

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 130/JP/2016
निर्धारण वर्ष / Assessment Year : 2008-09

Shri Ravi Poddar C-17, SJS Highway, Bani Park, Jaipur.	बनाम Vs.	The ACIT, Circle-3, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. ABRPD 3822 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agrawal (C.A.)
राजस्व की ओर से / Revenue by : Shri Prem Prakash Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 15.03.2017
घोषणा की तारीख / Date of Pronouncement: 24/03/2017.

आदेश / ORDER

PER SHRI VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-1, Jaipur dated 23.11.2015 wherein the assessee has taken the following grounds of appeal:

"1. The Learned C.I.T. (A) has grossly erred in fact as well as in law in confirming the action of the AO of issuing notice u/s 148 of I.T. Act, 1961, which is bad in law in the facts and circumstances of the case.

2. The learned C.I.T. (A) has grossly erred in fact as well as in law in confirming the addition to the returned total income of the appellant by the AO. of Rs.44,78,000 representing the amount equivalent to surrender value on assignment of Keyman Insurance Policy by the Firm

in favour of the Assessee Appellant Partner on 25.03.2008. The learned C.I.T. (A) has also erred in confirming the event of the assignment of Keyman Insurance Policy in favour of the appellant by the Firm resulting into income liable to tax u/s 2 (24) (xi) read with sec 28 (vi) of IT Act, 1961. Further, while sustaining the action of the AO of making addition of Rs.44,78,000 to the total income of the Assessee Appellant as above, the learned CIT (A) has overlooked/has not dealt with the submissions of the assessee appellant that for the year under Appeal, there is no scope for invoking extended meaning of sec 10 (10D) of IT Act, 1961 since the Explanation 1 to Sec 10 (10D) is not applicable for the year under consideration.

3. The learned C.I.T. (A) has further erred in fact as well as in law in sustaining the addition to the total income of the assessee, the amount of surrender value of Rs.44.78 lacs ignoring the fact that the Firm had paid all due taxes in the form of Fringe Benefit Tax under sec 115 WB (2) read with Sec 115 WC (1) of Income tax Act at the time of Assignment of the Keyman Insurance Policy in favour of the Appellant Assessee during the Financial Year relevant to Assessment Year 2008-09. Thus the said surrender value amount cannot be taxed again in the hands of the firm as well as its partner in absence of actual receipt of sum of money at the time of assignment.”

2. The facts of the case are that the appellant is the main working partner in the firm M/s. Cheer Sagar, Jaipur and was getting remuneration from the said firm of Rs.17,35,000 and Interest of Rs.10,00,000 and share of profit of Rs.11,97,933 besides other income. The said firm M/s. Cheer Sagar had taken out Keyman Insurance Policy in the name of the appellant from ICICI Prudential Life Insurance Co. Ltd. on 30.03.2005 for sum assured of Rs.2.75 Crore with an intent to protect the economic interest of the firm in the event of an untimely death of partner. The said policy was taken for a period of

seven years. The Partnership firm M/s. Cheer Sagar had made payments of premiums on such Keyman Insurance Policy in the different years as under:

Financial Year	Amount
2004-05	50,00,000
2005-06	10,00,000
2006-07	10,00,000
Total	70,00,000

2.1 The above Keyman Insurance policy was assigned by the firm M/s. Cheer Sagar in favour of the appellant on 25.03.2008 and on that date the surrender value of the said policy was determined by the Insurance Company at Rs.44.78 lacs. The firm had not recovered any value equivalent to the surrender value or any other amount from the appellant at the time of assignment, however on the advice of an expert, the firm paid FBT on such surrender value of the policy during the year under consideration.

2.2 Thereafter, the appellant surrendered the said Insurance Policy during the year under consideration and received a sum of Rs.75,45,613/- from the Insurance Company as surrender value of policy on 24.09.2008. The sum of Rs.75,45,613/- was claimed to be exempt in its assessment for the AY 2009-10 on the ground that after assignment of the Keyman policy to the appellant, the policy lost that character and became a normal insurance policy. In fact,

the AO made the addition of Rs.75,45,613/- in the AY 2009-10 which was deleted by the Ld. CIT(A) in ITA No.542/11-12 wherein it was held by her that:

"As per the facts discussed in detail above, the policy was assigned in favour of the appellant by the firm on 25.03.2008 at a value of Rs.44.78 lacs therefore, it was required to be taxed in his hands u/s 28(v) read with section 2(24)(xi) of the I.T. Act, 1961 during AY 2008-09, as the firm had regularly been claiming deduction on payment of the premiums of this policy u/s 37(1). The assigned amount of Rs.44.78 lacs was income u/s 2(24)(xi) in AY 2008-09 and would not be exempt in section 10(10D) in the said A.Y.

However, during this AY the nature/status of the Insurance Policy is not that of a Keyman Insurance Policy since it was assigned by the firm in favour of the appellant in AY 2008-09. Therefore, the sum of Rs.75,45,613/- received by the appellant on surrender of the Life Insurance Policy is exempt u/s 10(10D) as it was no longer a Keyman Insurance Policy but had acquired the status of an individual Insurance Policy after 25.03.2008."

2.3 For the year relevant to appeal i.e, AY 2008-09, assessee filed its return of income on 10.12.2008 and the revised return on 31.03.2009 which was processed under section 143(1) of the Act. Subsequently, the case of assessee was reopened and notice u/s 148 was issued to the assessee. On

request by the assessee, reasons recorded for reopening was provided to the assessee which reads as under:

"As per records of this office Shri Ravi Poddar, is a partner in firm M/s Cheer Sagar and M/s Cheer Sagar assigned a Keyman Insurance Policy on 25.03.2008 in favour of Sh. Ravi Poddar, partner. Sh. Ravi Poddar surrendered this policy in September, 2008 and received payment. The Insurance Company determined the surrender value of the policy at Rs.44.78 lacs as per Clause-5 of its policy at the time of assignment i.e. 25.03.2008.

The amount of Rs.44.78 lacs is taxable in the hands of the assessee at the time of assignment of the Keyman Policy as subsequent to the assignment the policy would attain an individual status and would be eligible for tax benefits u/s 10(10D) available to the individual policies. But at the time of surrender as on 25.03.2008 the same benefit u/s 10(10D) is not allowable to the assessee as the same is Keyman Insurance Policy as on date.

The assignment amount of Rs.44.78 lacs is income u/s 2(24)(xi) of the Act in A.Y. 2008-09 and same is not exempt in section 10(10D) in A.Y. 2008-09. Therefore, it is required to be taxed in the hands of the assessee Shri Ravi Poddar u/s 28(v)r.w.s.2(24)(xi) of the I.T. Act in A.Y. 2008-09".

2.4 The assessee objected to the reopening of assessment, which was disposed off by AO and thereafter, the assessment was completed vide order dated 30.09.2014 at a total income of Rs.72,65,550/- bringing to tax the sum

of Rs.44.78 lacs, being the surrender value of the Keyman Insurance policy. Aggrieved of the order of the AO, an appeal was filed before Ld. CIT(A), which was rejected vide order dated 23.11.2015, against which present appeal has been filed which has come up for hearing before this Bench.

3. Before adverting to the arguments taken by the parties, it would be relevant to refer to the findings of the Id CIT(A) on merit which are under challenge before us. The same are reproduced as under:

"(iv) In its written submission, it was the contention of the appellant that he has not 'received' any amount during the year under consideration and in all the relevant sections, the word used is 'received' and not 'accrue or arise'. In this regard, it may be mentioned that in the circular No.792 dated 18.02.1998 issued by the CBDT, it has been clarified that:

"14.4 the Act also lays down that the sums received by the said organization on such policies, be taxed as business profit; the surrender value of the policy, endorsed in favour of the employee (Keyman), or the sum received by him at the time of retirement be taken as "Profits in lieu of salary" for tax purpose; and in the case of other persons having no employer-employee relationship, the surrender value of the policy or the sum received under the policy be taken as income from other sources and taxed accordingly."

(v) Here, it may be mentioned that no premium was paid by the appellant after assignment of the Keyman policy by the firm to him. The whole arrangement is nothing but to avoid payment of due taxes on the surrender value. The firm can itself surrender the policy but instead it was assigned to the appellant to avoid payment of taxes. This objective becomes very obvious looking to the fact that the policy was assigned to the appellant on 25.03.2008 and the due date for payment of premium was 30.03.2008, but no premium was paid by the appellant after assignment of the policy to him. The issue under consideration is squarely covered by the decision of Hon'ble ITAT, Chandigarh Bench in the case of DCIT Vs Manjit Kumar (2014) 40 CCH 0711 Asr Trib / (2014) 65 SOT 0117 (Amritsar).

(vi) In view of the above discussion, it is held that the AO was justified in making addition of Rs.44.78 Lac on account of assignment of Keyman Insurance Policy to the appellant during the year under consideration."

4. We now refer to the contentions advanced by the Id AR. The Id AR of the assessee has submitted that assessee has challenged the action of Ld. CIT(A) in confirming the addition of Rs.44,78,000/- made by Ld. AO being the surrender value on the date on which policy was assigned in the favour of assessee. In this regard, it was submitted that to be taxable, a sum has to be have character of income within the meaning of section 2(24). So far as taxability of "Keyman Insurance Policy" is concerned, in case of employer the same could be u/s 28(vi), however in respect of employee it can be either

under "Salaries" as "Profits in lieu of salary" or u/s 56(2)(iv). It is pertinent to note here that whatever the case may be, taxability arises only if the same is covered by clause (xi) of section 2(24), which reads as under:

Sec. 2 (24) (xi)

"Any sum received under the Keyman Insurance Policy including the sum allocated by way of bonus on such policy."

As is evident from the definition of income as provided in section 2(24), it is crystal that only if any sum is "received" under Keyman Insurance Policy, the same can be treated as income and not otherwise as there is no ambiguity in the language of law and the intention of legislature is very clear.

4.1 It was further submitted that Ld. CIT(A) in his order passed for A.Y. 2009-10 observed that as the policy was assigned on 25.03.2008, it was required to be taxed in the hands of assessee u/s 28(v) r.w.s. 2(24)(xi) during A.Y. 2008-09, as the firm had regularly been claiming the deduction on payment of premium paid of policy u/s 37(1). Further Ld. CIT(A) held that amount of 44.78 lacs was income u/s 2(24)(xi) in A.Y. 2008-09 and would not be exempt u/s 10(10D) in A.Y. 2008-09. Based on the above stated observation of Ld. CIT(A), the assessment was reopened. The above observation of Ld. CIT(A) is factually incorrect as both section 2(24)(xi) as well as 28(vi) being with "any sum received....." and in this case no sum was received by assessee on 25.03.2008. Further, since the firm had availed deduction u/s 37(1) in respect of premiums paid, the same has to be taxed in

the hands of firm and could not be taxed in the hands of assessee by any stretch of imagination. Thus, remedial action, if any, could be taken in the hands of firm which has not been done. In other words, Ld. AO as well as CIT(A) accepted the fact that as soon as policy is assigned in favour of assessee the same no longer remains "Keyman Insurance Policy" and thus there was no dispute regarding exemption claimed in A.Y. 2009-10.

4.2 It was further submitted that so far as the impugned assessment year 2008-09 is concerned, there is no question of denial of exemption as no exemption was claimed rather amount was receivable at Rs.44.78 lacs (being the surrender value at the time of assignment), which does not fulfil the condition of being characterized as "Income" itself and it is a notional figure which may be received only when the policy was surrendered by the firm and not by assessee.

4.3 It was submitted that this was possibly a loophole in the law which was noticed by the Government and accordingly plugged by making amendment in Sec 10(10D) of Income Tax Act, 1961 by Finance Act, 2013 in terms of amendment of Explanation 1 by adding the words "and includes such policy which has been assigned to a person at any time during the term of the policy, with or without any consideration" w.e.f. 01.04.2014 and therefore this amendment is prospective in nature and cannot be applied retrospectively.

4.4 The legislative intention behind such amendment is clear from Memorandum explaining the provisions in Finance Bill, 2013, relevant extracts of which are as under [reported in 351 ITR (St.) 191].

4.5 Further Explanatory Notes to the provision of Finance Act, 2013 vide circular No.03/2014 dated 24th January, 2014 clarify that the above amendment are prospective i.e. applicable for assessment year 2014-15 and onwards.

4.6 It was accordingly submitted that after the aforesaid amendment, what is taxable in respect of Keyman Insurance Policy for the year under consideration is the amount received and nothing else. In other words, nothing is taxable at the time of assignment since there is no receipt of amount in such event.

4.7 In support, the Id AR placed reliance on the decision of Bombay High Court in case of **CIT, Central-III, Mumbai Vs. Prashant J. Agarwal 243 Taxman 119** wherein the head notes reads as under:

"Section 10(10D) read with section 17, of the Income Tax Act, 1961 – Insurance policy, sum received under (Keyman Insurance Policy) – Assessment Year 2010-11 – Whether amendment in Explanation 1 to section 10(10D) has specifically come into force only from 01.04.2014; it would not govern / apply to amounts received under Keyman Insurance Policy prior to assessment year 2014-15 so as to make receipts taxable – Held, yes."

4.8 It was further submitted that the word "received" is quite clear in contradiction to word "accruing or arising". In the case of Keyman Insurance Policies, no income shall accrue or arise before the date of actual payment/receipt. Reliance is placed on the decision of Supreme Court in the case of CIT V/s. Ashok Bhai Chiman Bhai (1965) 56 ITR 42 (S.C.) wherein the Supreme Court analyzing the provisions of Sec 5 of Income Tax Act, 1961 has observed as under:

"Income is said to be received when it reaches the assessee: when the right to receive the income becomes vested in the assessee, it is said to accrue or arise."

4.9 Reliance was also placed on the following decisions to explain the meaning of word "receipt or received":

(a) CIT vs. Dharamdas Hargovandas (1961) 42 ITR 427 (SC):

The words 'is received' are not terms of art and their meaning must receive colour from the context in which they are used. In the context of section 5(1)(a), these words only refer to the first receipt.

(b) CIT. Vs. Govind Prasad Prashbu Nath (1988) 35 Taxman 513/171 ITR 417 (All):

Neither, the word "income" nor the words 'is received', 'accrues' and 'arises' have been defined in the Act. Income can be said not to have resulted at all if there is neither accrual nor receipt of income. For the purposes of the Act, income can be said to be received when it reaches the assessee but it can be said to have accrued or arisen only when the right to receive the said income becomes vested in the assessee.

..... The words accrue and arise do not mean actual receipt of profits or gains. Both these words are used in contradistinction to the word 'receive' and indicate a right to receive.....

- (c) CIT vs. Shinwa Kaium Kaisha Ltd. (1986) 26 Taxman 277 (Cal.):

The expression 'receipt has not been defined in the Act but the meaning of the expression 'receipt' has been made clear in sections 5 and 9, it appears that the expressions 'accrued' or 'arisen' or 'received' or 'deemed to be received' have been used in the Act and they must be given their plain meaning in the absence of any particular definition.

- (d) Seth Pushalal Mansinghla (P) Ltd. vs. CIT (1967) 66 ITR 159 (SC):

..... The word 'accrue' and arise' do not mean actual receipt of the profits or gains. Both these words are used in contradistinction to the word 'receive' and indicate a right to receive.

- (e) Seth Madan Lal Modi vs. CIT (2003) 126 Taxman 129/261 ITR 49 (Delhi):

Dealing with the scope of total income, section 5 provides that the total income of a person, who is resident, includes all income from whatever, source derived and becomes chargeable to tax either when it is received or is deemed to be received in India by him or when it 'accrues' or 'arises' or is deemed to accrue or arise to him in India during the previous year. In other words, receipt of income is not the sole test of taxability. Under this section, the charge is both on receipt and accrual basis. The expressions 'is received', 'accrues' or 'arises' as appearing in the section are three distinct terms but are not defined.

"Income is said to be received when it actually reaches the assessee's hands:....."

- (f) Kno Werx Education (India) (P) Ltds., In re (2008) 170 Taxman 98 (AAR – New Delhi):

'Accrue', 'arise' and 'is received' are three distinct expressions used in section 5 2). So far as receipt of income is concerned, there can be no difficulty; it conveys a clear and distinct meaning. The expressions, 'accrue' and 'arise', though do not mean exactly the same thing, yet have been used in the Act to denote the same idea in contradistinction to the word 'receive'. The expression, 'accrue' or 'arise' does not mean an actual receipt of income, but indicates a stage anterior to the point of time when the income has become receivable. They indicate that the assessee has acquired the right to receive the income, though it may be received by him later. On the other hand, income is paid to be received when it reaches the assessee.

4.10 It was further submitted that the Ld. CIT(A), while rejecting the appeal of assessee relied upon decision of Hon'ble ITAT Chandigarh Bench in the case of DCIT vs. Manjit Kumar (2014) 65 SOT 0117, wherein it has been held that since the assignment took place few days prior to due date of premium and no premium was paid by assessee and policy was surrendered thereafter, proceeds of which were claimed exempt, thus it was a colourable method to evade tax in view of Supreme Court decision in the case of McDowell & Co. 154 ITR 148. In this regard, attention of the Hon'ble Bench is invited to the decision of the Hon'ble Delhi High Court delivered in the case of CIT Vs. Rajan Nanda reported in 349 ITR Page 8 wherein this issues has been elaborately discussed by the Hon'ble High Court and it has been held that "No income

could be charged to tax in the hands of the employee on the assignment of the policy as no amount was received. The Hon'ble Court further held that law is very clear. Every assessee has right to plan its affairs in such a manner which may result in payment of leased tax possible, albeit, inconformity with the provisions of Act. It is also permissible to the assessee to take advantage of gaping holes in the provisions of the Act. The job of the court is to simply look at the provision of the Act and to seek whether these provisions allow the assessee to arrange their affairs to ensure lesser payment of tax. If that is permissible, no further scrutiny is required and this would not amount to tax evasion.

It was submitted that only after realizing this loop hole in the Act vide Finance Act, 2013 amendment was brought into the statute by amending the definition of Keymen Insurance Policy given in explanation 1 to section 10(10D) of the Income Tax Act, 1961.

4.11 It was further submitted that as per the principles of Interpretation of statutes when the words of a statute reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. Accordingly, use of word 'received' in sec 2 (24) (xi) should carry literal meaning of the term 'received' as "actual receipt" or when used with the word "sum" or to say "sum received", it would mean "inflow of money" and nothing more. It is therefore, submitted that since the assessee has not received any sum on the assignment of Keyman Insurance Policy on

25.03.2008, nothing is taxable in the Assessment Year 2008-09 under the provisions of Income Tax Act, 1961. In the circumstances, it was submitted that the addition of Rs.44,78,000/- made by the Ld. AO is bad in law and therefore, the same deserves to be deleted.

5. The Id DR vehemently argued the matter and relied on the findings of the lower authorities.

6. We have heard the rival contentions and pursued the material available on record. The AO has brought to tax the surrender value of the Keyman Insurance policy in the hands of the appellant as the assignment in favour of the appellant has happened during the year. Though the actual surrender and receipt of amount from the insurance company has happened during the subsequent financial year 2008-09, given the fact that the policy was assigned by M/s Cheer Sagar in favour of the appellant during the financial year 2007-08, the surrender value computed as on the date of assignment has been determined at Rs 44.78 lacs and the same has been brought to tax in the hands of the appellant. The question that arises for consideration is whether the taxable event is the date of assignment of the policy which falls in the year under consideration or the date when the amount was actually received by the appellant on actual surrender of the policy which falls in the subsequent financial year.

6.1 Here, it would be relevant to note that the legislature has brought in substantive amendment through the Finance Act, 1996 in section 2(24)(xi),

section 10(10D), Section 17(3)(ii), Section 28(vi) and Section 56(2)(iv) of the Act in respect of Keyman Insurance Policy.

6.2 Section 2(24)(xi) provides that "any sum received under the keyman insurance policy including the sum allocated by way of bonus on such policy."

Section 10(10D) exempts any sum received under a life insurance policy other than a Keyman insurance policy including the sum allocated by way of bonus on such policy.

Explanation 1 to clause 10(10D) defines a Keyman insurance policy to mean 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.

Section 17(3)(ii) provides that any payment other than any payment referred to in clause (10), clause (10A), clause (10B), clause (11), clause (12) , clause (13) or clause (13A) of section 10, due to or received by an assessee from an employer or a former employer or from a provident or other fund, to the extent to which it does not consist of contributions by the assessee or interest on such contributions or any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

Section 28(vi) provides that "any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy."

Section 56(2)(iv) provides for taxability of income referred to in section 2(24)(xi) if it is not taxed under the head "profits and gains from business/profession or under the head "salary".

6.3 On perusal of all of the above provisions, it is noted that the legislature has used the words "any sum received under the Keyman Insurance policy". In the context of these provisions and in particular, section 2(24)(xi) read with section 28(vi) of the Act, the same cannot be given a meaning other than the sum of money under the Keyman Insurance policy which was actually received by the appellant. In this regard, we refer to the **Hon'ble Supreme Court** decision in case of **CIT vs Ashok Bhai Chiman Bhai (56 ITR 42)**, wherein the following legal proposition has been laid down:

"Under the Income tax Act, income is taxable when it accrues, arises or is received, or when it is by fiction deemed to accrue, arise or is deemed to be received. Receipt is not the only test of chargeability to tax; if income accrues or arises it may become liable to tax. For the purposes of this case, it is unnecessary to dilate upon the distinction between income "accruing" and "arising". But there is no doubt that the two words are used to contra-distinguish the word "receive". Income is said to be received when it reaches the assessee; when the right to receive the income becomes vested in the assessee, it is said to accrue or arise."

6.4 In the context of provisions relating to Keyman Insurance Policy, the **Hon'ble Delhi High Court** in case of **CIT vs Rajan Nanda (349 ITR 8)** has examined each of the above provisions as stated above (section 2(24)(xi), section 10(10D), Section 17(3)(ii), Section 28(vi) and Section 56(2)(iv)) and has held that the legislature in its wisdom thought to tax only that payment which is actually received by the employee assessee under the keyman insurance policy and in para 46, has confirmed the findings of the Tribunal by stating that:

"We, thus, agree with the opinion of the learned Tribunal that the tax event did not occur, as no such amount was received at the time of assignment of the policy by the company as employer to the director assessee, as employee. It is trite that income can be charged only if it comes under the heads of section 14."

6.5 In light of above discussions, in the instant case, the taxable event will occur when the amount was actually received by the appellant on actual surrender of the Keyman Insurance policy. The surrender of the policy and the actual receipt of money by the appellant under the Keyman Insurance Policy has admittedly not happened during the year under consideration but has happened only in the subsequent financial year. Hence, no amount can be brought to tax in the year under consideration. In our view, the pendulum of taxability will start titling from the firm towards the appellant as soon as the policy has been assigned by the firm in favour of the appellant but the

taxability will only be fastened on the appellant when he actually receives the surrender value. In other words, the assignment alone cannot be a basis for bringing to tax the surrender value but the act of assignment along with actual receipt of money under the policy would be the correct basis for bringing to tax such amount in the hands of the appellant. This is the way the Legislature in its wisdom has worded these charging provisions and we have to read it accordingly.

6.6 We now refer to Circular No.792 dated 18.02.1998 issued by the CBDT in the context of Finance Act (No 2), 1996 explaining the tax treatment of Keyman Insurance Policy and in particular, para 14.4 of the said Circular which has been invoked by the Id CIT(A) which reads as under:

"14.4 the Act also lays down that the sums received by the said organization on such policies, be taxed as business profit; the surrender value of the policy, endorsed in favour of the employee (Keyman), or the sum received by him at the time of retirement be taken as "Profits in lieu of salary" for tax purpose; and in the case of other persons having no employer-employee relationship, the surrender value of the policy or the sum received under the policy be taken as income from other sources and taxed accordingly."

6.7 The above circular has to be read in the context of the provisions relating to Keyman insurance policy which has been introduced by the Finance Act, 1996. As we have stated above, the assignment of the policy alone

cannot be a basis for bringing to tax the surrender value but the act of assignment along with actual receipt of money under the policy would be the correct basis for bringing to tax such amount in the hands of the appellant. In our view, the above circular nowhere suggests that the actual receipt of money under the policy is not a pre-requisite for defining the taxable event. Rather, the circular envisages a situation where the employee doesn't continue the policy and doesn't pay further premium and he gets only the surrender value. The second situation which has been envisaged in the circular is that employee continues the policy and pays subsequent premiums till his retirement, and he gets full amount on maturity/retirement. In both these situations, the taxable event remains to be actual receipt of money either at the time of surrender of the policy or at the time of maturity/retirement. The above circular therefore have to be read in the context of the express provisions in the statute as provided by the legislature and doesn't support the case of the Revenue.

6.8 Regarding the other contention of the Revenue that the whole arrangement of assignment is nothing but to avoid payment of due taxes on the surrender value as the firm can itself surrender the policy but it was assigned to the appellant to avoid payment of taxes. In this regard, it is noted that similar contention was raised before the Hon'ble Delhi High Court in case of **Rajan Nanda (Supra)** and the Hon'ble High Court has negated the said contentions by holding as under:

"54. No doubt, the parties here, viz., the company as well as the individual taken huge benefit of these provisions, but it cannot be treated as the case of tax evasion. It is a case of arranging the affairs in such a manner as to avail of the state exemption as provided in section 10(10D) of the Act. Law is clear. Every assessee has right to plan its affairs in such a manner which may result in payment of least tax possible, albeit, in conformity with the provisions of Act. It is also permissible to the assessee to take advantage of the gaping holes in the provisions of the Act. The job of the court is to simply look at the provisions of the Act and to see whether these provisions allow the assessee to arrange their affairs to ensure lesser payment of tax. If that is permissible, no further scrutiny is required and this would not amount to tax evasion. Benefit inured owing to the combined effect of a prudent investment and statutory exemption provided under section 10(10D) of the Act, the section does not envisage of any bifurcation in the amount received on maturity on any basis whatsoever. Nothing can be read in section 10(10D) of the Act, which is not specifically provided because any attempt in that behalf as contended by the Revenue would be tantamount to legislation and not interpretation."

6.9 Further, it is noted that the legislature has taken note of the said gaping holes in the taxing provisions and has brought in suitable amendment by way of the Finance Act, 2013. In this regard, useful reference can be

drawn to the memorandum explaining the Finance Bill 2013 which reads as under:

"The existing provisions of clause (10D) of section 10, inter alia, exempt any sum received under a life insurance policy other than a keyman insurance policy. Explanation 1 to the said clause (10D) defines a keyman insurance policy to mean 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.

It has been noticed that the policies taken as keyman insurance policy are being assigned to the keyman before its maturity. The keyman pays the remaining premium on the policy and claims the sum received under the policy as exempt on the ground that the policy is no longer a keyman insurance policy. Thus, the exemption under section 10(10D) is being claimed for policies which were originally keyman insurance policies but during the term these were assigned to some other person. The Courts have also noticed this loophole in law.

With a view to plug the loophole and check such practices to avoid payment of taxes, it is proposed to amend the provisions of clause (10D) of section 10 to provide that a keyman insurance policy which has been assigned to any

person during its term, with or without consideration, shall continue to be treated as a keyman insurance policy.

The above amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to assessment year 2014-15 and subsequent assessments years."

6.10 In light of above and especially in light of decision of the Hon'ble Delhi High Court in Rajan Nanda (supra), it cannot be held that the arrangement has been entered into between the firm and the appellant with a view to avoid payment of taxes. As we have held above, the taxable event is the year of actual receipt of the surrender value and the Revenue will be well within its rights to bring to tax such receipt on surrender of the Keyman Insurance policy as per law prevailing for the said year. In fact, it is noted that the Revenue has brought to tax the actual surrender value in the year of surrender in subsequent AY 2009-10 which however has not found favour with the Id CIT(A) and the same has been held eligible for exemption by the Id CIT(A) under section 10(10D) of the Act. The fact that the amount has been held eligible for exemption in the year of happening of the taxable event cannot be basis to hold that the taxable event can be shifted to another year or to hold that the arrangement has been entered into between the firm and the appellant with a view to avoid payment of taxes.

6.11 In light of above discussions and in the entirety of the facts and circumstances of the case, we are of the view that even though the assignment has happened during the year, surrender value as computed as on the date of assignment cannot be brought to tax in absence of actual receipt of the surrender value during the year under consideration. In the result, ground no. 2 of the assessee's appeal is allowed.

6.12 Having decided the issue on merit, we don't think it would be necessary to examine the alternate ground no. 3 relating to the non-taxability of surrender value in view of payment of FBT by the firm or the legality of proceedings as challenged in ground no. 1 of the assessee's appeal. In the result, the same become infructuous and are hereby dismissed.

In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 24/03/2017.

Sd/-
(KUL BHARAT)
न्यायिक सदस्य / Judicial Member

Sd/-
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Jaipur

Dated:- 24/ 03/2017.

SANJEEV

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Ravi Poddar C-17, SJS Highway, Bani Park, Jaipur.

2. प्रत्यर्थी / The Respondent- The ACIT, Circle-3, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File (ITA No.130/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar