



IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.2836/Mum/2017
(Assessment Year : 2009-10)

Dy. Commissioner of Income Tax
Circle-9(3)(2), Mumbai Appellant

v/s

Future Generali India Life
Insurance Ltd.
Knowledge House, Shayam Nagar
Off. Jogeshwari Vikhroli Link Road Respondent
Jogeshwari (E), Mumbai 400 060
PAN - AABCF0190Q

ITA no.2837/Mum/2017
(Assessment Year : 2012-13)

Dy. Commissioner of Income Tax
Circle-9(3)(2), Mumbai Appellant

v/s

Future Generali India Life
Insurance Ltd.
Knowledge House, Shayam Nagar
Off. Jogeshwari Vikhroli Link Road Respondent
Jogeshwari (E), Mumbai 400 060
PAN - AABCF0190Q

Revenue by : Shri Abhijit Patankar
Assessee by : Shri Dinkle Hariya

Date of Hearing - 09.08.2018

Date of Order - 31.08.2018

ORDER**PER SAKTIJIT DEY, J.M.**

Aforesaid appeals have been filed by the Revenue challenging two separate orders, both dated 20th January 2017, passed by the learned Commissioner (Appeals)-16, Mumbai, for the assessment years 2009-10 and 2012-13.

2. Grounds raised by the Revenue are common and identically worded in both the appeals and read as under:-

i) Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) was correct in concluding that transfer from share holder account to policy holder's account and shown as part of surplus in the actuarial valuation was only transfer of capital asset and not taxable u/s 44 of the Act r/w rule 2 of the First Schedule?

ii) Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) was correct in allowing the relief to the assessee by holding that surplus available both in Policy Holders Account and Share Holder's Account is to be consolidated and only net surplus is to be taxed as income from insurance business?

iii) Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) was justified in deleting the addition made by the Assessing Officer on account of loss from pension fund ignoring settled position of law that income includes loss and that income from pension fund does not form part of the total income of the assessee corporation u/s 10(23AAB) of the Act?

iv) Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) was justified in ignoring the fact that the non-obstante clause in section 44 is not extended to section 10(23AAB) of the Act?

3. Grounds no.1 and 2 are in relation to the taxability of profits of life insurance business.

4. Brief facts are, the assessee is engaged in the business of life insurance. The assessee filed its return of income for the impugned assessment years declaring loss. During the assessment proceedings, the Assessing Officer while examining the computation of profit of life insurance business noted that it has to be assessed as per section 44 of the Income Tax Act, 1961 (for short "*the Act*"). The Assessing Officer observed that as per the said provision, while computing the taxable income of life insurance companies, the provisions contained under section 28 to 43B of the Act would not apply. Therefore, he called upon the assessee to submit the actuarial valuation report of the relevant financial years. In response, the assessee submitted the required details as per which the surplus as on 31st March 2009, was ₹ 2,75,81,110, and as on 31st March 2012, was ₹ 11,39,67,000. Since, the assessee had not offered the surpluses in the computation of income, the Assessing Officer called upon the assessee to explain why they should not be added to the total income under section 44 of the Act. Though, the assessee objected to the proposed additions by making elaborate submissions, however, the Assessing Officer rejecting the submissions of the assessee added back the surplus of ₹

2,75,81,110 and ₹ 11,39,67,000 in the assessment year 2009–10 and 2012–13 respectively. The assessee challenged the aforesaid additions by filing appeals before the first appellate authority.

5. The learned Commissioner (Appeals) following the decisions of the Tribunal in case of ICICI Prudential Insurance Co. Ltd. v/s ACIT, ITA no.6854/Mum./2010, etc., and in case of SBI Life Insurance Co. Ltd. v/s JCIT, ITA no.3800/Mum./2009, etc., dated 23rd May 2014 and also taking note of the fact that in assessee's own case in assessment years 2010–11 and 2011–12 he has deleted such additions, followed the same and deleted the additions in the impugned assessment years as well.

6. The learned Authorised Representative, at the outset, submitted that the issue has been decided in favour of the assessee by the Tribunal in assessee's own case for assessment year 2010–11 and 2011–12. In this context, the learned Authorised Representative furnished copies of the orders of the Tribunal in the Bench.

7. The learned Departmental Representative, though, agreed that the issue in dispute is covered by the decision of the Tribunal, however, he relied upon the observations of the Assessing Officer.

8. We have considered rival submissions and perused materials on record. We find that identical additions relating to net surplus as per actuarial valuation was made by the Assessing Officer in assessment years 2010-11 and 2011-12. However, the additions made by the Assessing Officer were deleted by the learned Commissioner (Appeals). While deciding the appeal preferred by the Revenue on the issue in assessment year 2011-12 in ITA no.4373/Mum./2013, dated 30th March 2017, the Tribunal upheld the decision of the learned Commissioner (Appeals) with the following observations:-

"6. We have heard the rival submissions and perused the relevant material on record. We begin with 1st, 2nd & 3rd ground of appeal as they address a common issue. We find that the Hon'ble Bombay High Court in the case of ICICI Prudential Insurance Co. Ltd. (supra) has held that "where assessee was carrying on life insurance business and Tribunal following a decision of Supreme Court, while determining assessee's income under section 44, had taken into consideration total surplus as arrived at by actuarial valuation and further held that income from shareholders account was also to be taxed as a part of life insurance business, there was no substantial question of law arising for consideration". Reference was made to the decision in LIC of India vs. CIT (1964) 51 ITR 773, wherein the Hon'ble Supreme Court has held that the Assessing Officer has no power to modify the account after actuarial valuation is done.

The issues in 1st, 2nd & 3rd ground of appeal in the instant case are squarely covered by the above judgement. Respectfully following the same, we dismiss 1st, 2nd & 3rd ground of appeal filed by the revenue."

9. The same view was reiterated by the co-ordinate bench while deciding Revenue's appeal in assessee's own case for assessment year 2010-11 vide ITA no.4038/Mum./2015, dated 23rd June 2017. There

being no difference in facts brought to our notice by the learned Departmental Representative, respectfully following the consistent view of the Tribunal on the disputed issue in assessee's own case, we uphold the order of the learned Commissioner (Appeals) on the issue. Grounds raised are dismissed.

10. Ground no.3 and 4 are against deletion of disallowance of loss from pension fund.

11. Brief facts are, during the assessment proceedings, the Assessing Officer noticed that the assessee in the computation of income has claimed exemption of an amount of ₹ 20,16,38,543 under section 10(23AAB) of the Act on account of surplus / deficit pension fund. Similarly, he found that in assessment year 2012-13, the assessee has claimed exemption of an amount of ₹ 4,63,95,291 under section 10(23AAB) of the Act on account of surplus / deficit pension fund. When the Assessing Officer called upon the assessee to explain why such exemption claimed should not be disallowed, the assessee relying upon the decision of the Hon'ble Jurisdictional High Court in case of Life Insurance Corporation of India Ltd. justified its claim. By observing that the decision of the Hon'ble Jurisdictional High Court in case of Life Insurance Corporation of India Ltd. was challenged by the Department before the Hon'ble Supreme Court by filing Special Leave

Petition, the Assessing Officer disallowed the exemption claimed by the assessee under section 10(23AAB) of the Act. Being aggrieved of such disallowance, the assessee preferred appeal before the first appellate authority.

12. The learned Commissioner (Appeals) taking note of the fact that similar disallowance made in assessee's own case for assessment year 2010-11 and 2011-12, was deleted by him, followed the same and deleted the disallowance made in the impugned assessment year.

13. The learned Departmental Representative reiterated the observations of the Assessing Officer.

14. The learned Authorised Representative while supporting the decision of the learned Commissioner (Appeals) submitted that the issue has been decided in favour of the assessee by the Tribunal in assessment year 2010-11 and 2011-12.

15. We have considered rival submissions and perused materials on record. At the outset, we must observe that merely because the Revenue has filed SLP against the decision of the Hon'ble Jurisdictional High Court in case of Life Insurance Corporation Ltd. cannot be valid reason for the Assessing Officer in not following the decision of the Hon'ble Jurisdictional High Court which is binding on him. Be that as it

may, we have noticed that while deciding identical issue raised by the Revenue in assessee's own case for assessment year 2011-12, the Tribunal in the order referred to above, has held as under:-

"6.1 Now we turn to 4th, 5th, 6th and 7th ground of appeal as they address a common issue. In the case of Life Insurance Corporation of India Ltd. (supra), the assessee was engaged in the life insurance business. In its return of income for the A.Y. 2002-03, it computed actuarial valuation surplus by excluding the provision for reserve on account of solvency margin amounting to Rs. 3,500 crores and loss in Jeevan Suraksha Fund. The Assessing Officer disallowed the claim of the assessee and passed the assessment order by adding the amount on account of the provision for solvency margin and loss from Jeevan Suraksha Fund, inter alia, on the ground that the provision for solvency margin was not an ascertained liability and that income from Jeevan Suraksha Fund being exempt u/s 10(23AAB), the loss incurred from the said fund could not be adjusted against the taxable income. On appeal, the Commissioner (Appeals) confirmed the additions made by the AO. On second appeal, the Tribunal deleted the said addition. The revenue filed appeal against the order of the Tribunal before the High Court. The Hon'ble High Court held that (i) amount set apart by insurance company towards solvency margin as per the direction given by IRDA is to be excluded while computing actuarial valuation surplus, and (ii) pension fund like Jeevan Suraksha Fund would continue to be governed by provisions of section 44 irrespective of the fact that income from such fund is exempted, or not and, therefore, even after insertion of section 10(23AAB), loss incurred from pension fund like Jeevan Suraksha Fund has to be excluded while determining actuarial valuation surplus from insurance business u/s 44 of the Act.

We find that the issues in the above grounds of appeal are squarely covered by the above judgement of the Hon'ble Bombay High Court. We follow the judgement and dismiss 4th, 5th, 6th and 7th ground of appeal filed by the revenue."

16. The same view was reiterated by the Co-ordinate Bench while deciding the Revenue's appeal for assessment year 2010-11 (supra). There being no difference in fact pointed out by the learned

Departmental Representative, respectfully following the consistent view of the co-ordinate bench in assessee's own case we uphold the decision of the learned Commissioner (Appeals) on the disputed issue. Grounds raised are dismissed.

17. In the result, Revenue's appeals are dismissed.

Order pronounced in the open Court on 31.08.2018

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 31.08.2018

Copy of the order forwarded to:

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

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai