(1992) 02 CAL CK 0027

In the Calcutta High Court

Case No : Matter No. 2236 of 1991

COMMISSIONER OF WEALTH TAX — APPELLANT

Vs

BROJOGOPAL CHOWDHURY. — RESPONDENT

Date of Decision : 05-02-1992

Acts Referred:

Citation : (1993) 111 CTR 254

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J;Ajit K. Sen Gupta, J

Bench : Full Bench

Judgement

AJIT K. SENGUPTA, J. :

In this reference under s. 27(3) for the asst. yrs. 1972-73 to 1975-76, 1979-80 and 1980-81 the following common question of law has been referred to this Court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the assets included in the wealth-tax assessment of the assessee by the WTO should be assessed in the hands of the executor to the estate of Late Phanindra Nath Chowdhury and not in the hands of the assessee ?"

2. The Tribunal has recorded in the statement of case the following facts leading to this reference :

"The relevant facts are that the assessee and his two brothers Shri Sado Chowdhury and Shri Nani Gopal Chowdhury were the legatees under the Will executed by their father Late Phanindra Nath Chowdhury. The WTO made addition of 1/3 share of the assessee in the said estate of Late Phanindra Nath Chowdhury in the individual wealth of the assessee. The assessee resisted the said action of the WTO on the ground that the Will left by his father was not administered completely and, therefore, the estate of his father was to be assessed in the hands of the executor. The WTO did not accept this plea. The assessee agitated this dispute before the CWT(A).

The CWT(A) accepted the plea of the assessee. The Revenue being aggrieved by the order of the CWT(A) preferred second appeals before the Tribunal.

The Tribunal held that the Department had no case that till the asst. yr. 1981-82 the executor or the administrator had unnecessarily withheld the assent or that there was implied assent of the executor of the will and, therefore, it could not be said that the legacy vested in the assessee. The proposed question has arisen out of the order of the Tribunal. Hence, we have prepared a Statement of the Case."

3. There is no dispute that so long as the administration of the estate is not complete, the assessment has to be made on the executors. The only contention raised is that there are certain properties not covered by the trust and Will inherited by the three sons of the deceased including the assessee. We have directed the records to be produced before us including copy of the will. These records were produced and looked into by us by consent of parties. It appears that there is some confusion as to whether apart from the properties gifted under the Will there were other properties which were not the subject-matter of the trust and Will but belonged to the three sons individually. In that view of the matter, we decline to answer the question and direct the Tribunal to ascertain whether any property not covered by the trust and will had been inherited by the sons or devolved upon the sons of the deceased including the assessee and thereafter decide the question whether reassessment in the hands of the individual assessee is valid and proper. Parties will be at liberty to adduce fresh evidence before the Tribunal.

4. The Tribunal will dispose of the matter within six months from the date of the copy of the judgment served upon the Tribunal.

SHYAMAL KUMAR SEN, J. :

I agree.