

Jaswant Rai Churamani Vs. Commissioner of Income-tax

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Court : Allahabad

Decided On : Sep-08-1970

Reported in : [1971]80ITR701(All)

Judge : V.J. Oak, C.J. and ;H.N. Seth, J.

Acts : [Income Tax Act, 1961](#) - Sections 87(1)

Appeal No. : Income-tax Reference No. 271 of 1964

Appellant : Jaswant Rai Churamani

Respondent : Commissioner of Income-tax

Advocate for Def. : R.R. Misra, Adv.

Advocate for Pet/Ap. : B.L. Gupta and ;Ashok Gupta, Adv.

Judgement :

V.G. Oak, C.J.

1. This reference purports to have been made under Section 66 of the Indian Income-tax Act, 1922. The learned counsel for the parties are agreed that the case is in fact governed by the Income-tax Acts 1961. We may, therefore, dispose of the reference as one made under Section 256 of the Income-tax Act, 1961 (hereafter referred to as 'the Act').

2. Jaswant Rai Churamani, assessee, is an individual. The assessment year is 1962-63. The accounting period ended on March 31, 1962. In the year 1962, the assessee took out an insurance policy from the Life Insurance Corporation of India. The sum assured was Rs. 25,000. The assessee had to pay five annual premiums of Rs. 4,687'50. As required under the insurance policy, the assessee paid the Corporation the sum of Rs. 4,687.50 in March, 1962. The assessee claimed rebate for the sum of Rs. 4,687 as premium paid under the insurance policy. The claim for rebate was disallowed by the Income-tax Officer. His view was upheld in appeal by the Appellate Assistant Commissioner and by the Appellate Tribunal. The Appellate Tribunal, Delhi Bench 'C', has, at the request of the assessee, referred the following question of law to this court :

'Whether, on the facts and in the circumstances of the case, the rebate claimed by the assessee in the sum of Rs. 4,687 in respect of the policy taken by the assessee under the caption of pure endowment assurance, without profits, is allowable under the provisions of the Indian Income-tax Act.'

3. Annexure 'A' to the statement of the case is a copy of the insurance policy taken out by the assessee. Jaswant Rai was mentioned as the propose and the party whose life has been assured. The policy contained a special provision to the following effect:

'If the said life assured shall die before the date of maturity while the policy is in force, the total amount of premium paid shall be returned to the person or persons entitled to them in terms of the policy.'

4. The assessee has claimed rebate under Section 87 of the Act. Section 87 permits rebate on life insurance premia, etc. Sub-section (1) of Section 87 of the Act states :

'... the assessee shall be entitled to, a deduction of an amount equal to the income-tax calculated at the average rate of income-tax on the following sums, namely :--

(a) where the assessee is an individual, any sums paid in the previous year by the assessee out of his income chargeable to tax- (i) to effect or to keep in force an insurance on the life of the assessee'

5. The question is whether the present case is covered by Sub-clause (i) of Clause (a) of Section 87(1) of the Act.

6. The expression 'life insurance business' has been defined in Clause (11) of Section 2 of Insurance Act, 1938 :

'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'

7. In the present case the assessee was entitled to collect the sum of Rs. 25,000 from the Life Insurance Corporation of India provided that he was alive on the date of maturity. Payment of Rs. 25,000 depended: on the survival of the assessee up to the date of maturity. Since liability of the Corporation depended on the happening of a contingency dependent on human life; the case is covered by the description 'life insurance business' as given in the Insurance Act.

8. The Tribunal remarked that there was no element of risk under the policy. This remark is not quite accurate--not run much risk by issuing the policy. But it is not correct to say that the assured also did not run any risk, He was to collect Rs. 25,000 only if he survived up to the age of maturity. In case he died before the date of maturity, his nominee would be entitled to receive a sum much below Rs. 25,000. To that extent, the assured did run a risk.

9. The broad meaning of life insurance has been explained in Halsbury's Laws of England, 3rd edition, volume 22, on page 272, under Section 540 :

'. . . life insurance, in the 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.'

10. Basic features of endowment insurance have been described on page 290 in Section 576 :

'The essence of a contract by way of endowment insurance is that a specified sum becomes payable, not on the death of the insured, but on the arrival of a specified date, the insured being still alive; the contingency is the duration of the life up to the specified date rather than the arrival of death.'

11. Such an insurance policy came up for consideration in *Gould v. Curtis*, [1913] 6 T.C. 239 (C.A.) In that case the assessee entered into a policy described as double endowment assurance policy on his own life. He had to pay an annual premium of 11 11s. 8d. The sum assured was 200 payable at the expiration of 15 years if the assured was then alive, or 100 payable on previous death without profits. It was held by Hamilton J. that the assessee was entitled to rebate on account of premium paid on the insurance policy. It was explained on page 298 that policies of this kind have been in use since the year 1805. The view taken by Hamilton J. was upheld in appeal.

12. In *Babulal Kanji v. Commissioner of Income-tax*, [1946] 14 I.T.R. 662 (Bom.), it was observed by the Bombay High Court on page 671:

'While the contract must be that, in consideration of a sum of money paid in one sum or by different instalments, the company agrees to pay another sum on the happening of a contingent event, and which event must be connected with the life of the assured, the factor of the contract being necessarily disadvantageous to the assessee, is not a necessary ingredient.'

13. In *Chandulal Harjiwandas v. Commissioner of Income-tax*, [1967] 63 I.T.R. 627 ; [1961] I S.C.R. 921 (S.C.), the Supreme Court had to consider Whether under similar circumstances an assessee is entitled to rebate or not. It was explained on page 630 that the requirements of Section 15(1) of the 1922 Act are satisfied because all that Section 15(1) requires is that, in order to get exemption from payment of tax, 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. The provision of Section 15(1) of the 1922 Act was similar to the provision of Section 87 of the 1961 Act. It was further observed on page 631 :

'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.'

14. That condition is fulfilled in the present case. In the insurance policy the assessee had to pay certain annual instalments towards premium. The sum assured was Rs. 25,000. Payment was conditional on the survival of the assessee.

15. The Tribunal has referred to a booklet issued by the Life Insurance Corporation. The title of the booklet is *Tax and Life Insurance*, In that booklet it is mentioned that a pure endowment policy has to satisfy two conditions. Firstly, the sum assured is payable on the life assured's surviving the endowment term. Secondly, in the event of the life assured's death within the term, all premiums paid are refundable.

16. In the present case both the conditions are fulfilled. The Corporation has been doing business in life insurance since the year 1956. The policy in question was issued in the year 1962, In the policy it was described as pure endowment assurance without profits. We have seen that the transaction is of the nature of life insurance business as defined in the Insurance Act, 1938. Since payment of the sum assured depended on the survival of the assessee, this was an insurance on the life of the assessee. The assessee is an individual. It is not disputed that payment was made out of his income chargeable to tax. Thus, all the conditions mentioned in Section 87(1) (a)(i) are satisfied in the instant case. We are of the opinion that the assessee is entitled to rebate on the amount of Rs. 4,687.

17. We, therefore, answer the question referred to the court in the affirmative, and in favour of the assessee. The Commissioner of Income-tax shall pay the assessee Rs. 200 as costs of this reference.

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