

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

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No.1897/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2013-14)

Jt. Commissioner of Income Tax (OSD)- I/c DCIT, Circle-8(3)(1) Aaykar Bhavan, Room No. 615, M. K. Road, New Marine Lines, Mumbai-400020.	बनाम / Vs.	M/s. Tata AIA Life Insurance Co. Ltd. 14 th Floor, Tower-A, Peninsula Business Park, Senapati, Bapat Marg, Lower Parel, Mumbai-400013.
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Cross Objection No. 80/Mum/2023

Arising out of I.T.A. No.1897/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s. Tata AIA Life Insurance Co. Ltd. 14 th Floor, Tower-A, Peninsula Business Park, Senapati, Bapat Marg, Lower Parel, Mumbai-400013.	बनाम / Vs.	Jt. Commissioner of Income Tax (OSD)- I/c DCIT, Circle-8(3)(1) Aaykar Bhavan, Room No. 615, M. K. Road, New Marine Lines, Mumbai-400020.
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आयकर अपील सं/ I.T.A. No.1759/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2018-19)

Jt. Commissioner of Income Tax (OSD)- I/c DCIT, Circle-8(3)(1) Aaykar Bhavan, Room No. 615, M. K. Road, New Marine Lines, Mumbai-400020.	बनाम / Vs.	M/s. Tata AIA Life Insurance Co. Ltd. 14 th Floor, Tower-A, Peninsula Business Park, Senapati, Bapat Marg, Lower Parel, Mumbai-400013.
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I.T.A. No.1757/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s. Tata AIA Life Insurance Co. Ltd. 14 th Floor, Tower-A, Peninsula Business Park, Senapati, Bapat Marg, Lower Parel, Mumbai-400013.	बनाम / Vs.	Jt. Commissioner of Income Tax (OSD)- I/c DCIT, Circle-8(3)(1) Aaykar Bhavan, Room No. 615, M. K. Road, New Marine Lines, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABC73784C		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)



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Assessee by:	Shri Madhur Agarwal
Revenue by:	Shri Biswanath Das (DR)

सुनवाई की तारीख / Date of Hearing: 24/01/2024

घोषणा की तारीख /Date of Pronouncement: 31/01/2024

आदेश / ORDER

PER ABY T VARKEY, (JM):

These are appeals preferred by the revenue and assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi [in short 'Ld. CIT(A)'] dated 27.03.2023 & 20.03.2023 for AY. 2013-14 and AY 2018-19 respectively.

2. Both sides agree that the issues are similar and therefore, the appeals related to AY. 2018-19 are taken as the lead case.

3. The Revised grounds of appeal of the revenue reads as under: -

1. "Whether, on the facts and circumstances of the case and in law. the Ld CIT(A) was correct in interpreting the provisions of Section 44 of the Income Tax Act, 1961 ["the Act"] read with Rule 2 of the First Schedule along with provisions of Insurance Act, 1938, Insurance Regulatory and Development Authority Act. 1999 and regulations made thereunder and accordingly allowing adjustment from the 'surplus' worked out as per "actuarial valuation" in Form-I?

2. "Whether, on the facts and circumstance of the case and in law, the Ld CITA) was correct in holding that the exemption under section 10(34) of the Act was allowable to the assessee while calculating its income under section 44 read with First Schedule of the Act based on the decision of Hon'ble Tribunal,



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Mumbai in assessee's own case for A.Y. 2014-15, when the Department has not accepted the said decision and is in appeal before the Hon'ble Bombay High court?"

3. "Whether, on the facts and circumstances of the case and in law, the Ld CIT(A) has erred in disregarding the AO's contention that if the claim of exemption of the assessee u/s 10(34) for dividend income earned is allowed during appellate proceedings then the provision of sec14A shall apply?"

4. Whether, on the facts and circumstances of the case and in law, the Ld CITA) has erred in interpreting that the applicability of Section 14A to the Insurance Companies based on the decision of Hon'ble Tribunal, Mumbai in assessee's own case for A.Y. 2014-15, when the Department has not accepted the said decision and is in appeal before the Hon'ble Bombay High court?"

5. "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?"

6. "Whether, on the facts-and circumstances of the case and in law, the Ld. CIT(A) has erred in agreeing to reduce the exempt income u/s 10(23AAB) of the IT Act while computing income of insurance business of the assessee u/s 44 of the IT Act business by basing its decision on the decision of Hon'ble ITAT in a common order passed in assessee's own case for AY 2002-



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03 to AY 2008-09 even though the department is in appeal against the said common order?”

7. “Whether, on the facts and in the circumstance of the case and in law, the Ld. CIT was correct in holding that the exemption under section 10(34) of the Act and 10(23AAB) was allowable to the assessee while calculating its income under section 44 read with First Schedule of the Act without considering its impact with Section 14A wrt to disallowance that needs to be made when part of the income earned is exempt income?”

8. “Whether, on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing relief to the assessee by holding that the capital contribution from shareholder’s account to policy holder’s account has to be reduced while computing income under section 44 read with First schedule of IT Act”?

9. The appellant craves leave to amend or alter any ground or add a new ground that may be necessary.”

4. The grounds of appeal of the assessee are as under: -

1. “1. On the facts and circumstances of the case and in law, having allowed ground nos. 2, 3, 7, 8 and 9 (in entirety) and ground no. 10 (partly), raised before him, the learned CIT(A) ought to have directed the AO to assess the total income of the Appellant at INR 1,04,18,07,610 as offered by the Appellant in the return of income in accordance with the provisions of the Act.



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2. On the facts and circumstances of the case and in law, having allowed ground nos. 2 and 3 raised before him to the effect that entire income of the Appellant is taxable as income from life insurance business to be computed as per Rule 2 in the First Schedule to the Act in accordance with the regulations contained in Part-I and Part-II of the Fourth Schedule of the unamended Insurance Act, 1938, while deciding on ground nos. 4 and 5 raised before him, the learned CIT(A) ought to have directed the learned AO to rectify the errors in the manner of computation of income (resulting in double taxation) pointed by the Appellant in the income-tax computation sheet (annexed to the assessment order) rather than directing the learned AO to verify the errors pointed out by the Appellant.

While directing the learned AO to verify the errors pointed by the Appellant in computation of income, the learned CIT(A) erred in issuing such directions under section 251(1)(c) instead of section 251(1)(a) of the Act applicable in case of an appeal against the assessment order.

3. On the facts and circumstances of the case and in law, having allowed ground nos. 2 and 3 raised before him and having held that entire income of the Appellant is taxable as income from life insurance business to be computed as per Rule 2 in the First Schedule to the Act in accordance with the regulations contained in Part-I and Part-II of the Fourth Schedule of the unamended Insurance Act, 1938, while deciding on ground no. 6 raised before him, the learned CIT(A) ought to have categorically held that the rate of tax applicable in the Appellant's case is 12.5% as



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per provisions of section 115B instead of the rate of tax of 30% applied by the learned AO.

While directing the learned AO to verify and apply correct rate of tax as per the provisions of the Act, the learned CIT(A) erred in issuing such directions under section 251(1)(c) instead of section 251(1)(a) of the Act applicable in case of an appeal against the assessment order.

4. On the facts and circumstances of the case and in law, while deciding on ground no. 10 raised before him, the learned CIT(A) ought to have directed the learned AO to allow deduction of INR 2,13,95,768 under section 80(JJAA) as claimed by the Appellant in the p return of income rather than directing the learned AO to pass a speaking order on this issue.

The learned CIT(A) erred in issuing such directions under section 251(1)(c) instead of section 251(1)(a) of the Act applicable in case of an appeal against the assessment order.”

5. Brief facts of the case for AY. 2018-19 are that assessee company is engaged in the business of Life Insurance Business in India from year 2001. Since it is a Life Insurance Company, it computed its income u/s 44 of the Income Tax Act, 1961 (hereinafter “the Act”) read with Rule-2 of the First Schedule along with provision of Insurance Act 1938, IRDA Act, 1999 and regulation made there under. The assessee offered its entire income as taxable income from life insurance business as per section 44 read with Rule-2 of the First Schedule to the Act. The computation of income filed by the assessee



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in this regard during the course of assessment proceedings is reproduced below: -

Particulars	Amount (in INR)	Amount (in INR)
Surplus/(Deficit) as per Old Form I for 31 March 2018 (A)		5,32,10,91,910
Less: Surplus/(Deficit) as per Old Form I for 31 March 2017 (B)		2,94,51,94,177
Surplus as per section 44 (A-B) (C)		2,37,58,97,733
Less: Exemption u/s 10(23AAB) (D)	39,44,22,207	
Less: Exemption u/s 10(34) (E)	91,82,72,148	
(D-E) (F)		1,31,6,94,355
Surplus/(Deficit) from insurance business (C-F)		1,06,32,03,378
Less: Chapter VIA deduction		
Section 80JJAA		2,13,95,768
Total Income/(Loss)		1,04,18,07,610

6. The assessee offered total income of INR 1,041,807,610 in the return of income whereas, the AO assessed the total income at INR 4,875,212,340. And consistent with the order of this Tribunal (Mumbai) in the assessee's own case for AYs 2002-03 to AY 2008-09 and AY 2014-15; and as per section 44 read with Rule 2 of the First Schedule to the Act, the assessee computed the taxable surplus of Rs. 237,58,97,733 from life insurance business by taking into account the incremental surplus/(deficit) disclosed in the Valuation Balance Sheet (i.e. Old Form) prepared in accordance with the Regulations contained in Part-I and Part-II of the Fourth Schedule of the un-amended Insurance Act, 1938. From the taxable surplus of INR 2,37,58,97,933/- the assessee claimed exemption in respect of the dividend income of INR 91,82,72,148 and the income from pension business of INR 39,44,22,207 under section 10(34) and section 10(23AAB) of the Act, respectively, to arrive at the gross total income of INR 1,06,32,03,378/- for the year. The assessee also claimed deduction of INR 2,13,95,768/- under section 80(JJAA) of the Act to determine the taxable income of INR 1,04,18,07,670/- for the year. Based on the



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aforesaid computation, the assessee offered income of INR 1,04,18,07,610 in the return of income.

7. However, the methodology adopted by the AO while framing the assessment order for computing the taxable surplus as per section 44 read with Rule 2 of the First Schedule to the Act was different as compared to the methodology adopted by the assessee in filing the return of income, which resulted in taxable surplus of INR 2,37, 58, 97, 933 by holding as under: -

7.11 The submission of the assessee has been duly considered but the same is untenable based on the detailed discussion made by the assessing officer in preceding paragraph I would like to reiterate any point that since the department is in appeal to the High court and the same is still in the pre admission stage the claim of the assessee is rejected like that of preceding assessment orders.

7.12 As per the above discussion, it is clear that as per section 44 of the I.T. Act, 1961, the surplus as per the actuarial valuation report as per Form I has to be taken for inter valuation period i.e. difference between surplus figures of form I report as on 31.03.2018 and 31.03.2017. Both the Form I are reproduced as below

7.13 As per this, taxable Surplus for the assessee for A.Y. 2018-19 works out to be as follows:

Surplus as per form 1 as on 31.03.2018	Rs.6,59,96,62,000	
Less: surplus as per form 1 as on 31.03.2017	Rs/(5,09,42,93,000)	



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Add: Surplus as per P & L a/c (SHA) after adjusting transfer from/to Policyholders a/c	Rs.87,05,28,733	
Surplus/Income from business or profession		Rs.2,37,58,97,733

8. Aggrieved by the action of AO, the assessee preferred an appeal before Ld. CIT(A) and pointed out that the AO adopted a different methodology as compared to the methodology adopted by the assessee. According to assessee, the AO adopted new Form 1 as the basis to compute the aforesaid taxable surplus instead of Old Form I which was adopted by the assessee for computing its income as per section 44 read with Rule 2 of the First Schedule to the Act.

9. According to assessee, the AO computed incremental surplus of INR 1,50,53,69,000 as per New Form I, and since the said surplus represented only policyholders' results, the AO added the surplus of INR 87,05, 28,733 as per the Profit & Loss Account (i.e. shareholders' account) to arrive at the total taxable surplus of INR 2,37,58,97,733 from life insurance business as per section 44 read with Rule 2 of the First Schedule to the Act.

10. Further, according to assessee, the AO denied exemptions claimed by the assessee under section 10(34) and section 10(23AAB) of the Act and pointed out that by the AO at para 8.5 on page 23 of the order, denied the exemption of INR 91,82,72,148 in respect of dividend income claimed by the assessee under section 10(34) of the Act. And as concluded the



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AO at para 9.7 on page 28 of the order, denied exemption of INR 39,44,22,207 in respect of surplus from pension business claimed by the Appellant under section 10(23AAB) of the Act; and assailed the action of AO computing Rs.2,37,58,97,733/- as income from Life Insurance Business.

11. On appeal, the Ld. CIT(A) was pleased to partly allow the appeal of assessee. In respect of manner of computation of income as done by assessee vis-à-vis that by AO, the Ld. CIT(A) noted that the issue of “*manner of computation*” of assessee’s income was covered in favour of assessee in assessee’s own case for AY. 2002-03 to AY. 2008-09 (dated 21.09.2016) and for AY. 2014-15 (dated 16.03.2023) and accordingly he allowed it.

12. Aggrieved by the aforesaid action of Ld. CIT(A), the revenue is before us and has preferred ground no. 1 and ground no. 8. By preferring ground no. 1, according to Ld DR for revenue, the Ld. CIT(A) has not correctly interpreted section 44 of the Act read with Rule-2 of the First Schedule along with Insurance Act, 1938, IRDA Act, 1999 and Regulation made therein. And ground no. 8 is regarding the action of Ld. CIT(A) holding that the capital contribution of share holders account to policy holders accounts has to be reduced while computing income u/s 44 read with First Schedule of the Act. Since both issues are inter-connected, both the issues are disposed together.

13. We have heard both the parties and perused the records. We note that these issues are no longer res-integra. The Tribunal in



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assessee's own case for AY. 2002-03 to AY. 2008-09 [in *ITA. Nos 1035 to 1039/Mum/2011 and ITA. No. 1823/Mum/2011 & ITA. No.4111/Mum/2012*] has decided these issues at para 8, wherein Tribunal relied on the ratio laid by this Tribunal in the case of *ICICI Prudential Insurance Co. Ltd. Vs. ACIT* reported in 28 taxmann.com 257 (Mum) at para 42 wherein Tribunal held at para 42 in favour of the assessee by holding as under: -

“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”.

14. And Tribunal in assessee's own case (supra) endorsed the aforesaid ratio and noted as under: -

“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



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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.”

15. Since there is no change in law, respectfully following the order of Tribunal (supra), we dismiss ground no. 1 of the revenue and therefore ground no. 8 of the revenue doesn't require adjudication being infructuous. Therefore, both grounds 1 & 8 are dismissed.

16. Ground no. 2 & 6 of the revenue are against the action of the Ld. CIT(A) allowing the assessee exemption u/s 10(34) & 10(23AAB) of the Act while computing income of insurance business of assessee u/s 44 of the Act.

17. At the outset, it was brought to our notice that both these issues are no longer res-integra. And drew our attention to the assessee's own case in earlier years (supra) wherein similar grounds were raised by revenue, and the Tribunal followed the ratio of the decision on these issues in the case of M/s. ICICI Prudential Insurance (supra) wherein at para 47, this Tribunal has adjudicated similar grounds of appeal of the revenue and held as under: -

“47. The Revenue in its appeal has raised the following grounds:

"1. On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in deleting the deficit from pension schemes of Rs. 63,09,19,492/- ignoring the facts that the surplus of pension schemes do not form part of total income as per section 10(23AAB), so the deficit would also not form part of total income.



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2. On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in holding that the income from surplus of participating annuities business represent surplus from "Participating Pension Business" and accordingly allowing the relief to assessee of Rs. 21.34 crores".
3. On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in allowing the dividend income of assessee of Rs. 1,56,09,222/- as exempted under section 10(34) of the Income Tax Act, 1961 ignoring the facts that dividend income is considered as part of Income of Life Insurance Business and is included as an income by the actuary".

48. All the above three grounds are on the issue whether exemption under Sec 10 can be allowed when incomes are computed under Sec.44 of the IT Act. In arriving at the deficit from the insurance business, assessee claimed certain exempt incomes under section 10(23AAB) with reference to Pension Business and dividend under section 10(34). AO did not allow the amounts on the reason that these incomes are part of income of life insurance business and it is included as income by the actuary, therefore, they cannot be exempted. This issue is covered in favour of assessee and against the Revenue by the orders of the *General Insurance Company of India (supra)* wherein the issue of deduction under section 10 have been considered and allowed following the Hon'ble Bombay High Court judgment in *General Insurance Corpn. of India v. CIT* [2012] 204 Taxman 587/17 taxmann.com 247. The order in the case of *General Insurance Corpn. of India (supra)* vide Para 7 to 8 is as under:



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7. "Issue No.5: Availability of Section 10 Exemption (Modified Ground of Appeal No.2 - Original Ground of Appeal No.2.1 & 2.2) -. The issue arises in a peculiar manner in this assessment year. While dealing with the issue of profit on sale of investments, the Assessing Officer proposed to differ from assessee stand and bring to tax the profit on sale of investment. The assessee alternately submitted that the deduction under section 10(38) in respect of long term capital gain was available. When this issue came up before the CIT (A), the CIT (A) not only rejected the claim under section 10(38) but also considered and elaborately discussed how and why the assessee was not eligible for deductions already allowed by the Assessing Officer in respect of 'interest on tax free bonds' amounting to Rs. 3,45,19,352/- under section 10(15) and dividend income amounting to Rs. 270,66,46,489/- under section 10(34). He has elaborately discussed this issue from Para 6 onwards and ultimately made an enhancement of income to an extent of Rs. 274,11,65,844/- the amount which was allowed by the Assessing Officer as exempt under section 10. The contention of the CIT (A) was that the assessee was not eligible for deduction under section 10, once the incomes are brought to tax under section 44 r.w. Rule 5 of First Schedule to the Income Tax Act, 1961.



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8. There is no need to consider the arguments of the CIT (A) and how he has arrived at that conclusion in this order as this issue was decided by the Hon'ble Bombay High Court in favour of the assessee in writ petition No.2560 of 2011 in the assessee's own case dated 1.12.2011. Consequent to the findings of the CIT(A) in AY 2007-08 (impugned AY) the Assessing Officer seems to have issued notice under section 148 for reopening the assessment for the AY 2006-07 on the reason that the assessee was not eligible for claiming income as exempt under sub-sections 15, 23G, 34 and 38 of Section 10 and assessee challenged the issue by way of writ petition. The Hon'ble Bombay High Court not only disapproved the reopening of the assessment but gave the findings on merit also which are as under:-

"11. Section 44 of the Income Tax Act, 1961 stipulates as follows:

"44. 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 (43B), the profits and gains of any business of insurance, including any such business carried on by a mutual insurance company or by a cooperative society, shall be computed in accordance with the rules contained in the First Schedule".



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Section 44 provides that the profits and gains of any business of insurance of a mutual insurance company shall be computed in accordance with the rules in the First Schedule. Part 'A' of the First Schedule containing Rules 1 to 4 deals with profits of life insurance business while Part B consisting of Rule 5 deals with computation of profits and gains of other insurance business. Rule 5 provides as follows:

"5. The profits and gains of any business of insurance other than life insurance shall be taken to be the balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act, 1938 (4 of 1938), to be furnished to the Controller of Insurance subject to the following adjustments:

- (a) Subject to the other provisions of this rule, any expenditure or allowance (including any amount debited to the profit and loss account either by way of a provision for any tax, dividend, reserve or any other provision as may be prescribed) which is not admissible under the provisions of section 30 to (43B) in computing the profits and gains of a business shall be added back;
- (b) (.....)
- (c) Such amount carried over to a reserve for unexpired risks as may be prescribed in this behalf shall be allowed as a deduction".

The Assessing Officer has in the reasons for reopening the assessment proceeded on the premise that in computing the profits and gains of business for an assessee who carries on general insurance business no other section of the Act would apply and that the computation could be carried out only in



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accordance with section 44 read with Rule 5 of the First Schedule. In *Life Insurance Corporation of India, Bombay v. Commissioner of Income Tax Bombay City-III*, a Division Bench of this Court construed the provisions of section 44 and of the First Schedule. The assessee in that case which carried on life insurance business had made a claim to exemption under section 10(15) and section 19(1). In a reference before the Court, the questions referred included whether in computing the profits and gains of the business of insurance under section 44 read with the First Schedule certain items which were ordinarily not includible in the total income were rightly included in the taxable surplus. The Division Bench of this Court held as follows:

"The question which essentially falls to be determined in this reference is whether, in view of the provisions in section 44 or rule 2 of the first Schedule, the Life Insurance Corporation will not be entitled to claim the deductions which are otherwise admissible in the case of an assessee, computation of whose income is governed by the other provisions of the Act. The argument of Mr. Kolah for the Life Insurance Corporation is that unless there are express provisions which disable the Corporation from claiming the deductions referred to above, the Corporation cannot be deprived of the benefit of the provisions referred to in the questions Nos. 1 to 6. Section 44, which deals with computation of profits and gains of business of insurance, begins with a non-obstante clause, the effect of which is that the provisions of the Act relating to the computation of income chargeable under the head "Interest on securities", "Income from house property", "Capital gains" or



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"Income from other sources", do not apply in the case of computation of income from insurance business. The effect of the non-obstante clause so far as the earlier part of section 44 is concerned, therefore, is that the provisions of section 44 will prevail notwithstanding the fact that there are contrary provisions in the Act relating to computation of income chargeable under the four heads mentioned in section 44. The only other overriding effect of section 44 is that its provisions operate notwithstanding the provisions of section 191 and of section 28 to 43A. Thus, the only effect of section 44 is that the operation of the provisions referred to therein is excluded in the case of an assessee who carried on insurance business and in whose case the provisions of rule 2 of the First Schedule are attracted. If the deductions which are claimed by the assessee do not fall within the provisions which are referred to in section 44, it will have to be held that the applicability of those provisions in the case of an assessee whose assessment is governed by section 44 read with rule 2 in the First Schedule is not excluded".

This judgment is sought to be distinguished by the Assessing Officer while disposing of the objections on the ground that the decision was rendered in the context of an assessee which carried on life insurance business to whom Rules 1 to 4 of the First Schedule applied whereas in the case of the assessee in this case which carries on general insurance business Rule 5 could apply. According to the Assessing Officer, Rule 5 would not permit any adjustment to the balance of profit as per annual accounts prepared under the Insurance Act, and hence the judgment would not be applicable. The Assessing Officer has



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clearly not noticed that the decision in *Life Insurance Corporation (supra)* though rendered in the context of an assessee which carries on life insurance business, followed an earlier decision of a Division Bench of this Court in *Commissioner of Income-Tax v. New India Assurance Co Ltd.* That was a case of an assessee which carried on non life insurance business. In *New India Assurance Co. Ltd.* the Division Bench dealt inter alia with the provisions of section 19(7) of the Income Tax Act, 1922. The questions referred to this Court included whether the assessee was entitled to claim an exemption from tax under section 15B and 15C (4) and in respect of interest on a government loan under a notification issued under section 60. Section 10(7) of the Income Tax Act, 1922 provided that notwithstanding anything to the contrary contained in section 8,9,10,12 or 18, the profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to the Act. The Division Bench held that upon the language of sub-section (7) of section 10 read along with rule 6 it was impossible to hold that the provisions relating to exemptions stood excluded from operation. In that context the Division Bench held as follows:

"It is only after the profits and gains of a business are computed that any question of granting exemptions arises and if the latter stage were intended to be excluded by the law we should have thought that a clearer provision than is made in sub-section (7) of section 10 and in rule 6 would have been made".



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In the subsequent judgment of the Division Bench in *Life Insurance Corporation (supra)*, the Division Bench noted that there was a difference in the language of section 10(7) of the Act of 1922 when compared with section 44 of the Act of 1961 since section 44 does not refer to the computation of tax but merely to the computation of profits and gains in the business of insurance. The Division Bench held that this would however not make any difference to the principle laid down by the Court in the earlier decision in the case of *New India Assurance Co. Ltd.* Accordingly, the decision of *Life Insurance Corporation (Supra)* could not have been ignored by the Assessing Officer on the supposition that the decision was rendered in the context of an assessee who carried on life insurance business and was, therefore, not available to an assessee which carries on general insurance business.

12. In *General Insurance Corporation of India v. Commissioner of Income-Tax*, the Supreme Court considered in an appeal arising out of a judgment of the High Court the issue as to whether a sum of Rs. 3 crores, being a provision for redemption of preference shares, was not liable to be added back in the total income of the assessee for AY 1977-78?. The Supreme Court held that a plain reading of rule 5(a) of the First Schedule made it clear that in order to attract the applicability of the provision the amount should firstly be an expenditure or allowance and secondly it should be one not admissible under the provisions of section 30 to 43A. The Supreme Court held that the sum of Rs. 3 crores in that case which was set apart as a provision for redemption of preference shares could not have been treated as



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an expenditure and hence could not have been added back under rule 5(a). In that context the Supreme Court held as follows:

"There is another approach to the same issue. Section 44 of the Income-tax Act read with the rules contained in the First Schedule to the Act lays down an artificial mode of computing the profits and gains of insurance business. For the purpose of income-tax, the figures in the accounts of the assessee drawn up in accordance with the provisions of the First Schedule to the Income-tax Act and satisfying the requirements of the Insurance Act are binding on the Assessing Officer under the Income-tax Act and he has no general power to correct the errors in the accounts of an insurance business and undo the entries made therein".

The question whether an assessee who carries on general insurance business would be entitled to avail of an exemption under section 10 did not arise. The issue as to whether the assessee which carries on the business of general insurance would be entitled to the benefit of an exemption under clauses (15), (23G) and (33) of section 10 is directly governed by the decision rendered by the Division Bench in *Life Insurance Corporation v. Commissioner of Income-tax (Supra)* following the earlier decision in *Commissioner of Income-tax v. New India Assurance Co. Ltd (supra)*. The Assessing Officer could not have ignored the binding precedent contained in the two Division Bench decisions of this Court. Moreover, the Assessing Officer in allowing the benefit of the exemption in the order of assessment under section 143(3) specifically relied upon the view taken by the CBDT in its communication dated 21 February 2006 to the Chairman of IRDA. The communication clarifies that the exemption available to any other assessee under any clauses of section 10 is also available to a person carrying on non-life insurance business subject to the fulfillment of



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the conditions, if any, under a particular clause of section 10 under which exemption is sought. It needs to be emphasized that it is not the case of the Assessing Officer that the assessee had failed to fulfill the condition which attached to the provisions of the relevant clauses of section 10 in respect of which the exemption was allowed. This of course is apart from clause (38) of section 10 where the Assessing Officer had rejected the claim for exemption in the original order of assessment under section 143(3). The Assessing Officer above all was bound by the communication of the CBDT. Having followed that in the order under section 143(3) he could not have taken a different view while purporting to reopen the assessment. Having applied his mind specifically to the issue and having taken a view on the basis of the communication noted earlier, the act of reopening the assessment would have to be regarded as a mere change of opinion which has also not been based on any tangible material. Consequently, we hold that the reopening of the assessment is contrary to law. The Petition would have, therefore, to be allowed".

Respectfully following the above, we hold that the assessee is entitled for exemption under section 10. The enhancement made by the CIT (A) is therefore, cancelled. Ground is accordingly allowed".

49. In view of the above and respectfully following the same, we hold that assessee is entitled to exemption under section 10. Therefore, we do not see any reason to differ from the order of the CIT (A) where he has allowed assessee's claim of exemption under section 10(23AAB) of surplus of Participating Pension Business and also dividend under section 10(34). Accordingly, Revenue ground on this issue is rejected."

18. Respectfully following the ratio of the decision of this Tribunal on identical lis, we dismiss ground no. 2 & 6 of revenue.



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19. Ground nos. 3, 4 & 7 are regarding disallowance made by AO u/s 14A of the Act. The Ld. AR pointed out that these issues are also covered in favour of assessee in assessee's own case (supra) wherein at para 10 it was held as under: -

“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.”

20. Respectfully following the order of the Tribunal (supra), these grounds of revenue stands dismissed.

21. Ground no. 5 of the revenue is against the action of the Ld. CIT(A) relying on the decision of this Tribunal in assessee's own case for earlier years, even though the revenue has preferred an appeal before the Hon'ble Bombay High Court against the decision of Tribunal. This ground does not require any adjudication because the action of the Ld. CIT(A) is in consonance with the judicial discipline. So this ground of revenue stands dismissed.



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22. Ground no. 9 is general in nature so does not require any adjudication.

23. Coming next to the appeal of the assessee for AY. 2018-19, the Ld. AR points out that ground no. 1 is general in nature and therefore no adjudication is required. So it stands dismissed. Ground no. 2 is not pressed. So, ground no. 2 stands dismissed. Ground no. 3 of assessee is regarding rate of tax applicable in assessee's case, which according to the assessee is 12.5% as per section 115B of the Act, instead of the rate of tax levied @ 30%. According to the assessee, the assessee's income is admittedly from Life Insurance Business, therefore, it needs to be computed as per Rule-2 of the First Schedule to the Act in accordance with the Regulations contained in Part-I and Part-II of the Fourth Schedule of the un-amended Insurance Act, 1938. Therefore, according to the assessee, the rate of taxation is as per section 115B of the Act @ 12.5%. According to the assessee, in earlier years, the AO accepted the rate of tax @ 12.5% and only in this year there has been a departure and rate of tax was levied at @ 30%. On appeal, the Ld. CIT(A) has directed the AO to verify and apply the correct rate of tax as per the Act.

24. On this issue, we note that the assessee carries on Life Insurance Business in India as stipulated by Insurance Regulatory and Development Authority of India (IRDA). On the strength of the license issued from the IRDA, assessee is carrying on the Life Insurance business in India. And therefore, it's income has to be computed as per



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section 115B of the Act. And we note that in the earlier years there was no dispute on this issue and the AO himself has applied the rate of tax @ 12.5% in accordance with section 115B of the Act. In such a scenario, the AO ought to have levied tax @ 12.5% as per section 115B of the Act. This ground of assessee is allowed.

25. Ground no. 4 is against the action of the Ld. CIT(A) direction to the AO to pass a speaking order regarding the claim of assessee in respect of its claim of deduction of Rs.2,13,95,768/- u/s 80(JJAA) of the Act. On this issue, according to assessee, it has claimed in its return deduction of Rs.2,13,95,768/- u/s 80(JJAA) of the Act and the AO didn't adjudicate on it. Therefore, the Ld. CIT(A) directed the AO to hear the assessee on this issue and pass speaking order. Aggrieved, the assessee submits that Ld. CIT(A) ought to have decided on this issue. We note that assessee had filed the requisite Form-10DA before the AO for making claim u/s 80(JJAA) of the Act. But AO has not examined/adjudicated the claim and has disallowed it without giving any reason. And the Ld. CIT(A) has directed the AO to verify and pass speaking order on this claim. We note that the assessee has filed Form-10DA as required by statute to make the claim of deduction u/s 80(JJAA) of the Act and AO without any contrary material has disallowed the same without any whisper/reason for disallowing the same. In such a scenario, we direct the AO to verify the claim of the assessee and consider the claim in accordance to law after giving opportunity to assessee.



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26. In the result, appeal of the revenue is dismissed and appeal of the assessee is allowed partly for statistical purposes.

27. Grounds of appeal of the revenue for AY. 2013-14 are as under:-

“1. "Whether on the facts & circumstances of the case and in law, the Hon'ble ITAT was correct in interpreting the provisions of Section 44 of the Income Tax Act, 1961 ['the Act'] read with Rule 2 of the First Schedule along with provisions of Insurance Act, 1938, insurance Regulatory and Development Authority Act, 1999 and regulations made there under and accordingly allowing adjustment from the 'surplus' worked out as per "actuarial valuation"?"

2. “Whether, on the facts and in the circumstance of the case and in law, the Ld. CIT(A) was correct in deciding the matter only on the additional grounds raised by the assessee by basing its decision on the decision of Hon'ble ITAT in the case of ICICI Prudential Insurance Co Ltd even though the said decision of Hon'ble ITAT was not acceptable to the department and the Revenue is in appeal before the Hon'ble High Court?"

3. “Whether, on the facts and in the circumstance of the case and in law, the Ld. CIT was correct in holding that the exemption under section 10(34) of the Act was allowable to the assessee while calculating its income under section 44 read with First Schedule of the Act relying on the decision of Hon'ble Tribunal, Mumbai in assessee's own case for A.Y. 2014-15, whereas the



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Department has not accepted the decision of Hon'ble Tribunal and filed further appeal before the Hon'ble High Court?"

4. "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?"

5. "Whether, on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the capital contribution from share-holders account to policy holder account has to be reduced while computing income under section 44 read with First Schedule of IT Act"

6. "Whether, on the facts and circumstances of the case and in law, the Ld. CIT(A) has justifying in allowing relief to the assessee in exemption under section 10(23AAB) of the Act for income earned from pension business by basing its decision on the decision of Hon'ble ITAT in a common order passed in assessee's own case for AY 2002-03 to AY 2008-09 even though the department is in appeal against the said common order?"

7. "Whether, on the facts and in the circumstance of the case and in law, the Ld. CIT was correct in holding that the exemption under section 10(34) of the Act and 10(23AAB) was allowable to the assessee while calculating its income under section 44-read with First Schedule of the Act without considering its



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impact on Section 14A wrt to disallowance that needs to be made when part of the income earned. is exempt income?"

8. 'The appellant craves leave to amend or alter any ground or add a new ground that may be necessary.'

28. Cross Objection of the assessee for AY. 2013-14 are as under: -

"1. As across objection to ground no. 4 raised by the Appellant in its appeal, the Respondent prays that where the surplus as per the Form I prepared in accordance with the provisions of the Insurance Regulatory and Development Authority Act, 1999 [i.e., 'new Form I'] is considered, the amount of Rs. 2,30,35,570/- transferred from the Shareholders' Account to the Policyholders' Account should be reduced from the said surplus.

This ground is without prejudice to the conclusion by the Commissioner of Income-tax (Appeals) that incremental surplus as per the Form I prepared in accordance with Unamended Insurance Act, 1938 ['old Form I'], after allowing exemption under section 10 of the Act, should be the income of the Respondent.

2. The Respondent craves leave to add to or alter by deletion, substitution or otherwise of the above grounds of cross-objections at or before the hearing of the appeal."



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29. Ground no. 1 & 5 of revenue are identical as that of the revenue's ground no 1 & 8 for AY. 2018-19 (supra) and since there is no change in facts or law, on the same reasoning by applying *mutatis mutandis*, the revenue grounds of appeal are dismissed.

30. Ground no. 3 & 6 of the revenue are similar to that of the ground no. 2 & 6 of AY. 2018-19 (supra), and since there is no change in fact or law, applying the ratio *mutatis mutandis*, we dismiss the grounds of appeal of the revenue.

31. Ground no. 2 of the Revenue is against the action of Ld CIT(A) admitting additional ground based on decision of Tribunal in the case of M/s ICICI Prudential Life Insurance (supra), which we find to be legally correct and therefore, we dismiss this ground of appeal of Revenue. And ground no 4 is infructuous, since the Ld. CIT(A) has followed the order of the Tribunal in assessee's own case is in consonance with the judicial discipline. Therefore, it is also dismissed.

32. Ground no. 6 is general in nature so does not require any adjudication.

33. Coming next to the assessee's cross-objection, the Ld. AR submits that the ground no. 1 is infructuous, therefore, dismissed.

34. Ground no. 2 is general in nature so does not require any adjudication.



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35. Additional ground, of assessee, wherein the assessee is aggrieved by the action of AO/Ld. CIT(A) adopting the wrong amount as exempt u/s 10(34) of the Act. According to the Ld. AR, the amount of exempt income u/s 10(34) of the Act has been wrongly taken note by the authorities below as Rs.4,48,31,230/- whereas the correct amount according to assessee is Rs.114,29,82,007/-

36. Since factual verification is required on this issue, the same is restored back to the file of the AO for verification of the claim of the assessee and after hearing the assessee, order to be passed in accordance to law on this claim of assessee.

37. In the result, appeals of the Revenue stands dismissed and appeal/CO of assessee are partly allowed for statistical purposes.

Order pronounced in the open court on this 31/01/2024.

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

Mumbai; Dated 31/01/2024.
Vijay Pal Singh, (Sr. PS)



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.
- 6.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**