

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

Before Shri Mahavir Singh(JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

ITA No. 1701/Mum/2018
(Assessment year : 2013-14)

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 (E), Mumbai-400 051 PAN : AAACA4562G	vs	Dy.C IT, Circle 4(1)(1), Mumbai
APPELLANT		RESPONDEDNT

Appellant by	Ms. Neelam Jadhav
Respondent by	Shri Pankaj Kumar

Date of hearing	28-03-2019
Date of pronouncement	28-03-2019

ORDER

Per G Manjunatha, AM :

This appeal filed by the assessee is directed against order of the CIT(A)-9, Mumbai dated 17-01-2018 and it pertains to AY 2013-14. The assessee has raised the following grounds of appeal:-

"Disallowance of Keyman Insurance Premium of Rs.13.08.552/-

1. The Learned CIT(A) erred in confirming the disallowance of Keyman insurance premium of Rs.13,08,552/-, without appreciating that the Nominee of the policy is the policy holder and even if the nominee was not mentioned in the application form, the benefit of sum insured will remain with the policy holder or policy beneficiary. Hence the disallowance made by the A.O and confirmed by the CIT(A) may be deleted.

2. The Learned CIT(A) erred in confirming disallowance of Keyman Insurance Premium without appreciating that the Keyman Insurance policy is taken by the company and the policy documents itself mentioned that Policy Owner is a policy holder and the beneficiary of the policy is Appellant Company. Hence, the disallowance of Keyman Insurance premium paid may be deleted.

3. The Learned CIT(A) erred in confirming the disallowance of Keyman Insurance premium of Rs.13,08,552/-, without appreciating that Assessee Company is the Policy Owner and the policy owner does not assign its rights for sum insured to the others till date it remains with the Assessee Company only. Therefore, Keyman Insurance premium paid objecting for nomination is not correct it may be deleted.”

2. The brief facts of the case are that the assessee is engaged in the business of share and stock broking. The assessee has filed its return of income for AY 2013-14 on 03-09-2013 declaring total income at Rs.7,71,07,665. The case was selected for scrutiny and the assessment has been completed u/s 143(3) on 21-03-2015 by determining the total income at Rs.7,84,36,053 by making addition towards disallowance of amount paid to keyman insurance policy for the reason that the policy has been taken in the name of two directors.

3. Aggrieved by the assessment order assessee preferred appeal before the first appellate authority. The CIT(A) dismissed appeal filed by the assessee, where he confirmed addition made by the AO towards disallowance of keyman insurance premium paid towards insurance policy taken in the name of

directors of the company. Aggrieved by the order of Ld.CIT(A), assessee is in appeal before us.

4. The Ld.AR for the assessee, at the time of hearing, submitted that the issue is squarely covered in favour of the assessee by the decision of ITAT, Mumbai Bench "I" in assessee's own case for AYs 2011-12 and 2012-13 (2018) 170 ITD 616 (Mum), where under identical facts, the Tribunal held that where assessee's claim for deduction of premium paid on keyman insurance policy taken in name of directors was allowed on the ground that policies were, in fact, life insurance policies in view of fact that in the event of death of directors, assured sum had to be received by assessee company.

5. The Ld.DR, on the other hand, strongly supported the orders of authorities below.

6. We have heard both the parties, perused material available on record and gone through the orders of authorities below. The co-ordinate bench of ITAT, Mumbai Bench "I" had considered an identical issue in assessee's own case for AYs 2011-12 & 2012-13, where by considering facts held that sum assured under the insurance policy as per the terms and conditions would go back to the assessee in the event of death of policy holders. The relevant portion of the findings of the Tribunal are as under:-

“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 'B' 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) has allowed deduction in respect of premium paid. In fact, the assessee has made a statement 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 revenue except stating that in the preceding assessment years the Assessing Officer has not properly examined the issue has not brought to 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.

- Moreover, the keyman insurance policies were taken in the name of directors in pursuance to resolution of board of directors and it has also been submitted by the assessee that the sum assured under the insurance policy as per the terms and conditions would come back to the assessee on the death of policy holders. In view of the aforesaid, assessee's claim of deduction of premium paid in both the assessment years is allowed. [Para 6]"

7. In this view of the matter and consistent with the view taken by the co-ordinate bench in assessee's own case for earlier year, we are of the considered view that the AO was erred in disallowing insurance premium paid on keyman insurance policy taken in the name of directors. Hence, we direct the AO to delete addition made towards disallowance of premium paid on keyman insurance policy taken in the names of directors of the company.

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

Order pronounced in the open court on 28-03-2019.

Sd/-

sd/-

(Mahavir Singh)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 28th March, 2019

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai