PATNA HIGH COURT

Province of Bihar

Vs

Maharaja Pratap Udai Nath Sahi Deo

(Harries, C.J.)

17.04.1941

JUDGMENT

Harries, C.J.

1. These are two references made by the Board of Agricultural Income-tax, Bihar, under Section 25(2), Bihar Agricultural Income-tax Act (Act VII of 1938). The two references raise precisely the same questions, and it will be convenient to deal with them in one judgment.The assessee is the Maharaja of Chota Nagpur. He was called upon to make a return of his agricultural income for the previous year, and eventually he made a return showing an income of Rs. 9,956-12-6 derived from agriculture. The Income-tax Officer questioned the return and finally assessed the assessee on a net income of Rs. 1,42,743-8-71/2. The assessee being dissatisfied with this assessment appealed to the Commissioner of Agricultural Income-tax, who by an order dated September 20, 1939, dismissed the appeal and confirmed the assessment. The assessee then petitioned the Board of Agricultural Income-tax, Bihar; but his petition was rejected by an order dated February 21, 1940.The facts giving rise to Miscellaneous Judicial Case No. 48 of 1940 are very similar :-The assessee in this case is the Raja of Panchkote who was assessed by the Income-tax Officer to agricultural income-tax upon a sum of Rs. 99,392. The assessee appealed to the Commissioner of Income-tax, but his appeal was dismissed on September 21, 1939, and a petition to the Bihar Board of Agricultural Income-tax was rejected on February 21, 1940.The points taken by both the assessees were the same. It was contended, in the first place, that the Bihar Agricultural Income-tax Act was ultra vires and that neither assessee was liable to be assessed in respect of his agricultural income. Secondly, it was urged that the cess collected by the assessees from their tenure-holders and raiyats did not form part of their agricultural income and, therefore, could not be included in the sum to be assessed to agricultural income-tax. Thirdly, it was contended that payments in the nature of premia or salami formed no part of the income of the assessees and that such had been wrongly assessed to income-tax by the Income-tax Officer. Lastly, it was contended that income from Phalkar, Lahkar and Bankar could not be

assessed under the Act as part of the agricultural income of the assessees.The Commissioner of Agricultural Income-tax and the Bihar Board of Agricultural Income-tax decided that the Act was intra vires the Bihar Provincial Legislature and, therefore, the assessees could be assessed to agricultural income-tax. They further decided that the sums representing cess, premia or salami received by the assessees and income from phalkar, lahkar, and bankar had been rightly assessed to tax. As the cases involved difficult questions of law, the Bihar Board of Agricultural Income-tax was asked to state cases for the opinion of this Court, and the Board stated cases under Section 25(2), Bihar Agricultural Income-tax Act, and these cases formulate four questions :-

(1) Whether agricultural income of the assessee can be assessed under the Bihar Agricultural Income-tax Act (Act VII of 1938) ?

(2) Whether the cess as imposed by the Bengal Cess Act (Act IX of 1880 B.C.) on tenure-holders and raiyats and collected by the assessee can be assessed as agricultural income of the latter as defined in this Act ?

(3) Whether single non-recurring premia and salamis paid to the assessee once only as consideration for the settlement of agricultural land at the time of granting of a lease can be held to be income within the meaning of the Act ?

(4) Whether the income from trees derived by the assessee is agricultural income as defined in the Act ?

It will be convenient to consider each of these questions separately.

Question (1) - Whether agricultural income of the assessee can be assessed under the Bihar Agricultural Income-tax Act (Act VII of 1938) ?

The assessee wished to contend that the whole of the Bihar Agricultural Income-tax Act was ultra vires the powers of the Bihar Provincial Legislature or in the alternative that the Act was ultra vires in so far as it purported to tax agricultural incomes arising from permanently settled estates. The estates of both the assessees were permanently settled and were assessed to land revenue. At the outset Counsel for the assessees realised that it would be impossible to contend before this tribunal that the Act under which the tribunal was constituted was ultra vires. This tribunal has been expressly set up by the Act to here references under Section 25 of the Act, and an argument that the whole of the Act was ultra vires cannot be urged before a tribunal which owes its very existence and jurisdiction to the Act itself. Realising the difficulties, Counsel informed the Court that they did not press for an answer to this question as, in their view, the matter could be more appropriately and effectively raised in a suit challenging an assessment. That being so, no further argument was addressed to us upon this question, and I would, therefore, make no answer to it.Question (2) - Whether the cess as imposed by the Bengal Cess

Act (Act IX of 1880 B.C.) on tenure-holders and raiyats and collected by the assessee can be assessed as agricultural income of the latter as defined in this Act ?In the cases of both assessees the Income-tax Officer had included in their gross income sums collected by the assessees as cess from their tenure-holders and raiyats. In the case of the Maharaja of Chota Nagpur the amount of cess collected from tenure-holders and raiyats amounted to Rs. 1.14,686-0-2 1/2 and the amount payable by the said Maharaja under the Cess Act amounted to Rs. 1,62,757-2-10. In the case of Raja of Panchkote the amount of cess actually collected from the tenure-holders and tenants is not clearly stated, but there can be no question that it was a substantial amount. The amount of cess paid by the said Raja amounted to Rs. 78,705-13-7.There can be no question that the cess payable by the assessees under the provisions of the Cess Act are proper deductions from their gross income as such deductions are expressly provided for in Section (6)(b), Bihar Agricultural Income-tax Act. Among the deductions permissible under Section (6)(b) are sums "actually paid in the previous year in respect of such land as my local cess or rate collected under any Bengal Act or under any Bihar and Orissa Act or under any Bihar Act."The contention of the assessee was that though cess paid by them could be deducted from their gross income the cess actually collected by them from their tenure-holders and raiyats formed no part of their agricultural income and could not be included in the same representing their gross income. It was conceded that there was no justice or equity in this contention; but it was urged that on the plain words of the Act cess collected by the assessee formed no part of their income.

> "Agricultural income" is defined in Section 2(a) as, inter alia, "any rent or income derived from land which is used for agricultural purposes, and is either assessed to land-revenue in Bihar or subject to a local cess or rate assessed and collected under any Bengal Act or under any Bihar and Orissa Act or under any Bihar Act;....."

Counsel for the assessee argued that the Provincial Legislature had no power to define agricultural income as that term had already been defined in Section 311, Government of India Act, 1935. It is to be remembered that the power of the Provincial Legislature to levy agricultural income-tax is given to them under Section 100 and Schedule 7, List II, Item 41, Government of India Act. By reason of these provisions a Provincial Legislature is empowered to impose taxes on agricultural income. The latter term is defined in Section 311(2), Government of India Act, as meaning agricultural income as defined for the purposes of the enactments relating to Indian Income-tax. Section 2 of the present enactment relating to Indian Income-tax defines "agricultural income" as any rent or revenue derived from land which is used for agricultural purposes, and is either assessed and collected by officers of the Crown as such.It will be observed that the definition of "agricultural income" given in the Indian Income-tax Act differs somewhat from that given in the Bihar Agricultural Income-tax Act. In the Indian Income-tax Act agricultural income consists of any rent or revenue derived from agricultural land, whereas in the

Bihar Agricultural Income-tax Act it consists of any rent or income derived from agricultural land. In my judgment there is no real difference between the words "revenue" and "income" used in these two Acts. In the Indian Income-tax Act word revenue" is clearly used to cover payments in the nature of income other than rent derived from the land.The definitions in the two Acts also differ as to the description of the agricultural land contemplated. In the Indian Income-tax Act the land must either be assessed to land revenue in British India or subject to a local rate assessed and collected by officers of the Crown as such, whereas in the Bihar Act the land must be either assessed to land revenue in the province or subject to a local cess or rate assessed and collected under any Bengal Act or under any Bihar and Orissa Act or under any Bihar Act.For the reasons which I have already given, Counsel for the assessee could not and did not with to contend that the whole Act was ultra vires by reason of the fact that the definition of "agricultural income" in the Bihar Act differed from that in the Government of India Act. Counsel, possibly, could have argued that the Act was ultra vires in so far as the definition in the Bihar Agricultural Income-tax extended to cases not covered by the definition in the Government of India Act. Such an argument, however, could not avail the assessee in the present case, because both the estates were assessed to land-revenue and, therefore, the cases of both were covered not only by the definition in the Bihar Act but also by the definition in the Government of India Act. No point can be made in the present proceedings on the difference in the two definitions, and I merely mention the question in deference to the argument which was addressed to the Court.The learned Commissioner of Income-tax was of opinion that the cess collected by the assessees from their tenure-holders and raiyats formed part of their income though he did not regard the cess as part of the rent payable by the tenure-holders or raiyats as the Income-tax Officer appears to have thought. The Bihar Board of Agricultural Income-tax, however, came to the conclusion that cess formed part of the rent and was, therefore, liable it assessment as part of the assessees agricultural income. The contention of the Income-tax authorities was that the definition of "rent" given in the Chota Nagpur Tenancy Act was wide enough to cover these payments of cess but in my judgment the view of the learned Commissioner is the correct one. It may well be that for the purposes of the Chota Nagpur Tenancy Act cess could be regarded as part of the rent, but that would not make cess rent for the purposes of agricultural income-tax. It would, indeed, be strange if cess could be regarded as rent for the purposes of taxation in Chota Nagpur and could not be so regarded for the purposes of taxation in other parts of this province. In my judgment the cess received by the assessee cannot be regarded as part of the rent for the purposes of the Agricultural Income-tax Act and, therefore, taxable. It can only be assessed if it can be regarded as part of the agricultural income of the assessee.Cess is imposed by Section 5 of the Bengal Cess Act which is in these terms :-

> "From and after the commencement of this Act in any district or part of a district, all immovable property situate therein, except as otherwise in Section 2 provided, shall be

liable to the payment of a local cess.

The mode of payment of local cess is provided for in Section 41 of the Cess Act, which is in these terms :-

"Except as otherwise in this Act provided -

(1) every holder of an estate shall yearly pay to the Collector the entire amount of the local cess calculated on the annual value of the lands comprised in such estate, at the rate which may have been determined for such cess for the year as in this Act provided, less a deduction to be calculated at one-half of the said rate for every rupee of the revenue entered in the valuation roll of such estate as payable in respect thereof :

(2) every holder of a tenure shall yearly pay to the holder of the estate or tenure within which the land held by him is included, the entire amount of the local cess calculated on the annual value of the land comprised in his tenure at the rate which may have been determined for such cess for the year as in this Act provided less a deduction to be calculated at one-half of the said rate for every rupee of the rent payable by him for such tenure :

(3) every cultivating raiyat shall pay to the person to whom his rent is payable one half of the said local cess calculated at the said rate upon the rent payable by him, or upon the annual value ascertained under the provisions of Section 24 or 25 of the land held by him....."

It will be seen that by reason of Sec. 41 the proprietor has to pay cess on all the land held by him and the tenure-holders or raiyats under the proprietor have to pay cess to the latter in respect of the lands held by them. The landlords liability to pay cess is not conditional upon the collections of cess made by him from his tenure-holders or raiyats and the landlord is bound to pay the cess payable by him whether he is able or not to collect the cess due to him from persons holding from him. Section 41 of the Act makes it clear that the liability of the proprietor to pay cess in no way depends upon payments of cess made to him by his tenure-holders or raiyats.It was faintly urged that the cess received by the assessees from their tenure-holders and raiyats formed no part of their agricultural income by reason of the fact that the assessees had themselves to pay cess and in substance and in fact what they received from the tenure-holders and tenants they actually paid with their own contribution to the local authorities. If the proprietors were merely collecting agents of this cess, then it could be urged that the amounts collected by them formed no part of their income. However, if such was the case, the assessee could not claim a deduction of the cess payable by them in respect of lands actually held by tenure-holders and raiyats under Section 6(b). Bihar Agricultural Income-tax Act, because such cess would not be paid by the assessee but paid by the tenure-holders and raiyats through the hands of the assessee. The fact that the proprietors are entitled to deduct not only cess paid by them in respect of lands in their khas

possession but also in respect of lands held by tenure-holders and tenants makes it clear that the liability is that of the proprietor and not of those holding under him. In my view proprietors are not mere agents for the collection of cess, but on the other hand, they are the only persons liable to pay the cess due to the local authorities and further they are the only persons entitled to the cess payable by the tenure-holders and raiyats.In my judgment it is clear that the cess received by the assessees from tenure-holders and raiyats does form part of their income. When they receive the payments they are absolutely entitled to them and can retain them even if they themselves were able to avoid payment of their cess to the local authorities. The payments from the tenure-holders and raiyats are received regularly and are clearly within the definition of "Income" given by Sir George Lowndes in the judgment of their Lordships of the Privy Council in Commissioner of Income tax, *Bengal v. Shaw Wallance & Company*[1]. Sir George Lowndes observed :-

> "Income, their Lordships think, in this Act (meaning the Indian Income-tax Act) cannotes a periodical monetary return "coming in" with some sort of regularity, or expected regularity, from definite sources. The source is not necessarily one which is expected to be continuously productive, but is must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall. Thus income has been likened pictorially to the fruit of a tree, or the crop of a field."

As the assessee receive this cess regularly year by year and appropriate it to their own use it is clearly part of their income. The question, however, still remains whether it is income derived from land used for agricultural purposes, because it must, to be taxable, be derived from such land.In my judgment the cess received by the assessee in income derived from land used for agricultural purposes. All such land is expressly made liable to cess by the Bengal Cess Act and it is payable by the tenure-holders and raiyats by reason of their relation to the land, and further it is received by the assessee by reason of their rights as proprietors of the land. The liability to pay such cess and the right to receive it only exists as long as the relationship of proprietor and tenure-holder or proprietor and raiyat exists. When the proprietor ceases to be a proprietor, he no longer has any right to the cess and similarly when the interest of the tenure-holder or raiyat cases, their liability to pay cess comes to an end. The liability to pay and right to receive cess is so closely connected with the land that it can truly be said that it is income derived from the land. The cess was received by the assessees by virtue to the fact that they were the proprietors of the land used for agricultural purposes. That being so, the cess forms part of their agricultural income and is liable to be taxed under the Bihar Agricultural Income-tax Act.It was urged by Sir Sultan Ahmed on behalf of the assessee that cess could not form part of the agricultural income of the assessees, because the rights of the assessees to this cess were governed not by contract between them and their tenure-holders or raiyats but by statute. In my view it can make no real difference whether the money is received by reason of an agreement or by reason of a right given by statute.

Rent is payable by the tenant or the tenure-holder as the result of agreement. The Cess Act imposes a further liability on the tenure-holder and the tenant and gives the proprietor a right to something more than the rent which was fixed as the result of agreement. Both the payments are made by the tenure-holders or raiyats by virtue of the fact that they hold interest in land from the proprietor and the latters right to receive both the payments are equally by virtue of the fact that he is the proprietor of the land. In my view no distinction can be drawn by reason of the fact that cess is payable under stature, and in my judgment cess clearly forms part of the agricultural income of the assessees. I would, therefore, answer this question in the affirmative.Question (3) - Whether single non-recurring premia and salamis paid to the assessee once only a consideration for the settlement of agricultural land at the time of granting of a lease can be held to be income within the meaning of the Act ?

The learned Commissioner was of opinion that such premia or salamis were not capital payments but were revenue receipts and, therefore, taxable. In his judgment he observed :-

> "The amount of salami to be paid is and must necessarily be taken into account by the would-be lessee in estimating what rent he can afford to pay for the tenancy and I consider therefore that salami of this nature must in fact be regarded as merely a capitalised value of a portion of the future rents. I hold therefore that salamis of this nature are rent, but even if I did not come to this conclusion, I do not see how I could avoid holding that such salamis are income derived from land which is used for agricultural purposes. Money received must be either capital or income, and I find it impossible to regard salamis of this nature as being in any sense capital. They do not represent compensation for any deterioration of the landlords estate and are, in my opinion, income pure and simple."

The Bihar Board of Agricultural Income-tax also came to the conclusion that these salamis formed part of the assessees agricultural income. The Board relied upon the decision in *Birendra Kishore Manikya v. Secretary of State for India*[2] and declined to follow a decision of this Court in *Commissioner of Income-tax v. Maharajadhiraj Kumar Visheshwar Singh*[3] Dealing with the decision of this Court the Board states :-

> "With due respect to the ruling of the Honble High Court, I feel, I must upon this issue be guided by my own experience as a revenue officer and court. This point has come before the Board in many shapes and forms and especially whilst deciding question of rent reduction in the recently initiated proceedings in the province under Section 112 and 112-A of the Bihar Tenancy Act and the analogous sections of the Chota Nagpur Tenancy Act. I have, so I think, invariably seen that whenever a landlord has settled zirat, bakasht or nilami lands with tenants and has accepted a salami it has been always because of the

> imposition of a lower rate of rent than would have been the case if such salami had not been taken. I am of opinion that this has been the uniform practice in such cases coming before the Board throughout the province and on this consideration I cannot do anything else but hold that these salamis are merely advance rent and nothing else and so agricultural income-tax is rightly imposed upon them."

The facts relating to these various payments of salami are nowhere set out in the case. All that is said is that these payments by way of salami were made on settlement of lands with tenants. Both the Commissioner and the Board appeared to have though that as a matter of law such payments were not capital receipts but revenue receipts and, therefore, formed part of the proprietors income. The case of *Birendra Kishore Manikya v. Secretary of State for India (1920) 48 Cal. 766; 1 I.T.C. 6(Supra)7* now overruled on the main question which it decided does support the views of the Commissioner and the Board, but it is to be observed that this Court has not accepted the law as laid down in that case. In *Raja Shiva Prasad Singh v. The Crown*[4] this Court refused to follow the view of the Calcutta High Court that salami paid on the settlement of land was income. In that case the question was whether a sum of money received by the assessed by way of salami or premium for granting a mining lease was taxable. Dawson Miller C.J., observed.

> "There is a vast difference between a sum paid once for all for the lease of mineral rights and a rent or royalty paid annually to the lessor. The lessor in this case who holds an unfettered right of disposal would appear, in granting these leases, to have had two objects in view which are distinguishable. In so far as rent and royalty are reserved, he is founding an annual increment to the income of the Raj for himself and his successors, but with regard to salami it is the price he demands for parting with his direct enjoyment of the property by himself and his successors for a period of 999 years. He is parting with the capital to persons, who whilst not purchasers of the fee simple, are undoubtedly purchasers of a large interest therein. The purchase price is presumably not based upon the estimated outturn but is paid in exchange for the long term transferred. Possibly it may be objected that the distinction is one of degree rather than of kind, recurring payments at short periods being treated as income and a single payment of a similar kind covering a long period being treated as capital, but after all this is a distinction acknowledged in Section 4 of the Act itself and, as has been observed, the Income-tax Acts are not cast upon absolutely logical lines. Nor does there appear to be any reason why we should extend the exception made in the case of rent and royalty to the case of a non-recurring payment made to cover a long period."

This case was distinguished by the learned Commissioner on the ground that it related to royalties; but the case was approved and followed by a Bench of this Court in Commissioner of

Income-tax v. Maharahadhiraj Kumar Visheshwar Singh (1939) 7 I.T.R. 536; 18 Pat. 805, which was a case not connected with minerals but was a case relating to land. In this case the learned Judges reviewed all the authorities and came to the conclusion that where the premium or salami represented the whole or part of the price of the land, it could not be income. Income connoted a periodical monetary return coming in with some sort of regularity, or expected regularity, from definite sources. The premium or salami, which was paid once for all, was not a recurring payment and did not satisfy the test of income. Manohar Lall, J., further stated that it was impossible to lay down a hard and fast rule that a salami can in no case be taxable. The question in each case would depend on the facts and circumstances of that particular case.The same view was taken by another Bench of this Court of which I was a member, in the case of *Rani Bhubneshwari Kuar v. The Commissioner of Income-tax, Bihar*[5]. These two recent cases make it clear that salami cannot be regarded as income as a matter of law. Salami may in certain cases by regarded as payments of rent in advance, and in such cases the salami could rightly be regarded as income. Where, however, salami cannot be regarded as payment of rent in advance, it cannot be regarded as income and would, therefore, not be taxable. In the present case, as I have stated, no facts are given relating to any particular payment of salami. It is for the income-tax authorities to show that there do exists facts which would make the salami income. Prima facie, salami is not income, and it is impossible upon the facts as stated to say that the salami received by either assessee in this case constitute part of their income and, therefore, assessable to agricultural income-tax. I would, therefore, answer this third question in the negative.I think it only right to draw the attention of the Agricultural Income-tax Authorities to Section 25(6), Bihar Agricultural Income-tax Act. They must in future regard cases decided by this Court under the Act as binding upon them and they will not be entitled in the case of a conflict of authorities to follow decisions of other Courts or to rely on their own experience.Question (4). - Whether the income from trees derived by the assessee is agricultural income as defined in the Act ?The Maharaja of Chota Nagpur was assessed to income-tax on Rs. 823-12-0 income from bankar, Rs. 636-10-0 income from lakhar and Rs. 22-4-0 income from phalkar. The Raja of Panchkote appears also to have been assessed on income from some if not all the sources, though the actual amounts received from the various sources are not set out in the order of the Income-tax Officer or in either the judgments of the Commissioner or the Bihar Board of Agricultural Income-tax. Further, no details of any kind are given in the cases stated as to the precise nature of the sources of this income. All that can be gathered is that income from bankar, lakhar and phalkar has been taxed, and the contention of the assessees is that such is not income derived from land used for agricultural purposes, and, therefore, not taxable.The Commissioner of Income-tax appears to have thought that income derived from timber in virgin forests was income derived from land used for agricultural purposes. In his view trees were undoubtedly a crop and the practice of forestry formed part of agricultural. He relied upon the case of Chief Commissioner of Income-

tax, *Madras v. Zamindar of Singampatti*[6] In that case, however, the learned Judges appear to have thought that income from forests and fisheries might be regarded as agricultural income, though they pointed out that it was not necessary to determine whether such was the case or not. Another case supporting the view of the learned Commissioner is the case *of Pavadi Pathan v. Ramasamy Chetty*[7] in which it was held that a lease of land for growing casuarina trees is a lease for an agricultural purpose within the meaning of Section 117, Transfer of Property Act, and, therefor, does not require a registered instrument for its creation. it was further held that "agriculture" does not cannote tilling the soil for raising food products alone but means cultivation of the soil for any useful purpose.The Bihar Board of Agricultural Income-tax upheld the Commissioner, but he conceded that the point involved was a difficult one, and he in fact gives no reason for agreeing with the Commissioner. All he says is :

> "The learned Commissioner has given his reason for thinking that virgin forest is a crop and all I will say is that for the purposes of these proceedings I will not differ from him."

Bankar is income derived from the sale of wood from jungles, Whereas Lakhar is income from letting lands and trees for cultivation of lac. Phalkar is income from the fruit of jungle trees and bushes. The question which has to be determined is whether the income from these sources can be said to be derived from land used for agricultural purpose or from agriculture. If the land is not so used, then the income is not taxable under the Bihar Agricultural Income-tax Act. "Agriculture" is defined in Shorter Oxford Dictionary, Volume I, Page 37, as "The science and art of cultivating the soil, including the gathering in the crops and the rearing of live stock" and another alternativw definition is "farm in the widest sense."It will be convenient to deal with the items bankar, lakhar and phalkar separately.Bankar. - It appears that this head of income was derived from virgin jungles or jungle land not actually cultivated. A few forest guards appear to have been employed to protect the property, but it cannot be said that the trees have grown as the result of cultivation. They appear to have grown naturally in the jungles without the intervention of human agency, and in my view the growth of these trees cannot be said to result from the cultivation of the soil. In fact, it was the absence of cultivation that permitted the area to develop into a jungle.In the later cases decided in Madras the learned Judges take a different view from the cases already referred to. In the case of the Commissioner of Income-tax, *Madras v. Manavedan Tirumalpad*[8] a Special Bench of three Judges held that the amounts received by the owner of unassessed forest lands, by the sale of timber trees thereon, are income liable as such to income-tax under the Indian Income-tax Act. In short, the income was not derived from land used for agricultural purposes and, therefore, not within the exception in the Indian Income-tax Act. In this case, however, it dies not appear to have been seriously contended that income derived from the sale of such trees was income derived from land used for agricultural purposes or form agriculture.In Srimath Jagathguru Sringeri Sri *Satchitanantha Chandrasekhara Bharati*

Swamigal v. C. P. Duraiswami Naidu[9] a Bench held that growing casuarina trees, that is trees for fuel, is not an agricultural purpose so as to make the person who holds the land for that purpose a raiyat within the meaning of the Madras Estates Land Act.A similar view appears to have been taken by the Allahabad High Court in a Full Bench case, *Kesho Prasad Singh v. Sheo Pragash Ojha* [10]The learned Judges held that land held for the purposes of a grove was not land held for agricultural purposes, and this view was approved of in appeal by their Lordships of the Privy Council in the case of Kesho Prasad Singh v. Sheo Pragash Ojha (1924) 46 All. 831 in which their Lordships stated expressly that they agreed with High Court that land held for the purposes of a grove was not land used for agricultural purposes. In my judgment it has not been established in this case that the income referred to as bankar is derived from agricultural land or from agriculture and, therefore, it cannot be assessed under the Bihar Agricultural Income-tax Act.Lahkar. - This is income derived from letting land and trees for the cultivation of lac. Lac is a substance produced by certain insects which are placed on certain trees. Lac does not seems to be the result of any cultivation but is the creation of a particular insect when placed on particular trees. Nothing appears to be done beyond placing the insect on the trees, and in my judgment on the materials before the Court I cannot hold that this head of income is derived from land used for agricultural purposes or from agriculture.Phalkar. - This is income derived from wild jungle fruits, and it cannot be said that the fruit gathered is the result of any cultivation but, on the contrary, it is the result of the absence of cultivation. Trees and bushes yielding these fruits grow not on cultivated soil but on land not under cultivation and frequently the more neglected and wild the land is the thicker grow these wild bushes and trees yielding such crop. practically in all cases the crop is the result of want of cultivation and not the result of cultivation. In my judgment it is not established that the income described as phalkar in these cases is income derived from land used for agriculture or from agriculture and is, therefore, not assessable to agricultural income-tax.The case as stated on this fourth question does not set out precisely how the various items of income were obtained. On the materials before me I cannot hold that any item constitutes agricultural income but on a fuller Statement of the facts it may be open to a Court to come to different conclusion. The question is in the main one of fact, and the authorities should bear this in mind when stating a case.

In the result, therefore, I would answer this question is the negative.The assessee have been partially successful in this case though they have failed on the main question as to cess. In all the circumstances, I would make no order as to costs of these references. Particularly as the points involved are new and difficult.

Fazl All, J. - I Agree.

Manohar Lall, J. - I Also Agree.

Reference answered accordingly.

Cases Referred.

1(1932) 59 Cal. 1343 at p.1350
2(1920) 48 Cal. 766; 1 I.T.C. 67
3(1939) 7 I.T.R. 536; 18 Pat. 805
4(1924) 5 P.L.T. 497; 1 I.T.C. 384
5(1940) 8 I.T.R. 550; 192 I.C. 316
6(1922) 45 Mad. 518; 1 I.T.C. 181
7(1922) 45 Mad. 710
8(1930) 54 Mad. 21; 4 I.T.C. 421
9(1931) 54 Mad. 900
10(1921) 44 All. 19