

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : D : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.224/Del/2017
Assessment Year: 2014-15

ACIT,
Central Circle-1,
New Delhi.

Vs Sahara India Life Insurance Co. Ltd.,
R/o Kapoorthala Complex,
Aliganj,
Lucknow.

PAN: AAHCS1334B

(Appellant)

(Respondent)

Assessee by	:	Shri Aditya Vohra, Advocate
Revenue by	:	Mrs. Aashna Paul, CIT, DR
Date of Hearing	:	25.05.2021
Date of Pronouncement	:	30.06.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the Revenue is directed against the order dated 15.11.2016 of the CIT(A)-23, New Delhi, relating to assessment year 2014-15.

2. Facts of the case, in brief, are that the assessee is a company carrying on life insurance business. It got the licence to commence business on 6th February, 2004 and the business operations started on 30th October, 2004. It filed its return of

income on 27.11.2014 declaring total income at Rs.50,76,46,500/-. The AO completed the assessment determining the total income of the assessee at Rs.52,58,20,152/- wherein he made the following additions/disallowances:-

Income From Business -		
Income Declare		50,76,46,500/-
Add: Disallowance of amortization of investment	Rs.1,43,46,219.44	Rs.1,43,46,219.44
Disallowance on account of interest on TDS	Rs.960/-	Rs.960/-
Disallowance on account of Bonus Unpaid	Rs.6,62,612/-	Rs.6,62,612/-
Disallowance on account of Leave Encashment Unpaid	Rs.31,63,861/-	Rs.31,63,861/-
		Rs.52,58,20,152/-

3. In appeal, the Id.CIT(A), following the orders of his predecessor for A.Y.2006-07 to 2013-14 deleted the above additions.

4. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds:-

01. The order of Ld. CIT(A) is not correct in law and on facts.
2. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,43,46,219/- made by AO on account of Amortization of investment
3. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting addition of Rs.960/- made by AO on account of Interest on TDS
4. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting addition of Rs.6,62,612/- made by AO on account of Bonus Unpaid
5. That on the facts and circumstances of the case, the Ld. CIT(A) has

erred in deleting addition of 31,63,861/- made by AO on account of -Leave Encashment Unpaidø

6. The appellant craves leave to add, amend any/all the ground of appeal before or during the course of hearing of the appeal.ö

5. Grounds No.1 and 6 being general in nature are dismissed.

6. In ground of appeal No.2, the Revenue has challenged the order of the CIT(A) in deleting the addition of Rs.1,43,46,219/- made by the AO on account of amortization of investment.

7. Facts of the case, in brief, are that the AO, during the course of assessment proceedings, asked the assessee to furnish the details of amortization of investment in securities and the evidence thereof to justify its claim. The assessee filed all those details and submitted that these are verifiable with reference to books of account of the assessee. So far as the query raised by the AO as to why the amortization in respect of investment in securities charged to Profit & Loss Account should not be disallowed as the investment activity of the assessee is distinct from its life insurance business, the assessee submitted that such observation is misconceived as the investment activity has to be undertaken by the assessee company for carrying on the life insurance business as per Insurance Act and as per the guidelines of IRDA. The balance sheet and the accounts are prepared in accordance with the Insurance Act and. as per the provisions contained in the

Insurance Act amortization of investments made is written off from the year till the date of maturity and, therefore, the same is fully allowable deduction as the income from life insurance business has to be imputed in accordance with the provisions of section 44 of the Insurance Act notwithstanding anything contained in the provisions of section 28 to 43B of the Income Tax Act, 1961.

8. However, the AO was not satisfied with the arguments advanced by the assessee. He referred to the provisions of section 44 of the IT Act and noted that profits and gains of any business of insurance is assessable in accordance with the provisions of section 44 of the IT Act read with Rule 2 of the First Schedule of the Act. According to the AO, the profit and gains of any business of insurance is assessable in accordance with provisions of Section 44 of the Income Tax Act read with Rule 2 of the First Schedule of the Act. However, the assessee also has investment activity making investment in government securities and other specified securities and has earned interest income thereon. This investment activity of the assessee according to the AO is a separate and distinct business activity from the business of insurance. Accordingly, he held that the same cannot be said to be covered by the provisions of Section 44 of the Act and to this extent, the IRDA guidelines cannot have any overriding effect on the same. From the perusal of books of accounts and the details filed by the assessee, he noted that the assessee has shown Rs.1,43,46,219.44 as amortization (charge)/credit against the interest earned on such

securities.

9. According to the AO, the contention of the assessee is not maintainable so far as the claim of amortization is concerned. He observed that in some cases such investments have been made from the local market where cost has been incurred more than the face value of the securities. However, the market rate of such securities is not significantly less than purchase cost because in a majority of such investments in securities, further investments have been made in secured funds where the chances of any significant fall does not exist. He noted that as per the practices adopted by the assessee over the years, the difference in purchase value of the securities and the face value is amortized and written off over the period of remaining life-span of the security against the interest received/receivable. The claim of such amortization is not permissible in view of the ratio of the judgment of Honøble Supreme Court in the-case of M/s. Vijaya Bank Limited vs. CIT reported in 187 ITR 0541. The AO accordingly held that the investment activity of the assessee is a separate and distinct business activity than business of insurance. Accordingly, the same cannot be said to be covered by the provisions of section 44 of the Act. The AO therefore made addition of Rs.1,43,46,219.44 to the total income of the assessee.

10. In appeal, the Id.CIT(A) deleted the addition by observing as under:-

õ4.2 The 2nd, 3rd & 4th grounds relate to addition of Rs. 1,43,46,219/- on account of amortized portion of investment written off in accordance with the Insurance Act and I.R.D.A. guidelines in terms of the provisions of Section 44

of the Act read with First Schedule, and the grounds 5(a) to 7(b) relate to addition of Rs.960/-, Rs.6,62,612/- and Rs.31,63,861/- on account of disallowance of interest on TDS, bonus not paid during the financial year, and leave encashment not paid during the financial year respectively though the assessment of an insurance company has to be made in accordance with the provisions of section 44 of the Income Tax Act, 1961 and the provisions of section 28 to 43B of the Act are not applicable in the case of Life Insurance Business. Since these grounds relate to assessment of Life Insurance business these are taken together.

4.2.2 The facts of the case are similar to that of the case of the appellant for AY 2012-13 and 2013-14 and are covered by my order dt. 21.12.2015 and 09.06.2015 in Appeal Nos. 239/14-15 and 395/15-16 as also that of my Lnd. predecessor in AYs 2006-07 to 2011-12 in Appeal Nos. 136 and 664/09-10, 236/10-11, 398/11-12, 157 751/13-14 wherein it has been held that the provisions of sections 28 to 43 of the Act are not Applicable to the case of the appellant where the accounts are to be prepared in accordance with provisions of section 44 read with First Schedule of Income Tax Act, 1961 and I.R.D.A. guidelines (Preparation of financial statements and auditor's report of insurance companies Regulations 2002). Following these decisions all the above additions made are deleted.

11. After hearing both sides, we do not find any infirmity in the order of the CIT(A) on this issue. The Id. CIT(A), while deciding the issue has followed the order of his predecessor for AYs 2012-13 and 2013-14 and 2006-07 to 2011-12. Nothing contrary was brought to our notice to take a contrary view than the view taken by the CIT(A) on this issue. We, therefore, do not find any infirmity in the order of the CIT(A) deleting the addition. Accordingly, the ground raised by the Revenue on this issue is dismissed.

12. So far as the deletion of Rs.960 made by the AO on account of interest on TDS as per grounds of appeal No.3 is concerned, we find, the AO made the addition

on the ground that Rs.960/- has been debited under the head ~~Miscellaneous expenses~~ being interest on TDS which, according to him, is inadmissible u/s 40(a) of the IT Act. Here also, the Id.CIT(A) deleted the same by following the orders of his predecessors for preceding assessment years. However, in our opinion, interest on TDS is not an allowable expenditure in the light of the decisions of Honøble Supreme Court in the case of Bharat Commerce & Industries reported in 230 ITR 733 and the decision of Honøble Calcutta High Court in the case of Martin & Harries (P) Ltd. Vs. CIT, reported in 73 Taxmann 555. The ground raised by the Revenue on this issue is accordingly allowed.

13. Ground of appeal No.4 relates to the order of the CIT(A) in deleting the addition of Rs.6,62,612/- made by the AO on account of bonus unpaid by invoking the provisions of section 43B. We find, the Id. CIT(A) deleted the addition on the ground that identical issue was decided by his predecessors in the preceding so many assessment years. As per provisions of section 43B(c) any sum referred to in clause (ii) of sub-section (1) of section 36, payment of bonus shall be allowed as an expenditure on actual payment. Since the assessee admittedly had not paid such bonus before the specified date for which the auditors even have qualified the same, the Id. CIT(A) in our opinion was not justified in deleting the addition. The ground raised by the Revenue is accordingly allowed.

14. Ground No.5 relates to the order of the CIT(A) in deleting Rs.31,63,861/-

made by the AO on account of leave encashment unpaid.

15. After hearing both the sides, we find, the AO made the addition on the basis of tax audit report where it was mentioned that an amount of Rs.31,63,861/- towards leave encashment unpaid is disallowed u/s 43B. The CIT(A), following the orders of his predecessor for preceding so many assessment years, deleted the addition. The order of CIT(A) in our opinion, is not in accordance with law. With effect from 01.04.2002, clause (f) has been inserted in provisions of section 43B according to which any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee shall not be allowed as a deduction in computing the income of the assessee unless such sum is paid. Since the assessee in the instant case has admittedly not paid this sum towards leave encashment, therefore, the Id.CIT(A) is not justified in allowing the same. Merely because some wrong practice has been followed by the Id.CIT(A) in the past such wrong cannot be perpetuated. Since the order of the Id.CIT(A) is not in accordance with law, therefore, the order of Id.CIT(A) on this issue is set aside and the ground raised by the Revenue is allowed.

16. In the result, the appeal filed by the Revenue is partly allowed.

The decision was pronounced in the open court on 30.06.2021.

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 30th June, 2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi