

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI
BEFORE SHRI R.C. SHARMA , ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER

ITA no.4231/Mum./2013

(Assessment Year : 2009-10)

Income Tax Officer -4(2)(2), Room No. 644, 6 th floor, Aaykar Bhavan, M.K. Road, Mumbai:- 400 020.	v.	M/s Patani Securities Pvt. Ltd. 11, Crescent Chambers, Tamarind Lane Fort, Mumbai – 400 001.
PAN/GIR No. AAAC97182P		
Assessee		Respondent

jktLo fd vksj ls @Revenue By	Shri Ganesh Bare
fu/kZkfjfr fd vksj ls @Assessee By	Shri Upendra Shah

lquokbZ fd rkjh[k @Date of hearing	22.09.2015
?kks'k.kk fd rkjh[k@ Date of pronouncement	20.11.2015

ORDER

Per R.C. Sharma, Accountant Member

This appeal filed by the Revenue is against the order of CIT(A) for assessment year 2009-10, in the matter of order passed u/s 143(3) of the Income Tax Act.

2. First grievance of the Revenue relates to CIT(A)'s direction to hold that assessee's case is carved out under the Explanation to section 73.

3. Rival contentions have been heard and record perused. The facts of the case are that during assessment proceedings, the Assessing Officer observed that the assessee company had shown loss on sale of stock in trade of Rs. 77,25,600/- as under:

1. Rs. 60,12,0481- of Notional Loss i.e. loss on account of reduction in the value in trade as on 31/3/2009 for valuation of inventory.

2. Rs. 14,63,979/- as losses on account of sale of stock in trade.

3. Rs. 2,49,573/- as service tax and other charge debited to profit and loss account.

4. The Assessing Officer observed that the assessee has set off the same against the other business income. Therefore, the Assessing Officer relying on the decision of the Bombay High Court in the case of Prasad Agents (P) Ltd., treated the loss of Rs. 77,25,600/- as speculation loss under Explanation to section 73 and the same was allowed to be carried forward.

5. We have considered the rival contentions, as per the finding recorded by the CIT(A) assessee's income from interest, Long Term Capital

Gain was much more than its business income, therefore case of assessee is not caught by the mischief of Explanation to section 73. Accordingly, we uphold the action of CIT(A) for allowing the setting off of the loss so incurred against its other income.

6. Revenue is also aggrieved by action of CIT(A) deleting proportionate amount of Keyman Insurance premium for 167 days of Rs. 11,43,835. The facts of the case are that the assessee in the revised computation filed along with revised return of income claimed "disallowed Keyman Insurance Premium as prepaid now allowable in the current year of Rs. 24,52,055/-". The appellant during assessment proceedings made submissions which is reproduced by the Assessing Officer in his assessment order. The Assessing Officer observed that the payment of Keyman Insurance Premium of Rs. 25,00,000/- for the period from 24/3/2008 to 24/3/2009 was paid by the assessee on 26/3/2008. Out of Rs. 25,00,000/- payment of Rs. 47,945/- was for the period from 24/3/2008 to 31/3/2008 and the remaining amount of Rs. 24,52,055/- pertains to the period from 1/4/2008 to 24/3/2009. On 8/10/2008, the policy was assigned to Shri Mukesh Chrmanlal Patani for Rs. 1,38,68,762/-. Therefore, the claim of the appellant for the payment of Keyman Insurance Premium for the period after the policy was assigned to the assignee was not allowable by the Assessing Officer Since the period from 9/10/2008 to 24/3/2009 works out to 167 days, the Assessing Officer, therefore, worked

out the proportionate amount of premium for 167 days to Rs. 11,43,835/- and disallowed the same.

7. By the impugned order the CIT(A) deleted the disallowance after observing as under:-

“4.3 I have carefully considered the facts of the case and the contention of the appellant. It is an acceptable legal position that the maturity proceeds of the Keyman Insurance Policy is taxable and premium paid on such policies is deductible. The CBDT in Circular No. 763 dtd February 18, 1998 has made this aspect very clear. It is not necessary that a Keyman insurance Policy should be only in the name of the employees and not partners. Mumbai ITAT in the case of ITO v. Modi Motors - 27 SOT 476 (Mum.) had to deal with a case where the Assessee, a partnership firm, claimed deduction u/s 10(10D) of the Act on account of Keyman Insurance Policy premium paid on the life insurance policies of two of its working partners. The AO disallowed the claim on the ground that partnership firm is not a separate legal entity. The CIT(A) allowed the assessee's claim holding the firm and its partners as separate persons. The tribunal held that for the purposes of the Act, partnership firm is a separate entity than that of its partners under the Income-tax Act and if there exist any specific provision in the Income-tax law modifying the partnership law then, such specific provision shall be applied and if the tax law is silent on a specific issue, then a reference will have to be made to the provisions of partnership law for the adjudication of the same. It was further held that Sec .. 10(D) recognize the existence of other types of relationship apart from employer-employee relationship for claiming deduction on account of premium paid on Keyman Insurance Policy as business expenditure. The Hon'ble Bombay High Court in the case of B. N. Exports- 323 ITR 178 also held that allowability of expenditure incurred on premium paid towards a Keyman Insurance Policy cannot be confined only to a situation where policy is in respect of life of an employee. The Hon'ble Court held that Keyman Insurance Policy obtained on life of a partner to safeguard firm against a disruption of business that may result due to premature death of a partner and expenditure which is laid out for payment of premium on such a policy is allowable as business expenditure.

4.3(b) I further find that there is no material on record to show that the assessee-firm has taken the Keyman Insurance Policy for the personal benefits of the partners and not for the benefit of the firm. This being so, I am of the view that the

issue is squarely covered against the Revenue and in favour of the assessee by the judgment of the Hon'ble Jurisdictional High Court in the case of CIT vs. B.N. Exports (2010) 323 ITR 178 (Bom) wherein it has been held (head notes) :

"Held, dismissing the appeal, that there was a finding of fact by the Tribunal that the firm had not taken insurance for the personal benefit of the partner, but for the benefit of the firm, in order to protect itself against the setback that may be caused on account of the death of the partner. The insurance premium was deductible. "

4.3(c) The only observation which the Assessing Officer had made is that the payment of Keyman Insurance Premium of Rs. 25,00,000/- for the period from 24/3/2008 to 24/3/2009 was paid by the appellant on 26/3/2008. The expenses according to Assessing Officer relates to the period 24/3/2008 to 31/3/2008 and thereafter from 11/4/2008 to 24/3/2009. Thereafter, the policy was assigned to Shri Mukesh Chimanlal Patani for a value of Rs. 1,38,68,762/- on 8/10/2008. The Assessing Officer stated that after assigning the policy the same cannot be allowed to the appellant prior to the period of assignment and he worked out the proportionate amount of premium for 167 days at Rs. 11,43,8351- and disallowed the same. In my view, this disallowance is totally incorrect as once we accept that the premium on Keyman Insurance Policy is allowable as revenue expenditure, the same cannot be disallowed merely on the ground that the policy was assigned to someone else during the pendency of the policy. It would have been a different case had the policy been taken in the middle of the year, then also, the premium would have been different. However, proportionate disallowances on the premium cannot be made for the simple reason the expenditure in question is a revenue expenditure and is for the purposes of the business. In view of the foregoing the addition made by the Assessing Officer is accordingly deleted."

8. We have considered the rival contentions and having regard to the facts recorded by the CIT(A) to the effect that expenditure so incurred was revenue in nature and for the purpose of business only, therefore, proportionate disallowance of premium was wrongly made by the

Assessing Officer. Further perquisite value of the policy assigned has been taken care of by deducting due taxes thereon. Accordingly, we uphold the order of CIT(A).

9.. In the result appeal of the Revenue is dismissed..

Order pronounced in the open court on this day of 20th November 2015.

Sd/-
(Amarjit Singh)
(Judicial Member)

Sd/-
(R.C. Sharma)
(Accountant Member)

Mumbai dated 20-11-2015
SKS Sr. P.S

Copy to:
The Appellant
The Respondent
The concerned CIT (A)
The concerned CIT
The DR, "C" Bench, ITAT, Mumbai

By Order

Assistant Registrar
Income Tax Appellate Tribunal,
Mumbai Benches, MUMBAI