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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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\+ **ITA 480/2015**

THE PRINCIPAL COMMISSIONER OF INCOME-TAX-9 ..... Appellant

Through: Mr. Dileep Shivpuri, Senior Standing Counsel with Mr. Sanjay Kumar, Advocate.

versus

ZIRCON TRADERS LTD. ..... Respondent

And

ITA 482/2015

COMMISSIONER OF INCOME-TAX-9 ..... Appellant

Through: Mr. Dileep Shivpuri, Senior Standing Counsel with Mr. Sanjay Kumar, Advocate.

versus

ZIRCON TRADERS LTD ..... Respondent

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR
HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

% 29.07.2015

1. ITA No. 482 of 2015 pertains to the Assessment Year ('AY') 2007-08 and ITA No. 480 of 2015 pertains to the AY 2008-09. In both the AYs, one of the common questions sought to be urged by the Revenue is that in the impugned order dated 12th December 2014, the Income Tax Appellate

Tribunal ('ITAT') has erred in deleting the additions made by the Assessing Officer ('AO') by disallowing the business expenditure claimed in respect of 'keyman insurance policy'.

2. The plea sought to be advanced is that the policy taken by the Assessee in the name of Mr. Deepak Kothari who was the Director and major shareholder of the Assessee company did not qualify as a Keyman insurance policy holder in terms of the circular of the Insurance Regulatory and Development Authority of India ('IRDA') and further that this objection of the Revenue was not dealt with by the ITAT in the impugned order.

3. The object of a 'keyman insurance policy' is to indemnify the company for loss of earnings resulting from the death of a valuable employee and in the absence of the suitable replacement of the dead person to perform his functions. According to the Revenue one of the restrictions placed by the IRDA on offering keyman insurance policy is that "The key person should not be the sole proprietor of the company or should not own major of capital (*sic*)". The case of the Revenue is that since Mr. Deepak Kothari holds 44.90% of the shares of the Assessee and another 39.92% shares is also admittedly held by a close relative, the 'endowment policy' issued by Kotak Mahindra Life Insurance does not qualify as a keyman insurance and the premium paid in respect thereof ought not to be allowed to be deducted as business expenditure.

4. It is not in dispute that in the earlier years the premium paid in respect of the same keyman insurance policy was in fact allowed by the Revenue as a

business expenditure. The impugned order of the ITAT refers to the CBDT circulars regarding deduction of premium paid under Keyman insurance policy for the computation of business income under Section 37(1) of the Act. The two CBDT circulars referred to are dated 3rd February 1964 and 18th February 1998. The aforementioned CBDT circulars did not restrict the deduction only in the case of the policies that satisfy the requirements of IRDA.

5. If the intention was to place any such restriction then there should be an appropriate amendment to the law. That would make the Assessee aware of the legal requirements that have to be satisfied before the deduction can be claimed. Having allowed a similar deduction in the previous years the Revenue cannot spring a surprise on the Assessee by seeking to rely on the IRDA circular only for the AYs in question. In the facts of the present case, the Court is of the view that the principle of consistency as explained in ***CIT v. Rajan Nanda, 349 ITR 8 (Del)*** should be adopted by the Revenue. Consequently, the Court is of the view that no substantial question of law arises for determination on this aspect.

6. In relation to AY 2007-08, one more issue sought to be raised by the Revenue is that the ITAT erred in holding that a sum of Rs.50 lakhs offered to tax by the Assessee was capital gains since there was in fact no transfer of any capital asset.

7. The facts relevant to the above issue are that the Assessee intended to purchase flats from Topworth Properties Pvt. Ltd. (TPPL) and for that

purpose the Assessee paid TPPL Rs.1.60 crores. Since TPPL was unable to deliver the flats on time, the Assessee cancelled the booking. The Assessee received back a sum of Rs. 2.10 crores from TPPL and offered to tax the differential sum of Rs.50 lakhs as capital gains.

8. The AO by the order dated 24th December 2009 treated the entire sum of Rs. 2.10 crores as business income in the hands of the Assessee. He also treated the sum of Rs. 50 lakhs as capital gains. This was challenged by the Assessee before the CIT (Appeals). Accepting the contention of the Assessee, the CIT (A) held that " Only difference should have been added and the whole consideration amount which has been received back as a refund could not be taxed. AO's action in this regard is beyond stretch of imagination. So in my considered opinion, appellant's claim of capital gain amounting to Rs. 50 lakh is justified". The ITAT has also concurred in the above view of the CIT (A).

9. Before this Court, it was sought to be urged on behalf of the Revenue that the aforementioned sum of Rs. 50 lakhs should in fact have been treated as business income. The Court finds that no such plea was taken by the Revenue at any stage of the proceedings. The stand of the Revenue as reflected in the order of the AO was to treat the said sum of Rs. 50 lakhs as capital gains. The Court declines to permit the Revenue to change its stand.

10. Consequently, the Court does not find any substantial question of law arising from the impugned order of the ITAT which requires examination.

11. The appeals are dismissed.

S. MURALIDHAR, J

RAJIV SHAKDHER, J

JULY 29, 2015
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