

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA no.5118/Mum./2014
(Assessment Year :2010-11)

LIC of India,
3rd Floor, Yogakshema, Jeevan Bima Marg,
Mumbai 400 021
PAN AAACL0582H

..... Appellant

v/s

ACIT 1(2),
Aayakar Bhavan
Mumbai.

..... Respondent

Assessee by : Shri. Farrokh Irani
Revenue by : Shri. R.P Meena

Date of Hearing -06.03.2017

Date of Order - 07.03.2017

ORDER

PER: SHAMIM YAHYA

This appeal by the assessee is directed against order of Ld. CIT-A dated. 03.03.2014 and pertains to assessment year 2010-11.

2. The grounds of appeal read as under:

i) The CIT-A erred in confirming the action of the AO of adding the income from shareholder's funds credited directly to the shareholder's Account.

ii) The CIT-A erred in his interpretation of Act, the Insurance Act 1938, the IRDA Act and the IRDA (preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations 2002, the IRDA (Assets, Liabilities and Solvency Margin of Insurers) Regulations 2000.

iii) The CIT-A erred in not deleting the interest charged by the AO u/s. 234D of the Act.

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

3. At the outset in this case Ld. Counsel of the assessee fairly conceded that ground no. (i) and (ii) are already decided against the assessee by the decision of this Tribunal in assessment year 2009-10 by order dated 03.04.2013 in ITA No. 6221 & others in assessee's own case.

4. As regards ground no. (iii) Ld. Counsel of the submitted that he shall not be pressing for this ground.

5. Upon here in both the Counsel of perusing the record we find that ground no. (i) and (ii) are decided by the Tribunal in assessee own case in the order cited above vide para 5 thereof. We may gainfully referred to the concluding portion of the ITAT order as under:

1) We have rival submissions and perused the material on record. Basic question to be decided by us is whether the income respect of shareholders' account should be taxed in the hands of the assessee

or not? The undisputed facts relevant for deciding the issue can be summarised as under:

- i) LIC was established by the LIC Act,1956,*
- ii) In that year Government of India had contributed Rs. 5 Crores towards capital of the Corporation.*
- iii) No shares were issued by the LIC to Government of India.*
- iv) Assessee corporation had prepared its accounts as per the guidelines issued by competent authorities.*
- v) AO did not tax the sum appearing in the policy-holders' a/c., whereas amount appearing in the shareholders a/c. was treated as income of the assessee by him and taxed accordingly.*

2) We find that the basis for allocation for profit between the shareholder and the Government of India is the provisions of section 28 of the LIC Act. From Page no. 313 and 114 of the paper book it becomes clearly that profit was allocated by the assessee on the basis of a particular formula. There is no doubt that income had accrued to the assessee and same was transferred to the shareholders' account. In our opinion once income is earned by the assessee and later on it is applied for some specific purpose it cannot be treated as charge on profit. We are of the opinion that it is application of income. Preparation of books of accounts as per the Insurance account is different from determining the tax liability under income tax. Income transferred to policy holders' a/c. was not

application of income-it was charge on income and therefore AO had rightly excluded it from taxation.

3) *Secondly, income earned by the assessee-corporation on dividend and interest, in a strict sense, cannot be held to be earned from the insurance business. As per the provisions of the Act income from insurance business is exempt from taxation and not every type of income. We agree that initial capital contribution was made by the Government of India in 1955 for carrying out insurance business, but income earned by the assessee as dividend and interest in the year under consideration cannot be termed as income of the Sovereign. It is not part of any tax, duty, cess or any other similar levy by the State, which could be termed as income of Government of India. LIC cannot claim that it represents Government of India it is one of many a corporations established by Government of India for specific purposes. Income earned by it for carrying of business of Life Insurance is exempt as per the provisions of section 44 of the Act and not because that income of LIC is income of Government of India.*

4) *We have perused the order of the Tribunal dated 18.12.2006 (ITA2025/Mum/2000-AY. 1998-99. The basic question to be decided in that appeal was whether the assessee could be said to be in default u/s.115-Q of the Act on account of non-payment of tax on distributed profits u/s.115-O of the Act in respect of payment made to central government out of the surplus profit. After discussing*

facts of the case and the provisions of the sections 115-O and 115-Q of the Act, Tribunal held that payment made by the assessee to the Central Government could not be treated as dividend within the ambit of definition clause 2(22) of the Act, that provisions of section 115-O of the Act were not applicable, that assessee could not be declared as assessee in default u/s.115 Q of the Act. In our opinion, in the case relied upon by the AR of the assessee, question of taxability of particular items of income under the head income from other sources was not before the Tribunal. Therefore, upholding the order of the FAA we decide Ground of appeal no.3 against the assessee.

6. Since facts are identical following the above precedent we uphold the order of Ld. CIT-A. Hence the ground raised in this regard stand dismissed.
7. Ground no. 3 is dismissed as not pressed.

In the result this appeal file by the assessee stands dismissed.

Order pronounced in the Open Court on 07.03.2017

Sd/-

**RAVISH SOOD
JUDICIAL MEMBER**

Sd/-

**SHAMIM YAHIYA
ACCOUNTANT MEMBER**

MUMBAI, DATED: 07.03.2017

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Nishant Verma
Sr. Private Secretary*

By Order

(Dy./Asstt.Registrar)
ITAT, Mumbai

