

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.1285/Mum/2022
(Assessment Year :2017-18)**

M/s. Tata AIA Life Insurance Company Ltd., 14 th Floor, Tower A Peninsula Business Park Senapati Bapat Marg Lower Parel Mumbai – 400 013	Vs.	Pr.Commissioner of Income Tax, Range-8 Room No.811, 8 th Floor Aayakar Bhavan M.K.Road Mumbai – 400 020
PAN/GIR No.AABCT3784C		
(Appellant)	..	(Respondent)

Assessee by	Shri Madhur Agarwal
Revenue by	Shri A.B.Koli
Date of Hearing	23/08/2022
Date of Pronouncement	31/10/2022

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.1285/Mum/2022 for A.Y.2017-18 preferred by the order against the revision order of the Id. Principal Commissioner of Income Tax-8, Mumbai u/s.263 of the Act dated 25/03/2022 for the A.Y.2017-18.

2. The assessee has raised the following grounds of appeal:-

“Based on the facts and circumstances of the case. Tata AIA Life Insurance Company Limited (hereinafter referred to as 'TALIC' or 'the Appellant') craves leave to prefer an appeal under section 253 of the Income tax Act, 1961 (hereinafter referred to as the Act) against the order dated 25 March 2022 issued under section 263 of the Act (hereinafter referred to as the 'Order') by the Principal of Income-tax, Range-8, Mumbai (hereinafter referred to as the 'learned CIT) on the following grounds, each of which are without prejudice to one another.

1. Ground No. 1: Initiation of revision proceedings under section 263 of the Act.

The learned CIT has erred in law and fact, inter alia, on the following grounds:

1.1. In disregarding the submission of the Appellant that the twin conditions contained in section 263 of the Act are not fulfilled prior to initiating proceedings under section 263 of the Act and initiating proceedings under section 263 of the Act.

1.2. In treating the order dated 26 December 2019 issued under section 143(3) of the Act by the Assistant Commissioner of Income-tax, Range -8(3)(1), Mumbai (hereinafter referred to as the 'learned AO') [hereinafter referred to as the 'Assessment Order] for AY 2017-18 as erroneous and prejudicial to the interest of the revenue.

1.3. In concluding that the learned AO has made no inquiry regarding the taxability of the income earned by the Appellant from life insurance business and from activities other than the life insurance business.

1.4. In disregarding the submissions of the Appellant on the merits of the case and not following the order issued by the Jurisdictional High Court and setting aside the aforesaid Assessment Order, with directions to the learned AO to pass an assessment order, after providing an opportunity of being heard to the Appellant.

2. Ground No. 2: Revision of the Assessment Order

The learned CIT has erred in law and fact, inter alia, on the following grounds:

2.1. In not appreciating the submission of the Appellant, that the Appellant, being a Life Insurance Company regulated by the Insurance Regulatory and Development Authority of India ('IRDA'), can undertake only life insurance business and no other business.

2.2. In ignoring the provisions of section 44 of the Act read with Rule 2 of the Income-tax Rules, 1962 and consequently, in applying the rate of tax of 30% (which is applicable to a domestic company) as against the tax rate of 12.5% (which is applicable to a company engaged in life insurance business as per section 1158 of the Act

The Appellant craves leave to add, alter, vary, omit, substitute, or amend any or all of the above grounds of appeal, at any time before or at, the time of the appeal, so as to enable the Honorable Income-tax Appellate Tribunal to decide this appeal according to law.

3. We have heard rival submissions and perused the materials available on record. The assessee is a joint venture between Tata Sons and the AIA Group and carries on life insurance business in India in accordance with the regulations prescribed by the Insurance Regulatory and Development Authority of India (IRDA). It has obtained a license from the IRDA to carry on life insurance business in India on 12/02/2001 and started operations on 01/04/2001. The assessee filed its original return of income on 29/11/2017 declaring taxable income of Rs.103,85,94,540/-. The taxable income was computed as per Rule 2 of the First Schedule in accordance with the regulations contained in Part-I and Part-II of the Fourth Schedule of the unamended Insurance Act, 1938 (which was duly in accordance with the order of this Tribunal in assessee's own case for A.Yrs. 2002-03 to AY 2008-09 and AY 2014-15). The surplus/ (deficit) in this regard is disclosed by assessee in the Form ('Old Form 1) in accordance with the Insurance Act, 1938.

3.1. The taxable income of assessee was computed as difference between the surplus appearing in the Old Form I as on 31/03/2017 and the surplus appearing in the Old Form I as on 31/03/2016. Further, assessee claimed exemption towards dividend income under section 10(34) of the Act and towards surplus from pension fund under section 10(23AAB) of the Act amounting to Rs.84,06,99,308/- and Rs.10,60,42,568/- respectively and also claimed deduction of Rs.56,40,583/- u/s 80JJAA of the Act.

3.2. The return of income filed by assessee was selected for scrutiny assessment proceedings and the Id. AO issued notices under section 143(2) and section 142(1) of the Act requesting assessee to furnish various information/ documents. In response to the same, the assessee vide various submissions filed the relevant factual information/ documentary evidences before the Id. AO. The Id. AO while passing the order computed total income of Rs. 599,51,63,800/- by adopting a different approach resulting into double taxation for the purpose of computing the taxable income. The learned AO combined the surplus as per the technical/ revenue and non-technical/ shareholder accounts as well as added the differential surplus as per New Form I of Rs.87,65,86,000/- (comprising of policyholder's profit) while computing the taxable income. Further, the learned AO proceeded to disallow the exemptions claimed u/s 10(34) and u/s 10(23AAB) of the Act. The Id. AO also mentioned in the order that in case if it is held in the appellate proceedings that the above exemptions are available to assessee, then the provisions of section 14A of the Act shall apply.

3.3. Aggrieved by the Order passed by the Id. AO, assessee has preferred an appeal before the Commissioner of Income-tax (Appeals) on 23/01/2020 which is pending for disposal as on the date of hearing of this appeal. In the meanwhile, the present notice u/s 263 of the Act has been issued by the Id. PCIT contending that the order passed by the Id. AO is prejudicial to the interests of the Revenue and proposes to: compute tax payable on life insurance business at the rate of 12.5% under section 115B of the Act and tax on other than life insurance business allegedly i.e., surplus in the shareholders' funds at

the rate of 30% instead of 12.5% as prescribed in section 115B of the Act.

3.4. The Id. PCIT issued show-cause notice dated 04/03/2022 which is reproduced as under:-

NOTICE FOR THE HEARING

M/s/Mr/Ms

Subject: Notice for Hearing in respect of Revision proceedings u/s 263 of the THE INCOME TAX ACT, 1961-Assessment Year 2017-18.

In this regard, a hearing in the matter is fixed on 09/03/2022 at 11:30 AM. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: incometaxindiaefiling.gov.in

In this case, the ITR for AY 2017-18 was filed by the assessee on 29.11.2017 declaring total income at Rs. 103,85,94,540/-. Subsequently the assessment was completed u/s 143(3) on 26.12.2019 at Rs.599,51,63,804/-.

3. Further, on perusal of the case records, it is noticed that in accordance with the provisions contained in section 115B read with Appendix 1 of First Schedule of Income Tax Act, 1961, income derived from Life Insurance business to be taxed @12.5%. Also the accounts are to be prepared in two parts i.e. Technical Account and Non-Technical account as envisaged in Appendix 1 of the Act. In the case of a person who carries on or at any time in the previous year carried on life insurance business, the profits and gains of such person from that business shall be computed separately from his profits and gains from any other business. In other words, only income derived from Life insurance business carried by a company will attracts the concessional rate of tax and all other income of the company suffers the prevailing rates applicable to companies. The entire income is treated as an

income from Life Insurance business and taxed @12.5%. However, a perusal of computation of Income reveals the followings:

<i>Gross income :</i>	<i>599,51,63,800-(A)</i>
<i>Less: Surplus as per actuarial valuation</i>	<i>87,65,86,000</i>
<i>Less: Bonus to policy holders (other than pension fund)</i>	<i>350,16,26,177</i>
<i>Amount of income as life insurance business</i>	<i>437,82,12,177-(B)</i>
<i>Balance other income after above deductions (A-B)</i>	<i>161,69,51,623-(C)</i>

In view of the above quoted provisions tax payable on life insurance business (b) above is @12.5% which works out to Rs.63,13,38,195 and on other than life insurance business (c) above @30%, which works out to Rs.55,95,94,617. Thus total tax payable comes to Rs.119,09,32,812 as against the tax payable of Rs.86,45,02,620. Omission to do so has resulted in short levy of tax of Rs.43,41,52,155 which include interest.

The aforesaid aspect which prima facie warranted inquiry on the facts and circumstances of the case, have not been inquired into while completing the assessment. On the facts and circumstances of the case, it is clear that in respect of the aforesaid aspects, the order of the AO suffers from error and within the meaning of Section 263 of the IT Act, 1961. This error has resulted in prejudice to the revenue within the meaning of Section 263 in as much as the claim of the assessee is allowed in excess and/or income of the assessee has been under assessed Accordingly in respect of the aforesaid aspect enumerated in foregoing paragraphs as above, provisions of Section 263 of the Income Tax Act, 1961 are clearly attracted to the facts of the case.

In view of the above, it is proposed to suitably revise the assessment order passed by the AO u/s. 263 of the IT Act, 1961. Accordingly you are hereby requested to make your submission if any by 09.03.2022 11.30 pm and to explain why the said order u/s 143(3) dated 26.12.2019 should not be revised u/s. 263 of the IT Act, 1961. If nothing is heard from you by the said date, the necessary order will be passed exparte on the basis of material available on record without giving further opportunity to you, which may please be noted. Kindly note that the personal appearance is not necessary and you may file your reply on email-mumbai.pcit8@incometax.gov.in.

*Rahul Karna
PCIT, Mumbai-8*

3.5. The assessee filed detailed submissions before the Id. PCIT objecting to the proposal of invoking revision jurisdiction u/s.263 of the Act both on merits as well as on invalid assumption of jurisdiction. The assessee in response to the show-cause notice made the following submissions:-

(i) Assessee is a life insurance company and carries on life insurance business in India in accordance with the regulations prescribed by the Insurance Regulatory and Development Authority of India ('IRDA). It has obtained a license from the IRDA to carry on life insurance business in India on 12/02/2001 and started operations on 01/04/2001. Assessee is regulated by the Insurance Act, 1938, the Insurance Regulatory and Development Authority Act, 1999 (the IRDAI Act), and the rules and regulations thereunder.

(ii) Assessee is permitted to do only life insurance business and no other business. Its life insurance business includes term insurance, linked business, pension business, etc. falling within the definition of the term 'life insurance business' defined under section 2(11) of the Insurance Act, 1938 (the Insurance Act'). Further, it is submitted that as per the provisions of section 3(4)(h) of the Insurance Act, the license granted by the IRDAI to assessee would be cancelled if it carries on any business other than life insurance business. As a consequence, assessee is precluded from having any other purpose or carrying on any other activity apart from the life insurance business.

(iii) Section 44 of the Act, read with Rule 2 in the First Schedule thereto, lays down the manner in which the taxable income from life insurance business is to be determined, and the income so computed is taxable at the rate of 12.5%, as per section 115B of the Act.

(iv) In this regard, we have reiterated the relevant part of section 115B of the Act below for ready reference.

(1) Where the total income of an assessee includes any profits and gains from life insurance business, the income-tax payable shall be the aggregate of ---

- (a) the amount of income-tax calculated on the amount of profits and gains of the life insurance business included in the total income, at the rate of twelve and one-half percent and
- (b) the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the amount of profits and gains of the

Further, section 44 of the Act provides as under

"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 438, 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."

(v) The plain reading of section 44 states as under:

- The provision applies to the profits and gains of any business of insurance.
- Such profits and gains are to be computed in accordance with the First Schedule.
- This provision overrides all other provisions relating to the computation of income under the various heads of income, and also section 199.

Hence, it is clear that once any income is found to be the profits and gains of any business of insurance, the First Schedule applies to that income to the exclusion of any other computation provision, and the computation made under the First Schedule is a complete computation of those profits.

(vi). Normally, the computation of the profits of any business would be made under the normal computational provisions contained in sections 28 to 438 of the Act. However, the Act provides for a specific exception in the case of the business of insurance whereby not only do the provisions of sections 28 to 43B not apply, but even the computation provisions under other heads of income do not apply.

Thus, in effect, section 44 comprehensively deals with the taxation of profits of any business of insurance.

Section 44 exhausts all the income of an insurance company

(vii). In the case of Life Insurance Corporation of India v. CIT [1964] 51 ITR 773 (SC), at page 788, the Supreme Court observed as follows

"It is clear that the Income-tax Act contemplates that the assessment of insurance companies should be carried out not according to the ordinary principles applicable to business concerns as laid down in section 10, but in quite a different manner. Insurance companies do not compute their profits in the ordinary way because premiums cover risks which run into future years and loss includes losses from previous years... Actuarial estimation plays an important part and surplus only results when there is an excess of the fund over the liability after all other charges are met."

(viii). In the case of CIT v. The B. B. and C. I. Railway Co-operative Mutual Death Benefit Society for Indian Staff Ltd [1949] 17 ITR 509, the Bombay High Court held as follows, at page 512:

"Therefore, the result of this provision is that instead of computing the income of an insurance company as laid down in various sections under Chapter III, you compute them in the manner laid down in the Schedule to the Act."

"Therefore, it will be noticed that instead of an insurance company making its return of income under the various heads as laid down in Section 6, it has got to submit one unit of income, a sort of notional or artificial income, as provided in the Schedule to the Act."

Both the above judgements were under the Indian Income-tax Act, 1922, but so far as relevant, there has been no material change in the law. The principles laid down in the above judgements squarely apply to assessee.

(ix) Further, the Hon'ble Mumbai Tribunal in the case of ICICI Prudential Life Insurance Co Ltd (14 ITD 41) held that incomes

in Shareholder's account are to be taxed as part of life insurance business only, as they are part of same business and investments are made as part of solvency ratio of same business and accordingly, the same also need to be taxed at 12.5% under section 115B of the Act. Relevant extracts from the said order are reproduced as under

“55. We have heard the rival contentions. As briefly discussed while deciding the issue of taxing surplus, assessee is in life Insurance business and it is not permitted to do any other business. All activities carried out by assessee are for furtherance of Life Insurance business. Maintaining adequate capital is necessary to comply with IRDA (Assets, Liabilities and Solvency margin of insurers) Regulations, 2000. Income earned on capital infused in business is integral part of Life Insurance business. The LD. CIT(A) gives a finding that assessee is exclusively in Life Insurance business. However, since he gave primacy to Form proforma he concluded that other incomes are not of Life Insurance business. We have already considered and decided that assessee was mandated to maintain separate accounts by IRDA Regulations. Just because separate accounts are maintained the incomes in Shareholder's account does not become separate from Life Insurance business. As per Insurance Act 1938 all incomes are part of one business only and these incomes are considered as part of same business. Therefore, the incomes in Shareholder's account are to be considered as arising out of Life insurance business only.

More over Sec 44 mandates that only First Schedule will apply for computing incomes and excludes other heads of income like, Interest on Securities, income from house property, Capital gains or Income from other sources. Being non-obstante clause, sec. 44 mandates that the profits and gains of insurance business shall be computed in accordance with the rules contained in First Schedule. Therefore, the incomes in Shareholder's account are to be taxed as part of life insurance business only, as they are part of same business and Investments are made as part of solvency ratio of same business. The grounds are allowed. AO is directed to treat them as part of Life Insurance Business and tax them u/s 115B.”

(x). Where the said ground of appeal was preferred by the Revenue before the Hon'ble Bombay High court, the Hon'ble Bombay High Court [(2016) 73 taxmann.com 201 (Bom)] did not entertain the same and ruled in favour of the assessee as under.

"So far as Question No. 8 is concerned, the grievance of the revenue is that the income on shareholders' account has to be taxed as income from other sources. This on the ground that the income earned on shareholders' account is not an income which represents income on account of Life Insurance Business. Therefore, it is the revenue's contention that it has to be taxed as income from other sources. The impugned order while allowing the assessee's appeal holds that income earned on shareholders' amount has to be considered as arising out of Life Insurance Business. Moreover, in terms of Section 44 of the Act, such income has to be taxed in accordance with First Schedule as provided therein. None of the authorities under the Act nor even before us is it urged that the assessee is carrying on separate business other than life insurance business. Accordingly, the impugned order holding that the income from shareholders' account is also to be taxed as a part of life insurance business cannot be found fault with in view of the clear mandate of Section 44 of the Act. Accordingly Question No. 8 also does not raise any substantial question of law. Thus not entertained."

(xi) The said proposition has also been upheld by the Hon'ble Mumbai Tribunal in the following cases;

- Kotak Mahindra old Mutual Life Insurance Ltd. (ITA/2551/Mum/2010)
- HDFC Standard Life Insurance Company Ltd. (ITA/2203/Mum/2012)

(xii). Given the above, it is submitted that the entire income of assessee is from life insurance business and would be chargeable to tax at 12.5% in accordance with Section 115B of the Act.

We request your goodself to kindly take the above on record and not undertake revision of the Order under section 263 of the Act.

3.6. From the facts narrated above and the submissions made by the assessee, we find that assessee's case is that the shareholders account cannot be treated as a separate activity. The main plea of the assessee is that only for presentation purposes, the assessee prepares

'policyholders account' and 'shareholders account' and that shareholders account cannot be treated as other regular business carried out by the assessee so as to make it liable for taxation @30%. Now the short question that arises for our consideration is as to whether the income from shareholders account is to be treated as part of life insurance business and get taxed @12.5% prescribed u/s.115B of the Act or not. This issue is no longer res integra in view of the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. ICICI Prudential Insurance Co. Ltd., reported in 242 Taxman 159. The question No.8 raised thereon is relevant for our consideration:-

- (8) *Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in allowing relief to the assessee by holding that surplus available in Share Holders Account is not to be taxed separately as "income from other sources" and at the normal corporate rate and holding that surplus from Share Holders Account was only part of income from insurance business arrived at after "combining" surplus available in Share Holders Account with the surplus available in Policy Holders Account and then and taxing this 'net surplus' arrived at, at the rate specified u/s. 115B of the Act?"*

3.6.1. The aforesaid question has been disposed of by the Hon'ble Jurisdictional High Court as under:-

"5. So far as Question No. 8 is concerned, the grievance of the revenue is that the income on shareholders' account has to be taxed as income from other sources. This on the ground that the income earned on shareholders' account is not an income which represents income on account of Life Insurance Business. Therefore it is the revenue's contention that it has to be taxed as income from other sources. The impugned order while allowing the assessee's appeal holds that income earned on shareholders' amount has to be considered as arising out of Life Insurance Business. Moreover in terms of Section 44 of the Act, such income has to be taxed in accordance with First Schedule as provided therein. None of the authorities under the Act nor even before us is it urged that the assessee is carrying on separate business other than life insurance business. Accordingly, the impugned order holding that the income from shareholders' account is also to be

taxed as a part of life insurance business cannot be found fault with in view of the clear mandate of Section 44 of the Act. Accordingly Question No. 8 also does not raise any substantial question of law. Thus not entertained.”

3.7. Moreover we find that the Id. AO had made adequate enquiries in this regard during the course of assessment proceedings in response to the notice issued u/s.142(1) of the Act. The assessee vide letter dated 16/12/2019 had indeed made detailed submissions in respect to this issue which are enclosed in pages 24-30 of the paper book filed before us. Hence, the Id. PCIT seeking to invoke revision jurisdiction u/s.263 of the Act on the ground that no enquiries were made by the Id. AO by applying Explanation 2 to Section 263 of the Act is grossly incorrect and is hereby quashed. In any case, the issue sought to be revised by the Id. PCIT u/s.263 of the Act is also covered in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court on merits. Accordingly, the assessee is entitled for relief even on merits.

3.8. Hence, we have no hesitation to quash the revision order passed by the Id. PCIT u/s.263 of the Act in the instant case. Accordingly, the grounds raised by the assessee are allowed.

4. In the result, appeal of the assessee is allowed.

Order pronounced on 31/10/2022 by way of proper mentioning in the notice board.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 31/10/2022
KARUNA, 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,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai