

**THE INCOME TAX APPELLATE TRIBUNAL**  
**“H” Bench, Mumbai**

**SHRI OM PRAKASH KANT (ACCOUNT MEMBER)**  
**&**  
**MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**I.T.A. No.1352/Mum/2022 (A.Y. 2014-15)**  
**I.T.A. No.1353/Mum/2022 (A.Y. 2016-17)**  
**I.T.A. No.1413/Mum/2022 (A.Y. 2017-18)**

DCIT 14(1)(1) Room No.432, 4 <sup>th</sup> Floor, Ayakar Bhavan, M.K. Road, Mumbai 400020	Vs.	M/s Kotak Mahindra Life Insurance Company Ltd 2 <sup>nd</sup> Floor, 12 BKC, Bandra Kurla Complex G Block, Bandra East Mumbai 40005 <b>PAN: AAACO3983B</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Farrokh Irani
Department by	Shri Rakesh Ranjan
Date of Hearing	15.09.2022
Date of Pronouncement	28.09.2022

**ORDER**

Per Om Prakash Kant (AM) :-

1. Out of Captional three appeals, appeals for assessment Year 2014-15 and assessment Year 2016-17 are directed against two separate orders, both dated 26<sup>th</sup> March 2022 passed by the National Faceless Appeal Centre (NFAC, Delhi) [Hereinafter shall be referred as First Appellate Authority or (FFA)]. The appeal for assessment year 2017-18 is directed against order dated 31<sup>st</sup> march 2022 passed by the (NFAC, Delhi) (FFA)
2. In these appeals, identical grounds have been raised in respect of issue in dispute permeating from same set of facts and circumstances, and therefore, above appeals were heard together and disposed off by the way

of this consolidated order for convenience and avoid repetition of the facts. The grounds raised in these appeals are reproduced as under:

**Grounds raised in assessment year 2014-15**

- 1. Whether, on the facts and circumstances of the case and in Law, the Ld CIT(A) was justified in holding that the surplus in the Shareholders Account cannot be 'income from other business activity' and cannot be taxed separately*
- 2. Whether, on the facts and circumstances of the case and in Law, the Ld CIT(A) was justified in holding that provisions of Section 14A of the Act did not apply to Insurance Business."*
- 3. The Appellant prays that the order of the CIT(Appeals) on the above ground be set aside and that of the Ld. A.O. be restored.*
- 4. The Appellant craves leave to amend or alter any ground or to submit additional new ground, which may be necessary.*

**Grounds raised in assessment year 2016-17**

- 1. Whether, on the facts and circumstances of the case and in Law, the Ld CIT(A) was justified in holding that the surplus in the Shareholders Account cannot be considered 'income from other business activity' and cannot be taxed separately."*
- 2. "Whether, on the facts and circumstances of the case and in Law, the Ld CIT(A) was justified in holding that provisions of Section 14A of the Act did not apply to Insurance Business.*

3. *The Appellant prays that the order of the CIT(Appeals) on the above ground be set aside and that of the Ld. A.O. be restored.*

4. *The Appellant craves leave to amend or alter any ground or to submit additional new ground, which may be necessary.*

**Grounds raised in assessment year 2017-18.**

1. *Whether, on the facts and circumstances of the case and in Law, the Ld CIT(A) was justified in holding that the surplus in the Shareholders Account cannot be considered a income from other business activity' and cannot be taxed separately."*

2 *Whether, on the facts and circumstances of the case and in Law, the Ld CIT(A) was justified in holding that provisions of Section 14A of the Act did not apply to Insurance Business,"*

3. *Whether, on the facts and circumstances of the case and in Law, the Ld CIT(A) was justified in directing the AO to calculate the tax @12.5% as applicable u/s 115B, based on his decision in treating the surplus in Shareholder's Account as integral part of Life Insurance business."*

4. *Whether, on the facts and circumstances of the case and in Law, the Ld CIT(A) erred in deleting the addition made by the AO of Rs. 29,93,62,227/- on account of incremental Negative reserve without appreciating that negative reserve has an impact of reducing the 'taxable surplus' as per Form-I and therefore corresponding adjustment for 'negative need to be made to arrive at 'taxable surplus."*

*3. The Appellant prays that the order of the CIT(Appeals) on the above ground be set aside and that of the Ld. A.O. be restored.*

*4. The Appellant craves leave to amend or alter any ground or to submit additional new ground, which may be necessary.*

3. Briefly stated facts of the case are that assessee company was engaged in carrying Life Insurance business. The assessee filed return of income for Assessment Year 2014-15, 2016-17 and 2017-18 declaring total income of Rs. 173,32,53,127/- , Rs. 186,08,11,827/- and Rs. 234,01,88,077/- respectively. Against return of income filed by the assessee, the Ld. Assessing Officer (AO) completed the assessment under Section 143(3) of a Income Tax Act 1961 (hereinafter in short "the Act") after making certain addition / disallowance. Aggrieved with the order of the Ld. AO, the Assessee preferred appeal before the Ld. FAA. After considering submission of assessee, appeals in all the three captioned A.Y. were allowed partly in favor of the assessee. Aggrieved with the finding of the Ld. FFA the Revenue is in appeal before the Tribunal, raising the grounds as reproduced above.

4. The Ground No.1 raised in all three appeals relates to finding of the Ld. FAA on the issue of surplus in shareholders accounts, which that same cannot be considered as "income from other business activities" and cannot be taxed separately. The Ld. A.O., while framing assessment for AY 2014-15, the Ld. A.O. noted that the assessee prepared two separate account-Revenue account of the Policy holder(Technical account) and profit and loss account of the shareholders (Non-technical account). According to the Ld A.O. surplus of Rs. 62,15,13,000/- shown under the shareholders account should have been considered as income from other business and not to be considered under the income from Life Insurance Business in term Section 42 of the Act read with Rule 2 along with

schedules of Income-Tax Rules 1962. The Ld. A.O. was of the opinion that income from shareholder's account was not income of the assessee from Life Insurance business and it was income of the assessee from investment of the funds available under shareholder's account. Accordingly, he held surplus Rs.62,15,13,000/-, as income from other business and added to the total income of the assessee. The Ld. FFA after considering the decision of his predecessor in earlier years and decision of the Income-Tax Appellate Tribunal in earlier years (ITA No.5655/Mum/2015) Dated 26-09-2017, deleted the addition.

5. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. Before us the Ld. Counsel of the assessee referred to relevant order of the Tribunal in (ITA No. 5666/Mum/2015), which is reproduced as under:

*At the outset, the Id. Counsel for the assessee stated that this issue is squarely covered in assessee's own case by the Tribunal's decisions in ITA No. 2551/Mum/2010 for A.Y. 2007-08, in ITA No. 2004 & 2233/Mum/2012 for A.Y. 2008-09 and ITA No. 6223/Mum/2014 for A.Y. 2011-12. The ld. Counsel for the assessee drew our attention to ITA No. 6223/Mum/2014 for A.Y. 2011-12, vide order dated 20.12.2013 and relevant para 3, wherein the tribunal has considered that the shareholders funds constituted an integral and indivisible part of assessee's Life Insurance Business and assessee's sole business purpose was to carry on Life Insurance Business as per extant regulations and, hence, these two accounts formed part and parcel of the assessee's business. The Tribunal in para no. 3 followed earlier orders and observed as under:*

6. We find that Ld.FAA has followed binding precedent on the matter and that too in the case & assessee for earlier year, therefore, we do not find any error in the order of Ld. FFA on the issue in dispute, accordingly Ground No. 1 in the appeal for A.Y. 2014-15 is dismissed.

7. The Issue in dispute in Ground No.1 for other two captions A.Y. is identical and therefore Ground No.1 raised in all three appeals i.e. for A.Y. 2014-15, 2016-17, 2017-18 is dismissed.

8. The Ground No.2 raised in all three appeals relates to disallowance u/s 14(A) of the Act. In assessment order for A.Y. 2014-15, the Ld. A.O. observed dividend income earned by the assessee and accordingly, called for explanation from the assessee disallowance u/s 14(A) of the Act might not be made. Regarding the surplus in respect of Annuity Business Rs. 65,41,91,000/-, assessee submitted that same was arrived after considering expenses attributable to the said business therefore, provisions of Section 14(A) are not applicable. It was claimed by the assessee that investment activity of the company was managed by its treasury division and cost incurred by the said division was worked out to Rs.7,47,68,270/-. The submissions of the assessee have been summarized by the Ld. A.O. in the assessment order. For ready reference said, summary is reproduced as under:

*Even though the assessee has arrived at the surplus of Annuity Business after considering the expenditure attributable to earning income of Annuity Business, still provision of section 14A are nonetheless applicable as the assessee has received Dividend income. However, without prejudice to the above, the assessee company has contended that the investment activity of the company is*

*managed by its treasury division and cost incurred by the said division is worked out to Rs.7,47,68,270. Without prejudice to its contention that no disallowance can be made u / s 14A, the assessee company has claimed that if at all any disallowance u / s 14A can be made than it has to be worked out in proportion of dividend income to the total income of treasury division which works out to 4.6225% in the present year and after applying the said percentage to the cost of treasury division, the disallowance u / s 14A works out to Rs.34,56,155. The assessee company has further contented that without prejudice to above contentions 10% of the cost of the treasury division i.e. 10% of Rs.7,47,68,270 amounting to Rs.74,76,827 should only be considered for disallowance relying upon Mumbai Tribunal decision in the case of group company of the assessee. Alternatively, without prejudice to their submissions, the assessee company has claimed that disallowance u / s 14A should be made in respect of cost of treasury division in the ratio of average investments in shares} the average total investment of the company and an amount of 229,85,107 may be disallowed u/s 14A(1) The Assessee claimed that Rule Man 8D should not be invoked.*

**9.** The Ld. AO rejected the contention of the assessee and made disallowance u/s 14A invoking rule 8D of the Income Tax Rules and computed disallowance of Rs.17,72,81,090/-. The relevant Computation under rule 8D is reproduced as under:

<b>As per Rule 8D</b>		<b>(Rs.)</b>
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a) The amount of expenditure directly relating to income which does not form part of total income		NIL
b) In a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, <u>Interest Expenditure X Average Investments</u>  Average Total asset as per Balance Sheet		NIL
c) One-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income.		
Investment in shares as on 1-04-2013	4031,87,54,360	
Less: Investments relating to annuity business	469,63,67,447	3562,23,86,913
Investment in shares as on 31-03-2014	3933,89,41,617	
Less: Investments relating to annuity business	4,04,88,92,709	3529,00,48,907
Average Investments		3545,62,17,910
0.5% Of Average Investments Rs.		17,72,81,090
<b>Total Disallowance u/s 14A r.w. Rule 8D</b>		<b>17,72,81,090</b>

10. On further appeal, the Ld. FFA following the decision of the Tribunal in earlier years deleted the disallowance made by the Ld. AO. Relevant part of the order Ld. FFA is reproduced as under:

*I have considered the facts of the case and the submissions made by the appellant. This ground is covered by the decision of the Ld. CIT(A) order No. CIT(A)2/IT-235/2014-15 Dated 01.09.2015 of the appellant's own case for A.Y. 2012-13. In this order Ld. CIT(A) decided the issue in the favour of the appellant. Relevant portion of the order is reproduced.*

*I have examined the facts of the case, the stand taken by the Ld. A.O. in the assessment order and the contentions of the appellant. It is seen that this issue is already covered by the decision of Hon'ble Mumbai Tribunal in appeal no.2901/M/2010 dated 30.09 2011 in the Appellant's own case for the A.Y.'s 2007-08 to 2011-12 wherein the issue has been decided in the favour of the Appellant Company and Hon'ble Tribunal has held that provisions of section 14A are not applicable to the Appellant company being Life Insurance company and had deleted the disallowance of expenses made the Ld. A.O. under section 14A of the Income-Tax Act.*

*Further, the Appellant argued that this issue was taken up before my predecessor CIT(A)s for AY 2008-09, 2009-10, 2010-11 and 2011-12 wherein it was held provisions of section 14A are not applicable to the Appellant Company being Life Insurance company. It is submitted that similar view was taken by the Hon'ble Mumbai Tribunal in the case of ICICI Prudential Insurance Co. Ltd".*

*Furthermore, in the appellant's own case for AY. 2013-14, the CIT(A) has passed an order dated 28.02.2019 in Appeal No.CIT(A)22/ITO14(2)(4) IT-10188/2016-17, allowing the appeal of the appellant after drawing reference to the above orders of CIT(A) and Hon'ble ITAT, in appellant's own case*

*Revenue has gone in appeal before the Hon'ble TAT against orders of CIT(A) for successive A.Y.'s since A.Y. 2007-08. Revenue's appeals have been dismissed by the Hon'ble ITAT since A.Y. 2007-08. The operative part of Hon'ble ITAT's order in ITA No.2901/M/2010 for 2007-08 is as under:*

11. Ground no.2 is with regard to disallowance of sum of Rs.2,77,69,215/- in accordance with Rule 8D 2 Sec. 14A is expenditure incurred for earning end dividend income. The CIT(A) held as follows:

"At the outset it is clarified that the activity of annuity business is permitted business activity which can be undertaken separately and independently of insurance business and the disallowance being considered is only in respect of exempt income of this annuity business. The only objection taken against the disallowance made by Ld. A.O. is that Rule 8D goes beyond the authority given to CSDT by Section 14 A of the Income-tax Act. It is contended that the rule only determines the notional cost of holding investments which may or may not yield any exempt income and such notional cost for holding investment has no relationship with the actual expenditure incurred by appellant. It has been accordingly contended that the disallowance made by Ld. A.O. needs to be deleted. I have perused the facts of the case. I find that the issue of disallowance u/s 14 A has been considered by Hon'ble Mumbai PAT in several cases and it has been held that Rule 8D is perfectly justified and is required to be invoked in all cases of disallowance u/s 14A. It is accordingly held that Ld. A.O. has rightly invoked Rule 8D for making the disallowance. The disallowance made by Ld. A.O. is consequently confirmed and the ground of appeal is rejected."

12. Aggrieved the assessee is on appeal before us. In the case of Bajaj Alliance General Insurance Company Ltd v/s Additional Commissioner of Income Tax 38 DTR 282 Pune, it has been held that Sec. 14A is not applicable in

*the case of Insurance business, which is governed by specific provisions of 44 and Schedule 1. In the case of Reliance General Insurance Co Ltd v/s Deputy Commissioner of Income Tax, Mumbai Bench, similar view has been taken. Similarly in the case of Birla Sunlife Insurance Co Ltd v/s Additional Commissioner of Income Tax ITA 2253/M/2006 has held as follows:*

*"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 Ld. A.O. after examining the relevant details as discussed in para 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 Ld. A.O. is devoid of any merit This being so, and keeping in view that the Tribunal in Oriental Insurance co Ltd v/s Ad (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 1 and, therefore, it is not permissible to the Ld. A.O. 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 Ld. A.O. to travel beyond Sec 44 and Schedule-1 and make disallowance by applying Soc.14A of the Act and accordingly the disallowance of Rs.30,18,496 made by the Ld. A.O. and sustained by the Ld. CIT(A) is*

*deleted. The ground taken by the assessee is therefore, allowed."*

*Respectfully following the above decisions of the co-ordinate Benches, we delete the entire disallowance made under sec. 14A amounting to Rs.2,77,69,215 as no expenditure is incurred for earning exemption dividend income."*

*Respectfully following the decisions of the Hon'ble ITAT and Ld. CIT(A), this ground of appeal is allowed.*

**11.** We have heard rival submission of the parties on issue-in-dispute & perused the relevant material on the record. We find that Ld. FFA has followed binding precedent in the case of the assessee itself and therefore, we do not find any error in the order of the Ld. FFA Accordingly, we uphold same. The ground No.2 raised by the revenue the A.Y. 2014-15 is accordingly dismissed. Since issue in dispute and Ground No.2 raised in other appeals are identical, therefore to have consistency in our decision the Ground No.2 for A.Y. 2016-17 and 2017-18 is also dismissed.

**12.** In A.Y. 2017-18 two more grounds have been raised. Ground no.3 is in respect of treating surplus from shareholder's account for the purpose calculating book profit (115B of the Act)

**13.** The Ld. FFA in Para No. 4.3 of the order for A.Y. 2017-18 has noted that this ground is consequence to ground no.1 of the present appeal before us. Both the parties before us agreed that this ground being consequential no separate adjudication is required. Accordingly, we do not find any error in the finding of Ld. FFA on the issue in dispute and thus same is upheld. The same ground no. 3 of the appeal of Revenue is accordingly dismissed.

**14.** Ground No.4 of the appeal for A.Y. 2017-18 relates to the disallowance of the addition made by the Ld. A.O. of the Rs.29,93,62,227/- on account of incremental negative reserve. The Ld. A.O. rejected the submission of the assessee that income Life Insurance business is to be assessed on the basis of the actuarial valuation only and surplus worked by actuary cannot be disturbed by the Income-Tax Authority. It was submitted that negative reserve was a temporary phenomenon, which is automatically wiped out and therefore negative reserve should be taken as zero for actuarial valuation. The Ld. A.O. held that taking negative reserve at Zero was not according with the Insurance Act 1938 and IRDA regulation. Accordingly, he added incremental negative reserve as reproduced by the Actuary to the surplus of the actuarial valuation of the Life Insurance business of the assessee company which amounted to Rs. 29,93,62,227/-. On further appeal the Ld. FFA allowed the issue in dispute favor of the assessee, following decision of his predecessor and Tribunal in earlier years. The relevant finding of the Ld. FFA is reproduced as under:

*As stated by the Appellant in its submission, this issue has been decided by the predecessor CsIT (A) in appellant's favour in the appeals filed for the earlier A.Y.s. including AY. 2013-14 in Appeal No.CIT (A)-22/ITO 14(2)(4) /IT-10188/2016-17 wherein the CIT (A) has stated as follows:*

*"I have considered the facts of the case and the submissions made by the appellant. This issue in this ground of appeal has been considered by the CIT(A) in the appellant's own case for AY 2011-12 The CIT(A) deleted the addition in his order and allowed the appellant's ground of appeal. The relevant portion of the CIT(A) order is as under.*

*I have examined the facts of the case, the stand taken by the AO in the assessment order and the contentions of the appellant. This issue is covered by the decisions of the Hon'ble Jurisdictional Mumbai Tribunal in the case of ICICI Prudential Insurance Co Ltd, v/s ACIT reported in 140 ITD 41. The issue has been discussed at length by the Hon'ble Tribunal and the relevant finding at para 59 of the said order is reproduced as under:*

*59. After considering the rival submissions and examining the method of accounting and the mandate given by regulations to appoint Actuarial on the concept of mathematical reserves, we do not see any reason to interfere with the order of the CIT(A). The mathematical reserve is part of Actuarial valuation and the surplus as discussed in Form-1 under Regulation 4 takes into consideration this mathematical reserve also. Therefore the order of the CIT(A) is approve. Moreover the Ld. A.O. has no power to modify the amount after actuarial valuation was done, which was the basis for assessment under Rule 2 of 1<sup>st</sup> Schedule r.w.s. 44 of the I.T. Act. The principles laid down by the Hon'ble Supreme Court in LIC vs. VIT 512 ITR 773 about the powers of Ld. A.O. also restrict the scope and adjustments by the Ld. A.O. In view of this we uphold the order of the Ld. CIT(A) and dismiss the Revenue ground."*

*7.4 Further, the Appellant argued that this issue was taken up before me for A.Y. 2010-11 wherein it was held that Negative Reserve cannot be brought to tax*

*7.5 Since the facts in the Appellant's case are identical to that of ICICI Prudential's (supra) case and also those in the Appellant's own case for A.Y. 2010-11, respectfully*

*following the order of the Hon'ble Mumbai Tribunal, the Ld. A.O. is directed to exclude the Negative Reserve of Rs.399,05,98,960/- from the taxable surplus while computing the total income of the Appellant company.*

*7.6 Accordingly, this ground of appeal is decided in favour of the Appellant Company."*

*Following the decisions of CIT(A) & Hon'ble ITAT, this ground of appeal is allowed.*

**15.** We have heard rival submission of the parties and perusal of the relevant material on record. We find that Ld. FFA has followed the decision of the Tribunal in the case **ICICI prudential Insurance Co Ltd v/s ACIT reported in 140 ITD41**. Before us Ld. DR could not be produce any contrary decision, in favor of the Revenue. Therefore, since Ld. FFA has followed binding precedent on the issue in dispute, we do not find any error in the finding of Ld. FFA Accordingly, Ground no. 4 of the appeal of Revenue for A.Y. 2017-18 is dismissed

**16.** In the result all the three appeals of the Revenue are dismissed

**Order pronounced in the open court on 28.09.2022.**

**Sd/-  
(Kavitha Rajagopal)  
JUDICIAL MEMBER**

**Sd/-  
(Om Prakash Kant)  
ACCOUNTENT MEMBER**

Mumbai;  
Dated : 28/09/2022  
Aniket Rajput (Stenographer)

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(AssistantRegistrar)  
**ITAT, Mumbai**