Khorshed B. Mody Vs. Third Assistant Controller of

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Aug-19-1985

Reported in : (1986)15ITD272(Mum.)

Judge : G Raghavan, R Sangani

Appellant : Khorshed B. Mody

Respondent : Third Assistant Controller of

Judgement :

1. This appeal has been filed by the accountable person. The name of the deceased is Shri Bomi N. Mody. He died on 15-1-1976. The first ground relates to the inclusion of Rs. 1,48,500 in the principal value of the estate. This amount was paid by the employer of the deceased to the accountable person who is the widow of the deceased. The amount was paid under the Employees' Superannuation Scheme ('the scheme'). The contention on behalf of the accountable person was that the said amount did not fall under any of the charging Sections of the Estate Duty Act, 1953 ('the Act') and as such, it was not liable to be included in the principal value of the estate passing on death of the deceased. This contention has been negatived by the authorities below and the accountable person has reiterated the same plea before us.

2. The employer-company had created a pension scheme for making provision for the employees on retirement or for their dependants in the event of their death by way of assurances on the lives of their employees. The sole object of the scheme

was to provide each member with pension or annuity from the time of his retirement, payable either during the remainder of his life or for certain number of years and also to provide pensions or annuities to the dependants of the deceased members. The membership of the scheme was made a condition of service for all the employees. The contention on behalf of the accountable person is that the amount received by the accountable person does not come either under Section 5 or Section 6 or Section 15 of the Act, while the contention on behalf of the department is that it would fall under all these Sections.

3. For deciding the point in controversy, it is necessary to examine certain clauses of the scheme. Clause 3(a) of the scheme lays down that all the employees who fulfill the conditions mentioned therein 'shall be required' to participate in the scheme. The employer has, however, been given power by Clause 3(d) to exclude any employee from the scheme provided an application was filed by the employee for such exclusion.

The exclusion could, however, be effected only with the consent of Life Insurance Corporation (LIC) and Commissioner of Income-tax. The eligible employees to whom the scheme applied are termed as 'members' and Clause 5 prohibits a member from withdrawing from the scheme while he is still in service. The employers are enjoined by Clause 6 to make contributions to the superannuation fund, which is approved by the Commissioner of Income-tax under Part B of the Fourth Schedule of the Income-tax Act, 1961. The contributions are of two types, viz., ordinary annual contribution and extraordinary lump sum contribution for past services. Ordinary annual contribution in respect of each member is one-sixth of the member's salary drawn during the year, while extraordinary lump sum contributions are periodical payments of any sums made by the employer with instructions to the trustees of the fund as to their allocation for the benefit of all or specified members of their beneficiaries. These lump sum contributions are to be made to secure additional pension for the members in respect of their service prior to the date of their entry into the scheme. Sub-clause (b) of Clause 6 makes it clear that contributions under the scheme are to be made only by the employers meaning thereby that employees are under no obligation to make any contribution. Clause 7 deals with annuities and it is mentioned therein that the annuities shall be

effected only with LIC. Under Clause 80, the account of each member is required to be made up on 31st December each year and there is provision for crediting interest on the amount. Clause 9(0 lays down that upon retirement, the member would be entitled to pension benefits secured under an annuity purchased from the LIC. There are five types of benefits and the member has to opt for any one of them. Clause 1(xv) defines 'beneficiary' as wife or children or dependants of the member and Clause 27 empowers the member to appoint beneficiary out of the above three categories, viz., wife, children or dependants. A power of revocation and new appointment is given to the member and Clause 12, which is important for this appeal, provides that in the event of the death of the member before the date of retirement and while in service, the total accumulations in respect of the member shall be used to purchase a pension payable for the benefit of the beneficiary appointed by the member. Clause 16 mentions that benefits under the scheme shall be payable only in the forms of an annuity but if the member or the beneficiary, as the case may be, so desires and the trustees of the fund agree, a part of the annuity may be commuted for a single payment subject to certain limits.

4. In the present case the widow of the deceased who was the beneficiary appointed by the deceased has received the amount in question under the provisions of the above scheme and the question is whether the said amount was property which passed on the death of the deceased as laid down in Section 5 and/or which could be deemed to have passed under Section 6 or 15 thereof.

5. It is now well settled that the provisions relating to property which is deemed to pass (Sections 6 to 17 of the Act) have to be read along with Section 5 and not in any manner divorced from Section 5 or in watertight compartments. If both Section 5 and 1 or other of Sections 6 to 17 apply the property would be dutiable under both concurrently--CED v. Aloke Mitra [1980] 126 ITR 599 (SC).

6. It is clear from the terms of the scheme that the annuity for the benefit of the member is purchased from the amount standing to its credit in the accounts of the fund. Similarly, under clause 12, it is out of total accumulations in respect of the member which are used to purchase the pension for the beneficiary appointed by the member. The member has beneficial interest in the amount to his credit during

his lifetime and out of that amount the pension is purchased for the beneficiary appointed by him. In these circumstances, there can be no doubt that the amount received by the beneficiary is out of the property that passed on the death of the deceased member. In this view of the matter, the amount received by the widow of the deceased in the present case, under Clause 12 read with Clause 16 of this scheme, would be includible in the principal value of the estate passing on the death of the deceased in accordance with Section 5.

7. On the finding recorded above, it is not necessary to consider whether the provisions of Sections 6 and 15 would be attracted in the present case. However, since the arguments were advanced regarding those two provisions and since the Appellate Controller has relied on those provisions, we shall consider the applicability of those provisions. Section 6 lays down that the property with the deceased which he was at the time of his death competent to dispose of shall be deemed to pass on his death. The learned counsel for the assessee relied on the provisions in Section 3(1)(a) read with Section 2(9) of the Act in support of his contention that in the present case the property with which we are concerned was not one which the deceased was at the time of his death competent to dispose of. We are unable to agree with this contention. Section 3(1)(a) lays down that a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were sui juris, enable him to dispose of the property. The term 'general power' in Section 3(1)(a) would mean by virtue of Section 2(9) every power or authority enabling the holder thereof to appoint or dispose of his porperty as he thinks fit, whether exercisable by instrument inter vivos or by will or both. The contention was that in the present case, the deceased would not have disposed of the amounts standing to his credit as he thought fit by appointing any person as he liked as nominee because his power was restricted to nominate only his wife or any of his children or any of his dependants.

8. Under the first part of Section 3(1)(a) there is a fiction that a person shall be deemed competent to dispose of property, if he has such an estate or interest therein. In the present case, the deceased had an estate or interest in the funds standing to his credit out of which the amount was paid to his widow after his

death. Consequently, there can be no escape from the conclusion that provisions of Section 6 would be applicable. The learned counsel for the assessee has relied only on the second part of Section 3(1)(a). Definition of competency to dispose of as given in Section 3(1)() consist of two parts. Under the definition, a person would be deemed competent to dispose of property if either (1) he had such an estate or interest in the property as would enable him to dispose it of or (2) he had a general power of appointing over the property. If he had interest in the property of nature stated in (1) above, he would be deemed competent to dispose of the property and whether or not he had a general power of appointing over the property would be irrelevant. If, on the other hand, he had a general power of appointing, over the property, he would again be deemed competent to dispose of the property, and the question whether or not he himself had any interest in the property would be irrelevant. This is obviously the scheme of Section 6. In the present case, the deceased had an interest in the amount out of which the pension was payable to his widow under Clause 12, and as such, the condition mentioned in first part of Section 3(1)(a) is satisfied and as such, Section 6 would be attracted.

Consequently, it is not necessary to consider whether the condition mentioned in second part of Section 3(1)(a) was also satisfied.

9. We shall now consider the provisions of Section 15. Under the said provision 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. The contention of the learned counsel for the assessee was that the annuity payable to the assessee's widow cannot be said to have been purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person and, as such, Section 15 would not be attracted. Reliance was placed on the fact that scheme in question was compulsory and the deceased had no option but to join the same. Stress was also laid on the fact that the deceased had made no contribution and it was only the employer of the deceased who had made contribution. On these facts, it was submitted that the deceased could not be said to have either purchased the annuity or to have provided either by himself alone or in concert or

by arrangement with his employer. We are unable to agree with this contention. It is clear from various clauses of the scheme, that the provisions of the scheme were part of the condition of service of the deceased. The benefit was derived by the deceased solely because of the fact that he was voluntarily in service of his employer. This is not a case where the employer had in his sole discretion conferred some benefit to the assessee. This is a case where the assessee had enforceable right because of the fact that the amount was receivable on account of the conditions of the service. Consequently, the provisions of Section 15 would obviously be attracted. On behalf of the assessee, attention was drawn on the two decisions of the Madras High Court, viz., H.C. Khanna v. CED [1977] 107 ITR 373 and CED v. Estate of Late R. Ramanujam [1977] 108 ITR 273. In the first decision the facts were identical. In that case also the assessee had joined the scheme of pension which was made one of the conditions of service and his widow had received the amount. It was held that the benefit to which the employee, his wife and children were entitled became a part of the contract of service and as such there was a legal right with the beneficiaries to enforce against the trustees, with the result that it was a case of interest or benefit provided by the deceased by arrangement with his employer. The learned counsel for the assessee made an endeavour to distinguish this decision from the present case.

However, we do not find any material distinction in essential facts and we are of the opinion that the ratio of the said decision would be applicable. In the second decision the employer had taken out a policy on life of employee although taking out of such policy was not part of condition of service. The policy was an additional advantage provided by the employer on its own volition without reference to the employee.

It was on these facts that it was held that the sum received by the employee or the legal heirs under the policy was not an estate passing on the death of the deceased chargeable to estate duty. The facts of that case are entirely distinguishable. In the present case, the scheme formed part of the conditions of the service and the deceased as well as the beneficiaries had an enforceable right against the employer in respect of the amount standing to the credit of the deceased, out of which the annuity was to be purchased. Consequently, this

decision would not be applicable. For the reasons given above, we hold that the amount in question was includible in the principal value of the estate under Section 5 as well as under Sections 6 and 15.

10. The accountable person as the widow of the deceased received Rs. 66,000 from the employer of the deceased in respect of an insurance policy taken out by the employer.

The deceased had made no contribution in the form of payment of premia for taking out the policy. Before the Appellate Controller the contention on behalf of the accountable person was that the submission in respect of the amount payable under superannuation scheme would be applicable to the amount received under the said insurance policy. The Appellate Controller, therefore, did not investigate the facts and confirmed the rejection of the claim on the same ground on which the claim in respect of amount paid under the superannuation scheme was rejected. Before us, it is submitted that the ratio of the decision of the Madras High Court in Estate of Late R. Ramanujam's case (supra) would apply. As already stated in the said decision, it was expressly mentioned that the policy in question had been taken out by the employer-company for and on behalf of the employee specified in the policy and/or his legal heirs and that the taking of the policy was not a part of the scheme of the contract of service but it was a voluntary act on the part of the employer with which the employee had no concern.

In that case, the policy was an additional advantage by the employer on its own volition without reference to the employee. It was on these facts that it was held that the sum received by the legal heirs under policy was not an estate passing on the death of the deceased chargeable to the estate duty. In the present case, we have no material on record to verify whether the policy in question had been taken out as part of the scheme of contract of service or whether it was a voluntary act on the part of the employer with which the deceased had no concern and whether it was an additional advantage provided by the employer on its own volition without reference to the employee. A certificate of the employer on these points would be necessary before it could be said that the ratio of the decision of the Madras High Court in the above case applied to the facts of the present case. We may, in this

connection, refer to the decision of the Bombay High Court in Smt. Amy F. Antia v. ACED [1983] 142 ITR 57, where the employer-company had issued an office circular mentioning the benefits which could be enjoyed by the staff under similar policies on the life of members of the staff. It was held that the amount received un der the policy was liable to duty under the Act. Since, the material facts are not on record, we hereby restore the matter to the Appellate Controller with direction to decide the question afresh in the light of the decisions applicable on the facts and after giving reasonable opportunity to the accountable person to bring ths relevant material on record and after hearing both the parties.

11. The accountable person as the widow of the deceased received Rs. 9,782 by way of gratuity from the employer of the deceased. The Assistant Controller included this amount in the principal value of the estate passing on death. This decision was confirmed by the Appellate Controller. The accountable person has challenged the inclusion of the said amount before us.

12. A copy of the revised Gratuity Rules, for the members of the staff of the employer-company was produced before us. In Clause 1, it is specifically mentioned that retiring gratuity granted under those Rules would be at the discretion of the company and no employee, however eligible, shall be deemed to be entitled as a matter of right to any payment under those Rules. In view of this provision, it is clear that the deceased had no beneficial interest in the amount representing the gratuity. Consequently, when particular amount was paid to the widow of the deceased, it could not be said that the said amount represented property passing on death or property deemed to have passed on death.

For these reasons, we hold that the amount of gratuity in the present case was not includible in the present value of the estate passing on death. We direct the Assistant Controller to delete the same.

13. The deceased had died on 15-1-1976. Salary for the entire month of January 1976 amounting to Rs. 2,752 was paid to the accountable person by the employer of the deceased. The Assistant Controller included this amount in the principal value of the estate passing on death. The contention on behalf of the accountable person was that out of the said amount of Rs. 2,752, only an amount of Rs. 1,376

being the amount attributable to salary up to the date of death (15-1-1976) should have been included in the principal value of the estate. This contention was rejected by the Assistant Controller as well as the Controller (Appeals). The said contention is reiterated before us. We do not have any material on record to indicate as to whether there was any contract between the employer and the deceased to the effect that salary of entire month would be payable when the said service came to an end in the middle of the month because of death or otherwise. There is no material to indicate that the amount of Rs. 1,376 was a. gratuitous payment made to the widow of the deceased. When the employer of the deceased paid the whole amount as salary of the deceased, it cannot be said that the entire amount did not form part of the estate of the deceased on the death. We are, therefore, unable to accept the contention made on behalf of the accountable person. We confirm the orders of the authorities below on this point. The deceased had made a deposit of Rs. 5,000 for acquiring telephone. The amount representing the said deposit was included in the principal value of the estate.

This inclusion is being challenged on behalf of the accountable person.

The amount in question represents deposit made by the deceased and, as such, the deceased had beneficial interest in the said amount. In the circumstances, there is no scope for any doubt on the point that the said amount represents property passing on death. We, therefore, reject this ground.