

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE**

**BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.1961/Bang/2018
Assessment years : 2012-13

The Dy. Commissioner of Income-tax, Circle-2(1)(2), Bengaluru.	Vs.	M/s Exide Life Insurance Company Ltd., (formerly known as ING Vysya Life Insurance Company Ltd.) No.3/1, 3 rd Floor, JP Techno Park, Millers Road, Bengaluru-560 001. PAN – AAACI 7940 L.
APPELLANT		RESPONDENT

Appellant by	:	Shri T Suryanarayana, Advocate
Respondent by	:	Shri Pradeep Kumar, CIT (DR)

Date of hearing	:	21.10.2019
Date of Pronouncement	:	23.10.2019

ORDER

Per B.R Baskaran, Accountant Member

The appeal filed by the Revenue is directed against the order dated 15/3/2018 passed by the 1d CIT(A)-2, Bengaluru and it relates to asst. year 2012-13.

2. The grounds of appeal urged by the Revenue read as under:-

“1. CIT(A) erred in holding the surplus from Shareholder's funds as income from life insurance business U/s 44 of the IT Act, despite the fact that the nature of this income is completely different from

the premium income under policy holder fund, which is the only income from the life insurance business to be determined U/s 44 of the IT Act. Hon'ble Supreme Court has already admitted the SLP of Department on this issue in the case of CIT Vs ICICI Prudential Life Insurance Co. Ltd. (2016) 242 Taxman 97 (SC).

2. CIT(A) erred in holding that the profits of the Life Insurance business would be determined as per the financial accounts and not as per the surplus reflected in Form I of 'Actuarial Valuation' as per the provisions of Section 44 of the IT Act read with the First Schedule.

3. CIT(A) erred in not excluding the loss of Rs. 93,39,11,564/- in the pension account, which is exempt U/s 10(23AAB) of IT Act, and which should have been excluded from the computation of Total Income.”

3. The first two grounds relate to the issue of treating the surplus arising from “shareholder account” as separate income and not as income arising from life insurance business. During the year under consideration the assessee has shown surplus of Rs.32.11 crores in shareholders’ account and the same was not treated as income from life insurance business. Accordingly, it was assessed separately by the AO.

4. Before 1d CIT(A), the assessee contended that merely because surplus from shareholders account and policy holders’ account is disclosed separately in the financial statements, the income in shareholders’ account should not be treated as distinct income separated from life insurance business. It was further submitted that as per the Insurance Act, income from shareholders account as

well as policy holders' account constitutes part and parcel of life insurance business only. The assessee also placed reliance on the following case laws in support of its contentions:-

1. Order of ITAT Bangalore in Appellant's case for the asst. year 2009-10 (ITA No.792/Bang/2016)
2. PNB Metlife India Insurance Co. Ltd., Vs. CIT (ITA No.179/Bang/2017) (Bangalore ITAT)
3. PNB Metlife India Insurance Co. Ltd., Vs. CIT (ITA No.1508/Bang/2017) (Bangalore ITAT)
4. PNB Metlife India Insurance Co. Ltd., Vs. CIT (ITA No.756/Bang/2017) (Bangalore ITAT)
5. ICICI Prudential Insurance Co. LT6d. Vs. ACIT (29 Taxmann.com 257 (Mumbai ITAT) which was subsequently upheld by Bombay High Court in (73 Taxmann.com 2011)

5. The ld CIT(A) was convinced with the contention of the assessee and accordingly, by following the above said decisions, held as under:-

“Having considered the submissions, it is observed that the issue under consideration is squarely covered by the above judicial pronouncements including that, of the jurisdictional ITAT in the case of the Appellant for the Asst, Year 200010 in ITA No,792/Bang/2016) I Bangalore ITATI and also in the case of PNB Met.life in ITA No 1508/Bang/2015) [Bangalore TAT] AY 2011-12 & FFA No, 179/Bang/2017) AY 2012-13. The facts and circumstances of the matter under consideration are similar to that of the facts in the cases considered by the Hon'ble Bangalore ITAT in the decisions cited supra. Under the circumstances, respectfully following the

decisions of the Hon'ble ITAI, I am of the view that the surplus horn shareholders account, though disclosed separately in the financial statement, does not become separate from life insurance business. Accordingly, this ground of appeal is allowed."

6. We heard the parties and perused the record. We noticed that the Id CIT(A) has followed the decision rendered by the coordinate bench in the assessee's own case relating to asst. year 2009-10 and also decision rendered in the case of PNB Met Life (Supra) Since the Id CIT(A) has followed the decision rendered by Tribunal on this issue, we do not find any necessity to interfere with the order passed by him.

7. The ground No.3 relates to claim of set off of loss of Rs.93.39 crores computed under the Pension account against business income. The Id AR submitted that an identical issue was considered by the coordinate bench in the assessee's own case in asst. year 2009-10 and the Tribunal has decided this issue in favour of the assessee.

8. We heard the Id DR and perused the record. We noticed that the coordinate bench has examined an identical issue and decided the same in favour of the assessee by following the decision rendered by Bombay High Court in the case of LIC of India Ltd., (2011) 12 Taxmann.com 388 (Bom). For the sake of convenience, we extract below the relevant portion of the order passed by the Tribunal in IT(TP)A No.335, 338/Bang/2014 and IT(TP)A No.243/Bang/2015

47. *The next grievance projected by the assessee in ground No.II comprising of ground 1 to 6 is with regard to action of the Revenue authorities in not allowing loss incurred from pension fund which is exempt u/s 10(23AAB) of the Act amounting to Rs.87, 85,43,000/- while determining the actuarial valuation surplus u/s 44 of the Act. We have already seen that in asst. year 2009-10 this claim was allowed by the CIT(A). As far as present asst. year is concerned, the assessee made a claim on its deduction by letter dated 17/4/2013. Copy of which is at page 366 of the assessee's paper book. Though the claim was not made in return of income or revised return. Similarly in asst. year 2009-10 also claim was made before the AO in letter dated 22/3/2013. Copy of which is at page 76 of the assessee's paper book. The AO did not consider the claim of the assessee. The DRP also refused the claim of the assessee for the following reasons:-*

"7.1 In this ground, the assessee has claimed that the loss incurred from pension fund exempt u/s 10 (23AAB) of Rs. 87,85,43,000 is to be excluded while determining the actual valuation surplus u/s 44. It is admitted that no claim in this regard has been made by way of a return or revised return of income. The claim was made in the course of submissions in the assessment proceedings and has not been considered in the draft assessment order. Assessee has relied on the decision of the Honorable Bombay High Court in 338ITR212 in the case of LIC of India in this regard.

7.2 We have examined the issue before us. It is noted that the A.O has not had the occasion to examine the factual basis of the quantification of loss as the claim has not been made by way of a return or revised return. It would be relevant to point out that the assessee itself has not made the

claim in the return and perhaps rightly so. As regards the reliance on the decision of [IC (supra) of the Hon'ble Bombay High Court, in our respectful view the following decision of the Apex Court which has laid down the law on losses arising from an exempt source is more appropriate.

7.3. The Honorable Supreme Court in the case of Harprasad 99 ITR 118 has held that when any income is exempt at source, the loss would not consequently enter into computation of income. The relevant portion is as follows-

"It may be remembered that the concept of carry forward of loss does not stand in vacuo. It involves the notion of set-off Its sole purpose is to set off the loss against the profits of a subsequent year. It pre-supposes the permissibility and possibility of the carried-forward loss being absorbed or set off against the profits and gains, if any, of the subsequent year Set off implies that the tax is exigible and the assessee wants to adjust the loss against profit to reduce the tax demand. It follows that if such set-off is not permissible or possible owing to the income or profits of the subsequent year being from a non-taxable source, there would be no point in allowing the loss to be "carried forward". Conversely, if the loss arising in the previous year was under a head not chargeable to tax, it could not be allowed to be carried forward and absorbed against income in a subsequent year from a taxable source."

7.4 In view of the above decision we are of the view that the claim of the assessee not legally tenable. As the income from pension funds is congenitally exempt there is no question of allowing set off of losses from such exempt source. This objection rejected."

48. *Aggrieved by the order of the CIT(A), assessee is in appeal before the Tribunal.*

49. *We have heard and considered the rival submissions. In our view the issue is squarely*

covered in favour of the Assessee by the decision of the Hon'ble Bombay High Court in the case of CIT(A) Vs. LIC of India Ltd., (2011) 12 taxmann.com 388 (Bom) as explained while dealing with similar issue in AY 2009-10 in the earlier part of this order. The contention of the Revenue in this regard is that the Hon'ble Supreme Court in the case of Harprasad (Supra) has held that when any income is exempt at source, the loss would not also consequently enter into computation of income. As rightly contended by the Id counsel for the assessee it would be the case when income is computed under the normal provisions of the Act. However, in the case of Assessee's engaged in life insurance business Income has to be computed as laid down u/s 44 of the Act. Section 44 of the Act starts with a non obstante clause and overrides the provisions of the Act relating to computation of income under the various heads of income including income under the head profit and gains of business of insurance. Therefore, we are of the view that stand taken by the DRP cannot be accepted. We, therefore, direct that loss from pension fund which is exempt u/s10(23AAB) be excluded while determining surplus as per actuarial valuation surplus u/s 44 of the Act. Ground II raised by the assesese is allowed."

9. We noticed that the Id CIT(A) has followed the decision rendered by the Bombay High Court in the case of LIC of India (Supra). Accordingly we do not find any infirmity in the order passed by Id CIT(A) on this issue.

10. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on **23rd October, 2019.**

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,
Dated, 23 October, 2019.

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.