

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.257/Asr/2022
Assessment Year: 2017-18**

Mr. Ruder Mani Walia C/o M/s Apex Industries 54, Dada Colony, P.O. 424, Industrial Area, Jalandhar. [PAN:-AABPW0947M] (Appellant)	Vs.	ITO-Ward 2(3), Jalandhar. (Respondent)
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Appellant by	Sh. Vikas Bhagat, Adv.
Respondent by	Sh. Prashant Singh, Sr. DR

Date of Hearing	19.06.2023
Date of Pronouncement	17.07.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals), NFAC, Delhi,[in brevity the ‘CIT (A)’],order passed u/s 250of the Income Tax Act 1961, [in brevity ‘the Act’] for

A.Y. 2017-18. The impugned order was emanated from the order of the CPC Bengaluru, u/s 143(1) of the Act.

2. The assessee has taken the following grounds:

“1. That the order passed by CIT(A) is against law and facts of the case.

2. That the CIT(A) has wrongly made the addition of Rs. 46,79,856/- on account of maturity amount of LIC policy.

3. That the assessee has already declared the income under head Capital Gain.

4. That the CIT(A) has wrongly dismissed the appeal on the ground that assessee had not complied with the notices issued by the department, as the assessee has complied with all the notices and filed adjournments. But the CIT(A) has not considered the same and passed the order.”

3. Tersely we advert the fact of the case is that the assessee claimed deduction of maturity of LIC and calculated the capital gain U/s 48 and declared in the return. The maturity amount of LIP policy was Rs.47,40,561/-. Accordingly, indexation was applied on the invested amount of Rs.30 lacs and the index cost of acquisition is worked out amount of Rs.42,99,363/-. The long-term capital gain was declared on the above calculation amount of Rs.4,41,198/- on which assessee declared tax

@ 20%. The Life Insurance Corporation of India (in short LIC) had deducted the TDS on the maturity amount u/s 194DA of the Act. The ld. AO rejected the assessee's claim and added back the entire amount of Rs.47,40,561/- as total income of the assessee. The ld. AO in processing of return rejected the assessee's claim of income as capital gain u/s 48 of the Act. Being aggrieved assessee filed an appeal before CIT(A). The ld. CIT(A) upheld the assessment order. Being aggrieved the assessee filed an appeal before us.

4. The ld. AR for the assessee vehemently argued and placed that the maturity amount of Rs.46,79,856/- which is after deduction of TDS @1%and the total value of maturity is Rs.47,40,561/- is reflected in 26AS. The issue was agitated before the ld. CIT(A) and the ld. CIT(A) has passed speaking order which is reproduced as below:

“6.) Decision: In the statement of facts it was argued as under:

The facts of this case are that assessee has filed return on 19.12.2017 and declared gross income of Rs. 1362652/-. But the return has been wrongly processed u/s 143(1) and computed gross total income of Rs.6042508/-. The addition of Rs.4679856/- has been made on account of proceedings received on LIC maturity which has already been taken Into account under the head long term capital gain. Aggrieved. The assessee filed this appeal.

6.1) *The appellant claims that during the year under consideration proceedings on LIC Maturity amounting to Rs.47,40,561/- were reflected in the ITR for the AY 17-18. The ITR is verified and following entries were noticed. The relevant column in the ITR under the head “Schedule CG: Capital Gains : B-Long Term Capital Gains” at point 7a, 7b, and 7c, is as under:*

Full value of consideration Rs.47,40,561/-

Less: Deduction u/s 48:

Cost of acquisition without indexation Rs.42,99,363/-

Long Term Capital Gains Rs. 4,41,198/-

The appellant has not submitted any reason as to why the LIC maturity proceeds are taken under the head capital gains? There is no submission as to how the cost of acquisition is arrived at? Capital gains come into the picture if the following conditions are satisfied:

(i) there should be a capital asset as per sec. 2(14).

(ii) the asset should be transferred as per sec. 2(47).

It is also not clear whether the amount shown under the head capital gains is that of the LIC maturity proceeds only.

6.2) *Tax treatment of “any sum received under a Life Insurance Policy”:*

It is important to note that section 10(10D) and section 194DA deals with “any sum received under a Life Insurance Policy” and “Payment in respect of Life Insurance Policy” respectively.

Incomes not included in total income.

10. *In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—*

As per section 10(10D):

(10D) any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, other than—

*(a) any sum received under sub-section (3) of section 80DD or sub-section (3) of section 80DDA *; or*

(b) any sum received under a Keyman insurance policy; or

(c) any sum received under an insurance policy issued on or after the 1st day

of April, 2003 but on or before the 31st day of March, 2012 in respect of which the premium payable for any of the years during the term of the policy exceeds twenty per cent of the actual capital sum assured; or

(d) any sum received under an insurance policy issued on or after the 1st day of April, 2012 in respect of which the premium payable for any of the years during the term of the policy exceeds ten per cent of the actual capital sum assured:

Provided that the provisions of sub-clauses (c) and (d) shall not apply to any sum received on the death of a person:

Provided further that for the purpose of calculating the actual capital sum assured under sub-clause (c), effect shall be given to the Explanation to subsection (3) of section 80C or the Explanation to sub-section (2A) of section 88, as the case may be :

Provided also that where the policy, issued on or after the 1st day of April, 2013, is for insurance on life of any person, who is—

(i) a person with disability or a person with severe disability as referred to in

section 80U; or

(ii) suffering from disease or ailment as specified in the rules made under section 80DDB,

the provisions of this sub-clause shall have effect as if for the words "ten per cent", the words "fifteen per cent" had been substituted:

Provided also that nothing contained in this clause shall apply with respect to any unit linked insurance policy, issued on or after the 1st day of February, 2021, if the amount of premium payable for any of the previous year during the term of such policy exceeds two lakh and fifty thousand rupees:

Provided also that if the premium is payable, by a person, for more than one unit linked insurance policies, issued on or after the 1st day of February, 2021, the provisions of this clause shall apply only with respect to those unit linked insurance policies, where the aggregate amount of premium does not exceed the amount referred to in fourth proviso in any of the previous year during the term of any of those policies:

Provided also that the provisions of the fourth and fifth provisos shall not apply to any sum received on the death of a person:

Provided also that if any difficulty arises in giving effect to the provisions of this clause, the Board may, with the previous approval of the Central Government, issue guidelines for the purpose of removing the difficulty and every guideline issued by the Board under this proviso shall be laid before

each House of Parliament, and shall be binding on the income-tax authorities and the assessee]

Explanation 1.—For the purposes of this clause, "Keyman insurance policy" means a life insurance policy taken by a person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first-mentioned person and includes such policy which has been assigned to a person, at any time during the term of the policy, with or without any consideration.

Explanation 2.—For the purposes of sub-clause (d), the expression "actual capital sum assured" shall have the meaning assigned to it in the Explanation to sub-section (3A) of section 80C.

75[Explanation 3.— For the purposes of this clause, "unit linked insurance policy" means a life insurance policy which has components of both investment and insurance and is linked to a unit as defined in clause (ee) of regulation 3 of the Insurance Regulatory and Development Authority of India (Unit Linked Insurance Products) Regulations, 2019 issued by the Insurance Regulatory and Development Authority under the Insurance Act, 1938 (4 of 1938) and the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);]

As per section 194DA: Payment in respect of life insurance policy.

194DA. Any person responsible for paying to a resident any sum under a life insurance policy, including the sum allocated by way of bonus on such policy, other than the amount not includible in the total income under clause

(10D) of section 10, shall, at the time of payment thereof, deduct income-tax thereon at the rate of [one] per cent:

Provided that no deduction under this section shall be made where the amount of such payment or, as the case may be, the aggregate amount of such payments to the payee during the financial year is less than one hundred thousand rupees.

The appellant has not submitted any details relevant to the statement of facts and the grounds of appeal raised. No details regarding LIC proceeds is submitted in the appellate proceedings also. In absence of any submissions, it is difficult to understand tax treatment to be applied as enunciated in section 10(10D) of the Act. However, it is important to note that TDS u/s 194DA has been made. It is also important to note that the burden of proving that a particular item of income falls within this section (section 10) is on the assessee.

6.3) The appellant has also shown income from other sources at Rs.1,49,497/-, separately. Based on 26AS, the CPC has adopted the income from other sources at Rs.48,29,353/-. All the relevant facts are given as under:

(i) 26AS Details.

(ii) ITR filed and details of TDS on income.

(iii) Adjustments u/s 143(1)(a)

1 26AS Details - PAN: AABPW0947M : AY 2017-18

Sr.	TAN	TAN Name	Sec code	Amount paid	Total Tax collected	Return F.Y
1	JLDA00106B	Apex Industries Private Limited	194A	88,792	8,879	2016-17
2	JLDL00308A	Life Insurance Corporation of India	194 DA	47,40,561	47,406	2016-17
				48,29,353	56,285	

1 ITR filed for AY 2017-18, page number 5

TDS2: Details of Tax Deducted at Source on Income (As per Form 16A issued by Deductor(s))

Sr.	Tax Deduction Account number (TAN) of the Employer	Name of the Deductor	Financial year in which deducted	TDS of the current F.Y	Amount being claimed this year only if corresponding income is being offered for tax this year
1	JLDA00106B	Apex Industries Private Limited	2016	88,792	8,879
2	JLDL00308A	Life Insurance Corporation of India	2016	47,40,561	47,406

	TOTAL				56,285
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Adjustments u/s 143(1)(a)

Addition of income appearing in Form 26AS which has not been included in computing the total income in the return - 143(1)(a)(vi)

Sl.	Head of income	Form used for comparison	Income as per Income Tax Return	Amount paid / credited to you as per Form 26AS	Proposed addition of income	Error Description
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	(i)	(ii)	(iii)	(iv)	(v) = (iii) - (iv)	(vi)
	Other Sources	Form 26AS	1,49,497	48,29,353	46,79,856	There is inconsistency between other sources income in return and Form 26AS.

In view of the above, the adjustment made by AO CPC u/s 143(1)(a) is held to be correct as income appearing in Form 26AS has not been included by the appellant in computing the total income

in the return. Hence, in the Intimation order it is mentioned as “there is inconsistency between other sources income in the return and Form 26AS. The addition made by AO CPC is as per the discrepancy reflected in the return of income and Form 26AS. Hence the Intimation order made u/s 143(1) is held to be correct. In addition, it is also pertinent to note that in absence of any details and submissions from the appellant in spite of several opportunities provided the appeal is liable to be dismissed.

7. In the result, the appeal is dismissed.”

5. The Id. DR vehemently argued and fully relied on the order of the Id.CIT(A). The Id. CIT(A) had depicted the proper order that the Id. AO has a power to adjust the claim u/s 143(1)(a) by considering the Form 26AS. So, the addition is within the jurisdiction of the Id. AO. Further as per provision of section 10(10D), the assessee is liable for the payment of tax on the maturity of the LIC.

5.1. The section 194DA requires deduction of tax at source on the sum paid and section 143(1) requires adjustment towards addition of income and not of the sum paid. The CBDT in its Circular No.07/2003 dated 05-09-2003 has given explanatory notes on the provisions relating to Finance Act, 2003. The Board has clarified the position regarding section 10(10D) in para 10.3 reading as under:

10.3 The insurance policies with high premium and minimum risk covers are similar to deposits or bonds. With a view to ensure that such insurance policies are treated at par with other investment schemes, amendments have been made in section 88 and clause (10D) of section 10. The existing clause (10D) of section 10 has been substituted so as to provide that the exemption available under the said clause shall not be allowed on any sum received under an insurance policy issued on or after the 1st day of April, 2003, in respect of which the premium payable in any of the years during the term of the policy, exceeds twenty per cent of the actual capital sum assured. In view of this, the income accruing on such policies (not including the premium paid by the assessee) shall become taxable. However, any sum received under such policy on the death of a person shall continue to remain exempt. The new provision also provides that the amounts received under sub-section (3) of section 80DD, shall not be exempt under this clause.'

5.2. The interpretation of the provision makes it manifest that exemption under section 10(10D) does not apply if the conditions of clause (c) are satisfied, in which case the income becomes chargeable to tax. However, the quantum of taxable income, as explained in the Circular is: 'the income accruing on such policies (not including the premium paid by the assessee).' In the hue of the above, it is patent that though deduction of tax at source u/s 194DA is contemplated on the gross amount paid under a life insurance policy, but the income is such sum received as reduced by the amount of premium paid. Section 143(1) provides for making adjustment by way of 'addition of income appearing in Form no. 26AS' and not the

sum so appearing in the Form. Evidently, it is only the amount of income which can be added by means of adjustment u/s 143(1).

5.3. Reverting to the facts, the assessee received a sum of Rs.47,40,561/- towards premature surrender of life insurance policy and the amount of premium paid was Rs.30 lakh. The resultant income is Rs.17,40,561/-, which calls for adjustment in the intimation u/s.143(1) of the Act.

We order accordingly.

6. In the result, the appeal of the assessee bearing **ITA No. 257/Asr/2022** is partly allowed.

Order pronounced in the open court on 17.07.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

AKV

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

Sd/-

(ANIKESH BANERJEE)
Judicial Member

True Copy
By order