
(1987) 04 BOM CK 0025

In the Bombay High Court

Case No : Estate Duty Reference No. 5 of 1975

Controller of Estate Duty

APPELLANT

Vs

Bomansha Framji Cama and others

RESPONDENT

Date of Decision : 16-04-1987

Acts Referred:

Estate Duty Act, 1953 — Section 14, 14(1)

Citation : (1987) 63 CTR 97 : (1988) 170 ITR 600

Hon'ble Judges : T.D. Sugla, J;Bharucha, J

Bench : Division Bench

Judgement

Bharucha, J.—The provisions of section 14 of the Estate Duty Act, 1953, have to be interpreted in this reference made at the instance of the Revenue under that Act.

2. The deceased, Pestonji E. Polson, died on November 6, 1962. By an indenture of settlement dated January 27, 1942, the deceased had settled on trust five policies of insurance on his life. We are concerned here with two of those policies, one issued by the Norwich Life Insurance Society and the other by the Security Life Assurance Co. Ltd. The sum assured under each policy was Rs. 50,000. The premiums on the said two policies, even after their assignment under the settlement, were paid by the deceased. The first of the two policies became fully paid-up on September 22, 1959, and the second on June 1, 1957. On the death of the deceased, a sum of Rs. 97,396 became receivable in respect of the first policy and a sum of Rs. 77,370 in respect of the second policy.

3. The Assistant Controller of Estate Duty invoked the provisions of section 14 of the Estate Duty Act, 1953, on the basis that the policies had been wholly kept up by the deceased for the benefit of the donees under the trust. In the alternative, he found that the provisions of section 15 of the said Act would be attracted. He held that the sums received under the two policies passed on the death of the deceased. The accountable person carried the matter in appeal. The Appellate Controller of Estate Duty upheld the findings of the Assistant Controller of Estate

Duty. The accountable person filed a further appeal to the Income Tax Appellate Tribunal. The Tribunal came to the conclusion that since premia under the two policies had ceased to be payable in 1957/59, they could not have been said to have been wholly kept up by the deceased and that, accordingly, the provisions of section 14 were not attracted to the sums received thereunder. The Tribunal also concluded that the provisions of section 15 were not attracted.

4. Arising out of the judgment of the Tribunal, the following question is referred for our consideration :

"Whether, on the facts and in the circumstances of the case, the provisions of either section 14(1) or section 15 of the Estate Duty Act, 1953, are attracted to the said sum of Rs. 1,74,766 received from the said two policies by the assignees from the insurance companies after the death of the deceased, Pestonji E. Polson ?"

5. At the outset, we may note that the argument u/s 15 of the Estate Duty Act, 1953, has not been pressed. We are, therefore, concerned only with the provisions of section 14 of the said Act.

6. Section 14, sub-section (1), of the Estate Duty Act, 1953, with which we are really concerned, reads thus :

"14. (1) 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.

Explanation. - A policy of insurance on the life of a deceased person effected by virtue or in consequence of a settlement made by the deceased shall be treated as having been effected by the deceased."

7. The provisions of section 14 of the Estate Duty Act, 1953, have been drawn from those of section 11(1) of the Customs and Inland Revenue Act, 1889, which amended section 38(2) of the Customs and Inland Revenue Act, 1881. It read as follows : "The charge under the said section shall extend to money received under a policy of assurance effected by any person dying on or after the first day of June 1889, 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."

8. The words "kept up" have been interpreted in the case of *Barclays Bank Ltd. v. Attorney General* [1944] AC 372, 379, thus : "Keeping up" a policy according to the ordinary use of language connotes payment of the premiums, which is the normal method of keeping up a policy. This generally involves periodical payments..." In *Seethalakshmi Ammal Vs. Controller of Estate Duty, Madras*, , the Madras High Court, after referring to the judgment in *Barclays Bank Ltd.*"s

case [1944] AC 372, observed that a person could be said to keep up a policy if he paid the premiums himself out of his own money and thus prevented the policy from lapsing.

9. Mr. Dhanuka, learned counsel for the Revenue, drew our attention to the judgment of the House of Lords in *Lord Advocate v. Inzievar Estates Ltd.* [1938] AC 402; 2 All ER 424 (HL). The House of Lords was considering a case where one Sligo had effected a policy of insurance on his life in 1910. In 1925, having by then paid fourteen premiums, he executed a gratuitous assignment of the policy in favour of Inzievar Estates. After the assignment, Sligo paid the next four premiums, and Inzievar Estates paid the remaining seven till the date of the death of Sligo. The money under the policy was paid to Inzievar Estates. The House of Lords held that the policy money was liable to estate duty to the extent of the proportion which the number of premiums paid by the donor after the assignment bore to the total number of premiums paid during that period, namely, on four-elevenths of the policy money. Lord Macmillan noted that when the provision spoke of keeping up a policy for the benefit of a donee, it referred to the period after the donee had come into existence, that is to say, the period after assignation of the policy to the donee.

10. Relying upon the House of Lords' judgment in the case of *Inzievar Estates Ltd.* [1938] AC 402; 2 All ER 424, the Court of Appeal delivered its judgment in *Calcutta Company Ltd. Vs. The Commissioner of Income Tax, West Bengal*. This was a case the facts of which were similar to those before us. In 1912, Hodge's father effected a policy of assurance on his life. In 1913, he executed a voluntary settlement assigning the policy to trustees on trust for Hodge, on attaining the age of 25. The premiums on the policy were duly paid by the father in 1913, 1914, 1915 and 1916, when the policy became fully paid up. The son attained the age of 25 in 1938. The father died in 1950. The Crown claimed duty on the whole of the policy money as being "money received under a policy of assurance wholly kept up by the assured for the benefit of a donee". The Court of Appeal held that in determining whether a policy "was wholly kept up" for the purpose of section 11(1) of the 1889 Act, the period of time which it was relevant to consider was the period after the date of the assignment, because the expression "is partially kept up" as used in the provision had been decided by the House of Lords to mean, in effect, "has been partially kept up," and the expression "is wholly kept up" in the earlier part of the same provision should be similarly construed to refer to the past tense. Accordingly, it was held that the claim to duty succeeded because after the date of the assignment, the policy had been wholly kept up by the assured for the benefit of the son, the donee. Lord Evershed M.R. found that the opinion of the House of Lords in the case of *Inzievar Estates Ltd.* [1938] AC 402; 2 All ER 424 (HL), proceeded on the view that the vital point of time to which attention had to be drawn was the date of the assignment and it seemed to him inevitably to follow that, if one took that point of time and then asked, "In what proportion are the premiums paid ?", the answer to be given would not be essentially affected by the circumstance that all

the premiums may have stopped before the date of maturity of the policy. The phrase "is wholly kept up by the donor", Lord Evershed said, meant "is a wholly kept-up-by-the-donor-policy." Lord Justice Romer came to the same conclusion. He found that the speeches in the House of Lords in the case of the *Inzievar Estates Ltd.* [1938] AC 402; 2 All ER 424 (HL) showed quite clearly that the use of the present tense merely resulted in this, that in ascertaining whether a particular policy had been wholly or partially kept up, the period of time which it was relevant to look to was the period after the date of the assignment of the policy. Lord Romer went on to observe that it was abundantly plain that the language of the provision which dealt with policies which had been partially kept up by the deceased for the benefit of the donee, namely, "is partially kept up" included "or has been." That was quite manifest if one looked at the language, but at all events it had been so decided by the House of Lords in the case of *Inzievar Estates Ltd.* [1938] AC 402; 2 All ER 424. He thought that when it was so obvious that the word "is" in relation to partially paid premiums included the past, then the same conception had to be applied to cases where the policy "is wholly kept up". Lord Evershed M.R. said that it was to him no less shocking than it had been to the learned single judge that in such a case, duty should be exigible as upon a passing on the death of the assured on the sums payable under the policy. The reference was to the fact that no premiums had been paid or been payable since the year 1916. It came as a shock to the Master of the Rolls that a policy, which had been fully paid up for over 34 years and had, therefore, not needed any keeping up during the whole of that time and in respect of which there had been nothing to do but wait for the death of the assured, should attract duty, although no beneficial interest in it passed from anybody to anybody else on the death. The other learned judges expressed similar shock.

11. Mr. Dhanuka pointed out that after the decision of the Court of Appeal in *Calcutta Company Ltd. Vs. The Commissioner of Income Tax, West Bengal*, an express statutory concession was announced on behalf of the treasury. It said that no estate duty would be charged upon the trustees of a policy of assurance in a case where the beneficiary became absolutely entitled to the amount payable under the policy more than five years before the death of the assured and the assured did not retain any benefit for himself and did not pay any premium within five years. It also said that where the other conditions were satisfied but the assured paid some premium in the five-year period before his death, the claim for duty would be limited to the proportion of the policy money corresponding to the ratio between the premiums paid by the assured during the five-year period and the total premium.

12. Mr. Dhanuka submitted, that the language of the provision before us and of the English provision being virtually identical, we should interpret the provision before us in a similar manner. He pointed out that while the Court of Appeal expressed shock at the result it reached, it was left to the taxing authorities to consider the position in the light of its judgment. The statutory concession had

then been given by the treasury. There was no concession made in regard to section 14 of the Estate Duty Act, 1953.

13. Mr. Dhanuka drew our attention to the judgment of the Madras High Court in *CONTROLLER OF ESTATE DUTY, MADRAS Vs. ESTATE OF PICHAI THAMBI. (BY ACCOUNTABLE PERSON)*, . The learned judges there held that section 14 of the Estate Duty Act, 1953, applied only to moneys received or payable on the death of the assured and had no application to moneys received or payable under a contingency having no reference to and not depending upon the duration of the life of the assured. Consequently, under a whole-life assurance policy, the only contingency under which money was payable was the death of the assured and, hence, the section would apply to such money.

14. Mr. Dastur, learned counsel for the assessee, emphasised that section 14 of the Estate Duty Act, 1953, used the word "is". In his submission, the provisions of section 14 were, therefore, applicable only to a running current life insurance policy and not to a policy that had become paid-up. Section 14 was applicable, he said, only when the policy had to be kept up by the payment of premiums and a paid-up policy did not have to be kept up by the payment of premiums. Mr. Dastur pointed out that the House of Lords did not in the case of *Inzievar Estates Ltd. [1938] AC 402; 2 All ER 424* , interpret the word "is". Mr. Dastur said that the Court of Appeal had decided *Calcutta Company Ltd. Vs. The Commissioner of Income Tax, West Bengal*, by following the House of Lords' decision in *Inzievar Estates Ltd.* He submitted that this court was under no obligation to follow the House of Lords or the Court of Appeal.

15. The consequence of the interpretation that had shocked the Court of Appeal would, Mr. Dastur urged, be averted by rejecting the interpretation given in *Calcutta Company Ltd. Vs. The Commissioner of Income Tax, West Bengal*, . In this behalf, Mr. Dastur referred to the judgments in *Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association*, ; *R.B. Jodha Mal Kuthiala Vs. The Commissioner of Income Tax, Punjab, Jammu and Kashmir, Himachal Pradesh and Patiala*, . Broadly, these judgments say that except where the meaning of a statutory provision is plain and unambiguous, the consequences of a suggested construction can help fix its meaning and that attempts should be made in the matter of construction to reach a result that makes for equity rather than injustice.

16. Mr. Dastur also referred to the interpretation placed upon the word "is" in *The Union of India and Another Vs. Tata Engineering, Locomotive Co. Ltd. and Another*, and in *Upper Doab Sugar Mills Ltd. Vs. Shahdara (Delhi) Saharanpur Light Railway Company Ltd.*, . In the first case, this court was interpreting the phrase "is engaged in" in section 2(v) of the Monopolies and Restrictive Trade Practices Act, 1969. In the latter case, the Supreme Court was interpreting the words "is charging" and "is levying" in section 41(1)(b) and (c) of the Railways Act. As we shall immediately point out, these decisions will not assist us in the interpretation of the words "is..... kept up" in section 14 of the Estate Duty Act,

1953.

17. It is necessary to analyse the provisions of section 14 of the Estate Duty Act, 1953. Thereunder, where a policy of life insurance is kept up by the assured for the benefit of a donee, the money received under it is deemed to pass on the death of the assured. Where the policy is partially kept up by the assured for such benefit, part of the money received under it is deemed to so pass, and the part is determined in proportion to the premiums paid by the assured.

18. The word "is" is used in section 14 of the Estate Duty Act, 1953, in conjunction with the words "kept up". The word "is" refers to the present and the word "kept" refers to the past. Their conjoined use suggests that "is kept up" means that the policy has been and is kept valid. It has been and is kept valid by the payment of premiums. It has not been, and is not, allowed to lapse by such payment. In the case of a paid-up policy, no further payment of premium is required to prevent it from lapsing. The past payments of premium keep the policy valid and of such a policy, it can be said that it "is kept up" by the assured when he has paid some or all the premiums.

19. Romer L. J. in *Calcutta Company Ltd. Vs. The Commissioner of Income Tax, West Bengal*, gave a reason for the construction which the Court of Appeal placed on the provision similar to section 14 of the Estate Duty Act, 1953, which is unanswerable. He said that in so far as it dealt with policies which had been partially kept up by the deceased for the benefit of the donee, the phrase "is partially kept up" necessarily included the concept "has been". When it was so obvious, he said, that the word "is" in relation to partially paid premiums, included the past, then the same meaning had to be applied to cases where the policy "is wholly kept up".

20. Mr. Dastur, in the context of what is stated in the last paragraph, submitted that the words "in proportion to the premiums paid by him" in section 14 of the Estate Duty Act, 1953, referred to the share of the assured in the payment of each premium; they did not mean that some premium payments could be made by the assured and some by the donee. There is no justification for reading the words as excluding premium payments made by one or the other, the assured or the donee. While the words may cover part payment of each premium by the assured and the donee, they certainly cover cases where the premiums have been paid at one time by the assured and at another by the donee.

21. Upon a construction of section 14 of the Estate Duty Act, 1953, the question, in so far as it relates thereto, must be answered against the assessee. It is answered thus : The provisions of section 14(1) are attracted to the sum of Rs. 1,74,766 received for the two policies by the assignees from the insurance companies after the death of the deceased.

22. No order as to costs.