

PATNA HIGH COURT

Sir Kameshwar Singh

Vs

Commr. of Income-Tax

(Ramaswami, C.J. Sinha, J.)

04.05.1954

JUDGMENT

Sinha, J.

1. These references are under Section 66(2), Income-Tax Act. As the questions involved in these cases are common, they will be dealt with by this judgment. (2) The following four questions were framed by this Court at the instance of the assessee, and the Tribunal has stated the case in regard to those questions.

"1. Whether in the facts and circumstances of the case the receipts of Bankura forest lease are capital receipts or, in the alternative, constitute agricultural income?

2. Whether in the facts and circumstances of the case the receipts from Kharagpur forest are agricultural income?

3. Whether the interest receipts from Babuana and Dayana grantees are agricultural income?

4. Whether the debt amounting to Rs. 23,541-owed by P. E. Guzadar & Co. should have been allowed as a loss relating to the business carried on by the assessee "

Questions 1, 2 and 3 are common in all the references, while question No. 4 arises only in respect of Miscellaneous Judicial Case No. 24 of 1951, which arises out of the order passed for the assessment year 1948-49 in Income Tax Appeal No. 1481 of 1949-50. So far as the first two questions are concerned, there is slight difference in the case in regard to Bankura forest and Kharagpur forest: In regard to Bankura forest, the forest is leased out by auction on short terms for lump sums. The terms of the lease are not to be found on the records of these cases.

It is, however, said that, according to the terms of the lease, the lessee is entitled to cut down and remove all 'sal' trees, but not those which are more than 3 feet in girth above 3 feet from the

ground, and all other jungle trees, other than fruit-bearing trees and valuable timber trees. The lessee is further entitled to cut stumps not higher than 5 feet over ground so that new shoots may grow in rains and in time major trees are produced. The lessee cannot enter the forest during the rains, when new shoots come out, and he has to guard the forest from trespassing by men and cattle. After the period of the lease expires, the lessee loses all his rights to enter the land and the land reverts to the assessee. It is claimed by the assessee that the receipt from these forests is not income and it is a capital receipt and thus not taxable on the ground that the lessee becomes possessed of the trees and the jungle during the period of the lease and is entitled to cut and remove them and, on that account, the money paid by the lessee is capital receipt in the hands of the assessee for transferring the trees to the lessee or transferring the rights to cut the trees. In the alternative, the assessee claims that, as human skill and labour is employed, the income from the forest is covered by the definition of 'agricultural income', as given in the Act, and, therefore, exempt from income-tax. So far as the case in regard to Kharagpur forest is concerned, there is no lease and there are three sources of income from that forest, namely, (1) from bamboos, (2) from sabai grass and (3) from timber. The assessment in regard to the first two is not challenged; the assessment in regard to income from timber only is challenged.

3. I would like first to deal with Bankura forest. Mr. Mazumdar, appearing in this Court on behalf of the assessee, has placed reliance on the case of Commr. of Income-tax, *B. and O. v. Kamakshya Naraiu Singh*¹, That case, on facts, is entirely different. In that case, the assessee's predecessor had granted a prospecting license in respect of certain coal bearing lands. The licensee had the option to have a renewal and also to take a coal mining lease on certain terms and conditions. During the minority of the assessee, the Court of Wards, which was in possession of the estate of the assessee had extended the license several times. When the assessee attained majority, he raised the question that the licenses and the leases granted by the Court of Wards were 'ultra vires', and he further claimed that he should be reimbursed in respect of the cess and income-tax which were paid on his behalf to the Government. In these circumstances, the assessee and the company (the licensee and the lessee) entered into an agreement by which the assessee agreed to accept the various prospecting licenses, their extensions and the leases and to extend the prospecting license for a period of seven years on the same terms as were in force on that date; and, in consideration of the extension of the prospecting licenses and validating the leases and the licenses & in full settlement of the claim for salami, the company paid to the assessee Rs. 5,25,000/- in respect of the extension of the prospecting licenses, a capital sum of Rs. 40,000/- for validating the leases and licenses and another sum of Rs. 1,76,306/- in full settlement of cesses. The assessee had claimed that the sum of Rupees 5,25,000/-, received as 'salami', and the amount of Rs. 1,76,306/-, received on account of cesses, were not taxable, and it was so held by this Court. Their Lordships, following the case of -- 'Commr. of Income-tax, *B. & O. v. Viswe-shwar Singh*²', held that "it would be impossible to lay down any hard and fast rule

that a salami can in no case be taxable. But the question must depend upon the facts and circumstances of each case." In some cases it may be payment of rent in advance; in other cases it might well be a lump sum payment for transfer of the leasehold interest, in which case it will be a capital receipt. And the case of -- '*Bhuneshwari Kuer v. Commr. of Income-tax, B. & O³.*', where Harries, C. J. and Fazl Ali, J. (as he then was) had held that "It cannot be laid down as a hard and fast rule that salami or nazrana paia to the landlord for settlement of lands is payment of rent in advance and therefore assessable as, income. In some cases it may be payment of rent in advance; in other cases, it might well be a lump sum payment for transfer of the leasehold interest, in which case it will be a capital receipt. Consequently, whether salami - is a capital receipt or income can only be determined after a full investigation of all the facts relating to the settlement for which the salami or nazrana was. paid", was approved. In the present case, it is not contended that what was paid by the lessee is 'salami'. It is a simple case where the lease was given by the assessee for the purpose of selling timber in the forest. It was conceded during the course of the argument that if, instead of giving a lease, the assessee himself had sold the timber, the sale proceeds would be income and hence taxable. I see no difference in the two positions; in the one, the assessee sells himself and in the other, for the sake of convenience, he leases out the forest for the purpose of sale by the lessee. The Department rightly relied upon the case of -- '*Kamakshya Narain Singh v. Commr. of Income-tax, B. & O⁴.*', In that case, the assessee had been assessed on a total sum of Rs. 7,84,565/- which included a sum of Rs. 84,993/- on account of price realised by the sale of forest trees in his zamindari. The assessee had contended that the sale of forest trees should be treated as sale of capital asset, and their Lordships, relying upon a number of authorities, namely, -- '*Province of Bihar v. Pratap Udai Nath Sahi Deo*⁵, -- '*Commr. of Income-tax, Madras v. Manavedan Trumalapad*⁶, -- '*Chandrasekhara Bharathi Swami-gal v. Duraiswami Naidu*⁷, -- '*Kesho prasad Singh v. Shiva Prasad Ojha*⁸, and the Privy Council case of -- '*Kesho Prasad Singh v. Sheo Pargash Ojha*⁹, negatived the contention of the assessee and the argument advanced on behalf of the assessee, to the effect that the sale of the forest trees must necessarily result in diminution of the value of the estate of the assessee and, therefore, the amount realised should be treated as capital receipt, was not accepted, and it was held that the receipt from the sale of forest trees was income assessable to tax.

In the recent case of -- '*Fringford Estates Ltd. v. Commr. of Income-tax, Madras*', AIR 1932 Mad 47 (J), the Madras High Court has also taken the same view as was taken in the Patna case AIR 1947 Pat 115 (D), and it was held that income derived from sale of forest trees is not capital receipt and is liable to tax, even though there is exhaustion of capital assets in the shape of valuable and long-standing trees. In the case of -- '*Kamakshya Narain Singh v. Commr. of Income-tax, B. & O.*', AIR 1943 PC 153 (K), Lord Wright, delivering the judgment of the Judicial Committee, had observed as follows :

"If the receipts are income, it is not material for tax purposes that that for which they are paid comes from a wasting property. If the payment ceases because the source ceases so does the tax. Once it is established that the royalties are income within the meaning of the Act it is not material that the mines are in course of being exhausted unless there is provided in the Act that there should be a deduction from the income on that particular ground."

I hold, therefore, that the income from forest by sale of forest trees, which must naturally result in exhaustion of the forest, for tax purposes, is income and is taxable. In that view of the matter, the contention of the assessee in regard to Bankura forest must be negated.

4. The next contention in regard to the income from Bankura forest is that it is an agricultural income and, as such, exempt from tax under the Income-Tax Act, It is to be noted that an eminent Counsel of the position of Mr. Kolah had not seriously pressed this point before the Tribunal; but, as this matter has been argued before us, it is proper that this point also " Should be considered and answered. 'Agricultural income' is defined in Section 2(1), income-Tax Act, and, according to the definition, it means

"(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in the taxable territories or subject to a local rate assessed and collected by officers of the Government as such; (b) any income derived from such land by -- (i) agriculture, or (ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or (iii) the sale by a cultivator or receiver of a rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-Clause (ii) ;....."

The point is concluded by the authority of this Court in AIR 1941 Pat 289 (SB) (E). Mr. Mazumdar has placed reliance upon the case of --'Commr. of Agricultural Income-tax, *West Bengal v. Jagdish Chandra Deo*¹⁰', Even if the test laid down in that case is applied, the assessee's income from Bankura forest cannot be said to be the result of some 'expenditure of skill and labour' upon it. We have no evidence as to application of human efforts made in respect of this jungle The lease has not been produced nor has any other material been placed before us to show that the assessee made any efforts in growing the trees in this jungle. As I will have to deal with the case of 1949-17 ITR 426 (Cal) (L), in some detail while dealing with the second question, I do not think it proper to consider that case any further so far as this point is concerned. In that view of the matter, I would hold that the income from Bankura forest is not agricultural income and, as such, exempt from taxation. I would, therefore, answer question no, 1 in the negative.

5. Turning now to question no. 2, whether in the facts and circumstances of the case the receipts from Kharagpur forest are agricultural income, it should be mentioned at the outset that Mr. Mazumdar did not address us in regard to two sources of income, namely, from bamboos and 'sabai' grass; he has confined his argument to the income derived from timber. The finding of fact of the Tribunal is that there was a scheme by which the sal and 'ebony' trees which grow in the forests were conserved by allowing each tree a circle of 15 feet by clearing the jungle of other trees which fall within that area, thus leaving sufficient space for growth. Although some coppice work was also undertaken, it is clear that there was no human agency with reference to the production of the plant from the soil although there was some element of human activity with reference to assisting the growth of some of the trees. The scheme referred to in the order of the Tribunal had reference to the schemes, which were undertaken by the Court of Wards in regard to this jungle between the years 1871 to 1876.

In regard to the coppice work, it appears from the order of the Appellate Assistant Commissioner that, apart from the Government Annual Administration Report dated 5-10-1882, of Forest Administration in Bihar suggesting that private owners should take up growth of coppice forests for being worked in short rotation for fuel supply, there was no other evidence and that only in 1944 from certain correspondence it appeared that coppice coupes were proposed to be worked on the higher elevation of the rocky hills in seven years rotation. To show that the scheme was actually put in practice, there is no material on record. The assessee, if he wants to bring his case within one of the exceptions mentioned in Section 4 of the Act, must show that he is entitled to exemption. It is true that a taxing statute must be construed strictly and any exception mentioned in such statute has to be liberally construed. In the present case, however, the assessee has given no materials except that a scheme was prepared in 1871 to 1876 and coppice work was proposed to be taken up in 1944. The expression 'agricultural income' is defined in Section 2(1) of the Act which I have already quoted while dealing with the income derived from Bankura forest in the earlier part of my judgment. In the present case, what the assessee has proved is that the sal and ebony trees which grew in the forest were conserved by allowing each tree a circle of 15 feet cutting down the trees and jungles which fell within that circle leaving sufficient space for growth, and that forest conservancy staff, consisting of Forest Guards, inspectors of Forest, and other servants, was maintained to look after the forest. The question is whether these materials are enough to show that the income derived from the sale of timber of this forest is in law, agricultural income so as to be exempt from taxation under the Indian Income-tax Act. Mr. Mazumdar has placed great reliance upon the case of 1949-17 ITR 426 (Cal) (L), already referred to above. Their Lordships of the Calcutta High Court, in that case, were considering the definition of 'agricultural income' as defined in the Bengal Agricultural Income-tax Act, 1944. It must be at once stated that the definition given in that Act and the definition given in the Indian Income-tax Act are in similar terms. After an elaborate discussion of the various authorities,

including the Privy ' Council case of -- '*Mustafa Ali Khan v. Commr. of Income-tax, U. P. & Ajmer-Merwara*¹¹', it was held in that case that income from a virgin forest or forests of spontaneous growth was not agricultural income and the view that tilling of the soil was the 'sine qua non' for bringing a pursuit within the term agriculture was not sound; and, upon the facts of that particular case, it was held that there was definite proof of cutting of the young plants for the appearance of new shoots and plucking of the leaves; that, therefore, application of human intervention was clear and that without such human intervention the purpose for which tendua leaves were used would not have been possible. This judgment has taken a much wider view of the expression "agricultural income". In that case, there was no evidence that there was any cultivation of the land and, in spite of that, it was held that the income derived from the sale of timber was agricultural income because there were materials to show that there were regular operations in forestry. This Court, however, has taken the view that cultivation of the soil was necessary to bring the income from the sale of forest trees within the definition of agricultural income. Their Lordships held in the case of AIR 1941 Pat 289 at p. 295 (SB) CE), that "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 the 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." This view appears to have been upheld in the case of AIR 1949 PC 13 (M), already mentioned. Their Lordships observed as follows :

"It appears to their Lordships that, whether exemption is sought under Section 2(l)(a) or Section 2(l)(b), the primary condition must be satisfied that the land in question is used for agricultural purposes; the expression 'such land' in (b) refers back to the land mentioned in (a) and must have the same quality."

The views expressed in the case of -- '*Yuvarajah of Pithapuram v. Commr. of Income-tax, Madras*¹²', and that of -- '*Benoy Ratan Banerji v. Commr. of Income-tax, U. P., C. P. and Berar*¹³', were approved; and their Lordships finally held "(1) that in their opinion no assistance is to be got from the meaning ascribed to the word 'agriculture' in other statutes and (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." In my opinion, in order to show that an income is agricultural income within the meaning of the definition, it must be found that the land itself, was cultivated and that there was some expenditure of skill and labour upon it. In the present case, there is no material to show that the land on which the jungle stands was ever subjected to cultivation or that any skill or labour was spend upon that land. Even conceding that

the two conditions laid down by their Lordships are to be read as alternative conditions, in my view, there is no material on which to hold that there was any expenditure of skill and labour upon the land. At the most, the jungles were cut in order to provide a circle of 15 feet round about the trees and there were some Forest Guards and other staff. The case of AIR 1947 Mad 157 (N), mentioned above has referred approvingly to the decision of this Court in AIR 1941 Pat 289 (SB) (E). Their Lordships had also approved of the definition given of 'agriculture' in the Oxford Dictionary to mean "the science or art of cultivating the soil, including the allied pursuits of gathering in the crops and rearing live-stock; tillage, husbandry, farming (in the widest sense)", and they further held that income derived from trees which have grown wild is not agricultural income. In the other case relied upon by the Privy Council, namely, 1947-15 ITR 98 (All) (O), it was held that 'agriculture' implies cultivation of the soil and where nothing is done to the soil to prepare it for forest and the forest is of spontaneous growth, the land cannot be said to be used for agricultural purposes. It is thus clear that the view taken by this Court in AIR 1941 Pat 289 (SB) (E) was approved by their Lordships of the Judicial Committee in AIR 1949 PC 13 (M), I, therefore hold that, in order to bring the income within agricultural income, as defined in the Act, there must be cultivation of the land and expenditure of skill and labour upon it. In the present case therefore, there being no evidence in regard to cultivation of the land or expenditure of skill and labour upon the land, I am bound to hold, following the decision in AIR 1941 Pat 289 (SB) (E), that the income derived from the sale of timber from Kharagpur forest is not an agricultural income. The question must, therefore, be answered in the negative.

6. The third question mentioned above is concluded by authorities so far as the interest receipts from Babuana and Dayana grantees are concerned, they have been held to be not agricultural income and, therefore, not exempt from income-tax; and it is neither rent nor revenue derived from land -- '*Commr. of Income-Tax B. & O. v. Kamakhaya Narayan Singh*¹⁴',

7. The last question is also concluded by the authority of this Court in -- '*Kameshwar Singh v. Commr. of Income-Tax B. & O.*', AIR 1948 Pat 1 (Q). It should be noted that the last two questions namely, 3 and 4, were not at all seriously pressed before this Court and both are answered in the negative.

8. In the result, the references and the applications are dismissed with costs. As all these applications were heard together, there will be one set of hearing fee which I assess at Rs. 250/- (two hundred and fifty only).

Ramaswami, J.

9. I agree that all the four questions should be answered against the assessee and in favour of the Income-Tax Department.

10. As regards the receipt from Kharagpur forest the argument of Mr. S.K. Mazumdar was that though there was no actual tilling of the soil, there was regular forestry operation carried on by the staff of the assessee. Counsel advanced the argument that the phrase "agricultural income" in Section 2(1), Income-tax Act, should be construed in a wide manner and even if the land itself was not cultivated, the income from the sale of timber in the forest would constitute "agricultural income" within the meaning of Section 2(1) if there was expenditure of human skill and human labour upon the forest and if there was regular forestry operation.

In support of this argument counsel relied on the decision of the Judicial committee in AIR 1949 PC 13 (M). Counsel also referred to the decision of the Calcutta High Court in 1949-17 I. T. R. 426 (Cal) (L), in which Sal trees growing in the assessee's forest were not planted by him and there was no cultivation of the land. It was, however, found in that case that the assessee had carried on regular operation in forestry which required expenditure of skill and labour on the land upon which the forest grew. It was held by the Calcutta High Court that the income from the sale of the sal trees was agricultural income within the meaning of Section 2(1), Bengal Agricultural Income-tax Act, which is phrased in exactly similar terms as Section 2(1), Income-tax Act.

The opposite view point was put forward by Mr. R. J. Bahadur who appeared on behalf of the Income Tax Department. It was contended by him that Income from forest would not be agricultural income unless there was actual tilling or cultivation of the soil and the income from Kharagpur forest in this case was therefore not agricultural income exempt from the provisions of the Income-tax Act. Mr. Bahadur said that his argument was based upon the ratio of the decision reported in AIR 1949 PC 13 (M). Counsel also referred in support of his argument to the Patna case, AIR 1941 Pat 289 (SB) (E). In my opinion the argument of Mr. R.J. Bahadur is well founded. Harries, C. J., who pronounced the judgment of the Full Bench laid emphasis both upon the absence of intervention of any human agency and upon the absence of the cultivation of the soil. At p. 295 the judgment states "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 case AIR 1949 PC 13 (M), Lord Simonds observed that land cannot be said to be used for agricultural purposes within the meaning of Section 2(1) (a), Income-tax Act unless "there is some measure, of cultivation on the land, some expenditure of skill and labour upon it". It was contended by Mr. Mazumdar on behalf of the assessee that the two conditions laid down by Lord Simonds must be read in an alternative sense and if there is some measure of cultivation on the land 'or' some expenditure of skill and labour upon it, the income from forest

would constitute agricultural income within the meaning of the statute. Counsel also referred to the statement of Lord Simonds in the preceding paragraph that there was nothing to show that the assessee was carrying on any regular operation in forestry. I do not think that the argument of Mr. Mazumdar is correct.

In support of his submission Mr. Mazumdar relied upon the decision of the Calcutta High Court in 1949-17 I. T. R. 426 (Gal) (L). With great respect I do not think that the Calcutta High Court has rightly interpreted the decision of the Privy Council in AIR 1949 PC 13 (M). In my opinion the 'ratio decidendi' of the Privy Council is that there must be some measure of cultivation on the land and some expenditure of skill and labour upon it, if the income from a forest should be treated as an agricultural income. I agree with my learned brother Sinha, J. that that is the true principle which is to be deduced from the judgment of Lord Simonds in the Privy Council case. But I shall assume in favour of the assessee that the wider interpretation ought to be given to the expression "agricultural income" in Section 2(1)(a). Even so it is clear that the assessee has not been carrying on any regular operation of forestry with regard to Kharagpur forest.

11. The facts found by the Tribunal are that Sal and ebony trees which grew in the forest were conserved by allowing each tree a circle of 15 feet, that there was cutting down of the trees and jungles which fell within that circle leaving sufficient space for growth, and that forest conservancy staff, consisting of Forest Guards, Inspector of Forest, and other servants, was maintained to look after the forest. As regards coppice work there is some material to show that a scheme was prepared from 1871 to 1876 and coppice work was proposed to be taken up in 1944. There is no material furnished by the assessee to show that the scheme of coppice work was actually put into practice. In my opinion the facts found by the Tribunal do not support the case of the assessee and the receipt from the Kharagpur forest.

cannot be taken to be "agricultural income" within the meaning of Section 2(1) of the Income-tax Act.

Cases Referred.

- 1AIR 1947 Pat 252 (A)
- 21939-7 ITR 536 (Pat) (B)
- 3AIR 1941 Pat 39 (C)
- 4AIR 1947 Pat 115 (D)
- 5AIR 1941 Pat 289 (SB) (E)
- 6AIR 1930 Mad 764 (PB) (F)
- 7AIR 1931 Mad 659 (G)
- 8AIR 1922 All 301 (PB) (H)
- 9AIR 1924 PC 247 (I)
- 101949-17 ITR 426 (Cal) (L)
- 11AIR 1949 PC 13 (M)
- 12AIR 1947 Mad 157 (N)

131947-15 ITR 98 (All) (O)

14AIR 1949) PC 1 (P)

