

आयकर अपीलीय अधिकरण “एच” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य
एवं माननीय श्री रवीशसूद, न्यायिक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON’BLE SHRI RAVISH SOOD, JM
(Hearing Through Video Conferencing Mode)

1. आयकर अपील सं./ ITA No.1917/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2012-13)
&
2. आयकर अपील सं./ ITA No. 1918/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)
&
3. आयकर अपील सं./ ITA No.5639/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2014-15)
&
4. आयकर अपील सं./ ITA No.1191/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2015-16)

DCIT-1(1)(2) 579, Aaykar Bhawan M.K. Road Mumbai 400 020.	बनाम/ Vs.	M/s. HDFC Standard Life Insurance Co. Ltd. 12 th & 13 th Floor, Lodha Excelus Appollo Mills Compound, NM Joshi Marg Mahalaxmi, Mumbai 400 011.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACH- 8755-L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

5. Cross Objection No.228/Mum/2018
(Arising out of ITA No.1917/Mum/2017)
(Assessment Year: 2012-13)
&
6. Cross Objection No.227/Mum/2018
(Arising out of ITA No.1918/Mum/2017)
(Assessment Year: 2013-14)
&
7. Cross Objection No.33/Mum/2017
(Arising out of ITA No.5639/Mum/2017)
(Assessment Year: 2014-15)
&
8. Cross Objection No.33/Mum/2020
(Arising out of ITA No.1191/Mum/2019)
(Assessment Year: 2015-16)

M/s. HDFC Standard Life Insurance Co. Ltd. 12 th & 13 th Floor, Lodha Excelus Appollo Mills Compound, NM Joshi Marg Mahalaxmi, Mumbai 400 011.	बनाम / Vs.	DCIT-1(1)(2) 579, Aaykar Bhawan M.K. Road Mumbai 400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACH- 8755-L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Advocate Shri Charanjeev Chandrapal (Ld. Special Counsel)
Assessee by	:	Shri Percy Pardiwala, Ld. Sr. Counsel

सुनवाई की तारीख/ Date of Hearing	:	01/04/2021
घोषणा की तारीख / Date of Pronouncement	:	30/04/2021

आदेश / ORDER

Per Bench

1.1 Aforesaid appeals by revenue for Assessment Years (AY) 2012-13 to 2015-16 contest separate orders of learned first appellate authority. However, the facts as well as issues, in all the years, are stated to be common and therefore, the appeals were heard together and are now being disposed-off by way of this common order for the sake of convenience and brevity. The assessee has filed cross-objections for all the years which seek alternative relief. In the above background, we proceed to dispose-off the appeal for AY 2012-13.

1.2 The grounds raised by the revenue read as under:-

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct 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 regulation there under and accordingly allowing adjustment from the "surplus" [and as shown by the assessee in Form-1] in violation of ratio of the Apex court in the case of LIC Vs. CIT 51 ITR 778?."

"2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in interpreting that on account of "legislation by interpretation", 'only' the "un-amended" Insurance Act 1938 and the Regulations there under became part of Section 44 r.w.Rule 2 of the First Schedule of the I.T. Rules."

HDFC Standard Life Insurance Company Limited
Assessment Years: 2012-13 to 2015-16

“3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in interpreting the provisions of Section 44 of the I.T. Act read with rule 2 of the First Schedule that the legislature consciously omitted incorporation of the provision of the Insurance Regulatory and Development Authority Act, 1999 and regulation made there under in Rule 2 of the First Schedule which ‘refers’ only to an amended Insurance Act 1938 and Regulations made there under.”

“4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate the provisions of section 28 of Insurance Regulatory and Development Authority Act, 1999 which clarifies that provisions of IRDA Act and its Regulation as “legislation by reference” in Section 44 of the I.T. Act read with Rule 2 of the First Schedule of the I.T. Rules.”

“5. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in allowing relief to the assessee by holding that surplus available in share Holder 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 Holder Account and then taxing this net surplus arrived at the rates specified u/s. 115B of the Act.”

“6. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in ignoring the fact that even the assessee insurance company uses the nomenclature expenses “other than those directly related to insurance business” while computing the surplus in the share Holder Account and treating it as part of Insurance Business?”

“7. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in concluding that transfer from share Holder Account to Policy Holder’s 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 r.w. Rule 2 of the First Schedule.”

“8. Whether on the facts and 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 Holder’s Account and Share Holder’s Account is to be consolidated and only “net surplus” is to be taxed as income from Insurance Business.”

“9. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in holding that provisions of Section 14A of the Act did not apply to insurance business, even when the assessee has claimed exempted income u/s.10 of the I.T. Act.

“10. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in giving relief to the assessee on charge of interest u/s. 234B of the Act on its perception of peculiar circumstances of case.”

“11. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in failing to appreciate that negative reserve has an impact of reducing the taxable surplus as per Form-1 and therefore corresponding adjustment for “negative reserve” need to be made to arrive at “taxable surplus?”

1.3 The grounds taken in assessee’s cross-objection read as under.

1. The Commissioner of Income tax (Appeals)[CIT(A)] ought to have held that the provisions of section 234B of the Income-tax Act, 1961 (‘the Act’) are not applicable in the Respondent’s case.

2. If the negative reserves are held to be taxable as income, then

a. Only the incremental negative reserves should be brought to tax.

b. The negative reserves pertaining to the pension line of business ought to be considered exempt under section 10(23AAB) of the Act.

This is without prejudice to the relief granted by the CIT(A) that the negative reserves are not taxable.

3. If the contribution from Profit and Loss account is held to be taxable as income, the exemption under section 10(23AAB) should also be available in respect of the amount of Rs.2,68,78,000 transferred from the profit and Loss Account to the pension business

This is without prejudice to the relief granted by the CIT(A) that the contributions are not taxable.

4. If section 14A of the Act is held to be applicable to the Respondent, the disallowance under section 14A should be restricted to the disallowance of Rs.7,93,30,441 calculated by the Respondent.

2. The learned Sr. Counsel appearing for Assessee, Shri Percy Pardiwala, at the outset, submitted that identical issues were raised by the revenue in AYs 2010-11 & 2011-12 which were subject matter of adjudication by Tribunal vide ITA Nos.4078/Mum/2015 & ors. (a/w MA Nos.249-250/M/2018 order dated 02/08/2019), common order dated 23/08/2017. A copy of the order has been placed on record. The attention has been drawn to the fact that all the eleven grounds raised in revenue's appeal in this year were identical to grounds raised in AYs 2010-11 & 2011-12 and therefore, the said decision is squarely applicable to this year. Upon perusal of the order, we find that this decision follows the earlier decisions of Tribunal in assessee's own case for AYs 2002-03 to 2009-10. The order of Hon'ble Bombay High Court in revenue's appeal for AY 2008-09, ITA No.548 of 2014 dated 10/10/2016 has also been placed on record wherein the appeal has been admitted by Hon'ble Court on questions nos. 2,3,8,11 & 12 whereas remaining questions have not been admitted, finding no substantial question of law.

3. The Ld. Special Counsel for revenue, Shri Charanjeev Chandrapal, very fairly conceded the aforesaid fact. However, Ld. Counsel submitted that the issue of 'negative reserves' is in further challenge by revenue and already pending for adjudication before Hon'ble Apex Court.

Therefore, the revenue wishes to reserve its arguments on this issue. In the said background, Ld. Sr. Counsel supported the assessment framed by Ld. AO.

4. We have carefully heard the rival submissions and perused relevant material on record including the orders of lower authorities and the cited order of Tribunal in assessee's own case for earlier years as well as the order of Hon'ble Bombay High Court in assessee's own case. Our adjudication to the subject matter of appeal would be as under.

Assessment Proceedings

5.1 The assessee being resident corporate assessee is stated to be engaged in Life Insurance business. The income of such business is taxed as per Sec.44 of the Act r/w rule contained under first schedule. The Assessee declared loss of Rs.31.79 Crores in original return of income filed on 28/09/2012. The said loss was arrived at by considering the incremental surplus disclosed in new Form-1 and net income / loss as per the Profit & Loss Account.

5.2 However, the declared loss was revised to income of Rs.12.83 Crores which was ultimately reduced to 'nil' after set-off of brought forward losses. The return was stated to be revised on the basis of Tribunal's decision in assessee's own case for earlier years. In accordance with the decision, the revised income was computed by considering the deficit in the valuation Balance Sheet (i.e. old form) as at 31/03/2012 as reduced by the deficit in valuation Balance Sheet as at 31/03/2011. The decision of Tribunal held that surplus / deficit as per Rule 2 should be the surplus / deficit disclosed by actuarial valuation made in accordance with the regulations contained in the erstwhile Part-

1 & Part-II of the Fourth Schedule to the Insurance Act and accordingly, the surplus / deficit computed based on Form-I of Fourth Schedule to the Insurance Act prior to its amendment, represents the taxable income of a life insurance company.

5.3 During the course of assessment proceedings, Ld. AO noted that there were recurring issues on which additions were made in earlier years and therefore, the same additions were to be made in this year. Accordingly, an assessment has framed for the year under consideration u/s 143(3) on 09/03/2015 determining profit of Rs.4001.71 Crores after certain adjustments / disallowances.

5.4 Aggrieved, the assessee contested the adjustments / additions with partial success before Ld. CIT(A) vide impugned order dated 22/12/2016. The aforesaid adjudication has given rise to revenue's appeal before us.

Appellate Proceedings

6. Before Ld. CIT(A), the attention was drawn to the fact the issues were covered by the earlier decisions of Tribunal in assessee's own case for AYs 2002-03 to 2009-10. The same has also been tabulated in para 6.1 of the impugned order. Following these decisions, the impugned order has been passed. It is admitted position before us that Ld. CIT(A) has merely followed the earlier decisions of the Tribunal.

Our findings & Adjudication

7. In the above background, our adjudication to the subject matter of appeal would be as under: -

8. Surplus in Policyholder's Account as per Actuarial Valuation treated as Income from insurance business as per Rule-2 of First Schedule

8.1 The assessee declared income as per provisions of Section 44 r/w rule 1 & 2 of first schedule of Income Tax Act, 1961. During assessment proceedings, the revised income filed by the assessee based on valuation Balance Sheet (old form) was disregarded. As against this, the surplus, as done in earlier years, was to be considered as per new Form-1 which would represent income from life insurance business whereas Income in the Profit & Loss Account representing shareholder's account was to be treated as 'Income from other sources'.

8.2 As per actuarial valuation (new form), the assessee had surplus of Rs.868.77 Crores on 31/03/2012 in policyholders' account. As per the overriding provisions of Sec.44 r/w rule-2 of the First Schedule, the profits of life insurance business was to be taken to be the annual average of the surplus disclosed in the actuarial valuation report of the year. However, the assessee made further adjustment of reducing the actuarial surplus as on 31/03/2011 to arrive at 'incremental surplus' and adding the surplus / deficit of the shareholders' i.e. net profit / loss for the year taken from the financials of the company to the 'incremental surplus' of new Form-1. The same, in the opinion of Ld. AO was not acceptable since the assessee carries out the actuarial valuation every year and therefore, there would be no question of adjusting the earlier surplus. Accordingly, the surplus of Rs.868.77 Crores was taken as the profit of insurance business instead of 'incremental surplus' as offered by the assessee. The income in shareholders' account was brought to tax

as 'Income from other sources'. It was noted that the earlier decisions of ITAT were under challenge by the department before Hon'ble High Court.

8.3 The Ld. CIT(A), following Tribunal's decisions for AYs 2002-03 to 2009-10, directed Ld. AO to accept revised income based on old form-1. Further, the Ld. AO was directed to consider only the incremental surplus or deficit for the said purpose. Aggrieved, the revenue is before us by way of ground nos. 1 to 4.

8.4 Evidently, Ld. CIT(A) has merely followed earlier view of the Tribunal. We find that similar view has been taken by coordinate bench in assessee's own case for AYs 2010-11 & 2011-12, ITA Nos. 4078/Mum/2015 & ors. (a/w MA Nos.249-250/M/2018 order dated 02/08/2019), common order dated 23/08/2017. The Hon'ble Bombay High Court, on this issue, has admitted revenue's ground of appeal but the decision is pending. Therefore, the issue, as of now, is squarely covered by the earlier decisions of the Tribunal. Therefore, we find no reason to deviate from the earlier stand of the Tribunal. Resultantly, ground Nos. 1 to 4 stands dismissed.

8.5 Consequently, the working done by Ld. AO in para-12, on account of pension fund to re-compute exemption u/s 10(23AAB) would stand reversed.

9. 'Negative Reserves' in the Actuarial Valuation as on 31/03/2012

9.1 There were 'negative reserves' of Rs.3555.35 Crores in (new) Form No.1. The Ld. AO proceeded to treat the same as the income of the assessee. The assessee opposed the same by submitting that taxing 'negative reserves' would result in taxing future profits which may or may

not arise. However, Ld. AO noted that surplus in actuarial valuation in Form No.1 was arrived at by ignoring the 'negative reserves' and the same should have been taken into account while computing the income.

9.2 The concept of 'negative reserve' would stem from the fact that while making actuarial valuation, requirement of reserve to service the insurance policies issued by the company was to be ascertained. Such reserve (called mathematical reserve or value of liability) would be equal to present value of future benefits payable & future expenses to be incurred less present value of future premium payable. When the present value of future premium is more than the present value of future benefits & future expenses, this amount becomes negative which is known as 'negative reserves'. In simple words, it would mean that the insurance contract under consideration would not warrant any further provision and is, in fact, an asset. However, following IRDA guidelines, insurers may not treat the policies as an asset and they would set any 'negative reserve' to zero.

9.3 The Ld. AO opined that ignoring such 'negative reserves' would give unrealistic picture and understate the surplus. Though the assessee submitted that income of the Life insurance business was to be assessed on the basis of actuarial valuation only and the surplus worked out by the actuary could not be disturbed by Income Tax Authority, however, the same could not convince Ld. AO. Accordingly, the surplus of actuarial valuation was increased by the amount of 'negative reserves' i.e. Rs.3555.35 Crores. It was noted that the earlier decisions of ITAT were under challenge by the department before Hon'ble High Court.

9.4 The Ld. CIT(A), following Tribunal's decisions for AYs 2002-03 to 2009-10, directed Ld. AO to delete the aforesaid adjustment. Aggrieved, the revenue is before us by way of ground no. 11.

9.5 Evidently, Ld. CIT(A) has merely followed earlier view of the Tribunal. We find that similar view has been taken by coordinate bench in assessee's own case for AYs 2010-11 & 2011-12, ITA Nos. 4078/Mum/2015 & ors. (a/w MA Nos.249-250/M/2018 order dated 02/08/2019), common order dated 23/08/2017. The Hon'ble Bombay High Court has not admitted revenue's ground of appeal, on this issue, in AY 2008-09. Therefore, the issue, as of now, is squarely covered by the earlier decisions of the Tribunal. Therefore, following consistent view of the Tribunal, we dismiss this ground of appeal.

10. Income from Shareholders' Account treated as 'Income from Other Sources' without allowing deduction in respect of funds transferred from Shareholders' Account (SHA) to Policyholders' Account (PHA)

10.1 The Ld. AO noted that the assessee was required to prepare two separate accounts as per IRDA Regulations, 2002 – Revenue Account of the Policy Holders (Technical Account) and Profit & Loss Account of the Shareholders (non-technical account). The assessee earned income from activities other than life insurance business which would appear in revenue account of shareholders. Since, taxation of surplus as per actuarial valuation is taxation of income of assessee from life insurance business and the assessee is not permitted to carry any other business, the surplus in shareholders' account was to be taxed separately as 'Income from other sources'. The net surplus in shareholders account

Form A-PL was Rs.46.39 Crores which was brought to tax by Ld. AO as 'Income from Other Sources'. The said income would be taxable at normal rates. The assessee's alternative plea that contribution from SHA to PHA should be allowed as deduction was also negated.

10.2 The Ld. CIT(A), following Tribunal's decisions for AYs 2002-03 to 2009-10, directed Ld. AO to consider shareholders' account as part and parcel of insurance business. In other words, the income from shareholders' account was not to be taxed as 'Income from Other Sources' but as profits of insurance business under 'Business Income'. The Ld. AO was directed not to make any adjustments to the income computed by the assessee in accordance with rules to first schedule of the Income Tax Act. Further, entire profit would be taxable @12.5% u/s 115B as per the aforesaid decision of the Tribunal. Aggrieved, the revenue is before us by way of ground nos. 5 to 8.

10.3 We find that Ld. CIT(A) has merely followed earlier view of the Tribunal. Similar view has been taken by coordinate bench in assessee's own case for AYs 2010-11 & 2011-12, ITA Nos. 4078/Mum/2015 & ors. (a/w MA Nos.249-250/M/2018 order dated 02/08/2019), common order dated 23/08/2017. Therefore, the issue, as of now, is squarely covered by the earlier decisions of the Tribunal. Therefore, following consistent view of the Tribunal, we dismiss ground nos. 5 to 8.

11. Disallowance u/s 14A

11.1 The assessee received exempt dividend income of Rs.232.12 Crores but did not offer any suo-moto disallowance against the same while computing its income. After deducting dividend of Rs.75.75 Crores relating to pension business, the balance dividend of Rs.156.36 Crores

was broken into two parts viz. (i) Rs.0.64 Crores pertaining to investment from Shareholder's Account; (ii) Rs.155.72 Crores pertaining to investment from policyholders' account.

11.2 The assessee submitted that the provisions of Sec.14A would not apply to insurance company. However, not convinced, Ld. AO, applying Rule 8D(2)(iii), computed disallowance @0.5% of average investments which worked out to be Rs.66.12 Crores. The said disallowance was accordingly bifurcated into shareholders' account as well as policyholders account for computational purposes in view of the fact that income from shareholders account was treated as 'Income from other Sources.'

11.3 The Ld. CIT(A), following Tribunal's decisions for AYs 2002-03 to 2009-10 opined that in view of special provisions of Section 44 of the Act, the provisions of Sec.14A would not be attracted to the assessee. Aggrieved, the revenue is before us by way of ground no.9.

11.4 We find that Ld. CIT(A) has merely followed Tribunal's order for earlier years. Keeping in view the consistent stand of Tribunal in earlier years, we find no reason to deviate from the same. This ground stands dismissed.

12. Interest u/s 234B

12.1 In concluding para of assessment order, Ld. AO has directed for charging of interest u/s 234A/B/C/D. The Ld. CIT(A), while observing that levy of interest was mandatory, directed Ld. AO to revise the computations after giving effect to appellate order. Aggrieved the revenue is before us by way of ground no.10 wherein it has been pleaded that Ld. CIT(A) erred in giving relief to the assessee on account

of interest u/s 234B. However, we find that no such relief has been granted by Ld. CIT(A). Therefore, ground No.10 stands dismissed.

12.2 The assessee, in its cross-objections, has submitted that interest u/s 234B would not be leviable as held in earlier years. Concurring with the same, we direct Ld. AO to follow the directions given in para-16 of the Tribunal order for AY 2010-11 & 2011-12, ITA Nos. 4078/Mum/2015 & ors., common order dated 23/08/2017. Ground No.1 of assessee's cross-objections stand allowed.

12.3 Finally the revenue's appeal stand dismissed.

Revenue's Appeal for AYs 2013-14 to 2015-16

13. It is admitted position before us that facts as well as issues are substantially the same in all these years. Therefore, our adjudication, as for AY 2012-13, shall *mutatis-mutandis* apply to all these years. We order so. Consequently, the revenue's appeal for all these years stand dismissed.

Assessee's Cross-Objections

14.1 The registry has noted a delay of 164 days in filing of cross-objection for AY 2015-16. The condonation of the same has been sought by the assessee on the strength of letter dated 23/09/2020. It has been submitted that the last date for filing the cross-objection was 04/04/2020. Owing to pandemic situation, there was complete lockdown since March, 2020 which got extended from to time. Nevertheless, the assessee filed digitally signed copy of cross-objection by email dated 07/07/2020 and finally, the physically copy could be submitted only on 15/09/2020. In the above background, condonation of delay has been sought by the assessee.

14.2 After due consideration of the same, the bench formed an opinion that there was a reasonable cause in delayed filing of the cross-objection. Hence, we are inclined to condone the delay.

14.3 In ground no.1, the assessee has assailed charging of interest u/s 234B. The same has already been adjudicated and allowed by us in preceding para-7.5. Rest of the grounds, in all the years, is only alternative to revenue's ground of appeal. Since revenue's appeals have been dismissed, all these grounds have been rendered infructuous. Accordingly, the cross-objections, for all the years, stands partly allowed.

Conclusion

15. The revenue's appeals stands dismissed. The assessee's cross-objections stands partly allowed.

Order pronounced on 30th April, 2021.

Sd/-

(Ravish Sood)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 30/04/2021

Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

HDFC Standard Life Insurance Company Limited
Assessment Years: 2012-13 to 2015-16
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.