



IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA no.5854/Mum./2016
(Assessment Year : 2011-12)

M/s. Arcadia Share & Stock Brokers
Pvt. Ltd., 328/329, Nanad CHS
1st Floor, Bldg no.7, Service Road
Near Bhavishya Nidhi Bhavan
Opp. Western Express Highway
Bandra (East), Mumbai 400 051
PAN – AAACA4562G

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Range-4(1), Mumbai

..... Respondent

ITA no.5855/Mum./2016
(Assessment Year : 2012-13)

M/s. Arcadia Share & Stock Brokers
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PAN – AAACA4562G

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Range-4(1), Mumbai

..... Respondent

Assessee by : Dr. K. Shivram a/w Ms. Neelam Jadhav
Revenue by : Shri Saurabh Kumar Rai

Date of Hearing – 10.04.2018

Date of Order – 25.04.2018

ORDER**PER SAKTIJIT DEY, J.M.**

Aforesaid appeals by the assessee are against two separate orders, both dated 27th July 2016, passed by the learned Commissioner (Appeals)-9, Mumbai, pertaining to assessment years 2011-12 and 2012-13.

2. The only common issue raised in both the appeals are concerning disallowance of Keyman Insurance Premium paid of ₹ 13,06,512 and ₹ 13,08,552 for the assessment years 2011-12 and 2012-13 respectively.

3. Facts relating to the disputed issue which are more or less common in both the appeals are, the assessee a company is engaged in the business of share and stock broking. In course of assessment proceedings for the impugned assessment years the Assessing Officer noticing that the assessee has claimed deduction on account of premium paid towards Keyman Insurance policy taken in the name of two directors of the company called upon the assessee to furnish necessary details. After verifying the details furnished by the assessee and referring to the characteristic of Keyman Insurance the Assessing Officer called upon the assessee to justify the deduction claimed. As

observed by the Assessing Officer, the assessee submitted some literatures of Keyman Insurance policy and did not furnish any document to prove that the policies taken are Keyman Insurance policy. Further, on verifying the details filed by the assessee, the Assessing Officer observed that the premium paid by the assessee is towards Life Insurance policy and not Keyman Insurance policy. Accordingly, he held that the provisions of section 37(1) and section 10(10D) of the Act would not apply to the premium paid, hence, cannot be allowed as business expenditure. Accordingly, he disallowed assessee's claim of deduction on account of premium paid in both the assessment years. Being aggrieved by the disallowance made by the Assessing Officer, assessee preferred appeals before the learned Commissioner (Appeals). However, the learned Commissioner (Appeals) held that the policy in respect of which the assessee has paid premium cannot be considered as Keyman Insurance policy as the name of nominee in case of death of the policy holder has not been mentioned. As a result of which the benefit of the sum insured will go to the descendant of the policy holder. He observed, neither the company has been made a nominee in the insurance policy nor has been authorized to receive the insurance amount so as to cover the business risk of the assessee. Therefore, he held that the Insurance policy cannot be said to be for the benefit of the company, hence, the

expenses incurred in respect of such policy cannot be allowed as business expenditure. In this regard, he also endorsed the reasoning of the Assessing Officer.

4. The learned Authorised Representative submitted that the assessee has taken the Keyman Insurance policy in the name of two of its directors in the year 2004. He submitted, the aforesaid Keyman Insurance policy was taken as per the Board resolution dated 24th February 2004. He submitted that considering the experience of the directors and their contribution to the business of the company the Board decided to take Keyman Insurance policy in the name of the directors. He submitted that the first premium of the aforesaid policies was paid on 27th February 2004. He submitted that in the course of assessment proceedings for assessment year 2007-08, the Assessing Officer enquired into and examined in detail the nature of Keyman Insurance policy and allowed deduction claimed by the assessee towards premium paid for Keyman Insurance policy. He submitted that in the assessment years 2005-06 and 2006-07 also the premium paid by the assessee on the Keyman Insurance policy were allowed in the assessment orders passed under section 143(3) of the Act. In this regard, he drew our attention to the copies of the assessment orders placed in the paper book. The learned Authorised Representative

submitted that the same policies continued for these assessment years as well. The learned Authorised Representative submitted, there being no change in facts, assessee's claim of deduction in respect of premium paid in such policies cannot be disallowed, as rule of consistency should apply. The learned Authorised Representative submitted that the observations of the learned Commissioner (Appeals) that, in absence of mentioning the name of the assessee as nominee in the insurance policy the sum insured will go to the descendants of the company, is totally irrelevant and without any basis since, the policy document clearly provide that in case of death of the policy holder the sum assured will come to the assessee, as the assessee is the owner of the Keyman Insurance policy. The learned Authorised Representative submitted that considering the importance of the directors to the company due to their experience, the assessee has thought it prudent to make the Keyman Insurance policy in their name. The decision of the assessee as a prudent businessman cannot be called into question as it is the assessee who can only decide how to conduct the affairs of the business and what is beneficial to the business. Thus, it was submitted that assessee's claim of deduction on account of premium paid towards keyman Insurance policy should be allowed. In support of his contention, the learned Authorised Representative relied upon the following decisions:-

- i) Pharma Search v/s ACIT, [2012] 53 SOT 1 (Mum.) (Trib.);*
- ii) Shri Nidhi Corporation v/s ACIT, [2014] 151 ITD 470 (Mum.) (Trib.);*
- iii) ITO v/s Macropolo Products P. Ltd. ITA no.1390/Mum./2013 dated 06.05.2016; and*
- iv) CIT v/s Agarwal Enterprises, [2015] 374 ITR 240 (Bom.).*

5. The learned Departmental Representative strongly supporting the decisions of the Departmental Authorities submitted that the onus is on the assessee to prove that the persons in whose name the insurance policies were taken are Keyman and in the event of their demise assessee will suffer loss. The learned Departmental Representative submitted, no material has been brought on record by the assessee to prove the aforesaid fact. He, therefore, submitted that the deduction claimed by the assessee on account of premium paid has been rightly disallowed.

6. We have considered rival submissions and perused materials on record. Undisputedly, the deduction claimed by the assessee on account of premium paid is in respect of Keyman Insurance policy made in the name of two directors of the company. It is also not disputed that these Insurance policies with Birla Sunlife Insurance co. were made in the year 2004 and the assessee had claimed deduction of the premium paid in respect of such Insurance policy from

assessment years 2005–06, 2006–07 and 2007–08. Notably, after examining assessee's claim of deduction in these assessment years the Assessing Officer in assessments completed under section 143(3) of the Act has allowed deduction in respect of premium paid. In fact, the learned Counsel for the assessee has made a statement before us that, except, the impugned assessment year in no other assessment year deduction claimed on account of premium paid has been disallowed. Thus, when it is a fact on record that the Insurance policies are continuing from the year 2004 and in the preceding assessment years assessee's claim of deduction in respect of premium paid have been allowed by the Assessing Officer in scrutiny assessments, in the absence of any material change in facts the deduction claimed in respect of premium paid cannot be disallowed in the impugned assessment year, as the rule of consistency must be applied. The learned Departmental Representative except stating that in the preceding assessment years the Assessing Officer has not properly examined the issue has not brought to our notice any material change in facts which could have influenced the Assessing Officer to take a different view in the impugned assessment year departing from the view taken in the preceding assessment years. We have further taken note of the fact that the Keyman Insurance policies were taken in the name of directors in pursuance to resolution dated 24th February 2004

of board of directors and it has also been submitted before us by the learned Counsel for the assessee that the sum assured under the insurance policy as per the terms and conditions will come back to the assessee on the death of policy holders. In view of the aforesaid, we allow assessee's claim of deduction of premium paid in both the assessment years.

7. In the result, assessee's appeals are allowed.

Order pronounced in the open Court on 25.04.2018

**Sd/-
RAJESH KUMAR
ACCOUNTANT MEMBER**

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 25.04.2018

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

(Asstt. Registrar/Sr.P.S)
ITAT, Mumbai