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IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1701 OF 2012

The Commissioner of Income Tax-II
Pune. ..Appellant
-***Versus***-
Agarwal Enterprises ..Respondent

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Mr. Vimal Gupta, Senior Counsel, a/w Sham Walve i/b. Vipul A. Bajpayee for the Appellant.
None for the Respondent.

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CORAM: S.C. DHARMADHIKARI
AND
S. P. DESHMUKH, JJ.

DATE :- 7th JANUARY, 2015.

P.C.:

This Appeal by the Revenue challenges the order passed by the Income Tax Appellate Tribunal, Bench at Pune, dated 8th November, 2011.

2] The assessment year in question is 2005-06. The Revenue's Appeal before the Tribunal raised two grounds. The first ground was that the Commissioner of Income Tax (Appeals) should not have deleted the addition of Rs.27,63,920/- made by the Assessing Officer under section 37(1) of the Act from out of the Assessee's claim towards Keyman Insurance Premium.

3] The second ground was that a sum of Rs.42,48,052/- on account of under valuation of closing stock of shares and bonds was rightly added.

4] Mr. Vimal Gupta, learned Senior Counsel, appearing in support of this Appeal submits that all four questions and formulated by the Revenue are substantial questions of law.

5] He submits that the Keyman Insurance Policy has been taken in the case of the present Assessee, a partnership firm. It is on the life of two partners. The partnership firm cannot have existence in law independent that of the partners. Therefore, the Assessing Officer was justified in estimating a percentage, namely, 20% of the Keyman Insurance Premium. That was on the basis that this insurance premium expenditure was personal in nature and of the partners. It was not incurred wholly and solely for the purpose of the business of the Assessee's firm. Mr. Vimal Gupta would submit that both the Commissioner and the Tribunal erred in law in deleting this addition. Both having referred to no prohibition in making such an estimation and, therefore, the Appeal deserves to be admitted.

6] We have perused the order of the Commissioner and the Income Tax Appellate Tribunal to the extent relevant for us. With regard to the

Keyman Insurance Premium, the Tribunal held that it is an admitted position that the Assessee is a firm registered under the Indian Partnership Act, 1932. It is engaged in the business of purchase and sale of securities and investment in capital market. The insurance premium was paid and the expenditure of Rs.1,38,19,600/- under this Keyman Insurance Premium was claimed on the life of the two partners. The Assessee explained that this expenditure was deductible under section 37(1) of the Income Tax Act since it was incurred by the firm to protect the business from loss which may arise due to death of partner. The beneficiary of the insurance policy was the firm itself and not individual partners. It was an expenditure related to the partners. The Assessing Officer did not agree with this stand of the Assessee and on the legal position proceeded to hold that the Keyman Insurance Premium could be treated as personal expenses of the partners. He disallowed 20% of the Keyman Insurance Premium on the basis that this expenditure was personal in nature of the partners and it was not incurred wholly and solely for the purpose of business of the Assessee firm.

7] The Commissioner deleted such adhoc disallowance and the Tribunal has upheld that order of the Commissioner.

8] We have, in the light of this admitted factual position perused the findings. The findings of the Tribunal in para 5 are that the adhoc deduction could not have been effected. More so, when the department itself has clarified that premium paid on the Keyman Insurance Premium is allowable as business expenditure. The Keyman Insurance Premium is a life insurance 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 Commissioner referred to the legal provisions. The Commissioner rested his findings on the factual position that emerged from the record. The record indicated that the partnership firm comprised of two partners. It was dealing in securities and shares. The policy was obtained for the benefit of the firm inasmuch as the firm's business would be adversely affected, in the event, one of the partners met with an untimely death. It is, therefore, concluded by the Tribunal that such being the nature of the expenses and the business of the firm being of dealing in securities for protecting it this policy was obtained. The premium expenditure was incurred in the above factual backdrop. There was no basis, therefore, for making any deduction or disallowance. The disallowance was purely a matter of conjecture and surmise on the part of the Assessing Officer. It is in these circumstances that the Commissioner deleted this disallowance. That exercise of the Commissioner having been upheld in the peculiar factual backdrop, we are of the opinion that any wider question or controversy does not arise for our consideration and determination. The view taken been consistent with the factual position is a plausible and possible one. That does not raise any substantial question of law.

9] Even in relation to other two questions, we have perused para 9 of the Tribunal's order. We find that when the cost actually paid is considered, there is no concept of any notional valuation. The average cost is worked out by considering the total cost actually paid for purchasing the shares and the dividend by the number of shares. The Tribunal held that the Assessee's perception that the value taken on the basis of “weighted average method” is notional, is incorrect. Why it has to be termed as such, has been reasoned by the Tribunal in para 9. It has been held that the Assessee has been following this method of valuation of closing stock for the last 16 years. In these circumstances, unless some distinguishing features were on record, the Assessing Officer should not have interfered with this method of valuation, is the finding which the Tribunal renders. It concurs fully with the finding of the Commissioner when he holds that the method of valuation or stock followed by the Assessee was an accepted method and in consonance with law as well as Accounting Standards. We do not find that such a finding of fact rendered by the Tribunal can be termed as perverse. It is in consonance with the factual materials placed on record. On this count as well this Appeal is not raising any substantial question of law.

10] As a result of the above discussion, the Appeal fails and it is, accordingly, dismissed. No costs.

(S. P. DESHMUKH, J.) **(S.C. DHARMADHIKARI, J.)**

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