

ITA No. 437 of 2015

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 437 of 2015 (O&M)

Date of Decision: 2.2.2016

Pr. Commissioner of Income Tax-I, Ludhiana

...Appellant.

Versus

M/s Ramesh Steels, Ludhiana

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.**

PRESENT: Mr. Rajesh Katoch, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 26.5.2015 (Annexure A-III) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 757/Chd/2014, for the assessment year 2008-09, claiming the following substantial question of law:-

Whether upon facts and circumstances of the case, the Hon'ble ITAT was right in law, in upholding the decision of the Ld. CIT(A) in deleting the addition of Rs.1,27,49,983/- made by the Assessing Officer on

account of premium paid on the life of partners and debited to the profit and loss account as Keyman Insurance Premium of the assessee firm?

2. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed its return of income on 21.10.2008 for the assessment year 2008-09 at nil income. The said return was processed under Section 143(1) of the Act on 13.3.2010. Subsequently, the case was selected for scrutiny and notice under Section 143(2) of the Act was issued on 14.9.2009. Subsequently, notice under Section 142(1) of the Act was issued on 7.1.2010 along with preliminary questionnaire and again notice dated 28.4.2010 under Section 142(1) of the Act along with detailed questionnaire was issued. The Assessing Officer vide order dated 3.12.2010 (Annexure A-1) framed the assessment under Section 143(3) of the Act at nil income and made the additions of ₹ 21,52,812/- and ₹ 1,27,49,983/- on account of disallowance of excess depreciation and disallowance of premium paid on 'Keyman Insurance Policy' taken on life of the partners. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 24.6.2014 (Annexure A-II) allowed the appeal and deleted the additions made by the Assessing Officer. Against the order, Annexure A-II, the revenue filed an appeal before the Tribunal who vide order dated 26.5.2015 (Annexure A-III) upheld the order of the CIT(A) and dismissed the appeal. Hence, the present appeal by the revenue.

3. We have heard learned counsel for the revenue.

4. The primary issue that arises for consideration in this appeal

is whether the premium paid for securing “Keyman Insurance Policy” whereby the premium had been paid to secure the life of a partner against disruption of the business that may result due to the premature death of a partner would be admissible expenditure under Section 37 of the Act.

5. The issue is no longer *res integra*. The Bombay High Court delving into identical issue in **Commissioner of Income Tax v. B.N. Exports (2010) 323 ITR 178** after noticing the relevant statutory provisions and the Board Circular No. 762 dated 18th February, 1998 issued by the Central Board of Direct Taxes on the issue had held that the premium paid for a 'Keyman Insurance Policy' is allowable as business expenditure under Section 37(1) of the Act. It was further noted that the object and purpose of the said policy is to protect the business against a financial set back which may occur as a result of a premature death, to the business or professional organization. There is no rational basis to confine the allowability of the expenditure incurred on the premium paid towards such a policy only to a situation where the policy is in respect of the life of an employee. The said policy when obtained to secure the life of a partner against a disruption of the business is equally for the benefit of the partnership business which may be affected as a result of premature death of a partner. Thus, the premium on the 'Keyman Insurance Policy' of partner of the firm is wholly and exclusively for the purposes of business and is allowable as business expenditure. The relevant observations read thus:-

4. In order to appreciate the submission which has been made a reference to some of the relevant provisions of the Income Tax Act, 1961 would be in

order. Section 2(31) defines the expression "person" to include an individual, a Hindu Undivided Family, a company, a firm, an AOP or a BOI whether incorporated or not, a local authority and every artificial juridical person, not falling within the previous sub clauses. Consequently, for the purposes of taxation, a firm is regarded as a distinct assessable entity. Section 10 provides that in computing the total income of any person for the previous year, income falling within any of the clauses of the provision shall not be included. Clause (10D) specifies to any sum received under a life insurance policy, including a sum allocated by way of bonus on such a policy other than, inter alia, "any sum received under a Keyman Insurance Policy". The Explanation to Clause (10D) defines what is meant by a Keyman Insurance Policy thus :

"Keyman Insurance Policy" means a life insurance policy taken by a person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first mentioned person."

5. The effect of Clause (10D) is that a sum received under a life insurance policy is not to be included in computing the total income of any person. However, a sum received under a Keyman Insurance

Policy forms a part of the total income and is liable to be offered to tax. For the purposes of Clause (10D), a Keyman Insurance Policy is a life insurance policy taken by a person on the life of another person who is or was the employee of the person who subscribes to the policy of insurance or is or was connected in any manner whatsoever with the business of the subscriber to the policy. In other words, a Keyman Insurance Policy for Clause (10D) is not confined to a policy taken by a person on the life of an employee, but also extends to an insurance policy taken with respect to the life of another who is connected in any manner whatsoever with the business of the subscriber.

6. The Central Board of Direct Taxes has issued a circular on 18th February, 1998 (Circular 762) [(1998) 145 CTR (St) 5] which clarifies the scope and purpose of the provision. Paragraph 14.1 of the circular states thus :

"14.1 A Keyman Insurance Policy of the Life Insurance Corporation of India, etc., provides for an insurance policy taken by a business organisation or a professional organisation on the life of an employee, in order to protect the business against the financial loss, which may occur from the employee's premature death.

The "Keyman" is an employee or a director,

whose services are perceived to have a significant effect on the profitability of the business. The premium is paid by the employer."

7. The Circular notes that there were certain doubts on the taxability of the income, including bonus, received from such policies and as regards whether the premium paid should be allowed as capital or as revenue expenditure. The circular clarifies that the Act lays down the tax treatment for a Keyman Insurance Policy. The circular clarifies that the premium paid on a Keyman Insurance Policy is allowable as business expenditure."

6. The conclusion recorded in para 9 is quoted as under:-

9. The effect of Section 10(10D) is that monies which are received under a life insurance policy are not included in the computation of the total income of a person for a previous year. However, any sum received under a Keyman Insurance Policy is to be reckoned while computing total income. For that purpose, a Keyman Insurance Policy means a life insurance policy taken by a person on the life of another person who is or was in employment as well as on a person on who is or was connected in any manner whatsoever with the business of the subscriber. The words "is or was connected in any manner whatsoever with the business" of the

subscriber are wider than what would be subsumed under a contract of employment. The latter part makes it clear that a Keyman Insurance Policy for the purposes of Clause (10D) is not confined to a situation where there is a contract of employment. Clause (10D) relates to the treatment for the purpose of taxation of moneys received under an insurance policy. In this appeal, the Court has to determine the question of expenditure incurred towards the payment of insurance premium on a Keyman Insurance Policy. The circular which has been issued by the Central Board of Direct Taxes clarifies the position by stipulating that the premium paid for a Keyman Insurance Policy is allowable as business expenditure. In the present case, on the question whether the premium which was paid by the firm could have been allowed as business expenditure, there is a finding of fact by the Tribunal that the firm had not taken insurance for the personal benefit of the partner, but for the benefit of the firm, in order to protect itself against the set back that may be caused on account of the death of a partner. The object and purpose of a Keyman Insurance Policy is to protect the business against a financial set back which may occur, as a result of a premature death, to the business or professional organization. There is no rational basis to confine the allowability of the

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expenditure incurred on the premium paid towards such a policy only to a situation where the policy is in respect of the life of an employee. A Keyman Insurance Policy is obtained on the life of a partner to safeguard the firm against a disruption of the business that may result due to the premature death of a partner. Therefore, the expenditure which is laid out for the payment of premium on such a policy is incurred wholly and exclusively for the purposes of business.”

7. Further, the Gujarat High Court has expressed the similar view in **Commissioner of Income Tax v. Gem Art (2012) 252 CTR 451** and also this Court in **Commissioner of Income Tax-I, Ludhiana v. M/s Laj Exports, Ludhiana, ITA No. 251 of 2012** decided on 8.11.2013.

8. In view of the above, there is no error in the approach of the Tribunal in accepting the claim of the assessee. Accordingly, no substantial question of law arises in this appeal. Finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

February 2, 2016
gbs

(RAJ RAHUL GARG)
JUDGE