IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

BEFORE SHRI KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NOs. 1715, 1716 & 1717/MUM/2022
(A.Ys. 2014-15, 2016-17 & 2017-18)

Life Insurance Corporation of India Central Office, F&A Department 3rd Floor, West Wing "Yogakshema", Jeevan Bima Marg Mumbai-400021 **PAN: AAACL0582H**	*v.*	DCIT -3(2)(1) Room No. 608, Aayakar Bhavan Maharshi Karve Road New Marine Lines Churchgate, Mumbai-400020
(Appellant)		**(Respondent)**

ITA NOs. 1711, 1712 & 1713/MUM/2022
(A.Ys. 2014-15, 2017-18 & 2016-17)

ACIT -3(2)(1) Room No. 674, 6th Floor Aayakar Bhavan, M.K. Road Mumbai-400020	*v.*	M/s. Life Insurance Corporation of India Central Office, Yogakshema Jeevan Bima Marg, Nariman Point Mumbai-400005 **PAN: AAACL0582H**
(Appellant)		**(Respondent)**

Assessee Represented by	**:**	**Shri. Anish Thacker Shri. Nikhil Tiwari & Shri Rishab Jalan**
Department Represented by	**:**	**Shri. Jagadish Jangid**
Date of Hearing	**:**	**22.09.2022**
Date of Pronouncement	**:**	**27.09.2022**

O R D E R

PER BENCH

1. These cross appeals are filed by the assessee and Revenue different orders of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 02.05.2022 for the A.Ys. 2014-15, 2016-17 & 2017-2018.

2. Since the issues raised in all the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking Appeal in ITA.No. 1715/MUM/2022 for Assessment Year 2014-15 as a lead case.

3. Assessee has raised following grounds in its appeal: -

*"**General ground***

1. erred in confirming the action of the AO in making addition / disallowance to the extent of Rs. 20047,98,37,000 while determining the total income of the appellant and levying Dividend Distribution Tax (DDT) under section 115-0 of Rs. 245,14,05,000,

Addition of Rs. 1503,70,06,000 in respect of Interim Bonus paid to the total income of the appellant

2. erred in confirming the addition made in respect of Interim Bonus paid amounting to Rs. 1503,70,06,000 to the income of the appellant;

3. erred in not appreciating the fact that the appellant has correctly computed the amount of surplus in accordance with the

provisions of section 44 of the Act r.w. Rule 2 of the First Schedule to the Act, wherein income is offered basis actuarial report as reported in Form -1;

4. erred in upholding the AOS reference to Regulation 8 of IRDA Regulations which is used as a part of disclosure for the internal working and presentation of IRDA which represents the total surplus for the purpose of distribution of bonuses /dividends to the policyholders' and does not represent surplus or deficit of actuarial valuation for the purpose of taxation of income and therefore wrongly upheld the action of the learned AO of taxing the aforesaid interim bonus;

5. ought to have appreciated the fact that such interim bonus is paid to the existing policy holders out of surplus of earlier years which is already offered to tax and therefore it is mere application of tax paid income of earlier year and taxing the same again in the current year would lead to double taxation:

6. erred in adding interim bonus paid amounting to ₹.1503,70,06,000 as disclosed Form AR-A without appreciating the fact that difference in figure of surplus disclosed in Form AR-A was purely due to presentation requirements as per Insurance Regulatory and Development Authority (IRDA') Regulations and therefore addition made by the learned AO is not warranted;

7. ought to have appreciated that the appellant has offered to tax the actuarial surplus as reported in Form-1 for the income-tax purpose since its inception and the same has been accepted all along by all authorities and therefore deviating from the stand of earlier years would lead to violation of principle of consistency.

Disallowance of claim of deduction under section 80G to tune of Rs.5,00,00,000

8. erred in denying the claim of deduction under section 80G of the Act amounting to Rs. 5,00,00,000 (being 50% of Rs. 10,00,00,000, which is the amount actually paid);

9. ought to have appreciated that the appellant had fulfilled all the necessary conditions for claiming deduction undersection 80G and had thereby rightfully claimed the deduction under section 80G of the Act.

Addition on account of negative reserves amounting to Rs.18260,18,26,000

10. erred in confirming the addition of Rs. 18260,18,26,000 made on account negative reserves shown in Form I and thereby making addition on the basis of reasons given by the learned AO which are contrary to the provisions of section 44 r.w. the First Schedule to the Act;

11. erred in not considering the order in assessee's own case of Hon'ble jurisdictional Bombay High Court dated 15 September 2015 for AY 2007-08, 2008-09 and 2009 10, thereby not following the judicial hierarchy and therefore the impugned addition is bad in law;

12. erred in not appreciating the fact that as per sections 64V and 64VA of the Insurance Act, 1938, it is mandatory for the appointed actuary to set the amount of such mathematical reserve to zero in case of it being negative and therefore the addition made is not warranted;

13. ought to have appreciated that the negative reserves was considered as zero/nil by the appointed actuary which was as per the requirements of Insurance Act and IRDA regulations which are sacrosanct and the same was even accepted by IRDA to whom various statements, including Form I was submitted and also by the Hon'ble Supreme Court in own case in 51 ITR 773 (SC) and therefore the learned AO has erred in tampering with the same.

14. should have appreciated that negative reserves is nothing but present value of future surplus (ie. present value of all future receipts less present value of all future liabilities) and thereby the same should never be regarded as surplus of current year for taxation and hence it should not be added to the income of the previous year relevant to the assessment year under appeal, as this will lead to double taxation

Addition on account of income directly credited in shareholders' account amounting to Rs. 33,96,00,000

15. erred in confirming the action of the learned AO in adding the income from shareholders fund of Rs. 33,96,00,000 credited directly to shareholders account;

16. erred in not appreciating the fact that the amount credited to the shareholders account belongs to the sole shareholder viz.

Government of India ('GOI) and that the appellant has no right, interest or control over such amount.

17. ought to have appreciated that since the entire shareholders account is owned by the GOI, any income derived from utilization of such funds by way of investment will also belong to GOI;

18. without prejudice to the above, even if the said amount is considered to be taxable, the same should be taxable at the rate of 12.5% as per the section 115B of the Act and therefore the learned AO has erred in taxing the same at the rate of 30%;

Levy of tax under section 115-0 on the distributed profits amounting to Rs. 245,14,05,000

19. erred in levying tax under section 115-O on the surplus amount paid by the appellant to GOI in accordance with provisions section 28 and section 28A of the Life Insurance Corporation Act, 1956 of Rs. 245,14,05,000;

20. ought to have appreciated that the said amount is distribution of surplus and not dividend and therefore provisions of section 2(22) of the Act is not applicable and no tax under section 115-0 of the Act can be levied;

21. erred in not following the order of Hon'ble Tribunal in the assessee's own case (108 ITD 471) wherein the Hon'ble Tribunal has held that the Government of India ('GOI) could not be called a shareholder of the appellant and therefore distribution of income/profit as per section 28 and 28A of the Insurance Act 1956 could not be treated as dividend under section 2(22) of the Act and therefore the addition could not be done.

Charging of interest under section 115P of the Act

22. erred in confirming levy of interest under section 115P of the Act.

Charging of interest under section 234B of the Act

23. erred in confirming levy of interest under section 234B of the Act;

Charging of interest under section 234C of the Act

24. erred in confirming levy of interest under section 234C of the Act.

Charging of interest under section 234D of the Act

25 erred in confirming levy of interest under section 234D of the Act;

Initiation of penalty proceedings under section 271(1)(c) of the Act

26. erred in confirming the initiation of penalty proceedings under section 271(1)(c) of the Act."

4. We shall deal with the appeal ground wise.

5. Ground No. 1 is general in nature and needs no adjudication. Accordingly, the same is not adjudicated.

6. Ground Nos. 2 to 7 are relating to addition on account of interim bonus paid. Ld. AR brought to our notice that similar ground was raised before the Coordinate Bench in ITA.No. 4459 & 4528/Mum/2015 for the A.Y. 2011-12 and ITA.No. 2908 & 3403/Mum/2019 for the A.Y. 2015-16. Coordinate Bench has considered and adjudicated the above issue and remitted the issue back to the file of the Assessing Officer. Copy of the orders are placed on record. Ld. AR prayed that the same may be adopted for the assessment year under consideration.

7. Ld. DR fairly agreed with the submissions of the Ld. AR and he relied on the orders of the Authorities below.

8. Considered the rival submissions and material placed on record, we observed that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case for the A.Y. 2011-12 and remitted the issue back to the file of the Assessing Officer. While holding so, the Coordinate Bench held as under: -

> *"5. The next ground raised by the Revenue pertains to deleting the addition made on account of interim bonus paid, ignoring the fact that no deduction on account of interim bonus is required to be made from the total surplus as per the regulation of IDRA, the provisions of Act are not applicable in the case of the assessee.*
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> *5.1. During hearing the ld. counsel for the assessee contended that the bonus 95% has to be distributed to the policy holders and remaining 5% goes to the government. Our attention was invited to section 28 of the LIC Act and para 7.3 (page-18 of the impugned order). The Ld. CIT-DR defended the addition made by the Assessing Officer.*
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> *5.2. We have considered the rival submissions and perused the material available on record. Before adverting 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 reminder 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."

9. Similarly, in ITA.No. 2908 & 3403/Mum/2019 for the A.Y. 2015-16 the Coordinate Bench held as under: -

"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 ld. 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 ……

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.

10. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Ys. 2011-12 and 2015-16, we remit this issue to the file of the Assessing Officer with similar directions. Ground No. 2 to 7 are allowed for statistical purpose.

11. With regard to Ground Nos. 8 and 9 of grounds of appeal which are in respect of disallowance of claim u/s. 80G of the Act, Ld. AR brought to our notice that similar ground was raised before the Coordinate Bench in ITA.No. 2908 & 3403/Mum/2019 for the A.Y. 2015-16. Coordinate Bench has considered and adjudicated the issue in favour of the revenue.

12. Ld. DR fairly agreed with the submissions of the Ld. AR.

13. Considered the rival submissions and material placed on record, we observed that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case for the A.Y. 2015-16 and dismissed the ground raised by the assessee. While rejecting the ground raised by the assessee, the Coordinate Bench held as under: -

> *"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 ld.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 ld. 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 ld.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 ld. 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, ld.Departmental Representative vehemently supported the order of CIT(A). The ld.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 assessess'e claim of donation as expenditure in P&L account on actuarial valuation.

20.1 In so far as argument of ld.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."

14. Respectfully following the above said decision, we reject the ground raised by the assessee and accordingly sustain the order of the Ld.CIT(A) in this regard.

15. Coming to Ground Nos. 10 to 14 of grounds of appeal which are in respect of addition of negative reserve, Ld. AR brought to our notice that similar ground was raised before the Coordinate Bench in ITA.No. 4459 &

4528/Mum/2015 for the A.Y. 2011-12 and ITA.No. 2908 & 3403/Mum/2019 for the A.Y. 2015-16 and also by the Hon'ble Supreme Court and Hon'ble Jurisdictional High Court in the assessee's own case. Coordinate Bench has considered and adjudicated the issue in favour of the assessee. Copy of the orders are placed on record. Ld. AR prayed that the same may be adopted for the assessment year under consideration.

16. Ld. DR fairly agreed with the submissions of the Ld. AR and he relied on the orders of the Authorities below.

17. Considered the rival submissions and material placed on record, we observed that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case for the A.Y. 2015-16 and decided the issue in favour of the assessee. While holding so, the Coordinate Bench held as under: -

> *"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 20th 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 ld.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.

18. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2015-16, we allow the ground raised by the assessee on similar terms as directed in A.Y. 2015-16.

19. Coming to Ground Nos. 15 to 18 of grounds of appeal which are in respect of amount credited directly to shareholders fund account, Ld. AR brought to our notice that similar ground was raised before the Coordinate Bench in ITA.No. 4459 & 4528/Mum/2015 for the A.Y. 2011-12 and ITA.No. 2908 & 3403/Mum/2019 for the A.Y. 2015-16. Coordinate Bench has considered and adjudicated the issue in favour of the revenue. Copy of the orders are placed on record.

20. Ld. DR fairly agreed with the submissions of the Ld. Ld. AR.

21. Considered the rival submissions and material placed on record, we observed that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case for the A.Y. 2011-12 and

decided the issue in favour of the revenue and against the assessee. While holding so the Coordinate Bench held as under: -

> *"7. Now, we shall take up the appeal of the assessee for Assessment Year 2011-12 (ITA No.4528/Mum/2015), wherein, the only ground pertains to confirming the addition made on account of income from shareholders funds credited directly to the shareholders account, ignoring that such credit constituted a diversion at source and interpreting the Act (Insurance Act, 1938), the IRDA Act and auditor's report of the assessee company.*
>
> *7.1. During hearing, the ld. CIT-DR contended that this issue is covered against the assessee by the decision of the Tribunal for Assessment Year 2010-11 order dated 07/03/2017. The Ld. counsel for the assessee did not controvert the factual matrix that this issue has been decided against the assessee vide order dated in ITA No.5118/Mum/2014, order dated 07/03/2017.*
>
> *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 asincome 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."

22. Respectfully following the above said decision, we decide the issue in favour of the revenue and reject the ground raised by the assessee in this regard.

23. Coming to Ground Nos. 19 to 21 of grounds of appeal which are in respect of levy of tax u/s. 115-O of the Act on the distributed profits, Ld.AR brought to our notice that similar ground was raised before the Coordinate Bench in ITA.No. 4459 & 4528/Mum/2015 for the A.Y. 2011-

12 and ITA.No. 2908 & 3403/Mum/2019 for the A.Y. 2015-16. Coordinate Bench has considered and adjudicated the issue in favour of the assessee. Copy of the orders are placed on record. Ld. AR prayed that the same may be adopted for the assessment year under consideration.

24. Ld. DR fairly agreed with the submissions of the Ld. AR and he relied on the orders of the Authorities below.

25. Considered the rival submissions and material placed on record, we observed that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case for the A.Y. 2015-16 and decided the issue in favour of the assessee. While holding so the Coordinate Bench held as under: -

> *"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."

26. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2015-16, we allow the ground raised by the assessee.

27. Coming to Ground No. 22 of grounds of appeal which is in respect of interest charged u/s. 115P of the Act, as we have allowed the ground Nos. 19 to 21, it is consequential in nature, accordingly this ground also allowed.

28. Coming to Ground No. 23 to 25 which is in respect of interest charged u/s. 234B, 234C and 234D, since these grounds are consequential in nature and accordingly these grounds are not adjudicated and kept open.

29. Coming to Ground No. 26 which is in respect of initiation of penalty proceedings u/s. 271(1)(c) of the Act, since this ground is premature in nature, we are not adjudicating this ground at this stage.

30. In the result, appeal of the assessee is partly allowed as stated above.

ITA.No. 1716/MUM/2022 (A.Y. 2016-17)

ITA.No. 1717/MUM/2022 (A.Y. 2017-18)

31. Coming to the assessee's appeals relating to A.Ys. 2016-17 and 2017-18, since facts and grounds in these cases are mutatis mutandis, therefore the decision taken in assessee's appeal in ITA.No. 1715/Mum/2022 for the A.Y. 2014-15 is applicable to these Assessment Years also. Accordingly, these appeals are also partly allowed as per the stated directions in Para No. 13 to 29 above.

REVENUE APPEALS

ITA.No. 1711/MUM/2022 (A.Y. 2014-15)

32. Coming to the appeal of the Revenue for the A.Y. 2014-15, revenue has raised following grounds in its appeal: -

(i). 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?

(ii). Without prejudice to the above whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) 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 actuarial surplus determined is 5 % 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 actuarial method?

(iii). Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance of Rs.1159,19,00,000/- U/S.14A rwr 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/S.14A r.w.r. 8D?

(iv). 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 assesses despite the fact that Jeevan Suraksha Fund is covered u/s.1O(23AAB) of the I.T, Act, 1961 whereby the income including the loss is not includible in the total income?

(v). Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in law by not appreciating that Section 44 does not override section 10(23AAB) of the IT Act, 1962 in view of non-obstante clause in section 44?

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

(vii). The appellant craves leave to amend, alter, delete or add grounds which may be necessary.

33. With regard to Ground No. 1 and 2 which are in respect of disallowance of exemption claimed u/s. 10(34) of the Act, Ld.DR submitted that Ld.CIT(A) erred in disallowing the exemption claimed u/s.10(34) of the Act and he relied on the order of the Assessing Officer.

34. Ld. AR brought to our notice that similar ground was raised before the Coordinate Bench in ITA.No. 4459 & 4528/Mum/2015 for the A.Y.2011-12 and ITA.No. 2908 & 3403/Mum/2019 for the A.Y. 2015-16. Coordinate Bench has considered and adjudicated the issue in favour of the assessee. Copy of the orders are placed on record. Ld. AR prayed that the same may be adopted for the assessment year under consideration.

35. Considered the rival submissions and material placed on record, we observed that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case for the A.Y. 2011-12 and

decided the issue in favour of the assessee. While holding so the Coordinate Bench held as under: -

> *"3. The next ground pertains to dividend income of the assessee hold as exempt u/s 10(34) of the Income Tax Act, 1961 (hereinafter the Act). Ld. CIT-DR advanced argument which is identical to the ground raised by contending that since the assessee is engaged in the business of life insurance, it has to be computed under the non-obstante clause of section 44 of the Act. On the other hand, the ld. counsel for the assessee, claimed that this issue is covered in favour of the assessee in its own case by the decision of the Tribunal in ITA No.6221, 3702 & 3703/Mum/2012 vide order dated 03/04/2013 and also by Hon'ble Bombay High Court in Income Tax Appeal Nos.1759 of 2013, 116 of 2014 and 2162 of 2013 vide order dated 15/09/2015, wherein, the appeal of the Revenue was dismissed against the aforesaid order of the Tribunal.*
>
> *3.1. In view of the above, we are reproducing the relevant paras of the order of the Tribunal for ready reference and analysis:*
>
> > *3.4. 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 the AO in the cases of ICICI Prudential Insurance (ITA No. 7765/Mum/2010 AY. 2005-06 dt. 14- 09-2012). Ground No.3 filed by the AO reads as under:*
> >
> > *"On the facts and in the circumstances of the case and in law, the learned CIT(A)erred in allowing the dividend income of the assessee of Rs.1,56,09,222/-as exempted under section 10(34)of the Income-tax Act,1961 ignoring the facts that dividend income is considered as part of Income of Life Insurance Business and is included as an income by the actuary."*
> >
> > *While dealing with the issue, whether exemption u/s. 10 can be allowed to an Insurance company when income is computed u/s. 44 of the Act, Tribunal held that issue was covered in favour of the assessee and against the AO by the orders of the General Insurance Company of India in ITA No. 3354/Mum/2011 where in the issue of deduction u/s. 10 of the Act was considered and allowed following the Hon'ble Bombay*

High Court Judgment in writ petition No. 2560 of 2011 dt. 01-12-2011. After referring to the order of the GIC of India, which in turn had relied upon the cases of LIC vs. CIT-III Bombay, CIT Vs. New India Assurance Co. Ltd., GIC of India vs. CIT(Supreme Court) Tribunal further held that assessee was entitled to exemption u/s. 10 including the dividend income i.e., exemption available u/s. 10(34) of the Act. We find that facts of the case under consideration are similar to the facts of ICICI Prudential Insurance (supra), decided by the coordinating Bench. Here, we would also like to mention that Hon'ble Jurisdictional High Court in case of GIC of India has discussed and decided the issue as under:

"11. Section 44 of the Income Tax Act, 1961 stipulates as follows: "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 curried on by a mutual insurance company or by a cooperative society, shall be computed in accordance with the rules contained in the First Schedule".

Section 44 provides that the profits and gains of any business of insurance of a mutual insurance company shall be computed in accordance with the rules in the First Schedule. Part 'A' of the First Schedule containing Rules I to 4 deals with profits of life insurance business while Part B consisting of Rule 5 deals with computation of profits and gains of Other insurance business. Rule 5 provides as follows:

"5. The profits and gains of any business of insurance other than life insurance shall be taken to be the balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act, 1938 (4 of 1938), to be furnished to the Controller of Insurance subject to the following adjustments: (a)Subject to the other provisions of this rule, any

expenditure or allowance (including any amount debited to the profit and loss account either by way of a provision for any tax, dividend, reserve or any other provision as may be prescribed) which is not admissible under the provisions of section 30 to (43B) in computing the profits and gains of a business shall be added back;

(b)(……)

(c) Such amount carried over to a reserve for unexpired risks as may be prescribed in this behalf shall be allowed as a deduction".

The Assessing Officer has in the reasons for reopening the assessment proceeded on the premise that in computing the profits and gains of business for an assessee who carries on general insurance business no other section of the Act would apply and that the computation could be carried out only in accordance with section 44 read with Rule 5 of the First Schedule. In Life Insurance Corporation of India, v. Commissioner of Income Tax Bombay City-III a Division Bench of this Court construed the provisions of section 44 and of the First Schedule. The assessee in that case which carried on life insurance business had made a claim to exemption under section 10(15) and section 19(1). In a reference before the Court, the questions referred included whether in computing the profits and gains of the business of insurance under section 44 read with the First Schedule certain items- which were ordinarily not includible in the total income were rightly included in- the taxable surplus. The Division Bench of this Court held as follows: -

"The question which essentially falls to be - determined in this reference is whether, in view of the provisions in section 44 or rule 2 of the first Schedule, - the Life Insurance Corporation will not be entitled to claim the deductions which a-i-c otherwise admissible in- the- case of an assessee, computation of whose income is go vented by the other provisions of the Act. The argument of Mr. Kolah for the Life Insurance Corporation is that unless there are express provisions

which disable the Corporation from claiming the deductions referred to above; the Corporation cannot be deprived of the benefit -of the provisions referred to in the questions Nos. 1 to 6. Section 44, which deals with computation of profits and gains of business of insurance, begins with a non obstante clause, the effect of which is that the provisions of the 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", do not apply in the case of computation of income from insurance business. The effect of the non-obstante clause so far as the earlier part of section 44 is concerned, therefore, is that the provisions of section 44 will prevail notwithstanding the fact that there are contrary provisions in the Act relating to computation of income chargeable under the four heads mentioned in section 44. The only other overriding effect of section 44 is that its provisions operate notwithstanding the provisions of section 191 and of section 28 to 43A. Thus, 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 carried 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 which are referred to in section 44, it will have to be held that the applicability of those 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".

This judgment is sought to be distinguished by the Assessing Officer while disposing of the objections on the ground that the decision was rendered in the context of an assessee which- carried on life insurance business to whom Rules 1 to 4 of the First Schedule applied whereas in the case of the assessee in this case which carries on general insurance business Rule 5 could apply. According to the Assessing Officer, Rule 5 would not permit any adjustment to the balance of profit as per annual accounts prepared under the Insurance Act, and hence the judgment would not be

applicable. The Assessing Officer has clearly not noticed that the decision in Life Insurance Corporation (supra) though rendered in the context of an assessee which carries on life insurance business, followed an earlier decision of a Division Bench of this Court in Commissioner of Income-Tax v. New India Assurance Co Ltd. That was a case of an assessee which carried on non life insurance business. In New India Assurance Co. Ltd. the Division Bench dealt inter alia with the provisions - of section 1 9(7) of the Income Tax Act, 1922. The questions referred to this Court included whether the assessee was entitled to claim an exemption from tax under section 15B and 15C (4) and in respect of interest on a government loan under a notification issued under section 60. Section 10(7) of the Income Tax Act, 1922 provided that notwithstanding anything to the contrary contained in section 8,9,10,12 or 18, the profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to the Act. The Division Bench held that upon the language of sub-section (7) of section 10 read along with rule 6 it was impossible to hold that the provisions relating to exemptions stood excluded from operation. In that context the Division Bench held as follows:

"It is only after the profits and gains of a business are computed that any question of granting exemptions arises and if the latter stage were intended to be excluded by the law we should have thought that a clearer provision than is made in sub-section (7) of section 10 and in rule 6 would have been made". In the subsequent judgment of the Division Bench in CIT v. Insurance Corporation (supra), the Division Bench noted that there was a difference in the language of section 10(7) of the Act of 1922 when compared with section 44 of the Act of 1961 since section 44 does not refer to the computation of tax but merely to the computation of profits and gains in the business of insurance The Division Bench held that this would however riot make any difference to- the principle laid - - - - --down by the Court in the earlier decision in the

case of New India Assurance Co. Ltd. Accordingly, the decision of Life Insurance Corporation (Supra)could not have- been ignored by the Assessing- Officer on the supposition that the decision was rendered in the context of an assessee who carried on life insurance business and was, therefore, not available to an assessee which carries on general insurance business.

12.In General Insurance Corporation of India v. Commissioner of IncomeTax, the Supreme Court considered in an appeal arising out of a judgment of the High Court the issue as to whether a sum of Rs.3 crores, being a provision, for redemption of preference shares, was not liable to be added back in the total income of the assessee for AY 1977-78?. The Supreme Court held that a plain reading of rule 5(a) of the First Schedule made it clear that in order to attract the applicability of the provision the amount should firstly be an expenditure or allowance and secondly it should be one not admissible under the provisions of section 30 to 43A.The Supreme Court held that the sum of Rs.3 crores in that case which was set apart as a provision for redemption of preference shares could not have been treated as an expenditure and hence could not have been added back under rule 5(a). In that context- the Supreme Court held as follows

"There is another approach to the same issue. Section 44 of the Income-tax Act read with 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 Income-tax Act and satisfying the requirements of the Insurance Act are binding on the Assessing Officer under the Income-tax Act and he has no general power to correct the errors in the accounts of an insurance business and under the entries made.

The question whether an assessee who carries on general insurance business would be entitled to avail of an exemption under section 10 did not arise. The issue as to whether the assessee which carries on the

business of general insurance would be entitled to the benefit of an. exemption under clauses (10), (23G,) and (33) of section 10 is directly governed by the decision rendered by the Division Bench in. Life Insurance Corporation vs. Commissioner of Income-tax (Supra) following the earlier decision in Commissioner of Income-tax vs. New India Assurance Co. Ltd (supra). The Assessing Officer could not have ignored the binding precedent contained in the two Division Bench decisions of this Court. Moreover, the Assessing Officer in allowing the benefit of the exemption in the order of assessment under section 143(3) specifically relied upon the view taken by the CBDT in its communication dated 21 February 2006 to the Chairman of IRDA. The communication clarifies that th-e exemption available to any other assessee under any clauses of section 10 is also available to a person carrying on non-life insurance business subject to the fulfillment of the conditions, if any, under a particular clause of section 10 under which exemption is sought. It needs to be emphasized that it is not the case of the Assessing Officer that the assessee had failed to fulfill the condition which attached to the provisions of the relevant clauses of section 10 in respect of which the exemption was allowed. This of course is apartfrom clause (38) of section 10 where the Assessing Officer had rejected the claim for exemption in the original order of assessment under section 143(3). The Assessing Officer above all was bound by the communication of the CBDT. Having followed that in the order under section 143(3) he could not have taken a different view while purporting to reopen the assessment. Having applied his mind specifically to the issue and having taken a view on the basis of the communication noted earlier, the act of reopening the assessment would have to be regarded as a mere change of opinion which has also not been based on any tangible material. Consequently, we hold that the reopening of the assessment is contrary to law. The Petition would have, therefore, to be allowed". Respectfully following the above, we hold that the assessee is entitled for exemption under section 10.."

> *Respectfully following the order of the Hon'ble jurisdictional High Court and taking note of the decision of the coordinating bench (F Bench in the case of ICICI Prudentail Insurance Co.), we reverse the order of the FAA and decide Ground No.1 in favour of the assessee.*

3.2. It is also noted that the Hon'ble High Court dismissed the appeal of the Revenue by observing/holding as under:-

> *"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 20th July 2015 in view of the above, question (A) does not raise any substantial question of law and accordingly dismissed."*

We find that before the Hon'ble High Court, the ld. counsel for the Revenue fairly agreed that identical issued is covered by the decision in the case of ICICI Prudential Insurance Co. Ltd. as discussed in the para above, therefore, we find no infirmity in the conclusion of the Ld. Commissioner of Income Tax (Appeal), resultantly, this ground of the Revenue is also fails."

36. Similarly, in ITA.No. 2908 & 3403/Mum/2019 for the A.Y. 2015-16, the Coordinate Bench held as under: -

> *"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 ASSESSMENT YEAR 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 14th 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 20th 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."

37. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2011-12 and 2015-16, we reject the ground raised by the revenue.

38. With regard to Ground No. 3 which are in respect of disallowance u/s. 14A of the Act, Ld.DR submitted that Ld.CIT(A) erred in disallowing the exemption u/s. 14A of the Act and he relied on the order of the Assessing Officer.

39. At the time of hearing, Ld. AR brought to our notice that similar ground was raised before the Coordinate Bench in ITA.No. 2908 & 3403/Mum/2019 for the A.Y. 2015-16 and the Coordinate Bench has considered and adjudicated the issue in favour of the assessee. Copy of the orders are placed on record. Ld. AR prayed that the same may be adopted for the assessment year under consideration.

40. Considered the rival submissions and material placed on record, we observed that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case for the A.Y. 2015-16 and

decided the issue in favour of the assessee. While holding so the Coordinate Bench held as under: -

> *"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 ld.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 ld.Departmental Representative referred to the observations made by CIT(A) in page 48 and 50 of the impugned order. The ld. 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 ld.Departmental Representative heard. We find that in para 48 and 50 of the order of CIT(A) referred to by the ld. 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 ld. 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 ld. 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 ld. 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 ld. Counsel for the assessee. In the absence of any distinguishing feature brought on record by the ld. 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.14Aof the Act and accordingly the disallowance of Rs.30,18,496/- made by the Assessing Officer and sustained by the ld. 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."

41. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's

own case for the A.Y. 2015-16, we reject the ground raised by the revenue.

42. With regard to Ground No. 4 and 5 which are in respect of disallowance of loss from Jeevan Suraksha Fund, Ld.DR submitted that Ld.CIT(A) erred in disallowing the loss and he relied on the order of the Assessing Officer.

43. Ld. AR brought to our notice that similar ground was raised before the Coordinate Bench in ITA.No. 4459 & 4528/Mum/2015 for the A.Y. 2011-12 and ITA.No. 2908 & 3403/Mum/2019 for the A.Y. 2015-16. Coordinate Bench has considered and adjudicated the issue in favour of the assessee. Copy of the orders are placed on record. Ld. AR prayed that the same may be adopted for the assessment year under consideration.

44. Considered the rival submissions and material placed on record, we observed that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case for the A.Y. 2011-12 and decided the issue in favour of the assessee. While holding so the Coordinate Bench held as under: -

"The Revenue as well as the assessee is in cross appeal against the impugned order dated 11/05/2015 of the Ld. First Appellate Authority, Mumbai. First, we shall take up appeal of the Revenue in ITA No.4459/Mum/2015, wherein, the first and second ground raised pertains to deleting the addition made on account of loss from Jeevan Suraksha Fund ignoring the settled position of law that income includes loss thus the loss form Jeevan Suraksha Fund can be set off against taxable income of the assessee corporation despite the fact that Jeevan Suraksha is covered u/s 10(23AAB) of the Income Tax Act, 1961 (hereinafter the Act) and further ignoring the fact that non-obstante clause in section 44 of the Act is not extended to section 10(23)AAB of the Act.

2. During hearing of these appeals, the ld. counsel for the assessee, Shri F.V. Irani, contended that the impugned issue is covered in favour of the assessee in its own case by the decision of Hon'ble Bombay High Court in Income Tax Appeal Nos.3693, 3623, 3691, 3692 and 5001 of 2010 for the Assessment Years 2002-03 to 2006-07, vide order dated 02/08/2011 and also by the decision of the Tribunal in ITA No.4874/Mum/2014, vide order dated 24/02/2016. The Ld. CIT-DR, Shri R.P. Meena, though defended the addition but did not controvert the assertions made by the assessee to the effect that the impugned issue is covered by the aforesaid decisions

2.1 We have considered the rival submissions and perused the material available on record. In view of the above, we are reproducing the relevant para from the aforesaid order of Hon'ble High Court for ready reference and analysis:-

> *"18. The object of inserting Section 10(23AAB) as per the Board Circular No.762 dated 18th 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."

2.2. It is also noted that the Tribunal vide aforesaid order dated 24/02/2016 observed/held as under:-

"6. It was a common point between the parties that the judgement of the Hon'ble Bombay High Court in the case of the assessee for Assessment Years 2002-03 to 2006-07, which has been relied upon by the CIT(A), continues to hold the field, and therefore, we find no reason to interfere with the impugned decision of the CIT(A). As a consequence, Ground nos. 1 & 1.1 of appeal are dismissed."

We find that in the aforesaid order, the Hon'ble High Court vide order dated 02/08/2011 clearly held that the object of insert in section 10(23AAB), as per Board Circular No.762 dated 18/02/1998, was to enable the assessee to offer attractive terms to the contributors. The order of the Tribunal with respect to section 10(23AAB) that the loss incurred from the pension fund like Jeevan Suraksha Fund has to be excluded while determining the accrual surplus from the insurance business u/s 44 of the Act cannot be faulted, resultantly, the issue was decided in favour of the assessee. Respectfully following the decision from Hon'ble jurisdictional High Court and considering the decision of the Coordinate Bench, we don't find any infirmity in the conclusion of the First Appellate Authority. Thus, the impugned grounds are dismissed.

45. Similarly, in ITA.No. 2908 & 3403/Mum/2019 for the A.Y. 2015-16, the Coordinate Bench held as under: -

"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 ld.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 ld. 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 st 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 18th 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.*

46. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2011-12 and 2015-16, we reject the ground raised by the revenue.

47. Ground No. 6 and 7 are general in nature and needs no adjudication, accordingly the same are dismissed.

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

ITA.No. 1713/Mum/2022 (A.Y. 2016-17)

ITA.No. 1712/Mum/2022 (A.Y. 2017-18)

49. Coming to the department appeals relating to A.Ys. 2016-17 and 2017-18, since facts and grounds in these cases are mutatis mutandis, therefore the decision taken in departmental appeal in ITA.No.1711/Mum/2022 for the A.Y. 2014-15 is applicable to these Assessment Years also.

50. The department has raised new issue in Ground No. 1 for the A.Y.2017-18 which is in respect of Addition on account of interim bonus paid, this ground is similar to Ground Nos. 2 to 7 of grounds of appeal raised by the assessee in ITA.No. 1715/Mum/2022 for the A.Y.2014-15 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y. 2017-18. Accordingly, we remit this issue back to the file of the Assessing Officer.

51. In the result, appeal filed by the revenue for the A.Y. 2016-17 is dismissed and appeal for the A.Y. 2017-18 is partly allowed for statistical purpose.

52. To sum-up, all the appeals filed by the assessee are partly allowed. Appeals filed by the revenue for the A.Y. 2014-15 and 2016-17 are dismissed and appeal for the A.Y. 2017-18 is partly allowed for statistical purpose.

Order pronounced in the open court on 27th September, 2022.

Sd/-	**Sd/-**
(KULDIP SINGH)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai / Dated 27.09.2022
Giridhar, Sr.PS

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