

(1978) 01 CAL CK 0059

Calcutta High Court

Case No: Matter No's. 459, 460, 461 and 462 of 1966

Commissioner of Wealth Tax

APPELLANT

Vs

B.N. Chowdhury

RESPONDENT

Date of Decision: Jan. 16, 1978

Acts Referred:

- Income Tax Act, 1922 - Section 16(3)
- Wealth Tax Act, 1957 - Section 4(1)

Citation: (1978) 112 ITR 725

Hon'ble Judges: Dipak Kumar Sen, J; C.K. Banerji, J

Bench: Division Bench

Advocate: Ajit Sengupta, for the Appellant; Aditya Narayan Roy and Subhas Ch. Biswas, for the Respondent

Judgement

Sen, J.

In this consolidated reference under Sections 27(1) and 27(3) of the Wealth-tax Act, 1957, the facts found and/or admitted are that the assessee executed a deed of trust on the 12th April, 1957, conveying properties to his brother, S. N. Chowdhury, to hold the same in trust for the benefit of the latter's wife and minor children. On the same day, S. N. Chowdhury also created a similar trust of assets and properties of similar value for the benefit of the assessee's wife and minor children and appointed the assessee as the trustee thereof.

2. The Wealth-tax Officer applying Section 4(1)(a) of the Wealth-tax Act, 1957, included in the net wealth of the assessee the value of assets transferred to the assessee's brother on trust as aforesaid. On appeal, the Appellate Assistant Commissioner sustained the decision of the Wealth-tax Officer in respect of the assessment years 1958-59 and 1959-60. In the subsequent assessment years 1960-61 and 1961-62, the Appellate Assistant Commissioner, however, held that Section 4(1)(a) of the Wealth-tax Act was not applicable.

3. Both the revenue and the assessee preferred further appeals before the Tribunal against the said order of the Appellate Assistant Commissioner. The Tribunal held that the assets transferred by the trust deed could not be included in computing the net wealth in the hands of the assessee under Sub-clause (iii) of Section 4(1)(a) of the Act, under which sub-clause alone, if at all the said trust properties could have been so included. All the appeals were decided in favour of the assessee. From this order of the Tribunal the following questions have been referred to us u/s 27(1) of the Wealth-tax Act, 1957 ;

"1. Whether the Tribunal was right in holding that the provisions of Section 4(1)(a)(iii) of the Wealth-tax Act were not applicable in respect of transfers by trust deeds ?

2. If the answer to question No. 1 be in negative, whether, on the facts and in the circumstances of this case, the value of the properties given in trust by the assessed to his brother for the benefit of the latter's wife and minor children was chargeable to tax in the hands of the assessee u/s 4(1)(a)(iii) of the Wealth-tax Act, 1957 ?"

4. Further, u/s 27(3), the Tribunal has been directed by this court to draw up a further statement of case on the following further questions :

"1. Whether the Tribunal was right in holding that the provisions of Section 4(1)(a) of the Wealth-tax Act were not applicable in respect of transfers of trust deeds ?

2. If the answer to question No. 1 be in the negative, then whether, on the facts and in the circumstances of the case, the Tribunal was right in directing that the value of the properties given in trust by the assessee to his brother should be excluded from the assessment of the assessee ?"

5. A similar question came up for consideration in the case of Commissioner of Income Tax v. A. N. Chowdhury [1969] 71 ITR 326. In that case, there were transfers between two brothers and each brother transferred his properties and assets to the other brother in trust for the latter's wife and children. The questions which arose in that case were whether the provisions of Section 16(3)(b) of the Indian Income Tax Act, 1922, were applicable in cases of such transfers and if not, whether the income arising from the properties given in trust by the assessee to his brother for the benefit of the latter's wife and minor children was chargeable to Income Tax in the hands of the assessee.

6. This court held that Section 16(3)(b) of the Indian Income Tax Act, 1922, was not attracted in the facts and, therefore, the income of the wife and minor child of the assessee's brother was not chargeable to tax in the hands of the assessee.

7. We find that Section 4(1)(a)(iii) of the Wealth-tax Act, 1957, is in pari materia with Section 16(3)(b) of the Indian Income Tax Act, 1922. Therefore, following the ratio of the judgment in the above case of A. N. Chowdhury [1969] 71 ITR 326, we answer question No. 1 in the reference u/s 27(1) of the Wealth-tax Act, 1957, in the affirmative and in favour of the assessee. In view of such answer, question No. 2

does not call for any answer and we decline to answer the same.

8. By reason of the answer given to question No. 1 in the reference u/s 27(1), it is not necessary for us to answer the questions raised in the reference u/s 27(3), as in our opinion the material Clause attracted in the instant case is Clause (iii) of Section 4(1)(a) and not the other parts of the said Section.

9. The reference is disposed of accordingly. There will be no order as to costs.

Banerji, J.

10. I agree.