

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

BEFORE SHRI ABY T. VARKEY, JM

आयकरअपीलसं/I.T.A. No.22/Mum/2023
(निर्धारणवर्ष / Assessment Year: 2014-15)

Milan Tanvir Chokshi EE 5011/12/13, Bharat diamond Bourse, Bandra Kurla Complex, Bandra (East) Mumbai- 400 051	बनाम / Vs.	CIT(A)-51. 6 th Floor, Aaykar Bhavan, Maharishi Karve Road, Churchgate, Mumbai-400 020
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No. : AAAPC4709L		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Reepal G. Tralshawala
Revenue by:	Shri Anil Gupta

सुनवाईकीतारीख / Date of Hearing: 10/03/2023
घोषणाकीतारीख /Date of Pronouncement: 12/05/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-51, Mumbai (herein after "CIT(A)"), dated 18.11.2022 for AY 2015-16. The grounds of appeal raised by the assessee are as under:

1. In law and as per the facts and circumstances of the appellants case, the Hon'ble CIT(A) erred in upholding the validity of issue of notice u/s 148 even though the same is barred by limitation. Thus, any order passed as a consequence of the said notice deserves to be quashed, being void ab-initio

2. In law and as per the facts and circumstances of the appellants case, the Hon'ble CIT(A) erred in confirming the action of Id. A.O. of treating the accretion in the value of the policy received on surrender to the tune of Rs. 5,49,989/- as income from other sources'. Thus, the addition made on such misinterpretation is unjust/unreasonable and thus deserves to be deleted.

3. In law and as per the facts and circumstances of the appellants case, the Hon'ble CIT(A) erred in not treating the Unit Linked Market Plus Policy of LIC as a 'capital asset' within the meaning of section 2(14) by ignoring numerous judicial pronouncements in this regard and consequently erred in not allowing indexation benefit and consequential long term capital loss to the tune of Rs. 5,02,034/- on the surrender of such policy. Thus, the disallowance made on such misinterpretation of facts is bad in law and thus the same deserves to be deleted

4. In law and in the facts & circumstances of the appellants case, the Hon'ble CIT(A) erred in upholding the charging of interest w/s 234B & 234C of the Income Tax Act, 1961.

5. In law and in the facts & circumstances of the appellants case. the the hon'ble CIT(A) has erred in confirming initiation of penalty us 271 (1)(c) of the Income Tax Act, 1961.

6. The appellant craves leave to add, amend, alter or modify the ground or grounds of appeal on or before the hearing

2. At the outset, the Ld. AR of the assessee pointing out the legal issue (Ground No.1) assailed the action of the AO to have re-opened the assessment for AY 2014-15 without satisfying the *condition precedent* as prescribed under section 147 of the Income Tax Act (herein after "the Act").

3. Brief facts are that the assessee had filed his return of income on 29.09.2014 declaring total income of Rs. 12,37,920/-.The same was processed u/s 143(1) of the Act. Later the case of the assessee was reopened u/s 147 of the Act by issue of notice u/s 148 of the Act dated 22.03.2021. Pursuant thereto, the assessee requested for copy of the reasons recorded by AO before re-opening its assessment, which was furnished to the assessee and which reads as under: -

1. Brief details of the assessee: The assessee is an Individual

2. Brief details of the information collected/received by the AO:

Information has been received from ITO (I&CI). Unit 1(3). Mumbai about assessee that assessee has surrendered an LIC pension policy during FY 2013-14 and has received surrendered value of Rs 18,60,343/-, Single premium payment of Rs 13 lakhs was made towards this policy by assessee in 2006-07. During enquiry proceedings by the ITO in this regard, assessee submitted that he has not claimed benefit under Chapter VIA in respect of the policy on the payment of premium. Assessee also submitted that he treated the policy as debt fund and claimed Long Term Capital Loss of Rs 502034/- (after indexation benefit).

Later, the ITO shared the information with this office that tax treatment of pension policy as capital asset is incorrect. It was also shared that as per section 80CCC (2)

"(2) Where any amount standing to the credit of the assessee in a fund, referred to in sub-section (1) in respect of which a deduction has been allowed under sub-section (1), together with the interest or bonus accrued or credited to the assessee's account, if any, is received by the assessee or his nominee (a) on account of the surrender of the annuity

plan whether in whole or in part, in any previous year, or (b) as pension received from the annuity plan, an amount equal to the whole of the amount referred to in clause (a) or clause (b) shall be deemed to be the income of the assessee or his nominee, as the case may be, in that previous year in which such withdrawal is made or, as the case may be, pension is received, and shall accordingly be chargeable to tax as income of that previous year.”

It was also shared that in absence of complete submission, accretion value of Rs 5,60,343/- is chargeable to tax as income of assessee during FY 2013-14. Moreover, it was also stated that if it is found that assessee has claimed benefit under Chapter VI against premium payment, then entire surrender value shall be chargeable to tax in hands of assessee,

3. Analysis of information collected/received:

On perusal of facts mentioned above and provisions of the Income Tax Act, 1961. prima facie it is clear that the assessee's treatment of pension policy as capital asset is incorrect. Capital assets are transferrable whereas pension policy is not transferrable. Moreover, ITR of assessee has been perused. It is reflected in ITR that assessee has claimed Long Term Capital Loss of Rs 502034 during the year under consideration. Considering entirety of facts, it is clear that accretion value of Rs. 5,60,343/- is liable to tax in hands of assessee during FY 2013-14. Further, in case it is found that if assessee has claimed benefit under Chapter VI against premium payment, then entire surrender value ie. Rs 18,60,343/- shall be chargeable to tax in hands of assessee.

4. Enquiries made by the AO as sequel to information collected/received:

As mentioned above.

5. Basis of forming reasons to believe and details of escapement of Income.

From analysis of the above facts, have reason to believe that assessee failed to disclose fully and truly all material facts necessary for his assessment of income which resulted into understatement of his income by Rs.5,60,343/

4. According to the Ld. AR, before the aforesaid reasons were recorded and notice u/s 148 of the Act dated 22.03.2021 was issued by AO, there was a full fledged inquiry conducted in year 2018 by the ITO (I&CI), Unit (1)3, Mumbai which fact is discernible from perusal of page no. 17- 18 of the paper book, wherein, the ITO (I&CI), Unit (1)3, Mumbai had asked assessee the following queries on this issue which reads as under;

Regarding policy no. 902905122 of Shri Milan Tanvir Choksi

mumbai.ito.icil.3 <mumbai.ito.icil.3@incometax.govah 2018, 7:10 PM

to me

sir,

An enquiry in the above matter is under progress with this office. In this regard, it is requested to submit the following details by 07.10.2018

(i) Amount of premium paid for the policy with documentary evidence,
(ii) Whether deduction under Chapter VI-A of the I.T. Act has been availed on the payment of premium for the above policy. If no, necessary documentary evidence of other investments may please be submitted.

(iii) If deduction has not been taken on the above policy under Chapter VI-A whether the accretion value has been offered to tax in the year of

surrender? (iv) If deduction has been taken on the above policy under Chapter VI-A, whether the entire surrender value has been offered to tax?

Regards

Samarendra Pathak ITO (I&CI), Unit 1(3), Mumbai

5. And the assessee had replied vide letter dated 09-10-2018 which letter is found placed at page no 17 of paper book which reads as under;

To

ITO(I&CI), Unit 1(3)

Central Circle 21,

R. No. 403, Aaykar Bhavan, M.K. Road,

Mumbai -400020

Dear Sir,

Sub Assessment proceedings for the A.Y. 2014-15

PAN : AAPC4709L

With respect to the captioned matter, I would like to state as under.

I am in receipt of your mail dated 27.09.2018 wherein your goodselves have sought certain clarifications in connection with the Policy No. 902905122 in the my name. In response to the same I am furnishing herewith the following explanations/details: (Question wise)

1. The amount of premium paid for the policy is Rs. 13,00,000/-
2. I have not claimed any deduction under chapter VIA with respect to the above payment made towards the purchase of the said product from LIC
3. The investment made by me towards the said policy is in the nature of investment made in mutual fund and not a life insurance policy. The said investments were redeemed during the AY 2014-15 and the loss thereof

after taking the benefit of indexation (as the same was not subject to STT) was claimed in the return of income and carry forward of the same was sought. Thus, in nutshell the gain/loss i.e. accretion/erosion in the value has been duly disclosed in the return of income in the year of redemption i.e. AY 2014-15.

4. As mentioned above no deduction has been claimed in the return of income and the sale consideration after availing the indexation benefit available has been duly offered/claimed in the return of income.

Hope the above details suffice your requirement.

Thanking You,

For Milan T. Choksi

Sd/-

(Authorised Signatory)

6. According to the Ld. AR, in the light of above facts it can be seen that the ITO (I&CI), Unit (1)3, Mumbai in fact had enquired about the premium paid for the policy, where the assessee had availed deduction regarding payment of premium under chapter VIA etc. And according to the Ld. AR, when the assessee had replied to the AO's query vide letter to 09-10-2018 (supra) that assessee have not claimed any deduction under chapter VIA; and brought to his notice the relevant facts that the assessee had paid premium of Rs. 13,00,000/-; and also that the investment made in the policy was in the nature of investment in Mutual Funds and not Life Insurance Policy; and that the investments were redeemed during the Relevant AY 2014-15; and that the loss thereof was claimed by taking benefit of indexation (as the same was not subjected to STT) which was duly claimed in the return of income; and that carry forward of the same was rightly claimed; and thus

it was pointed out that erosion in the value has been disclosed in the return of income. Therefore, according to the Ld. AR, since ITO(I&CI), Unit 13, Mumbai had inquired about this issue (i.e, about the policy in question in October 2018)and thereafter this information was forwarded to the AO of the assessee; and on the strength of this information, the present AO has recorded the reasons "to believe escapement"of income and issued notice u/s 148 on 23-03-2021. According to the Ld. AR, the aforesaid facts would show that after the enquiry on this issue (supra), had been done and after three and a half years had elapsed, this information (enquiry) had been passed on by ITO (I&CI), Unit 13, Mumbai to the present AO; which fact can be seen from perusal of the reasons recorded that all information were before the AO, and still he states that the basis for forming the reason to believe escapement of income was on account of assessee's failure to disclose fully and truly all materials necessary for assessment of income which resulted in under statement to tune of Rs. 5,60,343/-. According to the Ld. AR, the reasons to believe "postulates"foundation based on information and belief based on reasons. Even after foundation based on information is there, still there must be reason warrant holding a belief that income chargeable to tax has escaped assessment. According to him, from a perusal of the *reasons recorded* it can be seen that the AO formed the *reasons to believe escapement* on the alleged failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment of income, which is *per-se* erroneous because in the return of income, assessee had claimed long time capital loss of Rs. 5,02,034/- which fact cannot be denied, since in the reasons recorded (supra), it can be seen that AO himself admits in his own words that " *It is reflected in ITR that assessee has claimed long time capital loss*

of Rs. 05,02,034/in the year under consideration". And further it has been clearly brought to the notice of ITO (I & CI) that assessee has not claimed benefit under Chapter VI, and still at para no. 3 of his reasons, the AO still expresses his doubts about this fact. And that the policy in question is a ULIP and not a Pension Policy; and even though these relevant facts were brought to the notice of ITO (I & CI) which were passed on to the AO, still he nursed doubts regarding these facts and finally concludes the basis of forming reasons to believe, escapement of income was due to failure on the part of assessee to disclose fully and truly all material facts necessary for his assessment of income. It can be seen from the discussion that the reason given by the AO to re-open the assessment in the light of the relevant facts before him suffers from the vice of non-application of mind. And therefore, in the facts and circumstance of this case, assessee succeeds on the legal issue raised against validity of the re-opening of the assessment. Therefore, the action of AO to reopen the assessment by issuance of notice u/s 148 of the Act is held to be bad in law and consequently all further proceedings are held to be 'null' in the eyes of law. Since assessee succeeds on legal issue, this Tribunal refrain from expressing its opinion on the merits of addition and it is left open.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 12/05/2023.

Sd/-

(ABY T. VARKEY)

न्यायिकसदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 12/05/2023.

Aniket Rajput

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त/ CIT
4. विभागीयप्रतिनिधि ,आयकरअपीलीयअधिकरण ,मुंबई/ DR, ITAT, Mumbai
5. गार्डफाईल / Guard file.

आदेशानुसार/BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार/(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण ,मुंबई / ITAT, Mumbai