income tax on the amounts of remuneration paid to their transferees. The court was not called upon to apply to income received by the assessee the principle of apportionment under r. 9 of Sch. 1 of the Excess Profits Tax Act, or any provision similar thereto. It is r. 9 of Sch. 1 which attracts the principle of apportionment. The rule enunciated in *M/s. E. D. Sassoon & Co.'s* case (1) has therefore no application to this case, and the High Court was right in holding that the assessment made by the Excess Profits Tax Offcer by apportionment of the commission income between the chargeable accounting periods was correct.

The appeals therefore fail and are dismissed with costs. One hearing fee.

Appeals dismissed.

THE TRAVANCORE RUBBER AND TEA CO., LTD.

v.

THE COMMISSIONER OF AGRICULTURAL INCOME-TAX, KERALA

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Agricultural Income Tax—Rubber Plantation—Expenditure on immature trees—Whether permissible deduction—Travancore-Cochin Agricultural Income-tax Act, 1950 (Tr. Co. XXII of 1950), s. 5.

In computing the agricultural-income of a person s. 5(f) of the Travancore-Cochin Agricultural Income-tax Act, 1950, allowed deductions of any expenditure "laid out wholly and exclusively for purpose of deriving the agricultural income". The assessee who had rubber plantations claimed that the amount expended on the maintenance and tending of immature rubber trees should be deducted in computing its agricultural income but this was disallowed on the ground that the use of the article "the" before the words agricultural income implied deduction

(1) [1955] 1 S.C.R. 313.

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from the income of the year in which the trees on which the amount was expended bore income.

Held, that the assessee was entitled to the deduction claimed. It was no answer to the claim for the deduction that these expenses produced no return in the year in question as the trees were not yielding rubber in that year.

Vallambrosa Rubber Co. Ltd. v. *Farmer*, (1910) 5 T. C. 529, followed.

Assam Bengal Cement Co. Ltd. v. *The Commissioner of Income-tax, West Bengal*, [1955] 1 S.C.R. 972, not applicable.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 290 to 292 of 1959.

Appeals by special leave from the judgment and order dated December 6, 1957, of the Kerala High Court in Agricultural Income-tax Referred Cases Nos. 15, 18 and 19 of 1955.

C. K. Daphtary, Solicitor-General of India, Thomas Vellapally and *M. R. K. Pillai*, for the appellants (in all the appeals)

Sardar Bahadur, for the respondents.

1960. December 15. The Judgment of the Court was delivered by

Kapur J.

KAPUR, J.—These three appeals are brought by special leave against the judgment and order of the High Court of Kerala and arise out of a common judgment of that court given in three Agricultural Income-tax References Nos. 15, 18 and 19 of 1955. In the first reference the question raised was:

> "Whether under the Travancore-Cochin Agricultural Income Tax Act, 1950 in calculating the assessable agricultural income of a rubber estate already planted and containing both mature yielding rubber trees and also immature rubber plants which have not come into bearing, the annual expenses incurred for the upkeep and maintenance of such rubber plants, are not a permissible deduction, and if so, whether the sum of I. Rs. 42,660-4-1 expended by the assessee in the relevant accounting year 1952, under this head may be deducted."

and in the other two the question referred was:

"Whether the expenses incurred for the maintenance and upkeep of immature rubber trees constitute a permissible deduction within the meaning of s. 5(j) of Act XXII of 1950?"

In all the references the questions were answered in the negative and against the appellant.

The appeals relate to three accounting years 1950, 1951 and 1952 (assessment years 1951-52, 1952-53 and 1953-54). The appellants have rubber plantations and in the accounting year 1950, corresponding to the assessment year 1951-52, the appellants had under cultivation 3558·84 acres out of which 334·64 acres had immature rubber trees growing and the rest i.e. 3224·20 acres mature rubber yielding trees under cultivation. In that year a sum of Rs. 19,056-0-9, which was expended for the upkeep and maintenance of immature portion of the rubber plantation, was allowed by the Agricultural Income tax Tribunal and at the instance of the respondent a reference was made to the High Court under s. 60(1) of the Agricultural Income tax Act (Act XXII of 1950) hereinafter termed the 'Act' and that was reference No. 18 of 1955.

During the accounting year 1951 corresponding to the assessment year 1952-53 the appellant had under cultivation a total area of 3426·55 acres of which 3091·91 acres were mature rubber yielding trees and 334·64 acres had immature rubber trees. In that year a sum of Rs. 59,271-9-5 was the expenditure incurred for the upkeep and maintenance of immature portion of the rubber estate. That sum was allowed by the Agricultural Income-tax Tribunal and at the instance of the respondent a reference was made under s. 60(1) of the Act to the High Court and that was reference No. 19 of 1955.

In Agricultural Income-tax Reference No. 15 of 1955 which related to accounting year 1952 and the assessment year 1953-54, the area under cultivation was 3453·65 out of which 2967·91 acres had mature rubber yielding trees and 485·74 acres had immature rubber growing trees. In that year the amount expended on the maintenance and tending of the immature rubber trees was Rs. 42,660-4-1. In that case,

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however, the Agricultural Income tax Tribunal rejected the appellant's claim and disallowed the expenditure. At the instance of the appellant a case was stated to the High Court under s. 60(1) of the Act and was answered in the negative and against the appellant. In all the cases the assessee company is the appellant and the main question for decision is whether the amount expended for the upkeep and maintenance of the immature rubber trees is a permissible deduction under s. 5(j) of the Act.

The charging section under the Act is s. 3 and s. 5 relates to computation of agricultural income. It provides:—

S. 5 "The agricultural income of a person shall be computed after making the following deductions, namely:—

.....

(j) any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of deriving the agricultural income;".

In regard to this income the High Court held:

"We find it impossible to say that the amounts spent on the upkeep and maintenance of the immature rubber plants were laid out or expended "for the purpose of deriving the agricultural income", much less that they were laid out or expended "wholly and exclusively for that purpose".

"The agricultural income", in the context, can only mean the agricultural income obtained in the accounting year concerned and not the agricultural income of any other period."

In our opinion the High Court has taken an erroneous view of the relevant provision. It is not denied that the expenditure claimed as a deduction was wholly and exclusively laid out for the purpose of deriving income but the use of the definite article "the" before agricultural income has given rise to the interpretation that the deduction is to be from the income of the year in which the trees on which the amount claimed

was expended bore any income. In a somewhat similar case *Vallambrosa Rubber Co. Ltd.* v. *Farmer* (1) the expenditure of the kind now claimed was allowed under the corresponding provision of the English Income-tax Act. In that case a rubber company had an estate in which in the year of assessment only 1/7 produced rubber and the other 6/7 was in process of cultivation for the production of rubber. It may be added that rubber trees do not yield any rubber until they are about six years old. The expenditure for the superintendence, weeding etc. incurred by the company in respect of the whole estate including the non-bearing rubber estate was allowed on the ground that in arriving at the assessable profits the assessee was entitled to deduct the expenditure for superintendence, weeding etc. on the whole estate and not only on the 1/7 of such expenditure. Lord President said at page 534:

> "Well that is for the case quite correct, but it must be taken, as you must always take a Judge's dicta, *secundum materiam subjectum* of the case that is decided. But to say that the expression of Lord Esher's lays down that you must take each year absolutely by itself and allow no expense except the expense which can be put against the profit which is reaped for the year is in my judgment to press it much further than it will go."

Counsel for the respondent relied upon a judgment of this Court in *Assam Bengal Cement Co. Ltd.* v. *The Commissioner of Income-tax, West Bengal* (2) and particularly on a passage at page 983 where Bhagwati J. observed:

> "The distinction was thus made between the acquisition of an income-earning asset and the process of the earning of the income. Expenditure in the acquisition of that asset was capital expenditure and expenditure in the process of the earning of the profits was revenue expenditure."

But that case has no relevancy to the facts of the present case nor has that passage any applicability to the facts of the present case. The question there was

(1) (1910) 5 T.C. 529. (2) [1955] 1 S.C.R. 972.

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whether certain payments made were by way of capital expenditure or revenue expenditure. The assessee acquired a lease from Government for twenty years and in addition to paying the rent and royalties for the lease the assessee had to pay two further sums as 'protection fees' under the terms of the lease. Those sums were held to be capital expenditure inasmuch as they were incurred for the acquisition of an asset or an advantage of enduring nature and were no part of the working or operational expenses for carrying on the business of the assessee.

In our opinion the amount expended on the superintendence, weeding etc. of the whole estate should have been allowed against the profits earned and it is no answer to the claim for a deduction that part of those expenses produced no return in that year because all the trees were not yielding rubber in that year.

We therefore allow these appeals, set aside the judgments and orders of the High Court and answer the questions in favour of the appellant in all the three agricultural Income-tax References. The appellant will have its costs in this Court and the High Court. One hearing fee in this Court.

Appeals allowed.