

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

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER)**

**AND**

**SHRI GAGAN GOYAL (ACCOUNTANT MEMBER)**

I.T.A No.2716/Mum/2022 - 2017-18

<b>DCIT-1(3)(1), Mumbai Room No.535, 5<sup>th</sup> Floor Aayakar Bhavan, M.K. Road Mumbai – 400 020</b>	vs	M/s Future Generali India Life Insurance Company Limited Unit No.801-802, Tower C 247 Embassy Park, LBS Marg Vikhroli (West), Tagore Nagar S.O. Mumbai-400 083 <b>AABCF0190Q</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee represented by	Shri Dinkle Haria
Department represented by	Shri Achal Sharma

Date of hearing	20/12/2022
Date of pronouncement	22 /12/2022

**O R D E R**

Per: Kuldip Singh (JM):

Appellant, M/s M/s Future Generali India Life Insurance Company Limited (hereinafter referred to as 'assessee'), by filing present appeal sought to set aside the impugned order dated 23/08/2022 on the ground interalia that –

- “1. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was correct in concluding that transfer from Share Holders Account to Policy Holder’s Account and shown as part of ‘surplus’ in the actuarial valuation’ was only transfer asset and not taxable u/s 44 of the act read with Rule 2 of the First Schedule?*
2. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was correct in allowing the relief to the assessee by holding that ‘surplus’ available both in Policy Holders Account and Share Holder’s Account is to be consolidated and only ‘net surplus’ is to be taxed as income from Insurance Business?”*
3. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition made by the Assessing Officer on account of loss from Pension Fund ignoring settled position of law that income includes loss and that income from Pension Fund does not form part of the total income of the assessee corporation u/s 10(23AAB) of the I.T. Act, 1961?*
4. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in ignoring the fact that the non obstante clause in section 44 is not extended to section 10(23AAB) of the I.T. Act, 1961?”*

2. Briefly stated, the facts necessary for adjudication of the issues at hand are:

The assessee company is into the business of life insurance, governed by the Insurance Act, 1938 and Insurance Regulatory and Development Authority (hereinafter IRDA) Act, 1999, filed its return of income declaring loss at Rs.76,90,22,512/-, which was subjected to scrutiny. As per Income-tax Act, the income of the life insurance company is computed under the provisions of section 44 of the Act, which is non obstante provision overriding all other provisions relating to computation of business income and prescribed that profits and gains of the business of insurance shall be computed in accordance with the Rules contained in the First Schedule of the Act. As per the prescribed format, the

share holders' account and policy holders account need to be disclosed separately. Assessing Officer, after declining the contentions raised by the assessee proceeded to hold that transfer from share holders' account to policy holders' account shown as part of 'surplus' in the actuarial valuation was only transfer of capital asset and not taxable u/s 44 of the Act read with Rule 2 of the First Schedule, and thereby made the addition of Rs.22,71,65,400/-. AO also made addition of Rs.4,59,41,957/- on account of loss from Pension Fund by ignoring the settled law that income includes loss and that income from Pension Fund does not form part of the total income of the assessee corporation under section 10(23AAB) of the Act. Accordingly, Assessing Officer framed the assessment under section 143(3) of the Act.

3. Assessee carried the matter before the Ld.CIT(A) by filing the present appeal who has partly allowed the same. Feeling aggrieved with the impugned order, Revenue has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld.Authorised Representative for the assessee and the Ld.Departmental Representative for the Revenue and perused the materials available on record and law applicable thereto.

5. Undisputedly, assessee company being into the life insurance business is assessable under the provisions contained under section 44 of the Act as well as under the IRDA Act. It is also not in dispute that the assessee is maintaining its regular books of account in accordance with the provisions contained under IRDA.

**Grounds 1 & 2:**

6. The Ld.DR for the Revenue challenged the impugned deletion made by the Assessing Officer on account of surplus appearing in Form 1 by relying upon the order passed by Assessing Officer.

7. However, on the other hand, the Ld.AR for the assessee contended that this issue has already been decided by the co-ordinate bench of Tribunal by following the decision rendered by Hon'ble Bombay High Court in assessee's own case which is available in the paper book as exhibit 'C'.

8. We have perused the order passed by co-ordinate bench which is on identical facts and grounds raised and has been decided in favour of the assessee by returning following findings:-

*"8. We have considered rival submissions and perused materials on record. We find that identical additions relating to net surplus as per actuarial valuation was made by the Assessing Officer in assessment years 2010-11 and 2011-12. However, the additions made by the Assessing Officer were deleted by the learned Commissioner (Appeals). While deciding the appeal preferred by the Revenue on the issue in assessment year 2011-12 in ITA No.4373/Mum./2013, dated 30<sup>th</sup> March 2017, the Tribunal upheld the decision of the learned Commissioner (Appeals) with the following observations: -*

*"6. We have heard the rival submissions and perused the relevant material on record. We begin with 1st, 2nd & 3rd ground of appeal as they address a common issue. We find that the Hon'ble Bombay High Court in the case of ICICI Prudential Insurance Co. Ltd. (supra) has held that "where assessee was carrying\_on\_life insurance business and Tribunal following a decision of Supreme Court, while 'determining assessee's income under section 44, had taken into consideration total surplus as arrived at by actuarial valuation and further held that income from shareholders account was also to be taxed as a part of life insurance\_business, there was no substantial question of law arising for consideration". Reference was made to the decision in LIC of India vs. CIT (1964) 51 ITR 773, wherein the Hon'ble Supreme Court has held that the Assessing Officer has no power to modify the account after actuarial valuation is done.*

*The issues in 1st, 2nd & 3rd ground of appeal in the instant case are squarely covered by the above judgement. Respectfully following the same, we dismiss 1st, 2nd & 3rd ground of appeal filed by the revenue."*

*9. The same view was reiterated by the co-ordinate bench while deciding Revenue's appeal in assessee's own case for assessment year 2010-11 vide ITA No.4038/Mum/2015, dated 23<sup>rd</sup> June 2017. There being no difference in facts brought to our notice by the learned Departmental Representative, respectfully following the consistent view of the Tribunal on the disputed issue in assessee's own case, we uphold the order of the learned Commissioner (Appeals) on the issue. Grounds raised are dismissed."*

9. Said position qua the issue in question as decided by co-ordinate bench of Tribunal vide order (supra) has not been controverted by Ld.DR, we are of the considered view that when undisputedly, the assessee is carrying on life insurance business, its income is to be determined under section 44 of the Act by taking into account total surplus as arrived at by actuarial valuation and further income from share holder account was also to be taxed as part of the life insurance business. So finding no illegality or perversity in the impugned findings returned by Ld.CIT(A), grounds 1 & 2 raised by the Revenue are dismissed.

**Grounds 3 & 4:**

10. In order to challenge the impugned deletion of addition made by the assessee under section 10(23AAB) of the Act, Ld.DR for the Revenue again relied upon the order passed by Assessing Officer.

11. Ld.AR for the assessee further contended that this issue has also been decided by the co-ordinate bench of Tribunal for A.Ys 2009-10 and 2012-13 (supra).

12. We have perused the findings returned by the co-ordinate bench of Tribunal in assessee's own case which are on identical issue and ground raised, which are as under:-

*"15. We have considered rival submissions and perused materials on record. At the outset, we must observe that merely because the Revenue has filed SLP against the decision of the Hon'ble Jurisdictional High Court in case of Life Insurance Corporation Ltd. cannot be valid reason for the Assessing Officer in not following the decision of the Hon'ble Jurisdictional High Court which is binding on him. Be that as*

*it may, we have noticed that while deciding identical issue raised by the Revenue in assessee's own case for assessment year 2011-12, the Tribunal in the order referred to above, has held as under:-*

*"6.1 Now we turn to 4th, 5th, 6th and 7th ground of appeal as they address a common issue. In the case of Life Insurance Corporation of India Ltd. (supra), the assessee was engaged in the life insurance business. In its return of income for the A.Y 2002-03, it computed actuarial valuation surplus by excluding the provision for reserve on account of solvency margin amounting to Rs. 3,500 crores and loss in Jeevan Suraksha Fund. The Assessing Officer disallowed the claim of the assessee and passed the assessment order by adding the amount on account of the provision for solvency margin and loss from Jeevan Suraksha Fund, inter alia, on the ground that the provision for solvency margin was not an ascertained liability and that income from Jeevan Suraksha Fund being exempt u/s (23AAB) the loss incurred from the said fund could not be adjusted against the taxable income. On appeal, the Commissioner (Appeals) confirmed the additions made by the AO. On second appeal the Tribunal deleted the said addition. The revenue filed appeal against the order of the Tribunal before the High Court. The Hon'ble High Court held that (i) amount set apart by insurance company towards solvency margin as per the direction given by IRDA is to be excluded while computing actuarial valuation surplus, and (ii) pension fund like Jeevan Suraksha Fund would continue to be governed by provisions of section 44 irrespective of the fact that income from such fund is exempted, or not and, therefore, even after insertion of section 10(23AAB), loss incurred from pension fund Jeevan Suraksha Fund has to be excluded while determining actuarial valuation surplus from insurance, business u/s 44 of the Act.*

*We find that the issues in the above grounds of appeal are squarely covered by the above judgement of the Hon'ble Bombay High Court. We follow the judgement and dismiss 4th, 5th, 6th and 7th ground of appeal filed by the revenue."*

16. The same view was reiterated by the Co-ordinate Bench while deciding the Revenue's appeal for assessment year 2010-11 (supra). There being no difference in fact pointed out by the learned Departmental Representative, respectfully following the consistent view of the co-ordinate bench in assessee's own case, we uphold the decision of the learned Commissioner (Appeals) on the issue. Grounds raised are dismissed."

13. So following the order passed by co-ordinate bench of Tribunal, we are of the considered view that Ld.CIT(A) has rightly deleted the addition made by the Assessing Officer on account of loss from Pension Fund being exemption under section 10(23AAB) of the Act. So we find no scope to interfere into the finding by Ld.CIT(A). Hence, grounds 3 & 4 are determined against the Revenue.

14. Resultantly, appeal is dismissed.

Order pronounced in the open court on 22 /12/2022

Sd/-

sd/-

**(GAGAN GOYAL)**  
**ACCOUNTANT MEMBER**

**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Mumbai, Dt : 22<sup>nd</sup> December, 2022

Pavanan

**प्रतिलिपि अग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar / Senior Private Secretary  
**ITAT, Mumbai**