CALCUTTA HIGH COURT

Commissioner of Agricultural

Vs

Raja Jagadish Chandra Deo Dhabal

(Mookerjee, J.)

29.09.1948

JUDGMENT

Mookerjee, J.

1.This is a reference under Section 63(1) of the Bengal Agricultural Income-tax Act, 1944.For the assessment year 1945-45 the assessee submitted a return for the accounting period 1350 B.S. including therein various items of agricultural income. While going through the books of accounts the Income-tax Officer traced from the ledger, produced by the assessee, that receipts from forest by the sale of Sal trees, amounting to Rs. 90,220-1-0, had not been included by the assessee in the return. The taxing officer considered this items to be assessable to agricultural income-tax and made the assessment accordingly. On an appeal by the assessee before the Appellate Assistant Commissioner this assessment was upheld has being "agricultural income from rent and revenue." The assessee preferred an appeal before the Appellate Tribunal and by an order dated October 9, 1947, it was held that the income from forest in this particular case was not agricultural income, and therefore, not assessable under the Agricultural Income-tax Act. On an application by the Commissioner of Agricultural Income-tax this reference has been made for the determining the questions :-

> "Whether on the facts and circumstances of the case, the sums of Rs. 90,220-1-0 derived from the sale of Sal trees in the forests of the assessee can be treated as agricultural income within the meaning of Section 2 of the Bengal Agricultural Income-tax Act, 1944."

Agricultural income is defined in Section 2(1) of the Bengal Agricultural Income-tax Act. The relevant portion of the section which requires considerations in the present case is in the following terms :-

"2(1) agricultural income means -

(a) any rent or revenue derived from land which is used for agricultural purposes and is either assessed to land revenue is British India or subject to a rate assessed and collected by officers of the Crown as such;

(b) any income derived from such land by -

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by the cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in item (ii)."It is an admitted case that the land on which the forest stands is assessed to land revenue. The only question to be considered is whether the income from the sale of the Sal trees standing on such land is either "rent or revenue derived from land which is used for agricultural purposes" or, is income derived from such land by agriculture or by the performance of any process ordinarily employed by a cultivator "to render the produce raised ore received by him to fit to be taken to market."The word "agriculture" is not defined in this Act. Etymological the word is derived from agar-field, culture-cultivation, including harvesting managing and farming.According to Murray in the Oxford Dictionary "agriculture" means "the science or art of cultivating soil including the allied pursuit of gathering the crop and rearing live-stock, tillage, husbandry, farming in the widest sense."

The Websters Dictionary meaning of "agriculture" is "farming, horticulture, forestry, butter and cheese-making, etc." In Bouviers Law Dictionary quoting the Standard Dictionary "agriculture" is defined as "the cultivation of soil for food products or other useful or valuable growth of the filed or garden village husband try also by extension farming including any industry practiced by a cultivator of the soil in connection with such cultivation, as breeding and rearing of stock, dairying, etc., the science that treats of the cultivation of the soil."In Corpus Juries the term "agriculture" has been defined to be the "art or science of cultivating the bound especially the fields of larger quantities including the preparation of the soil, the planting of seeds, raising and harvesting of crops and the rearing feeding and management of live-stock village husbandry and farming. In its general sense the word also includes gardening or horticulture."

The term agriculture is of wider port than the term "cultivation" : Hedayet Ali v. Kamalanand Singh. The latter terms is defined in Murrays Oxford Dictionary as meaning tilling of land, tillage and husbandry. It is, therefore, obvious that a purpose may be connected with agriculture but not necessarily ancillary to cultivation.The dictionary meaning as quoted above indicate the

great diversity as to the scope of the word in its ordinary sense. This word, as used in various English Acts, has been interpreted in decision by the Courts in English but I would refrain from going into the grounds mentioned in those decisions as both the idea of agriculture and the scheme of taxation in that country are altogether different from those in India.It will, therefore, be necessary to consider the background of the use of this word in this particular Act. The definition of the term "agricultural income" in this Act, viz., Bengal Agricultural Income-tax Act, is in terms similar to the one appearing in Section 2(1) of the Indian Income-tax Act. The test applied for the considering what class of income is excluded from assessment under the Income-tax Act as being agricultural income will accordingly, be the same for determining what is assessable as agricultural income under the Bengal Agricultural Income-tax Act. We must also notice in this connection the demarcation of the jurisdiction as between the Center and the Provinces in the matter of legislation. Under Sectiona 311(2) of the Constitution Act taken along with Schedule 7 it will be noticed that Item 41 in List II read with Item 54, List I, excludes agricultural land and income from the ambit of the jurisdiction of the Central Legislature. The Indian Income-tax Act has, therefore, excluded items of agricultural income from being assessed to income-tax and the provincial Agricultural Income-tax Act has made the same liable to the provincial tax.In the first instance, the learned counsel refer to the practice flowed by the Income-tax department for a very long series by years and reference is made to the executive instruction issued and appearing in the Income-tax Manual the Edition, page 240, in the notes under Section 2, where income received by a landowner from timber form his own land is described to be agricultural income. Reliance is placed on the observation in Commissioner for Special Purposes of the Income-tax v. John Frederick Pemsel, and also on those in Lakshmi Daiji v.Commissioner of Income-tax Bihar and Orissa, where the practice followed by and the interpretation accepted by the Department was referred to a being on of the grounds for inferring that the legislature had not made by alternation in any successive amending statutes as the legislature did not intend to depart from such previous interpretation by the Department. In the present case we are asked to take judicial notice of the executive instructions contained in the Manual and the practice followed by the Department for a very long period. This line of argument cannot be accepted. There is no evidence before us that the legislature was aware of the practice and the executive instruction by the Income-tax Department. Moreover, irrespective of the fact whether a particular department interpreted the law in a particular manner for a long series of years or not it would not be of much consequence when the Court is called upon to interpret that particular provision of the statute. This question recently came up for consideration before the Judicial Committee in Commissioner of Income-tax, Bihar and Orissa v. Raja Bahadur Kamakhaya Narayan Singh. The following observations by the Judicial Committee, in my opinion, concludes the question as raised :-

"It was stated-and the statement was no disputed-that for a considerable period Income-

tax authorities had not treated interest on rent in arrears as taxable, and that in their Manuals published from time to time in this view was openly stated. In their view such interest fell within the definition of agricultural income. The Income-tax Act, 1922, had in that period been amended from time to time without a change in the definition of agricultural income. Their Lordships were asked to make the inference that the definition had a thereby obtained the meaning attributed to it by the Income-tax authorities and that the legislature must be taken to have adopted the definition in the sense in which the Income-tax authorities had understood and applied it. The observations of Lord Macnaghten in Pemsels case and of their Lordships in Burahs case were relied on. Their Lordships are unable to accept this contention for the reason that they are unable to draw from the facts brought to their attention the inferece that the legislature had by the repetition of the debated phrase adopted by the meaning attributed to it by the taxing authorities. There is indeed no evidence that the legislature was aware of the practice and their Lordships are not prepared to make the assumption that a practice purporting to give a effect to definition has resulted in the creation of such a generally received meaning embodying that practice as would justify the inference that the attributed meaning had been silently adopted by the legislature."

It is next contended that a wide and liberal meaning has to be given to an exemption clause as regards a taxing statute. The charging section must always be interpreted strictly and unless a particular type of income is made taxable the revenue authorities cannot levy the tax. If there be any doubt the assessee is given the benefit of such doubt. There was a view that once a charging section makes a particular class of income assessable to tax if there be any provision introducing an exception to the general clause the onus lies on the assessee to prove that his particular case comes within the proviso or exception. This view, however, fell recently to be considered in England as also in India and the present-day view seems to be that where an exception. in conferred by statute that cause has to be interpreted liberally and in favour of the assessee but must always be without any violence to the language used. The rule must be construed together with the exempting provisions. which must be regarded as paramount : Australian Mutual Provident Society v. Indian Revenue Commissioners. This decision, though overruled on another point by the House of Lords in Inland Revenue Commissioner v. Australian Mutual Provident Society, on the point now in question was not overruled. (Vide also Cadbury Bros., Ltd. v. Sinclair) See also upper India Chamber of Commerce v. Commissioner of Income-tax C.P. & U.P. : "It is needless to observe that, as in the present case, we are concerned with the interpretation of an exemption clause in a taxing statute, that clause must be, as far as possible, liberally construed and in favour of the assessee provided no violence is done to the language used."The question whether sale proceeds of forests are agricultural income or not came up for consideration recently by the Judicial Committee in Raja Mustafa Ali Khan v. Commissioner of

Income-tax U.P. & Ajmer-Merwara and on appeal from the decision in Raja Mustafa Ali Khan v. Commissioner of Income-tax U.P. & C.P. The question which was referred to the Chief Court of Oudh Under Section 66(1) of the Income-tax Act was as follows :-

> "Whether income from the sale of forest trees growing on land naturally and without the intervention of human agency, even if the land is assessed to land revenue is agricultural income within the meaning of Section 2(1)(a) of the Income-tax Act and as such exempt from income-tax under Section 4(3)(viii) of the Act."

The only question no doubt was about the "forest trees growing naturally and without the intervention of humans agency," and it was held that the sales proceeds of such trees could not be held to agricultural income. Their Lordships indicate a test to find out whether the trees are growing on the land naturally, "there was nothing to show that the assessee was carrying on any regular operations in forestry" and the jungle from which the trees had been cut as also stated to the "one of spontaneous growth." Upon these facts the question is whether such income is (within Section 2(1)(a) of the Act] rent or revenue derived from land which satisfied two conditions, (a) that is used for agricultural purposes, and (b) that it is either assessed to land revenue or etc. or alternatively (as, notwithstanding the from of the question, counsel for the assessee was allowed to argue), whether such income was within the Section 2(1)(b), income derived from such land by agriculture.

> "It appears to their Lordships that, whether exemption is sought under Section 2(1)(a) or Section 2(1)(b), the primary condition must be satisfied that the land in question is used for agricultural purposes; the expression such land in (b) refers back to the land mentioned in (a) and must have the same quality. It is not then necessary to consider any other difficulty which may stand in the way of assessee. His case fails if he does not prove that the land is used for agricultural purposes. Upon this point their Lordships concur in the views which have been expressed not only in the Chief Court of Oudh but in the High Court of Madras (See Yuvarajah of Pithapuram v. Commissioner of Income-tax Madras) and the High Court of Allahabad (See Benoy Ratan Banerji v. Commissioner of Income-tax) and elsewhere in India. The question seems not yet to have been decided whether land can be said to be used for agricultural purposes within the section if it has been plated with trees and cultivated in the regular course of agriculture, and upon the question their Lordships express to say (a) that in their Opinion no assistance to be got from the meaning ascribed to the word agriculture in the others statues and (2) that, though it must always be difficult to draw the line, yet, unless there is some measure of cultivation of the land, some expenditure of skill and labour upon it, it cannot be said to be used for agricultural purposes within the meaning of the Income-tax Act. In the present case their Lordships agree with the High Court in thinking that there is no evidence which would

justify in the conclusion that this condition is satisfied."

The Judicial Committee makes it clear that (1) no assistance is to be sought from the meaning of the word "agriculture" as given in other statutes and (2) unless there is "so measure of cultivation of the land, some expenditure of skill and labour upon it," it cannot be said to be used for agricultural purposes.It is, therefore, incontrovertible that income from a virgin forest or forests of spontaneous growth is not agricultural income. The view that tilling of the soil was the sine qua non for bringing within the term agriculture has also been exploded. If there is actual tilling of the soil for producing the product, it is the unquestionable result of agricultural pursuit.It is quite evident that the view not expressed by the Judicial Committee about income from virgin and natural forests is in affirmance of the decisions of the different High court in India (Raja Ravu Venkata Mahipati Gangadhara Rama v. Commissioner of Income-tax, Madras, Province of Bihar v. Maharaja Pratap Udainath, Kajumal v. Saligram, Kajumal v. Saligram, Maharaja of Kapurthala v. Commissioner of income-tax C.P. and U.P. Raja Durga Narain Singh v. Commissioner of Income-tax, U.P. and C.P., Beohar Singh v. Commissioner of Income-tax, U.P. C.P. Raja Pratap Bikram Shah v. Commissioner of Income-tax, U.P. and Berar, and Special Manager, Court of Wards, Majgawan Estate v. Commissioner of Income-tax, U.P. and C.P.) Whether a particular forests is one of spontaneous growth or not has to be decided on one important consideration as indicated by the Judicial Committee in the unreported decision above referred to, i.e., where there has been "some expenditure of skill and labour upon it." It is also indicated that whether there were "any regular operation in firstly" would be material facts for consideration. To put it in another from, the introduction of human against and the application of human efforts world be the criteria for consideration. The test whether there has been human agency for intervention was considered to be an important and prime factor in Srimat Jagatguru Shringeri Chandrasekhara Bharati v. Duraisami Naidu, Kadirvelsami Naicker v. Sultan Ahmed Badruddin Raja Ravu Venkata Mahipati Gangadhara Rama v. Commissioner of Income-tax, Madras, and In re Moolji Sicka & Co.On a careful analysis of the reason given by the learned Judges in the various decision referred to above it will be apparent that the facts of each particular case must be considered for determining whether there has or has not been sufficient application of human efforts before it can be determined whether the income from a particular forests is agricultural or otherwise. In Kadirvelsami Naicker v. Sultan Ahmed Badruddin, the question arose whether the growing of cardamoms comes within the meaning of the word agriculture. It is no doubt true that the Court was required to interpret the definition as given in a local Act, viz., under Section 3(1) of the Madras Estates Land Act, and there are observations on the general question, and though obiter indicate that the test is the extent of human agency or intervention. In the case of a cardamoms cultivation "in the first place, the seeks are sown in beds where they germinate and are left to grow for six months. Then they are transplanted in another bed where they are left to grow for the further six months; the third stage is the replanting of the

young plants in the forest. They are permanently planted there as cardamom cultivation requires a considerable amount of shade." Therefore, the human element plays an important part in the bringing of cardamom plant to fruition, independent of special provision in local statutes. There is no doubt that the extent of human interevention in this case is such as to make the income form such yields as agricultural one. In re Moolji Sicka, decided by this Court in 1939, a question arose in connections with tendu leaves which were recovered form the tendu trees or shrubs for wrapping tobacco in the manufacturing country made cigarettes. A claim was put forward that the income form the sale of country-made cigarettes or birds was agricultural income in as much as the tends leaves which form part of biris are agricultural products. It was found in that case that the tendu plant is entirely of wild growth and propagates itself by root suckers or self-sown seeds. It grows either in jungle or waste lands and is never planted through human agency. There was no question of either pruning or watering or manuring or protecting up the soil; no fencing or other protection was afforded. During the cold weather dead leaves, broken twigs and thorns might be burnt; lopping of olders trees was not permitted. Towards the end of winter young plants are usually cut back with the result that new shots appears which yields larger and soft leaves. During April and May plucking of leaves takes place. It was held that so much of the products as was a derived form the collection and preparation of tendu leave so as to make them fit to be taken to market, the tendu products by the pruning of tendu shrubs, was considered to be agricultural income. In this particular case there was definite proof of the cutting of the young plants for the appearance of new shoots and plucking of the leaves; the application of human intervention was clear and without such human intervention the purpose for which tendu leaves were used would not have been possible.Bearing the scope of the decisions in the cases mentioned above we have next to consider, whether on the finding arrived at in the case now before us, the income form this particular forest was or was not included within agricultural income.The Assistant Commissioner questioned the accountant of the estate who appeared before him as to the details about the origin of, the management and disposal of, the forest trees. He records in the following passage the conditions prevailing in this particular forest :-

> "I questioned the accountant of the estate who appeared before me and the following facts were ascertained about the forests in question. The forest consists mainly of Sal trees which are sold mainly for fuel, wood and posts for huts. The total area of forest of the appellants is 14,000 acres. For the proper cultivation of the forest a larger number of officials include a forester, an assistant forester and guards an d choukidars are maintained. The Sal trees a generally sold off in the blocks when about 15 years old. Annually blocks of about 1,000 acres are sold up. All the trees in the back sold up are cut down by the purchasers for sale fuel and house posts. During the rainy season form the stumps of the trees cut down new shoots come out which grow into matured trees in 15 years, to be cut down again. In order to prevent damages to the young shoots in the early

stages of their growth, the areas cut down are close guarded for one year at least from the time when the block in question has been completed denuded of trees in order to keep cattle and men off form the lands so that they may not damage the young growing shoots. In order to promote the growth of shoots, the grounds is also kept free from undergrowth of jungle. This is not cleared at the appellant expenses but the villages are allowed to clear the ground of under growth and take the same away free of costs."

These findings are accepted by the Tribunal.

Mr. Khaitan, appearing on behalf of the Department, summarises the different processes adopted or required in the following terms :-

(1) Parcelling out the total area of 14,000 acres into about 1,000 acres each, tress on each parcel being sold when the trees are about 15 years old, is an important agricultural process;

(2) To prevent damage of the new shoots in the early stages of their growth and to give new vigour to the new shoots and saplings, the grounds is kept free form undergrowth of jungle and by removal of leaves;

(3) During the early stages of the growth in the each block, the area cut down are closely guarded by forest guarded at least for one year from the time when the block in question is cut down thus keeping both men and cattle off from the lands so that they may not be damage the growing shoots by trampling and/or browsing as the case may be.

(4) Final cutting at near about the 15 years form an intelligent agricultural operation - season and date have to be intelligently fixed and by the directing removal of the older trees leaving the new ones which might have grown recently.

It is clear that in this case neither any tilling of the soil nor sowing of seeds or grafts nor watering is required. Had any one or more of these operations been proved to have been necessary this particular forests would have been classified as requiring sufficient and pronounced utilization of human agency and also otherwise be included within the term "agriculture".This forest is also not, on the facts found, either a virgin forest or containing trees which grow spontaneously and naturally without any human intervention whatsoever.The Principle question in this case is whether on the facts as stated above and on the authorities referred to, the sale proceeds of Sal trees form this particular forest may be considered to be agricultural income. Extent and character of human intervention as found in In re Moolji Sicka cannot be noticed in this case. There is no pruning of young plants for helping the appearance of new shoots to yield larger and softer leaves. In place of plucking of leaves we have in the case now before the felling of the trees. The application of human efforts in somewhat different in the present case. But there is no

doubt that the assessee was carrying on a regular operation in forestry. Only if such operation in forestry be considered to be application of human efforts, it will then and then only be possible to include this income under the head agricultural. There was no cultivation of this land in this case, no case of planting of trees, but a regular operation in forestry. Under the system in force as introduced by the assessee for the use of particular plots on fixed and stated intervals and after one plot is denuded of the old trees, the new shoots appearing during the rains without any human intervention have to be properly guarded, which may be described as tentamount to tending. Mere guarding the forest area form poachers or against surreptitious removal of fuel, wood or logs cannot be any case of human intervention sufficient to make the forest produce as being an agricultural one; but the guarding of the new shoots form either being trampled under foot or being borrowed by animals is something quite different in nature than simply guarding the forest area. The operation of removing undergrowth or fallen leaves, though not by the owner of the forest but by this permission accorded to villages and others, is of the some significance though not of the same extent as "tending" at the initial stage when the shoots appear after clearing of each period of 15 years.The last operation which is alleged to relate to agricultural plating is a part of the forestry for removal trees of certain description only. This is using human knowledge and experience for the proper utilization of the produce of the earth.On a careful consideration of the circumstances as disclosed in the finding arrived by the Tribunal there is no escape form the conclusion that the assesee carried on "regular operation in forestry" in the forest in question.But before a final decision can be made on the question of the assessability to agricultural income-tax we have next to consider whether the income is "from land which issued for agricultural purposes." If there be some measure of cultivation if the land there is no doubt that the land is used for agricultural purposes. But if that is considered to be essential we would be making the two terms XDXX : "agriculture" and "cultivation" almost synonymous. As indicated already, the ordinary dictionary meaning of the two words are different and : "agricultural" is of much wider import than "cultivation." If a plot of land is used for rearing livestock, farming in the widest s ense and darying, such land is considered to be land used for agricultural purposes. Utilization of land "for regular operation in forestry" is, in my view, an agricultural operation, in the wider sense of the term.If the view of the Judicial Committee were to exclude all kinds of income from the category of agricultural income unless there was actual cultivation of the soil, reference to "regular operation of forestry" would have been unnecessary. Not that there must always be "some measure of cultivation of the land" and "some expenditure of skill and labour upon it" but that the proof of either would be sufficient to bring the case within the either clause (a) or (b) of Section 2(1) of the Act. "Regular operations in forestry" do require expenditure of skill and labour upon the land on which the forest grows.

We have, therefore, no doubt that in the special circumstance as disclosed in the present case there were regular operations of forestry and the question referred to this Court must be answered

in the affirmative.In view of the attitude adopted by the assessee in this Court each party will bear his own costs.Reference No. 2 of 1947-48. - The facts in this reference are exactly similar with those death with in Reference No. 1 of 1947-48 excepts that the assessment year are different. For reason given in the other case the question referred is to be answered in the affirmative.

Each party will bear his own costs in this court.

Das, J. - I agree.

Reference answered accordingly.