Supreme Court of India
Commissioner Of Income-Tax vs Jyotikana Chowdhurani And Ors. on 23 May, 1957
Equivalent citations: AIR 1958 SC 19, 1957 32 ITR 705 SC, (1958) IMLJ 76 SC
Author: Bhagwati
Bench: B P Kapur, V B Eradi
JUDGMENT Bhagwati, J.

1. These six appeals with certificates of fitness under section 66A(2) of the Indian Income-tax Act (XI of 1922) are directed against a common judgment and order passed by the Full Bench of the High Court of Judicature in Assam delivered on a consolidated reference by the Income-tax Appellate Tribunal under section 66(1) of the Act whereby Sarjoo Prasad, C.J., and Ram Labhaya, J., answered the referred question in the affirmative and Deka, J., answered it in the negative.

2. The referred question wa :

"Whether on the facts and in the circumstances of this case the receipts from the sale of sal trees can be said to be agricultural income under section 2(1) and exempt from taxation under section 4(3)(viii) of the Income-tax Ac ?"

3. These appeals were consolidated and the High Court ordered that a consolidated amount of security of Rs. 4,000 together with one set of printing costs be deposited by the appellant, the Commissioner of Income-tax, Assam.

4. The appellant filed one statement of case but the respondents in the six appeals filed separate statements of case each one of them.

5. Smt. Jyotikana Chowdhurani, the respondent in Civil Appeal No. 51 of 1956, is the widow and legal representative of the late Jyotsna Nath Choudhury who was a co-sharer and proprietor of the Mechpara Estate situate in the District of Goalpara in the State of Assam. The said estate is assessed to land revenue payable to the State of Assam and is also subject to local rates assessed and collected by the officers of the Assam Government. The said estate has vast areas of forest tracts, considerable portions of which are covered mainly by sal trees. The trees in the forests are of spontaneous growth and there was no planting or sowing or employment of any human agency for the purpose of tilling the soil.

6. The late Rai Sourindra Narayan Sinha Chowdhury father of Shri Jyotirindra Narayan Sinha Choudhury was a co-sharer of "Parbat Joar Estate", and had been assessed by the Income-tax Officer in the year 1923, on receipts from the sale of sal trees from his forests as income within the meaning of the Indian Income-tax Act. The Assistant Commissioner of Income-tax on appeal held by his order dated April 28, 1923, that receipts from forests were agricultural income and the Income-tax authorities accepted the said decision and ceased to assess such receipts for a good number of years.

7. On December 17, 1946, the said Jyotsna Nath Chowdhury was assessed for the year 1946-47 to income on his receipts from the sale of sal trees from his forests by the Income-tax Officer, Gauhati. An appeal filed by him against the said order of assessment failed and so did a further appeal filed by him to the Income-tax Appellate Tribunal, Calcutta. He thereupon asked for a reference by the Income-tax Appellate Tribunal of certain questions of law arising out of its order under section 66(1) of the Indian Income-tax Act. The Tribunal drew up a common statement of case in regard to the assessments of the said Jyotsna Nath Chowdhury as also the other respondents in the appeals before us and referred the question set out above to the High Court for its opinion. The said reference was heard by a Special Bench of the Assam High Court with the result indicated above.

8. Birendra Narayana Chowdhury, the respondent in C.A. No. 58 of 1956, was a co-sharer proprietor of the same estate. He also was assessed on December 17, 1946, to income-tax on his receipts from the sale of sal trees from his forests for the year 1946-47 by the Income-tax Officer, Gauhati. The appeals filed by him before the Appellate Assistant Commissioner of Income-tax, Calcutta "B" Range, and the Income-tax Appellate Tribunal were also dismissed. The latter however referred the same question to the High Court under section 66(1) of the Indian Income-tax Act, at his instance.

9. Shrimati Sulochana Chowdhury, the respondent in Civil Appeal No. 59 of 1956, is the legal representative of the late Jagadindra Narayan Chowdhury who was a co-sharer proprietor of the Parbat-Joar and Mechpara Estates within the district of Goalpara in Assam. On March 24, 1947, the said Jagadindra Narayan Chowdhury was assessed to income-tax on his receipts from the sale of sal trees from his forests for the year 1946-47 by the Income-tax Officer, Gauhati. He preferred an appeal before the Appellate Assistant Commissioner of Income-tax, Calcutta "B" Range, but died during the pendency of the said appeal and was succeeded by his mother - the respondent. The Appellate Income-tax Commissioner, Calcutta "B" Range, by his order dated March 15, 1948, reduced the assessment. The respondent preferred an appeal against the said order of the Appellate Tribunal which dismissed the appeal. The same question was referred by the Income-tax Appellate Tribunal to the High Court for its opinion under section 66(1) of the Indian Income-tax Act at the instance of the respondent.

10. Kamal Krishna Chowdhury, the respondent in Civil Appeal No. 60 of 1955, was a co-sharer proprietor of the Mechpara Estate within the district of Goalpara in Assam and he was also assessed to income-tax from the sale of sal trees from his forests for the year 1946-47 by an order of the Income-tax Officer, Gauhati, dated 17th December, 1946. He also filed unsuccessful appeals before the Appellate Assistant Commissioner of Income-tax, Calcutta "B" Rangae, and to the Income-tax Appeallate Tribunal. The Income-tax Appellate Tribunal at his instance referred the very same question to the High Court for its opinion under section 66(1) of the Indian Income-tax Act.

11. Sourindra Narayan Chowdhury, the respondent in Civil Appeal No. 61 of 1956, a co-sharer proprietor of the Parbatjoar and Mechpara Estates within the district of Goalpara in Assam was also assessed to income- tax for the receipts from the sale of sal trees from his forests for the year 1946-47 by the Income-tax Officer, Gauhati, on 29th July, 1947. He was similarly assessed by the same Officer for the receipts from the sale of sal trees from his forests for the year 1946-47 by the order of the Income-tax Officer, Gauhati, dated 17th December, 1947, and was also assessed to

income-tax on similar recipts for the year 1948-49 by the same on 30th November, 1948. He took appeals against these orders of the Income-tax Officer, Gauhati, to the Appellate Assistant Commissioner of Income-tax, Calcutta "B" Range, and thereafter to the Income-tax Appellate Tribunal, Calcutta, all of which were unsuccessful. The very same question was referred by the Income-tax Appellate Tribunal, Calcutta, under section 66(1) of the Indian Income-tax Act for opinion to the High Court at his instance.

(1) Smt. Sindhurani Chaudhurani, (2) Soumaya Narayan Sinha Choudhury, (3) Anal Narayan Chowdhury, the respondents in Civil Appeal No. 62 of 1956, are the widow and the minor sons and legal representatives of the late Jyotirindra Narayan Sinha Choudhury who was a co-sharer proprietor of the Parbatjoar and Mechpara Estates within the district of Goalpara in Assam. On 17th December, 1946, 17th December, 1947, and 22nd November, 1948, he was assessed by the Income-tax Officer, Gauhati, to income-tax on his receipts from the sale of sal trees from his forests for the years 1946-47, 1947-48 and 1948-49, respectively. He preferred appeals to the Appellate Assistant Commissioner of Income-tax, Calcutta "B" Range, and to the Income-tax Appellate Tribunal, Calcutta, without success and the Income-tax Appellate Tribunal referred the very question for opinion to the High Court under section 66(1) of the Indian Income-tax Act, at his instance.

12. All these references were heard together by a Special Bench of the High Court and three separate judgments were delivered by the High Court, Sarjoo Prasad, C.J., and Ram Labhaya, J., being of the same opinion, Deka, J., dissenting.

13. The facts appearing from the consolidated statement of case submitted by the Income-tax Appellate Tribunal, Calcutta, to the High Court were thes :

"It was admitted that the trees in the forest were of spontaneous growth (which is now stated by the representatives of the assessee that it meant of spontaneous germination), there was no planting or sowing nor were any human agency employed for the purpose of tilling the soil. From all that was done to the trees it was clear that the trees sold were those standing for a considerable number of years during which the soil had remained untouched. In the production of the income the applicants made no contribution by way of cultivation.

The applicants' case, however, was that there had been employment of human skill and labour with respect to the forests. Apart from the fact of the maintenance of a forest establishment, it was claimed that human skill and labour were employed for the maintenance, preservation, nursing, improving and rearing of the forests, so that the quality and general condition of the forest might be improved. It is claimed by the applicants in their petition which was filed before the Tribunal on 22nd June, 1951, in reply to the draft statement of case that the following activities with reference to the forests were taken recourse t :

(a) reservation of blocks of forest commonly known as Jhars and their operation in these blocks by rotation (cyclic order);

(b) marking of trees fit for felling;

(c) creeper and climber cutting;

(d) thinning and removal of diseased and unsound trees;

(e) clearing of jungles and undergrowth;

(f) allowing grazing from Kartik to Chaitra;

(g) burning of undergrowths in March/April (which clears the jungles and fertilises the soil);

(h) protection from fire - maintenance of fire lines;

(i) closure of all forests to men and cattle during rainy season Baisakh to Aswin; and

(j) preservation of mother trees.

In order to establish these facts an affidavit was filed before the Tribunal at the time of hearing of the appeal. But the actual costs with reference to each activity could not be found from the books of the assessee.....It is not disputed that no sum was contributed towards cultivation."

14. Even though Sarjoo Prasad, C.J., and Ram Labhaya, J., proceeded on the basis that these facts were proved, Deka, J., struck a dissenting note and observed that there was no evidence as to the claim made by the respondents and that the statements made on affidavit could not be accepted as there was no means to test them. We shall however proceed on the basis that these facts were proved by the assessees and determine whether the operations which the assessees claim to have performed in these forests were agricultural operations such as to bring the income derived from these forests within the definition of agricultural income.

15. It may be noted that on the question of the employment of human skill and labour, the appellants' representative stated before the Tribunal that with regard to the Mechpara Estate, the expenses on forests establishment (including temporary hands) were estimated at Rs. 15,000 a year, the gross receipts being about Rs. 1,70,000. With regard to Parbatjoar Estate, whose gross receipts come to Rs. 3,32,414, the appellants' representative stated that a total sum of Rs. 14,057 had been spent on the following head :

8 Forest Officers and 18 Barkandajas	Rs.	5,219
32 Forest Guards	Rs.	4,838
Proportionate salary of the Head Officers	Rs.	4,000

Total	Rs.	14,057

16. On these facts the majority of the Judges held that even though there was no tilling of the land or planting of seeds or saplings and the trees were of spontaneous germination, the operations carried on by the assessees were conducive to the growth and development of the trees and in essence involved the expenditure of human skill and labour on the land itself. In the opinion of the Court those operations were "agricultural operations" and the land on which the trees stood was being used for "agricultural purposes" and, therefore, the income from the sale of the trees was "agricultural income" and was exempt from taxation under section 4(3)(viii) of the Income-tax Act and the Court accordingly answered the referred question in the affirmative.

17. The appellant applied for and obtained certificated of fitness under section 66A(2) of the Act and that is how these appeals have come up for hearing and final disposal before us.

18. The connotation of the terms "agriculture" and "agricultural purpose" and the conditions under which the forestry operations performed by the assessee on forests of spontaneous growth can be assimilated to agricultural operations so as to constitute the income derived from the sale of the forest trees agricultural income within the meaning of its definition in section 2(1) of the Indian Income-tax Act have been laid down by us in the judgment just delivered in Commissioner of Income-tax, West Bengal v. Raja Benoy Kumar Sahas Roy.

19. Applying the principles which we have enunciated in that judgment to the facts of the instant cases, it appears that there was no planting or sowing of the seeds nor was any human agency employed for the purpose of tilling the soil. The soil had remained untouched and in the production of the income the assessees had made no contribution by way of cultivation. There were no basic operations either which were performed by the assessees on the forest lands. What was done by them was the performance of forestry operations which were in the nature of subsequent operations, operations which were performed after the produce had sprouted form the soil. The forests continued to be forests of spontaneous growth and the only result of the performance of these operations on the produce of the forests which was the outcome of spontaneous growth unaided by human skill and labour was the maintenance, preservation, nursing, improving and rearing of the forests. Even though these subsequent operations had the effect of increasing the produce of the forests, the forests none the less remained forests of spontaneous growth. No human skill and labour was spent by the assessees on the cultivation of the forest land nor was any human skill and labour performed on the land itself. The various operations which were described in the statements of case were no doubt for fostering the growth of the forests and obtain the greatest advantage from the forest trees, but they nevertheless were of spontaneous growth. Nothing was done by the assessees to grow the trees from the soil itself. They had grown there by the process of nature. The obstacles which would retard the growth of these trees which had grown spontaneously from the soil were certainly removed but these operations would not convert these subsequent operations into basic operations which would be the only pre-requisites for the cultivation of the forest land. Out of the categories (a) to (g) set out in the statement of facts, none of the operations was assimilated to basic operations in agriculture and unless and until there was even one basic operation on the land itself the rest of the operations could not be tacked on to them so as to convert the whole of them into agricultural operations. We are of opinion that the ratio adopted by the majority of the judges of the High Court was erroneous and the referred question ought to have been answered in the

negative.

20. We are fortified in this conclusion if regard be had to the fact that he forestry operations which were performed by the assessees were of insignificant value as compared with the gross receipts derived by them from the sale of the forest trees. In the case of Mechpara Estate the costs of these operations did not even come to 8 per cent. and in the case of the Parbatjoar Estate even to 4 per cent. of the gross income. All these operations were mainly operations performed for facilitating the spontaneous growth of these trees from the forest land and could not by any stretch of imagination be assimilated to agricultural operations.

21. We are therefore of opinion that the decision reached by the majority of the Judges of the high Court was not correct and it ought to be set aside. The appeals will, therefore, be allowed and the referred question will be answered in the negative. The appellant will get from the respondents one set of costs in all the appeals in this Court and Rs. 250 being the consolidated hearing fee of the Income-tax References in the High Court.

22. Appeals allowed.