

आयकर अपीलिय अधिकरण  
मुंबई पीठ " ए "  
श्री प्रमोद कुमार, उपाध्यक्ष एवं  
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI  
BEFORE SHRI PRAMOD KUMAR, VICE-PRESIDENT &  
SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
आअसं.2908/मुं/2019 (नि.व.2015-16)  
ITA NO.2908/MUM/2019 (A.Y. 2015-16)

The ACIT 3(2)(1),  
Room No.674, 6<sup>th</sup> Floor,  
Aaykar Bhavan, M.K.Road,  
Mumbai – 400 020

..... अपीलार्थी /Appellant

बनाम Vs.

Life Insurance Corporation of India,  
Central Office, Yogakshema Jeevan Bima Marg,  
Nariman Point, Mumbai 400 005.

**PAN: AAACL-0582-H**

..... प्रतिवादी/Respondent

आअसं. 3403/मुं/2019 (नि. व.2015-16)

ITA NO.3403/MUM/2019(A.Y. 2015-16)

Life Insurance Corporation of India,  
Central Office, Yogakshema Jeevan Bima Marg,  
Nariman Point, Mumbai 400 005.

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..... अपीलार्थी /Appellant

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..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri T. Sankar

प्रतिवादी द्वारा/Respondent by : Shri Farrokh V. Irani

सुनवाई की तिथि/ Date of hearing : 14/01/2022

घोषणा की तिथि/ Date of pronouncement : 08 /04/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

These cross appeals by the Revenue and assessee are against the order of Commissioner of Income Tax (Appeals)- 8 Mumbai [in short 'the CIT(A)'] dated 27/03/2019 for the assessment year 2015-16.

2. The Revenue in appeal has assailed the order of CIT(A) on following grounds:

*"1) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on account of Interim Bonus paid ignoring the fact that no deduction on account of the Interim Bonus is required to be made from the total surplus as per the regulation of IRDA, the provisions of the LIC Act, 1956 or the Income-Tax Act, 1961?"*

*2) Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in allowing the dividend income of the assessee as exempt u/s.10(34) of the I.T.Act 1961 ignoring the facts that dividend income is considered as part of Income of the life Insurance Business and is included as an income by actuary?"*

*3) Without prejudice to the above whether on the facts and in the circumstances of the case and in law, the ITAT erred in allowing the dividend income of the assessee as exempt u/s.10(34) of the I.T.Act 1961 ignoring the facts that the acturial surplus determined is around 12% of the gross revenue which is inclusive of dividend income and therefore if at all exemption is to be allowed u/s.10(34) of the I.T.Act, 1961 then it should be allowed only to the extent of dividend included in the surplus determined by acturian method?"*

*4) Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance of Rs. 1636,73,00,000/- u/s.14A r.w.r. 8D by holding that the AO cannot go beyond the provisions of section 44 and Schedule 1 of the I.T. Act, 1961 without appreciating the fact that the assessee itself had declared expenses that was relatable to the earning of such exempt income and ignoring the decision of the Hon'ble Supreme Court in the case of Maxopp Investments Ltd, 91 Taxmann.com 154 wherein the Apex Court has upheld the principle of disallowance u/s14A r.w.r. 8D?"*

*5) Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition made by the AO on account of loss from Jeevan Suraksha Fund ignoring the settled position of law that income includes loss and that*

*the loss from Jeevan Suraksha Fund can be set off against taxable income of the assessee despite the fact that Jeevan Suraksha Fund is covered u/s. 10(23AAB) of the I.T. Act, 1961 whereby the income including the loss is not includible in the total income?*

*6) Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in law in ignoring the fact that the non-obstante clause in section 44 is not extended to section 10(23AAB) of the I.T. Act, 1961?*

*7) Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in not appreciating that negative reserve has an impact of reducing the taxable surplus as per Form-I and therefore, corresponding adjustment for negative reserve need to be made to arrive at taxable surplus?*

*8) Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in placing reliance on the decision of the Hon'ble Supreme Court in the case of assessee, LIC of India v/s. CIT, 51 1TR 773, without appreciating that the facts involved therein was reworking of the surplus as per the acturial method whereas in the instant case the facts involved is reducing the negative reserves from the surplus as determined by the assessee by acturial method?*

*9) Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in law in holding that the provisions of section 115O r.w.s. 115Q of the I.T.Act, 1961 are not applicable in the case of the assessee?*

*10)The appellant prays that the order of CIT(A) on the above grounds be set aside and that of Assessing Officer be restored.*

*11)The appellant craves leave to amend, alter, delete or add grounds which may be necessary."*

3. Shri Farrokh V. Irani appearing on behalf of the assessee submitted at the outset that all the issues raised by the Department in appeal have been considered and adjudicated by the Tribunal in an appeal by the Department in assessee's own case in ITA No.4459/Mum/2015 for Assessment Year 2011-12. The said appeal of the Revenue was decided by the Tribunal vide order dated 06/09/2017. The Id. Authorized Representative for the assessee further pointed that some of the issues raised by the Department in its appeal are recurring and the same have travelled to the Hon'ble Jurisdictional High Court. The Hon'ble High Court has decided the same in favour of the assessee. The Id.

Authorized Representative for the assessee furnished copy of the order of Tribunal in ITA No.4459/Mum/2015(supra) and the order of Hon'ble Bombay High Court in Income Tax Appeal No.3693 of 2010 titled CIT vs. Life Insurance Corporation of India decided on 02/08/2011 and the order of Hon'ble Bombay High Court in Income Tax Appeal No.1759 of 2013 titled CIT vs. Life Insurance Corporation of India decided on 15/09/2015.

4. On the other hand Shri T. Sankar representing the Department vehemently defended the impugned order. However, the Id. Departmental Representative fairly admitted that the grounds raised by the Revenue in present appeal have already been considered by the Tribunal in preceding Assessment Years.

5. Both sides heard, orders of authorities below examined and the decision on which Id. Authorized Representative for the assessee has placed reliance considered. The issues raised in appeal by the Revenue are decided in seriatim of grounds as under:

**INTERIM BONUS:**

6. In ground No.1 of appeal, the Department has assailed the findings of CIT(A). During the course of assessment proceeding the Assessing Officer from computation of income filed by the assessee observed that the assessee has shown total profits and gains from Life Insurance business in terms of Rule-2 of First Schedule of Income Tax Act at Rs.36,060.41 crores, whereas in the Annual Report for the Financial Year 2014-15, the surplus has been shown at Rs.37960.16 cores. Thus, there was mismatch of Rs.1899.75 Crores in the profits declared in computation of income and the surplus reflected in the

Annual Report. The assessee explained that the difference between the actuarial surplus and the surplus reported in the computation of income is on account of interim bonus disclosed in Form-AR-A. The assessee furnished copy of Form AR-A before the Assessing Officer. Not satisfied with the submissions of the assessee, the Assessing Officer made addition of the differential amount stated to be interim bonus declared by the assessee. The CIT(A) in the first appellate proceedings following the order of his predecessor in assessee's case for Assessment Year 2011-12 accepted the explanation furnished by the assessee and deleted the addition. The Id. Authorized Representative for the assessee pointed that the Revenue has raised identical ground in Assessment Year 2011-12- in appeal before the Tribunal in ITA No.4459/Mum/2015(supra), challenging deletion of the addition made on account of interim bonus. We find that the Co-ordinate Bench has restored this issue to the file of Assessing Officer for denovo examination. The relevant extract of the finding of the Tribunal are reproduced herein below:

*"5.2. We have considered the rival submissions and perused the material available on record. Before advertng further, we are reproducing here under section 28 of the Life Insurance Corporation Act, 1956 for ready reference:-*

*"28. Surplus from life insurance business how to be utilized.-- If as a result of any investigation undertaken by the Corporation under section 26 any surplus emerges, ninety-five per cent of such surplus or such higher percentage thereof as the Central Government may approve shall be allocated to or reserved for the life insurance policy-holders of the Corporation and after meeting the liabilities of the Corporation, if any, which may arise under section 9, the remainder shall be paid to the Central Government or, if that Government so directs, be utilised for such purposes and in such manner as that Government may determine.]*

*[28A. Profits from any business (other than life insurance business) how to be utilized.-- If for any financial year profits accrue from any business (other than life insurance business) carried on by the Corporation, then, after making provision for reserves and other matters for which provision is necessary or*

*expedient, the balance of such profits shall be paid to the Central Government.]*

*If section 28 is analyzed, with respect to surplus from life insurance business and its utilization, it is clear that 95% of such surplus or such higher percentage thereof, as the central government may approve shall be allocated to or reserve for life insurance policy holders of the corporation and after meeting the liability of corporation, if any, which may arise u/s 9, the remainder shall be paid to the Central Government or if the Central Government so direct, shall be utilized for such purposes and in such manner as the government may determine. **Considering the clear language of the section, we direct the Assessing Officer to examine the factual matrix/utilization of the surplus and decide in accordance with law.** The assessee be given opportunity to substantiate its claim. **Thus, this ground is allowed for statistical purposes.**"*

Since, both sides have admitted that the facts in the impugned assessment year are identical to the facts in Assessment Year 2011-12, this issue is restored to the file of Assessing Officer with similar directions. Consequently, ground No.1 of the appeal is allowed for statistical purpose.

### **DIVIDEND INCOME**

7. In ground No.2 and 3 of appeal the Revenue has assailed the finding of CIT(A) in allowing dividend income as exempt u/s. 10(34) of the Act. During the period relevant to the assessment year under appeal, the assessee has claimed exemption on dividend income amounting to Rs.7256,30,71,278/- u/s. 10(34) of the Act. The stand of the Revenue is that only 40% of the dividend has been included in the surplus whereas the assessee is claiming exemption u/s.10(34) in respect of entire dividend. The Assessing Officer made addition of the entire dividend income. The CIT(A) reversed the finding of Assessing Officer by following the order of Hon'ble Bombay High Court in Income Tax Appeal No.1759 of 2013 (supra) in assessee's own case. It emanates from record that this issue is recurring since AY 2007-08. The Tribunal decided this issue in AY

2007-08, 2008-09 and 2009-10 in favour of the assessee and deleted the addition. The Revenue carried the issue in appeal before the Hon'ble Bombay High Court. The substantial question of law in appeal by the Revenue (supra) before the Hon'ble Jurisdictional High Court was:

*“A. Whether on the facts and in the circumstances of the case and in law, the ITAT erred in allowing the dividend income of the assessee as exempt u/s.10(34) of the I.T.Act 1961 ignoring the facts that dividend income is considered as part of Income of the life Insurance Business and is included as an income by actuary;”*

The Hon'ble High Court answered the question against the Revenue as under:

*“4. So far as question (A) is concerned, we find that the impugned order of the ITAT has allowed the respondent-assessee's appeal by following the decision of this Court in General Insurance Corporation of India vs. Deputy Commissioner of Income Tax & anr (2012) 342ITR 27 (Bom) and its own decision in the case of ICICI Prudential Insurance (Income Tax Appeal No.7765Mum/2010 AY. 2005-06 decided on 14<sup>th</sup> September, 2012.)*

*5. Mr.Suresh Kumar learned counsel for the revenue very fairly states that the revenue's appeal on this issue from the order of ITAT in ICICI Prudential Insurance Co.Ltd (supra) to this Court being Income Tax Appeal Nos.710 of 2013 relating to Assessment year 2005-06 was dismissed on 20<sup>th</sup> July 2015 in view of the above, question (A) does not raise any substantial question of law and accordingly dismissed.”*

The Co-ordinate Bench in AY 2011-12 decided this issue in favour of the assessee by following the aforesaid decision of Hon'ble Bombay High Court in assessee's own case. No contrary decision or any other material is furnished by the Revenue. Respectfully following the decision of Hon'ble Bombay High Court in assessee's own case, ground No. 2 & 3 of the appeal are dismissed.

#### **DISALLOWANCE U/S. 14A r.w.R.8D**

8. The Revenue in ground No. 4 of appeal has assailed the findings of CIT(A) in deleting the disallowance made u/s14A r.w.r.8D. In assessment proceedings the Assessing Officer observed that the assessee has claimed dividend income

as exempt u/s. 10(34) of the Act, therefore, the assessee cannot take the stand that no expenditure is disallowable u/s.14A r.w.r.8D. The Assessing Officer made disallowance of Rs.11636.73 crores u/s. 14A r.w.r. 8D on protective basis. In the first appellate proceedings the CIT(A) deleted the disallowance by following the decision of Tribunal rendered in the case of Birla Sunlife Insurance Co. Ltd. in ITA No.602/Mum/2009 for assessment year 2004-05 decided on 09/09/2010. The Id.Departmental Representative pointed that during the period relevant to the assessment year under appeal the assessee is earning income not only from insurance business, hence, the entire disallowance cannot be deleted. To substantiate his points the Id.Departmental Representative referred to the observations made by CIT(A) in page 48 and 50 of the impugned order. The Id. DR asserted that the decision rendered in the case of Birla Sunlife Insurance Co. Ltd.(supra) is in respect of income from Insurance business only, therefore the said decision would not apply to the facts of present case.

9. Submissions made by Id.Departmental Representative heard. We find that in para 48 and 50 of the order of CIT(A) referred to by the Id. Departmental Representative is the reproduction of the order Tribunal in ITA Nos.3702, 6221, 3703/Mum/2012 for assessment year 2009-10. There is no finding by the CIT(A) that the assessee is having income from any other source other than insurance business during the period relevant to the assessment year under appeal. Hence, the argument made by the Id. Departmental Representative is devoid of any merit. The issue whether the disallowance under section 14A r.w.r. 8D can be made in the case of assessee engaged in insurance business is squarely covered by the decision of Co-ordinate Bench

in the case of Birla Sunlife Insurance Co. Ltd.(supra). The Co-ordinate Bench placing reliance on the decision in the case of Oriental Insurance Co. Ltd vs. Assistant CIT reported as 130 TTJ 388 (Delhi) has held that no disallowance under section. 14A of the Act can be made in the case of company engaged in insurance business. The relevant extract of the findings of Tribunal on this issue are as under:

*“9. We have carefully considered the submissions of the rival parties and perused the material available on record. We find merit in the plea of the Id. Counsel for the assessee that the Assessing Officer after examining the relevant details as discussed in para 5.16 and 5.17 of the assessment order has disallowed the expenses of Rs.30,18,496/- for earning dividend income, therefore, the plea taken by the Id. DR that the issue may be set aside to the file of the Assessing Officer is devoid of any merit. This being so, and **keeping in view that the Tribunal in Oriental Insurance Co. Ltd. vs. ACIT (2009) TIOL -172-ITAT-DEL after discussing the identical issue at length has held that sec.44 provides for application of special provisions for computation of profits and gains of insurance business in accordance with Rule 5 of Schedule I and, therefore, it is not permissible to the Assessing Officer to travel beyond sec.44 and Schedule-I and make disallowance by applying sec.14A of the Act.** The above order has consistently been followed by the Tribunal in the above three cases relied on by the Id. Counsel for the assessee. In the absence of any distinguishing feature brought on record by the Id. DR we respectfully, following the consistent view of the Tribunal hold that it is not permissible to the Assessing Officer to travel beyond sec.44 and Schedule-I and make A,Y:04-05 disallowance by applying sec.14A of the Act and accordingly the disallowance of Rs.30,18,496/- made by the Assessing Officer and sustained by the Id. CIT(A) is deleted. The ground taken by the assessee is therefore, allowed”.*

No contrary decision has been brought to our notice by the Revenue, hence, following the aforesaid decision we uphold the finding of CIT(A) on this issue and dismiss ground No.4 of the appeal.

### **JEEVAN SURAKSHA PENSION FUND**

10. In ground No.5 and 6 of appeal, the Revenue has assailed deleting of addition made on account of loss from Jeevan Suraksha Pension Fund. The

Id. Authorized Representative of the assessee pointed that this issue has been considered by Co-ordinate Bench in appeal of the Revenue for assessment year 2011-12. The Id. Authorized Representative of the assessee further submitted that this issue has been settled by the Hon'ble Bombay High Court in appeal by the Revenue in favour of the assessee in Income Tax Appeal No.3693 of 2010 decided on 02/8/2011.

11. We find that one of the issue in substantial questions framed for consideration by the Hon'ble Bombay High Court in Income Tax Appeal No.3693 of 2010 for assessment year 2002-03 was:

*“(c) Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in deleting the addition made by the Assessing Officer on account of loss from Jeevan Suraksha Fund ignoring the settled position of law that income includes loss and that the income from Jeevan Suraksha Fund does not form part of the total income of the Assessee Corporation u/s. 10(23AAB) of the Income Tax Act, 1961?”*

*“(d) Whether on the facts and in the circumstances of the case the Tribunal was justified in ignoring the fact that the non obstante clause in section 44 is not extended to section 10(23AAB) of the Income Tax Act, 1961?”*

The Hon'ble High Court answered the aforesaid questions in affirmative and held as under:

*“17. It is not in dispute that the Jeevan Suraksha Fund is a pension fund approved by the Controller of Insurance appointed by the Central Government to perform the duties of the Controller of Insurance under the Insurance Act, 1938. The loss incurred in the Jeevan Suraksha Fund has been considered by the actuary as a business loss, as per the valuation report as on the last day of the financial year, allowable under Section 44 read with the First Schedule to the Income Tax Act, 1961. The fact that the income from such fund has been exempted under Section 10(23AAB) with effect from 1<sup>st</sup> April 1997, does not mean that the pension fund ceases to be insurance business, so as to fall outside the purview of the 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 the insurance business, the*

*actuary was justified in taking into consideration the loss incurred under Jeevan Suraksha Fund.*

*18. The object of inserting Section 10(23AAB) as per the Board Circular No.762 dated 18<sup>th</sup> February 1998 was to enable the assessee to offer attractive terms to the contributors. Thus, the object of inserting Section 10(23AAB) was not with a view to treat the pension fund like Jeevan Suraksha Fund outside the purview of insurance business but to promote insurance business by exempting the income from such fund. Therefore, in the facts of the present case, the decision of the Income Tax Appellate Tribunal in holding that even after insertion of Section 10(23AAB), the loss incurred from the pension fund like Jeevan Suraksha Fund had to be excluded while determining the actuarial valuation surplus from the insurance business under Section 44 of the Income Tax Act, 1961 cannot be faulted. Accordingly, questions (c) and (d) are answered in the affirmative, that is, in favour of the assessee and against the Revenue.”*

Thus, in the light of decision of Hon'ble Bombay High Court in assessee's own case ground No.5 & 6 of appeal are dismissed.

### **NEGATIVE RESERVE**

12. In ground No.7 & 8 of appeal, the Revenue has assailed the findings of CIT(A) in deleting the addition in respect of negative reserve. The Assessing Officer has made addition of Rs.12233.54 cores on account of negative reserve shown by the assessee in Form-I. The aforesaid addition made by Assessing Officer has resulted in increasing actuarial valuation. The assessee submitted that identical issue with respect to negative reserve has already been considered by the Hon'ble Bombay High Court in assessee's own case in Income Tax Appeal No.1759 of 2013(supra). We find that the CIT(A) has deleted the addition by following the decision of Hon'ble Bombay High Court in assessee's own case titled CIT vs. Life Insurance Corporation of India(surpa). One of the substantial question of law before Hon'ble Bombay High Court in the aforesaid appeal was:

*“B. Whether on the facts and in the circumstances of the case and in law, the ITAT erred in not appreciating that negative reserve has an impact of reducing the taxable surplus as per Form-I and therefore, corresponding adjustment for negative reserve need to be made to arrive at taxable surplus.”*

The Hon’ble Court decided the issue in favour of the assessee and against the Revenue by observing as under:-

*“6. In so far as question (B) is concerned, we find that the order of the ITAT has allowed the respondent-assessee's appeal by following its decision in ICICI Prudential Insurance Co. Ltd rendered in respect of Assessment year 2006-07. Mr.Suresh Kumar learned counsel appearing for the revenue very fairly, states that the revenue's appeal on this issue from the order of the Tribunal in ICICI Prudential Insurance Co. Ltd being Income Tax Appeal No.711 of 2013 for Assessment year 2006-07 was dismissed on 20<sup>th</sup> July 2015 by this Court. This inter alia on the ground that the issue stands covered in favour of the respondent –assessee by the decision of the Apex Court in LIC of India vs CIT 51 ITR 773 wherein it has inter alia been held that the Assessing Officer had no power to modify its accounts after Actuarial valuation is done. Accordingly, question (B) also does not give rise to any substantial question of law. Hence, dismissed.”*

Similar addition was made in respect of negative reserve in assessment year 2011-12. The CIT(A) deleted the addition. The revenue carried the issue before the Tribunal. The Co-ordinate Bench following aforementioned decision of the Hon'ble High Court in assessee’s own case and also referring to the decision of Tribunal in assessee’s own case for assessment year 2010-11 decided on 24/02/2016 dismissed the ground raised by the Revenue. The Id.Departmental Representative has not been able to controvert the findings of the CIT(A) and no contrary decision has been placed before us by the Revenue. Therefore, we find no reason to take a divergent view. In view of the fact that this issue has already been settled by Hon'ble Bombay High Court in assessee’s own case in preceding assessment years i.e. assessment year 2007-08, 2008-09 and 2009-10, the ground no. 7 & 8 of the appeal are dismissed being devoid of any merit.

**ADDITION U/S.115-O r.w.s. 115-Q OF THE ACT**

13. In ground No.9 of appeal, the Revenue has assailed the action of CIT(A) in upholding that the provisions of section 115-O r.w.s. 115Q of the Act are not attracted in the case of assessee. The Assessing Officer made addition of Rs.32.53 crores holding it to be dividend paid to shareholders. The Assessing Officer held that in the P&L Account an amount of Rs.32.53 crores has been credited in respect of shareholders account (Non technical), however, in computation of total income, total income in respect of policy holders account (technical account) has been shown and there is no income in respect of shareholders account. Thus, the Assessing Officer invoked the provisions of section 115-O r.w.s. 115Q of the Act and made addition of the aforesaid amount. In first appeal the CIT(A) deleted the addition by following the order of Tribunal in assessee's own case in ITA No.2025/Mum/2000 for assessment year 1998-99 dated 18/12/2006, which has been subsequently followed by the Tribunal in assessee's own case for assessment years 1999-2000, 2000-01 and 2001-02. We find that identical issue has been decided by the Tribunal in assessee's own case for assessment year 2011-12. The Co-ordinate Bench following the order of Tribunal in assessee's own case for assessment year 2206-07 in ITA No. 4993/M/2007 decided on 23/4/2009 and in AY 2007-08 and 2008-09 decided vide order dated 10/7/2013 decided the issue in favour of the assessee. The Co-ordinate Bench after considering the facts and the decisions of Tribunal in assessee's own case in preceding assessment years on this issue concluded as under:

*"6.3. In the aforesaid orders, the Tribunal duly examined the factual matrix/provisions of the Act and thereafter dismissed the appeal of the Revenue. The Tribunal in a later decision dated 10/07/2013 also followed the decision of*

*Assessment Year 2006-07. No contrary Life Insurance Corporation of India decision was brought to our notice by the Revenue, thus, we find no infirmity, in the order of the First Appellate Authority, on this issue also”*

No contrary material has been placed on record by the Revenue to disregard the aforesaid decision and take a contrary view. Hence, ground No.9 raised in the appeal by the Revenue is dismissed being devoid of any merit.

14. Ground No.10 and 11 of the appeal by Revenue are general in nature, hence, require no adjudication.

**15. In the result, appeal by the Revenue is partly allowed for statistical purpose.**

**ITA NO.3403/MUM/2019 – APPEAL BY ASSESSEE:**

16. The first ground raised by the assessee in appeal is against the order of CIT(A) in confirming addition of Rs.32.53 crores in respect of credit of shareholders fund directly to the shareholder account. The Id.Authorized Representative of the assessee submitted that similar addition was made by the Assessing Officer in assessment year 2011-12. The matter travelled to the Tribunal. The Tribunal following the order of Co-ordinate Bench in ITA No. 5118/M/2014 for AY 2010 decided on 07/3/2017 dismissed this ground in the appeal by the assessee.

The relevant extract of the Tribunal order for AY 2011-12 dealing with the issue reads as under:

*“7.2. We have considered the rival submissions and perused the material available on record. In view of the above, we are reproducing hereunder the relevant portion of the aforesaid order dated 07/03/2017 for ready reference and analysis:-*

*“This appeal by the assessee is directed against order of Ld. CITA dated. 03.03.2014 and pertains to assessment year 2010-11. 2.*

*The grounds of appeal read as under:*

*i) The CIT-A erred in confirming the action of the AO of adding the income from shareholder's funds credited directly to the shareholder's Account.*

*ii) The CIT-A erred in his interpretation of Act, the Insurance Act 1938, the IRDA Act and the IRDA (preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations 2002, the IRDA (Assets, Liabilities and Solvency Margin of Insurers) Regulations 2000.*

*iii) The CIT-A erred in not deleting the interest charged by the AO u/s. 234D of the Act. The Appellant craves leave to add to, amend and /or alter all or any of the above Ground of Appeal.*

*3. At the outset in this case Ld. Counsel of the assessee fairly conceded that ground no. (i) and (ii) are already decided against the assessee by the decision of this Tribunal in assessment year 2009-10 by order dated 03.04.2013 in ITA No. 6221 & others in assessee's own case.*

*4. As regards ground no. (iii) Ld. Counsel of the submitted that he shall not be pressing for this ground.*

*5. Upon here in both the Counsel of perusing the record we find that ground no. (i) and (ii) are decided by the Tribunal in assessee own case in the order cited above vide para 5 thereof. We may gainfully referred to the concluding portion of the ITAT order as under:*

*1) We have rival submissions and perused the material on record. Basic question to be decided by us is whether the income respect of shareholders' account should be taxed in the hands of the assessee or not? The undisputed facts relevant for deciding the issue can be summarised as under:*

*i) LIC was established by the LIC Act,1956,*

*ii) In that year Government of India had contributed Rs. 5 Crores towards capital of the Corporation. iii) No shares were issued by the LIC to Government of India.*

*iv) Assessee corporation had prepared its accounts as per the guidelines issued by competent authorities.*

*v) AO did not tax the sum appearing in the policy-holders' a/c., whereas amount appearing in the shareholders a/c. was treated as income of the assessee by him and taxed accordingly.*

*2) We find that the basis for allocation for profit between the shareholder and the Government of India is the provisions of section 28 of the LIC Act. From Page no. 313 and 114 of the paper book it becomes clearly that profit was allocated by the assessee on the basis of a particular formula. There is no doubt that income had accrued to the assessee and same was transferred to the share holders' account. In our opinion once income is earned by the*

*assessee and later on it is applied for some specific purpose it cannot be treated as charge on profit. We are of the opinion that it is application of income. Preparation of books of accounts as per the Insurance account is different from determining the tax liability under income tax. Income transferred to policy holders' a/c. was not application of income-it was charge on income and therefore AO had rightly excluded it from taxation.*

*3) Secondly, income earned by the assessee-corporation on dividend and interest, in a strict sense, cannot be held to be earned from the insurance business. As per the provisions of the Act income from insurance business is exempt from taxation and not every type of income. We agree that initial capital contribution was made by the Government of India in 1955 for carrying out insurance business, but income earned by the assessee as dividend and interest in the year under consideration cannot be termed as income of the Sovereign. It is not part of any tax, duty, cess or any other similar levy by the State, which could be termed as income of Government of India. LIC cannot claim that it represents Government of India it is one of many a corporations established by Government of India for specific purposes. Income earned by it for carrying of business of Life Insurance is exempt as per the provisions of section 44 of the Act and not because that income of LIC is income of Government of India.*

*4) We have perused the order of the Tribunal dated 18.12.2006 (ITA2025/Mum/2000-AY. 1998-99. The basic question to be decided in that appeal was whether the assessee could be said to be in default u/s.115-Q of the Act on account of non-payment of tax on distributed profits u/s.115- O of the Act in respect of payment made to central government out of the surplus profit. After discussing facts of the case and the provisions of the sections 115-O and 115-Q of the Act, Tribunal held that payment made by the assessee to the Central Government could not be treated as dividend within the ambit of definition clause 2(22) of the Act, that provisions of section 115-O of the Act were not applicable, that assessee could not be declared as assessee in default u/s.115 Q of the Act. In our opinion, in the case relied upon by the AR of the assessee, question of taxability of particular items of income under the head income from other sources was not before the Tribunal. Therefore, upholding the order of the FAA we decide Ground of appeal no.3 against the assessee.*

*6. Since facts are identical following the above precedent we uphold the order of Ld. CIT-A. Hence the ground raised in this regard stand dismissed.*

*7. Ground no. 3 is dismissed as not pressed.*

*In the result this appeal file by the assessee stands dismissed.*

*7.3. In the aforesaid order, the Tribunal has already considered the factual matrix and no contrary decision was brought to our notice by the assessee and further the*

*assessee has fairly agreed that this ground is covered against the assessee, therefore, this ground in the appeal of the assessee is dismissed.”*

No material is placed on record by the assessee to controvert the findings of the Tribunal in preceding assessment year. Facts being similar, ground no.1 of the appeal is dismissed.

17. The next ground of appeal by the assessee is with respect to disallowance of claim of deduction under section 80G of the Act. The Id. Authorized Representative of the assessee submitted that the assessee had made donations to the tune of Rs.5.00 cores to LIC Golder Jubilee Foundation. The donation to said Foundation are eligible for deduction under section 80G. The assessee claimed deduction under section 80G to the extent of 50% of the amount contributed towards the Foundation. The Id. Authorized Representative of the assessee submitted that for the purpose of computation of income of insurance companies provisions of section 44 of the Act would apply. Section 44 starts with obstinate clause. Hence, the provisions of section 44 of the Act overrides the other provisions of the Act including provisions of sub-section(5A) of section 80G of the Act . The Id. Authorized Representative of the assessee referring to the provisions of section 44 of the Act submits that the non-obstinate clause is only to the extent of computation of income chargeable to tax under the heads mentioned in the section. The benefit of provisions of section 80G is claimed after computation of total income. The Id. Authorized Representative of the assessee submitted that the Assessing Officer cannot go behind the income computed in accordance with the rules contained in First Schedule.

18. On the other hand, Id.Departmental Representative vehemently supported the order of CIT(A). The Id.Departmental Representative submitted that the assessee has claimed donation made to the Foundation in P&L Account and has also claimed deduction under section 80G without adding back the same in computation of income. Thus, this amounts to double deduction in respect of the donation made to the foundation. Once it is claimed as expenditure in the P&L Account and thereafter without adding back the same amount , the assessee claimed benefit of deduction under section 80G on the same amount. Thus, the assessee has taken the benefit of same amount twice, first in computation of income and second time by way of deduction u/s 80G of the Act.

19. We have heard the submissions made by rival sides on this issue. The income of the assessee engaged in Insurance Business is computed in accordance with the provisions of Section 44 of the Act. Before proceedings further, it is imperative to first refer to Section 44. The same is reproduced herein under:

*“44. Notwithstanding anything to the contrary contained in the provisions of this Act relating to the computation of income chargeable under the head "Interest on securities", "Income from house property", "Capital gains" or "Income from other sources", or in [section 199](#) or in [sections 28 to 43B](#), the profits and gains of any business of insurance, including any such business carried on by a mutual insurance company or by a co-operative society, shall be computed in accordance with the rules contained in the First Schedule.”*

Section 44 starts with a ‘non-obstinate’ clause which overrides the provisions of the Act relating to computation of income chargeable to tax under the head:

- (i) Interest on Securities;

- (ii) Income from House Property;
- (iii) Capital Gains;
- (iv) Income from other sources.
- (v) Profits & Gains of business (Section 28 to 43B)

Apart from above, the provisions of section 44 would also override provisions of section 199 relating to credit of tax deducted for the purpose of computation of income.. It is no denying the fact that the assessing being in insurance business is covered by special provisions contained in Section 44 of the Act and hence, for Income Tax purpose compute income in accordance with rules contained in the First Schedule.

20. The Assessing Officer and the CIT(A) have denied the benefit of deduction under section 80G claimed by the assessee for the reason that the assessee has claimed double benefit of donation amount, first in computation of income and secondly in the form of deduction under section 80G after computation. The assessee has not refuted above contentions of the Revenue. It is a trait law that the Assessing Officer has no power to go behind accounts drawn in First Schedule applicable to insurance companies, however, the Assessing Officer can always examine correctness of the claim of the assessee with regard to deduction claimed after computation of income. The intent of Legislature while framing special provision for insurance companies can by no means be to allow the benefit of double deduction of the same amount. The CIT(A) in para 3.4.9 of the impugned order has illustrated the impact of assesses'e claim of donation as expenditure in P&L account on actuarial valuation.

20.1 In so far as argument of Id.Authorized Representative of the assessee that section 44 would also override the provisions of sub-section (5A) of section 80G, we do not concur with the same. A bare perusal of section 44 would show that, in an unambiguous terms the provisions of section list out the head of income/section it would override for the purpose of computation of income. The non-obstinate clause does not impinge the powers of Assessing Officer to examine deductions claimed after computation of income. The Assessing Officer after examining the treatment given by assessee to the donation made to the foundation concluded that the assessee has taken undue benefit of double deduction of the same amount, hence, disallowed assessee's claim made after computation of income. The findings of the Assessing Officer have been upheld by the CIT(A) . We concur with the findings of the CIT(A) on this issue, hence, ground no.2 raised in the appeal by assessee is dismissed.

21. In the result, appeal of the assessee is dismissed.

22. To sum up, appeal of the Revenue is partly allowed for statistical purpose and the appeal of the assessee is dismissed.

Order pronounced in the open court on Friday the 8<sup>th</sup> day of April, 2022.

Sd/-

(PRAMOD KUMAR)

उपाध्यक्ष/VICE PRESIDENT

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 08/04/2022

Vm, Sr. PS(O/S)

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**