

(1986) 11 AHC CK 0004
In the Allahabad High Court
Case No : E.D.R. No. 61 of 1979

Subhash Chand Sharma

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 05-11-1986

Acts Referred:

Estate Duty Act, 1953 — Section 2(15), 34(3)

Citation : (1987) 61 CTR 281 : (1987) 167 ITR 852 : (1987) 31 TAXMAN 167

Hon'ble Judges : R.K. Gulati, J;K.C. Agrawal, J

Bench : Division Bench

Advocate : K.B. Bhatnagar, for the Appellant; Bharatji Agarwal, for the Respondent

Judgement

K.C. Agrawal, J.—At the instance of the accountable person, the following questions were referred under Sub-section (1) of Section 256 of the Income Tax Act by the Income Tax Appellate Tribunal to this court:

" (1) Whether, on the facts and in the circumstances of the case, the amount of Rs. 1 lakh received as insurance money by Smt. Sham Kumari, widow of the deceased, Shri Prem Narain Sharma, under the accident-cum-life insurance policy from the LIC was includible in the principal value of the estate left by the deceased?

(2) If the answer to question No. 1 is in the affirmative, then, was the Tribunal justified in holding that the amount of Rs. 1 lakh liable to be treated as a separate estate be not assessed separately u/s 34(3) of the Estate Duty Act ? "

2. The facts relevant for the purpose of deciding the aforesaid question/ " do not require detailed recitation of the same.

3. Prem Narain Sharma died in Agra in a car accident on May 23, 1973, leaving behind his wife, Smt Sham Kumari, and two sons, namely, Suresh Sharma and Vinod Sharma, and three unmarried daughters. The deceased had taken an accident-cum-life policy under which the normal insured amount was Rs. 1 lakh,

but in case of accident, it was to be doubled to Rs. 2 lacs. After the death of the deceased, the accountable person filed a statement of accounts including an amount of Rs. 1 lakh in the estate of the deceased. This was accepted by the Assistant Controller of Estate Duty and an assessment was made accordingly. Before the Assistant Controller, the accountable person stated that out of the total receipts of insurance money amounting to Rs. 2,37,304, Rs. 30,000 was for the marriage of three daughters and, therefore, the same was exempt u/s 33(1) (k) of the Estate Duty Act. This claim was rejected by the Assistant Controller and the rejection was upheld by the Zonal Appellate Controller.

4. In the appeal, the accountable person took the following additional ground :

" That the learned Assistant Controller of Estate Duty is not justified in law in including in the principal value of the estate of the deceased, the sum of Rs. 1,00,000 being the sum received after his death by his wife in settlement of his claim under the accidental policy, since it could not be deemed to have passed on his death as it was not in existence at all during the lifetime of the deceased."

5. The Zonal Controller held that the amount of Rs. 1 lakh which was received under the accident policy by the accountable person was liable to be included and as such the Assistant Controller had not committed any error in doing so. The Zonal Appellate Controller by the judgment dated May 28, 1975, dismissed the appeal.

6. The accountable person went up in appeal to the Appellate Tribunal. It was contended before the Tribunal that the sum of Rs. 1 lakh was payable only in case the insured died as a result of an accident and, therefore, the insured did not have any interest in the sum during his lifetime. For the proposition advanced before the Appellate Tribunal, reliance had been placed on the decision in Controller of Estate Duty Vs. Kasturi Lal Jain and Mohini Devi Muju, . The appellant had also relied on another decision in CED v. Smt. Motia Rani Malhotra [1915] 98 ITR 42 . Before the Appellate Tribunal, another alternative argument made was that if the deceased was competent to dispose of the policy, then the sum of rupees one lakh would not be aggregatable with the other estate of the deceased and should be treated as a separate estate in itself u/s 34(3) of the Estate Duty Act.

7. Both the aforesaid points were rejected by the Appellate Tribunal holding that on the death of the insured, the beneficial interest of the deceased passed on to the accountable person and other representatives and, as such, was dutiable u/s 5 of the Estate Duty Act. In any view of the matter, the Tribunal held that the deceased had a right to property under such a policy which could have been disposed of by will and, therefore, it must be deemed to pass on his death u/s 6 of the Estate Duty Act. Finding that the controversy involved raised statable questions of law, the Income Tax Appellate Tribunal made the present reference.

8. Recently, in M. Ct. Muthiah and Another Vs. Controller of Estate Duty, Madras, , the Supreme Court, dealing with a similar controversy, has held,

reversing the decision of the High Court that (headnote):

".....the insurance amount became property only on the happening of the contingency. That property arose on the death of the deceased in an accident during the subsistence of the policy. No property passed or could be deemed to pass on the death of the deceased. During the lifetime of the deceased, an interest vested totally and irretrievably in the hands of the nominee. The death did not cause the property to change hands. The fact that the deceased nominated a beneficiary was not tantamount to a disposition of the property. In any event, the disposition vested in the nominee a right in the property. It did not pass on the death of the deceased. Therefore, the deceased was not competent to dispose of the moneys payable under the personal accident policy and the sum of Rs. 2 lacs was not includible in the principal value of the estate of the deceased for purposes of estate duty.....

An accident insurance policy cannot be construed as a movable property unlike a life insurance policy or an annuity because, as laid down in Section 2(15) of the Estate Duty Act, 1953, it is not only necessary for the person to have property or interest in property but that interest must be in regard to a movable property and his interest should also be capable of being ascertainable during his lifetime or at the time of his death in that movable property. Secondly, an accident insurance policy could not be construed as a property or an interest in property since the person who possessed it cannot also be said to have a contingent interest because there was every possibility of the accident policy getting extinguished or rendered worthless during his lifetime ; on the other hand, in the case of a life insurance policy, there was always a tangible continuing interest, only that the value of that interest might be subjected to change at the time of passing of the property."

9. For what we have said above, we answer the first question in the negative and in favour of the accountable person and against the Revenue.

10. So far as the second question is concerned, the argument of the accountable person was that the sum paid under the accident policy could not be aggregatable with the other estate of the deceased and was liable to be treated as an estate u/s 34(3) of the Estate Duty Act. The Supreme Court has held that the sum of money to be received under the insurance policy was an estate separate from other estate of the deceased and could not be aggregated; while laying down the above law, the Supreme Court has affirmed the judgment in M. Ct. Muthiah and Another Vs. Controller of Estate Duty, on appeal M. Ct. Muthiah and Another Vs. Controller of Estate Duty, Madras, aforesaid.

11. The second question is, therefore, answered in favour of the Revenue and against the accountable person.

12. The accountable person will also be entitled to costs of this reference which is assessed at Rs. 200.