

Chandulal Harjivandas, Jamnagar

Vs

Commissioner of Income-Tax, Gujarat

Civil Appeal No. 684 of 1965

(J. C. Shah, V. Ramaswami-I JJ)

14.10.1966

JUDGMENT

RAMASWAMI J.

This appeal is brought, by certificate, from the judgment of the High Court of Gujarat dated September 9, 1963, in Income-tax Reference No. 20 of 1962.

On June 23, 1959, a policy called "Children's Deferred Endowment Assurance" for a sum of Rs. 50,000/- was issued by the Life Insurance Corporation of India. The proposer was Harjivandas Kotecha, the father of the appellant (hereinafter called the 'assessee') and the life assured was that of the assessee. The premium payable in respect of the policy was Rs. 1,925/ per annum. That amount was paid as premium out of the taxable income of the assessee. In the course of the assessment for the assessment year 1960-61, the assessee claimed rebate on the insurance premium of Rs. 1,925/ under the provisions of s. 15(1) of the Income-tax Act, 1922 (hereinafter called the 'Act'). The Income-tax Officer rejected the claim on the ground that under the said policy the life of the minor assessee had not been assured. The Appellate Assistant Commissioner agreed with the Income-tax Officer and held that the claim of the assessee was rightly rejected. The assessee took the matter in further appeal before the Appellate Tribunal but the appeal was dismissed. At the instance of the assessee, the Appellate Tribunal stated a case to the High Court on the following question of law :

"Whether rebate under s. 15(1) of the Income-tax Act, 1922, is admissible on the premia payable as per Annexure 'A' during the minority of the assessee ?"

The High Court of Gujarat answered the Reference in favour of the respondent and against the assessee. The High Court held that the contract of insurance with the Life Insurance Corporation was entered into by the father of the assessee and under the terms thereof the contract was to become the assessee's contract only by his adopting it on attaining majority. The High Court further held that on the true interpretation of the terms of the contract, even if the minor were to be alive on the deferred date it was the assessee's father who was entitled to receive the cash option unless the assessee adopted the contract as his own. The High Court accordingly observed that the real contracting parties were the father of the assessee and the Life Insurance Corporation and it was only under certain contingency on the happening of which the contract was to become the contract of the assessee.

Section 15(1) of the Act provides as follows :

"Exemption in the case of life insurances. - (1) The tax shall not be payable in respect

of any sums paid by an assessee to effect an insurance on the life of the assessee or on the life of a wife or husband of the assessee or in respect of a contract for a deferred annuity on the life of the assessee or on the life of a wife or husband of the assessee or as a contribution to any Provident Fund to which the Provident Funds Act, 1925, [XIX of 1925], applies :

The policy, a copy of which is annexed to the statement of the case as Annexure 'A', mentions the following details :

##"Cash option Deferred date Date of Maturity, Rs. 11,693-50 11-3-65 11-3-82Event on the happening of which On the stipulated date of sum assured payable, maturity if the Life Assured is then alive or at his prior death if it shall occur on or after the Deferred date."##

Clause 5 of the policy provides :

"All moneys payable in terms of these provisions shall, if the policy has been adopted by the Life Assured, be payable to the Life Assured, or his Assigns or Nominees under Section 39 of the Insurance Act or Proving Executors or Administrators or other legal Representatives..... Provided always that in the event of the Life Assured not having adopted the Policy, the moneys payable in terms of these provisions shall become payable to the proposer or his proving Executors or Administrators or other Legal Representatives....."

Certain other provisions contained in the policy which are material are to the following effect :

"The Life Assured shall at any time after attaining majority and before the Deferred Date by a writing signed by him adopt this Policy, agreeing to be bound by all its provisions. On such adoption by the Life Assured, this policy shall be deemed to be a contract between the Corporation and the Life Assured as the absolute owner of the Policy as from the date of such adoption and the proposer or his Estate shall not have any right or interest therein.....

Provided that if all the premiums due prior to the Deferred Date have been paid, the person entitled to the Policy moneys shall have the option to apply for and receive as on the Deferred Date the Cash Option mentioned in the Schedule in entire cancellation of this Policy. This Policy shall stand cancelled in case the Life Assured shall die before the Deferred Date and in such event a sum of money equal to all the premiums paid without any deduction whatsoever shall become payable to the person entitled to the Policy moneys.

This Policy shall stand cancelled also in the event of the Life Assured declining to adopt or failing or neglecting to adopt the Policy before the Deferred Date, and in such event a sum of money equal to the Cash Option will become payable to the person entitled to the Policy moneys."

According to the contract of insurance the Life Insurance Corporation was liable to pay the sum assured (a) on the stipulated date of maturity, if the life assured was alive on that date, i.e., March 11, 1982, or (b) if the life assured were to die before the said date, provided that the death occurred on or after the deferred date, i.e., March 11, 1965. Under the terms of the policy these are the two

events upon the happening of either of which the Corporation was to pay the sum assured, viz., Rs. 50,000/-. A special clause of the policy provides that at any time after attaining majority and before the Deferred Date the life assured may adopt the policy and on such adoption the policy is deemed to be a contract between the Corporation and the life assured as the absolute owner of the policy from the date of such adoption. In our opinion, the requirements of s. 15(1) of the Act are satisfied in this case because all that s. 15(1) requires is that in order to get exemption from payment of tax in respect of any sum two conditions must be satisfied, viz., (1) such sum must have been paid by the assessee himself, and (2) that such payment must have been made to effect an insurance on the life of the assessee himself. In the present case, the subject-matter of the contract is the insurance on the life of the assessee and it is not disputed that the payment of the premium was made by the assessee out of his taxable income. On behalf of the respondent Mr. Desai contended that the assessee was not entitled to the rebate under s. 15(1) of the Act on the premium paid. It was pointed out that the contract of insurance provided that the assessee was not entitled to the benefit of the policy till he adopted the contract on the date of his attaining majority. The argument was stressed that the contract was made between the Life Insurance Corporation and the father of the assessee and under the terms thereof it could become the assessee's contract only on his adopting it on his attaining majority. It was pointed out that if the assessee continued to be alive after the deferred date but failed to adopt the policy, it was the proposer who would be entitled to the cash option and not the assessee. If the assessee were to die before the deferred date the policy would stand cancelled and in that event it was the proposer and not the heirs of the assessee who would get the sums equal to the premiums paid. We are, however, of the opinion that the contract of insurance between the assessee's father and the Life Insurance Corporation must be read as a whole and in spite of the clauses referred to by Mr. Desai we consider that the contract is in substance a contract of life insurance with regard to the life of the assessee. The important point to notice is that if the assessee adopts the policy upon attaining majority the Corporation becomes liable to pay the sum assured, viz., Rs. 50,000/- to the assessee on the stipulated date of maturity, i.e., March 11, 1982, if the assessee was alive. The Life Insurance Corporation will also be liable to pay the amount assured if the assessee were to die before the stipulated date of maturity but on or after the deferred date i.e., March 11, 1965. In our opinion, the insurance on the life of the assessee was the main intention of the contract and the other clauses upon which Mr. S.T. Desai relied are merely ancillary or subordinate to that main purpose. Life insurance in a broader sense comprises any contract in which one party agrees to pay a given sum upon the happening of a particular event contingent upon the duration of human life, in consideration of the immediate payment of a smaller sum or certain equivalent periodical payments by another party (Halsbury's Laws of England, 3rd Edn. Vol. 22, p. 273). It was held by the Court of Appeal in *Gould v. Curtis* (6 T.C. 293] that for the purpose of the statutory provisions relating to relief in respect of life insurance premiums for purposes of income-tax, a contract by which a sum is payable on the death of the assured within a specified period and a larger sum if he is alive at the end of the period must be held to be an insurance on life. There is no definition of 'life insurance' in the Act but there is such a definition given in s. 2(11) of the Insurance Act, 1938 (Act 4 of 1938), which reads :

"'Life insurance business' means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life....."

It should be remembered in this connection that the object of enacting s. 15(1) of the Act is the encouragement of thrift and the section should hence be interpreted in such a manner as not to

nullify that object. Having examined all the clauses of the contract of insurance in this case, we are satisfied that it is in substance a contract of insurance on the life of the assessee and therefore rebate under s. 15(1) of the Act is admissible on the premium payable as per Annexure 'A' of the statement of the case during the minority of the assessee.

For these reasons we hold that this appeal must be allowed with costs of this court and of the High Court.

V.P.S.

Appeal allowed.

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