THE COMMISSIONER OF INCOME-TAX, WEST BENGAL, CALCUTTA

1957
May, 23

v.

RAJA BENOY KUMAR SAHAS ROY

(BHAGWATI, VENKATARAMA AYYAR and J.L. KAPUR JJ.)

Income-tax—Exemption—Income from sale of forest trees, if and when agricultural income—"Agriculture", Meaning of—Indian Income-tax Act (XI of 1922), ss. 2(1), 4(3) (viii).

The question for decision in this appeal by the Commissioner of Income-tax was whether a sum of Rs. 51,978 shown by the assessee in his return as income from his forest land was agricultural income within the meaning of s. 2(1) of the Indian Income-tax Act and was as such exempt from taxation under s. 4(3)(viii) of the Act. The forest was of spontaneous growth, 150 years old, and consisted of *sal* and *piyasal* trees. It was in parts denuded of trees from time to time by destructive elements and the assessee had to plant fresh trees in those parts. Considerable amount of human labour and skill had to be applied year after year for maintaining the forest, protecting the offshoots from the stumps of the trees that had been cut and sold and in reviving its denuded parts by fresh plantation. The staff employed by the assessee performed such operations as pruning, weeding, felling, clearing, cutting of channels, guarding the trees and sowing seeds by digging the soil in the denuded areas. The Income-tax Officer rejected the assessee's claim of exemption an added a sum of Rs. 34,430 to the assessable income, allowing a sum of Rs. 17,548 as expenditure. The Assistant Commissioner of Income-tax confirmed the assessment. The Appellate Tribunal held that the sowing of seeds were few and far between and the income, derived as it was from jungle products, was not agricultural income within the meaning of the Act. The High Court took a contrary view, held that tillage of the soil was not essential, and the income was agricultural income as human labour and skill had been expended on the land itself and answered the question in favour of the assessee. No attempt was, however, made by the Income-tax Authorities to ascertain the income actually derived from the trees planted by the assessee, nor were any materials placed on the record from which its exact amount could be ascertained, but having regard to the magnitude of the expenditure shown by the assessee as against the total income this Court held that a substantial portion of it must have been derived from the trees planted by the assessee.

Held, that the income actually derived from the trees planted by the assessee was agricultural income within the meaning of s. 2(1) of the Indian Income-tax Act and no attempt having been

1957

The Commissioner of Income-tax, West Bengal Calcutta
v.
Raja Benoy Kumar Sahas Roy

made to ascertain its exact amount and a fresh enquiry being undesirable after such a long lapse of time, the appeal must be dismissed.

The term 'agriculture' in s. 2(1)(b)(i) of the Indian Income-tax Act connotes the entire and integrated activity of an agriculturist performed on the land in order to raise its produce and consists of such basic and essential operations, requiring human skill and labour on the land itself, as the tilling of the soil, sowing of the seeds, planting and similar operations on the land and such other subsequent operations, performed after the produce sprouts from the land, as weeding, digging of the soil around the growth, removal of undesirable under-growths, tending, pruning, cutting, harvesting and marketing. But these subsequent operations, if unconnected with the basic operations, cannot by themselves constitute agriculture. It is only when the land is subjected to such integrated activity, that it can be said to be used for 'agricultural purpose' and its income called agricultural income within the meaning of the Act.

Case-law discussed.

Whatever is produced by such agriculture must be an agricultural product and the ambit of the term 'agriculture' cannot be confined merely to the production of grain and food for men and cattle but must extend to all products of the land that have some utility either for consumption or trade and commerce. Fruit and vegetable plantations, groves, pastures, articles of luxury such as betel, coffee, tea, spices, tobacco etc. or commercial crops like cotton, flax, jute, hemp, indigo etc. as also forest products such as timber, *sal* and *piyasal* trees, casuarina plantations, tendu leaves, horranuts etc. can come within its ambit.

Murugesa Chetti v. *Chinnathambi Goundan*, (1901) I.L.R. 24 Mad. 421 and *Raja of Venkatagiri* v. *Ayyappa Reddy*, (1913) I.L.R. 38 Mad. 738, disapproved.

Such an extended meaning of the term 'agriculture' and its processes and products can be tenable only where there is cultivation, which means the basic operations, and can never be dissociated from them. There is, therefore, no warrant for its further extension so as to include activities which are in some way connected with or dependent on land, such as breeding and rearing of livestock, dairy-farming, butter and cheese making and poultry-farming.

Moolji Sicka & Co., In re, (1925) 10 T.C. 341 and *Commissioner of Income-tax* v. *K. E. Sundara Mudaliar*, (1950) 18 I.T.R. 259, disapproved.

Although human labour and skill are required both in the performance of the basic as well as the subsequent operations, it is only in the case of the basic operations alone that such skill and labour can be said to have been spent on the land iteself, and this distinction becomes important where they are disjointed and do

not form an integrated activity, as in the case of products of land that are of spontaneous growth where human skill and labour are spent merely in fostering the growth, preservation and regeneration of such products.

Judicial opinion is unanimous that products which grow wild on the land or are of spontaneous growth and do not involve any human skill or labour on the land, and all that the assessee has to perform in respect of them is only to collect them for consumption and marketing, are not products of agriculture and the income derived from them is not agricultural income within the meaning of s. 2(1) of the Act.

When, however, the assessee performs subsequent operations on these products of land, the nature of those operations will have to be determined in the light of the principles enunciated above.

Held further, that there is no basis for the argument that the demarcation of agriculture and forestry as separate heads of legislation in Entries 14 and 19 of List II of the Seventh Schedule to the Constitution has the effect of making them mutually exclusive. Income from forestry coming within the definition of 'agricultural income' contained in s. 2(1) of the Indian Income-tax Act will be agricultural income under Entry 46 and thus fall within the purview of that Act.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 165 of 1954.

Appeal from the judgment and order dated May 27, 1953, of the Calcutta High Court in Income-tax Reference No. 35 of 1952.

G. N. Joshi and *R. H. Dhebar*, for the appellant.

Jyotish Chandra Pal and *D. N. Mukherjee*, for the respondent.

1957. May 23. The Judgment of the Court was delivered by

Bhagwati J.

BHAGWATI, J.—This appeal with certificate of fitness under s. 66A(2) of the Indian Income-tax Act (XI of 1922) is directed against the Judgment and order of the High Court of Judicature at Calcutta on a reference under s. 66(1) of the Act.

The respondent owns an area of 6,000 acres of forest land assessed to land revenue and grown with *Sal* and *Piyasal* trees. The forest was originally of spontaneous growth, "not grown by the aid of human skill and

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

laobur" and it has been in existence for about 150 years. A considerable income is derived by the assessee from sales of trees from this forest. The assessment year in which this forest income was last taxed under the Indian Income-tax Act was 1923-24 but thereafter and till 1944-45 which is the assessment year in question, it was always left out of account. The assessment for 1944-45 also was first made without including therein any forest income, but the assessment was subsequently re-opened under s. 34. In response to a notice under s. 22(2) read with s. 34 of the Act, the respondent submitted a return showing the gross receipt of Rs. 51,978 from the said forest. A claim was, however, made that the said income was not assessable under the Act as it was agricultural income and was exempt under s. 4(3) (viii) of the Act. The Income Tax Officer rejected this claim and added a sum of Rs. 34,430 to the assessable income as income derived from the forest after allowing a sum of Rs. 17,548 as expenditure. The Appellate Assistant Commissioner confirmed the assessment and the Income-tax Appellate Tribunal also was of opinion that the said income was not agricultural income but was income derived from the sale of jungle produce of spontaneous growth and as such was not covered by s. 2(1) of the Act. At the instance of the assessee the Tribunal referred to the High Court under s. 66(1) of the Act two questions of law arising out of its order, one of which was:

"Whether on the facts and in the circumstances of this case, the sum of Rs. 34,430 is "agricultural income" and as such is exempt from payment of tax under section 4 (3) (viii) of the Indian Income-tax Act?"

The Tribunal submitted a statement of case from which the following facts appear as admitted or established :

"(i) The area covered by the forest is about 6,000 acres, trees growing being Sal and Piyasal;

(ii) It is of spontaneous growth being about 150 years old. It is not a forest grown by the aid of human skill and labour;

(iii) The forest is occasionally parcelled out for the purposes of sale and the space from which trees sold are cut away is guarded by forest guards to protect offshoots;

(iv) It has been satisfactorily proved that considerable amount of human labour and care is being applied year after year for keeping the forest alive as also for reviving the portions that get denuded as a result of destruction by cattle and other causes;

(v) The staff is employed by the assessee to perform the following specific operations;

(a) Pruning,
(b) Weeding,
(c) Felling,
(d) Clearing,
(e) Cutting of channels to help the flow of rain water,
(f) Guarding the trees against pests and other destructive elements,
(g) Sowing of seeds after digging of the soil in denuded areas."

The Tribunal found that the employment of human labour and skill in items (a) to (f) was necessary for the maintenance and upkeep of any forest of spontaneous growth. Regarding item (g), however, it found that the said operation had been performed only occasionally and over a small fraction of the area where the original growth had been found to have been completely denuded. Such occasions were however few and far between, the normal process being that whenever a tree was cut, a stump of about 6" height was left intact which sent forth offshoots all round bringing about fresh growth in course of time. This went on perpetually unless an area got otherwise completely denuded.

The reference was heard by the High Court and the High Court held that actual cultivation of the land was not required and as human labour and skill were spent for the growth of the forest the income from the forest was agricultural income. It accordingly answered the above question in the affirmative. The

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

Revenue obtained the requisite certificate of fitness for appeal to this Court and hence this appeal.

The question that arises for consideration in this appeal is whether income derived from the sale of *Sal* and *Piyasal* trees in the forest owned by the assessee which was originally a forest of spontaneous growth "not grown by the aid of human skill and labour" but on which forestry operations described in the statement of case had been carried on by the assessee involving considerable amount of expenditure of human skill and labour is agricultural income within the meaning of s. 2(1) and as such exempt from payment of tax under s. 4 (3) (viii) of the Indian Income-tax Act.

Section 2(1) of the Act defines agricultural income and states (so far as it is relevant for the purposes of this appeal) :

(1) "agricultural income" means:

(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in the taxable territories or subject to a local rate assessed and collected by officers of the Government as such :

(b) any income derived from such land by :

(i) agriculture, or

(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 sub-clause (ii);

....."

Section 4(3) of the Act provides:—

"(3) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them;

.....

(viii) Agricultural income....."

Even though "agricultural income" which is exempted under s. 4(3) (viii) of the Act is defined in s. 2(1) as above, there is no definition of "agriculture" or "agricultural purpose" to be found in the Act and it therefore falls to be determined what is the connotation of these terms.

An argument based on entries 14 and 19 of List II of the Seventh Schedule to the Constitution may be disposed of at once. It was urged that entry No. 14 referred to agriculture including agricultural education and research, protection against pests and prevention of plant diseases while entry No. 19 referred to forests and there was therefore a clear line of demarcation between agriculture and forests with the result that forestry could not be comprised within agriculture. If forestry was thus not comprised within agriculture, any income from forestry could not be agricultural income and the income derived by the assessee from the sale of the forest trees could not be agricultural income at all, as it was not derived from land by agriculture within the meaning of the definition of agricultural income given in the Indian Income-tax Act. This argument, however, does not take account of the fact that the entries in the lists of the Seventh Schedule to the Constitution are heads of legislation which are to be interpreted in a liberal manner comprising within their scope all matters incidental thereto. They are not mutually exclusive. If the assessee plants on a vacant site trees with a view that they should grow into a forest, as for example, casuarina plantations and expends labour and skill for that purpose, the income from such trees would clearly be agricultural produce. It has to be remembered that even though this demarcation between agriculture and forestry was available in the Lists contained in the Seventh Schedule to the Government of India Act, 1935, no such demarcation existed in the Devolution Rules made under the Government of India Act, 1919, and in any event the definition of agricultural income with which we are concerned was incorporated in the Indian Income-tax Acts as early as 1886, if not earlier: *vide* s. 5 of the Indian Income-tax

[1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

Act 1886 (II of 1886). It has also to be remembered that in spite of this demarcation between agriculture and forests in the Constitution, taxes on agricultural income are a separate head under entry 46 of List II of the Seventh Schedule and would comprise within their scope even income from forestry operations provided it falls within the definition of agricultural income which according to the definition given under Art. 366(1) means agricultural income as defined for the purposes of the enactments relating to Indian Income-tax.

The terms "agriculture" and "agricultural purpose" not having been defined in the Indian Income-tax Act, we must necessarily fall back upon the general sense in which they have been understood in common parlance. "Agriculture" in its root sense means ager, a field and culture, cultivation, cultivation of field which of course implies expenditure of human skill and labour upon land. The term has, however, acquired a wider significance and that is to be found in the various dictionary meanings ascribed to it. It may be permissible to look the dictionary meaning of the term in the absence of any definition thereof in the relevant statutes. As was observed by Lord Coleridge in *R.* v. *Peters* (1) :

"I am quite aware that dictionaries are not to be taken as authoritative exponents of the meanings of words used in Acts of Parliament, but it is a well-known rule of courts of law that words should be taken to be used in their ordinary sense, and we are therefore sent for instruction to these books."

Cozens-Hardy, M.R., also said in *Camden* (*Marquis*) v. *I.R.C.* (2) :

"It is for the Court to interpret the statute as best it may. In so doing the Courts may no doubt assist themselves in the discharge of their duty by any literary help they can find, including of course the consultation of standard authors and reference to well-known and authoritative dictionaries."

(1) (1886) 16 Q.B.D. 636, 641. (2) [1914] 1 K.B. 641, 647.

Turning therefore to the dictionary meaning of "agriculture" we find Webster's New International Dictionary describing it as "the art or science of cultivating the ground, including rearing and management of livestock, husbandry, farming, etc. and also including in its broad sense farming, horticulture, forestry, butter and cheese-making etc.". Murray's Oxford Dictionary describes it as "the science and art of cultivating the soil; including the allied pursuits of gathering in the crop and rearing livestock; tillage husbandry, farming (in the widest sense)". In Bouvier's Law Dictionary quoting the Standard Dictionary "agriculture" is defined as "the cultivation of soil for food products or any other useful or valuable growths of the field of garden; tillage; husbandry; also, by extension, farming, including any industry practised by cultivator of the soil in connection with such cultivation, as breeding and rearing of stock, dairying, etc. The science that treats of the cultivation of the soil".

In Corpus Juris the term "agriculture" has been understood to mean : "art or science of cultivating the ground, especially in fields or large quantities, including the preparation of the soil, the planting of seeds, the raising and harvesting of crops, and the rearing, feeding and management of livestock; tillage, husbandry and farming. In its general sense the word also includes gardening or horticulture".

Bhasyam Ayyangar J. in *Murugesa Chetti* v. *Chinnathambi Goundan* (1) gave the following dictionary meanings of agriculture as culled out from the Century Dictionary and Anderson's Dictionary of Law:

"The primary meaning of agriculture is the cultivation of the ground (The Century Dictionary) and in its general sense it is the cultivation of the ground for the purpose of procuring vegetables and fruits for the use of man and beast including gardening or horticulture and the raising or feeding of cattle and other stock (Anderson's Dictionary of Law). Its less general and more ordinary signification is the cultivation with the plough and in large areas in order to raise

(1) (1901) I.L.R. 24 Mad. 421, 423.

1957

The Commissioner of Income-tax West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

food for man and beast (The Century Dictionary) or, in other words, "that species of cultivation which is intended to riase grain and other field crops for man and beast." (Anderson's Dictionary of Law). Horticulture, which denotes the cultivation of garden or orchards, is a species of agriculture in its primary and more general sense."

Ramesam J. in *Panadai Pathan* v *Ramasami Chetti* (1) referred to the following connotation of 'agricultrure';

"Wharton's Law Lexicon adopts the definition of "agriculture" in 8 Edw. VII, c. 36, as including "horticulture, forestry, and the use of land for any purpose of husbandry etc. In 10 Edw. VII, c. 8 s. 41, it was defined so as to include the use of land as "meadow" or pasture land or orchard or osier or woodland, or for market gardens, nursery grounds or allotments, etc. In 57 and 58 Vict. c. 30 s. 22, the term 'agricultural property' was defined so as to include agricultural land, pasture and woodland, etc."

These are the various meanings ascribed to the term "agriculture" in various dictionaries and it is significant to note that the term has been used both in the narrow sense of the cultivation of the field and the wider sense of comprising all activities in relation to the land including horticulture, forestry, breeding and rearing of livestock, dairying, butter and cheese-making, husbandry etc.

It was urged on behalf of the assessee that the Court should accept the wider significance of the term and include forestry operations also within its connotation even though they did not involve tilling of the land, sowing of seeds, planting, or similar work on the land. The argument was that tilling of the land, sowing of the seeds planting or similar work on the land were no doubt agricultural operations and if they were part of the forestry operations carried on by the assessee the subsequent operations would certainly be a continuation of the same and would therefore acquire the characteristic of agricultural operations. But the

(1) (1922) I.L.R. 45 Mad. 710.

absence of these basic operations would not necessarily make any difference to the character of the subsequent operations and would not divest them of their character of agricultural operations, so that if in a particular case one found that the forest was of spontaneous growth, even so if forestry operations were carried on in such forests for the purpose of furthering the growth of forest trees, these operations would also enjoy the character of agricultural operations. If breeding and rearing of livestock, dairying, butter and cheese-making etc., could be comprised within the term "agriculture", it was asked, why should these also be not classed as agricultural operations.

Considerable stress was laid on the fact that s. 4(3) (viii) of the Act enacted a provision in regard to the exemption of "agricultural income" from assessment and it was contended that exemptions should be liberally construed. Reliance was placed on the observations of Vishwanatha Sastri J. in *Commissioner of Income-tax, Madras* v. *K.E. Sundara Mudaliar*(1) :

"Exemption from tax granted by a Statute should be given full scope and amplitude and should not be whittled down by importing limitations not inserted by the Legislature."

Mookerjee J. in *Commissioner of Agricultural Income-tax, West Bengal* v. *Raja Jagadish Chandra Deo Dhabal Deb* (2) also expressed himself similarly :

"and the present day view seems to be that where an exemption is conferred by statute, that clause has to be interpreted liberally and in favour of the assessee but must always be without any violence to the language used. The rule must be construed together with the exempting provisions, which must be regarded as paramount."

He also quoted a passage from *The Upper India Chamber of Commerce* v. *Commissioner of Income-tax, C.P.& U.P.* (3) :

(1) [1950] 18 I.T.R. 259, 271. (3) [1947] 15 I.T.R. 263, A.I.R. 1948 All. 70
(2) [1949] 17 I.T.R. 426, 438.

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

"It is needless to observe that, as in the present case, we are concerned with the interpretation of an exemption clause in a taxing statute, that clause must be, as far as possible, liberally construed and in favour of the assessee, provided no violence is done to the language used."

It was also pointed out that "Taxes on agricultural income" formed a head of legislation specified in item 46 of List II of the Seventh Schedule to the Constitution and should be liberally construed, with the result that agriculture should be understood in the wider significance of the term and all agricultural income derived from agriculture or so understood should be included within the category. There was authority for the proposition that the expression "agricultural land" mentioned in Entry 21 of List II of the Seventh Schedule to the Government of India Act, 1935, should be interpreted in its wider significance as including lands which are used or are capable of being used for raising any valuable plants or trees or for any other purpose of husbandry. [see *Sarojinidevi* v. *Shri Krishna Anjanneya Subrahmanyam* (1) and *Megh Raj* v. *Allah Rakhia* (2).

While recognizing the force of the above expressions of opinion we cannot press them into service in favour of the assessee for the simple reason that "agricultural income" has been defined in the Constitution itself in Art. 366(1) to mean agricultural income as defined for the purposes of enactments relating to Indian income-tax and there is a definition of "agricultural income" to be found in s. 2(1) of the Indian Income-tax Act. We have therefore got to look to the terms of the definition itself and construe the same regardless of any other consideration, though, in so far as the terms "agriculture" and "agricultural purposes" are concerned, we feel free in view of the same not having been defined in the Act itself to consider the various meanings which have been ascribed to the same in the legal and other dictionaries.

(1) I.L.R. (1945) Mad. 61 (2) [1942] F.C.R. 53,62.

We may also note here the dictionary meanings of the terms "Forestry" and "Cultivation." The Shorter Oxford Dictionary, Vol I. page 735, gives the meaning of "forestry" as the "science and art of forming and cultivating forests, management of growing timber."

Webster's New Internationtal Dictionary, Vol. I, page 990, gives the following meaning of forestry:

"Science and art of farming, caring for, or cultivating forests; the management of growing timber."

Webster's New International Dictionary. Vol. I, page 643, while talking of cultivation says that "to cultivate" means "(i) to prepare, or to prepare and use, for the raising of crops; to till; as to cultivate the soil; to loosen or break up the soil about (growing crop or plants) for the purpose of killing weeds, etc. especially with a cultivator, as to cultivate the corn;

(2) to raise, or foster the growth of, by tillage or by labour and care; to produce by culture; as to cultivate roses; to cultivate oysters."

Whether the narrower or the wider sense of the term "agriculture" should be adopted in a particular case depends not only upon the provisions of the various statutes in which the same occurs but also upon the facts and circumstances of each case. The definition of the term in one statute does not afford a guide to the construction of the same term in another statute and the sense in which the term has been understood in the several statutes does not necessarily throw any light on the manner in which the term should be understood generally. The decided cases disclose a variety of opinions in regard to the connotation of the terms "agriculture" and "agricultural purposes." At one time "agriculture" was understood in its primary sense of cultivation of field and that too for production of food crops for human beings and beasts. This limited interpretation could not be adhered to even though tilling of the land, sowing of the seeds, planting or similar work on the land were the basic operations, the scope of the crops produced was enlarged and all crops raised on the land, whether they be food crops or not were included in the produce raised by agriculture. There was however another school of thought

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

which extended the term "agriculture" and included within its connotation not only the products raised by the cultivation of the land but also allied activities which had relation to the land and operations which had the effect of fostering the growth, preservation and maintenance as also the regeneration of the products of the land, thus bringing within its compass not only the basic agricultural operations but also the further operations performed on the products of the land even though they were not necessarily accompanied by these preliminary basic operations. As against these cases which dealt with these preliminary basic operations and also the further operations either by themselves or in conjunction with the former which of course necessarily involved in the expenditure of human skill and labour in carrying out those operations, there were instances of products of land which grew wild or were of spontaneous growth without the expenditure of human skill and labour and which it was agreed on all hands could not be comprised within "agriculture" and the income from which could not fall within the definition of "agricultural income". We shall briefly discuss the various cases dealing with these different aspects and try to evolve some principle therefrom which would serve as a guide in the determination of the question before us.

Kunhaven Haji v. *Mavan* (1) was the earliest case in which it was held that a lease of a coffee garden was not an agricultural lease within the meaning of Transfer of Property Act, s. 117. The case however concerned itself with the situation where as far as the Court could gather from the Karar the lease was of the coffee plants only. There was no further discussion of the legal position and it may be noted that Shephard, J., who was a party to this decision stated in the later case of *Murugesa Chetti* v. *Chinnathambi Gounden* (2) that he was wrong in the opinion he expressed with regard to a coffee garden in this case.

Murugesa Chetti v. *Chinnathambi Goundan* (2) also was concerned with s. 117 of the Transfer of Property Act. The lease there was a lease of land for

(1) [1893] I.L.R. 17 Mad. 98. (2) [1901] I.L.R. 24 Mad. 421, 423.

the cultivation of betel and the Court held that such a lease was an agricultural lease falling under s. 117. Bhashyam Ayyangar, J., who delivered the main judgment of the Court discussed the dictionary meanings of the term "agriculture" and stated that in s. 117 of the Transfer of Property Act it was used in its more general sense as comprehending the raising of vegetables, fruits and other garden products as food for men or beast, though some of them may be regarded in England as products of horticulture as distinguished from agriculture. The learned Judge considered the distinction between "agriculture" and "horticulture" and observed :

"The distinction between agriculture when it is used otherwise than in its primary and more general sense and horticulture is a fine one even in England and in India, especially, it will be impossible in the case of several products of the land to draw a line between agriculture and horticulture according to English notions. The only practical distinction which I can suggest and one which will give effect to the policy of the Legislature in exempting agricultural leases from the operations of section 107, etc., of the Transfer of Property Act is to regard as agriculture, as distinguished from horticulture, not only all field cultivation by tillage but also all garden cultivation for the purpose chiefly of procuring vegetables or fuits as food for man or beast and other products fit for human consumption by way of luxury, if not as an article of diet."

He then discussed the policy of exemption setting out the observations of Cave. J. in *Ellis & Co.* v. *Hilse* (1):

"The very object of this exemption is the well-known one of favouring agriculture—an old object of English Legislation in favour of a very important industry",

and stated :

"This observation of Mr. Justice Cave will apply with much greater force in this country where the agricultural industry is more important than in England and is one that is common to wet cultivation

(1) [1889] L.R. 23 Q.B.D. 24.

1957

The Commissioner of Income-tax, West Bengal Calcutta
v.
Raja Benoy Kumar Sahas Roy
—
Bhagwati J.

as to garden and dry cultivation, the object of all such cultivation being chiefly to procure food for men and cattle and other products of the soil which are usually consumed by the people as gentle stimulants or by way of luxury. Betel leaf is an article of daily consumption with all classes in this country as tobacco leaf is with most classes and betel vine is generally grown side by side with plantations, the products of which are among the chief articles of vegetable food."

The lease in that case being one for the cutivation of betel was therefore held to be agricultural lease and Shephard, J., agreed with this conclusion revising the opinion which he had expressed earlier in *Kunhavan Haji* v. *Mavan* (*supra*).

In *Raja of Venkatagiri* v. *Ayyappa Reddy* (1) the question was whether land usually fit only for pasturing cattle and not for cultivation, i.e., ploughing and raising agricultural crops, was "ryoti" land, though it might have been "old waste" and a tenant of such land was a "ryot" and any amount agreed to be paid for pasturing cattle was "rent" within the definitions of s. 3 of the Madras Estates Land Act (Mad. 1 of 1908). The Court held that such land was not "ryoti" land inasmuch as it was not fit for ploughing and raising agricultural crops. The ordinary meaning of "agriculture" was taken to be "the raising of annual or periodical grain crops through the operations of ploughing, sowing, etc." (Per Sadasiva Ayyar, J., at page 741).

The Chief Commissioner of Income Tax, Madras v. *Zamindar of Singampatti* (2) was a reference arising out of the assessment for income-tax under Act VII of 1918 of the income derived by the Zamindar of Singampatti from forests and fisheries within the ambit of his Zamindari. The assessee objected to the assessment (i) on the ground that the income was agricultural income within the meaning of s. 4 of the Act and therefore, not chargeable to income-tax; (ii) that the

(1) [1913] I.L.R. 38 Mad. 738. (2) [1922] I.L.R. 45 Mad. 518 (F.B.)

assessment was illegal as contravening the terms of his permanent sanad for the Zamindari and the provisions of Regulation XXV of 1802. The Court held that where the peishkush of a permanently settled estate was fixed in commutation not only of the rentals of the cultivated lands but also of all income which might be derived from forests or fisheries, both under the terms of the sanad and s. I of Regulation XXV of 1802, these incomes were exempt from further taxation by the Government, and s. 3 of the Income-tax Act did not abrogate this exemption. In view of this conclusion the Court did not think it necessary to determine whether income from forests or fisheries came under the definition of "agricultural income". The Court, however, pointed out that "a reference to Murray's and Webster's dictionaries shows that the word "agriculture", while sometimes used in the narrow sense of the art or science of cultivating the ground, is also used in a much wider sense so as to include even "forestry", according to Webster. In which sense it was used by the framers of the Income-tax Act would be a matter for determination and to this end it would not be out of place to consider the probable reason for the exemption of agricultural income from income-tax. No other reason is suggested than the equity of exempting from further burden income which had already paid toll to the State in the shape of land revenue."

The question, therefore, whether the income from forests would be "agricultural income" within the meaning of s. 4 of the Income-tax Act was thus left open and the decision that income from forests was not liable to income-tax was reached under the terms of the Sanad of s. I of Regulation No. 25 of 1802.

Kaju Mal v. *Salig Ram* (1) was concerned *inter alia* with a field in which tea was grown and the question was whether the land fell within the definition of "agricultural income" or "village immoveable property" as given in s. 3(i) and (ii) of the Punjab Pre-emption Act, 1905. The Court held that fields planted with tea bushes were fields used for agricultural

(1) [1919] P.R. No. 19. p. 237.

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

purposes and this decision was affirmed by the Privy Council in *Kaju Mall* v. *Salig Ram* (1). It was held that the words "agricultural purposes" in s. 2(iii) of the Punjab Alienation of Land Act, 1900, included the cultivation of tea; consequently, land which was not occupied as the site of any building in a town or village, and was occupied or let for the cultivation of tea was "agricultural land" within the meaning of s. 3(i) of the Punjab Pre-emption Act, 1905.

Emperor v. *Probhat Chandra Barua* (2) was a case under the Indian Income-tax Act and the classes of income derived from permanently settled estates were "1. Income from fisheries. 2. Income from land used for stacking timber. 3. Income from pasturage." The income from the first two heads was certainly not agricultural income or income derived from "land which is used for agricultural purposes" within the meaning of ss. 2 and 4 of the Act. But income derived from pasturage was held to be agricultural income which could not lawfully be charged with income-tax. There was a difference of opinion between Rankin, J., and Page, J., in regard to the liability of income from fisheries and income from land used for stacking timber based on the construction of the Permanent Settlement Regulations of 1793. But that is immaterial for our present purposes. What is material is that both the learned Judges were unanimous in their opinion that income from pasturage was income derived from "land which is used for agricultural purposes" and was, therefore, within the exemption given by s. 4(3) (viii) to agricultural income as defined by s.2(1)(a) of the Act.

In *Kesho Prasad Singh* v. *Sheo Pragash Ojha* (3) the Privy Council held that a grove was not land "held for agricultural purposes" within the meaning of s. 70 of the Agra Tenancy Act, 1901, affirming the decision of the High Court of Allahabad that it was impossible to hold that that section had any application whatever to such a property as the grove in fact was.

(1) [1223] I.L.R. 5 Lah. 50.
(2) [1924] I.L.R. 51 Cal. 504.
(3) [1924] I.L.R. 46 All. 831.

The Commissioner of Income-tax, Madras v. *T. Manavedan Tirumalpad* (1) was also a decision under the Indian Income-tax Act (XI of 1922) and the assessee there was assessed by the Income-tax Officer for the year 1928-29 on the amount received by the sale of timber trees cut and removed from the forests. The question was whether these amounts were liable as such to income-tax and the Court observed :

".....we are unable to distinguish between the income derived from the sale of paddy which is grown on land and the income derived from the sale of timber cut in a forest; but the profits earned from the sale of paddy would be assessable to income-tax but for the special exemption given to that income in the Income-tax Act, by reason of its being agricultural income. There is such exemption in the case of income derived from the sale of timber."

There is no further discussion to be found in the judgment which would throw light on the question whether such receipts by the assessee were agricultural income and as such exempt from income-tax.

The later decision of the Madras High Court in *Chandrasekhara Bharathi Swamigal* v. *Duraisami Naidu* (2) however contains an elaborate discussion as to the connotation of the term "agriculture". The case arose under the Madras Estates Land Act (Mad. I of 1908) and the question which the Court had to consider was whether growing casuarina trees, i.e., trees for fuel, was an agricultural purpose so as to make the person who held the land for that purpose a "ryot" within the meaning of the Madras Estates Land Act. The Court held that land held for growing casuarina trees was not land held for purposes of agriculture and the person holding the land for that purpose was not a "ryot" within the meaning of the Act. While delivering the judgment of the Court Reilly, J., embarked upon a consideration of what the term "agriculture" meant and came to the conclusion that agriculture could not be defined by the nature of the product cultivated but should be defined rather by

(1) [1930] I.L.R. 54 Mad. 21 (S.B.) (2) [1931] I.L.R. 54 Mad. 900.

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

the circumstances in which the cultivation was carried on. He observed at page 902 :

"I agree with the remark of Shephard, J., in *Murugesa Chetti* v. *Chinnathambi Goundan* (1) that a man who plants or maintains trees for firewood is not in ordinary parlance an agriculturist. If we take the strict meaning of "agriculture" according to its derivation, it means the cultivation of a field, the cultivation of an open space, as opposed to horticulture, the cultivation of a comparatively small enclosed space. The cultivation either of the field in agriculture or of the garden in horticulture cannot be confined, I think, to any particular product. With great respect, I do not agree with the opinion of Bhashyam Ayyangar, J., in *Murugesa Chetti* v. *Chinnathambi Goundan* (1) that agirculture implies production of things useful as food for men or beast or other products fit for human consumption by way of luxury. That appears to me to be too narrow an interpretation. Still less do I agree with the opinion expressed by Sadasiva Ayyar, J., in *Raja of Venkatagiri* v. *Ayyappa Reddi* (2) that agriculture is confined to the production of grain crops. I can see no reason why the cultivation in open spaces of such useful products as cotton, jute, flax and hemp should not be agriculture. Indeed I think agriculture cannot be defined by the nature of the products cultivated but should be defined rather by the circumstances in which the cultivation is carried on. In some cases it has been suggested that agriculture is confined to tillage. I think it can easily be shown that agriculture was carried on in this world before ploughs were invented. In the present day in many places cultivation is done with spades and not with ploughs, but the planting of timber or firewood trees, which are to stand on the land for a considerable number of years, forming plantations or woods or forests, appears to me to be opposed to the idea of agriculture, the cultivation of an open space. It is true that for the purpose of growing trees in a plantation it may be necessary first to prepare the land.

(1) [1901] I.L.R. 24 Mad. 421, 423 (2) [1913] I.L.R. 38 Mad. 738.

Later on it may be necessary to protect and water the young plants. Still later it may be necessary to thin out the plantation. But, when the land is covered with trees which had to stand on it for a number of years, sometimes as long as a century, during most of which period the land itself is untouched, to describe that as agriculture appears to me inappropriate. To my mind it is something very different from the cultivation of a field or of an open space It may be noticed that in *Kesho Prasad Singh* v. *Sheo Pragash Ojha* (1) their Lordhips of the Privy Council approved of the opinion expressed by two learned judges of the Allahabad High Court that land let for a grove was not let for an agricultural purpose. It happened that the case then under consideration was one arising under the Agra Tenancy Act. But in that Act there is no definition of 'agriculture'. Therefore both the learned judges of the Allahabad High Court and their Lordships of the Privy Council were, we may take it considering what is the meaning of the word 'agriculture' in its general sense. I may mention also that in *Commissioner of Income Tax* v. *Manavedan Tirumalpad* (2) a Full Bench of this Court remarked that income from cutting timber was not agricultural income."

It may be noticed that the learned Judge enlarged the connotation of the term "agriculture" by having regard to the circumstances in which the cultivation was carried on rather than the nature of the products cultivated and embraced within the scope of the term not merely the production of things useful as food for man or beast or other products fit for human consumption by way of luxury but also such useful products as cotton, jute, flax and hemp, though he stopped short at those products and hesitated to include therein growing of trees in plantation where the land was covered with trees which have to stand on it for a number of years.

The last case to be referred in this series in that of *Deen Mohammad Mian* v. *Hulas Narain Singh* (2)

(1) [1924] I.L.R. 46 All. 831. (2) [1952] 23 Pat. L.T. 143, 152

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

where it was held that an orchard is an agricultural land. It was observed :

"The case of an orchard is quite different. Orchard trees ordinarily are, and can be presumed to have been, planted by men after preparation of the ground which is cultivation and seasonal crops are gathered. Fruit trees also require seasonal attention such as pruning and digging of the soil around the roots and it cannot be said that this ceases to be cultivation merely because the whole tree is not replanted every year.....
.....In my opinion the land in suit is agricultural land; it is land from which by preparing the soil and planting and cultivating trees the raiyat expects to enjoy periodical returns in the way of produce for food."

This was a further extension of the idea which had germinated in the opinion expressed by Reilly, J., in *Chandrasekhara Bharathi Swamigal* v. *C.P. Duraisami Naidu* (1) and even plantation of trees in orchards which did not require to be replanted every year was included in the connotation of the term "agriculture".

A still further extension of the term is to be found in the following observations of Vishwanatha Sastri, J., in *The Commissioner of Income-tax, Madras* v. *K.E. Sundara Mudaliar* (2) at p. 273:

"It is a matter of ordinary experience, at least in this part of the country, that mango, cocoanut, palmyra, orange, jack, arecanut, tamarind and other trees are planted usually in an enclosed land, and that these trees do not yield any fruit or crop in the early years of their growth. They remain on the land for a long number of years yielding fruit only after their maturity. There is no reason why the planting, rearing, watering, fencing and protection of such trees and the gathering of their fruits during the annual seasons should not be held to be "agriculture". There is some kind of cultivation or prodding of the soil at the inception when the planting is done and subsequently also at intervals. In the case of coffee grown on hill slopes, there is no ploughing or tillage as in the

(1) [1931] I.L.R. 54 Mad. 900 (2) [1956] 18 I.T.R. 259, 271.

case of wet and dry fields; but it cannot be maintained that growing coffee is not an agricultural operation. Coffee and tea plants stand on the soil for many years, and their produce is gathered periodically. In the *padugai* lands or lands lying between the sandy bed and flood bank of rivers, plantains are grown in many places in deltaic tracts. Young plants are often brought and planted in pits dug for the purpose in a row with sufficient interspaces. Trenches are dug by the side of a row of plantain trees in order to catch and detain water. The plantain trees last for about two years, and from each tree off-shoots spring up and grow in place of the parent tree. There is thus a natural replenishment of the plantain garden. It cannot be said that the raising of plantains is not an agricultural purpose. Similarly in the case of sugarcane the plants stand on the land for two years or a little more, and there are usually two cuttings. Castor plants stand for some years on the soil and the seeds are periodically gathered in. Bamboo is often planted in enclosed lands by digging pits, filling them with sand and manure and then planting the young stalks in a bunch at suitable distances. Watering is done for the first 2 or 3 years. Every year, the land surrounding each bamboo cluster is dig with a spade and small earthen ridges are put up so as to catch and retain rain water. Bamboo plants attain maturity in about 3 or 4 years, and the thorny branches which grow on the main stem are then fit to be cut off and used for fencing purposes.....I am unable to see why these operations are not agricultural operations."

The cases above noted all of them interpret the term "agriculture" in its narrower sense, though there is a marked progress from the extremely narrow construction put upon it by Bhashyam Ayyangar J. in *Murugesa Cehtti* v. *Chinnathambi Goundan* (1) to somewhat wider connotation thereof adopted by Reilly J. in *Chandrasekhara Bharathi Swamigal* v. *C.P. Duraisami Naidu* (2) and by Vishwanatha Sastri J. in *The Commissioner of Income-tax, Madras* v. *K.E. Sundra*

(1) [1901] I.L.R. 24 Mad. 421, 423. (2) [1931] I.L.R. 54 Mad. 900.

1957

The Commissioner of Income-tax, West Bengal Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

Muddaliar (1). It is interesting to note that all throughout these cases runs the central idea of either tillage of the land or sowing of seeds or planting or similar work on the land which invests the operation with the characteristic of agricultural operations and whenever that central idea is fulfilled there is the user of land for agricultural purposes and the income derived therefrom becomes agricultural income.

There were, on the other hand, decisions which interpreted the term "agriculture" in the wider sense as including all activities in relation to the land even though they did not comprise these basic agricultural operations. *King Emperor* v. *Alexander Allen* (2) involved the interpretation of the expression "land used solely for agricultural pruposes" in sub-s. (3) of s. 63 of the Madras District Municipalities Act (Mad. IV of 1884) as amended by the Madras District Municipalities Amendment Act (Mad. III of 1897) and the Court held that the lands on which potatoes, grain, vegetables, etc., were grown, as well as pasture land, were used "solely for agricultural purposes" within the meaning of the sub-section. The court adopted the definition of agricultural land given in the Agricultural Rates Act (59 and 60 Vict., Chap. 16) s. 9:

"The expression "agricultural land" means any land used as arable, meadow, or pasture ground only, cottage gardens exceeding one-quarter of an acre, market gardens, nursery grounds, orchards, or allotments, but does not include land occupied together with a house as a park, gardens other than as aforesaid pleasure grounds or any land kept or preserved mainly or exclusively for purposes of sport or recreation or land used as a race course."

and also the meaning ascribed to it in Murray's Oxford English Dictionary quoted above and observed:

"We also note that it is there pointed out that the restriction of the word agriculture to tillage as in the following quotation is rare. The lands were not fields for agriculture but pastures for cattle. We believe that we cannot do better than follow these definitions in

(1) [1950] 18 I.T.R. 259, 271. (2) [1901] I.L.R. 25 Mad. 629, 630.

attempting to decide what, for the purposes of sub-section (3) of section 63 of the Municipalities Act, are or are not lands used solely for agricultural purposes .....We do not consider that any distinction can be drawn between large and small plots of lands on which roots of grain are cultivated. All such land must be held to be land used solely for agricultural purposes....Counsel has urged before us that these so-called waste lands are pasture lands and as such should be held to be lands used solely for agricultural purposes.....If, therefore, it could be shown that these so-called waste lands were in reality pasture grounds or lands used for "rearing livestock", we should certainly decide that they were lands used solely for agricultural purposes."

The learned Judges there were influenced by the dictionary meaning of the term agriculture as given in Murray's New Oxford Dictionary and understood the term agriculture in the wider sense as including the user of land for rearing livestock also.

In *Panadai Pathan* v. *Ramaswami Chetti* (1) a lease of land was given for growing casuarina trees and the question was whether such a lease was a lease for agricultural purposes within the meaning of s. 117 of the Transfer of Property Act. The Court held that it was a lease for agricultural purposes and therefore did not require a registered instrument for its creation. Spence J. in the course of his judgment differed from the opinion of Bhashyam Ayyangar, J., in *Murugesa Chetti* v. *Chinnathambi Goundan* (2) that the word agriculture in its more general sense comprehends the raising of vegetables, fruits and other garden products as food for man or beast, if the learned Judge intended thereby to limit it to the raising of food products. For to so restrict the word would be to exclude flower, indigo, cotton, jute, flax, tobacco and other such cultivation. He also differed from the opinion expressed by Sadasi Ayyar J. in *Seshayya* v. *Rajah* of

(1) [1922] I.L.R. 45 Mad. 710.
(2) [1901] I.L.R. 24 Mad. 421, 423.

1957

The Commissioner of Income-tax, West Bengal Calcutta
v.
Raja Benoy Roy Sahas Roy

Bhagwati J.

Pittapur (1) and *Rajah of Venkatagiri* v. *Ayyappa Reddi* (2) that agriculture meant the raising of annual or periodical grain crops through the operation of ploughing, sowing, etc., as such definition would exclude sugarcane, indigo, tea, flower, tobacco, and betel cultivation from agriculture. He then referred to the dictionary meaning of the term "agriculture" as given in the Oxford Dictionary and the Bouvier's Law Dictionary set out above and observed :

"In my opinion agriculture connotes the raising of useful or valuable products which derive nutriment from the soil with the aid of human skill and labour; and thus it will include horticulture, arboriculture and silviculture, in all cases where growth of trees is effected by the expenditure of human care and attention in such operations as those of ploughing, sowing, planting, pruning, manuring, watering, protecting etc."

Ramesam, J, who delivered a concurring judgment referred to the definition of agriculture adopted in Wharton's Law Lexicon and was of opinion that it would include the use of land as "meadow or pasture or orchard or osier or woodland, or for market gardens, nursery grounds or allotments etc." but would exclude all cultivation of fibrous plants such as cotton, jute and linen and all plants used for dyeing purposes, such as indigo, etc., and all timber trees and flowering plants etc. According to him, the rearing of a casuarina plantation requires some preparation of the ground and subsequent care by watering the plants and he was therefore of opinion that rearing of casuarina trees was an agricultural purpose within the meaning of s. 117 of the Transfer of Property Act.

It may be observed however that according to both the learned Judges some preparation of the ground or some expenditure of human care and attention in such operations as those ploughing, sowing, planting etc., was considered essential for constituting these operations agricultural operations.

In *Commissioner of Income-tax, Burma* v. *Kokine Dairy, Rangoon* (3) the question was whether income

(1) [1916] 31 M.L.J. 284; 1916 M.W.N. 366. (3) [1938] 6I.T.R. 502,509.
(2) [1913] I.L.R. 38 Mad. 738.

from a dairy farm and the milk derived from the farm is agricultural income and exempt as such from income-tax. Roberts C.J., who delivered the opinion of the Court observed :

"Where cattle are wholly stall-fed and not pastured upon the land at all, doubtless it is trade and no agricultural operation is being carried on; where cattle are being exclusively or mainly pastured and are none the less fed with small amounts of oil-cake or the like, it may well be that the income derived from the sale of their milk is agricultural income. But between the two extremes there must be a number of varying degrees, and the task of the Income-tax Officer is to apply his mind to the two distinctions and to decide in any particular case on which side of the fence, if I may use the term, the matter falls".

He then referred to the case of *Lean and Dickinson* v. *Ball* (1) where Lord Cullen had said that he proceeded on the footing that the case, which was one dealing with poultry-farming, was one in which the poultry derived sustenance to a material extent from the produce of the ground.

This method of approach was on a par with the one adopted by Lord Wright in *Lord Glanely* v. *Wightman* (2) where it was observed :

"If authority were needed the provisions just quoted do at least show that profits of 'occupation' include gains from the animal produce as well as the agricultural, horticultural, or arboricultural produce of the soil;.....equally it is obvious that the rearing of animals, regarded as they must be as products of the soil—since it is from the soil that they draw their sustenance and on the soil they live—is a source of profit from the occupation of land, whether these animals are for consumption as food (such as bullocks, pigs or chickens), or for the provision of food (such as cows, goats or fowls), or for recreation (such as hunters or race horses), or for use (such as draught or plough horses). All these animals are appurtenant to the soil, in the relevant sense for this purpose, as much as trees, wheat crops, flowers or roots though no doubt they differ in obvious respects. Nor

(2) (1925) 10 Tax Cas. 341.

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

is it now material towards determining what are products of occupation that farming has developed in its use of mechanical appliances and power, not only in such matters as ploughing, reaping, threshing, and so forth, but in such ancient methods of preparing its products as making cream, butter or cheese. The farmer is still dealing with the products of the soil, and Schedule B covers the income."

The House of Lords were dealing with the profits of occupation of land not with income derived from user of land for agricultural purposes and therefore not restricted in their interpretation of the term "occupation" and all these activities which were described therein might as well have been comprised within the scope of the taxing statutes. What we have, however, to see is whether these activities fall within the connotation of the terms "agriculture" and "agricultural purpose" which are the only terms to be considered for bringing the income derived therefrom within the definition of agricultural income in s. 2(1)(a) of the Indian Income-tax Act.

In *Moolji Sicka & Co., In re* (1) Derbyshire C.J. understood the term "agriculture" in a wider sense as including operations not only on the land itself but on the shrubs which grew on the soil and were according to him a part of the soil. The assessees were manufacturers of biri, a kind of cigarette consisting of tobacco wrapped in tendu leaves. The tendu plant was of entirely wild growth and propagated itself without human agency in jungle and waste lands. The assessees had taken several villages on "lease" for plucking the leaves of such plants and the work done by the assessees consisted in pruning the trees and burning the dead branches and dried leaves lying on the ground. The Court held that the profits accruing to the assessees by the sale of tendu leaves was not exempt as agricultural income but to the extent to which pruning of the tendu shrub occurred, there was in a technical and legal sense a cultivation of the soil

(1) [1939] 7 I.T.R. 493. (2) [1933] A.C. 618 (H.L.) 638.

in which the shrub grew and therefore so much of the income as was shown by the assessee to be profit derived from the collection and preparation so as to make them fit to be taken to the market, of tendu leaves produced by the pruning of the tendu shrubs was exempt as agricultural income under s. 2(1) and s.4(3)(viii) of the Indian Income-tax Act. The learned Chief Justice observed :

"Cutting back or pruning the wild tendu clearly contributes to the growth of the leaves in that shrub and I am prepared to hold that the pruning of the shrub is a cultivation of the shrub and as the shrub grows in the soil and as a part of it, is a cultivation of the soil in a legal and technical sense."

The word cultivation was here understood by the learned Chief Justice not only in the sense of cultivation of the soil but in the sense of cultivation of the tendu shrubs which grew on the soil and were therefore a part of it. The operations which were performed on the shrubs were certainly not operations performed on the soil itself and the opinion expressed by the learned Chief Justice has certainly given an extended meaning to the term cultivation and used with reference to the soil. It is significant however to observe that cultivation of the soil was considered an essential ingredient which rendered the income derived from the tendu leaves agricultural income within the meaning of its definition s. 2(1)(a) of the Act.

Commissioner of Income-tax, Madras, v. *K. E. Sundara Mudaliar* (1) contains a further extension of this idea where Vishwanatha Sastri J. Observed at p. 274:

"Pasture land used for the feeding and rearing of livestock is land used for agricultural purposes: *Emperor* v. *Alexander Allen* (2). Rearing of livestock such as cows, buffaloes, sheep and poultry is included in "husbandry". These animals are considered to be the products of the soil, just like crops, roots, flowers and trees, for they live on the land and derive their sustenance from the soil and its produce : *Glanely* v. *Wightman* (3); *Commissioner of Income-tax, Burma* v.

(1) [1950] 18 I.T.R. 259, 271.
(2) [1901] I.L.R. 25 Mad. 627 629, 630.
(3) [1933] 1 A.C. 618 (H.L.) 638.

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

Kokine Dairy Co. (1). It is therefore not legitimate, in my opinion, to confine the word "agriculture" to the cultivation of an open field with annual or periodical crops like wheat, rice, ragi, cotton, tobacco, jute, etc. Casuarina is usually raised on dry lands of poor quality, and it is usual to find the same land used alternatively for the cultivation of ordinary cereal crops like groundnut, gingelly, cholam, kambu, etc., and for the raising of Casuarina plantations. The land bears the dry assessment whatever be the nature of the crop raised."

This enlarged connotation of the term "agriculture" has been tinged by the dictionary meanings ascribed to it in Murray's Oxford Dictionary and the Webster's Dictionary quoted above which understood the term as including the allied pursuits of rearing, feeding and management of live-stock and also including husbandry, farming horticulture, etc., in the widest sense, as also butter cheese-making etc. We shall have to consider at the appropriate stage as to how far such enlargement is warranted by the definition of "agricultural income" as given in s. 2(1)(a) of the Indian Income-tax Act.

The cases above noted all of them involve some expenditure of human skill and labour either on the land or the produce of the land, for without such expenditure there would be no question of the income derived from such land being agricultural income. Where, however, the products of the land are of wild, or spontaneous growth involving no expenditure of human labour and skill there is unanimity of opinion that no agricultural operations were at all involved and there is no agricultural income. In such cases, it would be the absence of any such operations rather than the performance thereof which would be the prime cause of the growth of such products.

The cases bearing on this aspect of the question may be noted.

Kaju Mal and others v. *Salig Ram* (2) is the earliest case where a stretch of natural forest came in for consideration. It was a forest land and it was held to

(1) [1938] 6 I.T.R. 592, 599. (2) (1919) P.R. No. 19 p. 237.

be agricultural land or land used for purposes subservient to agriculture or for pasture, and therefore exempt from pre-emption under s. 4 of the Punjab Pre-emption Act, 1905.

There was no discussion of any legal principles in that decision but when we come to the next case of *Province of Bihar* v. *Maharaja Pratap Udai Nath Sahi Deo* (1) which was a case under the Bihar Agricultural Income-tax Act (Bihar VII of 1938), we find the ratio of these decisions laid down in clear terms. The assessees there derived their income from "Bankar" and "Phalkar". "Bankar" was income derived from the sale of wood from virgin jungles or jungles not actually cultivated; and "Phalkar" was income derived from the fruits of wild jungle trees and bushes. The question was whether this income was agricultural income within the meaning of the term as defined in the Act. Harries C.J., who delivered the judgment of the Court observed :

"*Bankar*" : It appears that this head of income was derived from virgin jungles or jungle land not actually cultivated. A few forest guards appear to have been employed to protect the property, but it cannot be said that the trees have grown as the result of cultivation. They appear to have grown naturally in the jungles without the intervention of the human agency, and in my view the growth of these trees cannot be said to result from the cultivation of the soil. In fact, it was the absence of cultivation that permitted the area to develop into a jungle....."

"*Phalkar*" : This is income derived from wild jungle fruits, and it cannot be said that the fruit gathered is the result of the cultivation, but, on the contrary, it is the result of the absence of cultivation. Trees and bushes yielding these fruits grow not on cultivated soil but on the land not under cultivation and frequently the more neglected and wild the land is the thicker grow these wild bushes and trees yielding such crop. Practically in all cases the crop is the result of want of cultivation and not the result of cultivation.

(1) [1941] 9 I.T.R. 313, 328.

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

In my judgment it is not established that the income described as *phalkar* in these cases is income derived from land used for agriculture or from agriculture and is, therefore, not assessable to agricultural income-tax."

In *Raja Mustafa Ali Khan* v. *Commissioner of Income-tax, U.P. & C.P.* (1) which went up to the Privy Council, the Oudh Chief Court held that income from the sale of forest trees growing on land naturally and without the intervention of human agency even if the land was assessed to land revenue, was not agricultural income within the meaning of s. 2(1)(a) of the Income-tax Act. The court followed an earlier decision given by it in the case of *Maharaja of Kapurthala* v. *Commissioner of Income-tax. C.P. & U.P.* (2) in which the court had discussed the meaning to be ascribed to the term "agriculture" and observed at page 93:

"A fiscal statute should no doubt be construed strictly, and, if there be any doubt about its construction, the subject must be given the benefit. But we do not feel any doubt that the expression "land used for agricultural purposes" in the Income-tax Act does not extend to forests of spontaneous growth, where nothing is done to prepare the soil for trees to be planted therein, and where the growth of the trees is not fostered by tillage. We should not be justified in giving the taxpayer the benefit of the dictionary definition when it is not disputed that the meaning of the term "agricultural" cannot be extended for the purpose of the Income-tax Act to all the secondary implications therein suggested. We therefore construe the term in its primary sense. We accordingly hold that income from the sale of forest trees of spontaneous growth growing on land which is assessed to land revenue is not agricultural income within the meaning of section 2(1) (a) of the Income-tax Act."

Yuvarajah of Pithapuram & Anr. v. *Commissioner of Income-tax, Madras* (3) was also a case where the

(1) [1945] 13 I.T.R. 98.
(2) [1945] 13 I.T.R. 74, 93.
(3) [1946] 14 I.T.R. 92, 99.

assessee derived income from forests of spontaneous growth by the sale of wood, bark, leaves, other usufruct of trees, minor forest produce and licence fees and from trees that had grown wild in non-forest areas. The Zamindari of Pithapuram was a permanently settled estate under the Permanent Settlement Regulation (Regulation XXV of 1802) and it was contended that the imposition of income-tax in respect of income other than agricultural income derived from a permanently settled estate would not be a breach of Regulation XXV of 1802 relating to permanent settlement. Reliance was placed in support of this position on the decision in *Chief Commissioner of Income-tax* v. *Zamindar of Singampatti* (1). It was, however, held that the case was impliedly overruled by the decision of the Privy Council in *Probat Chandra Barua* v. *King Emperor* (2) and the Court proceeded to consider whether income derived from forests of spontaneous growth by the sale of wood, bark, leaves, other usufruct of trees, minor forest produce and licence fees and from trees which have grown wild in non-forest areas was agricultural income within the meaning of s. 2(1) of the Income-tax Act. The Court observed :

"There is ample authority for holding that income derived from trees which have grown wild is not agricultural income but without the aid of authority, we should have no hesitation in saying that to describe it as such would involve a distortion of the meaning of the word 'agriculture'.

and such income was accordingly held to be not agricultural income within the meaning of s. 2(1) of the Act. (It may be noted that the appellant preferred an appeal to the Privy Council against this decision but the same was dismissed vide *Yuvarajah of Pithapuram & Anr.* v. *Commissioner of Income-tax, Madras* (3).

Benoy Ratan Banerji v. *Commissioner of Income-tax, U.P., C.P. & Berar* (4) was another case in which the assessee derived income from the sale of timber from

(1) (1922) ILR 45 Mad. 518 (FB)
(2) (1930) LR 57 IA 228
(3) (1949) 17 ITR 445
(4) (1947) 15 ITR 98

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

the Zamindari on which there had been for many years, a number of forest trees, khar and wild plants. There was no evidence on the record to show that the growth of the trees in question was the result of any actual cultivation by the assessee at all. The various trees which he sold were of spontaneous growth, not having grown as a result of actual cultivation. The Court held that in order to come within the definition of "agricultural income", the income had not only to be derived from land which was used for "agricultural purposes" but such income had also to be derived by the process of "agriculture". The Court observed that being trees of spontaneous growth, to the production of which the assessee had made no contribution by way of cultivation, no question could arise either of the land on which they grew being "used for agricultural purposes" or of the trees themselves and the income they produced being the result of "agriculture". The Court accordingly held that the income from the sale of forest trees of spontaneous growth, growing on land naturally and without the intervention of human agency, was not agricultural income within the meaning of s. 2(1) (a) of the Income Tax Act even if such land was subject to a local rate assessed and collected by officers of the Crown as such and such income was not exempt from income-tax under s. 4(3) (viii) of the Act.

A decision of the Nagpur High Court in *Beohar Singh Raghubir Singh* v. *Commissioner of Income-Tax, U.P. & C.P. and Berar* (1) (delivered on September 4, 1946, but reported in 1948) may be noted here. There also the income in question was derived by the assessee from the sale of forest produce such as timber, tendu leaves, mohua flowers, harranuts, etc., derived from a forest which was not a cultivated one but was of spontaneous growth. The question was whether such income was agricultural income and as such exempt from taxation under s. 4(3) (viii) of the Indian Income-tax Act. The Court considered the dictionary meanings of the term "agriculture" which included forestry within its compass but observed that the essence of

(1) [1948] 16 I.T.R. 433.

agriculture even when it was extended to include "forestry", was the application of human skill and labour; without that it could neither be an art nor a science and that was according to them the determining factor in such class of cases. The Court then referred to the various decisions referred to above and cited with approval the following passage from the Judgment of the Federal Court in *Meghraj* v. *Allah Rakhia* (1).

"Their Lordships confirmed a decision of the Punjab Chief Court to the effect that land used as a tea garden was used for "agricultural purposes". In the judgment of the Chief Court (which was generally approved by their Lordships) it was observed that the term "agricultural land" is used in the Act of 1905 in its widest sense to denote all land which is *tilled*"..... The Chief Court had held that land covered by a natural forest was not agricultural land, and this view also would seem to have been confirmed by the Judicial Committee,"

and they further proceeded to observe :

"We have underlined the word 'tilled" because, in our opinion, that brings out the distinction which we have sought to draw between an agricultural and a non-agricultural purpose. The decisions referred to are *Kaju Mal* v. *Saligram* and *Kajumal* v. *Saligram* (2)".

The Court came to the conclusion that it was essential that the income should be derived from some activity which necessitated the employment of human skill and labour and which was not merely a product of man's neglect or inaction except for the gathering in of the spoils. Not only must the assessee labour to reap the harvest, but he must also labour to produce it and they accordingly held that the income in question was not agricultural income and was not exempt from taxation under s. 4(3)(viii) of the Indian Income-tax Act.

We now come to the decision of the Privy Council in *Raja Mustafa Ali Khan* v. *Commissioner of*

(1) [1942] F.C.R. 53, 62.

(2) [1919] P.R. No. 19 p. 237 and (1923) I.L.R. 5 Lah. 50.

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

Income-tax, U.P., Ajmer and Ajmer-Merwara (1). It will be recalled that the Oudh Chief Court had in *Raja Mustafa Ali Khan* v. *Commissioner of Income Tax, U.P. & C.P.* (2) decided that income from the sale of forest trees growing on land nautrally and without the intervention of human agency even if the land was assessed to land revenue was not agricultural income within the meaning of section 2(1)(a) of the Indian Income-tax Act. The appellant took an appeal to the Privy Council against this decision and the main question for consideration before their Lordships was whether the land was used for agricultural purposes and the income derived therefrom was agricultural income. Their Lordships of the Privy Council observed that the income in question—

"was derived from the sale of trees described as forest trees growing on land naturally and the case has throughout proceeded upon the footing that there was nothing to show that the assessee was carrying on any regular operations in forestry and that the jungle from which trees had been cut and sold was a spontaneous growth. Upon those facts the question is whether such income is (within section 2(1)(a) of the Act) rent or revenue.....or alternatively....whether such income was, within section 2(1)(b), income derived from *such* land by agriculture.

It appears to their Lordships that, whether exemption is sought under section 2(1)(a) or section 2(1)(b), the primary condition must be satisfied that the land in question is used for agricultural purposes; the expression "such land" in (b) refers back to the land mentioned in (a) and must have the same quality. It is not then necessary to consider any other difficulty which may stand in the way of the assessee. His case fails if he does not prove that the land is "used for agricultural purposes". Upon this point their Lordships concur in the views which have been expressed not only in the Chief Court of Oudh but in the High Court of Madras (see *Yuvarajah of Pithapuram* v.

(1) [1948] 16 I.T.R. 330. (2) [1945] 13 I.T.R. 98.

Commissioner of Income Tax, Madras (1), and the High Court of Allahabad (see *Benoy Ratan Banerji* v. *Commissioner of Income Tax, U.P., C.P & Berar* (2) and elsewhere in India. The question seems not yet to have been decided whether land can be said to be used for agricultural purposes within the section, if it has been planted with trees and cultivated in the regular course of arboriculture, and upon this question their Lordships express no opinion. It is sufficient for the purpose of the present appeal to say (1) that in their opinion no assistance is to be got from the meaning ascribed to the word "agriculture" in other statutes and (2) that, though it must always be difficult to draw the line, yet, unless there is some measure of cultivation of the land, some expenditure of skill and labour upon it, it cannot be said to be used for agricultural purposes within the meaning of the Indian Income-tax Act. In the present case their Lordships agree with the High Court in thinking that there is no evidence which would justify the conclusion that this condition is satisfied."

It may be noted that the Privy Council also proceeded upon the footing that there was nothing to show that the assessee was carrying on any regular operations in forestry and these observations are patient of argument that if any regular operations in forestry had been carried on the land they might have made a difference to the result. Their Lordships also did not express any opinion on the question whether land can be said to be used for agricultural purposes within the section if it has been planted with trees and cultivated in the regular course of arboriculture. They were, however, definite in their opinion that unless there is some measure of cultivation of the land, some expenditure of skill and labour upon it, the land cannot be said to be used for agricultural purposes within the meaning of the Act. Agricultural operations are thus defined by them to be operations where there was some measure of cultivation of the land, some expenditure of skill and labour upon it. If these conditions were satisfied in regard to any particular land, then

(1) [1946] 14 I.T.R. 92, 99. (2) [1946] 15 I.T.R. 98.

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

such land can be said to be used for agricultural purposes and the income derived therefrom constitute agricultural income within the meaning of s. 2(1) (a) of the Act. The term "agriculture" for the purposes of the Indian Income Tax Act was thus in effect defined by their Lordships to mean some measure of cultivation of the land and some expenditure of skill and labour upon it and unless the operations, whether they be agricultural operations or forestry operations conformed with those definitions, they could not be styled agricultural operations so as to constitute land on which they were performed land used for agricultural purposes.

One should have thought that this decision of the Privy Council would put an end to all controversies with regard to the connotation of the term "agriculture" and "agricultural purposes". That was, however, not to be. The words used by their Lordships in their judgment were cryptic and the controversy arose immediately thereafter as to whether, "some measure of cultivation of the land" and "some expenditure of skill and labour upon it" were used by them as cumulative or in the alternative. Considerable ingenuity was exercised in determining what were regular operations in forestry and whether they could be assimilated to agricultural operations which could have the effect of constituting the land upon which they were performed land used for agricultural purposes within the meaning of the Indian Income-tax Act so that income derived therefrom could fall within the definition of "agricultural income" contained therein.

The first case which came up for consideration after the above decision of the Privy Council was the case of *Commissioner of Agricultural Income-tax, West Bengal* v. *Raj Jagadish Chandra Deo Dhabal Deb* (1) before the Calcutta High Court. The assessee was the Zamindar of Chilkigarh in the district of Midnapore the western part of which contained jungle mahal. The income in question was derived from the sale of Sal trees which grew in the forest. The forest was not an uncared for virgin forest. The assessee maintained a staff of one forester, 6 guards and 24 Chaukas to look after the

(1) [1940] 17 I.T.R. 426, 438.

forest and for the proper cultivation of the same. The Sal trees were generally sold off in blocks when about 15 years old. Annually blocks of about 1,000 acres were sold up. All the trees in the blocks sold up were cut down by the purchasers for sale as fuel and house posts. During the rainy season from the stumps of the trees cut down, new shoots come out which grew into mature trees in 15 years, to be cut down again. In order to prevent damage to the young shoots in the early stages of their growth the areas cut down were closely guarded for one year at least from the time when the block in question had been completely denuded of trees, in order to keep cattle and men off from the lands so that they may not damage the young growing shoots. In order to promote the growth of shoots, the ground was also kept free from undergrowth jungle. This was not cleared at the assessee's expense but the villagers were allowed to clear the grounds of the undergrowth and take the same away free of cost. The existing Sal trees in the forests and the Sal trees which had been sold off in 1350 B.S. had been grown in the same manner as described above. From the above facts it was clear that human care and skill had been utilised for promoting the growth of the Sal trees from which the income was derived in 1350 B.S.

The Court discussed the dictionary meaning of the term "agriculture" and following the decision of the Privy Council in *Raja Mustafa Ali Khan* v. *Commissioner of Income-Tax, U.P., Ajmer & Ajmer Merwara* (1) came to the conclusion that income from a virgin forest or forests of spontaneous growth was not agricultural income. The view that the tilling of the soil was the *sine qua non* for bringing a pursuit within the term agriculture was also held to have been exploded and it was observed at p. 440 :

"Whether a particular forest is one of spontaneous growth or not has to be decided on one important consideration as indicated by the Judicial, Committee in that decision *i.e.*, whether there has been 'some expenditure of skill and labour upon it'."

(1) [1943] 16 I.T.R. 330.

1957

The Commissioner of Income-tax, West Bengal Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

Reliance was placed upon the further observations of the Privy Council that, whether there were "any regular operations in forestry" would be a material fact for consideration and it was observed :

"To put it in another form; the introduction of human agency and the application of human efforts would be the criteria for consideration"

and after discussing several cases on the subject the Court observed at p. 441 :

"On a careful analysis of the reasons given by the learned Judges in the various decisions referred to above it will be apparent that the facts of each particular case must be considered for determining whether there has or has not been sufficient application of human efforts before it can be determined whether the income from a particular forest is agricultural or otherwise".

On the findings of fact recorded by the Tribunal in the case before them the Court was of opinion that the forest in question was not either a virgin forest or containing trees which grew spontaneously and naturally without any human intervention whatever. The circumstance that there was felling of the trees, the new shoots appearing during the rainy season without any human intervention guarding of the new shoots from either being trampled under foot or being browsed by animals and the removal of undergrowth of fallen leaves were considered regular operations in forestry in the forest in question which required the application of human efforts sufficient to include them under the head agricultural income. It was further observed :

"If the view of the Judicial Committee were to exclude all kinds of income from the category of agricultural income unless there was actual cultivation of the soil, reference to "regular operations of forestry" would have been unnecessary. Not that there must always be "some measure of cultivation of the land" and "some expenditure of skill and labour upon it" but that the proof of either would be sufficient to bring the case within either clause (a) or (b) of section 2(1) of

the Act. "Regular operations in forestry" do require expenditure of skill and labour upon the land on which the forest grows."

The Court, therefore, came to the conclusion that in the special circumstances as disclosed in the case, there were regular operations in forestry and the income derived from forests in question was agricultural income within the meaning of s. 2 (1) (a) of the Bengal Agricultural Income-tax Act, 1944.

Jyotirindra Narayan Sinha Choudhury v. *The State of Assam* (1) arose under the Assam Agricultural Income-tax Act, 1939 and the question for the consideration of the Court was whether the amounts realised by the assessee from the sale of Sal trees growing in the forest was agricultural income within the meaning of s. 2 (1) of the Act. There was no evidence to show that these Sal trees were of spontaneous growth. Even though the possibility of the forests originally having been of spontaneous growth was recognised, it was an admitted fact that forest trees were protected and fostered in growth by the application of human labour and skill. In these forests, operations in forestry such as clearing jungles, creepers and climbers, thinning by removal of less healthy trees from thickly grown areas, removal of unsound, crooked and diseased trees, burning of leaves to fertilise the ground, cutting of trees at special heights reservation of blocks by turns and their operation in cyclic order, preservation of mother trees for the spread of seed, protection of forests from fire, etc., were regularly carried on and regular operations were thus being undertaken for their growth, preservation and regeneration. The Court held that as extensive operations in forestry were employed in the forest of Sal trees, the income from the sale of such trees would be agricultural income as defined in the Assam Agricultural Income-tax Act. In arriving at this conclusion, the Court relying on the various dictionary meanings of the term "agriculture" observed at p. 390 :

(1) [1950] 19 I.T.R. 379.

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

"in spite of the diversity as to the scope and purpose of agriculture as revealed by the different definitions, there is one feature which is essentially common to all of these. This is the application of human skill and labour without which there can be no agriculture."

The Court then referred to the decision of the Privy Council in *Raja Mustafa Ali Khan* v. *Commissioner of Income Tax* (1) and after quoting the passage from the judgment above referred to proceeded to observe :

"Their Lordships have not laid down that some measure of cultivation is absolutely necessary before it can be said that land is used for agricultural purposes. In fact "some measure of cultivation" is placed on a par with "some expenditure of skill and labour". If either of the two conditions exists, the land could be said as being used for agricultural purposes. Tillage or actual cultivation would not in their view be an essential pre-requisite of "agriculture" in its wider implication".

After referring to a decision of the Calcutta High Court in *Hedayat Ali* v. *Kamalanand Singh* (2) and *Commissioner of Agricultural Income-Tax* v. *Jagadish Chandra Deo Dhabal Deb* (3) the court observed:

"The review of the authorities considered above leads to the conclusion that purpose within the meaning of the Assam Act can be agricultural even if its achievement does not involve actual cultivation of the soil. In the words of their Lordships of the Privy Council in the case of receipts from the sale of forest trees, the income would be agricultural if there is some expenditure of skill and labour upon it. Regular operations in forestry necessarily involve expenditure of skill and labour. Where therefore, such operations take place, the income from the sale of trees in the forest would be within the ambit of agricultural income as defined in the Assam Act."

In *Pratap Singh Balbeer Singh* v. *Commissioner of Income-Tax, U.P., C.P. & Berar* (4) , however, the

(1) [1948] 16 I.T.R. 330.
(2) [1913] 17 C.L.J. 411.
(3) [1949] 17 I.T.R. 426, 438.
(5) [1952] 22 I.T.R. 1.

High Court of Allahabad struck a different note. The assessee there derived the income from the sale of forest trees growing on land naturally and spontaneously without the intervention of any human agency but carried on forestry operations working the forest for at least some time on scientific lines in accordance with a scheme of making profits. There was a regular working plan and the assessee was deriving regular income from the forest and spending money to increase the profit. The Court held that the "agriculture" and "agricultural purposes" with reference to land clearly implied that some operations must be carried on on the land itself; human skill and labour should be used for the purpose of ploughing the land, manuring it, planting the trees or some similar process, and that mere weeding care and preservation of forest trees which grew spontaneously were not operations on the land which were necessary to constitute the process a process of agriculture. In the course of the judgment, the Court interpreted the above passage from the judgment of their Lordships of the Privy Council in *Raja Mustafa Ali Khan* v. *Commissioner of Income-tax* (1) as under :

"It is quite clear that their Lordships were of the view that, for income to be agricultural income, the essential element that must exist is that there should be "some measure of cultivation of the land" or "some expenditure of skill and labour upon it". The language used by their Lordships of the Privy Council shows that the expenditure of skill and labour must be upon the land and not merely on the trees which are already growing on it as a result of spontaneous growth."

Mere regeneration and preservation of trees could not be said to be expenditure of human skill and labour upon the land itself and the land could not under the circumstances be held to be used for agricultural purposes nor could it be held that any process of agriculture was being carried on. The Court observed that planned and scientific exploitation of a forest of spontaneous growth, though it might yield

(1) [1948] 16 I.T.R. 330.

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

regular income, would not be income from agriculture as no operations were carried out and no human skill and labour was expended in such a case on the land itself.

Raja Benoy Kumar Sahas Roy v. *Commissioner of Income-tax, West Bengal* (1) the judgment under appeal before us here struck a middle path. The Tribunal had found that except the sowing of seeds, the operations carried out, though equally necessary for the maintenance and upkeep of any forest of spontaneous growth, did not involve such expenditure of human labour and skill as to constitute them operations in agriculture. The sowing of seeds were "few and far between" and the normal process by which the forest grew again after a part of it had been cut down, was by the growing out off-shoots from the stumps left, the operations were therefore in the main only operations for the "maintenance, preservation, nursing and rearing", of the forest. It was urged before the High Court on behalf of the assessee that the exemption from agricultural income-tax determined in *Commissioner of Agricultural Income-tax, West Bengal,* v. *Raja Jagadish Chandra Deo Dhabal Deb* (2) covered the case and it was submitted that the facts here were if at all far stronger in favour of the assessee. The decision of the Privy Council in *Raja Mustafa Ali Khan* v. *Commissioner of Income-tax, U.P., Ajmer and Ajmer-Merwara* (3) was considered and the Court observed at p. 87:

"I do not think that when the Privy Council said that there must be "some measure of cultivation on the land, some expenditure of skill and labour upon it", their Lordships intended to say that the expenditure of skill and labour must always be in the form of cultivation. The word "or" introduced by the Allahabad High Court between the two phrases does not occur in the original, but I think it is implied. The idea, it seems to me, is that if the land has been left to the forces of nature to grow what products such forces could, there is no agriculture and there can be

(1) [1953] 24 I.T.R 70, 87.
(2) [1949] 17 I.T.R. 426, 438.
(3) [1948] 16 I.T.R. 330.

agriculture only if the labour and skill of man has operated on the land to cause or aid the growth of certain products. All that is necessary is that the land should be actively exploited with a view to procuring growth or better growths from the soil but it does not seem to be also necessary that the exploitation should be by tillage."

The Court accordingly came to the conclusion that even though tillage was thus not essential, human labour and skill must be expended on the land itself and not merely on the growth from the land. When income is derived from the natural growths from the land, it is derived from land but not derived from land by the process of agriculture. It is derived from land by agriculture only when the land is subjected to the labour and skill of man, whether in the form of cultivation or otherwise, in order to produce or the improvement of the produce which yields the income. On the facts before them the learned Judges were of opinion that if forest of natural growth was taken over and then the land was regularly weeded and cleared, if it was supplied with moisture, necessary for the nourishment of the trees, by the cutting of channels across it and by the distribution of rain-water through them and if the land was dug, and sown with seeds whenever bare patches appeared and while all this was done, if elaborate subsidiary arrangements were also maintained for the protection of the trees and the tending of new shoots springing from the stumps of old trees cut down till they themselves grew into new trees, it might well be said that operations in forestry involving agricultural operations were carried on on the forest land and that income derived from the land was derived from agriculture.

Sir Kameshwar Singh v. *Commissioner of Income-tax, Bihar & Orrissa* (1) which is the subject-matter of C.A. Nos. 112 to 117 of 1956 before us also was a case under the Indian Income-tax Act (XI of 1922). It was found by the Appellate Tribunal that the Sal and ebony trees which grew in the forest were conserved by allowing each a circle of 15 feet, that there was cutting down

(1) [1954] 26 I.T.R. 121.

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

of the trees and jungles which fell within that circle leaving sufficient space for growth and that forest conservancy staff was maintained to look after the forest. The Court construed the observations of the Privy Council in *Raja Mustafa Ali Khan's case* (1) to mean that "in order to show that an income is agricultural income within the meaning of the definition, it must be found that the land itself was cultivated and that there was some expenditure of skill and labour upon it." The Court held that even conceding that the two conditions laid down by the Privy Council in *Raja Mustafa Ali Khan's case* were to be read as alternative conditions, there was no material on which to hold that there was any expenditure of skill and labour upon the land and therefore the income from the sale of forest trees was not agricultural income.

In *Jyotikana Chowdhurani* v. *Commissioner of Income-tax, Assam* (2) which is also under appeal before us in Civil Appeals Nos. 57 to 62, a Special Bench of the Assam High Court considered whether income derived by the assessees from the sale of trees of spontaneous growth where there was no planting or sowing or employment of any human agency for the purpose of tilling the land but operations in forestry were carried on by the assessee involving considerable expenditure of human skill and labour was agricultural income within the meaning of s. 2 (1) (a) of the Indian Income-tax Act. The majority of the Court consisting of Sarjoo Prasad C.J. and Ram Labhaya J. (Deka J. dissenting) held that even though there was no tilling of the land or planting of seed 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. 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 s. 4(3) (viii) of the Income-tax Act.

(1) [1948] 16 I.T.R. 330. (2) [1953] 26 I.T.R. 424, 439, 461.

Sarjoo Prasad C.J. explained the test laid down in *Raja Mustafa Ali Khan* v. *Commissioner of Income-tax* (1) in the manner following :

"The contention of Mr. Iyengar is that the expression "some expenditure of skill and labour upon it" is used merely in further clarification of the expression "cultivation of the land" and, therefore, all that their Lordships held was that cultivation of the land was necessary. I do not concede that the word "cultivation" is necessarily synonymous with ploughing or tillage. But even if it were, I am unable to accept the argument for the simple reason that if precision is the hallmark of Privy Council decisions, as I think it is, then their Lordships would have stopped short with the phrase "some measure of cultivation of the land". This, in itself, was quite expressive and no further expressions were needed to clarify the matter. Therefore, when they proceeded to add after a comma, the phrase "some expenditure of skill and labour upon it", they evidently intended to signify something more than mere cultivation. There is, of course, no conjunctive phrase between the two expressions, but in the context the meaning seems to be plain."

Ram Labhaya J. expressed himself in the test laid down by the Privy Council in these words :

"A test however was laid down for finding out when land may be said to be used for agricultural purposes. The test requires that there must be some measure of cultivation of the land; some expenditure of skill and labour upon it. It has however to be borne in mind that their Lordships when stating the facts did point out that the case had proceeded on the footing that there was nothing to show that the assessee was carrying on any regular operations in forestry. This statement has an important bearing on the interpretation of the test. Such operations in forestry are carried on in forests. They involve the use of human labour and skill on the soil. They aim at stimulating growth and could easily satisfy the requirements of the

(1) [1948] 16 I.T.R. 330.

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

test evolved by their Lordships. Due importance, therefore, has to be given to the absence of operations in forestry in *Raja Mustafa Ali Khan's case* (1) when interpreting the test laid down therein."

Vikram Deo Varma v. *Commissioner of Income-tax, Bihar & Orissa* (2) is the last case of this series. The assessee derived income from extensive forest areas in the impartible estate of which he was proprietor. Over several decades the whole of the forest area had been subjected by hill tribes to a process of "podu" cultivation—setting fire to the trees and cultivating the forest lands and raising crops thereon—so that it was impossible to say that there was any virgin forest left. Through a huge forest establishment considerable amount of human labour and skill was spent (i) in fostering the growth of trees and preserving them from destruction by men and cattle; (ii) in cultivation of the soil by felling and burning trees from time to time; (iii) in planned exploitation of trees by marking out the areas into blocks; (iv) in systematic cutting down of trees of particular girth and at particular heights; (v) in planting new trees where patches occur; and (vi) watering, pruning, dibbling and digging. The Tribunal had held that as there was no forest cultivation or tilling as such the income was not due to agricultural operations and therefore not exempt under s. 4(3)(viii) of the Indian Income-tax Act. In the course of the judgment the learned Judges referred to the observations of their Lordships of the Privy Council in *Raja Mustafa Ali Khan's case* (1) but observed that their Lordships did not lay down what the measure of that cultivation should be or what the nature of skill and labour expended should be, in order to bring the operations within the meaning of the expression "agricultural purposes" as used in the definition section. The question to be determined in each case should, therefore, be whether the land out of which the rent or revenue was derived was used for "agricultural purposes". Unless the land was subject to some measure of cultivation or there was some expenditure of human skill and labour on it in order to

(1) [1948] 16 I.T.R. 330. (1) [1955] 29 I.T.R. 76.

derive the rent or revenue, the purpose would not be agricultural. It was observed that the cultivation was not mere tilling but the science and art of cultivating the soil may depend upon the nature of the soil the atmosphere and various other factors. It was therefore idle to regard "tilling" as the sole or indispensable test of agriculture. On the facts before it, the Court held that the operations carried on by the assessee through the forest establishment showed that there had been both cultivation of the soil as well as the application to human skill and labour upon the land as well as on the trees themselves, and that therefore the income derived from the forest was exempt from taxation under s. 4(3) (viii) of the Indian Income-tax Act.

Before parting with these cases it may be apposite here to note the following observations of Vishwanatha Sastri J. in *Commissioner of Income-tax, Madras* v. *K.E. Sundara Mudaliar* (1) at page 277:

"In *Commissioner of Agricultural Income-tax* v. *Raja Jagdish Chandra Deo Dhabal Deb* (2) it was held by a Division Bench of the Calcutta High Court that income derived from the sale of *sal* trees growing spontaneously in forest and not planted by man was "agricultural" income within the meaning of s. 2(1) of the Bengal Agricultural Income-tax Act. There was no digging or ploughing of the land nor planting of trees but there were "operations in forestry" such as guarding the forest trees to keep away cattle and allowing leaves and undergrowth to be removed by people of the locality. There was no breaking up of the soil, no sowing or planting or watering or fencing. Whether the decision is correct or not can only be authoritatively declared by the Supreme Court of India. It seems to rest on an undue extension of the principle laid down by the Judicial Committee in *Raja Mustafa Ali Khan's case* (3) and goes much further than our decision in the present case."

It appears from the above survey that there has been a divergence of opinion amongst the various

(1) [1950] 18 I.T.R. 259, 271. (2) [1949] 17 I.T.R. 426, 438.
(3) [1948] 16 I.T.R. 330.

1957

The Commissioner of Income-tax, West Bengal Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

Courts not only in regard to the connotation of the terms "agriculture" and "agricultural purposes" but also in regard to the nature of forestry operations performed in the forest which can be styled agricultural operations so as to constitute the "land used for agricultural purposes" within the definition of agricultural income as given both in the Indian Income-tax Act and in the several Agricultural Income-tax Acts passed by the various States.

It may be noted at the outset that the definition of "agricultural income" given in s. 2(1) of the Indian Income-tax Act is in identical terms with the definitions of that term as given in the various Agricultural Income-tax Acts passed by the several States. It will be idle therefore to treat "Taxes on Agricultural Income" which fall within the legislative competence of the State Legislature as having no relation at all to the corresponding provisions of the Indian Income-tax Act. Once it is determined that the income in question is derived from land used for Agricultural purposes by agriculture, it would be agricultural income and as such exempt from tax under s. 4(3) (viii) of the Indian Income-tax Act and would fall within the purview of the relevant provisions of the several Agricultural Income-tax Acts passed by the various States. The result of this determination would be that the assessee would not be liable to assessment under the Indian Income-tax Act but he would have to pay the Agricultural Income-tax which would be levied upon him under the relative Agricultural Income-tax Acts. The only enquiry which would therefore be relevant is whether the income in question is agricultural income within the terms of the definition thereof and that would have to be determined in each case by the Court having regard to the facts and circumstances of the particular case before it.

In order that an income derived by the assessee should fall within the definition of agricultural income two conditions are necessary to be satisfied and they are : (1) that the land from which it is derived should be used for agricultural purposes and is either assessed for land revenue in the taxable territories or is subject

to local rates assessed and collected by the officers of the Government as such; and (ii) that the income should be derived from such land by agriculture or by one or the other of the operations described in cls. (ii) and (iii) of s. 2 (1) (b) of the Indian Income-tax Act.

It was at one time thought that the assessment of the land to land revenue in the taxable territories was intended to exempt the income derived from that land from liability for payment of income-tax altogether and that theory was based on the assumption that an assessee who was subject to payment of land revenue should not further be subjected to the payment of income-tax, because if he was so subjected he would be liable to pay double taxation.

It is interesting to note at this stage the genesis of the provision exempting agricultural income derived from the lands assessed to land revenue as understood by the Courts. Vishwanatha Sastri J. in this context observed in the *Commissioner of Income-tax, Madras* v. *K.E. Sundara Mudaliar* (1) at page 270 :

"I shall briefly advert to the genesis of the provision exempting agricultural income derived from lands assessed to land revenue, as I consider that the subject matter with which the Legislature was dealing, and the facts existing at the time with respect to which the legislation was made, are legitimate topics for consideration in ascertaining the object and scope of the exemption from income-tax conferred on agricultural income. This exemption, it would be noticed, has been a persistent feature of the Income-tax legislation of this country from 1867 onwards, and nothing like it is found in the English Income-Tax Acts. Even at a time when there was no provision like Section 100 of the Government of India Act, 1935, with Federal and Provincial Lists and there was no incompetency on the part of the Central Legislature to levy a tax on agricultural income, the Income-tax Acts passed from time to time by the Central Legislature including the existing Act of 1922, exempted from income-tax the agricultural income of land assessed to public revenue.

(1) [1950] 18 I.T.R. 259, 271

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

This exemption was granted for no other reason than the justice and equity of exempting from further burden income which had already paid its toll to the State in the shape of land revenue either as a permanently fixed peishkush under Regulation No. XXV of 1802 or as an assessment periodically fixed under the ryotwari settlement. Under what may be called the common law in India, the State had the immemorial prerogative right to collect, a share of the produce of the land from its owner, the latter having the full right to enjoyment of the land and its produce, subject only to the aforesaid contribution to the State. Land revenue is collected annually from the proprietor of the land and is presumably exigible from the income of the land. Cash payment in lieu of a share of the produce due to the State was substituted long ago to facilitate collection of revenue. Income derived from the produce of the land having been subjected to the payment of the annual land revenue, it was thought inequitable to subject the same income again to annual income-tax. Hence the exemption of the agricultural income of assessed lands or lands whose revenue had been remitted either in whole or in part, as in the case of the inams. Mines, minerals, and quarries having been reserved by the State, at any rate in respect of lands other than those comprised in a permanently settled estate, income derived from such sources was not exempted from income-tax. The revenue assessment was based on the quality of the soil and the income derived from the produce of the lands, and therefore the exemption from income-tax was limited to agricultural income derived from assessed lands. Such is the reason for exemption from income-tax of agricultural income."

Whatever may have been the gensis of the exemption of agricultural income from income-tax, the liability to pay land revenue or fixed peishkush under Regulation XXV of 1902, was not considered by Rankin J. as a deterrent against the levy of income-tax in appropriate cases, even on certain classes of income derived from the permanently settled estates, if that was the clear intention of the legislature. The

learned Judge observed in *Emperor* v. *Probhat Chandra Barua* (1):

"Some reference was made at the bar to the practice of the Revenue Authorities since 1886 as regards fisheries in permanently settled estates but there is no agreement as to what that practice—if there be any practice—has been. Assuming that it would have been open to us to place some degree of reliance upon an interpretation settled by practice as *contemporanea expositio* we are in fact without any such assistance.

"Some reference was also made to what has been called a "presumption against double taxation". In *Manindra Chandra Nandi* v. *Secretary of State* (2), royalties from a coal mine were held liable both to cess under the Cess Act, 1880, and to income-tax under the Act of 1886, but it was said that "it may be considered that courts always look with disfavour upon double taxation, and Statute will be construed, if possible, to avoid double taxes." Reference was made to certain dicta of American Courts and to the English case of *Carr* v. *Fowle* (3)—But the only observation in this case was to the effect that the statute presumably did not intend that a vicar should in effect pay the same tax (land tax) twice on the same hereditament. This is plain enough. Thus the income-tax is one tax, and income assessed under one schedule cannot be assessed all over again under another. That there is any legal presumption of a general character against "double taxation" in any wider sense is a proposition to which I respectfully demur as a principle for the construction of a modern statute. In *Manindra Chandra Nandi* v. *Secretary of State* (2) it did not avail to cut down clear, though absolutely general language."

This view of Rankin J. was upheld by the Privy Council in *Prabhat Chandra Barua* v. *King Emperor* (4). In the later case of *Yuvarajah of Pittapuram* v. *Commissioner of Income-tax, Madras* (5) the Privy Council held that the imposition of Income-tax in respect of income derived from the permanently settled estate

(1) [1924] I.L.R. 51 Cal. 504.
(2) (1907) ILR 34 Cal 257, 287
(3) (1893) 1 Q.B. 251.
(4) (1930) L.R. 57 IA 228
(5) [1949] 17 ITR 445.

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

would not be a breach of the Madras Permanent Settlement Regulations No. XXV of 1802. The assessment of land to land revenue or its being subject to local rates assessed and collected by the officers of the Government as such is merely an indication that the land is an agricultural land as distinguished from land which can be used for agricultural purposes but carries the matter no further.

We have, therefore, to consider when it can be said that the land is used for agricultural purposes or agricultural operations are performed on it. Agriculture is the basic idea underlying the expressions "agricultural purposes" and "agricultural operations" and it is pertinent therefore to enquire what is the connotation of the term "agriculture". As we have noted above, the primary sense in which the term agriculture is understood is agar—field and cultra—cultivation, i.e., the cultivation of the field and if the term is understood only in that sense, agriculture would be restricted only 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. They would be the basic operations and would require the expenditure of human skill and labour upon the land itself. There are however other operations which have got to be resorted to by the agriculturist and which are absolutely necessary for the purpose of effectively raising the produce from the land. They are operations to be performed after the produce sprouts from the land, e.g., weeding, digging the soil around the growth, removal of undesirable undergrowths and all 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. The latter would all be agricultural operations when taken in conjunction with the basic operations above described, and it would be futile to urge that they are not agricultural operations at all. But even though these subsequent operations may be assimilated to agricultural operations, when they are in conjunction with these basic operations, could it be said that even

though they are divorced from these basic operations they would nevertheless enjoy the characteristic of agricultural operations? Can one eliminate these basic operations altogether and say that even if these basic operations are not performed in a given case the mere performance of these subsequent operations would be tantamount to the performance of agricultural operations on the land so as to constitute the income derived by the assessee therefrom agricultural income within the definition on that term?

We are of opinion 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 which we have described above would not be enough to characterise them as agricultural operations. In order to invest them with the character of agricultural operations, these subsequent operations must necessarily be in conjunction with and a continuation of the basic operations which are the effective cause of the products being raised from the land. 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. The cultivation of the land does not comprise merely of raising the products of the land in the narrower sense of the term like tilling of the land, sowing of the seeds, planting, and similar work done on the land but also includes the subsequent operations set out above all of which operations, basic as well as subsequent, form one integrated activity of the agriculturist and the term "agriculture" has got to be understood as connoting this integrated activity of the agriculturist. One cannot dissociate the basic operations from the subsequent operations, and say that the subsequent operations, even though they are divorced from the basic operations can consitute agricultural operations by themselves. If this integrated activity which constitutes agriculture is undertaken and performed in regard to any land that land can be said to have been used for "agricultural purposes" and the income

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

derived therefrom can be said to be "agricultural income" derived from the land by agriculture.

In considering the connotation of the term "agriculture" we have so far thought of cultivation of land in the wider sense as comprising within its scope the basic as well as the subsequent operations described above, regardless of the nature of the products raised on the land. These products may be grain or vegetables or fruits which are necessary for the sustenance of human beings including plantations and groves, or grass or pasture for consumption of beasts, or articles of luxury such as, betel, coffee, tea, spices, tobacco etc., or commercial crops like cotton, flax, jute, hemp, indigo etc. All these are products raised from the land and the term "agriculture" cannot be confined merely to the production of grain and food products for human beings and beasts as was sought to be done by Bhashyam Ayyangar J. in *Murugesa Chetti* v. *Chinnathambi Goundun* (1) or Sadashiva Ayyar J. in *Rajah of Venkatagiri* v. *Ayyappa Redi* (2) but must be understood as comprising all the products of the land which have some utility either for consumption or for trade and commerce and would also include forest products such as timber, *sal* and *piyasal* trees, casuarina plantations, tendu leaves, horranuts etc.

The question still remains whether there is any warrant for the further extension of the term "agriculture" to all activities in relation to the land or having connection with the land including breeding and rearing of livestock, dairy-farming, butter and cheese making, poultry-farming etc. This extension is based on the dictionary meanings of the term and the definitions of "agriculture" collated in Wharton's Law Lexicon, as also the dicta of Lord Cullen and Lord Wright in *Lean & Dickinson* v. *Ball* (3) and *Lord Glaneley* v. *Wightman* (4) quoted above.

Derbyshire C.J. in *Moolji Sicka & Co., In re* (5) treated tendu plants growing on the soil as part of the soil and therefore considered the pruning of the shrub

(1) (1901) I.L.R. 24 Mad. 421, 423.
(2) (1913) I.L.R. 38 Mad. 738.
(3) (1925) 10 Tax Cas. 341.
(4) [1933] A.C. 618 (H.L.) 638.
(5) [1939] 7 I.T.R. 493.

as cultivation of the soil in a legal and technical sense and this extension of the term "agriculture" was also approved by Vishwanatha Sastri J. in *Commissioner of Income-tax*, v. *K.E. Sundara Mudaliar* (1). We are however of opinion that the mere fact that an activity has some connection with or is in some way dependent on land is not sufficient to bring it within the scope of the term and such extension of the term "agriculture" is unwarranted. The term "agriculture" cannot be dissociated from the primary significance thereof which is that of cultivation of the land and even though it can be extended in the manner we have stated before both in regard to the process of agriculture and the products which are raised upon the land, there is no warrant at all for extending it to all activities which have relation to the land or are in any way connected with the land. The use of the word agriculture in regard to such activities would certainly be a distortion of the term.

A critical examination of the definition of "agricultural income" as given in s. 2(1) of the Indian Income-tax Act and the relevant provisions of the several Agricultural Income-tax Acts of the various States also lends support to this position. In the first instance, it is defined as rent or revenue derived from land which is used for agricultural purposes; and it is next defined as income derived from such land by agriculture or by the activities described in cls. 2 and 3 of s. 2(1) (b) of the Act. These activities are postulated to be performed by the cultivator or receiver of rent-in-kind of such land in regard to the products raised or received by him which necessarily means the produce raised on the land either by himself or by the actual cultivator of the land who pays such rent-in-kind to him. If produce raised or received by the cultivator or receiver of rent-in-kind is thus made the subject-matter of cls. (ii) and (iii) in s. 2 (1)(b) of the Act, the term "agriculture" used in cl. (i) of s. 2(1)(b) must also be similarly restricted to the performance of the basic operations on the land and there is no scope for reading the term "agriculture" in the still wider sense indicated above.

(1) [1950] 18 I.T.R. 259, 271.

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

If the term "agriculture" is thus understood as comprising within its scope the basic as well as subsequent operations in the process of agriculture and the raising on the land of products which have some utility either for consumption or for trade and commerce, it will be seen that the term "agriculture" receives a wider interpretation both in regard to its operations as well as the results of the same. Nevertheless there is present all throughout the basic idea that there must be at the bottom of its cultivation of land in the sense of 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 operation performed on the land constituting agricultural operation. If the basic operations are there, the rest of the operations found themselves upon the same. But if these basic operations are wanting the subsequent operations do not acquire the characteristic of agricultural operations.

All these operations no doubt require the expenditure of human labour and skill but the human labour and skill spent in the performance of the basic operations only can be said to have been spent upon the land. The human labour and skill spent in the performance of subsequent operations cannot be said to have been spent on the land itself, though it may have the effect of preserving, fostering and regenerating the products of the land.

This distinction is not so important in cases where the agriculturist performs these operations as a part of his integrated activity in cultivation of the land. Where, however, the products of the land are of spontaneous growth unassisted by human skill and labour, and human skill and labour are spent merely in fostering the growth, preservation and regeneration of such products of land, the question falls to be considered whether these subsequent operations performed by the agriculturist are agricultural operations and enjoy the characteristic of agricultural operations.

It is agreed on all hands that products which grow wild on the land or are of spontaneous growth not involving any human labour or skill upon the land are

not products of agriculture and the income derived therefrom is not agricultural income. There is no process of agriculture involved in the raising of these products from the land. There are no agricultural operations performed by the assessee in respect of the same, and the only work which the assessee performs here is that of collecting the produce and consuming and marketing the same. No agricultural operations have been performed and there is no question at all of the income derived therefrom being agricultural income within the definition given in s. 2(1) of the Indian Income-tax Act. Where, however, the assessee performs subsequent operations on these products of land which are of wild or spontaneous growth, the nature of those operations would have to be determined in the light of the principles enunciated above.

Applying these principles to the facts of the present case, we no doubt start with the finding that the forest in question was of spontaneous growth. If there were no other facts found, that would entail the conclusion that the income is not agricultural income. But, then, it has also been found by the Tribunal that the forest is more than 150 years old, though portions of the forest have from time to time been denuded, that is to say, trees have completely fallen and the proprietors have planted fresh trees in those areas, and they have performed the operations for the purpose of nursing the trees planted by them. It cannot be denied that so far as those trees are concerned, the income derived therefrom would be agricultural income. In view of the fact that the forest is more than 150 years old, the areas which had thus become denuded and replanted cannot be considered to be negligible. The position therefore is that the whole of the income derived from the forest cannot be treated as non-agricultural income. If the enquiry had been directed on proper lines, it would have been possible for the Income-tax authorities to ascertain how much of the income is attributable to forest of spontaneous growth and how much to trees planted by the proprietors. But no such enquiry had been directed, and in view of the long lapse of time, we do not consider it desirable to direct any such

1957

The Commissioner of Income-tax, West Bengal, Calcutta
v.
Raja Benoy Kumar Sahas Roy

Bhagwati J.

enquiry now. The expenditure shown by the assessee for the maintenance of the forest is about Rs. 17,000 as against a total income of about Rs. 51,000. Having regard to the magnitude of this figure, we think that a substantial portion of the income must have been derived from trees planted by the proprietors themselves. As no attempt has been made by the Department to establish which portion of the income is attributable to forest of spontaneous growth, there are no materials on which we could say that the judgment of the court below is wrong.

The appeal is accordingly dismissed with costs.

Appeal dismissed.