

**आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

**आयकर अपील सं./ ITAs No. 70 & 71/Mum/2018**

(निर्धारण वर्ष / Assessment Years 2012-13 & 2013-14)

**आयकर अपील सं./ ITA No. 6948/Mum/2017**

(निर्धारण वर्ष / Assessment Year 2014-15)

The Dy. Commissioner of Income Tax, Cir.6(3)(1),R.No.506, 5th Floor, Aaykar Bhavan, MK Road, Mumbai 400 020	Vs.	IDBI Federal Life Insurance Company P. Ltd. 1st Flr.Tradeview, Oasis Complex, Kamala City, P.B.Marg,Lower Parel (W), Mumbai 400 013
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी/ Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AABCI6227M</b>		

**आयकर अपील सं./ ITA No. 1044 & 1045/Mum/2018**

(निर्धारण वर्ष / Assessment Year 2012-13 & 2013-14)

**आयकर अपील सं./ ITA No. 6970/Mum/2017**

(निर्धारण वर्ष / Assessment Year 2014-15)

IDBI Federal Life Insurance Company P. Ltd. 1st FLr.,Tradeview, Oasis Complex, Kamala City, P.B.Marg, Lower Parel (W), Mumbai 400 013	Vs.	The Dy. Commissioner of Income Tax, Cir.6(3)(1), R.No.506, 5th Floor, Aaykar Bhavan, MK Road, Mumbai 400 020
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी/ Respondent)</b>

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri Manoj Kumar Singh, DR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Ms. Aarati Vissanji, AR

सुनवाई की तारीख / <b>Date of hearing:</b>	05.07.2019
घोषणा की तारीख / <b>Date of pronouncement :</b>	24.07.2019



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## आदेश / O R D E R

महावीर सिंह, न्यायिक सदस्य/  
PER MAHAVIR SINGH, JM:

The captioned are a group of six appeals, three each by the assessee and the Revenue relating to assessment years 2012-13 to 2014-15. Since the appeals relate to the same assessee and involve common issues, they have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

2. All the appeals are directed against separate orders passed by CIT(A)-12, Mumbai dated 13/10/2017 for assessment years 2012-13 and 2013-14 and dated 21/09/2017 for assessment year 2014-15, which in turn arise out of orders passed by Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short the Act) dated 25/03/2015 and 31/03/2016. the issues are common in all the three assessment years, the cross appeals of the Revenue and the assessee for assessment year 2012-13, being ITA No.70/Mum/2018 & 1044/Mum/2018 respectively are taken up as the lead appeals.

ITA NO.70/MUM/2018 & 1044/MUM/2018:

3. The first issue in the appeal of Revenue is against the order of CIT(A) allowing adjustment from the actuarial valuation relying on the decision of ITAT in the case of ICICI Prudential Life Insurance Co. Ltd. Vs. ACIT, (2013) 140 ITD 41 (Mum). For this, the Revenue has raised the following Ground of appeal: -



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*“1. On the facts and in the circumstances of the case and in Law the Ld.CIT(A) erred, in relying on the order of ITAT in the case of ICICI Prudential Life Insurance CO. Ltd. for earlier years and in the case of IDBI Federal Life Insurance CO. Ltd. for A.Y. 2009-10 and 2010-11 respectively, in interpreting the provisions of Section 44 of the I.T, Act read with Rule 2 of the First Schedule along with provisions- of Insurance Act 1938, Insurance Regulatory and Development Authority Act 1999 and regulations there under and accordingly allowing adjustment from the 'surplus' worked as per "actuarial valuation" [and as shown by the assessee in Form-I] in violation of the ratio of the Apex Court in the case of LIC vs CIT 51 ITR 778 without appreciating the fact that these decisions are not accepted by the Department and further appeals have been filed.”*

4. Briefly stated, the facts of the case are that the assessee company is engaged in the business of life insurance and filed its return of income for assessment year 2012-13 declaring a loss of Rs.83,17,14,360/- on account life insurance business. The AO noted that the assessee has aggregated the surplus/deficit of policy holders account and share holders account in order to arrive at surplus/deficit in view of section 44 of the Act r.w. Rule 2 of the First Schedule. The AO noted the computation of income/loss, which is reproduced in the assessment order as well in the order of the CIT(A). The assessee disclosed the surplus at Nil in policy holders account, whereas deficit of Rs.69.86 crores in share holders account. After aggregating both,



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assessee arrived a deficit of Rs.69.86 crores and the same was considered as profit and gains of the insurance business as per section 44 of the Act r.w. Rule 2 of the First Schedule. The assessee claimed exemption of dividend income of Rs.12.70 crores and pension business income of Rs.60.00 cores included therein under the provisions of section 10(34) and 10(23AAB) of the Act. Accordingly, the assessee worked out the loss at Rs.83.17 crores. According to the AO, the assessee is not following the principle of the provisions of section 44 of the Act. According to the AO as per section 44 of the Act, the profits and gains of the life insurance business shall be computed in accordance with Rule-2 contained in First Schedule of the Act. Accordingly, the AO noted that as per Rule-2 of the First Schedule, which is relevant for the business of life insurance carried on by the assessee, which provides that profits and gain of life insurance business shall be taken to be the average value of the surplus arriving at by adjusting the surplus or deficit disclosed by actuarial valuation made in accordance with the Insurance Act, 1938 in respect of the less inter valuation period ending before the commencement of the assessment year so as to include it from any surplus/deficit included therein which was made in any inter valuation period. The AO carried out the entire exercise consistently from the earlier years. Accordingly, the AO did not accept the computation of profit and gains from the life insurance business made by the assessee. Aggrieved, the assessee preferred an appeal before the CIT(A).

5. The CIT(A) relying on the decision of ITAT in the case of ICICI Prudential Life Insurance Co. Ltd.(supra) allowed the claim of the



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assessee. The CIT(A) also relied upon the ITAT order dated 09/08/2017 in assessee's own case for assessment years 2009-10 & 2010-11 in ITA Nos. 6282/Mum/2012, 6281/Mum/2012, 5567/Mum/2014 (assessee's appeal) & ITA Nos. 6306/Mum/2012 & 5378/Mum/2014 (Revenues appeal). Accordingly, the CIT(A) directed the AO to compute the surplus/deficit in share holders account without adding back the amount of Rs.122.41 crores that has been transferred from the share holders account to the policy holders account. Aggrieved, now the Revenue is in appeal before the Tribunal.

6. We have heard the rival submissions and gone through the facts and circumstances of the case. We noted that this issue is squarely covered by the decision of ITAT in assessee's own case for assessment years 2009-10 and 2010-11 in ITA Nos. 6282/Mum/2012, 6281/Mum/2012, 5567/Mum/2014 (assessee's appeal) & ITA Nos. 6306/Mum/2012 & 5378/Mum/2014 (Revenues appeal) and for assessment year 2008-09 vide ITA Nos.1562/Mum/2013 &1488/Mum/2013. We have noted that the Tribunal is taking a consistent view in all the cases of life insurance business and allowing adjustment from surplus arrived at as per actuarial valuation while interpreting section 44 of the Act r.w. Rule -2 of the First Schedule along with the provisions of Insurance Act 1938, Insurance Regulatory and Development Authority Act 1999 and regulations there under. As the issue is squarely covered in favour of the assessee consistently, the Ld. CIT DR could not point out any distinguishing facts in the present case. Hence, we affirm the order of the CIT(A) and dismiss this issue of Revenue's appeal.



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7. The second issue in this appeal of Revenue is against the order of CIT(A) in holding that transfer between share holders account and policy holders account is tax neutral and not taxable u/s. 44 of the Act r.w. Rule-2 of the First Schedule. For this the Revenue has raised the following Ground:-

*“2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in giving relief to the assessee following the decision of Hon'ble ITAT in the case of ICICI Prudential Life Insurance CO. Ltd. for the earlier years and in the case of IDBI Federal Life Insurance CO. Ltd. for A.Y. 2009-10 and 2010-11 respectively, in concluding that transfer between shareholders Account and Policy Holders Account is tax neutral and not taxable u/s 44 of the Act r.w. Rule 2 of the First Schedule, without appreciating the fact that this decision of the ITAT were not accepted by the department and further appeals have been filed.”*

8. We have heard the rival contentions on this and gone through the facts and circumstances of the case. We noted that this issue is also connected with the first issue and the Tribunal has already in assessee's own case for assessment years 2009-10 and 2010-11 in ITA Nos. 6282/Mum/2012, 6281/Mum/2012, 5567/Mum/2014 (assessee's appeal) & ITA Nos. 6306/Mum/2012 & 5378/Mum/2014 (Revenues appeal) and for assessment year 2008-09 vide ITA Nos.1562/Mum/2013 &1488/Mum/2013 has decided the issue , wherein the Tribunal has already concluded that transfer between



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share holders account and policy holders account is tax neutral and not taxable u/s. 44 of the Act r.w. Rule-2 of the First Schedule. It was the contention of the Revenue that the Revenue has not accepted the decision of the ITAT and further appeals have been filed before the Hon'ble High Court. We noted that it is an admitted position that this issue is squarely covered in favour of the assessee in assessee own case vide orders of the Tribunal, hence, are not interfering in the finding of CIT(A) allowing the claim of the assessee. Even before us, now also the Ld. DR could not distinguish the facts of the present case vis-à-vis the orders of the Tribunal in earlier years. Therefore, this issue in Revenue's appeal is dismissed.

9. The third issue in this appeal of Revenue is against the order of CIT(A) deleting the addition made on account of claim of 100% depreciation. In this regard Revenue has raised the following Ground of appeal: -

*“3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made on account of claim of 100% depreciation ignoring the facts that Actuarial surplus is determined on the basis of the total assets of the company and therefore by not capitalizing the above assets, the assets of the assessee company are under-stated, in the books and thereby it has an impact of reducing the surplus or increase in the deficit and therefore, the assets so written off are also accordingly required to be considered as part of the surplus and taxable under section 44 of the I.T. Act?”*



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10. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the assessee has claimed 100% depreciation in respect of assets costing less than Rs.20,000/-. The AO disallowed the claim of assessee of 100% depreciation in respect of assets costing less than Rs.20,000/- amounting to Rs.81,50,646/-. The CIT(A) allowed the claim of the assessee by following the Tribunal's decision in assessee's own case for assessment years 2009-10 and 2010-11 in ITA Nos. 6282/Mum/2012, 6281/Mum/2012, 5567/Mum/2014 (assessee's appeal) & ITA Nos. 6306/Mum/2012 & 5378/Mum/2014 (Revenues appeal) and for assessment year 2008-09 vide ITA Nos.1562/Mum/2013 &1488/Mum/2013. As there is no dispute on facts, the claim of assessee is that it has been consistently following the policy of providing depreciation @ 100% on the value of assets costing less than Rs.20,000/-. The contention of the assessee is that since computation of profits and gains of the business of assessee, being in the business of life insurance, is in accordance with the provisions of section 44 of the Act, which over rides section 28 to 43B of the Act are not applicable to the assessee for determining the income from life insurance business. We noted that this issue is now settled and Revenue could not point out any distinguishing facts from earlier years. Hence, we confirm the order of the CIT(A) and dismiss this Ground of Revenue's appeal.

11. The next issue in this appeal of the Revenue is against the order of the CIT(A) allowing exemption u/s 10(34) of the Act in respect to dividend income. In this appeal, the Revenue has raised the following Ground: -



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*“4. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in allowing the dividend income of assessee as exempt u/s. 10(34) of the I.T. Act, 1961, ignoring the fact that dividend income is considered as part of income of Insurance Business and is included as an 'income' by the actuary?”*

12. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the AO made a disallowance of exemption made by the assessee in respect to dividend income under section 10(34) of the Act. The assessee has claimed that exemption of dividend income of Rs.12.70 crores under section 10(34) of the Act. The AO disallowed the claim by noting that as the assessee's computation of total income of life insurance business is governed by special provision contained in section 44 of the Act and, therefore, exemption provision contained in section 10 of the Act is not applicable. The CIT(A) allowed the claim of the assessee relying on the decision of ITAT in assessee's own case for assessment years 2009-10 and 2010-11 in ITA Nos. 6282/Mum/2012, 6281/Mum/2012, 5567/Mum/2014 (assessee's appeal) & ITA Nos. 6306/Mum/2012 & 5378/Mum/2014 (Revenues appeal) and for assessment year 2008-09 vide ITA Nos.1562/Mum/2013 &1488/Mum/2013. We note that this issue has been consistently decided in favour of the assessee by allowing the claim of exemption on account of dividend u/s. 10(34) of the Act by the Tribunal in earlier years and hence, taking a consistent view, we confirm the order of CIT(A) and this issue of Revenue's appeal is dismissed.



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13. The next issue, which is common in both the appeals i.e. appeal of the assessee and Revenue. The common issue as regards the disallowance of expenses relatable to exempt income by the Assessing Officer and restricted by CIT(A) by applying the provisions of section 14A of the Act r.w. Rule 8D of the Rules. In this appeal Revenue has raised the following Ground:

*“5. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made u/s 14A r.w.r. 8D on protective basis without appreciating the fact that the Ld. CIT(A) has allowed dividend as exempt income, then , the disallowance has to be made u/s 14A r.w.r. 8D of the Act and on the contrary, the department is in appeal for allowing the claim of assessee u/s 10(34) of the Act.*

The assessee has raised the following Grounds of appeal: -

*“2. Application of Rule 8D.*

*On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the action of the DCIT that the provisions of rule 8D of the Income-tax Rules, 1962, are applicable even though it has been explicitly held the provisions of section 14A of the Income-tax Act, 1961 ('the Act') are not applicable to the facts of the case.*



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*The Appellant prays that it be held the rule 8D is not applicable to the facts of the case.*

### *3. Amount of disallowance*

*Without prejudice to Ground no 2 above, having held that provisions of rule 8D were applicable in the case of the Appellant, the learned CIT(A) erred in confirming the action of the DCIT in determining the working of the disallowance at Rs.11,08,65,980 instead of the 'without prejudice' working of Rs. 2,35,04,388 as computed and submitted by the Appellant during the course of the assessment proceedings*

*The appellant prays that the amount of expenditure under Rule 8D be determined at ₹ 2,36,04,388/- instead of ₹ 11,08,65,980/-.*

14. We have heard the rival contentions. We noted that the AO disallowed the expenses amounting to Rs.11,08,65,980/- in relation to exempt income by invoking the provisions of section 14A of the Act r.w. Rule 8D of the Rules. The AO, however, made this addition on protective basis for the reasons that the disallowance on exemptions claimed by the assessee in support of dividend income of Rs.12.70 crores u/s. 10(34) of the Act was disallowed. We are aware that we have already adjudicated the issue of exemption claimed by the assessee u/s.10(34) of the Act in respect of dividend income and allowed the same as exempt. However, we noted that this issue has



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been adjudicated by the Tribunal in assessee's own case for assessment years 2009-10 and 2010-11 in ITA Nos. 6282/Mum/2012, 6281/Mum/2012, 5567/Mum/2014 (assessee's appeal) & ITA Nos. 6306/Mum/2012 & 5378/Mum/2014 (Revenues appeal) and for assessment year 2008-09 vide ITA Nos.1562/Mum/2013 &1488/Mum/2013 and on that basis CIT(A) held that no disallowance is attracted u/s. 14A of the Act in assessee's own case even if it is held that the assessee is entitled to claim u/s.10(34) of the Act in respect of dividend income. We noted that the Tribunal is consistently taking a view that no disallowance u/s.14A of the Act r.w. Rule 8D of the Rules can be made while computing a total income of the person engaged in the business of insurance whose profits and gains from insurance business is computed in terms of the provision of section 44 of the Act r.w. First Schedule of the Act. As the Tribunal is consistently taking a view on this issue, we confirm the order of CIT(A) and this common issue is allowed in favour of the assessee. Accordingly, this issue in the appeal of the Revenue is dismissed and that of assessee's appeal is allowed.

15. The next issue in these Cross appeals is as regards to the order of CIT(A) allowing carry forward of losses, which is assessed under the head 'income from other sources'. For this revenue has raised the following Ground: -

*"6. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the carry forward of losses which is assessed under the head "Income from Other Sources" without considering the restriction of carry*



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*forward of losses under section 74A of the Act to set off against the business income in the current year."*

The assessee has raised the following Ground No.4.

*"On the facts and circumstances of the case and in law, the CIT(A) ought to have directed the DCIT to set off the brought forward business of loss of earlier years while computing the total income of the Appellate for the subject year."*

16. Brief facts are that the assessee has brought forward business losses aggregating to Rs.371.12 crores from assessment year 2008-09 to 2011-12 and claimed the same to be allowed as set off against the income of the present assessment year 2012-13. The AO disallowed the claim of the assessee. The CIT(A) allowed the claim of the assessee against business income of the present assessment year. The CIT(A) observed in para 61 & 62 as under :-

*"61. I have carefully considered the facts of the case, the assessment order and the written submissions of the appellant. The appellant has contended that it has brought forward business losses aggregating to Rs.371.12 crores for A.Y.2008-09 to 2011-12 if the orders giving effect to the orders of the CIT(A) for the A.Ys 2008-09 and 2011-12 and order of the Hon'ble Tribunal for A.Ys 2009-10 & 2010-11 are passed by the AO and the same ought to have been allowed set off*



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*against the income determined for the present A.Y.2012-13:*

*62. In this regard, it needs to be stated that the appellant is entitled for set off of the brought business losses pertaining to A.Ys. 2008-09 to 2010-12 as determined in the orders giving effect to the appellate orders for the said assessment years against the business income of the present A.Y.2012-13 provided the returns of income for the said assessment years were filed within the due date as specified u/s.139(1) of the Act. The AO is therefore directed to verify the same and allow set off of the brought forward business losses against the business income of the present A.Y 2012-13 as per the provisions of the Act. This ground of appeal of the appellant is accordingly partly allowed.”*

17. We noted that this issue is covered in favour of the assessee by Co-ordinate Bench decision in assessee's own case for assessment year 2008-09 in ITA No.1562/Mum/2013, wherein the Tribunal vide para 3.1 has allowed the carry forward of losses u/s. 72 of the Act. The relevant finding of Tribunal in Para 3.1 reads as under: -

*“3.1 As regards the 6th ground of appeal, we find that the Ld. CIT(A) has directed the AO to assessee the total income of the assessee in accordance with the order of the ITAT in ICICI Prudential Life Insurance Co. Ltd. and*



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*then give effect to the provisions of section 72 of the Act in respect of carry forward of losses. As the above direction of the Ld. CIT(A) is based on facts and law, we uphold the same. Accordingly, we dismiss the 6th ground of appeal.”*

18. We, following the same, direct the AO to compute the income accordingly. This issue of Revenue's appeal is dismissed and that of the assessee is allowed.

19. The next issue in this appeal of the Revenue is against the order of the CIT(A) in holding that the surplus available in share holders account is to be assessed as income from other sources, rather this is an income from insurance business. For this, Revenue has raised the following Ground of appeal :-

*“7. On the facts and circumstances of the case and in law, the Ld CIT(A) erred in allowing relief to the assessee by holding that surplus available in Share Holders Account is not to be taxed separately as "income from other sources" and at the normal corporate rate and holding that surplus from Share Holders Account was only part of income from insurance business arrived at after "combining" surplus available in Share Holders Account with the surplus available in Policy Holders Account and then taxing this 'net surplus' arrived at, at the rates specified u/s.115B of the Act ?”*

20. The facts of the case are that the AO while computing the tax in



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respect to surplus arising out of share holders account @30% treated the same as income from other sources. The CIT(A) treated surplus arising out of shares holders account as profits and gains of life insurance business as per the provisions of section 115JB of the Act. Accordingly, the CIT(A) directed the AO to apply the special rate of tax @12.50%. Aggrieved by this, the Revenue is in appeal before the Tribunal.

21. We noted that this issue is squarely covered in assessee's own case for assessment years 2009-10 & 2010-11 in ITA Nos. 6282/Mum/2012, 6281/Mum/2012, 5567/Mum/2014 (assessee's appeal) & ITA Nos. 6306/Mum/2012 & 5378/Mum/2014 (Revenues appeal) and CIT(A) has directed as under: -

*"67. Further, it is seen that the Hon'ble ITAT, Mumbai has decided this issue in favour of the appellant in the appellant's own case in the consolidated order dated 09.08.2017 passed for A.Ys.2009-10 and 2010-11 in ITA No.6281,6282/MLJM/2012 and ITA No.5567/MUM/2014 by relying on its own decision in the case of ICICI Prudential Insurance Co. Ltd. v. ACIT [2013] 140 ITD 41 (Mum) referred to above. Respectfully following the same, these grounds are held in favour of the appellant and the AO is directed to apply the tax rate of 12.5% as per the provisions of section 115B in respect of the surplus in SHA by treating the same as part of the profits and gains of Life Insurance business and in respect of the income assessed as Profits and gains of life insurance business."*



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We noted that this issue is covered in favour of the assessee and, hence, we also uphold the findings of CIT(A). This issue of Revenue's appeal is dismissed.

22. The next issue in assessee's appeal is as regards to the order of CIT(A) in affirming the action of the AO in disallowing the claim of deduction on account of decrease in negative reserve. For this issue, assessee has raised the following Ground of appeal: -

**"1. "Deduction for decrease in negative reserve**

*On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in not directing the Deputy Commissioner of Income tax ("DCIT or AO") to allow deduction for an amount of Rs. 45,04,33,880 representing the decrease in the Negative Reserves from last year, despite the fact that the DCIT had himself treated an increase in the Negative Reserves as taxable income in the earlier years' assessments.*

*The Appellant prays that decrease in Negative Reserves be allowed as a deduction from profits if at all the increase in Negative Reserves is treated as income in the earlier years."*

23. Before CIT(A) the assessee contended that the AO ought to have allowed deduction for an amount of Rs.45,04,33,888/- representing decrease in negative reserve compared to preceding inter-valuation period relating to assessment year 2008-09 to 2011-



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12. It was contended that in those years the increase in negative reserve was added to the total income. It was contended by the assessee before AO that consistent stand with regard to the negative reserve should be followed. The AO has not considered the allowance of deduction. Aggrieved, assessee preferred an appeal before the CIT(A). The CIT(A) considered this issue and relying on the Tribunal decision in assessee's case for assessment years 2009-10 & 2010-11 in ITA Nos. 6282/Mum/2012, 6281/Mum/2012, 5567/Mum/2014 (assessee's appeal) & ITA Nos. 6306/Mum/2012 & 5378/Mum/2014 (Revenues appeal) treated the increase in negative reserve as non taxable surplus as actuarial valuation for the purpose of determining the profit and gains of the business of the life insurance business of the assessee. The CIT(A) after considering the submissions of the assessee directed the AO vide Para – 59 as under: -

*“59. In this regard, it is seen that the AO was directed not to include the increase in the negative reserves in the surplus to be taxed as profits and gains of the business of the Life Insurance in the appeal order passed by the CIT(A) in the case of the appellant for assessment year 2011-12 by relying on the decision of the Hon'ble ITAT, Mumbai in the appellant's own case in the consolidated order dated 09.08.2017 passed for A.Ys.2009-10 and 2010-11 in ITA No.6281,6282/MUM/2012 and ITA No.5567/MUM/2014 which in turn relied on its own decision in the case of ICICI Prudential Insurance Co. Ltd. ACIT [2013] 140 ITD 41 (Mum). Thus, it is seen that the*



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*view of the AO to treat the increase in negative reserves as taxable surplus as per actuarial valuation for the purpose of determining the profits and gains of the business of the Life Insurance has not been upheld by the CIT(A) and the Hon'ble Tribunal in the appellant's case so far. In the light of this fact, the appellant's prayer to give a direction to the AO to allow deduction for the decrease in negative reserves during the year while computing the profits and gains of the business of the Life Insurance cannot be considered to be legally tenable. Hence, this ground of appeal of the appellant is dismissed.”*

24. During the course of hearing before us, both the sides agreed that this issue has been dealt with by the Co-ordinate Bench of the Tribunal in the case of HDFC Standard Life Insurance Company Ltd., ITA No.2203/Mum/2012, A.Y. 2002-03 and Others, wherein the Tribunal has considered this issue and finally following the decision of ICICI Prudential Insurance Co. Ltd., ITA No. 6059/Mum/2010 & Others A.Ys 2005-06 to 2008-09 allowed the claim of the assessee, observing in para 6.3 as under:-

*“6.3. We have heard rival submissions and perused the material before us. We are of the opinion that treatment given to negative reserves by actuary cannot be disturbed by the AO. Here, it would be useful to understand meaning of negative reserve in simple terms. While making actuarial valuation, requirement of reserve to service insurance policies issued is ascertained. Such*



*reserve (called mathematical reserve or value of liability) is equal to present value of future benefits payable and future expenses to be incurred less present value of future premium receivable. When the present value of future premium is more than the present value of future benefits payable and future expenses to be incurred, this amount becomes negative, known as 'negative reserve'. In simple words, it means that the insurance contracts under consideration do not warrant any provision and is, in fact, an asset. However, in certain circumstances, such as for following IRDA guidelines, insurers may not treat policies as assets and they set any negative reserves to zero. For example, if an insurer had two policies, one with a reserve of 100 and the other with a reserve of - 10, it might think of its liabilities at 100 rather than 90 to take into account the eventuality in case the second policy lapsed. This process is called eliminating negative reserves. As mentioned in 21 ITA No. 2203/Mum/2012 & Ors. HDFC Standard Life Insurance Company Ltd earlier, a policy which has a negative reserve is in nature of an asset.*

*We find that in the case of ICICI Prudential Insurance Co.(supra), AO had disallowed negative reserve related to Life Insurance business of the assessee. In appellate proceedings FAA allowed the appeal of the assessee. AO challenged the order of the FAA before the Tribunal. We find that AO has raised the following ground of appeal in the appeal filed by him for AY 2006-07.*



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*“On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not subjecting the negative reserve amounting to Rs.27.27 Crores ignoring the facts that negative reserves has impact of reducing the taxable surplus as per Form I.”*

*Disposing his appeal, Tribunal held as under:*

*“After considering the rival submissions and examining the method of accounting and the mandate given by regulations to appoint Actuarial on the concept of mathematical reserves we do not see any reason to interfere with the order of the CIT(A). The mathematical reserve is a part of Actuarial valuation and the surplus as discussed in Form-I under Regulation 4 takes in to consideration this mathematical reserve also. Therefore the order of the order of the CIT(A) is approved. Moreover the Assessing Officer has no power to modify the amount after actuarial valuation was done, which was the basis for assessment under Rule 2 of 1st Schedule r.w.s.44 of the I.T. Act. The principle laid down by the Hon’ble Supreme Court in LIC vs. CIT 51ITR773 about the power of the Assessing Officer also restricted the scope and adjustment by the AO. In view of this uphold the order of the CIT(A) and dismiss the Revenue’s ground.”*



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*Respectfully, following the above we decide effective ground of appeal against the Assessing Officer”*

25. The CIT(A) only on this basis allowed the claim of assessee of negative reserve. Since the issue is covered in favour of the assessee in regard to actuarial valuation, we uphold the order of CIT(A). The issued raised by the assessee in regard to negative reserve has become academic and, hence, infructuous.

ITA No.71/MUM/2018 & ITA No.6948/MUM/2017

26. Now we may take up the appeals of the Revenue for assessment years 2013-14 & 2014-15. Since the Grounds raised by the Revenue for both assessment years are identical, the grounds raised for assessment year 2013-14 are reproduced below: -

*“1. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred, in relying on the order of ITAT in the case of ICICI Prudential Life Insurance CO. Ltd. for earlier years and in the case of IDBI Federal Life Insurance CO. Ltd. for A.Y. 2009-10 and 2010-11 respectively, in interpreting the provisions of Section 44 of the I.T. Act read with Rule 2 of the First Schedule along with provisions of Insurance Act 1938, Insurance Regulatory and Development Authority Act 1 999 and regulations there under and accordingly allowing adjustment from the 'surplus' worked as per "actuarial valuation" [and as shown by the assesses in Form-1] in violation of the ratio of the Apex Court in the case of LIC vs CIT 51 ITR 778 without appreciating the fact that these*



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*decisions are not accepted by the Department and further appeals have been filed.*

*2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in giving relief to the assessee following the decision of Hon'ble ITAT in the case of ICICI Prudential Life Insurance CO. Ltd. for the earlier years and in the case of IDBI Federal Life Insurance CO. Ltd. for A.Y. 2009-10 and 2010-11 respectively, in concluding that transfer between shareholders Account and Policy Holders Account is tax neutral and not taxable u/s 44 of the Act r.w. Rule 2 of the First Schedule, without appreciating the fact that this decision of the ITAT were not accepted by the department and further appeals have been filed.*

*3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made on account of claim of 100% depreciation ignoring the facts that Actuarial surplus is determined on the basis of the total assets of the company and therefore by not capitalizing the above assets, the assets of the assessee company are under-stated in the books and thereby it has an impact of reducing the surplus or increase in the deficit and therefore, the assets so written off are also accordingly required to be considered as part of the surplus and taxable under section 44 of the I.T. Act?*



4. *On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in allowing the dividend income of assessee as exempt u/s. 10(34) of the I.T. Act, 1961, ignoring the fact that dividend income is considered as part of income of Life Insurance Business and is included as an 'income' by the actuary?*

5. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made u/s 14A r.w.r. 8D on protective basis without appreciating the fact that the Ld. CIT(A) has allowed dividend as exempt income, then , the disallowance has to be made u/s 14A r.w.r. 8D of the Act and on the contrary, the department is in appeal for allowing the claim of assessee u/s 10(34) of the Act,*

6. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the claim of exemption u/s. 10(23AAB) of the I T Act o Rs. 0.97 crs in respect of surplus in pension line of business?*

7. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of provision of wealth Tax as it is not allowable expense as per I T Act, 1962?*

8. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the carry forward of*



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*losses which is assessed under the head "Income from Other Sources" without considering the restriction of carry forward of losses under section 74A of the Act to set off against the business income in the current year."*

9. *On the facts and circumstances of the case and in law, the Ld CIT(A) erred in allowing relief to the assessee by holding that surplus available in Share Holders Account is not to be taxed separately as "income from other sources" and at the normal corporate rate and holding that surplus from Share Holders Account was only part of income from insurance business arrived at after "combining" surplus available in Share Holders Account with the surplus available in Policy Holders Account and then taxing this 'net surplus' arrived at, at the rates specified u/s.H5BoftheAct ?*

10. *The appellant prays that the order of the Ld. CIT (A) on the above grounds be set aside to the file of the AO or confirm the order of the AO."*

27. It was a common point between the parties that the facts and circumstances in ITA No. 71/mum/2018 & 6948/Mum/2017 for assessment years 2013-14 to 2014-15 are *pari-materia* to those considered by us in ITA No. 70/Mum/2018 for assessment year 2012-13, thus, our decision therein shall apply *mutatis mutandis* in these appeals also.

ITA No.1045/MUM/2018 & ITA No.6970/MUM/2017:



In ITA No. 70,71,1044,1045/Mum/2018  
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28. Now we may take up the appeals of the assessee for assessment years 2013-14 & 2014-15. Since the Grounds raised by the assessee for both assessment years are identical, the grounds raised for assessment year 2013-14 are reproduced below:-

*“The Appellant submits the following grounds of appeal, which are independent and without prejudice to one another:*

*1. Deduction for decrease in negative reserve*

*On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in not directing the Assistant Commissioner of Income tax ("ACIT or AO") to allow deduction for an amount of Rs. 50,78,22,283 representing the decrease in the Negative Reserves from last year, despite the fact that the ACIT had herself treated an increase in the Negative Reserves as taxable income in the earlier years' assessments.*

*The Appellant prays that decrease in Negative Reserves be allowed as a deduction from profits if at all the increase in Negative Reserves is treated as income in the earlier years.*

*2. Application of rule 8D*

*On the facts and in the circumstances of the case and in*



*law, the Learned CIT(A) erred in confirming the action of the ACIT that the provisions of rule 8D of the Income-tax Rules, 1962, are applicable even though it has been explicitly held the provisions of section 14A of the Income-tax Act, 1961 ('the Act') are not applicable to the facts of the case.*

*The Appellant prays that it be held the rule 8D is not applicable to the facts of the case.*

### *3. Amount of Disallowance*

*Without prejudice to Ground no. 2 above, the learned CIT(A) ought to have directed the ACIT to accept the 'without prejudice' working of the disallowance of Rs.36,79,942 under section 14A of the Act provided by the Appellant during the course of the assessment proceedings.*

### *4. Set off of brought forward losses*

*On the facts and circumstances of the case and in law, the CIT(A) ought to have directed the ACIT to set off brought forward business loss of earlier years while computing the total income of the Appellant for the subject year.*

### *5. Interest u/s 234B of the Act*



In ITA No. 70,71,1044,1045/Mum/2018  
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*On the facts and circumstances of the case and in law, the CIT(A) erred in not holding that provisions of section 234B of the Act & are not applicable in the Appellant's case.*

#### 6. Initiation of penalty proceedings

*On the facts and the circumstances of the case, and in law, the CIT(A) ought to have directed the ACIT to drop the penalty proceedings initiated under section 27i(i)(c) of the Act.”*

29. It was a common point between the parties that the facts and circumstances in ITA No. 1045/mum/2018 & 6970/Mum/2017 for assessment years 2013-14 to 2014-15 are *pari-materia* to those considered by us in ITA No. 70/Mum/2018 & 1044/Mum/2018 for assessment year 2012-13, thus, our decision therein shall apply *mutatis mutandis* in these appeals also.

**30. In the result, the appeals of Revenue are dismissed and the appeals of assessee are allowed in term of the above.**

Order pronounced in the open court on 24<sup>th</sup> July, 2019.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)  
(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 24.07.2019

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(महावीर सिंह / MAHAVIR SINGH)  
(न्यायिक सदस्य/ JUDICIAL MEMBER)



In ITA No. 70,71,1044,1045/Mum/2018  
6948 & 6970/Mum/2017

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**सत्यापित प्रति //True Copy//**

**उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**