

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No.834/Mum/2023
(Assessment Year: 2012-13)

Tata Aia Life Insurance Company Limited 14 th Floor, Tower-A, Peninsula Business Park, Senapati Bapat Marg, Lower Parel, Mumbai-400 013	Vs.	DCIT-8(3)(1) Mumbai
PAN/GIR No. AABCT 3784 C		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Madhur Agrawal
Revenue by	:	Shri Harishankar Lal
Date of Hearing	:	30.05.2023
Date of Pronouncement	:	24.08.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘Id.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2012-13.

2. The assessee has raised the following grounds challenging the order of the Id. CIT(A):

1. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in dismissing the appeal filed by the Appellant against the order dated 30 November 2019 of the learned Assistant Commissioner of Income-tax 8(3)(1) (learned AO) under section 154 of the Act (rectification order) -*

a) *without considering the request made by the Appellant vide letter filed on 18 January 2023 (i.e., date within which the learned.CIT(A) required the Appellant to*

respond to his notice) seeking additional time for furnishing a detailed written submission;
b) without providing it an opportunity of being heard by way of a formal hearing.
c) without appreciating the fact that the impugned rectification order was passed by the learned AO without providing an opportunity of being heard to the Appellant as required under section 154 of the Act; and
d) making factually incorrect and contradictory statements

and consequently, the order dated 19 January 2023 passed by the learned CIT(A) so dismissing the appeal of the Appellant is liable to be set aside as bad in law as it is passed in violation of principle of natural justice.

2. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in not holding the rectification order passed by the learned AO as bad in law in so far as passing of such order by the learned AO amounted to change of opinion and reassessment of income as the learned AO added an amount of Rs 315,27,57,788 (i.e. returned income) to the income of Rs.2,43,26, 89,000 independently assessed by his predecessor AO in the assessment order dated 23 March 2015 passed under section 143(3) of the Act, for which no rectification order could have been passed by him as per the provisions of the Act.*

Consequently, the learned CIT(A) erred in confirming the action taken by the learned AO in the rectification order of setting off an additional amount of Rs 315,27,57,788 against the brought forward losses which resulted in allowing a lower amount of losses as carry forward.

3. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in not holding that the rectification order dated 19 January 2023 passed by the learned AO was bad in law as it was passed beyond four years from the end of the financial year in which order sought to be amended was passed since the rectification order sought to amend the income assessed in the assessment order dated 23 March 2015 passed under section 143(3) of the Act by his predecessor AO.*

With regard to the above, the learned CIT(A) further erred:

- *in confirming the rectification order passed by the learned AO as passed within the statutory time limit of four years on the ground that it sought to rectify the original rectification order dated 11 April 2017 passed by his predecessor AO.*
- *in confirming the view of the learned AO that the original rectification order dated 11 April 2017 contained a mistake apparent from the record in so far as the predecessor AO wrongly set off brought forward loss to the extent of Rs 2,43,26,89,000 (i.e., assessed income as per assessment order) and not additional brought forward loss to the extent of Rs.315,27,57, 788.*

4. *On the facts and circumstances of the case and in law, the learned CIT(A), while confirming the action of the AO in not granting the exemption of dividend income of Rs 3,40,11,282 under section 10(34) of the Act, ought to have himself allowed the said claim for exemption made in the return of income filed by the Appellant (based on the favourable decisions passed by the Hon'ble Mumbai bench of Income-tax Appellate Tribunal (ITAT) in the Appellant's own case), so as to determine correct total income of the Appellant for the year.*

3. The brief facts are that the assessee is engaged in the business of life insurance and is a joint venture between Tata Sons & AIA Group. The assessee carries on life insurance

business in India in accordance with the regulations prescribed by the Insurance Regulatory Development Authority (IRDA) after obtaining license from IRDA on 12.02.2011 and started operations on 01.04.2001. The assessee filed its return of income dated 28.09.2012, declaring total income at Rs.Nil after setting off brought forward losses of Rs.321,15,79,542/- and had filed its revised return of income dated 28.03.2014, declaring total income at Rs.Nil after setting off brought forward losses of Rs.315,27,57,788/-. The assessee's case was selected for scrutiny and the assessment order dated 23.03.2015 was passed by the Assessing Officer ('A.O.' for short) u/s. 143(3) of the Act where the A.O. determined the total income at Rs.243,26,89,000/- as being income from actuarial surplus disclosed in the Form 1 prepared as per IRDA Act, 1999.

4. The assessee vide letter dated 30.04.2015 and 11.05.2015 had filed rectification application before the A.O. for allowing of set off of eligible brought forward business losses against the assessed income of Rs.243,62,89,000/-. The assessee vide letter dated 10.08.2016 filed an application for rectification of assessment order dated 23.03.2015 for exemption of dividend income amounting to Rs.3,40,11,282/- u/s. 10(34) of the Act. The A.O. vide order dated 11.04.2017 passed the order u/s. 154 of the Act allowing set off of brought forward losses to the extent of Rs.2,43,62,89,000/- and resulting in the total income at Rs.Nil but had not granted exemption of dividend income amounting to Rs.3,40,11,282/- u/s. 10(34) of the Act. Further to this, the Id. A.O. vide notice dated 12.10.2019 u/s. 154/155 of the Act stated that the following mistake was apparent from the record which is stated as below:

“It can be seen from the return of income filed by the assessee for A.Y. 2012-13 that the assessee had positive income of Rs.315,27,57,788/- and after set

off to that extent from the brought forward losses had filed a nil return of income. During scrutiny assessment the income from actuarial surplus was determined at Rs.243,26,89,000/- Nothing was discussed regarding the returned income of Rs.315,27,57,788/- (which was set off at the stage of filing of return itself). Thus, it is clear that the income determined of Rs.243,26,89,000/- from actuarial surplus was over and above the income offered by the assessee in the return of income. The assessee had positive income of Rs.315,27,57,788/- and the assessing officer determined further income of Rs.243,26,89,000/- during the scrutiny assessment dated 16.03.2016. Thus, the total income determined for the A.Y. 2012-13 was Rs.558,54,46,788/- (Rs.315,27,57,788/- + Rs.243,26,89,000). The income was finally determined at Nil after allowing set off to that extent vide order u/s. 154 of the Act, dated 11.04.2017. However, this was omitted to be mentioned in the order dated 11.04.2017. this mistake is proposed to be rectified.”

5. The A.O. then vide order dated 30.11.2019 passed u/s. 154/155 of the Act had added the returned income of Rs.315,27,57,788/- with the assessed income of Rs.243,26,89,000/- and had brought forward business losses was also set off to this extent thereby resulting in reduction of the overall brought forward losses.

6. The assessee was in appeal before the Id. CIT(A) challenging the impugned order on the ground that the A.O. had followed the past assessment order from A.Ys. 2002-03 to A.Y. 2011-12 wherein the returned income filed by the assessee was not considered and only actuarial surplus determined as per the provision of IRDA was taken into account for determining the income. The assessee also sought for reducing the dividend income of Rs.3,40,11,282/- to the total income against which set off brought forward losses should be allowed. The assessee also challenged the rectification order u/s. 154 of the Act to be barred by limitation. The Id. CIT(A) upheld the addition made by the A.O.

7. The assessee is in appeal before us, challenging the impugned order of the Id. CIT(A) on various grounds.

8. We have heard the rival submissions and perused the materials available on record. It is observed that the A.O. passed a rectification order u/s. 154 of the Act vide order dated 11.04.2017 but did not grant exemption for dividend income amounting to Rs.3,40,11,282/- claimed u/s. 10(34) of the Act. The A.O. allowed the set off of brought forward business loss to the extent of Rs.243,26,89,000/- resulting in Rs.Nil taxable income vide order dated 11.04.2017.

9. The subsequent order of the A.O. vide order dated 30.11.2019 passed u/s. 154/155 of the Act added the returned income of Rs.315,27,57,788/- to the taxable income over and above the assessed income of Rs.243,26,89,000/- and the brought forward business losses was also set off to this extent resulting in the reduction of overall brought forward losses. The first appellate authority dismissed the grounds raised by the assessee but the merits of the grounds were not decided.

10. The learned Authorised Representative ('ld. AR' for short) for the assessee contended that the ld. CIT(A) has not given sufficient opportunity to present its case and the A.O. has also passed an *ex parte* order not considering the submission of the assessee. The ld. AR prayed that these issues may be remanded back to the file of the ld. CIT(A) for deciding the grounds on the merits of the case. The learned Departmental Representative ('ld.DR' for short), on the other hand, controverted the said facts and vehemently opposed to remanding this issue back to the file of the ld. CIT(A) for the reason that sufficient opportunity was given to the assessee.

11. It is observed that the Id. CIT(A) has not decided the grounds raised by the assessee on the merits of the case. In view of the principles of natural justice, we deem it fit to remand this issue back to the file of the Id. CIT(A) for *de nova* adjudication on the merits of the case based on the submission proposed to be made by the assessee. As we have not adjudicated the issues on merits, the other contentions are hereby left open.

12. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 24.08.2023

Sd/-

(Om Prakash Kant)
Accountant Member

Mumbai; Dated : 24.08.2023

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai