

(1976) 04 MAD CK 0012

In the Madras High Court

Case No : Tax Case No. 357 of 1970 (Reference No. 107 of 1970)

H.C. Khanna

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 07-04-1976

Acts Referred:

Estate Duty Act, 1953 — Section 15, 5, 6

Citation : (1976) ILR (Mad) 356 : (1977) 107 ITR 373

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : A.C. Muthanna, for G.S. Balasundaram, for the Appellant; J. Jayaraman and Nalini Chidambaram, for the Respondent

Judgement

Sethuraman, J.—This is a reference u/s 64(1) of the Estate Duty Act, 1953, made by the Income Tax Appellate Tribunal, Madras Bench,

and the question of law referred for the opinion of this court runs as follows :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the sums payable under the Parry &

Company Ltd. Staff Pension and Insurance Scheme is includible in the principal value of the estate ?

2. The reference arises consequent on the demise of one Mr. Killick, who was a senior staff official of Parry & Company Ltd. He died on 13th

April, 1963. Parry & Co. Ltd. had created a trust fund by a deed dated 7th December, 1955, for making provision for the employees on

retirement or for their dependants in the event of death, by way of assurances on the lives of the employees. The arrangement was called the Parry

& Co. Ltd. Executive Staff Pension and Assurance Scheme. The scheme was effective from 1st January, 1955. The sole object of the scheme was

to provide, on behalf of the company, each member with a pension or annuity from the time of his retirement, payable during the remainder of his

life and to provide pensions or annuities to the dependants of deceased members. Membership of the scheme was optional to all members in the

senior grade who were on the company's service on the effective date and was made a condition of service for all future entrants into this grade.

On the effective date, Mr. Killick was an employee of the company and he was eligible to join the scheme as from that date, which he did. On

applying to enter the scheme, each employee had to sign the necessary application form. Thereupon, policies were effected on the life of each

eligible member and those policies were assigned immediately after issue to the company by each individual assured and the policies were to be

reassigned by the company when the employee retired, died or left the company. There was a master policy issued by the insurance company to

the trustees under which assurances on the lives of the members were effected. Each member received a certificate of membership stating the

particulars of his benefits. The premiums were paid by the company, but the employee added the annual premium paid on his behalf to his income

when making his Income Tax return (presumably in accordance with Section 7 , Explanation 1, Clause (iv) of the Indian Income Tax Act, 1922)

resulting in increased personal Income Tax liability to that extent. He got also the tax benefit available for payment of premium on the insurance

policy taken on his life.

3. Rule 8 of the scheme enumerates the benefits on retirement at normal pension date. Sub-rule (iii) of Rule 8 permits a member to surrender a

portion of the pension payable to him on retirement in order to provide for his wife a deferred annuity of equivalent actuarial value, payable for her

benefit during her lifetime from the date of his death. Rule 9 deals with benefits on retirement after normal pension date. Rule 10 deals with benefits

on retirement before normal pension date, In the event of a member retiring with the consent of the employer for the time being at any time within

10 years preceding his normal pension date, the assurance on the member's life shall be surrendered and the surrender value shall be applied in the

manner laid down in Rule 8 in all respects as if the surrender value were the sum assured; the reduced benefits thus obtained will depend upon the

amount of the surrender value and the age of the member at the time. Rule 11 enumerates benefits on death before normal pension date. In the event of the death of a member before normal pension date and while in the service of any of the employers the amount payable under the assurance on his life shall be used to purchase a pension or pension in one of the forms specified in the deed. Such pension was to be payable by quarterly instalments in advance, the first instalment falling due on the date of the member's death. The pension available would be as follows : If the member had left a widow, pension was payable during the lifetime of such widow ; or if the member had left a widow and one or more children, pension was payable during the lifetime of the widow but guaranteed to continue, in any event, until the anniversary of the date of the member's death which immediately followed the date when the youngest child attains, or would have attained the age of 18 years ; or in any event, a pension was payable for fifteen years certain. Thus, the pension would be for the benefit of the member's widow for so long as she is alive, failing which for the benefit of the member's child and children, in equal shares if more than one, failing which for the benefit of such one or more of the member's dependants or failing these, for the benefit of such person or persons as the trustees in their absolute discretion shall decide. Rule 12 provides that if any employee leaves the service of the company for any reason except death, or retirement on pension, the trustees may in their discretion allow the member to exercise the option of converting the assurance into a fully paid up assurance of a reduced sum assured payable at normal pension date or at the member's previous death, subject to the provision of applying the sum in the manner laid down in Rule 8 or Rule 11, as the case may be ; or to exercise the option of taking the cash surrender value of the assurance which shall be applied to secure an immediate pension payable for the benefit of the member until his death. Rule 13 provides for a minimum pension. Rule 18A provides:

In the event of any benefit becoming payable under this scheme to a widow or dependant of a member or to any person on the death of a member, no payment of such benefit shall be authorised by the trustees until they obtain a certificate from the estate duty authorities in India to the effect that Indian estate duty has been paid or will be paid or that none is due.

4. The rest of the rules are not relevant for our purpose. As Mr. Killick died in harness, Rule 11 of the scheme governed the benefits available to

him. Accordingly, his widow became entitled to a pension of ₹ 684-17 sh. per annum, payable in quarterly instalments. The equivalent actuarial

value on the basis of a pension payable for fifteen years certain, as per Inwood's Tables of Mortality, worked out to Rs. 96,536. The Assistant

Controller of Estate Duty brought this sum to charge stating that the provisions of Section 6 and/or Section 15 of the Estate Duty Act, 1953, would

be applicable. He relied on Rule 8(iii) for this purpose. Alternatively, he based his case on Section 5 of the Estate Duty Act.

5. The accountable person appealed to the Appellate Controller of Estate Duty who supported the assessment based on the provisions of Section

6 of the Estate Duty Act under which property which the deceased was at the time of his death competent to dispose of shall be deemed to pass

on his death. In his view, it was unnecessary to consider whether the provisions of Section 15 or Section 16 of the Estate Duty Act were attracted

or not. The assessment having been confirmed by the Appellate Controller, the accountable person appealed to the Income Tax Appellate

Tribunal. The Tribunal held that Section 6 was not applicable to the facts here and that the assessment was supportable by reference to Section 15

of the Estate Duty Act. At the instance of the accountable person who had failed before the Tribunal also, the present reference has been made

and the question of law referred has already been set out by us.

6. The question that arises for consideration is whether the assessment was supportable u/s 15 of the Estate Duty Act. Section 15 provides:--

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.

There is an "Explanation" to this section. It is unnecessary for our present purpose to extract the same.

7. As in the present case the premium has been provided by the employer, the point to be considered is whether this is a case which comes within

the scope of the expression "annuity or other interest, purchased or provided by the deceased, either by himself alone or in concert or by

arrangement with any other person". By reason of the deceased having executed the necessary letters and joined the scheme and by reason of the company having provided the necessary amounts for the purpose of payment of the insurance premium, this is a case which comes within the scope of the aforesaid expression. The deceased was actually taking the relevant amount paid by the company as one having been paid on his behalf and returning the amounts for the purpose of assessment to Income Tax in the respective years. This was only on the basis that the company provided the relevant amount on his behalf and for his benefit. The arrangement to pay the amount being thus traceable to an agreement between the company and himself, the case squarely falls within the scope of Section 15 of the Estate Duty Act, 1953. The assessee would not have obtained the tax concession available for payment of insurance premium but for the fact that the amount was paid by the employer on his behalf. There can thus be no dispute on the facts that the policy belonged, to him and that the amount of premium was paid only on his behalf by the employer. This is not a case where the payments contemplated under the scheme were gratuitous. The benefits which the employee, his wife and children become entitled to, become part of his contract of service. There was a legal right which the beneficiaries can enforce against the trustees and it is, therefore, a case of interest or benefit provided by the deceased by arrangement with his employer. In terms of Section 15, pensionary benefits of the widow of the deceased contemplated under Rule 11 of the scheme constituted an interest in property which can be deemed to pass on his death to the extent of the beneficial interest accruing or arising on his death.

8. The learned counsel for the accountable person relies on the decision in *In re J. Bibby & Sons Ltd.* [1952] 2 All ER 483. The facts in that case

are as follows :

In 1898, A. entered the employment of a firm which was subsequently incorporated as a company with limited liability. In 1924, the company adopted a pension scheme which was created by an indenture made between the company and some of its directors who were designated trustees. The scheme was non-contributory, and the pensions fund was to consist of ₹ 60,000 provided by the company and such further sums

as the company should thereafter provide. The fund was vested in the trustees, and was stated to be "primarily established for the benefit of retired employees of the company and its predecessors in business whose character and length of service may in the judgment of the trustees entitle them to claims upon it". The trustees were to have an absolute and uncontrolled discretion in the exercise of the powers conferred on them. Rules for the administration of the fund were scheduled to the deed, and referred to employees being or becoming "entitled" to pensions. The rules also provided for the amount of the pensions to be granted. The trustees had the power to reduce or suspend a pension for misconduct. The Crown claimed estate duty u/s 2(1)(d) of the Finance Act, 1894, with reference to the benefits arising from the estate of the deceased under the above scheme. It was held on the true construction of the deed of 1924 that the benefits were entirely in the discretion of the trustees and that, therefore, the pension was not "property" within Section 2 of the Act of 1894. It was also held that the widow had no "beneficial interest" within Section 2(1)(d) since she has no enforceable right to the pension, nor was any interest "purchased or provided" by A., the pension being a gratuitous provision by the company without any bargain or agreement between the company and A. ; and, therefore, no estate duty was eligible

9. In that case, Harman J. observed at page 486 :

When I read the deed, without travelling outside it and looking at the fact, for instance, that everybody knows that a good employer will not see the widow of his faithful employee left in the street with nothing, I can only come to the conclusion that this is a purely discretionary trust deed. It is true it is a trust, but it is a trust under which, so far as any employee is concerned, it seems to me the trustees have an absolute discretion either to give or to withhold a pension according to their views of the desirability of paying it. They are not bound, I think, to give any reason, nor bound to do anything but honestly consider the merits of the plaintiff's case. It is true that the plaintiff, perhaps by herself or it may be, in a representation action, might come to the court for this much assistance, that she could prevent the trustees from embezzling the fund or paying it back to the company and thereby defeating what is called the main object created by Clause 7 of the deed. The whole matter is there. It is not " Who have

claims upon it ? "but" Who in the judgment of the trustees have claims upon it ?", and the added words about widows and children seem to me

exactly in pari materia for this purpose. Every person wanting a share in this fund must submit himself or herself to the judgment of the trustees,

and, if there was a threatened diversion of the money so that the trustees could not perform their part of that function I conceive the Court of

Chancery might protect the fund, or might even administer it by way of scheme, but it would still remain vis-a-vis any one widow or any one ex-

employee or child of an ex-employee completely discretionary in the trustees either to withhold or to give any moneys at all.

10. The above passage would clearly go to show that in the case before the Chancery Division, the whole trust was a discretionary one and no ex-

employee or his widow was entitled as a matter of right to claim the benefits arising under the scheme. In the present case, as is clear from the

scheme, the employee or his widow or children or dependants would be in a position to claim the benefits of the scheme as a matter of right and

there is no provision in the deed or rules vesting discretion in the trustees to refuse to pay the pension under any circumstances whatever. The

present case, therefore, falls squarely within the scope of Section 15 of the Estate Duty Act. The Tribunal's conclusion is, therefore, correct.

11. For the above reasons, we answer the question referred to us in the affirmative and in favour of the revenue. The revenue will be entitled to its

costs. Counsel's fee is fixed at Rs. 250.