

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAJ KUMAR CHAUHAN, HON'BLE JUDICIAL MEMBER

I.T.A. No. 2879/Mum/2024
Assessment Year: 2018-19
&
I.T.A. No. 4064/Mum/2024
Assessment Year: 2020-21

Mr. Atul Hirji Maru 51, 25 th Floor Usha Kiran CHS Ltd., M.L. Dahanukar Marg Mumbai - 400026 [PAN: AABPM4278R]	Vs	ACIT, Circle-19(1), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Rajeev Waglay, A/R
Revenue by :	Shir Lieder Panicker (Sr. D/R)

सुनवाई की तारीख/Date of Hearing : 09/10/2024
घोषणा की तारीख /Date of Pronouncement: 17/10/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

I.T.A. No. 2879/Mum/2024 & I.T.A. No. 4064/Mum/2024 are two separate appeals by the assessee preferred against two separate orders of NFAC, Delhi, dated 03/05/2024 and 08/07/2024 pertaining to AY 2018-19 and 2020-21.

2. Since common issues are involved, both the appeals were heard together and are disposed off by this common order for the sake of convenience and brevity.

3. We first take up ITA No. 2879/Mum/2024; AY 2018-19

4. Assessee is aggrieved by the disallowance of interest of Rs. 63,48,487/- on the ground that the assessee had earned interest income

on his own funds hence the sum had to be disallowed out of total deduction of interest of Rs. 2,02,76,955/-.

4.1. The second grievance of the assessee is relating to the maturity profits from Keyman Insurance Policies which was taxed as profit in lieu of salary.

5. Briefly stated the facts of the case are that the return of income of the assessee was selected for limited scrutiny under the E-assessment scheme on the issue of deductions from income from other sources. While scrutinizing the return of income, the AO noticed that the assessee derives income from salary, income from partnership firm and income from other sources. The assessee is a partner of Shemaroo Corporation and has derived income as interest on capital employed. The AO found that the assessee has shown total income of Rs.3,02,00,210/- and has claimed deduction u/s 57 of the Act as under:-

Head	Amount of deduction/expenses	Amount of income
Interest from saving bank account		135452/-
Interest from parties		20276955/-
KMP maturity value		36400000/-
Total		56812407/-
Less : Interest on loans	20276955/-	
Less: KMP premium paid	16668184/-	
Less :	36945139/-	36945139/-
Balance		19867268/-

5.1. The AO found that the assessee has paid interest @ 12% to the people from whom he had borrowed the money and received interest @ 12.5% from the company whom he had lent the money. Details of the loans taken and given during the year were furnished and on perusal of the same, the AO found that the assessee has given excess loans out of his own funds and earned interest from loans given out of his own funds. According to the AO, the assessee had earned interest income of Rs. 63,48,487/- out of his own funds against which deduction on account of interest paid is not allowable in view of the provisions of Section 57 of the Act. Accordingly, the AO disallowed the sum of Rs. 63,48,487/-.

5.2. Proceeding further, the AO noticed that the assessee has shown income from other sources at Rs.3,64,00,000/- on account of Keyman Policy (KMP) maturity value and claimed deduction u/s 57(iii) of the Act at Rs. 1,66,68,184/- on account of KMP premium paid. It was explained that two Keyman policies were taken out by Shemaroo Entertainment Ltd., for which the company had paid premium of Rs.9,27,668/- per year per policy from the date of insurance policy and the last insurance premium was paid on 23/02/2011. The policies were assigned to the assessee at the surrender value of Rs.74,06,424/- per policy on 31/12/2011. Thereafter, the assessee kept the policy alive till 27/03/2012 by yearly payment of premium of Rs.9,27,668/-. The Keyman Insurance policies matured on 28/02/20218 and the income was declared as income from other sources and surrender value and

premium paid till the date of maturity were claimed as deduction from maturity value as per Section 57(iii) of the Act as the expenses laid out or expended wholly and exclusively for the purpose of making or earning such income.

5.3. The AO was of the opinion that the company paid premium and availed deduction of premium paid up to AY 2011-12 in its ITR from year to year and on the request of the assessee, the company assigned policies to the assessee at the surrender value of Rs.74,06,424/- per policy on 31/12/2011. On perusal of the bank statement, the AO found that a sum of Rs.1,50,00,000/- was transferred by the company to the assessee on 03/02/2012 and on the same date, the assessee had transferred Rs.74,06,424/- twice, back to the company. The last premium paid by the assessee was in 2012-13 and the assessee has not taken maturity in the year 2012-13 but after six years.

5.4. Drawing support from the CBDT Circular No. 762 dated 18/02/1998, the AO was of the firm belief that the assignee is liable to pay tax on surrender value of Keyman Insurance policy value at the time of assignment and on the strength of the said Circular, the AO made the addition of Rs.1,66,68,184/-.

6. The assessee carried the matter before the Id. CIT(A) but without any success.

7. Before us, the Id. Counsel reiterated what has been stated before the lower authorities and the Id. D/R strongly supported the findings of the Id. AO and the Id. CIT(A).

8. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that the assessee had lent money out of the borrowed funds. Assessee was charging interest @ 12.5% and was paying interest @12%. It is also not in dispute that the assessee has lent out funds out of borrowed capital till October, 2017 on which gross interest received was Rs.2,02,76,955/-. Thereafter, since November, 2017, the assessee has lent money out of his own funds. The total interest paid by the assessee was Rs.2,42,26,347/-. Thus, the assessee was eligible for claim of deduction of interest payments totaling to Rs.2,42,26,347/-. However, a perusal of the computation of income shows that the assessee has claimed deduction of interest only to the extent of Rs.2,02,76,955/- which means that the assessee has *suo moto* disallowed Rs.39,49,392/-, which can cover all the apprehensions of the AO. Therefore, considering the facts in totality, we do not find any reason for a further disallowance of Rs.63,48,487/-. The AO is directed to delete the disallowance of Rs.63,48,487/-.

9. Coming to the second issue of addition on account of surrender value of Keyman Insurance policy, on perusal of the facts, we are of the considered opinion that on identical set of facts, the Co-ordinate Bench in the case of *Mihir Parikh vs. ACIT in ITA No. 2982/Del/2023*, has considered and decided the issue as under:-

"9. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. Ld. CIT(A) has decided the issue by observing as under:-
5. Decision:

"In this case, the addition has been made by the Assessing Officer worth Rs. 1,43,08,000/- u/s 28(vi) of the [Income Tax Act, 1961](#). The Assessing Officer held that definition of capital assets as per [section 2\(14\)](#) of the Income Tax Act, 1961, does not have any mention of Keyman Insurance policy. The appellant has held that the insurance policy is a capital asset and has worked out long term capital loss of Rs. 16,30,328/- in respect of maturity proceeds received from Keyman Insurance policy. The Assessing Officer did not agree with the contention of the appellant and has made the addition of Rs. 1,43,08,000/-.

5.1 Now before me in the appellate proceedings, the appellant has filed the written submission. I have gone through the written submission. It is to be mention that when show-cause notice was issued to the appellant by the Assessing Officer why Keyman Insurance Policy should not be taxed. The appellant has filed the revised computation of income and has shown Long Term Capital Loss of Rs. 16,30,328/-. The appellant has relied upon various case laws in the written submission. [Section 28\(vi\)](#) is very clear and hence the Assessing Officer has rightly made the addition. Since the legislative intent of the Act and the [section 28\(vi\)](#) is very clear and hence as per interpretation of the statutes, there is no question of any ambiguity and hence the addition of the Assessing Officer is confirmed and appeal of the appellant is dismissed."

10. We find some merit in the contention of the assessee that if the policy is transferred before its maturity then it would lose its character. The Hon'ble Delhi High Court in the case of [CIT vs Rajan Nanda](#) [2012] 18 taxmann.com 98 (Delhi) has held as under:-

51. "The Tribunal while giving requisite relief brought to tax the amount of surrender value at the time of assignment subject to verification by the AO. It also rejected the alternative argument of the assessee that in case the sum received on maturity was held to be taxable then deduction be allowed for the premia paid by the assessee after the assignment of the policy, which were embedded in the maturity amount and not claimed as a deduction in the tax assessments.

52. Thus, the issue depends on the question as to whether on assignment of the insurance policy to the assessee, it changes its character from Keyman insurance also to an ordinary policy. It is because of the reason that if it remains Keyman insurance policy, then the maturity value received is subjected to tax as per [Section 10\(10D\)](#) of the Act. On the other hand, if it had become ordinary policy, the premium received under this policy, in view of the aforesaid [Section 10\(10D\)](#) itself, the same would not be subjected to tax.

53. Once there is no assignment of company/employer in favour of the individual, the character of the insurance policy changes and it gets converted

into an ordinary policy. Contracting parties also change inasmuch as after the assignment which is accepted by the insurance, the contract is now between the insurance company and the individual and not the company/employer which initially took the policy. Such company/employer no more remains the contracting parties. We have to bear in mind that law permits such an assignment even LIC accepted the assignment and the same is permissible. There is no prohibition as to the assignment or conversion under the Act. Once there is an assignment, it leads to Page \ 6 conversion and the character of policy changes. The insurance company has itself clarified that on assignment, it does not remain a keyman policy and gets converted into an ordinary policy. In these circumstances, it is not open to the Revenue to still allege that the policy in question is keyman policy and when it matures, the advantage drawn therefrom is taxable. One has to keep in mind on maturity, it does not the company but who is an individual getting the matured value of the insurance.

54. No doubt, the parties here, viz., the company as well as the individual taken huge benefit of these provisions, but it cannot be treated as the case of tax evasion. It is a case of arranging the affairs in such a manner as to avail the state exemption as provided in [Section 10\(10D\)](#) of the Act. Law is clear. Every assessee has right to plan its affairs in such a manner which may result in payment of least tax possible, albeit, in conformity with the provisions of Act. It is also permissible to the assessee to take advantage of the gaping holes in the provisions of the Act. The job of the Court is to simply look at the provisions of the Act and to see whether these provisions allow the assessee to arrange their affairs to ensure lesser payment of tax. If that is permissible, no further scrutiny is required and this would not amount to tax evasion. Benefit inured owing to the combined effect of a prudent investment and statutory exemption provided under [Section 10\(10D\)](#) of the Act, the section does not envisage of any bifurcation in the amount received on maturity on any basis whatsoever. Nothing can be read in [Section 10\(10D\)](#) of the Act, which is not specifically provided because any attempt in that behalf as contended by Revenue would be tantamount to legislation and not interpretation."

11. Therefore, in the light of above-mentioned binding precedents, we are of the considered view that the authorities below were not justified in denying the benefit of exemption to the assessee. We hold accordingly. The AO is directed to delete the addition. The ground raised by the assessee is accordingly, allowed.

10. Similarly, the Co-ordinate Bench in the case of *Smt. Harleen Kaur Bhatia vs. PCIT in ITA No.150/Ind/2019*, has decided the issue in favour of the assessee.

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

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

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai