IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. Nos.440&441/Coch/2018
Assessment Years : 2012-13 & 2013-14

The Assistant Commissioner of Income-tax, Circle-1, Kottayam.	**Vs.**	Kerala Forest Development Corporation Ltd., Aranyakom. Karapuzha, Kottayam-686 003. [PAN:AAACK 8721D]
(Revenue-Appellant)		**(Assessee-Respondent)**

Revenue by	Smt. A.S. Bindhu, Sr. DR
Assessee by	Smt. K. Parvathy Ammal, CA

Date of hearing	01/05/2019
Date of pronouncement	08/05/2019

O R D E R

Per CHANDRA POOJARI, AM:

These appeals filed by the Revenue are directed against the different orders passed by the CIT(A), Kottayam dated 09/07/2018 and pertain to the assessment years 2012-13 and 2013-14.

2. The Revenue has raised the following grounds of appeal:

1. The order of the learned Commissioner of Income tax (Appeals), Kottayam in so far as the points stated below are concerned, is opposed to law on the facts and in the circumstances of the case.

2. The Learned Commissioner of Income tax (Appeals), Kottayam erred both in law and facts in deleting the addition made by the assessing officer on the issue of receipt from the sale of spontaneous trees.

3. The Ld. CIT (A) failed to appreciate the fact that the assessee has earned substantial income from the sale of timber including the income from the sale of spontaneous growth trees and only the income from sale of spontaneous growth was excluded from total income, only because of the reason that this is not under the preview of income tax Act and hence not liable to tax.

4. The Ld. CIT (A) ought to have considered fact that the assessee was periodically earning income from sale of trees of spontaneous growth without any human aid or efforts, which should be brought under taxable income.

5. The Ld. CIT (A) ought to have seen that the Judgment of Hon'ble High Court of Kerala in the case of Travancore Rubbers & Tea Co. Ltd. reported in (1996) 221 ITR 585 (KER.) which in turn relied on the decision of Apex court in the case of CIT Vs. G.R. Karthikeyan (1993) 201 ITR 866 wherein discussed the definition of income in detail and held that the definition of income as in section 2(24) is of inclusive character, the purpose is not to limit the meaning of the term but to widen its net and even id a receipt did not fall within the ambit of any of the clauses, it might still be income if it partook the nature of the income.

6. The Ld. CIT (A) failed to appreciate in facts and circumstances of the case that the basic issue involved in the relied judgment of Apex court in the case of Maharajadhiraj Sir Kameswar Singh reported in (1957) 32 ITR 587 (SC), the AO rejected the amount received in respects of forest trees of spontaneous growth were not taxable as they were either capital receipts or agricultural income. The judgment obviously pronounced in favour of revenue and dismissed the appeal of the assessee. However, from the order, it can neither be capital nor agricultural income. Hence liable to tax.

7. The Ld. CIT (A) ought to have considered the Judgment of the High Court of Gauhati in the case of Tarajan Tea Co. (P) Ltd. reported in (1994) 205 ITR 45 wherein it held that the receipts from the sale of spontaneous growth trees done periodically can be assessed under the capital gains' since there is no cost of acquisition and should be treated as 'revenue receipts'.

3. The facts of the case are that during the AY 2012-13, the assessee received income from sale of spontaneous tree growth amounting to Rs. 1,89,07,031.and Rs. 2,31,47,828/- for the assessment year 2013-14. During the assessment proceedings, the Assessing Officer examined the issue of taxability of income from

sale of spontaneous trees in detail and assessed the same as business income after allowing proportionate expenditure.

4. On appeal, the CIT(A) decided the issue in favour of the assessee by following the order this Tribunal in the case of Santhosh George vs. DCIT in ITA Nos.291 to 297/Coch/2012 dated 31/07/2013 wherein the Tribunal had considered the issue of taxability of receipts from sale of spontaneous growth of trees and held as under:

"9. Shri Mathew Joseph, the ld. representative for the assessee submitted that the assessee has sold trees which were grown spontaneously for which there is no cost of acquisition. Therefore, the entire amount has to be treated as not taxable. For this proposition, the ld. representative has placed reliance on the judgment of the Calcutta High Court in CIT vs Suman Tea & Plywood Industries (P) Ltd (1997) 226 ITR 34 (Cal); Supreme Court judgment in the case of CIT vs B.C. Srinivasa Setty (1981) 128 ITR 294 (SC) and the judgment of the Kerala High Court in the case of CIT vs E.C. Jacob (1973) 89 ITR 88 (Ker) affirmed in 128 ITR 294 (SC).

10. On the contrary, Smt. S. Vijayaprabha, the ld. DR submitted that admittedly, the trees were grown spontaneously. The judgments referred to by the ld. representative for the assessee are in respect of business, concerns and not in respect of trees grown spontaneously. The judgment of the Apex Court in the case of Maharajadhiraj Sir Kameshwar Singh vs CIT (1957) 32 ITR 587 (SC), the ld. DR submitted that when the trees are sold, which are grown spontaneously, the receipt of the same has to be taxed as casual and non recurring income of the assessee.

11. We have considered the rival submissions on either side and also perused the material available on record. It is not in dispute that the trees were grown spontaneously in the property purchased in the year 2001. The question arises for consideration is - whether the sale consideration received on sale of the trees which were grown spontaneously without any human aid could be treated as a casual receipt or capital receipt? We have carefully gone through the judgment of the Apex Court in the case of Maharajadhiraj Sir Kameshwar Singh (supra) before the Apex Court. In that case various trees grown spontaneously without any human aid and labour were sold. The Apex Court, after referring to the judgment of the Privy Council in Raja Mustafa Ali Khan vs CIT (1948) 16 ITR 330 found that the receipt on sale of such trees cannot be treated as agricultural income. The question, whether the trees grown spontaneously has no cost of acquisition was not raised by the assessee before the Supreme Court and the Supreme Court had

no occasion to consider such a plea. Therefore, the contention of the ld. DR that the receipt has to be treated as casual and non recurring on the basis of the judgment of the Apex Court may not be correct.

12. We have also carefully gone through the judgment of the Calcutta High Court in the case of Suman Tea & Plywood Industries (P) Ltd (supra). In the case before the Calcutta High Court, the assessee claimed sale of trees grown spontaneously as not taxable. The Calcutta High Court, after referring to the judgment of the Full Bench of the Kerala High Court in CIT vs Jacob (E.C.) (1973) 89 ITR 88 (Ker)(FB) and the judgments of the Apex Court in the case of CIT vs B.C. Srinivasa Setty (1981) 128 ITR 294 (SC); Vishnudatta Antharjanam vs Commr. of Agril.I.T. (1970) 78 ITR 58 (SC) and in CIT vs Ambat Echukutty Menon (1979) 120 ITR 70 (SC) found that the receipt on sale of trees grown spontaneously has to be treated as capital in nature and since there is no cost of acquisition, it cannot be assessed as taxable income. This judgment of the Calcutta High Court is directly on the point regarding the taxability of the trees grown spontaneously without any human aid. Since the Apex Court in the case of Maharajadhiraj Sir Kameshwar Singh (supra) is silent with regard to cost of acquisition and it only deals with the issue whether it is agricultural income or not, this Tribunal is of the opinion that the Calcutta High Court judgment in the case of Suman Tea & Plywood Industries (P) Ltd (supra) may be squarely applicable to the facts of the case. Therefore, the sale of trees grown spontaneously - treated as capital in nature and since there is no cost of it is not liable for taxation as found by the Calcutta High Court. Accordingly, the assessee succeeds on this ground."

Thus, following the decision of the Tribunal cited supra, the CIT(A) held that the receipt from the sale of spontaneous trees are 'Capital' in nature and not taxable. Hence, the additions for both the assessment years were deleted.

5. Against this, the Revenue is in appeal before us. The Ld. DR submitted that the assessee received income from the sale of spontaneous growth of trees. According to the ld. DR, the assessee has not performed any agricultural activities so as to aid the spontaneous growth of trees. The ld. DR submitted that the spontaneous growth of trees was a regular activity and year after year, the assessee earned substantial income from the same. The Ld. DR submitted that the

concept of income as per section 2(24) of the Act is an inclusive one. It was submitted that this aspect was reiterated in the judgment of the Supreme Court in the case of Emil Webber vs. CIT (200 ITR 483) wherein it was observed that definition of 'income' in section 2(24) is an inclusive definition. Anything which can properly be described as income is taxable under the Act unless it is exempted under one or other provisions of the Act. Further, it was submitted that in the case of CIT vs. G.R. Karthikeyan (211 ITR 866), the Supreme Court held that even if a receipt does not fall within the ambit of any of the sub clauses in section 2(24), it may still be income if it partakes the nature of the income – the word 'income' is of widest amplitude and must be given its natural and grammatical meaning. Therefore, it was submitted that if the income earned from the sale of spontaneous growth of trees is to be exempt from tax, either of the two conditions needs to be satisfied (1) the same should be specifically exempt under the IT Act or (2) it is to be established that the income from spontaneous tree growth assumes the nature of an income already exempt. Regarding the taxability of forest development tariff/regeneration charges collected on the sale of timber, the ld. DR submitted that item (i) in the 'Notes to Financial Statements' clarifies that these receipts are unaccounted as capital receipts. Vide letter 16/03/2015, it was clarified that the same was tax collected at the rate of 5% of the sale value of any forest produce disposed of by the Government as per sec. 75A of the Kerala Forest Act, 1961 and 60% of the amount collected shall be utilized for planting and maintenance of softwood trees and those species of trees which form raw material for industries and 40% for forest research. Since the assessee accounts the forest development

tariff as capital receipt, the FDT should also be factored in. The Ld. DR submitted that the major activities of the assessee included raising of forest trees and sale of timber, cultivation of plantation crops, eco tourism etc. from which the assessee earned substantial income. Therefore, the ld. DR submitted that the income from the sale of spontaneous growth of trees is to be taxed under any head other than "income from business".

6. The Ld. AR submitted that the assessee (KFDC) had been handed over properties from Govt. of Kerala as per various orders, the details of which are given below:

GO (Ms) 380/76/AD dt. 11/11/1976.

GO (Ms) 33/89/F&WLD dt. 04.03.1989.

GO (MS) No.62/89/F&WLD dt. 25,04.1989 with area schedule – (10618.897 Ha.)

It was submitted that the assessee had Central Govt. (Ministry of Environment, Forests & Climate change) approved Management Plan for every year governing the schedule of clear felling, harvesting, replanting, thinning etc. A detailed schedule was prepared which had to be strictly adhered to by the assessee. The area of land, the extent of land, the No. of trees to be planted, the extent of land, the period for which trees are to be planted etc. were decided beforehand. Following the directions, the area was cultivated by the assessee and cutting of trees in the area was also done as per the directions of the Government of India , Ministry of Environment & Forests. She drew our attention to the copy of letter dated

11.09.2007 of Ministry of Environment & Forests , Government of India issued on Subject Draft Management Plan for Forest Plantations of the assessee for the period 2007-08 to 2011-12. According to her, from the attached Schedule of Harvesting it could be seen that the assessee had to give all the particulars regarding the Plantation - Division, Location, , Year of Plantation , Extent, Expected yield ,etc.

6.1 She drew our attention to the copy of the letter dated 28.06.2013 on the approval of Management Plan of the assessee for the period 2013-14 issued by the Ministry of Environment & Forests, Government of India. According to her, from the same, Clause 1, it could be seen that felling is an integral part of the plan and there are specific conditions to clear the area by felling. She also drew our attention to the copy of Replanting Schedule for the year 2011-12 & 2012-13. According to the Ld. AR, when the main plantation in a particular area is cut the assessee also carries out felling spontaneous grown trees to clear the particular area and only if the entire area is cut then only the land is prepared for the next set of plantation activities. According to the Ld. AR, there is no intention to earn any profit out of the activities of sale of spontaneous growth and the only intention of felling of the spontaneous growth trees is to ensure that the area is in a cultivable state and next set of agricultural activities as directed by the Govt. can be commenced.

6.2 It was submitted that the spontaneous growth in question was sold from the following land:

a. Kudappanakulam, Subunit IV- Pathanapuram, Block III, Bit-2 , Punalur.

b. Kudappanakulam, Subunit IV- Pathanapuram, Block III, Bit-3, Punalur.

c. Kudappanakulam, Subunit IV- Pathanapuram ,Block IV, Bit-1 , Punalur.

The Ld. AR submitted the copy of the ledger account showing the details of the sale of spontaneous growth of Rs.1.89 Crores for the AY 2012-13 and of 2.31 Crores for AY 2013-14. The Ld. AR submitted copy of agreement dated 03.11.2011 between the assessee and Sri.R. Rajesh for collection and removal of Matty, Elavu & Miscellaneous tree growth in Block III, Bit 2,. Kudappanakulam in Subunit IV Pathnapuram for a sum of Rs. 1,00,16,000/-.

6.3 The Ld. AR submitted agreement dated 27.12.2011 between the assessee and Shri A.V, Thomas for collection and removal of Matty, Elavu & Miscellaneous tree growth in Block III, Bit 3, Kudappanakulam in Subunit IV, Pathnapuram for a sum of Rs.50,05,001/-. Copy of agreement dated 25.10.2012 between the assessee and Smt.Jaya Elias for collection and removal of Matty & Miscellaneous trees (except Teak & Rose wood) in Block IV , Kudappanakulam, Bit 1, 1983 plantation - 30 Ha in subunit IV, for a sum of Rs.2,26,00,003/-. The scope of work, other terms and conditions and the period of contract are all detailed in the Agreement. It was submitted that once the felling is done the assessee carries out the Plantation activities as per the prescribed plan of the government. It was submitted that the assessee prepares the detailed Plantation -- area where the spontaneous growth are cleared and made ready for plantation, mentioning therein the Nursery details, Pre planting operations. Details of exploitation timber (period of felling and conversion,

brief history of felling), yearwise maintenance plan etc. The assessee also prepares a Completion report in respect of the plantation work done in each area. The Ld. AR submitted the sample copy of the Plantation Journal and the Planting Completion Report in respect of the area where spontaneous growth felling is done for the above mentioned agreements as other area where felling is done and replantation is done. The Ld. AR also submitted Plantation Journal for Subunit IV, Pathanapuram, Block III, Bit 1, 2 & 3 Kudappanakulam and Plantation Journal and Completion Report for Subunit IV, Pathanapuram , Block IV, Bit 1 & 2, Kudappanakulam.

6.4 It was therefore submitted that from the above particulars it could be seen that the assessee undertakes felling of spontaneous growth as per the plantation plan of the Government, which is not of a regular nature. It was submitted that once an area is cleared and plantation done it will take along period for replantation of that area since plantation of a particular plant will take long period to reach its reaping/cutting stage and there is no periodicity in respect of the spontaneous growth sale as well..

6.5 It was submitted that there is no revenue from spontaneous growth from the financial year 2013-14 onwards. Hence, it was submitted that the amount received towards the sale of spontaneous growth is only a capital receipt. The Ld. AR submitted that the question whether sale of trees of spontaneous growth was taxable has been considered by the Supreme Court in th ecase of CIT Vs. Ambat Echukutty Menon (120 ITR 70) (SC) wherein the Supreme Court upheld the view of

the Kerala High Court that the sale of trees of spontaneous growth is of a capital nature. The High Court took note of the facts that the felling of trees was done in such a way that there would be no generation of future growth of the trees concerned. The trees were uprooted along with the roots and stems and there is no possibility of regeneration. In that case, there were around 772 trees of various kinds of spontaneous growth, which were interspersed among the paddy fields. The trees were sold by uprooting the roots. The Supreme Court held that there could not be any object of regeneration of income from the trees growing again as there was no question of a second growth at all. The Supreme Court observed that *where the evidence shows that the land has benm acquired for the purpose of cultivation ....and the assesse did not intend to permit regeneration of the trees and he had in fact later put the land to cultivation, the payment received on the sale of trunks cannot be regarded as taxable income.* The Supreme Court held that regeneration of trees was not possible and therefore profit making activities could not be spelt out. Therefore, it was submitted that the case of the assessee is identical. In the case of the assessee the area is felled only with a view to clear the same for further cultivation. The entire area is cleared, the roots and sterns are also cut; no chance for regeneration. Further cultivation is possible only after the entire area. There is no profit making intention present while clearing the area for further. Therefore, the facts of the decision of the Supreme Court is squarely applicableto the case of the assessee.

6.6 The Ld. AR submitted that in the case of Rajagopal Varma Raja case (76 ITR 460) the trees were felled in such a manner that the roots and stems of the trees were allowed to remainl in the land so that the trees may regenerate. It was held that where the trunks are cut so that the stumps remain intact and capable of regeneration, receipts from sale of the trunks would be in the nature of income. In The Ld. AR relied on the judgment of the Supreme Court in the case of Vishnudatta Antbrjanam v. Commr. of Agrl. I.T. [1970] (78 ITR 58) where the trees were sold with their roots, and it was held by this Court that removal of roots the source from which the fresh growth of trees could take place has also been removed and, therefore, the sale of such trees affected the capital structure, and could not give rise to a revenue receipt. In the said case, teakwood trees had been sold for Rs.76,500/-, The trees planted in the year 1946-47 were cut and completely removed from the land with roots for the purpose of planting rubber and there was no question of further re-generation and growth of trees which had been cut and removed. No possibility of recurring income from this. The Ld. AR submitted that the Supreme Court took note of the fact that the test laid down by the Privy Council in CTT Vs Shaw Wallace Co - AIR 32 PC 138 found out whether particular receipt is income or not is that there should be a periodical monetary_return giving any regularity or expected regularity but from definite source. Source must be one whose object is production of definite return excluding in the nature of anything of a wind fall. The Supreme Court observed that once the teakwood trees were removed with there is no prospect of regeneration or of any products as of any return therefrom, it can be stated that source ceased to be one which could produce

any income. The Supreme Court observed that the High Court had considered the fact that profit motive is not decisive of the question whether a particular receipt is capital or income. Any accretion to capital does not become taxable merely because an asset is acquired in the hope that it can be sold at a profit. If the trees are cut with roots, once and for all part of the asset is disposed of. Sale proceeds on account of the disposal cannot constitute revenue because by removing the root, the source from which fresh growth of trees is also removed, sale of such trees is capital and not revenue. Further, the Ld. AR relied on the judgment of the Bombay High Court in the case of CIT vs. N.T. Patwardhan (41 ITR 313) wherein it was held that sale of trees with the roots and land on which it stood was a disposal of the capital assets and it is impossible to split up the transaction into two parts and regard a part of it a capital sale and the rest as a sale producing income. In the said case, it was submitted that there were large number of trees which had grown spontaneously stood for number of years. The trees were sold by auction. The purchaser was to uproot the trees roots from the land. The assesse had contended that sale of trees by uprooting them was on capital account. This view was accepted by the Tribunal as well. The High Court observed that where on land growth of trees had stood up for number of years without any attempt being made to realise therefrom the trees are sold once and for all with their roots the transaction is of capital and not of revenue for by disposing off the roots of the trees they are disposed of thee source from which a fresh growth of wood would spring up. It was submitted that the ratio of the above judgment is squarely applicable in the assessee's case.

6.8 The Ld. AR relied on the judgment of the Madhya Pradesh High Cdourt in the case of CIT vs. Mahendra, Karma Pooranchand Soni and others wherein the issue was that the assesseee was an agriculturist and there were some trees which were creating hindrance to the assessee for undertaking cultivation of such land. Permission was sought to cut the trees and after cutting the trees sale was to be effected only to Forest Dept. of the State. The High Court held that:

> 1.The appellant is an agriculturalist and do not have any other business activities.
> 2.Cutting and selling of trees was made after obtaining permission from competent authorities.
> 3. Sale of trees was made to the State.
> 4. Cutting and selling was governed by the Courts and rules.
> 5. Price of trees was determined by State Authorities.
> 6. It was not a profit sale.
> 7. Certificate was given by the Tahsildar that the trees would not be regenerated in the near future.
> 8. The land was put to use for cultivation after cutting the trees.
> 9. There is no evidence to show that any profitable event in the transaction was noticed.
> 10. The Hon'ble High Court in the ground that the appellant did not intend to earn my profit out of the sale of such trees nor his intention was to indulge in any profit making activities by sale of such trees.

Considering the ratio of the above decision it was clear that the amount received by the assessee is only Capital receipt in nature .

6.9 It was submitted that there was no profit making activity and hence, no Income is not assessble under the head " Income from Business". This question is also covered by the Supreme Court Judgment in CIT vs. Ambat Echukutty Menon 120 ITR 70 (SC). The Supreme Court has expressly stated -".... *It is a case where, although the stump roots remained after the trees were felled and removed by the*

purchaser, the regeneration of the trees was not to be allowed and, therefore, a profit-making activity could not be spelled out".

It was also submitted that the assessing officer had included the income from sale of spontaneous growth of trees under 'profit and gains of business. Section 28 states that the following income shall be charged to income tax under the head 'profit or gain of business and profession'.

i) Profit of any business or profession which was carried on by the assessee at any time ; the previous year

ii) to viii.

Apparently all the other clauses would not cover income from sale of spontaneous tree Therefore, if at all the amount is to be assessed, it would fall only within the ambit of Section 28 (i). Section 28(i) states that *profit or gain of any business which is carried on by the assessee at any time during the previous year is chargeable to income tax under the head 'income from business'.*

It was submitted that following ingredients were found to emerge from the analysis of clause 28(i):

a) there should be a 'business' or 'profession'.

b) the business or profession should be carried on by the assessee;

c) the business or profession should be carried on for some time during the previous year;

d) the charge is in respect of the profits and gains of the previous year of the business or profession; and

e) the charge extends to any business or profession carried on.

It was submitted that ordinarily the expression business connotes continuous activity carried on a particular time or occasion. It was submitted that further ingredient of business is that it must be carried on with a profit motive. In order to be a business income there must be evidence of exploitation or commercial activity and the sale of trees is only with a view to take up cultivation, there is no intention to make profit therefrom.

6.9.1 It was submitted that the assessee undertakes plantation activity in the land obtained from Government on lease. The assessee does not own land and pays periodical lease rental to Government as per the Order. It was submitted that the word income includes capital gains chargeable u/s. 45". Therefore, only capital gains which is chargeable u/s. 45 is income under the Income Tax Act. The question whether the aforesaid nature of sale would be covered under capital gains was considered by the Supreme Court in the case of B.C. Sreenivasa Shetty (128 ITR 294) wherein it was held that "*What is contemplated is an asset in the acquisition of which it is possible to envisage a cost goes to the nature and character of the asset, that it is an asset which possesses the inherent quality of being available on the expenditure of money to a person seeking to acquire it. It is immaterial that although the asset belongs to such a class, it may, on the facts of a certain* case, *be acquired without the payment of money. That kind of case is covered by s. 49 and its cost, for the purpose of s. 48, is determined in accordance with those provisions. There are other provisions which indicate that s. 48 is concerned with an asset capable of acquisition at its cost. Section 50 is one such*

provision. So also is sub-s. (2) of s. 55. None of the provisions pertaining to the head 'Capital Gains' suggests that they include an asset in the acquisition of which no cost at all can be conceived. Yet there are assets which are acquired by way of production in which no cost element can be identified or envisaged. From what has gone before, it is apparent that the goodwill generated in a new business has been so regarded. The elements which create it have already been detailed. In such a case, *when the asset is sold and the consideration is brought to tax, what is charged is the capital value of the asset and not any profit or gain.*

In the case of goodwill generated in a new business there is the further circumstance that it is not possible to determine the date when it comes into existence. The date of acquisition of the asset is a material factor in applying the computation provisions pertaining to capital gains. It is possible to say that the "cost of acquisition" mentioned in s. 48 implies date of acquisition, and that inference is strengthened by the provisions of ss. 49 and 50 as well as sub-s..(2) of s.55.

It may also be noted that if the goodwill generated in a new business is regarded as acquired at a cost and subsequently passes to an assessce in any of the modes specified in sub-s. (1) of s. 49, it will become necessary to determine the cost of acquisition to the previous owner. Having regard to the nature of the asset, it will be impossible to determine such cost of acquisition. Nor can sub-s. (3) of s. 55 be invoked, because the date of acquisition by the previous owner will remain unknown.

We are of the opinion that the goodwill generated in a newly commenced business cannot be described as an "asset" within the terms of s. 45 and, therefore, its transfer is not subject to income-tax under the head “Capital gains".

6.9.2 It was submitted that the Tribunal had relied on the judgment of the Calcutta High Court in the case of Suman Tea & Plywood Industries. It was submitted that in the case before the Calcutta High Court, the assessee claimed sale of trees grown spontaneously as not taxable. The Calcutta High Court, after referring to the judgment of Full Bench of the Kerala High Court in 89 ITR 88 (Ker) and the judgments of the Apex Court in (1981) 128 ITR 294 (SC), 78 ITR 58 (SC) and in 120 ITR 70 (SC) found that the receipt on sale of trees grown spontaneously has to be treated as capital in nature and since there is no cost of acquisition, it cannot be assessed as taxable income. The ITAT held that "this judgment of the Calcutta High Court is directly on the point regarding the taxability of the trees grown spontaneously without any human aid. Since the Apex Court in the case of Maharajadhiraj Sir Kameshwar Singh (supra) is silent with regard to cost of acquisition and it only deals with the issue whether it is agricultural income or not, this Tribunal is of the opinion that the Calcutta High Court judgment in the case of Suman Tea & Plywood Industries (P) Ltd (supra) may be squarely applicable to the facts of the case. Therefore, the sale of trees grown spontaneously has to be treated as capital in nature and since there is no cost of acquisition, it is not liable for taxation as found by the Calcutta High Court." It was submitted that the above judgment is squarely applicable to the facts of this case also. Therefore, the amount

cannot be assessed under the head capital gains. It was submitted that whether the fact that amount was received in more than one year will alter the nature of receipt. The assessing Officer had observed that the assessee had received the amount in more than one year and therefore, the amount is assessable as income. It was submitted that the nature of receipts is per se capital, therefore, even if the assessee received the amount in various years that alone would not be a criteria to tax it in the hands of the assessee as income.

6.9.3 The Ld. AR relied on the judgment of the Karnataka High Court in the case of Consolidated Coffee Estates vs. Commissioner of Agricultural Income Tax, Bangalore (76 ITR 29). In the said case gravelia trees were maintained as shade trees for the coffee bushes and it were of spontaneous growth. It was held therein that the shade trees were capital assets and the proceeds are capital receipts. The High Court also observed that the fact that the appellant received the proceeds not in lump sum in one year but in the course of more than one year is immaterial for the purpose of determining it nature. An income received is not necessarily recurring nor a capital receipt necessarily single. A single receipt may be an item of income and the annual receipt recurring over a number of years may be capital. Following the ratio of the above decision, the contention of the Officer that year after year, the appellant had received substantial income from sale of spontaneous growth would not make the receipts as income liable to tax.

6.9.4 Further, it was submitted that it had been confirmed from the figures that even though it is stated by the Officer that the income is "substantial" that is not true, when compared with the total receipts from agricultural operations of the assessee. According to the assessing officer for AY 2012-13 the amount involved was Rs.1.89 crores and in AY 2011-12 Rs.2.31 crores. It was submitted that the area under control of the assessee was about 10000 hectares to 25000 acres and the area from which spontaneous growth was received is different in each year and there is no case that in the same location spontaneous growth was received by the assessee from year to year. In AY 2012-13 the amount was received mainly from Block 111, Bit 2 & 3 in Subunit IV Pathanapuram. In AY 2013-14 the amount was received mainly from Block IV , Bit 1 in Subunit IV, Pathanapuram.

Assessment year	Agricuoltural Receipt	Spontaneous Growth
2012-13	Rs.18.65 crores	Rs.1.89 crores
2013-14	Rs.11.98 cores	Rs.2.31 crores

6.9.5 The Ld. AR submitted the copy of the Schedule attached to the audited Profit & Loss account for the relevant years was submitted and from the above it can be seen that even though the amount of spontaneous growth sale seems to be substantial, compared to the area planted by the assessee and the total agricultural receipt spontaneous growth sale is negligible which also confirmed the fact that there was no intention to make any profit from spontaneous growth sale, receipt was only incidental. Thus, it was submitted that there was no intention at all to grow spontaneous trees or to earn any income in a systematic from the sale of such trees.

6.9.6 The Ld. AR distinguished the case laws relied on by the Department in support of its contention that income earned from sale of trees of spontaneous growth without human aid or efforts should be brought under taxable income.

(a) High Court of Kerala in the case of Travancore Rubbers & Tea Company Limitecl (221 1TR 585 Ker) in which case Earnest Money of Rs. 75,000/- was received by the assesse in respect of sale of old and uneconomic rubber trees, consequent to termination of the agreement for breach thereof by the parties. it was held by the High Court that the E.M.D. forfeited was taxable. It was held therein that the amount is as a result of forfeiture of E.M.D. which is the source of the matter. Nexus means immediate cause and not cause of causes. The fact that EMD related to sale of uneconomic nature trees is not to be looked into. Also if the contract had been through whether the same is exempt not considered.

(b) In CIT vs. G.R. Karthikeyan (201 ITR 866) the question therein was whether the sum received from All India Highway Motor Rally was income defined u/s. 2(24) of the Act. The decision that the amount constituted income was on the ground that the definition of word income specifically included races and other games of any sort. It was held that the words 'other games of any sort' are of wide amplitude therefore, the meaning is not confined to games of a gambling nature alone. It is in these circumstances that the Supreme Court held that the amount received was income liable to tax. The

definition of the word income in the Income Tax Act specifically included winning from games and hence the amount was held to be income. In the case under consideration, the amount is a capital receipt and income includes only any capital gains chargeable u/s. 45. If an amount is not chargeable u/s. 45 the said amount cannot be included under the purview of income under the Income Tax Act. Hence, it was submitted that the ratio of the decision is not applicable to the case under consideration.

(c) It was submitted that the judgment of the Supreme Court in the case of Maharajadhiraj Sir Kameshwar Singh vs. CIT (32 ITR 587) was considered in the decision rendered by the ITAT in the case of Santhosh George, cited supra wherein it was specifically held that the decision considered only the fact that the amount was not agricultural income and was silent on the fact as to whether the sum was capital receipt or not? As such, it was submitted that the decision has already been considered by the Tribunal. The Ld. AR pointed out that the Department in Ground No. 7 stated that the CIT(A) ought to have considered the judgment of High Court of Gauhati in the case of Tarajan Tea Pvt. Ltd. reported in (1994) (205 ITR 45) wherein it was held that the receipt from the sale of spontaneous growth of trees done periodically cannot be assessed under the head “capital gains” since there is no cost of acquisition and should be treated as “revenue receipts”. Against this, it was submitted that there is no such finding in the judgment. It was specifically held in the judgment that *“the principles on the basis of which consideration received for*

sale of trees of spontaneous growth is to be treated as revenue receipt or capital receipt was laid down in CIT vs. Ambat Echukutty Menon cited supra. The High Court noted that there were certain ambiguity whether the trees in the previous year relevant to the assessment year were trees standing at the time of acquisition or trees which grow on roots and trunks existing at the time of acquisition and cut subsequently. In this case, the Inspecting Assistant Commissioner had no such data before him to conclude that there was no cost of acquisition. It is also for consideration whether the spontaneous growth required any care or attention by way of protection from animal and the like and, if so, whether the assessee did not incur any cost in this regard. It was observed that *"any decision either way without considering these aspects would be erroneous and any decision in favour of the assessee without considering these aspects would be prejudicial to the interest of the revenue."*

6.9.7 Therefore, it was submitted that the decisions relied on by the revenue are not applicable to the facts of the assessee's case. The assessing officer had stated that if the income earned from sale of spontaneous growth is to be exempt from tax, either of the two conditions need to be satisfied.

1) The same should be specifically exempt under IT or

2) It is to be established that income from spontaneous tree growth assumes the nature of an income already exempt.

The Ld. AR submitted that the case laws cited above including the judgments by the Supreme Court confirmed the fact that the receipt income from spontaneous growth

is Capital receipt and therefore, not liable to tax. As such following the judgments of the Supreme Court, the receipt is not taxable.

7. We have heard the rival submissions and perused the record. This issue came up for consideration of the Supreme Court in the case of CIT vs. Ambat Echukutty Menon (120 ITR 70) wherein it was held as follows:

> *"The respondent, a HUF, owning large agricultural lands, purchased in a Court auction in 1905 some lands covering an area of 200 acres with two irrigational channels. In 1960, the assessee sold the trees of spontaneous growth standing on 60 acres of those lands. The trees were not in one block but were interspersed among paddy fields as the land was meant for paddy cultivation. Under the agreement, the purchaser was to cut the trees neatly and the stumps were neither to be pulled out nor cut. The respondent claimed that this was the first and the last sale, and that the sale was effected with a view to extending dry or wet cultivation to that area since the trees were a hindrance. Without rejecting the assessee's stand that the transaction in question was the first and the last sale of trees and without finding that the respondent's object was not to convert the land for cultivation but to earn income by regeneration of the trees, the Appellate Tribunal held that the receipt from the sale of trees was a revenue receipt, observing that as the respondent was claiming exemption it was up to it to furnish all information as to what trees would not regenerate, what kind of trees was sold, etc., and that it had failed to furnish these details. On a reference, the High Court held that the receipts were of a capital nature and not assessable to income-tax. On appeal to the Supreme Court:*
>
> *Held, that the decision of the High Court was correct, because the object of the sale was not the regeneration of the trees but protection of the land eventually to be used for the purpose of cultivation.*
>
> *Held also, that this was not a case where the assessee claimed an exemption and failed to furnish details, but this was a case where in order to net the receipt as a revenue receipt it was for the department to reject the assessee's stand and to hold that the object of the assessee is not allowing the licensee to cut the stumps and uproot the roots was regeneration of the income.".*

7.1 In our opinion, this issue was settled by the above judgment wherein it was held that receipts from sale of spontaneous growth of trees is a capital receipt not

liable to tax. The order of the Tribunal cited supra relied on by the CIT(A), was in conformity with the above judgment of the Supreme Court. Even section 55(2)(a) has no relevance in the case of spontaneous growth of trees. This issue was considered by the ITAT, Ahmedabad Bench in the case of Natraj, Ahmedabad vs. DCIT dated 06/09/2010 in ITA No.3063/Ahd/2010 wherein it was held as under:

> *"……we find that the provision of section 55(2)(a) shall apply in relation to the capital assets mentioned in section 55(2)(a) of the Act only. The capital assets as mentioned in section 55(2)(a) are exhaustive and all inclusive of capital assets such as goodwill, trade mark, brand name, right to manufacture, produce or process any article or thing or right to carry on any business, tenancy rights, stage carriage permits or loom hours, and being an exhaustive list of capital assets, any other capital asset such as land etc. could not be included for the purpose of valuation of "cost of acquisition" for sections 48 and 49 of the Act. It is well settled that when certain provision of law has clear language and leaves no room for ambiguity, there should be no violence to the provision as enacted by the Legislature and no words should be added or omitted while reading a specific provision of law."*

Being so, after amendment to section 55, when the cost of acquisition of spontaneous growth of trees is nil, there cannot be any capital gain. The provisions of section 55(2)(a) of the Act cannot be applied to spontaneous growth of trees and is to be applied only to goodwill, trade mark, brand name, right to manufacture, produce or process any article or thing or right to carry on any business, tenancy rights, stage carriage permits or loom hours etc.

7.3 Further, in the case of State of Kerala vs. Karimtharuvi Tea Estates Ltd. (60 ITR 275) (Larger Bench), it was held that High Court had confirmed that gravelia trees were grown and maintained for the sole purpose of providing shade to the tea bushes in the tea estates of the assessee. That such shade is essential for the proper cultivation of tea cannot be disputed; and hence, we consider it to be a part

of the capital asset of the company and tea bushes themselves are the equipment of tea factories. Some of the gravelia trees became old and useless with the expiry of time and naturally to be cut for sale. In view of the above order of the Tribunal and the judgments of the Supreme Court, we are inclined to dismiss the grounds of appeals of the Revenue.

9. In the result, the appeals filed by the Revenue are dismissed.

Order pronounced in the open Court on this 8th May, 2019

sd/-	sd/-
(GEORGE GEORGE K.)	(CHANDRA POOJARI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Place: Kochi
Dated: 8th May, 2019
GJ
Copy to:
1. Kerala Forest Development Corporation Ltd., Aranyakom. Karapuzha, Kottayam-686 003.
2. The Assistant Commissioner of Income-tax, Circle-1, Kottayam.
3. The Commissioner of Income-tax(Appeals), Kottayam.
4. The Pr. Commissioner of Income-tax, Kottayam.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin