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Controller of Estate Duty Vs. Kewalram

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Court : Madhya Pradesh

Decided On : Apr-19-1989

Reported in : [1989]179ITR254(MP); 1989MPLJ488

Judge : G.G. Sohani, Actg. C.J., ;Faizanuddin and ;K.K. Adhikari, JJ.

Acts : Insurance Act, 1938 - Sections 39

Appeal No. : Miscellaneous Civil Case No. 248 of 1984

Appellant : Controller of Estate Duty

Respondent : Kewalram

Advocate for Def. : G.N. Purohit, Adv.

Advocate for Pet/Ap. : B.K. Rawat, Adv.

Judgement :

G.G. sohani, Actg. C.J.

1. This Full Bench has been constituted on a reference made by a Division Bench of this court to decide the following questions of law referred by the Income-tax Appellate Tribunal, Jabalpur Bench, Jabalpur, to this court under Section 64(1) of the Estate Duty Act, 1958 (hereinafter referred to as 'the Act') :

'(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that Rs. 45,000 representing the value of insurance policies did not pass on the death of Harchamal and is not includible in the principal value of the estate of the deceased ?

(2) Whether the moneys payable on the three policies became the property of the nominees on the death of the deceased ?'

2. The material facts giving rise to this reference, briefly, are as follows : The dispute relates to the computation of the net principal value of the estate of Shri Harchamal who died on February 2, 1978. The deceased had taken three insurance policies for Rs. 15,000 each for which the premium was being paid out of the funds of the Hindu undivided family. In the return filed under the Act by the accountable person, a sum of Rs. 45,000 was shown as the value of the three insurance policies belonging to the Hindu undivided family. The Assistant Controller of Estate Duty included 1/4 interest of the deceased in the insurance policies in the computation of the net principal value of the estate of the deceased. On appeal, the Controller of Estate Duty (Appeals) upheld, in view of the decision of the Madras High Court in CED v. Estate of Pichai Thambi : [1978]111ITR711(Mad) the contention urged on behalf of the accountable person that since the deceased had made nomination of the insurance policies in favour of his sons and wife, the value of the policy money became their property and could not be included in the principal value of the estate. The Revenue, thereupon, preferred an appeal before the Tribunal, but the Tribunal dismissed the appeal. Aggrieved by the order passed by the Tribunal, the Revenue sought reference and it is at the instance of the Revenue that the aforesaid questions of law have been referred to this court for its opinion. When the matter came up for consideration before a Division Bench of this court, the Division Bench was of the opinion that the view of another Division Bench of this court taken in Maharaja Bahadursingh Kasliival v. CED : [1979]116ITR96(MP) required reconsideration and the matter was, therefore, referred to a Full Bench. That is how this matter has come up before us for consideration.

3. Having heard learned counsel for the parties, we have come to the conclusion that this reference must be answered in favour of the Revenue and against the assessee. There is a well-settled distinction between an assignment of a policy and a nomination in a policy. The relevant provisions of Section 39 of the Insurance Act, dealing with nomination, are as follows :

'39. Nomination by policy-holder.--(1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons towhom the money secured by the policy shall be paid in the event of hisdeath :

Provided that where any nominee is a minor, it shall be lawful for the policy-holder to appoint in the prescribed manner any person to, receive the money secured by the policy in the event of his death during the minority of the nominee. (2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may, at any time before the policy matures for payment, be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in the records of the insurer .. .

(5) Where the policy matures for payment during the lifetime of the person whose life is insifred or where the nominee or, if there are more nominees than one, all, the nominees die before the policy matures for payment, the amount secured by the policy, shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be ...'

4. The effect of the aforesaid provisions is neatly summarised in Seethalakshmi Ammal v. CED : [1966]61ITR317(Mad) :

'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 that the effect of an assignment is that the assignee is the only person entitled to the 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 entitledto 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.'

5. The aforesaid observations were approved by the Bombay High Court in Harendra Popatlal Gandhi v. CED : [1978]112ITR41(Bom) and it was observed as follows (at p. 45) :

'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 v. Mt. Promila Bala Dasi 0065/1928 : AIR1928 Cal518 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 not 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.'

6. We respectfully agree with the aforesaid observations. In our opinion, therefore, the observations made by a Division Bench of this court in Maharaja Bahadursingh Kasliwal v. CED : [1979]116ITR96(MP) that 'it could not be disputed that when the policies have been nominated in favour of a particular person, the value of the policy will be the property of that person' do not lay down correct law as they fail to take into account the well-settled distinction between an assignment of a policy and nomination of a policy.

7. The case of the accountable person that the premium for the three policies was paid from out of the funds of the Hindu undivided family and hence the sum of Rs. 45,000 was the property of the Hindu undivided family, was accepted by the Assistant Controller and as the interest of the deceased in the family property was found to be 1/4, the Assistant Controller had rightly included 1/4th share of the deceased in the property of the Hindu undivided family in the net principal value of the estate of the deceased. This finding of the Assistant Controller was not affirmed by the Controller and the Tribunal only because they held that they were bound by the observations of this court in Maharaja Bahadursingh Kasliwal v. CED : [1979]116ITR96(MP) . These observations, as we have already observed,do not lay down the correct law. In these circumstances, the Appellate Tribunal, in our opinion, was not justified in holding that the amount payable on the three policies became the property of the nominees on the death of the deceased and that the sum of Rs. 45,000 representing the value of the insurance policies did not pass on the death of Harchamal and was not includible in the principal value of the estate of the deceased.

8. The reference is answered accordingly in favour of the Revenue and against the assessee. Parties to bear their own costs.

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