

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.760/M/2022
Assessment Year: 2017-18**

M/s. ALF Engineering Pvt. Ltd., E-60/61, MIDC, AMBAD, Nasik, Mumbai – 422 010 PAN: AAFCA6242G	Vs.	Pr. CIT, Mumbai -4, Room No.629, 6 th Floor, Aayakar Bhavan, M.K. Marg, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Jitendra Singh, A.R.
Revenue by : Shri Rajesh Damor, D.R.

Date of Hearing : 30 . 08 . 2022
Date of Pronouncement : 20 . 09 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

Appellant M/s. ALF Engineering Pvt. Ltd. (hereinafter referred to assessee) by filing the present appeal sought to set aside the impugned order dated 25.03.2022 passed by Principal Commissioner of Income Tax (hereinafter referred to as the PCIT) invoking revisionary jurisdiction contained under section 263 of the Income Tax Act, 1961 (for short 'the Act') qua A.Y. 2017-18 on the grounds inter alia that:

“1. The Ld. Principal Commissioner of Income Tax, Mumbai - 4, [hereinafter referred to as the "Ld. Pr. CIT"] erred in passing the

order dated 25th March, 2022 invoking the provisions of section 263 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] setting aside the order dated 18th December, 2019 passed by Ld. A.O. under section 143(3) of the Act. The revision order dated 25th March, 2022 is passed merely on conjecture and surmises. Hence, the same is bad in law and the same may be quashed.

2. The Ld. Pr. CIT; further, erred in passing the order dated 25th March, 2022 under section 263 of the Act without satisfying the pre conditions to invoke the jurisdiction under the above section. Hence, the Order dated 25th March, 2022 is bad-in-law and the same may be quashed.

3. The Ld. Pr. CIT failed to appreciate that the Assessment Order dated 18th December, 2019 was passed after due application of mind and after carrying on proper investigations by the Ld. A.O. Thus, the same is neither erroneous nor prejudicial to the interest of the revenue. The Appellant, therefore, prays that the revision order dated 25th March, 2022 is against the provisions of law and the same may be quashed.

4. The Ld. Pr. CIT further failed to appreciate that the impugned keyman insurance policy was taken in the previous year 2012-13 relevant to assessment year 2013-14 and the Ld. A.O. has accepted the contention of the Appellant in the assessment orders passed under section 143(3) of the Act for all the relevant assessment years. Hence, the Ld. Pr. CIT is unjustified in adopting a view contrary to view taken in earlier assessment years is against the settled procedures of law. The Appellant, therefore, prays that the revision order dated 25th March, 2022 is against the provisions of law and the same may be quashed.

5. The Ld. Pr. CIT further failed to appreciate that the policy taken by the Appellant is duly approved by the IRDA as being in the nature of keyman insurance policy only. Hence, the expenditure incurred by the Appellant for payment of premium of said policies are eligible for deduction under section 37 of the Act. The Appellant, therefore, prays that the revision order dated 25th March, 2022 is against the provisions of law and the same may be quashed.

6. Without prejudice to the above the Ld. Pr. CIT failed to appreciate that the issues raised during the course of the proceedings under section 263 do not satisfy the condition precedent that the assessment order dated 18th December, 2019 passed under section 143(3) of the Act is erroneous as well as prejudicial to the interests of revenue. Therefore, the impugned order passed under section 263 of the Act dated 25th March, 2022 is bad in law. Hence, the same may be quashed and set aside.

7. *The Appellant craves leave to add, alter, amend, delete, rescind or withdraw any of the grounds of appeal mentioned hereinabove.*

2. Briefly stated facts necessary for adjudication of the controversy at hand are : assessee filed return of income for A.Y. 2017-18 declaring total income of Rs.41,00,83,620/- which was subjected to scrutiny and consequently assessment was framed under section 143(3) of the Act at the declared income. However, the Ld. PCIT by invoking the revisionary jurisdiction issued a notice under section 263 of the Act by flagging the issue “AO has accepted the assessee’s claim of key man insurance premium paid under section 37(1) to the tune of Rs.3,25,00,000/- and as such AO has failed to observe that as to why the company had paid excess differential premium of Rs.30,500,000/- (Rs.3,25,00,000 – Rs.20,00,000/-) on account of Unit Linked Investment Plan (ULIP) when the coverage of only 30 years available from the same life insurance company at approximate premium of Rs.20,00,000/- covering taxes and other various minor variations, thus AO failed to inquire into the reason for the same”. Failure of the Assessing Officer to make enquires which was warranted under the facts and circumstances of the case have rendered the assessment order dated 18.12.2019 erroneous in so far as it is prejudicial to the interest of the Revenue.

3. Declining the contentions raised by the assessee the Ld. PCIT set aside the assessment order passed under section 143(3) of the Act erroneous and in so far it is prejudicial to the interest of the Revenue.

4. Feeling aggrieved with the impugned order passed by the Ld. PCIT under section 263 of the Act the assessee has come up before the Tribunal by way of filing present appeal.

5. At the very outset, the Ld. A.R. for the assessee challenging the impugned order contended inter alia that the AO has passed impugned assessment order after duly applying his mind by calling complete detail that this issue has already been accepted by the Revenue in the earlier years; that identical issue has already been decided by the co-ordinate Bench of the Tribunal in case of M/s. F.C. Sondhi & Co. (India) P. Ltd. vs. The Deputy Commissioner of Income Tax in ITA No.117/(Asr)/2010 for A.Y. 2006-07 order dated 27.11.2015

6. However, on the other hand, the Ld. D.R. for the Revenue relied upon the order passed by the Ld. PCIT.

7. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

8. At the very outset, the Ld. A.R. for the assessee drew our attention towards copy of notice dated 17.10.2019 along with annexure issued by the AO under section 142(1) of the Act seeking details/explanations of “key man insurance policy” purchased by the assessee for A.Y. 2017-18 available at page 1 & 2 of the paper book wherein at Sl. No.5 of the annexure, AO specifically called for “detail of key man insurance policy taken, person insured,

nature of his duties, current status of the policies” from the assessee to which the assessee has filed complete detail/explanation available at page 3 to 14 of the paper book. Assessee proceeded on the premise that key man insurance policy premium paid is allowable under section 37(1) of the Act as Joseph D’Souza and Pierre D’Souza are the key persons of the company and any sum received under the key man policy is taxable on maturity. Finding the explanation given by the assessee, the AO accepted the claim of the assessee under section 37(1) and framed the assessment.

9. Aforesaid facts have not been controverted by the Ld. D.R. by bringing on record any other facts than canvassed by the assessee. However, Ld. D.R. for the Revenue relied upon the order passed by the Ld. CIT(A).

10. Even otherwise the Ld. A.R. for the assessee relied upon the order passed by the co-ordinate Bench of the Tribunal in case of M/s. F.C. Sondhi & Co. (India) P. Ltd. (supra) wherein identical issue has been decided in favour of the assessee, which has followed earlier decision of the co-ordinate Bench of the Tribunal in case of M/s. Suri Sons in ITA No.37(Asr)/2010 order dated 31.08.2015 by returning following findings:

“We find that the case law of M/s Suri Sons as relied upon by learned AR in ITA 37(Asr)/2010 also contains similar findings. Therefore, in any case the case of the assessee is covered in its favour.

6. As regards the argument of learned DR that in view of conflicting judgments, Special Bench should have been constituted, we find that the contrary judgment passed by Tribunal in the case of assessee itself stands recalled and therefore, the order passed by the Bench in favour of Revenue as having been recalled is a nullity and since there are no conflicting views, there is no need to constitute a Special Bench.

7. As regards the argument of learned DR that the written note submitted in the case of M/s Suri Sons as contained in para d and e

were not considered, we find that in para d as noted by the Hon'ble Tribunal the objection of learned DR was that the decision of Sh. Nidhi Corporation vs. ACIT 151 ITD 470 was not applicable as in that case the assessee was given the liberty to choose the investment plan whereas no such option was available to the assessee in the present case. In this respect, we find that in the case of Sh. Nidhi Corporation also, the assessee had taken Keyman Insurance Policies on the life of partners and Hon'ble Tribunal had held that wherever insurance company is making investment in mutual funds for capital appreciation or under any other investment scheme will not make any material difference in respect of allowance of premium. Moreover, we find that definition of Keyman Insurance Policy has been provided in explanation to Section 24(xi) which reads as under.

Explanation: For the purpose of this clause the expression 'Keyman Insurance Policy' shall have the meaning assigned to it in explanation to clause (10D) of section 10 which is reproduced below:

"Section 10(10D), 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."

We find that Keyman Insurance Policy is a policy on the life of another person who is an employee of the assessee or is connected with the business of assessee and there is no such restriction as to whether the assessee is given liberty to decide investment plans of insurance companies or not. Therefore, the argument raised by learned DR has no force.

8. As regards the para-e of written note submitted by Revenue in the case of M/s Suri Sons, we find that this para dealt with the request for constitution of Special Bench which has already been dealt with by us. In view of the above facts and circumstances and in view of the judicial precedents, we find that the issue of payment of Keyman Insurance Policy is duly covered in favour of assessee and therefore, the appeal filed by the assessee is allowed."

11. In view of what has been discussed above, we are of the considered view that when the AO has passed the assessment order after enquiry and due verification by duly calling the detail/explanation from the assessee and after applying his mind passed the order by taking a plausible view, the order passed by the

AO is neither erroneous nor prejudicial to the interest of the Revenue.

12. Resultantly, impugned order passed by the Ld. PCIT under section 263 of the Act is not sustainable in the eyes of law, hence ordered to be quashed and hence appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 20.09.2022.

**Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 20.09.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.