IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

[Coram: Pramod Kumar AM and A.D. Jain JM]

I.T.A. No. 37/Asr/2010,
Assessment year: 2006-07

Suri Sons ***……Appellant***
15 A Basti Nau, Jalandhar City
[AAJFS3496B]

Vs.

Additional Commissioner of Income Tax
Range 1, Jalandhar ***……Respondent***

Appearances by:

Y K Sud *for the appellant*
Tarsem Lal *for the respondent*

Date of concluding the hearing: June 10, 2015
Date of pronouncing the order: August 31, 2015

O R D E R

Per Pramod Kumar:

1. By way of this appeal, the assesse appellant has challenged correctness of the order dated 29th October 2009 passed by the learned CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2006-07. Although the assesse has raised as many as eight grounds of appeal, the short grievance of the assesse is that, on the facts and circumstances of this case, learned CIT(A) erred in upholding the disallowance of Rs 1,49,99,922 towards premium of keyman insurance policies.

2. Briefly stated, the relevant material facts are like this. During the course of the scrutiny assessment proceedings, the Assessing Officer noted that the assesse has claimed a deduction of Rs 1,49,99,222 towards keyman insurance policy on its

partner Shri Sanjeev Suri. The Assessing Officer noted that the assesse had taken "united linked endowment assurance plan" and that out of total premium paid by the assesse, only Rs 3,26,293 is towards "risk premium on life" and the balance premium is invested by the insurance company in buying units. The main objective of the insurance policy, thus, was guaranteed returns on the insurance premium amounts, rather than life insurance, and this main objective was to be achieved by investing in units. The Assessing Officer was of the view that a unit linked endowment plan, under Kotak Safe Investment Plan, "cannot be keyman insurance policy as per definition of keyman insurance given in the Income Tax Act". The AO was of the view that keyman insurance policy can include only a 'life insurance policy' and "the scope of cover should not be wider than the term assurance". The AO concluded that "the policy that has been taken as united linked endowment assurance plan is investment plan, premium of which has been put into growth fund and it is not a pure life insurance policy on the life of another person (*emphasis, by underlining, supplied by the Assessing Officer*)". On a separate note, the Assessing Officer also held that a partner of the firm cannot be 'keyman', and, for this reason also, the deduction cannot be allowed. The Assessing Officer also referred to the circular issued in April 2005 by the Insurance Regulatory and Development Authority (IRDA) referring to misuse of keyman insurance policies and warning the insurance companies and their agents of such malpractices. The AO observed that "Even as per the IRDA, only term insurance policies can be issued as keyman insurance cover". The AO further examined an employee of the Kotak Mahindra Life Insurance Ltd who stated that the policy in question was "in no way keyman insurance policy" nor could it be converted into a keyman insurance policy. The AO also examined an employee of the Kotak Mahindra Old Mutual Life Insurance Ltd who stated on oath that the policy was issued as "keyman insurance cover under the United Linked Endowment Assurance Plan in accordance with the application made" by the policyholder. The Assessing Officer also noted that the turnover of the assesse firm has gone down from 19 crores in the 2003-04 to Rs 12 crores in the assessment year 2004-05 and it has further come down to Rs 9 crore in the present year. This fall in turnover, apparently according to the Assessing Officer, shows that there was no commercial benefit from taking the keyman insurance cover. The insurance policy

was taken for the benefit of the partner rather than the firm. No necessity or expediency of the person being keyman and the policy being taken for the benefit of the firm was established. When benefit of policy was assigned to the insured, the policy cannot be said to be for the benefit of the assesse firm. With these discussions, and holding that the assesse had failed to prove "**that the policy taken is keyman as per definition given in the Income Tax Act, i.e. policy taken by a person on the life of another person and also fulfilling the terms and conditions laid down by IRDA in this regard, necessity and expediency of the person being keyman and the policy taken for the benefit of the assesse firm** *(emphasis, by underling, supplied by the AO)*", the Assessing Officer disallowed Rs 1,49,99,922. The Assessing Officer made some other observations in this regard also, but, for the reasons we will set out in a short while, it is not really necessary to deal with those aspects of the matter. Aggrieved, assesse carried the matter in appeal before the CIT(A) but without any success. The assesse is not satisfied and is in further appeal before us.

3. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

4. During the course of this hearing, we asked the parties to address us on, inter alia, the following aspects:

(a) Whether the disallowance under section 14A, in respect of expenses in relation to an income which does not form part of the total income, would come into play in this case and whether expense on keyman insurance policy, to the extent it relates to an income not chargeable to tax under section 10(10D), could fall in that category?

(b) Whether, in order to deal with the question 'a' above, is it permissible to bifurcate the keyman insurance policy premium into the portion relatable to the risk premium and the investment component?

(c) Whether even when none of the parties has raised that aspect of the matter before us, is it permissible for us, particularly in the light of the Special Bench decision in the case of Tata Communications Ltd Vs JCIT [(2009) 121 ITD SB 384, to deal with questions 'a' and 'b' above and proceed to adjudicate on the same?

(d) Whether the decisions of the coordinate benches, in the case of Shri Nidhi Corporation Vs ACIT [(2014) 151 ITD 470 (Bom)] and Emdee Apparel & Another Vs ACIT [(2012) 19 ITR 623 (Bangalore)], in the light of the issues raised above, could not be followed in entirety on the facts and in the circumstances of this case?

(e) Whether it is a fit case for being referred to Hon'ble President for the constitution of a special bench, consisting of three or more members, under section 255(4) of the Income Tax Act, 1961?

5. On these issues, learned counsel has submitted that the provisions of Section 14 A donot come into play in this case as the receipts in question are not exempt under section 10(10D) and, therefore, all other related questions are academic. He, however, hastens to add that the decisions in the case of Shri Nidhi Corporation (supra) and Emdee Apparel (supra) are directly on the issue that the insurance policy premium even on the policy which are not pure life insurance policies or term policies, are to be allowed as deduction as premium on keyman insurance policies. That precisely is the issue in this appeal, and, therefore, these decisions must be followed. As for the reference being made for special bench, learned counsel submits that the decision in the case of F C Sondhi & Co Vs DCIT [(2014) 49 taxmann.com 180 (Amritsar - Trib.)], is *per incurium* inasmuch as it does not follow earlier decisions on the same issue in the cases of Shri Nidhi Corporation (supra) and Emdee Apparel (supra), and, following decisions of this Tribunal in the case of JKT Fabrics Vs DCIT (4 SOT 84), it is not a binding judicial precedent. It is also pointed out that a rectification petition has already been filed against the said decision and this rectification is already heard, and order is reserved thereon, by the Tribunal on 2nd June 2015. In these circumstances, there being no conflict in the binding judicial precedents, there is no occasion for reference to the special bench. We are thus urged to follow the Shri Nidhi Corp decision and uphold the grievance of the assesse. On the other hand, however, in response to our query, learned Departmental Representative has submitted the following written note:

(a) It is submitted that section 14A would not come into play inn this case, as in the year when deduction is claimed, no income is claimed exempt and the proceeds of insurance policy is not exempt from tax as the same shall

form part of income as per provisions of Section 28(iv) of the Income Tax Act, 1961.

(b) Not applicable, in view of the above.

(c) Not applicable, in view of the above.

(d) The decision in the case of Shri Nidhi Coorporation Vs ACIT (151 ITD 470) is not applicable on the facts of this case as, in the policy submitted by the assesse, the assesse was given the liberty to choose the investment plan, whereas no such option was available to the assesse in the case of Shri Nidhi Corporation (supra). The assesse being allowed an option to choose its investment divests the very policy of its being nature of keyman insurance policy as such the same, being not the keyman insurance policy, is no eligible for exemption. It is further submitted that the issue involved in the case of Emdee Apparel & Another Vs ACIT, reported in 19 ITR Trib 623, is on different issue and I believe the same has no relevance to the subject matter of these appeals.

(e) It is submitted that the Hon'ble bench has already decided the issue in favour of the department in the case of F C Sondhi & Co, and it is, therefore, prayed that the said order be followed. Without prejudice to this submission, it is submitted that if the Hon'ble bench is of the opinion that the said order is not to be followed, then it is an ideal situation where the issue should be referred to the President for constituting a special bench to decide the issue.

6. One thing on which there is a consensus between the parties is that the provisions of Section 14A do not apply to the facts of this case, and, accordingly, no disallowance can be made on the ground that the payment of the policy premium results in a tax exempt income. In this view of the matter, the coordinate bench decision in the case of Agarwal Packaging Pvt Ltd Vs CIT [(2008) 112 ITD 240 (Pune)] has no application in the matter. As regards the F C Sondhi decision, relied upon by the learned Departmental Representative, we may point out that, while delivering this decision, an earlier decision on the same issue in the case of Shri Nidhi Corporation (supra), which decides the issue in favour of the assesse inasmuch as it holds that even non- pure life insurance policies are eligible for being treated as keyman insurance policies and that the IRDA circulars cannot, in any case, have a retrospective effect, was not taken note of by the Tribunal. Such a mistake may have been inadvertent but as to what is the consequence of such a

mistake, we find guidance from a coordinate bench decision in the case of J K T Fabrics (supra), wherein, the coordinate bench has inter alia observed as follows:

> **5. As far as Tribunal's decision in the case of Prince SWR Systems (P) Ltd. (supra) is concerned, we have noted that the Tribunal has not followed the co-ordinate Bench decision in Plastiblends India Ltd.'s case (supra), and has decided the case against the assessee by following the Bombay High Court judgment in the case of Indian Rayon Corpn. Ltd. vs. CIT (2003) 182 CTR (Bom) 247 : (2003) 261 ITR 98 (Bom). What is missed out, however, is the fact that in Plastiblends India Ltd.'s case (supra), the co-ordinate Bench had duly considered Indian Rayon Corpn. Ltd.'s case (supra) and then came to the conclusion that Indian Rayon Corpn. Ltd.'s case (supra) decision has no bearing on the question before the Tribunal. Once a co-ordinate Bench comes to this conclusion, it is not open to another co-ordinate Bench to come to any other conclusion on that issue. This is so held by the Hon'ble Supreme Court in the case of Union of India vs. Paras Laminates (P) Ltd. (1990) 87 CTR (SC) 180. To that extent, Tribunal's decision in the case of Prince SWR Systems (P) Ltd. (supra) appears to be in our humble understanding, per incuriam. In the case of Paras Laminates (P) Ltd. (supra), Hon'ble Supreme Court has, inter alia, observed as follows :**
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> **"It is true that a Bench of two Members must not lightly disregard the decision of another Bench of the same Tribunal on an identical question. This is particularly true when the earlier decision is rendered by a larger Bench. The rationale of this rule is the need for continuity, certainty and predictability in the administration of justice. Persons affected by decisions of Tribunals or Courts have a right to expect that those exercising judicial functions will follow the reason or ground of the judicial decision in the earlier cases on identical matters. Classification of particular goods adopted in earlier decisions must not be lightly disregarded in subsequent decisions, lest such judicial inconsistency would shake public confidence in the administration of justice. It is, however, equally true that it is vital to the administration of justice that those exercising judicial power must have the necessary freedom to doubt the correctness of an earlier decision if and when subsequent proceedings bring to light what is perceived by them as an erroneous decision in the earlier case. In such circumstances, it is but natural and reasonable and indeed efficacious that the case is referred to a larger Bench."**
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> **6. In the case of Venus Jewels (supra), the co-ordinate Bench held the issue in favour of the Revenue on the basis of Hon'ble Bombay High Court's judgment in the case of Indian Rayon Corpn. Ltd. (supra) and on the basis of the Hon'ble Rajasthan High Court's judgment in the case of Vijay Industries vs. CIT (2004) 190 CTR (Raj) 90 : (2004) 270 ITR 175 (Raj). What is held in Vijay Industries' case (supra) is the same thing as**

held in Indian Rayon Corpn. Ltd.'s case (supra) but then Plastiblends India Ltd.'s case (supra) having considered the school of thought emerging from these materially similar decisions, has come to the conclusion that where the assessee has not claimed the depreciation in its books of account, the same cannot be thrust upon the assessee for the purpose of computing the deduction under s. 80-IA. Following the Hon'ble Supreme Court's judgment in Paras Laminates (P) Ltd.'s case (supra) it was not open to the Bench to take any other view of the matter than the view taken by the co-ordinate Bench. The decision in Venus Jewels' case (supra) also appears to be per incurium.

7. No doubt that when a co-ordinate Bench doubts the correctness of decision of another co-ordinate Bench, a reference can be made to the Hon'ble President for constitution of a larger Bench. However, as far as the issue before us is concerned, a request for constitution of larger Bench was already been turned down. We see no necessity to make yet another request considering that Hon'ble President has, in a considered decision, turned down earlier request to that effect. In our opinion, the issue does not call for a reconsideration at this stage.

8. As to what should be the binding effect of a per incurium decision, we can do no better than to quote the Hon'ble Andhra High Court in the case of CIT vs. B.R. Constructions (1993) 113 CTR (AP)(FB) 1 : (1993) 202 ITR 222 (AP)(FB). In his inimitable style, Justice S.S.M. Quadri (as he then was) has articulated the views of the Full Bench of Hon'ble Andhra Pradesh High Court as follows :

"In a country like ours which is governed by rule of law, law has to be certain and uniform which is fundamental to the rule of law. In Mamleshwar vs. Kanahaiya Lal AIR 1975 SC 907, Krishna Iyer, J., speaking for the Supreme Court, observed :

'Certainty of the law, consistency of rulings and comity of Courts all flowering from the same principle, converge to the conclusion that a decision once rendered must later bind like cases.'

In this concurring judgment in State of U.P. vs. Synthetics & Chemicals Ltd. (1991) 4 SCC 139, 163, the observation of Sahai, J. on this aspect is :

'Uniformity and consistency are the core of judicial discipline.'

That is why the doctrine of stare decisis is part of our judicial system. This doctrine means 'to abide by former precedents'. Blackstone elucidated the doctrine thus :

'For it is an established rule to abide by former precedents, where the same points come again in litigation : as well as to keep the scale of

justice even and steady and not liable to waiver with every new Judge's opinion, as also because the law in that case being solemnly declared and determined, what before was uncertain, and perhaps indifferent, is now become a permanent rule, which it is not in the breast of any subsequent Judge to alter or vary from, according to his private sentiment. . . .'

The ratio decidendi of a judgment is a binding precedent. The hierarchy of authority with regard to binding precedent is summed up in para 28 at p. 158 of 'Salmond on Jurisprudence', Twelfth Edition, as follows :

'The general rule is that a Court is bound by the decision of all Courts higher than itself. A High Court Judge cannot question a decision of the Court of Appeal, nor can the Court of Appeal refuse to follow judgments of the House of Lords. A corollary of the rule is that the Courts are bound only by decisions of higher Courts and not by those of lower or equal rank. A High Court Judge is not bound by a previous High Court decision, though he will normally follow it on the principle of judicial comity, in order to avoid conflict of authority and to secure certainty and uniformity in the administration of justice. If he refuses to follow it, he cannot overrule it; both decisions stand and the resulting antimony must wait for a higher Court to settle.'

The principles applicable to Courts in India were laid down by Subba Rao, J. (as he then was) in Dr. K.C. Nambiar vs. State of Madras AIR 1953 Mad 351, which were approved by a Full Bench of our High Court in Subbarayudu vs. State AIR 1955 AP 87 (FB) : (1955) 11 ALT (Cri.) 53. They are as follows :

'A single Judge is bound by a decision of a Division Bench exercising appellate jurisdiction. If there is a conflict of Bench decisions, he should refer the case to a Bench of two Judges who may refer it to a Full Bench. A single Judge cannot differ from a Division Bench unless a Full Bench or the Supreme Court overruled that decision specifically or laid down a different law on the same point. But he cannot ignore a Bench decision, as I am asked to do on the ground that some observations of the Supreme Court made in different context might indicate a different line of reasoning. A Division Bench must ordinarily respect another Divisional Bench of co-ordinate jurisdiction but if it differs, the case should be referred to a Full Bench. This procedure would avoid unnecessary conflict and confusion that otherwise would prevail.'

The effect of binding precedents in India is that the decisions of the Supreme Court are binding on all the Courts. Indeed, Art. 141 of the Constitution embodies the rule of precedent. All the subordinate Courts are bound by the judgments of the High Court. A single Judge of a High Court is bound by the judgment of another single Judge and a fortiori judgments of Benches consisting of more Judges than one. So also, a

Division Bench of a High Court is bound by judgments of another Division Bench and Full. A single Judge or Benches of High Courts cannot differ from the earlier judgments of co-ordinate jurisdiction merely because they hold a different view on the question of law for the reason that certainty and uniformity in the administration of justice are of paramount importance. But, if the earlier judgment is erroneous or adherence to the rule of precedents results in manifest injustice, differing from the earlier judgment will be permissible. When a Division Bench differs from the judgment of another Division Bench, it has to refer the case to a Full Bench. A single Judge cannot differ from a decision of a Division Bench except when that decision or a judgment relied upon in that decision is overruled by a Full Bench or the Supreme Court, or when the law laid down by a Full Bench or the Supreme Court is inconsistent with the decision.

It may be noticed that precedent ceases to be a binding precedent :

(i) if it is reversed or overruled by a higher Court,

(ii) when it is affirmed or reversed on a different ground,

(iii) when it is inconsistent with the earlier decisions of the same rank,

(iv) when it is sub silentio, and

(v) when it is rendered per incuriam.

In para 578 at p. 297 of Halsbury's Laws of England, Fourth Edition, the rule of per incuriam is stated as follows :

'A decision is given per incuriam when the Court has acted in ignorance of a previous decision of its own or of a Court of co-ordinate jurisdiction which covered the case before it, in which case it must be decided which case to follow; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force.'

In Punjab Land Development & Reclamation Corpn. Ltd. vs. Presiding Officer, Labour Court (1990) 3 SCC 682 : (1990) 77 FJR 17 (SC), the Supreme Court explained the expression 'per incuriam' thus :

'The Latin expression per incuriam means through inadvertence. A decision can be said generally to be given per incuriam when the Supreme Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of the Supreme Court.'

As has been noticed above, a judgment can be said to be per incuriam if it is rendered in ignorance or forgetfulness of the provisions of a statute or a rule having statutory force or a binding authority. But, if the provision of the Act was noticed and considered before the conclusion arrived at, on the ground that it has erroneously reached the conclusion the judgment cannot be ignored as being per incuriam. In Salmond on Jurisprudence, Twelfth Edition, at p. 151, the rule is stated as follows :

'The mere fact that (as is contended) the earlier Court misconstrued a statute, or ignored a rule of construction, is no ground for impugning the authority of the precedent. A precedent on the construction of a statute is as much binding as any other, and the fact that it was mistaken in its reasoning does not destroy its binding force.'

In Choudhry Bros. vs. CIT (1987) 60 CTR (AP) 151 : (1986) 158 ITR 224 (AP), as noticed above, the Division Bench treated the judgment in Ch. Atchaiah vs. ITO (1979) 116 ITR 675 (AP), as per incuriam on the ground that the earlier Division Bench did not notice the significant changes the charging s. 3 has undergone by the omission of the words 'or the partners of the firm or the members of the association individually'. In our view, this cannot be a ground to treat an earlier judgment as per incuriam. The change in the provisions of the Act was present in the mind of the Court which decided Ch. Atchaiah's case (supra). Merely because the conclusion arrived at on construing the provisions of the charging section under the old Act as well as under the new Act did not have the concurrence of the latter Bench, the earlier judgment cannot be called per incuriam.

Though a judgment rendered per incuriam can be ignored even by a lower Court, yet it appears that such a course of action was not approved by the House of Lords in Cassell & Co. Ltd. vs. Broome (1972) 1 All ER 801, wherein the House of Lords disapproved the judgment of the Court of Appeal treating an earlier judgment of the House of Lords as per incurium. Lord Hailsham observed :

'It is not open to the Court of Appeal to give gratuitous advice to Judges of first instance to ignore decisions of the House of Lords in this way'.

It is recognised that the rule of per incuriam is of limited application and will be applicable only in the rarest of rare cases. Therefore, when a learned single Judge or a Division Bench doubts the correctness of an otherwise binding precedent, the appropriate course would be to refer the case to a Division Bench or Full Bench, as the case may be, for an authoritative pronouncement on the question involved as indicated above. The abovesaid two questions are answered as indicated above."

9. It is thus beyond dispute that a decision which is per incuriam is not a binding judicial precedent. It is also well-settled that when it is not open

> **to a High Court Bench to differ from the decision of a Bench of equal strength, it cannot also be open to a Bench of this Tribunal to differ from the view taken by a co-ordinate Bench of equal strength. The only option in case one doubts the correctness of such a decision is to refer the matter for constitution of a larger Bench. A decision ignoring this rule of precedent, which is duly approved by the Hon'ble Courts from time to time, cannot but be viewed as per incuriam. Therefore, following the Hon'ble Andhra Pradesh High Court Full Bench decision in the case of B.R. Constructions (supra), such a decision of the co-ordinate Bench has no precedence value**

7. The coordinate bench decision in the case of F C Sondhi & Co (supra), for the reasons set out above, does not constitute a binding judicial precedent. That apart, this decision now stands recalled as some of the contentions raised by the appellant were not disposed of in the said order. Not only thus it is not a binding judicial precedent, as on now, it is a legal nullity as having been recalled as above. Nothing thus really turns on this precedent.

8. Let us now come back to the core issue before us. The short question that we have to really adjudicate is as to whether the premium of Rs 1,49,99,922 paid on the keyman insurance policies can be allowed on the facts of this case. As to what constitutes 'keyman insurance policy', we find guidance from the Explanation below Section 10(10D), as it stood at the relevant point of time, which defined the keyman insurance policy as follows:

> **For the purposes of this clause, "Keyman insurance policy" means a life insurance policy taken by a person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first-mentioned person**

9. Vide Finance Act 2013, the following words have been added to this definition- "**and includes such policy which has been assigned to a person, at any time during the term of the policy, with or without any consideration**".

10. All that is required for an insurance policy to meet the requirements of Section 10(10D), therefore, has to be – (a) it should be a life insurance policy; (b) it should be taken by the assesse on the life of another person who is, or was, an employee of the assesse or is related to the business of the assesse is any manner.

11. Dealing with both the limbs of the above requiremenst, a coordinate bench of this Tribunal, in the case of Shri Nidhi Corporation (supra), has observed as follows:

> It appears that after the assessee has purchased these policies, IRDA came up with circular dated 27th April 2005 that partnership insurance in the name of partner will not be covered under Keyman insurance but as a term insurance cover. Thus, such IRDA circular cannot be adversely viewed in case of the assessee as when the assessee has taken the policy under Keyman Insurance Scheme from two reputed insurance companies there was no such regulation. The other objections of the Revenue are that the deduction of the premium under Keyman insurance cannot be allowed in the case of partnership firm, is not tenable in view of the decision of the Hon'ble Jurisdictional High Court in B.N. Exports (supra), wherein, it has been held that if the Keyman Insurance Policy is obtained on a life of a partner, to safeguard the firm against a disruption of business, then the payment for premium on such policy is liable for deduction as business expenditure. Thus, **even if a Keyman insurance has been taken in the name of a partner by the partnership firm, then also the deduction has to be allowed on the payment of premium**. The other main objections of the learned Commissioner (Appeals) has been that firstly, these are not insurance policy as such but are mainly for capital appreciation under the investment scheme and secondly, the assessee has not received the maturity sum but it has been assigned to the partners, therefore, the assessee cannot be given deduction for any premium paid. Insofar as the first objection of the learned Commissioner (Appeals) is concerned, we declined to agree with this conclusion, because **once the assessee has bought a policy under a life insurance scheme, then whether the insurance company is making investment in mutual funds for capital appreciation or under any other investment scheme, will not make any material difference.**
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> *(Emphasis, by underlining, supplied by us)*

12. We are in considered agreement with the views so expressed by our distinguished colleagues. As long as a policy is an insurance policy, whether

it involves a capital appreciation or is under any other investment scheme, it meets the tests laid down under section 10(10D).

13. The requirement of pure insurance policy is something which is not laid down by the statute. Yet, it is this which has been inferred by the authorities below.

14. Even if such an inference is desirable, as long as it does not emerge from the plain words of the statute, it cannot be open to supply the same. The concepts of term policy, pure life policy and the IRDA guidelines find no mention in the statutory provisions. But even if these concepts ought to be incorporated in this statutory provision of the Income Tax Act to make it more meaningful and workable, it cannot be open to any judicial forum to supply these omissions. Relying upon Hon'ble Supreme Court's judgment in the case of **Tarulata Shyam Vs CIT [(1977) 108 ITR 245 (SC)],** a coordinate bench of this Tribunal, in the case of **Tata Tea Limited Vs JCIT [(2003) 87 ITD 351 (Cal)]**, has explained this principle as follows:

> **8. Casus omissus, which broadly refers to the principle that a matter which has not been provided in the statute but should have been there, cannot be supplied by us, as, to do so will be clearly beyond the call and scope of our duty which is only to interpret the law as it exists. Hon'ble Supreme Court, in the case of Smt. Tarulata Shyam vs. CIT 1977 CTR (SC) 275 : (1977) 108 ITR 345 (SC) at p 356 has observed :**
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> **"We have given anxious thought to the persuasive arguments..... (which) if accepted, will certainly soften the rigour of this extremely drastic provision and bring it more in conformity with logic and equity. But the language of sections..... is clear and unambiguous. There is no scope for importing into the statute the words which are not there. Such interpretation would be, not to construe, but to amend the statute. Even if there be a casus omissus, the defect can be remedied only by legislation and not by judicial interpretation.....To us, there appears no justification to depart from normal rule of construction according to which the intention of legislature is primarily to be gathered from the words used in the statute. It will be well to recall the words of Rowlatt. J. in Cape Brandy Syndicate vs. IRC (1921) 1 KB 64 (KB) at p. 71, that**

: "..... in a taxing Act one has to look at merely what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." Once it is shown that the case of the assessee comes within the letter of law, he must be taxed, however great the hardship may appear to the judicial mind to be."

Even in the case of CIT vs. National Taj Traders (supra), relied upon by the assessee, Their Lordships of Hon'ble Supreme Court have referred to, with approval, Maxwell on Interpretation of Statutes' observation that "A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and that the omission appears in consequence to have been unintentional". Their Lordships then observed that "In other words, under the first principle, a casus omissus cannot be supplied by the Court except when reason for it is found to be in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute".

15. It is also important to bear in mind the fact that the IRDA guidelines, no matter how relevant as these guidelines may be, have no role to play in the interpretation of the statutory provisions. IRDA is a body controlling the insurance companies and its guidance is relevant on how the insurance companies should conduct their business. Beyond this limited role, these guidelines donot affect how the provisions of the Income Tax Act are to be construed. Whenever the provisions of the other statututes are to be taken into account, for interpreting the provisions of the Income Tax Act, the Income Tax Act specifically provides so, such as in the case of Explanation 2 to Section 2 (42A) which provides that **"the expression "security" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956**)]". It cannot, therefore, be open to us to turn to the guidelines of the IRDA to interpret the provisions of the Income tax Act, 1961. In this view of the matter, learned Assessing Officer's observations to the effect that, ""**that the policy taken is**

keyman as per definition given in the Income Tax Act, i.e. policy taken by a person on the life of another person and also fulfilling the terms and conditions laid down by IRDA in this regard, necessity and expediency of the person being keyman and the policy taken for the benefit of the assesse firm *(emphasis, by underling, supplied by the AO)*" are devoid of any legally sustainable merits. The fulfilment of IRDA terms and conditions is wholly alien to the present context. As for the policy being taken for the benefit of the assesse firm, as long as it is for the purpose of taking an insurance policy on the life of a person who is related to the firm, the same cannot be called into question either. We have also noted that the authorities below have paid a lot of emphasis on the contention that the insurance policies in question were not termed as keyman insurance policies but nothing turns on that aspect, even if that be so, either. The keyman insurance policy is a defined concept and as long as it meets the requirements of this definition, the terminology given by the insurers have no relevance for the purposes of the Income Tax Act. All that is necessary is that it should be a life insurance policy, whether pure life insurance policy or not- as such criterion is not set out anywhere in the stature, and it should be taken on the life of a person who is, or has been, an employee of the assesse or any other person who is or was connected in any manner whatsoever with the business of the assesse. These conditions are clearly satisfied on the facts of the case before us.

16. A lot of emphasis has been placed by the authorities below on the circulars issued by the IRDA. It may, therefore, be appropriate to briefly deal with the IRDA and the impact of the circulars issued by the IRDA. IRDA, i.e. Insurance Regulatory and Development Authority, is set up under the Insurance Regulatory and Development Act 1999. Section 14 of the Insurance Regulatory and Development Act, 1999, describes the duties, powers and functions of the IRDA as follows:

> 14. DUTIES, POWERS AND FUNCTIONS OF AUTHORITY.
>
> (1) Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty to regulate, promote and ensure orderly growth of the insurance business and re-insurance business.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the powers and functions of the Authority shall include, -

(a) issue to the applicant a certificate of registration, renew, modify, withdraw, suspend or cancel such registration;

(b) protection of the interests of the policy holders in matters concerning assigning of policy, nomination by policy holders, insurable interest, settlement of insurance claim, surrender value of policy and other terms and conditions of contracts of insurance;

(c) specifying requisite qualifications, code of conduct and practical training for intermediary or insurance intermediaries and agents;

(d) specifying the code of conduct for surveyors and loss assessors;

(e) promoting efficiency in the conduct of insurance business;

(f) promoting and regulating professional organisations connected with the insurance and re-insurance business;

(g) levying fees and other charges for carrying out the purposes of this Act;

(h) calling for information from, undertaking inspection of, conducting enquiries and investigations including audit of the insurers, intermediaries, insurance intermediaries and other organisations connected with the insurance business;

(i) control and regulation of the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee under section 64U of the Insurance Act, 1938 (4 of 1938);

(j) specifying the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by insurers and other insurance intermediaries;

(k) regulating investment of funds by insurance companies;

(l) regulating maintenance of margin of solvency;

(m) adjudication of disputes between insurers and intermediaries or insurance intermediaries;

(n) supervising the functioning of the Tariff Advisory Committee;

(o) specifying the percentage of premium income of the insurer to finance schemes for promoting and regulating professional organisations referred to in clause (f);

(p) specifying the percentage of life insurance business and general insurance business to be undertaken by the insurer in the rural or social sector; and

(q) exercising such other powers as may be prescribed.

17. Clearly, therefore, IRDA is primarily to "regulate, promote and ensure orderly growth of the insurance business and re-insurance business". In

doing so, as evident from Section 14(2)(a) to (q) above, it regulates the conduct of the service providers in the business of the insurance. It does not, and cannot, regulate the conduct of the policy holders. As in Section 14(2)(b), if at all it has anything to do with the policyholders, it is protection of interest of the policyholders. It is in this background that we have to see the circulars issued by the IRDA. In the circular dated 27th April, 2005, the IRDA states as follows:

> The Authority is aware that some of the aberrations have taken place in the month of March 2005 in the matter of sale of keyman insurance.
>
> We shall conduct a detailed examination of the policies marketed in March 2005 and shall come up with detailed guidelines on the sale of keyman insurance at the appropriate time. In the meantime, it has been decided that only term insurance policy will henceforth be issued as 'keyman insurance cover'.
>
> Your company is requested to ensure that your company follows this circular till fresh guidelines are issued.

17. A plain look at the above circular shows that it deals with aberrations in sale of keyman insurance policies and it is was a direction to the insurance companies that effect 27th April 2005 only term insurance policies should be issued as keyman insurance cover. That is between the regulatory authority and the insurance companies as to what should be allowed to be marketed as keyman insurance cover. However, it does not alter the requirements of Section 10(10D) which is for 'life insurance policy'. What can be sold as a 'life insurance policy' taken by a business entity for its employee, former employee or any other person important for business of such an entity is between the insurance regulator and insurance service provider. However, once it has been sold as a life insurance policy on the keyman to the business, as long as it is in the nature of life insurance policy, whether pure life cover or term cover or a growth or guaranteed return policy, it is eligible for coverage of Section 10(10D). It is not open to us to infer the words which are not there on the statute and then proceed to give life and effect to the same. We had detailed discussions about this aspect of the matter in

paragraph numbers 10 to 15 above, and, as we have held there, such an exercise is not permissible under the scheme of the Act.

18. What IRDA regulates is issuance of life insurance policies by the insurance companies to the policyholders on the lives of its employees, former employees and key personnel but once such a policy is issued it cannot but be treated as a 'keyman insurance cover' as it essentially meets the requirement of Section 10(10D) because it is a "**a life insurance policy taken by a person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first-mentioned person".** The mandate of Section 10(10D) does not put any further tests, nor can we infer the same.

19. The Assessing Officer has questioned commercial expediency of taking the keyman insurance policies on the short grounds that (a) the fall in turnover, apparently according to the Assessing Officer, shows that there was no commercial benefit from taking the keyman insurance cover; (b) the insurance policy was taken for the benefit of the partner rather than the firm; and (c) no necessity or expediency of the person being keyman and the policy being taken for the benefit of the firm was established. When benefit of policy was assigned to the insured, the policy cannot be said to be for the benefit of the assesse firm. We see no merits in these objections to the commercial expediency. As for the fall in turnover, the benefit of an expenditure cannot be, by any stretch of logic, relevant to determine its commercial expediency, and, in any case. Such a benefit of hindsight cannot be available at the point of time when business decisions are made; more often than not, these are the tools of post mortem of events, rather than inputs for the decision making. As for the other issues raised by the Assessing Officer as such, we may refer to the following observations made, in this context, by Hon'ble Delhi High Court in the case of **CIT Vs Rajan Nanda etc. [(2012) 349 ITR 8 (Del)]**:

> **25. After giving our due and thoughtful consideration to the submissions of the parties of both sides, we feel that the assessee has**

been able to make out a case in its favour and order of the Tribunal does not call for any interference. We are persuaded by the following reasons in support of this view of ours:

(i) The Department has itself allowed the expenditure incurred on the premium paid for keyman insurance policies in previous years as business expenditure under Section 37 of the Act. Right from 1991-92 upto 1993-94 and thereafter even in respect of Assessment Year 1997-98, the expenditure was allowed. Though thereafter, the expenditure was disallowed, but again the claim was accepted for the Assessment Years 2001-02 and 2002-03. Principle of consistency would, therefore, by applicable in such a case.

(ii) The Tribunal has rightly referred to and relied upon the CBDT's Circular dated 18.2.1998. This Circular is binding on the Income Tax Department, which categorically stipulates that premium on keyman policy should be allowed as business expenses. The assessee would, naturally, take into consideration such clarifications issued by the CBDT and would act on the basis thereof. When the assessee was given the impression, by means of the aforesaid Circular, that if expenditure is incurred on the keyman policy, it would be treated as business expenditure. There is no reason for the Department to deviate therefrom when it comes to the assessment.

(iii) The nature of expenditure incurred on keyman insurance policy has even been judicially considered and Bombay High Court has held in B.N. Exports (supra) that this expenditure is to be allowed as business expenditure, in the following words:

"The effect of Section 10(10D) is that monies which are received under a life insurance policy are not included in the computation of the total income of a person for a previous year. However, any sum received under a Keyman insurance policy is to be reckoned while computing the total income. For that purpose, a Keyman insurance policy means a life insurance policy taken by a person on the life of another person who is or was in employment as well as on a person on who is or was connected in any manner whatsoever with the business of the subscriber. The words "is or was connected in any manner whatsoever with the business of the subscriber" are wider than what would be subsumed under a contract of employment. The latter part makes it clear that a Keyman insurance policy for the purposes of Clause (10D) is not confined to a situation where there is a contract of employment. Clause (10D) relates to the treatment for the purpose of taxation of moneys received under an insurance policy. In this appeal, the court has to determine the question of expenditure incurred towards the payment of insurance premium on a Keyman insurance policy. The circular which has been issued by the Central Board of Direct Taxes clarifies the position by stipulating that the premium paid for a Keyman insurance

policy is allowable as business expenditure. In the present case, on the question whether the premium which was paid by the firm could have been allowed as business expenditure, there is 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 set back that may be caused on account of the death of a partner. The object and purpose of a Keyman insurance policy is to protect the business against a financial set back which may occur, as a result of a premature death, to the business or professional organization. There is no rational basis to confine the allowability of the expenditure incurred on the premium paid towards such a policy only to a situation where the policy is in respect of the life of an employee. A Keyman insurance policy is obtained on the life of a partner to safeguard the firm against a disruption of the business that may result due to the premature death of a partner. Therefore, the expenditure which is laid out for the payment of premium on such a policy is incurred wholly and exclusively for the purposes of business."

(iv) The argument of Mr. N.P. Sahni, learned counsel for the Revenue that taking such keyman insurance policy every year and thereafter assigning the same to the beneficiaries may be treated as colourable device, may not be correct. Though this argument appears to be attractive when we look into the fact that the assessee had been taking the policies and thereafter assigning the same year after year in favour of the beneficiaries, what cannot be ignored that this course of action is permitted by the Department itself as stated in CBDT's Circular dated 18.2.1998.

(v) The expenditure incurred has to be tested on the touchstone of Section 37 of the Act and to see as to whether such expenditure is permissible or not. No doubt, the object of a keyman insurance policy is to enable business organizations to insure the life of a keyman in order to protect the business against the financial loss which may occur in the likely eventuality of premature death. Such an expenditure is treated as business expenditure by the Department itself and recognized as such in Circular dated 18.2.1998. The expenditure is to be seen at the time it is incurred. Merely because the policy was assigned after sometime would not mean that the expenditure incurred in the first instance would lose the flavour of it being ^business expenditure'.

(vi) Once the legal provisions and the outlook of Department itself based on such legal provisions permit the assessee to have the tax planning of this nature, and the course of action taken by the assessee is permissible under law, the argument of colourable device cannot be advanced by the Revenue. When expenditure of this nature is treated ^business expenditure' per se by the Department itself, there cannot be any question of raising the issue of want of business expediency. The learned counsel for the respondent is right in his submission that the

Department could not sit on the armchair of the assessee and decide as to whether it was appropriate on business expediency for the assessee to incur such an expenditure or not. If the transaction is otherwise valid in law and is a part of tax planning, merely because it has resulted in reduction of tax, such expenditure cannot be ignored raising the issue of underlying motive of entering into this type of transaction. Various judgments cited by the learned counsel for the respondents clearly get attracted to this Court.

(Emphasis, by underlining, supplied by us)

20. Respectfully following the esteemed views of Hon'ble Delhi High Court, we reject the stand of the authorities below on this aspect of the matter as well. As for the statement made by the employees of the insurance companies, nothing turns on these statements. What constitutes a keyman insurance policy under section 10(10D) is not dependent on what is it treated even by the insurer; as long as the assesse is allowed to take life insurance policy on its keymen, as have been undisputedly taken in this case, the same satisfies the requirement of Section 10(10D). In view of these detailed discussions, as also bearing in mind entirety of the case, we uphold the grievance of the assesse and delete the impugned disallowance of Rs 1,49,99,922. The assesse gets the relief accordingly.

21. In the result, the appeal is allowed in the terms indicated above. Pronounced in the open court today on the 31st day of August, 2015

Sd/xx ***Sd/xx***
A D Jain **Pramod Kumar**
(Judicial Member) (Accountant Member)
Dated: the 31st day of August 2015

Copies to: *(1)* *The appellant* *(2)* *The respondent*
(3) *Commissioner* *(4)* *CIT(A)*
(5) *DR* *(6)* *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Amritsar Bench, Amritsar