

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'डी' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH "D" AHMEDABAD
श्री डी.के.त्यागी, न्यायिक सदस्य श्री ए.के.गरोडिया, लेखा सदस्य
Before **Shri D.K. Tyagi, Hon'ble Judicial Member** and
Shri A.K.Garodia, Hon'ble Accountant Member

ITA No.63/Ahd/2011
Assessment Year:2007-08

Asst. Commissioner of Income-tax, Circle-4, Baroda	V/s.	Prakash Chemical Agencies (P) Ltd., Induchacha House, Opp. Chhani Octroi Naka, Baroda -390 022 PAN No.AACCP6646G
(Appellant)	..	(Respondent)

Appellant by :-	Shri James Kurair, DR
Respondent by:-	Shri M.K. Patel, AR

Date of hearing	02-12-2011
Date of pronouncement	09-12-2011

आदेश / O R D E R

PER A.K. Garodia, Accountant Member:-

This is Revenue's appeal directed against the order of Ld. Commissioner of Income-tax (Appeals)-III, Baroda dated 31-08-2010 for assessment year 2007-08. The ground raised by Revenue is as under:-

"1. On the facts and in the circumstances of the case and in law the learned CIT(A) erred in allowing Keyman Insurance premium amounting to Rs.37,00,000/-, overlooking the fact that the expenditure was disallowable us.37(1) of the Income Tax Act, 1961, as the assessee could not establish that the payment was wholly and exclusively for the purpose of the assessee's business."

2. Ld. DR of the Revenue has supported the assessment order whereas Ld. AR of the assessee relied on the order of Ld. CIT(A). It was also submitted by him that this issue has been decided by Ld. CIT(A) as per para-6.3 of his order and in the same, it was noted by him that this issue has been decided by his predecessor in assessee's own case for assessment year 2006-07. He submitted that although the appeal of Revenue for assessment year 2006-07 is still pending before Tribunal but in one of the group concerns i.e. in the case of *DCIT v. M/s. Prakash Chemical Pvt. Ltd.* in **ITA No.172/Ahd2011** dated 14-10-2011, similar issue has been decided by the Tribunal in favour of assessee by following the judgment of Hon'ble Bombay High Court rendered in the case of *CIT v. B.N. Exports* (2010) as reported in 190 Taxman 325 (Bom). He submitted a copy of Tribunal's decision.

3. In rejoinder, it was submitted by Ld. DR of the Revenue that it is noted by the Assessing Officer in paraa-4.6 and 4.7 of the assessment order that in the present case, the assessee has not been able to even furnish the details of persons for whom the keyman insurance policy has been taken. In reply, it was submitted by Ld. AR of the assessee that this observation of AO is not factually correct because in para-4.1 of the assessment order, the AO has noted the details given by the assessee regarding name of persons for whom the premium for keyman policy has been paid. It was also submitted that all the persons are directors of the assessee-company, out of which. two persons are employees also.

4. We have considered the rival submissions perusing the material on record and gone through the order of authorities below and the Tribunal's decision cited by Ld. AR of the assessee. The relevant para of Tribunal's order cited by Ld. AR of the assessee are para-3..1, 3.2 and 4 which are reproduced below:-

"3.1 The matter was carried before the first appellate authority who has discussed a decision of Hon'ble Bombay High Court pronounced in the case of CIT vs. B.N. Exports [2010] 190 Taxman 325 (Bom), wherein it

*was held that the allowability of the expenditure incurred on premium paid towards the Keyman Insurance Policy could not be confined only to a situation where policy is in respect of life of an employee. For the purpose of clause (10D), a Keyman Insurance Policy is a life insurance policy taken by a person on the life of another person, who is an employee of the person who has subscribed to the policy of insurance which is connected in any manner whatsoever with the business of the subscribed to the policy. Ld. CIT(A) has also discussed CBDDT Circular **No.726** dated **18/02/1998** and allowed the claim.*

3.2 In addition to above precedents, the issue of Keyman Insurance is also covered by the decisions of (i) P.G. Electronics vs. ITO 98 TTJ 896, CIT vs. B.N. Exports, 37 DTR 381 (Bom), Sunita Finlease Ltd. vs. DCIT 118 TTJ 263 (ITAT) [Bilaspur] and ITO vs. Modi Motors 27 SOT 476 (ITAT) (Bom) and allowed the claim.

*4. Having heard the submissions of both the sides, the issue now stood covered by a latest decision of ITAT "D" Bench Ahmedabad pronounced in the case of M/s. Gee Aar Tex vs. ACIT in **ITA No.3469/Ahd/2008** (for A.Y. 2005-06), dated 31/03/2009, wherein the issue was discussed at length and finally held that in the light of the CBDDT Circular (supra) and the Explanation to section 10(10D) the premium paid under the 'Keyman Insurance Policy' on the life of a partner should not be disallowed. Though from the side of the Revenue, ld. DR Mr. A.K. Patel has objected the relief granted by Ld. CIT(A) on the ground that the Keyman Insurance Policy pertained only to the Directors of the Company, and not for the employees of the company, therefore, the AO has rightly disallowed the same, but that aspect of his argument has already been considered by the Respected Co-ordinate Bench, therefore following the aforesaid decision, we find no force in this ground of the Revenue, hence, dismissed."*

5. In the present case, a clear finding is given by Ld. CIT(A) that two persons namely, Mr. Sudip Shah and Mr. Dilip Shah are employed and the assessee paid the premium of Rs.25 lakh for them and other six persons are directors handling various aspects of business on whose life total Rs.12 lakh premium was paid. It is also noted by Ld. CIT(A) on page-34 of his order that it was submitted by assessee before him that by letter dated 05-12-2008 given to the Assessing Officer, copy of which submitted before Ld. CIT(A) also, the details of persons, date of joining, nature of work done by them were given to the AO to prove that Keyman insurance premium was paid for those persons,

who are either employee or director handling key functions. Ld. CIT(A) also considered the Board's Circular No.762. In the light of these facts, this issue is squarely covered in favour of the assessee by the Tribunal decision cited by Ld. AR of the assessee relevant portion of which has been already reproduced above, and hence, by respectfully following the Tribunal decision, we decide the issue in favour of assessee and decline to interfere in the order of Ld. CIT(A).

6. In the result, appeal of Revenue is dismissed.

Order pronounced in Open Court on 09/12/2011

इस आदेश की घोषणा दिनांक: 09/12/2011 को खुले न्यायालय में की गई ।

Sd/-
(डी.के.त्यागी)
(D.K.Tyagi)
(न्यायिक सदस्य)
(Judicial Member)

Sd/-
(ए.के.गरोडिया)
(A.K. Garodia)
(लेखा सदस्य)
(Accountant Member)

Ahmedabad,

*Dkp

दिनांक:-09/12/2011अहमदाबाद ।

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

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

By order/आदेश से,

/True copy/

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद ।