

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI**

**SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 949/MUM/2023
(Assessment Year: 2013-14)**

**ITA No. 950/MUM/2023
(Assessment Year: 2014-15)**

&

**ITA No. 951/MUM/2023
(Assessment Year: 2016-17)**

Satish Anant Bhadri,
221, Unique Industrial Estate,
Off V.S. Marg, Prabhadevi
[PAN: AADPB8461D]

..... **Appellant**

**Commissioner of Income Tax
(Appeals)- Delhi,**
Room No. 245-A, North Block,
New Delhi - 110001

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Kishore Chaudhari
For the Respondent/Department : Shri Paresh Deshpande

Date : 26.06.2023
Conclusion of hearing : 28.06.2023
Pronouncement of order

ORDER

Per Bench:

1. This is a batch of three appeals pertaining to Assessment Years 2013-14, 2014-15 and 2016-17 preferred by the Appellant against the orders passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as 'the CIT(A)'] All the appeals involve identical issues the same were heard together and are being disposed by way of a

common order.

ITA No. 949/MUM/2023 (Assessment Year: 2013-14)

2. We would first take up appeal for the Assessment Year 2013-14 which has been preferred by the Appellant challenging the order, dated 09/02/2023, passed by the CIT(A) for the Assessment Year 2013-14, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 03/12/2019, passed under Section 144 read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. The relevant facts in brief are the Appellant filed return of income for the Assessment Year 2013-14 declaring income of INR 39,07,180/-. On the basis of information received by the Assessing Officer from the Income Tax Department's (Intelligence and Criminal Investigation) Wing, that the Appellant had prematurely surrendered insurance policy bearing number 883065720, 883065721 and 883065772/- on 27/08/2012, 26/12/2012 and 21.03/2013, respectively and had received INR 38,64,799/-, INR 39,94,655/- and INR 41,32,339/-, respectively, as surrender value in respect of the same. The policies surrendered were purchased by the Appellant from LIC of India on 31/03/2008 on payment of premium of INR 25,00,000/- each. Thus, the Appellant has not offered to tax INR 44,91,793/- being difference between aggregate surrender value of INR 1,19,91,793/- and the purchase value of INR 75,00,000/-. The assessment for the Assessment Year 2013-14 was reopened and order under Section 144 read with Section 147 of the Act was passed on 03.12.2019 assessing total income of the Appellant at INR 83,98,970/- after making an addition of INR

44,91,793/-, being accretion value, under the head 'Income from Other Sources'.

4. Being aggrieved, the Appellant preferred appeal before the CIT(A). Before the CIT(A), the Appellant contended that the acquisition of LIC Market Plus policy amounted to investment in capital assets and the surrender thereof amounted to transfer of capital assets resulting in capital receipts. Since the policy was held for more than three years from the date of acquisition/purchase, the capital gain arising from such transaction was in the nature of Long Term Capital Gains. The Appellant was entitled to claim benefit of deduction under Section 54F of the Act as the Appellant had purchase the residential house property. The Appellant also filed a letter dated 25/01/2023, issued by the Sr. Branch Manager stating as under:

"Sir,

With reference to your mail regarding IT Notice received to you, following information we are sharing with you.

1. Copy of EDMS image sending to you.

2. Mr. Satish Bhadri surrendered the Market plus policies before vesting Pension. Only surrender value is paid to him. No other benefits, such as annuity, accident benefits and pension benefits were paid during active period of policy issued by LIC Of India.

3. The LIC's Market Plus policies, which was surrendered are single premium pension policies, where no risk cover was opted. This scheme is similar to Debt Mutual Fund."

5. The CIT(A) was not convinced and therefore, vide order dated 09/02/2023, the CIT(A) dismissed the appeal. The CIT(A) declined to grant any relief as the CIT(A) was of the view that the Appellant had not furnished the complete policy document. The policy document

did not specify the number of units. Further, the certificate issued by the LIC Branch Manager used the expression 'before vesting pension' which showed that the Appellant had taken a pension policy. The policy purchased by the Appellant could at best be understood as market linked pension plan (and not investment in bonds or mutual fund units) which does not qualify as a capital asset as defined in Section 2(14) of the Act. The accretion in the value of the policy is, therefore, liable to tax as 'Income from Other Sources'. Therefore, there were no capital gains during the relevant previous year in respect of which deduction under Section 54F could be claimed by the Appellant.

6. The Appellant has, being aggrieved by the dismissal of appeal by the CIT(A), preferred the present appeal.
7. Before us, the Learned Authorised Representative for the Appellant reiterated the submission made before the CIT(A). He vehemently contended that the CIT(A) had failed to appreciate the correct facts. The Appellant had essentially made investment and not purchased pension policy. Referring to status report of policy placed at page 13 of the paper-book, the Learned Authorised Representative for Appellant submitted that the Appellant had not taken any cover and the assured sum was 'Nil'. The aforesaid status report of policy no. 883065720 clearly specified number of units (i.e. 233867) and Fund Type (i.e., Bonds). He also relied upon the Letter dated 25/01/2023 issued by the Sr. Branch Manager, LIC to support his contention that the policy taken by the Appellant was in the nature of a Debt Mutual Fund. Learned Authorised Representative for Appellant also placed reliance on the decision of the Ahmadabad

Bench of the Tribunal in the case of ACIT – Circle 7, Ahmedabad Vs. Shri Girish Haribhai Trivedi : ITA No. 2966/AHD/2011, Dated 13.07.2012. The Learned Authorised Representative for Appellant further submitted that the Appellant had invested the receipts in residential house property within specified time to claim benefit of deduction under Section 54F of the Act. In this regard, the Learned Authorised Representative for Appellant invited out attention to Agreement for Sale, dated 09/12/2014 (placed at page 28 to 83 of the paper-book).

8. Per Contra, Learned Departmental Representative supported the order passed by the CIT(A) and reiterated the stand taken by the Assessing Officer in the Assessment Order.
9. We have considered the rival submissions and perused the material on record. We find the averments made by the Learned Authorised Representative for Appellant to be factually correct to the extent the Status Report of Policy No. 883065720 placed on Page 13 of the Paper-Book clearly provided that investment type was made in Bonds, number of units held were 2,33,867.402, Life Cover was not opted and the sum assured was reflected as '000' (i.e. Nil). Further, the Letter, dated 25/01/2023, was issued by Sr. Branch Manager stating that the policy taken by the Appellant was similar to a Debt Mutual Fund. In our view, the CIT(A) failed to appreciate the fact that in the aforesaid letter it was stated that the 'LIC's Market Plus Policies, which was surrendered are single premium policies where no risk cover is opted' and therefore, it is similar to Debt Mutual Fund. The letter was obtained by the Appellant on specific query raised by the CIT(A). The letter also gives reference to the fact that

the Appellant had disclosed the fact that 'IT Notice' was received by the Appellant and therefore, clarification was required. The Letter clarified that the policy was in the nature of a Debt Mutual Fund since the Appellant had not opted for risk cover. Further, during the operation of policy no other benefit in the form of annuity, accident benefit or pension benefit was paid to the Appellant. In our view, the inference drawn by the CIT(A) that the policy was a pension policy runs contrary to express statement made in the letter issued by Sr. Branch Manager, LIC. We note that the Assessing Officer/CIT(A) has not relied upon any policy term to support the conclusion that the policy taken by the Appellant is a pension policy. On the other hand the Learned Authorised Representative for Appellant has relied upon the decision of Ahmadabad Bench of the Tribunal in the case of Shri Girish Haribhai Trivedi (supra). In that case the subject matter of consideration before the Tribunal was surrender value received on surrender of investment made the assessee in that case in the ICICI Pru Life Term, a unit linked insurance plan by ICICI Prudential Life Insurance. The Tribunal accepted the alternative contention of the assessee and upheld the order of the CIT(A) holding that the surplus on maturity of the policy was in the nature of Long Term Capital Gains. The relevant extract of the aforesaid decision reads as under:

"7. After hearing both the parties and perusing the record we find that Id. CIT(A), after properly appreciating the facts of this case, has passed a well reasoned speaking order by partly allowing the appeal of the assessee. The findings of the Id. CIT(A) has remained uncontroverted by Id. D.R. at the time of hearing before us. Therefore, we are not inclined to interfere with the order passed by Id. CIT(A). For the sake of clarity, the relevant portion of the order of Id. CIT(A) is reproduced as under:-

"I have carefully perused the assessment order and the submissions given by the appellant. The brief facts of the case are that the appellant purchased a unit linked insurance policy from ICICI Prudential Life Insurance Company Limited. The name of the policy was ICICI Pru. Life Time. The policy was purchased by the appellant on 31.07.2003. The sum assured was Rs.1,00,000/-. The appellant initially made a payment of Rs.3,00,000/- by cheque on 30.07.2003. Subsequently payment of another 15,00,000/- were also made by him during the next two years. The policy was encashed by him on 22.08.2007. Accordingly, the return of income for the present assessment year was filed by the appellant showing the surplus amount of Rs.14,74,492/- as amount received on maturity of policy in the capital account. The A.O. analysed the various aspects of the policy and held that the receipts from the policy would not be exempt in view of the limitations imposed by section 10(10D) and held that the receipts would not be exempt from tax.

After careful perusal of all the facts, it is evident that the policy purchased by the appellant was a unit linked insurance policy. In this type of policy, out of the premium paid during the year, a small portion of the investment goes towards providing the life cover to the person and the residual portion is invested in a fund which in turn invests in stocks or bonds. The value of investment grows or declines as per the type of the investment made by the fund. The investor also has a choice to choose between the equity based funds or the bond based funds. The investor also can regularly change his investment from one type of fund to another considering the overall scenario of the equity market. These kind of changes are called 'switch'. At the time of the maturity, the investor is paid the amount equal to the value of the units of the date of maturity.

It is observed from the statement of account of the policy which has been enclosed to the assessment order by the A.O. that the appellant initially opted for investment in protector fund and later on is switched certain part of maximiser fund. At the time of surrender i.e. on 21.08.2007, the full value of policy was Rs.32,74,492.91 for which the cheque was issued to the appellant. The A.O. was not

justified in treating the entire receipts as income of the appellant as only the surplus could have been considered for the purpose of taxation. As evident from above, the investment by the appellant was in a unit linked insurance policy in which major portion was invested in mutual funds and accordingly, the surplus on maturity of the policy should be treated as capital gain. Since no security transaction tax has been deducted at the time of transaction by the fund, the benefit of indexation will be available to the appellant. The last payment in the fund was made by the appellant on 25.08.2005 and the policy has been surrendered on 22.08.2007 which shows that the investment was for more than three years for the overall policy and more than one year from the date of last investment. The surplus will, therefore, be treated as long term capital gain on investment in mutual funds. The A.O. is, therefore, directed to take the sale consideration of units as the amount received on account of maturity of the policy and the cost of investment as the amount invested by appellant during the span of 2-3 years i.e. Rs.18,00,000/- and accordingly work out the long term capital gain and tax payable thereon, if any.

*The ground of appeal is accordingly partly allowed.”
(Emphasis Supplied)*

10. As was the case in the above decision, the Appellant has held investment for a period of more than three years. Single premium was paid on 31/03/2008 and surrender value was received after 31/03/2011 during the relevant previous year. In the present case the investment were in the nature of investment in Debt Mutual Fund. According, we hold that the accretion value of INR 44,91,793 was in the nature of long term capital gains. Accordingly, the addition of INR 44,91,793/- made by the Assessing Officer in the hands of the Appellant holding the same to be 'Income from Other Sources' is set aside. The Assessing Officer is directed to compute the amount of capital gains tax liability, if any, as per law. The

Assessing Officer is also directed to grant the benefit of Section 54F of the Act to the Appellant after verifying the claim of the Appellant taking into consideration the Agreement for Sale, dated 09/12/2014 filed by the Appellant. In case the need arises, the Assessing Officer shall also grant reasonable opportunity of being heard to the Appellant. In view of the aforesaid Ground No. 1, 3, 4 and 5 are allowed, while Ground No. 6 is allowed for statistical purposes. Ground No. 2 raised by the Appellant is disposed off as being infructuous.

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11. Both the sides agreed for the Assessment Years 2014-15 and 2016-17, in identical facts and circumstances addition of INR 29,75,489/- (in respect of surrender value of INR 67,75,489/- received on surrender of LIC Market Policy No. 883439720 purchased for INR 38,00,000/-) and INR 23,34,963/- (in respect of surrender value of INR 43,34,963/- received on surrender of LIC Market Policy No. 883065725 purchased for INR 20,00,000/-), respectively, were made by the Assessing Officer. The aforesaid additions were confirmed by the CIT(A) and in respective appeals preferred by the Appellant were dismissed. In appeals before us, both sides, adopted their arguments in respect of appeal for the Assessment Year 2013-14 and agreed that out finding/adjudication in appeal for the Assessment Year 2013-14 shall apply mutatis mutandis to appeal for the Assessment Year 2014-15 and 2016-17 also.
12. We note that the grounds raised in appeals for the Assessment Year

2014-15 and 2016-17 are identical to the grounds raised in appeal for the Assessment Year 2013-14. Accordingly, in view of paragraph 7 to 10 above, the addition of INR 29,75,489/- and INR 23,34,963/- made by the Assessing Officer in the hands of the Appellant for the Assessment Year 2014-15 and 2016-17, respectively, holding the same to be 'Income from Other Sources' is set aside. For both the aforesaid assessment years the Assessing Officer is directed to compute the amount of long term capital gains tax liability, if any, as per law by treating the accretion value as long term capital gains. The Assessing Officer is also directed to grant the benefit of Section 54F of the Act to the Appellant after verifying the claim of the Appellant for the assessment years under consideration taking into consideration the Agreement for Sale, dated 09/12/2014 filed by the Appellant. In case the need arises, the Assessing Officer shall also grant reasonable opportunity of being heard to the Appellant. In view of the aforesaid, Ground No. 1, 3, 4 and 5 of the Appeal for the Assessment Year 2014-15 and 2016-17 are allowed, while Ground No. 6 of the respective appeal is allowed for statistical purposes. Ground No. 2 of the respective appeal raised by the Appellant is disposed off as being infructuous.

In result, all the three appeals are allowed.

Order pronounced on 28.06.2023

Sd/-

(B.R. Baskaran)
Accountant Member

Sd/-

(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 28.06.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai