

(1974) 11 GUJ CK 0008
In the Gujarat High Court
Case No : Estate Duty Reference No. 1 1973

Bharatkumar Manilal Dalal	Vs	APPELLANT
Controller of Estate Duty, Gujarat		RESPONDENT

Date of Decision : 04-11-1974

Acts Referred:

Estate Duty Act, 1953 — Section 14, 15, 34(3), 5, 6

Citation : (1975) 99 ITR 179

Hon'ble Judges : B.K. Mehta, J; B.J. Divan, J

Bench : Division Bench

Advocate : S.M. Nanavati, for the Appellant; K.H. Kaji, for the Respondent

Judgement

B.K. Mehta, J.—This reference raises a somewhat difficult question and our attempt to answer them has caused considerable anxiety to us. The question referred to us for our opinion u/s 64 of the Estate Duty Act, 1953, is as under :

"Whether, on the facts and circumstances of the case, the amount of Rs. 1,00,000 received from the New India Assurance Company and a further amount of Rs. 3,42,864 pounds 75,000 equivalent to Rs. 3,57,150 less 4 per cent. realisation expenses) received from Aetna Life Insurance Company covered by two accident insurance policies were liable to estate duty u/s 5, 6, 14 or 15 of the Estate Duty Act, 1953 ?"

2. The question arises in the following tragic circumstances which are not many.

3. The applicant herein who is the accountable person happens to be the grieved father of the unfortunate young man, Munirkumar B. Dalal, who met with the fatal accident in that historic plane crash near Alps on 24th January, 1966, enroute to the United States in the course of his return journey after enjoying his brief spell of holiday for about three months in this country during which he got himself married. The deceased had purchased on August 8, 1965, a limited non-renewable policy covering certain travel accidents on scheduled airlines from Aetna Life Insurance Company, Hartford, Connecticut, U. S. A., insuring himself

against risk of air travel for his journey from U. S. A., insuring himself against risk of air travel for his journey from U. S. A. to India and back for a maximum sum of pounds 75,000. The accountable person was designated as a beneficiary under the said policy by the deceased. It appears that the deceased had also purchased similarly in July, 1965, a personal accident policy from New India Assurance Company Ltd., insuring himself for a maximum sum of Rs. 1,00,000 against risk of loss of life or limb arising as a result of accident in the course of one year. The deceased had paid only one premium of Rs. 255 under the said policy to the New India Assurance Company. The accountable person was nominated as a beneficiary for receiving the claim amount payable under the said policy in case of death of the insured. The accountable person on learning about the sad demise of his son went to the U. S. A. for ascertaining whether his son had effected any policy against the risk of air travel. He could trace the policy after great search and had to incur expenses of travelling, lodging and boarding in the United States. As a sequel to the demise of the said Munirkumar B. Dalal, two sums of Rs. 1,00,000 and Rs. 3,57,808 (after deducting the realisation expenses at 4 per cent.) were received from the New India Assurance Company Ltd. and Aetna Life Insurance Company, U. S. A., respectively. In the course of assessment of the accountable person for his liability to pay the estate duty an objection was raised on behalf of the accountable person to the inclusion of the aforesaid two sums in the dutiable estate of the deceased. The contention raised on behalf of the accountable person was that these two sums were not liable to duty u/s 14 of the Estate Duty Act since the policies in question were not wholly kept up by the deceased for the benefit of the donee nor the amounts receivable under the said policies could be considered as a property which the deceased at the time of his death was competent to dispose of and, therefore, the said sums were not liable to be subjected to duty u/s 5 or 6 of the said Act. It was also contended that sections 15 and 16 of the said Act would not be applicable as they relate to annuity or other interest purchased or provided by the deceased. The Assistant Controller of Estate Duty negated all these contentions and held that the claim amounts were not only dutiable u/s 14 but were liable to duty under sections 5, 6, and 15 of the Estate Duty Act.

4. The accountable person, therefore, carried the matter in appeal before the Appellate Controller of Estate Duty, Western Zone, Bombay, raising inter alia, the same contentions as those urged before the Assistant Controller. The Appellate Controller agreed with the accountable person and held that section 14 was not applicable in the facts of the present case. He, however, held that sections 5, 6, and 15 of the said Act were applicable and, therefore, the said two sums were liable to be included in the dutiable estate of the deceased.

5. The accountable person, therefore, carried the matter in further appeal before the Tribunal where the same contentions were reiterated. The Tribunal did not agree fully with the Appellate Controller and held that section 5 of the said Act would not be attracted as admittedly the property in the shape of insurance amounts, which the beneficiary named in the policies subsequently received

under the policies, did not exist since they came into existence only after the death. The Tribunal also held that section 6 of the Act was also not applicable as it was not possible to hold that the deceased had disposing power over the amounts received by the beneficiary after his death since what the deceased possessed was only a future interest in the contingent contract, the contingency of accident being most uncertain. The Tribunal distinguished the decision of the Delhi High Court in *Controller of Estate Duty v. A. T. Sahani*, which followed the decision of the House of Lords in *Attorney-general v. Quixley*, by pointing out that they were not applicable in the facts of the present case as the insurance policies covered risk on account of accident which were purely in the nature of a contingent contract in which the deceased could have no interest in praesenti till his death in respect of these contracts and it cannot be said that the deceased was entitled to those payments in his lifetime and, therefore, he was not competent to dispose of the amounts which were received by the accountable person who was the beneficiary after the death of the insured. The Tribunal agreed with the Appellate Controller that section 14 was not attracted at all. The Tribunal ultimately, however, upheld the order of the Appellate Controller that the aforesaid two sums were liable to be included in the dutiable estate of the deceased because the beneficial interest in the said policies accrued or arose in favour of the accountable person as a result of the death of the insured and, therefore, liable to be subjected to duty u/s 15 of the Estate Duty Act. In that view of the matter, therefore, the Tribunal dismissed the appeal of the accountable person. As the Tribunal found the accountable person liable to duty u/s 15 of the Act only, the accountable person sought reference to this court u/s 64 of the said Act. The revenue also sought the reference as the Tribunal found that neither section 5 nor section 6 section 14 was attracted to the facts of the present case. The question set out hereinabove is, therefore, referred to us at the instance of both the parties.

6. At the time of hearing of this reference, broadly the contentions urged on behalf of the accountable person were that the aforesaid two sums paid under accident policies were not liable to be included in the dutiable estate of the deceased since no property passed u/s 5 and/or section 6 of the said Act because no property existed at or about the time of his death under an accident policy which is ex facie contingent in its nature and the contingency of accident being a chance pure and simple, interest in such a policy, if any, is in the nature of more a spes successionis which could not have been transferred by an instrument inter vivos or disposed of by a will. It could not be, as well, subjected to duty either u/s 14 or section 15 of the Estate Duty Act since they were paid neither under a life policy kept up by the deceased nor were they paid to the accountable person on account of a new beneficial interest having been generated in his favour on the death of the deceased.

7. The revenue sought to repel these broad contentions by urging that every policy of insurance, whether accident or otherwise, is a contingent contract providing for the liability of an insurer to pay a sum assured to an insured on the

happening of a specified event, which has always some element of uncertainty either as to its time or its cause. Neither the time nor the causes of uncertain specified events would be conclusive on the point of existence of interest of an insured in a policy. It is such interest which is a property existing at the time of death which passes on his death or is capable of being disposed of by an insured by act inter vivos or by a will. In any case, assuming without admitting, that it may not be a life policy kept up by the deceased, it is certainly a purchase or provision of an interest in the nature of accident policy and the beneficial interest under it springs into life on the death of an insured. In the submission of the revenue, the sums aforesaid were, therefore, liable to be subjected to estate duty at least u/s 5, 6, or 15 of the Estate Duty Act. The above respective broad contentions were advanced on the basis of different intermediate contentions to which we will advert at the appropriate stages.

8. The question as referred to us gives an impression that the amounts in question have been sought to be made liable under any of the sections, namely, 5 or 6 or 14 or 15 of the Estate Duty Act. It is a settled position of law that these sections are not exhaustive and a property may be liable to duty under any one or more of them (vide *Public Trustee v. Inland Revenue Commissioners* and *In re Weir's Settlement Trusts : Macpherson and Weir (Viscount) v. Inland revenue Commissioners*).

9. At the outset it must be said that section 14 of the Estate Duty Act is not attracted on the plain reading of the said section.

10. It provides :

"Money received under a policy of insurance effected by any person on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums, paid by him, where the policy is partially kept up by him for such benefit, shall be deemed to pass on the death of the assured."

11. A similar provision to one contained in section 14 is to be found in section 2(1)(c) of the Finance Act, 1894, of the United Kingdom. The said provision has come up for consideration in the famous case of *Barclays Bank Ltd. v. Attorney-General*, where the House of Lords was concerned with the question of liability to estate duty of a settlor who settled policies on his life and vested in trustee's funds for payment of the premium; and any surplus income of the funds was subject to further trusts, under which the deceased retained no beneficial interest, a class of persons, including the deceased's son being entitled during the life of the son under discretionary provisions. The House of Lords rejected the claim for estate duty on the policies u/s 2(1)(c) of the Finance Act, 1894, on the ground that the policies were not "kept up" by the settlor at the date of his death within the terms of the incorporated section 11(1) of the Customs and Inland Revenue Act, 1889. Lord Simonds, in his opinion, said :

"It may well be that a person may in certain circumstances be said to keep up a

policy though another pays the premiums. Every case must be examined on its merits. Much will depend on the relation in which the one person stands to the other... a person cannot be said to keep up a policy merely because he has provided a fund out of which the premium were intended to be, and were, in fact, paid. If, as each premium becomes payable, it lies with him to say whether or not it shall be paid-if, to take the simplest case, the hand that pays is the hand of his agent acting according to his direction - I should have no difficulty in saying that he keeps up the policy but, equally, where the payment is made by a trustee whose duty and right it is to pay whether the settlor wills it or not, it is not he but the trustee who pays the premiums and keeps up the policy."

12. Lord Wright in his opinion said that keeping up a policy "generally involves periodical payments" and though a single premium policy is not unknown, that would have the effect not so much of keeping up a policy as establishing its operation once and for all. It should be also noted that section 14 imposes liability of duty on money received under a policy of insurance effected by any person on his life and would not, therefore, take in its sweep the cases of monies paid under an accident policy, the connotation of which is well-known as contradistinguished from that of life policy. The opinion of the Tribunal that section 14 of the said Act is not attracted to the facts of the present case is justified.

13. We will, therefore, examine, in the first instance, whether the aforesaid two sums are liable to be included within dutiable estate of the deceased u/s 15 of the Act, which provides as under :

"Any annuity or other interest, purchased or provided by the deceased, either by himself alone, or in concert or by arrangement with any other person, shall be deemed to pass on his death to the extent of the beneficial interest accruing or arising, by survivorship or otherwise, on his death.

Explanation. - The extent of the beneficial interest must be ascertained without regard to any interest in expectancy which the beneficiary may have had before the death.

The first limb of the contention urged on behalf of the accountable person was that, in order to understand the import of the term "interest" in section 15, courts should bear in mind the history of the section and the object underlying the same in incorporating it in the Indian statute. It was urged that, having regard to the history and object of the provision contained in the said section, it cannot be held, as has been sought to be done by the Tribunal, that the purchase of an accident policy by the deceased is an interest purchased or provided by him. In *Sir Wroth Periam Christopher Lethbridge Baronet v. Attorney-General* the House of Lords considered the object of similar provision contained in section 2(1) (d) of the Finance Act, 1894. The facts in that case were that a tenant for life of real estates had raised money by charges on his life estate and insurance policies on his life. By a family arrangement in 1885 between him and his son the estates

were disentailed and resettled; the fee was mortgaged by father and son for an amount to pay off the father's debts; the policies were assigned to the son; the rents and profits of the estates were held in trust to pay the interest on the mortgage, the premium on the policies, an annuity to the son, the rents and profits of the estates were held in trust to pay the interest on the mortgage, the premium on the policies, an annuity to the son, and the residue to the father for life, with remainder to the son in fee. On the father's death the policy moneys were paid to the son and the Crown claimed estate duty thereon from the son under the Finance Act, 1894, section 2(1)(d). In this context, Lord Loreburn L. C. observed at page 23 :

"The general purpose of this sub-section is to prevent a man escaping estate duty by subtracting from his means, during life, money or money's worth, which, when he dies, are to reappear in the form of a beneficial interest accruing or arising on his death. Now, it is not subtracting from his means if the deceased has received a full equivalent in return for whatever he has laid out."

14. Our attention was invited in this connection to the provision as it originally stood in the Estate Duty Bill, 1952 (Bill No. 92 of 1952), which is reproduced in [1952] 22 ITR 45 (Statutes). Clause 15 incorporates the said provision. It provided as under :

"15. Annuity or other interest purchased or provided by the deceased - Any annuity or other interest, including moneys payable under a policy of life assurance, purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person shall be deemed to pass on his death to the extent of the beneficial interest accruing or arising, by survivorship or otherwise, on his death....

At page 76 in the same volume the object and reason for clause 15 are given. They read as under :

"Clause 15. - From section 2(1) (d), U. K. Finance Act, 1894.

The general purpose of this provision is to prevent a man from escaping estate duty by reducing his estate, during life, by money or money's worth paid as premiums which, after his death, reappear in the form of a beneficial interest accruing or arising on his death."

15. Our attention was further invited to the provision as it emerged when the said bill was passed by Parliament and became Act on 6th October, 1953, to which the President accorded his assent on 6th October, 1953, so as to bring it in force on 15th October, 1953. If we look to section 15 as it now stands on the statute book, it has omitted the words "including moneys payable under a policy of life insurance" occurring after the words "other interest" and before "purchased or provided by the deceased". It was, therefore, urged on behalf of the accountable person that it could not be said that when a person purchased accident policy by paying a meagre amount of premium his intention was to

subtract from his estate with a view to avoid estate duty. In the submission of the learned counsel for the accountable person the very fact that words "including moneys payable under a policy of life insurance" which were there in clause 15 of the Bill have been omitted from the said section 15 as it now stands on the statute book, assumes significance and is indicative that the term "other interest" would not include interest under accident policies. It is no doubt true as Lord MacDermott said in *Inland Revenue Commissioners v. Rennele* that the first principle of taxing law is that its language is not to be strained to an unnatural use in order to enlarge its scope, but, as has been observed by Lord Halsbury in *Lord Advocate v. Fleming*, in dealing with taxing Acts, there is no governing principle to look at; one has simply to go on the Act itself to see whether the duty claimed is what the legislature enacted. In *Inland Revenue Commissioners v. Herbert* Lord Haldane observed that it is not permissible to speculate on the opinions or motives of those who framed the legislation, except so far as they appear from the language use. As Rowlatt J. observed in *Cape Brandy Syndicate v. Inland Revenue Commissioners* there is no room for any intendment in a taxing Act, and no presumption about a tax, and the best and safest guide to the intention of all legislation is afforded by what the legislature itself has said. We have, therefore, to consider what is the nature and grammatical meaning of the term "other interest" in section 15. There cannot be any equity about a tax if one is within the corners of a charging section. Neither the initial objective nor the alternate intention of the legislature in putting the same on a statute book is relevant. The pertinent question to which the court must address itself is, whether, on the true construction of section 15, the term "other interest" would be wide enough to cover the cases of interest under accident policy or the court should restrict its meaning having regard to the scheme of the Act or the structure of the section. We do not find anything in the structure of the section so as to limit and restrict the meaning of the term "other interest". Section 14 provided for moneys received under a policy of life insurance where the policy is wholly kept up and on the accepted interpretation of similar provision in the United Kingdom it is clear that only those life insurance policies which have been kept up by the insured by paying the premiums as and when they become due and which possibly would not include single premium policies, are within the mischief of that section. It is clear to us that section 14 would, therefore, not cover the cases of interest such as those under accident policies. Section 15, therefore, provided for the annuities and such other interest. There is no warrant in the section itself or in any other provisions of the Act to infer that the legislature wanted to restrict the meaning and import of the term "other interest". The said term is of the widest amplitude and there is no reason for us to restrict its meaning. The learned counsel for the accountable person, therefore, attempted to persuade us to hold that, on the principle of *noscitur a sociis*, where two or more words of analogous meaning are coupled together, they colour from each other and the more general is restricted to the less general. It was, therefore, urged that the word "other interest" in section 15 should be understood in the cognate sense of the word "annuity".

16. The question when the doctrine of *noscitur a sociis* is attracted came up for consideration before the Supreme Court in *State of Bombay v. Hospital Mazdoor Sabha*, where the court was concerned with the definition of the term "industry" in section 2(j) of the Industrial Disputes Act, which provided that "industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or a vocation of workmen. The question raised on behalf of the State of Bombay which was the appellant before the Supreme Court was that the J. J. group of Hospitals were not industry within the meaning of the definition of the said term and it was contended that in construing the definition the court must adopt the rule of construction *noscitur a sociis*. Negating the contention urged on behalf of the State, Mr. Justice Gajendragadkar (as he then was) relied on the following passage from the Book "Words and Phrases", volume XIV, page 207 :

"Associated words take their meaning from one another under the doctrine of *noscitur a sociis*, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *eiusdem generis*."

17. Justice Gajendragadkar thereafter observed as under :

"It must be borne in mind that *noscitur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but where the object of the legislature in using wider words is clear and free of ambiguity the rule of construction in question cannot be pressed into service. As has been observed by Earl of Halsbury L. C. in *Corporation of Glasgow v. Glasgow Tramway and Omnibus Co. Ltd.*, in dealing with the wider words used in section 6 of Valuation of Lands (Scotland) Act, 1854 :

".... the words "free from all expenses whatever in connection with the said tramways" appear to me to be so wide in their application that I should have thought it impossible to qualify or cut them down by their being associated with other words on the principle of their being *eiusdem generis* with the previous words enumerated."

18. Craies on Statute Law, seventh edition, it has been observed at page 179, that the rule of law generally known as the *eiusdem generis* rule, or the rule *noscitur a sociis* was thus enunciated by Lord Campbell in *R. V. Edmundson* :

"I accede to the principle laid down in all the cases which have been cited that, where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified."

19. It is really a question of the assumed intention of the statute. It has been observed by the said learned author at page 181 that the ejusdem generis rule is one to be applied with caution and not pushed too far, as in the case of many decisions, which treated it as automatically applicable, and not as being what it is, mere presumption, in the absence of other indications of the intention of the legislature; and that the modern tendency of the law is to attenuate the application of the rule of ejusdem generis. In *Allen v. Emmerson*, where a local Act required that "theatres and other places of public entertainment" should be licensed, the question arose whether a "fun-fair" for which no fee was charged for admission was within the Act. It was held that it came within the mischief of the Act and that the ejusdem generis rule cannot be invoked to confine the words "other places" to places of the same kind as "theatres". The scheme of the Estate Duty Act is clearly to bring within the net of the duty all the properties passing on the death of a person. Section 5 is the main charging section and section 6 onwards up to section 16 provides that property which the deceased was at the time of his death competent to dispose of would be deemed to pass on his death. Section 7 applies to the cases where there is cesser of interest of the deceased in a property on his death and a new benefit accrues or arises by cesser of such interest including, in particular, a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law. Section 8 provides for gifts mortis causa as property deeming to pass on the death of the donor. Section 9 brings within the net of the duty the properties gifted within the statutory period before death. Section 10 subjects those properties taken under any gift to estate duty to the extent the donor was not entirely excluded from its possession and enjoyment by the donee. Section 11 has been designed to prevent legal avoidance of estate duty in certain circumstances and is attracted only where an interest limited to cease on a death has been disposed of or has been determined. Section 12 is also designated with a view to avoid the payment of duty and is attracted where the settlements have been made with the reservation under which an interest under settled property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor or whereby the settlor may have reserved to himself the right by the exercise of any power to restore to himself or to reclaim the absolute interest in such property. Section 13 is also designed with a view to prevent the avoidance of duty and is attracted where a person absolutely entitled to any property has transferred or vested it in himself and another person jointly so that the beneficial interest in some part of that property passes or accrues by survivorship on his death to the other person; the whole of that property would be deemed to pass on the death and liable to pay he duty. Section 14 provides for moneys payable under a policy of insurance effected by the deceased don his life and wholly kept up by him for the benefit of the donee. This is also with a view to prevent the avoidance of tax. Section 15 provides for annuity and other interest. Section 16 provides for annuity or other interest purchased or provided out of the property derived from the deceased. In our opinion, therefore, having regard to the structure of sections 14 and 15 of

the Act, we do not find that there is any limitation that, in order that section 15 can be attracted, the interest must be in the nature of annuity. It may be that the interest may flow from an insurance policy taken out for any purpose other than that which is provided for in section 14. Section 14 applies only in a case where a policy has been kept up by the deceased for the benefit of a donee, while there is no such requirement for attraction of section 15, which does not require that there should be necessarily a donee. What it requires is that the funds or moneys should have been provided by the deceased and that a beneficial interest may accrue or arise by survivorship or otherwise on the death of the person providing the funds. Having regard to the overall scheme of the Act which we have briefly referred to and particularly section 14, we do not find any assumed legislative intent limiting the import of the term "other interest". The contention urged on behalf of the accountable person that the import of the term "other interest" should be restricted and it should take colour from the word "annuity" and should bear a cognate meaning must be rejected. We do not find ourselves compelled to restrict the meaning of the term "other interest" even by reference to the history of the provisions, the objects and reasons given by the legislature for inserting such a provision in the Indian statute. In our opinion, if the legislative intent as outlined in the Statement of Objects and Reasons given in the Bill for the said clause 15 is any guide, it clearly points in the direction that the legislature wanted to cover all kinds of interests which have been purchased or provided by the deceased in the nature of annuities or policies other than life insurance policy as passing on his death to the extent of beneficial interest accruing or arising as a result of the death. We, therefore, do not find ourselves compelled to cut down or restrict the meaning of the term "other interest" which is of the widest import. It is now no more a doubtful proposition of law whether a policy of insurance was an "annuity" or "other interest" within the meaning of section 2(1)(d) of the Finance Act of 1894 as observed by Lord Morton of Henryton in *Westminster Bank Ltd. v. Inland Revenue Commissioners* :

"My Lords, in the case of *D'Avigdor-Goldsmid v. Inland Revenue Commissioners* I expressed a doubt whether a policy of assurance was an "annuity or other interest" within the meaning of section 2(1)(d) of the Act of 1894, and if I had to decide that question in the absence of authority, I should feel the same doubt to-day. The argument presented by counsel for the appellant has considerable attractions. However, in *Attorney-General v. Murray* the Court of Appeal answered that question briefly in the affirmative. That decision has stood unquestioned for over fifty years and very many policies must have been dealt with on the footing that it was correct. Moreover, this House in *Adamson v. Attorney General* gave a wide meaning to the words just quoted, though it does not appear that the trust funds included any policy of assurance. Finally, if the decision in *Murray's* case had not been in accordance with the intentions of the legislature, it is reasonable to suppose that the necessary amendment would have been made in some subsequent Finance Act. In these circumstances, I think that this is plainly a case in which the principle *stare decisis* should be

applied, and I would, therefore, hold that, when the settlor provided the four policies, as he undoubtedly did, he provided in "annuity or other interest" within the meaning of section 2(1)(d)."

20. Lord Reid in his opinion affirmed at page 753 that policies of assurance come within the scope of section 2(1)(d) of the Finance Act, 1894, and he also agreed that when a settlor settles a policy or for that matter any other "interest", he must be held to "provide" not only the policy but also the proceeds of the policy which have to be dealt with under the provisions of the settlement. Lord Keith of Avonholm in his opinion agreed with the other law Lords and opined that an interest provided within the meaning of section 2(1)(d) of the Finance Act, 1894, could take the form of a policy of assurance.

21. The learned counsel for the accountable person, therefore, made an attempt to distinguish the case of an accident policy from that of a life policy. It was sought to be contended that the meaning of the term "other interest" in view of the deeming fiction contained in section 15 should not be given a wider meaning than that warranted by the fiction. It may be allowed to take within its sweep the interest under the life policy and not those under accident policies because the interest in a life policy existed in the lifetime of an insured inasmuch as there is a right to get the surrender value and such interest or property is augmented by death. In the case of interest under an accident policy, so ran the argument, there is no interest in existence in the lifetime of the insured which can be assigned as can be done in the case of interest under a life policy. The learned counsel for the accountable person has in this connection drawn our attention that in the terms and conditions of the relevant policies, there was no clause enabling or empowering the deceased to assign the policies. The entire reasoning on which this contention is founded is, in our opinion, misconceived. It is no doubt true that to constitute a valid assignment of a policy, the assignment must accompany a transfer of interest in the subject-matter. The subject-matter of a contract of insurance must be distinguished from the subject-matter of insurance which exists independently of the contract Bowen L. J. in *Castellain v. Preston* said :

"What is it that is insured in a fire policy ? Not the bricks and the materials used in building the house, but the interest of the assured in the subject-matter of insurance,..."

22. In his book, *General Principles of Insurance Law*, second edition (Butterworths), E. R. Hardy Ivamy has pointed out at page 10 :

"A contract of insurance necessarily contemplates the existence of something to which an accident may happen, and anything to which an accident may happen, may, therefore, be the subject-matter of insurance. Strictly speaking, an accident can only happen to a physical object. There are, however, certain kinds of insurance intended to protect the assured in cases where he requires protection not against accidents to physical objects, but against the consequences to

himself of such accidents. In these kinds of insurance, the interest of the assured which will be adversely affected by the happening of the accident insured against and not the physical object to which the accident actually happens, is to be regarded as the subject-matter of insurance...

Thus, the subject-matter of insurance in personal accident insurance is the body of the assured. In burglary insurance it is the property exposed to the peril. Similarly, in fire insurance the building insured is the subject-matter of insurance".

23. In Chapter 5 on Insurable Interest at page 19 the said learned author observed :

"Where, as in the case of personal accident insurance and most branches of property insurance, the subject-matter of insurance is a physical object exposed to certain perils, an insurable interest is constituted by the fact that the assured, from his relation to the subject-matter, will suffer prejudice, if the subject-matter is lost or damaged by such perils. Thus, the assured is clearly prejudiced by the loss of life or limb or by the theft of his own goods, and has, therefore, an insurable interest for the purposes of a personal accident or burglary insurance."

24. To contend, therefore, that an insured would have no interest in an accident policy in his lifetime is entirely misconceived. A policy may contain an express provision for assignment of a policy or may contain an express prohibition against it being assigned without notice to the insurers and without obtaining their consent. We have not been able to appreciate how an express provision enabling assignment or express prohibition against assignment without notice to the insurers can be conclusive on the question, whether an insured has within the meaning of section 15 an interest in his lifetime under an accident policy. It is axiomatic to say that without an insurable interest there cannot be a contract of insurance. In an accident policy, what is assigned is virtually the subject-matter of the contract of insurance. However, a provision permitting or prohibiting assignment cannot be of any assistance to the accountable person in the present case before us. We also do not agree with the learned advocate on behalf of the accountable person that there was a clear prohibition against assignment under the policy of the Aetna Life Insurance Company in view of the following clause contained in the general provisions of the policy :

"Change of beneficiary - Unless the insured makes an irrevocable designation of beneficiary, the right to change the beneficiary, is reserved to the insured and the consent of the beneficiary or beneficiary shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries or to any other changes in this policy."

25. Clause 8 of the New India Assurance Company provides :

"The company shall not be bound to notice or be affected by any notice of any trust, charge, lien, assignment or other dealing with or relating to this policy but

the receipt of the insured or his legal personal representatives shall in all cases be an effectual discharge to the company."

26. However, as we have just observed, the question of assignment is not at all relevant for determining whether the moneys payable under the two relevant policies in the present case would be dutiable u/s 15 of the Estate Duty Act. The learned advocate on behalf of the accountable person, therefore, urged that section 15 would not be attracted as no new beneficial interest has come into existence on the death of the insured in the present case. In support of his contention he relied on the decision of the House of Lords in *D'Avigdor-Goldsmid v. Inland Revenue Commissioners*. Our attention was drawn to the speech of Lord Asquith, of Bishopstone at page 417. Lord Asquith, in his short opinion, observed :

"Disengaged from certain clinging and obscuring draperies, the point seems to me a short one. It turns on the meanings in section 2(1)(d) of the Finance Act, 1984, of two terms : "other interest" and "beneficial interest". "Other interest" in this context seems to me to cover, and on the facts of this case specifically to denote, the benefit of the policy, viz., the contractual rights conferred by it, whether on its original holder or its assignee. These rights included the right to exact payment of the insurance moneys in an agreed and specified event, viz., the death of Sir Osmond. The policy, the vehicle of this right, was assigned out and out to Sir Osmond's son, the appellant, over five years before his father's death.

The "beneficial interest" referred to in the concluding lines of the material paragraph was a beneficial interest in the "other interest" referred to in its opening lines. It is a clumsy collocation of terms, no doubt, but it must mean a beneficial interest in a contractual right to exact L X if and when Sir Osmond should die. This beneficial interest has never altered in quality from the time of the assignment till the day of Sir Osmond's death, or until the day after it. The death has not generated a new beneficial interest. What it has done is to enhance the value of the "other interest" in which the beneficial interest subsisted. The "other interest" (consisting of the contractual rights under the policy) bore in its womb the "promise and potency" of this enhancement from the start. To say that the "beneficial interest" therein sprang into life "on the death" seems to me wholly false. If I buy an apple tree and it subsequently bears fruits, I am beneficially interested in the fruit from the start."

27. It is really beyond our comprehension to appreciate how this observation can be of any assistance to the cause of the accountable person which his learned counsel was advocating. On the basis of this observation it cannot be successfully contended that the deceased had no interest in his lifetime in the relevant policies. In the two personal accident policies before us, the subject-matter of the insurance was the person of the deceased in case of it being exposed to certain perils of travelling and the assured would clearly be prejudiced by the loss of life or limb as a result of the accident and, therefore, had an insurable

interest for purposes of personal accident. To contend that the death did not generate a new beneficial interest is beside the point for the time being. The deceased had an interest in the contractual right under the two relevant policies of insurance to exact a particular sum, if and when there was loss of life or limb arising as a result of the accident. The very fact that the deceased had a contractual right to exact a particular sum in case of loss of limb or life is an interest in expectancy and it would have been an interest in expectancy and it would have been an interest in present the moment the accident occurred resulting in loss of his limb. The contract of insurance contained in the two relevant policies conferred on the deceased the benefit of the policies, namely, the right to exact a particular amount of damage depending on the loss of limb or life, as the case may be. The first limb of the contention urged by the learned advocate on behalf of the accountable person that the deceased had no interest in the two policies before us is not at all well-founded and should be rejected.

28. The second limb of the same contention that no beneficial interest had generated on the death of the insured in the case before us is also not well-founded. The learned counsel has lost sight of the fact that under the aforesaid policies the person designated as beneficiary could not have exacted the sums payable in case of loss of limb as a result of the accident. It is only in case of the death of the insured that the beneficiary was, or the personal representatives were, entitled to the sums assured as payable on the death. In the general provisions of the policy of Aetna Life Insurance Company the following provisions have been made as to payment of claims :

"Payment of claims - Benefit for loss of life will be payable in accordance with beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such benefit shall be payable to the estate of the insured. Any other accrued benefits unpaid at the insured's death may, at the option of Aetna Life, be paid either to such beneficiary or to such estate. All other benefits will be payable to the insured."

29. Under the policy effected with New India Assurance Company Ltd., by clause 1 of table "A" it was agreed between the parties as under :

"1. If the insured shall sustain any bodily injury resulting solely and directly from accident caused by outward violent and visible means, then the company shall pay to the insured or to his legal personal representatives, as the case may be, the sum or sums hereinafter set forth, that is to say..."

30. It is, therefore, clear to us that in the lifetime of the insured neither the beneficiary designated under the aforesaid policies nor the legal representatives had any claim either to exact or receive payment in case of loss of limb as a result of accident. It is only in the case of death of the insured that the beneficiary or legal representatives were entitled to exact and receive the payment of the sum payable under the same. It, therefore, cannot be said that

no new beneficial interest was generated on the death of the insured. The observation of Lord Asquith in the context of the case before the House of Lords in *D'Avigdor-Goldsmid v. Inland Revenue Commissioners*, "beneficial interest has never altered in quality" or "the death has not generated a new beneficial interest" and "it enhanced the value of the other interest subsisted" cannot be pressed into service in support of the stand of the accountable person. In our opinion it was by the very death of the insured in the present case that the beneficial interest of the accountable person was generated since he had no interest whatsoever in the sums assured or in the contractual rights under the policies during the lifetime of the insured. In that view of the matter, the second limb of the contention is not worthy of merit and it should be rejected.

31. We will now proceed to examine whether the aforesaid two sums are liable to be included within the dutiable estate of the deceased either u/s 5 and/or section 6 of the Estate Duty Act. It has been very strenuously contended on behalf of the accountable person that the Tribunal has rightly held that the deceased had no interest in so far as the aforesaid two sums were concerned since what the deceased had under the aforesaid two insurance policies was the future interest in a contingent contract which was more in the nature of spes successionis than an interest in expectancy because the contingency of the happening of the specified event, namely, the accident was uncertain and in any case the death would not be its necessary result. The death benefit assured, under the said two policies was, therefore, something like a chance of a relation obtaining a legacy on the death of a kinsman or any other mere possibility of the like nature which in the very nature of things could not have been transferred u/s 6 of the Transfer of Property Act. It could not have, therefore, been disposed of by a will in view of the prohibition contained in Schedule III to the Indian Succession Act, 1925. In other words, there was no property in existence in the lifetime of the insured which would have passed on his death. Since the right of the beneficiary to receive money under the said two policies on the accidental death of the insured was like a chance to succeed, it could not have been transferred by an act inter vivos or disposed of by a will. This contention urged on behalf of the accountable person appears, prima facie, to be attractive, but on close scrutiny, it would not stand the legal test. Is it correct to contend, in the first instance, that there is no property in a policy of insurance? It is now no more a matter of doubt that a policy of insurance constitutes not only a contract inter-parties but it is also a species of property. It is no doubt true that life policies are treated as securities for money, as observed by Romilly M. R., in *Stokoe v. Cowan*, payable at an uncertain date, but on a future event which is bound to occur. *Nihil certius morte, nihil insertius hora mortis*. It is also true that life policies have got a surrender value calculated actuarially on the basis of which banks would lend money. If an insurance is upon an insured's own life, his personal representatives would have a right to the policy moneys on his death and they would be bound to treat it as money owing to him and forming part of his estate. This would, however, not mean that policies, other than life policies, and

particularly accident policies, would be only contracts inter-parties and not a property. Jessel M. R. in *In re Moore* observed that policies of insurance are legal things in action, whether contracts of indemnity or otherwise, and the assured can grant a valid assignment of the right to recover under any policy of insurance, without the assent of the insurers. To contend that the right under a contract of insurance contained in an accident policy is one in nature of spes successionis is too broad a contention, which cannot be accepted. The right of an assured under an accident policy is not merely to exact a sum assured in case of death only; it also invests in the insured a right to recover the sum assured for other bodily injury resulting in loss of limb on account of accident. Contracts of insurance are aleatory contracts "depending on an uncertain event or contingency as to both profit and loss (vide Webster's New International Dictionary, 2nd edition); for financial or other consideration the insurer agrees to pay or otherwise benefit to the assured on the happening of a specified event or contingency : vide *The Law of Insurance* by Raoul Colinvaux, 3rd edition). As observed by Lord Mansfield in *Carter v. Boehm*, "insurance is a contract upon speculation". It is no doubt true that there are various classes of insurances recognized in practice as well as in law and they are designated by separate names such as life insurance, accident insurance, fire insurance, marine insurance, burglary insurance, etc. These different kinds of insurances are referred to and sometimes defined under different statutes dealing with the subject but the distinction between these types of insurances is not on account of any legal difference between particular kinds of insurances. The designation is largely conventional. The contention of the learned counsel of the accountable person that there is no property in the contract of insurance contained in the accident policy and that it comes into existence only on the happening of a contingent event of accident does not appear to be well-founded. The learned counsel for the accountable person has lost sight of the fact that where the right to receive a sum payable under an accident policy or for that matter life policy in the event of loss is alone assigned, it would not require that the assignee should possess or acquire any beneficial interest in the subject-matter itself, since what is assigned is not the assured's interest in the subject-matter itself, since what is assigned is not the assured's interest but his interest in the sum payable (see *Lloyd v. Fleming*, and *North American Accident Insurance Co. v. Newton*. Assignments of life policies have always been treated as valid in equity (see *In re Griffin : Griffin v. Griffin* and *In re Turcan*) since such assignment is in effect and substance a right to receive the proceeds of a policy and not an assignment of the policy itself as otherwise it would amount to an insurance on a different life. In this connection our attention has been invited by the learned counsel for the revenue to the observation made by E. R. Hardy Ivamy in his aforesaid book on *General Principles of Insurance Law* in Chapter 44 on "The assignment of the proceeds of the policy" at page 399, which reads as under :

"In the case of life policies, what is commonly called an assignment of the policy, is really an assignment of the right to receive the proceeds of the policy, and not

an assignment of the policy itself, for this would amount to an insurance on a different life. Assignments of life policies in this sense have always been treated as valid in equity. Similarly, accident policies have also been treated as assignable (see *Stokell v. Heywood*). There does not seem to be any reason why an assignment of the beneficial interest in a contract of fire insurance should not be valid...

It is not necessary for the assignee of the beneficial interest in the contract to possess or to acquire any interest in the subject-matter of insurance (see *McPhillips v. London Mutual Fire Insurance Co.*). Nor is the consent of the insurers to the assignment required even if the policy contains a condition against assignment without their consent, or even an express condition that the policy shall not be assignable in any case whatever, since the assignment does not alter the relations of the original parties to the contract, and, consequently, does not prevent the personal factor in the contract of insurance from having its full operation. The policy continues to subsist, depending for its existence upon the continuance of the assured's interest and upon his performance of the duties imposed upon him personally by the nature of the contract whilst the assignment relates merely to the application of the proceeds of the insurance, and takes effect only in the event of a loss."

32. We, therefore, cannot agree with the learned counsel for the accountable person that under an accident policy an insured has no property whatsoever in his lifetime and the property, if any, comes into existence only on his death. As held in *Westminster Bank Ltd. v. Inland Revenue Commissioners*, "when a settlor settles a policy of insurance, he must be held to provide not only the policy but also the proceeds of policy". In *D'Avigdor's* case Viscount Simon described the nature of a life policy in the following terms :

"A life policy is a piece of property which confers upon the owner of it the right, if certain conditions continue to be satisfied, to claim and be paid the policy moneys on the death of the person whose life is assured."

33. It is no doubt true that death is a certain event in one's life, but none-the-less interest of an insured under a contract of insurance contained in a life policy is an interest in expectancy since the event of death, though bound to happen in ordinary course of nature, the time of its happening is uncertain. In accident policies, the happening of event depends upon accidental causes and the event, therefore, may never happen at all but the uncertainty of contingency of accident would not render an interest of an insured in a contract of insurance contained in an accident policy a *spes successions*. In our opinion, therefore, the first limb of this contention that there is no proprietary interest or right in a contract of insurance contained in an accident policy should be rejected.

34. It was, therefore, argued that assuming that an insured under an accident policy has got an interest, it cannot be transferred, since it would not realise any value in the market and, therefore, it cannot be transferred or assigned for

consideration, and, consequently, cannot be disposed of by a will. We have not been impressed by this second limb of this contention that because the interest of an insured under an accident policy would not realise a sufficient value in the market it should follow that it would be non-transferable by an act inter vivos and, therefore, cannot be disposed of by a will. It may be that insignificant interest of an insured under an accident policy may enhance in value on the happening of the contingency, namely, accident, the extent of such enhancement being again dependent on the loss of limb or life, as the case may be. That possibility of enhancement of value is equally present in life policies. It may be that, as far as life policies are concerned, they may have some surrender value computed actuarially in the lifetime of the insured. The present value of a future interest may be negligible but that aspect of the problem cannot have any bearing on the broad question raised in this reference, namely, whether the enhanced value of such interest on the happening of the contingency is liable to be included in the dutiable estate. The definition of "property" in section 2(15) of the Estate Duty Act includes any interest in property, movable or immovable, the proceeds of sale thereof, and any money or investment for the time being representing the proceeds of sale and also includes any property converted from one species into another by any method whatsoever. "Property passing on death" has been defined in section 2(16) of the said Act as including property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and "on the death" includes "at a period ascertainable only by reference to the death". "Interest in expectancy" has been defined to include an estate in remainder or reversion and every other future interest, whether vested or contingent, but does not include reversions expectant upon the determination of leases. In our opinion, therefore, there is no justification for holding that under an accident policy the insured has no interest in the same and has, therefore, no property in it. It may be that his interest may be a future contingent interest which becomes vested in him or his legal representatives or beneficiary or beneficiaries on the happening of an accident resulting in loss of limb or life, as the case may be. The contention of the revenue that future contingent interest is by itself a property and that it can be assigned or transferred by an act inter vivos and, therefore, passes on death under the sections appears to be well-founded. In the alternative, it has been contended by the revenue that, on the ratio of the decision in Quixley's case, section 6 of the Estate Duty Act enlarges and sweeps into the charge that right or interest which the deceased was competent to dispose of into the term "property passing on the death". The learned counsel for the accountable person joined issue with the revenue by raising a question that in the facts and circumstances of the case was there any property which the deceased was competent to dispose of and passed on the death ? It was strenuously urged that posthumous right to have money paid to the beneficiaries or legal representatives is not a property which the insured in the present case could have disposed of by a will. Section 6 provides that property which the deceased was at the time of his death competent to dispose of would be deemed

to pass on his death. When a person is deemed to be "competent to dispose of the property" has been interpreted by section 3(1). It provides that a person would be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were sui juris, enable him to dispose of the property. "Power to appoint property" has been defined by section 2(13) as to mean power to determine the disposition of property of which the person invested with the power is not the owner. In Quixley's case, the Court of Appeal was concerned in an appeal on behalf of the revenue with its right to recover estate duty on the death of a lady who happened to be a teacher in a school, in respect of death gratuity which became payable to her personal representatives. Under the School Teachers (Superannuation) Act, 1918, the lady was entitled to a prospect of a grant of gratuity on her death. The School Teachers (Superannuation) Act, 1922, compelled her to make contribution and by the School Teachers (Superannuation) Act, 1925, her executors and administrators were given in return for the compulsory contribution, a right to receive this gratuity. The effect of these three statutes was that the deceased lady teacher was bound to make her contribution and equally had a right to have paid to her personal representatives a sum which was called "death gratuity", on conditions, inter alia, that she must have died in contributory service. In the appeal before the House of Lords, all the conditions were fulfilled and she had an absolute right at the time of her death to be paid "death gratuity". The exact amount to be paid was a matter of calculation by the Board of Education in accordance with the rules and regulations which prescribed the calculations. The lady died on April 11, 1927. A sum of pounds 429 17s. 11d. was awarded by the Board on August 4, 1927. The Crown claimed that this sum of death gratuity was subject to estate duty. According to section 1(f) of the Finance Act, 1894, all property passing on death was charged to duty. It was urged on behalf of the estate that section 1 of the Finance Act, standing alone, would not bring within the charge the said sum of gratuity since the section postulates that there must be at the death the property in existence which on the death continues and passes to the successor. Counsel for the estate contended that there was merely a possibility of receipt of death gratuity and the lady had no more than an interest which might fall, if certain conditions had not been fulfilled, as per example, if she had not died in contributory service. Lord Hanworth M. R. rejecting this contention, stated in his opinion :

"It appears to me that that argument confuses the clear words of the section. Counsel is compelled to admit that she had an interest and, I think, an interest, which she also admits, she could dispose of by will, passing on the death, and, as such, includes property of which the deceased was at the time of her death representatives, of which the value was not known and which would have to be determined according to rules to which, so to speak, the deceased lady was no party. But, first of all, if the interest that she had falls within the term "property" we can leave aside for the moment the other matters brought into consideration in the argument. It appears to me that from and after the operation of the Act of

1925, whereby it was laid down that the board shall make a grant to the legal personal representatives of a teacher, that interest was not only an interest in an uncertain amount, but was a right which was within the term "property".

35. He thereafter proceeded in his speech :

"... Is this right under the section a piece of property ? In my view it is, and, being such, it prima facie comes within the enlarging words in the Finance Act, 1894, section 2(1)(a). Be it observed that what we have to do is not to take the ordinary meaning of words but we have to interpret "shall be deemed". Therefore, what might not at once appear to be rightly called "property passing on the death" is still to be property passing on the death, and, as such, includes property of which the deceased was at the time of her death competent to dispose. It was, in my judgment, property."

36. After referring to the definition "when a person is deemed competent to dispose of the property", Lord Hanworth M. R. proceeded to observe :

"Counsel for the defendant was compelled to admit that the deceased could dispose of a sum ultimately to be received, or could dispose of this interest by her will, although he said she could not raise any money on it in the sense that there could not be an assignment of it while she was alive, but it would appear to me that to suggest that the deceased had no power to dispose of this sum by will would be to take away half the merit of the gratuity on her decease... Id certum est is the old maxim and just as where a man is possessed of freehold property which is devastated by fire just before his death, but, being fully assured, he enables his executors to receive under a contract of fire insurance a sum which is to be estimated by an award made as a condition precedent to liability, so also here the mere ascertainment of the amount at a later date does not alter the nature of the right which the deceased had or prevent that right falling within the term "property", and, as such, chargeable to estate duty."

37. Lawrence L. J. in his speech, observed :

"... The Finance Act, 1894, section 1, imposes estate duty on all property which passes on the death. In order that the estate duty may be payable under that section, the property must have a continuous existence before and after the death, and the possession or enjoyment of the property must pass from one person to another on the death. Section 2 deals with property which does not in fact pass on the death, and enacts that for the purposes of liability to estate duty that property shall be deemed to pass. In order that estate duty may be payable in respect of property under that section it is not necessary that there should have been a continuous existence of that property, nor is it necessary that it should pass from one person to another on the death. It would include property which comes into existence for the first time on the death of a person. Amongst the property which is so deemed to pass u/s 2 is "property of which the deceased was at the time of his death competent to dispose" : (see sub-section (1) (a) of section 2)."

38. After referring to the definition of the words "competent to dispose" as given in section 22(2)(a) of the Finance Act, 1894, Lord Lawrence L. J. proceeded to observe as under :

"The sole question arising in this case is whether the death gratuity payable to the deceased was property of which the deceased was, at the time of her death, competent to dispose within the meaning of 2(1)(a) and section 22(2)(a) of the Finance Act, 1894.... The learned judge was, in my opinion, right in saying that there existed a right in the deceased to have paid to her legal personal representatives after her death a sum of money and I think the learned judge was further right in holding that that sum of money, when so paid, was property and, being property, it was property of which the deceased was entitled to dispose as she thought fit by her will."

39. Sankey L. J. raised a question, whether the deceased had at the time of her death such an interest in property as enabled her to dispose of the same by will ? He answered the question in the affirmative and observed :

"She had such an interest and she had power to dispose of it by will, but counsel for the defendant took a point in limine which savours rather more of metaphysics than of law; he contended that, at the teacher's death, no property in fact existed, but only a conditional right or interest which had not been ascertained or quantified. I think this is a fallacy. It must be remembered that the definition of "property passing on the death" is an artificial one : see the Finance Act, 1894, s. 2(1) : "Property passing on the death of the deceased shall be deemed to include", and see also section 22(2)(a) of the Act. The deceased had an absolute right to be paid pounds X under the Teachers (Superannuation) Act, 1925, section 5, a right which she was given in return for compulsory contributions. The fact that the quantum remains to be ascertained does not make the right any the less property within the artificial meaning of "property passing on the death" laid down in the Finance Act."

40. The learned counsel for the accountable person sought to distinguish this decision and also the decision of the Delhi High Court in *Controller of Estate Duty v. A. T. Sahani*, which had followed *Quixley*'s case and held that a gratuity payable on death by an accident to a pilot under the Indian Airlines Corporation (Flying Crew) Services Rules was property which passed on death u/s 6 of the Estate Duty Act, and, therefore, liable to pay estate duty, by urging that these two cases were cases of compulsory gratuity schemes under which an employee was given an absolute right to the payment of gratuity in consideration of the services rendered. It appears that the Tribunal has also taken a similar view that since death was certain the deceased in *Quixley*'s case had an absolute right to receive a gratuity, the quantification of which had to be made subsequently. In the opinion of the tribunal the facts in *Quixley*'s case and those of *A. T. Sahani*'s case were different. The liability to pay gratuity in *A. T. Sahani*'s case was dependent on the death by accident which itself was an uncertain event whereas in the facts of *Quixley*'s case the death of the employee being certain, the right

to receive gratuity was an absolute right. According to the Tribunal, the ratio of Quixley's case would not be applicable to the facts of Sahani's case and more so the instant case as the aforesaid two insurance policies covered only receipt of amounts on accident and the deceased could have no interest in praesenti under the contingent contracts of insurance contained in the said policies till his death. We are of the opinion that the Tribunal was clearly in error in not appreciating that the Quixley's case the right of gratuity of a teacher was not an absolute right but was conditional on the teacher dying in contributory service. Section 5(1) of the School Teachers (Superannuation) Act, 1925, which so far as material provided as follows :

"Subject to the provisions of this Act, the Board of Education shall grant to the legal personal representatives of a teacher who has been employed... and who dies while in contributory service... a sum not exceeding an amount equal to the amount of the additional allowance which the Board might have granted to him if he had at the date of his death become permanently incapable of serving efficiently as a teacher in contributory service, which ever is the greater."

41. Section 6 of the School Teachers (Superannuation) Act, 1918, declared as under :

"Nothing in this Act shall give any person an absolute right to any superannuation allowance or gratuity, and, except as in this Act provided, the decision of the board on any question which may arise as to, or which may affect, the application of this Act to any person... shall be final."

42. This view of ours that the right a teacher had under the said Act was not absolute is fortified by the observation of Lord Hanworth M. R., which reads :

"... No doubt the payment of that sum depended on the fulfillment of conditions. I have mentioned one condition, that she must have died in what is called, and defined as, contributory service, and there are others. These conditions would have to be fulfilled, or that right would not have become absolute..."

43. The emphasis by the Tribunal on the fact that death was a certainty and, therefore, there was an absolute right under those relevant Acts applicable in Quixley's case is misplaced. It is on the happening of a certain contingency, namely, the teacher concerned dying in contributory service, and on other conditions being fulfilled that she had a right to payment of gratuity on her death to her legal representatives. In our respectful opinion the Delhi High Court was perfectly justified in applying the ratio of Quixley's case to the facts before it. The Tribunal was, therefore, clearly in error in distinguishing both these decisions on the grounds which are not justified. In A. T. Sahani's case Mr. Justice Hardayal Hardy, speaking for the court, observed as under after referring in extenso to the speeches of different Lord Justices in Quixley's case :

"It is true that in the instant case the deceased was not required to make any contribution for the purpose of earning the compensation as Miss Quixley was

required to make under the Teachers (Superannuation) Act but the compensation was payable as a reward for the services which the deceased was required to render and was a part of the remuneration payable under the service rules and the pilot agreement and its object was to make some sort of provision for the legal representatives of the deceased employees. He, therefore, had interest in it and had also the right to appoint the person to whom it should be paid on his death. Although no specific rule providing for such appointment has been pointed out, the fact that he did nominate his wife as the person to whom the compensation should be paid and the Corporation accepted the nomination goes to show that his authority to do so was recognized..."

44. In this connection the learned counsel on behalf of the revenue has invited our attention to the decision of the Madras High Court in *M. C. T. Muthiah v. Controller of Estate Duty*, where the Madras High Court was concerned with the liability to pay estate duty on money received by heirs of the deceased under a policy of personal accident. The question referred to the court in that case was, whether the deceased was competent to dispose of the moneys payable under the accident policy and whether the sum of Rs. 2,00,000 was includible in the principal value of the estate, and, consequently, whether the said amount could be aggregated with the other properties or should be assessed as an estate by itself. The Madras High Court held that the personal accident policy is not a contract of indemnity since the amount payable on the death of the insured is fixed in the policy itself, as it is in the contemplation of the parties even at the time of the contract that in the case of death the amount would be payable either to the nominee or the legal representatives and not to the insured, and that it is in the nature of a provision made by the deceased for such persons. The court further held that the deceased had no interest in the money as such because that comes into existence the moment after his death and is payable to the nominee or legal representatives; he has interest over the payment of money and not in the money itself. In that view of the matter, the Madras High Court held that the deceased had a right to take away this right of the legal representatives to receive money and vest it in some other person by will since he could nominate a person to whom the amount shall be paid, or vary or change the nomination which is by itself a disposition in the nature of will. The Madras High Court affirmed that it admits of no doubt that the money paid on death is property though it came into existence at the time of the death. Since it came into existence at the time of his death, the deceased was competent to dispose of the same by a will which attracts the provision of section 6 of the Estate Duty Act. The court also held that the beneficial interest in the policy which accrued or arose on death is the sum paid out under the policy and this beneficial interest having been purchased by the deceased, the provisions of section 15 of the Estate Duty Act were also attracted. The Madras High Court was of the opinion that unlike in the case of a life insurance policy, where both policy and money payable thereon are property, in the case of a personal accident policy the property is not the policy but the ultimate money that is paid and,

therefore, that money would be deemed to pass on the death of the deceased because of his competency to dispose of the same by will. The Madras High Court, therefore, answered the first question in favour of the revenue that the deceased was competent to dispose of the money payable under accident policy and the sum so paid was includible in the personal value of estate u/s 6 and 15 of the Estate Duty Act. We are in respectful agreement with this conclusion reached by the learned judges of the Madras High Court, though the entire reasoning on which the conclusions have been reached does not appeal to us. In our opinion, on the reasoning which we have given hereinabove, the deceased had property in the nature of interest to receive the sums assured on the happening of the contingency of accident resulting in loss of limb or life under the contracts of insurance contained in the aforesaid two accident policies and that he was competent to dispose of that property by an act inter vivos or by a will. The property in the nature of interest was in existence in the lifetime of the deceased which passed on his death to the beneficiaries designated or to his legal representatives in the absence of such a designation, and was, therefore, dutiable u/s 5 of the Estate Duty Act. In any case he had a right to property under the said policies which he could have disposed of by will and, therefore, it must be deemed to pass on his death u/s 6 of the Estate Duty Act.

45. The learned counsel on behalf of the accountable person, lastly, contended that the aforesaid two sums should not be aggregated with other property of the deceased and should be assessed as an estate by itself. In support of this contention reliance was placed on section 34(3) of the Estate Duty Act. Section 34(1) provides for the aggregation of property. It in effect lays down that, for purposes of determining the rate of the estate duty to be paid on any property passing on the death of the deceased, all property so passing other than property exempted from estate duty under clauses (c), (d), (e), (i), (j), (l), (m), (n) and (o) of sub-section (1) of section 33; agricultural land so passing, if any, situate in any State not specified in the First Schedule; and in the case of property so passing which consisting of a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law would be aggregated so as to form one estate and the duty would be levied thereon at the rate or rates applicable in respect of the principal value thereof. Sub-section (2) of section 34 provides for a different rate of estate duty when the estate referred to in sub-section (1) of section 34 includes any property exempt from estate duty. Sub-section (3) of section 34 which is material for purposes of determining this last contention reads as under :

"Notwithstanding anything contained in sub-section (1) or sub-section (2), any property passing in which the deceased never had an interest, not being a right or debt or benefit that is treated as property by virtue of the Explanations to clause (15) of section 2, shall not be aggregated with any property, but shall be an estate by itself, and the estate duty shall be levied at the rate or rates applicable in respect of the principal value thereof."

46. The learned counsel for the accountable person relied on the decision of the Madras High Court in *M. C. T. Muthiah v. Controller of Estate Duty*, where the Madras High Court ruled that the sum payable under accident policy should not be aggregated with other properties but should be assessed as an estate by itself u/s 34(3) because the deceased never had an interest during his lifetime on the money paid on his death under the personal accident policy though he was competent to dispose of the same by a will. With respect to the learned judges of the Madras High Court, we have not been able to agree with their reasoning nor are we able to appreciate the contention urged on behalf of the accountable person relying on this decision. Section 34(3) of the Estate Duty Act contains the same provision as one found in section 4 of the Finance Act, 1894, that any property so passing in which the deceased never had an interest should not be aggregated with another property and should be treated as an estate by itself. In this connection, the learned counsel for the revenue has drawn our attention to the observations in *Dymond's Death Duties*, 15th edition, 1973, at pages 696 and 697, where the question of non-aggregation of the property in which the deceased never had an interest is discussed. It is interesting to note the following observations which are found at page 697 :

"An "interest" for the purpose of the proviso to section 4 includes a contingent interest, even if it fails to take effect (*Attorney-general v. Pearson*, *Tennant v. Lord Advocate Sharp's Trustees v. Lord Advocate* so that where, under a nominated policy, the deceased had a contingent beneficial interest on failure of the objects of the nomination, the policy moneys are aggregable. But the deceased must have had an interest as distinct from a mere spes : cf. *Walker's Trustees v. Inland Revenue*...

The condition of the proviso is that the deceased never had an interest; if he had at some former time an interest which he disposed of, or which ceased in his lifetime, the property is aggregable, although he had no interest in it at his death... The test applied in *In re Hodson's Settlement* was to ask the question in whose favour there would be a resulting trust if all the beneficiaries were to disclaim. If such a trust would be in favour of the deceased or his representatives, it cannot be said that the deceased never had an interest in the property... The "disclaimer" test, if literally applied, is a very severe one, but the revenue does not seem always so to apply it, though it does treat any contingent interest, however remote, other than a resulting trust based solely on a hypothetical disclaimer by the beneficiaries, as involving aggregation."

47. In *Quixley's* case, Rowlatt J. said at page 290 :

"I do not think section 4 means an interest in possession or enjoyment, but she had an interest in the widest possible sense that can be used."

48. In that view of the matter which we have taken it cannot be said that the deceased had no interest in the contracts of insurance contained in the two accident policies. We are of the opinion that the deceased had a property in the

nature of interest to receive payment in case of loss of limb arising as a result of accident or the deceased purchased an interest for the benefit of his legal representatives in case of loss of his life as a result of accident. It, therefore, cannot be said that the deceased had never an interest in the contracts of insurance contained in the said two policies and the moneys payable thereunder. With utmost respect to the learned judges of the Madras High Court, we are not in agreement with the view which they have taken that the moneys payable under an accident policy should be assessed as a separate estate u/s 34(3) of the Estate Duty Act, more particularly when they had taken the view that the same were liable to estate duty u/s 15 of the Estate Duty Act.

49. The learned advocate for the accountable person finally urged that the principal value of the property is to be determined with reference to the death of the insured and at the time of his death the property in question had only the value of the premiums which have been paid. This faint attempt made on behalf of the accountable person should obviously be discouraged as the question as to what is the crucial date, for purposes of valuation, has been now settled by the decision in *Inland Revenue v. Graham's Trustees*. In that case the deceased at his death in February, 1963, owned a farm, of which he and members of his family were tenants under a partnership agreement. The Inland Revenue maintained that the farm should be valued on the basis that vacant possession could be obtained in April, 1964, in which case the value would be pounds 44,500; while the trustees maintained that the farm remained subject to a tenancy from year to year, in which case the value would be pounds 30,000. The Court of Session had held at [1970] S. L. T. 8, that the partnership which in Scots law, unlike English law, constituted a legal persona was dissolved by the death and that the tenancy came to an end at the same time, so that the trustees were entitled to obtain vacant possession of the farm, but that the value was nevertheless pounds 30,000 because the farm had to be valued at the moment before the death rather than the moment after. The House of Lords reversed the decision on the last point and valued the farm at pounds 44,500. Lord Donovan cited with approval the dicta in *In re Magan*, that the death in contemplation of law must precede the passing, and in *In re Smith*, that "it is only when the person in question has expired, after the last breath has left the body that the property passes and the liability to estate duty arises." In that view of the position now settled by this decision of the House of Lords, it must be held that the valuation must be ascertained on the date immediately succeeding the date of the death, which, in the present case, would be the aforesaid two sums sought to be included by the revenue in the estate of the deceased.

50. The result, therefore, is that we answer the question referred to us in favour of the revenue and against the accountable person. Our answer is that the aforesaid two sums received from the above mentioned two insurance companies were liable to estate duty u/s 5 and/or section 6 and section 15 of the Estate Duty Act, 1953. The accountable person shall pay costs of this reference to the revenue.