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(1991) 03 BOM CK 0075

In the Bombay High Court

Case No : Estate Duty Reference No. 30 of 1977

Shri Harshavardhan B. Doshi APPELLANT

Vs

Controller of Estate Duty RESPONDENT

Date of Decision : 20-03-1991

Acts Referred:

Estate Duty Act, 1953 — Section 34(3), 36, 44, 5, 74
Married Womens Property Act, 1874 — Section 6

Citation : (1991) 3 BomCR 44 : (1991) 192 ITR 469

Hon'ble Judges : T.D. Sugla, J;B.N. Srikrishna, J

Bench : Division Bench

Advocate : S.J. Mehta, for the Appellant; Dr. V. Balasubramanian, for the Respondent

Judgement

B.N. Srikrishna, J.—At the instance of the accountable person, the Tribunal has referred the following questions for the opinion of this court u/s 64(1) of the Estate Duty Act, 1953. The question referred are :

"(1) Whether, on the facts and in the circumstances of the case, the applicant''s claim for excluding the surrender value of the policy under the Married Women''s Property Act was rightly rejected ?

(2) Whether, on the facts and in the circumstances of the case, the surrender value of the said policy was rightly aggregated with the other property passing on the death of the deceased ?

(3) Whether, on the facts and in the circumstances of the case, the applicant''s claim for deducting the amount payable as estate duty in computing the value of the principles estate was rightly rejected ?"

2. The reference has been made at the instance of the accountable person in respect of the estate left by one, Mrs. Leelabai B. Doshi, who died on June 6, 1969. The husband of the deceased, Mr. Doshi, had taken out a policy u/s 6 of the Married Women''s Property Act, 1874, which was specifically assigned in

favour of his wife. The Assistant Controller of Estate Duty considered the surrender value of the policy amounting to Rs. 20,965 as property that passed on the death of the deceased. He also rejected the further contention of the accountable person that the amount payable as estate duty in the computation of the value of the principal estate must be deducted. The appeal preferred by the accountable person against the assessment was dismissed by the Appellate Controller of Estate Duty who concurred with the view of the Assistant Controller. On appeal to the Tribunal, the Tribunal held that the benefit of the policy was an interest which vested in the deceased herself during her lifetime and that it passed on her death. In this view of the matter, the Tribunal confirmed the assessment and the findings of the authorities below that the surrender value of the life insurance policy which passed on the death of the deceased. The present reference was made at the instance of the accountable person and the questions stated hereinabove have been referred for the opinion of this court.

3. Section 6 of the Married Women''s Property Act, 1874, provides that a policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or of any of them shall ensure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or of any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband or to his creditors or form part of his estate.

4. In the instant case, though the accountable person objected to the inclusion of the surrender value of the life insurance policy in the estate of the deceased, the Tribunal has, in our opinion, rightly taken the view that the deceased wife had an interest, at least to the extent of the surrender value of the insurance policy, as on the date of her death.

5. Under the terms of the life insurance policy which taken expressly u/s 6 of the Married Women''s Property Act, 1874, a trust was created in favour of the deceased, the husband retaining no control over the amounts standing in trust in favour of the deceased wife. The amount thus standing in trust was not a part of the estate of the husband of the deceased. The moment such a policy, as contemplated by section 6 of the said Act, is taken out, it creates an interest in favour of the beneficiary.

6. Once it is held that the deceased married woman had a present interest in the policy, at least to the extent of the surrender value thereof, such interest would be "property passing" on her death within the meaning of section 5 of the Estate Duty Act. Hence, we answer question No. 1 in the affirmative and against the assessee.

7. In our view, the surrender value of the insurance policy was bound to be aggregated with the other property passing on the death of the deceased as it was not such property as would fall within the exception created under sub-section (3) of section 34 of the Act, inasmuch as the deceased had an interest in

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the surrender value of the policy at the time of her death and such interest or property did not come into existence as a consequence of or upon her death. In the result, we agree with the Tribunal and answer question No. 2 in the affirmative and against the assessee.

8. Counsel on both sides are agreed that question No. 3 referred for the opinion of this court is already concluded by a judgment of this court in Controller of Estate Duty Vs. Bipinchandra N. Patel, . In view of this judgment, we answer question No. 3 in the affirmative and against the assessee.

9. No order as to costs.

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