
(1977) 06 BOM CK 0011

In the Bombay High Court

Case No : Estate Duty Reference No. 3 of 1965

Harendra Popatlal Gandhi

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 30-06-1977

Acts Referred:

Estate Duty Act, 1953 — Section 44

Citation : (1978) 112 ITR 41

Hon'ble Judges : V.D. Tulzapurkar, J; R.M. Kantawala, J

Bench : Division Bench

Advocate : P.T. Mehta, for the Appellant; R.J. Joshi, for the Respondent

Judgement

Tulzapurkar, J.—The question that has been referred to this court for our opinion in this reference u/s 64(1) of the Estate Duty Act 1953, runs thus :

"Whether, on the facts and in the circumstances of the case, the excess of the debts of the free estate of the deceased over the value of that estate amounting to Rs. 64,097 could be deducted from the value of property not forming part of the fee estate amounting to Rs. 2,57,603, representing the value of the insurance policies."

2. The question relates to the estate duty assessment of the estate of late Shri Popatlal Hargovindas Gandhi (hereinafter referred to as "the deceased"). He died on 17th December, 1954. The applicant, his son, as the accountable person, filed a statement of account before the Assistant Controller of Estate Duty, Bombay. After the statement was scrutinised and after the applicant was duly heard, the Assistant Controller determined the principal value of the estate at Rs. 2,57,603 and the estate duty payable thereon at Rs. 15,640.83. It appears that the properties, passing or deemed to pass on the death of the deceased, comprised assets of free estate as well as property passing under other titles. The assets of the free estate were valued at Rs. 84,001, but the Assistant Controller found that the said assets were not sufficient to pay off all the liabilities of the free estate

amounting to Rs. 1,34,120. In other words, there was a deficit of Rs. 50,119 in the free estate. In addition to this deficit a claim for deduction pertaining to the actual Income Tax liability was also made by the accountable person which Income Tax liability came to about Rs. 19,000 but since the actual Income Tax liability could be allowed only against the free estate, the deficit of Rs. 50,119 got enhanced to Rs. 64,097. The property passing under other titles consisted of moneys payable under fifteen life insurance policies effected by the deceased and assigned to or nominated in favour of the wife of the deceased, aggregating in value to Rs. 2,57,603. In computing the principal value of the estate the Assistant Controller did not allow the aforesaid deficit in the free estate to be set off against the value of the property passing under other titles.

3. The applicant carried the matter in appeal to the Board u/s 63 of the Act and the main contention raised on his behalf was that the deficit of the free estate should be set off against the value of the property passing under other titles. A two-fold contention was urged. In the first place, it was contended that u/s 5 of the Act read with section 3(3), the property passing and the property deemed to pass should be aggregated to arrive at the net value of the estate liable to duty. In other words, the insurance moneys should be aggregated with the value of the free estate. Secondly, it was urged that the insurance moneys were liable to satisfy the unsatisfied debts of the free estate on the basis that the deceased had an interest till his death in the assigned as well as nominated policies, which could, therefore, be attached by his creditors. The contentions were negatived by the Board who came to the conclusion that the question was really not one of aggregation but whether u/s 44 of the Act the unsatisfied debts of the free estate could be deducted from out of the value of the property passing under other titles, and it came to the conclusion that such set-off would not be permissible u/s 44 of the Act. In substance, the Board came to the conclusion that so far as the assigned policies were concerned, the deceased had no interest therein because the assignee (his wife) was living at the time of his death and as the assignee was the absolute owner of the policies the moneys thereunder were not attachable by the creditors of the free estate; and as regards the nominated policies it took the view that although the nomination did not create any title to the moneys under the said policies in favour of the nominee, what was required to be considered was the position immediately upon the death of the deceased and since these nominated policies also become the absolute property of the wife immediately on the death of the deceased these policies could not be attached for payment of the debts of the free estate of the deceased. In the result, the Board confirmed the assessment made by the Assistant Controller and dismissed the appeal. At the instance of the assessee, the question set out above has been referred to us for our opinion.

4. Mr. Mehta appearing for the assessee had fairly conceded that he had no point to urge against the Tribunal's decision in regard to assigned policies for he fairly stated that the assignment really effected a transfer of the moneys and benefits under the said policies in favour of the wife even during the lifetime of the

deceased; but he substantially raised the contention that the Board's decision in regard to the moneys under the nominated policies was clearly erroneous in law and according to him since the value of the property under the nominated policies was admittedly far in excess of the deficit in the free estate, the unsatisfied debts of the free estate should have been allowed to be deducted from out of the value of the nominated policies. In support of his contention he principally relied upon the well-settled distinction between an assignment of a policy and a nomination of a policy and a couple of decisions where it has been laid down that by reason of nomination effected by a policy-holder u/s 39 of the Insurance Act a mere right to collect the moneys under the said policies is given to the nominee, but the moneys under such policies continue to remain the estate of the policy-holder and such estate upon his death is liable to be attached by creditors. We find considerable substance in the contention urged by Mr. Mehta.

5. The question whether u/s 44 of the Estate Duty Act insurance moneys were liable to satisfy the unsatisfied debts of the free estate and whether the set-off claimed should be allowed or not, has been considered by the Board in its order at page 11 of the record and the reasoning of the Board may be set out in its own words :

"It is necessary, therefore, to consider the title of the deceased in the insurance policies and whether the deceased had any interest in them as contended. The terms of the assignment of the six policies have been already referred to earlier. Whether the assignment was conditional or absolute, the title of the assigned policies vested with the assignee, vide section 38(5) of the Indian Insurance Act, 1938. Unless the assignee conceded to any change. she was the absolute owner thereof and the assignor had no interest in it. It is clear that the deceased had no interest whatever till his death because his wife was alive till his death, and it is equally clear that these policies could not be attached by the creditors of the free estate at any time after the assignment. Coming now to the nominated policies, it is true that nomination does not create any title to the property in favour of the nominee; but what is to be considered for the purpose of the assessment is the position immediately after the death of the deceased, when all the nominated policies became the absolute property of the wife. u/s 2(16) property passing on death means property passing immediately after death or at a period ascertainable only by reference to death. Therefore, the position immediately after the death has to be considered for the purpose of setting off the debts against the property..... In this case it is clear that, in the course of administration, the insurance policies both assigned and the nominated ones could not have been attached for paying off the debts of the free estate. Thus, it is clear that insurance policy moneys were not liable to the surplus debts of the free estate, taking into account the position in the course of the administration of the estate."

6. In our view the aforesaid reasoning adopted by the Board really fails to take

into account the well-settled distinction between an assignment of a policy and a nomination of a policy. It is clear that an assignment effects a transfer of the interest or benefit under the policy to the assignee and in fact once an assignment is made it is not alterable by the assignor without the consent of the assignee; whereas in the case of a nomination of an insurance policy all that happens is that the nominee merely gets a right to collect the insurance moneys from the insurer upon the death of the policy-holder; but the moneys so collected by the nominee continue to be the property or estate of the deceased and the same is liable to be attached by the creditors of the deceased. This position in law has been clearly established in several decisions of various High Courts. In *Krishna Lal Sadhu and Another Vs. Mt. Promila Bala Dasi*, , Chief Justice Rankin and Justice Ghose took the view that a person who is nominated by an assured in his policy of life insurance for receiving money due under it upon his death is no entitled to enforce his claim against the company as he, though a nominee, is no party to the contract and no interest passes to him merely by reason of his being named in the policy and the money forms part of the assets of the deceased and is liable for his debts.

7. In the case of *Shankar Vishvanath Wagh Vs. Umabai Sadashiv Wagle*, , a Division Bench of this court has also taken the view that an assured does not divest himself of his beneficial interest under the policy by means of a nomination unlike in the case of an assignment in writing as provided by section 130 of the Transfer of Property Act or by signed declaration of trust as provided by section 5 of the Trusts Act, and that the policy on his death forms part of his estate.

8. In *Mahadasa Brahmamma v. Kandula Venkataramana Rao* [1958] 28 Comp Cas (Ins.) : AIR 1957 AP 757, the Andhra Pradesh High Court has held thus :

"A reading of the relevant provisions of section 39 can only lead to a conclusion that the holder of the policy continues to have interest in the policy notwithstanding the nomination effected in regard to the policy. It does not divest him of the rights in the policy and he retains disposing power over it..... the title does not pass to the nominee by reason of the nomination. Consequently, the nominee gets the property in the policy subject to all the liabilities of the policy-holder."

9. In a case arising under the Estate Duty Act, the Madras High Court in the case of *Seethalakshmi Ammal Vs. Controller of Estate Duty, Madras*, has pointed out the aforesaid distinction between "assignment" and "nomination" in very clear terms. At page 326 of the report this is what the court has observed :

"A nomination does not involve a transfer of the rights under a policy unlike an assignment. This distinction was recognised by a Division Bench of this court in *Mohanavelu Mudaliar v. Indian Insurance and Banking Corporation Ltd.* [1957] 27 Comp Cas 47 (Mad) in relation to sections 38 and 39 of the Insurance Act. Section 38(5) clearly states the effect of an assignment as that the assignee is

the only person entitled to benefit under the policy and such a person shall also be subject to all liabilities and equities to which the assignor was subject at the date of assignment. But "nomination", as seen from sub-section (1) of section 39, merely means that the person nominated is the one to whom moneys secured by the policy shall be paid in the event of the death of the assured. Unlike an assignment which is irrevocable, a nomination may, at any time, before the policy matures for payment, be cancelled or changed. In the event of the policy maturing during the lifetime of the assured, the nomination will have no effect and the policy money will in that event, be payable to the assured. It follows that while an assignee is not merely entitled to receive but has a right to the policy money itself, a nominee is no more than a person who is competent to receive the money if the assured did not survive maturity of a policy and has no right to the money."

10. In view of the above position in law, it is clear that even if the position is to be considered immediately upon the death of the deceased, it cannot be said that as regards the nominated policies the moneys thereunder had become the property of the wife, much less the absolute property of hers. In fact, upon the death of the deceased all that the wife got under the nomination was a right to receive the moneys from the insurance company and the moneys under the nominated policies continued to be the property of the estate of the deceased, clearly liable to be attached by creditors for satisfaction of their debts. In other words, to the extent of nine policies which had been nominated by the deceased in favour of his wife, the moneys thereunder were liable to satisfy the unsatisfied debts of the free estate and in a sense the said insurance moneys really formed part of the free estate of the deceased and not property deemed to pass under other titles. If that be the position, in view of the undisputed fact that the insurance moneys under the said nine nominated policies which were of the value of Rs. 1,24,000, the unsatisfied debts to the extent of Rs. 64,097 will have to be deducted from the said amount, representing the value of nominated insurance policies. In our view, therefore, the unsatisfied debts to the extent of Rs. 64,097 would be allowable as a deduction u/s 44 of the Act, and the question is answered accordingly.

11. The revenue will pay the costs of the reference to the accountable person.