

(1962) 02 CAL CK 0020

Calcutta High Court

Case No: IT Reference No"s. 31 to 38 of 1955

Haji Latif Abdullah

APPELLANT

Vs

Commissioner of
Income Tax

RESPONDENT

Date of Decision: Feb. 20, 1962

Acts Referred:

- Income Tax Act, 1922 - Section 2(1), 2(1)(b)

Citation: (1963) 48 ITR 242

Hon'ble Judges: Ray, J; G.K. Mitter, J

Bench: Division Bench

Advocate: A.C. Sampath Iyengar and S.B. Sen, for the Appellant; E.R. Meyer and B.L. Pal, for the Respondent

Judgement

Ray, J.

The following questions of law have been referred :

"(1) Whether the pollarding and coppicing as carried out by the assessee amounted to agricultural operations within the meaning of section 2(1) of the Act ?

(2) If the answer to the above question be in the affirmative, whether, in order that the assessee could claim exemption from tax on the ground that the income from tendu leaves was agricultural income, it was necessary that he should have had some interest in the lands concerned ? and

(3) If the answer to the foregoing question be also in the affirmative, whether the assessee had, under the documents under which he collected the tendu leaves, an interest in the lands concerned and whether the income from the same could be held to be income derived from such lands?"

The assessee deals in tendu (bidi) leaves which are used to roll up tobacco in the manufacture of bidis. The said leaves grow in forests. The assessee took on lease certain forests from the State Government, the then Indian Native States, zamindaries and malguzaries, for the purpose of its business. The assessee conceded before us that pollarding was not an agricultural operation but contended that coppicing was so. As to what is coppicing operation will appear according to the statement of the assessee set out at page 93 of the paper-book and counsel for the assessee relied on items Nos. marked 1, 2, 5, 6 and 7.

2. The said items Nos. 1, 2, 5, 6, and 7 are as follows:

"(1) Cutting out of the tendu plants, by shovel and axe to about 3 inches below the ground level and prodding and relaying of the earth, to give fresh feed to the plant, to make better off-shoots, known in forestry as coppicing. This is the first process before the actual start of the season.

(2) Taking proper care of the off-shoots from the root-suckers, by strengthening and making them firm in the ground by tamping earth round about the root-suckers, and giving them proper feed and making them active, without which, the plants die down.

(5) While coppicing, earth is prodded and relaid, and the forest fire-ashes and dried up fallen leaves are stored at the plant base, thus manuring the plants and giving them proper nourishment to grow better.

(6) The above processes have to be adopted to safeguard the plants, to give them proper feed, to remain alive, and yield more leaves.

(7) Due to untimely clouds and weather conditions, tendu plants get diseased and with a view to save their life and yield, coppicing processes have to be repeated when the weather is clear and thus a new feed and nourishment is provided to the plants."

3. Before the Appellate Tribunal the assessee contended that coppicing is an operation on the land as the roots of the plants are cut even below the surface. The Appellate Tribunal held that coppicing operations were not on the land but on the plants.

4. Counsel for the Commissioner contended, first, that the Tribunal found as a fact that the operations described as coppicing were not operations on the land and were not therefore agricultural operations within the meaning of section 2(1) of the income tax Act, and, secondly, that the coppicing operations claimed by the assessee to be agricultural operations were not so, in view of the recent decisions of the Supreme Court to which I shall now refer.

5. Counsel for the assessee contended that the finding of the Tribunal was a legal inference from facts and therefore it was open to the assessee to impeach the conclusion as perverse or wrong inference. I am unable to accept the contention of the

assessee. The operations claimed by the assessee to be agricultural operations have been examined by the Appellate Tribunal and the finding is that no operations on the land were carried out.

6. In the case of [Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy](#), the Supreme Court laid down the law as to the meaning of "agricultural income", "agriculture" and "agricultural operations". Two conditions are necessary to be satisfied in order to be agricultural income. First, that the land from which the income is derived should be used for agricultural purposes and the land should be assessed for land revenue in the taxable territories or subject to local rates assessed and collected by the officers of the Government and, secondly, the income should be derived from such land by agriculture or by one or other of the operations described in clauses 2 and 3 of section 2(1)(b) of the Indian income tax Act. At page 154 of the report it is stated that the term "agriculture" in the strict sense of the term means "tilling of the land, sowing of the seeds, planting and similar operations on the lands." These are described by the Supreme Court as the basic operations which require expenditure of human skill and labour upon the land. Other operations which have to be resorted to by the agriculturist for the purpose of effectively raising the produce from the land like weeding, digging the soil around the growth, removal of undesirable undergrowths and operations which foster the growth and preserve the same not only from insects and pests but also from depredation from outside, tending, pruning, cutting, harvesting and rendering the produce fit for the market, are agricultural operations, when taken in conjunction with the basic operations mentioned before. At page 155 of the report the Supreme Court held that "the mere performance of these subsequent operations on the products of the land, where such products have not been raised on the land by the performance of the basic operations...would not be enough to characterise them as agricultural operations....It is only if the products are raised from the land by the performance of these basic operations that the subsequent operations attach themselves to the products of the land and acquire the characteristic of agricultural operations." Again at page 158 of the report the Supreme Court said: "If the term "agriculture" is thus understood as comprising within its scope the basic as well as the subsequent operations in the process of agriculture...there is present all throughout the basic idea that there must be at the bottom of it cultivation of land in the sense of the tilling of the land, sowing of the seeds, planting, and similar work done on the land itself. This basic conception is the essential sine qua non of any operations performed on the land constituting agricultural operations...if these basic operations are wanting the subsequent operations do not acquire the characteristic of agricultural operations."

7. In the case of [The Commissioner of Income Tax, Bihar and Orissa Vs. Sri Ramakrishna Deo](#), the Supreme Court said that apart from the basic operations as tilling of the land, sowing of the seeds, plantation and the like, there cannot be an agricultural operation.

8. In the present case there is no finding of any operation by the assessee on the land like tilling of the land or sowing of the seeds of plantation or similar operations. The operations described by the assessee as cutting out of the plants to about 3" below the ground level and prodding and relaying of the earth are said by the assessee to give fresh feed to the plant-root to make better off-shoots. The other operations of taking proper care of the off-shoots of the root-suckers by strengthening and making them firm in the ground by tamping earth round about the root-suckers, and giving them proper feed and making them active, and storing of forest fire-ashes and dried up fallen leaves are all intended for the purpose of manuring, nourishing and preserving plants. In the case of Raja Benoy Kumar Sahas Roy's case (supra) the Supreme Court held that it is only the association of the basic operations with the subsequent operations that the integrated activity of basic operation along with subsequent operations is agricultural operation or an user of the land for agricultural purposes. In the light of the principles of law laid down by the Supreme Court I am of opinion that the coppicing operations claimed by the assessee to be agricultural operations are not agricultural operations within the meaning of the Act. The answer to question No. 1 is therefore in the negative. In view of this answer questions Nos. 2 and 3 do not call for any answer in the present case. The assessee is to pay the costs. Certificate for two counsel.

G.K. Mitter, J.

I agree.