

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH "A"**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.1220/Bang/2017
(Asst. Year 2013-14)

The Dy. Commissioner of Income-tax,
Circle-5(1)(2),
Bengaluru.

. Appellant

Vs.

M/s PNB Metlife India Insurance Co. Ltd.,
No.5, Brigade Seshmahal,
Vani Vilas Road, Basavangudi,
Bengaluru.
PAN - AACCM6448H.

. Respondent

Appellant by : Shri C.H Sundar Rao, CIT
Respondent by : Shri Chavali Narayan, C.A

Date of Hearing : 3-1-2018

Date of Pronouncement : 5-1-2018

ORDER

PER SHRI JASON P BOAZ, ACCOUNTANT MEMBER :

This appeal by the Revenue is directed against the order of the Commissioner of Income-tax (Appeals) - 5, Bangalore dated 28/3/2017 for asst. year 2013-14.

2 Briefly stated, the facts of the case are as under:-

2.1 The assessee, a company engaged in the business of life insurance, filed its return of income for asst. year 2013-14 on 26/9/2013 declaring NIL income. The case was taken up for scrutiny and the assessment was completed u/s 143(3) of the Income-tax 1961 (in short 'the Act') vide order dated 18/3/2016, wherein the assessee's income was determined at Rs.45,59,36,000/- in view of the Assessing Officer ('AO') denying the assessee the benefit of aggregation of surplus/deficit as per policy holders account with the surplus/deficit of shareholders account.

2.2 On appeal, the assessee submitted before the Id CIT(A) that as per the provisions of sec. 44 of the Act, for the purpose of computing income from life insurance business, the assessee is permitted to aggregate its surplus/deficit from policy holders account to surplus/deficit of the shareholders account. It was also submitted that the similar issue has been considered by the co-ordinate bench of this Tribunal in the assessee's own case for asst. year 2011-12 in ITA No.1508/Bang/2015 dated 22/9/2016 wherein the Tribunal has allowed the benefit of aggregation of income for the purpose of computation of income from life insurance business. The Id CIT(A) after considering the submissions of the assessee and also relying on the decision of the co-ordinate bench in the assessee's own case for asst. year 2011-12 (Supra) allowed the appeal filed by the assessee vide his order dated 28/3/2017.

3.1 Revenue, being aggrieved by the order of the CIT(A)-5, Bangalore dated 28/3/2017 for asst. year 2013-14, has preferred this appeal, raising the following grounds:-

“1. The order of the Commissioner of Income Tax(Appeals) - 5, Bangalore, is opposed to the law and not on the facts and circumstances of the case.

2. "Whether the CIT(A) is right, in law in allowing assessee appeal without appreciating the fact that the special provision u/s.44 of the I.T Act 1961 have been mixed with the normal provision of the Act by the assessee"

3. The learned CIT(A) failed to construe the special provision u/s.44 of the Act read with First Schedule and 115B of the Act in a meaningful manner to differentiate income from life insurance and other income.”

3.2.1 We have heard the rival contentions and perused and carefully considered the material on record. The sole issue for consideration and adjudication before us is that as per the provisions of sec. 44 of the Act, for the purpose of computation of income from the business of life insurance, can the assessee aggregate surplus/deficit of policy holders and share holders account. We find that a co-ordinate bench of this Tribunal has considered a similar issue in the assessee's own case for asst. year 2012-13 in ITA No.1508/Bang/2015 dated 8/9/2017, following the decisions of co-ordinate bench in the assessee's own case for asst. year 2011-12 (Supra) and has observed and held that surplus/deficit of the policy holders should be aggregated with surplus/deficit of shareholders account for

determining the profit/loss of the assessee u/s 44 of the Act. The relevant portion at paras 4 and 5 thereof is extracted hereunder:-

4. We have heard both the parties and perused the material available on record. The only issue that came up for our consideration is that as per the provisions of section 44 of the Act, for the purpose of computation of income from business of life insurance, can the assessee aggregate surplus/deficit from policy holders account to surplus/deficit of the shareholders account. We find that the coordinate Bench of this Tribunal has considered a similar issue in assessee's own case for the AY 2011-12 in ITA No.1508/B/2015 wherein it was observed that surplus/deficit from shareholders account should be aggregated with surplus/deficit of the policy holders account for determining the profit/loss of the assessee u/s. 44 of the Act. The relevant portion of the order of the Tribunal is reproduced hereunder:-

"8. As regards grounds 9 to 13, we find that they are alternate grounds. If the deficits in the policy holders account is to be set off against the surplus as per shareholders account in computing the taxable income of the assessee u/s. 44 of the IT Act, the assessee

contends (i) deficit in the policy holders account should be set off against the surplus as per shareholders account u/s 70 of the IT Act as both constitutes a single business and sec. 70 permits inter unit set off and (ii) the loss of the business of assessee as determined at Rs.1745.61 crores for earlier years should be carried forward and set off against the business income of the current year. As we have held that surplus/deficit as per shareholders account should be aggregated with surplus/deficit in the policy holders account for determining the profit/loss of the assessee u/s 44, and such aggregation would results in a loss of Rs.34,45,94,000/- as per the impugned order, the view of setting off of losses against income u/s. 70,72 would be academic and hence not decided."

5. *In this view of the matter and also respectfully following the decision of the coordinate Bench of this Tribunal in assessee's own case for AY 2011-12, we are of the view that surplus/deficit as per shareholders account may be aggregated with surplus/deficit of the policy holders account for determining the income of the assessee u/s. 44 of the*

Act. The CIT(Appeals) after considering the relevant provisions of the Act has rightly deleted the addition made by the AO. We do not find any error or infirmity in the orders of CIT(Appeals). Hence, we are inclined to uphold the CIT(Appeals) order and dismiss the appeal filed by the revenue.”

3.2.2 Following the aforesaid orders of the co-ordinate bench of this Tribunal in the assessee’s own case for asst. year’s 2011-12 and 2012-13 (Supra) we are of the view and hold that surplus/deficit of policy holders account may be aggregated with the surplus/deficit of the shareholders account for determining the income of the assessee u/s 44 of the Act. In this view of the matter, we find no reason to interfere with the finding/order of the Id CIT(A) on this issue and consequently dismiss the appeal filed by Revenue.

4. In the result, Revenue’s appeal for asst. year 2013-14 is dismissed.

Order pronounced in the open court on **5th January, 2018.**

Sd/-
(SUNIL KUMAR YADAV)
JUDICIAL MEMBER

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

Bangalore
Dated : 5/1/2018
Vms

Copy to :1. The Assessee
2. The Revenue
3.The CIT concerned.
4.The CIT(A) concerned.
5.DR
6.GF

By order

Sr. Private Secretary, ITAT, Bangalore.