

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

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.1482/M/2018
Assessment Year: 2014-15**

JCIT (OSD), Circle-8(3)(1), 6 th Floor, Room No.615, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai - 400020	Vs.	M/s. Tata AIA Life Insurance Co. Ltd., 14 th Floor, Tower -A, Peninsula Business Park, Senapati Bapat Marg, Lower Parel, Mumbai - 400 013 PAN: AABCT 3784C
(Appellant)		(Respondent)

**ITA No.1683/M/2018
Assessment Year: 2014-15**

M/s. Tata AIA Life Insurance Co. Ltd., 14 th Floor, Tower -A, Peninsula Business Park, Senapati Bapat Marg, Lower Parel, Mumbai - 400 013 PAN: AABCT 3784C	Vs.	The ACIT-8(3)(1), 6 th Floor, Room No.615, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Nishant Thakkar, A.R.
Shri Hiten Chande, A.R.

Revenue by : Shri R. Manjunatha Swamy, D.R.

Date of Hearing : 03.09.2019

Date of Pronouncement : 08.11.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled cross appeals - one by the Revenue and the other by the assessee have been preferred against the order dated 18.12.2017 of the Commissioner of Income Tax (Appeals)

[hereinafter referred to as the CIT(A)] relevant to assessment year 2014-15.

ITA No.1482/M/2018 (Revenue's appeal)

2. The Revenue has raised the following grounds of appeal:

- 1."Whether on the facts and circumstances of the case and in law, the learned CIT(A) has erred in holding that the surplus disclosed in the Actuarial Report in Form I can be changed by way of adjustment.
2. Whether on the facts and circumstances of the case and in law, the learned CIT(A) has erred in holding that the capital contribution of shareholders account to policy holder account has to be reduced while computing income u/ r.w.s first schedule of IT Act.
3. Whether on the facts and circumstances of the case and in law, the learned CIT(A) has erred in agreeing to reduce the exempt income u/s 10(34) of the IT Act while computing income of insurance business of the assessee u/s 44 of the IT Act.
4. The appellant craves leave to amend or alter any ground or add a new ground that may be necessary.
5. The appellant prays that the order of CIT(A) on the above ground be set aside and that of the AO restored."

3. The issue raised in ground No.1 is against the order of Ld. CIT(A) holding that surplus disclosed in the actuarial report in form 1 can be charged by way of adjustment whereas the ground No.2 is against the order of Ld. CIT(A) holding that capital contribution of the shareholders account to policy holder account has to be reduced while computing income under section 44 read with 1 schedule of the Act.

4. The Ld. A.R., at the outset, submitted that the identical issue has been decided in assessee's own case in ITA No.1039/M/2011 A.Y. 2006-07 & others vide order dated 21.09.2106 by the coordinate bench. The Ld. A.R. submitted that since the issues raised in both the grounds of appeal stood decided by the co-ordinate bench of the Tribunal in favour of the assessee and against the Revenue and accordingly the ground No.1 & 2 raised by the Revenue may kindly be dismissed.

5. The Ld. D.R., on the other hand, fairly agreed that the issue have been decided in assessee's own case and thus fairly agreeing with the arguments of the Ld. A.R., however, relied on the grounds of appeal and order of the AO.

6. After going through the facts on record and the order of co-ordinate bench of the Tribunal in ITA No.1036 & 1039/M/2011 (supra), we observe that the ground No.1 & 2 raised in the this appeal by the Revenue are identical to ground No.3 & 2 respectively which has been decided by the co-ordinate bench of the Tribunal as under:

"8. After considering the relevant finding given in the impugned order as well as the aforesaid decisions of the Tribunal, we agree with Ld. Counsel that all the three issues raised in the grounds raised by the revenue are covered in favour of the assessee and against the Department by the aforesaid decisions of the Tribunal. We find that the Tribunal in the case of ICICI Prudential Insurance Co. Ltd. (supra) has dealt with all these issues in detail after considering the judgment of jurisdictional High Court; catena of other decisions and the relevant provisions of law. The relevant observations and the findings of the Tribunal in the case of ICICI Prudential Insurance Co. Ltd. (supra) on various points, paragraph wise are summarized as under:-

"24. Before analyzing the issue, it is necessary to discuss the principles of 'incorporation' of Insurance Act 1938 into the Income Tax Act 1961. As rightly pointed out by the learned Counsel, the reference to the Insurance Act 1938 in the Income Tax Act as such can only be considered as 'legislation by incorporation'.

27. 'actuarial valuation made in accordance with the Insurance Act, 1938' do mean that the actuarial valuation done in accordance with the Insurance Act, 1938. In arriving at the above decision we have also taken into consideration that Rule-5 in Part-B of the first schedule with reference to 'other insurance business' did incorporate the IRDA and its Regulations as amended by the Finance Act 2009 w.e.f. 1.4.2011 is also taken into consideration. This indicates that the Legislature consciously omitted incorporating the provisions of IRDA or the Regulations made there under in rule 2 which still refers to the Insurance Act, 1938 only.

28. Further, we also notice that the Insurance Act itself was amended along with the introduction of IRDA Act 1999. Along with the said IRDA Act, there are various amendments proposed in the Insurance Act in tune with IRDA

Act by amending the relevant provisions of Insurance Act 1938. However, since the Rule 5 was amended in the First schedule by specifically referring to the IRDA Act 1999 or the Regulations made there under, we are of the opinion that the legislature intended not to modify or amend the Rule-2. This indicates the intention of legislature that the actuarial valuation has to be made in accordance with the unamended Insurance Act, 1938. We are of the firm opinion that the unamended provisions of Insurance Act 1938 were only incorporated into the Income Tax Act as far as life insurance businesses are concerned. Therefore, AO's action in following the format prescribed under the Regulations of IRDA Act is not in accordance with the spirit of Rule-2 and provisions as made applicable under the Income Tax Act.

29. It is also noticed that the actuarial report and abstracts under the Insurance Act carrying on life insurance business shall, in accordance with the Regulations contained in Part I of the Fourth Schedule and in conformity with the requirements of Part II of that Schedule.

30. The First to Fourth Schedule of the Insurance Act 1938 was omitted by the Insurance Amendment Act 2002 after incorporation of the relevant schedules in the IRDA Act. Even though the said schedules were omitted from the Insurance Act, 1938, we are of the opinion that as far as Rule-2 is concerned by the principle of 'Legislation by incorporation' unamended Insurance Act, 1938 is applicable and the actuarial valuation has to be made in accordance with the then existing Part-I of the Fourth Schedule and in conformity with the requirements of Part-II of that schedule. Therefore, assessee's contention that the IRDA Regulations even though are applicable to assessee since it has commenced business after the commencement of the IRDA Act, 1999, for the purpose of Rule-2, the actuarial valuation has to be done in accordance with the Regulations contained in erstwhile Fourth schedule Part-I and Part II. This is what assessee is contending and merging the accounts of policyholder's and shareholder's account and arriving at the actuarial deficit, without taking into consideration the transfer of funds from the shareholder's account to policyholder's account.

31. After introduction of IRDA Act, the entire Regulation of insurance business has gone to the authority and in order to protect the interests of holders of insurance policies, to regulate, to promote and ensure orderly growth of insurance industry number of regulations have been prescribed by the IRDA. One such is, Insurance Regulatory and Development Authority (IRDA) (Actuarial Report and Abstract) Regulations 2000 by which method of preparation of actuaries report and abstracts were prescribed. An actuary is responsible for analyzing possible outcomes of the types of events that would potentially cost policy holders to make claims against their insurance policies. Insurance companies need to make sure that the money they are charging and collecting from policy holders is adequate to cover the costs of certain claims that might beneficially be made by policy holders as well as their other expenses. In fact, the work that actuaries perform is crucial to an insurance company's ability to remain in business. Actuaries are involved at all stages in product development and in the pricing risk assessment and

marketing of the products. Their job involves making estimates of ultimate out-come of insurable events. In the business of insurance the product cost is an abstraction, depending on the timing issues, variability issues and risk parameters. One big function actuaries provide is making reserves to insure that insurance companies keep enough money on their balance sheets to make good of all the claims they will have to pay. This involves arriving at actuarial surplus or deficit depending on various factors. In order to ensure a fair play in the business, the IRDA prescribed regulations according to which various norms were prescribed in order to ensure that Life Insurance business (even other insurance business) are done according to healthy business practices. As per the above regulations, Regulation 4 prescribes number of abstracts and statements in respect of (a) linked business; (b) non-linked business and (c) health insurance business. As part of this Regulation 4(2) (d) item no. iv, Form-"I" was prescribed for the purpose of valuation results and to indicate the surplus or deficit in the life insurance business of a company. Apart from the above regulations, IRDA also prescribed Insurance Regulatory and Development Authority (Preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations 2002. The surplus or deficit arrived at by the actuary in his valuation for the inter valuation period has to be taken into consideration under the regulations in financial accounts as well.

32. IRDA Regulations specifically require maintaining the policyholder's account and the shareholder's account separately and permits transfer of funds from shareholder's account to policyholder's account as and when there is a deficit in policyholder's account. As rightly noted by the Hon'ble Bombay High Court, as a policy, company is transferring funds/assets from shareholder's account to policyholder's account even during the year periodically as and when the actuarial valuation was arrived at in policyholder's account. Most of the companies are required to submit quarterly accounts under the Company Law, there is requirement of actuarial valuation report periodically and accordingly assessee was transferring funds from the shareholder's account to policyholder's account. Since the insurance business will not yield the required profits in the initial 7 to 10 years, lot of capital has to be infused so as to balance the deficit in the policyholder's account. During the year as already stated assessee has issued fresh capital to the extent of Rs.250 crores and transferred funds to the extent of Rs.233 crores from the shareholder's account to policyholder's account. Since assessee is having only one business of life insurance, the entire transactions both under the policyholder's and shareholder's account do pertain to the life insurance business only as it was not permitted to do any other business. Once assessee is in the life insurance business, the computation has to be made in accordance with the Rule-2 as per provisions of section 44. Therefore, there is a valid argument raised by assessee that both the policyholder's & shareholder's account has to be consolidated into one and transfer from one account to another is tax neutral. What AO has done is to tax the surplus after the funds have been transferred from shareholder's account to the policyholder's account at the gross level while ignoring such transfer in shareholder's account, while bringing to tax only

the incomes declared in the shareholder's account that too under the head 'other sources of income'. In fact while giving the finding that assessee is in the life insurance business only and incomes are to be treated as income from life insurance business, the CIT (A) surprisingly in subsequent assessment years appeals accepted AO's contention that surplus in shareholder's account is to be taxed as other sources of income. But once the provisions of section 44 of IT Act are invoked anything contained in the heads of income like income from other sources, capital gains, house property or even interest on securities does not come into play and only first schedule has to be invoked to arrive at the profit. Therefore, in our opinion both the policyholder's and shareholder's account has to be consolidated for the purpose of arriving at the deficit or surplus.

Comparison of Forms-I under the Insurance Act and the IRDA Regulations.

33. Whether Assessing Officer's action in adopting Form-I prescribed under the IRDA Regulations same as that of actuarial valuation made in accordance with the Insurance Act 1938. Even though Insurance Act 1938 also refers to Form-I, there is substantial difference in the formats. Both AO and the CIT (A) has given credence to Form I without understanding that the old form-I prescribed under the Insurance Act 1938 is entirely different from new Form-I prescribed under the IRDA Regulations.

35. The department is asked to explain what the surplus is shown under Form I i.e. at column (a) above. Regulation 8 as shown above has Column (a) 'surplus shown under Form I'. In Col.(e) one has to represent sum transferred from shareholder's fund during the inter valuation period. Item (g) refers to the 'total surplus' after taking into account items (a) to (f). Under Col.(a) surplus shown in Form I is a deficit as per Form AR-A in the policyholder's deficit account in this year. This corresponds the 'actuarial valuation surplus or deficit' referred to under the Insurance Act, 1938. This amount also tallies with Form I prescribed under Regulation 4. IRDA Regulations however, after arriving at the surplus or deficit in the Form I also prescribes a separate statement again as Form I with details of (a) to (f) under Regulation 8. As can be seen from these two forms, there is variation in the amounts are presented, as these forms serve different purposes. The Form I which was prescribed under Regulations 8 is after arriving at the distribution surplus under Regulations 6. The Regulations 6, 7 and 8 are as under: Thus as can be seen from above Regulations, the Form I under Regulation 8 represent the total surplus for the purpose of distribution of bonuses/ dividends to policy holders and does not represent surplus or deficit of actuarial valuation for the purposes of balance sheet. This amount is represented in Form I prepared under Regulation 4 for the purpose of financial accounts.

Reconciliation of amounts:-

36. As seen from the orders of the authorities, the 'Total surplus' prepared under Regulation 8 was taken as basis ignoring the Form- I of Regulation 4.

While accepting the department argument that for the purposes of Life insurance business the act provides for surplus of valuation to be taxed at lesser rate, we cannot accept the argument that surplus is Total surplus including Transfers from share holder's account. Basically transfers are tax neutral as a credit in one account gets cancelled by debit in other account when accounts are consolidated. What the Rule.2 prescribed was only 'average surplus' arrived by adjusting the surplus disclosed in the actuarial valuation made with regard to the Insurance Act, 1938 in respect of inter valuation period. Assessee in the course of the assessment proceedings has furnished general balance sheet in Form-A.

38. The statement furnished is in accordance with the Insurance Act, 1938, therefore, it cannot be stated that assessee returned income is not in accordance with the Insurance Act, 1938. There is no basis for AO to take Form-I 'total surplus' as surplus of the Life insurance business ignoring transfer from shareholder's account.

39. It is also on record that assessee followed the IRDA recommendations and accordingly prepared the actuarial valuation report including the surplus or deficit. However, Rule-2 prescribes only actuarial valuation in accordance with the Insurance Act, 1938. Therefore, AO is duty bound to insist on actuarial valuation in accordance with the Insurance Act, 1938, so as to bring to tax the surplus or deficit. What we notice is that AO, ignoring Rule-2, has relied on the actuarial valuation report prescribed under the IRDA recommendations under Regulation 8 that too at 'Total surplus', which is at variance with the Insurance Act, 1938. Since no amendment was brought to Rule-2 to incorporate IRDA recommendations, we are of the opinion that the action of AO in relying on the IRDA Regulations is not according to the law. Assessee had submitted its accounts as stated above, which are in accordance with the Insurance Act, 1938. Instead of examining these statements, just because assessee has shown total surplus in the accounts in similarly named Form-I(under Regulation 8), AO wants to tax the amount which is after taking into account the transfer of assets by way of fresh capital from shareholder's account. This in a way is taxing fresh capital infused into business indirectly which cannot be done as this is not business surplus but infusion of capital directly.

40. What assessee has done in reconciling the IRDA format with that of old Insurance Form is correct and accordingly the loss disclosed in the computation of income is according to the actuarial surplus/deficit under the Insurance Act, 1938 prescribed under Rule 2 of the first schedule part-A. In view of this, we are of the opinion that insistence by AO to bring to tax the entire amount shown under the new Regulations including transfer from shareholder's account is not correct. Instead of AO in taking the surplus at Regulation 8(1)(a) which is the actuarial surplus / deficit for the year took the amount as disclosed at Regulation 8 (1) (f) (total surplus after transfer from Shareholder's account) which is not at all correct.

Conclusion:-

42. In view of the above, looking at the issue in any way what we notice is that the computation made by assessee is in accordance with Rule-2 of the Insurance Act 1938 according to which only AO can base his computation. This also corresponds to the way incomes were assessed in earlier years i.e. the correct method as per Rule 2 and Sec 44 of IT ACT. In view of the discussion above and after analyzing the Forms, Regulations and Provisions we have no hesitation to hold that the assessee working of actuarial surplus/ deficit is in accordance with Rule 2 of First Schedule. Therefore, assessee grounds on this issue are allowed and AO is directed to modify the order accordingly”.

This decision has been followed by the Tribunal in the case of HDFC Standard Life Insurance Co. Ltd. (supra). Thus, following the same judicial precedence which would apply on the facts of the present case also, we decide the issues raised vide ground no. 1&2 in the department’s appeal in favour of the assessee and against the Department.

9. Similarly, with regard to the issue raised in ground No.3 also, the same is also covered by the same decision as incorporated above and accordingly, respectfully following the same, we uphold the order of the CIT(A) and dismissed the ground raised by the Department.”

Since the facts of the issues raised by the revenue are identical as decided by the coordinate bench in the order as stated reproduced above, accordingly the ground no. 1 and 2 raised by the revenue are dismissed and the order of ld. CIT(A) is upheld.

7. The issue raised in ground No.3 by the Revenue is against the order of Ld. CIT(A) directing the AO to reduce the exempt income under section 10(34) of the Act while computing the income of insurance business of the assessee under section 44 of the Act.

8. The Ld. A.R. at the outset submitted that the identical issue has been decided by the co-ordinate bench of the Tribunal in ITA No.1039/M/2011 (supra) in assessee’s own case wherein it has been held that the provisions of section 14A of the Act are not applicable to life insurance companies. The Ld. A.R. prayed

that the ground raised by the Revenue may kindly be dismissed in the light of the said decision of the coordinate bench.

9. The Ld. D.R., on the other hand, fairly agreed that the issue has been decided in assessee's own case agreeing with the arguments of the Ld. A.R., however, relied on the grounds of appeal and order of the AO.

10. After perusing the decision of the co-ordinate bench of the Tribunal in ITA No.1036 & 1039/M/2011 (supra) and the grounds raised by the Revenue, we observe that the identical issue stood adjudicated in favour of the assessee and against the Revenue in para 10 of the decision dated 21.09.2016 passed in ITA No.1039/M/2011 which is reproduced as under:

"10. Lastly, with regard to ground No.4, that is, disallowing exemption under section 10(34) with regard to the dividend income earned, we find that the Ld. CIT(A) after relying upon various decisions held that section 14A is not applicable to Life Insurance Company. The Tribunal has reiterated the same view in the above cases that provisions of section 14A will not apply to Insurance companies, whose income are strictly assessable in terms of Rules of the Insurance Act. Thus, respectfully following the same, we affirm the order of the CIT (A) and dismissed the ground raised by the revenue. Accordingly, grounds raised by the revenue are dismissed."

11. We, therefore, respectfully following the decision of the co-ordinate bench of the Tribunal, dismiss the ground no. 3 raised by the Revenue by upholding the order of Ld. CIT(A).

ITA No. 1683/Mum/2018

12. The assessee has raised the following grounds of appeal:

Aggrieved by the order passed by the Commissioner of Income-tax (Appeals) - 14, Mumbai [hereinafter referred to as 'the learned CIT(A)'], under section 250 of the Income-tax Act, 1961 (Act) and based on the facts and circumstances of the case and in law, Tata AIA Life Insurance Company Limited [hereinafter referred to as 'the Appellant'] respectfully submits that the learned CIT(A) erred in disposing the appeal of the Appellant, on the following grounds:

1. The learned CIT(A) erred in holding that assessed income cannot be less than the returned income by relying on the circular of the Central Board of Direct Taxes (CBDT) i.e. Circular no 549 dated 31 October 1989 and thereby rejecting the computation of income furnished by the Appellant prepared in accordance with regulations contained in Part-I and Part-II of the Fourth schedule of the unamended Insurance Act, 1938 reporting a taxable surplus of Rs.3,806,005,935.

2. Placing reliance on the CBDT Circular no 549 dated 31 October 1989, the learned CIT(A) erred in disregarding the revised claim under section 10(34) and section 10(23AAB) of the Act amounting to Rs 1,065,553,682 and Rs 317,696,000 respectively on the basis that the deduction would reduce the assessed income below the income disclosed in the revised return of income.”

13. The assessee has also raised following additional grounds which is as under :

“The CIT(A) erred in holding the exemption under section 10(34) is allowable on a net basis.”

14. The facts in brief are that the AO while passing the order held that method of computing of business income of life insurance company are to be computed as per the provision of section 44 of the Act read with rule 2 of the 1st schedule. The AO after verifying the actuarial report for the year ended 31.03.2014 observed that there is a surplus of Rs.594,13,20,000/- whereas the corresponding surplus for the preceding year ended 31.03.2013 was Rs.582,16,24,000/-. The AO thus concluded that profitable income for the year as per rule 2 of schedule 1 of the Act would be adjusted for Rs.11,96,96,000/- which was calculated by subtracting the surplus as on 31.03.2013 from the surplus as on 31.03.2014. After giving show cause notice to the assessee as to why the income should not be adjusted for the same which was replied by the assessee submitting that actuarial report included transfer of funds from share holder account and hence the surplus shown in the actuarial report can not be the income of the assessee. The assessee submitted that the actuarial report

is calculated as per form 1 of the Insurance Regulatory and Development Act and hence the surplus includes contributions from share holders funds. The assessee submitted before the AO that rule 2 of 1st schedule deals with the surplus in actuarial report as per Insurance Act, 1938 and not as per the IRDA Act and therefore the surplus as per actuarial report can not be treated as income of the assessee. The assessee relied on the decision of co-ordinate bench of the Tribunal in the case of ICICI Prudential Insurance Co. Ltd. vs. ACIT Mumbai (2013) 140 ITD 41 (Mum). However, the reply of the assessee did not find favour with the AO and he adjusted the income of the assessee by Rs.11,96,96,000/-.

15. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal of the assessee by observing and holding as under:

“5.2 I have considered the facts of the issue and the submissions made by the AR, In view of the decision of the jurisdictional ITAT in case of ICICI Prudential Insurance Co Ltd v ACIT - 6(1) [2013] 140 ITD 41 (Mumbai) ICICI Pru directing to compute the income of a life insurance company based on the mechanism prescribed as per the OLD Form 1 i.e. by considering the Surplus / (Deficit) as per Form I, prepared in accordance with the Fourth Schedule to the Insurance Act, 1938 [prior to its amendment by the Insuui2uice (Amendment) Act, 2002] for the last inter-valuation period, the income of the appellant is also to be computed accordingly.

However, when the computation as per old Form I is adopted, the appellant income of the appellant will be lower than the returned income which is not permissible (the surplus as per Old Form I comes to Rs 3,80,60,05,935 and the income as per the revised return of income is Rs 4,53,28,55,247) in view of the decision of Hon'ble Mumbai High Court in the case of LML Ltd. [1994] 205 ITR 585 (Bombay HC), wherein the Hon'ble Mumbai High Court relying on the CBDT Circular No. 549, dated 31-10-1989 has held that the assessed income cannot be lower than the returned income.

In light of the above, I hold that total income is to be restricted to the income as per revised return of income filed by the Appellant. The AO is hereby directed to compute the total income "as per the revised return of income filed by the Appellant on 28 March 2016.

This ground is accordingly **partly allowed.**”

16. The Ld. A.R. vehemently submitted before the Bench that the order passed by the Ld. CIT(A) on this issue is not as per the provisions of the Act. The Ld. A.R. submitted that the assessee has challenged the observations of the Ld. CIT(A) in which the Ld. CIT(A) has held that in view of the decision of the Hon'ble Bombay High Court in the case of LML Ltd. (1994) 204 ITR 585 (Bom. – HC) relying on the CBDT circular No.449 dated 31.10.1999 has held that income assessed can not be lower than the returned income. The Ld. A.R. submitted that identical issue arose in the case of ACIT vs. Bajaj Finance Ltd. in ITA No.288 to 291/PN/2014 A.Y. 2006-07 to 2008-09 wherein the co-ordinate bench of the Tribunal has held that post amendment to section 143(3) of the Act by the Finance Act(2), 1998 w.e.f. 1.10.1998 the AO is empowered to grant refund of any amount due to the assessee consequent to the assessment and therefore the AO is statutorily empowered to determine the revised income which can be lower than the returned income. The Ld. A.R. therefore prayed before the Bench that the ground 1& 2 raised by the assessee may kindly be allowed.

17. The Ld. D.R., on the other hand, relied on the order of Ld. CIT(A) on this issue by submitting that the assessed income can not be lower than the returned income and therefore the ground No.1 & 2 of the assessee may kindly be dismissed.

18. After hearing both the parties and perusing the material on record, we observe that the co-ordinate bench of the Tribunal in the case of ACIT vs. Bajaj Finance Ltd. in ITA No.288 to 291/PN/2014 (supra) has interpreted the provisions of section 143(3) as amended by the Finance Act (2), 1998 w.e.f.

01.10.1998. The co-ordinate bench of the Tribunal has held that the CBDT circular No.549 dated 31.10.1989 and judgment of the Hon'ble Bombay High Court in the case of LML vs. CIT (supra) were rendered in the context of assessment year 1989-90 which was prior to the amendment and in the post amendment period, the AO is statutorily empowered to determine the revised income which can even be lower than the returned income. The operative part of the decision is as under:

“9. We have carefully considered the rival submissions. In our considered opinion, the discussion made by the CIT(A) in para 10 of the impugned order, which we have extracted above, settles the controversy in favour of the assessee. The reliance placed by the Revenue on the CBDT's Circular dated 31.10.1989 (supra) and the decision of the Hon'ble Bombay High Court in the case of LML Ltd. Vs. ACIT (supra) is quite mis-placed having regard to the facts and circumstances of the present case. Ostensibly, the CBDT's Circular dated 31.10.1989 (supra) and also the judgment of the Hon'ble Bombay High Court in the case of LML Ltd. Vs. ACIT (supra) are in the context of assessment year 1989-90 which were prior to the amendments made to [section 143\(3\)](#) of the Act by the [Finance Act \(No.2\) 1998 w.e.f. 01.10.1998](#). As [section 143\(3\)](#) of the Act stood for the assessment year 1989-90, there was no provision for refund after the regular assessment. In the present case, the assessment years involved are 2006-07 onwards, which pertain to period after [section 143\(3\)](#) of the Act was amended by the [Finance Act \(No.2\) 1998 w.e.f. 01.10.1998](#). As per the amendment, the assessment under [section 143\(3\)](#) of the Act, inter-alia, envisages the Assessing Officer to grant refund of any amount due to the assessee consequent to the assessment and therefore, the Assessing Officer is statutorily empowered to determine the revised income which can be lower than the returned income. Therefore, in our view, the objection raised by the Revenue to the impugned order of CIT(A) is untenable in the eyes of the law, as it stood for the period under consideration.”

It is apparent from the above that post amendment to section 143(3) of the Act by Finance Act (2), 1998 w.e.f. 01.10.1998, the AO has the power to determine the revised income which can be lower than the returned income. Accordingly we set aside the order of Ld. CIT(A) on this issue and direct the AO accordingly. The issue raised by the assessee in ground No.1 & 2 are allowed.

19. The assessee has also raised additional ground which is reproduced as under:

“The CIT(A) erred in holding the exemption under section 10(34) is allowable on a net basis”

20. The Ld. A.R. while arguing on the admissibility of additional ground submitted that the issue is emanating out of the assessment record and order of the authorities below and requires no independent or further verification of facts on the part of the AO and therefore the same may kindly be admitted for adjudication.

21. Whereas the Revenue, on the other hand, opposed the admission of the said additional ground at this stage by submitting that the said ground was not raised before the authorities below.

22. After hearing both the parties and perusing the material on record, we observe that the issue raised by the Ld. A.R. by way of this additional ground is purely illegal and emanating out of the assessment records before the authorities below and does not require any further verification of facts. We are, therefore, inclined to admit the same for adjudication following the decision of National Thermal Power Company Ltd. vs. CIT 229 ITR 383 (SC).

23. At the outset, the Ld. Counsel of the assessee submitted before us that the issue is squarely covered in favour of the assessee in ITA No.1039/M/2011 in own case wherein the ITAT affirmed the order of Ld. CIT(A) and dismissed the ground raised by the Revenue on the issue of exemption under section 10(34) of the Act with regard to dividend income and provisions of

section 14A are not applicable to the insurance company. The Ld. A.R. submitted that in view of the said the decision of the co-ordinate bench of the Tribunal, the additional ground of the assessee may kindly be allowed by setting aside the order of Ld. CIT(A) wherein it has been held that the exemption under section 10(34) in respect of dividend is allowable on net basis.

24. The Ld. D.R., on the other hand, relied on the order of Ld. CIT(A) and argued that the expenses incurred for earning exempt income are to be reduced as contemplated by section 14A of the Act and then exemption is to be allowed under section 10(34) of the Act.

25. After hearing both the parties and perusing the material on record, we observe that the co-ordinate bench of the Tribunal in ITA No.1039/M/2011 (supra) has decided the issue by holding that the provisions of section 14A are not applicable to the life insurance companies by holding as under:

“10. Lastly, with regard to ground No.4, that is, disallowing exemption under section 10(34) with regard to the dividend income earned, we find that the Ld. CIT(A) after relying upon various decisions held that section 14A is not applicable to Life Insurance Company. The Tribunal has reiterated the same view in the above cases that provisions of section 14A will not apply to Insurance companies, whose income are strictly assessable in terms of Rules of the Insurance Act. Thus, respectfully following the same, we affirm the order of the CIT (A) and dismissed the ground raised by the revenue. Accordingly, grounds raised by the revenue are dismissed.”

26. Accordingly, following the co-ordinate bench decision we hold that the exemption under section 10(34) of the Act is to be allowed on the amount of dividend earned and not on net basis as the provisions of section 14A of the Act are not applicable to the insurance companies. The additional ground raised by the assessee is allowed.

27. In the result, the appeal of the Revenue is dismissed and the appeal of the assessee is allowed.

Order pronounced in the open court on 08.11.2019.

**Sd/-
(Mahavir Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 08.11.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.