

NAGPUR HIGH COURT

Mahendra, Lal

Vs

Comr. of Income-tax

Misc. Civil Case No. 13 of 1946

(Hidayatullah, J. On Difference Of Opinion Between Bose, Ag. C.J. and Mudholkar, J.)

22.10.1948

JUDGMENT

Mudholkar, J.

1. The following question has been referred to this Court for its decision by the Income-tax Appellate Tribunal, Bombay, under Section 66 (1), Income-tax Act :

"Whether on the facts of this case, the two amounts of Rs. 14,208 and Rs. 1,275 derived from sale of timber it letting out of the pasture meadows respectively, or either of them, is agricultural income within the meaning of Section 2 (1) 7 exempt from taxation under Section 4 (3) (viii), Income-tax Act, 1922?"

2. The question arises out of an application made by the applicant to the Income-tax Appellate Tribunal in which, among other matters, he sought a reference of the following question of law :

"Whether income derived from forests and pastures as a result of spontaneous growth of the trees and grass without special effort on the part of the landlord cannot be called agricultural for the only reason that the landlord is inactive.

3. Before formulating the question the Income-tax Appellate Tribunal observed as follows :

"As regards the timber it is of a spontaneous growth and had been standing for a very long time without being planted or without any particular care being taken to promote its growth. Then as regards the pastures meadows the grass growing thereon was equally a spontaneous growth, no agricultural operation being undertaken upon the land."

4. From this it would be clear that what we are called upon to decide is whether income derived from land upon which no human skill or labour has been expended is agricultural income or not. I may state here that it is common ground that the land in question is assessed to land revenue.

5. The definition of "agricultural income" is contained in Section 2 (1), Income-tax Act and is as follows :

"(1) '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, 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 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)

(c) Any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in sub-cl. (ii) and (iii) of clause (b) is carried on."

6. Clearly, the income from the natural forests or naturally growing grass obtained by the applicant cannot possibly fall under either sub-Clause (ii) or sub-Clause (iii) of Section 2 (1) (b), Income-tax Act. For, it is not his case that he was carrying on any regular operations in forestry, and grazing leases are neither "sale of the produce raised" nor do they involve any "process" contemplated by these two sub-clauses. So what we have to consider is whether income derived from the two sources is derived from land which is used for agricultural purposes or by agriculture on such land.

7. This very question arose for decision before their Lordships of the Privy Council in a recent case, *Mustafa Ali Khan v. Commr. of Income-tax, U. P. Ajmer and Ajmer-Merwara*¹, though there their Lordships were called upon to consider only whether income derived from the sale of "trees growing on land naturally" was agricultural income within the definition of the term contained in Section 2 (1), Income-tax Act. Their Lordships observed as follows :

"Upon these facts the question is whether such income is (within Section 2 (1) (a) of the Act) rent or revenue derived from land which satisfies two conditions, (a) that it is used for agricultural purposes, and (b) that it is 'either assessed to land revenue or etc.', or alternatively (as, notwithstanding the form of the question, counsel for the assessee was allowed to argue), whether such income was, within Section 2 (1) (b), income derived from such land by agriculture.

¹ P. C. A. No. 33 of 1947, D/-12-7-1948

It appears to their Lordships that, whether exemption is sought under Section 2 (1) (a) or Section

2 (1) (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. It is not then necessary to consider any other difficulty which may stand in the way of the assessee. His case fails if he does not prove that the land is 'used for agricultural purposes.' Upon this point their Lordships concur in the views which have been expressed not only in the Chief Court of Oudh but in the High Court of Madras (see '*Yuvarajah of Pithapuram v. Commr. of Income-tax, Madras*², and the High Court of Allahabad (see '*Benoy Ratan v. Commr. of Income-tax, U.P., C.P., and Berar*³, and elsewhere in India. The question seems not yet to have been decided whether land can be said to be used for agricultural purposes within the section, if it has been planted with trees and cultivated in the regular course of arboriculture, and upon this question their Lordships express no opinion. It is sufficient for the purpose of the present appeal to say (1) that in their opinion no assistance is to be got from the meaning ascribed to the word 'agriculture' in other statutes 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 the present case their Lordships agree with the High Court in thinking that there is no evidence which would justify the conclusion that this condition is satisfied."

8. While it is conceded, and I agree rightly, that these observations conclude the matter in so far as income derived from forests of spontaneous growth is concerned, it is argued, on the authority of '*Beohar Raghubir Singh v. Commissioner of Income-tax, P.P., C.P. and Berar*⁴, to which one of us (Bose J) was a party, that income derived from pasturage is agricultural income. This decision indeed lays down the same test, whether human skill or labour has been expended on the land, which their Lordships have laid down in 'Mustafa Ali Khan's case.'

9. Then the following observations occur : "*Emperor v. Probhat Chandra*⁵, 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 H. C. (see p. 527). But that apart, nearly every rule has its exceptions and the pasturing of cattle is so closely allied to agriculture that it has come to be considered part parcel of it and the meaning of the term is now so well established that there is no longer room for doubt."

10. The question in that case was whether income derived from forests of spontaneous growth was agricultural income or not. The other question whether income derived from pasture was agricultural income or not did not arise for decision and has therefore not been fully dealt with. It was to reconcile the test laid down in that case with the decision in '*Emperor v. Probhat Chandra* 51 Cal 504(SUPRA), that these observations appear to have been made. In certain circumstances income derived from

² I.L.R (1946) Mad 745 ⁴ I.L.R (1947) Nag 425, at p. 433

³(1947) 15 I.L.R 98 (All) ⁵51 Cal 504

pasture lands would be agricultural income as, for instance, where that land is appurtenant to cultivated land; or again, where human skill or labour is expended upon it for obtaining a particular variety or quality of grass. In the present case it is admitted that nothing what-so-ever was done upon the land by human agency. Therefore, the mere fact that the land is described as pasture land is not conclusive of the category in which income from it would fall.

11. Now that their Lordships have laid down a definite test, the question whether income derived from a particular source is agricultural income or not must be decided primarily by applying that test. So, the mere circumstance that pasturing of cattle has come to be regarded as part and parcel of agriculture does not necessarily make income derived from that source agricultural. It has further to be shown that it answers the test laid down by their Lordships. If it satisfies that test, then the income derived from that source must be deemed to be agricultural income. Here it is conceded that no human skill or labour has been expended on the land and so the test must be regarded as not satisfied.

12. Thus my answer to the question referred to us is as follows : Income derived from sale of timber obtained from forests of spontaneous growth as also income derived from leases of pasture lands the grass in which is of spontaneous growth, is not "agricultural income" within the meaning of the definition contained in Section 2 (1) of the Income-tax Act.

Bose, Ag. C. J.

13. have had the advantage of reading my learned brother's judgment and I agree so far as the income from forests is concerned, but I regret I am unable to agree on the other points regarding the income from pasture lands.

14. The section we are concerned with is Section 2. It defines 'agricultural income' as "(a) 'any' rent or revenue derived from 'land' which is 'used for agricultural purposes.'"

We need not consider (b) separately because that deals with "any income derived from 'such' land" etc. The word 'such' refers us back to clause 1 (a). Therefore what we have to see for present purposes is whether this kind of income falls under Clause (a).

15. The income we are considering is either "rent" or "revenue." It is money which the malguzar of the village receives from persons to whom he lets out his pasture lands for grazing. That fulfils the condition that the money should be "rent" or "revenue." It is to be observed that under the definition it can be 'any' rent or revenue, which also fulfils the other conditions of the definition.

16. The next question is whether this kind of income is derived from the land in question. There also I have no doubt, and if there are any doubts I think they are settled by the decision of the Privy Council which my learned brother has quoted.

17. Their Lordships were dealing with a case in which the assessee was a usufructuary mortgagee, that is, he was for the purposes then in question, in the same position as the owner of the land. This mortgagee did not cultivate the agricultural lands covered by his mortgage himself but let them out to another person and received rent from him. (That other person happened to be the mortgagor but that was immaterial). Their Lordships held that the rent received from the tenants of the land was agricultural income within the meaning of the section and that it was derived from the land. Their Lordships quoted with approval a passage from Ramesam, J.'s judgment in *'Hajee Muhammad Sadak v. Commr. of Income-tax, Madras'*⁶.

"If the mortgagor receives it (the rent) from the tenants it is agricultural income in his hands and when it passes from his hands it is not. Similarly if the mortgagee collects it

from the tenants it is agricultural income."

In confirmation of this view their Lordships also referred to '*Commissioner of Income-tax v. Maharajah of Darbhanga*'⁷, and quoted :

"The exemption is conferred indelibly, on a particular kind of income and does not depend on the character of the recipient..... the result in their Lordships' opinion is to exclude 'agricultural income' from the scope of the Act howsoever or by whomsoever it may be received."

18. That leaves the last condition. The income must be from land 'which is used for agricultural purposes.' The only question therefore is, is pasturage an agricultural purpose? Now I quite agree that that depends upon what is pastured. If the animals are elephants or polo ponies or circus horses then the pasturing of them would not be an agricultural purpose. But if they are agricultural cattle such as would normally be the case in villages in this Province then I have no doubt that the pasturing of them is an agricultural purpose.

19. I do not conceive that the term 'agriculture' has been used as a term of art in the Act. It must therefore bear its ordinary meaning. I find it defined in Webster's Dictionary as :

"The art or science of cultivating the ground 'including' the harvesting of crops, 'and the rearing and management of live-stock'; tillage, husbandry, farming."

Then we have 'pasturage' defined as "grazing ground, the business of feeding or grazing cattle", and pasture as "grass land for cattle."

20. It will be seen that the tilling or cultivation of the ground is only one aspect of agriculture. The other is the rearing and management of livestock; and naturally, because, until quite recently when tractors were introduced the cultivation of the soil on an agricultural scale would have been impossible without the aid of live-stock. But livestock cannot be "reared" or "managed" without the aid of grazing grounds and pasturage. Therefore the pasturage of agricultural cattle is, in my opinion, an agricultural purpose and if it is, I cannot see how it can be said not to fall within the purview of the definition.

⁶⁸ ITC 138

⁷⁶² IA 215

21. So far I have considered the ordinary dictionary meaning of the term. But if we delve into the history of pasturage in England we find it existed there as a right of "common of pasturage" from "time immemorial," but that it was confined to :

"Such cattle as serve for the maintenance of the plough, as horses and oxen to plough the land, and sheep and kine to composture (that is, to manure) it." (See Halsbury's Laws of England, Hailsham Edn. Vol. IV, p. 532).

In other words, it was limited to agricultural cattle. and horses. Halsbury concludes :

"It has therefore been described as the common law right of every free tenant in the lord's wastes."

22. The history in India is not very different. The right of free grazing for agricultural cattle is to be found in most 'Wajib-ul-arzs' and has been the subject-matter of frequent decision in this Court.

23. It is bootless to refer to other Acts with special definitions of their own, but it is perhaps relevant to notice that the English Finance Act of 1910 appears to take the above into consideration in Section 41 when it defines 'agriculture' to include "the use of land as meadow or pasture land." In none of these cases would the grass be specially cultivated.

24. It is true this point was not decided in '*Emperor v. Probhat Chandra*', 51 Cal 504(SUPRA), and that the observations of the learned Judges there are 'obiter.' But one of them was a Judge of great eminence, and both were agreed in placing the same construction on the Section as I do. Rankin, J., said at p. 507 :

"I agree with the Commissioner and the learned Vakil who appears for the Crown in thinking it to be reasonably plain that income from pasturage is 'derived from land which is used for agricultural purposes.'"

Page, J., also agreed at p. 527.

25. So also in the case which Hemeon, J., and I decided, '*Beohar Raghbir Singh v. Commr. of Income-tax, U.P. C. P. and Berar*'⁸, Our remarks were 'obiter,' but they were not made without considerable thought for the purpose of distinguishing pasturage from forests. We are clear there that pasture land was agricultural land, and as I wrote the judgment I am in a position to say that I, at any rate, was not thinking only in terms of land where the grass is cultivated.

26. My learned brother feels that it is impossible now to resolve this problem along the lines I suggest because he feels that that runs counter to the decision of their Lordships in the case quoted '*Mustafa Ali Khan v. Commissioner of Income-tax, U.P., Ajmer and Ajmer-Merwara*'⁹, But this point was not before their Lordships, and I do not think they intended their decision to cover a case of this kind. We have to observe the fundamental rule that a case is authoritative only for what it decides even when

⁸ I.L.R (1947) Nag 425 at p. 433

⁹ P.C.A. No. 33 of 1947

interpreting a decision of the Privy Council. I do not mean to imply that Courts in India are at liberty to ignore 'obiter' remarks of the Board when their Lordships apply their minds to the point at issue, but in this case I do not feel that their Lordships had a case like this in mind and so I cannot construe their remarks as 'obiter' on this point. The passage in their judgment which, in my opinion, applies to this case is the one in which their Lordships say :

"Under Section 2 (1) (a) or Section 2 (1) (b), the primary condition must be satisfied that the land in question is used 'for agricultural purposes.'" It is true they go on to say 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."

But those remarks were, I feel, directed to the sort of case they were considering, namely, forests of spontaneous growth. They were dealing with a case where the income was directly derived from a product of the soil. Here there is no cutting of the grass. The cattle eat it, and it is not so much the product of the soil which is the agricultural purpose but the rearing and management of the live-stock. I conceive that land which is occupied for a dairy farm in a rural area would be such land even though nothing is grown on it and only buildings are, there. So also would be land leased out to a person who conducts agricultural operations on a large scale, for the housing and tethering of his agricultural live-stock. A distinction has to be drawn between the land and the purpose for which the land is used. The land need not be agricultural land in the sense that it must grow a crop. It can be any land which is used for an agricultural purpose, and the income can be 'any' rent or revenue derived from such land. When the agricultural purpose is the growing of a crop then there must be some element of skill and labour expended upon it, but when the purpose is the management of live-stock we are not concerned with the product of the soil. The human agency element must still be there. There must be skill and labour in the management of the stock but not upon the land. The land in such a case is incidental to the main purpose.

27. With all respect to my learned brother, I would answer this part of the question as follows, namely, that the income derived from the letting out of pasture meadows is 'agricultural income' within the meaning of Section 2 (1), whether the grass thereon is cultivated or of spontaneous growth, provided the animals pastured are agricultural animals.

28. I am not in a position to say whether the Rs. 1,275 derived from the letting out of the pasture land is agricultural income 'on the facts of this case' because the facts do not tell me whether the animals pastured are agricultural or not. 'If they are', then the income is, in my judgment, exempt, if they are not, then it is liable to taxation.

29. In view of the difference of opinion on this point it will be referred to a third Judge. In the meanwhile the reference can be answered along the lines my learned brother has suggested so far as the first point is concerned.

(On the difference of opinion between Bose, A.C.J. and Mudholkar, J., the case was referred to Hidayatullah who delivered the following opinion :)

Hidayatullah, J.

30. This case comes before me on a difference of opinion between Bose Ag. C.J., and Mudholkar, J. The question on which they have differed was referred by the Income-tax Appellate Tribunal, Bombay, under section 66 (1), Income-tax Act, and it reads as follows :

"Whether on the facts of this case, the two amounts of Rs. 14,208 and Rs. 1,275 derived from sale of timber and letting out of the pasture meadows respectively, or either of them, is agricultural income within the meaning of Section 2 (1), and exempt from taxation under Section 4 (3) (viii), Income-tax Act, 1922?"

31. While formulating the question the Income-tax Appellate Tribunal observed as follows :

"As regards the timber it is of a spontaneous growth and had been standing for a very

long time without being planted or without any particular care being taken to promote its growth. Then as regards the pasture meadows the grass growing thereon was equally a spontaneous growth, no agricultural operation being undertaken upon the land."

32. The question divided itself into two parts and in respect of the first part, viz., forests, both the learned Judges were agreed that no exemption from income-tax could be claimed. They have differed on the question of the income from pasture lands, which Bose Ag. C.J., holds is exempt from income-tax, whereas Mudholkar, J., considers that it is not so exempt.

33. The question involves the construction of Section 2 (1), Income-tax Act, where 'agricultural income' is defined. That definition runs as follows :

"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, 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 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);

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation Mentioned in sub-cl. (ii) and (iii) of Clause (b) is carried on.'

34. The learned Judges have differed upon the interpretation of a P. C. case, '*Mustafa Ali Khan v. Commissioner of Income-tax, U.P.*¹⁰', The question that was referred to the Chief Court of Oudh by the Tribunal in that case read as follows :

'Whether income from the sale of forest trees growing on land naturally and without the intervention of human agency, even if the land is assessed to land revenue, is agricultural income within the meaning of Section 2 (1) (a), Income-tax Act and as such exempt from income-tax under section 4 (3) (viii) of the Act.'

In delivering the judgment of their Lordships Lord Simonds observed as follows :

"As appears from the form of the question, the income under the first head was derived from the sale of trees described as "forest trees growing on land naturally" and the case has throughout proceeded upon the footing that there was nothing to show that the

assessee was carrying on any regular operations in forestry and that the jungle from which trees had been cut and sold was a spontaneous growth. Upon these facts the question is whether such income is (within Section 2 (1) (a) of the Act) rent or revenue derived from land which satisfies two conditions, (a) that it is used for agricultural purposes and (b) that it is "either assessed to land revenue or etc.", or alternatively (as, notwithstanding the form of the question, counsel for the assessee was allowed to argue), whether such Income was, within Section 2(1)(b), income derived from 'such' land by agriculture. 'It appears to their Lordships that, whether exemption is sought under section 2(1)(a) or Section 2(1)(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. It is not then necessary to consider any other difficulty which may stand in the way of the assessee. His case fails if he does not prove that the land is "used for agricultural purposes." Upon this point their Lordships concur in the views which have been expressed not only in the Chief Court of Oudh but in the High Court of Madras (see *Yuvarajah of Pithapuram v. Commr. of Income-tax, Madras*¹¹, and the High Court of Allahabad (see *Benoy Ratan Banerji v. Commr. of Income-tax, U.P., C. P., and Berar*¹², and elsewhere in India. The question seems hot yet to have been decided whether land can be said to be used for agricultural purposes within the section, if it has been planted with trees and cultivated in the regular course of arboriculture, and upon this question their Lordships express no opinion. It is sufficient for the purpose of the present appeal to say (1) that in their opinion no assistance is to be got from the meaning ascribed to the word "agriculture" in other statutes and (2) that, though it must always be difficult to draw the line, yet, unless there is some measure of cultivation of the land,

¹⁰ P. C. A. No. 33 of 1947

¹²(1946) 15 ITR 98 (All)

¹¹ I.L.R (1946) Mat 745

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 the present case their Lordships agree with the H.C. in thinking that there is no evidence which would justify the conclusion that this condition is satisfied.'

35. Before I take up the consideration of the question whether this observation of their Lordships is 'obiter' or not I wish to review some cases that had arisen in the High Courts of India in connection with the section expounded in the Privy Council case. These cases fall into two categories. On the one side there are cases in which a wide meaning is given to the phrase 'agricultural purposes', and on the other side are those cases in which a narrow interpretation is placed upon these words.

36. In *Emperor v. Probhat Chandra Barua*, 51 Cal 504(SUPRA), Rankin and Page, JJ., held that pasturage is an agricultural purpose and that fees realized from graziers for grazing their cattle in forest areas and waste lands are agricultural income. To the same effect is the case of Bose and Hemeon, JJ., reported in *Beohar Raghbir Singh v. Commissioner of Income-tax, U.P., C.P. and Berar*, I.L.R (1947) Nag 425(SUPRA). It may be pointed here that we are not concerned with the

definitions of the phrase 'agricultural purposes' as given in other statutes like the Tenancy Acts and the Transfer of Property Act. Their Lordships of the Privy Council observed in the case to which I have referred that such definitions might be misleading, and I do not therefore refer to several other cases cited at the Bar tending to widen the meaning of this phrase. I have therefore referred to two cases in which the point arose directly in connection with the Income-tax Act

37. The cases on the other side are numerous. Most of them deal mainly with the sale of forest trees growing without the agency of man. But in some of these cases the point now arising in this reference was also considered, and it was held that unless there was some cultivation or the growth was due to human agency the income from naturally growing trees or grass could not be classed as agricultural income. I may refer here to a few such cases.

38. In '*Tara Kumari Devi v. Commissioner of Income-tax*'¹³, Bennett and Madeley, JJ., held that income from the sale of forest trees and grass of spontaneous growth growing on land naturally was not exempt from income-tax because such income was not derived either from agriculture or from land used for agricultural purposes. They referred to an earlier case of the Oudh Chief Court, reported in '*Maharaja of Kapurthala v. Commissioner of Income-tax, C.P. and U.P.*'¹⁴. To the same in '*Sir Pateshwari Prasad Singh v. Commissioner of Income-tax*'¹⁵, The counsel in that case, however, conceded the point in view of the consistent opinion of the Oudh Chief Court. In another case, a case from the Patna H.C., '*Province of Bihar v. Pratap Udai Nath*'¹⁶, Harries, C.J., presiding over a Special Bench observed as follows :

"It appears that this head of income was derived from virgin jungle land not actually cultivated. A few forest guards appear to have been employed to

¹³(1946) 14 ITR 787 (Oudh)

¹⁵(1947) 15 ITR 181 (Oudh)

¹⁴ (1945) 13 ITR 74

¹⁶(1941) 9 ITR 313 (Pat)

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 '*Pratap Bikram Shah v. Commissioner of Income-tax*', (1946) 14 ITR 788 (Oudh)(*supra*) it was observed as follows :

"The learned counsel for the applicant has strenuously contended that the grass growing on land, which is used by the agriculturists for grazing their cattle, and which according to his forms part of agriculture, or 'phus' and 'jhau' which are used indirectly for agricultural purposes, the land upon which such grass or 'phus' or 'jhau' grow should be deemed to be land used for agricultural purposes. There is, in our opinion, a fallacy in this contention. If income from sale of commodities which agriculturists use in order to carry on their trade or business were to be included in the definition of agricultural income, a large number of manufacturers and traders will necessarily be exempted from income-tax. For example, the manufacturers of implements of husbandry and innumerable other manufacturers and traders, who cater for agriculturists would claim exemption from income-tax on the

ground that the commodities they produce and sell to agriculturists are agricultural income. We have given these examples to show the absurdity to which the question can be reduced. The learned counsel has attempted to draw a distinction between sale of grass and the income derived from grazing dues, but we are unable to see any difference between the two. In an unreported case, '*Tara Kumari Devi v. Commissioner of Income-tax*', U.P., C. P., and Berar, Civil Ref. No. 5 of 1943(*supra*), on a question : "Whether income from the sale of forest trees and wild grass of spontaneous growth growing on land, which is assessed to land revenue, naturally and without the intervention of human agency, is "agricultural income" within the meaning of Section 2 (1), Income-tax Act, and as such exempt from income-tax under section 4 (3) (viii) of the Act?" a Bench of this Court, to which one of us was a party, held that the income from sale of such grass did not come within the exemption provided by Section 4 (3) (viii), Income-tax Act. As already observed, we see no difference between the revenue derived by the sale of grass or by way of grazing dues."

39. In the Allahabad High Court in '*Benoy Ratan v. Commissioner of Income-tax*', U.P., C. P., and Berar¹⁷, Braund and Pathak, JJ., observed that income from the sale of forest trees of a spontaneous growth growing on land naturally and without the intervention of human agency is not agricultural income and expressed the opinion that an order to come within the definition of agricultural income the income is not only to be derived from land which is used for agricultural purposes, but such income has also to be derived by the process of agriculture. By 'the process of agriculture' they meant the preparation of the soil as also the cultivation thereof. In a later case, '*Durga Narain v. Commissioner of Income-tax*', AIR 1948 Allahabad 10(*supra*). Verma and Malik, JJ., followed this case as also the case reported in '*Province of*

¹⁷(1947) 15 ITR 98 (All)

Bihar v. Pratap Udai Nath', (1941) 9 ITR 313 (Pat)(*supra*) : It is to be observed that the Allahabad case was approved by their Lordships of the P.C. in the case which has given rise to this difference of opinion, as also the Oudh cases and the case reported in '*Yuvarajah of Pithapuram v. Commissioner of Income-tax, Madras*', I.L.R (1946) Mad 745 (*supra*): which also is to the same effect.

40. It cannot now be doubted that the income from the sale of forest trees growing naturally and without any human effort is not agricultural income. It will be seen that in none of these cases was there any question about the use to which the timber from the trees was to be put. I have no doubt that the sale of forest trees to a person who merely cuts the trees and removes the timber cannot by any stretch of imagination be connected with either agriculture or any agricultural purpose. The question that arises is whether the rent or revenue derived from agriculturists who are allowed to pasture their agricultural cattle upon grass growing naturally can be put in the same category.

41. It is plain upon a reading of the judgment of their Lordships in '*Mustafa Ali Khan v. Commr. of Income-tax, U.P., Ajmer and Ajmer-Merwara*', P.C. A. No. 33 of 1947(*supra*) that their Lordships never intended that that case was to be an authority for any other case involving different facts. Their Lordships have qualified their observations by limiting them to the facts in that particular case. This follows from the use of the words. 'It is sufficient for the purpose of the

present appeal' and by saying that in that case there was no evidence which would justify the conclusion that the conditions adverted to by their Lordships were satisfied. The cardinal principle in the application of a judgment as a binding authority is to see what the case decides. The decision in this case was that where forest trees grow without any human effort and are sold to raise an income that income is not exempt from income-tax. I agree respectfully with Bose, Ag. C.J., that the decision cannot be carried much further though their Lordships' observations on the meaning of the phrase 'agricultural purposes' is couched in terms which may be applicable generally to other cases also. I am quite clear that even an 'obiter' remark of their Lordships of the Privy Council is binding upon Courts in India provided the remark could be made applicable to the facts of a case. I have therefore to examine very carefully what their Lordships stated was the law and also to see whether it could be made applicable to the facts of this case.

42. Their Lordships' observations are that before it can be said that a land was used for agricultural purposes within the meaning of the Income-tax Act it has to be shown that there was 'some measure of cultivation of the land or some expenditure of skill and labour upon it.' To begin with the expenditure of skill and labour need not necessarily be connected with the cultivation of land. This, in my humble opinion, follows naturally from their words, because if their Lordships had cultivation alone in their minds there was no need for them to use another phrase, viz., "expenditure of skill and labour."

43. The Department contends that emphasis has been placed by their Lordships upon the word 'agriculture.' I do not agree. While it is obvious that every word of the statute has to be given a meaning their Lordships have nowhere stated that the expenditure of skill and labour upon the land must be in cultivating it. Thus, if the product grows naturally and the agriculturist does nothing, more than trim the place and put a thorn fencing, I would say that there was some expenditure of skill and labour upon the land. It is not necessary that the expenditure of labour and skill should be in the direction of cultivation in the sense in which Braunde and Pathak, JJ., have expressed themselves in '*Benoy Ratan v. Commissioner of Income-tax*', U.P., C.P. and Berar (1947) 15 ITR 98 (All)(supra). The words 'agricultural purposes' mean something, more than mere agriculture and cannot be taken to be an equivalent of cultivation though agriculture implies something which is achieved with the aid of human agency. In '*Yuvarajah of Pithapuram v. Commissioner of Income-tax, Madras*' I.L.R (1946) Mad 745 (supra): Leach, C.J., quoted the dictionary meaning of the word 'agriculture' as the science and art of cultivating the soil including the allied pursuits of gathering crops and rearing livestock, tillage, husbandry, fanning in the widest sense. All these pursuits require human agency, and any expenditure of labour and skill in this direction would satisfy the meaning of the word 'agriculture.' This case was approved by their Lordships of the Privy Council.

44. I may give an example. If a person tills the soil and sows herbs upon it that would be cultivation, and even though he may sell the produce to a manufacturer of medicines the income would be regarded as income from agriculture. On the other hand, if the herbs grew naturally and are sold to the manufacturer, the agricultural purpose not being there it would be regarded as non-agricultural income. It is possible to imagine a third case where the thing growing grows spontaneously and the use to which it is put is for an agricultural purpose. In this case, though there is no direct cultivation there would be a use of the land for agricultural purposes.

45. We are not required to view the ultimate end to which the product would be put but to see the

immediate purpose and to find out whether it is agricultural or not. It is quite true that if the person merely sold something which is growing naturally upon his land he cannot be said to be using the land for an agricultural purpose, and the rent or revenue thus derived would not be exempt, but a similar result does not follow where the product is used not for raising merely a revenue but is devoted entirely for agricultural purposes. It has been shown by Bose, Ag. C.J., that the word 'agriculture' includes the notion of cattle-breeding and d AIR y-farming. In England also in several statutes pasturing of cattle is included in the notion of husbandry. I do not say that these statutes are binding in interpreting the Indian Act, but I do wish to emphasize that the conception that cattle-breeding and d AIR y-farming are a part of agriculture is not far-fetched

46. I was referred to the case reported in '*Producers Co-operative Distributing Society, Ltd., v. Commissioner of Taxation*', AIR 1948 PC 74(*supra*), where their Lordships of the Privy Council held in a case from Australia that butter made by factories from cream sold to them by farmers is not an agricultural product, and that a rural society selling such butter is not exempt from income-tax. In the case their Lordships made a distinction between the farming industry and the butter-making industry and held that they were independent. While butter that is the result of a process in a factory may not be an agricultural product, it cannot be gainsaid that butter produced by an agriculturist on his farm is certainly an agricultural product. It is pertinent to note that in this case their Lordships use the word 'cultivation' in connection with the production of cream and butter.

47. I feel therefore that in determining what is meant by agricultural purpose we are not to consider only word 'agricultural' and ignore the other word 'purposes.' The phrase has to be expounded as a whole. It is quite true that whether there be cultivation or no, some effort has to be made, but that effort may take different shapes.

48. If the notion of cattle-breeding is part and parcel of agriculture then the expenditure of skill and labour would be found not directly in relation to the land but indirectly in rearing of cattle upon it. The opinion of the learned Acting Chief Justice is therefore in consonance with the spirit underlying the decision of their Lordships of the Privy Council. In the case before their Lordships there was no evidence whatever of any cultivation or any expenditure of skill and labour which could be called agricultural purpose, and therefore it was held that the land was not being used for agricultural purposes. The matter is different here where by reason of the breeding of cattle and their pasturing, agriculture in its wide meaning is promoted. I need not traverse the ground which has already been covered by my Lord the Acting Chief Justice. I am of opinion that there is that expenditure of skill and labour upon the land in relation to the rearing of the cattle pastured upon it which would satisfy the test laid down by their Lordships of the Privy Council. I have jointed out above that the word 'agriculture' means some-thing more than cultivation, and on the facts of the case before their Lordships no question either of cultivation or of expenditure of skill and labour arose. I would therefore respectfully agree with Bose, Ag. C.J. and answer the reference as proposed by him.

By The Court, Bose, A.C.J. And Mudholkar, J.

49. We answer the first part of the question as follows :

The amount of Rs. 14,208 derived from the sale of timber is not, in this case, agricultural income

within the meaning of Section 2 (1), Income-tax Act, and is thus not exempt from taxation under section 4 (3) (viii). We answer the second part of the question as follows in accordance with the opinion of Hidayatullah, J. The amount of Rs. 1,275/- derived from the letting out of pasture meadows will be agricultural income to the extent that it is derived from agricultural animals pastured thereon and not as to the rest.

Reference answered accordingly.