V. Venugopala Verma Rajah

Vs

Commissioner of Income-Tax, Kerala

Civil Appeal No. 810 of 1967

(J. C. Shah, V. Ramaswami-I, A.N. Grover JJ)

24.09.1969

JUDGEMENT

SHAH, J. -

1. By our order dated February 13, 1969, we called for a supplementary statement of the case setting out the terms of the agreement conveying the rights in the forest trees to the lessees, and the true import of the expression "clear felling". The Income-tax Appellate Tribunal has submitted a supplementary statement of the case. The Tribunal has set out the relevant terms of the agreement and has also observed that the import of the expression "clear felling" is that "all trees except casurina are to be felled at a height not exceeding six inches from the ground, the barks being left intact on the stump and adhering to it all round the stump without being torn off or otherwise changed."

There is no suggestion that there were any casurina trees in the forest lands let out to the lessees. It is common ground also that the trees in the forest were of spontaneous growth. The Tribunal has found that by the use of the expression "clear felling" it was stipulated that the trees are to be cut so that 6 inches of the trunk with the barks intact and adhering to it all round the stump is left. This is with a view to permit regeneration of the trees.

2. The question whether receipts from sale of trees by an owner of the land who is not carrying on business in timber may be regarded as income liable to tax has given rise to some difference of opinion in the High Courts. In Commissioner of Income-tax, Madras v. T. Manavedan Tirumalpad, (ILR 54 Mad 21) a Full Bench of the Madras High Court held that the receipts from sale of timber trees by the owner of unassessed forest lands in Malabar were revenue and not capital. The court observed that if income from the sale of coal from a coal-mine or stone won from a quarry or from the sale of paddy grown on land be regarded as income, but for the special exemption granted under the Income-tax Act, there is no logical reason for holding that income from sale of trees is not income liable to tax.

3. In re Ram Prasad (ILR 52 All 419) a Division Bench of the Allahabad High Court held that receipt from sale of timber is income liable to be taxed and is not a capital receipt. The case arose under the Government Trading Taxation Act, 1926.

4. In Maharaja of Kapurthala v. Commissioner of Income-tax, C.P. and U.P. (13 ITR 74) the Oudh Chief Court held that net receipts from the sale of forest trees is income liable to income-tax, even though the forest may be gradually exhausted by fellings. The court further observed that income from the sale of forest of spontaneous growth growing on land which is assessed to land revenue is

not agricultural income within the meaning of section 2(1) of the Income-tax Act and is not exempt from income-tax under section 4(3)(viii) of the Act.

5. In Raja Bahadur Kamakshya Narain Singh v. Commissioner of Income-tax, Bihar and Orissa (14 ITR 673) a similar view was expressed by the Patna High Court.

6. In Fringford Estates Ltd., Calicut v. Commissioner of Income-tax, Madras (20 ITR 385) it was held that profits realised from the sale of timber were trade profits and were liable to income-tax. In that case the assessee company formed with the object of purchasing, clearing and improving of estates and the cultivation and sale of tea, coffee, etc., in such estates, purchased a tract of land part of which had already been cultivated with tea and the rest was a jungle capable of being cleared and made fit for plantation. The company entered into an agreement with a timber merchant for clearing a part of the forest of all trees and for sale of the trees in the market. This was held to be a part of the business activity of the company.

7. The cases on the other side of the line are to be found in commissioner of Income-tax v. N. T. Patwardhan (41 ITR 313) in which a Division bench of the Bombay were disposed of with their roots "once and for all", the receipts were capital. The court observed, (p. 318) :

> "The asset of the man was the land with the wild growth of trees on it. If the land with the trees had been sold, there could have been no doubt that the sale was a realisation of capital and it would not have been possible to argue that the transaction in so far as it involved a sale of the trees was a sale producing income and the remaining part of the transaction was a capital sale. In the present case the land is retained by the assessee but a part of the asset is disposed of in its entirety by selling the trees with roots once and for all."

8. In State of Kerala v. Karimtharuvi Tea Estate Ltd. (51 ITR 129) the Kerala High Court held in a case arising under the Kerala Agricultural Income-tax Act, 1950, that the amount realised by sale as firewood of old and useless gravelia trees grown and maintained in tea gardens for the purpose of affording shade to tea plants is capital receipt and not revenue receipt. The Court observed :

> "The gravelia trees were grown and maintained for the sole purpose of providing shade to the tea bushes in the estates of the assessee. That such shade is essential for the proper cultivation of tea cannot be disputed and the trees should hence be considered to be as much a part of the capital assets of the company as the tea bushes themselves or the equipment in its factories. Some of the gravelia trees became old and useless with the efflux of time and they naturally had to be cut down and sold. The sale proceeds of such trees cannot possibly amount to a revenue receipt."

9. In Commissioner of Income-tax, Mysore v. H. B. Van Ingen (53 ITR 681) the Mysore High Court hold that the assessee who had purchase a coffee estate of which a part had been planted with coffee plants and the rest was jungle, and had cleared the jungle for the purpose of planting coffee and had sold the trees felled, price realised by the sale of the trees was a capital and not a revenue receipt, because the trees had grown spontaneously, and the assessee had purchased the estate including the trees.

10. It is not necessary for the purpose of this case to enter upon a detailed analyses of the principle underlying the decisions and to resolve the conflict. On the finding in the present case it is clear that

the trees were not removed with roots. The stumps of the trees were allowed to remain in the land so that the trees may regenerate. If a person sells merely leaves or fruit of the trees or even branches of the trees it would be difficult [subject to the special exemption under section 4(3)(viii) of the Income-tax Act, 1922] to hold that the realization is not of the nature of income. Where the trunks are cut so that the stumps remain intact and capable of regeneration, receipts from sale of the trunks would be in the nature of income. It is true that the tree is a part of the land. But by selling a part of the trunk, the assessee does not necessarily realise a part of his capital. We need not consider whether in case there is a sale of the trees with the roots so that there is no possibility of regeneration, it may be said that the realisation is in the nature of capital. That question does not arise in the present case.

11. The appeal fails and is dismissed with costs.

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