

Maharajadhiraj Sir Kameshwar Singh

Vs

Commissioner of Income-Tax, Bihar and Orissa

Civil Appeals Nos. 112 to 117 of 1956

(T. L. Venkatarama Ayyar, N. H. Bhagwati, J. L. Kapur JJ)

23.05.1957

JUDGMENT

BHAGWATI, J. -

These are six consolidated appeals arising out of a common judgment and six separate orders of the High Court of Judicature at Patna with certificates under section 66A(2) of the Indian Income-tax Act and they raise common questions of law :

"(1) Whether in the facts and circumstances of the case, the receipts of Bankura forest lease are capital receipts or, in the alternative, constitute agricultural income ?

(2) Whether in the facts and circumstances of the case, the receipts from Kharagpur forest are agricultural income ?"

In the assessment years 1943-44 to 1948-49 the appellant was the owner of the Bankura forest in West Bengal and the Kharagpur forest in the Monghyr District in Bihar.

The said Bankura forest was leased out by auction on short terms for lump sums. The terms of the lease were not produced, but it was stated that according to the terms of the lease the lessee was entitled to cut down and remove all sal trees but not those which were more than three feet in girth and three feet from the ground and all other jungle trees other than fruit bearing trees and valuable timber trees. The lessee was further entitled to cut stumps not higher than five feet over ground. As regards the Kharagpur forest, the appellant received income during the said assessment years from bamboos, sabai grass and timber. The officers concerned with the assessment of the appellant for these assessment years, by assessment orders made under section 23(3) of the Indian Income-tax Act, respectively on 15th March, 1944, 9th March, 1945, 27th March, 1946, 12th March, 1947, 13th March, 1948, and 24th February, 1946, rejected the contentions of the appellant that the two sums of Rs. 7,436 and Rs. 11,468 received during the year of account 1349 Fasli, of Rs. 23,581 and Rs. 17,027 received during the year of account 1350 Fasli, of Rs. 20,582 and Rs. 59,514 received during the year of account 1351 Fasli and of Rs. 14,750 and Rs. 98,969 received during the year of account 1352 Fasli, of Rs. 13,836 and Rs. 1,17,173, received during the year of account 1353 Fasli and of Rs. 22,211 and Rs. 73,449 received during the year of account 1354 Fasli, by the appellant from his forests in Bankura in West Bengal and Kharagpur forest in Bihar respectively were not taxable as they were (i) capital receipts and/or (ii) agricultural income.

The appellant preferred appeals to the Appellate Assistant Commissioner of Income-tax, Patna, or to the Additional Appellate Assistant Commissioner of Income-tax, Patna Range, Patna, as the case

may be, against these assessment orders but the said appeals were dismissed and the orders of assessment were confirmed.

The appellant carried further appeals against these orders of the Appellate Assistant Commissioners to the Income-tax Appellate Tribunal, Calcutta Bench, but the Tribunal also rejected the appeals and confirmed the assessments.

The appellant thereupon asked the Tribunal under section 66(1) of the Indian Income-tax Act for reference to the High Court inter alia of the above questions. The Tribunal, however, held that no question of law arose out of these orders and, accordingly, refused to refer the said questions of law as formulated by the appellant or any other question to the High Court and rejected the appellant's said reference applications.

The appellant then applied to the High Court praying for a direction under section 66(2) of the Indian Income-tax Act, 1922, requiring the said Tribunal to state a case and the High Court directed the Tribunal to state case inter alia on the said questions of law set out hereinabove.

The Tribunal accordingly drew up a statement of case and submitted it to the High Court, from which the following facts do appear:

Bankura Forest (West Bengal : "The forest in this area in block is leased out by auction on short terms for lump sums. The lessee can cut down and remove all sal trees but those which are more than three feet in girth above three feet from the ground and all other jungle trees other than fruit bearing trees and valuable timber trees; cut stumps not higher than five inches over ground so that new shoots may grow in rains and in time mature trees are produced; refrain from entering the forests during rains when new shoots come out; and guard the forests from trespassing by men and cattle.

On the conclusion of the stipulated period the lessee loses all rights, even the right to enter the land."

Kharagpur Forest (Bihar : The income from Kharagpur forest comes from the three sources, viz., (i) bamboos, (ii) sabai grass and (iii) timber.

The following passage from the order of the Tribunal records the finding in regard thereto :

"All these are grown wild and spontaneously. In 1944 a working plan was formulated for felling mature bamboo trees in rotation from sub- divided coupes. It cannot be said that any human agency was responsible for either plantation or the growth of the bamboos. The position with regard to sabai grass is more or less the same. With regard to timber trees, we find that there was a scheme by which the sal and ebony trees which grow in the forests were conserved by allowing each tree a circle of 15 feet by clearing the jungle of other trees which fall within this area, thus leaving sufficient space for the growth. No doubt wells were sunk but they were not for the purpose of watering the trees but were for supplying drinking water for the cartmen and bullocks which go into the forests to bring out the timber..... It is alleged that coppice work was also undertaken near about 1883 but the only evidence is a government annual administration report dated 5th October, 1882, of forest administration in Bihar suggesting that private owners should take up growth of coppice forests for being worked in short rotation for fuel supply. There is also letter

No. 170 dated 14th April, 1883, of the Commissioner, Bhagalpur Division, addressed to the Manager, Darbhanga Raj, regarding preservation of sal saplings in the forests of neighbouring zamindars (Gidhour and Banaily Raj) but only in the 1944 correspondence there is evidence to show that 'coppice coupes' of sal trees on the higher elevation of rocky hills were proposed to be worked in 7 years..... From this it is clear that there was no human agency with reference to the production of the plant from the soil although there was some element of human activity with reference to assisting the growth of some of the trees."

The High Court heard the reference and delivered one common judgment as the questions involved therein were common and answered the referred questions in the negative and against the appellant. The appellant thereupon applied for and obtained the requisite certificates of fitness for appeal to this Court as aforesaid and hence these appeals.

The High Court decided the referred questions against the appellant mainly on the ground that there was no material on which to hold that there was any expenditure of human skill and labour upon the land so as to constitute the income derived therefrom agricultural income within the meaning of its definition in section 2(1) of the Act. The conservation of the forest by allowing each sal and ebony tree a circle of 15 feet and cutting down of the trees and jungles which fell within that circle leaving sufficient space for growth and the employment of conservancy staff maintained to look after the forest were not considered by the Court sufficient in themselves to constitute any expenditure of human skill and labour upon the land so as to fall within the dictum of the Privy Council in *Raja Mustafa Ali Khan v. Commissioner of Income-tax*.

We need not repeat here the principles which govern the decision of cases like these where forestry operations are performed by the assessee in regard to forest trees of spontaneous growth. They have been enunciated by us in the judgment just delivered in *Commissioner of Income-tax, West Bengal v. Raja Benoy Kumar Sahas Roy*. Suffice it to say that in regard to the forest trees of spontaneous growth, which grow on the soil unaided by any human skill and labour and where no basic operations in agriculture are performed upon the soil itself by the assessee, there is no cultivation of the soil at all. The only operations which are performed by the assessee are subsequent operations, which though in the nature of forestry operations, are mainly performed for the conservation and growth of the forest trees which have sprung into existence by forces of nature rather than by the expenditure of any human skill and labour on the land itself. These subsequent operations though they may have the effect of nursing and fostering the growth of such forest trees have nothing in common with the basic operations which are the efficient cause of raising these products from the soil and cannot constitute agricultural operations unless they form part and parcel of and integrate themselves with such basic operations. The operations which were performed by the assessee in the cases before us had nothing in common with the basic agricultural operations and did not have the effect of converting the forest produce which was of spontaneous growth into produce raised upon the land by agriculture within the connotation of that term as laid down by us in the decision referred to above.

We are, therefore, of opinion that the High Court was right in the decision to which it came and the questions were rightly answered by it against the appellant and these appeals of the appellant must be dismissed with costs. There will be however one set of costs in all the appeals before us.

Appeals dismissed.

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