(1994) 09 AP CK 0003

In the Andhra Pradesh High Court

Case No : Wealth-tax Case No. 7 of 1991

Commissioner of Income Tax	APPELLANT
Vs	
Satishchandra Modi	RESPONDENT

Date of Decision : 28-09-1994

Acts Referred:
Income Tax Act, 1961 — Section 80M
Wealth Tax Act, 1957 — Section 27(2), 27(3)

Citation : (1995) 216 ITR 435

Hon'ble Judges : S. Parvatha Rao, J;K.M. Agrawal, J

Bench : Division Bench

Advocate : S.R. Ashok, for the Appellant; S. Ravi, for the Respondent

Judgement

K.M. Agarwal J.

1. This is an application u/s 27(3) of the Wealth-tax Act, 1957, by the Revenue for directing the Tribunal to state a case and make a reference of the following questions of law :

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the two partial partitions on January 19, 1976, and October 16, 1978, are valid in law and satisfy the requirements of section 171 indisputably effected before March 31, 1978 ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the partitions dated January 19, 1976, and October 16, 1978, were ostensibly adverted in the best interest of the family and its members and the income from the assets in question subjected to the above partial partitions is not liable to be included in the income of the Hindu undivided family in respect of the period subsequent to such partitions as it belongs to the separate entities created as a result of the partitions ?"

2. The assessee was a joint family consisting of father, mother and two minor sons. The assessee set up a case of two partial partitions. The first partial

partition was alleged to have taken place on January 19, 1976, and the second to have taken place on October 16, 1978. It was alleged that in the first partial partition, the father, mother and one son by name Sourabh collectively got Rs. 20,000, whereas Soham got Rs. 10,000 individually. Similarly, in the second partial partition it was alleged that the father, mother and another son, Soham, collectively got Rs. 20,000 in their share, whereas the remaining son, Sourabh, got a sum of Rs. 10,000 individually in his name. These partial partitions were not accepted by the Income Tax Department. However, for the purpose of wealth-tax, the Tribunal came to the conclusion that the said partial partitions were genuine and were valid under the Hindu law and accordingly decided the case in favour of the assessee. Being aggrieved, the Revenue made an application before the Tribunal for making a reference of the aforesaid questions of law. The said application was rejected and, therefore, this petition u/s 27(3) of the Act has been made for directing the Tribunal to state the case and to make a reference.

3. After having heard learned counsel for the parties, we are of the view that the Tribunal ought to have referred the first question to this court u/s 27(2) of the Act, as it does give rise to a question of law. The second question proposed does not given rise to any question of law and, therefore, needs no consideration. Accordingly, this application u/s 27(3) of the Act is allowed and the Tribunal is directed to state the case and to refer the following question of law to this court :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the two partial partitions dated January 19, 1976, and October 16, 1978, are valid in law and satisfy the requirements of section 171 ?"

4. There shall be no order as to costs of these proceedings.