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IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH; AMRITSAR

BEFORE SH. A.D.JAIN, HON'BLE JUDICIAL MEMBER AND
SH. T.S. KAPOOR, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 117(Asr)/2010
Assessment Year: 2006-07
PAN: AAACF2771Q

M/s. F.C. Sondhi & Co.(India) P. Ltd. G.T.Road, Suranussi, Jalandhar.	Vs.	The Deputy Commissioner of Income Tax, Range-I, Jalandhar.
(Appellant)		**(Respondent)**

I.T.A. Nos. 502 & 131(Asr)/2011 & 2012
Assessment Years: 2006-07 & 2007-08
PAN: AAACV8722D

M/s. Vishal Tools & Forgings Pvt. Ltd. B-9, Focal Point Extension, Jalandhar.	Vs.	The Additional Commissioner of Income Tax, Range-II, Jalandhar.
(Appellant)		**(Respondent)**

Appellant by: Sh. Sandeep Vijh (CA)
Respondent by: Sh. Tarsem Lal (DR)

Date of hearing: 28.10.2015
Date of pronouncement: 27.11.2015

ORDER

PER T. S. KAPOOR (AM):

The appeal in ITA No. 117(Asr)/2010 for Asst. Year 2006-07 is filed by the assessee, against the order of learned CIT(A), Jalandhar, dated 28.12.2009, for the Asst. Year 2006-07. The assessee has taken only one ground wherein it is aggrieved with the confirmation of disallowance made by Assessing Officer on account of payment of Premium of Keyman Insurance Policy amounting to Rs.59,96,356/-. The appeal was earlier disposed off vide Tribunal order dated

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21.04.2014, wherein it was dismissed on merits. However, the said Tribunal order was recalled vide Tribunal order dated 31.08.2015 as the assessee in its Miscellaneous Application had pointed out that certain arguments advanced by it were not dealt with by the Tribunal. The concluding para of Tribunal's order dated 31.08.2015 reads as under:

> "We, therefore, recall the order dated 21st April 2014 for the purpose of adjudicating upon the plea of the assessee to the effect that, on the facts of this case, the IRDA circulars have no role to play in deciding whether the premium on the insurance polices paid are covered by the scope of 'Keman Insurance Policy' under section 10(10D) of the Act, and for deciding the matter afresh in the light of the said adjudication. We have noted that an earlier decision of this Tribunal, in the case of *Shri Nidhi Corporation Vs. Additional CIT[(2014) 151 ITD 470(Mum)],* was not taken into account by the Tribunal, while disposing of the matter, as the said order, through passed earlier, was not in public domain by that point of time. Now that the matter is going back to the Tribunal for fresh consideration, needless to say, this decision will also have to be taken into account."

In view of the above Tribunal order, the assessee is again, before us.

2. The appeals in ITA No. 502(Asr)/2011 for Asst. Year 2006-07 and ITA No. 131(Asr)/2012 for Asst. Year 2007-08, has also been filed by the assessee wherein it is aggrieved with the order of the learned CIT(A) dated 23.08.2011 and dated 12.03.2012 respectively, with the action of learned CIT(A) by which he had upheld the disallowance on premium paid for Keyman Insurance Policy amounting to Rs.16,00,000/- each. These appeals were heard together as the issue involved is common regarding allowance of Keyman Insurance Policy and therefore, for the sake of convenience, these are being disposed off by this

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common and consolidated order. The learned AR had argued the appeal in the case of M/s F.C. Sondhi & Co. (India) Pvt. Ltd. in ITA No.117(Asr)/2010.

3. At the outset the learned AR submitted that now this issue is covered in favour of assessee by the order of Tribunal in the case of M/s. Suri Sons vs. ACIT, in ITA No.37(ASR)/2010, wherein the Hon'ble Tribunal vide order dated 31.08.2015 has decided the similar issue in favour of assessee. However, he submitted that to strengthen the case of assessee, he wants to advance certain other arguments also. Inviting our attention to the facts and circumstances of the case the learned AR submitted that the assessee company was engaged in the manufacturing and export of Sports Goods. During the year under consideration the assessee had paid premium on three 'Keyman Insurance Policies' on the life of Sh. Rajiv Anurag Sondhi (Marketing Director) and had claimed such premium amount as expenditure which the Assessing Officer had disallowed and learned CIT(A) had confirmed such disallowance. Inviting our attention to the definition of 'Keyman Insurance Policy' as defined in Section 10(10D) of the Income Tax Act, the learned AR submitted that the definition of 'Keyman Insurance Policy' itself indicates that this policy is on the life of another person and the payment under the policy becomes due on the death of the insured person. Inviting our attention to the learned CIT(A)'s order in para 2.8. the learned AR submitted that as per the authorities below the 'Keyman Insurance Policy' should only be a 'Term Assurance Policy' and in this respect he submitted that while holding that 'Keyman Insurance Policy' should be a only Term Policy, the authorities below had relied upon the IRDA Circular

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dated 27.04.2005 and 30.01.2006. The learned AR submitted that there is a difference between a 'Term Assurance Policy' and 'Keyman Insurance Policy'. That in 'Term Assurance Policy' if during the policy period death does not occur, nothing is receivable and moreover the proceeds of 'Term Assurance Policy' are not taxable whereas in 'Keyman Insurance Policy' the profits including bonus are taxable either under section17(3)(ii) or under section 28(vi) or u/s 56(I)(iv). The learned AR submitted that learned CIT(A) has misguided himself regarding the role of IRDA and has held that the cover under 'Keyman Insurance Policy' could not be wider than that under Term Insurance. The learned AR further submitted that the learned CIT(A) has not appreciated correctly the interpretation of the case law of United Airlines vs. CIT reported at 287 ITR 281 decided by Delhi High Court and he submitted that Hon'ble High Court in that case has held that in taxing statute the principal of literal interpretation is very strictly applied. While interpreting taxing statute one cannot go by the notion as to what is just and expedient. He submitted that similar view has been expressed by Madras High Court in the case of CIT vs. Micormax P. Ltd. reported 277 ITR 409. The learned AR submitted that learned CIT(A) after referring to the case law of United Airlines (supra) has observed that though term 'Keyman Insurance" has been defined in section 10(10D) the term 'Life Insurance' has not been so defined under the Income Tax Act and therefore, he had held that the term 'Life Insurance' in the context of Keyman Insurance Policy by IRDA is important. The learned AR submitted that IRDA is confined to regulate, promote and ensure orderly growth of the insurance

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business. The IRDA has no relevance as for as the allowability of premium under 'Income Tax Act is concerned and no cognizance should be taken of IRDA Circulars. He submitted that in Income Tax Act the help of another act cannot be taken for the purposes of interpretation and wherever it is required it is mentioned in the relevant section of the Income Tax Act itself and in this respect he invited our attention to the following sections of Income Tax Act where for the purposes of interpretation help of other acts has been taken:

> Section 2(25a) refers to Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act 1976.
>
> Sec 2(29D): Refers to National Tax Tribunal Act 2005.
>
> Sec.2(38): Refers to Employees Provident Fund Act 1952.
>
> Sec.2(42A): Explanation-2: Refers to Securities Contract (Regulation) Act, 1956.
>
> Sec. 2(47)(V): Refers to Transfer of Property Act 1882.

In view of the above, the learned AR submitted that there is no mention of any IRDA regulations or Circular in the Income Tax Act, therefore, no cognizance can be taken thereof. The learned AR further submitted that Circulars issued by IRDA do not mention section 10(10D) which defines 'Keyman Insurance Policy' under Income Tax Act, therefore, for the purposes of Income Tax Act the Circulars cannot be relied upon and the word 'Life Insurance' should be understood as it is understood in common parlance. Reliance in this respect was placed on the following cases.

CIT vs. Lake Palace Hotels-226ITR 561(Raj)
Swedish East India Co. vs. 133 ITR 407
Indian Hotesl vs. ITO-245 ITR 538(SC)

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The learned AR further submitted that learned CIT(A) has failed to appreciate that despite the fact that RBI has power to regulate anything for Finance Companies and is authorized to monitor & regulate the accounts of those companies in terms of provisions of non performing assets but the same are not allowable expenses for computing income under the Income Tax Act as is held by Hon'ble Supreme Court in the case of Southern Technologies Ltd. vs. JCIT reported at 320 ITR 577. He further argued that similarly, even if a person is not an owner of the property under the Transfer of Property Act, he is still considered to be an owner and eligible for depreciation if he is in possession of that property. Reliance in this respect was placed on the decision of Hon'ble Supreme Court in the case of Mysore Minerals Ltd. vs. CIT 239 ITR 755. In view of the above, the learned AR submitted that reliance on other Acts or circulars for considering the allowability of Keyman premium under the Income Tax Act is thus not justified. Further arguing the meaning of 'Life Insurance', the learned AR submitted that the meaning of 'Life Insurance' in common parlance has to be adopted without importing words which are not there in the Income Tax Act and reliance in this respect was placed on following case:

Smt. Tarulata Shyam 7 Ors. Vs. CIT-108 ITR 345 (SC)
Orissa State Warehousing Corpn vs. CIT-237 ITR 589 (SC)
Dilharshankar C. Bhachech vs. CED-158 ITR 238 (SC)
Elel Hotels & Investment Ltd. Vs. UOI-178 ITR 140(SC)
Mittal Cold Storage vs. CIT-159 ITR 18 (MP)

Regarding observations of learned CIT(A) that the Keyman Insurance Policy is unit linked policy and its proceeds are invested in capital markets, the learned

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AR submitted that it is not a unit linked policy and it has been considered in the case of Suri Sons. Regarding reliance placed by learned CIT(A) on Circular No.762, the learned AR submitted that in fact Circular no.762 states that premium paid by Keyman Insurance Policy was allowable expenses. The learned AR submitted that the observations of learned CIT that money of Insurance Premium is invested as per directions of insured is irrelevant as in section 10(10D), no such restriction has been placed that funds cannot be invested as per directions of insured. Inviting our attention to para 2.12 of learned CIT(A)'s order, the learned AR submitted that IRDA Circular had prohibited the issue of 'Keyman Insruance Policy' unless they were 'Term Insurance Policy' only after 10.05.2005 whereas in the present case the policies were issued before 10.05.2005. This also shows that learned CIT(A) was bent upon taking a view against the assessee. In view of the above facts and circumstances and arguments and in view of the case laws of Suri Sons decided by Hon'ble Tribunal in ITA No.37(Asr)/2010, the learned AR argued that Keyman Insurance Premium is a deductible expenses.

3. Inviting our attention to the terms and conditions of 'Keyman Insurance Policy' the learned DR submitted that the Keyman Insurance Policy can be taken on the life of a person falling in the age group of 0 to 65 years and therefore, he argued that how a person not yet born can be eligible to become a Keyman. He submitted that this argument was taken by the Department in the case of law of Suri Sons(supra) which had skipped the attention of the Hon'ble Tribunal while deciding the issue in favour of the assessee. The learned DR in

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this respect invited our attention to point-d of written note filed by the Department in the case of Suri Sons which finds mention in the Tribunal order from para 5 onwards. The learned DR submitted that in the case of Sh. Nidhi Corporation vs. ACIT 151 ITD 470(Mumbai Tribunal) the assessee was given the liberty to choose the investment plan, whereas no such option was available to the assessee. He submitted that the assessee being allowed an option to choose its investment plans the nature of Keyman Insurance Policy itself is gone. Inviting our attention to point-(e) of his written submissions in the case of Suri Sons(surpa), the learned DR submitted that earlier the Hon'ble Bench had decided the case of F.C Sondhi & Co, vide order dated 21.04.2014 in fvaour of the Department and therefore, it was argued that the case of F.C. Sondhi & Co. (India) Pvt. Ltd. be followed in the case of Suri Sons and in the event the said order was not to be followed then the matter should be referred to president for constituting a Special Bench. The learned DR submitted that his request for constitution of Special Bench has not been dealt with by the Tribunal and therefore, in view of non consideration of written arguments of Revenue in the case of Suri Sons (supra) the same should not be followed. Further, he argued that the judgment passed in ITA No.37(Asr)/2010 in the case of Suri Sons(supra) was itself invalid order as the constitution of Bench was terminated on 12.06.2015 and order was pronounced on 31.08.2015 by not following the rules, and therefore, order passed by Bench was not a valid order and cannot be followed.

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4. The learned AR in his rejoinder submitted that he is in agreement with the argument of learned DR that Keyman cannot be a person of zero age but in the present case the person insured is a Marketing Director and therefore, the argument of learned DR on this account does not hold any ground. As regards other argument of learned DR regarding constitution of Special Bench, the learned AR submitted that since the order in the case of assessee has been recalled and therefore, there was no case having different views so therefore, there is no need for constitution of Special Bench.

5. We have heard the rival parties and have gone through the material placed on record. We first take up appeal in ITA No. 117(Asr)2010 for Asst. Year 2006-07. We find that the only issue to be decided by us is regarding allowability of premium of Keyman Insurance Policy. We further find that this case was earlier decided by Hon'ble Bench vide its order dated 21.04.2014 in favour of the Revenue which was latter on recalled and was decided in favour of the assessee vide order dated 31.08.2015. We further find that the similar issue has been decided by the Hon'ble Bench in favour of the assessee by the order of Tribunal dated 31.08.2015 in ITA No.37(Asr)/2010 in the case of M/s Suri Sons, in which the learned DR had argued that it should not be followed for two reasons one of being that the pronouncement was not proper and therefore, it was an invalid order and secondly the arguments taken by Revenue in the case of Suri Sons were not considered by the Tribunal. As regards the first argument that the order in the case of M/s Suri Sons was not

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valid, we have enquired from the registry about the manner of pronouncement of this order and the registry has replied as under:

> "On verbal query from Shri T.S.Kapoor, Hon'ble A.M regarding pronouncement of orders dated 31.08.2015 in the cases of M/s Suri Sons, Jalandhar, it is respectfully submitted that the said cases have duly been pronounced on 31.08.2015, as per list of pronouncement of order under the signatures of Hon'ble Member, which was put on notice board."

We find that clause-4 of Rule 34 of ITAT Rules provides as under:

> "(4) The Bench shall pronounce its orders in the court.
> [However, where the Bench is not functioning or for any other good reason the pronouncement of order in the Court is not possible or practicable, a list of such orders(s) shall be prepared duly signed by the Members showing the result of the appeal and the same would be put on the Notice Board of the Bench it shall be deemed pronouncement of order.]"

We have gone through the list of pronouncements made on 31.08.2015 which contained the pronouncement in the case of Suri Sons also and we find that the list showing the results of appeals duly signed by the both members was in the record of Bench Clerk and therefore, the pronouncement was proper. In view of the above, we do not find any merit in the argument of learned DR that the pronouncement was not proper. Moreover, we find that the similar issue has been decided by this Bench in the case of M/s. Ambika Overseas in ITA No.45(Asr)/2010, in which the Hon'ble Tribunal vide order dated 31.08.2015 had decided the issue in favour of the assessee. In ITA No.45(Asr)/2010 and ITA No.700(Asr)/2013 for Asst. Year 2006-07 & 2007-08, the Tribunal in this case had dealt with in length regarding arguments of both parties and had allowed to the relief to assessee by following the judgment of the Hon'ble Delhi High Court in the case of CIT vs. Rajan Nanda, 349 ITR 8 (Del). The relevant

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findings of Hon'ble Tribunal as contended in the case of M/s Ambika Overseas contained in para 8 onwards are reproduced below:

> *"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 assessee on the life of another person who is, or was, an employee of the assessee or is related to the business of the assessee 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*

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> *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.***
>
> *(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***

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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 :

"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

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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 do not 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 assessee 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 assessee 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 assessee or any other person who is or was connected in any manner whatsoever with the business of the assessee. These conditions are clearly satisfied on the facts of the case before us.*

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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;*

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(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.*

18. 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

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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.

*19. 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.*

*20. 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 assessee 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:***

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(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. <u>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</u>. 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. <u>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</u>. 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

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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

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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)

21. *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 assessee 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 assessee and delete the impugned disallowance of Rs.1,49,99,922. The assessee gets the relief accordingly."*

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> *We find that facts & circumstances of Ground No.5 in the present appeal are similar, therefore, respectfully following the above Tribunal Orders, we allow Ground No.5. "*

We find that the case law of M/s Suri Sons as relied upon by learned AR in ITA 37(Asr)/2010 also contains similar findings. Therefore, in any case the case of the assessee is covered in its favour.

6. As regards the argument of learned DR that in view of conflicting judgments, Special Bench should have been constituted, we find that the contrary judgment passed by Tribunal in the case of assessee itself stands recalled and therefore, the order passed by the Bench in favour of Revenue as having been recalled is a nullity and since there are no conflicting views, there is no need to constitute a Special Bench.

7. As regards the argument of learned DR that the written note submitted in the case of M/s Suri Sons as contained in para d and e were not considered, we find that in para d as noted by the Hon'ble Tribunal the objection of learned DR was that the decision of Sh. Nidhi Corporation vs. ACIT 151 ITD 470 was not applicable as in that case the assessee was given the liberty to choose the investment plan whereas no such option was available to the assessee in the present case. In this respect, we find that in the case of Sh. Nidhi Corporation also, the assessee had taken Keyman Insurance Policies on the life of partners and Hon'ble Tribunal had held that wherever insurance company is making investment in mutual funds for capital appreciation or under any other investment scheme will not make any material difference in respect of

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allowance of premium. Moreover, we find that definition of Keyman Insurance Policy has been provided in explanation to Section 24(xi) which reads as under.

Explanation: For the purpose of this clause the expression 'Keyman Insurance Policy" shall have the meaning assigned to it in explanation to clause (10D) of section 10 which is reproduced below:

> "Section 10(10D), 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."

We find that Keyman Insurance Policy is a policy on the life of another person who is an employee of the assessee or is connected with the business of assessee and there is no such restriction as to whether the assessee is given liberty to decide investment plans of insurance companies or not. Therefore, the argument raised by learned DR has no force.

8. As regards the para-e of written note submitted by Revenue in the case of M/s Suri Sons, we find that this para dealt with the request for constitution of Special Bench which has already been dealt with by us. In view of the above facts and circumstances and in view of the judicial precedents, we find that the issue of payment of Keyman Insurance Policy is duly covered in favour of assessee and therefore, the appeal filed by the assessee is allowed.

9. Now, we take up appeals in ITA Nos. 502(Asr)2011 & ITA No.131(Asr)2012. Since, the issue involved in both the appeals is similar to the issue decided by us herein above in ITA No.117(Asr)2010, the findings given

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therein will securely be applicable to the facts and circumstances of these present appeals also. Accordingly, the appeals in ITA No.502(Asr)/2011 & ITA No.131(Asr)2012 are allowed.

10. In the result, all the three appeals filed by the assessees are allowed.

Order pronounced in the open court on 27th November, 2015.

Sd/-	Sd/-
(A.D. JAIN)	(T. S. KAPOOR)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated: 27.11.2015.
/PK/ Ps.
Copy of the order forwarded to:
1. The Assessee: (i) M/s. F.C.Sondhi & Co. (India) Pvt. Ltd., Jalandhar.
   (ii) Vishal Tools & Forgings Pvt. Ltd.
2. (i) The DCIT, Range-I, Jalandhar (ii) The ACIT, Range-II, Jalandhar.
3. The CIT(A),
4. The CIT,
5. The SR DR, I.T.A.T.,

True copy

By order

(Assistant Registrar)
Income Tax Appellate Tribunal,
Amritsar Bench: Amritsar.