

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

**BEFORE MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 1932/MUM/2024
(A.Y. 2015-16)**

Dipendu Bapalal Shah Flat No.62-A, Atlas Apartment Mumbai, Malabar Hill, Mumbai-400006	v/s. बनाम	International Taxation Ward-4(2)(1)-Mumbai Air India Building, Mumbai-400001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: BNBPS0099E		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Vijaykumar S. Biyani
Respondent by :	Shri Anil Sant

Date of Hearing	02.07.2024
Date of Pronouncement	29.08.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-55 /National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] dated 31.03.2023 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for Assessment Year [A.Y.] 2015-16.

2. The assessee has raised following grounds of appeal:

"The learned Commissioner of Income Tax Appeal has erred in confirming Rs 16,39,726 u/s 56 of the Income Tax Act 1961 being accretion value on account of premature surrender of pension policies from LIC.

Interlia ignoring the fact that I had not claimed any - benefit u/s 80CCC(2) in the year of investments.

The appellant also craves leave to submit additional documents and facts as may be necessary for the purpose of disposal of this appeal.”

3. Brief facts of the case are that the assessee had e-filed his original return on 28.08.2015 declaring total income of Rs. 12,66,660/-. The same was processed u/s 143(1) of the Act on 15.12.2015. Subsequently, on receipt of information regarding pension policies of LIC, purchased by the assessee which had been surrender during the year. A notice u/s 148 of the Act was issued on 31.03.2021, as the assessee had not declared these transactions in his return of income. The assessee had purchased 3 pension policies on different dates and surrender these on 13.08.2014 for Rs. 51,23,726/- as under:

Sr. No.	Number	Date of entry	Amount invested (INR)	Date redemption (INR)	Redemption value	Accretion Being capital gain (INR)
1.	905611951	09.08.2007	15,00,000	13.08.2014	2,453,655	9,53,655
2.	906008411	31.12.2009	10,00,000	13.08.2014	1,345,820	3,45,820
3.	96008413	31.12.2009	9,84,000	13.08.2014	1,324,251	3,40,251
	Total		34,84,000		51,23,726	16,39,726

4. The AO issued a show cause notice to the assessee, asking him to explain why the accretion of Rs. 16,39,726/- [i.e. surrender value – investment value] should not be added to the income u/s 56 of the Act?. The assessee explained that since no deduction was claimed under chapter 6A in any of the earlier years in respect of these policies, no income shall be liable to tax in the year of the surrender in the provisions to section 80CCC of the Act. The AO, however, disagreed with the interpretation of the assessee and preceded tax the interest or the bonus of Rs. 16,39,726/- u/s. 56 of the Act.

5. Before Ld. CIT(A), the assessee reiterated his arguments. However, the Ld. CIT(A) agreed with the findings of the AO and confirmed the addition of Rs. 16,39,726/- u/s 56 of the Act.

6. Before us, the Ld. AR has reiterated his arguments that since no deduction u/s 80CCC(1) was claimed, there is no question of applicability of section 80CCC(2) of the Act. He cited a favourable decision of the co-ordinate bench in case of **Sandeep Sukhtankar v/s ITO in ITA No. 2690/Mum/2012** on this issue. He also placed reliance on the decisions of the **Hon'ble Gujarat High Court** in the following cases:

i) Civil Application No. 17829 of 2018 of Piyush Ambalal Gandhi V/s DCIT-Circle-2.

ii) Ami Ashish Shah v/s ITO 440 ITR 417 (Gujrat).

7. On the other hand, Ld. DR vehemently argued that the interpretation being given regarding the applicability of section 80CCC is erroneous. In his written submission, he has made the following arguments:

"It is assessee's contention that since no deduction is claimed under chapter VIA in either of the earlier years, no income shall be liable to be taxed in the year of surrender, i.e. AY 2014-15, according to the provisions of section 80CCC. However, while doing so the assessee has not appropriately considered the provisions of section 80CCC of the Act. The assessee has misinterpreted the provisions of section 80CCC in saying that if no deduction is claimed under chapter VIA, no income shall be liable to be taxed in the year of surrender.

It is noted that the Assessee has considered the expression "referred to in sub-section (1) in respect of which a deduction has been allowed under sub section (1)" as a pre-requisite condition, for an amount, in order to fall under the purview of income as provided in section 80CCC(2) whereas the said expression needs to be read in conjunction with the

expression prior to it, i.e., "Where any amount standing to the credit of the assessee in a fund". The provisions of the section may read into three parts:

- (a) Where any amount standing to the credit of the assessee
- (b) In a fund, referred to in sub-section (1) in respect of which a deduction has been allowed under sub section (1).
- (c) together with the interest or bonus accrued or credited to the assessee's account.

On perusal of the above three parts, it is clear that the section determines the amount of income, on surrender of a pension policy under a fund as referred to in section 10(23AAB) of the Act, constituents of which are two sums the sum which has been availed as a deduction in sub-section (1) and the interest or bonus accrued or credited to the assessee's account. Hence, the expression "referred to in sub-section (1) in respect of which a deduction has been allowed Under sub-section (1)" when read with the text prior to it gives a clear understanding that it qualifies the amount which has to be included in the income under this section along with the interest or bonus accrued. However, it nowhere sets a condition that if deduction has been claimed in section 80CCC(1) of the Act, only then the income under section 80CCC(2) of the Act would arise.

Hence, in assessee's case, in order to determine to what extent the proceeds received on premature surrender of pension policy should be taxed, the interpretation, of the provisions of section 80CCC(2) of the Act, as discussed above needs to be adopted.

Therefore, as the Assessee has not claimed deduction under section 80CCC(1) or under any other section in respect of the pension policy, the first constituent i.e. Investment in the policy (Rs.34,84,000/-) is not considered while determining the amount of income under section 80CCC(2) of the Act and the only amount over and above the investment i.e. interest or bonus of Rs.16,39,726/- (being the difference of total proceeds of Rs.51,23,726/- and the investment of Rs.34,84,000/-) is the amount of income determined under section 80CCC(2) of the Act and the same is liable to be added to total income of the assessee under section 56 under the head "Income from other sources."

8. We have carefully considered the rival submissions as well as the judicial pronouncement on the issue. In order to decide the issue, it is relevant to go through the provisions of section 80CCC which are reproduced below:

"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 49[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.]]”*

9. On a plain reading of section 80CCC, it clear that 80CCC(2) is applicable only when the assessee is covered under sub section (1) i.e. where a deduction had been claimed and allowed under sub section (1). Admittedly, there has been no claim of deduction u/s 80CCC(1) of the Act by assessee and therefore 80CCC(2) is not applicable. However, in respect of the accretion of Rs. 16,39,726/- [i.e. surrender value (51,23,726) -



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investment (34,84,000[]) reference is required to be made to the provisions of section 10(10D) to determine whether this amount is exempt u/s 10(10D). For this limited purpose, the matter is restored to the file of AO to examine the eligibility of the proceeds from surrender of policy for exemption u/s 10(10D) of the Act.

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

Order pronounced in the open court on 29.08.2024.

Sd/-

KAVITHA RAJAGOPAL

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 29.08.2024

अनिकेत सिंह राजपूत/ स्टेनो

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

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

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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