

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH “SMC”, LUCKNOW**

[Through Virtual Hearing]

BEFORE SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

**ITA No. 340/Lkw/2018
Assessment Year 2007-08**

Ibrahim International Ltd. earlier known as Ibrahim International Trading Co., 40/121, Hospital Road Parade, Kanpur 208001 PAN – AAIFI 9671F	Vs.	ACIT-3, Kanpur
(Appellant)		(Respondent)

Appellant by	Shri Abhinav Mehrotra, Advocate
Respondent by	Shri Ajay Kumar, DR
Date of hearing	12/08/2021
Date of pronouncement	25/08/2021

ORDER

This is an appeal filed by the assessee against the order of Id. CIT(A)-1, Kanpur dated 01.07.2016 pertaining to Assessment Year 2007-08.

2. At the outset, the Id. AR of the assessee invited our attention to amended Form No. 36 placed on record and which was explained to have been filed because of the fact that earlier the assessee was a partnership firm and presently it has been converted into a limited company and in this respect our attention was invited to copy of memorandum of association of company placed in P.B. pg. 67 onwards and where the fact that the assessee was earlier a partnership firm was mentioned at Page 71.

Therefore, in view of conversion of partnership firm into a limited company it was submitted that amended Form No. 36 was filed which may be taken on record. The Id. DR had no objection regarding taking of the amended Form. No.36 on record therefore, the same was taken on record. Inviting our attention to the facts of the case the Id. AR submitted that the Assessing Officer had made an addition of Rs.18,88,136/- which the assessee had debited into P&L account being premium paid on Keyman Insurance Policy. It was submitted that Id. CIT(A) has also not accepted the contention of the assessee that the said expenditure is allowable business expenditure. The Id. AR invited our attention to a CBDT, Circular No. 38 of 2016 placed in P.B. Pgs. 36 to 37 wherein the CBDT itself has directed the Assessing Officer to treat the premium paid on Keyman Policies as allowable expenditure. Therefore, in view of such circular, it was prayed that the disallowance sustained by Id. CIT(A) be deleted. As regards the other two additions of Rs.50,000/- under head travelling expenses and Rs.12,050/- under head fixed assets the Id. AR submitted that the authorities below has made the disallowances on adhoc basis which is not based upon any material and it was left up to the wisdom of bench to allow the whole of the amount or a part thereof as the case may be. The Id. AR further invited our attention to Ground No.6 to 8 wherein the assessee has raised a ground against the direction of Id. CIT(A) giving direction to Assessing Officer u/s. 153(3)(2) to take suitable action u/s.150(1) to bring the escapement of income to tax in the hands of the assessee. The Id. AR submitted that such direction is beyond the subject matter of appeal and was not warranted as the Id. CIT(A) had to decide the issues before him

and reliance in this respect was placed on a decision of Lucknow Bench in the case of The Allahabad Bank Karamchari Cooperative Credit Society Ltd. where vide order dated 14.06.2019 the Tribunal had expunged similar direction.

3. The Id. DR, on the other hand, heavily placed reliance on the orders of the authorities below.

4. I have heard the rival parties and have gone through the material placed on record. I find that earlier the appeal was disposed of vide Tribunal order dated 25.01.2019 by which the said appeal was dismissed for non prosecution. However, vide Tribunal order dated 15.05.2019 such order of the Tribunal was recalled and appeal was fixed for hearing on merits. I further find that the appeal was filed in the name of Ibrahim International Trading Co. which was a partnership firm and which has been converted into a limited company which is apparent from the copy of memorandum of association placed in P.B. 68 onwards. The fact of conversion from partnership firm to limited company has been mentioned at pg. 71 and now the assessee is known as Ibrahim International Ltd. The assessee in this respect has filed amended Form No.36 which has been taken on record.

5. Now coming to the facts of the appeal, the assessee is a aggrieved with the disallowance of Rs.18,88,136/- which the assessee had claimed to have paid for Keyman Insurance for its partners. The authorities below has disallowed such expenditure holding the same to be in the nature of investment. However, Circular No. 38/2016 dated 22.11.2016 placed in P.B. pgs. 30 to 37 clearly holds that such expenditure is an admissible expenditure

u/s. 37 of the Act. For the sake of completeness the contents of circular is reproduced below:

"CIRCULAR NO. 38/2016

*F.No.279/Misc./140/20 L5-ITJ
Government of India
Ministry of Finance
Central Board of Direct Taxes*

New Delhi, Dated 22nd November, 2016

Subject: Admissibility of expenditure incurred by a Firm on Keyman Insurance Policy in the case of a partner- Reg.

The issue relating to admissibility of expenditure incurred by a firm on Keyman Insurance Policy premium in the case of a partner has been, a contentious one.

2. CBDT Circular no. 762/1998 dated 18.02.1998 clarifies that the premium paid on the Keyman Insurance Policy is allowable as business expenditure. However, in case of such expenditure incurred on a partner of a firm, the general approach of the assessing officers was to treat the expenditure as not incurred for the purpose of business and disallow the same.

3. High Courts have upheld the admissibility of the expenditure incurred by the firm in the case of the partners'. Taking into account the Explanation to Clause {10D} of Section 10 of the Income-tax Act, 1961 and the CBDT Circular no. 762 dated 18.02.1998, Courts have held that a Keyman Insurance Policy is not confined to a policy taken for an employee but also extends to an insurance policy taken with respect to the life of another person who is connected in any manner whatsoever with the business of the subscriber (assessee).

4. The High Court of Punjab and Haryana in the case of M/s. Ramesh Steels, JTA No. 437 of 2015, vide judgement dated 2.2.2016 (NJKS citation 2016 -LI^0505-68), reiterating the above view held that, "the said policy when

obtained to secure the life of a partner to safeguard the firm against a disruption of the business is equally for the benefit of the partnership business which may be effected as a result of premature death of a partner. Thus, the premium on the Keuman Insurance Policy of partner of the firm is wholly and exclusively for the purpose of business and is allowable as business expenditure".

5. The above view has been accepted by CBDT and the judgment has not been further contested.

i High Court of Bombay -CIT vs. B.N. Exports, ITA No. 2714 of 2009 dated 31.03.2010-NJRS citation 2010--LL-033MO, CfTvs. Aggarwal Enterprises, ITA No. 1701 of 2012 dated 07.01.2015 -NJRS citation 2015-LL-0107-4.

High Court of Gujarat- CTf vs. Gem Arts, ITA No. 1739 of 2009 dated 13.03.2012-NJRS citation 2012-LL-0313

High Court of Punjab & Haryana- C1T vs. Laj Exports, ITA No. 251 of 2012 dated 08. II.2013-NJKScitation 2013-LL-1108-72"

6. In view of this, it is a settled position that in case of a firm, premium paid by the firm on the Keyrnan Insurance Policy of a partner, to safeguard the firm against a disruption of the business, is an admissible expenditure under section 37 of the Act,

7. Accordingly, henceforth, on this settled issue, appeals may not be filed by the department and those already filed, may be withdrawn/ not pressed upon.

8. The above may be brought to the notice of all concerned.

*(K. Varnsi Krishna)
 AC1T (OSD)(1TJ),
 CBDT, New Delhi"*

6. In view of such circular the expenditure incurred by assessee for obtaining Keyman Insurance Policies is held to be allowable expenditure and therefore Ground Nos. 1 to 3 are allowed.

7. Coming to Ground No. 4 regarding disallowance of Rs.50,000/-, I find that Assessing Officer has made disallowances out of travelling expenses by holding that assessee had converted local currency amounting to Rs.6,41,500/- into foreign currency and when the assessee was asked to produce bills it could produce bills only to the extent of Rs.2.5 lacs and therefore Assessing Officer had made an addition of Rs.50,000/-. I find that assessee was not able to substantiate the entire foreign currency expenses and could explain only 1/3rd of the expenses and therefore, disallowance sustained by Id. CIT(A) is reasonable and therefore Ground No.4 is dismissed.

8. Coming to Ground No.5. In this respect, I find that assessee had debited Rs.40,570/- under the head fixed assets for purchase of computer and could produce bills for Rs.25,820/- only and therefore Assessing Officer made the addition for the balance amount. I find that addition of Rs.12,050/- is not justified as the assessee had not debited the same in the P&L account but it had debited it under the head fixed assets and for which the Assessing Officer has already made disallowance on account of depreciation on the difference of amount debited and bill and therefore the addition of Rs.12,050/- is not warranted and therefore is deleted and in view of that Ground No.5 is allowed.

9. Now coming to Grounds No. 6 to 8, I find that while disposing of the appeal of the assessee, the Id. CIT(A) issued following direction to the Assessing Officer :

"Order u/s section 153 (3)(ii) read with 150(1)

Let us go through the Provisions of Section 150(1) of the Aa:

"Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law."

Finding on the issue:

It is seen that the aforesaid policies were purchased in financial year 2003-2004, 2004 - 2005 and 2006 - 2007 and wrongly claimed as expenses in the relevant assessment years. It is evident that this expenditure has been wrongly claimed and allowed to the assessee.

Direction to the A.O.:

In light of judgements in case of Atul Traders Vs. Income Tax Officer (2005)200 CTR 71 (Allahabad) and Kerala High Court in Commissioner Of Income-Tax vs Amy Colabawala 243 ITR 19 Kerala.

A direction is given to the Assessing Officer u/s section 153(3)(ii) to take suitable action under section 150(1) to bring this escaped income to take in the hands of the assessee."

9.1 In this respect, I find that Lucknow Bench of the Tribunal in the case of Allahabad Bank Karamchari Cooperative Credit Society Ltd. vide order dated 14.06.2019 has dealt similar issue of giving directions to Assessing Officer and the Tribunal vide Para 7 to 19 has held as under:

“7. However, while annulling the assessment order, as above, the Id. CIT(A) issued the following direction to the jurisdictional A.O:

“5.5 Even though, assessments in present appeal has been annulled on legal ground, undersigned is of the view that income of the appellant amounting to Rs.26,38,000/- is chargeable to tax in view of Supreme Court judgement in the case of Citizen Co-operative Society, 397 ITR 1 (SC) and Totgars Cooperative Sale Society Limited vs. Income Tax Officer, 322 ITR 283 (SC). Hence, jurisdictional A.O., i.e., ACIT-1, Kanpur is directed to execute remedial action under section 148 of the Act. This may be considered as direction under section 150 of the Act.”

8. It is the above direction which brings the assessee once again before us, by way of the present appeal.

9. The Id. A.R. of the assessee has contended that the Id. CIT(A)-II, Kanpur has erred in law and on facts in giving direction under section 150 of the Act to the A.C.I.T.-1, Kanpur to execute remedial action under section 148 of the Act, ignoring the provisions of section 150(2) of the Act; that the direction issued under section 150 of the Act by the Id. CIT(A) is unsustainable in law and barred by limitation under section 150(2) read with section 149 of the Act; that without adjudicating the specific grounds raised by the assessee on the issue(s) relating to the merits of the additions/disallowance made by the AO, the Id. CIT(A) has erred in law and on facts in forming his view on such issues and such view cannot be treated as a finding in terms of section 150 of the Act; and that therefore, such finding and direction contained in para. 5.5 of the impugned order be ordered to be deleted.

10. On the other hand, the Id. D.R. has placed strong reliance on the impugned order.

11. Heard. The Id. CIT(A) has annulled the assessment order, holding the issuance of the notice under section 148 of the Act as bad in law for want of jurisdiction of the A.O to

do so. The Department is not in appeal. Thus, the assessment stands annulled for all intents and purposes. The Id. CIT(A), while annulling the assessment, has directed the jurisdictional the A.O to execute remedial action under section 148 of the Act, since in his (the Id. CIT(A)'s) view, the assessee's income of Rs.26,38,000/- is chargeable to tax in view of the Supreme Court judgments in 'Citizen Co-operative Society' (supra) and 'Totgars Cooperative Sale Society Limited vs. Income Tax Officer' (supra). The question is whether this action of the Id. CIT(A) is correct as per law.

12. The assessment year in question is assessment year 2008-09. The order passed by the Id. CIT(A) is dated 2/5/2019. Section 150 of the Act relates to cases where assessment is in pursuance of an order on appeal, etc. According to section 150(1) of the Act, a notice under section 148 may be issued at any time for the purpose of making an assessment in consequence of or to give effect to any finding or direction contained in an order passed on appeal. Section 150(2) of the Act, however, provides that the provisions of section 150(1) of the Act shall not apply in any case where any such assessment, made in consequence of an appellate order relates to an assessment year in respect of which an assessment could not have been made at the time the order, which was the subject matter of the appeal, was made, by reason of any other provision limiting the time within which any action for assessment may be taken. Section 149 of the Act lays down the time limit for issuance of notice under section 148 of the Act. In accordance with section 149(1)(b) of the Act, if four years, but not more than six years have elapsed from the end of the relevant assessment year, and if the income chargeable to tax which has escaped assessment amounts to one lakh rupees or more for that year, notice under section 148 of the Act for the relevant assessment year shall be issued. In other words, in such a case, a notice under section 148 of the Act can be issued upto a maximum period of six years from the end of the relevant assessment year.

13. In the present case, the impugned order was passed on 2/5/2019. The assessment year involved is assessment

year 2008-09. Thus, in accordance with the provisions of section 149(1)(b) of the Act, notice under section 148 of the Act could have issued by the end of assessment year 2015-16. This period had already elapsed when the impugned order came to be passed. Therefore, the law not permitting initiation of proceedings under section 147 when the order under appeal was passed, the direction of the Id. CIT(A) is not in accordance with law. It is a non est direction.

14. It is well settled that an appellate authority cannot confer jurisdiction which the A.O does not have, e.g., as in the case of an assessment being barred by limitation. This has been held by the Hon'ble Gauhati High Court in the case of 'Bengal Tea And Fabrics Ltd. vs. ACIT', 223 ITR 729 (Gau).

15. Reference may also be had to 'CIT vs. Rameshwardas Ram Narain', 107 ITR 710 (All.) and 'CIT vs. Estate Of Late Sri N. Veeraswamy Chettiar', 49 ITR 13 (Mad.).

16. In 'CIT vs. Rameshwardas Ram Narain' (supra), the penalty was imposed by the ITO without obtaining the prior approval of the IAC. The Hon'ble Allahabad High Court held that the AAC was not justified in directing the ITO to proceed in accordance with law. In 'CIT vs. Estate Of Late Sri N. Veeraswamy Chettiar' (supra), the Hon'ble Madras High Court has held that conferment of jurisdiction on the ITO, which he is not lawfully seized of, is not within the scope of the appellate powers of the AAC.

17. In view of the above, finding the grievance of the assessee to be justified, the same is accepted. The direction in question, i.e., the direction issued by the Id. CIT(A) vide para 5.5 of the impugned order, as reproduced in para 7 of this order, is hereby ordered to be expunged.

18. Nothing further has been challenged in this appeal, nor was anything else argued.

19. In the result, the appeal is allowed. The stay application no longer survives and it is rejected as infructuous."

10. In view of above, the directions given by the Id. CIT(A) expunged and Grounds No. 6 to 8 are allowed.

11. In the result, appeal of the assessee is partly allowed.

(Order pronounced in the open court on 25/08/2021)

Sd/-
(T.S. KAPOOR)
ACCOUNTANT MEMBER

Aks –
Dtd. 25/08/2021

Copy of order forwarded to:

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

By order
Assistant Registrar