

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

ITA No. 6971/MUM/2017 (A.Y: 2011-12)

Dy. Commissioner of Income- tax Circle – 6(3)(1) Room No. 506, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai – 400 020	v.	M/s. IDBI Federal Life Insurance Company Pvt. Ltd., 22 nd Floor, A Wing, Marathon Futurex N.M. Joshi Marg, Lower Parel (E) Mumbai – 400 013 PAN: AABCI6227M
(Appellant)		(Respondent)

**CO. NO. 10/MUM/2019
[ARISING OUT OF ITA No. 6971/MUM/2017 (A.Y: 2011-12)]**

M/s. IDBI Federal Life Insurance Company Pvt. Ltd., 22 nd Floor, A Wing, Marathon Futurex N.M. Joshi Marg, Lower Parel (E) Mumbai – 400 013 PAN: AABCI6227M	v.	Dy. Commissioner of Income- tax Circle – 6(3)(1) Room No. 506, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai – 400 020
(Appellant)		(Respondent)

Assessee by	:	Ms. Arati Vissanji
Department by	:	Shri Awangshi Gimson
Date of Hearing	:	21.11.2019
Date of Pronouncement	:	07.02.2020

ORDER**PER C.N. PRASAD (JM)**

1. This appeal and cross objection are filed by the revenue and assessee against the order of the Learned Commissioner of Income Tax (Appeals)-12, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 21.09.2017 for the A.Y. 2011-12.

2. Revenue in its appeal has raised the following effective grounds: -

"1. On the facts and in the circumstances of the case and in law, the Ld CYT(A) erred, in relying on the order of TTAT 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-7/ 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.

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 failing to appreciate that negative reserve has an impact of reducing the 'taxable surplus' as per Form-7 and therefore corresponding adjustment for "negative reserve" need to be made to arrive at "taxable surplus".

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 AO 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 in the circumstances of the case and in law, the Ld CIT(A) erred in deleting the addition made on account of claim of 1 00% 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 IT. Act?"*

3. At the outset, Learned Counsel for the assessee submitted that all the grounds of appeal of the revenue are decided by the Tribunal in assessee's own case for the A.Ys. 2008-09 to 2013-14 by various orders and also identical issues were decided by the Tribunal in the case of ICICI Prudential's case. Copies of the orders were placed on record by the Ld. Counsel.

4. Ld. DR fairly submitted that all the grounds were decided by the Tribunal in assessee's own case.

5. We have heard the rival submissions and perused the relevant materials on record. We find that the following grounds of appeal are covered in favour of the assessee by the decision of the ITAT in assessee's own case and in other cases as given below.

Ground No.	Ground raised before ITAT	ITAT decision in IDBI Federal Life Insurance Company Limited for A.Y. 2008-09 in ITA.No. 1488/Mum/2013 dated 25.01.2018	ITAT decision in IDBI Federal Life Insurance Company Limited for A.Y. 2009-10 & 2010-11 in ITA.No. 6281 & 6282/Mum/2012, ITA.No. 5567/Mum/2014 dated 09.08.2017	ITAT decision in IDBI Federal Life Insurance Company Limited for A.Ys. 2012-13 & A.Y. 2013-14 in ITA.No. 1044 & 1045/Mum/2018 & 6970/Mum/2017 dated 24.07.2019	ITAT decision in ICICI Prudential's case in ITA.No. 1563/Mum/2013	ITAT decision in ICICI Prudential's case [140 ITD 41 (Mum)]
1.	Allowing adjustment from the "actuarial valuation"	Page 6, last Para of Para 3	Page 5, Para 7.1	Page 5, Para 6	Pages 6 to 8, Paras 12 to 15	Page 58, Para 19
2.	Transfer between Share Holders Account and Policy Holder's Account is tax neutral	Page 6, last para of Para 3	Page 5, Para 7.1	Page 6 and 7, Para 8	Pages 6 to 8, Paras 12 to 15	Page 79, Para 36 Page 83, Para 39-40
3.	Negative Reserves	Page 6, last para of Para 3	Page 5, Para 7.1	---	Pages 6 to 9, Paras 12 to 14	Page 98, Para 59
4.	Exemption for dividend income	---	Page 5, Para 7.1	Page 9, Para 12	Pages 6 to 8, Paras 12 to 15	Page 94, Para 49
5.	Disallowance u/s. 14A	---	Page 6, Para 8.3	Page 11 and 12, Para 14	Pages 2 to 6, Paras 5 to 9	Pages 86-89, Para 46

Ground No.	Ground raised before ITAT	ITAT decision in IDBI Federal Life Insurance Company Limited for A.Y. 2008-09 in ITA.No. 1488/Mum/2013 dated 25.01.2018	ITAT decision in IDBI Federal Life Insurance Company Limited for A.Y. 2009-10 & 2010-11 in ITA.No. 6281 & 6282/Mum/2012, ITA.No. 5567/Mum/2014 dated 09.08.2017	ITAT decision in IDBI Federal Life Insurance Company Limited for A.Ys. 2012-13 & A.Y. 2013-14 in ITA.No. 1044 & 1045/Mum/2018 & 6970/Mum/2017 dated 24.07.2019	ITAT decision in ICICI Prudential's case in ITA.No. 1563/Mum/2013	ITAT decision in ICICI Prudential's case [140 ITD 41 (Mum)]
6.	Allowing write off of assets (Cost less than ₹.20,000)	Page 6, last para of Para 3	Pages, Para 7.1 Page 6, Para 8.4	Page 8, Para 10	Pages 6 to 8, Paras 12 to 15	Page 98, Paras 61-62

6. Thus, we find that all the above grounds of appeal raised by the Revenue are covered in favour of the assessee by various orders of the Tribunal in the aforementioned cases.

7. The Hon'ble Madhya Pradesh High Court in the case of Agrawal Warehousing and Leasing Ltd. v. CIT 2 [57 ITR 235], by following the judgment of the Hon'ble Supreme Court in the case of UOI v. Kamlakshi Finance Corporation Ltd. AIR 1992 SC 711, 712 has ruled thus:

“The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not ‘acceptable’ to the Department - in itself an objectionable phrase – and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assessee and chaos in administration of tax laws”.

8. Carrying this principle further, the Hon'ble Gujarat High Court in Sayaji Iron and Engineering Co. v. CIT [253 ITR 749] reiterated that no Tribunal of fact has any right or jurisdiction to come to a conclusion entirely contrary to the one reached by another bench of the same Tribunal on the same facts, and if a bench of a Tribunal on identical facts is allowed to come to a conclusion directly opposed to the conclusion reached by another bench of the Tribunal on an earlier occasion, that will be destructive of the institutional integrity itself.

9. Therefore, facts being identical, we follow the decision of the Tribunal mentioned hereinbefore and dismiss all the grounds of appeal filed by the Revenue in its appeal.

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7. Since we have dismissed the appeal of the revenue, the cross objection filed by the assessee becomes infructuous. Accordingly, the same is dismissed.

Order pronounced in the open court on the 07th February, 2020

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai / Dated 07/02/2020

Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum