आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ,एफ,मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "F", MUMBAI

श्री जोगिन्दर सिंह, न्यायिक सदस्य **एवं**

श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष

Before Shri Joginder Singh, Judicial Member, and
Shri Ashwani Taneja, Accountant Member

ITA NO.9085/Mum/2010
Assessment Year: 2007-08

M/s Four Dimensions Securities (India) Ltd. 209-Arcadia building 2nd Floor Nariman Point, Mumbai-400021	**बनाम**/ Vs.	Addl. Commissioner of Income Tax, Range-4(1), 6th Floor, Aayakar Bhavan, Mumbai-400020
(निर्धारिती /Assessee)		(राजस्व /Revenue)
PAN. No.AAACF1734F		

ITA NO.406/Mum/2011
Assessment Year: 2007-08

Addl. Commissioner of Income Tax, Range-4(1), 6th Floor,Aayakar Bhavan, Mumbai-400020	**बनाम**/ Vs.	M/s Four Dimensions Securities (India) Ltd. 209-Arcadia building 2nd Floor Nariman Point, Mumbai-400021
(राजस्व /Revenue)		(निर्धारिती /Assessee)
		PAN. No.AAACF1734F

निर्धारिती **की ओर से /** Assessee by	Shri Anuj Kishnadwala
राजस्व **की ओर से** / Revenue by	Mr. Shridhar -DR

सुनवाई की तारीख **/ Date of Hearing :**	**23/12/2015**
आदेश की तारीख /**Date of Order:**	**01/01/2016**

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The assessee as well as the Revenue is in cross appeal for Assessment year 2007-08 challenging the order dated 28/10/210 of the ld. First Appellate Authority, Mumbai.

2. First, we shall take up appeal of the assessee (ITA No.9085/Mum/2010), wherein, first ground pertains to confirming the disallowance u/s 14A of the Income Tax Act, 1961 (hereinafter the Act) to the extent of Rs.31,18,078/-. During hearing of this appeal, the crux of arguments advanced by Shri Anuj Kishnadwala, ld. counsel for the assessee, is that Rule-8D of the rules is not applicable to the present appeal being the Assessment year involved is 2007-08 by further arguing that a reasonable disallowance may be made by inviting our attention to order in ITA No.6711/Mum/2011 (2008-09) which was affirmed by Hon'ble jurisdictional High Court in ITA No.1131 of 2013, order dated 13/04/2015. This factual matrix was consented to be correct by ld. DR, Mr. Shridhar. Our attention was also invited to page-5 of the balance sheet.

2.1. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee is a corporate member of NSE, engaged in the business of broking in shares and securities and trading in shares and securities as well as futures and options segments. The ld. Assessing Officer determined the

disallowance of expenses u/s 14A r.w.r.8D of the rules to the tune of Rs.1,20,18,526/- with respect to claimed exempt dividend income of Rs.87,33,208/-, earned during the year. On appeal, before the ld. Commissioner of Income Tax (Appeals), the disallowance u/s 14A was confirmed to the extent of Rs.31,18,078/-. The assessee is in further appeal before this Tribunal.

If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the ld. respective counsel, if kept in juxtaposition and analyzed, under the facts narrated hereinabove, so far as, application of Rule-8D is concerned, we are of the view, that Rule-8D is not applicable being the assessment year involved is 2007-08. We have also perused the balance sheet available at page-5 of the paper book as on 31/03/2007 (schedule-F) with respect to investment and further the schedule forming part of the balance sheet (page-3 of the paper book) as on 31/03/2007. Without going into much deliberation, we note that the Tribunal vide order dated 14/09/2012 in the case of DCIT vs M/s India Advantage Securities Ltd. (ITA No.6711/Mum/2011) for A.Y. 2008-09 has duly deliberated upon the decision in M/s American Express Bank Ltd. (ITA No.5904 & 6022/Mum/2000), Hon'ble Karnataka High Court in CCL Ltd. vs JCIT (250 CTR 291), Ganjam Treading Company Ltd. (ITA No.3724/Mum/2005) Order dated 20/07/2012 along with

the decision of the Special Bench in the case of Daga Capital Management Pvt. Ltd., etc. by holding that the disallowance of interest in relation to dividend received from treading shares cannot be made. It is also noted that the assessee has claimed that no expenses were incurred for earning dividend income, during the year as the investment in shares was made out of interest free funds available with the assessee and not out of borrowed funds. Without going into much deliberation, we direct the Assessing Officer to examine the claim of the assessee and after ascertaining the true fact decide in accordance with law by keeping in view the ratio laid down in the cases cited by the ld. counsel for the assessee and any other case law, if any, cited during remand proceedings. The assessee be given opportunity of being heard with further liberty to furnish evidence, if any, to substantiate its claim. This ground of the assessee is allowed for statistical purposes.

3. The next ground, raised by the assessee pertains to confirmation of disallowance on account of Keyman Insurance Premium amounting to Rs.60,000/-. At the outset, the ld. counsel for the assessee, contended that this issue is covered in favour of the assessee by the decision of the Tribunal dated 28/10/2015, in the case of assessee itself for A.Y. 2005-06 and 2006-07. This factual matrix was consented to be correct by the ld. DR.

3.1. We have considered the rival submissions and perused the material available on record. We find that identically, the Tribunal in the case of assessee itself vide aforesaid order dated 28/10/2015 held as under:-

> "5. The last ground, in this appeal, pertains to confirming the disallowance of Rs.84,88,660/- made on account of Keyman Insurance premium. The crux of argument on behalf of the assessee is that impugned issue is covered by the decision of the Tribunal in ITA No.3694/Mum/2009 and ITA No.6016/Mum/2008. Our attention was invited to the resolution passed by the shareholders on 29/03/2003, resolution was passed by the Board of Directors on 11/03/2005, inviting our attention to para 10 (page 18) of the assessment order. On the other hand, the ld. DR, defended the conclusion arrived at by the ld. Assessing Officer as well as Commissioner of Income Tax (Appeals) by contending that the payment was made on account of insurance cover taken for Mr. Rohit Kothari, an employee, drawing salary of Rs.80,000 per month.
>
> 5.1. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the ld. respective counsel, if kept in juxtaposition and analyzed, the undisputed fact is that Mr. Rohit Kothari is an employee of the assessee and the share holders passed a resolution on 29/03/2003 appointed Mr. Rohit Kothari, relative of the

Director of the company to hold and continue as Chief Executive Officer in terms of conditions contained in service agreement and the Board in its meeting held on 11/03/2005 rectified and to take Keyman Insurance cover for Shri Rohit Kothari, CEO of the assessee company. Without going into much deliberation, we note that the impugned issue is covered by the decision of the Tribunal in the case of ACIT vs M/s Baader Schulz Laboratories Shantivilla Shantivan Co-op. Hsg. Soc. (ITA No. 6224/Mum /2011), order dated 01/07/2015, which is reproduced hereunder for ready reference and analysis:-

"The Revenue is aggrieved by the impugned order dated 20/06/2011 of the ld. First Appellate Authority, Mumbai, on the ground, deleting the addition of Rs.31,25,000/- made on account of payment towards keyman insurance premium, taken on the life of the partners.

2. During hearing of the appeal, Dr. Yogesh Kamat, ld. DR, contended that the partners, in respect of whom, the insurance premium was paid, were neither managing partners nor working partners as they did not receive any premium from the assessee firm, ignoring the fact that the benefit would not accrue to the assessee firm. On the other hand, Shri Pradeep D. Shah, ld. counsel for the assessee, defended the conclusion arrived at in the impugned order.

2.1. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee is a partnership firm engaged in the

business of manufacturing of poultry and cattle feeds, filed its return dated 30/09/2008. The assessee company took insurance policy on the life of the partners and claimed deduction on the premium paid for such policy. It was claimed before the Assessing Officer that the premium paid towards keyman insurance policy is deductible by placing reliance upon circular no. 762 dated 18/02/1998. The ld. Assessing Officer denied the claim against which the assessee went in appeal before the ld. Commissioner of Income Tax (Appeals). The ld. Commissioner of Income Tax (Appeals) examined the claim and found that the amount of Rs.31,25,000/- was paid in respect of ICICI prudential keyman insurance policies (Policy No.01615183, 01615296 and 01051293). The ld. Commissioner of Income Tax (Appeals) decided in favour of the assessee against which the Revenue is in appeal before this Tribunal. We find that the persons for whom the keyman insurance policy was taken and consequent premium was paid are closely connected with the business of the assessee firm. Keyman insurance policy means a life insurance policy taken by a person for the life of another person who is or was the employ of the first mentioned person or is was connected in any manner whatsoever with the business of the first mention persons, who is paying for such person, who is closely connected with the business of the payer. The ratio laid down in CIT vs B.N. Exports (190 taxman 325), the Hon'ble jurisdictional High Court held that the keyman insurance premium paid only policies of the lives of the partners is an allowable deduction. In the present appeal, the ld. Assessing Officer did not allow the keyman

insurance premium broadly on two counts (a) the partners in respect of whom insurance premium was paid were neither managing partners nor working partners as they did not receive any remuneration from the firm and (b) the policies were assigned to the partners and the benefit would not accrue to the assessee firm. However, if it is analyze, the keyman insurance premium paid in respect of any person, who is connected with the business of the assessee would be treated as keyman. There is no requirement, that such person should be a working partner or managing partner. The Hon'ble Delhi High Court in CIT vs Rajan Nanda (2012) 349 ITR 8 (Del.) held that premium on keyman insurance is a deductible business expenditure u/s 37 of the Act. The relevant portion of the order is reproduced hereunder for ready reference:-

The assessee took keyman insurance policies on the lives of two employees/directors in different years. After paying premium for a certain period, they were assigned to the two employees/directors receiving the surrender value from them. For the remaining period of the policies, the insurance premia were paid by the assignees. The Assessing Officer held that since the expenditure incurred on the premia paid on the keyman insurance policies was much more than the surrender value realized by the assessee on the assignment of these policies to the employees/directors, the amount paid by the assessee as premia on the policies could not be treated as expenditure incurred wholly and exclusively for the business purpose of the assessee. Therefore, he disallowed the premia paid in different years which was claimed as business expenditure. The Commissioner (Appeals) and the Tribunal, however, held that the amount was deductible.

In so far as the employees/directors were concerned, the question was whether the difference between the actual premium paid and the

surrender value given by them was to be treated as "salary" in their hands and was to be taxed accordingly and whether the maturity value received by them on the policy was to be taxed or not. The Assessing Officer held that the directors had taken a substantial benefit by paying only the surrender value as against the much higher amount of premia paid by the assessee. The difference between the premia paid by the assessee and the surrender value paid by them was treated as benefit to be taxed in their hands. The Tribunal held that merely by assignment in a particular year when the policy was still continuing, no taxable event had taken place and, therefore, no tax could be charged. It had also held that the amount in question could not be taxed as perquisite so as to fall within the scope of section 17(3) . The Tribunal took note of the certificate obtained by the assessee from the LIC whereby it had certified that a keyman insurance policy after assignment assumed the status of an ordinary insurance policy. The Tribunal while giving requisite relief brought to tax the amount of the surrender value at the time of assignment subject to verification by the Assessing Officer. On appeal to the High Court :

Held, dismissing the appeals, (i) that the Department had itself allowed the expenditure incurred on the premium paid for the keyman insurance policies in previous years as business expenditure under section 37 of the Act. Right from 1991-92 to 1993-94 and thereafter even in respect of the assessment year 1997-98, the expenditure was allowed. Thereafter, the expenditure was disallowed, but again the claim was accepted for the assessment years 2001-02 and 2002-03. The principle of consistency would, therefore, be applicable in such a case. The object of a keyman insurance policy is to enable business organizations to insure the life of a key man in order to protect the business against the financial loss which may occur in the likely eventuality of his premature death. Such an expenditure is treated as business expenditure by the Department and recognised as such in circular dated February 18, 1998. The circular is binding on the Income-tax Department, which categorically stipulates that premium on keyman policy should be allowed as business expenses. Merely because the policy was assigned after some time that would not mean that the expenditure incurred

in the first instance would lose the flavour of "business expenditure". The premia were deductible as business expenditure.

(ii) That the Explanation to section10(10D)gives the meaning to "keyman insurance policy" and only that sum received under this policy would be treated as income. Sub-clause(ii)of clause(3)of section17taxes "any sum received in a keyman insurance policy". The word "received" assumes significance. The Legislature in its wisdom thought to tax only that payment, which is received by the employee-assessee under the keyman insurance policy. The purport of sub-clause(ii)is altogether different. Such an amount due or received by the assessee has to be : (a) before joining any employment ; or (b) after cessation of its employment. No such contingency occurred when the keyman insurance policy was assigned by the company in favour of the director-assessee. 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. The amounts were not taxable in the hands of the directors.

(iii) That there is no prohibition on the assignment or conversion of keyman insurance under the Act. Once there is an assignment, it leads to conversion and the character of the policy changes. The insurance company had itself clarified that on assignment, it does not remain a keyman policy and gets converted into an ordinary policy. Hence, the policy in question was not a keyman insurance policy and when it matured, the advantage drawn therefrom was not taxable.

In another case of CIT vs Gem Art (2012) 208 taxman 47 (Guj.), wherein, premium was paid by the firm for partners under keyman insurance policy, the Hon'ble High Court treated it as revenue expenditure. Respectfully following the aforesaid decisions from Hon'ble Delhi and Gujarat High Courts, we affirm the stand of the ld. Commissioner of Income Tax (Appeals), thus, appeal of the Revenue is dismissed.

Finally, the appeal of the Revenue is dismissed."

5.2. In view of the above, we are expected to analyse the provision of the Act. Explanation to section10(10D)gives the meaning to "keyman insurance policy" and only that sum received under this policy would be treated as income. Sub-clause(ii)of clause(3)of section17taxes "any sum received in a keyman insurance policy". The word "received" assumes significance. The Legislature in its wisdom thought to tax only that payment, which is received by the employee-assessee under the keyman insurance policy. The purport of sub-clause(ii)is altogether different. Such an amount due or received by the assessee has to be : (a) before joining any employment ; or (b) after cessation of its employment. No such contingency occurred when the keyman insurance policy was assigned by the company in favour of the director-assessee. 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. The amounts were not taxable in the hands of the directors.

In the case of CIT vs Gem Art (2012) 208 taxman 47 (Guj.), wherein, premium was paid by the firm for partners under keyman insurance policy, the Hon'ble High Court treated it as revenue expenditure. Respectfully following the aforesaid decisions from Hon'ble Delhi High Court (discussed in the aforesaid order) and Gujarat High Court, we find merit in the contention of the assessee. So far as, the contention of the ld. DR that the impugned issue is covered in favour of the Revenue in Taparia Tools Ltd. vs

JCIT 260 ITR 102 (Bom.). This decision has been reversed by Hon'ble Apex Court in Taparia Tools vs JCIT 372 ITR 605 (SC), order dated 23/03/2015, thus, this ground of the assessee is allowed."

We note that the Tribunal on identical issue has made an elaborate discussion and then decided the issue in favour of the assessee. Following the aforesaid decision, we allow this ground of the assessee.

4. The next ground raised by the assessee pertains allocating the data based assessed charges in proportion to the turnover of share trading/broking income as against the Act of the assessee. It was contended by the ld. counsel that identically, the Tribunal vide aforesaid order dated 28/10/2015, in the case of the assessee itself send the issue to the file of ld. Assessing Officer. This factual matrix was consented to be correct by the ld. DR.

4.1. We have considered the rival submissions and perused the material available on record. In view of the above, we are reproducing hereunder the relevant portion from the aforesaid order of the Tribunal for ready reference:-

"13. *The last ground pertains to confirming the allocation of Keyman Insurance Premium data base access charges, travelling, conveyance, legal and professional fee to share trading business for the purposes of computing rebate u/s 88E of the Act. The ld. counsel for the assessee invited our attention to the direction by the ld. Commissioner of Income Tax (Appeals) to the ld. Assessing Officer. It*

was contended that the Assessing Officer may be directed to follow the directions of the ld. Commissioner of Income Tax (Appeals). The ld. DR placed reliance upon the order of the ld. Commissioner of Income Tax (Appeals).

13.1. We have considered the rival submissions and perused the material available on record. We find that from Para 7 onwards (page-5) of the order of the ld. Commissioner of Income Tax (Appeals), the issue has been discussed and finally Assessing Officer was directed to verify the nature of expenditure and then allocate such expenses and recomputed the rebate u/s 88E of the Act. We find no infirmity in the direction of the Commissioner of Income Tax (Appeals), therefore, the Assessing Officer is directed to follow the direction of the ld. First Appellate Authority and decide in accordance with law."

In view of the above, this ground is sent to the file of the ld. Assessing Officer to examine the claim of the assessee and decide in accordance with law. The assessee be given opportunity of being heard with further liberty to furnish evidence, if any, to substantiate its claim, consequently, this ground is allowed for statistical purposes.

Finally, the appeal of the assessee is partly allowed for statistical purposes.

5. Now, we shall take up appeal of the Revenue (ITA No.406/Mum/2011) (A.Y. 2007-08), wherein, only ground raised pertains to deleting the penalty of Rs.10,000/- on

violation of bye-laws of the stock exchange which are statutory in character, thus, amounts to infringement of law, ignoring the fact that the penalty was imposed under SEBI Rules, 1995 which has a binding character.

5.1. During hearing, the ld. DR, advanced arguments which is identical to the ground raised by contending that the assessee violated the bye-laws of the stock exchange which are statutory in character, thus, the penalty was imposed as per SEBI Rules. The ld. Commissioner of Income Tax (Appeals), consequently, erred in deleting the penalty. On the other hand, the ld. counsel for the assessee defended the conclusion arrived at in the impugned order by inviting our attention to page-26, para 7 and 7.1 of the order of the Tribunal dated 28/10/2015 (ITA No. 790/Mum/2009) etc.

5.2. We have considered the rival submissions and perused the material available on record. In view of the above, we are reproducing hereunder the relevant portion of the aforesaid order for ready reference:-

> *"7. So far as, grounds no 8 to 12 are concerned, these were claimed to be covered by the decision from Hon'ble jurisdictional High Court in CIT vs Angel Capital & Debit Market Ltd. (ITA No.475 of 2011) order dated 28/07/2011. This factual matrix was not controverted by ld. DR.*
>
> *7.1. We have considered the rival submissions and perused the material available on record. We find that so far as deleting the*

addition made on account of penalty of Rs.76,410/-, on violation of bye-laws of stock exchange, penalty imposed under SEBI Rules 1995 is concerned, the Hon'ble High Court held that such payments were not on account of infraction of law, hence, allowable as business expenditure and further explanation to section 37 of the Act will not apply. This ground of the Revenue, is therefore, has no merit."

5.3. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, conclusion drawn in the order of the Tribunal, assertions made by the ld. respective counsels, if kept in juxtaposition and analyzed, there is a finding in the order of the Tribunal that the impugned issue is covered by the decision of the Hon'ble jurisdictional High Court in CIT vs Angel Capital Debit Market Ltd. (ITA No.475 of 2011) order dated 28/07/2011. This factual matrix was not controverted by the ld. DR. The Hon'ble High Court in the aforesaid case held that such payments are not on account of infraction of law, hence allowable as business expenditure and further explanation to section 37 of the Act will not apply. Respectfully following the aforesaid decision, we find no infirmity in the conclusion drawn by the ld. Commissioner of Income Tax (Appeals) in deleting the penalty, thus, appeal of the Revenue is having no merit, consequently, dismissed.

Finally, the appeal of the assessee is allowed for statistical purposes, whereas, the appeal of the Revenue is dismissed.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 23/12/2015.

Sd/-	***Sd/-***
(Ashwani Taneja)	(Joginder Singh)
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य** / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 01/01/2016

*Shekhar, P.S./*नि.स.

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**