

BOMBAY HIGH COURT

Commissioner of Income-Tax

Vs

N.T. Patwardhan

(S Desai, C.J. V.S. Desai, J.)

26.04.1960

JUDGMENT

V.S. Desai, J.

1. In this reference, which the Tribunal has made to us under section 66 (1) of the Indian Income-tax Act, the point in dispute is whether the receipt of the sale proceeds of the trees standing on the grasslands of the assessee for a number of years and which have been uprooted and bodily removed is capital or revenue in nature.

2. The assessee is the Raja Saheb of Miraj, who owned about 10 square miles of grasslands. On these lands there were a large number of trees which had grown spontaneously and had stood for a number of years. In the accounting year 1948-49 the assessee sold these trees by four auctions. According to the conditions of the auction, the purchaser was to pay in lump sum the amount for which he had bid at the auction. The purchase price was, however, realised by installments over a period of time so as to suit the convenience of the purchasers. There was also a term of the auction under which the purchaser was to uproot the trees and remove the roots from the lands. This was the only year in which the auction sale of the trees had been held by the assessee and the record did not show that any such sales were periodically held by the assessee before that time. In the assessment years 1951-52, 1952-53 and 1953-54, the assessee realised Rs. 53,490 in the first year, Rs. 34,176 in the second year and Rs. 7,475 in the third year, out of the sale proceeds. These amounts were included by the Department in the sums of the assessee's income from the business of sale of trees. The assessee contended that the land with trees standing thereon was capital and the capital was not converted into a stock-in-trade and the sale of the trees by uprooting them was on capital account. In the appeal before the Tribunal, the Tribunal accepted the contention of the assessee and held that the income in the hands of the assessee was capital in nature because "when the tree is sold with its roots, it is clearly a capital asset which has been uprooted once and for all." It took the view that the roots of the trees certainly formed part of the capital structure of the assessee's holdings and when the trees were bodily uprooted it

constituted a diminution of the assessee's capital asset. At the instance of the Commissioner, it referred the following question to this court under section 66(1) of the Indian Income-tax Act :

"Whether on the facts and circumstances of the case the receipt from the sale of trees by roots is capital in nature and exempt from income-tax ?"

3. Mr. G. N. Joshi, learned counsel for the Revenue, has contended before us that the view taken by the Tribunal is entirely erroneous and unsustainable. He has contended in the first place that on the facts and circumstances of the case, the sale to the purchaser was a sale of trees. The further condition imposed upon the purchaser that he had to uproot the trees sold to him was a condition which was for the benefit of the vendor and not to his detriment. There was, therefore, no question of diminution of his capital asset and the condition did not in any way alter the real nature of the transaction which was a sale of trees of spontaneous growth. Mr. Joshi has argued that the legal position with regard to the income from sale of trees of spontaneous growth is now well settled. Such income is not agricultural income but income liable to tax under the Income-tax Act. The sale proceeds, therefore, which the assessee has realised in the present case were not exempt from income-tax.

4. Mr. Joshi has further argued that the trees on the land having grown spontaneously there is no question of a capital structure created by the assessee and the roots of the trees which he has never planted nor reared cannot form a part of his capital structure. His capital is the land and that capital is in no way affected whether the sale of trees is with roots or without roots. There is no reason, therefore, argues Mr. Joshi, to draw a distinction between the two and hold that in case of sale of trees with roots it is a capital sale or case of capital accretion and in the other case it is sale producing income. He has further argued that even if the sale by roots may have the effect of consuming or exhausting the assessee's capital, that would not make any difference to the legal character of the income received because it has been held by a catena of judicial decisions that profits from capital which is consumed or exhausted in the process of realisation are none the less income which is liable to income-tax and such income is not realisation of capital but is taxable as income regardless of the consumption of capital involved in the process of profit earning.

5. In support of the submissions, which he has made, Mr. Joshi has cited before us a large number of authorities. It is not necessary for us to refer to those authorities because there can be no quarrel with the principles which have been laid down in those decision. It is well settled that the income from the trees, which grow spontaneously on the land, is not an agricultural income. It is also well settled that the income from the timber of forest, where the trees grow naturally is income in the nature of a revenue. There can also be no dispute that the mere fact that in the process of selling of timber of forest, the forest will gradually get diminished will not make the

income received from the sale of forest trees a receipt of capital nature. The judicial decisions to which Mr. Joshi has referred do not, however, lay down the proposition that in each and every case a sale of a tree or trees growing spontaneously must constitute a sale producing income irrespective of the other facts and circumstances of the case. In our opinion, whether a sale is a capital sale or sale producing income must depend upon the facts and circumstances of the case. What we have to consider, therefore, is whether on the facts and in the circumstances of the present case, the auction sales by the assessee of the trees in 1948-49 constituted capital sales or sales producing income.

6. Now, the facts of the present case are that on the area of 10 square miles of grasslands belonging to the assessee had stood a large number of trees which had grown spontaneously and all these trees were sold by him in a single year by four auctions with a condition that the trees had to be removed with their roots. No attempt had been made by him at any time before to get any income from these trees and he did not want their roots to remain in the land to facilitate their fresh growth in subsequent years. Although these were the four solitary transactions in a single year, the Tribunal did not think it necessary to consider whether the receipts from these transactions would be exempt under section 4(3)(vii) because it took the view that even if the activity of the assessee in holding the four auctions in 1948-49 was regarded as a plunge in trade on his part for a short duration he was entitled to succeed on a more fundamental ground, namely, that the receipts from the sales in any case would be capital receipts in his hands. According to the Tribunal the trees which had stood on the land all these years having been disposed of with their roots once and for all, the receipts were merely a capital accretion. In our opinion, the view taken by the Tribunal is right. 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 possible to argue that the transaction in so far as it involved a sale 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. As we have already stated earlier whether in a given case there is a capital sale or sale producing income must depend upon the facts and circumstances of the case and it seems to us that in case like the present, where a man, on whose lands a wild growth of trees had stood for a number of years without any attempt being made by him to realise any income therefrom, sells the trees once and for all with their roots the transaction is on account of capital and not of revenue, for by disposing of the roots of the trees he has disposed of the source from which a fresh growth of wood would spring up. Mr. Joshi has argued that no capital has been invested by the man in the growing of the trees and the trees which have grown spontaneously form on part of his capital. His capital is only the land and that also is the source of his income. Mr. Joshi argues that even if the trees are disposed of by their roots, so long as the land is retained, the source for a fresh germination of trees of spontaneous growth is still possessed by the man and the trees will grow again in course of time. We are not

impressed by this argument. The fact that the man was not required to invest capital in growing the trees is, in our opinion, immaterial and the trees with their roots and growth are still an asset of the man. As to the possibility of a fresh growth of trees spontaneously springing up on the land in course of time we do not think that such distant and remote possibility would persuade us to hold that the capital asset of the man and the source of income was merely the land and the roots of the trees which had firmly grown and securely embedded in the land providing a ready and easy source for fresh growth of wood when the trees were cut did not form any part thereof.

7. Then again considered from the point of view of a person engaging himself in the business of sale of trees the capital structure would, in our opinion, be not only the land on which the trees stand but also the roots of the trees from which the wood grows and yields income. If he sells off the trees with roots, there is no doubt that the capital structure is affected and there is no doubt that the capital structure is affected and there is a diminution in his capital asset as held by the Tribunal. Considered from this point of view also we are of the opinion that the view taken by the Tribunal in the present case is the correct view.

8. Mr. Joshi has then argued that the Tribunal has not framed the question correctly because this was not a case of sale of trees by roots but the case of sale of trees with a further condition that the person purchasing the trees had also to remove the roots of the trees. In our opinion, the transaction between the parties in view of the terms and conditions of the auction was a transaction of sale of trees along with the roots and the question, therefore, was correctly framed by the Tribunal. It may also be noted that the question framed was at the instance of the Commissioner and was precisely as was suggested by the departmental representative.

9. Lastly, Mr. Joshi has argued that even if we take the view that the sale was a sale of trees by roots and that the roots of the trees embedded in the land of the assessee formed a part of the capital assets of the assessee, since the price paid was for the wood of the trees as well as for the roots, the income, at any rate, which would represent the value of the wood, would be the income, which is taxable. This question was not raised before the Tribunal and is sought to be raised before us for the first time. We would not, therefore, allow this question to be argued for the first time before us. Moreover, even if it had been allowed to be raised, we would have answered it against Mr. Joshi. In the view which we have taken that the sale of the trees with the roots was a disposal of the capital asset it is impossible to split up the transaction into two parts and regard a part of it as capital sale and the rest as a sale producing income. As we have already pointed out if the entire land with trees had been sold it would have been impossible to hold that the sale in so far as it related to the trees was a sale producing income.

10. In our opinion, therefore, the question which has been referred to us in this reference must be answered in the affirmative. The Commissioner to pay the costs of the assessee.

11. Question answered in the affirmative.

