

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI PAVAN KUMAR GADALE, JM

ITA No. 2046/MUM/2022

(Assessment Year 2014-15)

DCIT-CC1(1), 9th Floor, 905,
Pratishtha Bhavan, Old
C.G.O. Bldg., (Annexe0,
M.K.Road, Mumbai-400 020

(Appellant)

Vs.

Edelweiss Tokio Life
Insurance Ltd.
Edelweiss House off CST
Rd, Kalina, Santacruz(e),
Mumbai-400 098

(Respondent)

ITA No. 2047/MUM/2022

(Assessment Year 2015-16)

DCIT-CC1(1), 9th Floor, 905,
Pratishtha Bhavan, Old C.G.O.
Bldg., (Annexe0, M.K.Road,
Mumbai-400 020

(Appellant)

Vs.

Edelweiss Tokio Life
Insurance Ltd.
Edelweiss House off CST
Rd, Kalina, Santacruz(e),
Mumbai-400 098

(Respondent)

ITA No. 2048/MUM/2022

(Assessment Year 2016-17)

DCIT-CC1(1), 9th Floor, 905,
Pratishtha Bhavan, Old
C.G.O. Bldg., (Annexe0,
M.K.Road, Mumbai-400 020

(Appellant)

Vs.

Edelweiss Tokio Life
Insurance Ltd.
Edelweiss House off CST
Rd, Kalina, Santacruz(e),
Mumbai-400 098

(Respondent)



ITA No. 2049/MUM/2022

(Assessment Year 2017-18)

DCIT-CC1(1), 9th Floor, 905,
Pratistha Bhavan, Old
C.G.O. Bldg., (Annexe0,
M.K.Road, Mumbai-400 020

Edelweiss Tokio Life
Insurance Ltd.
Vs. Edelweiss House off CST
Rd, Kalina, Santacruz(e),
Mumbai-400 098

(Appellant)

(Respondent)

ITA No. 2050/MUM/2022

(Assessment Year 2018-19)

DCIT-CC1(1), 9th Floor, 905,
Pratistha Bhavan, Old
C.G.O. Bldg., (Annexe0,
M.K.Road, Mumbai-400 020

Edelweiss Tokio Life
Insurance Ltd.
Vs. Edelweiss House off CST
Rd, Kalina, Santacruz(e),
Mumbai-400 098

(Appellant)

(Respondent)

PAN No. AACCE2709H

Assessee by : Shri. Ravikant Pathak
Revenue by : Shri. Suresh Periasamy, (CIT
DR)

Date of hearing: 11.10.2022.

Date of pronouncement: 31.10.2022.

ORDER

PER Bench

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01. This is the bunch of 5 appeals filed by the Deputy Commissioner of income tax, central circle 1 (1), Mumbai (the AO) for assessment year 2014 – 15 to assessment year 2018 – 19 in case of one assessee Edelweiss Tokkio life insurance Ltd (the assessee) involving similar issues against the consolidated appellate order passed by the learned Commissioner of income tax (Appeals) – 47, Mumbai (the learned CIT – A) dated 29/6/2022.
02. In ITA number 2046/M/2022 the appeal is filed for assessment year 2014 – 15 by the learned assessing officer raising following grounds of appeal: -
- i. whether on the facts and circumstances of the case and in law, the learned CIT (A) is correct in allowing the appeal filed by the assessee by relying on the decision of the honourable Bombay High Court in case of the principal Commissioner of income tax – 6, Mumbai versus ICICI Prudential life insurance Co Ltd (SLPC number 003816/2019) ignoring the fact that the issue same is of this appeal is pending before the honourable Supreme Court of India.
 - ii. Whether on the facts and circumstances of the case, and on law, the learned CIT (A) is correct in allowing exemption u/s 10 (34) of the income tax act, 1961, amounting to ₹ 6,696,593/- on account of dividend income, denied by the assessing officer, considering the

- fetters prescribed u/s 44 of the income tax act, 1961 and CIT (A) ignoring the fact that the Department is contesting the assessee's own case in (ITA number 1179/2022) and for assessment year 2012 - 13 and (ITA number 1507/2022) for assessment year 2013 - 14 which is still pending in the honourable High Court for finality
- iii. whether on the facts and circumstances of the case and on law, the learned CIT (A) is correct in deleting the disallowance u/s 14 A of the income tax act, 1961, amounting to ₹ 3,895,297/- which was made by the assessing officer considering fetters prescribed in Section 44 of the income tax act, 1961, and CIT (A) ignoring the fact that the Department is contesting the assessee's own case (ITA number 1179/2022) for assessment year 2012 - 13 which is still pending in the honourable High Court for finality
- iv. whether on the facts and circumstances of the case, and on law, the learned CIT (A) is correct in deleting the addition on account of negative reserves amounting to ₹ 63,203,000/- which was made by the assessing officer, without appreciating the provisions of the insurance act 1938 and IRDA regulations and ignoring the fact that the Department has contesting the

assessee's own case (ITA number 1179/2022) for assessment year 2012 - 13 and (ITA number 1507/2022) for assessment year 2013 - 14 which is still pending in honourable High Court for finality.

03. Issues in other appeals for assessment year 2015 - 16 to 2018 - 19 are also similar.
04. Facts emerging for assessment year 2014 - 15 shows that assessee is a company licensed by insurance and regulatory development authority to carry on the business of life insurance. As the assessee is engaged in the business of life insurance the computation of total income is required to be made Under the provisions of Section 44 of the income tax act. The part A of the first schedule of the income tax act 1961 defines the method for computation of profit of life insurance business. The rule 1 and 2 of the first schedule further defines the computation of profit of life insurance business. The assessee filed its original return of income on 27/11/2014 declaring a total loss of ₹ 650,594,236. The case of the assessee was selected for scrutiny.
05. During assessment proceedings
 - a. on the basis of examination the learned AO noted that assessee has claimed exemption of dividend income of ₹ 6,696,593/- as exempt income u/s 10 (34) of the income

tax act and has also reduce the same from the income worked out as per rule 2 of the first schedule of the income tax act 1961. The learned AO questioned the assessee by the issue of show cause why the addition/disallowance made in earlier year shall not be made for the year Under consideration.

- b. Assessee explained that assessee has earned dividend income amounting to ₹ 7,849,841/- comprising of Unit linked dividend of ₹ 1,153,248 and shareholders dividend of ₹ 6,696,593/-. The dividend income earned on the Unit linked the account is passed on immediately to the account of the policy order. The company is no discretion in such gain/losses of the linked funds. Thus, the life insurance Co is merely a passthrough entity. In view of the fact that the life insurance Co needs to pay this amount to the policy order, it is required to create a corresponding liability to that extent. Accordingly, dividend on Unit linked the policy amounting to ₹ 1,153,148 has not been claimed as exempt from tax u/s 10 (34) of the act. However dividend and shareholders fund and not only in funds amounting to ₹ 6,696,593 has been claimed as exempt u/s 10 (34) of the

act. The reason being that the company believes that the Section 44 exclude the operation of sections relating to the computation of income chargeable to tax and not all the sections of the act. However, the provisions of Section 10 should be applicable to all assessee including insurance companies accordingly the total income of the company chargeable to tax was computed after excluding exempt income u/s 10 of the act as applicable. The assessee also stated that Chapter III of the act deals with the incomes which do not form part of the total income therefore Section 10 (34) which forms part of this chapter are clearly to be first excluded from the total income of the assessee before the income chargeable to tax can be computed.

- c. The learned assessing officer was of the view that computation of income in the case of insurance business is as per provisions of Section 44 of the IT act. This action is starting with a non-obstante clause therefore dividend income Under the head income from other sources cannot be taken as separate from the profit and gains of insurance business accordingly the dividend income which falls Under that

income from other sources cannot be computed separately to claim exemption u/s 10 (34) of the act as it would amount to violation of provisions of Section 44 of the act. Accordingly the learned assessing officer rejected the claim for deduction of dividend income from the surplus determined by the actuary and made the addition to the extent of ₹ 6,696,593/- to the total income of the assessee.

- d. The learned AO further noted that the assessee has claimed dividend income exempt u/s 10 (34) of the act of ₹ 66,696,593 however did not make any disallowance u/s 14 A of the act and therefore the assessee was asked to explain why the disallowance should not be made u/s 14 A hundred with rule 8D of the IT act.
- e. The assessee explained that taxability of life insurance Co is governed by provisions of Section 44 of the act and therefore provisions of Section 14 A does not apply. It was further stated that Section 14 A refers to the deduction allowable Under the act contains u/s 28 to Section 40 3B of the act.

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- f. The learned assessing officer rejected the explanation of the assessee and held that Section 14 A applies to the insurance company also the learned assessing officer further recorded the satisfaction about the correctness of the claim of the assessee and therefore applied the provisions of rule 8D and disallowed 1% of the average value of investment amounting to ₹ 3,895,297.
- g. The learned assessing officer further noted that there is an item called as negative reserve amounting to ₹ 63,203,000. The learned AO verified the report of actuary submitted in form I and found that the surplus ascertained has been arrived at by ignoring the negative reserve. The AO questioned the assessee that why the same should not be added to the surplus computed as per actuary valuation.
- h. Assessee explained that as per the provisions of Section 44 of the income tax act, income of life insurance business is to be assessed on the basis of actuarial valuation only and the surplus worked out by the actuary cannot be disturbed by the income tax authorities.
- i. However the learned assessing officer rejected the contention of the assessee

referred to the nature of negative reserve in actuarial valuation for service of insurance policies. The learned AO was of the view that it is true that Section 44 provides that surplus worked out by actuarial valuation is to be adopted for computing income from life insurance business but it does not mean that figure taken by the appointed actuary automatically become is assessed total income. Accordingly, he held that by taking negative reserve at zero the surplus has been made less than the actuarial valuation. He also referred to various guidelines issued by insurance regulation and development authority. He also noted that negative reserve is a temporary phenomenon observed only in any years of the policy. He therefore rejected the assessee's contention in respect of taking negative reserve at zero and therefore it was added to the surplus of the actual valuation of the life insurance business of the assessee company resulting into an addition of ₹ 63,203,000/-.

06. Accordingly assessment order u/s 143 (3) of the income tax act was passed on 1/12/2016 determining the assessed total income of the assessee at a loss of ₹ 580,694,643 against the

income from business as per the computation of the assessee at a loss of 65,05,94,236/-.

07. Assessee aggrieved with the order of the learned AO preferred an appeal before the learned CIT – A. It was submitted before the learned and CIT – A that all the 3 issues in this appeal is squarely covered in favour of the assessee by the decision of the coordinate bench in assessee’s own case for assessment year 2012 – 13 in ITA number 2715/M/2019. The learned and CIT – A referred to that order of the coordinate bench and deleted the addition of ₹ 6,696,593 being exempt income u/s 10 (34) of the act, disallowance of ₹ 3,895,297 made on protective basis by the learned assessing officer u/s 14 A of the act and further deleted the addition of ₹ 63,203,300/- being negative reserve. Accordingly appeal of the assessee was allowed.
08. The learned assessing officer is aggrieved with the order of the learned CIT – A and is in appeal before us.
09. The learned departmental representative vehemently supported the orders of the learned assessing officer.
010. The learned authorised representative submitted that identical issue is covered in favour of the assessee by the decision of the coordinate bench in assessee’s own case which has been followed by the learned CIT – A and as there is no change in the facts and

circumstances of the case same deserves to be followed.t

011. we have carefully considered the rival contention and perused the order of the lower authorities. We find that the learned CIT – A has followed the decision of the coordinate bench in assessee’s own case for assessment year 2012 – 13 in ITA number 6 to 70/M/2018 and for assessment year 2013 – 14 in ITA number 2715/M/2019 wherein all the above issue are covered. We have also carefully perused the decision of the coordinate bench. We find that

a. issue of dividend income and disallowance u/s 14 A has been covered in favour of the assessee by the decision of coordinate bench in assessee’s own case and when on appeal by revenue honourable Bombay High Court in case of principal Commissioner of income tax versus ICICI Prudential life insurance Co Ltd **2016] 73 taxmann.com 201 (Bombay) while answering question no 4** admitted the ground raised by the revenue about the allowability of dividend income exemption u/s 10 (34) of The Act . The question no 4 before Hon. High court was: -

(4) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in holding that provisions of Section 14A of the Act did not apply to Insurance business, even when the assessee has claimed exempted income u/s. 10 of the I.T. Act and has also itself made some disallowance u/s 14A of the Act in the return?

Therefore at present the issue is covered in favour of the assessee by the decision of coordinate bench in assessee's own case.

Further identical issue arose in case of **PRINCIPAL COMMISSIONER OF INCOME TAX (LTU) vs. THE ORIENTAL INSURANCE CO. LTD.** (2020) 107 CCH 0583 Del HC (2020) 273 TAXMAN 0427 (Delhi), honourable Delhi High court held as under:

"9. We have heard learned counsels and are of the view that no substantial question of law arises for our consideration. The Tribunal has interpreted Section 44 read with the first schedule and concluded that applicability of Section 14A is excluded in relation to computation of income of an insurance company. We have examined the relevant provisions. Section 44 begins with a non-obstante clause and overrides the other provisions of the Act as mentioned therein including Section 14A. We are not convinced with the submission of Mr. Ajit Sharma that Section 14A would be applicable in respect of the Respondent. Section 14A does not have independent legs to stand on. Section 14A *inter alia* begins with the words "for the purposes of computing the total income under this chapter, no deduction shall be allowed in respect of expenditure incurred.....". The chapter in question is chapter IV. This chapter also contains the provisions relating to computation of profits and gains of business or profession. Section 44 specifically excludes the provisions of the Act relating to computation of income, *inter alia*, those contained in "Section 28 to 43B". Thus, the exclusion would take within its sweep Section 14A which is an exemption for deductions as allowable under the Act, as provided under Section 28 to 43B. Further, Section 44 is a special provision applicable in the cases of insurance companies and applies, notwithstanding anything to the contrary contained in the provisions of the Income Tax Act relating to the computation of income chargeable under different heads. For computing the profits and gains of the business of insurance company, the AO had to resort to Section 44 and the prescribed rules, and could not have applied Section 28 to 43B, since the same were excluded from the purview of Section 44. This necessarily includes the exception provision enshrined under Section 14A of the Act. Therefore, in our view, the AO could not have travelled beyond Section 44 in the first schedule of the Act. Besides, the tribunal has also invoked the rule of consistency since the same view of the Tribunal has prevailed in respect of the earlier assessment years i.e., 2000-01, 2001-02 and 2005-06.

10. We also do not find merit in the submission of Mr. Sharma that the Tribunal should have remanded back the matter to the Assessing Officer for computation of income of the Respondent-assessee in terms of first schedule of the Act, since that was not even a ground urged by the Revenue before the Tribunal. At this stage, it is too late in the day for the Revenue to argue that notwithstanding the grounds urged to challenge the order of the CIT (A), the Tribunal should have ventured into examining the merits of the computation of income of the Respondent assessee in terms of Section 44 read with the first schedule of the Act. No doubt, the Tribunal is a final fact-finding body. However, when the Revenue confined its challenge only in respect of the applicability of Section 14A, we cannot find fault in the impugned order, on the basis of submissions not advanced before the Tribunal. We, therefore do not find any substantial question of law arising in relation to the view taken by the Tribunal."

Therefore, respectfully following decision of Honourable Delhi High court and Coordinate bench in assessee's own case. This Ground No [3] of Id AO's Appeal fails.

- b. On the issue of adjustment of negative reserve the coordinate bench followed the decision of the Honourable Bombay High Court in case of principal Commissioner of income tax versus ICICI Prudential life insurance Co Ltd 2016] 73 taxmann.com 201 (Bombay) while answering question no 6 i.e.

(6)	Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in failing to appreciate that negative reserve has an impact of reducing the 'taxable surplus' as per Form-I and therefore corresponding adjustment for "negative reserve" need to be made to arrive at "taxable surplus"?
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The Honourable High court held as under: -

- "4. So far as Question No. 6 is concerned, the grievance of the revenue is that the Tribunal after having taken total surplus as arrived by Actuarial valuation ought to have reduced negative reserve amount of Rs.

27.27 crores while determining respondent-assessee's income under Section 44 of the Act. The impugned order records that the mathematical reserves is a part of the Actuarial valuation and the surplus takes into account the mathematical reserve also. Besides the impugned order follows the decision of the Apex Court in *LIC of India v. CIT* [1964] 51 ITR 773, wherein the Apex Court has held that the Assessing Officer has no power to modify the account after Actuarial valuation is done. It is also pertinent to note that for the Assessment Year 2007-08, the Assessing Officer had raised an identical issue during the assessment proceedings and thereafter by the assessment order dated 30 December 2009 held that no adjustment of the Actuarial valuation is to be done by following the decision of the Apex Court in *LIC of India's case (supra)*. Therefore we find no substantial question of law arising for our consideration. In view of the fact that the impugned order has merely followed the decision of the Apex Court, we see no substantial question of law for our consideration. Accordingly, Question No. 6 is not entertained."

Therefore, this issue is squarely covered in favour of the assessee, hence this ground no [4] of Id AO's Appeal is dismissed.

c. with respect to the allowance of exemption u/s 10 (34) of the income tax act Honourable High court in

honourable Bombay High Court in case of principal Commissioner of income tax versus ICICI Prudential life insurance Co Ltd **2016] 73 taxmann.com 201 (Bombay) while answering question no 5 i.e.**

- (5) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in allowing the dividend income of assessee as exempt u/s. 10(34) of the I.T. Act, 1961, ignoring the fact that dividend income is considered as part of income of Life Insurance Business and is included as an 'income' by the actuary?

The Honourable High court held as under: -

“3. It is agreed between the parties that so far as Question No. 5 is concerned, an appeal by the revenue in respect of Assessment Year 2005-06 being Income Tax Appeal No. 710/2013 raising an identical question in respect of the same respondent was not entertained. Accordingly, following our decision in Income Tax Appeal No. 710/2013 and for reasons indicated therein, Question No. 5 is not entertained.”

Thus, Ground no [2] of The Appeal fails

012. Ground no [1] is general in nature.
013. As such all the grounds of appeal itself states that issues are covered in favour of the assessee by the order of coordinate bench in assessee's own case which has been challenged before honourable High court and for the reason that issue is pending before honourable supreme court.

014. In the result appeal for AY 2014-15 filed by Id. AO is dismissed.
015. ITA number 2047/M/2022 for assessment year 2015-16 , ITA number 2048/M/2022 for assessment year 2016 - 17, ITA number 2049/M/2022 for assessment year 2017 - 18 and ITA number 2050/M/2022 for AY 2018-19 are filed by the learned assessing officer against the order of the learned CIT - A raising same ground of appeal.
016. There is no change in the facts and circumstances of the case and the argument of the both the parties also remained the same. For the reason given by us in appeal of the learned assessing officer for assessment year 2016 - 17, we dismiss the appeal of the learned AO for all these years.
017. Accordingly all 5 appeals filed by the learned assessing officer from assessment year 2014 - 15 to assessment year 2018 - 19 are dismissed.

Order pronounced in the open court on 31.10.2022.

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.10.2022

Sudip Sarkar, Sr.PS

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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai