

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

BEFORE SHRI RAMIT KOCHAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.3385/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2012-13)

DCIT 1(3)(1) Room No. 540, 5 th Floor, Aayakar Bhawan, M.K. Road, Mumbai-400020.	बनाम/ Vs.	M/s. SBI Life Insurance Co. Ltd. Natraj, 5 th Floor, M.V. Road and Western Express Highway Junction (E), Andheri (E), Mumbai- 400059
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFCS2530P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by:	Dr. Narender Kumar & Chaudhary Arun Kumar Singh
Assessee by:	Shri Farrokh V. Irani/Amruta Lele

सुनवाई की तारीख / Date of Hearing: 25/07/2019
घोषणा की तारीख /Date of Pronouncement: 29/08/2019

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 28.02.2017 passed by the Commissioner of Income Tax (Appeals) -6, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2012-13.

2. The revenue has raised the following grounds: -

- "1 *Whether on the facts and in the circumstances of the case and in law the Id. CIT (A)was correct in concluding that transfer from Shareholder's account to Policy 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 read with Rule 2 of the First Schedule?"*
2. *" Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was correct in allowing 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?"*
3. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating that taking the value of negative reserve at zero has an impact of reducing the taxable surplus as per Form-I and therefore, corresponding adjustment for negative reserve need to be made to arrive at taxable surplus?"*
4. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in upholding the claim of the assessee that its dividend income is exempt under section 10(34) of the I.T. Act 1961?"*
- 5 *Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the claim of the assessee that its dividend income is exempt under section 10(34) of the I.T. Act 1961 made by the assessee, ignoring the fact that dividend income is considered as an income by the actuary.?*
6. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition made by the AO on the exemption of income from pension fund u/s 10(23AAB) and that the income from pension fund does not form part of the total income of the assessee u/s 10(23AAB) of the I.T. Act, 1961.*
7. *Whether on the facts and in the circumstances of the case and in law, the Ld. 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 I.T. Act, 1961."*

3. The brief facts of the case are that the assessee filed its return of income on 29.11.2012 declaring total income to the tune of Rs.213,54,12,409/-. The return was processed u/s 143(1) of the I.T. Act, 1961. Thereafter, the case was selected for scrutiny and notices u/s 143(2) and 142(1) of the Act were issued and served upon the assessee. The

assessee company was carrying on the business of 'life insurance' including life annuity linked, non-linked term, whole term assurance, pension business, long term health insurance, family insurance, group insurance, multiple cover insurance on linked and non-linked platform and any kind of assurance or insurance against any other kind of risk liability whether direct or indirect arising from happening of any event or the fulfillment or non-fulfillment of contingency, obligation or undertaking whatsoever and to carry on and transfer any and every kind of life insurance and reinsurance whether indoor or outside ending. On verification, it was found that the assessee has income in shareholder accounts (SHP) but treated the same as insurance business. The notice was given and after the reply of the assessee, the income in the shareholder accounts in sum of Rs.100,90,06,308/- was treated as income from other sources than the insurance business and was subjected to normal tax rate. The assessee also earned dividend income of Rs.198,18,97,677/- stated as exempt u/s 10(34) of the I. T. Act, 1961. The AO was of the view that the said income was not eligible for exemption u/s 10(34) of the Act, hence, treated as taxable. The assessee also claimed exemption u/s 10(23AAB) of the Act of Rs.1,32,59,95,816/- which was not found eligible, hence, was added to the income of the assessee. The assessee was having the account of incremental negative reserve. The AO was of the view that the assessee company was taken the undue addition by reducing its taxable surplus by amount of Rs.11,76,06,147/-, hence, the same was disallowed and was added to the income of the assessee. The total income of the assessee was assessed to the tune of Rs.886,88,05,540/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who

allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

ISSUE NOS. 1 & 2:-

4. Issue nos. 1 & 2 are in connection with the allowance of the claim of the assessee by CIT(A) in connection with the income from shareholder's account. The Ld. Representative of the revenue has argued that the claim of the assessee has wrongly been allowed whereas the Ld. Representative of the assessee has argued that the claim of the assessee has rightly been allowed being covered by the decision of the Hon'ble ITAT for the different assessment year. Before going further, we deemed it necessary to advert the finding of the CIT(A) on record: -

“6.1.1 Vide these grounds, appellant has agitated against AO's action in disallowing the transfer of funds from Shareholder's Account (SHA) to Policyholder's Account and Treatment of Profit in P&L Account (Shareholder's Account) as income from other sources amounting to Rs.100,87,06,309/-. In para 2 of the assessment order, the Ld. AO observed that the appellant company has shown Business profit from policyholder's Account and Shareholder's jointly as profit from insurance business. He was of the view that profit from shareholder's account should be assessed under the head income from other sources and not under the head ' Insurance business'. Hence he recalculated the income and bifurcated them under income from life insurance business and income other than life insurance business.

6.1.2 After examining the facts and circumstances of the case, I find that this issue has already been decided by my predecessors in the favor of the appellant company in different assessment years, where- in it was held that the income of the appellant company should be assessed under the head life insurance business only because shareholders account is integral and indivisible part of life insurance business. The bifurcation of total profit between revenue and P&L A/c is a mere disclosure requirement without in any way, having impact on the real profit from business of insurance. It was argued before me that the two accounts are inseparable and for arriving at the profit of insurance

business as whole one has to see the combined surplus in the two accounts. Support has been taken of the legal requirement of solvency margin requiring infusion of additional capital; obligation to invest funds of shareholder account in the manner prescribed under the insurance act as result of which all the funds- including funds between the accounts to offset the deficiency in one of them. Various legal provisions have been relied upon to prove that unless the results in the two accounts are taken together it will not be possible to work out the true profit of insurance business. Once it has been decided that policy holder account and shareholders accounts together constitute the profit of insurance business, the transfer from one account to another account will not affect the taxable surplus.”

5. On appraisal of the above said finding, we noticed that the CIT(A) has decided the matter of controversy on the basis of the decision of **Hon’ble ITAT in ITA. No.4066/MUM/2011, 1897/MUM/2012, 5112/MUM/2012 AND 2476/MUM/2014 for the A.Ys. 2007-08 to 2010-11 and ITA. No.3800/MUM/2008 for A.Y.2003-04.** CIT(A) has also relied upon the decision of the Hon’ble ITAT in case of ICIC Prudential Insurance Co. Ltd. Vs. ACIT Circle-6(1), (2012-TIOL-580-ITAT-ITA No.6855/MUM/2010) and HDFC Standard Life Insurance Company Ltd. Vs. DCIT (OSD)-1(1)(ITA. No3004/MUM/2012) & (ITA. No. 3004/MUM/2012 A.Y. 2008-09) in which the issue has been decided in favour of the assessee against the revenue. Since this issue has been adjudicated in favour of the assessee in which the income arising in shareholder’s accounts under the head life insurance business has been treated as income from business. The facts are not distinguishable at this stage. No law contrary to the law relied by the Ld. Representative of the assessee has been produced before us. Taking into account all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage.

ISSUEU NO.3

6. Under this issue the revenue has challenged the deletion of addition of negative reserves. The Ld. Representative of the revenue has argued that the negative reserve contained taxable liability but the CIT(A) has wrongly deleted the addition, therefore, the finding of the CIT(A) is not justifiable, hence, the same is liable to be set aside in the interest of justice. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

“6.2.2 I have carefully examined the facts of the case, the stand taken by the A.O. in the assessment order, the grounds of appeal and the submissions filed by the appellant company during the appellate proceedings. Similar issue was evaluated by my predecessor in appellant's own case for earlier assessment years.

6.2.3 It is seen that the Hon'ble Supreme Court in the case of Life Insurance Corporation of India v/s CIT, Delhi and Rajasthan [51 ITR 0773] has dealt with the issue of mathematical reserve, which may be negative, is called 'Negative Reserve', Where the value of future income extends the value of estimated liabilities. However, in terms of regulations governing the insurance business, such a negative reserve has to be ignored and has to be taken as zero. The Hon'ble Supreme Court has in the case of LIC (Supra), held that the assessing officer shall not disturb such accounting methodology which is regulated under the Insurance Act. Further, Hon'ble Tribunal vide order bearing ITA No.4066/MUM/2011, ITA No.1897/MUM/2012, ITA No.5112Th1um/2012 and ITA No.2576/Mum/2014 for A.Y.2007-08 to 2010-11 and ICICI Prudential Insurance Co. Ltd. (supra) has cited the decision of Hon'ble Supreme Court [5 ITR 773] and held that there is no scope for the assessing officer to make any adjustment after the actuarial valuation is done. Also, the AO passed the favourable order giving effect on the redirect matter from Mumbai ITAT. By respectfully following the decision of Hon'ble Supreme Court, my predecessor CIT(A) vide order No. CIT(A)-XXI/ ACIT.1(3)/IT-111/08-09 dated 18.08.2009 for A.Y.2006-07 has allowed the appeal of the appellant company on this issue. Also, for the A.Y.2003-04, 2010-11 & 2011-12 my predecessors allowed the ground in

the favour of assessee. Therefore, I have no reason to deviate from the findings of my learned predecessors and higher appellate authorities. Since the facts are identical and the decision is rendered in appellant company's own case, accordingly addition of Rs.11,76,06,147/- made by the AO on account of incremental negative reserve is deleted and appeal of the assessee on this ground is allowed."

7. On appraisal of the above mentioned finding, we noticed that the CIT(A) has decided the matter of controversy on the basis of decision of Hon'ble Supreme Court in case of **Life Insurance Corporation of India Vs. CIT, Delhi and Rajasthan (51 ITR 0773)**. The CIT(A) has also placed reliance upon the decision of the Hon'ble ITAT Mumbai Bench in **ITA. No.4066/MUM/2011, 1897/MUM/2012, 5112/MUM/2012 AND 2476/MUM/2014 for the A.Ys. 2007-08 to 2010-11**. The facts are not distinguishable at this stage. The treatment of incremental negative reserve is quite same as held in the previous year. There is no reason to deviate from the finding of the CIT(A). No law contrary to the law relied by the Ld. Representative of the assessee has been produced before us. Taking into account all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage.

ISSUE Nos. 4 & 5

8. Under these issues the revenue has challenged the allowance of claim of dividend income u/s 10(34) of the Act. The revenue has challenged the finding on the basis of this fact the same is not justifiable and is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has strongly relied by the order passed by the

CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

“6.3.2 I have gone through the assessment order and submission made by the Ld. AR. I am also in the view that section 10(34) is independent to the provisions of section 44 of the Income Tax Act, 1961. Therefore, while calculating the income of a life insurance business as per the rule 2 of the first schedule it is considered by the actuary for calculating the surplus of such business. Hence, by virtue of section 10(34) of the Income Tax-Act; 1961 the exemption is available to the assessee while computing the taxable income. Also, the same view is approved by the Hon’ble High Court of Bombay in case of Life Insurance Corporation of India vs. Commissioner of Income Tax reported in 115 ITR 45 (Bom), Hon'ble Mumbai Tribunal in the case of ICICI Prudential Insurance Co. Ltd vs. Asstt. Commissioner of Income Tax Circle- 6(1) (2012-TIOL-580-ITAT-MUM-ITA No.7765/MUM/2010) and Hon'ble Mumbai Tribunal in the case of SBI Life vs Commissioner of Income Tax - 1, Mumbai, (2013-TIOL-681-ITAT-MUM, ITA No.6366/ Mum/2011). It is also noteworthy that the Hon'ble Bombay High court also set aside the appeal file by the department vide its order dated June 27, 2016 (INCOME TAX APPEAL NO.62 OF 2014) against the order of ITAT, Mumbai. Further, in a recent judgment again the "E" Bench of the Hon’ble Mumbai ITAT, in the case of assessee (SBI Life) vs ACIT.1(3) Mumbai/Dy. CIT 1(3), ITA No.4066/MUM/2011, ITA No.1897/ MUM/2012, ITA No.5112/Mum/2012 & ITA No.2576/Mum/2014 for A.Y.2007-08 to 2010-11 passed the favorable order for the A.Y.2007-08 to A.Y.2010-11. Also, assessing officer has also passed the favorable order giving effect on exemption of dividend income for the A.Y.2005-06 on the redirect matter by Hon’ble Mumbai ITAT on the appeal no ITA No.1501/Mum/2009, ITA No.3346/Mum/2009. Since the facts are identical, therefore, respectfully following the decision of Hon'ble High Courts, the ground is decided in favour of the appellant. Accordingly, addition of Rs.198,18,97,677/- made by the AO on account of dividend income is deleted and ground of appeal is allowed.”

9. On appraisal of the above mentioned order, we noticed that the CIT(A) has decided the issues on the basis of decision of Bombay High Court in case of **Life Insurance Corporation of India Vs. CIT reported in 115 ITR 45 (Bom)**. The issue has already covered with the decision of Hon’ble ITAT in the assessee’s own case **in ITA. No.4066/MUM/2011,**

1897/MUM/2012, 5112/MUM/2012 AND 2476/MUM/2014 for the A.Ys. 2007-08 to 2010-11. The facts are not distinguishable at this stage. No law contrary to the law relied by the Ld. Representative of the assessee has been produced before us. Taking into account all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage.

ISSUE Nos. 6 & 7

10. Under these issues the revenue has challenged the deletion of addition raised on account of exemption of the claim u/s 10(23AAB) of the Act of Rs.1,32,59,95,816/- on account of income from pension scheme. The CIT(A) has given the finding which is hereby reproduced as under:-

“6.4.4 The same view is approved by the Hon'ble High Court of Bombay in case of Life Insurance Corporation of India vs. Commissioner of Income Tax reported in 115 ITR 45 (Bom), Hon'ble Mumbai Tribunal in the case of LIC vs Addl CIT - ITA Nos.3702, 3703, 6221/Mum/2012. in the case of ICICI Prudential Insurance Co. Ltd vs. Asstt. Commissioner of Income Tax Circle-6(1),(2012-TIOL-580-ITAT-MUM-ITA No.7765/MUM/2010). in the case of HDFC Standard Life Insurance Co. Ltd (ITA No. 4959/Mum/2011 & ITA No.5494/Mum/2011) and Hon'ble Mumbai Tribunal in the case of SBI Life (assessee) by ITA No.3495/Mum/2014 & 2863/Mum/2015. Also, on the redirect matter by Hon'ble Mumbai ITAT on the appeal no. ITA No.1501/Mum/2009, ITA No.3346/Mum/2009. The AO has also passed the favorable order after considering the facts for allowing the exemption of income from pension business in the light of decision of ICICI Prudential Insurance Vs AC1T Vide ITA Nos.6854 to 6856, 7765 and 7213/ Mum/2012. Since the facts are identical, therefore, respectfully following the decision of Hon'ble High Courts, the ground is decided in favour of the appellant. Accordingly, addition of Rs.132,59,95,816/- made by the AO on account of income from pension segment u/s.10(23AAB) is deleted and ground of appeal is allowed.”

11. On appraisal of the above mentioned order, we noticed that the CIT(A) has decided the issues on the basis of decision of Bombay High Court in case of **Life Insurance Corporation of India Vs. CIT reported in 115 ITR 45 (Bom)**. The issue has already covered with the decision of Hon'ble ITAT in the assessee's own case in **ITA. No.4066/MUM/2011, 1897/MUM/2012, 5112/MUM/2012 AND 2476/MUM/2014 for the A.Ys. 2007-08 to 2010-11**. The facts are not distinguishable at this stage. No law contrary to the law relied by the Ld. Representative of the assessee has been produced before us. Taking into account all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, this issue is decided in favour of the assessee against the revenue.

12. In the result, the appeal filed by the **revenue is hereby ordered to be dismissed.**

Order pronounced in the open court on 29/08/2019

Sd/-

(RAMIT KOCHAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 29/08/2019

Vijay/Sr.PS

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

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 / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**