

# ***Insurance premium paid under a Keyman insurance policy which is not a pure life insurance policy not a deductible expense***

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## ***In brief***

The Amritsar Bench of the Income-tax Appellate Tribunal held in the case of **F.C. Sondhi & Co. (India)** that insurance premium paid under a Keyman insurance policy, which was not a pure life insurance policy, was not a deductible expense.

## ***In detail***

### ***Facts***

- F.C. Sondhi & Co. (India) Private Limited<sup>1</sup> (the taxpayer) had taken three policies on the life of its key persons. Out of the three policies, two were Unit Linked Insurance Plans (ULIP) and one was a policy with guaranteed additions for five years and with profits thereafter.
- The premium paid under these policies was treated as an expense under the head, Keyman insurance policy, in the Profit and Loss Account.
- The taxpayer claimed the premium paid as a deductible expense while offering its income to tax.
- In the assessment, the aforesaid claim was disallowed.

### ***Issue before the Tribunal***

Is the premium paid by the taxpayer under the Keyman insurance policies, a deductible expense under the Act?

### ***Tribunal's ruling***

In the appeal, the Amritsar bench of the Income-tax Appellate Tribunal (Tribunal) decided the issue against the taxpayer. The key observations of the Tribunal are as under:

- The subject policies were in the nature of investment plans, and not pure life insurance policies being taken on the life of another person. Therefore, these policies did not fall within the ambit of the definition of the term 'Keyman Insurance Policy' provided in Explanation to clause (c) of section 10(10D) of the Income-tax Act, 1961 (the Act).
- Both, the tax officer (TO) and the Commissioner of Income-tax (Appeal) [CIT(A)], were correct in

their findings that the circulars dated April 27, 2005 and January 30, 2006 issued by the Insurance Regulatory and Development Authority (IRDA) required insurance companies to issue only term insurance policies as 'Keyman Insurance Cover'.

- These circulars were clarificatory in nature and therefore, the contention of the taxpayer that the circulars did not apply to its case as the policies in its case were issued prior to the date of circulars, could not be accepted.
- Out of the total premium paid, only a fraction of the premium was meant for risk cover and the balance was used for investment in units and therefore, the premium paid could not be claimed as business expenditure.

<sup>1</sup> F.C. Sondhi & Company (India) Pvt. Limited v. DCIT [TS-243-ITAT-2014(ASR)]

### ***The takeaway***

The Tribunal's observations suggest that the claim of the taxpayer was rejected mainly on the ground that the policies were not pure life insurance plans, but were in the nature of investment plans, which were not allowed to be issued by the IRDA as Keyman insurance cover. Nowhere in the order has the Tribunal discussed whether the said expense could be considered to be an expense laid out wholly and exclusively for the purpose of business, a condition precedent for allowing the claim of expense under section 37(1) of the Act.

On a separate note, the Tribunal's decision could have wide ramifications in cases involving plans other than term insurance plans, as the Tribunal had taken a view that the plans such as ULIPs, plans with guaranteed returns or profits, etc. represented investment plans, and were not pure life insurance plans.

While the higher appellate authorities may not approve this view, the tax authorities may rely on this ruling to treat the amount received under the investment type of products as not entitled to exemption under section 10(10D) of the Act and to limit the deduction under section 80C of the Act to the portion of premium relating only to risk cover.

### ***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact:

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