Supreme Court of India
A. K. T. K. M. Vishnudatta ... vs Commissioner Of Agricultural ... on 5 May, 1970
Equivalent citations: 1970 AIR 2055, 1971 SCR (1) 535
Author: A Grover
Bench: Grover, A.N.

PETITIONER:
A. K. T. K. M. VISHNUDATTA ANDHARJANAM REPRESENTEDBY. D.

Vs.

RESPONDENT:
COMMISSIONER OF AGRICULTURAL INCOME TAX,TRIVANDRUM

DATE OF JUDGMENT:
05/05/1970

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SHAH, J.C.
HEGDE, K.S.

CITATION:
1970 AIR 2055 1971 SCR (1) 535
1970 SCC (2) 165
CITATOR INFO :
E 1980 SC 71 (12,14,17)

ACT:
Income or capital-Teak trees removed by their roots and sold-Sale receipts whether income or capital.

HEADNOTE:
in the course of the appellant's assessment under the Kerala Agricultural Income-tax Act, 1950, for the years 1963-64 and 1964-65, the Agricultural Income-tax Officer included in the appellant's income an amount realised from the sale-of teak trees which had been planted in the year 1946-47 and were removed from the appellant's land and sold during the assessment years. The Appellate Assistant Commissioner as well as the Tribunal confirmed the assessment. On a reference under s. 60(1) of the question whether the receipt from the sale of teak trees was capital in nature and exempted from agricultural income-tax, the High Court found against the appellant.
On appeal to this Court
HELD:Allowing the appeal,
The form of the question referred to the High Court itself

showed that the trees were cut and completely removed from the land together with their roots for the purpose of planting rubber. There wag no question of any further regeneration or growth of the trees which had been cut and removed. In other words there was no possibility of recurring income from these trees.
The sale of such trees thus affects capital structure and cannot give rise to a revenue receipt.
V. Venugopala Verma Rajah v. Commissioner of Income-tax, Kerala C.A. 1810 of 1967 decided on 24-9-69; The Commissioner of Income-tax, Bengal v. Messrs Shah Wallace and Company, 6 I.T.C. 178; Commissioner of Income-tax, Bombay South v. N. T. Patwardhan 41 I.T.R. 313; referred to.
The profit motive is not decisive of the question whether a particular receipt is capital or income. An accretion to capital does not become taxable income merely because an asset is acquired in the hope that it may be sold at a profit [538, B-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : CiVil Appeals Nos. 2327 and 2328 of 1968.

Appeals by special leave from the judgment and order dated August 21, 1968 of the Kerala High Court in Income-tax Referred Cases Nos. 28 and 29 of 1967.

53 6 K. P. Radhakrishna Menon, for the appellant (in both the appeals).

M. C. Chagla and M. R. K. Pillai for the respondent (in both the appeals).

The Judgment of the Court was delivered by Grover, J. These appeals by special leave from a judgment of the Kerala High Court arise out of the assessment of agricultural income of, the assessee made under the Kerala Agricultural Income tax Act, 1950, hereinafter called the "Act", in respect of the assessment years 1963-64 and 1964-

65. For the assessment year 1963-64 the assessee filed a return showing a net agricultural income of Rs. 12,558-76. When the matter came up for hearing before the Agricultural Income tax Officer another statement showing an amount of Rs. 43,250-00 as income from teak trees was filed. The Agricultural Income tax Officer disallowed certain expenses and assessed the income for the year 1963-64 at Rs. 62,021-

00. For the assessment year 1964-65 a return was filed declaring a net agricultural income of Rs. 25,733-63. No income was shown from the sale of teak trees. The Agricultural Income tax Officer found that teak trees had been sold for a lump sum of Rs. 76,500-00 out of which Rs. 43,250-00 had been received in the previous year 1963-64 and he included the said amount in that year's income. The balance amount of Rs. 33,250-00 was received in the previous year corresponding to the

assessment year 1964-65. In determining the assessable income for that year this amount was added to the income which had been returned and after disallowing certain amount which had been claimed by way of expenses the net income was determined at Rs. 61,041-00. The assessee filed appeals before the Additional Appellate Assistant Commissioner who confirmed the assessment and dismissed the appeals. Further appeals were taken to the Agricultural Income tax Tribunal. The Tribunal held that the amount in dispute was agricultural income and not capital. The expenses which were claimed were also disallowed. On an application made under S. 60(1) of the Act the following two questions were referred to the High Court "1. Whether on the facts and in the circumstances of the case, the receipt from the sale of teak trees for the purpose of planting the area with rubber is capital in nature and exempt from Agrl. Income-tax Act.

2. If the answer to the above question is in the negative, whether the expenses incurred in the prior years for the purpose of obtaining the said agrl. income is allowable as a deduction from the sale proceeds of the trees."

The High Court did not agree with the contention of the assesses that the amounts received by sale of the teak trees constituted capital and were not agricultural income. Certain amounts were, however, allowed as deductions by way of expenses for the assessment year 1963-64. The principal point that has to be determined is whether the sale proceeds of the teak trees constituted capital or revenue. It appears to have been common ground before the High Court that the assessee planted the teak trees sometime in the year 1946-47. The form of the question itself showed 'that the trees were cut and completely removed from the land together with their roots for the purpose planting rubber. There was no question of any further regeneration or growth of the trees which had been cut and removed. In other words there was no possibility of recurring income from these trees. In V. Venugopala Verma Rajah v. Commissioner of Income tax Kerala(1) the question before this Court was whether trees which had not been removed with the roots and the stumps of which had been allowed to remain in the land was in the nature of income. This is what was observed in that case "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 present question was apparently left open and was not decided as the point which arose there did not relate to sale of trees of which the roots had also been taken out for the purpose of planting some other kind of trees e.g., rubber as in the present case.

It seems to us that the well known test laid down by the Privy Council in The Commissioner of Income tax, Bengal v. Messrs. Show, Wallace and Company (2) to find out whether a (1) C.A. 810 of 1967 decided on 24-9-69 (2) 6 I.T.C.

178. ,particular receipt is income is not satisfied in the facts and circumstances of the present case. According to that test income con-notes a periodical monetary return coming in with some sort of

regularity or expected regularity from definite sources. The source is not necessarily one which is expected to be continuously productive but it must be one whose object is the production of a definite return excluding anything in the nature of a mere windfall. Once the teak trees were removed together with their roots and there was no prospect of regeneration or of any production of a return therefrom it could well be said that the source ceased to be one -which could produce any income. The Bombay High Court in Commissioner of Income-tax, Bombay South v. V. T. Patwardhan(1) said that from the point of view of a person engaging himself in the business of sale of trees the capital structure would be not only the land on which the trees stood but also the roots ,of the trees from which the wood yielded income. If the trees 'were sold off with the roots the capital structure would be affected. The High Court in the judgment under appeal was particularly impressed with the profit motive of the assessee in, planting teak trees although that, was done several years ago. But it was overlooked that profit motive is not decisive of the question whether a particular receipt is capital or income, An accretion to capita does not become taxable income merely because an asset is acquired in 'the hope that it may be sold at a profit. It must also be remembered that trees so long as they are uncut form a part of the land. If they are cut with roots once and for all a part of the assets is disposed of. The sale proceeds on account of their disposal cannot constitute revenue because by removing the roots the source ,from which fresh growth of trees can take place is also removed. The sale of such trees thus affects capital structure and cannot give rise to a revenue receipt.

For the reasons given above the answer to the first question will be in the affirmative and in favour of the assessee. It is unnecessary to return any answer to the second question. The appeals are accordingly allowed and the judgment of the High 'Court is set aside with costs. One hearing fee.

R.K.P.S. Appeals allowed.

(1) 41 I.T. R. 313.

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