

Dharmarth Trust Vs. Inspecting Assistant

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jan-31-1991

Reported in : (1991)37ITD86(Delhi)

Judge : G Krishnamurthy, J Bengra

Appellant : Dharmarth Trust

Respondent : inspecting Assistant

Judgement :

1. These are the appeals filed by the assessee against the orders of the Assessing Officer. All these appeals involve a common point. Except I.T.A. No. 834 (Asr.) of 1989 relating to the assessment year 1984-85, which arose out of the order passed by the Commissioner of Income-tax under Section 263, all the other appeals arise out of the orders passed by the Commissioner (A) under Section 250(4) of the Income-tax Act, 1961. For the assessment year 1984-85 there are two appeals, one filed against the order passed by the Commissioner (A) under Section 250(4) which is a regular assessment and the other against the order passed by the Commissioner of Income-tax under Section 263 of the Income-tax Act, 1961. Both the appeals involve the same point. For that reason all the appeals are consolidated for disposal by a common order.

2. The common issue in all these appeals is, whether the income derived by the assessee trust could be regarded as agricultural income or could be regarded as income out of a business carried on by the assessee trust.

3. The assessee is a charitable and religious trust created in 1846 by Maharaja Gulab Singh of Jammu and Kashmir State. Large tracks of land were given to this trust, which consisted of chir and pine wood trees.

The pine wood trees yielded resin. The assessee collected the resin, sold it and utilised the proceeds for the purposes of the trust. That the sale proceeds were utilised for the purposes of the trust was not a point in dispute before us. The assessee regarded the income derived from the sale of this resin as agricultural income not liable to Income-tax under Section 2(1 A) of the Income-tax Act, 1961 whereas the department considered that this was an income derived out of a business carried on by the assessee trust and therefore under the provisions of Section 11 (4A) the income therefrom was liable to tax in the hands of the trust. Arguments were taken up before the Income-tax Officer and also before the Commissioner (A) as to the question whether Section 11(4A) would or would not apply and as to whether by the introduction of Section 11(4 A) with effect from 1-4-1984 did it make any substantial change in bringing to tax the income of a business carried on by a trust although the trust was for charitable and religious purposes. The main discussion in all these cases appeared in the order passed for the assessment year 1985-86 in ITA No. 288 (Asr.) of 1989.

We would therefore go to that order as a representative order to decide the issue that arose in this case.

4. For the assessment year 1985-86 a return of income was filed showing nil income. As we have mentioned a short while ago the assessee was having vast track of forest land near Mata Vaishneo Devi temple. The scrutiny of accounts maintained for the forest, according to the Assessing Officer, showed the income and expenditure in the following manner: The Assessing Officer was of the opinion that this income was liable to tax by virtue of the provisions of Section 11(4A) of the Income-tax Act, 1961, which were introduced by the Finance Act, 1983 with effect from 1-4-1984. The reply of the assessee was that it was not carrying on any business on the ground that the management of the forest was given to the Government of Jammu and Kashmir on royalty basis and it was not the assessee that was carrying on the business but the Government of Jammu and Kashmir and

secondly the property was received when the trust was created by the Maharaja Gulab Singh about 150 years ago and thus the assessee trust had not purchased this property to start or to carry on any business and therefore the provisions of Section 11(4A) would be totally inapplicable. The Assessing Officer negated this contention. According to him the very purpose of introducing Section 11(4 A) was to take away the exemption provided from levy of income-tax on the profits derived from a business carried on by any trust or institution held for religious or charitable purposes. The exemption, which was otherwise available earlier was withdrawn by the insertion of Section 11 (4A) and when that was so, it could not be argued that the income from a business carried on by a trust was not liable to tax. He agreed in categorical terms that the income derived therefrom was utilised for the objects of the trust.

Nonetheless according to him even if the management of the forest was entrusted to the Government of Jammu and Kashmir on payment of royalty, still that would amount to carrying on of a business because the assessee had incurred expenditure both on manufacture of resin and maintenance of forest. Following observations made by the Assessing Officer in this context are very relevant and are reproduced below: However it is seen that the assessee has given the forest only for management purposes to the Forest Department of the Jammu & Kashmir Govt. for which the royalty is being paid to the forest Department.

The very fact that the assessee has accounted for the expenditure on the manufacturing of resin, maintenance of forests and has also taken into consideration the entire sale proceeds of resin clearly indicates that the assessee is carrying on a business of manufacturing of resin from the forests. It is immaterial whether the assessee has given the management of the forest to the Forest Department. Accordingly the income from resin to the extent of Rs. 2,06,256 is taxed in the hands of the assessee without giving the exemption under Section 11.

With these observations, he brought the sum of Rs. 2,06,256 to tax in this assessment year. Similarly in the other assessment years more or less for the same reasons, the Assessing Officer brought to tax varying sums, namely, in the assessment year 1984-85 Rs. 2,48,828, in the assessment year 1986-87 Rs.

2,18,659 and in the assessment year 1988-89 Rs. 73,737.

5. On appeal the very same submissions, that were put forward before the Assessing Officer, were reiterated but in vain. That is how these appeals have come before us.

6. The following further facts were noted by the Commissioner (A). He found it as a fact that this trust was created by Maharaja Gulab Singh about 150 years ago and that it was managing the famous Shrine of Mata Vaishneo Devi, that large tracks of land of Chir and Pine Wood trees were gifted by the Maharaja, that the resin yielded by these trees is an item which cannot be tapped by any private individual, that it was done exclusively by the State Government and thereafter it was allotted to various industries or dealers for manufacture and sale. The Commissioner(A) agreeing with the view of the Assessing Officer that Section 11(4A) brings to tax the income from a business carried on by a charitable and religious trust held that the assessee was carrying on business in the sale of resin and that income was liable to be taxed and correctly taxed. In arriving at this conclusion, he placed reliance on the orders passed by him for the assessment year 1986-87 and by his predecessor for the assessment year 1985-86. It was in the assessment year 1985-86 that the contentions were discussed a little more elaborately and that was the reason why we have taken the assessment year 1985-86 first. In the assessment year 1985-86 two contentions were raised before the Commissioner (A); one related to the applicability of Section 11 (4A) and the other related to the nature of income, namely, whether it is agricultural income or business income. In paragraph 2 of his order the Commissioner (A) posed for himself two questions for decision (j) as to whether the income from resin could be considered as business income and (i) whether the provisions of Section 11(4A) were relevant. In deciding the first question as to the nature of the income, the Commissioner (A) considered it relevant to observe that forests lands covered by the trees of spontaneous growth could not be held to be agricultural land unless there was some evidence to show that such lands were set apart or earmarked for or linked up with agricultural purposes by their owners or occupiers. He held that the principle that was attached to lands belonged to the land was not applicable to India. Thus trees which stand on agriculture are not agricultural land in India within

the meaning of Section 2(14)(m) of the Income-tax Act, 1961. He thus came to the conclusion that these were capital assets and the profits arising therefrom were assessable as capital gains and does not constitute as agricultural income.

However, if the trees were not sold as such but they were tapped to yield resin, then the activity of tapping the pine trees for collecting resin and thereafter selling the same would be considered as commercial activity. Having held that the income derived by the assessee was not agricultural income and that for deriving that income, commercial activity was involved, he proceeded to examine what was 'business' and how the word 'business' had been judicially noticed and eventually came to the conclusion that the activity of tapping resin from pine wood trees was a business activity within the provisions of Section 2(13) of the Income-tax Act, 1961 and therefore the income from that activity would have to be computed with reference to Section 28 of the Income-tax Act, 1961 and the same was not exempt under the other provisions of the Income-tax Act. Having thus given a finding on the question as to whether the income derived by the assessee was agricultural income or business income in such clear terms, he proceeded to examine the applicability of Section 11 (4A) and eventually held that under that section the income derived from business by a charitable and religious trust was not exempt. He thus agreed with the view of the Assessing Officer that the income was rightly taxed. It was the reasoning adopted by the Commissioner (A) in this year that was adopted by the other Commissioner (A) for disposing of the appeals of the other years and also by the Commissioner of Income-tax in taking action under Section 263 for the assessment year 1984-85.

7. The learned representative for the assessee Shri S.K. Kandhari submitted that he would not press the point that under Section 11 (4A) the income derived by the assessee is not eligible for exemption and is liable to tax and yet submitted that what was carried on by the assessee was not business and in any case it was income derived out of agricultural operations and therefore agricultural income and not business income at all. He submitted that if the income was agricultural income, the other question whether the assessee was carrying on business of manufacture of resin and selling the same, would become academic, inasmuch as, the agricultural income is not liable to tax at all. By referring to the observations

made by the Commissioner (A) for the Assessment year 1985-86, he submitted that he misdirected himself in applying the correct law relating to the agricultural income. The reference by the Commissioner (A) to the case law in CED v. V. Venugopala Varma Rajah [1916] 105 ITR 593 (SC) and the other decisions of the Privy Council were not at all apposite. The leading case on the subject was the one decided by the Supreme Court in the case of CIT v. Raja Benoy Kumar SahasRoy [1957] 32 ITR 466. It is in this case that the Supreme Court laid down the principles as to when income could be considered as agricultural income. It laid down in that case that if trees are of spontaneous growth, the income derived therefrom would be non-agricultural income but if the trees are planted or for existing trees some agricultural operations were carried out, then the income derived therefrom would cease to be non-agricultural income and becomes agricultural income because of the operations. In other words, the fact that distinguishes agricultural income from non-agriculture income, is carrying out of operations akin to agriculture like tending, manuring, pruning, laying out canals, irrigation, weeding out, protection from pests etc. etc. Since in this case admittedly expenditure was incurred by the assessee in carrying out operations apart from operations necessary to collect the resin, the income could not but be treated as agricultural income. The test laid down by the Supreme Court was either misapplied or ignored.

Applying the correct test he submitted that as there was admittedly expenditure incurred on carrying out operations, which were allowed as deductions in allowing the income from the sale of resin, it is wrong on the part of the Revenue still to say that the income realised on the sale of resin was not income from, agriculture. He referred us to the other decisions of the Supreme Court, which had consistently upheld this line of judgment. He then submitted that these trees were of 150 years old. They were existing when the trust was created. The trees that were existing at the time of gift to the trust 150 years ago could not be expected to live even till today in the same vitality and strength yielding the same quantity or quality of resin. They are bound to die or wither away or felled or destroyed and in their place new trees must have been raised. It was from the trees that were raised subsequently that the present income had arisen. The raising of the further trees and tending thereof could not be considered of spontaneous growth. Once they

are not of spontaneous growth and once agricultural operations were carried out to plant new trees, tend them, protect them from destruction, the operation would become agricultural operation and the entire income would become agricultural income. The learned Commissioner (A) had glossed over this important fact and placed reliance upon an inapplicable ruling of the Supreme Court, which is totally distinguishable. This test laid down by the Supreme Court not having been differed by the subsequent decisions of the Supreme Court and the law thereafter not having been changed, the law laid down by the Supreme Court should be held to be the law of the land and applying that law, it should be held that the income derived by the assessee was income from agriculture and therefore exempt from tax.

8. The learned Departmental Representative, on the other hand very seriously contended that the assessee should not be allowed to raise this point for two reasons; one was that this point was not taken up before the Assessing Officer and, therefore, should not be permitted to be raised now and secondly before the Commissioner(A) also this point was not taken up at least in the manner in which it is presented now and, therefore, the assessee should not be heard on that point. What was, therefore, left was only the applicability of Section 11(4A) of the Income-tax Act and whether under that section the income derived by the assessee from the carrying on of the business of manufacture of resin is liable to tax or not. She submitted that since the assessee's counsel has conceded that point, nothing more remained for the assessee to argue about the exemption and, therefore, the appeals should be decided only in favour of the Revenue. The entire argument and the trouble taken by the learned Departmental Representative before us was about the admissibility of this point. She genuinely believed that this point was not taken up before the authorities below and, therefore, out of our purview for consideration. Since she strongly felt that this point was not taken up before the Commissioner (A) and also before the Assessing Officer, we wish to dispose of this preliminary point first.

9. It is no doubt true that this point was not seen to be taken up before the Assessing Officer except in a very round about way but definite observation from his order was available as underlined by us about this matter whereby he admitted

that expenditure on maintenance of forest was incurred. But it cannot be denied that the point was not discussed by the Assessing Officer in sufficient detail. However this shows that this aspect was before the Assessing Officer and he applied his mind, though in, a little manner. It cannot be said, therefore, that this point was not raised. Before the Commissioner (A) this point was taken up and he did discuss this matter by making reference of this point in his order, the gist of which we have mentioned above and we reproduce below his actual observations:

3. For deciding the first question, it is relevant to observe that forest land covered by trees of spontaneous growth cannot be held to be agriculture land unless there is some evidence to show that such lands, had been, in some way, set apart or earmarked for or linked up with agricultural purpose by their owners or occupiers. 1 CEO v. Venugopala Varma Rajah [1916] 105 ITR 593 (SC)J. The principle that what is attached to land belongs to the land is not applicable in India (AIR 1929 PC 163, AIR 1958 SC 789, AIR 1953 Trav.-Cochin 349r AIR 1963 Ker. 297). Thus, trees which stand on agriculture land are not agricultural land in India within the meaning of Section 2(14)(iii) of IT Act, 1961. These are capital assets and profits arising from their sale is assessable as capital gains and does not constitute as agricultural income. However, if the trees are not sold as such, but they are tapped to yield resin, then the activity of tapping the pine trees for collecting resin and thereafter selling the same will have to be considered as commercial activity.

This shows that this point was very much before the Commissioner (A) and he did apply his mind to this aspect and came to certain conclusions, the correctness of which is now in dispute. It is therefore incorrect to say that this point was not taken up before the Commissioner (A) and he did not adjudicate upon it and therefore it is no more open to the Revenue to contend that this point was not taken up before the Commissioner (A). The preliminary objection taken by the Revenue is therefore rejected.

10. Coming to the merits of the matter, it is in the case of Raja Benoy Kumar Sahas Roy (supra) that the Supreme Court laid down the tests as to when the income could be said to be agricultural income qualifying for exemption under the Income-tax Act. The 'agricultural income' was defined under Section 2(1 A) of the Income-tax Act, which is the definition section.

(a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes; (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 (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 paragraph (ii) of this sub-clause.

(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 process mentioned in paragraphs (ii) and (HI) of Sub-clause (b) is carried on : (i) the building is on or in the immediate vicinity of the land, and is a building which the receiver of 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, and (ii) the land is either assessed to land revenue in India or is subject to a local sale assessed and collected by officers of the Government as such or where the land is not so assessed to land revenue or subject to a local rate, it is not situated - (A) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year, or (B) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (A), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette.

This definition was the same as the definition under the 1922 Act.

Therefore the decision given by the Supreme Court interpreting the definition of 'agricultural income' under the 1922 Act will apply with equal force to the 'agricultural income' as defined in the Income-tax Act, 1961. In 1970 by Taxation

Laws (Amendment) Act, 1970, some modifications were made with retrospective effect from 1-4-1962 but they do not impinge very much upon the subject before us. The exemption of agricultural income from Central Taxation is based on the provisions of the Constitution, according to which only the State Legislature has exclusive power to make laws with respect to taxes on agricultural income under Article 246(1) of the Constitution read with entry 82 of List I (Union List) in the Seventh Schedule, and Article 246(3) read with entry 46 of List II (State List). It is interesting to note that Article 366(1) of the Constitution defines the expression 'agricultural income' as 'agricultural income as defined for the purposes of enactment relating to Indian Income-tax Act. This means that the Parliament has adopted for the purposes of the Constitution the definition of the expression 'agricultural income' as given in the Income-tax Act.

We have already noticed that Sub-section (2) of the Taxation Laws (Amendment) Act 1970 introduced some important changes with retrospective effect from 1-4-1962. The effect of this amendment was explained by the Board in a circular given on 9-3-1971 No. 56: In recent years, agricultural operations have been extended to lands in terai areas or cantonments, forest lands, etc. where the land is not assessed to land revenue and is not subject to any local rate as require under the above-mentioned definition of agricultural income.

Accordingly, income derived by agricultural operations on such lands is presently outside the scope of "agricultural income" and becomes liable to central income-tax. Apart from this, in several States, lands up to specified limits have been exempted from land revenue assessment. Hence income derived by the performance of agricultural operations on such land in these States would also come within the purview of central income taxation.

93. As the character of the income derived by agricultural operations remains the same whether or not the land is subject to land revenue or a local rate, it would be anomalous to subject to central income-tax such income in those cases where there is no land revenue assessment while exempting income of the same nature in other cases. With a view to removing this anomaly and providing tax relief to agriculturists who cultivate forest lands, lands in terai areas or cantonments or in

States which have abolished land revenue on small holdings, the definition of "agricultural income" in Clause (1) of Section 2 has been amended so as to drop the condition that the land from which the income is derived should be assessed to land revenue or any local rate. This change will bring within the purview of the expression "agricultural income", income derived from cultivation of forest lands, lands in terai areas and cantonments as also lands in respect of which the State Government does not levy any land revenue.

It thus follows that the income derived from cultivation of forest lands, lands in terai areas and cantonments as also lands in respect of which the State Government does not levy any land revenue, would be considered as agricultural income. This is an important amendment which has to be kept in view for the purposes of understanding the agricultural income and what is the nature of income derived from the cultivation of forest lands.

11. The question as to what constituted agricultural income had been a vexed question till it came before the Supreme Court of India in the case of Raja Benoy Kumar Sahas Roy (supra) on which also reliance was placed by the learned representative for the assessee. The Supreme Court laid down the cardinal principle as to when an income could be said to be agricultural income and what ingredients are to be satisfied. The Supreme Court said that "Agriculture" in its primary sense denotes the cultivation of the field and is restricted to cultivation of the land in the strict sense of the term, meaning thereby tilling of the land, sowing of the seeds, planting and similar operations on the land. These are the basic operations and require the expenditure of human skill and labour upon the land itself. Those operations which the agriculturist has to resort to and which are absolutely necessary for the purpose of effectively raising produce from the land operations which are to be performed after the produce sprouts from land, e.g. weeding, digging the soil around the growth, removal of undesirable undergrowth and all operations which foster the growth and preservation of the same not only from the insects and pests but also from degradation from outside, tending, pruning, cutting, harvesting and rendering the produce fit for the market, would be subsequent agricultural operations but when taken in conjunction with the basic operations they become integrated agricultural operations.

The Supreme Court cautioned that the human labour and skill spent in the performance of the subsequent operations cannot be said to have been spent on the land itself. Thus a distinction was drawn between the basic operations and the subsequent operations. The mere performance of the subsequent operations on the produce 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. Therefore, the necessity of the conjunction of the basic operations with the subsequent operations. Thus there should be an integrated activity in order to constitute agriculture and that the integrated activity must be performed in regard to any land. Only then the land can be said to have been used for agricultural purposes and the income derived therefrom could be said to be agricultural income derived from the land by agriculture. The Supreme Court also pointed out that agriculture comprised within its scope all basic and subsequent operations regardless of the nature of the product raised on the land. The emphasis, therefore, is not on the products raised but on carrying out of the basic and subsequent operations on the land. By way of example the Supreme Court pointed out in this case that the produce that could be raised on the land could be necessary for the sustenance of human beings, including plantations and groves, or grass or pasture for the consumption of beasts or articles of luxury .such as betel, coffee, tea, spices, tobacco or commercial crops like cotton, flax, jute, indigo. The produce of the land can be used for either human consumption or for trade and commerce and would also include forest products such as timber, and sal and piyasal trees, casuarina plantations, tendu leaves and horra nuts. Thus the term 'agriculture' cannot be extended to activities, which have some relation to the land or in any way connected with the land but it must be in connection with performance of basic and subsequent operations. This Supreme Court decision is considered as locus classicus on the subject and it is followed by the Supreme Court later in the case of CIT v. Ramakrishna Deo[1959] 35 ITR 312. The Supreme Court has pointed out that if any income is derived from the trees which are of spontaneous growth, then that income would not be agricultural income because in the case of trees of spontaneous growth there would neither be basic operations nor subsequent operations. If the trees had grown as a consequence of carrying out agricultural operations, then the income derived

therefrom would be agricultural income.

11A. It is to be noted that while Clause (a) of Section 2(1A) deals with rent or revenue derived from land used for agricultural purposes, Clause (b) deals with income derived from such land by agriculture or by the performance by the cultivator or the receiver of rent-in-kind of any process ordinarily employed by the cultivator or the receiver render the produce raised or received by him fit to be taken to the market or the sale by a cultivator or receiver of rent-in-kind of the produce in respect of which no process has been performed other than a process of the nature mentioned above, is also regarded as agricultural income. There is plethora of case law on the subject as to in what circumstances the performance by a cultivator of any process ordinarily employed by the cultivator to "render the produce raised or received by him fit to be taken to market is agricultural income. There may be some cases where a part of the operations relate to agriculture and another part to business and in order to differentiate this part, the Income-tax Rules, particularly Rules 7&8 were enacted with this object.

The crop is harvested may not find a market. In order to make the produce a saleable commodity, it may be necessary to perform certain processes which will enhance the value of the produce. Even that also is considered as agricultural income. The only thing is the ascertainment of income attributable to the performance of the marketing process should have to wait till an actual sale takes place.

This is decided by the Supreme Court in the case of Dooars Tea Co. Ltd. v. CAIT [1962] 44 ITR 6. The whole idea is that even though some processes have to be employed to make the commodity marketable and even though the employment of those processes will enhance the value, still the produce is to be regarded as income derived from agricultural land, which is the immediate and effective source of such income. The processes that may be employed may depend upon the commodity raised. It may be manual or it may be mechanical. Merely because machinery is used to make the product raised marketable, the character of agricultural income is not changed. Similarly in the case of coconut though it is a direct agricultural commodity, still operations employed to convert it into copra by

removing the husk and selling the husk as fibre, was held to be agricultural income [see CIT v. P.K. Veeran [1964] 54 ITR 393 (Ker.)]. Similarly sugarcane but not the sugar manufactured out of sugarcane. Similarly in the case of cotton, indigo, tobacco, tendu leaves, tamarind, coffee, rubber. In the case of rubber, there is what is called a centrifuging process is employed to convert the latex as drawn from the rubber trees into rubber. Since the process of centrifuging did nothing more than to reduce the bulk of the latex as tapped from the trees by removing part of water therefrom so as to make the rubber easily portable, the income from the sale of latex is held to be agricultural income CIT v. Woodland Estates Ltd. [1965] 58 ITR 612 (Ker.). In the case of tea for its peculiar nature Rule 8 of the Income-tax Rules provide that the income derived from the sale of manufactured tea, only a portion would be considered as income liable to tax and a major portion was held to be agricultural income exempt from tax. That was because there is no market for the green tea leaves unless by the employing of several processes the green tea leaves are converted into black tea, for which alone the market exists. All this would show that the immediate source for raising the income must be the land and the trees grown thereon. If the agricultural produce raised is marketed by employing certain processes, that would not change the character of the income as seen above from the decided cases. It is thus clear that when an assessee as in this case planted the fresh trees by incurring expenditure, nurtured them and performed agricultural operations and sold the product by employing the use of machinery, that would not render it anytheless the agricultural income.

12. Applying these principles we have to find out whether in its case the income derived by the assessee from resin is agricultural income or not. Therefore the crucial question is not whether the assessee is carrying activity for profit nor the question as to whether any business activity is involved or not but whether the activity of agriculture was involved or not. In the case of Raja Benoy Kumar Sahas Roy (supra) the assessee owned about 6000 acres of forest land, which consisted of sal and piyasal trees. The forest was originally of spontaneous growth. It was in existence for over 150 years. The question arose whether the income from the sale of trees and the product was agricultural income or not. After referring to the definition of "agricultural income" and after laying down the principle as to when , the income could be called agricultural income, the Supreme Court found on the

facts in that case that though the forest in question was originally of spontaneous growth, since the forest was more than 150 years old, some portion of the forest must have from time to time been denuded, trees must have been completely felled down and the proprietors must have planted fresh trees and they performed operations for the purpose of nursing the trees planted by them. In respect of those trees the income would certainly be agricultural income. Having regard to the age of the trees, the Supreme Court held that all the trees could not be said to be of spontaneous growth and trees of such spontaneous growth would be negligible. It therefore held that whole of the income derived from the forest could be treated as agricultural income. Then the Supreme Court said that the accounts showed that some expenditure was incurred on the maintenance of the forest and that would be sufficient to show that some operations like basic and subsequent were carried out in order to constitute the income derived as agricultural income. Thus the emphasis laid down by the Supreme Court in this locus classicus case was (a) incurring of expenditure (b) the fees not being of spontaneous growth, (c) and taking note of the fact that the trees if they were very old of more than 150 years, they would not live and that they would be dead and in their place new trees would have to be raised by planting new trees and (d) that the income derived from such a forest would constitute agricultural income.

13. Applying these principles to the facts before us, we find that the forest was of more than 150 years old. Therefore, all the trees, which were originally gifted, though by then would be of spontaneous growth, could not be said to be living even till today, i.e., to the dates of the assessment years in question. It is an admitted fact that expenditure was incurred for the maintenance and for carrying out agricultural operations. Therefore, in the place of the trees that died, new trees must have been planted yielding more resin, perhaps applying more modern and technical methods. The expenditure incurred docs lead one to the conclusion that agricultural operations both of basic as well as of subsequent were being carried out. From the order of assessment for the assessment year 1985-86 it is seen that while Rs. 2,59,820 was the expenditure incurred on extraction of resin, Rs. 33,972 was spent on forest. Details of similar expenditure incurred for all these years were furnished and is available on record. For the assessment year 1984-85 the expenditure incurred was Rs. 19,268 and for the assessment year 1986-87 it was

Rs. 47,983. We have been furnished with the figures for the earlier assessment years commencing from 1975-76, in the paper book but we do not wish to comment on them, other than those referred to by the Assessing Officers in their orders for these years. Thus the expenditure incurred to indicate that agricultural operations were being carried out and it cannot be again said that the trees which were originally gifted about 150 years ago, were still living and when they were replanted, the replanting for new trees in their place, and nurturing them thereafter, would only constitute the basic and subsequent operations as defined by the Supreme Court in the case referred to above.

14. Having regard to these facts, we are of the opinion that the income derived from resin is agricultural income and therefore entitled to exemption from the levy of tax.

15. Before we part with this matter, we would like to add a word about the application of Section 11 (4 A) of the Income-tax Act, 1961. Though it is conceded that Section 11(4 A) would apply and would make this income liable to tax as if it is the income from business still under Clause (b) of Sub-section (4A) of Section 11, the income from business even though carried on by a trust would still earn exemption if the business is carried on by an Institution wholly for charitable purposes and the work in connection with the business is mainly carried on by the beneficiaries of the Institution. In this case it is an admitted fact that assuming that it was a business carried on by the Institution, namely, the trust, was wholly for charitable purposes.

There is also no dispute that the income derived from the sale of resin was applied for the purposes of the trust. The second condition is 'work in connection with the business' should be mainly carried on by the beneficiaries of the Institution. The expression "work in connection with the business" is perhaps not the same as carrying on of the business. If both of them are one and the same, the Legislature would not have used the expression "work in connection with the business" but would have used the words "the business carried on". Be that as it may in this case the work in connection with the business must have been carried on by the beneficiaries. The beneficiaries are the temples, i.e., the idols, deities like Mala

Vaishneo Devi, Raghunath Ji etc. installed in the temples. These idols which are inanimate bodies, the affairs must have to be carried out through human agency, i.e., either by the Trustees or the employees employed by them and the gain must enure to the temples. There is no gain saying of the fact that in the case of a deity the work in connection with the business can be carried on only by the trustees or the agents and servants employed by the trustees of the Deity. Here in this case the business if at all there was any business it was carried on only by the servants and agents appointed by the trustees so also the work in connection with the business. It is also doubtful whether in a case of this nature where the management etc. was given to Government on Royalty basis would amount to carrying on of business, or would amount to only exploitation of the forest land and its produce, so that exemption could be denied under Section 11 (4A). Be that as it may, without expressing any firm opinion on this issue which was raised though not pressed, we hold that the income derived by the assessee trust was from performing agricultural operations, and that income should not have been brought to tax on the ground that Section 11(4A) applied.

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