

# KERALA HIGH COURT

Commissioner of Income-Tax

Vs

Venugopala Verma Raja

(M.S. Menon C. J)

03.08.1966

## JUDGMENT

### **M.S. Menon C. J**

1.This is a reference by the Income-tax Appellate Tribunal, Madras Bench, under section 66 (2) of the Indian Income-tax Act, 1922. The assessment year concerned is 1959-60; and the accounting period, the twelve months ended on March 31, 1959. The question referred is :

"Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was correct in holding that Rs. 75,000 being income from felling of trees from forests is not subject to income-tax ?" The reference is at the instance of the Commissioner of Income-tax, Kerala, Ernakulam. The contention of the department is that the Tribunal was wrong in treating Rs. 75,000, the amount received by the assessee from his lessees for the felling of trees in his forest, as a capital and not as a revenue receipt.

There is no doubt that the sale of trees, together with their roots, can be treated as a capital transaction. An authority for the proposition is the decision of the Bombay High Court in Commissioner of Income-tax v. N. T. Patwardhan. The question for determination is whether Rs. 75,000 was received by the assessee for the removal of the trees with their roots or whether it was for the felling of the trees in such a way as to permit and ensure their regeneration. If the latter was the case, as we think it is, then, the amount received should be considered not as a capital but as a revenue receipt. The trees were of spontaneous growth and it is not contended that the income concerned is agricultural income and, hence, not assessable to income-tax under the Indian Income-tax Act, 1922. It is common ground that if the income is not of a capital but of a revenue nature, the same is assessable under the Act. There is no doubt that the sum of Rs. 75,000 was received for "clear felling" of the trees in the area. This is made clear in the order of the Income-tax Officer dated November 25, 1959, the order of the Appellate Assistant Commissioner dated January 10, 1962, and the order of the Appellate Tribunal dated October 11,

1962. The statement of the Appellate Tribunal reads as follows :

"The second contention is against the inclusion of the income from the felling of trees from the forest. In the year of account, 500 acres of forest in Agamalavaram were raised (sic) for clear felling and fetched an income of Rs. 75,000."

It is agreed that the forest involved comes within the ambit of the Madras Preservation of Private Forest Act, 1949, and the statutory rules on the subject. The expression "clear felling" is an expression with a definite and specific meaning as far as such forests are concerned. Rule 7 of the rules provide that every permission granted for the cutting of trees under the clear felling method shall be subject to the conditions mentioned in that rule. Condition (b) reads as follows :

"All trees except casuarina shall be felled at a height not exceeding six inches from the ground, the bark being left intact on the stump without being torn off or otherwise damaged. In the case of casuarina trees, the removal of the stump and root will also be permitted ";

and condition (e) :

"The felled area shall be closed to grazing for a period of five years after felling".

It is not contended by the assessee that Rs. 75,000 or any portion thereof was received for the felling of casuarina trees. The conditions extracted above will indicate that the felling of the trees under the clear felling method will not permit a removal of the trees along with their roots. On the other hand, the clear indications are that the felling of the trees under the clear felling method should be done in such a way as to permit the regeneration and future growth of the trees concerned. In other words, what is contemplated by the clear felling method is not the sterilisation of an asset but the removal of a growth above a particular height, leaving intact the roots and the stumps in such a manner as to ensure regeneration, future growth, further felling and a subsequent income.

It follows that the income of Rs. 75,000 should be considered as a revenue income and not as a capital income as has been done by the Appellate Tribunal and that the question referred has to be answered in the negative, that is against the assessee and in favour of the department. We do so; but in the circumstances of the case without any order as to costs. Paragraph 2 of the statement of the case refers to a lease deed dated the 11th September, 1957, and paragraph 12 thereof reads as follows :

"The assessee's learned counsel has submitted that the reference to the lease deed dated September 11, 1957, mentioned in paragraph 2 of the statement of the case, should be deleted. It is his case that this is additional evidence and that the statement of the case should be confined to the materials available on the date of the order of the Tribunal. We reject this submission also. It has to be mentioned that, when the case came up before the

Appellate Assistant Commissioner, in the first instance, it was remanded to the Income-tax Officer. In the remand report it is seen that these documents dated September 11, 1957, were produced by the assessee's learned counsel and, in his report regarding the receipt under clear felling, the Income-tax Officer had also made reference to these documents. It cannot be said that these are fresh materials ".

We make it clear that we have not placed any reliance on the extract from the lease deed given in paragraph 2 for coming to the conclusion that we have reached in this case.

A copy of this judgment under the seal of the High Court and the signature of the Registrar will be sent to the Appellate Tribunal as required by sub-section (5) of section 66 of the Indian Income-tax Act, 1922.