PETITIONER:
V. VENUGOPALA VARMA RAJAH

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX, KERALA

DATE OF JUDGMENT:
24/09/1969

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
RAMASWAMI, V.
GROVER, A.N.

CITATION:
1970 AIR 2051 1970 SCR (2) 547
1970 SCC (2) 165
CITATOR INFO :
RF 1970 SC2055 (3)
E 1980 SC 71 (11,12,17)

ACT:
Capital or Income--Contract for 'clear felling' of trees i.e. cutting them so as to leave six inches of the stump to allow regeneration--Forest of spontaneous growth--Income from sale of trees so felled whether in the nature of revenue.

HEADNOTE:
In computing the income of the appellant's father for the assessment year 1959-60 the Income-tax Officer included Rs. 75,000 received under an agreement for cutting and removing trees from 500 acres of forest land in Madras State. The Income-tax Officer held that the income was taxable because the land was leased for clear felling by the father of the appellant. What the expression 'clear felling' meant was not investigated by the Income-tax Officer. The Appellate Assistant Commissioner confirmed the assessment order. But the Tribunal held that the receipt was of a capital nature and deleted it from the taxable income. In reference the High Court differed from the Tribunal. In appeal 'against the High Courts order this Court directed the Tribunal to submit to this Court a supplementary statement of case setting out the terms of the agreement between the father of the appellant relating to the rights conveyed to the lessees and especially about the import of the' term relating to 'clear felling. The Tribunal in its supplementary statement of case set out the relevant terms of the agreement and observed that the import of the expression 'clear felling' is that 'all trees except casurina are to be felled at a height not exceeding six inches from the ground, the barks being left intact on the stump and adhering to it all round the stump without being torn off or otherwise changed." It was not suggested that there were any casurina trees in the forest land let out to the lessees and it was common ground that the trees in the forest were of spontaneous growth.
HELD: The appeal must be dismissed.
the finding in the present case it was clear that the

trees were not removed with roots. The stumps of the trees were allowed to remain in the land so that the trees may regenerate. If a person sells merely leaves or fruit of the trees or even branches of the trees it would be1 difficult (subject to the special exemption under s. 4(3)(viii) of the Income-tax Act, 19'22) to hold that the realisation is not of the nature of income. It is true that the tree is a part of the land. But by selling a part of the trunk, the assessee does not necessarily realise a part of his capital. [553 B-C]

Commissioner of Income-tax, Madrs, v.T. Manavedan Tirumalpad, I.LR.. 54 Mad. 21, In re: Ram Prasad, I.L.R. 52 All. 419, Maharaja of Kapurthala v. Commissioner of Income-tax, C.P. & U.P. 13 I.T.R. 74, Raja Bahadur Kamkshya Narain Singh v. Commissioner of Income-tax, Bihar & Orissa, 14 I.T.R. 673, Fringford Estate Ltd., Calicut v. Commissioner of Income-tax, Madras, 20 I.T.R. 285, Commissioner of Income tax, Bombay South v.N.T. Patwardhan, 41 I.T.R. 313,State of Kerala v. Karimtharuvi Tea Estate Ltd. 51 I.T.R. 129 and Commissioner of Income-tax, Mysore v.H.B. Van Ingen, 53 I.T.R. 681, referred to.

548

[Question whether in case of sale of trees with the roots so that there is no possibility of regeneration the realisation may be said to be, in the nature of capital, left open.] [553 D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 810 of 1967.

Appeal by special leave from the judgment and order dated August 3, 1966 of the Kerala High Court in Income-tax Referred Case No. 49 of 1965.

K. Javaram, for the appellant.

S.T. Desai, R.N. Sachthey and B.D. Sharma for the respondent.

Sardar Bahadur Saharya. ,for the Intervener.

The Judgment of the Court was delivered by

Shah, J. In computing the income of the appellant's father to tax for the assessment year 1959-60 the Income-tax officer included Rs. 75,000 received under an agreement for cutting and removing trees from 500 acres of Mangayam Katchithode forest. The Appellate Assistant Commissioner after calling ,for a report on certain facts confirmed the order. But the Tribunal held that the receipt was of a capital nature and deleted it from the taxable income.

At the instance of the Commissioner of Income-tax, the Tribunal referred the following question to the High Court of Kerala:

> "Whether on the ,facts and in the circumstances of the case, the Income-tax Appellate Tribunal was correct in holding that Rs. 75,000/- being income from felling of trees from forests is not subject to income-tax ?"

The High Court answered the question in the negative.

We are of the view that the facts found by the Tribunal are not sufficient to enable us to record an answer to the question referred. The Income-tax officer held that the income was taxable because 500 acres of forest land was leased for "clear felling" by the father of the appellant and this fetched an income of Rs. 75,000/-. What the expression "clear falling" meant was not investigated by the Income-tax officer. The Appellate Assistant

Commissioner in dealing with the contention raised by the appellant that the receipt was of the nature of a Capital, observed:

"The claim is based on the reasoning that the clear felling of' forest trees amounts to sterilisation of a capital asset. In other words clear felling is said to involve total destruction of the
549
forest. It is admitted that the trees are of spontaneous growth and it has not been established that removal of trees has in any way affected the value of the property. As a matter of fact, _clear felling is resorted to make the land more productive and more valuable. At any rate the claim has not been substantiated beyond doubt and hence there is no scope for any relief."

The Tribunal relying upon the observation of the Income-tax officer "that the trees were not cut together with the roots but only 6" above the ground and that they were later on destroyed" held that there was "nothing to show that there was a diminution of capital assets". On the other hand, the Income-tax officer had given a clear finding that this was a case of "clear felling". After making 'an extensive quotation from the Judgment of the High Court of Bombay in Commissioner of Income-tax v.N. Patwardhan(1), the Tribunal stated that the observations applied to the facts in the case before them, and on that account they upheld the claim of the 'appellant.

The High Court observed that "it was agreed that the Mangayam Katchithode forest was within the ambit of the Madras Preservation of Private Forests Act, 1949, and the statutory rules on the subject and that the expression "clear feeling" is an expression with a definite and specific meaning as far as such forests are concerned". They then proceeded to quote r. 7 framed under the Madras Preservation of Private Forests Act, 1949, and after setting out conditions (b) & (c) observed that "the felling of the trees under the "clear felling" method will not permit a removal of the trees along with their roots. On the other hand, the clear indications were that the felling of the trees under the clear indications were that the felling of the trees under the regeneration and future growth of the trees concerned. In other words, what is contemplated by the clear felling method is not sterilisation of an asset but the removal of a growth ,above a particular height, leaving intact the roots and the stumps in such a manner as to ensure regeneration, future growth, further felling and subsequent income." On that view the Court held that the receipt of Rs. 75,000/- was a revenue receipt and not a capital receipt as held by the Appellate Tribunal.

The departmental authorities. the Tribunal and the High Court have expressed different views on the import of the expression "clear ,felling" and about the true effect of the agreement. The Income-tax officer taxed the amount of Rs. 75,000/- on the footing that the 500 acres of forest lands were leased for clear felling. The Appellate Assistant Commissioner held that the trees being of spontaneous growth and the falling of the trees not having

(1) [1961] 41 I.T.R. 313.

550

affected the value of the property as a result of the clearance, the lands became more productive and the receipt was a revenue income. The Tribunal held that the case being one of "clear felling" and the trees having been cut 6" above the ground and "that they were later on destroyed" it was a case of clear felling 'and the receipt was of

capital nature. The High Court was of the view that the "clear felling" of forest lands meant cutting trees and not removal of the roots so that there would be regeneration, future growth of the roots and the stumps and on that account the receipt was of revenue nature.

It appears that before the Income-tax Officer the agreement dated Sept. 11, 1957 was not produced. After the Appellate Assistant Commissioner remanded the case to the Income-tax Officer the latter submitted the "remand report" and at that time the agreement was produce. The Tribunal in support of its conclusion referred to the preamble of the document and the conditions thereof. The learned Judges of the High Court observed that they did not place any reliance on the extracts in the lease given in paragraph 2 of the statement of the case for coming to the conclusion they had reached. Why the High Court thought it fit to discard the recitals, is not clear from the record.

The facts found being not clear, it is difficult to record any conclusion whether the receipt was of a revenue nature or of a capital nature. We therefore call upon the Tribunal to submit to this Court a supplementary statement setting out the terms of the agreement between the father of the appellant relating to the rights conveyed to, the lessees in the forest lands and especially about the import of the term relating to "clear felling". The Tribunal will submit the supplementary statement of the case only on the basis of the evidence on the record and will not take any additional evidence. The report to be submitted within three months from the date on which the papers reach the Tribunal.

Shah, J. By our order dated February 13, 1969, we called for a supplementary statement of the case setting out the terms of the agreement conveying the rights in the forest trees to the lessees, and the true import of the expression "clear felling". The Income-tax Appellate Tribunal has submitted a supplementary statement o,f the case. The Tribunal has set out the relevant terms of the agreement and has also observed that the import of the expression "clear felling" is that "all trees except casuring are to be felled at 'a height not exceeding six inches from the ground, the barks being left intact on the stump and adhering to it all round the stump without being torn off or otherwise changed".

There is no suggestion that there were any casurina trees in the forest lands let out to the lessees. It is common ground also that the trees in the forest were of spontaneous growth. The
551
Tribunal has found that by the use of the expression "clear felling" it was stipulated that the trees are to be cut so that 6" of the trunk with the barks intact and adhering to it all round the stump is left. This is with a view to permit regeneration of the trees.

The question whether receipts from sale of trees by an owner of the land who is not carrying on 'business in timber may be regarded as income liable to tax has given rise to. some difference of opinion in the High Courts. In Commissioner of Income-tax, Madras v.T. Manavedan Tirumalpad,(1) a Full Bench of the Madras High Court held that the receipts ,from sale of timber trees by the owner of unassessed forest lands in Malabar were revenue and not capital. The Court observed that if income from the sale of coal from a coal-mine or stone won from a quarry or from the sale of paddy grown on land be regarded as income, but for the special exemption granted under the Income-tax Act,

there is no logical reason for holding that income from sale of trees is not income liable to tax.

In re Ram Prasad(2) a Division Bench of the Allahabad High Court held that receipt from sale of timber is income liable to be taxed and is not a capital receipt. The case arose under the Government Trading Taxation Act 3 of 1926.

In Maharaja of Kapurthala v. Commissioner of Income-tax, C.P. and U.P.(3) the Oudh Chief Court held that net receipt from the sale of forest trees is income liable to income-tax, eventhough the ,forest may be gradually exhausted by fellings. The Court further observed that income from the sale of forest trees of spontaneous growth growing on land which is assessed to land revenue is not agricultural income within the meaning of s. 2(1 ) (a) of the Income-tax Act and is not exempt from income-tax under s. 4(3)(viii) of the Act.

In Raja Bahadur Kamakshya Narain Singh v. Commissioner of Income-tax, Bihar and Orissa(4) a similar view was expressed by the Patna High Court.

In Fringford Estates Ltd., Calicut v. Commissioner of Income-tax, Madras(b) it was held that profits realised from the sale of timber were trade profits and were liable to income-tax. In that case the assessee Company formed with the object of purchasing, clearing and improving of estates and the cultivation and sale of tea, coffee etc. in such estates, purchased a tract of land part of which had already been cultivated with tea and the rest was a jungle capable of being cleared and made fit for plantation. The

(1) I.L.R. 54 Mad.21.
(2) I.L.R.52 All. 419.
(3) 13 I.T.R. 74.
(4). 14 I.T.R. 673.
(5) 20 I.T.R. 385.

552

Company entered into an agreement with a timber merchant for clearing a part of the forest of all trees and for sale of the trees m the market. This was held to be a part of the business activity of the Company.

The cases on the other side of the line are to be found in Commissioner of Income-tax, Bombay South v. N.T. Patwardhan(1) in which a Division Bench of the Bombay High Court held that when old trees which stood on the land of the assessee were disposed of with their roots "once and for all", the receipts were capital. The Court observed (p. 318):

> "The asset of the man was the land with the wild growth of trees on it. If the land with the trees had been sold, there could have been no doubt that the sale was a realisation of capital and it would not have been possible to argue that the transaction in so far as it involved a sale of the trees was a sale producing income and the remaining part of the transaction was a capital sale. In the present case the land is retained by the assessee but a part of the asset is disposed of in its entirety by selling the trees with roots once and for all."

In State of Kerala v. Karimtharuvi Tea Estate Ltd.(2) the Kerala High Court held in a case arising under the Kerala Agricultural Income-tax Act, 1950, that the amount realised by sale as firewood of old and useless gravelia trees grown and maintained in tea gardens for the purpose of affording shade to tea plants is capital receipt and not revenue receipt. The Court observed:

> "The gravelia trees were grown and maintained for the sole purpose of providing shade to the tea bushes in the tea estates of the assessee. That such shade is essential for the proper cultivation of tea cannot be disputed and the trees should hence be considered to be as much a part of the capital assets of the company as the tea bushes themselves or the equipment in its ,factories. Some of the gravelia trees became old and useless with the efflux of time and they naturally had to be cut down and sold. The sale proceeds of such trees cannot possibly amount to a revenue receipt."

In Commissioner of Income-tax, Mysore V.H.B. Van Ingen(3) the Mysore High Court held that the assessee who had purchased a coffee estate of which a part had been planted with coffee plants and the rest was jungle, and had cleared the jungle

(1)41 I.T.R. 313.
(2) 5 I.T.P 129.
(3) 53 I.T.R 681

553

for the purpose of planting coffee and had sold the trees felled, price realised by the sale of the trees was a capital and not a revenue receipt, because the trees had grown spontaneously, and the assessee had purchased the estate including the trees.

It is not necessary for the purpose of this case to enter upon a detailed analysis of the principle underlying the decisions and to resolve the conflict. On the finding in the present case it is clear that the trees were not removed with roots. The stumps of the trees were allowed to remain in the land so that the trees may regenerate. If a person sells merely leaves or fruit of the trees or even branches of the trees it would be difficult (subject to the special exemption under s. 4(3)(viii) of the Income-tax Act, 1922) to hold that the realization is not of the nature of income. Where the trunks are cut so that the stumps remain intact and capable of regeneration, receipts from sale of the trunks would be in the nature of income. It is true that the tree is a part of the land. But by selling a part of the trunk, the assessee does not necessarily realise a part of his capital. We need not consider whether in case there is a sale of the trees with the roots so that there is no possibility of regeneration, it may be said that the realisation is in the nature of capital. That question does not arise in the present case.

The appeal fails and is dismissed with costs.

G.C.

Appeal dismissed.

554