ORISSA HIGH COURT

Vikram Deo Varma

Vs

Commissioner of Income Tax

Special Jurisdiction Case No. 179 of 1951

(Panigrahi, C.J. and Misra, J.)

21.04.1955

JUDGMENT

Panigrahi, C.J.

1. This is a reference made under Section 66 (1), Indian Income-tax Act by the Appellate Tribunal Calcutta Branch, of certain questions of law raised by the assessee, the Maharaja of Jeypore.

2. The first and the most important of the questions raised by the assessee is whether the income derived from the extensive forest areas is liable to tax. He has been assessed to income-tax in respect of his forest income for the years 1942-43 to 1946-47. His case is that the income that he derives from the forests is exempt from taxation as it is agricultural income. The assessee is the proprietor of the impartible estate of Jeypore in Koraput district and has a forest area of 1540 sq. miles of reserved and 100sq. miles of protected forests. The income that he made from these forests during the assessment years resulted from the sale of timber such as teak, sal wood, lac, myrabolam, tamarind, cashew-nuts, and firewood. The Income-tax officer rejected the assessee's claim on the ground that there was no plantation book maintained by the Estate. On appeal, by the assessee, the Appellate Assistant Commissioner also took the view that there was no evidence that any cultivation or tilling had been done periodically, and that the forest being a spontaneous growth the income made by the assessee was liable to be taxed. The Income-tax Tribunal which heard the appeal against the order of the Appellate Assistant Commissioner was not satisfied that the assessee's case had been properly considered and, therefore, by an order of remand asked the Income-tax officer to enquire and report about the allegations of the assessee contained in his statement, Ex. F, (printed at page 250 of the Paper Book) in which the assessee claimed that the Estate had been actively adopting for decades a progressive forest policy and had done a lot of spade work such as cultivation, settlement and demarcation of boundaries, prevention of theft, timely removal of dead and dying trees so as not to interfere with the proper growth of other trees, protection against fire (and other causes of decay), planting of new trees, growing grass, collection of seeds, replacement of casualties, adoption of improved fellings, clearing of bushes, cutting of climbers and numerous other operations.
The assessee claimed that very large amounts had been spent in replacement, tilling, ploughing,

manuring, burning, construction of roads and buildings, and making other improvements in the management of the forests. The estate maintained a very big Forest Department under Experts. The Department consisted of 17 ranges managed by four subdivisional officers, controlled by a chief Forest officer with foreign qualifications. The field establishment consisted of 21 rangers, 56 foresters, 49 gate gumasthas, 358 forest guards and other personnel. The assessee also asserted that he had employed systematic and modern methods for cultivation of lac, and planted teak, sandal, Avaram, cashewnuts etc. The Income-tax officer by his order (Ex. H - printed at page 326 of the Paper Book) observed that "most of these items were such as by no stretch of imagination can be regarded as agricultural operation." He examined the assessee's claim only under three heads:

> (i) propagation of forest; (ii) cultivation. ploughing, tilling and manuring, and (iii) planting of new trees, growing grass, collection of seeds and replacement of casualties. He held that the bulk of the expenditure was devoted to the maintenance of the Forest Establishment and for looking after the Cinchona, Coffee and Orange plantations and for the preservation of the forest area. There was no forest cultivation as such, and the large forest income was not due to any agricultural operations.

On receipt of the report from the Income-tax officer the Income-tax Appellate Tribunal again heard the assessee, but agreed with the view taken by the Income-tax officer and rejected the assessee's claim. The Tribunal observed that the assessee had not produced any accounts prior to February 1904 and that, therefore, he had failed to prove that he had adopted any forest operations or incurred any costs for plantation of the trees sold in 1941. The Tribunal assumed that a tree is not fit for sale unless it is forty years old and that the trees sold by the assessee in the year of accounting were all 40 years old. Both the Income-tax officer and the Tribunal proceeded on the footing that the income of the assessee arose from forests of spontaneous growth and was therefore not agricultural income. The question of law that arises out of the order of the Tribunal and referred to us is:

> "whether on the facts and in the circumstances the income derived from forests in this case is taxable under the Indian Income-tax Act". Subsequent to the submission of the report of the Income-tax officer after remand, the assessee filed a further statement and enclosed a volume of correspondence, but these have not been printed as a part of the Paper Book.

3. The second question referred to us relates to the years 1945-46 and 1946-47 during which period the assessee sold rice to the Ceylon Government and made some profits. The assessee's case was that the contract was really between one Jagan-nadhyya and the Ceylon Government and that the assessee was merely helping to bring about the arrangement between the parties. The question of law referred to us is:

> "whether the view taken by the Tribunal that the assessee was one of the contracting parties is correct".

4. Similarly, the assessee had business transactions with Messrs. Shaw Wallace and Co., of

Calcutta in the assessment year 1945-46 and the question referred to us, for opinion, is:

> "whether the market value of paddy received by the assessee as rent in kind should be the market value at Calcatta for the purpose of computing the income under the provisions of Rule 23, Indian Income-tax Rules".

5. The fourth question relates to the exemptions claimed by the assessee in respect of the annual grant of Rs.1,00,000/- paid by him to the Andhra University in pursuance of Ex. z-4, dated 6-12-1933 (vide page 367 of the Paper Book).

6. The last question referred to us relates to the exemption claimed by the assessee in respect of a sum of Rs.65,500/- paid as damages to one Mr. Gaggar.

7. Learned counsel for the assessee devoted much of his argument mainly to the first question viz., whether the income from forests is not entitled to exemption on the ground of its being 'agricultural income'. The case for the assessee is that it is not necessary to prove that there was actual tilling of the soil in order to entitle him to claim exemption from income-tax. Alternatively, he contended that there is considerable evidence of actual cultivation of the soil in the forest areas of the Estate.
Our attention was drawn to extracts from District Manuals and other official documents to show that the hill-tribes of these areas incessantly set fire to the trees and cultivate the forest lands and raise crops thereon. This process known as 'podu' or shifting cultivation has been going on for several years and as a result of the frequency to these operations old trees have been burnt and new ones have sprung up.
The Vizagapattam District Gazetteer of the year 1907 contains the following report of the Conservator of Forests, Col. Beddome. (page 280 of the Paper Book - Annexure II):

> "Over the whole portion of the plateau visited, I did not find a single patch of virgin forest except here and there very small plots (scarcely over half an acre) - where reservation had occurred on account of some sacred stone. Every acre has, at some time or other, been felled and burnt for cultivation and is, at best, only second growth; but most tracts have been probably many rotations of this system, and consequently forests are to be seen at every stage of deterioration.....
> "I have nowhere in India seen this hill cultivation so systematically carried out. Directly all the forest within a certain radius has been felled and cultivated, the village is deserted and the cultivators move off to other tracts to carry on the same ruinous system".

Mr. Francis, I.C.S., who compiled the District Gazetteer observed, in Chap. V, under "Forests", as follows:

> "Wherever on travels through Jeypore one sees wide tracts of hillside which once were forest-clothed, now covered only with blackened stumps leafless dead trees, bare ash covered with soil, and protruding barren rock".

In addition to this 'podu' cultivation the assesses carries out several operations such as weeding,

clearing, cutting back climbers, and protection from fire, atmospheric agencies, grazing, insects, fungi and parasites. The Forest Department also takes steps to protect the forests from damage by man through faulty exploitation, prevention of podu cultivation, damage by animals, damage by floods, torrents and excessive water in the soil, and prevention of land-slides. It is accordingly claimed that there is no virgin forest worth the name and such as there was has been destroyed by the hill tribes, through the process of 'podu' cultivation and through indiscriminate cutting down of forest trees. Reliance is also placed on the notes left by Mr. H.G. Turner, I.C.S., in 1872 and quoted in the District Gazetteer.

> "I can myself call to mind a score of hills that have been completely cleared of forests within five years".

The assessee explains how the present forest has grown up. Immediately after the virgin forest had been felled and burnt for the purpose of shifting cultivation, rank grass occupies the area. Before the south-west monsoon sets in the forester sets fire to the whole rank grass, at least once if not twice, and this process is continued for a few years to prevent growth of rank grass The ground is then prepared to receive seeds and trees. Thorny and coarse undergrowth is taken out and burnt and the ashes of these obnoxious weeds add to the fertility of the soil. Where the ground is hard, it is tilled and where it is undulated the forester levels it. Sometimes manure is used to enrich the soil which has been, depleted. The assessee states that these formed a part of the normal duties of the forest staff and no written record is possible except the record of punishments for breach of these duties. The trees planted by the estate employees, are teak, sandal, avaram, myrabolam, cashew-nut, lac and other species.

8. It appears to us that the cases as set out by both parties have been put too high. The Department takes the view that unless there is actual cultivation of the soil the income from the forest trees cannot be regarded as agricultural income. The fact that the assessee has spent some money and planted valuable trees in some areas is not sufficient to free the income, out of the extensive forests which owe their existence to spontaneous growth from its liability to taxation. The assessee on the other hand seeks to create an impression that there is not a single tree of spontaneous growth, in these forests, and such trees as now constitute the forests have sprung up out of the stumps left by the hillmen as a result of the system of 'podu' cultivation adopted by them. It appears to us that neither of these claims can be regarded as precise or correct.

9. A correct description of the forests in Koraput district is to be found in the Orissa District Gazetteer for Koraput, compiled in 1941 by Mr. Bell, I.C.S. There it is said (in Chap. VI) that about 1393 sq. miles of reserved and protected forests lie in the Koraput sub-division and only 251 sq. miles in the Rayaghada Sub-division. The following extract from the report of Mr. J.W. Nicholson, Conservator of Forests, Orissa, quoted at page 99, is instructive:

> "The forest on the 2000-foot plateau is typically sal of a moist peninsular type, the average quality being III. A few patches of teak occur locally. The whole crop was at one time under shifting cultivation and the forests now comprise pole crops in various stages of growth. Large trees are scarce.....
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> "In the north of Malkanagiri taluk there is sal forest mainly of quality III, but equalling II in places. It is very remote from any market. The sal disappears about 14 miles north of

Malkanagiri, giving way to forest of a dry, mixed type. The forests are usually very open and grassy, and economically are of little value except for their excellent grazing.

"The taluks of Koraput and Pottangi are on an undulating plateau averaging 3000 feet above sea level and containing peaks above 5000 feet in height. Above 4000 feet there is little forest growth, uncultivated lands being the usual vegetation. Below 4000 feet the vegetation is typically forest wherever the population is scanty.

"In the more densely populated areas as in the hills to the south of Koraput, repeated shifting cultivation over a long period of years has reduced the forests to an open scrub type or barren soil. The existing forests have all been under shifting cultivation..... Bamboos are common locally, but they are of poor quality and they probably obtained a footing only as a result of shifting cultivation".

Referring to the Rayaghada Sub-division Mr. Nicholson says:

"The forests are of potential economic importance but owing to shifting cultivation large Sal trees and pole crops are at present scarce".

Referring to the distribution of Sal in Jeypore generally, Mr. Nicholson says:

"There are large tracts e. g., the Koraput plateau where the climate and soil is suitable for sale but the latter is not found. In Malkanagiri the Sal stops at about the same southerly point as it does in the adjoining Basthar state..... The rarity of Sal in the Nagavalli valley can also be explained on the theory that the Sal belt was advancing from north-east until shifting cultivation, through its destruction of most seeds, checked further progress".

It appears that even in 1870 when Koraput was chosen as the headquarters of the Administration the country round it was completely barren of tree growth, as it is now. It seems likely that the transition from ever green jungle to the bare hill slopes that are now to be seen was spread over centuries rather than decades. Colonel Beddome, a former chief Conservator of Forests in Madras, thus described the process:

"The burning is (at first at least) very superficial and the stumps, or a greater portion of them, at once begin to grow again; and when the cultivation is abandoned which it generally is after two years the forest soon begins to recover itself. The evergreen trees suffer more than the others and these are more or less absent at first, and for some years rank grass and much thorn and coarse undergrowth hold sway and fires periodically sweep through and it is not till the growth arrives at an age of some twenty years or more, that there is any chance of much humus being added to the surface soil and then fires are soon excluded, seedlings have a chance, and shortly afterwards rattans and tree-ferns appear.

The evergreen trees increase in number and the undergrowth quite changes its character ..... when a tract is allowed forty or fifty years to recover it appears to return almost to its 'pristine

vigour and form, and many seedling trees in time make way; and unless the base of the older trees be observed, a forester even might be deceived, and fancy that he was in a virgin forest. It is, however, only in a few tracts, chiefly on the eastern and western ghats of the plateau where the hills form chaos, that the forests are allowed a rest of any long duration. About the more accessible and less densely forested portions they are felled every eight, ten, or fifteen years and never have a chance of recovering. They have a wretched, stunted appearance, are very dry, and more or less impenetrable from a tangled rank undergrowth and there are no seedlings; nothing, in fact, but the coppice growth, generally of only the quicker-growing but poorer sorts of timber".

10. It is therefore extremely hazardous to assume having regard to the peculiar conditions prevailing in this area, that the entire forest is of spontaneous growth or that the huge forest establishment maintained by the Maharaja was merely engaged in preserving what has been saved from destruction by the hillmen. The Income-tax Tribunal appears to have wholly overlooked the effect of 'podu' cultivation on the destruction of virgin forests and on the emergence of new trees whose ages vary from 15 to 20 years. The Tribunal also seems to have made a sweepins assertion that the trees are mature for felling only at the end of forty years, and looked for evidence of actual agrictultural operations prior to 1901. While accepting the assessee's contention that the forest establishment has been in existence for quite a long time the Tribunal observed that

> "the point in dispute is whether there has been any agricultural operation carried on for the purpose of bringing into existence forests and growing timber".

The Tribunal seems to have thought that the forests must come into existence directly as a result of agricultural operation in order to be within the exemption clause. It is true that there was no allegation that there was any planting of forest trees. But the Tribunal failed to properly consider how far shifting cultivation had contributed to the growth and development of the existing forests, and it drew an inference from the extracts, quoted from the District Gazetteer, of observations made by officers who had personal knowledge of the area, that they proved at any rate that there were 'luxuriant forests at one time". The Tribunal also threw on the assessee the onus of proving that these luxuriant forests were the result of agricultural operations carried on by the assessee. Reliance was placed on the decision of the Privy Council in - *Mustafa Ali Khan v. Commissioner of Income-tax, U.P[1].',* and the Tribunal was of opinion that that case is an authority for the position that income from forests of spontaneous growth is not agricultural income.

11. There is no finding by the Tribunal that the assertion made by the Dewan in his statement of facts that the forest had been planted generated, protected, developed and maintained only with the aid of active human agency, was incorrect. In 1903 the forest establishment had consisted of 203 persons while in 1939-40 it was 1913. The Dewan also requested the Income-tax Officer to inspect some of the plantations so that he may have a definite idea of the various duties and activities of the Forest Officers. It does not appear from the records, however, that the Income-tax Officer took the trouble to inspect any of these plantations. Along with the statement a list of the files showing the action taken by the officials of the Samasthanam for planting and transplanting of forest trees was filed, but no reference has been made by the Tribunal to these papers. Annexure VI to the Dewan's statement contains a list of files showing the plantations of

timber. These files indicate that the estimates and sketch-maps are prepared for plantations, seeds are purchased, and money is spent for watering them Annexure VII shows the steps taken by the Estate from time to time for preventing 'podu' cultivation and bringing the area under "Reserved" and 'protected" forests by notification after obtaining the approval of Government. The dead fuel is removed under permits granted to the villagers. Annexure X shows the expenditure by the Forest Department on the plantations. These include clearing, sowing, planting and fire-protection, during the years 1940-41 and 1941-42. Annexure XI shows the expenditure on labour charges for digging, dibbling, etc.
Annexure XII contains extracts of entries in the cash books of the chief Forest Officer for 1920-22, and these show the amounts spent on wages to coolies for uprooting the lanthana shrubs, wages paid for lopping off kusum trees on which lac is grown, charges paid for coppicing stumps, and money spent on various other heads. The Income-tax Officer thought that most of the expenses incurred by the Estate are on maintenance of forests and general development and that the teak and avaram plantations were raised only in sporadic areas where spontaneous growth was not expected.

12. It appears to me that the Department did not attach sufficient importance to the agricultural operations carried on by the Estate in raising new plantations and protecting forest trees and brushed aside the claim of the assessee that the existing forests are not of spontaneous growth, without a proper appreciation of the voluminous evidence on the record. In arriving at this conclusion the Tribunal was largely influenced by a limited interpretation of the decision of the Privy Council in - 'Mustafa Ali Khan's Case (A)' In that case the question raised was whether the money received under the head "Forests" constituted agricultural income. The question referred by the Tribunal to the High Court, as would appear from the report, was formulated as followed:

> "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), Indian Income-tax Act, and as such exempt from taxation under Section 4 (3) (viii) of the Act".

It was admitted in that case that the trees grew without the intervention of human agency and the forest was of spontaneous growth. Their Lordships of the Privy Council observed:

> "As appears from the form of the question, the income under the first head was derived from the sale of trees described as 'forest trees growing on land naturally and the case has throughout proceeded upon the footing there was nothing to show that the assessee was carrying on any regular operations in forestry, and that the jungle from which trees had been cut was a spontaneous growth".

This case has absolutely no application to the facts before us. In the case before us it is not only not admitted that the trees have grown on land naturally, but the assessee claims that he has been carrying on regular operations in forestry under ex- pert advice. Then again their Lordships of the Privy Council referred to the expression "used for agricultural purposes" and observed as follows:

> "It is sufficient for the purpose of the present appeal to say (1) that in their opinion no assistance is to be got from the meaning ascribed to the word 'agriculture' in other statutes; (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".

On the facts of that case their Lordships agreed with the High Court in holding that there was no evidence which would justify the conclusion that this condition was satisfied. It would appear that the income would not be regarded as agricultural income if there is a total absence of some measure of cultivation of the land, or of some expenditure of skill and labour upon it. Their Lordships, however, do not lay down what the measure of that cultivation should be or what the nature of skill and labour expended should be, in order to bring the operations within the meaning of the expression 'agricultural purposes' as used in the definition section. Agricultural income is defined in Section 2 of the Act as:

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

13. The question to be determined in each case should therefore, be whether the land out of which the rent or revenue is derived is used for agricultural purposes. Unless the land is subject to some measure of cultivation or there is expenditure of some human skill and labour in order to derive the rent or revenue, the purpose would not be agricultural.

> 'Agriculture' includes farming, horticulture, forestry, butter and cheese-making etc. (WEBSTER). According to Murray's Oxford Dictionary it means:
> "tillage of the land, the art of cultivating the soil including the allied pursuit of gathering the crops and rearing livestock, also husbandry, - farming in the widest sense".

The etymological meaning of the word is cultivation of a field. But cultivation is not mere tilling. The science and art of cultivating the soil may depend upon the nature of the soil, the atmosphere and various other factors.

14. It is therefore idle to regard 'tilling' as the sole or indispensable test of agriculture It was held in several cases prior to 'Mustafa Ali Khan's case, that income from virgin forests, where admittedly there is no agricultural operation carried on by human agency is not agricultural income. In *'Province of Bihar v. Pratap Udai Nath[2]',* which arose under the Bihar Agricultural Income-tax Act, the Court accepted the contention for the assessee that the land from which the income of Bankar, Lakhar and Phalkar was divided was not used for agricultural purposes, as they were the natural produce of the soil. The Court observed that it was due to the absence of cultivation that the area developed into a jungle. This view was adopted in - *'Maharaja of Kapurthala v. Commissioner of Income-tax Central and U.P[3].',* In that case it was admitted by the general agent of the estate, Shri Hara Chand Das, that the forest was of spontaneous growth and that nothing in the nature of preparing the land for the growth of trees was done. It was accordingly held that if trees grow naturally on land without being fostered by tillage, the rent

derived from the sale of such trees could not be said to be 'income from land used for agricultural purposes' In the - 'Pithapuram case' reported in - *'Gangadhara Rama Rao v. Commissioner of Income Tax, Madras[4],'* the Madras High Court distinguished its earlier decision in - *'Chief Commissioner of Income Tax v. Zamindar of Singampathi[5]',* and held that the income derived from trees which have grown wild is not agricultural income. This case went up to the Privy Council and its decision is reported in - *'Gangadhara Ramarao Bahadur v. Commissioner of Income-tax, Madras[6]',* It would appear from the judgment that it was admitted in that case that the trees in the forest and non-forest areas had grown wild and that agricultural operations were not carried on in any of the areas from which the income in question was derived. About the same time the Nagpur High Court, in - '*Beohar Singh v. Commissioner of Income-tax[7]',* summed up the positon as follows:

> "This resume will show that so far as forests are concerned the definition we have adopted, making actual cultivation with the aid of human skill and labour the dividing line, reconciles, as far as we can see, the various cases which have been cited on the matter of forests"

Their Lordships further observed:

> "It is essential that the income should be derived from some activity which necessitates the employment of human skill and labour; it is not merely a product of man's neglect or inaction except for the gathering in of the spoils".

This case, it should be noted, was decided before the Judicial Committee pronounced its opinion in - 'Mustafa Ah Khan's case'. In all these cases the forests were admittedly of spontaneous growth, and no operations of any kind involving human labour or skill had been undertaken.

15. Subsequent to - 'Mustafa Ali Khan's case, there have been many decisions of the various High Courts, which have interpreted the expressions "operations in forestry" and 'expenditure of human skill and labour upon land" used by their Lordships of the Privy Council in that case. In '*Commissioner of Agricultural Income-tax, West Bengal v. Jagadish Chandra Deo[8]',* Mookerji, J. of the Calcutta High Court observed that the introduction of human agency and the application of human effort would be the criteria for consideration whether a forest is one of spontaneous growth or not. If there were any regular operations in forestry, that would be a material fact for consideration though it may not be decisive. Whether there has been sufficient application of human effort in any particular case is essentially a question of fact. A typical instance is to be found in - 'In re Moolji Sicka and Co.', 1939-7 ITR 493 (Cal), where pruning of tendu leaves was held to be 'cultivation of soil in a technical and legal sense' and the land was held to have been used for the purpose of agricuture The facts proved in - 'Jagadish Chandra's case' were: parcelling out of 14,000 acres into blocks of about 1000 acres each, the trees on each being sold when they were about 15 years old; the ground was kept free from undergrowth and jungle and, by removal of roots to prevent damage to the new shoots; the area cut down was closely guarded by forest guards at least for one year; and final cutting down at near about 15 years and removal of older trees. There was admittedly no tilling of the soil nor sowing of seeds, nor watering. Nonetheless, Mookerji J. said that

> "the application of human effort is somewhat different in the present case, but there is no doubt that the assessee was carrying on regular operations of forestry".

The growing of new shoots appearing during the rains without any human intervention, and the use of particular blocks at fixed and stated intervals were held tantamount to 'tending'. Removal of trees of certain description was an operation depending upon technical skill and experience of officers, for the proper utilization of the produce of the earth. In these circumstances, their Lordships held that there was no escape from the conclusion that the assessee carried on regular operations in forestry-Utilization of land for operations in forestry is therefore an agricultural purpose and tilling of the land is not a conclusive test of such purpose. There is also another case of the Calcutta High Court - '*Benoy Kumar v. Commissioner of Income-tax West Bengal*[9]*',* There it was found that the forest had been in existence for 150 years and that the trees standing on sections of it were sold periodically by rotation. The learned Chief Justice observed thus:

> "It can safely be presumed that the trees of which the forest now consists, are mostly off-shoots sprung and grown from the stumps of original trees after they had been cut down and some have sprung from seeds sown. It follows that, whether or not the operations of the assessee amount to agriculture, the whole of the income is derived from those operations".

The learned Chief Justice concluded with the following words:

> "I am aware that in some of the decisions weeding has been held to be not an agricultural operation, but I can see no reason for taking that view, because it is certainly an operation carried out on the land in order to free the soil of the burden and make it a better feeder of the plants preserved or grown.

In my opinion if a forest of natural growth is taken over, and then the land is regularly weeded and cleared, if it is supplied with moisture necessary for the nourishment of the trees, by the cutting of channels across it and by the distribution of rain-water through them, and if the land is dug and sown with seeds whenever bare patches appear, and while all this is done, if elaborate subsidiary arrangements are also maintained for the protection of the trees and the tending of new shoots, springing from old trees cut down till they themselves grow into new trees it can well be said that operations in forestry involving agricultural operations are carried on in the forest and that the income derived from the land is agricultural income". I would now refer to two decisions of the Assam High Court. In the first of these cases, - *'Jyotindra Narayan v. State of Assam*[10]*',* the forests consisted mainly of Sal trees and the history of their origin was not available. There was nothing to show that these Sal trees were of spontaneous growth. It was proved, however, that the forest trees were protected and fostered in their growth by the application of human skill and labour. These operations consisted of clearing of jungle creepers and climbers thinning by removal of less healthy trees from thickly grown areas, removal of diseased trees, burning of leaves, cutting of trees a particular heights reservation of blocks by turns, and their operation in cyclic order, protection of forest from fire, etc. In these circumstances their Lordships held that elaborate operations in forestry were necessary for the maintenance of the forests and for the

growth and regeneration of new types in place of those cut every year. These operations were undertaken with a view to enable the assessee to sell trees from the forests periodically and involved both skill and labour; and the income was held to be agricultural income. In the second case reported in - '*Jyotikana Chowdhurani v. Commissioner of Income-tax, Assam*'[11], the facts found were that the trees were of spontaneous growth and there was no planting. The operations in forestry carried on by the assessee were reservation of blocks for operation in rotation, marking of trees fit for selling, creeper and climber cutting, thinning and removal of diseased and unsound trees, clearing of undergrowth, allowing grazing during a certain season, burning of undergrowth and protection from fire. It was held by the majority that though the trees were of spontaneous generation, the operations carried on by the assessee were conducive to the growth and development of the trees and involved expenditure of human skill and labour on the land itself. The land was, therefore, being used for agricultural purposes and the income was held to be agricultural income.

16. Learned counsel for the Income-tax Department drew our attention to the case of - *'Pratap Singh v. Commissioner of Income-tax',* a decision of the Allahabad High Court reported in - ' AIR 1952 Allahabad 845', where the more conservative view has been taken. In that case, the Tribunal had not indicated in their statement of the case the manner in which skill and labour were utilised for regeneration and preservation of the trees. Nor had the Tribunal given any finding as to whether the assessee had spent any money on watering, pruning and protecting the trees. Their Lord ships, therefore, refused to assume that these operations had been carried out and observed:

> "In the present case mere regeneration and preservation of trees by human agency cannot be said to be expenditure of skill and labour upon the land itself".

With great respect I am unable to follow how regeneration and preservation can be brought about without expenditure of human skill and labour upon the land.

17. Applying the principles cited above to the case before us we find that considerable amount of human labour and skill was spent-

> (1) in fostering the growth of the trees and preserving them from destruction by man and cattle;
> (2) in cultivation of the soil by felling and burning trees from time to time;
> (3) in planned exploitation of trees by marking out the areas into blocks;
> (4) in systematic cutting down of trees of particular girth and at particular heights;
> (5) in planting new trees where patches occur; and
> (6) in watering, pruning, dibbling and digging operations carried on from time to time. All these and similar operations which have been undertaken by the assessee through his huge forest establishment show that there has been both cultivation of the soil as well as application of human skill and labour, both upon the land and on the trees them selves.

It cannot be assumed therefore that all the trees are of spontaneous growth. The indications, on the other hand, appear to be that most of them are sprouts springing from burnt stumps. There is

no basis for the assumption made by the Income-tax Department that all the trees are forty years old and that they owe their existence to spontaneous growth. Apart from that it will be noticed that what distinguishes the present case from all the reported decisions is that practically the whole of the forest area has been subjected to a process of 'podu' cultivation spreading over several decades so that it is impossible to say that there is any virgin forest left.

18. The onus was certainly upon the Department to prove that the income derived from the forests was chargeable to tax and fell outside the scope of the exemption mentioned in Section 4 (3) (viii). Neither the word 'agriculture' nor the expression 'agricultural purposes' is defined in the Indian Income-tax Act. Where an expression in a taxing statute is of doubtful meaning it must be resolved in favour of the assessee. The burden is on the Revenue authorities to show that a certain item of receipt sought to be taxed is, in the first instance, liable to be taxed. The principle deducible from the authorities is that

> "Where an exemption is conferred by statute, the State must not get the tax either direcly or indirectly".

As was observed by Lord Somervelle (L.J.) in - *'Australian Mutual Provident Fund Society v. Inland Revenue Commissioners[12]',*

> "The rule must be construed together with the exempting provisions which in our opinion must be regarded as paramount. In so far as the rule, if taken in isolation, would have the effect of indirectly depriving the company of any part of the benefits of the exemption, its operation must be cut down, so as to prevent any such result, and to allow the exemption to operate to its fullest extent".

If the tax authorities regard the forest revenue as 'income' chargeable to tax under Section 4, they should also establish that it is not entitled to exemption under clause (viii) of sub-section (3) of Section 4.

19. I am not satisfied that the facts and circumstances of this case would take the assessee out of the exemption and make him liable to taxation of the income derived from the forests. Our answer to the first question referred to us in para.9 of the referring order, at page 4 of the Paper Book, is therefore, in the negative. We would accordingly hold that on the facts and in the circumstances of the case, the income derived from forests is not taxable under the Indian Income-tax Act.

20. The next question relates to the assessee's business. The assessee has been taxed for the assessment years 1944-45 and 1945-46 in respect of certain profits made by sale of rice to the Ceylon Government. After having gone through the statement of the case and heard learned counsel we have no doubt that the assessee entered into contracts with the Ceylon Government for sale of rice and derived profits as a result of this contract. Learned counsel contended that this was an isolated transaction and cannot be regarded as 'business'. The facts however disclose that the Dewan took out a dealer's license for purchase and sale of paddy during the years in question, that he made several purchases from tenants, and supplied the rice by a series of sales. We are

therefore agreement with the view taken by the Tribunal that the assessee was carrying on the business of supplying rice to the Ceylon Government and that the income derived therefrom constituted business profits. We would accordingly answer the question formulated at pages 7 and 8 of the Paper Book, in para.12 of the referring order, in the affirmative.

21. With regard to the next question referred to us, in paragraph 17 of the Tribunal's referring order (Vide page 9 of the Paper Book), we are satisfied that the Tribunal was right in computing the taxable profits in regard to the business of the assessee with Messrs. Shaw Wallace and Co., Calcutta. The market value of the paddy sold by the assessee should be the rate obtaining at Koraput and not at Calcutta. This question is
accordingly answered in the negative.

22. The next question is whether the sum of Rs.1,00,000/- paid by the assessee every year to the Andhra University is liable to be included in the total income of the assessee. Section 4 (3) (i), Indian Income-tax Act is invoked by the assessee. for claiming exemption. That clause reads as follows:-

> "Any income, profits, or gains within the following classes shall not be included in the total income of the person receiving them.
> (i) any income derived from property held under trust or other legal obligation, wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied or finally set apart for application, there to".

We have gone through Ex. Z-4 dated 6-12-1933 the deed of gift executed by the Maharaja of Jeypore (vide page 367 of the printed Paper Book). It purports to grant an annuity of one lakh of rupees to the Andhra University out of the revenues of the impartible estate. Clause 4 of the deed says that the annuity is charged and secured on the revenues of the impartible estate of Jeypore. There is nothing to indicate that the estate itself was held under trust or other legal obligation for charitable purposes. The exemption clause would apply only if the income in the hands of the Maharaja was derived from property already under thus or other legal obligation. It is unnecessary to go into this point in detail as the question is concluded In *'Bijoy Singh Dudhuria v. Commissioner of Income Tax Bengal*[13]*',* the assessee was bound, under a decree, to make a payment to his step-mother. That case was not of a charge created by the Raja, for payment of debts which he had voluntarily incurred. If, therefore, a charge is created by the assessee himself for payment of an annuity, as happened in this case, he cannot escape taxation of the income. In a later case, - *'Shiv Prasad Singh v. Commissioner of Income-tax, B and O*[14]*',* the Patna High Court held, on similar facts, that the members of an undivided family being entitled to maintenance had a charge upon an estate, and that the amount payable to them is not income in the hands of the assessee liable to be taxed. This question is accordingly answered favour of the defendant.

23. The last question that now remains to be answered is whether the assessee is entitled to the disallowance of Rs.65,5000/- paid as damages Mr. Gaggar (vide para. 19 of the referring order page 11 of the Paper Book). Learned counsel did not seriously contest this correctness of the view taken by the Tribunal of this question and we would answer this question in the negative and hold that the assessee is not entitle to claim any deduction of this amount.

24. In the result the petitioner succeeds only on the first question of law referred to us, and fails on the other questions. We would therefore make no order as to costs.

Misra, J.

25. I agree.

Reference answered accordingly.

Cases Referred.

[1] AIR 1949 PC 13
[2] AIR 1941 Pat 289 (SB)
[3] AIR 1945 Oudh 35
[4] AIR 1947 Mad 157
[5] AIR 1922 Mad 325 (FB)
[6] AIR 1949 PC 294
[7] AIR 1948 Nag 228
[8] 1949-17 ITR 426 (Cal)
[9] AIR 1954 Cal 225
[10] AIR 1951 Ass 2
[11] AIR 1954 Ass 113
[12] 1946-1 All ER 528 (N)

[13] AIR 1933 PC 145
[14] AIR 1942 Pat 456