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

INCOME TAX APPEAL NO. 465 OF 2014

Commissioner of Income Tax,
Central-III, Mumbai .. Appellant

v/s.

Prashant J. Agarwal .. Respondent

Ms. S.V. Bharucha for the appellant
Mr. Atul Jasani for the respondent

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.

DATED : 26th SEPTEMBER, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 6th September, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2010-11.

2. Ms. Bharucha, learned Counsel for the Revenue urges the following question of law for our consideration :-

> *"Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in holding that amount of*

Rs.76,00,000/- received by the assessee on maturity of "Keyman Insurance Policy" is not taxable and is exempt under Section 1O(10D) of the Income Tax Act ignoring the Circular No.762 dated 18/02/1998 issued by CBDT wherein it was clarified that such amount is taxable in "the hands of recipient"?

3. During the subject assessment year, the respondent assessee received an amount of Rs.76 lakhs on account of maturity of Keyman Insurance Policy. The respondent assessee claimed exemption under Section 10(10D) of the Act. The Assessing Officer denied the same and brought the amounts received by the respondent assessee to tax under Section 17(3)(ii) of the Act, as profits in lieu of salary.

4. In appeal, the Commissioner of Income Tax (Appeals) [CIT(A)] by an order dated 16th May, 2012 allowed the respondent assessee's appeal by following the decision of Delhi High Court in ***Commissioner of Income Tax Vs. Rajan Nanda, 349 ITR 8.*** The Delhi High Court in the above case, on identical facts held that the amount received by the assessee on account of maturity of Keyman Insurance Policy is exempted under Section 10(10D) of the Act. The aforesaid decision also placed reliance upon a Circular dated 18th February, 1998 issued by the Central Board of Direct Taxes, which permitted the conversion of a

Keyman Insurance Policy into a normal policy. Thus, the appeal was allowed by following the decision of Delhi High Court in Rajan Nanda (supra).

5. The Revenue's appeal before the Tribunal was dismissed by the impugned order dated 6th September, 2013. It held that the assessment year being A.Y. 2010-11, the issue stand concluded against the Revenue by the decision of Delhi High Court in Rajan Nanda (supra) on identical facts. This it held is particularly so as Explanation-I to Section 10(10D) of the Act was amended by clarifying the meaning of "Keyman Insurance Policy" to include a Keyman Policy which has been assigned to any other person only effective from 1st April, 2014. The amended Explanation I to Section 10(10D) of the Act now reads as under :-

> *"[Explanation 1] – 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 <u>[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]</u>."*
>
> *(emphasis supplied)*

6. However, as we are concerned with the period prior to 1st April, 2014, the above amendment would not apply in the subject assessment year.

7. Ms. Bharucha, learned Counsel for the Revenue very fairly states that the issue arising stands concluded against the Revenue for the reasons mentioned by the Delhi High Court in Rajan Nanda (supra). It is also accepted by the Revenue that the amendment in Explanation I to Section 10(10D) of the Act has specifically come into force only from 1st April, 2014 and it would not govern / apply to amounts received under the assigned Keyman Insurance Policy prior to Assessment Year 2014-15.

8. In view of the above, the question as proposed does not give rise to any substantial question of law. Hence, not entertained.

9. The appeal is dismissed. No order as to costs.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**