Pratap Singh vs Commr. Of Income-Tax on 2 May, 1952

Equivalent citations: AIR1952ALL845, [1952]22ITR1(ALL), AIR 1952 ALLAHABAD 845

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Bench: V. Bhargava

JUDGMENT

Y. Bhargava, J.

1. In this reference under Section 66 (l), Income-tax Act, the Income-tax Appellate Tribunal has referred the following questions to us for answer :

> Q. 1--Whether income from the sale of forest trees of spontaneous growth, growing on land which 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 ?
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> Q. 2--Whether the assesee's net receipts from the sale of forest trees were the assessse's income liable to income-tax and not merely capital converted into cash?"

2. As regards the second question, it was the assessee's own case that the forest was being worked for, at least, some time on scientific lines in accordance with a scheme of making profit, there was a regular working plan and the assessee was deriving regular income from the forest and spending money to increase the profit. It was in view of these admissions that Shri Pathak had to concede that the answer to this question must be in the affirmative, i.e., that the net receipts on the sale of forest trees were the assessee's income liable to income-tax and were not merely capital converted into cash.

3. Shri Pathak has, however, urged that this income must be treated as agricultural income within the meaning of Section 2 (1) (a), Income-tax Act and as such it is exempt from income-tax. As the question has been framed, the answer can only be in favour of the department.

4. The assessee had prayed that the question be amended as follows :

> "Whether the income from the sale of forest trees originally of spontaneous growth for the regeneration and preservation of which human labour and skill were used, growing on land, which 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?"

When this application came up before the Tribunal, the Tribunal held as follows :

> "As regards the proposed alteration, we think that it is not necessary as the matter has been fully brought out and discussed in the Statement of the Case and the question formulated by the Tribunal is, of course, subject to the facts stated, and findings arrived at. by the tribunal. The suggestion made by the applicant will, however, be included in the paper-book,"

This note appended to the Statement of the Case shows that the Tribunal did not reject the contention of the applicant that, though the trees were originally of spontaneous growth, the applicant had applied human labour and skill for the regeneration and preservation of the trees growing on the land. The Tribunal, however, following the decision in Ghandrasekhara Bharati Swamigal v. Duraisivami Naidu, 54 Mad. 900, held that since human labour and skill had been put in merely for the regeneration and preservation of the forest timber, the process did not amount to agricultural operation as it did not involve the cultivation of the soil so that the income had not been derived by "agriculture."

5. Section 4 (3), Income-tax Act is as follows :

> "Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them. ..... (viii) Agricultural income." .
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> Section 2 (1), Income-tax Act defines 'agricultural income' as meaning :
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> "(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 Grown) as such ;
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> (b) any income derived from such land by
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> (i) agriculture, or
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> (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
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> (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-clauses (ii) and (iii) of Clause (b) is carried on ;

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of the rent-in-kind by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building."

6. It is not disputed that the land in this case is assessed to land revenue. The only question for decision is whether, in this case, the income can be said to be derived from land used for 'agricultural purposes' by 'agriculture' within the meaning of these words in Section 2 (1) (b) (i), Income-tax Act. It has not been and could not be contended that this income can be treated as agricultural income within any other clause of Section 2 (1) of the Act. In the Statement of the Case, the Tribunal has mentioned that it was conceded before the Bench that there was no evidence on the record of the assessment proceedings that there had ever been cultivation of the soil on which the trees stood. The form in which the question was formulated also implied that the growth of the trees on the land was natural and spontaneous and without the intervention of human agency. If, therefore, human labour and skill were expended, they were not directed towards planting or growing of the trees. The skill and labour were directed towards regeneration and preservation of the forest trees. We are unable to hold that the use of human labour and skill merely for such purpose constitutes 'agriculture' or that the land was being used for agricultural purposes.

7. In the Statement of the Case, the Tribunal have not indicated the exact manner in which skill and labour were utilised for regeneration and preservation of the trees and have not exactly explained what were the processes that were carried out by the assessee. In the appellate order, the Tribunal had, however, considered the contention on behalf of the assessee that watering, pruning and protecting of trees amounted to agricultural operations. When considering this argument of the assessee, the Tribunal did not give any finding whether the assessee had or had not been watering, pruning and protecting the trees, nor does the Statement of the Case indicate that any finding was arrived at on this point. We cannot, therefore, assume that the processes carried on by the assessee included watering, pruning and protecting of the trees.

8. The Statement of the Case forwarded to us by the Tribunal included a copy of the order of the Appellate Assistant Commissioner of Income-tax who has mentioned that Shri S. C. Banerji, general manager of the assessee, who has present before him, said that the trees, which had been sold, were standing for more than 30 years and that, none of them was planted in recent years and further that no watering was done. Normally, we are not entitled to take into consideration facts which have not been found by the Tribunal and included in the Statement of the Case and our decision has to be confined to the facts found by the Tribunal in the Statement of Case: vide Commissioner of Income-tax, West Bengal v. Calcutta Agency, Ltd., A. I. R. 1951 S. C. 108. But, in this case, it may be urged that since the Tribunal itself made the order of the Appellate Assistant Commissioner of Income-tax a part of the paper-book, we may look at that order also. However, even if that order is taken into consideration, it does not show that any actual watering of the trees was done by the

assessee and it would appear that, at best, all that was done in expending skill and labour for the regeneration and preservation of the trees was pruning and weeding besides protecting of the trees. This process by itself is not enough to constitute 'agriculture' or a regular operation in 'forestry.' Words 'agriculture and agricultural purposes' with reference to land clearly imply that some operations must be carried on on the soil of the land itself; human skill and labour should be used for the purpose of ploughing the soil, manuring it, planting the trees or some similar process. Mere weeding, care and preservation of the trees which grow spontaneously are not operations on the soil of the land which are necessary to constitute the process a process of agriculture. In Maharaja of Kapurthala v. Commissioner of Income-tax, C. P. & U. P., 1945-13 I. T. R. 74 (oudh), a Bench of the Chief Court of Oudh held :

> "But we do not feel any doubt that the expression 'land used for agricultural purposes' in the Income-tax Act does not extend to forests of spontaneous growth, where nothing is done to prepare the soil for trees to be planted therein, and where the growth of the trees is not fostered by tillage."

9. In Benoy Ratan Banerji v. Commissioner of Income-tax, U. P., C. P. and Berar, 1947-15 I. T. R. 98 (ALL.) a Bench of this Court held :

> "We are entirely satisfied that, being trees of spontaneous growth to the production of which the assessee has made no contribution by way of cultivation, no question can arise either of the laud on which they grew being 'used for agricultural purposes' or of the trees themselves and the income they produced being the result of 'agriculture'."

10. In Mustafa Ali Khan v. Commissioner of Income-tax, U. P., Ajmer and Ajmer-Merwara, 1948-16 I.T.R. 330 (P.c.), their Lordships of the Privy Council had to consider the question whether income derived from the sale of trees described as 'forest trees growing on land naturally,' when the assessee was not carrying on any regular operations in forestry and the jungle from which trees had been cut and sold was a spontaneous growth, was agricultural income or not. Their Lordships expressed their concurrence with the views of the Chief Court of Oudh and the High Court of Allahabad in the cases cited above and then, while expressing no opinion on the question whether land can be said to be used for agricultural purposes within Section 2 (1), Income-tax Act, if it has been planted with trees and cultivated in the regular course of arboriculture, their Lordships proceeded to define the scope of the word 'agriculture' in the following words :

> "It is sufficient for the purpose of the present appeal to say :
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> (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."

11. It is quite clear that their Lordships were of the view that, for income to be agricultural income, the essential element, that must exist, is that there should be "some measure of cultivation of the land" or "some expenditure of skill and labour upon it." The language used by their Lordships of the Privy Council shows that the expenditure of skill and labour must be upon the land and not merely on the trees which are already growing on it as a result of spontaneous growth. In the present case, mere regeneration and preservation of trees by human agency cannot be said to be expenditure of skill and labour upon the land itself. Clearly, therefore, it is not possible to hold that, in this case, the land was being used for agricultural purposes or that the process of agriculture was being carried on. Planned and scientific exploitation of a forest of spontaneous growth, though it might yield regular income, would not be income from 'agriculture' as no operations are carried out and no human skill or labour is expended in such a case on the land itself.

12. Learned counsel for the assessee has relied on a decision of the Calcutta High Court in Commissioner of Agricultural Income-tax, West Bengal v. Jagdish Chandra, 1949-17 I.T.R. 426 (cal.) where the Bench expressed the view that :

> "It is clear that in this cage neither any tilling of the soil nor sowing of seeds or grafts nor watering is required. Had any one or mare of these operations been proved to have been necessary this particular forest would have been classified as requiring sufficient and pronounced utilisation of human agency and also otherwise be included within the term 'agriculture'."

Learned counsel relying on this view urged that since, in this present case, watering had been done, it must be held that the labour and skill of human agency had been expended on 'agriculture.' On our view expressed above that there is no finding that watering had been done by the assessee in this case, no assistance can be derived from that case.

13. Learned counsel also cited the case of Commissioner of Income-tax, Madras v. K. E. Sundara Mudaliar, 1950-18 I. T. B. 259 (Mad.) in support of his contention that in similar circumstances, it was held by the Madras High Court that the work carried out amounted to 'agriculture.' The word 'agriculture' was held to apply, to the cultivation of the soil for food products or any other useful or valuable growth of the field or garden and was held to be wide enough to cover the rearing, feeding and management of livestock which live on the land and draw their; sustenance from the soil. The case before that Court, however, was one where it was found that the assessee was carrying on the process of planting, rearing, watering, fencing and protection of the trees and the gathering of their fruits. It was, also held that there was some cultivation or prodding of the soil at the inception when the planting, was done and subsequently, also at intervals. It was in these circumstances that the Madras High Court held that the income was derived from 'agriculture'. The case before as is quite different. Here there is no finding that they carried on planting, watering or fencing. Mere rearing and protection of trees was not held in that case to be sufficient to constitute the process into an agricultural operation; Viswanatha Sastri J., at the conclusion expressed his opinion as follows :

> "I would hold that irrespective of the nature of the produce or product of the land, whatever is grown on land aided by human labour and effort, whatever does not grow

> wild or spontaneously on the soil without human labour or effort, would be an agricultural product, and the process of producing it would be 'agriculture' within the meaning of that expression in Section 2, Income-tax Act."

Exphasis was laid on two aspects. The crop should be grown on land aided by human labour and effort and further it should not grow wild or spontaneously on the soil without human labour or effort. In the case before us, the trees have been held to be of spontaneous growth and it is not shown that human labour or effort was utilised in aiding the growth of the trees.

14. Finally, the learned counsel for the assessee also relied on a decision of the Assam High Court in Jyotirindra Narayan v. State of Assam. 1951-19 I.T.R. 379 (Assam). That case is of no assistance because, in that case, the decision proceeded on the finding that the forest trees, as they existed at the time when the question of assessment of the income from those trees arose, were the result of operations in forestry that were undertaken for their growth and regeneration and were not the original trees of spontaneous growth. It was also found to be an admitted fact that the forest trees had to be protected and fostered in growth by the application of human labour and skill and that regular operations were being undertaken for their growth, preservation and regeneration. Fertilisation of the ground was also carried on. In these circumstances, there were operations on the soil of the land itself by human skill and labour which factors have not been found to be present in the case before us. In this case, all that has been found by the Tribunal is that there was expenditure of human skill and labour for regeneration and preservation of the trees without defining what processes were carried on for this purpose. The only reference to the actual process carried on is found in the order of the Appellate Assistant Commissioner of Income-tax which, if referred to, would show that all that was done was pruning, weeding and protection of the trees. There was no process carried on on the soil itself or directed towards the growth of the trees. Consequently in this case, it has to be held that the income derived from the forest was not income from land used for agricultural purposes or by agriculture.

15. Therefore, our answer to the first question is in the negative and to the second in the affirmative. The department is entitled to its costs from the assessee which we assess at Rs. 400.