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

BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA Nos.270 & 271/M/2014
Assessment Years: 2009-10 & 2010-11

DCIT 1(2), R.No.535, 5th Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400 020	Vs.	M/s. Kotak Mahindra Old Mutual Life Insurance Limited, 7th Floor, Kotak Infiniti, Bldg No.1, Inifinity Park, Off Western Express Highway, General AK Vidya Marg, Malad (E), Mumbai – 400 097 **PAN: AAACO 3983B**
(Appellant)		(Respondent)

Present for:

Assessee by	: Shri Madhur Agarwal, A.R. & Shri Chetan Kakka, A.R.
Revenue by	: Shri B. Srinivas, D.R.
Date of Hearing	: 17.05.2018
Date of Pronouncement	: 11.06.2018

O R D E R

Per Rajesh Kumar, Accountant Member:

The above two appeals have been preferred by the Revenue against the orders dated 08.12.2011 and 30.08.2013 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10 & 2010-11 respectively.

ITA No.270/M/2014

2. The issue raised in ground No.1 is whether the Ld. CIT(A) is correct in holding that income from share holders account of Rs.24.26 crores is to be treated at par with the income from the insurance business under the policy holders account taxable under section 44 of the Act.

3. At the outset, the Ld. A.R. of the assessee submitted before the Bench that issue is squarely covered by the order of the co-ordinate bench of the Tribunal in assessee's own case both in the preceding and succeeding assessment years in which the same has been decided in favour of the assessee. The Ld. A.R. specifically referred to the order dated 22.03.2013 in ITA No.2551/M/2010 for A.Y. 2007-08 wherein the co-ordinate bench of the Tribunal vide para No.14 has decided the issue in favour of the assessee. In view of the same, the Ld. A.R. submitted that the ground raised by the Revenue is deserved to be dismissed.

4. The Ld. D.R., on the other hand, relied on the order of AO and ground raised before the Bench.

5. We have heard the rival submissions of both the parties and perused the material on record. We find that the issue involved in the present case is squarely covered by the decision of the co-ordinate bench of the Tribunal both passed prior to and subsequent years to the current year in favour of the assessee. We are only referring to A.Y. 2007-08 order

dated 22.03.13 in ITA No.2551/M/2010 vide para 4 which as extracted as under:

> "4. We have carefully considered the rival submissions and perused the orders of the lower authorities and the orders of the Tribunal relied upon by the rival parties. We find that the reliance of the DR on the decision of the Tribunal in assessee's own case is misplaced inasmuch as during that period, the assessee has not started its insurance business. Therefore, provisions of Sec. 44 and in the first schedule would not be applicable in that year. However, for the year under consideration, we find that the assessee is in the insurance business therefore, the issue is squarely covered by the decision of the Tribunal in the case of ICICI Prudential Insurance Co. Ltd (supra). We find that the Tribunal has decided this issue at para-55 of its order which is as under:
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> > "We have heard the rival contentions. As briefly discussed while deciding the issue of taxing surplus, assessee is in life Insurance business and it 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, incomes in Shareholder's account are to be considered as arising out of Life insurance business only. Moreover 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."
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> *As* facts and issues are identical to the facts and issues in the case of ICICI Prudential Insurance Co. Ltd., (supra), respectfully following the decision of the Tribunal, appeal filed by the Revenue is dismissed."

6. As the facts and issues in the current year raised in ground No.1 is identical to one as has been decided by the co-ordinate bench of the Tribunal (supra), we, therefore, respectfully following the decision of the Tribunal in as stated above, uphold the order passed by the Ld. CIT(A) on this issue by dismissing the ground raised by the Revenue.

7. The issue raised in ground No.2 is against the direction of Ld. CIT(A) to AO to reduce the 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 by actuary using mathematical formulae and principles and, dividend income is not particularly included in these calculations.

8. The Ld. A.R., at the outset, submitted that the case of the assessee is covered by the decisions of the co-ordinate bench of the Tribunal in the earlier and subsequent years wherein identical issue has been decided in favour of the assessee and therefore the same should be decided in favour of the assessee by dismissing the ground raised by the Revenue. The Ld. A.R. filed copies of decisions of A.Y. 2007-08, 2008-09, 2011-12 & 2012-13 during the course of hearing.

9. The Ld. D.R., on the other hand, relied on the order of AO and grounds of appeal.

10. We have heard the rival submissions of both the parties and perused the material on record including the impugned order and the decisions of the co-ordinate benches of the Tribunal in assessee's own case in the earlier year and subsequent year. We find from the perusal of ITA No.2901/M/2010 for A.Y. 2007-08 that the similar issue has been decided by the co-ordinate bench of the Tribunal vide order dated 30.09.11. The relevant extracts are reproduced as under:

> "8. We find that in the case of Life Insurance Corporation of India vs. CIT it has been held that deduction claimed by Insurance Company, not specifically excluded u/s.44 Rule 2 of First Schedule of Income tax Act 1961 is allowable. Similarly, in the case of Lakshmi Insurance Co Ltd vs CIT it was held that exemption granted by notification u/s.16 of 1922 Act is available in the case of assessable profits of Insurance Companies determined under Rule 2B of schedule. In this case "the contention of the assessee before the IT authorities was that by virtue of a notification under s.60, interest on Mysore Darbar Securities was exempt from tax, and that the said amounts should not be included in the taxable surplus. The ITO accepted the said contention of the assessee and excluded the amounts in computing the taxable surplus. But, the CIT took the view that the said amounts should not be so excluded. According to him, the life insurance business is 6 class by itself, the profits of which are to be computed in accordance with the procedure laid down in the Schedule to the IT Act, and only the adjustments enumerated in the said Schedule are to be carried out and no other modification is to be made to the basis of computation of profits. His reasoning was that the income that is assessed in the case of life insurance business is neither the actual income nor the total income of the previous year, but what is charged to tax under s.*10(7) and the Schedule to the Act is a notional or conventional income, that as actual income is not to be brought under tax, the question of exclusion of the* interest on the securities of the Mysore Darbar does not arise, that in cases where r.2 (b) of the Schedule is applicable, the Schedule provides a method of finding out the amount which is to be the subject of tax in respect of profits of insurance business, and that the exemption granted by notification under s. 60 of the Act is not available in the case of assessable profits of insurance companies determined under r. 2(b) of the Schedule. In support of his view, he relied upon the decisions in IRC vs. Australian Mutual Provident Society (1947) 15 ITR (Suppl) 71 (HL), CIT vs. Western India Life Insurance Co Ltd (1949) 17 ITR 125 (PC) and CIT vs. B.B. & C,I. Railway Coop. Mutual Death Benefit Society (1949) 17 hR 509 (Bom)."

9. In the case of CIT vs. New India Assurance Co Ltd it has been held that for the purposes of calculating the capital gains in respect of compensation for acquisition of insurance business run by the assessee, the assessee is not bound by the formula laid down by the Insurance Act for adopting the market value of the cost of acquisition as on 1st Jan., 1954.

10. Sec. 44 provides that computation of income of Insurance companies under various heads should be as per the First Schedule. But what we are considering is an income falling under Chapter-Ill which is to be excluded from total income. We are of the opinion that under the scheme of Act, no income falling within the various clauses of Sec.10 of the Act is to be compulsorily excluded in computing the total income of the assessee and the provision of Sec.44 in relation to computation of profits and gains of business of insurance do not include incomes otherwise exempt u/s.10 (34). Therefore

the dividend income of Rs.6,78,13,292 is treated as exempt u/s. 10(34) of the Act has to be excluded from the computation of total income of the assessee.

11. Since the issue involved in the current year is identical to one as decided by the coordinate bench above, we therefore respectfully following the same dismiss the ground no. 2 raised by the Revenue and the order of Ld. CIT(A) is upheld on this issue.

12. The issue raised in ground No.3 is against the deletion of disallowance by Ld. CIT(A) as made by the AO under section 14A of the Act in accordance with rule 8D.

13. The Ld. A.R. submitted at the outset that issue is fully covered by the decision of the co-ordinate bench of the Tribunal in assessee's own case in A.Y. 2007-08, 2008-09, 2011-12 & 2012-13 in which the similar issue has been decided in favour of the assessee. The Ld. A.R. particularly referred to the decision of ITA No.2901/M/2010 for A.Y. 2007-

08 order dated 30.09.11.

14. The Ld. D.R., on the other hand, relied on the order of AO and grounds raised by the Revenue.

15. Having heard both the parties and after perusing the orders of the coordinate benches, we find that the identical issue was decided by the co-ordinate bench of the Tribunal in earlier and subsequent years. We specifically reproduce below the operative part of ITA No.2901/M/2010 for A.Y. 2007-08 as under:

"11. Ground no.2 is with regard to disallowance of sum of Rs.2,77,69,215/- in accordance with Rule 8D 2 Sec.14A is expenditure incurred for earning end dividend income. The CIT(A) held as follows:

> "At the outset it is clarified that the activity of annuity business is permitted business activity which can he undertaken separately and independently of insurance business and the disallowance being considered is only in respect of exempt income of this annuity business. The only objection taken against the disallowance made by Assessing Officer fs that Rule 8D goes beyond the authority given to CSDT by Section 14 A of the Income-tax Act. It is contended that the rule only detet772ines the notional cost of holding investments which may or may not yield any exempt income and such notional cost for holding investment has no relationship with the actual expenditure incurred by appellant. It has been accordingly contended that the disallowance made by Assessing Officer needs to be deleted I have perused die facts of the case. I find that the issue of disallowance u15.14 A has been considered by Honourable Mumbai PAT in several cases and it has been held that Rule SD Is perfectly justified and is required to be invoked in all cases of disallowance u1s.14A. It is accordingly held that Assessing Officer has rightly invoked Rule 80 for making the disallowance. The diallowance made by Assessing Officer is consequently confirmed and the ground of appeal is rejected."

12. Aggrieved the assessee is on appeal before us. In the case of Bajaj Alliance General Insurance Company Ltd vs Additional Commissioner of Income Tax 38 DTR 282 Pune, it has been held that Sec.14A is not applicable in the case of Insurance business, which is governed by specific provisions of 44 and Schedule 1. In the case of Reliance General Insurance Co Ltd vs Deputy Commissioner of Income Tax, Mumbai Bench, similar view has been taken. Similarly in the case of Birla Sunlife Insurance Co Ltd vs Additional Commissioner of Income Tax 1TA 2253/M/2006 has held as follows:

"We have carefully considered the submissions of the rival parties and perused the material available on record. We find merit in the plea of the Ld. Counsel for the assessee that the Assessing Officer after examining the relevant details as discussed in para 5.16 and 5.17 of the assessment order has disallowed the expenses of Rs. 30,18,496/- for earning dividend income, therefore, the plea taken by the Ld. DR that the issue may be set aside to the file of the Assessing Officer is devoid of any merit. This being so, and keeping in view that the Tribunal in Oriental Insurance Co Ltd vs. ACIT (2009) TIOL – 172 ITAT - DEL after discussing the identical issue at length has held that Sec. 44 provides for application of special provisions for computation of profits and gains of insurance business in accordance with Rule 5 of Schedule 1 and, therefore, it is not permissible to the Assessing Officer to travel beyond Sec.44 and Schedule-I and make disallowance by applying Sec. 14A of the Act. The above order has consistently been followed by the Tribunal in the above three cases relied on by the Ld. Counsel for the assessee. In the absence of any distinguishing feature brought on record by the Ld. DR we respectfully, following the consistent view of the Tribunal hold that it is not permissible to the Assessing Officer to travel beyond Sec.44 and Schedule-1 and make disallowance by applying Sec.14A of the Act and accordingly the disallowance of Rs.30,18,496 made by the Assessing Officer and sustained by the Ld. CIT(A) is deleted. The ground taken by the assessee is therefore, allowed."

Respectfully following the above decisions of the co-ordinate Benches, we delete the entire disallowance made under 14A amounting to Rs.2,77,69,215 is no expenditure is incurred for earning exemption dividend income."

16. Since the issue raised in the ground no 3 is similar to one as decided by the order of the tribunal as stated above we, therefore, following the same dismiss the ground raised by the Revenue.

17. The issue raised in ground No.4 is whether the Ld. CIT(A) is correct in upholding the provisions of chapter III of the Act pertaining to exempt income as per section 10 of the Act was available to the assessee despite the fact that computation of taxable income of the assessee(life insurance company) was governed by non-obstante provisions of section 44 of the Act which includes even income from annuity business being approved pension fund under the head income from other

sources to be dealt with as per the rules contained in the First Schedule of the IT Act.

18. The Ld. A.R., at the outset, submitted that the identical issue has been decided by the co-ordinate bench of the Tribunal in assessee's own case for A.Y. 2011-12 in ITA No.6223/M/2014 vide order dated 20.12.16 vide para 6. The Ld. A.R. prayed before the Bench that following the said order of the co-ordinate bench of the Tribunal, the ground raised by the Revenue deserved to be dismissed.

19. The Ld. D.R., on the other hand, relied on the order of AO and ground raised by the Revenue.

20. We have heard the rival submissions of both the parties and perused the material on record including the decision of ITAT. We find that the identical issue was involved in ITA No.6223/M/2014 for A.Y. 2011-12 and the co-ordinate bench of the Tribunal has decided the same in favour of the assessee by observing and holding as under:

> "6. The assessee incurred loss/deficit of Rs.8.53 crores in 'Annuity Business' and claimed set off of the same against taxable surplus by contending that the provisions of Section 10(23AAB) of the act are applicable only if there is a surplus and not in case of deficit. Rejecting the same, AO did not allow the set off which was assailed successfully before CIT(A), who relied upon assessee's own case for earlier year. Our attention is drawn to the judgment of Hon'ble Bombay High Court in CIT vs. LIC of India Ltd. 338 ITR 212 where in similar situation, the set-off of the same has been allowed by the jurisdictional court. Respectfully following the same, we dismiss Ground No.6 of revenue's appeal."

Since the issue involved in the ground no 4 is identical to one as decided by the tribunal above, we are inclined to dismiss the ground raised by the revenue.

21. In the result appeal of the Revenue in ITA No.270/M/2010 is dismissed.

ITA No.271/M/2014

22. The issue raised in ground Nos.1 to 4 of this appeal are identical to ones as raised by the Revenue in ITA No.270/M/2014 which has been decided by us (supra) vide para Nos.2 to 22 wherein we have dismissed all the 4 grounds on the ground by holding that all these are covered in favour of the same by orders of the Tribunal. Therefore, our finding in the said 4 grounds in ITA No.270;/M/2014 would, mutatis mutandis, apply to these grounds as well. Accordingly, ground Nos.1 to 4 raised by the Revenue in this appeal are dismissed.

23. The issue raised by the Revenue in ground No.5 is against the order of Ld. CIT(A) not appreciating that negative reserve has an impact of reducing the taxable surplus as per Form-I and therefore, corresponding adjustment for negative reserve needs to be made to arrive at taxable surplus.

24. The Ld. A.R. submitted that the identical issue has been decided by the co-ordinate bench of the Tribunal in assessee's own case in A.Y. 2011-12 in ITA No.6223/M/2014. The Ld. A.R. prayed that the ground raised by the Revenue deserved to be dismissed on the basis of the decision of co-ordinate bench of the Tribunal in the case as cited above.

25. The Ld. D.R., on the other hand, relied on the order of AO and ground raised by the Revenue.

26. After hearing both the parties and perusing the material on record including the decision of the co-ordinate bench of the Tribunal, we find that the identical issue has been decided in favour of the assessee by the co-ordinate bench of the Tribunal in ITA No.6223/M/2014 for A.Y. 2011-12 vide order dated 20.12.16. The relevant para is extracted below:

> "7. The last ground of revenue's appeal assails deletion of addition on account of Negative reserve of Rs.399.05 crores by CIT(A). The AO added the same in taxable surplus on the premises that negative reserve means the insurance contract under consideration does not warrant any provision and in fact, is an asset. Relying upon Tribunal judgment, CIT(A) deleted the same. The Ld. AR has supported the stand of CIT(A) and drawn our attention to various Tribunal decision in the case of companies carrying on insurance business, which we have perused. We find that Tribunal in ITA No. 6854 & others / Mum/2010 order dated 14/09/2012 titled as ICICI Prudential Insurance Co. Ltd. Vs. ACIT has concluded that such negative reserves do not give rise to distributable surplus. Similar view has been expressed in bunch of appeals ITA No. 2203 & Others titled as HDFC Standard LIC Ltd. Vs. DCIT order dated 20/09/2013, copy of which has been placed before us. Respectfully following the settled position, we are inclined to dismiss this ground of revenue's appeal."

27. The facts in the present case being identical to one as decided by the Tribunal, therefore, we respectfully following the decision of the Tribunal, dismiss the ground raised by the Revenue.

28. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open court on 11.06.2018.

Sd/-	**Sd/-**
(C.N. Prasad)	**(Rajesh Kumar)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dated: 11.06.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.