



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

ITA no.175/Mum./2019  
(Assessment Year : 2015-16)

Ravjibhai L. Kakadia  
601-602, Plot no.254-A  
Raheja Legend, Dr. A.B. Road  
Worli Colony, Mumbai 400 030  
PAN – AGQPK5038G

..... Appellant

v/s

Asstt. Commissioner of Income Tax  
Circle-20(3), Mumbai

..... Respondent

Assessee by : Shri R.K. Sinha  
Revenue by : Smt. Jyothilakshmi Nayak &  
Smt. Kavita P kaushik

Date of Hearing – 07.08.2020

Date of Order – 03.09.2020

**ORDER**

**PER SAKTIJIT DEY. J.M.**

The captioned appeal has been filed by the assessee challenging the order dated 27<sup>th</sup> September 2018, passed by the learned Commissioner of Income Tax (Appeals)-32, Mumbai, for the assessment year 2015-16.

Before we proceed to decide the appeal, it is necessary to observe, the appeal was earlier fixed for hearing on 22.01.2020.

Learned counsels appearing for the parties were heard at length and the hearing was closed. However, due to the extraordinary situation arising out of the pandemic COVID-19 leading to nationwide lockdown, the order could not be finalized and pronounced. By the time little bit of normalcy returned and the institution started functioning in a limited scale, considerable time has elapsed. Therefore, it was felt necessary to put the appeal for clarification so that learned counsels appearing for parties would get a fair chance to make further submissions, if any, for enabling the Bench to decide the appeal. Accordingly, appeal was heard again on 07.08.2020 and in course of hearing learned counsels appearing for the parties reiterated the submissions made by them earlier.

2. In the present appeal, we have been called upon to decide firstly, whether the amount received by the assessee on maturity of the Keyman Insurance Policy is exempt under section 10(10D) of the Income Tax Act, 1961 (for short "*the Act*"); and secondly, if it is held as taxable, the proper head of income under which it can be taxed.

3. Brief facts are, the assessee was a partner in M/s. Sheetal Mfg. Co., a partnership firm (since dissolved). The firm had taken a Keyman Insurance Policy on the assessee on 28<sup>th</sup> April 2005 from Life Insurance Corporation of India (LIC) and had paid premium in the years 2005-06, 2006-07 and 2007-08, aggregating to ₹ 47,56,680.

On 20<sup>th</sup> December 2007, the Keyman Insurance Policy was assigned to the assessee and thereafter the assessee continued paying premium in the year 2008–09, aggregating to ₹ 79,51,280. The aforesaid Policy matured on 20<sup>th</sup> November 2014, and the assessee received an amount of ₹ 5,68,41,892, towards the maturity value of the policy. In the return of income filed for the impugned assessment year, the assessee offered long term capital gain of ₹ 2,10,61,320, on the maturity value received from the Policy after availing indexation benefit on premium paid of ₹ 79,71,280, by treating it as cost of acquisition. After examining the return of income as well as the computation of total income furnished by the assessee in the course assessment proceedings, the Assessing Officer issued a show cause notice to the assessee requiring him to explain as to why the maturity value received on the Keyman Insurance Policy should not be assessed under the head salary as against the long term capital gain claimed by the assessee.

4. In response to the show cause notice, the assessee firstly claimed that the amount received on maturity of the insurance policy is not taxable as per section 10(10D) of the Act. It was submitted, since on assignment of the Keyman Insurance Policy it becomes a regular Insurance Policy in the name of the assessee, it is covered under the exemption provision of section 10(10D) of the Act. Further,

it was submitted by the assessee that since the Insurance Policy is a capital asset, the gain derived from the maturity value of the Policy has to be treated as long term capital gain. Of course, the assessee also submitted that there being no employer–employee relationship between the firm and the assessee, the amount received on maturity of the Policy cannot be treated as profit in lieu of salary under section 17 of the Act. In support of his contention, the assessee relied upon various judicial precedents.

5. The Assessing Officer, however, was neither impressed nor convinced with any of the submissions made by the assessee. He observed, the Keyman Insurance Policy is specifically excluded from availing exemption under section 10(10D) of the Act. Referring to the amendment brought to Explanation–1 to section 10(10D) of the Act, he observed, if the Keyman Insurance Policy is assigned during the term of the Policy, it still remains a Keyman Insurance Policy. While expressing such opinion, he also referred to explanatory notes and circulars issued by the CBDT from time–to–time regarding taxability of amount received under Keyman Insurance Policy. Thus, ultimately, the Assessing Officer concluded that the amount received on maturity of the Keyman Insurance Policy is taxable as income from other sources as provided under section 56(2)(iv) r/w section 2(24)(xi) of the Act. Further, after allowing premium paid by the assessee amounting to ₹

1,59,42,560, towards expenditure incurred for earning the income, the Assessing Officer added back the amount of ₹ 4,08,99,332, to the income of the assessee. Though, the assessee challenged the aforesaid addition before the first appellate authority, however, he was unsuccessful.

6. The learned Authorised Representative submitted, the erstwhile firm had taken the Keyman Insurance Policy from LIC in the name of the assessee and after payment of initial premiums, the Policy was ultimately assigned to the assessee on 20<sup>th</sup> December 2007, with the approval of the LIC. He submitted, once the Policy was assigned to the assessee, it no longer remained a Keyman Insurance Policy and has to be treated as regular Insurance Policy of the assessee as the LIC had converted it into an ordinary Policy. He submitted, as per section 10(10D) of the Act the maturity value of life insurance policy except Keyman Insurance Policy is not taxable. He submitted, in assessee's case, the Keyman Insurance Policy was assigned prior to 1<sup>st</sup> April 2014, i.e., on 20<sup>th</sup> December 2007. Therefore, since the Keyman Insurance Policy was converted to an ordinary Insurance Policy prior to the amendment to Explanation-1 to section 10(10D) of the Act, which is prospective, it will not be applicable to the assessee. In this context he relied upon the decision of the Hon'ble apex court in case of CIT V/s Vatika Township (P) Ltd. [2014] 49 taxmann.com 249 (SC). Thus, he

submitted, the maturity value received by the assessee will be covered by exemption provision contained under section 10(10D) of the Act. In support of such contention, the learned Authorised Representative relied upon the following decisions:-

- i) *Brahm Dutt v/s ACIT, W.P(C) no.1109/2016, dated 06.12.2018 (Del. HC);*
- ii) *Prashant J. Agrawal, (2016) 243 taxman 119; and*
- iii) *DCIT v/s Rajan Nanda, [2013] 37 taxman.com 335 (Del.) (Trib.).*

7. Without prejudice, the learned Authorised Representative submitted, if at all it is held that the maturity value of the Insurance Policy is taxable at the hands of the assessee, it can only be taxed as long term capital gain. He submitted, investment made by way of premium in the LIC Policy certainly is a capital asset. Therefore, the LIC Policy is covered u/s 2(14) of the Act. That being the case, the profit/gain derived on maturity of Insurance Policy is assessable under the head capital gain.

8. The learned Departmental Representative strongly relying upon the observations of learned Commissioner (Appeals) and the Assessing Officer submitted that after the amendment to Explanation-1 to section 10(10D) of the Act, a Keyman Insurance Policy would not change its character even if there is an assignment in favour of the

insured during the tenure of the Policy. He submitted, since in assessee's case, the Policy matured after the amendment came into force, it will not come within the purview of section 10(10D) of the Act. As regards the contention of the assessee that the Policy should be treated as capital asset and gain derived therefrom should be assessed under the head capital gain, the learned Departmental Representative submitted, the definition of capital asset under section 2(14) of the Act does not include LIC. Further, he submitted, the capital asset under section 2(14) of the Act must be capable of being transferred. Whereas, the Life Insurance Policy cannot be transferred by the insured in favour of anyone. It can only be repudiated on maturity of the Policy. Thus, he submitted, any income derived on maturity of the Policy has to be assessed under the head income from other sources.

9. We have considered rival submissions in the light of the decisions relied upon and perused the material on record. There is no dispute that the erstwhile partnership firm, wherein, the assessee was a partner had taken a Keyman Insurance Policy from LIC in the name of the assessee. It is further evident, the partnership firm paid premium on the Policy in the initial years till the assignment of the Policy in assessee's name on 20<sup>th</sup> December 2009. After the assignment of the Policy, the assessee continued paying the premium and the Policy got matured on 20<sup>th</sup> November 2014, with the assessee receiving maturity

amount of ₹ 5,68,41,892. It is a fact on record that the assessee himself in the return of income filed for the impugned assessment year has offered an amount of ₹ 2,10,61,320, as long term capital gain. Subsequently, the assessee filed revised computation of income during the assessment proceedings enhancing the long term capital gain to ₹ 2,99,01,330. Thus, from the aforesaid facts, it is clear that, though, the assessee had subsequently claimed exemption under section 10(10D) of the Act, however, he himself has offered the gain derived from the maturity value of the Insurance Policy as income under the head capital gain.

10. Keeping in perspective the aforesaid factual position, we may proceed to examine assessee's claim of exemption under section 10(10D) of the Act. It is not disputed that when the policy was taken out in the name of the assessee by the erstwhile partnership firm, it was a Keyman Insurance Policy. A reading of section 10(10D) of the Act would make it clear that any sum received under the LIC Policy including bonus would not be taxable. However, the aforesaid provision carves out certain exceptions as provided under clause (a) to (d). The aforesaid exceptions, inter-alia, provide that any sum received under a Keyman Insurance Policy would not be eligible for exemption. It is the case of the assessee that on assignment of the Policy in the name of the assessee in the year 2009, it has ceased to

be a Keyman Insurance Policy and has to be treated at par with regular Life Insurance Policy. Therefore, the maturity amount received is exempt under section 10(10D) of the Act. It is the further case of the assessee that the amendment brought to Explanation-1 to section 10(10D) of the Act by the Finance Act, 2013, w.e.f. 1<sup>st</sup> April 2014, would not be applicable to the assessee, since, the assignment in the name of the assessee has taken place much prior to the amendment.

11. As discussed earlier, section 10(10D) of the Act specifically excluded any sum received under a Keyman Insurance Policy from exemption under section 10(10D) of the Act. By Finance Act, 2012, w.e.f. 1<sup>st</sup> April 2013, Explanation-1 was introduced explaining the expression "*Keyman Insurance Policy*". The aforesaid explanation was further amended by Finance Act 2013, w.e.f. 1<sup>st</sup> April 2014, by adding following 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".*

12. Thus, after the aforesaid amendment, Explanation-1 to section 10(10D) of the Act reads as under:-

*Explanation 1.—For the purposes of this clause, "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 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;*

13. A reading of the aforesaid Explanation would make it clear that a Keyman Insurance Policy, even if, is assigned to a person at any time during the term of the Policy, would not change its nature and character, but would still remain a Keyman Insurance Policy. Thus, after the amendment to Explanation-1, a Keyman Insurance Policy even on assignment would remain such, hence, would come within the exception provided under section 10(10D)(b) of the Act, therefore, would not be eligible for exemption under section 10(10D) of the Act. The object of the aforesaid amendment has been further clarified by CBDT in Circular no.3 of 2014, dated 21<sup>st</sup> January 2014, by stating that by taking advantage of the legal loophole in the provision of section 10(10D) of the Act, exemption is claimed in cases wherein though originally Policies were Keyman Insurance Policy, but during its term it is assigned to some other person. The Circular makes it clear that with a view to plug such loophole and check such practices to avoid payment of tax, the provision of section 10(10D) of the Act was amended to provide that Keyman Insurance Policy assigned during its term *shall continue to be treated as a* Keyman Insurance Policy, hence, would not be eligible for exemption under section 10(10D) of the Act. No doubt, the amendment to Explanation-1 to section 10(10D) of the Act is applicable from the assessment year 2014-15. If

we apply the provisions of section 10(10D) of the Act to the facts of the present case, undisputedly, the Policy was assigned in the name of the assessee on 20<sup>th</sup> December 2009, whereas, it matured on 20<sup>th</sup> November 2014, i.e., during the previous year relevant to assessment year 2015–16. Thus, it is very much clear that at the time of maturity of the Keyman Insurance Policy, the amendment to section 10(10D) of the Act by way of Explanation–1, has already been made effective, therefore, would be applicable. That being the case, the maturity value received on the Keyman Insurance Policy would be taxable at the hands of the assessee. The decisions relied upon by the learned Authorised Representative having been rendered prior to the amendment to Explanation–1 to section 10(10D) of the Act, would not be applicable to the facts of the present case. In fact, in case of CIT v/s Prashant J. Agarwal, ITA no.465 of 2014, judgment dated 26<sup>th</sup> September 2016, the Hon'ble Jurisdictional High Court has made it clear that any sum received under the assigned Keyman Insurance Policy prior to assessment year 2014–15, would be eligible for exemption under section 10(10D) of the Act, as the amendment in Explanation–1 would apply only from 1<sup>st</sup> April 2014. The aforesaid observations of the Hon'ble Jurisdictional High Court rather supports the case of the Revenue as in the present case, the Keyman Insurance Policy has matured in November 2014. Thus, the assessee received

the amount on maturity of Keyman Insurance Policy after coming into effect of the amended Explanation-1 to section 10(10D) of the Act. The decision of the Hon'ble Supreme Court in case of CIT V/s. Vatika Township (supra) may not be of any help to the assessee as there is no retrospective application of the provision. In this view of the matter, in our considered opinion, the assessee is not eligible to claim exemption under section 10(10D) of the Act on the maturity value of the Keyman Insurance Policy.

14. Having held so, now it is necessary to deal with another aspect of the issue raised by the assessee relating to proper head of income under which the maturity value received on the Keyman Insurance Policy can be brought to tax. It is the case of the assessee that Keyman Insurance Policy being in the nature of a capital asset, as defined under section 2(14) of the Act, gain derived there from is taxable under the head capital gain. At this stage, we propose to deal with the definition of capital asset as provided under section 2(14) of the Act. A reading of the aforesaid provision shows that a property of any kind held by the assessee whether or not connected with his business or profession comes within the purview of capital asset. However, the provision itself excludes certain types of properties from being treated as capital asset. The provision also makes it clear that the definition of capital asset does not include certain types of bonds

issued by the Central Government. However, in our considered opinion, the definition of capital asset cannot be read independently dehors the definition of transfer under section 2(47) of the Act. A conjoint reading of the aforesaid provisions would make it clear that a property to be considered as a capital asset under section 2(14) of the Act must be capable of being transferred as defined under section 2(47). In our view, life insurance policy is not a property which can be transferred in the mode and manner prescribed under section 2(47) of the Act. On maturity of a Life Insurance Policy, it is repudiated and the insured receives the maturity value along with bonus, if any, from the insurer. In such cases, there is no question of any transfer of property between the insured and insurer. At best, the LIC Policy can be pledged/assigned as a security/collateral for availing loan, etc. However, the insured always remains the owner of the property. In this regard, it is further beneficial to look into the provision contained under section 56(2)(iv) of the Act, which provides that income referred to in section 2(24)(xi), if not chargeable under the head Profit or Gain of Business or Profession or under the head salary, would be taxable under the head income from other sources. A reference to section 2(24)(xi) of the Act would reveal that it speaks of any sum received under a Keyman Insurance Policy including bonus and for the meaning of Keyman Insurance Policy, it refers to the Explanation

under clause 10(10D) of the Act. Thus, the conjoint reading of the aforesaid provisions would make it clear that the amount received on maturity of Keyman Insurance Policy can either be taxed under the head salary or income from business and profession or income from other sources. Thus, from the aforesaid, it becomes abundantly clear that the legislature in its own wisdom never intended that sum received on maturity of Keyman Insurance Policy is to be assessed under the head income from capital gain. Had it been the case, as the assessee wants us to believe, the legislature would not have restricted the assessability of the amount received under Keyman Insurance Policy to the three heads viz. salary, income from business and profession and income from other sources. In the facts of the present case, undisputedly, the sum received on maturity of Keyman Insurance Policy cannot be assessed either under the head salary or income from business and profession. Thus, the only other head under which it can be assessed is income from other sources as per section 56(2)(iv) of the Act and the Assessing Officer has assessed such income in accordance with the statutory provisions. In view of the aforesaid, we do not find any merit in the without prejudice submissions of the assessee. Accordingly, grounds raised by the assessee are dismissed.

15. In the result, appeal is dismissed.

Order pronounced by placing in the notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963, on 03.09.2020.

**Sd/-**  
**G. MANJUNATHA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 03.09.2020**

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

Assistant Registrar  
ITAT, Mumbai