

(1994) 01 GAU CK 0019

In the Gauhati High Court

Case No : Civil Rule No's. 25 (M) to 27 (M) of 1992

Naresh Kumar Gupta

APPELLANT

Vs

Commissioner of Wealth-tax

RESPONDENT

Date of Decision : 12-01-1994

Acts Referred:

Citation : (1994) 01 GAU CK 0019

Hon'ble Judges : S.N. Phukan, J;M.K. Sharma, J

Bench : Division Bench

Advocate : A.K. Saraf and K.K. Gupta, for the Appellant; D.K. Talukdar and B.J. Talukdar, for the Respondent

Judgement

1. These three applications, namely, CR 25(M) of 1992, CR 26(M) of 1992 and CR 27(M) 1,992, are filed by the assessee u/s 27(3) of the Wealth-tax Act, 1957 (sic), praying to call for a statement of facts on the question of law sought to be referred to this court as suggested by the assessee. Being dissatisfied with the order passed by the Income Tax Appellate Tribunal, Gauhati Bench, Gauhati, rejecting the reference applications filed by the assessee and in refusing to state the case and refer the question of law as suggested by the assessee, the assessee in the aforesaid applications has prayed that the following question of law be referred to this court for its opinion, namely :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the income from the assets acquired of the family by the minor (sic) cannot be assessed in the hands of the Hindu undivided family consisting of karta, his wife and minor daughters till a son is born in the family and is to be assessed as the income of the karta in his individual capacity ?"

2. Three separate applications have been filed for three different assessment years, i.e., for 1981-82, 1983-84 and 1984-85 by the assessee.

3. We have heard learned counsel for the parties.

4. We have been taken through the order of the Income Tax Appellate Tribunal, Gauhati Bench, Gauhati, rejecting the prayer for reference and on a perusal of the same, we find that although the learned Tribunal held that the question of law proposed by the assessee is in fact a question of law it refused to refer the said question for the esteemed opinion of this court on the ground that the said question is covered by a decision of the apex court in *Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay*, According to the learned Tribunal, though the question sought to be referred, might be treated as a question of law, it need not be referred as the issue would be only of academic interest. Accordingly, the Tribunal declined to draw up the statement of the case as sought for by the said reference application.

5. We have heard the submissions of Dr. A.K. Saraf, learned counsel appearing for the assessee, as also Mr. D.K. Talukdar, learned counsel representing the Revenue. Dr. Saraf, while making his submission, has tried to draw up a distinction between the facts of the present case and those of the case decided by the apex court in *Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay*, He also relied upon the decision of the Andhra Pradesh High Court in *Ashok Kumar Ratanchand Vs. Commissioner of Income Tax*, drawing our specific attention to a passage of the aforesaid decision at page 489 to bring home his contention that the issue in hand is not squarely covered by the decision of the apex court in *Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay*,

6. We have given our anxious consideration to the submissions made by learned counsel for the parties and we are of the opinion that the asset involved in the case decided by the Supreme Court being self-acquired property of the assessee and the asset involved in the present case being acquired by the assessee on a partition of the family, the issue raised in the present proceeding cannot be said to be squarely covered by the decision of the apex court in *Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay*, Accordingly, in our opinion, it is a fit case where a reference can be called for u/s 27(3) of the Wealth-tax Act (sic) on the question referred to in the petitions. Accordingly, we direct the learned Tribunal to draw up a statement of the case and refer the same to this court for its decision. We, therefore, allow these petitions, but we make no order as to costs.