

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

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)

ITA No. 1650/MUM/2023
Assessment Year: 2015-16

Jt. CIT (OSD) – I/C DCIT Circle
8(3)(1), Aayakar Bhavan, Room
No. 615, M.K. Road, New
Marine Lines, Mumbai-400020.

Appellant

M/s Tata AIA Life Insurance Co.
Ltd.,
Vs. 14th floor, Tower –A, Peninsula
Business Park, Senapati Bapat
Marg, Lower Parel,
Mumbai-400013.
PAN No. AABCT 3784 C
Respondent

Assessee by : Mr. Madhur Agrawal/
Mr. Anish Thacker
Revenue by : Mr. Biswanath Das, CIT-DR
Date of Hearing : 30/08/2023
Date of pronouncement : 30/08/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 16.03.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2015-16, raising following grounds:

- 1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in allowing the appeal of assessee relying on the decision of Hon'ble Tribunal Mumbai in assessee's own case for A.Y. 2014-15, whereas the Department has not accepted the decision of Hon'ble Tribunal and filed further appeal before the Hon'ble High Court.*



2. *"Whether on the facts and circumstances of the case and in law, the learned CIT(A) has erred in holding that the surplus disclosed in the Actuarial Report in Form I can be changed by way of adjustment.*
3. *Whether on the facts and circumstances of the case and in law, the learned CIT(A) has erred in holding that the capital contribution of shareholders account to policy holder account has to be reduced while computing income u/ r.w.s first schedule of IT Act.*
4. *Whether on the facts and circumstances of the case and in law, the learned CIT(A) has erred in agreeing to reduce the exempt income u/s 10(34) of t he IT Act while computing income of insurance business of the assessee us 44 of the IT Act.*

2. Briefly stated, facts of the case are that the assessee company during relevant year was engaged in the business of providing life insurance. The assessee filed return of income on 30.11.2015 declaring total income of Rs.2,70,16,25,000/-. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. In the assessment completed u/s 143(3) of the Act on 29.12.2017 , the Assessing officer assessed the income under the provisions of section 44 of the Act but he rejected the claim of the assessee filed otherwise then by way of revised return for non-considering the surplus as per the actuarial report based on the IRDA report as income of the assessee. On further appeal, the Ld. CIT(A) following the finding of the Tribunal in assessment year 2014-15 allowed the claim of the assessee. The Ld. CIT(A) also reduced exempted income earned u/s 10(34) of the Act while computing the income of the insurance business of the assessee u/s 44 of the Act. Aggrieved, the Revenue is in appeal before the Tribunal by way of grounds as reproduced above.



3. The ground No. 1 and 2 of the appeal of the Revenue relate the claim in respect of surplus of business in the actuarial report in Form No. 1 prescribed. The ground No. 3 of the appeal of the Revenue also relates to computation of life insurance business income. The ground No. 4 relates to excluding exempted income u/s 10(34) of the Act while computing the income of the insurance business u/s 44 of the Act. We find that the Ld. CIT(A) has referred to the order of the Tribunal for assessment year 2014-15 and allowed the appeal of the assessee. For ready reference, the relevant part of the decision is extracted as under:

"5. Ground of appeal no. 2 is related the manner of computation of income in the case of appellant should be as per the surplus/deficit should be computed in accordance with regulations contained in Part-1 and Part II of the Fourth Schedule of the un-amended Insurance Act, 1938. The A.R of the appellant has pointed out that this ground is covered by the decision of ITAT, Mumbai in the case of ICICI Prudential Insurance Co.Ltd [2012] 28 taxmann.co. 257 (Mum.) and in his appellant's own case in ITA No. 1482/M/2018 dated 08.11.2019 in A.Y. 2014-15. He has pointed out to the relevant portion of the order as under:

"ITA No.1482/M/2018 (Revenue's appeal)

2. The Revenue has raised the following grounds of appeal:

1. "Whether on the facts and circumstances of the case and in law, the learned CIT(A) has erred in holding that the surplus disclosed in the Actuarial Report in Form I can be changed by way of adjustment.

2. Whether on the facts and circumstances of the case and in law, the learned CIT(A) has erred in holding that the capital contribution of shareholders account to policy holder account has to be reduced while computing income u/ r.u.s first schedule of IT Act.

.....

3. The issue raised in ground No.1 is against the order of Ld. CIT(A) holding that surplus disclosed in the actuarial report in form 1 can be charged by way of adjustment whereas the ground No.2 is against the order of Ld. CIT(A) holding that capital contribution of the shareholders account to policy



holder account has to be reduced while computing income under section 44 read with 1 schedule of the Act.

4. The Ld. AR at the outset, submitted that the identical issue has been decided in assessee's own case in ITA NO.1039/M/2011 A.Y. 2006-07 & others vide order dated 21.09.2106 by the coordinate bench. The Ld. A.R. submitted that since the issues raised in both the grounds of appeal stood decided by the co-ordinate bench of the Tribunal in favour of the assessee and against the Revenue and accordingly the ground No. 1 & 2 raised by the Revenue may kindly be dismissed.

5. The Ld. D.R., on the other hand, fairly agreed that the issue have been decided in assessee's own case and thus fairly agreeing with the arguments of the Ld. A.R., however, relied on the grounds of appeal and order of the AO.

6. After going through the facts on record and the order of coordinate bench of the Tribunal in ITA No. 1036 & 1039/M/2011 (supra), we observe that the ground No. 1 & 2 raised in the this appeal by the Revenue are identical to ground No.3 & 2 respectively which has been decided by the co-ordinate bench of the Tribunal as under:

8. After considering the relevant finding given in the impugned order as well as the aforesaid decisions of the Tribunal, we agree with Ld. Counsel that all the three issues raised in the grounds raised by the revenue are covered decisions of the Tribunal. We find that the Tribunal in the case of ICICI Prudential Insurance Co. Ltd. (supra) has dealt with all these issues in detail after considering the judgment of jurisdictional High Court; catena of other decisions and the relevant provisions of law. The relevant observations and the findings of the Tribunal in the case of ICICI Prudential Insurance Co. Ltd. (supra) on various points paragraph wise summarized as under:

"24. Before analyzing the issue, it is necessary to discuss the principles of incorporation' of Insurance Act 1938 into the Income Tax Act 1961. As rightly pointed out by the learned Counsel, the reference to the Insurance Act 1938 in the Income Tax Act as such can only be considered as 'legislation by incorporation

27. actuarial valuation made in accordance with the Insurance Act, 1938* do mean that the actuarial valuation done in accordance with the Insurance Act, 1938. In arriving at the above decision we have also taken into consideration that Rule-5 in Part-B of the first schedule with reference to 'other insurance business' did incorporate the IRDA and its Regulations as amended by the Finance Act 2009 w.e.f. 1.4.2011 is also taken into consideration. This indicates that the Legislature consciously omitted incorporating the provisions of IRDA or the Regulations made there under in rule 2 which still refers to the Insurance Act.1938 only.

28. Further, we also notice that the Insurance Act itself was amended along with the introduction of IRDA Act 1999. Along with



the said IRDA Act, there are various amendments proposed in the Insurance Act in tune with IRDA IT No.1482 1683/M/2018 M/s. Tata AIA Life Insurance Co. Ltd. 4 Act by

Act by amending the relevant provisions of Insurance Act 1938. However, since the Rule 5 was amended in the First schedule by specifically referring to the IRDA Act 1999 or the Regulations made there under, we are of the opinion that the legislature intended not to modify or amend the Rule-2. This indicates the intention of legislature that the actuarial valuation has to be made in accordance with the unamended Insurance Act, 1938. We are of the firm opinion that the unamended provisions of Insurance Act 1938 were only incorporated into the Income Tax Act as far as life insurance businesses are concerned. Therefore, AO's action in following the format prescribed under the Regulations of IRDA Act is not in accordance with the spirit of Rule-2 and provisions as made applicable under the Income Tax Act.

29. It is also noticed that the actuarial report and abstracts under the Insurance Act carrying on life insurance business shall, in accordance with the Regulations contained in Part I of the Fourth Schedule and in conformity with the requirements of Part II of that Schedule.

30. The First to Fourth Schedule of the Insurance Act 1938 was omitted by the Insurance Amendment Act 2002 after incorporation of the relevant schedules in the IRDA Act. Even though the said schedules were omitted from the Insurance Act, 1938, we are of the opinion that as far as Rule-2 is concerned by the principle of 'Legislation by incorporation' unamended Insurance Act, 1938 is applicable and the actuarial valuation has to be made in accordance with the then existing Part-I of the Fourth Schedule and in conformity with the requirements of Part-II of that schedule. Therefore, assessee's contention that the IRDA Regulations even though are applicable to assessee since it has commenced business after the commencement of the IRDA Act, 1999, for the purpose of Rule-2, the actuarial valuation has to be done in accordance with the Regulations contained in erstwhile Fourth schedule Part-I and Part II. This is what assessee is contending and merging the accounts of policyholder's and shareholder's account and arriving at the actuarial deficit, without taking into consideration the transfer of funds from the shareholder's account to policyholder's account.

31. After introduction of IRDA Act, the entire Regulation of insurance business has gone to the authority and in order to protect the interests of holders of insurance policies, to regulate, to promote and ensure orderly growth of insurance industry number of regulations have been prescribed by the IRDA. One such is, Insurance Regulatory and Development Authority (IRDA) (Actuarial Report and Abstract) Regulations 2000 by which method of preparation of actuaries report and abstracts were prescribed. An actuary is responsible for analyzing possible outcomes of the types of events



that would potentially cost policy holders to make claims against their insurance policies. Insurance companies need to make sure that the money they are charging and collecting from policy holders is adequate to cover the costs of certain claims that might beneficially be made by policy holders as well as their other expenses. In fact, the work that actuaries perform is crucial to an insurance company's ability to remain in business. Actuaries are involved at all stages in product development and in the pricing risk assessment and marketing of the products. Their job involves making estimates of ultimate out-come of insurable events. In the business of insurance the product cost is an abstraction, depending on the timing issues, variability issues and risk parameters. One big function actuaries provide is making reserves to insure that insurance companies keep enough money on their balance sheets to make good of all the claims they will have to pay. This involves arriving at actuarial surplus or deficit depending on various factors. In order to ensure a fair play in the business, the IRDA prescribed regulations according to which various norms were prescribed in order to ensure that Life Insurance business (even other insurance business) are done according to healthy business practices. As per the above regulations, Regulation 4 prescribes number of abstracts and statements in respect of (a) linked business; (b) non-linked business and (c) health insurance business. As part of this Regulation 4(2) (d) item no. iv, Form-"T" was prescribed for the purpose of valuation results and to indicate the surplus or deficit in the life insurance business of a company. Apart from the above regulations, IRDA also prescribed Insurance Regulatory and Development Authority (Preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations 2002. The surplus or deficit arrived at by the actuary in his valuation for the inter valuation period has to be taken into consideration under the regulations in financial accounts as well.

32. IRDA Regulations specifically require maintaining the policyholder's account and the shareholder's account separately and permits transfer of funds from shareholder's account to policyholder's account as and when there is a deficit in policyholder's account. As rightly noted by the Hon'ble Bombay High Court, as a policy, company is transferring funds/assets from shareholder's account to policyholder's account even during the year periodically as and when the actuarial valuation was arrived at in policyholder's account. Most of the companies are required to submit quarterly accounts under the Company Law, there is requirement of actuarial valuation report periodically and accordingly assessee was transferring funds from the shareholder's account to policyholder's account. Since the insurance business will not yield the required profits in the initial 7 to 10 years, lot of capital has to be infused so as to balance the deficit in the policyholder's account. During the year as already stated assessee has issued fresh capital to the extent of Rs.250 crores and transferred funds to the extent of Rs.233 crores from the shareholder's account to policyholder's account. Since assessee is having only one business of life insurance, the entire



transactions both under the policyholder's and shareholder's account do pertain to the life insurance business only as it was not permitted to do any other business. Once assessee is in the life insurance business, the computation has to be made in accordance with the Rule-2 as per provisions of section 44. Therefore, there is a valid argument raised by assessee that both the policyholder's & shareholder's account has to be consolidated into one and transfer from one account to another is tax neutral. What AO has done is to tax the surplus after the funds have been transferred from shareholder's account to the policyholder's account at the gross level while ignoring such transfer in shareholder's account, while bringing to tax only the incomes declared in the shareholder's account that too under the head 'other sources of income'. In fact while giving the finding that assessee is in the life insurance business only and incomes are to be treated as income from life insurance business, the CIT (A) surprisingly in subsequent assessment years appeals accepted AO's contention that surplus in shareholder's account is to be taxed as other sources of income. But once the provisions of section 44 of IT Act are invoked anything contained in the heads of income like income from other sources, capital gains, house property or even interest on securities does not come into play and only first schedule has to be invoked to arrive at the profit. Therefore, in our opinion both the policyholder's and shareholder's account has to be consolidated for the purpose of arriving at the deficit or surplus. Comparison of Forms-I under the Insurance Act and the IRDA Regulations.

33. Whether Assessing Officer's action in adopting Form-I prescribed under the IRDA Regulations same as that of actuarial valuation made in accordance with the Insurance Act 1938. Even though Insurance Act 1938 also refers to Form-I, there is substantial difference in the formats. Both AO and the CIT (A) has given credence to Form I without understanding that the old form-I prescribed under the Insurance Act 1938 is entirely different from new Form-I prescribed under the IRDA Regulations.

35. The department is asked to explain what the surplus is shown under Form I i.e. at column (a) above. Regulation 8 as shown above has Column (a) 'surplus shown under Form I. In Col.(e) one has to represent sum transferred from shareholder's fund during the inter valuation period. Item (g) refers to the 'total surplus' after taking into account items (a) to (f). Under Col.(a) surplus shown in Form I is a deficit as per Form AR-A in the policyholder's deficit account in this year. This corresponds the 'actuarial valuation surplus or deficit' referred to under the Insurance Act, 1938. This amount also tallies with Form I prescribed under Regulation 4. IRDA Regulations however, after arriving at the surplus or deficit in the Form I also prescribes a separate statement again as Form I with details of (a) to (f) under Regulation 8. As can be seen from these two forms, there is variation in the amounts are presented, as these forms serve different purposes. The Form I which was prescribed under Regulations 8 is after arriving at the distribution surplus under



Regulations 6. The Regulations 6, 7 and 8 are as under: Thus as can be seen from above Regulations, the Form I under Regulation 8 represent the total surplus for the purpose of distribution of bonuses/ dividends to policy holders and does not represent surplus or deficit of actuarial valuation for the purposes of balance sheet. This amount is represented in Form I prepared under Regulation 4 for the purpose of financial accounts. Reconciliation of amounts:-

36. As seen from the orders of the authorities, the 'Total surplus' prepared under Regulation 8 was taken as basis ignoring the Form-I of Regulation 4. While accepting the department argument that for the purposes of Life insurance business the act provides for surplus of valuation to be taxed at lesser rate, we cannot accept the argument that surplus is Total surplus including Transfers from share holder's account. Basically transfers are tax neutral as a credit in one account gets cancelled by debit in other account when accounts are consolidated. What the Rule.2 prescribed was only 'average surplus' arrived by adjusting the surplus disclosed in the actuarial valuation made with regard to the Insurance Act, 1938 in respect of inter valuation period. Assessee in the course of the assessment proceedings has furnished general balance sheet in Form-A.

38. The statement furnished is in accordance with the Insurance Act, 1938, therefore, it cannot be stated that assessee returned income is not in accordance with the Insurance Act, 1938. There is no basis for AO to take Form-I 'total surplus' as surplus of the Life insurance business ignoring transfer from shareholder's account.

39. It is also on record that assessee followed the IRDA recommendations and accordingly prepared the actuarial valuation report including the surplus or deficit. However, Rule-2 prescribes only actuarial valuation in accordance with the Insurance Act, 1938. Therefore, AO is duty bound to insist on actuarial valuation in accordance with the Insurance Act, 1938, so as to bring to tax the surplus or deficit. What we notice is that AO, ignoring Rule-2, has relied on the actuarial valuation report prescribed under the IRDA recommendations under Regulation 8 that too at 'Total surplus', which is at variance with the Insurance Act, 1938. Since no amendment was brought to Rule-2 to incorporate IRDA recommendations, we are of the opinion that the action of AO in relying on the IRDA Regulations is not according to the law. Assessee had submitted its accounts as stated above, which are in accordance with the Insurance Act, 1938. Instead of examining these statements, just because assessee has shown total surplus in the accounts in similarly named Form-I(under Regulation 8), AO wants to tax the amount which is after taking into account the transfer of assets by way of fresh capital from shareholder's account. This in a way is taxing fresh capital infused into business indirectly which cannot be done as this is not business surplus but infusion of capital directly.



40. What assessee has done in reconciling the IRDA format with that of old Insurance Form is correct and accordingly the loss disclosed in the computation of income is according to the actuarial surplus/deficit under the Insurance Act, 1938 prescribed under Rule 2 of the first schedule part-A. In view of this, we are of the opinion that insistence by AO to bring to tax the entire amount shown under the new Regulations including transfer from shareholder's account is not correct. Instead of AO in taking the surplus at Regulation 8(1)(a) which is the actuarial surplus / deficit for the year took the amount as disclosed at Regulation 8 (1) (f) (total surplus after transfer from Shareholder's account) which is not at all correct.

Conclusion:-

M/s. Tata AIA Life Insurance Co. Ltd.

42. In view of the above, looking at the issue in any way what we notice is that the computation made by assessee is in accordance with Rule-2 of the Insurance Act 1938 according to which only AO can base his computation. This also corresponds to the way incomes were assessed in earlier years ie. the correct method as per Rule 2 and Sec 44 of IT ACT. In view of the discussion above and after analyzing the Forms, Regulations and Provisions we have no hesitation to hold that the assessee working of actuarial surplus/deficit is in accordance with Rule 2 of First Schedule. Therefore, assessee grounds on this issue are allowed and AO is directed to modify the order accordingly".

This decision has been followed by the Tribunal in the case of HDFC Standard Life Insurance Co. Ltd. (supra). Thus, following the same judicial precedence which would apply on the facts of the present case also, we decide the issues raised vide ground no. 1&2 in the department's appeal in favour of the assessee and against the Department.

9. Similarly, with regard to the issue raised in ground No.3 also, the same is also covered by the same decision as incorporated above and accordingly, respectfully following the same, we uphold the order of the CIT(A) and dismissed the ground raised by the Department."

Since the facts of the issues raised by the revenue are identical as decided by the coordinate bench in the order as stated reproduced above, accordingly the ground no. 1 and 2 raised by the revenue are dismissed and the order of ld. CIT(A) is upheld."

Findings and Decision :

6. I have gone through the facts of the case and material available on record.



Ground of appeal no. 1 is covered in favour of appellant by order of Hon'ble ITAT, Mumbai in his own case in ITA No. 1683/Mum/2018 dated 08.11. 2019 for A.Y. 2014-15. Therefore, ground of appeal no. 1 is allowed.

7. Ground of appeal no. 2 is also covered in favour of appellant by order of Hon'ble ITAT, Mumbai in his own case in ITA No. 1482/M/2018 dated 08.11.2019 in A.Y. 2014-15. Ground of appeal no. 2 is allowed.”

3.1 Thus, we find that the Ld. CIT(A) has followed the binding precedent on the issue in dispute and therefore, we do not find any error in the order of the Ld. CIT(A) on the issues in dispute. Further before us, the Ld. Counsel of the assessee has also referred to the decision of the Tribunal in the case of Addl. CIT v. Tata Aig Life Insurance Co. Ltd. in ITA Nos. 1035 to 1039, 1823/M/2011 and 4111/M/2012 and CO Nos. 56/M/2012, 57, 53, 54, 55, 195/M/2013 order dated 21.09.2016 wherein the Tribunal has given a detailed finding as under:

“8. After considering the relevant finding given in the impugned order as well as the aforesaid decisions of the Tribunal, we agree with Ld. Counsel that all the three issues raised in the grounds raised by the revenue are covered in favour of the assessee and against the Department by the aforesaid decisions of the Tribunal. We find that the Tribunal in the case of ICICI Prudential Insurance Co. Ltd. (supra) has dealt with all these issues in detail after considering the judgment of jurisdictional High Court; catena of other decisions and the relevant provisions of law. The relevant observations and the findings of the Tribunal in the case of ICICI Prudential Insurance Co. Ltd. (supra) on various points, paragraph wise are summarized as under:-

“24. Before analyzing the issue, it is necessary to discuss the principles of incorporation' of Insurance Act 1938 into the Income Tax Act 1961. As rightly pointed out by the learned Counsel, the reference to the Insurance Act 1938 in the Income Tax Act as such can only be considered as 'legislation by incorporation

27. actuarial valuation made in accordance with the Insurance Act, 1938 do mean that the actuarial valuation done in accordance with the Insurance Act, 1938. In arriving at the above decision we have also taken into consideration that Rule-5 in Part-B of the first schedule with reference to 'other insurance business' did incorporate*



the IRDA and its Regulations as amended by the Finance Act 2009 w.e.f. 1.4.2011 is also taken into consideration. This indicates that the Legislature consciously omitted incorporating the provisions of IRDA or the Regulations made there under in rule 2 which still refers to the Insurance Act. 1938 only.

28. Further, we also notice that the Insurance Act itself was amended along with the introduction of IRDA Act 1999. Along with the said IRDA Act, there are various amendments proposed in the Insurance Act in tune with IRDA IT No.1482 1683/M/2018 M/s. Tata AIA Life Insurance Co. Ltd. 4 Act by

Act by amending the relevant provisions of Insurance Act 1938. However, since the Rule 5 was amended in the First schedule by specifically referring to the IRDA Act 1999 or the Regulations made there under, we are of the opinion that the legislature intended not to modify or amend the Rule-2. This indicates the intention of legislature that the actuarial valuation has to be made in accordance with the unamended Insurance Act, 1938. We are of the firm opinion that the unamended provisions of Insurance Act 1938 were only incorporated into the Income Tax Act as far as life insurance businesses are concerned. Therefore, AO's action in following the format prescribed under the Regulations of IRDA Act is not in accordance with the spirit of Rule-2 and provisions as made applicable under the Income Tax Act.

29. It is also noticed that the actuarial report and abstracts under the Insurance Act carrying on life insurance business shall, in accordance with the Regulations contained in Part I of the Fourth Schedule and in conformity with the requirements of Part II of that Schedule.

30. The First to Fourth Schedule of the Insurance Act 1938 was omitted by the Insurance Amendment Act 2002 after incorporation of the relevant schedules in the IRDA Act. Even though the said schedules were omitted from the Insurance Act, 1938, we are of the opinion that as far as Rule-2 is concerned by the principle of 'Legislation by incorporation' unamended Insurance Act, 1938 is applicable and the actuarial valuation has to be made in accordance with the then existing Part-I of the Fourth Schedule and in conformity with the requirements of Part-II of that schedule. Therefore, assessee's contention that the IRDA Regulations even though are applicable to assessee since it has commenced business after the commencement of the IRDA Act, 1999, for the purpose of Rule-2, the actuarial valuation has to be done in accordance with the Regulations contained in erstwhile Fourth schedule Part-I and Part II. This is what assessee is contending and merging the accounts of policyholder's and shareholder's account and arriving at the actuarial deficit, without taking into consideration the transfer of funds from the shareholder's account to policyholder's account.



31. After introduction of IRDA Act, the entire Regulation of insurance business has gone to the authority and in order to protect the interests of holders of insurance policies, to regulate, to promote and ensure orderly growth of insurance industry number of regulations have been prescribed by the IRDA. One such is, Insurance Regulatory and Development Authority (IRDA) (Actuarial Report and Abstract) Regulations 2000 by which method of preparation of actuaries report and abstracts were prescribed. An actuary is responsible for analyzing possible outcomes of the types of events that would potentially cost policy holders to make claims against their insurance policies. Insurance companies need to make sure that the money they are charging and collecting from policy holders is adequate to cover the costs of certain claims that might beneficially be made by policy holders as well as their other expenses. In fact, the work that actuaries perform is crucial to an insurance company's ability to remain in business. Actuaries are involved at all stages in product development and in the pricing risk assessment and marketing of the products. Their job involves making estimates of ultimate out-come of insurable events. In the business of insurance the product cost is an abstraction, depending on the timing issues, variability issues and risk parameters. One big function actuaries provide is making reserves to insure that insurance companies keep enough money on their balance sheets to make good of all the claims they will have to pay. This involves arriving at actuarial surplus or deficit depending on various factors. In order to ensure a fair play in the business, the IRDA prescribed regulations according to which various norms were prescribed in order to ensure that Life Insurance business (even other insurance business) are done according to healthy business practices. As per the above regulations, Regulation 4 prescribes number of abstracts and statements in respect of (a) linked business; (b) non-linked business and (c) health insurance business. As part of this Regulation 4(2) (d) item no. iv, Form-"I" was prescribed for the purpose of valuation results and to indicate the surplus or deficit in the life insurance business of a company. Apart from the above regulations, IRDA also prescribed Insurance Regulatory and Development Authority (Preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations 2002. The surplus or deficit arrived at by the actuary in his valuation for the inter valuation period has to be taken into consideration under the regulations in financial accounts as well.

32. IRDA Regulations specifically require maintaining the policyholder's account and the shareholder's account separately and permits transfer of funds from shareholder's account to policyholder's account as and when there is a deficit in policyholder's account. As rightly noted by the Hon'ble Bombay High Court, as a policy, company is transferring funds/assets from shareholder's account to policyholder's account even during the year periodically as and when the actuarial valuation was arrived at in policyholder's account. Most of the companies are required to submit quarterly accounts under the Company Law, there is requirement of



actuarial valuation report periodically and accordingly assessee was transferring funds from the shareholder's account to policyholder's account. Since the insurance business will not yield the required profits in the initial 7 to 10 years, lot of capital has to be infused so as to balance the deficit in the policyholder's account. During the year as already stated assessee has issued fresh capital to the extent of Rs.250 crores and transferred funds to the extent of Rs.233 crores from the shareholder's account to policyholder's account. Since assessee is having only one business of life insurance, the entire transactions both under the policyholder's and shareholder's account do pertain to the life insurance business only as it was not permitted to do any other business. Once assessee is in the life insurance business, the computation has to be made in accordance with the Rule-2 as per provisions of section 44. Therefore, there is a valid argument raised by assessee that both the policyholder's & shareholder's account has to be consolidated into one and transfer from one account to another is tax neutral. What AO has done is to tax the surplus after the funds have been transferred from shareholder's account to the policyholder's account at the gross level while ignoring such transfer in shareholder's account, while bringing to tax only the incomes declared in the shareholder's account that too under the head 'other sources of income'. In fact while giving the finding that assessee is in the life insurance business only and incomes are to be treated as income from life insurance business, the CIT (A) surprisingly in subsequent assessment years appeals accepted AO's contention that surplus in shareholder's account is to be taxed as other sources of income. But once the provisions of section 44 of IT Act are invoked anything contained in the heads of income like income from other sources, capital gains, house property or even interest on securities does not come into play and only first schedule has to be invoked to arrive at the profit. Therefore, in our opinion both the policyholder's and shareholder's account has to be consolidated for the purpose of arriving at the deficit or surplus. Comparison of Forms-I under the Insurance Act and the IRDA Regulations.

33. Whether Assessing Officer's action in adopting Form-I prescribed under the IRDA Regulations same as that of actuarial valuation made in accordance with the Insurance Act 1938. Even though Insurance Act 1938 also refers to Form-I, there is substantial difference in the formats. Both AO and the CIT (A) has given credence to Form I without understanding that the old form-I prescribed under the Insurance Act 1938 is entirely different from new Form-I prescribed under the IRDA Regulations.

35. The department is asked to explain what the surplus is shown under Form I i.e. at column (a) above. Regulation 8 as shown above has Column (a) 'surplus shown under Form I'. In Col.(e) one has to represent sum transferred from shareholder's fund during the inter valuation period. Item (g) refers to the 'total surplus' after taking into account items (a) to (f). Under Col.(a) surplus shown in Form I is a deficit as per Form AR-A in the policyholder's deficit account in this



year. This corresponds the 'actuarial valuation surplus or deficit' referred to under the Insurance Act, 1938. This amount also tallies with Form I prescribed under Regulation 4. IRDA Regulations however, after arriving at the surplus or deficit in the Form I also prescribes a separate statement again as Form I with details of (a) to (f) under Regulation 8. As can be seen from these two forms, there is variation in the amounts are presented, as these forms serve different purposes. The Form I which was prescribed under Regulations 8 is after arriving at the distribution surplus under Regulations 6. The Regulations 6, 7 and 8 are as under: Thus as can be seen from above Regulations, the Form I under Regulation 8 represent the total surplus for the purpose of distribution of bonuses/ dividends to policy holders and does not represent surplus or deficit of actuarial valuation for the purposes of balance sheet. This amount is represented in Form I prepared under Regulation 4 for the purpose of financial accounts. Reconciliation of amounts:-

36. As seen from the orders of the authorities, the 'Total surplus' prepared under Regulation 8 was taken as basis ignoring the Form- I of Regulation 4. While accepting the department argument that for the purposes of Life insurance business the act provides for surplus of valuation to be taxed at lesser rate, we cannot accept the argument that surplus is Total surplus including Transfers from share holder's account. Basically transfers are tax neutral as a credit in one account gets cancelled by debit in other account when accounts are consolidated. What the Rule.2 prescribed was only 'average surplus' arrived by adjusting the surplus disclosed in the actuarial valuation made with regard to the Insurance Act, 1938 in respect of inter valuation period. Assessee in the course of the assessment proceedings has furnished general balance sheet in Form-A.

38. The statement furnished is in accordance with the Insurance Act, 1938, therefore, it cannot be stated that assessee returned income is not in accordance with the Insurance Act, 1938. There is no basis for AO to take Form-I 'total surplus' as surplus of the Life insurance business ignoring transfer from shareholder's account.

39. It is also on record that assessee followed the IRDA recommendations and accordingly prepared the actuarial valuation report including the surplus or deficit. However, Rule-2 prescribes only actuarial valuation in accordance with the Insurance Act, 1938. Therefore, AO is duty bound to insist on actuarial valuation in accordance with the Insurance Act, 1938, so as to bring to tax the surplus or deficit. What we notice is that AO, ignoring Rule-2, has relied on the actuarial valuation report prescribed under the IRDA recommendations under Regulation 8 that too at 'Total surplus', which is at variance with the Insurance Act, 1938. Since no amendment was brought to Rule-2 to incorporate IRDA recommendations, we are of the opinion that the action of AO in relying on the IRDA Regulations is not according to the law. Assessee had submitted its accounts as stated above, which are in



accordance with the Insurance Act, 1938. Instead of examining these statements, just because assessee has shown total surplus in the accounts in similarly named Form-I(under Regulation 8), AO wants to tax the amount which is after taking into account the transfer of assets by way of fresh capital from shareholder's account. This in a way is taxing fresh capital infused into business indirectly which cannot be done as this is not business surplus but infusion of capital directly.

40. What assessee has done in reconciling the IRDA format with that of old Insurance Form is correct and accordingly the loss disclosed in the computation of income is according to the actuarial surplus/deficit under the Insurance Act, 1938 prescribed under Rule 2 of the first schedule part-A. In view of this, we are of the opinion that insistence by AO to bring to tax the entire amount shown under the new Regulations including transfer from shareholder's account is not correct. Instead of AO in taking the surplus at Regulation 8(1)(a) which is the actuarial surplus / deficit for the year took the amount as disclosed at Regulation 8 (1) (f) (total surplus after transfer from Shareholder's account) which is not at all correct.

Conclusion:-

M/s. Tata AIA Life Insurance Co. Ltd.

42. In view of the above, looking at the issue in any way what we notice is that the computation made by assessee is in accordance with Rule-2 of the Insurance Act 1938 according to which only AO can base his computation. This also corresponds to the way incomes were assessed in earlier years i.e. the correct method as per Rule 2 and Sec 44 of IT ACT. In view of the discussion above and after analyzing the Forms, Regulations and Provisions we have no hesitation to hold that the assessee working of actuarial surplus/ deficit is in accordance with Rule 2 of First Schedule. Therefore, assessee grounds on this issue are allowed and AO is directed to modify the order accordingly".

This decision has been followed by the Tribunal in the case of HDFC Standard Life Insurance Co. Ltd. (supra). Thus, following the same judicial precedence which would apply on the facts of the present case also, we decide the issues raised vide ground no. 182 in the department's appeal in favour of the assessee and against the Department.

9. Similarly, with regard to the issue raised in ground No.3 also, the same is also covered by the same decision as incorporated above and accordingly, respectfully following the same, we uphold the order of the CIT(A) and dismissed the ground raised by the Department.

10. Lastly, with regard to ground No.4, that is, disallowing exemption under section 10(34) with regard to the dividend income earned, we find that the Ld. CIT(A) after relying upon various decisions held that section 14A is not applicable to Life Insurance Company. The Tribunal has reiterated the same



view in the above cases that provisions of section 14A will not apply to Insurance companies, whose income are strictly assessable in terms of Rules of the Insurance Act. Thus, respectfully following the same, we affirm the order of the CIT (A) and dismissed the ground raised by the revenue. Accordingly, grounds raised by the revenue are dismissed.”

3.2 As all the issue in dispute in the present appeal are squarely covered by the decision of the Tribunal (supra). Respectfully following the same, the grounds of appeal of the Revenue are dismissed.

4. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 30/08/2023.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 30/08/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai