

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 6364/MUM/2019 (A.Y: 2015-16)

DCIT – 12(2)(2) Room No. 128F, 1 st Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	v.	M/s. India First Life Insurance Company Ltd., B-301, Tril IT 4, Film City Road Malad(E), Mumbai - 400097 PAN: AADCB6215G
(Appellant)		(Respondent)

Assessee by	:	Shri Faruk Irani
Department by	:	Shri Nihar Ranjan Samal
Date of Hearing	:	04.07.2022
Date of Pronouncement	:	28.07.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-20, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 24.06.2019 for the A.Y. 2015-16.
2. Brief facts of the case are, assessee filed its return of income on 30.09.2015 declaring total loss of ₹.19,36,20,451/-. Subsequently, case

was selected for scrutiny under CASS and notice u/s. 143(2) and 142(1) of Income-tax Act, 1961 (in short "Act") were issued and served on the assessee. In response AR of the assessee attended and submitted the information as called for.

3. Assessee is engaged in the business of Life Insurance, Health Insurance and Annuity Business. It is a joint venture between Bank of Baroda, Andhra Bank and UK based financial and investment company Legal and General with individual share of 44%, 30% and 26% respectively. During this year assessee earned dividend income (not including the dividend income earned under pension fund scheme, if any) during the relevant year. The return of income of ₹.21,89,25,490/- being dividend had been claimed as exempt u/s. 10(34) of the Act. Assessing Officer disallowed the claim of dividend and held that dividend was taxable under provisions of section 44 of the Act. Further, Assessing Officer observed that addition on account of dividend income to the tune of ₹.21,89,25,490/- has been made based on the discussion on the issue of sec. 10(34) of the Act.

4. However, the Assessing Officer observed that the issue of disallowance u/s. 14A of the Act has not been considered as the whole

dividend income has been taken as includible in the surplus as per section 44 of the Act. However, if at any stage of appellate proceedings in the case of the assessee, the dividend income is held as allowable then, the disallowance u/s. 14A is to be considered at that stage. Accordingly, he worked out the disallowance u/s. 14A r.w. Rule 8D of I.T. Rules as under:-

Particulars	Amount (Rs)	Amount (Rs)
i) Direct Expenditure relating to exempt income		0
ii) Amount computed as per rule 8D(2)(ii) = $[A \times B / C]$		4693460
A= Interest Expenses	1,10,88,280	
B= Average Investment _	1596,25,83,930	
C=Average Total asset	3771,15,37,220	
iii) 0.5% of Average Investment (0,5% \times Rs.15962583930)		79812920
Total Disallowances as per Rule 8D (i+ii+iii)		8,45,06,380
Total Disallowances as per Rule 8D (i+ii+iii)		8,45,06,380

The total disallowance u/s. 14A r.w. Rule 8D works out to ₹.8,45,06,380/-

5. Aggrieved assessee preferred an appeal before the CIT(A)-20, Mumbai and before the Ld.CIT(A) assessee submitted that it is a well settled position of the law that income which do not form part of dividend income to be excluded while determining the correct taxable income, in the present case, assessee had earned income by way of dividend during the year. The dividend income was exempt u/s. 10 of the Act which forms part of the Chapter III of the Act, therefore income earned by way of

dividend has been claimed as exempt in the computation of income. Further, assessee contended that section 44 of the Act deals with the computation of profits and gains of business of insurance, though the section starts with a non-obstante clause, the overriding powers of section 44 is limited to provisions of Act mentioned under the section i.e. section 44 of the Act. It was contended that provisions of section 44 do not override the provisions of section 10 of the Act. Further, Ld. AR of the assessee has relied on the following case laws:

- (i). *ITAT Mumbai bench decision in the case of ICICI Prudential Insurance v. ACIT in ITA.No. 6854 to 6856, 6509, 7765, 7767 and 73213/Mum/2010*
- (ii). *ITAT Mumbai bench decision in the case of Aegon Religare Life Insurance Company Limited v. ACIT in ITA.No. 4110 & 4130/Mum/2014.*
- (iii). *Hon'ble Bombay High Court decision in the case of CIT. M/s.SBI Life Insurance Co. Ltd.,*

6. Further, it was submitted that in assessee's own case in ITA.No. 7276/Mum/2014 dated 11.01.2017 Coordinate Bench has decided the issue in favour of the assessee.

7. After considering the submissions of the assessee Ld.CIT(A) allowed the ground raised by the assessee by relying on the decision of ITAT in assessee's own case for A.Y. 2010-11.

8. With regard to 14A disallowance assessee submitted that provisions of section 14A cannot be invoked in the case of assessee who is engaged in the business of Life Insurance, Health Insurance and Annuity Business.

9. Further, it was submitted that Hon'ble Supreme Court in the case of GIC (106 taxman 389) held that "section 44 r.w. the rules contained in the First Schedule to the Act lays down an artificial mode of computing the profits and gains of Insurance business. For the purpose of Income-tax, the figures in the accounts of the assessee drawn up in accordance with the provisions of the First Schedule to the Act and satisfying the requirement of Insurance Act are binding on the Assessing Officer under the Act and he has no general power to correct the errors in the accounts of an insurance business and undo the entries made therein".

10. Further, submitted that this issue is covered in favour of the assessee by the decision of the Coordinate Bench in the case of ICICI Prudential Insurance v. ACIT (supra).

11. After considering the submissions of the assessee Ld.CIT(A) deleted the addition by observing that the issue is covered by the decision of the

ITAT and held that provisions of section 14A are not applicable in the case of assessee.

12. Aggrieved revenue is in appeal before us raising following grounds in its appeal: -

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on account of deduction claimed of dividend income u/s. 10(34) of the Act, of Rs.21,89,25,490/- without considering the fact that such dividend income was assessable under the income from business and profession and cannot be computed separately to claim exemption u/s. 10(34) of the Act as this will amount to violation of provision of section 44 of the Act.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance made u/s. 14A on account of expenses related to exempt income on the ground that the provisions of section 44 does not provide for such disallowance and at the same time allowing relief on the taxability of dividend income ignoring the provisions of section 44 of the Income Tax Act, 1961

3. "The appellant prays that the order of the Ld. CIT(A) on the grounds be set aside and that of the Assessing Officer be restored".

13. At the time of hearing, Ld. AR of the assessee submitted that both the issues are squarely covered in favour of the assessee in assessee's own case and Ld. DR fairly accepted that this issue is covered in favour of the assessee.

14. Considered the rival submissions and material placed on record, we observe that similar issue was considered and adjudicated by the Coordinate Bench in A.Y. 2016-17 in ITA.No. 6725/Mum/2019 dated 30.08.2021, the same is reproduced below: -

"With regard to deduction of dividend income u/s. 10(34) of the Act, it has held as under: -

6. The issue raised in ground no.2 of present appeal is in respect of deduction on dividend income under section 10(34) of the Act. The Coordinate bench in ITA No. 1912/Mum/2018 (supra) in assessee's own case has considered this issue and held as under:

"6. Issue no.2 is in connection with the deletion of the addition made on account of deduction claimed on dividend income u/s 10(34) of the Act of Rs.13,82,68,575/-. At the very outset, the Ld. Representative of the revenue has argued that the CIT(A) has wrongly allowed the claim of the assessee u/s 10(34) of the Act, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(a) on record: -

"6.4 I have considered the facts of the case and the appellant's submissions. I find that identical issue had come up for consideration in the appellant's appeal for A.Y. 2010-11 wherein my Id. predecessor had observed and held as under:

"5.3 I have considered the facts and circumstances of the case, appellant's submissions and the case laws supported by the appellant This issue had come into consideration of various judicial rulings which is as under:

(i) ICICI Prudential Insurance vs. ACIT ITA Nos. 6854, to 6856,6509,7765 to 7767 and 7213/Mum/2010

In view of the above and respectfully following the same we hold that assessee is entitled to exemption under section 10. Therefore, we do not see any reason to differ from the order of the CIT(A) where he has allowed assessee's claim of exemption under section 120 (23AA8) of surplus of participation Pension Business and also dividend under section 10(34). Accordingly, revenue ground on this issue is rejected."

(ii) LIC (115 ITR 45)

"The only effect of section 44 is that the operation of the provisions referred to therein is excluded in the case of an assessee who carries on insurance business and in whose case the provisions of rule 2 of the First Schedule are attracted. If the deductions which are claimed by the assessee do not fall within the provisions in the case of an assessee whose assessment is governed by section 44 read with rule 2 in the First Schedule is not excluded."

LIC vs. Addl. C/T1TA Nos.3702, 3703,6221/Mum/2012

"We find that the issue of admissibility of provisions of section 10(34) has been considered by the 'F' bench of Mumbai Tribunal while deciding the appeals filed by AO in the cases of ICICI Prudential Insurance (ITA No. 7765/Mum/2010A.Y.2005-06 dt.14-09 2012). Respectfully following the above, we hold that the assessee is entitled for exemption u/s.10."

(iv) SBI Life Insurance Company Ltd. vs. It. CIT ITA Nos.3800 to 3801/Mum /2008, ITA No.1501/Mum/2009, ITA No.5670/Mum/2009. ITA No. 4139/Mum/2008, ITA No. 3346/Mum/2009, IA No. 5759/Mum/2009:

"In connection with Revenue's appeal for AY 2005-06, the parties mentioned that there are four main issues that require specific adjudication. They are... (c) exclusion from total income the exempted income under section 10(34) and 10(38) and 10(23AA8) of the Act.

In connection with issue at (c) above it is the claim of the assessee that the same is required to be adjudicated

considering the decisions of tribunal in case of /C/C/ Prudential Insurance and supra. These decisions are not in existence at the relevant point of time. Considering the new the said decisions and after granting reasonable opportunity of being heard to the assessee."

Following the above judicial rulings, A. O. is directed to allow appellant's claim of sec. 10(34) of the 1. T. Act. This ground of appeal is allowed."

6.5 The above decision of my Id. predecessor has also been affirmed by the Hon'ble Tribunal in ITA No. 7276/M12014 vide order dated 11.01.2017 by observing and holding as under:

"7. Regarding the 2nd issue, which relates to the disallowance of dividend income u/s 10(34) qua the provisions of section 44 of the Act, we find that the finding of the CIT(A) in para 5.3 of his order is fair and reasonable as the same is taken based on the various binding judicial precedents in the case of LIC vs Addl. CIT. : ICIC Prudential Insurance vs ACIT; SBI Life Insurance Company Ltd vs CIT etc, (contents on page 8 of the CIT (A) order are relevant . Accordingly, we affirm the order of the CIT (A) on this issue too. Thus, both the issues raised by the revenue are allowed in favour of assessee."

Facts and issue being the same as that of the earlier year, respectfully following the decision of the Hon'ble Tribunal in the appellant's own case, the appellant's ground of appeal is allowed."

7. On appraisal of the above said finding, we noticed that the CIT(A) has passed the order on the basis of the decision of Hon'ble ITAT in the assessee's own case in ITA. No. 7276/M/2014 vide order dated 11.01.2017 for the A.Y.2010-11. The facts are not distinguishable at the stage. No law contrary to the law relied by the assessee has been produced before us. Since the matter of controversy has duly been covered by the decision of Hon'ble ITAT in the assessee's own case (supra), therefore, we are of the view that the CIT(A) has passed the order judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, we decide this issue in favour of the assessee against the revenue."

The facts in the impugned AY are identical. No contrary decision has been brought to our notice by the Department. We find no reason to take contrary view. Following the decision of co-ordinate bench, the ground no.2 of the appeal is dismissed for parity of reasons.

With regard to 14A disallowance, Coordinate Bench held as under:-

"7. In ground no.3 of appeal, the Revenue has assailed the findings of CIT(A) in deleting disallowance made under section 14A of the Act. We find that in the case of SBI Life Insurance Co. Vs. JCIT (supra) one of the issue before the Tribunal was applicability of provisions of section 14A of the Act to Insurance Companies. The co-ordinate bench after considering various decisions and examining the facts concluded as under:

"17. We have heard both the parties and perused the orders of the Revenue Authorities as well as the decisions of the Tribunal cited before us. On perusal of the decision of the ITAT in the case of ICICI Prudential Insurance (supra) as well as another decision in the case of HDFC Standard Life Insurance Company (supra), we find revenue raised the arguments revolving around the applicability of the judgment in the case of Godrej & Boyce Mfg Co Ltd, supra. Despite the same, the Tribunal considered the said judgment and still allowed the claim of the assessee. Therefore, in view of the special provisions applicable to the insurance companies, we are of the opinion that the provisions of section 14A r.w.r. 8D were held not applicable to the insurance companies i.e., ICICI Prudential Insurance, HDFC Standard Life Insurance Company. Therefore, the SBI Life Insurance Company Limited assessee in the present case should not be any exception. Considering the settled nature of the issue vide decisions of the Tribunal's order (supra), ground no.3 raised by the assessee for the AY 2006-07 is allowed."

8. We find similar view has been taken in the case of ICICI Prudential Insurance v/s. ACIT (supra), IDBI Federal Life Insurance Co. Ltd. (supra) and Birla Sunlife Insurance Co. Ltd. (supra). No contrary decision has been brought to our notice by the Revenue. Therefore, in the light of above decisions, we hold that the provisions

*of section 14A are not attracted in the case of Insurance Companies.
The ground No.3 of appeal is dismissed, accordingly."*

15. Since both the issues are covered by the Coordinate Bench decision in A.Y. 2016-17 we are inclined to follow the same and adjudicate the issue in favour of the assessee and against the revenue. Accordingly, ground raised by the revenue are dismissed.

16. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 28th July, 2022.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER
Mumbai / Dated 28.07.2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum