

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SHRI BEENA A PILLAI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3855/Del/2014
(Assessment Year: 2011-12)

DCIT, Central Circle-6, New Delhi	Vs.	Sahara India Life Insurance Company Ltd, 1-Kapoorthala Complex, Aliganj, Lucknow PAN: AAHCS1334B
(Appellant)		(Respondent)

Revenue by :	Smt Naina Sain Kapil, Sr. DR
Assessee by:	Shri Aditya Vohra, Adv Shri Arpit Goyal, CA
Date of Hearing	21/01/2019
Date of pronouncement	25/02/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the Deputy Commissioner Of Income Tax, Central circle – 6, New Delhi (the learned Assessing Officer, AO) against the order of the Id Commissioner Of Income Tax (Appeals) [the learned CIT(A)] -1, New Delhi dated 11.04.2013 for the Assessment Year 2011-12.
2. The revenue has raised the following grounds of appeal:-
 - “1. *The Id CIT(A) is not correct in law and facts.*
 2. *On the facts and circumstances of the case the Id CIT(A) has erred in deleting the addition of Rs. 1,75,56,702/- made by the AO on account of disallowance of amortization of investment.*”
3. The assessee is a company carrying on the business of life insurance, filed its return of income on 30/9/2011 declaring taxable income of INR 322427645/- , Assessment under section 143 (3) was passed on 31/1/2014 determining the total taxable income of Rs. 339984347/- . Only addition was made of INR 17556702/- being disallowance of amortization of investment. The assessee aggrieved with the order of the learned assessing Officer preferred an appeal before the learned Commissioner of Income Tax

Appeals – 1 who passed an order on 11/4/2013 deleting the above disallowance. Aggrieved with this order, the learned assessing officer has preferred this appeal.

4. The only solitary ground of appeal raised in is that the learned Commissioner of Income Tax Appeal has erred in deleting the addition of INR 17556702/- made by the learned Assessing Officer because of disallowance of amortization of investment.
5. The learned departmental representative supported the order of the learned assessing officer. It was submitted that the provisions of section 44 of the income tax act does not provide that every income whether from any of the source of the income is covered under that section. It was stated that the income of the assessee from investment activities are not covered under section 44 of the income tax act.
6. The learned authorised representative submitted that the issue is squarely covered in favour of the assessee by the decision of the coordinate bench in assessee's own case for assessment year 2005 – 06 to assessment year 2010 – 11 vide order dated 31/10/2018. He submitted that assessee is an insurance company that is governed by the provisions of section 44 and schedule 1 to the income tax act, therefore the whole income of the assessee is chargeable to tax under the provisions of section 44 of the income tax act only. He submitted that the assessee according to the direction of IRDA makes investment, which is part of the insurance business of the company. The amortization is also because of the investment directed by IRDA. He therefore submitted that there could not be a separate adjustment to the income of insurance business. He stated that separately claiming deduction of exempt income is not falling under the exclusion covered under section 44 of the income tax act and therefore both cannot be compared. He further referred to the decision of the honourable Bombay High Court in CIT vs ICICI Prudential insurance Co Ltd 73 taxmann.com 201 (Bom) to support his contention. He further referred to the provisions of section 44 of the income tax act and stated that it provides that Notwithstanding anything to the contrary contained in the provisions of this Act relating to the computation of income chargeable under the head "Interest on securities", "Income from house property", "Capital gains" or "Income from other

sources", or in section 199 or in sections 28 to ⁵⁷[43B], the profits and gains of any business of insurance, including any such business carried on by a mutual insurance company or by a co-operative society, shall be computed in accordance with the rules contained in the First Schedule. He therefore submitted that the appeal of the revenue deserves to be dismissed.

7. We have carefully considered the rival contention and perused the orders of the lower authorities. The issue involved in the appeal is during the year the appellant has written off a sum of INR 1 7556702/- as amortized charge against the earnings from securities. The accounts of the assessee have been prepared in accordance with The Insurance Act, 1938 and as per the said account the profit of INR 1 63939000/- as appearing as per profit and loss account and INR 212325000/- surpluses appearing in the policyholders account in accordance with the valuation made as actuarial. The learned assessing officer noted that the investment activity of the appellant' is a separate and distinguished business from life insurance business carried on by the appellant and accordingly the same cannot be covered by the provisions of section 44 of the income tax act 1961. The claim of the assessee is that The Insurance Regulatory Development Authority Regulations primarily govern its business activities and the income of the assessee carrying on life insurance business has to be computed in accordance with the provisions of section 44 of the income tax act read with the 1st schedule of the act. It is fact that as per IRDA regulations the insurance company cannot carry on any other business other than insurance business. However, the learned assessing officer was of the view that the provisions of insurance regulatory development act and the first schedule of the income tax act governs the insurance activities of the assessee and not the investment activities of the assessee. Therefore, the learned AO after considering the provisions of section 44 of the income tax act and the rules in the first schedule of the act held that investment activity of the assessee is separate and distinguished from the life insurance business carried on by the assessee company. Therefore same is not covered u/s 44 of the income tax act 1961 the learned assessing officer further supported his argument stating that when the assessee has claimed INR 1 075675/- as exempt under section 10 (23AAB) and Rs. 55524591/-

income as deemed dividend income exempt under section 10 (34) of the income tax act the assessee cannot claim that its investment business is considered under section 44 of the income tax act. The identical issue has been covered by the coordinate bench in assessee's own case for assessment year 2005 – 06 to assessment year 2010 – 11 vide order dated 31/10/2018. As per para number 5.2 of the order of the coordinate bench it has been held that it is a settled law that section 44 of the act overrides other provisions of the act for the purposes of the competition of profits and gains from the life insurance business. In all those years, any adjustment made to the total income of the assessee was negated. Further as per para number 5 of the order of the honourable Bombay High Court in 73 taxmann.com 201 in case of Commissioner of income tax vs ICICI Prudential insurance Co Ltd the honourable High Court has held that that income on shareholders account has to be taxed under section 44 of the income tax act whereas the claim of the revenue was that it should be taxed as income from other sources. The honourable High Court has held that in terms of section 44 of the act such income is to be taxed in accordance with the first schedule as provided therein. He also it is not the case of the revenue that assessee is carrying on any separate business other than life insurance business. In view of this we uphold the order of the learned CIT – A and dismiss the solitary ground of appeal of the revenue.

8. Accordingly, appeal of the revenue is dismissed.

Order pronounced in the open court on 25/02/2019.

-Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 25/02/2019
Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi