

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

**BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SUNIL KUMAR SINGH, JM**

ITA No. 2891/Mum/2024
(Assessment Year: 2017-18)

Vinay Parmanand Hariani
C/o. Chaturvedi Piyush & CO.
3-D1, Court Chambers,
New Marine Lines,
Mumbai-400 020

Vs.

ITO International Taxation,
Ward 2(2)(1),
Room No.1725, 17th Floor,
Air India Building,
Nariman Point,
Mumbai-400 021

(Appellant)

(Respondent)

PAN No. AABPH4179A

Assessee by : Shri Piyush Chaturvedi, AR
Revenue by : Shri Anil Sant, DR

Date of hearing: 22.07.2024
Date of pronouncement : 24.07.2024

ORDER

PER PRASHANT MAHARISHI, AM:

1. ITA No. 2891/Mum/2024 for A.Y. 2017-18, is filed by the Vinay Parmanand Hariani,[Assessee/ Appellant] against the assessment order passed by the Income Tax Officer, International tax, ward 2(2)(1), Mumbai dated 21st March, 2024, raising following grounds of appeal:

"On the facts and circumstances of the case and in law:-



1. *The Ld. AO/DRP erred in calculating the gain on the surrender of Bajaj Allianz Policy for Rs. 44,06,623/- instead of a loss of Rs. 1,75,284/*

2. *The Ld. AO/DRP erred in not allowing the refund along with interest arise to the assessee as a result of giving the effect of the directions of the DRP order with respect to reassessment u/s 143(3) r.w.s 147 of the Act.*

3. *The L.d. AO/DRP failed to appreciate that the refund along with interest due to the assessee, being the excess of TDS over the tax chargeable on corresponding income assessed by the AO, ought to have been allowed following the amended provision of sec. 143(3) r.w.s 240 of the Act while giving the effect of DRP directions, irrespective of the claim made by the assessee.*

4. *The assessee reserves the right to add, withdraw, amend, or alter any of the grounds of objections at any point of time prior to or during the case of proceedings before the ITAT."*

2. Brief facts of the case shows that assessee is a non-resident individual, who did not file his return of income. The learned Assessing Officer on the basis of the information found that assessee is in receipt of substantial income and has also made substantial payments and has not filed his return of income and therefore, notice under Section 148 of the Income-tax Act, 1961 (the Act) was issued on 1st June, 2021.

3. In response to notice, assessee filed his return of income on 30th March, 2022, declaring total income of ₹6,95,120/- and also claimed refund of ₹19,99,220/-. As the assessee did not file his return of income within stipulated time u/s 148 of the act , return filed by the assessee on 30th March, 2022, was treated by the learned Assessing Officer as invalid return of income. Pursuant to the decision of the Hon'ble Supreme Court in case of Ashish Agarwal dated 4th May, 2022, further notice under Section 148 of the Act was issued on 26th July, 2022, to file the return of income within 30 days. The assessee did not file any further return. Notice under Section 142(1) of the Act was also issued on 3 different occasions which were not replied to. Accordingly, the learned Assessing Officer based on the information available passed the draft assessment order making the following additions:-
- a. Addition as unexplained investment under Section 69 of the Act of ₹1,00,000/-
 - b. Addition as unexplained money under Section 69A of the Act of ₹2,56,30,000/-.
 - c. Addition as undisclosed interest income of ₹6,94,121/-.
 - d. Addition as undisclosed income of ₹1,05,07,894/-.
4. Short-term capital gain of ₹8,16,275/- was also added.



5. Accordingly, by the draft assessment order dated 29th May, 2023, the total income was assessed at ₹3,77,48,290/-.
6. The assessee preferred the objection before the learned Dispute Resolution Panel(1), Mumbai. The learned Dispute Resolution Panel who passed direction on 27th February, 2024. Based on this direction, the learned Assessing Officer passed an assessment order under Section 147 read with section 144 of the Act on 21st March, 2024, wherein the assessed income of the assessee was determined at ₹69,07,025/-. The assessee is aggrieved against the assessment order.
7. As per ground no. 1 & 2, the assessee has challenged that the learned Assessing Officer has erred in calculating the gain on the surrender of Bajaj Allianz Policy for ₹44,06,623/- instead of loss of ₹1,75,284/-, despite direction of the Id DRP.
8. He submitted that on perusal of the information under section 133(6) of the Act, it was found that assessee has purchased insurance policy of Bajaj Life Insurance Corporation, ICICI Prudential Life Insurance, Aviva Life Insurance Corporation of India. These policies were surrendered by the assessee wherein the assessee received pay out of ₹44,06,612/-. The learned Authorized Representative referred to the assessee's submission at paragraph no.9.1 of the order of the learned Dispute Resolution Panel. He submitted that explanation of the assessee was given which was accepted by the learned

Assessing Officer in remand report, however, failed to consider the direction of the learned Dispute Resolution Panel and stated that the learned Dispute Resolution Panel has directed to compute the capital gain after granting indexation to the assessee which the learned Assessing Officer has not followed. He submits that the ground no.1 is on this issue.

9. The learned Departmental Representative supported the order of the learned Assessing Officer.
10. On careful consideration of the rival contentions and the orders of the learned Assessing Officer and direction of the learned Dispute Resolution Panel, we find that the learned Assessing Officer in spite of the acceptance of case of the correctness of the claim of the assessee in remand report and direction of the learned Dispute Resolution Panel has not granted assessee the benefit of indexation while computed the capital gain, Thus addition is in violation of the direction of the learned Dispute Resolution Panel which is binding on the Assessing Officer.
11. The fact clearly shows that assessee has purchased a insurance policy on 26th April, 2010, on which yearly premium of ₹30 lacs was to be paid. This policy was completed on 13th may, 2016, and tax was deducted at source at the rate of 30.90% on the gain of ₹42,80,577/-. The assessee computed the capital gain on surrendered of the insurance policy after computing the indexation benefit. Sale consideration of ₹1,32,80,577/- was reduced by index cost of ₹1,30,07,466/- resulting into a gain of ₹

2,73,111/-. In the remand report the learned Assessing Officer submitted to the learned Dispute Resolution Panel that the claim of the assessee appears to be in order. Accordingly, in paragraph 9.2, the learned Dispute Resolution Panel directed the learned Assessing Officer to assess the assessee on capital gain after indexing cost of acquisition. Despite this direction, the learned Assessing Officer did not allow indexation to the assessee. It is also the fact that when other insurance policies such as ICICI Prudential Life Insurance Corporation and Aviva Life Insurance Corporation, learned Assessing Officer has allowed the benefit of index cost of acquisition. Therefore, we find that the claim of the assessee is correct. Even otherwise not following the direction of the learned Dispute Resolution Panel by the learned Assessing Officer makes the addition not sustainable. We also note that assessee has also filed a rectification application on 23rd April, 2024, before the learned Assessing Officer which is still not disposed off. Accordingly, ground no.1& 2 of the appeal of the assessee is allowed.

12. Ground no. 3 of the appeal of the assessee is that the assessee is entitled to refund of tax along with interest which is granted to the assessee. The computation sheet attached with the assessment order shows that aggregate tax liability of the assessee was determined at ₹ 20,00,369/-. The assessee has been granted TDS of ₹19,99,379/- and TCS credit of ₹999/-. Therefore, the assessee has been granted total credit of tax paid of ₹20,00,369/-. The learned Authorized Representative has



also placed before us a revised and corrected statement of income which was attached with the rectification application dated April, 23, 2024. According to that computation the assessee has asked for a refund due of ₹15,04,060/-. In the computation of total income, the pre paid taxes of ₹20,63,957/- were shown by the assessee. In the tax computation statement with Assessment order the learned Assessing Officer granted credit of pre paid taxes of ₹20,00,369/-. Therefore, after carrying out the direction of the learned Dispute Resolution Panel, the learned Assessing Officer is directed to compute the sum of refund due to the assessee. The issue of non-granting of interest will arise only if the learned Assessing Officer does not grant the same. In view of this, we direct the learned Assessing Officer that if any refund is due to the assessee, the same shall be granted to the assessee along with the interest, if same is found payable to assessee in accordance with the law. Till that time, ground no.2 and 3 of the appeal are premature. Hence, dismissed.

13. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 24.07. 2024.

Sd/-
(SUNIL KUMAR SINGH)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 24.07. 2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant



2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai