

Life Insurance Corporation Of India & ... vs Gangadhar Vishwanath Ranade (Dead) By ... on 8 September, 1989

Equivalent citations: 1990 AIR 185, 1989 SCR SUPL. (1) 97, AIR 1990 SUPREME COURT 185, 1989 (4) SCC 297, (1989) 3 JT 637 (SC), (1990) 2 BANKLJ 177, 1989 3 JT 637, 1989 66 COM CAS 858, (1989) 180 ITR 1

Author: Jagdish Saran Verma

Bench: Jagdish Saran Verma, N.D. Ojha

PETITIONER:

LIFE INSURANCE CORPORATION OF INDIA & ANR.

Vs.

RESPONDENT:

GANGADHAR VISHWANATH RANADE (DEAD) BY LRS.

DATE OF JUDGMENT 08/09/1989

BENCH:

VERMA, JAGDISH SARAN (J)

BENCH:

VERMA, JAGDISH SARAN (J)

OJHA, N.D. (J)

CITATION:

1990 AIR 185	1989 SCR Supl. (1) 97
1989 SCC (4) 297	JT 1989 (3) 637
1989 SCALE (2) 499	

ACT:

Income Tax Act, 1961 --Sections 226(3) (vi) and 281
--Assignment of policies by insurer Assignment accepted by
LIC--ITO of opinion that transfer of policy with intent to
defraud Revenue--Inordinate delay by LIC in making statement
on oath before ITO--Liability of LIC to pay interest to
assignee of policies for delay in fulfilling statutory
obligation.

HEADNOTE:

One Sh. G.V. Ranade took four policies on his own life from the LIC during the period. 1958 to 1960. In April 1969 G.V. Ranade assigned absolutely all these four policies in favour of his wife Smt. Kamalabai G. Ranade and the assign-

ment was duly registered by the LIC. These policies were paid up and the date of maturity of these were 14.9.72, 28.12.73, 9.11.75 and 21.12.75.

There were some income tax dues against the said G.V. Ranade for recovery of which income tax officer 'commenced recovery proceedings. The Income Tax Officer on 27.1.71 issued a notice under Section 226(3) of the Income Tax Act, 1961 to the Manager of the LIC at Nagpur directing the LIC to pay to I.T.O. forthwith any amount due from the LIC to or, held by the LIC for or on account of the said Ranade to meet the amount due from Ranade as arrears of income tax. The Divisional Manager of the LIC at Nagpur intimated this fact of receipt of the notice under section 226(3) of the Income Tax Act 1961 to the assignee of these policies Smt. Kamalabai G. Ranade, suggesting that she take steps to get the notice vacated in order to safeguard her interest in the policies. By further correspondence the ITO required the LIC to deposit the amount of Rs.3415.70 payable against the first policy which was to mature on 14.9.72 and the LIC informed the assignee that the moneys due under the policies will be paid to her only after her getting the notice served on LIC by the ITO vacated.

On 5.9.72 Smt. kamalabai G. Ranade filed a Writ Petition in the High Court of Bombay impleading LIC and the ITO claiming several reliefs including a direction to the LIC for payment of Rs.3415.70 and also to make a statement that no part of the said amount is due to G.V.

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Ranade nor does the LIC hold any part of the sum for or on account of Ranade. This Writ Petition was dismissed in limine. Smt. Kamalabai G. Ranade filed an appeal by special leave in this court and this court disposed of the appeal on the counsel for the LIC stating that he would file the necessary statement on oath in accordance with S. 226(3)(vi) of the Income Tax Act, 1961 stating that no sum of money is due to the Assessee, insured person, before the ITO except one policy in respect of which the LIC having already paid the money to ITO no statement need be made and consequently no order can be made u/s 226(3)(vi) and the appeal was disposed of accordingly.

It appears that the ITO did not revoke the order of attachment inspite of the LIC making the requisite statement on oath under section 226(3)(vi) of the Income Tax Act on 5.12.75. This led to the filing of another Writ Petition in the Bombay High Court by Smt. Kamalabai praying for a direction to the ITO to revoke all notices issued under section 226(3) to the LIC and to the LIC to pay her the amount due against the policies which had matured. On 4.4.1977 counsel for the ITO produced before the High Court a copy of the order dated 1.4.77 passed by the ITO withdrawing the notice u/s 226(3) of the Income Tax Act and the Writ Petition was dismissed as withdrawn.

Smt. Kamalabai then sent notice to the LIC demanding

payment of the total amount due against the four policies together with interest @ 15% since the delay in payment had been occasioned by the default of the LIC. LIC made the payment of these amounts to her but disputed its liability to pay interest thereon for the period subsequent to the date of maturity on the ground that the delay was occasioned by the ITOs notice u/s 226(3). This dispute regarding the LIC's liability to pay interest led to the filing of Writ Petition No. 1248 of 1977 decided on January 7, 1981 which gives rise to this appeal.

The impugned judgment holds that the last two policies having matured on 9.11.75 and 21.12.75 a few days before or after 5.12.75 when the statement on oath u/s 226(3) of the Income Tax Act was made by the LIC did not qualify for award of such interest which was payable in respect of the first two which had matured earlier on 14.9.72 and 28.12.73. This view of the High Court on which the award of interest is based is assailed on behalf of the appellant.

The dispute in this appeal is only about the LIC's liability for payment of interest on the principal amount from the date of maturity of the first two policies to 31.12.75 and the rate of 15% p.a. which is alleged to be excessive.

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Dismissing the appeal with costs this Court,

HELD: In the instant case, admittedly assignment of the policies was made by the insured G.V. Ranade and the same was duly accepted and registered by the LIC in April 1969. It is, therefore, obvious that the LIC was bound to act on that assignment in favour of Smt. Kamalabai G. Ranade unless the assignment was held to be invalid by a competent authority on a proper proceeding taken for this purpose [111B]

Mere issuance of notice under section 226(3) of the Income Tax Act, 1961 did not have the effect of invalidating the assignment nor did the casual mention of section 281 of the Income Tax Act, 1961 by the IT0 in his letter dated 28.8.72 result in this consequence. Any further step towards formation of the final opinion by the IT0 could be taken only after the LIC had made the requisite statement on oath under section 226(3)(vi) of the Income Tax Act, 1961 on the basis of the registered assignment of policies. [111C-D]

The question of revocation of the notice under clause (vii) of subsection (3) of Section 226 of the Income Tax Act, 1961 arose in the present case only after the LIC made the requisite statement on oath under section 226(3)(vi) of the Act in view of its consistent stand throughout that the moneys due under the policies were held by it for and on behalf of the assignee and not the defaulter. Mere information of the assignment to the IT0 and keeping the assignee informed of the IT0's action did not amount to discharge of the statutory obligation under section 226(3)(vi) of the Act by the LIC. Sub-section (3) of Section 226 of the Income Tax Act, 1961 clearly shows that on a notice thereunder being

issued by the ITO to the LIC in the present case, it was incumbent on the LIC to make the requisite statement on oath under clause (vi) thereof raising an objection on the basis of the registered assignment. It was then for the ITO to proceed further and form his final opinion and revoke the notice under clause (vii). [112D-E; 113G-H]

The inordinate delay in making the statement on oath by the LIC under section 226(3)(vi) of the Income Tax Act, 1961 was the result of misconstruction of the provisions and misappreciation of its liability thereunder. [114B]

Obviously the assignee of the policies who had become entitled to receive the amount due thereunder on the dates of their maturity must be compensated by the LIC for its failure to perform its statutory

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obligation under section 226(3)(vi) of the Income Tax Act, 1961 within a reasonable time. Performance of this statutory obligation by the LIC in the present case being after inordinate delay award of interest to the assignee of the policies to whom the payment thereunder had to be made even according to the stand of the LIC is, therefore, clearly justified. [114C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1979 of 1981.

From the Judgment and Order dated 7.1.81 of the Bombay High Court in Civil Writ Petition No. 1248 of 1977. P.P. Rao, Kailash Vasdev and S. Murlidhar for the Appellants.

A.K. Sanghi for the Respondent.

The Judgment of the Court was delivered by VERMA, J. This appeal by special leave is against the judgment dated January 7, 1981 in Writ Petition No. 1248 of 1977 of the Nagpur Bench of the Bombay High Court. The special leave has been confined only to the question of liability of the appellant, Life Insurance Corporation, to pay interest for the period after date of maturity of insurance policy, in case of delay in payment. Accordingly, this is the only question arising for decision in this appeal. The writ petition in the High Court was filed by Smt. Kamalabai G. Ranade, the wife of Gangadhar Vishwanath Ranade of Nagpur. The said G.V. Ranade took four policies on his own life from the Life Insurance Corporation of India (hereinafter referred to as "the LIC") during the period 1958 to 1960. These policies were paid up and the particulars thereof including their paid up value payable on the date of maturity are as under:

Policy Number	Sum Assured	Paid up Value	Date of Maturity.
19620636	10,000.00	3415.70	14.9.72
13932229	3,500.00	1118.65	28.12.73
13969 144	5,000.00	892.20	9.11.75

In April 1969 G.V. Ranade assigned absolutely all these four insurance policies in favour of his wife Smt. Kamalabai G. Ranade and the assignment so made was duly registered by the LIC as under:

"In registering this Assignment the Corporation makes no admission as to its validity. Nagpur sd/-

Dt. 8.4.69 P. Divisional Manager"

It appears that there were some income tax dues against the said G.V. Ranade for recovery of which Income-tax Officer had commenced recovery proceedings. Prior to the date of maturity of these policies the Income-tax Officer on 27.1.1971 issued a notice under section 226(3) of the Income Tax Act, 1961 to the Manager of the LIC at Nagpur directing the LIC to pay to the ITO forthwith any amount due from the LIC to or, held by the LIC for or on account of the said G.V. Ranade to meet the amount due from G.V. Ranade as arrears of income tax. This notice further mentioned the consequences envisaged by section 226(3) of the Income Tax Act, 1961. The Divisional Manager of the LIC at Nagpur intimated the fact of receipt of the notice under section 226(3) of the Income Tax Act, 1961 to the assignee of these policies, Smt. Kamalabai G. Ranade, suggesting that she take steps to get the notice vacated in order to safeguard her interest in the policies. The further correspondence in this behalf between Income-tax Officer, the LIC and the assignee shows that the Income-tax Officer required the LIC to deposit the amount of Rs.3415.70 payable against the first policy which was to mature on 14.9.72 and the LIC kept the assignee informed of this demand by the ITO adding in its letter dated 27.7.1972 to the assignee that the moneys due under the policies will be paid to her "only after your getting the notice served on us by the ITO vacated". This was reiterated by the LIC in its letter dated 11.8.72 to the assignee.

The assignee sent a notice dated 21.8.72 to the LIC reiterating that the policies had been absolutely assigned to her as admitted by the LIC as a result of which the amount payable against the same had to be paid only to her since the amount was not held by the LIC for or on account of G.V. Ranade. The LIC was also required by this notice to take the necessary steps for revocation of the ITO's notice and to make the payment due in respect of all these policies to the assignee. The assignee sent a similar notice to the ITO asserting her claim as the assignee to get the moneys payable under the policies. The ITO in a letter dated 28.7.72 addressed to the LIC had added that the alleged transfer of policies by G.V. Ranade to his wife are void with an intention to defraud the revenue and the case falls within the mischief of section 281 of the Income Tax Act, 1961; and the LIC was requested to withhold any payment to Smt. Kamalabai G. Ranade till further communication from the ITO.

On 5.9.1972 Smt. Kamalubai G. Ranade filed a writ petition, (S.C.A. No. 861 of 1972), in the High Court of Bombay impleading the LIC and the ITO as respondents therein claiming several reliefs which are mentioned at pages 33 to 35 of the paper-book. The reliefs included a direction to the LIC for payment of Rs.3415.70 due on 14.9.72 on maturity of the first policy to Smt. Kamalabai G. Ranade and also to make a statement on oath as contemplated by section 226(3) of the Income Tax Act, 1961 that no part of the said amount is due to G.V. Ranade nor does the LIC hold any part of the sum for or on account of G.V. Ranade. This writ petition was dismissed in limine by the High Court on 14.9.72. The amount of Rs.3415.70 payable against the first policy which matured on 14.9.72 was paid by the LIC to the ITO. Smt. Kamalabai G. Ranade filed an appeal (C.A. No. 373 of 1973) by special leave in this Court against dismissal of her writ petition by the Bombay High Court. That appeal was disposed of by this Court on October 6, 1975 as under:

"On behalf of the Life Insurance Corporation of India Mr. Rathi stated that he would file the necessary statement on oath in accordance with sub-cl. (vi) of Cl. (3) of S. 226 of the Income Tax Act, 1961 and file it in Court within two months from today stating that no sum of money is due to the Assessee, insured person, before the Income-tax Officer. It will thereafter be open to the Income-tax Officer to take such other proceedings as he might consider necessary in order to realise the amounts due from the assessee. It is, however, stated that in respect of one policy, the Life Insurance Corporation has already paid the money to the Income-tax Officer. In respect of it no statement need be made and consequently no order can be made under S. 226(3)(vi). The appeal is disposed of accordingly. There will be no order as to costs".

In pursuance of the above order of this Court, the LIC filed on December 5, 1975 the requisite statement on oath under section 226(3)(vi) of the Income Tax Act, 1961 in respect of the remaining three policies.

It appears that the ITO did not revoke the order of attachment in spite of the LIC making the requisite statement on oath under section 226(3)(vi) of Income Tax Act, 1961 on 5.12.75. This led to another writ petition (S.C.A. 302 of 1977) filed in the Bombay High Court by Smt. Kamalabai G. Ranade praying for a direction to the ITO to revoke all notices issued under section 226(3) to the LIC and to the LIC to pay to her the amount due against the policies which had matured. On 4.4.77 counsel for the ITO produced before the High Court a copy of the order dated 1.4.77 passed by the Income-tax Officer withdrawing the notice under section 226(3) of the Income Tax Act, 1961 and the writ petition was dismissed as withdrawn. Smt. Kamalabai G. Ranade then promptly sent a notice to the LIC demanding payment of the total amount due against these four policies together with interest @ 15% since the delay in payment had been occasioned by the default of the LIC. Admittedly the LIC had made the payment of these amounts to Smt. Kamalabai G. Ranade in these circumstances. The L.I.C. has not disputed at any stage its liability to pay to Smt. Kamalabai G. Ranade the amounts due under these policies. However, it has disputed its liability to pay interest thereon for any period after the date of maturity on the ground that the delay was occasioned by the I.T.O.'s notice under section 226(3). On the other hand, Smt. Kamalabai G. Ranade claimed that

the L.I.C. had wrongfully refused to make the statement as contemplated under section 226(3)(vi) of the Income Tax Act, 1961 resulting in delay in payment of the moneys after maturity of the policies. This dispute regarding the L.I.C.'s liability to pay interest led to the filing of the Writ Petition No. 1248 of 1977 decided on January 7, 1981 which gives rise to this appeal. The impugned judgment of the Bombay High Court in Writ Petition No. 1248 of 1977 holds that the last two policies having matured on 9.11.1975 and 21.12.1975, i.e., a few days before or after 5.12.75 when the statement on oath under section 226(3) of the Income Tax Act, 1961 was made by the L.I.C. did not qualify for award of such interest which was payable in respect of the first two which had matured much earlier on 14.9.72 and 28.12.73. For the period commencing from the date of maturity of the policy ending with performance of the L.I.C.'s obligation to make the statement under section 226(3)(vi) of the Income Tax Act, 1961 on 5.12.75 the L.I.C. has been held liable to pay interest on the basis of its failure to perform its statutory obligation. This view of the High Court on which the award of interest is based, is assailed on behalf of the appellant.

The surviving dispute in this appeal is now only about the L.I.C.'s liability for payment of interest on the principal amount from the date of maturity of the first two policies to 31.12.75, and the rate of 15 % per annum which is alleged to be excessive.

Broadly stated, the contention of the appellant is that the appellant was not liable to pay any interest for the period during which it was restrained from making the payment on account of the I.T.O.'s notice under section 226(3) of the Income tax Act, 1961 and the I.T.O. also adding that the matter fell within the ambit of S. 281 of the Act. On this basis it was urged on behalf of the appellant that the award of interest on the first two policies from the date of their maturity till 31.12.1975 (statement on oath by the L.I.C. being made only on 5.12.1975) is contrary to law. To support the main contention of the appellant, that it is not liable for payment of any interest for any period after maturity of the policies, Shri P.P. Rao, learned counsel for the appellant advanced several arguments. His first argument is that the Income-tax Officer was a necessary party in the writ petition giving rise to this appeal and in his absence no effective adjudication of this dispute can be made. The second argument is that the High Court has misconstrued section 226(3) of the Income Tax Act, 1961 and thereby wrongly fastened the liability for payment of interest upto 31.12.75 on the appellant. The third argument is that the principle of res judicata or at least constructive res judicata, as a result of the earlier writ petitions, bars the claim for payment of interest in this writ petition. The fourth argument is that the writ petition (S.C.A. No. 302 of 1977) being withdrawn unconditionally without liberty to file a fresh petition, this writ petition (W.P. No. 1248 of 1977) is not maintainable. The fifth argument is that the rate of 15% p.a. at which interest has been awarded is excessive. The sixth and the last argument is that the appellant has been required to make double payment of Rs.3415.70 due against the policy which matured on 14.9.1972 inasmuch as the L.I.C. had already deposited that amount earlier in September 1972 with the I.T.O. in pursuance to the I.T.O.'s demand.

In reply, Shri A.K. Sanghi, learned counsel for the respondent contended that the liability for payment of interest has been correctly fastened on the appellant because of its failure to discharge the statu-

tory obligation of making the requisite statement on oath under section 226(3)(vi) of the Income Tax Act, 1961 till 5.12.1975. He argued that the L.I.C. having accepted and registered the absolute assignment made by the insured G.V. Ranade in favour of his wife Smt. Kamalabai G. Ranade, it was the duty of the L.I.C. to promptly make the requisite statement on oath under section 226(3)(vi) of the Income Tax Act, 1961 which it made much later on 5.12.75 in pursuance to the Court's order to enable the I.T.O. to revoke the notice issued by him under section 226(3) of the Income Tax Act, 1961. Shri Sanghi stated that even though the special leave granted by this Court is confined only to the question of interest and therefore, does not extend to the question of alleged double payment of Rs.3415.70 by the L.I.C. yet the respondent concedes that the amount of Rs.3415.70 deposited by the L.I.C. with the I.T.O. may be refunded by the I.T.O. to the L.I.C. together with interest, if any, payable on refund of that amount; and that the respondent does not lay any claim to that amount from the I.T.O. having obtained that amount from the L.I.C. We shall first dispose of the last point relating to double payment by the L.I.C. of the amount of Rs.3415.70 in view of the express concession made by Shri Sanghi, learned counsel for the respondent that the respondent does not lay any claim to it and that the L.I.C. may obtain its refund from the I.T.O. In view of this statement of learned counsel for the respondent, Shri Sanghi, it is sufficient to observe that it would be open to the L.I.C. to obtain refund of the amount of Rs.3415.70 deposited by it with the I.T.O. together with interest, if any, payable on the refund by the Income Tax Department, since it has been conceded that the respondent does not claim that amount from the I.T.O. We shall now deal with the remaining arguments of Shri Rao, learned counsel for the appellant.

The first argument of the learned counsel for the appellant is that the I.T.O. was a necessary party in the writ petition giving rise to this appeal. We are unable to accept this contention. The only claim made in Writ Petition No. 1248 of 1977 decided on 7.1.1981 giving rise to this appeal is for payment of interest by the appellant, and no relief has been sought against the I.T.O. This being so, for effective adjudication of the L.I.C.'s liability towards the respondent, the presence of the I.T.O. is not necessary. The respondent's claim is only against the L.I.C. without any claim being made in the alternative or otherwise against the I.T.O. The respondent's claim has, therefore, to succeed or fail only on the basis of the L.I.C.'s liability vis-a-vis the respondent without involving the I.T.O. or anyone else in that process. Merely because the defence of the L.I.C. was based on an act of the I.T.O., it was not incumbent for the respondent to implead the I.T.O. in this proceeding when neither any relief was claimed against the I.T.O. nor was any suggestion of I.T.O.'s liability for payment of interest made in the writ petition. This argument is, therefore, rejected. The second argument relating to construction of section 226(3) of the Income Tax Act, 1961 is in fact the main argument of Shri Rao and, therefore, we shall consider the same after disposing of the remaining arguments which are shorter points.

The third argument is based on the principle of res judicata and constructive res judicata on the basis of two earlier writ petitions filed by Smt. Kamalabai G. Ranade. The first writ petition was S.C.A. No. 861 of 1972 filed in the Bombay High Court on 5.9.72 prior to the date of maturity of the first policy claim against, which was required to be paid by the L.I.C. to the assignee, Smt. Kamalabai G. Ranade. This was after issuance of the notice under section 226(3) of the Income Tax Act, 1961 by the I.T.O. to the L.I.C. One of the reliefs claimed therein was a direction to the L.I.C. to make a statement on oath as required by section 226(3)(vi) of the Income Tax Act, 1961 that no part of the

amount due against the policy maturing on 14.9.72 was due to the insured G.V. Ranade nor did the L.I.C. hold any part of that sum for or on account of the alleged defaulter. No doubt some other reliefs including revocation of the notice under section 226(3) of the Income Tax Act, 1961 were also claimed including payment of the amount together with the accretions thereto. This writ petition being dismissed, Smt. Kamalabai G. Ranade came to this Court by special leave and Civil Appeal No. 373 of 1973 was disposed of by this Court's order dated 6.10.1975 requiring the L.I.C. to make the necessary statement on oath in accordance with section 226(3)(vi) of the Income Tax Act, 1961 within two months. It is obvious that with this direction requiring the L.I.C. to make the requisite statement on oath under section 226(3)(vi) of the Income Tax Act, 1961, no further question survived in that writ petition and the consequent civil appeal in this Court since the further questions including payment of interest on the principal amount were to arise only at a subsequent stage. Asking for any other relief was obviously premature at that stage. It is apparent for this reason that this Court did not at that stage go into the other questions relating to the further reliefs specified in that writ petition. That decision cannot, therefore, preclude agitation of the question of interest subsequently.

The next writ petition filed by Smt. Kamalabai G. Ranade was S.C.A. No. 302 of 1977 in the Bombay High Court. The prayer made therein was for a direction to the L.I.C. to pay the principal amount together with interest thereon. In this writ petition also the I.T.O. was impleaded as a party. This writ petition had to be filed because in spite of the L.I.C. having made the requisite statement under section 226(3)(vi) of the Income Tax Act, 1961 on 5.12.75, the Income-tax Officer had not withdrawn the notice under section 226(3) of the Income Tax Act, 1961 issued to the L.I.C. and, therefore, the L.I.C. was not making the payment to the respondent. On 4.4.77 that writ petition was dismissed as withdrawn as a result of the I.T.O.'s counsel filing a copy of the order dated 1.4.1977 withdrawing the I.T.O.'s notice under section 226(3) of the Income Tax Act, 1961 enabling the L.I.C. to make the payment due against the policies to the respondent. The operation of the notice under section 226(3) of the Income Tax Act, 1961 by the I.T.O. being the only reason given by the L.I.C. to support its action of non-payment to the respondent, it was unnecessary to pursue that writ petition when the I.T.O. had made the order withdrawing the notice under section 226(3) of the Act. Admittedly, it was in consequence of the withdrawal of the I.T.O.'s notice by order dated 1.4.77 that payment was actually made by the L.I.C. to the respondent. It is, therefore, difficult to appreciate how the withdrawal of that writ petition can, in any manner, preclude the respondent from raising the question of the L.I.C.'s liability to pay interest when the principal amount alone was paid later.

The L.I.C. having refused to pay the interest on the principal amount in spite of the inordinate delay in payment, the Writ Petition No. 1248 of 1977 had to be filed giving rise to this appeal raising only the question of L.I.C.'s liability to pay interest on the principal amount due against the policies. The same is therefore, clearly maintainable and the earlier writ petitions cannot, in any manner, bar the adjudication of this point here, in for the reasons already given. This contention of learned counsel for the appellant is also, therefore, rejected. The fourth contention based on withdrawal of writ petition (S.C.A. No. 302 of 1977) being covered by the discussion relating to the third contention, the same is rejected. The fifth argument relates to the rate of interest. Shri Rao contended that the award of interest @15% p.a. is excessive even if the L.I.C. is held liable for payment of interest. Reference was made by Shri Rao to Section 244 of the Income Tax Act, 1961 providing for payment

of interest on refund which prescribed the rate of 12% p.a. from 1.7.1972 to 1.10.1984, the increase to 15% p.a. being made therein only from 1.10.84 by amendment of that section. It was urged that the period in question in the present case being prior to 1.10.84 the rate of 15% p.a. in excess of the statutory provision of 12% p.a. in Section 244 of the Income Tax Act, 1961 is unjustified. Admittedly, the award of interest, in the present case, for payment by the L.I.C. is not governed by Section 244 of the Income Tax Act, 1961. Apparently, for this reason, learned counsel for the appellant relied on Section 244 of the Income Tax Act, 1961 as of persuasive value. We are not impressed by this argument. The High Court has relied on the fact that interest @ 15% p.a. is reasonable, in the present case, particularly in view of the fact that the L.I.C. itself charges interest at that rate. It is sufficient for us to state that there is no material produced, in the present case, to suggest that award of interest @ 15% p.a. is excessive to permit interference with the rate in this appeal particularly when the High Court has come to the conclusion that this is the reasonable rate. This argument also is, therefore, rejected.

The only point remaining for consideration now is the construction of Section 226(3) of the Income Tax Act, 1961 the relevant portion of which, reads as under:

"Other modes of recovery: 226.(1) Notwithstanding the issue of a certificate to the Tax Recovery Officer under section 222, the Income-tax Officer may recover the tax by any one or more of the modes provided in this section.

.....

(3)(i) The Income-tax Officer may, at any time or from time to time, by notice in writing require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee, to pay to the Income-tax Officer either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the assessee jointly with any other person and for the purposes of this sub-section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved to be equal.

(iii) A copy of the notice shall be forwarded to the assessee at his last address known to the Income-tax Officer, and in the case of a joint account to all the joint-

holders at their last addresses known to the Income-tax Officer.

(iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this subsection. shall be bound to comply with such notice, and, in particular, where any such notice

is issued to a post office, banking company or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.

(v) Any claim respecting any proper-

ty in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(vi) Where a person to whom a notice under this subsection is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Income-tax Officer to the extent of his own liability to the assessee on the date of the notice, or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(vii) The Income-tax Officer may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.

(viii) The Income-tax Officer shall grant a receipt for any amount paid in compli-
ance with a notice issued under this sub-

section, and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.

(ix) Any person discharging any liability to the assessee after receipt of a notice under this sub-section shall be person- ally liable to the Income-tax Officer to the extent of his own liability to the assessee so discharged or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(x) If the person to whom a notice under this subsection is sent fails to make payment in pursuance thereof to the Income-tax Officer, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear of tax due from him, in the manner provided in sections 222 to 225 and the notice shall have the same effect as an attachment of a debt by the Tax Recovery Officer in exercise of his powers under sec- tion 222."

....."

The argument of the learned counsel for the appellant is that on receipt of the I.T.O.'s notice under section 226(3) of the Income Tax Act, 1961, the L.I.C. was not left with the option to make the

payment to assignee of the policies since the L.I.C. or its officer making the statement on oath under section 226(3)(vi) would thereby have been exposed to personal liability as the defaulter of the income tax dues. It was argued that in these circumstances the L.I.C. could make the payment only after revocation of the notice by the I.T.O.'s Order dated 1.4.77 and, therefore, the L.I.C. cannot be held liable for payment of interest for any period prior to revocation of the notice. The period for which the L.I.C. has been held liable to pay interest being prior to revocation of the notice by the I.T.O., it was urged that the same was unjustified.

Having given our anxious consideration to the argument we cannot persuade ourselves to accept the same. On a close scrutiny of the provision we find that the benefit claimed by the L.I.C. is not available to it, in the facts of the present case.

Admittedly assignment of the policies was made by the insured G.V. Ranade and the same was duly accepted and registered by the L.I.C. in April 1969. It is, therefore, obvious that the L.I.C. was bound to act on that assignment in favour of Smt. Kamalabai G. Ranade unless the assignment was held to be invalid by a competent authority in a proper proceeding taken for this purpose. It is significant that the L.I.C. never disputed the validity of the assignment and was throughout prepared to act on it. It is undisputed that the assignment was not declared invalid by any competent authority. Mere issuance of notice under section 226(3) of the Income Tax Act, 1961 did not have the effect of invalidating the assignment nor did the casual mention of Section 281 of the Income Tax Act, 1961 by the I.T.O. in his letter dated 28.8.72 result in this consequence. Any further step towards formation of the final opinion by the I.T.O. could be taken only after the L.I.C. had made the requisite statement on oath under section 226(3)(vi) of the Income Tax Act, 1961 on the basis of the registered assignment of policies. This act was performed by the L.I.C. only on 5.12.75 which led to revocation of the notice under section 226(3) of the Act, by the I.T.O. The question is of the liability of the L.I.C. in these circumstances.

Section 226 consists of several Sub-sections of which sub-sections (1) and (3) alone are relevant for our purpose. Sub-section (1) enables the I.T.O. to recover the tax by anyone or more of the further modes provided in this section. Sub-section (3) deals with one such mode where the defaulter's money is held by another person. Clause (i) of sub-section (3) enables the I.T.O. by notice in writing to require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay the Income-tax Officer that money or so much of it as is sufficient to pay the dues of the assessee in respect of the arrears of tax. It is in exercise of this power that the I.T.O. had issued the notice to the L.I.C. in the present case. Obviously, the I.T.O. had assumed that the money payable on maturity of these policies belonged to the insured/assessee/defaulters G.V. Ranade overlooking the duly registered assignment made much earlier in favour of the assessee's wife in April 1969. The further clauses (ii) to

(v) of sub-section (3) deal with ancillary matters and also provide that any claim in respect of property covered by the notice shall be void after the date of the notice as against the demand contained in the notice.

Clause (vi) is relevant for the present purpose and speaks of the obligation of a person to whom such a notice has been sent. Clause (vi) relieves the person receiving such a notice from the liability to pay any sum to the I.T.O. in obedience to the notice if he "objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee". This clause further provides that "if it is discovered that such statement was false in any material particular" such person shall be personally liable to the I.T.O. to the extent of the assessee's liability on the date of notice. Clause (vii) then provides, inter alia, for amendment or revocation of the notice issued under this sub-section by the I.T.O. This stage of amendment or revocation of the notice under clause

(vii) is reached only after the stage provided in clause

(vi), in a case where the notice objects that he does not hold the money for or on behalf of the defaulter of tax dues.

It is, therefore, obvious that the question of revocation of the notice under clause (vii) of sub-section (3) of section 226 of the Income Tax Act, 1961 arose in the present case only after the L.I.C. made the requisite statement on oath under section 226(3)(vi) of the Act in view of its consistent stand throughout that the moneys due under the policies were held by it for and on behalf of the assignee and not the defaulter. Mere information of the assignment to the I.T.O. and keeping the assignee informed of the I.T.O.'s action did not amount to discharge of the statutory obligation under section 226(3)(vi) of the Act, by the L.I.C. The statute having expressly provided the mode of raising such an objection in the form of a statement on oath specified in clause (vi), performance of that obligation by the notice had to be made only in that manner. This statutory obligation was performed by the L.I.C. only on 5.12.1975 as stated earlier. The personal liability arising after making the requisite statement on oath as envisaged by clause (vi) is only "if it is discovered that such statement was false in any material particular and not otherwise.

Learned counsel for the appellant argued that the requisite statement under section 226(3)(vi) of the Income Tax Act, 1961 could not be made by the L.I.C. since it involved the risk of exposing the L.I.C. or its officer making the statement on oath to personal liability for the income tax dues of the assessee/defaulter G.V. Ranade. In the first place, such a statement was in fact made without hesitation by the L.I.C. on 5.12.75 after the assignee was compelled to obtain such a direction in a writ petition filed by her. That apart the risk visualised on behalf of the L.I.C., in ultimate analysis, is entirely imaginary and not real. The risk of personal liability envisaged in clause (vi) arises only "if it is discovered that such statement was false in any material particular". Thus, there is no risk of personal liability of the person making the statement on oath unless any material particular mentioned in the statement is false. The statement on oath required to be made by clause (vi) is only "that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee". The L.I.C. itself has taken the stand throughout that the sum demanded by the notice issued under section 226(3) of the Income Tax Act, 1961 by the I.T.O. did not belong to the assessee inasmuch as it was payable only to the assignee, Smt. Kamalabai G. Ranade by virtue of the assignment made, accepted and registered in April 1969 much earlier to the date of the notice. This being so the making of this statement on oath of the L.I.C.'s own stand which

in fact was so made on 5.12.75 did not involve even remotely the possibility of any risk of personal liability.

On the contrary, real risk of the L.I.C. being treated deemed defaulter assessee under clause (x) of sub-section (3) of section 226 of the Act lay in its failure to pay to the I.T.O. after receipt of notice under section 226(3), the amounts of the matured policies within the time given by the I.T.O. or a reasonable time, without objecting to the demand by denying its liability to the assessee in the manner prescribed in clause (vi) thereof, instead of in doing so. Prudence also required the L.I.C. in its own interest, to object to the demand according to clause (vi) instead of refusing or delaying the objection. The argument that such a statement was not made since it involved the likelihood of exposing the L.I.C. or any of its officers to personal liability has, therefore, no merit. This being the only reason given by the L.I.C. to justify the inordinate delay in making the requisite statement under section 226(3)(vi) of the Income Tax Act, 1961, it is obvious that this defence is untenable.

Sub-section (3) of section 226 of the Income Tax Act, 1961 clearly shows that on a notice thereunder being issued by the I.T.O. to the L.I.C., in the present case, it was incumbent on the L.I.C. to make the requisite statement on oath under clause (vi) thereof raising an objection on the basis of the registered assignment. It was then for the I.T.O. to proceed further and form his final opinion and revoke the notice under clause (vii). It was not possible for the assignee of the policies to obtain revocation of the notice by the I.T.O. without the requisite statement on oath being made by the L.I.C. as envisaged in clause (vi) of sub-section (3) of section 226 of the Income Tax Act. It is obvious that the inordinate delay in making the statement on oath by the L.I.C. under section 226(3)(vi) of the Income Tax Act, 1961 was the result of misconstruction of the provision and misappreciation of its liability thereunder. Obviously the assignee of the policies who had become entitled to receive the amounts due thereunder on the dates of their maturity must be compensated by the L.I.C. for its failure to perform its statutory obligation under section 226(3)(vi) of the Income Tax Act, 1961 within a reasonable time. We have no doubt that this is the proper construction of section 226(3) of the Income Tax Act, 1961 and the consequential liability resulting from the failure of the notice to raise the objection in the prescribed manner under clause

(vi) thereof within a reasonable time. Performance of this statutory obligation by the L.I.C., in the present case, being after inordinate delay, award of interest to the assignee of the policies to whom the payment thereunder had to be made even according to the stand of the L.I.C. is, therefore, clearly justified. This contention which is really the main contention urged on behalf of the appellant, therefore, fails and is rejected.

Consequently, the appeal is dismissed with costs. The costs are quantified at Rs.2,000.

R.N.J.
missed.

Appeal dis-