

IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI
BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 4900/Mum/2019
(A.Y: 2016-17)

DCIT – 9(3)(2) Room No. 418, 4 th Floor, Aayakar Bhavan, Churchgate, Mumbai – 400020.	Vs.	M/s. Future Generali Ind Life Insurance Co. Ltd., 6 th Floor, Tower – 3, India Bulls Finance Centre, Senapati Bapat Marg, Elphinston Road, Mumbai - 400013
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCF0190Q		
Appellant	..	Respondent

Appellant by :	Shri S.N Kabra, CIT DR
Respondent by :	Ms. Dinkle Hariya, AR

Date of Hearing	30.09.2021
Date of Pronouncement	06.10.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The Revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-16, Mumbai passed u/s 143(3) and 250 of the Income Tax Act, 1961. The Revenue has raised the following grounds of appeal:

- 1. Whether on the facts and in the circumstances of the case and in law, the CIT(A) was justified in deleting the addition*

made by the AO on account of Surplus disclosed in Form No.1 of Actuarial Report ignoring the provision of Sec. 44 r.w.s 2 of the First Schedule of IT Act, 1961?

- 2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition made by the AO on account of loss from pension found u/s 10(23AAB) of the IT Act, 1961.*
- 3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in ignoring the fact that the non obstante clause in sec 44 is not extended to sec 10(23AAB) of the Act.*

2. The brief facts of the case are that the assessee company is engaged in the business of life insurance. The assessee has filed the return of income on 19.09.2016 for the A.Y 2016-17 declaring a total loss of Rs. (-) 36,75,81,217/- and the return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. The A.O on perusal of the financial statements and the computation of income has dealt on the provisions of Sec. 44 of the Act and considered the provisions of IRDA Act 1999. Finally, the A.O. has observed that the surplus in form- 1 should be offered for tax without any modification and Hence Rs.30,95,34,000/- is added to total income. The A.O. mentioned in the order that in the assessee's own case for the A.Y 2009-10 to A.Y 2012-13, the Honble ITAT Mumbai decision was not accepted by the revenue and

the appeal was filed u/s 260A of the Act and with his observations the A.O. has made an addition of Rs.30,95,34,000/-. Further the A.O. made an addition in respect of claim of surplus/deficit u/s 10(23AAB) of the Act of Rs. 83,000/-as Loss from pension fund and determined a total loss of Rs. (-)5,79,64,217/- and passed order u/s 143(3) of the Act on 07.12.2018.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, findings of the A.O., the provisions of Act, the assessee's submissions and observed at Para 4 of order, in respect of addition of surplus disclosed in Form-I as income of the assessee. The CIT(A) relied on the decision of Honble Tribunal in assessee's own case for the A.Y 2010-11, 2011-12, 2012-13 and 2014-15 and deleted the addition. Similarly on disallowance of loss from pension fund, the CIT(A) relied on Honble Tribunal decision and allowed the ground of appeal and partly allowed the assessee appeal. Aggrieved by the order of the CIT(A) the revenue has filed an appeal before the Honble Tribunal.

4. At the time of hearing, the Ld. DR submitted the CIT(A) has relied on the earlier decision of the Hon'ble Tribunal and has granted relief. Whereas, the revenue

has challenged the Honble Tribunal order before the Hon'ble Jurisdictional High Court in appeal and prayed for allowing the revenue appeal.

5. Contra, the Ld.AR supported the order of the CIT(A) and substantiate the submissions with the decisions of the Hon'ble Tribunal in the assessee own case for the A.Ys. 2011-12 to 2013-14 and filed the paper book.

6. We heard the rival submissions and perused the material on record. Prima-facie, the sole crux of the disputed issues is in regard to the CIT(A) has erred in granting the relief to the assessee relying on earlier years decision of the Honble Tribunal in respect of surplus as per Form no -1. The Ld.DR has fairly accepted the earlier decisions and submitted that the Revenue has challenged the Honble Tribunal decision before the Hon'ble High Court. At this juncture, we considered it appropriate to refer to the observations of CIT(A) dealt at Para 4 to 4.3.2, which is read as under;

I have carefully perused the assessment order of the AO and the submissions made by the AR in support of his arguments. After taking into consideration, the A.O's findings and the appellant's oral and written submissions made during the course of hearing as well as facts of the case, decision on various grounds are adjudicated as under:

4.1 Ground No.1 - This ground is general in nature, hence no adjudication.

4.2 Ground No.2:

4.2.1 Vide this ground appellant has agitated against disallowance on account of considering the surplus disclosed in Form-I of Rs.30,95,34,000/- as the income of the appellant. Identical issue had come up in appeal in appellant's own case for A.Ys.201011, 2011-12, 2012-13 & 2014-15. The relevant part of the order of A.Y.2014-15 dated 24.08.2018 is reproduced as under:

1.1.1. The appellant is an insurance company on Life Insurance business in India and is registered under IRDA 1999. As per IRDA 1999 and regulation therein the appellant has to maintain two separate accounts i.e. shareholder Account and Policyholder Account for the business as a whole Viz Revenue account and Profit and Loss Account.

1.1.2. As per the provisions of Income Tax Act, 1961 (Act) the computation of profits and gains from business of life insurance is governed by the provision of section 44 read with Rule 2 of First Schedule of Income Tax Act, 1961(Act). Rule 2 provide for mechanism of arriving at surplus of the Insurance business and actuarial valuation made in accordance with Insurance Act, 1938 shall be considered as Income from Life Insurance Business.

1.1.3. It is undisputed fact that Shareholder Account and Policyholder Account forms part of the Life Insurance business. The old Form I captures the data accurately. However, from the perusal of New Form I it seems that It is for limited purpose of disclosing the surplus/deficit in policyholder account and not for the Life Insurance business as a whole. The formal prescribed under Insurance Act 1938 to arrive at actuarial valuation i.e. Old Form I is the combined result of Shareholder Account and Policyholder Account and thus the surplus/deficit is computed after considering the impact of both the accounts.

1.1.4 However, it is observed that the entire regulation of

Insurance business has undergone changes after the introduction of IRDA 1999 and new formats prescribed under IRDA regulations are currently in force.

1.1.5. I have noticed- that- even though the amendment was brought in Rule 5 of First Schedule of the Act for General Insurance business to incorporate the changes brought by IRDA 1999 there is no corresponding amendment was brought into Rule 2 of the First Schedule of the Act to incorporate IRDA recommendations. Therefore, the manner of taxing life insurance companies has not been realigned with the changes as prescribed by IRDA 1999.

1.1.6. Thus as stated by me in Para 1.4.6 there is substantial difference between New format of Form I which includes only Policyholder account whereas the Old format of Form I takes into consideration the aggregate result of Shareholder Account and Policyholder Account.

1.1.7. It is undisputed fact that Policyholder Account and Shareholder Account forms part of Insurance business and therefore to determine surplus taxable under Rule 2 of First Schedule one cannot refer to New Format of Form I in isolation.

1.1.8. Considering the discussion held above it is evident that that surplus or deficit amount as defined under Rule 2 of First Schedule of Section 44 of the Act should be arrived at after adjusting both accounts i.e. Shareholder's Account and policyholder Account.

1.1.9. The jurisdictional Mumbai Tribunal decision in case of ICICI prudential Insurance company Ltd Vs Asst CIT (ITA no 6854/55/5659/Mumbai/2010) & (ITA no 7765/66/67/Mumbai/2010) supports the contention of the appellant and the relevant extract is reproduced as under:

"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, AD is duly bound to insist on actuarial valuation in accordance with the Insurance Act, 1938, so as to bring to tax the surplus or deficit. IA/fiat we notice is that AD, 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), AD 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.

In our opinion 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 AD to bring to tax the entire amount shown under the new Regulations including transfer from shareholder's account is not correct. Instead of AD 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.-

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 AD is directed to modify the order accordingly. Ground Nos. 1 to 3 are considered allowed".

1.1.10. Further, Jurisdictional Mumbai Tribunal decision in case of SBI Life Insurance company Limited Vs ft. CIT (ITA No. 3800 to 3801,1501,5670/Mum/2009 & ITA no. 4139/Mum/2008i3346;5759/Mum/2009 dated 23 May 2014.

"5. We have heard both the parties and perused the orders of the Revenue Authorities as well as the cited decisions of the Tribunal. We have carefully examined the grounds raised in the appeals qua the conclusions of the Tribunal in the above referred cases in general and ICICI Prudential Insurance (supra) in On perusal of the same, we find that it is the conclusion of the said that the sums transferred from account to the other of the same assessee to the deficit if any do not amounts to the chargeable income of the assessee - the insurance company. Relevant extract from the said orders of the Tribunal are already incorporated in the paragraphs above.

Thus, in principle, the issues raised by the assessee in its grounds stand covered. Accordingly, the grounds I to 4 raised in the appeal for the AY 2003-04 are allowed and ground 5, being general in nature, does not need any

specific adjudication."

1.1.11. Also the Jurisdictional Mumbai Tribunal decision in case of The DCIT Vs Ws Kotak Mahindra Old Mutual Life Insurance Ltd and HDFC Standard Life Insurance Company Ltd Vs DCIT IITA no. 2203 to 2207/Mum/2011, ITA No. -3000 to 3004/MumI2011, ITA No. 4959/Mum12011, ITA No. 4960/MurnI2011, ITA No. 5493/Mum12011, ITA No. 5494/Mum/2011, ITA No. 5591/Mum/2012.1 supports the contention of the appellant.

1.1.12. Considering the discussion held above and after analyzing the Forms, regulations and provisions of the Act we have no hesitation to hold that the working of actuarial surplus/deficit is in accordance with the relevant regulations as per IRDA guidelines and the loss disclosed in the computation of income is according to the corresponding provisions of section 44 read with rule 2 of the First schedule of the Act

1.1.13. The action of the AO to bring to tax the 'Total Surplus' as computed under Regulation 8 amounting to Rs. 583,46,6301- is not at all correct and AO is directed to modify the order accordingly. Therefore, this ground of appeal is allowed.

6.1.2 The Hon'ble Mumbai ITAT 'F' Bench in ITA No.4373/Mum/2015 dated 30.03.2017 has decided the appeal of the appellant for A. Y.2011-12 on similar issue. The relevant part of the Hon'ble ITAT's order is as under:

"We have heard the rival submissions and perused the relevant material on record. We begin with 1st, 2nd & 3rd ground of appeal as they address a common issue. We find that the Hon'ble Bombay I-Jig/i Court in the case of [CICI Prudential Insurance Co. Ltd. 'supra) has held that "where assessee was carrying on life insurance business and Tribunal following a decision of Supreme Court, while determining assessee's income u/s.44 had taken into consideration total surplus as arrived at by actuarial valuation and further held that income from shareholders

account was also to be taxed as a part of life insurance business, there was no substantial question of law arising for consideration." Reference was made to the decision in LIC of India vs. CIT (1964) 51 ITR 773, wherein the Hon'ble Supreme Court has held that the Assessing Officer has no power to modify the account after actuarial valuation is done.

The issues in 1st, 2nd & 3rd ground of appeal in the instant case are squarely covered by the above judgement. Respectfully following the same, we dismiss isty, 2nd & 3rd ground of appeal filed by the revenue."

6.1.3 Since the facts in the' present case are per material same with the facts of the appellant own case for A. Y.2010-11 & 2011-12 decided by me, and respectfully following the decision of the Hon'ble ITAT in appellant's own case for A. Y.2011-12, hence maintaining consistency, the action of the AO bring to tax the Total Surplus' as computed under Regulation 8 amounting to Rs.11,39,67,0001- is not at all correct and AO is directed to modify the order accordingly. Therefore, this ground of appeal is allowed."

4.2.2 Since the facts in the present case are per material with the facts of the appellant's own case for A.Y.2014-15 and respectfully following the decision of the Hon'ble ITAT in appellant's own case for A.Y.2011-12, appeal of the appellant is allowed and addition of Rs.30,95,34,000/- is deleted. Therefore, this ground of appeal is allowed.

Ground.3

4.3.1 Vide this ground the appellant has agitated against disallowance of loss from pension fund of Rs.83,000/-. Identical issue had come up in appeal in the appellant's own case for A.Ys. 2010-11, 2011-12, 2012-13, 2013-14 & 2014-15. The Relevant part of order of A.Y. 2014-15 dated 24.08.2018 is reproduced as under:

"2.1.1 I have heard the contention and have gone through the relevant material available on record. In view of above I have observed that the appellant is into the life insurance business and it is undisputed fact that Pension Fund business is a part

of Life Insurance business.

2.1.2 It is also observed that Pension Fund scheme of the appellant was approved by Insurance Regulatory Development Authority (IRDA). The appellant company has incurred loss from its pension business during the relevant year under consideration and losses from Pension Fund business was taken into consideration by actuary while determining the surplus/deficit from insurance business.

2.1.3 I have considered the facts and circumstances of the case and appellant's submissions. This issue had already come into consideration of Bombay High Court in case of Commissioner of Income Tax-1, Mumbai vs. Life Insurance Corporation of India Ltd. [(2011) 12 tasmann.com 388(Bom.)] wherein it is held as under:

"The fact that income from such fund has been exempted under section 10(23AAB) with effect from 1st April 1997 does not mean that the pension fund ceases to be insurance business so as to fall outside the purview of insurance business covered under section 44 of the Income Tax Act, 1961. In other words, the pension fund like Jeevan Suraksha Fund would continue to be governed by the provisions of section 44 of the Income Tax Act, 1961 irrespective of the fact that the income from such fund are exempted or not. Therefore, while determining the surplus from insurance business the actuary was justified in taking into consideration the loss incurred under jeevan Suraksha Fund.

2.1.4 Following the above decision where loss in pension fund is allowed to be adjusted against the surplus amount from insurance business this ground of appeal is allowed.

4.2.2 Since the facts in the present case are per material same with the facts of the appellant's own case for A. Ys. 2010-11, 2011-12 & 2012-13 decided by me, hence maintaining consistency, this ground of appeal is allowed."

4.3.2 Since the facts in the present case are same with the facts of the appellant's own case for A.Y. 2014-15, hence I have no reason to deviate from the findings given in

appellant's own case for A.Y.2014-15. Therefore, this ground of appeal is allowed.

We Find the CIT(A) relied on the Honble Tribunal decisions and passed a reasoned order. We respectfully follow the judicial precedence and are not inclined to interfere with the order of the CIT(A) and upheld the same and dismissed the grounds of appeal of the revenue.

7. In the result the revenue appeal is dismissed.

Order pronounced in the open court on 06.10.2021.

Sd/- (S RIFAUR RAHMAN) Sd/- (PAVAN KUMAR GADALE)
ACCOUNTANT MEMBER JUDICIAL MEMBER

Mumbai, Dated 06.10.2021
KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai