IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 37 of 2016 (O&M)

Date of Decision: 5.5.2016

Pr. Commissioner of Income Tax-I, Ludhiana

....Appellant.

Versus

M/s Ramesh Steels, Ludhiana

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE SHEKHER DHAWAN.

PRESENT: Mr. Rajesh Katoch, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 3.9.2015 (Annexure A-IV) passed by the Income Tax Appellate Tribunal, Chandigarh Benches, Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 295/Chd/2012, for the assessment year 2005-06, claiming the following substantial question of law:-

> 1. Whether upon facts and circumstances of the case, the Hon'ble ITAT was justified in law, in applying its decision in assessee's own case of

A.Y. 2008-09 to the present case under consideration of A.Y. 2005-06 when the nature of additions in both assessment years are markedly different?

2. Whether upon facts and circumstances of the case, the Hon'ble ITAT was justified in law, in allowing the entire claim of keyman insurance premium expense for A.Y. 2005-06 by ignoring the fact that the CIT (Administration) in his order u/s 263 has held that the expenses related to the period beyond 31.03.2005 and the same cannot be held allowable in the present year since the assessee maintains its books on accrual basis?

2. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee is engaged in the business of merchant traders and filed its return of income on 31.10.2005 for the assessment year 2005-06 declaring the income at ₹ 55,70,194/-. The said return was processed under Section 143(1) of the Act on 8.1.2006. Subsequently, the case was selected for scrutiny and notice under Section 143(2) of the Act was issued on 16.10.2006. Thereafter, notices under Sections 143(2) and 142(1) along with questionnaire were issued on 16.7.2007. The Assessing Officer vide order dated 20.11.2007 (Annexure A-1) framed the assessment under Section 143(3) of the Act accepted the returned income of ₹ 55,70,194/-. The Commissioner of Income Tax-I, Ludhiana passed order dated

30.3.2010 under Section 263 of the Act directing the Assessing Officer to decide the case in view of the directions given thereunder, who vide order dated 12.10.2010 (Annexure A-II) passed under Section 143(3) read with Section 263 of the Act framed the assessment by making addition of ₹ 84,68,494/- on account of disallowance of premium paid on keyman insurance taken on life of partners as the expenditure related to the period beyond 31.3.2005, i.e. beyond the purview of assessment year 2005-06. Feeling aggrieved, the assessee filed an appeal against the order, Annexure A-II, before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 15.12.2011 (Annexure A-III) allowed the appeal and deleted the addition of ₹ 84,68,494/- made by the Assessing Officer. The revenue assailed the order, Annexure A-III, in appeal before the Tribunal who vide order dated 3.9.2015 (Annexure A-IV) upheld the order of the CIT(A) and dismissed the appeal. Hence, the present appeal by the revenue.

3. We have heard learned counsel for the revenue.

4. The following two issues arise for our consideration in this appeal:-

(i) Whether the assessee is entitled to deduction on account of premium paid on Keyman Insurance Policies of its partners?

(ii) Whether the premium paid by the assessee related to period beyond 31.3.2005 and thus, not allowable deduction for the assessment year 2005-06?

5. Taking up issue No. (i), in view of the judgment of this Court

in **ITA No. 437 of 2015 (Pr. Commissioner of Income Tax-I, Ludhiana v. M/s Ramesh Steels, Ludhiana)** decided on 2.2.2016 in the case of the assessee where it has been held that the Keyman insurance policy taken out in respect of partner of the firm would be admissible expenditure, issue No. (i) is decided against the revenue.

6. Regarding question No.2, learned counsel for the revenue submitted that the amount of ₹ 84,68,494/- debited by the assessee towards insurance policy as expenditure related to the period beyond 31.3.2005 and, therefore, this amount could not have been allowed during the assessment year 2005-06.

7. The assessee during the assessment for the assessment year 2004-05 had claimed that an amount of ₹ 90 lacs was paid during that year, out of which ₹ 5,31,506/- related to the assessment year 2004-05 whereas the balance of ₹ 84,68,494/- was pertaining to assessment year 2005-06. Otherwise also, the case of the assessee was that it had paid ₹ 90 lacs on the Keyman insurance policies during the assessment year 2005-06 as well. At this stage, it would be apposite to refer to the reply dated 12.10.2010 submitted by the assessee to the notice issued by the Assessing Officer and has been reproduced in the assessment order which reads thus:-

> "(b) That originally in the assessment year 2004-05, the assessee had claimed total premium paid of ₹ 90 lacs as deduction whereas the assessment was framed by your goodself vide order dated 16.11.2009 u/s 143(3) of the Act and your goodself had held that the deduction of Keyman

insurance expenditure should only to be allowed on accrual basis and thus, out of the total figure of ₹ 90 lacs, ₹ 5,31,506/- was held to be expenditure related to the assessment year 2004-05 and remaining ₹ 84,68,494/- was held to be expenditure pertaining to the assessment year 2005-06 which is the year under consideration.

(c) Even in assessment year 2005-06, the assessee has paid total premium of ₹ 90 lacs on the said Keyman insurance policies and has been claimed as deduction.

(d) Thus, it is clarified that both under the cash system of accounting or accrual system of accounting the premium allowable as deduction in this year would remain ₹ 90 lacs. It is further clarified that even the CIT-I, Ludhiana has accepted this argument in para 3.2.4 of the aforesaid order and, therefore, in view of the above, no adverse action on this issue is called for."

8. Accordingly, a sum of ₹ 5,31,506/- was held to be expenditure relating to the assessment year 2004-05 and the remaining amount of ₹ 84,68,494/- was held to be expenditure pertaining to the assessment year 2005-06.

9. In view of the above, learned counsel for the revenue was

unable to show that the claim of deduction of premium on Keyman insurance policy amounting to ₹ 84,68,494/- was erroneously granted and the order of the Tribunal was unsustainable. Accordingly, no substantial question of law arises in this appeal. The appeal stands dismissed.

(AJAY KUMAR MITTAL)
JUDGE

May 5, 2016
gbs

(SHEKHER DHAWAN)
JUDGE