

KERALA HIGH COURT

Elixir Plantations Ltd

Vs.

Commissioner of Income-tax

Income-Tax Referred Case No. 70 of 1963

(M.S. Menon, C.J. and M. Madhavan Nair, J.)

09.06.1964

JUDGMENT

Madhavan Nair, J.

1. The question referred is "whether the amount of Rs. 68,000/- was correctly brought to tax ?"
2. The statement of the case, in its paragraph 2, reads :-

"The assessee purchased a Coffee Estate known as Greenfield' Estate in Coorg in 1938. During the accounting year 1959-60, relevant to the assessment year 1960-61, the assessee sold certain dead and wind-fallen Avenue Trees for a sum of Rs. 68,690 and credited it in the profit and loss account under miscellaneous receipt in Greenfield Estate. Of this, rupees 68,000 was the amount received from a firm called Malankara Timbers, a registered Partnership."

It is clear from the above statement that the sum of Rs. 68,000 which is the subject-matter of reference, is part of the sale-proceeds of dead and wind-fallen avenue trees cut and removed from the Estate, which were purchased a year or two before the transaction. If the trees are dead and windfallen it is certain that no future growth out of them is possible. The principle of *Commr. of I.T. v. N.T. Patwardhan*¹, is that if the trees are so cut as to leave their stumps capable of yielding further growth, the proceeds of the cutting will be revenue, and not capital. When the sale is of "dead and windfallen" trees, the cutting and removal would exhaust the trees, leaving no chance of further income therefrom. The receipts must then be of a capital nature. The question referred therefore has to be answered in the negative and in favour of the assessee. We do so. No order as to costs here.

Answer accordingly.

¹(1961) 41 ITR 313 (Bom)