

Meaning of 'Keyman Insurance Policy' can't be derived from IRDA circulars



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Introduction

1. Section 10(10D) provides that any sum received under life insurance policy including sum allocated by way of bonus on such policy will be exempt except in certain cases. One of the exception is that the sum received under keyman insurance policy will not get exemption. Explanation to that section provides the definition of "Keyman insurance policy, which means a life insurance policy taken by a person on the life of another person who is or was his employee, or is or was, connected in any manner whatsoever with the business of the first mention person. The Act lays down that the sum received by the payer organization on such policies be taxed as business profits in its hands; and if the sum is received by the employee, if policy is endorsed in his favour, then it should be taxed in his hands, as profits in lieu of salary. And in case of other persons, not having employer employee relationship and receiving the sum on maturity, the same should be taxed as income from other sources. In this regard following questions will arise:

- (1) What will happen if the nature and character of the policy changes before the maturity – whether sum received on maturity will still be taxable?
- (2) Whether every kind of life insurance policy is covered under section 10(10D) or only term insurance policy are covered?
- (3) Whether Tribunal can drive support for the definition of life insurance policy from the definition laid down in other statutes like IRDA?
- (4) Whether not dealing with a contention of the party constitutes mistake apparent from the record? If yes then to what extent?

Some of these issues have been dealt with by the Tribunal in *F.C. Sondhi & Co. (India) (P.) Ltd. v. Dy. CIT*¹. Facts of this case,

arguments of the parties and decision of the Tribunal along with comments thereon, are discussed below:

Facts of the case

2. The assessee invested in Unit Linked Insurance Plan under the Keyman Insurance Plan purchased on the life of its managing director Shri Rajeev Anurag Sondhi and claimed deduction in respect of premium paid of ₹ 59,96,365. The Assessing Officer rejected the claim by holding that (1) the Unit Linked Insurance Plan is not the keyman insurance policy as per the meaning given in the Act. (2) The policy taken is Unit Linked Insurance Plan "an Investment Plan" of ICICI Prudential & Jeevan Shree I of LIC of Guaranteed returns and profits and not Keyman Insurance Policy as per definition of "Keyman Insurance Policy", as per explanation to clause (c) to section 10(10D) of the I.T. Act.

This disallowance was confirmed by the CIT(A) as well as by the Tribunal. Subsequently, the assessee moved a rectification petition pointing out that the Tribunal had not dealt with its main contentions. According to the assessee not dealing with the contention of the assessee, is a rectifiable mistake apparent from record. In addition to moving a rectification application, the assessee had also filed an appeal under section 260A before Hon'ble Punjab and Haryana High Court.

Arguments of the assessee

3. On maintainability of rectification application it was submitted that pendency of appeal before Hon'ble High Court does not come in the way of exercising, by the Tribunal, powers under section 254(2) of the Act, reliance was placed on the decision of Hon'ble Bombay High Court in the case of *R.W. Promotions (P.) Ltd. v. ITAT*². On merit of the rectification, the contention of the assessee was that his core contentions were not dealt with and decided.

These contentions were that (1) the insurance policy is on the life of another person who is an employee of the assessee, and that no further tests, *i.e.*, whether it is a term insurance policy or not, were envisaged by the statute and (2) the circulars of the IRDA have no decisive bearing on the definition of what constitutes, 'Keyman Insurance Policy'.

Arguments of the Department

4. According to the department, (1) insurance policies in question were not Keyman Insurance Policies, and, therefore, in the garb of rectifying a mistake apparent on record, such a decision cannot be revisited (2) the order cannot be recalled for minor omissions of not dealing with certain contentions if it does not affect the final outcome (3) the main decision of the tribunal is that the policy premium paid by the assessee is ineligible for deduction, and that decision, being a conscious and considered decision, cannot at all be termed as a mistake apparent on record (4) rectification under section 254(2) is confined to the patent and glaring mistakes and on which no two views are possible.

5. Decision of the Tribunal

1. For taxing the sum received on maturity in case of keyman insurance policy section 10(10D) provides that the policy should be a life insurance policy on the life of an eligible person.
2. The concept of term 'policy', 'pure life policy' or IRDA guidelines find no mention in the statutory provisions. IRDA circulars have no role to play in deciding whether the premium on the insurance policies paid are covered by the scope of 'keyman insurance policy' under section 10(10D) of the Act.
3. Even if there are omissions in a provision, it is not open to any judicial forum to supply these omissions.³