

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA 1908 & 1909/Mum/2024
(Assessment Years : 2012-13 & 2013-14)**

Laxman Gore Shreshtha 714(66), 12 th Road, Khar West Mumbai-400 052 PAN :ABEPS0595D	vs	DCIT, CIRCLE 22(1), MUMBAI
APPELLANT		RESPONDENT

Assessee by : Shri J.P. Bairagra & Ms. Rupa Nanda

Respondent by : Shri Manoj Kumar Sinha (SR.DR.)

Date of hearing : 02/07/2024

Date of pronouncement : 09/07/2024

ORDER

PER BENCH:

Both the appeals of the assessee are preferred against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2012-13 & 2013-14, both are passed on dated 22.03.2024. The impugned orders are emanated from the order of the Id. Assistant Commissioner of Income-tax, Circle -22(2), Mumbai (in short, 'the A.O.'), order passed under section 143(3) r.w.s. 147 of the Act, date of order dated 21/12/2019.

2. In the outset, both the appeals have same nature of facts and common issues, **ITA No.1908/Mum/2024** is taken as lead case.

ITA 1908/Mum/2024

3. The assessee has taken the following grounds of appeal:-

"1. The Ld. CIT(A) erred in confirming the reopening of assessment u/s 147 of Income Tax Act, 1961. It is submitted that reopening is on the basis of incorrect details, facts and data regarding interest income on account of which no addition made in the reassessment order.

2. The Ld. CIT(A) has not considered the grounds that assessment was reopened after four years without the sanction from PCIT-22 u/s 151 of Income Tax Act, 1961 as no such sanction was provided inspite of reminders.

3. The Ld. CIT(A) further erred in confirming the addition on account of surrender of ULIP Market Plus-1 (plan no. 181) policy at Rs.25,24,428/-.

4. The Ld. CIT further erred in not following the decision of Hon'ble ITAT Kolkata Bench 'SMC' in case of the Bishista Bagchi vs. Deputy Commissioner of Income-tax, [2022] 138 taxmann.com 419 which is directly on this issue.

5. The Ld. CIT(A) further erred in disallowing Long Term Capital Loss of Rs.3,24,937 claimed on account of surrender of ULIP market plus-I(plan no. 181) policy.

6. The Ld. CIT(A) wrongly mentioned in Para 6.2.6 of order that during the VC, the appellant has agreed to furnish details that the amount paid for purchasing the ULIP Market Plus-1 (plan no. 181) policy has not claimed as deduction u/s 80C as it was submitted that deduction u/s 80C was Rs. 1,00,000/- claimed which includes deduction on account of PPF of rs.70,000/- and balance Rs.30,000/- on account of the investment in the ULIP Market Plus-1 (plan no. 181) policy in the assessment year 2008-09.

7. The Ld. CIT(A) further erred in holding that the appellant has surrendered the policy before the lock-in period of 5 years as per the guidelines

issued by IRDAI in 2010 and not considered the fact that the appellant has bought the policy in F.Y. 2007-08 which is before the revised guidelines were issued by IRDAI and before that the lock-in period was of 3 years as amendment applicable in respect of policies taken after 01-09-2010 while appellant purchased policy on 26-03-2008. Hence the appellant has correctly surrendered the policy after 3 years on 15-04-2011 that is in F.Y. 2011-12.

8. *The Ld. CIT(A) further erred in not considered and given findings on additional grounds raised as under:*

"Without prejudice above the purchase price of this policy is Rs.20.00,000/- and on surrender the assessee has received Rs.25,42,428/- and therefore, even under the head income from other sources deduction of Rs.20,00,000/- should be allowed as per the provision of section 57(iii). Accordingly, balance amount of Rs.5,24,428/- will be taxable."

9. *The Ld. CIT further erred in not holding that ULIP Market Plus-I(Plan no.181) policy is neither a life insurance policy u/s 10(10D) of the Income Tax Act, 1961 and nor pension policy u/s 10(10A) and it is an investment cum insurance instrument issued by LIC.*

10. *The Ld. CIT(A) erred in holding in the order that during the course of hearing of the VC, the authorized representative assured particulars of not claiming deduction u/s 80C in respect of premium paid on life pension policy will be furnished immediately after the VC. However, the appellant has not furnished any particulars to this effect after the hearing of the VC.*

11. *The Ld. CIT(A) further erred in not fulfilling his findings during the course of the VC that this is simple case and he understood that and why we have opted for the VC."*

3.1 The assessee has also sought to raise the following additional ground of appeal:-

"The assessment is reopened after four years from the end of the relevant assessment year on 29/03/2019. In the reasons for reopening for assessment there is no mention of failure on part of the appellant to disclose fully and truly all material facts necessary for assessment,"

4. Brief facts of the case are that the assessment was reopened by issuance of notice under section 148 of the Act on dated 29/03/2019. The re-assessment was completed on 21/12/2019 determining total income at Rs.1,32,560,980/-interalia making addition of Rs.25,24,428/- on account of maturity of policy "ULIP Market Plus-1". The assessee declared the maturity in return of income and treated it as long-term capital loss amount to Rs.3,24,937/-. But the Id. AO denied the claim of assessee and added back entire amount of Rs 25,24,428/- in assumption that amount received on pre-maturity. Aggrieved assessee filed appeal before the CIT(A). The Ld.CIT(A) dismissed the appeal filed by the assessee. Being aggrieved, the assessee filed the present appeal before us.

5. The Ld.AR argued and filed the written submission which is kept in record. The Id. AR placed that under wrong assumption, the addition was made. The Ld.AR in written submission placed that the assessee invested in "LIC ULIP Market Plus-1 (Plan 181)" policy during the financial years 2007-08. This policy is purchased under the Plan No.181 of LIC wherein the lock in period for surrender of policy was 3 years which was wrongly assumed by the Ld.AO as 5 years. The Ld.AO has failed to appreciate that policy is purchased by the assessee before the revised guidelines issued by the IRDA i.e. lock in period of the policy is 3 years instead of 5 years. In written submission, the assessee placed the following submission which reproduced as below:-

"2) The assessee has duly submitted details of LIC i.e. redemption letter received at the time of surrender of policy, premium paid date and amount along with copy of bank statement highlighting the said payment, date and amount of receipt of surrender value along with copy of bank statement highlighting the said receipt.

Further, for your reference we are providing the summary of above said details as under:

<i>Details of LIC</i>	<i>It is a market plus policy as mentioned on the redemption letter.</i>
<i>ULIP Policy No. of market plus policy</i>	<i>905723380</i>
<i>Premium paid</i>	<i>Rs.20,00,000/- paid on 26th March, 2008</i>
<i>Surrender Value</i>	<i>Rs.26,124,428/- credit in bank account on 19th April, 2011.</i>

3) Also, at the time of purchase of ULIP market plus -1 (plan no. 181) policy, the assessee has only received statement wherein the number of units allotted at the NAV of the purchase date and the purchase amount are mentioned. Similarly, at the time of surrender, the assessee has received a redemption letter stating the NAV of unit at the time of surrender is multiplied by the number of units held and amount of surrender value is arrived.

4) The assessee has purchased the LIC ULIP market plus - I (plan no. 181) policy during the FY 2007-08. This policy is purchased under the plan no. 181 of LIC wherein, the lock in period for surrender of policy was 3 years.

5) The Learned assessing officer has considered the lock in period as 5 years as per the revised guidelines issued by IRDA in the year 2010. The AQ has failed to appreciate the fact that the policy is purchased by the assessee before the revised guidelines issued by the IRDA i.e. for the assessee lock in period for the ULIP market plus - I (plan no. 181) policy is 3 years only instead of 5 years.

6) The assessee had duly responded to the notice dated 18-11-2019 and 3-11-2019 vide letter dated 05-12-2019. The assessee has clearly stated at point no. 11 of letter dated 05-12-2019 that the assessee had taken ULIP market plus - I (plan no. 181) policy which is not in nature of life insurance but, is an investment policy, as LIC further invests this amount . in listed equity shares.”

6. The Ld.AR further argued that revenue has made a wrong assumption that claim once made under section 10(10A) or section 10(10D), whereas the assessee

has never made such claim of exemption during the filing of return of income. This is purely in the nature of gain of the assessee which the assessee may declare as capital gain or Income from other sources. Accordingly, assessee claimed the income as capital gain in the return of income and booked capital loss after due calculation.

7. The Ld.AR further invited our attention in recorded reasons related to notice issued under section 148 (APB page 21), which reads as follows:-

"3.1. Further with regard to the surrender value of Rs.25,24,428/-, the assessee-; submitted that this value has been offered for tax in the AY 2012-13 as Long Term Capital Gain / Loss, being the year In which the policy was surrendered. However on perusal of return filed by the assessee for AY 2012-13, it is gathered that the assessee has offered the surrender value of Rs.25,24,428/- under the head long term capital gain and has claimed loss of Rs. 3,24,937/-. This treatment of the assessee of treating the surrender value as capital loss is incorrect for the reason that the money received from prematurely encashed pension policies do not come under the, purview of exempted income as per section 10(10D) of the I T Act as pension policy is not a life insurance policy. This exemption is available u/s. 10(10A). Further to get exemption under this section, the amount received should be on account of pension and not on surrender. So the amount received by the assessee as surrender of policy should be taxed as income from other sources u/s. 56 of the I T Act, 1961. Further since the assessee has claimed deduction u/s. 80C in respect of the premium paid of the above policy in FY 2009-10 relevant to AY 2010-11, the whole surrender value of Rs.25,24,428/- is liable for taxation u/s. 80CCC(2) of the IT Act, 1961 in the FY 2011-12 relevant to AY 2012-13.

4. I have, thus, reason to believe that, in this case, for the AY 2012-13, the assessee has escaped income to the extent of Rs.3,03,01,478/- within the

meaning of "Section 147 of the I.T. Act, 1961, for the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for the previous year relevant to Assessment Year 2012-13."

8. The Ld.DR argued vehemently and relied on the orders of the revenue authorities. The relevant para of the appeal order (paragraphs 6.2.5 and 6.2.6 are reproduced below:-

"6.2.5 The submission of the appellant is considered carefully. The appellant has not waited till the maturity and has surrendered the policy before the lock in period to claim any exemption u/s 10(100) of the IT Act. The appellant also submitted that he has not claimed any exemption u/s 10(10D) as the proceeds are from surrender but not on maturity. The appellant has availed the benefit of 80C on the premium paid and the exemption if any u/s 10(100) is available only on maturity. However, in the instant case the appellant has claimed deduction u/s 80C on the premium paid in earlier years and has also surrendered the policy before the lock-in period and thus not eligible for claiming any deduction or exemption on the consideration received.

6.2.6 *Further, during the course of the hearing on video conferencing, the appellant claimed that he had not claimed deduction u/s.80C in respect of the premium paid towards LIC Pension Plan but claimed on account of payment made towards provident fund and relevant particulars would be furnished immediately after the video conference. However, the appellant has not furnished any particulars regarding his claim that no deduction u/s 80C was claimed on the premium paid in earlier years. The appellant's Authorised Representative further claimed that the LIC Market Plus-1 lock-in period was changed from 3 years to 5 years and thus as the policy was purchased before the guidelines, the maturity should be reckoned for 3 years. However, it is noticed*

that the revised rules are applicable from 01/09/2010 and the appellant was aware of the changes in the rules. The appellant is thus not eligible to claim any benefit of tax on the surrender of policy before the mandatory lock-in period. Thus, as the appellant was unable to show that no deduction under Section 80C was claimed in the earlier years and as the appellant has surrendered the policy before the lock-in period, the entire consideration received needs to be charged to tax as "Income from Other Sources." In view of this, this appellate authority is of the opinion that there is no infirmity in the addition made by the Id.AO and does not need any interference."

9. We heard the rival submissions and considered the documents available in the record. The Ld.AR challenged the issue on both the factual and legal grounds before the Ld.CIT(A) and also before the Bench. Considering the legal ground, on perusal of the recorded reason the reopening is made after four years on a wrong assumption of the fact. The revenue assumed that the assessee claimed exemption under section 10(10A) or section 10(10D) of the Act in the return of income of the said investment was matured before the stipulated period. The assessee declared this income in the return of income. So accordingly, there is no question of concealment of fact. The assessee denied about the claim of exemption U/s 10(10A) or U/s 10(10D) of the Act. The recorded reason itself is erroneous and liable to be quashed. The assessee has taken additional ground which is purely legal and duly accepted by the Bench. The Ld.DR has not made any strong objection against the submission of the assessee. The entire addition was made on the basis of wrong assumption of fact by the Ld.AO. Accordingly, we delete the addition of Rs.25,24,428/-. While holding so, we did not enter into the facts of the case as it remains only for academic purpose.

ITA No.1909/Mum/2024

10. Since the facts and circumstances in this appeal are identical to ITA No.1908/Mum/2024, which we have decided in earlier paragraphs, the decision arrived at therein shall apply mutatis mutandis to this appeal also.

11. In the result, both the appeals of the assessee bearing **ITA Nos.1908 & 1909/Mum/2024** are allowed.

Order pronounced in the open court on 09th day of July, 2024.

Sd/-

(PRASHANT MAHARISHI)

ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 09/07/2024

Pavanan

sd/-

(ANIKESH BANERJEE)

JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai