Supreme Court of India
Commissioner Of Income Tax, ... vs Ambat Echukutty Menon on 6 September, 1979
Equivalent citations: 1980 AIR 71, 1980 SCR (1) 539
Author: N Untwalia
Bench: Untwalia, N.L.

PETITIONER:
COMMISSIONER OF INCOME TAX, KERALA

Vs.

RESPONDENT:
AMBAT ECHUKUTTY MENON

DATE OF JUDGMENT06/09/1979

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
PATHAK, R.S.

CITATION:
1980 AIR 71 1980 SCR (1) 539
1979 SCC (4) 298

ACT:
Income Tax Act 1961-Capital Receipt & Revenue Receipt-Sale of trees of spontaneous growth-Purchaser to cut and remove trunks of trees only-Stumps and roots embedded in soil not to be disturbed-Proceeds of sale whether liable to be taxed as 'income'.

HEADNOTE:
On a vast area of agricultural land owned by the assessee there were about 772 trees some of which were of spontaneous growth.

Clauses 12 and 13 of the agreement by which the assessee sold some trees provided that the trees should be cut without pulling the stumps.

The Income Tax Officer, held that the trees were of spontaneous growth and assessed the whole of the income from the sale of trees to income-tax.

The Appellate Assistant Commissioner allowed the assessee's appeal in part holding that only the amount actually received during the accounting year, was assessable to income-tax.

Appeals preferred by the assessee as well as the department to the Income Tax Appellate Tribunal were dismissed but references were made to the High Court on the

question whether the receipts from the sale of trees of spontaneous growth were assessable to tax and if so, whether assessable under the head 'other sources'.

The High Court held that the receipts from the sale of the trees were of a capital nature, and decided the references in favour of the assessee and against the department.

Dismissing the appeals the Court,

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HELD: (per Untwalia, J.)

(1) The High Court rightly distinguished the decision in V. Venugopala Varma Rajah v. Commissioner of Income-tax, Kerala, 76 ITR 460 and applied the ratio of that in A. K. T. K. M. Vishnudatta Antharjanam v. Commissioner of Agricultural Income Tax, Trivandrum, 78 ITR 58. [549F]

(2) In Venugopala Varma Rajah v. Commissioner of Income Tax, Kerala, 76 ITR 460, this Court held that if a person sells merely leaves or fruit of the trees or even branches of the trees it would be difficult 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 on income. By selling a part of the trunk, the assessee does not necessarily realise a part of his capital. [546A, D-E]

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(3) In A. K. T. K. M. Vishnudatta Antharjanam v. Commissioner of Agricultural Income Tax, Trivandrum, 78 ITR 58, a case of sale of trees with roots, this Court applied the test laid down by the Privy Council in the Commissioner of Income Tax, Bengal v. M/s. Shaw, Wallace and Co., 6 ITC 178 and held that, "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." Although the test laid down by the Privy Council has been whittled down by subsequent pronouncements, yet in the matter of sale of trees when this Court applied the same test in Vishnudatta's case it was for the purpose of laying stress on the object of the felling of trees. [546G, 547A-C]

(4) If the object of felling the trees leaving the roots and stumps intact is for regeneration of income, then whether income is regenerated or not is immaterial. But in a case, where the trees are sold by uprooting the roots nobody can say that there could be any object of regeneration of income from the trees growing again as there was no question of a second growth at all. Similarly when the trees are sold and allowed to be felled by leaving the roots and stumps intact then in case of trees of spontaneous growth there is

a likelihood of fresh sprouting and further growth of trees on the left out roots and stumps. The presumption in such cases would be that the owner did it with the object of regenerating the income. There can be cases like the instant one, where the roots and stumps were not allowed to be uprooted and cut by the licensee or the lessee, yet the object was not the regeneration of the trees, but a protection of the land eventually to be used for the purpose of cultivation. [547D-F]

In the instant case, the agreement dated 28-11-1960 indicates that the transaction was not a sale of trees with roots and stumps, for clauses 12 and 13 of the agreement impose a prohibition that after the cutting, sprouts were not to be cut. The object of the assessee was to protect the land falling vacant after the cutting of the trees from being damaged by the licensee by at random cutting of the stumps and uprooting of the roots. [547G, 548B-C]

(5) In order to net the receipt as a revenue receipt it is for the department to reject the assessee's stand and to hold that the object of the assessee in not allowing the licensee to cut the stumps and uproot the roots was a regeneration of the income. By the time the assessment was completed by the Income Tax Officer an area of ten acres had been converted into cultivable land. [549 E-F]

(per Pathak, J. concurring)

1. The instant case does not fall either within V. Venugopala Varma Rajah v. Commissioner of Income Tax, Kerala, 76 ITR 460 or A. K. T. K. M. Vishnudatta Antharjanam v. Commissioner of Agricultural Income Tax, Trivandrum, 78 ITR 58. It is a case where although the stumps and roots remained after the trees were felled and removed by the purchaser, the regeneration of the trees was not to be allowed and, therefore, a profit-making activity could not be spelled out. [550G]

2. Where trees are felled and removed, the stumps and roots are allowed to remain on the land with a view to regeneration of the trees, the intention of the
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owner would be to indulge in a profit-making activity. The receipt from the sale of the trunks would be revenue receipts. [550B]

3. There was no intention in this case to reserve the stumps and roots for the purpose of allowing regeneration of the trees, and the intention and subsequent conduct of the assessee established that the stipulation against removal of the stumps and roots was intended to protect the surface of the land from indiscriminate injury because the land was to be applied to cultivation. Intention is a material factor in such cases, and each case has to be decided on its particular facts. Without evidence of the intention or object behind such a stipulation the mere fact that the trees were sold without stumps and roots cannot lead to the necessary inference that a profit making activity was

involved. [550C-D]

4. Where the evidence shows that the land has been acquired for the purpose of cultivation, and that the prohibition on the purchaser against removing the stumps and roots was intended to prevent undue interference with the soil, and the assessee did not intend to permit regeneration of the trees, and that he had in fact later put the land to cultivation, the payments received on sale of the trunks cannot be regarded as taxable income. [550E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2242- 2247 of 1972.

Appeals by special leave from the Judgment and Order dated 1-12-1971 of the Kerala High Court in Income Tax Ref. No. 29/70, 30/70, 71, 92, 97 and 98/69.

P. A. Francis, G. A. Shah and Miss A. Subhashini for the Appellant.

S. T. Desai, Mrs. S. Vaidyalingam, J. B. Dadachanji, Mrs. A. K. Verma and Monjel Kumar for the Respondents.

The following Judgments were delivered:

UNTWALIA, J.-These six appeals by special leave preferred by the Commissioner of Income-tax from the judgments of the Kerala High Court are all inter-connected and arise out of different proceedings in relation to one assessment year only. They have, therefore, been heard together and are being disposed of by this judgment.

The assessee-respondent is a Hindu undivided family owning large agricultural lands in the State of Kerala. In 1905 the family purchased in court auction some lands covering an area of about 200 acres. There were two irrigational channels in the land drawing water from a river. According to the Sanad, there were about 772 trees of various kinds like Karimpana, coconut trees, jack trees, tamarind trees, Maruthu etc. There were other trees of spontaneous growth but they were not in one block. They were interspersed among the paddy fields as the land aforesaid was meant for paddy cultivation. By an agreement dated November 28, 1960 the assessee sold to one Velappa Rowther trees from about 60 acres of land forming part of the 200 acres aforesaid. Since the original term stipulated in connection with the payment of money by Rowther could not be adhered to by him, further agreements were entered into deferring and spreading the payments over some years. The assessee under the impression that the money which it received from Rowther on account of sale of trees was not chargeable to income-tax under the Indian Income-Tax Act did not file any voluntary return. On February 28, 1963 the Income-Tax Officer, Palghat wrote to the Karanavan of the assessee family pointing out that he had information that the assessee had leased certain private forests to Velappa Rowther for cutting timber; and that the assessee had received Rs. 75,000/-

during the relevant year. The corresponding assessment year would be 1961-62. The assessee was asked to explain why no voluntary return had been filed. In reply to the letter of the Income-Tax Officer the assessee wrote a letter dated the 3rd April, 1963 stating therein that there was no lease but an out and out sale of the entire standing timber trees except certain specified varieties and that the sale was affected with a view to extend wet or dry cultivation in its fields in the area; the receipt therefrom were of a capital nature or in any event it was an agricultural income. The assessee, however, concluded its letter by stating that he had no deliberate intention of avoiding to file any return. If the Income-Tax Officer so desired, he was ready to comply with his direction.

Thereafter the Income-Tax Officer served a notice on the assessee under section 148 of the Income-Tax Act, 1961, hereinafter called the Act. In response to the same the assessee filed a return on 25.3.1966 showing a total net income of Rs. 626.63 paise for the previous year ending on 31.3.1961. The Income-Tax Officer held that out of the total number of trees numbering 772 four varieties were not sold and roughly speaking the number of trees sold and allowed to be cut as per the agreement came to 367. The trees were of spontaneous growth and the whole of the amount of Rs. 1,75,000/-, although the whole of it was not paid during the accounting year, represented the assessee's income which had accrued as per the terms of the agreement in that very year. He accordingly assessed the whole of the amount to income- tax.

The Appellate Assistant Commissioner allowed the appeal of the assessee in part and held that only a sum of Rs 75,000/-, the amount actually received during the accounting year, was assessable to income-tax in the assessment year 1961-62. The assessee as well as the department both preferred appeals before the Income-Tax Appellate Tribunal from the order of the Appellate Assistant Commissioner. The Tribunal by its order dated the 16th November, 1968 dismissed both the appeals.

At the instance of the assessee the Tribunal stated a case which was numbered as Reference No. 30 of 1970 and referred the following question of law to the High Court for its opinion:-

> "Whether, on the facts and in the circumstances of the case, the receipts from the sale of trees of spontaneous growth were assessable to tax and if so, whether assessable under 'Other Sources'?"

The High Court by its judgment, since reported in Ambat Echukutty Menon v. Commissioner of Income-Tax, Ernakulam(1) has answered the question in the negative, in favour of the assessee and against the department. Civil Appeal No. 2247 arises out of Reference No. 30 of 1970.

At the instance of the Revenue also the Tribunal made a Reference being Reference No. 29/1970 and the question of law referred to the High Court is in the following terms:-

> "Whether on the facts and in the circumstances of the case, the whole of the sum of Rs. 1,75,000/- was not assessable to tax in the previous year ending on 31.3.1961 relevant for the assessment year 1961-62."

Since the High Court in the main Reference opined that the receipt from the sale of the trees were of a capital nature this Reference was also answered in favour of the assessee. Civil Appeal No. 2242 arises out of Reference No. 29 of 1970.

The Income-Tax Officer initiated penalty proceedings against the assessee, one under section 271 (1) (a) of the Act and the other under section 273 (b), the former being for the alleged failure of the assessee to furnish the return for the period in question and the latter for its alleged failure to furnish an estimate of the advance tax payable. In relation to the penalty proceeding under section 271(1)(a) of the Act, two References were made to the High Court, one at the instance of the Revenue and the other at the assessee's instance and two References were similarly made in relation to the penalty proceeding under section 273(b). As a consequence of the main judgment of the High Court in Reference No. 30 of 1970 all these four References also had to be disposed of in favour of the assessee. Civil Appeals 2243 to Civil Appeals 2246 have been preferred by the department in these penalty proceedings.

Since, in our view, for the reasons to be stated hereinafter the judgment of the High Court in the main Reference giving rise to Civil Appeal 2247 is correct and the said appeal has to fail on that account, it is plain that the other five appeals fail as a corollary to the same and have got to be dismissed as such. I now proceed to discuss and decide the relevant question of law in the main appeal.

Before I notice and advert to some special facts of this case it would be better to have a resume of some decisions of the High Courts and this Court taking one view or the other in relation to the sale of trees, some cases holding that it is a capital receipt and some cases concluding in different situations and on different facts that it is a revenue receipt. In Commissioner of Income-tax, Madras v. T. Manavedan Tirumalpad(1) a Full Bench of the Madras High Court held that the receipts from the sale of timber trees by the owner of unassessed forest lands in Malabar were chargeable to income-tax. Such trees were treated as usufruct from the land like paddy from land and minerals from mines. Similarly the Oudh Chief Court expressed the view in Maharaja of Kapurthala v. Commissioner of Income-Tax, C.P. & U.P.(2) that the net receipts from the sale of forest trees are income liable to income-tax even though the forest would be gradually exhausted by fellings. This was a case of forest trees of spontaneous growth growing on land which was assessed to land revenue. The Patna case viz. Raja Bahadur Kamakshya Narain Singh v. Commissioner of Income-Tax, Bihar and Orissa(3) was also a case of the receipts from the sale of forest trees. In Fringford Estates Ltd., Calicut v. Commissioner of Income- Tax, Madras(4) the sale of timber comprised in the trees from the forest was on a business line and the profits derived from the same were held to be assessable to income- tax on the principle that profits derived from capital which is consumed or exhausted in the process of realization are nonetheless the taxable income.

The other cases taking the view that money received by sale of trees is a capital receipt are of the nature where trees have not been treated as usufruct of the land. They were treated as part of the capital assets and the receipts from the sale of such trees retained the same character. In Commissioner of Income-Tax, Bombay South v. N. T. Patwardhan(1) the Bombay High Court was dealing with a case of the sale once for all of the trees with roots even though they were of the

spontaneous growth. The receipts from such sales were held to be capital in nature. The Kerala High Court in State of Kerala v. Karimtharuvi Tea Estate Ltd.(2) was concerned with the sale of firewood of gravelia trees grown and maintained in tea gardens for the purpose of affording shade to tea plants. Even sale proceeds of forest trees failed for the purpose of coffee plantation in the land were held to be capital receipts by the Mysore High Court in the case of Commissioner of Income-Tax, Mysore v. H. B. Van Ingen(3) and the Madras High Court in the case of Commissioner of Income-Tax, Madras v. M. S. P. Nadar Sons(4). Similarly sale of dead and wind-fallen trees and trees planted for shades were held to be bringing receipts of capital nature vide Flixir Plantations Ltd. v. Commissioner of Income-Tax(5) and Consolidated Coffee Estates (1943) Ltd. v. Commissioner of Agricultural Income- Tax, Mysore(6).

In Commissioner of Income-Tax, Kerala v. Venugopala Varma Raja(7) the Kerala High Court was concerned with the trees of spontaneous growth. Obviously the income was not agricultural income. The owner of a forest had derived income from a lease of the forest which came within the ambit of the Madras Preservation of Private Forests Act, 1949. The lease was for "clear felling" which had a definite and specific meaning under Rule 7 framed under the said Act. It did not permit a removal of the trees along with their roots. The felling of the trees had to be done in such a way as to permit the regeneration and future growth of the trees concerned. "In other words, what is contemplated by the clear felling method is not the sterilisation of an asset but the removal of a growth above a particular height, leaving intact the roots and the stamps in such a manner as to ensure regeneration, future growth, further felling and a subsequent income" (page 803). On that account it was held that it was a revenue receipt and not a capital one. The case came up to this Court and the view of the High Court was eventually upheld. The decision of this Court is reported in V. Venugopala Varma Rajah v. Commissioner of Income-Tax, Kerala(1). A supplementary statement of the case was called for by this Court but ultimately the decision turned round the true import of the expression "clear felling". Some of the earlier decisions of the various High Courts noticed by me above were referred and it was thought that there was some conflict between them, yet finally without resolving the conflict, the view expressed at page 466 by this Court with reference to the facts of the case was in these terms:-

> "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 tress 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 section 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 question, however, of sale of trees with roots arose before this Court shortly after in A. K. T. K. M. Vishnudatta Antharjanam v. Commissioner of Agricultural Income-Tax, Trivandrum(2). Shah J., as he then was, who had delivered the judgment in Venugopala's case (supra) was a party in this case also, the judgment of which was delivered by Grover J. The test laid down by the Privy Council in The Commissioner of Income-tax, Bengal v. Messrs Shaw Wallace and Company(3) was applied and it was said at page 61:-

> "According to that test, income connotes 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."

I am aware that the test laid down by Sir George Lowndes in Shaw Wallace case has been whittled down to a very large extent by subsequent pronouncements of the Privy Council e.g. in Gopal Saran Narain Singh v. C.I.T.(1) and Kamakshya Narain Singh v. C.I.T.,(2) yet in the matter of sale of trees when this Court applied the same test in Vishnudatta's case it was for the purpose of laying stress on the object of the felling of the trees. The return may be one and only one. But if the object of felling the trees leaving the roots and stumps intact is for regeneration of income, then whether income is regenerated or not is immaterial. But in a case where the trees are sold by uprooting the roots no body can say that there could be any object of regeneration of income from the trees growing again as there was no question of a second growth at all. Similarly, ordinarily and generally, when the trees are sold and allowed to be felled by leaving the roots and stumps intact then in case of trees of spontaneous growth there is a likelihood of fresh sprouting and further growth of trees on the left out roots and stumps. The presumption in such cases generally would be that the owner did it with the object of regenerating the income. But there may be case, although few and far between, like the one with which we are concerned here where the roots and stumps were not allowed to be uprooted and cut by the licensee or the lessee yet the object was not the regeneration of the trees but a protection of the land eventually to be used for the purpose of cultivation. In this background of the law, I now proceed to refer to the special facts of this case.

Clauses 12 and 13 of the agreement dated 28.11.1960 entered into between the assessee and Velappa Rowther are as follows:-

> "(12) The trees in the reared forest have to but cut neatly and the relative stumps should not be either pulled out or cut out.
>
> (13) No. 3 should not enter on the lands from where trees are cut or on the sprouts coming up from there. After the cuttings sprouts are not to be cut."

No. 3 referred in clause (13) is the said Rowther. On the face of the agreement, therefore, the transaction was not a sale of trees with roots and stumps. Rather there was a prohibition that after

the cutting, sprouts were not to be cut. The agreement, however, did not indicate as to what was the object of the assessee in incorporating clauses (12) and (13) in the agreement. Was it the regeneration of the trees for earning more income or was it something else ? The subsequent conduct of the assessee as appeared from the facts placed before the Income-tax authorities without anything more will indicate that the object of the assessee was to protect the land falling vacant after the cutting of the trees from being damaged by the licensee by at random cutting of the stumps and uprooting of the roots. The trees sold were spread in an area of 60 acres of land only. Even in that area the trees were not in any thick or continuous forest. They were interspersed by paddy fields. In its very first communication to the Income-Tax Officer sent on 3-4- 1963 the assessee perhaps was made aware of the decision of the Kerala High Court in Commissioner of Income-Tax, Kerala v. Venugopala Varma Raja (1) which was a case of private forest governed by the Madras Act. The assessee, therefore, claimed that there were no private forests in Cochin area of Kerala where the land was situated. The assessee asserted that in substance and in effect the sale was of the entire standing timber i.e. totality of the trees and "the sale was effected with a view to extend wet or dry cultivation to that area as well since the standing trees were a hindrance for such extensions." In this very letter the assessee also asserted-"This is the very first time that our Thavazhi has sold the trees. The trees, the subject matter of the sale contract, were there at the time of the purchase of the agricultural lands by our Thavazhi in 1080 M.E. The trees were old trees. No tree had been sold after our Thavazhi became the owner of the agricultural lands. A large extent of agricultural lands was purchased and these trees formed part and parcel of such holdings. None of us know when the trees began to grow. After purchase of the lands we had developed the same and in the process we sold the trees with the object mentioned above. The present sale has been the only sale and it will be the last one also since our idea is to extend cultivation to this area as well."

The Tribunal in its appellate order noticed the argument of the assessee that its sole occupation was agriculture and the attraction in the purchase of the land in the year 1905 was two irrigational channels contained therein. It also noticed the other facts stated in the letter aforesaid of the assessee and finally concluded on the basis of clauses (12) and (13) of the agreement-"It is clear from these that the assessee was reserving to itself the results of the future growth and a source of income." The case was squarely covered, in its opinion, by the decision of the Kerala High Court in Venugopala's case. It further observed that the assessee was claiming exemption and it was upto him to furnish all the information as to what trees would not regenerate, what kind of trees were sold etc. The assessee had failed to furnish these details. Yet it would be noticed that without rejecting the assessee's stand that the transaction in question was the first and the last sale of trees by the assessee and without finding that the object of the assessee was not to convert the land for cultivation but to earn income by regeneration of trees, it upheld the view of the departmental authorities that the receipt was a revenue receipt assessable to income-tax. It should be noted that the assessment made was not for default of the assessee to produce any relevant material but a regular assessment on consideration of such materials as were produced by it. It was not asked to produce any other evidence or material to substantiate the stand taken by it. Nor was the stand rejected. In such a situation it was not a question of assessee's claiming any exemption and failing to get it for its alleged failure to furnish any more details. But it was a case where in order to net the receipt as a revenue receipt it was for the department to reject the assessee's stand and to hold that the object of the assessee in not allowing the licensee to cut the stumps and uproot the roots was a

regeneration of the income. The High Court has also noticed the fact as found mentioned in the order of the Tribunal that by the time the assessment was completed by the Income-Tax Officer an area of 10 acres had been converted into cultivable land. In our opinion, therefore, the High Court rightly distinguished the decision in Venugopala's case (supra) and applied the ratio of that of Vishnudatta's case (supra). As I have observed above the facts of this case were on a line which on the surface was blurred and indistinct, yet, on a careful examination of the matter I find that the dividing line, though thin, nonetheless, is distinct enough to make this case fit for application of the ratio of the decision of this Court in Vishnudatta's case. I accordingly uphold the view of the High Court.

In the result all the six appeals are dismissed but on the special facts and circumstances of this case we make no order as to costs in any of them.

PATHAK, J. I agree with my learned brother that the appeals should be dismissed. And I shall set out my reasons.

The case is one where trees of spontaneous growth were sold on condition that the purchaser would cut and remove the trunks without disturbing the stumps and roots embedded in the soil. Where trees are so felled and removed, and the stumps and roots are allowed to remain in the land with a view to regeneration of the trees, the intention of the owner would be to indulge in a profit-making activity, and the case would fall within V. Venugopala Varma Rajah v. Commissioner of Income-Tax, Kerala(1). The receipts from sale of the trunks would be revenue receipts. But in the present case there was no intention to reserve the stumps and roots for the purpose of allowing regeneration of the trees. The intention and subsequent conduct of the assessee establishes that the stipulation against removal of the stumps and roots was intended to protect the surface of the land from indiscriminate injury because the land was to be applied to cultivation. Intention is a material factor in such cases, and each case has to be decided on its particular facts. Without evidence of the intention or object behind such a stipulation, the mere fact that the trees were sold without stumps and roots cannot lead to the necessary inference that a profit making activity was involved. Where the evidence shows that the land had been acquired for the purpose of cultivation, and that the prohibition on the purchaser against removing the stumps and roots was intended to prevent undue interference with the soil, and the assessee did not intend to permit regeneration of the trees, and that the had in fact later put the land to cultivation, the payments received on sale of the trunks cannot be regarded as taxable income. And yet the case is distinguishable from the facts in A.K.T.K.M. Vishnudatta Antharjanam v. Commissioner of Agricultural Income-Tax, Trivandrum.(1) That was a case where the trees were sold with their roots, and it was held by this Court that by removal of the roots the source from which the fresh growth of trees could take place had also been removed and, therefore, the sale of such trees effected the capital structure, and could not give rise to a revenue receipt. In my opinion, the present case does not fall either within V. Venugopala Varma Rajah (supra) or A.K.T.K.M. Vishnudatta Antharjanam (supra). It is a case where although the stump and roots remained after the trees were felled and removed by the purchaser, the regeneration of the trees was not to be allowed and, therefore, a profit-making activity could not be spelled out.

The appeals are dismissed, but there is no order as to costs.

N.V.K. Appeals dismissed.