

Commissioner of Wealth-Tax, Punjab, J. & K. and Chandigarh

Vs

Yuvraj Amrinder Singh.

Commissioner of Wealth-Tax, Punjab, J. & K. And Chandigarh

Vs

Princess Rupinder Kumari.

Civil Appeals Nos. 797 to 799 of 1974

(V. D. Tulzapurkar, Sabyasachi Mukharji JJ)

08.10.1985

JUDGMENT

TULZAPURKAR J. –

The common question of law that arises for our determination in these appeals is :

"Whether, on the facts and in the circumstances of the case, the right or interest of an assessee in an annuity policy is exempt from wealth- tax under section 5(1)(vi) of the Wealth-tax Act, 1957 ?"

The facts giving rise to the question are briefly these. Yuvraj Amrinder Singh and Princess Rupinder Kumari are individual assesseees being assessed to wealth-tax under the Wealth-tax Act, 1957, (hereinafter called "the Act"). As regards the former, the two assessment years are 1964-65 and 1965-66, for which the respective valuation dates are March 31, 1964, and March 31, 1965, whereas the assessment year in the case of Princess Rupinder Kumari is 1965-66, for which the valuation date is March 31, 1965. The two assesseees had purchased one annuity policy each and they claimed exemption in respect of the value of each policy in each one's assessment to wealth-tax under section 5(1)(vi) of the Act. The value of the annuity policy in the case of Yuvraj Amrinder Singh was Rs. 2,13,000 while in the case of Princess Rupinder Kumari, it was Rs. 2,35,176. Exemption in respect of such value was claimed under section 5(1)(vi) of the Act inasmuch as the annuity policies fell within the expression "any policy of insurance" occurring in the said provisions.

The Wealth-tax Officer rejected the claim and included the above mentioned amounts in the assesseees' net wealth for the concerned assessment year on the ground that the exemption was allowable only to an insurance policy whereas the policy taken out by the assessee was an annuity policy whereunder the assessee had made lump sum payment and he would be getting periodical returns after the lapse of a number of years and as such an annuity policy could not be considered as an insurance policy. Aggrieved by the orders passed by the Wealth-tax Officer, the assesseees preferred appeals to the Appellate Assistant Commissioner who allowed their appeals holding them to be entitled to exemption under section 5(1)(vi) as according to him annuity policies were covered by the term "any policy of insurance" used in the said sub-section. This view of the Appellate

Assistant Commissioner was confirmed by the Income-tax Appellate Tribunal in appeals preferred by the Revenue. In the three Wealth-tax References Nos. 2, 3 & 4 of 1972 made to the High Court by the Tribunal at the instance of the Revenue, the High Court confirmed the Tribunal's view and answered the question set out above (which arose in each reference) in favour of the assessee. The Revenue has come up in appeal challenging the view taken by the High Court.

Since the question raised in these appeals concerns the proper construction of the expression "any policy of insurance" occurring in section 5(1)(vi) of the Act read with the order connected provisions thereof in relation to the terms of the annuity policies purchased by the two assessees, it will be desirable to set out the terms of the two annuity policies. In each, the annuitant is the proposer and each contains a provision for commutation, that is to say, neither is a non-commutable policy. It may be stated that the terms and conditions of both the annuity policies are the same and hence the terms and conditions of one (of Yuvraj Amrinder Singh) may be set out which are as follows :

"Type of annuity : Deferred annuity without profits guaranteed for 35 years.

Date on which the annuity Twenty-second day of January vests : Nineteen hundred and sixty-four.

Event on the happening On expiry of 35 years calculated from the of which annuity ceases date on which the annuity vests or at the or determines : death of annuitant, if later.

To whom annuity payable : To the annuitant.

Dates when annuity On the stipulated due date of the 1st payable : annuity instalment and monthly thereafter

Special provisions :

(1) If the annuitant shall die before the date on which the annuity vests, the amount of the single premium paid but without any interest shall be returned to the proposer or in case he shall be then dead, to his proving executors or administrators or other legal representatives who should take out representation to his estate or limited to the moneys payable under this policy from any court of any State or Territory of the Union of India, or in case the annuitant (provided he is also the proposer) shall have appointed any nominee to receive such money or executed any assignment in favour of any assignee, to such nominee or assignee.

(2) In lieu of the payment of the annuity under this policy, the proposer has the option to be exercised before the date on which the annuity vests to receive a cash payment of Rs. 2,88,184 on January 22, 1964."

Before dealing with the rival submissions made by the learned counsel for the parties, the relevant provisions of the Act with which we would be concerned may be referred to. Under the charging provision contained in section 3 of the Act, wealth-tax is charged, subject to the other provisions contained in the Act, for every assessment year in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company, at the rate or rates specified in Schedule I. "Net wealth" is defined in section 2(m) as meaning (so far as is material) the amount by which the aggregate value of all the assets belonging to the

assessee on the valuation date is excess of the aggregate value of all the debts owned by the assessee on that date. The expression "assets" is defined in section 2(e) and the relevant part thereof runs thus :

"2(e) 'assets' includes property of every description, movable or immovable, but does not include -

(iv) a right to any annuity in any case where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant."

The next material provision is section 5(1)(vi) with which we are directly concerned and it runs thus :

"5. Exemption in respect of certain assets. - (1) Subject to the provisions of sub-section (1A), wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee - ...

(vi) the right or interest of the assessee in any policy of insurance before the moneys covered by the policies become due and payable to the assessee :

Provided that in the case of a policy of insurance the premium or other payment whereon is payable during a period of less than ten years the amount that shall not be included in the net wealth of the assessee under this clause shall be a sum that bears to the value of the right or interest of the assessee in the policy the same proportion as the number of years during which the premium or other payment on the policy is payable bears to ten."

It may be stated that the above proviso was not there at the relevant time and it has been inserted by the Finance Act, 1974, with effect from April 1, 1975, but since an argument was based on it, we have thought it fit to reproduce the same. The next material provisions are section 5(1)(via) and (vii) which run thus :

"(via) the right of the assessee to receive any annuity payable by the Central Government under the provisions of section 280D of the Income- tax Act :

[Inserted by the Taxation Laws (Amendment) Act, 1970, with retrospective effect from April 1, 1965.]

(vii) the right of the assessee to receive a pension or other life annuity in respect of past services under an employer."

Since a contention was raised that annuity policies of the type with which we are concerned in the case cannot be regarded as life insurance policies, it will be necessary to refer to the definition of "life insurance business" given in section 2(11) of the Insurance Act, 1938. Section 2(11) runs thus :

"2. (11) '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 and shall be deemed to include -

(a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance,

(b) the granting of annuities upon human life; and

(c) the granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons."

At the outset, we would like to dispose of the initial contention raised on behalf of the revenue that a contract for deferred annuity is quite distinct from a "policy of insurance" - the expression used in section 5(1)(vi) - since there is no element of insurance against any risk involved in such annuity policy, a contention which found favour with the Wealth-tax Officer but was rejected by the Appellate Assistant Commissioner, the Tribunal and the High Court. The contention is that in the case of a deferred annuity policy, the annuitant, on payment of a lump sum, gets the right to the annuity equivalent in the shape of deferred annual or monthly payments guaranteed for a certain period (in the instant case for 35 years), that there is a date on which the annuity vests in the annuitant (here January 22, 1964), that usually there is a provision that in the event of the death of the annuitant before the date of vesting, the single premium paid by him would be returned to the proper and that the proposer may have (as is the case here) the option, to be exercised before the date on which the annuity vests, to receive the commuted value in lieu of deferred annual or monthly payments and such provisions clearly show that the intention is that, in essence, the annuity contract is operative from the date on which the annuity vests and thereafter there is no element of insurance in the contract. It is, therefore, urged that a contract for deferred annuity cannot be treated as a policy of insurance and as such the value thereof would not be exempt under section 5(1)(vi) of the Act. The gravamen of the contention is that there is no element of insurance covering any risk on human life involved in a deferred annuity policy.

The contention, in our view, proceeds on a misconception of the true or real nature of a deferred annuity policy. It is well known that a contract of insurance based on human life can be effect in two ways : (a) the insurer, in consideration of payment of periodical premia, undertakes to pay the person for whose benefit the insurance is made a stipulated lump sum upon the death of the person whose life is insured or the happening of any contingency dependent on human life (e.g., usual life policies or endowment policies), and (b) the insurer, in consideration of payment of a gross sum as premium, undertakes to pay the person for whose benefit the insurance is made, annuity equivalent (either annual or monthly instalments) after a certain age on the happening of a contingency depending upon the duration of human life (e.g., deferred annuity policies). In either case, it is an insurance against the risk of penury and as such is a contract of insurance. That contracts of insurance based on human life are effected in one of the two ways mentioned above will be clear from the manner in which the concept of life insurance is understood in the legal and commercial world. In Halsbury's Laws of England, fourth edition, volume 25, page 13, the following passage occurs in para. 7 under the heading "Main types of risk" :

"7. Main types of risk. - For convenience, the different types of insurance business may be classified as follows : (1) marine, aviation and transport insurance; (2) ordinary long-term insurance; (3) personal accident insurance; (4) property

insurance; (5) liability insurance; (6) motor vehicle insurance; (7) pecuniary loss insurance; (8) war risks insurance; and (9) industrial assurance."

Footnote 2 deals with "ordinary long-term insurance business" and says - "ordinary long-term insurance business" means the business of effecting and carrying out contracts of insurance on human life or to pay annuities on human life [section 83(2)(a) of the Insurance Companies Act, 1974].

In Bouvier's Law Dictionary (Rawle's Third Revision), vol. 2, at page 1619, the following passage occur under the caption "Life Insurance" :

"LIFE INSURANCE. - The insurance of the life of a person is a contract by which the insurer, in consideration of a certain premium, either in a gross sum or periodical payments, undertakes to pay the person for whose benefit the insurance is made, a stipulated sum, or annuity equivalent, upon the death of the person whose life is insured, whenever this shall happen, if the insurance be for the whole life or in case this shall happen within a certain period, if the insurance be for a limited time.

An agreement by the insurer to pay to the insured or his nominee a specified sum of money, either on the death of a designated life, or at the end of a certain period, provided the death does not occur before, in consideration of the present payment of a fixed amount, or of an annuity till the death occurs or the period of insurance is ended."

The definition of "life insurance business" as given in section 2(11) of our Insurance Act, 1938, clearly includes, by a deeming provision, the business of granting of annuities upon human life within the expression "life insurance business".

In CIT v. General Family Fund [1952] 22 Comp Cas (Ins.) 89; [1952] 21 ITR 497 (Cal), the Calcutta High Court has held that if the right to payment under annuity contract is governed by the happening of a contingency which depends in any way upon the duration of human life, the business of effecting such a contract is life insurance business. When the same case came up in appeal before this court, this court confirmed that view by observing that where the business of a company consists exclusively in granting terminable pensions or annuities dependant on human life in favour of the subscribers, such business is life insurance business.

In Chandulal Harjiwandas v. CIT [1967] 63 ITR 627 (SC), while dealing with a policy called "Children's Deferred Endowment Assurance" issued by the Life Insurance Corporation of India in the context of the question whether rebate was allowable on the premia paid during the minority of the life assured under section 15(1) of the Indian Income- tax Act, 1922, this court at page 631 of the Report has observed thus :

"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, third edition, volume 22; page 273)."

In the instant case, in each of the two annuity policies, there is term stipulating the event on the happening of which the annuity shall cease or determine and states that the annuity shall cease or

determine "on the expiry of 35 years calculated from the date on which the annuity years (January 22, 1964) or at the death of the annuitant, if later". In other words, the monthly payments are guaranteed for a period of 35 years commencing from January 22, 1964, even if the death occurs before the expiry of the period but in case the annuitant lives beyond the said period of 35 years, the monthly payments shall continue to be made till he dies. In view of this provisions which is to be found in each of the two annuity policies, it cannot be gainsaid that the policies evidence a contract of insurance covering the risk of human and as such would fall within the expression a "policy of insurance" occurring in section 5(1)(vi) of the Act. The contention that no element of insurance covering any risk of human life was involved after January 22, 1964 (the date of vesting) was, in our view, rightly rejected by the Appellate Assistant Commissioner, the Tribunal and the High Court.

In the light of the above discussion, the position becomes quite clear that annuities dependent on human life constitute a species of contracts of life insurance and would normally fall within the expression "any policy of insurance" occurring in section 5(1)(vi) of the Act. The object of enacting the provision is the encouragement of thrift which element is present in both types of life insurance and hence the provision should be interpreted in such a manner as not to nullify that object. Moreover, section 5 deals with exemptions in respect of certain assets and one of such exempted assets under sub- clause (vi) of sub-section (1) thereof is "the right or interest of the assessee in any policy of insurance before the moneys covered by the policy become due and payable to the assessee". It is quite clear that while granting this exemption, the Legislature has used the expression "any policy of insurance" which is a very wide import. The exemption is not confined to rights or interests in life insurance policies alone, much less any particular species of life insurance policies, but it extends to rights or interests of an assessee in other types of insurance policies also, such as a marine or a fire insurance policy, etc. It cannot be suggested that the right or interest of an assessee in such other types of policies has no value or cannot be valued. For instance, a marine or fire insurance policy may be for the three or five years and in such a case, the unexpired value of the premium could be one of the bases for determining the value of the assessee's interest in the policy on the valuation date; similarly, it is possible that the contingent event insured against has occurred, though the claim is pending determination on adjudication and in such a case also, the assessee would have a valuable interest in the policy. In such cases, the assessee's interest would be exempt under the aforesaid clause if the moneys under the policy have not become due and payable on the valuation date. It is, therefore, clear that the exemption contemplated by section 5(1)(vi) covers interests of an assessee in all types of insurance policies and the expression "any policy of insurance" in the said provision would a fortiori attract within its ambit or scope a deferred annuity policy based on human life, it being a species of life insurance policy and, therefore, unless there is some warrant to cut down the ambit or scope of that expression, the right or interest of an assessee in such a policy would be exempt from the charge of wealth-tax unless, of course, any moneys thereunder have become due and payable to the assessee on the valuation date.

Counsel for the Revenue urged a two-fold contention in support of the plea that there is such a warrant to cut down the ambit or scope of the expression "any insurance policy" occurring in section 5(1)(vi) and confine it to life insurance policies of the usual type where in consideration of periodical premia, the stipulated lump sum becomes payable upon the death or happening of an event dependent upon duration of human life, that is to say, the usual life policies or endowment policies. In the first place, it was urged that the proviso to sub-clause (vi), though inserted by the Finance Act, 1974, with effect from April 1, 1975, suggests that the Legislature intended that the said expression should be so confined that annuities on life are excluded and in this behalf reliance was placed on the Notes on Clauses accompanying the relevant Finance Bill as also the speech of

the Hon'ble Finance Minister, while introducing the Bill. Secondly, it was urged that since non-commutable annuities only have been excluded from the definition of "assets" given in the section 2(e), the Legislature could not have intended to exempt annuities based on human life under section 5(1)(vi) by bringing them within the expression "any policy of insurance" used therein. For the reasons which we shall indicate presently, there is no substance in either of the pleas pressed by counsel for the Revenue.

The proviso to sub-clause (vi) has been reproduced above. It has the effect of cutting down the exemption contained in the sub-clause to some extent. It commences with the words "Provided that in the case of a policy of insurance the premium or other payment whereon is payable during a period of less than 10 years" and the argument is that the underlined words suggest that the expression "any policy of insurance" in the main sub-clause must mean a policy based on human life and that too where periodical premia are payable and as such an annuity of life which consists of lump sum investment followed by deferred annual or monthly payments is excluded. It is impossible to read the underlined words in the proviso in this manner which has the effect of unduly narrowing down the expression "any policy of insurance" used in the main sub-clause, which as indicated earlier, is of very wide import converting all types of insurance policies like life, marine, fire, etc. In the first place, the main provision (sub-clause (vi)) was enacted in 1957 and continued to operate for 17/18 years till March 31, 1975, without any qualification and, as such, it will be absurd to attribute to the Legislature, because of the insertion of the proviso in 1975, an intention of having used the wide expression "any policy of insurance" throughout all this period in a narrow sense as suggested. Secondly, if the main provision and the proviso are read together, the underlined words do not suggest that any narrow construction, much less as urged, was intended and to say so would be missing the real object or purpose of the proviso. In our view, the proper way to read the proviso would be to treat the main provision as creating or granting an exemption and the proviso carving out something from the exemption. The main provision creates an exemption in respect of the assessee's "right or interest in any policy of insurance" and the proviso seeks to cut down that exemption to a limited extent, namely, whenever there is a policy of insurance in respect whereof periodical premia are payable for a duration of less than 10 years, then, in such a case, a proportionate exemption specified therein will be available to the assessee irrespective of what type of policy it is; the proviso has no other effect. That such was the object or purpose of insertion the proviso will be clear if regard be had to the relevant part of Notes of Clauses accompanying the Bill and the relevant portion of the speech of the Finance Minister while introducing the Bill. We were taken through the relevant portions of Notes on Clauses [vide 93 ITR (Statutes) 125] and the speech of the Hon'ble Finance Minister while introducing the Bill [vide 93 ITR (Statutes) 74] and, in our view, far from supporting the contention of counsel for the Revenue, these lend support to the view which we have just expressed. The relevant portion of "Notes of Clauses" states that "under this amendment (the insertion of proviso), the value of the taxpayer's right or interest in a policy of insurance will be exempt from tax only if the premia are payable over a period of ten years or more. In cases where premia are payable over a period of less than ten year, only a proportionate amount of the value of the taxpayer's right or interest in the policy of insurance will be exempt from wealth-tax." The Finance Minister's speech, though strictly not relevant as an aid to construction, substantially reiterates what has been stated in the "Notes of Clauses" accompanying the Bill. On this account, therefore, there is no warrant to put a narrow construction on the expression "any policy of insurance" occurring in sub-clause (vi) of section 5(1).

Similarly, counsel's reliance on the definition of "assets" given in section 2(e) of the Act and particularly the exclusionary part contained in sub-clause (iv) in relation to annuities for the purpose of giving a narrow construction to the expression "any policy of insurance" occurring in sub-clause

(vi) of section 5(1) is of no avail. We have already quoted above section 2(e)(iv). The definition of "assets" is in two parts; the first part defines assets as including property of every description, movable or immovable, while the second part excludes certain items of property from falling within the expression "assets" and of the items coming within this exclusionary part is : "(iv) a right to any annuity in any case where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant". In other words, non- commutable annuities only are excluded from "assets". The contention for the Revenue is that if under section 2(e)(vi) only non- commutable annuities have been excluded from the definition of assets, then the Legislature could not have intended to exempt annuities based on human life from wealth-tax charge under section 5(1)(vi); in other words, it is urged that it would be incongruous for the Legislature to include commutable annuities on life within the expression "assets" under section 2(e) on the one hand and at the same time to exempt such annuities from the charge by including them within the expression "any policy of insurance" under section 5(1)(vi). The contention, in our view, is entirely misconceived, for, in the first place, it proceeds on a wrong assumption that the topic of annuities is exhaustively dealt with under section 2(e)(iv) and, secondly, it ignores the scheme of the Act emerging from the relevant provisions. It is obvious that the postulate of the so-called incongruity that is being suggested on a reading of the two concerned provisions together must be that the topic of annuities has been dealt with exhaustively by section 2(e)(iv). But the postulate is non-existent. That clause (iv) of section 2(e) is not exhaustive of all annuities is clear from the fact that at least two types of annuities are separately and specifically dealt with under sections 5(1)(via) and 5(1)(vii) - the former speaks of the assessee's right to receive annuity payable by the Central Government under section 280D of the Income-tax Act and the latter speaks of the assessee's right to receive a pension or other life annuity in respect of past services under an employer. If that be so, the argument based on any incongruity arising from a reading of section 2(e)(iv) and section 5(1)(vi) together must fall to the ground. Further, a careful analysis of the two relevant provisions shows what is the general scheme of the Act. Section 2(e) defines "assets" to include property of every description; it, however, excludes certain items from the purview of the charge by excluding them from the definition of "assets", while section 5(1)(vi), on the other hand, exempts certain assets from the tax by declaring that tax will not be payable in respect of such assets. In other words, in order to be covered by the exemption under section 5(1)(vi), a property must in the first instance be an asset under section 2(e). The question of exempting commutable annuity policies of insurance arises only because they are not excluded from the definition but because they are not excluded from the definition but because they fall within the definition of "assets". It is, therefore, fallacious to contend that because commutable annuity policies fall within "assets", they should not be exempted under section 5(1)(vi).

We have already pointed out that a reading of section 2(e)(iv) together with sections 5(1)(via) and 5(1)(vii) negates the view that legislative intention was to deal exhaustively with annuities under section 2(e)(iv). Now, a commutable life annuity received from an employer would undoubtedly be exempt from the charge of wealth-tax under section 5(1)(vii). If section 2(e)(iv) is construed as confining, by implication, the exemption from wealth-tax to non- commutable annuities alone, then there would be an obvious conflict between section 5(1)(vii) and section 2(e)(iv). Therefore, a harmonious reading of section 2(e)(iv) with section 5(1)(vi) and section 5(1)(vii) would be that while non-commutable annuities are wholly outside the purview of the wealth-tax, commutable annuities are exempt under sections 5(1)(vi) and 5(1)(vii) to the limited extent mentioned in each. It is well settled that when such a harmonious construction is possible and which further the object of the Act, namely, to promote thrift and channelise private savings for national use, the same must be preferred to the construction which leads to a conflict between section 2(e)(iv) and section 5(1)(vi).

The contention that a narrow construction should be placed on the expression "any policy of insurance" occurring in section 5(1)(vi) of the Act, has, therefore, to be rejected. In other words, commutable annuities on life, like the ones in the instant case, would fall under section 5(1)(vi) of the Act and the value thereof would qualify for the exemption from the charge.

In the result, we decide the point raised in the appeals in favour of the assesseees and confirm the view of the High Court. The appeals are, therefore, dismissed with costs.

Appeals dismissed.

</html