IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI

BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER)
AND
SHRI ASHWANI TANEJA (ACCOUNTANT MEMBER)

I.T.A. No.4066/Mum/2011	-	Assessment Year: 2007-08
I.T.A. No.3495/Mum/2014	-	Assessment Year : 2009-10
I.T.A. No.5112/Mum/2012	-	Assessment Year : 2009-10
I.T.A. No.5267/Mum/2012	-	Assessment Year : 2008-09
I.T.A. No.1897/Mum/2012	-	Assessment Year : 2008-09
I.T.A. No.2863/Mum/2015	-	Assessment Year : 2010-11

SBI Life Insurance Co Ltd 5th Floor, "Natraj", M.V. Road Western Express Highway Junction Andheri (E), Mumbai-69	vs	ACIT 1(3), Mumbai
PAN : AAFCS2530P		
(Appellant)		(Respondent)

I.T.A. No.4945/Mum/2012	-	Assessment Year : 2009-10
I.T.A. No.2114/Mum/2012	-	Assessment Year : 2008-09
I.T.A. No.1668/Mum/2011	-	Assessment Year : 2002-03
I.T.A. No.3170/Mum/2011	-	Assessment Year : 2007-08
I.T.A. No.2576/Mum/2014	-	Assessment Year : 2010-11

ACIT 1(3), Mumbai / Dy.CIT 1(3), Mumbai	vs	SBI Life Insurance Co Ltd 5th Floor, "Natraj", M.V. Road Western Express Highway Junction Andheri (E), Mumbai-69
		PAN : AAFCS2530P
(Revenue)		(Respondent)

Assessee by	Shri F.V. Irani along with with Shri Manoj Purohit
Revenue by	D. Chanda, CIT-DR

Date of hearing	:	01-12-2016
Date of pronouncement	:	23 -12-2016

O R D E R

Per Bench:

These cross appeals pertain to same assessee for different assessment years involving identical issues, therefore, these were heard together and being disposed of by this common order. During the course of hearing, it was stated at the very outset by the Ld. Counsel of the assessee that the issues involved in this case have already been reached before the Tribunal in assessee's own case and the Tribunal decided the issues for earlier assessment years. It was further stated that there is no distinction in facts and legal position in those years and the years before us now. Under these circumstances, reliance was placed on the order of the Tribunal for earlier years, especially the order passed in ITA No 3800/Mum/2008 & Others for A.Ys 2003-04 and 2006-07.

2. Per contra, the Ld.CIT-DR did not object to the above submission and could not point out any distinction in facts or legal position. Thus, with this background we proceed to decide the present appeals in the light of the decision taken by the Tribunal in earlier years on identical issues.

3. First, we shall take up appeal filed by the Revenue for AY. 2002-03 in ITA No.1668/Mum/2011 filed against the order of Commissioner of Income-tax (Appeals)-2, Mumbai [in short, CIT(A)] dated 10-12-2010 passed against the assessment order dated 14-12-2009 u/s 143(3) r.w.s. 147 of the Act for AY. 2002-03 on the following grounds:-

"*Ground No 1*

DISALLOWANCE OF EXEMPTION IN RESPECT OF DIVIDEND INCOME U/S 10(34):

(i) The learned CIT (A) has erred in law as well as on facts in exercising the power of enhancement for withdrawing the exemption allowed by the A.O. under Section 10 (34) in respect of income from dividend.

(ii) The learned CIT (A) failed to appreciate the fact that income from dividend is one of the type of income that is not to form part of the total income under chapter III of the I.T. Act. In whatever manner the total income of the assessee is to be computed under the law the same is to exclude the income from dividend under sub-section (34) of Section 10 of the Income Tax Act, 1961.

(iii) The learned CIT (A) failed to appreciate the import of the legal provision contained in Section 44 of the I.T. Act read with Schedule I which is a special provision for computation of the income from business of life insurance. The provision, though a non-obstante provision, does not override all the provisions of the Act. The provision specifically overrides only the provisions of the Act relating to the computation of income chargeable under the head "interest on Securities" "income from house property" "Capital gain" or " income from other sources" or in Section 199 or in Section 28 to 43B. It does not override the provisions of Chapter III of which Section 10(34) is a part.

(iv) The learned CIT (A) failed to the take note of the settled position of law that income is to be computed as per the applicable provisions of the Act unless all or any of the provisions are expressly made inapplicable. In cases where application of only specific provisions is barred, all other provisions remain applicable. Any other view taken renders the overriding of specified provisions redundant and the law cannot be interpreted in a manner so as to render any provision of the Act or part thereof as redundant.

(v) That the learned CIT (A) erred in basing his decision on the erroneous understanding of the computation of actuarial surplus/ deficiency as per the provisions of the Insurance Act when he observed that income from dividend has not been taxed. Even if income from dividend is not being charged to tax under the respective heads of income, such income gets included in the total income of the appellant. Even if the provisions relating to computation of income under the head 'income from other sources' are overridden obviating the requirement of headwise computation of total income, the income mentioned in chapter Ill, of included in the total income in any form, is required to be excluded. As observed by Hon'ble Bombay High Court in life Insurance Corporation of India case reported in 119 STR 900 the surplus in a life insurance business is worked out on the basis of "the net liability under business as shown in the summary and valuation of policies" and the "balance of life insurance fund as shown in the balance sheet". Since income from dividend become part of the life insurance fund, it enters into the computation of total income under Section 44 read with First Schedule of the LT. Act. The mere fact that the "income from other sources" has not been separately computed does not make any difference in the tax treatment of such income.

Ground No 2

ADDITION ON ACCOUNT OF DIS LLOWANCE OF EXPENDITURE U/S 14A:

Based on the decision leading to withdrawal of exemption granted in respect of income from dividend, the learned CIT has held that the provisions of Section 14A are not applicable to the case. However, in the event of his finding getting reversed in Appeal, the provisions will become applicable. He has therefore, considered and disapproved the submissions made by the appellant in regard to working out the amount of expenses relatable to exempt income from dividend. In that respect the appellant is aggrieved on following grounds.

(i) The learned CIT was in error in holding that Rule 8D represents the wisdom of the legislature in the matter of determining the amount to be disallowed under Section

14A of the Act in all cases and even in respect of assessments relating the assessment years prior to assessment years 2008-09.

(ii) *(ii) Even following the ratio of Hon'ble Bombay High Court decision in the case of Godrej & Boyce that Rule 8D has no retrospective application, the learned CIT erred in upholding the computation as per Rule 8D in the assessment relating to 2007-08 without going into the specific facts of the case. The learned CIT erroneously ignored the provisions of sub-section (2) of Section 14A under which the A.O. is required to determine the amount of expenditure incurred in relation to exempt income in accordance with the prescribed method only if he is not satisfied with the correctness of the claim of the assessee. The method prescribed, which is Rule 8D, gets relevance only in case of failure of the assessee to satisfy the correctness of the claim and that too with effect from A.Y. 2008-09. Prior to 2008-09, there being no prescribed method, the amount of disallowance is to be solely determined on the basis of the facts of each individual case and not by blanket application of Rule 8D.*

(iii) The learned CIT (A) was, therefore, not justified in holding computation of disallowable amount as per Rule 8D as a rule of universal application based on the argument that the rule signified legislative wisdom in determination of such amount in all cases and in all the years, even prior to its coming into force. In case the proposition is accepted, it will render the findings of the Hon'ble Bombay High Court in Godrej and Boyce redundant and of no legal consequence.

(iv) The amount offered for disallowance by the Appellant was based on facts and ought to have been accepted as reasonable and justified.

Ground No. 3

DISALLOWANCE OF EXEMPTION IN RESPECT OF INCOME FROM PENSION FUND UIS 10(23AAB):

(i) The learned CIT (A) was not justified in holding that the exemption u/ s 10 (23AAB) in regard to income of Pension Fund is not available to the appellant on the ground that such an exemption is applicable only when the Pension Fund is an independent assessable entity.

(iii) The learned CIT(A) failed to take a note of the fact that for the purpose of availing the exemption under section 10(23AAB) there are only two conditions to be fulfilled as laid down in the section, firstly that the contributions to such a fund is made by any person for the purpose of receiving pension from such fund and secondly the fund is approved by the Controller of Insurance or the Insurance Development Authority of India(IRDA). Hence, the learned CIT (A) was not justified in such an understanding of the provision which nowhere lays down the requirement of the Fund to be an independent assessable entity. The provision is applicable and consequently, the exemption is available to the Fund, irrespective of the fact whether it is an independent entity or run as a segment of the life insurance company, provided the conditions set out in sub-section (23AAB) of Section 10 are complied with. The appellant humbly submit that the Fund is operated by the appellant company as one of the various segments, accounts are maintained in the manner from which surplus I deficiency there from is determinable and all the requirements of Section 10 (23AAB) are met.

(iii) For the reasons aforementioned, the learned CIT ought to have directed the A.O. to allow the exemption of the surplus relatable to the Pension Fund.

Ground No.4

<u>NOT ALLOWING SET OFF OF BROUGHT FORWARD LOSSES:</u>

(i) The learned CIT (A) was nor justified in directing the A.O. to pass specific order u/s 157 instead of directing him to allow set off of the brought forward losses.

(ii) The learned CIT (A) misunderstood the appellant's request which was for set off of losses of earlier years which are determined losses brought forward in the year under appeal. These losses are allowed to set off out of current years income for which no order u/s 157 is necessary. In any case, this provisions does not involve an order but merely an intimation of the current loss assessed by him under the provisions of the Act."

4. Grounds 1, 1(i) & 1(ii) deal with common issue wherein the AO recomputed the income of the assessee by treating Shareholders' Account and Policy Holders' account as separate and consequently separately assessing the income of Rs.10,91,69,687 being the amount transferred from Shareholders' Account to Policy Holders' Account.

5. In this regard, the Ld. Counsel of the assessee stated that the assessee is engaged in the business of life insurance and that is the only business of the assessee. Separate accounts of Shareholders and Policy Holders have been made keeping in view the requirement of IRDA, but the assessee has only one integrated business of life insurance. Thus, the AO has grossly erred by artificially breaking the business of the assessee into two parts merely on the ground that the assessee was maintaining Shareholders' Account and Policyholders' Account. It was further stated by him that this issue is no more *res integra* since it had already arisen in earlier years and the Tribunal has decided the issue in favour of the assessee in its order dated 23-05-2014 for AYs. 2003-04 to 2006-07. It was further stated that the impugned year i.e. AY. 2002-03 was reopened subsequently on the basis of assessment on order of those years. Ld. CIT(A) has relied upon his earlier order while deleting the addition made by the AO. It was also submitted that orders of the Ld. CIT(A) of those years reached before the Tribunal and have been confirmed by the

Tribunal by dismissing the appeal of the Revenue. Thus, it was requested by the Ld. Counsel that the earlier orders of the Tribunal may be followed in this year also.

6. Per contra, the Ld. CIT-DR could not point out any distinction in facts or in law in earlier orders of this Tribunal and in the years before us.

7. We have gone through the orders passed by lower authorities, submissions made by both the sides before us as well as the earlier orders of the Tribunal. These three grounds are related to each other involving common issues, i.e. whether the assessee was carrying on two independent activities, i.e. one of insurance business which was reflected in Policyholders' Account by the assessee and the other, being an independent activity depicted in Shareholders' Account, as per the detailed findings given in the assessment order. Under these circumstances, the AO taxed the income arising in Shareholders' Account as "Income from other sources" and the activity related to insurance as reflected in Policyholders' Account was held to be taxable in accordance with provisions of section 44 of the Income-tax Act. Having held that activities of the assessee were separate and independent, the AO computed the 'Income from other sources' after making few adjustments and disallowances. It was noted by the AO that in Shareholders' Account net income was shown at Rs.10,62,87,461. It was further noted that a sum of Rs.10,91,69,687 was debited in Shareholders' Account and transferred to Policyholders' Account was converted in loss of Rs.28,82,226. The AO delinked both the accounts and computed the income by making addition of Rs.10,91,69,687 being the amount

transferred from Shareholders' Account to Policyholders' Account. In appeal before the Ld. CIT(A), proper analysis were made and all the facts and figures were duly considered by him. He examined the exact position of law in this regard and finally held that life insurance business is integrated business and investment is made by the assessee keeping in view the requirements of the regulatory authorities, therefore, entire life insurance business should be assessed as one in view of section 44 of the Act read with Rule 1 and Rule 1D of First Schedule of the Act. Relevant part of finding of Ld. CIT(A) is reproduced below :-

> "*9. Having so held about the activities of appellant, Assessing Officer has computed the income from other sources after making adjustment and disallowances. The facts in. brief are that the position in the policyholders account and the shareholders account as depicted by appellant was as under:*

	Policyholders Account	***Shareholders Account***	***Total***
Gross income	*148971452*	*125951099*	*274922551*
Gross expenditure	*258141139*	*19663638*	*277804777*
Net income before transfer	*(109169687)*	*106387461*	*(2882226)*
Transfer entry from shareholders account to policyhold	*109169687*	*(109169687)*	*Nil*

ers account			

10. It is evident from above that an amount of Rs.10,91,69,687 has been transferred through a simple accounting entry from the shareholders account to the policyholders account. It is this transfer entry which is critical to the issue under consideration. It is clarified that the shareholders account is also known as the profit and loss account whereas the policyholders account as another name as revenue account. These two accounts are maintained separately under specific guidelines of IRDA, the Regulating Authority of-Insurance In India.

11. For the sake of clarity, it is necessary ·to understand the breakup of the amount transferred from shareholders' account to policyholders account. It consists of two parts as under:

1. Bonus paid to policyholders Rs.14,320/-

2. Deficiency in revenue accountRs.10,91,55,367/-

12. According to appellant, the transfer is necessitated because the appellant desired to effect payment of bonus which could not have been done by appellant as long as there was negative surplus in the policyholders account. Therefore, the positive income in the shareholders account was transferred by passing a journal entry to the policyholders account.

13. Assessing Officer has treated the effect of the transfer entry as under:

(1) The amount of dividend paid to the policyholders at Rs.14,320 has been treated as surplus in the policyholders account (before transfer entry) as against actual deficiency of Rs.10,91,55,367/-. According to Assessing Officer the amount of Rs.14,320/- is income from life insurance business being surplus as per actuary valuation. The same has been brought to tax

against which appellant is in appeal in the second ground appeal.

(2) Assessing Officer has taken the income arising from the shareholders accounts of Rs.28,82,226/ -, as income from sources, other than insurance business, and has made the disallowances, first being amount transferred from shareholders account to policyholders account on the ground that this is not an expenditure item and therefore has to be disallowed in the computation of income against which -appellant has preferred ground of appeal No.3 and, for the disallowance of stamp duty charges of Rs.12,50,000/ - under pretext that these are capital expenditures and cannot be allowed in computation of income, against which appellant has preferred the ground of appeal being ground of appeal No.5. Appellant has taken another ground of appeal being ground of appeal No.4 where the finding of Assessing Officer to tax income in the shareholders account as income from other sources has been challenged.

14. It is relevant to point out here that there are some mistakes on contents adopted for different purposes by Assessing Officer which are not considered here because that would amount to diversion from the main issue.

15. It is evident from the preceding discussion that the whole issue is revolving around the concept of business of insurance, which according to Assessing Officer, appellant is doing only in relation to the policyholders account and therefore the entire transaction of shareholders account is required to be taxed separately as income from other sources and which has not been accepted by appellant according to whom the two accounts, the policyholders account and the shareholders account are an integra1 part of the same business of insurance. This issue was considered by me in the case of another corporate entity engaged in life insurance business where I have held that the policyholders account and the shareholders account cannot be segregated by Assessing Officer for computing income of

insurance business and that appellant is not doing any independent business activity in relation to funds in- the, shareholders account and that the activity of investment of these funds is intricately interlaced with the activity of insurance undertaken under the policyholders account and the two together reflect business of insurance."

8. Thereafter, the Ld. CIT(A) made his detailed analysis and recorded well reasoned findings by making reference to his earlier order passed in another case and concluded that as per law and facts, the whole business of the assessee is that of life insurance and, therefore, it has to be taken as one integrated business and should be assessed as such in view of section 44 of the Act. Thus, addition made by the AO was deleted. The AO was also directed to re-compute the income by accepting the income as was computed in the return filed by the assessee.

9. During the course of hearing before us, Ld. CIT-DR was not able to show anything incorrect or contrary to law in the detailed and well reasoned findings of Ld. CIT(A). Further, the Ld. Counsel of the assessee drew our attention on the order passed by the Tribunal wherein identical issue has already been decided in assessee's own case by the Tribunal vide its order dated 23-05-2014.

10. We have gone through the order of the Tribunal and find that the issue before us is covered in favour of the assessee by the earlier decision of the Tribunal. Relevant part of observations of the Tribunal is reproduced below:

"2. Core issue common in AYs under consideration- Income nature of the funds transferred from shareholders' Accounts to the Policyholders' Account to meet out the deficiencies: During

the proceedings before us and at the outset, in connection with the appeals of the assessee, F.V. Irani and Shri Manoj Purohit, Ld Counsels for the assessee stated that the assessee in the present case is an insurance company and the provisions of section 44 of the Income tax Act are applicable here. Further, bringing our attention to the core issue raised in all the grounds 1 to 4 of the appeal for the AY 2003-04, which is common in all the AYs under consideration, he mentioned that under the provisions of IRDA Act, the assessee is under obligation to maintain separate accounts namely 'policy holders account' and the 'shareholders account'. In case, there is income deficiency in policy holders' account, the funds are transferred from the shareholders account otherwise, both these accounts are part of the business of the assessee and it is case of transfer of funds from one hand to the other of the same person. Such transfer of funds to policy holders' accounts should not be treated as income as it is a case of transfer of funds from one hand to the other. It is a tax neutral transaction. This issue is now settled by the decisions of the Tribunal in the case of ICICI Prudential Insurance vs. ACIT vide ITA Nos.6854 to 6856, 6509, 7765 and 7213/Mum/2010. He brought our attention to para 40, 42, and 55 of the said order of the Tribunal which read as under:

> *"40. In our opinion what assessee has done in reconciling the IRDA format with that of old Insurance Form is correct and accordingly the loss disclosed in the computation of income is according to the actuarial surplus/deficit under the Insurance Act 1938 prescribed under Rule 2 of the first schedule part-A. In view of this, we are of the opinion that insistence by AO to bring to tax the entire amount shown under the new Regulations including transfer from shareholders account is not correct. Instead of AO in taking the surplus at Reguulation 8(1)(a) which is the actuarial surplus / deficit for the year took the amount as disclosed at Regulation 8 (1) (f) (total surplus after transfer from Shareholder's account) which is not at all correct.*
>
> *42. In View of the above, looking at the issue in any way what we notice is that the computation made by assessee is in accordance with Rule-2 of the Insurance Act 1938*

according to which only AD can base his computation. This also corresponds to the way incomes were assessed in earlier years ie. the correct method as per Rule 2 and Sec 44 of IT ACT. In view of the discussion above and after analyzing the Forms, Regulations and Provisions we have no hesitation to hold that the assessee working of actuarial surplus / deficit is in accordance with Rule 2 of First Schedule. Therefore, assessee grounds on this issue are allowed and AD is directed to modify the order accordingly. Ground Nos. 1 to 3 are considered allowed.

55. We have heard the rival contentions. As briefly discussed while deciding the issue of taxing surplus, assessee is in life Insurance business and it is not permitted to do any other business. All activities carried out by assessee are for furtherance of Life Insurance business. Maintaining adequate capital is necessary to comply with IRDA (Assets, liabilities and Solvency margin of insurers) Regulations,2000. Income earned on capital infused in business is integral part of Life Insurance business. The LD. CIT(A) gives a finding that assessee is exclusively in life Insurance business. However, since he gave primacy to Form I proforma he concluded that other incomes are not of life Insurance business. We have already considered and decided that assessee was mandated to maintain separate accounts by IRDA Regulations. Just because separate accounts are maintained the incomes in Shareholder's account does not become separate from life insurance business. As per Insurance Act 1938 all incomes are part of one business only and these incomes are considered as part of same business. Therefore, the incomes in Shareholder's account are to be considered as arising out of Life insurance business only. More over Sec 44 mandates that only First Schedule will apply for computing incomes and excludes other heads of income like, Interest on Securities, income from house property, Capital gains or Income from other sources. Being non-obstante clause, sec. 44 mandates that the profits and gains of insurance business shall be computed in accordance with the rules contained in First Schedule. Therefore, the incomes in Shareholder's account

are to be taxed as part of life insurance business only, as they are part of same business and investments are made as part of solvency ratio of same business. The grounds are allowed. AD is directed to treat them as part of Life Insurance Business and tax them u/s 115B."

3. Further, Ld Counsel also brought our attention to the another decisions of the Tribunal in the cases of (i) M/s. Kotak Mahindra Old Mutual Life Insurance Ltd vide ITA No.2551/M/2010; (ii) HDFC Standard Life Insurance Company Ltd s. DCIT vide ITA No.2203/Mum/2012 (para 2.5); (iii) LIC vs. CIT, 51 ITR 773 and many others to strengthen the above views. In this regard, Ld Counsel filed a composite chart involving the grounds of all the appeals of the assessee as well as the revenue and, for consolidated adjudication of the common grounds, he mentioned that ground no. I, 2, 3 and 4 for the A Ys 2003-04; 2004-05 and 2005-06 and grounds no.1 and 2 of A.Y. 2006-07 are one and the same. All these grounds stand covered by the above extracted ratio of the judgments."

11. We have also examined the facts of the year before us. It is noted from the notes to accounts appended to the balance-sheet, wherein it has been mentioned that investments shown in the balance-sheet were made in accordance with Insurance Act, 1938, the Insurance Regulator and Development Authority (Investment Regulations, 2000) as amended and circulars / notifications issued by IRDA from time to time. Further, during the course of proceedings before the AO for AY. 2010-11, the assessee submitted to the AO, vide its reply dated 26-12-2012 as under:-

*"13) "**Why the Net Profit from Shareholders Accounts should not be taxed as income from other business activities as per the provisions of section from 28 to 43B other than activity of Insurance Business as per section 44 of the Income Tax Act, 1961?"***

We would like to submit that the amount of `98,7047,844/-which profit from shareholders account, cannot be treated as profit/loss other than insurance business and accordingly

applied the provisions of Section 28 to 43B, for the following reasons:

i. The company is engaged in the business of life insurance. It is debarred under the statute to indulge in any other business vide sub-section 4(h) of section 3 of the Insurance Act, 1938. Please find below the extracts of the aforesaid section:

"3(4) the authority shall cancel the registration of an insurer either wholly or insofar as it relates to a particular class of insurance business, as the case may be-

(h) if the insurer carries on any business other than insurance business or any prescribed business "

Therefore it is evident by law that corporate entity engaged in insurance business cannot undertake any other business activity. If it does so, its license to carry on insurance business is liable to be cancelled. It, therefore, follows that the entire profit generated from the business is profit from business of life insurance irrespective of ha -

the same is accounted for.

Clause (c) of Section 2 (7 A) of Insurance Act 1938 may be referred which states that "Indian insurance company means any insurer being a company- whose sole purpose is to carry on life insurance business or general insurance business or reinsurance business."

ii. Keeping separate accounts for the business as a whole viz. Revenue account and Profit and Loss Account is the requirement prescribed by the Insurance Regulatory & Development Authority of India (IRDA) with the sole purpose of presenting the annual result in such a manner that the policyholders are assured of the financial solvency and the capacity of the company to honour its long-term commitments to the policyholders with whom the company stands in fiduciary relationship. Separation of total profit in two different accounts is merely a way of presentation of results without in any way affecting the real nature of the profit which remains profits from Life insurance business. Life Insurance companies are required to prepare financial

statements as per the Insurance Regulatory and Development Authority (Preparation of financial Statements and Auditors report of insurance companies) Regulation 2002.

iii. Under the revised format the account for policyholders is called Revenue account under which the income from policyholder (premium, income from their investment) and the expenses on policyholders (claims, commission etc.) are accounted for. The surplus left after accounting for change in value of investments, interim bonus paid to the policyholders etc. are appropriated to the shareholder's funds, reserves and funds for future appropriations. Under the account of shareholders called P&L A / c, the revenues earned on shareholders investments and the expenses not directly related to policyholders are accounted for. It is relevant to mention that surplus / deficiency in Revenue account is duly reflected in P&L A/ c and it is only after taking account of surplus/ deficiency in Revenue account that the profit subject to appropriation is arrived at in the P&L A/ c. The two accounts are, therefore, inseparable and for arriving at the profit of the insurance business as a whole, one has to see the combined result in the two accounts.

iv. Further, Section 64VA(IA) of the Insurance Act 1938 mandates that every life insurer must maintain a prescribed solvency margin in respect of its life insurance business. For the purpose of calculating the solvency margin, consideration has to be given to assets relating to policyholders as well as shareholders as reflected in the combined balance sheet. Any shortfall in solvency margin is required to be made up by the insurer. by infusing additional capital. The Shareholders fund does not therefore, represents fund for an independent activity but, being a creation of statutory requirement, is intricately linked to the business of Life insurance.

v. Insurance Regulatory And Development Authority (IRDA) has issued clarification on regulatory framework vide its letter no. 108/1/F&A/SBLIC/100/0ct./2008-09 dated October 20, 2008 addressed to appellant and confirmed that" shareholder's

account is an integral and indivisible part of life insurance business." The copy of said letter is attached as per Annexure 9.

vi. We would also like to bring your attention that the Honble Mumbai Tribunal in the case of ICIer Prudential Insurance Co. Ltd vs. Asstt. Commissioner of Income Tax Circle- 6(1),(2012-TrOL-580-ITAT-MUM-ITA No. 6855/MUM/2010) held that:

> *"As briefly discussed while deciding the issue of taxing surplus, assessee is in life Insurance business and it is not permitted to do any other business. All activities carried out by assessee are for furtherance of Life Insurance business. Maintaining adequate capital is necessary to comply with IRDA (Assets, Liabilities and Solvency margin of insurers) Regulations, 2000. Income earned on capital infused in business is integral part of Life Insurance business. The LD. CIT (A) gives a finding that assessee is exclusively in Life Insurance business. However, since he gave primacy to Form I proforma he concluded that other incomes are not of Life Insurance business. We have already considered and decided that assessee was mandated to maintain separate accounts by IRDA Regulations. Just because separate accounts are maintained the incomes in Shareholder's account does not become separate from Life insurance business. As per Insurance Act 1938 all incomes are part of one business only and these incomes are considered as part of same business. Therefore, the incomes in Shareholder's account are to be considered as arising out of Life insurance business only. More over Sec 44 mandates that only First Schedule will apply for computing incomes and excludes other heads of income like, Interest on Securities, income from house property, Capital gains or Income from other sources. Being non-obstante clause, sec. 44 mandates that the profits and gains of insurance business shall be computed in accordance with the rules contained in First Schedule. Therefore, the incomes in Shareholder's account are to be taxed as part of life insurance business only, as they are part of same business and investments are made as part of solvency ratio of same business. The grounds are allowed. AO is directed to treat*

them as part of Life Insurance Business and tax them u/s 115B."

vii. The Learned CIT (A) has decided the said issue in favour of appellant in the previous assessment years. (Kindly refer the Sl.no. .3 of Annexure 8.)

14) ***Why the amount transfer from Policyholders' Accounts has been reduced from the Net Profit/(Loss) in Policyholders'. Account(Technical) and why it should not be treated as income / loss from other business activity.***

i. In this regard, we would like to submit that the amount transferred from the Policyholders Account to the shareholders' account is a mere appropriation from the surplus in the Revenue Account (Policyholders Account). This amount has already been subject to tax in the Revenue Account and is included in Rs. 1,942,556,721/-.

This Amount is the amount of surplus generated from the Policyholders Account and a portion of which i.e. ` 1,777,528,757 has been transferred to the Shareholders by way of an appropriation. Taxing the same amount again in the shareholders account would amount to double taxation which is against the intent of law.

ii. The Hon'ble Mumbai Tribunal in the case of ICICI Prudential Insurance Co. Ltd vs. Asstt. Commissioner of Income Tax Circle-6(1), (2012-TIOL-580-ITAT-MUM-ITA 6854/MUM/2010) held that :

"Since assessee is having only one business of life insurance, the entire transactions both under the policyholder's and shareholder's account do pertain to the life insurance business only as it was not permitted to do any other business. Once assessee is in the life insurance business, the computation has to be made in accordance with the Rule-2 as per provisions of section 44. Therefore, there is a valid argument raised by assessee that both the policyholder's & shareholder's account has to be consolidated into one and transfer from one account to another is tax neutral. "

Thus, it was held by the hon'ble' members in the aforesaid case that both the policyholders & shareholders account has

to be consolidated for the purpose of arriving at the deficit or surplus, which in turn will neutralize the effect of internal transfer from one account to another."

12. Thus, from the perusal of the above, it may be noted that assessee has time and again brought to the notice of the AO that assessee is engaged only in the business of life insurance. It has been brought to the notice of the AO that no other business has been carried out. The investments were made in line with the requirement of applicable regulations. It is further noted that nothing has been brought out by the AO in the assessment order to show if any other business has been done by the assessee. It has also been shown that Shareholders' Account and Policyholders' Account have been separately maintained for the purpose of meeting the requirement of law as mentioned above also. Thus, there was no justification to artificially disintegrate the business by separately assessing the amount transferred from one account to the other by the assessee for the purpose of maintenance of accounts as per requirement of law. Thus, in view of well reasoned findings of Ld. CIT(A), we respectfully follow the order of the Tribunal dated 23-09-2014, wherein it has been held that assessee was engaged in only one business, i.e. business of life insurance. Under these circumstances, the re-computation of income made by the AO was rightly rejected by the Ld. CIT(A). Therefore, we do not find any reason or justification to interfere in the findings of the Ld. CIT(A). Thus, the order of Ld.CIT(A) is hereby confirmed. As a result, Grounds 1(i) & 1(ii) raised by the Revenue are hereby dismissed.

13. Ground 1(iii) : In this ground, the Revenue has challenged the action of Ld.CIT(A) in deleting disallowance of Rs.12,50,00 by treating the

same as capital expenditure as against revenue expenditure claimed by the assessee.

14. The brief background is that the AO noted from the perusal of Share holders' Account that assessee had claimed stamp duty charges amounting to Rs.12,50,000 as revenue expenditure. It was noted by the AO that these charges were disallowed by the Ld. CIT(A) in A.Y. 2005-06 and thus relying upon the same, these were disallowed as capital expenses during the year which was allowed by the Ld. CIT(A) holding it as revenue expenses.

15. During the course of hearing before us, it was stated by the Ld. Counsel that this issue is also covered in favour of the assessee by the earlier order of the Tribunal. Ld. CIT-DR did not make any distinction on facts of the case. It is noted that in the appeal for A.Y. 2005-06, the Tribunal, vide its order dated 23-05-2014 held as under:

> *"11. Regarding ground 5 of the assessee appeal for the AY 2005-06, Ld Counsel mentioned that it relates to the 'allowability of claim of stamp duty expenditure incurred in Equity Share Capital. In this regard, both parties mentioned that the AO/CIT(A) are of the opinion that the said expenditure is not allowable considering the capital nature of them. However, now this issue has to be redecided considering the order of the Tribunal in the case of HDFC Standard Life Insurance Co Ltd (ITA 3004/M/2012 and LIC, supra. On hearing the parties, we remand this issue to file of the AO for fresh adjudication after granting reasonable opportunity of being heard to the assessee. Accordingly, relevant conclusions of the CIT(A) are set aside and ground 5 is remanded."*

Subsequently the AO passed Order Giving Effect to the order of the Tribunal on 29-11-2016, wherein the issue sent back by the Tribunal to

the file of the AO has been decided in favour of the assessee by observing as under:-

> *"5. Allowability of claim of Stamp Duty expenditure incurred in Equity Share Capital*
>
> *5.1 The AO disallowed expenditure of Rs 1,16,44,000/- debited to profit and loss account. These stamp duty expenses are in connection with raising of additional capital. The CIT(A) confirmed the disallowance made by the AO. On appeal, the Hon'ble ITAT remanded this issue to the file of the AO for fresh adjudication after considering the order of the Tribunal in the case of HDFC Standard Life Insurance Co Ltd (ITA 3004/M/2012) and LIC (Supra). In the case of HDFC Standard Life Insurance Co Ltd (ITA 3004/M/2012), the Hon'ble ITAT, Mumbai held as under.*
>
> > *"We have heard the rival submissions and perused the material on record. While deciding ground no.1 to 7, we have held that income of the assessee doing the business of life insurance has to be assessed u/s.44 of the Act r. w. Schedule I of the Act. As the effective ground of computation of income of life insurance has been decided in favour of the assessee. So, issue before us is held to be academic in nature. We are of the opinion that ADs are not allowed to disturb the actuarial valuation, as held by the Hon'ble Apex Court in the case of Life Insurance Corporation of India (supra). Therefore, ground no.11 is allowed in favour of the assessee for statistical purposes. "*
>
> *So, in view of the above, the AO is not allowed to disturb the actuarial valuation carried out under Insurance Act, 1938, including the allowability or otherwise or nature of expenditure i.e. revenue or capital. After verification of the same, the said addition is to be deleted."*

On the basis of the above, it was stated by the Ld. Counsel that this issue stands decided by the AO in favour of the assessee on the basis of legal principle by relying upon the orders of the Tribunal in the case of HDFC Standard Life Insurance Co Ltd. Under these circumstances, in this year

also, there would be no point in sending the issue back for futile exercise as the decision has already been taken, which can be applied here also.

We have considered the request of the Ld. Counsel. No objection or any contrary argument was made by the Ld. CIT-DR in this regard. Thus, under these circumstances, we find that there would not be any requirement to send this issue back to the file of the AO which would be a redundant exercise since the issue has already been decided in favour of the assessee by the AO himself. Therefore, the addition is directed to be deleted. As a result, ground 1(iii) raised by the Revenue is dismissed.

16. As a result, appeal of the Revenue is dismissed.

17. Now, we shall take up Revenue's appeals for AY 2007-08 in ITA No.3170/Mum/2010 and AY 2009-10 in ITA No. 4945/Mum/2012.

18. It has been jointly stated by both the parties that grounds raised in these appeals are identical to grounds 1, 1(i), & 1(ii) of Revenue's appeal for A.Y. 2002-03 and there is no change in facts or law. We have gone through the orders passed by the lower authorities and find that identical issues have been raised by the Revenue. We have already dismissed the grounds raised by the Revenue. Respectfully following the same, appeals filed by the Revenue are dismissed in these years as well.

19. Now we shall take up Revenue's appeal for A.Y. 2010-11 in ITA No.2576/Mum/2014 which has been filed against the order of the Commissioner of Income-tax (Appeals))-2, Mumbai [in short, CIT(A)] dated 10-12-2010 passed against the assessment order dated 11-12-2013 u/s 143(3) of the Act for AY. 2010-11 on the following grounds:-

"1. "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is correct in holding that the income from share holders account of Rs. 98,70,47,844/ - has to be treated on par with the income from the insurance business under the policy holders account taxable u/s 44 of the LT. Act".
2. "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in not appreciating that negative reserve has an impact of reducing the taxable surplus as per Form-I and therefore, corresponding adjustment for negative reserve need to be made to arrive at taxable surplus?"
3.1 "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) err d in directing to reduce dividend income (claim by the assessee exempt u/s 10(34) of the Act) from income computed in accordance with Schedule I r.w.s. 44 of the Act, despite the fact that income in schedule 1 is determined by actuary using mathematical formulae and principles and, dividend income is not particularly included in these calculations?"
3.2 "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in directing to reduce dividend income (claim by the assessee exempt u/s 10(34) of the Act) from income computed in accordance with Schedule 1 r.w.s. 44 of the Act, despite the fact that income in schedule 1 is determined under non-obstante clause of Section 44 of the Act".
3.3 "Whether the Ld. CIT(A) is correct in holding that the provisions of chapter III of the LT. Act pertaining to exempt income as per section 10 was available to the assessee despite the fact that the computation of taxable income of the assessee (Life Insurance Company) was governed by non-obstante provision of section 44 of the LT. Act which includes even dividend income under the head income from other sources to be dealt as per rules contained in the First Schedule of the I.T. Act?"
4. "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is correct in deleting the disallowance u/s 14A of the Act made by the Assessing Officer in accordance with the Rule 8D?"

20. Ground 1: This ground is identical to Ground 1 of Revenue's appeal for AY 2002-03 wherein we have rejected the ground raised by the Revenue. Relying upon our order for AY 2002-03, this ground is dismissed.

21. Ground 2: In this ground, the Revenue has challenged the action of Ld. CIT(A) in deleting the addition made by the AO on account of Negative Reserve. During the course of hearing, the Ld. CIT-DR contended that the Ld.CIT(A) erred in not appreciating that Negative Reserve has an impact of reducing the surplus as per Form-I and, therefore, corresponding adjustments for negative reserve need to be made to arrive at taxable surplus.

22. Per contra, the Ld. Counsel submitted that this issue has also been decided in favour of the assessee by the Tribunal in its order dated 23-05-2014 passed in assessee's own case**.**

23. We have gone through the orders passed by the lower authorities as well as the order of the Tribunal for earlier years. The brief background is that the AO was of the view that the assessee took an undue advantage by reducing its taxable surplus by the amount of Negative Reserve, value of which was taken at zero. In the appellate proceedings before the Ld. CIT(A), the assessee submitted that income of the assessee was to be computed in accordance with the provisions of section 44 of the Act which overrides all the general provisions for computation of income from business contained in sections 28 to 43B of the Act. It was also submitted that combined reading of section 44 of the Act with Rule 2 of First Schedule of the Act makes it clear that surplus or deficit disclosed by the actuarial valuation made in accordance with Insurance Act, 1938 is the

sole basis for computation of income from life insurance business, and these provisions do not permit any adjustment to be made except adjustment for surplus / deficit in the last valuation report so as to arrive at the incremental surplus / deficit for the valuation period. Ld. CIT(A) considered all the provisions as also the legal position in detail in this regard and partly allowed the ground of the assessee by observing as under:-

> *"4.13. I have carefully examined the facts of the case, the stand taken by the A.O. in the assessment order, the grounds of appeal and the submissions filed by the appellant company during the appellate proceedings. The same issue was evaluated by me for the assessee's appellate proceedings for AY 2003-04. I would like to reiterate those findings here was well.*
>
> *It is seen that the Hon'ble Supreme Court in the case of Life Insurance Corporation of India vis CIT, Delhi and Rajasthan [5IITR0773] has dealt with the issue of mathematical reserve, which may be negative, is called 'Negative Reserve', where the value of future income extends the value of estimated liabilities. However, in terms of regulations governing the insurance business, such a negative reserve has to be ignored and has to be taken as zero. The Hon'ble Supreme Court has in the case of LIC (Supra), held that the assessing officer shall not disturb such accounting methodology which is regulated under the Insurance Act. As also cited by the appellant company, the Hon'ble Mumbai Tribunal in the case of ICICI Prudential Insurance Co. Ltd. (Supra) has cited the decision of the Hon'ble Supreme Court [51 ITR 773] and held that there is no scope for the assessing officer to make any adjustment after the actuarial valuation is done. By respectfully following the decision of the Hon'ble Supreme Court, my predecessor CIT(A) vide order No CIT(A)-XXIIACIT1(3)/IT- 111/08-09 dated 18.08.2009 for AY 2006-07 has allowed the appeal of the appellant company on this issue. Therefore, I have no reason to differ with my decision and that of my predecessor, since the facts are identical and the decision is rendered in the appellant company's own case. Accordingly, the*

addition made by the AO, on account of incremental negative reserve is hereby deleted."

24. During the course of hearing before us, Ld. Counsel submitted that this issue was sent back to the file of the AO in AY. 2005-06 wherein fresh assessment order has been passed by the AO and this claim has been allowed on legal principle. Therefore, following the same in this year also, it can be allowed right here and the futile exercise of sending it back to the AO can be avoided in the interest of justice. Copy of order passed by the AO has been provided to the Ld. CIT-DR and after reading the same he raised no serious objection and did not point out any distinction or contradiction in the facts for AY 2005-06 and the year before us.

25. We have gone through the orders passed by the lower authorities and order of the Tribunal as well as the fresh order passed by the AO for AY 2005-06. It is noted that the Tribunal, vide its order dated 23-05-2014 observed as under:

"In connection with issue at (d) above, it is the claim of the assessee that the same is required to be adjudicated considering the decisions of the Tribunal in the case of ICICI Prudential Insurance, supra and LIC, supra. These decisions are not in existence at the relevant point of time. Considering these new developments, we direct the AO to re-adjudicate the same after considering the said decisions and the after granting reasonable opportunity of being heard to the assessee. Accordingly, we partly allow the relevant grounds for statistical purpose."

It is further noticed by us that pursuance to the aforesaid order, the AO passed fresh assessment order for AY. 2005-06 dated 30-11-2016 by observing as under:-

"3. In the mean time, the case was reopened on 25-03-2010 and a notice U/S 148 of the Act was issued on 25-03-2010. While completing re-assessment proceedings U/S 143(3) r.w.s 147 of the Act on 13-12-2010, the Assessing Officer has added incremental negative reserves of Rs 8,17,92,0001-, as the same was not considered as part of actuarial surplus arrived at as per actuarial valuation, for the purpose of computing income from life insurance business as per provisions of Section 44 read with Rule 1 & 2 of the First Schedule of Income-tax Act, 1961.

4. The assessee filed appeal before CIT(A) challenging the reopening of assessment as well as addition on account of negative reserves of Rs. 8,17,92,000/-. The CIT(A) in his order in Appeal No. CIT(A)-2/IT-114/2010-11 and dated 19-12-2011 dismissed the appeal of the assessee on both the grounds of appeal.

5. Against the order of CIT(A), the assessee went into appeal before ITAT. The Hon'ble ITAT, Mumbai vide its order in Appeal No. ITA No. 16841M12012 dated 19-06-2015 disposed the appeal of the assessee. The Hon'ble IT AT upheld the reopening of assessment u/s 148 of the Act. The ITA T restored the issue on negative reserves to the file of the AO to decide the same in the light of directions given by the Tribunal for adjudicating the issue for subsequent year i.e. AY 2006-07 vide ITA No. 5670/M/2009 in assessee's own case decided on 23-05-2014 along with other appeals of the assessee bearing No. 38001M12008, 3801/M/2008, 1501/M/2008 and corresponding cross appeals of the Revenue, wherein the Tribunal restored the matter to the file of the AO for fresh adjudication after considering the decision of ITA T, Mumbai in the case of ICICI Prudential Insurance Co. Ltd (ITA No. 6854/M/2010) and LIC Vs Addl. CIT (ITA No. 6221/M/2012).

6. In this regard, the decision of the Tribunal on the issue of treatment of negative reserves in the case of ICICI Prudential Insurance Co. Ltd (ITA No. 6854/M/2010) is reproduced as under:-

"56. In this appeal, the Revenue has raised the following three grounds:

"1. On the facts and circumstances of the case and in law, the learned CIT (A) erred in not subjecting the negative

reserve amounting to Rs 27.27 crores ignoring the facts that negative reserve has an impact of reducing the taxable surplus as per Form-l

……..

57. Ground No. 1 is on the issue of treating negative reserve and disallowing the amount. While completing the assessment of life insurance business the AD, after taking the total surplus from Form-I, reduced the negative reserve amounting to Rs 27.27 crores.

Assessee submitted before the CIT(A) as under: -

"Method of Determination of Mathematical Reserves -

(1) . Mathematical Reserves shall be determined separately for each contract by a prospective method of valuation in accordance with sub-paras (2) to (4).

(2) The valuation method shall take into account all prospective contingencies which any premiums (by the policyholder) or benefits (to the policyholder/beneficiary) may be payable under the policy, as determined by the policy conditions. The level of benefits shall take into account the reasonable expectations of policyholders (with regard to bonuses, including terminal bonuses, if any) and any established practices of an insurer for payment of benefits.

(3) The valuation method shall take into account the cost of any options that may be available to the policyholder under the terms of the contract.

(4) The determination of the amount of liability under each policy shall be based on prudent assumptions of all relevant parameters. The value of each such parameter shall be based on the insurer's expected experience and shall include an appropriate margin for adverse deviations (hereinafter referred to as MAD) that may result in an increase in the amount of mathematical reserves.

(5) (1) The amount of mathematical reserve in respect of a policy, determined in accordance with sub-para (4), may be negative (called "negative reserves") or less than the guaranteed surrender value available (called "guaranteed surrender value deficiency reserves") at the valuation date*.*

The appointed actuary shall, for the purpose of section 35 of the Act, use the amount of such mathematical reserves without any modification.

The appointed actuary shall, for the purpose of sections 13, 49, 64Vand 64VA of the Act, set the amount of such mathematical reserve to zero, in case of such negative reserve, or to the guaranteed surrender value, in case of such guaranteed surrender value deficiency reserves, as the case may be.

(6) The valuation method shall be called "Gross Premium Method".

(7) If in the opinion of the appointed actuary, a method of valuation other than the Gross Premium Method of valuation is to be adopted, then, other approximations (e.g. retrospective method) may be used.

Provided that the amount of calculated reserve is expected to be at least equal to the amount that shall be produced by the application of Gross Premium Method.

(8) The method of calculation of the amount of liabilities and the assumptions for the valuation parameters shall not be subject to arbitrary discontinuities for one year to the next.

(9) The determination of the amount of mathematical reserves shall take into account the nature and term of the assets representing those liabilities and the value placed upon them and shall include prudent provision against the effects of possible future changes in the value of assets on the ability to the insurer to meet its obligations arising under policies as they arise.

Mandate to Appointed Actuary under regulation

Sub-Rule 4 mandates Appointed Actuary to have prudent assumption of all relevant parameters and to include an appropriate margin for adverse deviations that may result in an increase in the amount of mathematical reserves.

Sub-Rule 5 defines such margin as "Negative Reserve ", which is being disclosed in column 6 of the Form 1.

Further, clause (iii) to sub-Rule 5 mandates appointed actuary to provide for negative reserve in mathematical reserve, accordingly not to include in distributable surplus as per Section 49 of the Insurance Act, 1938.

Clause (ii) to sub-Rifle 5 mandates appointed actuary to include negative reserve in mathematics reserve. only at the time of Amalgamation and transfer of insurance business and otherwise.

Taxable surplus

Since taxation of Life Insurance Business is on surplus disclosed as per Section 49 which is covered by Rule 2 (5)(iii), where in appointed actuary is mandated to arrive at surplus after excluding negative reserve.

In view of the above we humbly submit before your goodself to kindly not treat negative reserve as taxable. Sub-Rule 4 mandates Appointed Actuary to have prudent assumption of all relevant parameters and to include an appropriate margin for adverse deviations that may result in an increase in the amount of mathematical reserves. "

58. The CIT(A), in his brief order vide para 17, considered the detailed explanation above and accepted that the negative reserve disclosed in Form-1 does not give rise to distributable surplus. Accordingly he disallowed the same.

59. After considering the rival submissions and examining the method of accounting and the mandate given by regulations to appoint Actuarial on the concept of mathematical reserves, we do not see any reason to interfere with the order of the CIT(A). The mathematical reserve is part of Actuarial valuation and the surplus as discussed in Form-I under Regulation 4 takes into consideration this mathematical reserve also. Therefore the order of the CIT(A) is approve. Moreover the Assessing Officer has no power to modify the amount after actuarial valuation was done, which was the basis for assessment under Rule 2 of 1st Schedule r.w.s. 44 of the 1 T. Act. The principles laid down by the Hon'ble Supreme Court in LIC vs. CIT 512 ITR 773 about the powers of Assessing Officer also restricts the scope and adjustments by the A O. In view of this we uphold the order of the CIT(A) and dismiss the Revenue ground. "

7. As can be seen above, the Hon'ble ITAT, Mumbai held that Mathematical Reserve, which is debited on expense side of the profit and loss account, is computed as per the insurance regulations, as per which negative reserve is to be ignored while

arriving at the Mathematical Reserve and as the Assessing Officer has no power to modify the amount after actuarial valuation was done, which is the basis of assessment under Rule 2 of First Schedule read with Section 44 of the Income-tax Act, 1961. In view of the same, after going through the decision of ITAT, Mumbai in the case of ICICI Prudential Insurance Co. Ltd (Supra), the negative reserve cannot be added back while computing the income of life insurance business of the assessee company under Section 44 r.w. Rule 1 & 2 of the First Schedule to the Income-tax Act, 1961. So, the addition of Rs. 8,17,92,000/- made by the AO on account of negative reserves is to be deleted in pursuance of directions given by the Hon'ble ITAT, Mumbai."

26. Thus, from the above, it is clear that the AO has himself took a decision that the Negative Reserves cannot be added back while computing the income of life insurance assessee company u/s 44 read with rules 1 & 2 of First Schedule of the Income-tax Act, 1961. Under these circumstances, we find that no dispute is left on this issue. Therefore, we find that addition has been rightly deleted by the Ld. CIT(A) on the basis of his well reasoned findings. No interference is called for in his order from us. Thus, the order of the Ld. CIT(A) is upheld and ground 2 is dismissed.

27. Grounds 3.1 to 3.3: In these grounds, the Revenue has challenged the action of the Ld. CIT(A) in directing to grant benefit of exemption u/s 10(32) on dividend income received by the assessee during the year.

28. The brief background of the issue is that as per the assessing officer manner of the computation of profit of any business of life insurance is laid down in section 44 of the act which over ride the normal provisions of the act for computation of income. Thus, income so computed u/s 44 of the Act is taxed at special rates on which the tax payable by the assessee is at lower rate. In view of the above facts, the exemption u/s 10(34) of the

Income Tax Act is not available to the assessee who is engaged in the business of life insurance.

29. In the appeal before the Ld. CIT(A), it was submitted by the assessee in detail that dividend income is exempt by virtue of section 10(34) of the Act. It is correct that section 44 overrides sections 28 to 43B, but dividend is not exempt under these sections. Therefore, it is independent of these provisions and available for seeking exemption while computing the income of life insurance business u/s 44 of the Act. In support of its argument, the assessee placed reliance on the various judgments. Ld. CIT(A) considered the facts of the case and analysed the legal position with the help of these judgments and held that benefit of exemption u/s 10(34) upon the dividend income was available to the assessee. Relevant part of Ld. CIT(A)'s order is reproduced herein below:-

> *"5.8 I have examined the facts of the case, the stand taken by the A.O. in the assessment order and the contentions of the appellant. I am in agreement with the contention of the appellant that section 10(34) is independent of the provisions of section 44 of the Income Tax Act, 1961. Therefore, while calculating the income of a life insurance business as per the rule 2 of the first schedule it is considered by the actuary for calculating the surplus of such business. Hence, by virtue of section 10(34) of the Income Tax Act, 1961 the exemption is available to the assessee while computing the taxable income. Also, the same view is approved by the Hon'ble High Court of Bombay in case of Life Insurance Corporation of India vs. Commissioner of Income Tax reported in 115 ITR 45 (Born), Hon 'ble Mumbai Tribunal in the case of ICICI Prudential Insurance Co. Ltd vs. Asstt. Commissioner of Income Tax Circle- 6(1),(2012-TIOL-580-ITAT-MUM-ITA No. 7765/MUM/2010) and Honble Mumbai Tribunal in the case of SBI Life vs Commissioner of Income Tax - 1, Mumbai, (2013-TIOL-681-ITAT-MUM, ITA No.6366/ Mum/2011). Hence, respectfully following the*

judgments (supra), I am in agreement with the contentions of the appellant. Accordingly, the addition made by assessing officer on account of "Dividend Income" is hereby deleted."

30. During the course of hearing before us, it was stated by the Ld. Counsel that this issue has been examined by the Tribunal in assessee's own case in its order dated 23-05-2014 wherein the Tribunal principally decided the issue in favour of assessee, but sent it back to the AO for the limited purpose of verification of facts. In pursuance to the same, the AO passed order giving appeal effect on 29-11-2016, wherein he after verification of the facts in detail and after examining the judgments of the Tribunal decided this issue in favour of the assessee by allowing benefit of exemption u/s 10(34), 1038) as well as 10(23AAB). It was requested that in view of these facts and circumstances, this issue should be decided in favour of the assessee.

31. Per contra, the Ld. DR did not make out any distinction on facts or law.

32. We have considered the submissions made by both the sides, facts of the case, earlier order of the Tribunal as well as Order Giving Appeal Effect passed by the AO as was brought before us. It is noted that identical issue came up before the Tribunal which was sent back to the file of the AO after deciding the issue principally in favour of the assessee. In the order giving appeal effect proceedings, the AO verified the facts and granted the benefit of exemption with following observations:-

"6. Exclusion from total income the exempted income u/s 10(34), 10(38) and 10(23AAB) of the Act
6.1 The AO included income exempted D/s 10(34), 10(38) and 10(23AAB) of the Act while computing the total income of the assessee company. The CIT(A) allowed the claim of the assessee.

The Department went into appeal before IT AT on this issue. The IT AT directed the AO to re-adjudicate the matter keeping in view the decisions of Hon'ble ITAT, Mumbai in the case of ICICI Prudential Insurance Vs ACIT Vide ITA Nos. 6854 to 6856, 7765 and nl3/Mum/20l0 and LIC Vs CIT (115 ITR 45,51 ITR 773 and 119 ITR 900).

6.2 In the case of ICICI Prudential Insurance Vs ACIT Vide ITA Nos. 6854 to 6856, 7765 and 7213 um/20lO, the Hon'ble ITAT, Mumbai held as under:-

> *"49. In view of the above and respectfully following the same, we hold that assessee is entitled to exemption under section 10. Therefore, we do not see any reason to differ from the order of the CIT (A) where he has allowed assessee's claim of exemption under section 10(23AAB) of surplus of Participating Pension Business and also dividend under section 10(34). Accordingly Revenue his issue is rejected. "*

6.3 In view of the above, the claim of the assessee company U/s 10(34), 10(38) and 10(23AAB) are to be excluded before computation of income from life insurance business under Section 44 read with Rule 1 & 2 of the First Schedule of the Act. This issue was already decided in favour of the assessee as per the decision and directions of the CIT(A) and made part of the order giving to appellate order of CIT(A) 1154 of the Act, as mentioned above."

33. We have gone through the order passed by Ld. CIT(A) also and find that the benefit of exemption was granted by the Ld. CIT(A) relying upon the judgement of the Hon'ble Bombay High Court in the case of Life Insurance Corporation of India vs CIT 115 ITR 45 (Bom) as well as judgement of Mumbai Bench of the Tribunal in the case of ICICI Prudential Insurance Co Ltd vs ACIT (supra). The AO in Order Giving Effect has also granted relief to the assessee by relying upon these judgements. Under these circumstances, we do not find it necessary to interfere in the finding

of Ld. CIT(A) and, therefore, the order of the Ld.CIT(A) is upheld. These Grounds raised by the Revenue are dismissed.

34. Ground 4: In this ground, the Revenue is aggrieved by the action of the Ld. CIT(A) in deleting the disallowance made by the AO u/s 14A on the basis of Rule 8D.

35. The brief background of the matter is that in the assessment order it was stated by the AO that in case the assessee is allowed the benefit of exemption u/s 10(34) at any stage, in that case disallowance u/s 14A would be required to be made in accordance with law. In the appeal before Ld. CIT(A), it was stated by the assessee that the Delhi Bench of the Tribunal in the case of Oriental Insurance Co Ltd vs ACIT (ITA No.5462 & 5463/Del/2003 has held that disallowance u/s 14A of the Act is not attracted in the case of insurance company due to special provisions of section 44 of the Income-tax Act being applicable to such companies. Under these circumstances, it was requested that no disallowance was made u/s 14A. The Ld. CIT(A) considered the facts of the case and various judgements available on this issue and held that no disallowance was required to be made u/s 14A. Disallowance made by the AO was directed to be deleted with following observations:-

> *"6.8. I have examined the facts of the case, the stand taken by the A.O. in the assessment order and the contentions of the appellant. Life insurance is governed by the provision of section 44 of the Income Tax Act, 1961. The Hon'ble Delhi Tribunal in the case of Oriental Insurance Company Ltd vs. ACIT (2009-TIOL-172-ITAT-DEL -ITA NO.5462 & 54631 Del/03), categorically held that disallowance under section 14 A of the IT Act is not attracted in case of an insurance company due to special provisions of section 44 of the IT Act applicable to such companies for calculating the taxable income. Same view was also confirmed in the cases of the Life Insurance Corporation of India, Vs. Addl.*

Commissioner of Income Tax, Range - 1(2), 2013 (TIOL-275-ITAT-MUM); and ICICI Prudential Insurance Co. Ltd vs. Asstt. Commissioner of Income Tax Circ1e-6(1), (2012-TIOL-580-ITAT-MUM-ITA No. 68541MUM120 1 0). Since, I have no reason to differ from the above judicial decisions, A.O. is hereby directed to delete the disallowance made u/s. 14A of the Act."

36. During the course of hearing before us it was stated by the Ld. Counsel that this issue has also been examined by the Tribunal in assessee's own case in its order dated 23-05-2014 wherein it was held that provisions of section 14A r.w. rule 8D were not applicable to insurance companies, therefore, the order of the Ld. CIT(A) should be upheld on this issue.

37. Per contra, the Ld. DR did not make any distinction on facts or law.

38. We have gone through the orders passed by lower authorities as well as earlier orders passed by the Tribunal in assessee's own case. It is noted that the Tribunal has already decided this issue in favour of the assessee in its aforesaid order by observing as under:-

"17. We have heard both the parties and perused the orders of the Revenue Authorities as well as the decisions of the Tribunal cited before us. On perusal of the decision of the ITAT in the case of lCICI Prudential Insurance (supra) as well as another decision in the case of HDFC Standard Life Insurance Company (supra), we find revenue raised the arguments revolving around the applicability of the judgment in the case of Godrej & Boyce Mfg Co Ltd, supra. Despite the same, the Tribunal considered the said judgment and still allowed the claim of the assessee. Therefore, in view of the special provisions applicable to the insurance companies, we are of the opinion that the provisions of section 14A r.w.r. 8D were held not applicable to the insurance companies i.e., lCICI Prudential Insurance, HDFC Standard Life Insurance Company. Therefore, the SSI Life Insurance Company Limited (assessee in the present case should not be any exception. Considering the settled nature of the issue vide the

*decisions of the Tribunal's orders (supra), ground no.3 raised b the assessee for the AY 2006-07 is **allowed**."*

39. During the course of hearing before us, no distinction has been made. Thus, respectfully following the order of the Tribunal, we uphold the decision of the Ld. CIT(A) on this issue. No interference is called for in his order. Ground 4 raised by the revenue is dismissed.

40. As a result, appeal filed by the Revenue is dismissed.

41. Now we shall take up appeal of the assessee in ITA No.4066/Mum/2011 for AY. 2007-08. This appeal is filed against the order of the Commissioner of Income-tax (Appeals) -2, Mumbai [in short, CIT(A)] dated 04-02-2011 passed against the assessment order dated 14-12-2009 u/s 143(3) of the Act on the following grounds:-

"Ground No 1

DISALLOWANCE OF EXEMPTION IN RESPECT OF DIVIDEND INCOME UIS 10(34):

(i) The learned CIT (A) has erred in law as well as on facts in exercising the power of enhancement for withdrawing the exemption allowed by the A.O. under Section 10 (34) in respect of income from dividend.

(ii) The learned CIT (A) failed to appreciate the fact that income from dividend is one of the type of income that is not to form part of the total income under chapter III of the LT. Act. In whatever manner the total income of the assessee is to be computed under the law the same is to exclude the income from dividend under sub-section (34) of Section 10 of the Income Tax Act, 1961.

(iii) The learned CIT (A) failed to appreciate the import of the legal provision contained in Section 44 of the LT. Act read with Schedule I which is a special provision for computation of the income from business of life insurance. The provision, though a non-obstante provision, does not override all the provisions of the Act. The provision specifically overrides only the provisions of

the Act relating to the computation of income chargeable under the head "interest on Securities" "income from house property" "Capital gain" or "income from other sources" or in Section 199 or in Section 28 to 43B. It does not override the provisions of Chapter III of which Section 10(34) is a part.

(iv) The learned CIT (A) failed to the take note of the settled position of law that income is to be computed as per the applicable provisions of the Act unless all or any of the provisions are expressly made inapplicable. In cases where application of only specific provisions is barred, all other provisions remain applicable. Any other view taken renders the overriding of specified provisions redundant and the law cannot be interpreted in a manner so as to render any provision of the Act or part thereof as redundant.

(v) That the learned CIT (A) erred in basing his decision on the erroneous understanding of the computation of actuarial surplus/deficiency as per the provisions of the Insurance Act when he observed that income from dividend has not been taxed. Even if income from dividend is not being charged to tax under the respective heads of income, such income gets included in the total income of the appellant. Even if the provisions relating to computation of income under the head 'income from other sources' are overridden obviating the requirement of head wise computation of total income, the income mentioned in chapter Ill, of included in the total income in any form, is required to be excluded. As observed by Hon'ble Bombay High Court in life Insurance Corporation of India case reported in 119 ITR 900 the surplus in a life insurance business is worked out on the basis of "the net liability under business as shown in the summary and valuation of policies" and the "balance of life insurance fund as shown in the balance sheet". Since income from dividend become part of the life insurance fund, it enters into the computation of total income under Section 44 read with First Schedule of the LT. Act. The mere fact that the "income from other sources" has not been separately computed does not make any difference in the tax treatment of such income.

Ground No 2

ADDITION ON ACCOUNT OF DISALLOWANCE OF EXPENDITURE U/S 14A:

Based on the decision leading to withdrawal of exemption granted in respect of income from dividend, the learned CIT has held that the provisions of Section 14A are not applicable to the case. However, in the event of his finding getting reversed in Appeal, the provisions will become applicable. He has therefore, considered and disapproved the submissions made by the appellant in regard to working out the amount of expenses relatable to exempt income from dividend. In that respect the appellant is aggrieved on following grounds.

(i) The learned CIT was in error in holding that Rule 8D represents the wisdom of the legislature in the matter of determining the amount to be disallowed under Section 14A of the Act in all cases and even in respect of assessments relating the assessment years prior to assessment years 2008-09.

(ii) Even following the ratio of Hon'ble Bombay High Court decision in the case of Godrej & Boyce that Rule 8D has no retrospective application, the learned CIT erred in upholding the computation as per Rule 8D in the assessment relating to 2007-08 without going into the specific facts of the case. The learned CIT erroneously ignored the provisions of sub-section (2) of Section 14A under which the A.O. is required to determine the amount of expenditure incurred in relation to exempt income in accordance with the prescribed method only if he is not satisfied with the correctness of the claim of the assessee. The method prescribed, which is Rule 8D, gets relevance only in case of failure of the assessee to satisfy the correctness of the claim and that too with effect from A.Y. 2008-09. Prior to 2008-09, there being no prescribed method, the amount of disallowance is to be solely determined on the basis of the facts of each individual case and not by blanket application of Rule 8D.

(iii) The learned CIT (A) was, therefore, not justified in holding computation of disallowable amount as per Rule 8D as a rule of universal application based on the argument that the rule signified legislative wisdom in determination of such amount in all cases and in all the years, even prior to its coming into force. In case the proposition is accepted, it

will render the findings of the Honble Bombay High Court in Godrej and Boyce redundant and of no legal consequence.

(iv) The amount offered for disallowance by the Appellant was based on facts and ought to have been accepted as reasonable and justified.

Ground No. 3

DISALLOWANCE OF EXEMPTION IN RESPECT OF INCOME FROM PENSION FUND UIS 10(23AAB):

(i) The learned CIT (A) was not justified in holding that the exemption u/s 10 (23AAB) in regard to income of Pension Fund is not available to the appellant on the ground that such an exemption is applicable only when the Pension Fund is an independent assessable entity.

(ii) The learned CIT(A) failed to take a note of the fact that for the purpose of availing the exemption under section 10(23AAB) there are only two conditions to be fulfilled as laid down in the section, firstly that the contributions to such a fund is made by any person for the purpose of receiving pension from such fund and secondly the fund is approved by the Controller of Insurance or the Insurance Development Authority of India(IRDA). Hence, the learned CIT (A) was not justified in such an understanding of the provision which nowhere lays down the requirement of the Fund to be an independent assessable entity. The provision is applicable and consequently, the exemption is available to the Fund, irrespective of the fact whether it is an independent entity or run as a segment of the life insurance company, provided the conditions set out in sub-section (23AAB) of Section 10 are complied with. The appellant humbly submit that the Fund is operated by the appellant company as one of the various segments, accounts are maintained in the manner from which surplus/ deficiency therefrom is determinable and all the requirements of Section 10 (23AAB) are met.

(iii) For the reasons aforementioned, the learned CIT ought to have directed the A.O. to allow the exemption of the surplus relatable to the Pension Fund.

GroundNo.4
NOT ALLOWING SET OFF OF BROUGHT FORWARD LOSSES:

(i) The learned CIT (A) was not justified in directing the A.O. to pass specific order u/ s 157 instead of directing him to allow set off of the brought forward losses.

(ii) The learned CIT (A) misunderstood the appellant's request which was for set off of losses of earlier years which are determined losses brought forward in the year under appeal. These losses are allowed to set off out of current years income for which no order u/ s 157 is necessary. In any case, this provisions does not involve an order but merely an intimation of the current loss assessed by him under the provisions of the Act."

42. Ground 1: Both the parties jointly stated that this ground is identical to ground 3.1 to 3.3 of Revenue's appeal for A.Y. 2010-11, wherein this issue has been decided in favour of the assessee and Revenue's appeal was dismissed. No distinction on facts or legal position was brought to our notice. Thus, respectfully following our order, we decide this issue in favour of the assessee. The AO is directed to grant the benefit of exemption u/s 10(34) on the dividend income. Ground 1 is allowed.

43. Ground 2: This ground deals with the disallowance made u/s 14A of the Act. It was jointly stated by both the parties that this ground is identical to Ground 4 of Revenue's appeal for A.Y. 2010-11 which has been decided in favour of the assessee by holding that provisions of section 14A are not applicable on the assessee company being a life insurance company. Consistent with our order, this issue is also decided in favour of the assessee and it is held that the provisions of section 14A are not

applicable upon the assessee; therefore disallowance made by the AO is directed to be deleted.

44. Ground 3 : In this ground, the assessee is aggrieved with the action of lower authorities in holding that exemption u/s 10(23AAB) in regard to income of pension fund was not available to the assessee due to the fact that such an exemption is applicable only when pension fund is an independent assessable entity.

45. During the course of hearing, it was stated by the Ld. Counsel that this issue has already been decided by the Tribunal in assessee's own case vide its order dated 23-05-2014, wherein this issue was principally decided in favour of the assessee, but for the purpose of verification of facts it was sent back to the file of the AO. The AO, in the order giving appeal effect examined this issue on facts as well as on law, and vide his order dated 29-11-2016 he has already decided this issue in favour of the assessee.

46. Per contra, the Ld. DR did not make any distinction in facts or law.

47. We have gone through the submissions made by both the sides as well as orders placed before. It is noted that this ground is identical to Ground No.1 wherein the issue of availability of exemption u/s 10(34) on the dividend income was examined. It is noted that identical issue came up before the Tribunal in earlier years which was sent back to the AO. The AO in his Order Giving Appeal Effect dated 29-11-2016 has decided this issue after following the decision of Mumbai Bench of the Tribunal in the case of ICICI Prudential Insurance Co vs ACIT. Relevant part of the order of the AO has already been reproduced by us in earlier part of the order. No distinction has been pointed out by the Ld. DR before us on the facts of earlier years and this year. Thus, we have no option but to apply the

decision which has already been taken by us in earlier years in the case of the assessee. Under these circumstances, we direct the AO to grant the benefit of exemption u/s 10(23AAB). As a result, Ground 3 of the assessee is allowed.

48. Ground 4: In this ground, the assessee is aggrieved in not allowing the benefit of set off of brought forward losses of earlier years.

49. During the course of hearing, it was stated by the Ld. Counsel that this ground has become infructuous at this stage in view of the fact that relief has been granted in subsequent years. Thus, this ground is dismissed as infructuous.

50. As a result, appeal of the assessee is partly allowed.

51. Now we shall take up assessee's appeal for A.Y 2008-09 in ITA No.1897/Mum/2012 filed against the order of the Commissioner of Income-tax (Appeals))-2, Mumbai [in short, CIT(A)] dated 03-01-2012 passed against the assessment order dated 30-12-2010 u/s 143(3) r.w.s. 144A of the Act on the following grounds:-

> *"The following grounds of appeal are without prejudice to and independent of the other(s).*
> *On the facts and circumstances of the case and in law, SBI Life Insurance Company Limited [hereinafter referred to as the Appellant] craves to prefer an appeal against the order passed by the Commissioner of Income-tax (Appeals) -II, Mumbai [hereinafter referred to as the learned CIT(A)], under section 250(6) of the Income-tax Act, 1961 (Act) in respect of the order passed by the Deputy Commissioner of Income-tax - Range 1(3), Mumbai (the AO) under section 143(3) of the Act, on the following grounds:*
> *<u>Ground No 1</u>*
>
> *The Learned CIT (A) has erred in confirming the action of the AO to disallow the exemption of Rs 19,62,41,801/- in respect of*

dividend income under section 10(34) and failed to appreciate that section 10(34) is not overridden by the provisions of section 44 of the Act.
Ground No 2

The Learned CIT (A) has erred in confirming the action of the AO to disallow the exemption of Rs 18,47,89,000/- in respect of income of pension fund under section 10(23AAB) and failed to appreciate that section 10(23AAB) is not overridden by the provisions of section 44 of the Act.
Ground No 3

The Learned CIT (A) has erred in enhancing the actuarial surplus by the negative reserve amounting Rs 3,59,25,230/ - for determining the profit from business of life insurance ignoring the ratio of the Supreme court decision in LIC v / s [CIT 51 ITR 773] and the provision of Insurance Act and the rules and regulation framed there under.
GroundNo4

The Learned CIT (A) has erred in initiating penalty proceedings against the appellant under section 271(1)(c).”

52. **Ground 1** is regarding denial of benefit of exemption u/s 10(34) on the dividend income received by the assessee on the ground that income of the assessee is computed u/s 44 of the Act.

53. It is noted on the basis of submissions made by both the sides that this ground is identical to Ground 1 of A.Y. 2007-08 which has already been decided in favour of the assessee. Therefore, following our order, this ground of the assessee is allowed.

54. **Ground 2:** This ground is against denial of benefit u/s 10(23AAB) in respect of income of pension fund. It is noted on the basis of submissions made by both the sides before us that this ground is identical to Ground 3 of assessee’s appeal for A.Y.2007-08 which has already been decided in

favour of the assessee. Following our order, this ground is also decided in favour of the assessee. Ground 2 is allowed.

55. Ground 3: In this ground, the assessee is aggrieved with the action of the lower authorities in directing the addition of Negative Reserve to the actuarial surplus for determining the profit from business of life insurance. It is noted that this ground is identical to Ground 7 of Revenue's appeal for AY. 2010-11 wherein relying upon the order of the Tribunal passed in assessee's own case, this ground has been decided in favour of the assessee. No distinction has been made on facts or law. Thus, following our order, this ground is decided in favour of the assessee. Ground 3 is allowed.

55. Ground 4 is with regard to initiation of penalty proceedings and is dismissed being premature.

56. As a result, appeal of the assessee is partly allowed.

57. Now we shall take up appeal filed by the assessee for AY. 2009-10 in ITA No.5112/Mum/2012 filed against the order of the Commissioner of Income-tax (Appeals)-2, Mumbai [in short, CIT(A)] dated 30-05-2012 passed against the assessment order dated 30-12-2011 u/s 143(3) of the Act on the following grounds:-

> *"Grounds of Appeal*
> *The following grounds of appeal are without prejudice to and independent of the other(s).*
> *On the facts and circumstances of the case and in law, SBI Life Insurance Company Limited [hereinafter referred to as the Appellant] craves to prefer an appeal against the order passed by the Commissioner of Income-tax (Appeals) - 2, Mumbai [hereinafter referred to as the learned CIT(A)], under section 250*

of the Income-tax Act, 1961 (Act) in respect of the order passed by the Deputy Commissioner of Income-tax (OSD)-1(2), Mumbai (the AO) under section 143(3) of the Act, on the following grounds:

Ground No 1

The Learned CIT (A) has erred in confirming the action of the AO in making addition of negative reserves amounting Rs 2,66,25,660/ - to the actuarial surplus for determining the profit from business of life insurance in disregard of the law laid down by the Supreme court in the case of LIC vs CIT 51 ITR 773 for prohibiting any adjustment to the actuarial surplus determined as per the provision of Insurance Act.

Ground No 2

The Learned CIT (A) has erred in confirming the action of the AO to disallow the exemption of Rs 50,92,75,738/- in respect of dividend income under section 10(34) and failed to appreciate that section 10(34) is not overridden by the provisions of section 44 of the Act."

58. **Ground 1** is with regard to addition on the basis of actuarial surplus of Negative Reserves. It was jointly stated that this ground is identical to Ground 2 of Revenue's appeal for AY. 2010-11. This issue has already been decided in favour of the assessee. Thus, consistent with our order, we decide this ground in favour of the assessee. Ground 1 is allowed.

59. **Ground 2** is with regard to benefit of exemption u/s 10(34) on the dividend income. This ground is identical to grounds 3.1 to 3.3 of Revenue's appeal for AY. 2010-11. Thus following our order, this ground is decided in favour of the assessee. Ground 2 is allowed.

60. As a result, appeal of the assessee is allowed.

61. **Now we shall take up appeal filed by the assessee for A.Y. 2009-10 in ITA No.3495/Mum/2014** filed against the order of the Commissioner of

Income-tax-2, Mumbai [in short, CIT] dated 19-03-2014 passed u/s 263(3) of the Act on the following grounds:-

"The following grounds of appeal are without prejudice to and independent of the other(s). On the facts and circumstances of the case and in law, SBI Life Insurance Company Limited (hereinafter referred to as the 11 Appellant") craves to prefer an appeal against the order passed by the Commissioner of Income Tax-I, Mumbai (hereinafter referred to as the learned CIT (1), under section 263 of the Income-tax Act, 1961(" Act") setting aside the assessment of the appellant to be made fresh, on the following grounds:

1. The learned CIT (1) erred in invoking the provisions of section 263 of the Income Tax Act, 1961 and assuming jurisdiction to proceed under the section. The learned CIT (1) while passing the order went wrong in not applying the ratio of the Honourable Supreme Court laid in Malabar Industrial Company Ltd v Is CIT (2000) 243 ITR 83 (SC) for reason not relevant to the applicability of the ratio and failed to appreciate that the exemption of income from pension fund is matter on which different views are possible, one of which taken by the assessing officer (AO).

1.1 The learned CIT (1) erred in directing the AO to decide the issue of exemption under Section 10(23AAB) of the Income Tax Act, 1961 and pass an assessment order afresh.

2. The learned CIT (1) erred in holding that exemption under section 10(23AAB) of the Income Tax Act, 1961 is not available to assessee as separate pension fund is not established by the company. The learned CIT (1) has failed to appreciate that the company has a separate fund and its pension schemes are duly approved by the Insurance Regulatory and Development Authority as required by the law.

2.1 The Learned CIT (1) erred in guiding himself by the understanding that crediting income to P&L AI C amounts to confirmation that a separate fund has not been created. He ignored the fact that a pension segment, even though a distinct segment, remains part of insurance business. The CIT (1) failed to appreciate that by virtue of section 3 (4h) of the Insurance

Act, 1938 an insurer is not permitted to do any other business except insurance business.

2.2 The CIT (1) failed to take note of the observations of the Honourable Bombay High Court in the case of Life Insurance corporation of India Ltd vs CIT (1), Mumbai (2011- TIOL-483-HC-MUM-IT), that the object of inserting section 10(23AAB) of the Income Tax Act, 1961 was not with a view to treat the pension Fund like Jeevan Suraksha outside the purview of insurance business but to promote insurance business by exempting the income from such fund.

3. Without prejudice to the claim that pension fund remains part of insurance business even with the exemption under section 10(23AAB) of the Income Tax Act, 1961, in case it is held to be income of a separate entity, it will be erroneous not to exclude such income from the total income of the appellant."

62. During the course of hearing, it was stated by the Ld. Counsel that issues raised in the order of CIT are identical to grounds 2 & 3 of assessee's appeal for A.Ys 2007-08 & 2008-09. These issues have already been decided in favour of the assessee. Therefore, the entire exercise taken by the Ld. CIT has become infructuous at this stage.

63. Per contra, the Ld. DR did not oppose the submissions of the Ld. Counsel in this regard.

64. We have gone through the orders passed by the lower authorities and find that the issue involved in the order passed by the Ld.CIT is with regard to allowability of exemption u/s 10(23AAB) to the assessee being life insurance company. It is noted that on facts, this issues has already been examined in earlier years by the Tribunal and also by the AO. Relevant part of the order has already been discussed in earlier part of our order. There is no change in facts or in legal position as per the information provided to us. Under these circumstances, we find that since

the issue has already been decided in favour of the assessee on merits, no purpose will be served in going ahead with the order passed by the Ld.CIT u/s 263. Thus, taking into account the totality of facts and circumstances of the case, the order passed by the Ld.CIT u/s 263 is hereby set aside.

65. As a result, appeal of the assessee is allowed.

66. Now we shall take up the appeal filed by the assessee for AY 2010-11 in ITA No.2863/Mum/2015 against the order passed by the Commissioner of Income-tax-1, Mumbai (in short, CIT) dated 16-03-2015 on the following grounds:-

> *"The following grounds of appeal are without prejudice to and independent of the other(s). On the facts and circumstances of the case and in law, SBI Life Insurance Company Limited (hereinafter referred to as the 11 Appellant") craves to prefer an appeal against the order passed by the Commissioner of Income Tax - 1, Mumbai (hereinafter referred to as the learned CIT (1), under section 263 of the Income-tax Act, 1961(" Act") setting aside the assessment of the appellant to be made fresh, on the following grounds:*
> *1. The learned CIT (1) erred in invoking the provisions of section 263 of the Income Tax Act, 1961 and assuming jurisdiction to proceed under the section. The learned CIT (1) while passing the order went wrong in not applying the ratio of the Honourable Supreme Court laid in Malabar Industrial Company Ltd v Is CIT (2000) 243 ITR 83 (SC) for reason not relevant to the applicability of the ratio and failed to appreciate that the exemption of income from pension fund is matter on which different views are possible, one of which taken by the assessing officer (AO).*
> *1.1 The learned CIT (1) erred in directing the AO to decide the issue of exemption under Section 10(23AAB) of the Income Tax Act, 1961 and pass an assessment order afresh.*
> *2. The learned CIT (1) erred in holding that exemption under section 10(23AAB) of the Income Tax Act, 1961 is not available to assessee as separate pension fund is not established by the company. The learned CIT (1) has failed to appreciate that the company has a separate fund and its pension schemes are duly*

approved by the Insurance Regulatory and Development Authority of India as required by the law.

2.1 The Learned CIT (1) erred in guiding himself by the understanding that crediting income to Profit & Loss AI c amounts to confirmation that a separate fund has not been created. He ignored the fact that a pension segment, even though a distinct segment, remains part of insurance business. The CIT (1) failed to appreciate that by virtue of section 3(4h) of the Insurance Act, 1938 an insurer is not permitted to do any other business except insurance business.

2.2 The CIT (1) failed to take note of the observations of the Honourable Bombay High Court in the case of Life Insurance corporation of India Ltd vs CIT (1), Mumbai (2011- TIOL-483-HC-MUM-IT), that the object of inserting section 10(23AAB) of the Income Tax Act, 1961 was not with a view to treat the Pension Fund like Jeevan Suraksha outside the purview of insurance business but to promote insurance business by exempting the income from such fund.

3. Without prejudice to the claim that pension fund remains part of insurance business even with the exemption under section 10(23AAB) of the Income Tax Act, 1961, in case it is held to be income of a separate entity, it will be erroneous not to exclude such income from the total income of the appellant."

67. It was jointly stated by both the parties that this issue is identical to appeal for AY 2009-10 in ITA No.3495/M/2014 (against the order u/s 263).

68. The facts and legal situation remaining the same, consistent with our order, we allow the appeal of the assessee.

69. Now we shall take up appeal filed by the assessee in ITA No 5267/M/12/ for A.Y. 2008-09 against the order of the CIT(A)-2, [in short, CIT(A)]Mumbai dated 28-06-2012 wherein penalty u/s 271(1)(c) was levied on the income enhanced by the CIT(A).

70. The brief background of this appeal is that the Ld.CIT (A) had enhanced the income of the assessee by making addition on account of

Negative Reserves and thereafter penalty was levied on this amount. It is noted that the addition made by the Ld. CIT(A) had already been deleted by us in quantum appeal for A.Y. 2008-09 in ITA No.1897/Mum/2012 above. Under these circumstances, there remains no basis to continue with the penalty proceedings. Therefore, penalty levied by the Ld. CIT(A) is directed to be deleted. Appeal of the assessee is allowed.

71. In the result, Revenue's appeals are dismissed and assessee's appeals in ITA Nos. 3495/M/2014, 5112/M/2012, 5267/M/2012 & 2863/m/2015 are allowed and assessee's appeals in ITA Nos 4066/M/2011 and 1897/M/2012 are partly allowed.

Order was pronounced in the open court at the conclusion of the hearing.

Sd/-	Sd/-
(MAHAVIR SINGH)	(ASHWANI TANEJA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt: 23rd December, 2016

Copy to:

1. The appellant
2. The respondent
3. The CIT(A)
4. The CIT
5. The Ld. Departmental Representative for the Revenue, E-Bench

(True copy) By order

ASSTT.REGISTRAR, ITAT, MUMBAI BENCHES