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(1968) 09 CAL CK 0003

Calcutta High Court

Case No: Income-tax Reference No"s. 96 to 100 of 1963

Commissioner of Income Tax		APPELLANT
	Vs	
W.J. Shepherd		RESPONDENT

Date of Decision: Sept. 9, 1968

Acts Referred:

- Income Tax Act, 1922 - Section 15, 15(1)

Citation: (1969) 74 ITR 79

Hon'ble Judges: Sankar Prasad Mitra, J; Chatterjee, J

Bench: Division Bench

Advocate: B.L. Pal and B. Gupta, for the Appellant; S. Mitra, Pal and R. Sarkar, for the Respondent

Judgement

Chatterjee, J.
This is a reference u/s 66(2) of the Indian Income Tax Act, 1922. The reference is at the instance of the department. The assessee is an employee of Messrs. Avery Co. of India (Pr.) Ltd. There is an agreement between the assessee employee and his employer, Messrs. Avery Co. of India (Pr.) Ltd., which is described in a scheme made by Messrs. Avery Co. of India. We may put the scheme in the following manner:

(1) In case the employee dies before his retirement a cash payment of a stipulated sum would be paid by his employer, M/s. Avery Co. of India (Pr.) Ltd.

(2) In case he survives up to his retirement age of 55, he will be entitled to participate in a scheme for pension and he would get his pension at a stipulated figure from the date of his retirement till his death provided that in case the employee dies within 5 years of his retirement the pension would, notwithstanding such death, continue to be payable for 5 years from the date of retirement.

2. The employee assessee contributed certain sums to that scheme. Certain other sums were contributed by the employer. The question is whether the sums contributed by the assessee employee would be exempted from taxation u/s 15 of the Indian Income Tax Act, 1922. The employer-company entered into an agreement with its employee in the aforesaid manner which implies that the company undertook certain risks ; a prudent company would ordinarily cover itself against those risks and the company in question, viz., Messrs. Avery Company of India (Pr.) Ltd. entered into a group insurance policy with Messrs. Legal and General Assurance Society Ltd. of London for the purpose of protecting itself against such risk. What payments are to be made by the employer to its insurer and whether those payments would get the benefit of Section 15 of the Indian Income Tax Act, are not the questions before us. We have referred to the arrangements between M/s. Avery Co. of India (Pr.) Ltd. and M/s. Legal and General Assurance Society Ltd. of London just to give a complete picture of the whole case. For our present purpose the insurance policy taken by M/s. Avery Co. of India (Pr.) Ltd. with M/s. Legal and General Assurance Society Ltd. of London is of no importance. The relevant fact is that an employer in India contracted with its employee in India regarding a scheme for pension and the employer agreed to bear certain burden and the employee agreed to bear certain other burden. The question is whether the relief granted by Section 15 of the Indian Income Tax Act would be granted to the employee in respect of payments for the said scheme.

3. It may also be mentioned that the employee was not required by the contract to pay anything towards the arrangement for cash payment on death, if any, before retirement.

4. Mr. Pal, on behalf of the department, says that the employer is no insurance company and any sum paid by the employer to cover the risk of payment on death before retirement could not be taken to be a payment to "effect an insurance on life" within the meaning of Section 15 of the Indian Income Tax Act. Mr. Sukumar Mitra on behalf of the assessee claims no exemption with regard to any sum contributed by the employer towards the scheme. The employee was never asked to pay any premium to any insurance company and the employee did in fact pay no premium to any insurance company. Hence there is no question of any exemption u/s 15 of the Income Tax Act of any payment "by the assessee to effect an insurance policy". The assessee claims no such exemption.

5. Before the Income Tax authorities it was urged that the scheme was in the nature of a scheme for provident fund. Mr. Sukumar Mitra has not urged that point as well. Hence we have not to consider Section 15 of the Indian Income Tax Act, 1922, with respect to the aforesaid matters. Hence the relevant matter in Section 15 of the Act reads as follows:

"The tax shall not be payable in respect of any sums paid by an assessee .... in respect of a contract for a deferred annuity on the life of the assessee.....".

6. The question here would be whether the assessee-employee would be entitled to get the benefit of Section 15 of the Indian Income Tax Act, 1922, with respect to payments made to his employer in respect of the aforesaid pension scheme.

7. The question referred to us is as follows :

"Whether, on the facts and in the circumstances of the case, the assessee was entitled to any exemption u/s 15(1) of the Indian Income Tax Act, 1922, in respect of the contributions made by him to the pension scheme of Avery Co. of India (Private) Ltd., Calcutta ?"

8. The provisions of Section 15 of the Income Tax Act will be satisfied;

(1) if any sum was paid by the assessee,

(2) in respect of,

(3) a contract,

(4) for a deferred annuity on the life of the assessee.

9. With regard to the first matter, namely, whether any sum was paid or not, Mr. Sukumar Mitra on behalf of the assessee made it clear that he does not claim any benefit with regard to any sum which was not actually paid by the assessee but which was contributed by the employer ; the assessee actually paid certain sums with regard to the aforesaid scheme and this cannot be disputed. Hence, we must say that "sums were paid by the assessee" to his employer for the pension scheme.

10. The next question is whether the payment was "in respect of a contract for a deferred annuity". Mr. Pal"s submission is that the contract was not for a deferred annuity. The contract was pension and, secondly, there was not merely a contract with regard to a deferred annuity but there was further a contract, that in case of death before retirement, the assessee would get a certain sum from the employer. Therefore, if a payment was made with respect to the entire scheme and not with respect to any part of it, the payment could be attributed exclusively to a contract "for a deferred annuity".

11. We shall first see whether the contract is a contract for an annuity. The word "annuity" has been understood to mean "a yearly payment of a certain sum of money granted to another in fee, for life, or years charging the person of grantor only" (see vide Annuity--Judicial Dictionary, Stroud). Here the pension scheme is a scheme by which the employee would get a certain sum annually after retirement. It is not a scheme by which the employee would contribute certain sums and then get back the said money in annual instalments. But the company as well contributes to it and gets nothing instead ; the company thus granted certain money to the employee; in an annuity, there is an element of grant in this scheme. Therefore, this pension scheme satisfies the requirements of a

contract for "annuity".

12. Next the "contract for annuity" must be "deferred". There is no doubt that the performance of the contract is "deferred" till a particular event happens, namely, when the assessee retires and, therefore, it is thus deferred. Hence the contract is a contract "for a deferred annuity".

13. The next question is : Is the payment "in respect of" a contract for the deferred annuity ? Mr. Pal, for the department, says here is a contract which is not a single contract for any annuity but it includes a contract for a cash payment on death before retirement as well as a contract to pay annuity for five years if the employee dies within five years of retirement. Therefore, this contract, according to Mr. Pal, is of a complex nature and the payment being with respect to such a contract, it cannot be said that the contract was exclusively for a deferred annuity which is stated to be the requirement of Section 15. It is true that the contract may be considered to be two contracts, one for cash payment on death and another for a deferred annuity till death or for 5 years if death occurs in that period; even if it be two contracts, the payment for the former is the exclusive liability of the employer and, therefore, the contribution of the employee has nothing to do with regard to that contract. Had there been a payment with respect to both the contracts, there would arise a question that the payment was not exclusively for a deferred annuity. But no such question arises because the entirety of the contract for payment of a sum of money on death was or is the liability of the employer and the employee contributed nothing for that liability at all. Hence, there is no doubt that payments were made towards "the contract for a deferred annuity". The contract for payment of a deferred annuity for five years in case of death within five years of retirement is not a new or additional contract but a part of the contract for a deferred annuity. It extends the liability for a deferred annuity for 5 years after retirement if death occurs in that period.

14. But even if we treat the scheme as one composite contract not exclusively for a deferred annuity, even then there will be no difficulty. Section 15 does not require that the payments must be "for" the contract for a deferred annuity. It refers to a contract "in respect of" a deferred annuity. The phrase "in respect of" has a wider connotation. But in the circumstances stated aforesaid the payments were made exclusively for the contract of a deferred annuity and not for the contract for cash payment on death before retirement. Finally, the contract has been described as a pension scheme. As we have already seen it satisfies all the requirements of a scheme for a deferred annuity, it does not matter what name is given to it nor does it matter if it also satisfies the requirement of a scheme for pension. We may refer to a decision in In re Profits and Income Insurance Company Ltd., [1929] 1 Ch. 262 where it was held: On the resignation of the actuary and secretary of an insurance company which, in addition to other branches of insurance business, carried on the business of ordinary life assurance, both by the issue of policies upon human life and by the granting of annuities upon human life, the directors passed a resolution granting him a pension. The company was subsequently ordered to be wound

up compulsorily and the late actuary, having lodged a proof in respect of his pension, dies before the proof was dealt with.

15. It was held that such a grant was an annuity within the meaning of the Assurance Companies Act, 1909. It is true that there is great difference between Indian Acts and the corresponding English Acts. But the substance is that a resolution granting pension was held to be a grant of deferred annuity.

16. Under the English statute such contract need be with an insurance company. But Section 15 does not require that a contract for a deferred annuity must be with an insurance company. Hence the requirements of Section 15 with respect to a deferred annuity are satisfied. We must answer the question in the affirmative.

17. Each party will bear his own costs.

Sankar Prasad Mitra, J.

18. I agree.