IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI H BENCH, MUMBAI

[Coram: Pramod Kumar (Vice President),
and Rahul Chaudhary (Judicial Member)]

ITA No. 807/Mum/2020
Assessment year: 2016-17

Deputy Commissioner of Income Tax, 1(1)(2)
Mumbai ……..……Appellant

Vs.

M/s HDFC Standard Life Insurance Co. Ltd., ……..…….……Respondent
(Now Known as HDFC Life Insurance Co. Ltd.
13th Floor, LodhaExcelus, Appollo Mills Compound,
N M Joshi Marg, Mahalaxmi, Mumbai 400 011[PAN: AAACH8755L]

CO No. 99/Mum/2021
Arising out of ITA No.807/Mum/2020
Assessment year: 2016-17

M/s HDFC Standard Life Insurance Co. Ltd., ……..…….……Cross Objector
(Now Known as HDFC Life Insurance Co. Ltd.
13th Floor, LodhaExcelus, Appollo Mills Compound,
N M Joshi Marg, Mahalaxmi, Mumbai 400 011[PAN: AAACH8755L]

Vs.

Deputy Commissioner of Income Tax, 1(1)(2)……..……Respondent
Mumbai

Appearances by:
Arati Vissanji *for the appellant*
Charanjeet Chanderpal *for the respondent*

Date of concluding the hearing : 25/02/2022
Date of pronouncing the order : 20/05/2022

O R D E R

Per Pramod Kumar VP

1. This appeal filed by the Assessing Officer, as also the cross objection filed by the assessee, are directed against the order dated 07.11.2019 passed by the CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act 1961 for the assessment year 2016-17.

2. We will now take up the revenue appeal.

3. Grievances raised by the Assessing Officer are as follows:-

1. "Whether on the facts and in the circumstances of the case and in law, the CIT(A) was correct in interpreting the provisions of section 44 of the IT Act read with rule 2 of the First Schedule alongwith provisions of Insurance Act, 1938, Insurance Regulatory and Development Authority Act, 1999 and regulation there under and accordingly allowing adjustment from the 'surplus' worked out as per actuarial valuation [and as shown by the assessee in Form-1] in violation of the ratio of the Apex Court in the case of LIC vs CIT 51 IT 778?"

2. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in interpreting that on account of "legislation by incorporation", "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"

3. "Whether on the facts and in the circumstances of the case and in law, the CIT(A) was correct in interpreting section 44 of the IT Act read with rule 2 of the First Schedule that the legislature consciously omitted incorporation of the provision of Insurance Regulatory and Development Authority Act, 1999 and regulation made there under in rule 2 of the First Schedule which 'refers' only to un-amended Insurance Act 1938 and regulations made there under".

4. "Whether on the facts and in the circumstances of the case and in law, the 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 IT Act of the First Schedule of the IT Rules?"

5. "Whether on the facts and in the circumstances of the case and in law, the CIT(A) was correct in allowing relief to the assessee by holding that "surplus" available both in policy holders account and share holders account is to be consolidated and only "net surplus" is to be taxed as "income from insurance business?

6. "Whether on the facts and in the circumstances of the case and in law, the CIT(A) was correct in concluding that transfer from shareholders account to policy holders 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 Income Tax Act read with rule 2 of the First Schedule"

7. "Whether on the facts and in the circumstances of the case and in law, the CIT(A) was justified in failing to appreciate 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 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 IT Act?'

9. "Whether on the facts and in the circumstances of the case and in law, the CIT(A) was right in allowing relief to the assessee by holding that surplus available in shareholders account is not to be taxed separately as "income from other sources" and at the normal corporate rate and holding that surplus from shareholders account was only part of income from insurance business arrived at after "combining" surplus available in shareholders account with surplus available in policy holders account and then taxing this "net surplus" arrived at the rate specified u/s 115JB of the Act?"

10. "Whether on the facts and in the circumstances of the case and in law, the CIT(A) allowing relief to the assessee ignoring that even the assessee insurance company uses the nomenclature expenses other than those directly related to insurance business while computing the surplus in the shareholders account and treating it as part of insurance business?"

4. Learned representatives fairly agree that all the issues in this appeal are squarely covered, in favour of the assessee, by various decisions of the coordinate benchers. So far as ground no 1 is concerned, thisissue is covered by several decisions in assessee's own case including the order dated 30.04.2021for assessment years 2012-13 to 2015-16 wherein the co-ordinate bench observed as follows:-

8.4 Evidently, Ld. CIT(A) has merely followed earlier view of the Tribunal. We find that a 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.

5. So far as ground nos 2,3 and 4 are concerned, these issues are also covered by several decisions in assessee's own case including the order dated 30.04.2021 for assessment years 2012-13 to 2015-16 wherein the co-ordinate bench observed as follows:

8. Surplus in Policy holder'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 Form1 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.

6. Similarly so far as ground nos5 and 6 are concerned, these issues are also covered by several decisions in the assessee's own case including the order dated 30.04.2021 for assessment years 2012-13 to 2015-16 wherein the co-ordinate bench observed as follows::-

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.

7. Coming to ground no. 7, we find that this issue is alsocovered by several decisions in the assessee own case including the order dated 30.04.2021 for assessment years 2012-13 to 2015-16 wherein the co-ordinate bench observed as follows::-

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.

8. So far as ground no. 8 is concerned, this issue is alsocovered by several decisions in assessee's own case including the order dated 30.04.2021 for assessment years 2012-13 to 2015-16 wherein the co-ordinate bench observed as follows::-

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.

9. So far as ground nos9 and 10 are concerned, these issues are also covered by several decisions in the assessee's own case including the order dated 30.04.2021 for assessment years 2012-13 to 2015-16 wherein the co-ordinate bench observed as follows::-

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.

10. In the result, the appeal filed by the Assessing Officer is dismissed in the terms indicated above.

11. We will now take up the cross objection appeal filed by the assessee.

12. Grievances raised in the cross objection is as follows:-

1. If negative reserves are held to be taxable as income, then only the ineremental negative reserves of Rs 426,25,89,000 should be considered.

This is without prejudice to the relief granted by the learned Commissioner of Income-tax (Appeals) [learned CIT(A)] that the negative reserves are not taxable.

2. If negative reserves are held to be taxable as income, then in any case, the negative reserves pertaining to the pension line of business ought to be considered as exempt under section10(23AAB) of the Income-tax Act, 1961 ('the Act').

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

3. If the provisions of section 14A of the Act is held to be applicable to the Respondent, the disallowance under section 14A should not exceed the disallowance of Rs.4,16,76,065 calculated by the Respondent.

This is without prejudice to the relief granted by the learned CIT(A) that section 14A of the Act should not apply in case of the Respondent.

4. The learned CIT(A) ought to have held that the provisions of section 234B of the Act, are not applicable in the respondent's case.

5. On the facts and circumstances of the case, and in law, the learned CIT(A) ought to have directed the Income tax Officer to drop the penalty proceedings.

13. Learned representative fairly agree that in the event of the revenue appeal being dismissed. The grievances raised in the cross objection will be rendered infructuous as vide our order above, we already dismissed the appeal of the revenue. The grievances raised in the cross objection are rendered infructuous.

14. The cross objection filled by the assessee is thus also dismissed.

15. To sum up, while the appeal of the Assessing Officer is dismissed in the terms indicated above, the cross objections filed by the assessee are dismissed as infructuous. Pronounced in the open court today on the 20th day of May, 2022

Sd/-	Sd/-
Rahul Chaudhary	**Pramod Kumar**
(Judicial Member)	(Vice President)

Mumbai, dated the 20th day of May, 2022

Copies to:	*(1)*	*The appellant*	*(2)*	*The respondent*
	(3)	*CIT*	*(4)*	*CIT(A)*
	(5)	*DR*	*(6)*	*Guard File*

By order etc

Assistant Registrar/ Sr PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai