

## SPECIAL BENCH.

*Before Mr. Horace Owen Compton Beasley, Chief Justice,  
Mr. Justice Anantakrishna Ayyar and Mr. Justice Curgenvven.*

THE COMMISSIONER OF INCOME-TAX,  
MADRAS, PETITIONER,

1930,  
April 11.

---

v.

T. MANAVEDAN TIRUMALPAD,  
SENIOR RAJAH OF NILAMBUR, RESPONDENT.\*

*Indian Income-tax Act (XI of 1922) — Forest produce, sale of—  
Amount received by owner of unassessed land by sale of  
timber trees thereon, whether liable to Income-tax.*

Amounts received by the owner of unassessed forest lands, by the sale of timber trees thereon, are income liable as such to income-tax.

REFERENCE under section 66 (1) of the Income-tax Act (XI of 1922). In the matter of the Income-tax Act, 1922, and in the matter of the assessment of T. Manavedan Tirumalpad for the year 1928-29.

The material facts appear from the Judgment.

*T. R. Venkatarama Sastri* (with him *T. B. Balagopalan*) for the assessee :—Income derived from the sale of forest produce is not taxable under the Indian Income-tax Act (XI of 1922). The Commissioner holds that there is no deterioration of capital by the sale of such produce, and that consequently the income is liable to tax. The land here is unassessed land. If land was assessed, there is no doubt that the produce is not liable to Income-tax; though this land is unassessed, the sale proceeds of the produce thereon is not liable to income-tax. Sale of trees on unassessed land is sale of movable property. A man who sells such property is not liable to tax for the price realized by the sale. See *Sri Sri Raja Shiva Prasad Singh v. The Crown*(1).

---

\* Original Petition No. 152 of 1929.

(1) (1924) I.L.R. 4 Pat. 73.

COMMIS-  
SIONER OF  
INCOME-TAX,  
MADRAS.  
v.  
MANAVEDAN  
TIRUMALPAD.

This is not a case of a "business" of the owner of the forest. In the case of paddy, it is produced by agricultural operations, which is a "business," and so it is specially exempted by the Income-tax Act. So also in the case of an owner of herds of cattle, some of which may be sold and income realized, he may be liable to tax for such income, as rearing of cattle is a business. In the case of forest produce (such as timber trees), there is deterioration caused to the capital by the cutting of trees. The case of mines and quarries is not analogous to this case

*M. Patanjali Sastri* for Commissioner of Income-tax:—  
The case of sale of forest produce is similar to the sale of the produce of mines and the sale of stones quarried or the case of sale of paddy grown on land. In the case of paddy, the profits earned by the sale would be liable to income-tax but for the special exemption of such income under the Income-tax Act.

### JUDGMENT.

The question referred to us by the Commissioner of Income-tax is

"Whether the amounts received by sale of timber trees are income, liable as such to income-tax."

The assessee is the owner of unassessed forest lands in Malabar and was assessed by the Income-tax Officer, Palghat, for the year 1928-29 on an income of Rs. 5,395 from property and Rs. 3,07,629 from fees received in respect of timber cut and removed from the forests and other miscellaneous receipts. The assessee objects to the latter assessment. Before the Commissioner, his contention was that he had purchased the forests with trees growing therein and that, as the trees were cut down and carried away, the capital was thereby decreased. The Commissioner of Income-tax has pointed out that similar circumstances exist in the case of mines and quarries—this is conceded by Mr. Venkatarama Sastri who appears for the assessee—and that in neither of those cases is any deduction allowed by reason of the

fact that as years go on the amount of coal under the land in the case of the mines is diminished and the amount of the stones to be quarried in the case of the quarry is diminished. Similar views have been taken in the English Courts with regard to minerals. Mr. Venkatarama Sastri here argues that this is not to be treated as assessable income at all, although he admits that he can see no difference between the income derived from the sale of coal and the sale of stone quarried in a quarry or from income derived from the sale of paddy grown on land. Of course, 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 no such exemption in the case of income derived from the sale of timber. Under the circumstances, we answer the question referred to us in the affirmative. The assessee will pay Rs. 250 costs to the Commissioner of Income-tax.

K.R.

---