

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 2791/Mum/2022 (A.Y.2012-13)

Ms. Anisha Gulab Adnani

449, Ambit House,
Senapati Bapat Marg,
Lower Parel,
Mumbai- 400013,
PAN: ALMPA7111K

..... Appellant

Vs.

ITO (Intl. Tax) – 1 (1)(1),

R. No. 19, B Wing,
3rd Floor, Mittal Court,
Nariman Point,
Mumbai- 400021

..... Respondent

Appellant by : Shri Madhav Khandel /Vivek K.
Agarwal, Ld. AR
Respondent by : Shri Anil Sant, Ld. DR
Date of hearing : 04/10/2023
Date of pronouncement : 12/12/2023

ORDER

PER GAGAN GOYAL, A.M.:

This appeal by assessee is directed against the order of Ld. CIT (A)-55, Mumbai dated 02.09.2023 u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2012-13. The assessee has raised the following grounds of appeal:-

Revised Ground filed by assessee in place of original grounds filed with form no. 36

1.1 That the Ld. Commissioner of Income Tax (Appeals) (hereinafter referred to as 'CIT(A)'] has erred in law in maintaining an addition to the extent of Rs. 28,62,600/- under section 80CCC of the Income Tax Act, 1961 out of the total addition of Rs. 1,48,62,600/- made by the Ld. Assessing Officer in respect of surrender value of Lifetime Super Pension Policy issued by ICICI Prudential Life Insurance Company being the amount received in respect of the said policy. The Ld. CIT(A) failed to appreciate that in absence of satisfaction of conditions of section 80CCC(2) of the Act, no addition in respect of Rs. 28,62,6000/- received on surrender of the said policy could be made.

1.2 That the Ld. CIT(A) has failed to appreciate that the additional amount of Rs. 28,62,600/- received on surrender of Lifetime Super Pension Policy is a capital receipt and is not liable to tax in the hands of the appellant.

The appellant prays that the addition of Rs. 28, 62,600/- maintained by the Ld. CIT (A) deserves to be deleted.

2. The Appellant craves leave to add to, alter, amend and / or delete all or any of the above Grounds of Appeal.

2. The brief facts of the case are that, assessee is an individual having NRI Status as per Income Tax Act, 1961. For the year under consideration assessee has not filed any return of income u/s. 139 of the Act. However, revenue is in possession of information pertaining to assessee through "Individual Transaction Statement", as per this assessee has surrendered **pension policy** No. 7774037 of ICICI Prudential Life Insurance Co, Ltd. on 09-11-2011, i.e. during F.Y. 2011-12 relevant to A.Y. 2012-13 and received an amount of Rs. 1,48,62,603/-

3. Case of the assessee was re-opened by issuing notice u/s. 148 of the Act on 31.03.2018 after recording reasons the reasons. Assessee did not file any return in compliance to notice u/s. 148 of the Act. Further notices u/s. 142(1) of the Act were issued asking to file return and other relevant information vide dated: 04.09.2019, 10.10.2019, 18.10.2019 and 19.11.2019. A final show cause issued on 23.11.2019, however no compliance was made by the assessee and assessment was completed on best judgement basis u/s. 144 r.w.s. 147 of the Act and whole amount received by the assessee amounting to Rs. 1,48,62,603/- was added to the income of the assessee vide order dated: 10.12.2019.

4. Assessee being aggrieved with this order of AO preferred an appeal before the Ld. CIT(A), who in turn partly allowed the appeal of the assessee by treating basic investment amount as not taxable amounting to Rs. 1,20,00,000/- and additional amount received over and above the amount mentioned (supra) amounting to Rs. 28,62,600/- as taxable. Assessee being further aggrieved with this order of Ld. CIT (A) preferred present appeal before us. We have gone through the order of AO, Order of Ld. CIT (A) and submissions of the assessee alongwith ground raised before us. Issue involved is purely legal in nature and for better understanding relevant sections needs to be reproduced for ready reference as under:

(10A) (i) any payment in commutation of pension received under the Civil Pensions (Commutation) Rules of the Central Government or under any similar scheme applicable [to the members of the civil services of the Union or holders of posts connected with defence or of civil posts under the Union (such members or holders being persons not governed by the said Rules) or to the members of the

all-India services or to the members of the defence services or to the members of the civil services of a State or holders of civil posts under a State or to the employees of a local authority] or a corporation established by a Central, State or Provincial Act;

(ii) any payment in commutation of pension received under any scheme of any other employer, to the extent it does not exceed—

(a) in a case where the employee receives any gratuity, the commuted value of one-third of the pension which he is normally entitled to receive, and

(b) in any other case, the commuted value of one-half of such pension, such commuted value being determined having regard to the age of the recipient, the state of his health, the rate of interest and officially recognised tables of mortality;

(iii) any payment in commutation of pension received from a fund under clause (23AAB).

Deduction in respect of contribution to certain pension funds.

80CCC. (1) Where an assessee being an individual has in the previous year paid or deposited any amount out of his income chargeable to tax to effect or keep in force a contract for any annuity plan of Life Insurance Corporation of India [or any other insurer] for receiving pension from the fund referred to in clause (23AAB) of section 10, **he shall, in accordance with, and subject to, the provisions of this section, be allowed a deduction in the computation of his total income, of the whole of the amount paid or deposited (excluding interest or bonus accrued or credited to the assessee's account, if any) as does not exceed the amount of [one hundred and fifty thousand] rupees in the previous year.**

(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.

[(3) Where any amount paid or deposited by the assessee has been taken into account for the purposes of this section, —

(a)	***]
(b)	a deduction with reference to such amount shall not be allowed under section 80C for any assessment year beginning on or after the 1st day of April, 2006.]]

5. We have gone through the grounds taken by the assessee and found that ground no. 1.1 is tenable in the light of provisions of section 10(10A) and section 80CCC(2) reproduced (supra). As far as ground no. 1.2 is concerned where assessee is talking about the nature of receipt as capital in nature is not tenable. In this matter section 10(10A) and 80CCC of the Act are the relevant section to be analyzed as mentioned (supra). In our observation issue involved is of two-fold, i.e. exemption provided in section 10(10A) of the Act simultaneously conditions as

discussed in section 80CCC of the Act also. Chargeability under section 80CCC of the Act is linked to deduction claimed by the assessee, i.e. if no deduction is claimed, there is no chargeability as per section 80CCC (2) of the Act. In this fact is established and not under challenge by the revenue also that assessee has not claimed any deduction u/s. 80CCC of the Act, hence entitled to claim complete exemption u/s. 10(10A) of the Act subject to conditions prescribed in section 10(10A) of the Act itself.

6. We have gone through the orders of AO and Ld. CIT(A) on this issue and observed that nowhere in the order it is dealt specifically, that which of the conditions mentioned in section 10(10A) or 80CCC(2) of the Act are not satisfied by the Assessee. In our observation, there is no working done by the revenue to establish that assessee is in contravention to the conditions prescribed in section 80CCC (2) mentioned (supra), instead revenue relied upon the CBDT Circular No. 3/2017, issued in the year 2017 and the same does not pertain to the issue under consideration/not in existence at the relevant period under consideration. Secondly, the same may be binding on Income Tax Authorities and not on assessee.

7. Through the revised grounds, assessee raised the issue that amount received on surrender of policy should be treated as capital receipt, but on examination of matter after going through the provisions of section 80CCC (2) and section 10(10A) of the Act, we find that amount received by the assessee specifically dealt with by the sections mentioned (supra), hence the same cannot

be treated as capital receipt. Still, same is exempted u/s. 10(10A) r.w.s. 80CCC (2) of the Act. Hence, as the claim of the assessee is tenable, same is allowed.

8. In view of above, it is observed that department has failed to specify against the assessee, as to under which clause the benefit of exemption claimed u/s. 10(10A) of the Act is denied. Even if for the time being, we rely on the circular mentioned (supra), assessee will be entitled to claim the benefit of indexation and consequential long term capital gain/loss. In view of above discussion, we agree with the contentions of the assessee raised through Revised Grounds. In the result, Revised Ground raised by the assessee are allowed and order of authorities below are set-aside with a direction to AO to delete the addition made and treat the whole amount received as exempt u/s. 10(10A) of the Act.

9. **In the result appeal of the assessee is partly allowed.**

Order pronounced in the open court on 12th of December, 2023.

Sd/-

(VIKAS AWASTHY)

JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 12/12/2023

Sr. PS (Dhananjay)

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)
ITAT, Mumbai