

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT  
&  
SHRI BHAVNESH SAINI, JUDICIAL MEMBER**

**ITA No. 1162/Del/2016  
Assessment Year: 2012-13**

ACIT Cent. Circle-1 New Delhi.	vs	Sahara India Life Insurance Co. Ltd. R/o 1 Kapoorthala Complex, Aliganj, Lucknow.
		<b>PAN No. AAHCS1334B</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Revenue by</b>	<b>Sh. J.K. Mishra, CIT DR</b>
<b>Assessee by</b>	<b>Adity Vohra, Adv. Sh. Arpit Goyal, CA</b>

<b>Date of Hearing</b>	<b>12.04.2019</b>
<b>Date of Pronouncement</b>	<b>16.04.2019</b>

**ORDER**

**PER SHRI BHAVNESH SAINI, J.M.**

This appeal by Revenue has been directed against the order of Ld. CIT(Appeals)-23, New Delhi dated 21.12.2012 for AY 2012-13 on the following grounds:

1. *"The order of Ld. CIT(A) is not correct in law and on facts.*
2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs.*

*1,60,24,438/- made by the AO on account of 'Amortization of Investment'.*

*3. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 12,00,000/- made by the AO on account of 'Payment of penalty to IRDA'."*

2. We have heard Ld. Representatives of both the parties and perused the orders of the authorities below.

3. The assessee has objected to the disallowance of write off of Rs. 1,60,24,438/- representing the amortized portion of the investments. The submissions of the assessee are noted in the impugned order. The assessee also pleaded that the CIT(A) has deleted the similar disallowances made in earlier years for AY 2011-12 vide order dated 11.4.2013 and similar addition made in earlier years from AYs 2006-07 to 2010-11 have also been deleted by the Ld. CIT(A). The assessee also objected to the disallowance of Rs. 12 lakhs on account of penalty levied by IRDA. It was submitted before Ld. CIT(A) that AO has failed to appreciate that the provisions of section 28 to 43B are not applicable in the case of Insurance Company, therefore, addition shall have to be deleted.

4. The Ld. CIT(A) on both the issues following his appellate orders for earlier years deleted the similar additions. His findings in para 4.2 to 4.2.4 of the impugned order are reproduced as under:

*"4.2 The 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> grounds relate to addition of Rs. 1,60,24,438.70 on account of amortized portion of*

*investment written off in accordance with the Insurance Act and IRDA guidelines in terms of the provisions of Section 44 of the Act read with First Schedule, and the grounds 5(a) and 5(b) relate to addition of Rs. 12 lakh by way of disallowance of penalty paid to IRDA though the assessment of an insurance company has to be made in accordance with the provisions of section 44 of the Income Tax Act, 1961 and the provisions of section 28 to 43B of the Act are not applicable in the case of Life Insurance Business. Since these grounds relate to assessment of Life Insurance business these are taken together.*

*4.2.2 The appellant company is carrying on business of life insurance and is duly registered and approved by IRDA. The appellant company is governed by the Insurance Act, 1938 and the income of company has to be computed in accordance with the provisions of section 44 read with First Schedule of Income Tax Act, 1961 and the provisions of sections 28 to 43B of the Act do not apply to this business. Accordingly, the investments of the appellant company are to be made as prescribed under the Insurance Act, 1938 one of the mode of investments being securities. The accounts of the appellant company has to be prepared as per IRDA guidelines (Preparation of financial statements and auditor's report of insurance companies Regulations 2002) and at the time of purchase of the security the excess amount paid over and above the face value is amortized and the same is written off over the periodicity of the security and the said security is considered as "held to maturity". The accounts of the appellant company have been prepared in accordance with the Insurance Act, 1938 and the profits of Rs. 13,89,36,728.19 as per profit and loss account (Shareholders accounts) and Rs. 22,05,74,467.37 surplus appearing in the Policyholders account in accordance with actuarial Valuation worked out, and during the year the appellant has written off a sum of Rs. 1,60,24,438/- as amortized charge against the earnings from securities.*

4.2.3 *The AO holding that the investment activity of the appellant is separate and distinguished from life insurance business carried on by the appellant company rejected the claim of the appellant. The appellant has distinguished the judgment in Vijaya Bank Ltd. vs. CIT reported in 187 ITR 541 since the judgment of the Hon'ble Supreme Court in case of Vijaya Bank Ltd. was with reference to treatment of interest receivable on the security vis-à-vis its break-up into pre-acquisition period and post-acquisition period and the issue regarding amortized portion of investment "held to maturity" was never an issue before the Hon'ble Supreme Court in the case. The appellant has relied on the judgments in New India Assurance Company Ltd. vs. Addl. CIT 12 Taxman.com 465 (Mum.), CIT vs. Oriental Insurance Company Limited 260 ITR 91 (Del), Bajaj Allianz General Insurance Co. Ltd. Vs. Addl. CIT 130 TTJ 398 (Pune) and that of the Hon'ble Pune Tribunal in the case of Oriental Insurance Co. Ltd. vs. ACIT 130 TTJ 338 (Del.).*

4.2.4 *On similar facts my Ld. Predecessor in the case of the appellant in AYs 2006-07 to 2011-12 in Appeal Nos. 136 and 664/09-10, 236/10-11, 398/11-12, 157 and 751/13-14 has decided the issue in favour of the appellant in view of the fact that the provisions of sections 28 to 43 of the Act are not applicable to the case of the appellant where the accounts are to be prepared in accordance with provisions of section 44 read with First Schedule of Income Tax Act, 1961 and IRDA guidelines (Preparation of financial statements and auditor's report of insurance companies Regulations 2002). Following these decisions both the additions made are accordingly deleted."*

5. Ld. Counsel for assessee at the outset, submitted that similar issues have been considered by ITAT Delhi 'A' Bench in the case of the same assessee for AY 2004-05 to AY 2010-11 vide order dated 31.10.2018 in which it was held that "there is no reason to

interfere with the directions of the Ld. CIT(A) in all the captioned years and we uphold his directions that the income of the assessee should be computed in accordance with the provisions of section 44 of the Act. Accordingly, we dismiss the grounds raised by the Department in all the six appeals”. He has further submitted that the same order dated 31.10.2018 in the case of the assessee has been followed by the Tribunal in the case of the assessee for AY 2005-06 vide order dated 27.02.2019 and Departmental appeal has been dismissed. He has, therefore, submitted that both the issues are covered by earlier orders of the Tribunal above. Copies of the same orders are filed in the Paper Book.

6. Ld. DR also stated that both the issues are covered in favour of the assessee by above orders of the Tribunal.

7. Considering the facts of the case, in the light of the submissions of the parties and earlier orders of the Tribunal, we are of the view that both the issues are covered in favour of the assessee by above orders of the Tribunal in which it was held that income of the assessee should be computed in accordance with section 44 of the Act. We, therefore, do not find any merit in the Departmental appeal. The same is accordingly dismissed.

Order pronounced in the open Court.

Sd/-  
**(G.D. AGRAWAL)**  
**VICE PRESIDENT**

Dated: 12/04/2019

Sd/-  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

\*Kavita Arora

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	12/04/2019
Date on which the typed draft is placed before the dictating Member	16/04/19
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	12/4
Date on which the fair order comes back to the Sr. PS/PS	16/4
Date on which the final order is uploaded on the website of ITAT	16/4
Date on which the file goes to the Bench Clerk	16/4
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

