

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA No.1671/M/2022

Assessment Year: 2010-11

M/s. Life Insurance Corporation of India, Central Office, F&A Department, 3 rd Floor, West Wing, "Yogakshema", Jeevan Bima Marg, Mumbai – 400 021 PAN: AAACL0582H	Vs.	DCIT 3(2)(1), Room No.608, Aayakar Bhavan, Maharshi Karve Road, New Marine Lines, Mumbai - 400020
(Appellant)		(Respondent)

ITA No.1566/M/2022

Assessment Year: 2010-11

ACIT 3(2)(1), Room No.674, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Life Insurance Corporation of India, Central Office, Yogakshema, Jeevan Bima Marg, Nariman Point, Mumbai – 400 005 PAN: AAACL0582H
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Anish Thacker, A.R..
Shri Nikhil Tiwari &
Shri Rishab Jalan, A.R.

Revenue by : Shri Jagadish Jangid, D.R.

Date of Hearing : 05 . 09 . 2022

Date of Pronouncement : 29 . 09 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

For the sake of brevity aforesaid cross appeals bearing common question of law and facts are being taken up for disposal by way of composite order to avoid repetition of discussion.

2. Appellant M/s. Life Insurance Corporation of India, Mumbai (hereinafter referred to as the assessee) and appellant ACIT, Mumbai (hereinafter referred to as the Revenue) by filing aforesaid cross appeals sought to set aside the impugned order dated 30.04.2022 passed by National Faceless Appeal Centre (NFAC) [Commissioner of Income Tax (Appeals)] [hereinafter referred to as the CIT(A)], on grounds inter alia that:

Assessee's appeal ITA No.1671/M/2022

“Based on the facts and circumstances of the case and in law, Life Insurance Corporation of India ('the Appellant'), respectfully craves leave to prefer an appeal against the order dated 30 April 2022 passed by National Faceless Appeal Centre ('NFAC'), Delhi under section 250 of the Income-tax Act, 1961 ('Act') on the following grounds which are separate and without prejudice to each other:

On the facts and in the circumstances of the case, the learned Assessing Officer ('AO')/NFAC has:-

General ground

1. erred in confirming the action of the AO in making addition / disallowance to the extent of Rs.1008,53,93,000 while determining the total income of the appellant;

Validity of reopening proceedings:-

2. erred in re-opening the assessment proceedings for the captioned Assessment Year ('AY') under section 147 of the Act without appreciating that the reopening proceedings are invalid and bad in law;

3. erred in re-opening the assessment proceedings beyond a period of four years from the end of the assessment year, without appreciating the fact that there was no failure on part of the Appellant to disclose facts truly and fully;

4. erred in re-opening the assessment proceedings for the captioned AY without any new tangible material coming to his notice post the assessment;

5. erred in re-opening the assessment proceedings for the captioned AY on the basis of a mere change in opinion and without any live linkage of the impugned material with the escapement of income;

6. erred in confirming the reopening of assessment, without appreciating that the reason for reopening (i.e. basis for initiation of reopening) was only on account of disallowance made under section 14A of the Act which was deleted by the Hon'ble CIT(A) and thereby the Hon'ble CIT(A) erred in confirming the reopening, in respect) of there maining two issues i.e. addition of interim bonus paid and denial of deduction under section 80G of the Act, both of which will not have any separate leg to stand on, once the disallowance under section 14A is deleted and therefore, entire reopening should be treated as being bad in law;

Addition of Rs. 1003,53,93,000 in respect of Interim Bonus paid to income of the appellant

7. erred in confirming the addition made in respect of Interim Bonus paid amounting to Rs. 1003,53,93,000 to the income of the appellant;

8. 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 - I;

9. 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;

10. 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;

11. erred in adding interim bonus paid amounting to Rs. 1003,53,93,000 as disclosed in 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;

12. ought to have appreciated that the appellant has offered to tax the actuarial surplus as reported in Form - I 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

13. 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);

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

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

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

Charging of interest under section 234B of the Act

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

Charging of interest under section 234C of the Act

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

Charging of interest under section 234D of the Act

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

The appellant craves, to consider each of the above grounds of appeal without prejudice to each other and craves, leave to add, alter, delete or modify all or any of the above grounds of appeal.”

Grounds of Revenue's appeal

ITA No.1566/M/2022

“(i) Whether on the facts and circumstances of the case and in law, the Ld.CFT(A) has erred in deleting the disallowance of Rs.669,58,70,204/- U/S.14A r.w.r. 8D by holding that the AO cannot go beyond the provisions of section 44 and Schedule 1 of the IT. 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?”

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

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

3. Briefly stated facts necessary for adjudication of the controversy at hand are: assessee is into the insurance business governed by the Insurance Act, 1938, which is administered by the Insurance Regularly and Development Authority (IRDA) constituted under the provisions of the Insurance Regulatory and Development Authority Act, 1999. Assessee Insurance Corporation of India established with Life Insurance Corporation Act, 1956 to carry out Life Insurance business in and outside India. The assessee also carries on miscellaneous insurance business even by way of capital redemption insurance business. Assessee corporation is required to pay corporation tax on valuation surplus declared by the actuary and computed the total chargeable income at Rs.1,70,29,59,48,781/-.

4. Originally assessment in this case was framed under section 143(3) of the Income Tax Act, 1961 (for short 'the Act') vide order dated 11.02.2013 by recording reasons and by way of issuance of

notice under section 148 of the Act. Assessee was duly represented who was called upon to furnish working of disallowance under section 14A read with rule 8D as to why the disallowance under section 14A should not be disallowed. Declining the contentions raised by the assessee the Assessing Officer (AO) proceeded to make disallowance to the tune of Rs.3686.59 crore as against Rs.669.59 crore offered by the assessee under section 14A of the Act. AO also made addition of Rs.10,03,53,93,000/- qua the interim bonus paid to the total income of the assessee. AO also made disallowance of the claim or deduction claimed by the assessee under section 80G of the Act to the tune of Rs.5,00,00,000/- and thereby framed the assessment at the total income of Rs.18736,95,55,984/-.

5. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same. Feeling aggrieved with the impugned order passed by the Ld. PCIT(A) both assessee as well as Revenue have come up before the Tribunal by way of filing present cross appeals.

6. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

7. Ground No.1 is general in nature, hence needs no specific findings.

Grounds No.2 to 6:

8. These grounds pertaining to reopening of assessment under section 147 of the Act not pressed by the assessee, hence the same are dismissed.

Grounds No.7 to 12:

9. Assessee corporation has paid a sum of Rs.1003,53,93,000/- as interim bonus to the existing policy holders from 01.04.2009 to 31.12.2009 at the rate specified in the valuation out of surplus of the earlier years which was already subjected to tax. However, the AO disallowed the same and made addition thereof to the total income of the assessee. Addition made by the AO has been upheld by the Ld. CIT(A).

10. Challenging the impugned order addition made AO and confirmed by the Ld. CIT(A), the Ld. A.R. for the assessee contended that this issue has already been decided by the Tribunal in assessee's own case in ITA No.4459 & 4528/M/2015 for A.Y. 2011-12 and ITA No.2908 & 3403/M/2019 for A.Y. 2015-16 available at page 1 to 46 of the paper book.

11. We have perused the order passed by the co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2011-12, which is on identical issue and has been decided in favour of the assessee by remitting the issue back to the AO to examine the factual matrix/utilization of surplus and to decide in accordance with law by returning following findings:

“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.

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.

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.”

12. Since identical issue for the earlier years has already been remanded back to the AO to decide afresh after providing opportunity of being heard to the assessee the issue qua the year under consideration is also required to be remitted back to the AO to decide afresh in accordance with the directions issued by the Bench in assessee's own case for A.Y. 2010-11. Hence, grounds No.7 to 12 are decided in favour of the assessee for statistical purposes.

Grounds No.13 & 14

13. Assessee corporation claimed 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) which the AO has disallowed on the ground that such deductions are duplicate in nature since the income is considered on the basis of actuarial valuation. The Ld. CIT(A) also upheld the disallowance made by the AO.

14. However, the Ld. A.R. for the assessee has fairly conceded that this issue has already been decided against the assessee in its own case in ITA Nos.2908 & 3403/M/2019 for A.Y. 2015-16 by the Tribunal and has not preferred to address any other argument.

15. We have perused the order passed by the co-ordinate Bench of the Tribunal which is on identical issue having been decided by the Tribunal by way of returning following findings:

“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 assesses's 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.”

16. Consequently grounds No.13 & 14 are decided against the assessee.

Ground No.15

17. This ground raised by the assessee is premature, hence not be decided.

Grounds No.16 to 18:

18. These grounds are consequential in nature qua the levy of interest which shall be taken care of by the AO as per findings returned by the Bench.

Departmental appeal bearing ITA No.1566/M/2022**Grounds No.1, 2 & 3:**

19. The Ld. CIT(A) deleted the disallowance of Rs.6,69,58,70,204/- made by the AO under section 14A read with rule 8D which is under challenge before the Bench. The Ld. CIT(A) deleted the addition made by the AO under section 14A to the tune of Rs.6,69,58,70,204/- by following the order passed by the Tribunal and order passed by the Ld. CIT(A) in assessee's own case for A.Y. 2009-10 and A.Y. 2015-15. The Ld. A.R. for the assessee brought to the notice of the Bench that identical issue had come up before the co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2015-16 and decided in favour of the assessee by returning following findings:

“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.14A of 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.”

20. When the Ld. CIT(A) has decided this issue in favour of the assessee by following the order passed by the Ld. CIT(A) in assessee's own case for A.Y. 2015-16 on identical facts, which has been upheld by the co-ordinate Bench of the Tribunal vide order (supra) which is covered by the decision rendered by co-ordinate Bench of the Tribunal in Birla Sunlife Insurance Company and Oriental Insurance Co. Ltd. vs. ACIT, 130 TTJ 388 (Del), we find no illegality or perversity in deletion of addition made by the AO under section 14A read with rule 8D of the Act, hence grounds No.1, 2 & 3 raised by the Revenue are dismissed.

21. In view of what has been discussed above, appeal filed by the assessee is partly allowed for statistical purposes and appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 29.09.2022.

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

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 29.09.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.