

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "E" BENCH: NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER &  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.2982/Del/2023  
[Assessment Year : 2016-17]**

Mihir Parikh, 47, 2 <sup>nd</sup> Floor, Navjivvan Vihar, New Delhi-110017. <b>PAN-AHMPP7063M</b>	vs	ACIT, Circle-61(1), Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Gautam Jain, Adv.	
<b>Respondent by</b>	Dr.Maninder Kaur Biswas, Sr.DR	
<b>Date of Hearing</b>	16.02.2024	
<b>Date of Pronouncement</b>	21.02.2024	

**ORDER**

**PER KUL BHARAT, JM :**

By way of this present appeal, the assessee has challenged the correctness of the order passed by Ld. CIT(A), National Faceless Appeal Centre ("NFAC"), Delhi dated 01.09.2023 for the Assessment Year ("AY") 2016-17. The assessee has raised following grounds of appeal:-

1. *"That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi has erred both in law and on facts in upholding an addition made of Rs. 1,43,08,000/- representing sums received representing maturity proceeds of life insurance policy by erroneously invoking the provision contained in section 28(vi) of the Act.*
- 1.1. *That the learned Commissioner of Income Tax while upholding the addition has failed to appreciate the facts and circumstances of the case of the appellant that sums received on surrender of life insurance policy was exempt u/s 10(10D) of the Act and therefore,*

*neither the policy could be held as "Keyman Insurance Policy" and, nor the same could be brought to tax u/s 28(vi) of the Act.*

- 1.2. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that once the policy document clearly and specifically stated that policy was no longer "Keyman Insurance Policy", then the learned Commissioner of Income Tax (Appeals) without any material or evidence could not have arbitrarily or justifiably concluded that, the policy is Keyman Insurance Policy and, not a life insurance policy.*
- 1.3. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that sum received under a 'Keyman Insurance Policy' assigned before 1st April, 2014 not taxable. That the amendment in the definition of 'Keyman Insurance Policy' is prospective in nature and the same would not be applicable to the taxpayer since the assignment of 'Keyman Insurance Policy' in favour of keyman was made on November, 2008 which was much before the effective date of amendment i.e. 1st April, 2014.*
- 1.4. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the assignee paid Surrender Value of Rs.45,55,344/- to the Firm & who ultimately paid tax on Surrender Value. That the remaining three premium amounting to Rs.50,59,440/-also paid by the assignee. Total amount paid by the assignee was Rs.96,14,784/- & no tax benefit was claimed by the assignee on such policy. That tax was already paid by the assessee on this amount.*
- 1.5. That the learned Commissioner of Income Tax (Appeals) has further failed to appreciate that, once Circular No. 762 issued by CBDT clearly provided that, in case of employer-employee relationship, only surrender value is taxable in the hands of employee and that too at time of assignment of policy and thus, it cannot validly be held that, entire sum received on surrender of life insurance policy is taxable as income u/s 28(vi) of the Act in the year under consideration.*

2. *That without prejudice and in the alternative at best the addition could be made under the capital gains and thus even otherwise addition made and sustained is not in accordance with law.”*

2. The only effective ground raised by the assessee is regarding taxability of the sums received on maturity of life insurance policy u/s 28(vi) of the Income Tax Act, 1961 (“the Act”).

3. Facts giving rise to the present appeal are that the assessee filed his return of income, declaring total income of INR 64,76,000/- on 08.10.2016. The case of the assessee was selected for scrutiny assessment. During the course of assessment proceedings, the Assessing Officer (“AO”) noticed that the assessee had claimed a sum of INR 1,46,00,000/- as exempt income being the maturity proceeds from Life Insurance Corporation of India (“LIC”). In response to the statutory notices, Ld. Authorized Representative of the assessee attended the proceedings and filed explanation regarding proposed addition. However, the AO did not accept the contention of the assessee and treated the sum as taxable u/s 28(vi) of the Act, treating the proceeds under Keyman Insurance policy.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, sustained the addition and dismissed the appeal of the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. Ld. Counsel for the assessee submitted that it was contended before the AO that the maturity proceeds were received in AY 2016-17. The insurance

policy was under Keyman Insurance policy taken by M/s. Pratap Parikh Associates, a proprietorship concern in which the assessee was a Keyman. The proprietorship concern was dissolved and the assessee purchased the Keyman Insurance policy from M/s. Pratap Parikh Associates on 22.11.2008 after paying a surrender value amounting to INR 45,54,344/-. Thus, the assessee rightly claimed the amount as exempt u/s 10(10D) of the Act as a character of policy had changed wayback in the year 2008. He further submitted that under the identical facts, the Co-ordinate Bench of this Tribunal in the case of **Smt. Harleen Kaur Bhatia vs Pr.CIT, Indore [2020] 114 taxmann.com 183 (Indore-Trib.)**, decided the issue in favour of the assessee. He drew our attention to the decision of Tribunal in the case of *Smt. Harleen Kaur Bhatia vs Pr.CIT* (supra). He further placed reliance on the judgement of Hon'ble Delhi High Court in the case of **CIT vs Rajan Nanda [2012] 18 taxmann.com 98 (Delhi)**.

7. To buttress the contention that once insurance policy is assigned by the employer to employee, the insurance policy get converted into an ordinary policy. In that case, the value received by employee would not be subjected to tax in view of section 10(10D) of the Act. He further submitted that the amendment in law has been duly considered by the Co-ordinate Bench of the Tribunal and the decision of Hon'ble Bombay High Court in the case of **CIT, Central-III, Mumbai vs Prashant J.Agarwal [2016] 75 taxmann.com 54 (Bombay)**. Therefore, he submitted that the issue in question is covered in favour of the assessee.

8. On the other hand, Ld. Sr. DR for the Revenue opposed these submissions and supported the orders of the authorities below.

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*

*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.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 21<sup>st</sup> February, 2024.

**Sd/-**

**Sd/-**

**(N.K.BILLAIYA)**  
**ACCOUNTANT MEMBER**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI