribunal was of the opinion, however, that the assessee was bound to disclose the names of the sub-contractors, and as he had not disclosed their names, the Income Tax Officer was not able to verify the correctness of the return as regards the contracts, which were said to have been sub-let.

After having come to this conclusion, the Tribunal adopted a very curious attitude. They held that the Income Tax Officer had, on the footing that the assessee had done all the business himself, estimated his profits at Rs. 52,000. On the basis of the finding of the Tribunal that some of the contracts had been sub-let this estimate should be reduced. The assessee had made a return of Rs. 38,118, and the Tribunal said that they would add a token figure of Rs. 1,882 to make the estimated income into a round figure of Rs. 40,000. The Tribunal could not add a token figure to round up the figure of Rs. 38,118. On what principle this amount of Rs. 1,882 was estimated it is difficult to find. The assessment was u/s 23(3) of the Income Tax Act, and if there were no materials on which the Tribunal could come to a definite finding as regards those four contracts which were said to have been sub-let, the Tribunal could not just add a sum of Rs. 1,882 to have a nice round figure of Rs. 40,000 instead of Rs. 38,118.

The questions referred to us u/s 66(1) are as follows :-

(1) Whether on the findings arrived at by the Tribunal, there was any justification for making a token addition of Rs. 1,882 to the accounted versio ? In view of what we have already said, the answer to this question must be in the negative.

We find it very difficult to understand the meaning of the second question which is as follow : - (2) Whether on the findings of fact assessment was correctly made u/s

23(3) ? No such question seems to have been discussed by the Tribunal in its appellate order and we do not see how this question arises and we do not understand what it exactly means.

The assessee is entitled to the costs of this case, which we assess at the figure of Rs. 200.

Reference answered accordingly.