NAGPUR HIGH COURT

Beohar Singh Raghubir Singh

Vs

Commissioner of Income Tax

(Bose and Hemeon ,JJ.)

04.09.1946

ORDER

Hemeon ,JJ.

1. This judgment will govern miscellaneous civil case No. 63 of 1944 and miscellaneous civil cases Nos. 7, 8, 85, 91, 92 and 98 of 1945. The questions they raise are not common to all, except as regards one question, but as the others are interlinked between them it will be convenient to group the cases according to the questions referred and. deal with all in one judgment.

2. These cases are all Income Tax references made under Section 66(1), Income Tax Act, as amended in 1939. In view of the contentions made before us, we think it desirable to set out the limits of our authority at the outset. It is important to emphasise that we are not a Court of appeal and accordingly are not free to debate such questions as might seem to us to arise in the case, however important they may appear to be. We are only an advisory body which is not free to tender unsolicited advice. We can only advise on the questions referred and accordingly will have to confine our answers to the questions asked. We have certain other powers, and indeed it will be necessary to exercise them in one of the cases heard along with these (we shall deal separately with that), but these powers only enable us to send the matter back and compel a reference. Until that is done, we have no power to debate questions which have not been referred. This is clear from the Act, but the matter has been placed beyond controversy by their Lord, ships of the Privy Council in *Commissioner of Income Tax B. & O. v. Kameshwar Singh of Darbhanga*[1], *Rajendra Narayan v. Commissioner of Income Tax B. & O*[2]., *Trustees Corporation (India) Ltd. v. Commissioner of Income Tax Bombay*[3], and *National Life Association of Australasia Ltd. v. Commissioner of Income Tax Bombay Presidency & Aden*[4], It has also been so decided by this Court in *Income Tax Appellate Tribunal Bombay v. Managing Trustee Shei Radha Madho Trust Saugor*[5]

3. The question which concerns all the cases has been referred in these terms in Misc. Civil case No. 63/44:

Whether, in the circumstances of this case, the income of ₹ 10,835/- derived from the sale

of forest pro-duce is "agricultural income" exempt from taxation under Section 4(3)(viii), Income Tax Act.

The point is the same in the other cases though in some of them the language is a little different, and, naturally the figure differs in each case.

4. The question is one of mixed fact and law. So far as the facts are concerned they will be found separately in each case. So far as the law goes it will be necessary to search for some general and clear cut principle, because opinions have differed, and in the absence of principle, opinion tends to be arbitrary.

5. The definition given in the Act is that "agricultural income" means:

> (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; (b) any income derived from such land by (i) agriculture.

6. Clause (b) throws us back to Clause (a) because of words "such land" which refer to the land described there. It is land which is (1) used for agricultural purposes and (2) either assessed to land revenue in British India or subject to a local rate assessed and collected by officers of the Crown as such.

7. It is admitted that the land in all these cases is either assessed to land revenue or is subject to a local rate assessed and collected by officers of the Crown as such, and that, therefore to that extent, the income complies with the definition. But that is not enough, for, it must also either be used for agricultural purpose's or for agriculture. The question, therefore, is how far does agriculture covers forests? Opinions differ regarding this, and because of that the learned acting Advocate-General suggested that it will be pertinent to go back to first principles and analyze the root of the word.

8. The dictionaries tell us that agriculture comes from ager, a field, and cultura, cultivation. This implies the use of human skill and labour; and that is exactly how the dictionaries define it. Webster, for instance, says that agriculture is the "art or science of cultivating the ground," and includes in it the rearing and management of livestock, husbandry, farming and so forth. Other dictionaries including the Oxford English Dictionary employ the same basic conception. Some include "forestry", in the term.

9. It is to be observed, however, that the word used when forestry is included, is forestry and not forests. The distinction is important because when one turns to the definition of forestry in the dictionaries one finds that is also an art or a science. Thus, Webster says it is "the art of farming or cultivating forests; the management of growing timber," and the Oxford English Dictionary says much the same thing. Therefore, throughout we find that the essence of agriculture, even when it is extended to in. elude "forestry," is the application of human skill and labour. Without that it can be neither an art nor a science. And that we feel must be the determining factor in this class of case.

10. Turning next to the cases, one of the most important is the Federal Court judgment in *Meghraj v. Allah Rakhia*[6] not because it deals directly with this question, though it touches an allied matter, but because it lays down certain general principles which bind us, and clears much of the aground.

11. The learned Judges were dealing with the expression "agricultural land" in the Constitution Act, and after pointing out that it had not been denned there said at page 61:

> It must accordingly be understood in the sense which it ordinarily bears in the English language,

and again at page 62:

> As regards the connotation of the word "agriculture," it may be pointed out that "agriculture," has teen variously defined in several English and Indian statutes for the purposes of these statutes and it is neither useful nor legitimate to attempt to draw any inference from these statutory definitions for the purpose of determining the ordinary connotation of the "word in English language."

12. They then' referred to decisions in which the Court has placed a restricted meaning on the terms "in view of the indications afforded by the particular Act which had to be considered by the Court," and to others which construed the term in a more general sense. The sum and substance of it all is that it is of little avail to consider these decisions because, of course it is open to the Legislature to widen or to restrict the ordinary meaning of a word, and because, if it chooses to do so for the purposes of a particular Act it does not follow that the same result is intended in another Act framed for a different purpose, having different provisions and using other language. In the face of that we do not think it will be either profitable or proper to consider in detail the various decisions which construe the tern, or analogous expressions, for the purpose of some particular Act. Some of them have been referred to in the Federal Court's judgment at pp. 62-65, and others will be found in decisions like *Province of Bihar v. Pratap Udai Nath Sahi Deo*[7] and *Chandrasekhara Harathi v. Duraisani Naidu*[8] It will suffice to say that the following cases related to special Acts, and at least part of the decisions in each is based upon matters special to those Acts: *Venkayya v. Ramasami*[9] *Murugesa Chetti v. Chinna Thambi Goundan*[10] *Chandrasekhara Harathi v. Duraisani Naidu*[11] *Kesho Prasad v. Sheo Pargash Ojha*[12] *Kesho Prasad v. Sheo Pargash Ojha*[13] *HiralaLRavchand v. Parbulal Sakhidas*[14] *Kaju Mal v. Salig Ram*[15] and *Imam Ali v. Priyawati Devi*[16] The other cases in this class, though dealing with special Acts, base he decision on general grounds and to that extent are more in point. But all they serve to show is that difference of opinion is possible, the meaning being extended in some cases and restricted in others. Thus,
Panadai Pathan v. Ramasami chetty[17] holds that the growing of casuarinas trees for fuel is an agricultural purpose and *Hiralal ravchand v. Parbulal Sakhidas A.I.R. 1922 Bom. 146(Supra)* discards what we might term the human agency test and employs instead one which determines whether the income is derived from the produce of the land and not what is the actual quantum of labour bestowed on it. Of these two the former; is largely based on considerations which the

Federal Court state are irrelevant, namely, the meaning of the term in certain English Acts where special statutory definitions are given. With the latter we do not, with respect, agree.

13. As to the other cases, the Federal Court state that the view taken in *Murugesa Chetti v. Chinna Thambi Goundan*[18] *Venkayya v. Ramasami (99) 22 Mad 3(supra)9* and *Panadai Pathan v. Ramasami chetty*[19] has not gone unchallenged and the learned Judges refer to *Chandrasekhara Harathi v. Duraisani Naidu A.I.R. 1931 Mad. 659(Supra)*. So also they state that the decision of the Judicial Committee in *Kesho Prasad v. Sheo Pargash Ojha A.I.R. 1924 P.C. 247(Supra)* upholding *Kesho Prasad v. Sheo Pargash Ojha A.I.R. 1922 All. 301(supra)* lays down no principle or test of general application. They are accordingly not of much value for the present purpose. The only decisions in this class which, in our opinion, lay down general rules are best referred to in the language of' the Federal Court, *Meghraj v. Allah Rakhia A.I.R. 1947 F.C. 27(Supra)*:

> Their Lordships confirmed a decision of the Punjab Chief Court to the effect that land used as a tea garden was used for "agricultural purposes." In the judgment of the Chief Court (which was generally approved by their Lordships) it was observed that "the term 'agricultural land' is used in the Act of 1905 in its widest sense to denote all land which is tilled".... The Chief Court had held that land covered by a natural forest was not agricultural, and this view also would seem to have been confirmed by the Judicial Committee.
>
> We have underlined (here italicized) the word "tilled" because, in our opinion, that brings out the distinction which we have sought to draw between an agricultural and a non-agricultural purpose. The decisions referred to are *Kaju Mal v. Salig Ram*[20] and *Panadai Pathan v. Ramasami chetty A.I.R. 1922 Mad. 351(supra).*

14. From here we proceed to consider cases under the Income Tax Act. A large number were cited but those dealing with forests are not many. Of them, *Chief Commissioner of Income Tax v. Zamindar of Singampatti A.I.R. 1922 Mad. 325(Supra)* thought, without deciding the point, that "forestry" might be regarded as agriculture. We stress, however, the use of the word "forestry" as opposed to "forests".

15. *Emperor v. Probhat Chandra*[21]*,* held that income derived from pasturage was agricultural income but not that from fisheries or from land leased for stacking timber. The "pasturage" part of the decision would, at first sight, appear to offend the rule we have suggested but the point was not decided because it was not contested once the case reached the High Court (see page 527.) But that apart, nearly every rule has its
exceptions and the pasturing of cattle is so closely allied to agriculture that it has
become to be considered part and parcel of it and the meaning of the term is now so
well etablished that there is no longer room for doubt. That, however, does not apply to forests, or even to forestry, though we think it possible that the latter might fall within the scope of the definition.

16. *Commissioner of Income Tax Madras v. Manavedan Tirumalapur*[22] holds that' income Fortnum assessed forest land is not agricultural income; and *Province of Bihar v. Pratap Udai*

Nath Sahi Deo[23] applies the same rule to uncultivated forest land, as also does *Maharaja of Kapurthala v. Commissioner of Income Tax U.P. & C.P. A.I.R. 1945 Oudh. 35(*Supra) *Special Manager Court of Wards v. Commissioner of Income Tax U.P. & C.P. A.I.R. 1945 Oudh. 42(supra)*. *Mustafa Ali Khan v. Commissioner of Income Tax U.P. & C.P. A.I.R. 1945 Oudh. 44(Supra)*, *Nawazish Ali Khan v. Commissioner of Income Tax C.P. & U.P. 1946 14 I.T.R. 356(supra)*.

17. 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.

18. The other cases cited to us are not in point and do not help because they deal with other matters, such as dairy farming, *Commissioner of Income Tax Burma v. Kokine Dairy Rangoon A.I.R. 1938 Rang. 260(Supra)* allowances from a zemindari to a Rani, *Commissioner of Income Tax Central & United Provinces v. Rani Saltanant Begam A.I.R. 1933 Oudh. 586(supra)* a money-lender who cultivates a field in lieu of a debt due to him, *Chellappa Chettiar v. Commissioner of Income Tax*[24] and royalties from a coal mine, *Kamakshya Narain Singh v. Commissioner of Income Tax B. & O, AIR 1943 PC 153(Supra)*. All we need say with respect to them, excluding of course the judgment of the Privy Council, is that in so far as their more general observations agree with the distinction, we make, they support us, and in so far as they do not, then, with great respect, we differ from them. Their Lordships held that royalties from coal mines were not agricultural income and nothing that their Lordships said detracts from our view.

19. It will be necessary, however, for us to meet certain arguments. It was suggested in some of the cases that the object of exempting agricultural income from tax was that it already pays tax in another form, namely land revenue or cesses, and, therefore, the idea is to avoid double taxation. This view will be found advanced in, for instance, *Chief Commissioner of Income Tax v. Zamindar of Singampatti A.I.R. 1922 Mad. 325(supra)*. But we think it is sufficiently met in *Maharaja of Kapurthala v. Commissioner of Income Tax U.P. & C.P*[25].

20. The learned Judges point out there that the fact that the Act requires the income not only to be subject to land revenne or cesses but also to be derived from agriculture or from land used for agricultural purposes shows that incomes from other types of land are not exempt even though they pay land revenue. And that of course is patent.

Rents derived from bungalows on malik makbuza land in a town are already taxable.
Nor indeed is there any reason why there should not be double taxation if the legislature chooses to impose it. That is also dealt with in the Oudh case. The argument is also met by what their Lordships of the Privy Council say in *Pranbhatchandra Barua v. Emperor*[26]*,* Their Lordships point out that in such cases the land revenue or cusses paid are deducted from the gross receipts because the tax is not levied on gross receipts but on income. In practice, therefore, there is no double taxation.

21. It was also argued that this income is not taxable at all because Section 6 of the Act sets out the only sources of taxable income. It cannot fall under the head "income from property" because Section 9 defines that and there is no room for forest produce there. So also Section 10 sets out

what is to constitute "profits and gains of business, profession or vocation". That also excludes income from': forests. And as regards "other sources", it was contended that this must be read "ejusdem genej ris" with what precedes it. It was said that an important head of income such as the present. could hardly have been left for inclusion under a general section. It was pointed out that forests cover a large section of India and, therefore, assume more than ordinary importance in this country.

22. That may be so, but the same applies to agriculture, and Section 4(3)(viii) and 2(1)(a) and (b) would be otiose if agricultural income is exempt in any way. The fact that it was necessary to include these sections shows that income of this sort would be taxable but for the exemptions. But this apart, the matter has now been set at rest by: their Lordships of the Privy Council. In *Pranbhatchandra Barua v. Emperor, AIR 1930 PC 209(Supra)* their Lordships say that the words appear to be.

> Clear and emphatic, and expressly framed so as to make the sixth head mentioned in Section 6 describe a true residuary group embracing within it all sources of income, profits and gains provided the Act applies to them, i.e., provided that they accrue or arise or are received in British India or are deemed to accrue or arise or to be received in British India, as provided by Section 4(1), and are not exempted by virtue of Section 4(3) In view of that it is not necessary to say anything further.

23. Part of the argument on behalf of the assessees had reference to certain provisions in some of our local Acts, such as the Land Revenue Act; but we do not consider that a proper approach when construing an Act of the Central Legislature. Central Acts apply all over India, while Provincial Acts have limited provincial application; also Acts touching the same topics can,, and often do, differ from Province to Province. It would be impossible for us to conclude that the words in a Central Act have one meaning in one Province and another in another. The same, assessee might have forests in this Province as well as in other Provinces. The local Acts in each might differ. It would be impossible for us to hold that his income from forests is exempt here while taxable elsewhere because the same word used in the Income Tax Act mean one thing in, one place and another in another.

24. It is pertinent here to quote the Privy Council in *Srimathoo Mothoo Vijia Ragoonadah Kolandapuree Netchiar v. Dorasinga Tevar*[27] The case is not in point but the observations are pertinent. At page 317 their Lordships say:

> It is obvious that an enactment which is intended? to apply to all the Courts in India, and which is also-a modem enactment, ought to receive the same construction in all those Courts, and that no inconsistent course of practice should be allowed to spring up ins any of the presidencies.
> and at page 320.
> unless, therefore, etc...we must come to the absurd conclusion that the same words are to be interpreted by the High Court in one sense when it is exercising its original jurisdiction or sitting on an appeal from a decree made under that jurisdiction, and in a different sense when it is sitting on an appeal from a mofussil Court; and further that the Legislature has

by the same form of words intended to make one law for the mofussil Courts, and another for those of the Presidency towns.

25. Another branch of this argument had relation to a possible conflict between the provincial and Federal Legislative Lists in the Constitution Act unless the matter was decided in the way contended for by the assessees. But the basis of that argument is that agricultural income from land revenue paying estates etc., cannot be taxed. No one questions that, and if the income from these forests is agricultural income then, of course, it cannot be taxed. The whole question is whether it is such income. The other phase of this argument was only a variation of what was argued before the Federal Court in *Hulas Narain Singh v. Province of Bihar*[28] It would be pointless to elaborate this further.

26. Attempts were made to induce us to consider passages in the report of the Select Committee which dealt with the Indian Income Tax bill. In the matter of Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, AIR 1939 FC 1 was relied on. But that passage has been much misunderstood and was explained by Gwyer, C.J. in *In re Hindu Women's Right to Property Act 1937, AIR 1941 FC 72 : 1941 AWR (F.C.) 11 648 : 1941-54-LW 22(supra)*. It is true this was not done in the course of a judgment but was an interjection during the arguments, but the substance of what he said accords with what the Privy Council laid in *H.M. Edward v. Attorney-General of Canada, AIR 1930 PC 120 : 126 Ind. Cas. 88 : 1930-31-LW 60(suupra)1*. Two other decisions of the Judicial Committee are also apposite: *Administ**rator-**General of Bengal v. Premlal*[29] and *Krishna Ayangar v. Nallaperumal Pillai A.I.R. 1920 P.C. 56(Supra).*

27. Mr. Mangalmurti stressed the difference between the words "any rent or revenue derived from land which is used for agricultural purposes" in Section 2(1)(a) and the words "any income derived from such land by agriculture." He argued that the former, was the wider and would include income from any by-product of the land and certainly income which came directly from the land. In our judgment the first clause refers to income derived from land which is used directly for agricultural purposes
and the second to by-products, such as the selling of milk, the pasturing of cattle etc.,
provided the endeavour is agricultural and provided it is reasonably connected with land used for agricultural purposes. The distinction may be of importance in some cases, but here it still leaves the burden of deciding what "agriculture" means. As we have said whatever else may be necessary it is essential that the income should be derived from some activity which necessitates the employment of human skill and labour and which is not merely a product of man's neglect or inaction except for the gathering in of the spoils. Not only must he labour to reap the harvest--that of course he must do else there could be no income--but be must also labour to produce it.

28. An attempt was also made to get us to take into consideration the previous practice of the department and the instructions embodied in. the Income Tax Manual. This also is not permissible. It shows no more than that either certain officers of the department hold a certain view of the law, or that it was considered expedient at that time, for this reason or that, not to tax income of this kind. The Courts are here to interpret the law and what departmental officers thought is not relevant. The argument is doubtless founded on certain observations of Lord Halsbury in *Commissioners for Special Purposes of Income Tax v. Pemsel (1891) 1891 A.C. 53(supra)1* but Lord Macnaghten said in the same case at page 591 that he would prefer not to

express an opinion: on the point. Also a later House of Lords case *Pate v. Pate A.I.R. 1915 P.C. 127(Supra)* brushed aside the continuous interpretation which the Supreme Court of Ceylon had placed on a statute for 44 years. We do not think, therefore, that it will be proper to take those matters into consideration and so will exclude them.

29. Having enumerated the general rule we will now proceed to examine the facts in each case separately and determine how far they conform to the rule we have enumerated.

30. Misc. Civil Case No. 63/44--The facts were agreed in this case. It appears from the order of reference, as also from the decision of the Income-tax' Appellate Tribunal in appeal, I that the forest here was not a cultivated one j and was of spontaneous growth. The same remarks apply to the following items of produce; namely, harra nuts and mohua flowers. According to our definition, they are not included within the exemption and so are liable to tax.

31. As regards lac, it was held in *Province of Bihar v. Pratap Udai Nath Sahi Deo A.I.R. 1941 Pat. 289(Supra)* that income from this source is taxable. On the other hand one of us (Bose, J.) held in *Imam Ali v. Priyawati Devi A.I.R. 1937 Nag. 289(Supra)* that lac cultivation is an agricultural operation. But the decision was based on the C.P. Tenancy Act and it was made clear that that Act had extended the definition of agriculture. Accordingly, what *Hiria v. Mahomed Sirujuddin Khan (08) 4 N.L.R. 104* had held was not agriculture' (namely lac cultivation) was considered to be "agriculture" because of the extension of the definition in the later Act for the purposes of that Act.

32. Now, it is clear from *Hiria v. Mahomed Sirujuddin Khan (08) 4 N.L.R. 104(Supra)* that Lao is neither timber nor fruit. In the case before me, it is not the produce of the tenant's labour, but of his neglect and idleness. It is the deposit of an insect upon the smaller branches of the palas trees. Again at page 110 Stanyon A.J.C. says:

> Such propagation can only be developed by allowing the land to lie waste so that the palas trees can spread over it as jungle. Therefore the produce of lac involves a use of the land in a manner which is opposed to agriculture, as we understand that term in relation to village operations in this province.

33. In the circumstances we are of opinion that for the purposes of the Income Tax Act lac cultivation cannot be regarded as an agricultural operation. In any case it has not been shown that in this case the conditions were otherwise than as described above.

34. Our answer to the question referred in this case is that the ₹ 10,835/- derived from the sale of forest produce is not "agricultural income" and so is not exempt from taxation.

35. Miscellaneous Civil Case No. 7 of 1945. Here also the facts are agreed. The forest income is derived from a sale of timber which the assessee cuts into beams, logs, poles etc; also from the sale of tendu leaves which are used in the manufacture of bidis. The finding regarding the nature of the forest is to be found in the Tribunal's appellate order and is given in these words:

> It is impossible that all these forest trees or tendu shrubs could have been planted or

reared by any process of agriculture, that is to say, by the cultivation of the soil. It may be that at some stage in their growth the trees required to be watered or watched. But the fact is that they had been standing upon the land for a number of years during which the soil has remained untouched.

36. The evidence adduced by the assessee to show that he had planted the trees was disbelieved. In the circumstances, the burden being on the assessee to bring himself within the purview of the exemption, and he not having proved that the forest was "cultivated" by him in the sense that its produce was due to the skill and labour which he expended on it as opposed to produce which would come in anyway from natural causes despite inaction on his part, we are of opinion that the ES. 19,447 arising from those sources was rightly held to be taxable.

37. Miscellaneous Civil Case No. 8 of 1945. The forest income here was derived from leases of the forest "for the purpose of cutting and removing standing timber and fuel, and taking tendu leaves, lac and harra there from".

The finding regarding the nature of the forest is to this effect:

> The trees in these forest lands are obviously of spontaneous growth and must have been standing for a number of years. It is impossible to say that they were either planted or reared up by any process of agriculture.

38. We hold that the ₹ 12,373/- assessed to income under this head was rightly assessed.

39. Miscellaneous Civil Case No. 85 of 1945. In this case, ₹ 1,799/- received from the sale of 'harra and tendu leaves has been assessed. The Appellate Assistant Commissioner found here that the forest was of spontaneous growth and that nothing is done in the nature of preparing land for the growth of the trees therein". The Tribunal has accepted this and nothing has been shown us to the contrary. Accordingly, here also, we hold the income was rightly assessed.

40. Miscellaneous Civil Case No. 91 of 1945. Here also the finding of the Tribunal is that the forest was:

> Of a spontaneous growth and no process of agriculture was employed in growing the forest. It may be that at one time forest guards may have been employed but that does not make it an agricultural income. Active human agency in tilling the soil was not employed nor any process which is commonly understood as an agricultural process was used in the production of the forest trees which grow spontaneously and which were sold from time to time to clear off the overgrowth.
>
> We agree that the income under this head was rightly assessed.

41. Miscellaneous Civil Cases Nos. 92 and 98 of 1945. The income in both these cases was from the sale of forest trees. The findings in each regarding the facts are the same as in Miscellaneous civil Case No, 91/45, and are given in the same words. Our conclusion is, therefore, the same in

these two cases as in Miscellaneous Civil case No. 91/1945.

42. We now turn to points which are not common to all the cases. A question of interest arises in Miscellaneous civil case No. 63/44, as also in Miscellaneous civil Gases Nos. 8 and 85 of 1945. We will deal with that. The question has been posed in much the same language in all three cases except for the figure. It was (we quote from Miscellaneous civil case No. 85/1945.)

> Whether the sum of (₹ 1,270) representing interest received by the assessee on the arrears of agricultural rents due to him-from his tenants is agricultural income within the meaning of Section 2(i)(a), Income Tax Act?".

43. This matter has been recently decided by a Division Bench of this Court in *Pratapmal Laxmichand Firm v. Commissioner of Income Tax U.P., C.P. & Berar* [30]We do not feel free to differ from this decision though had the matter been res integra we might have taken another view.

44. It was contended by the learned acting Advocate-General that the decision is distinguishable and that it is, in any event, wrong. The ground of distinction is said to be that the question posed there narrows the scope of the enquiry to the Central
Provinces Tenancy Act whereas here there are no such limitations. It is true the Central Provinces Tenancy Act is expressly mentioned in the question referred in that case whereas it is not mentioned in the present cases but that makes no difference. We are not asked to decide whether all interest is exempt but whether interest received from tenants on the arrears of rent due from them is. These interests are received under the provisions of the Central Provinces Tenancy Act and therefore whether the Act is expressly mentioned or not the fact remains that the rent is received in the same way and for the same reasons in both sets of cases. We are unable to distinguish that case from the present ones.

45. As regards the contention that the decision is, in any event, wrong, we find that the matter is debatable and that it is as easy for a Judge acting judicially to reach the one conclusion as the other. In an ultimate analysis it narrows down to a question of individual preference, it being possible to advance cogent reasons on either side. That being the position, we do not feel free to differ, nor do we think it proper to refer the point to a Full Bench, This, we feel, is one of the cases in which certainty is of more value than the doubtful satisfaction of reaching a conclusion by a mere counting of heads. The matter has been fully debated in other High Courts. Opinions have differed and the Division Bench in the former case preferred one view to the other. In our view either the legislature should step in and say which view should prevail, or we should in this Province, accept the view of our own High Court. After all the two, the rent and the interest, are so intimately bound together that it is not unreasonable to hold that they are species of the same genus, though we realise that it is anomalous that while a man who receives his rent regularly and places the money it represents in a bank must pay tax on the interest he receives from the bank whereas another who leaves his money with the tenant and receives interests from the tenant instead of from a bank need not. But anomalies arise on the other view too. The interest is recoverable under the Central Provinces Tenancy Act in the same way and along with the rent which is in arrear. It creates the same burden on the land and subjects a defaulting tenant to the same: penalty.

46. In the circumstances, we hold, following *Pratapmal Laxmichand Firm v. Commissioner of Income Tax U.P., C.P. & Berar Misc. Civil Case No. 34 of 1935(supra)* that the interest in these three cases is exempt from taxation, it being agricultural income.

47. Miscellaneous civil case No. 7/45 raises another question. We are asked to decide whether a profit of ES. 19,447/- arising from the Bale of forest produce, such as timber and tendu leaves, is a receipt of a capital nature and so exempt on that score.

48. Their Lordships of the Privy Council point out in *Kamakshya Narain Singh v. Commissioner of Income Tax B. & O., AIR 1943 PC 153(Supra)* that whether a given receipt is capital expenditure (receipt?) or income depends on circumstances, so that what is income in the hands of one man may be capital expenditure (receipt?) in the of another. The facts here are admitted and are stated thus in the order of reference.
But it was admitted before us that the assessee sells timber annually and derives the income in Question and that there has been no reduction or loss of any capital asset, that is the forest land, by the timber being out and sold.
That places the matter, in principle, on a par with the decision of the Judicial Committee just cited. We hold that the ₹ 19,447/- under this head is income and was rightly included in the assessment.

49. Miscellaneous civil case No. 8/45 raises the following additional question:

> Whether there was any material to hold that the "bazar dues" and "nazrana receipts" of ₹ 171/- and ₹ 192/- respectively were items of "agricultural income....

As regards this, the Tribunal said:

> With that we agree and add that the point was abandoned before us by counsel for the assessee who appeared in place of Mr. Mangalmurti on the second day. We hold the ₹ 192/- was rightly included in the assessment.

50. As regards the nazrana, receipts under this head can flow from sources which are not agricultural, as for example, money taken from consent to a transfer of tenancy and other lands, presents on the occasion of a marriage, and so forth. Therefore, until we know exactly what the nazrana consisted of, it is impossible for us to say whether the income is agricultural or not. The Tribunal says:

> it was alleged before us that it represented the amount levied from tenants taking up vacant plots for the purpose of cultivation. But the statement was not borne out by any evidence.

51. We asked counsel to points out any evidence to us which would indicate the nature of the

nazrana and he admitted there was none. The burden is on the assessee and as he has produced no evidence on this point his contention must fail. We hold there is no material and that the sum of ₹ 192/- was rightly assessed.

52. The result of our findings is that the assessees have lost in all the cases and on all the points except on the question of interest in three of the cases, namely, Miscellaneous civil case No. 63/44 and Miscellaneous Civil Cases Nos. 8 and 85 of 1945. They will, therefore, pay the costs of the Commissioner in all but these three cases. Counsel's fee ₹ 100/- in each case.

53. As regards the remaining three cases, the success of the assessee on this point in two of the cases is so negligible as compared with his failure that we think it proper that each should pay the Commissioner's costs there as well. In Miscellaneous civil Case No. 63/44 the assessee lost on the item of ₹ 10,835/- and succeeded only as regard? ₹ 504/-.

54. In Miscellaneous civil case No. 8/35 the assessee failed as regards ₹ 12,373/- and succeeded as regards ₹ 314/-. We therefore, direct that each of these two assessees should pay the Commissioner's costs. Counsel's fee ₹ 100/- in each case.

55. That leaves Miscellaneous civil Case. No. 85/45. There, the success and failure is almost equal. The assessee lost as regards ₹ 1,799/- and won as regards ₹ 1,270/-. There will be no order as to costs in this case.

Cases Referred.

[1] AIR 1933 PC 108 : 1933 AWR (P.C.) 2 74 : 1933-37-LW 701
[2] AIR 1940 PC 158 : 1940 AWR (P.C.) 10 122 : 1940-52-LW 406
[3] AIR 1930 PC 151 : 1930-32-LW 127
[4] AIR 1936 PC 55
[5] A.I.R. 1946 Nag. 397
[6] A.I.R. 1947 F.C. 27
[7] A.I.R. 1941 Pat. 289
[8] A.I.R. 1931 Mad. 659
[9](99) 22 Mad 39
[10](01) 24 Mad. 421
[11] A.I.R. 1931 Mad. 659
[12] A.I.R. 1922 All. 301
[13] A.I.R. 1924 P.C. 247
[14] A.I.R. 1922 Bom. 146
[15] A.I.R. 1919 Lah. 222
[16] A.I.R. 1937 Nag. 289
[17] A.I.R. 1922 Mad. 351
[18](01) 24 Mad. 421
[19] A.I.R. 1922 Mad. 351
[20] A.I.R. 1919 Lah. 222
[21] AIR 1924 Cal 668
[22] A.I.R. 1930 Mad. 764
[23]28 A.I.R. 1941 Pat. 289
[24] A.I.R. 1937 Mad. 393

[25] A.I.R. 1945 Oudh. 35
[26] AIR 1930 PC 209
[27](75) 23 W.R. 314
[28] A.I.R. 1942 F.C. 8
[29](95) 22 Cal. 788
[30] Misc. Civil Case No. 34 of 1935