

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

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

**ITA No. 3825/MUM/2024
Assessment Year: 2011-12**

DCIT-CC-5(3),
Room No. 426, Kautilya Bhavan,
BKC Road,
Mumbai-400051.

Appellant

Indiafirst Life Insurance Company
Ltd.,
Vs. 12th and 13th Floor, Building No. 4,
Nesco IT Park Western Express
Highway Goregaon E,
Mumbai-400063.
PAN NO. AADCB 6215 G
Respondent

**CO No. 206/MUM/2024
(Arising out of ITA No. 3825/MUM/2024)
Assessment Year: 2011-12**

Indiafirst Life Insurance
Company Ltd.,
12th and 13th Floor, Building No.
4, Nesco IT Park Western Express
Highway Goregaon E,
Mumbai-400063.

PAN NO. AADCB 6215 G
Appellant

Vs. DCIT-CC-5(3),
Room No. 426, Kautilya Bhavan,
BKC Road,
Mumbai-400051.

Respondent

Assessee by : Mr. Farrokh V. Irani
Revenue by : Mr. R.A. Dhyani, CIT-DR

Date of Hearing : 01/10/2024
Date of pronouncement : 29/10/2024



ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue and cross-objection by the assessee are directed against order dated 08.05.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – 54, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2011-12.

2. The grounds raised by the Revenue in its appeal are reproduced as under:

1. *"Whether on the facts & circumstances of the case and in law, the Ld. CIT(A) erred 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 & circumstances of the case and in law, the Ld.CIT(A) erred in interpreting that * on account of "legislation by incorporation" 'only' the "un-amended' Insurance Act 1938 and the Regulations there under became part of section 44 r.w.r. rule 2 of the First Schedule of the I.T Rules?"*
3. *"Whether on the facts & circumstances of the case and in law, the Ld.CIT(A) erred in not appreciating the facts that the valuation of the insurance companies is done under the Insurance Act, therefore, what can be reduced is only what is specifically provided in schedule 1 Rule 2 and nothing else. Therefore, exemption under section 10(23AAB) cannot be granted to an assessee engaged in business of life insurance where income is computed u/s 44 of the I.T Act"?*
4. *"Whether on the facts & circumstances of the case and in law, the Ld.CIT(A) erred in ignoring the fact that even the assessee insurance company uses the nomenclature expenses "other than those directly related to insurance business" while computing the surplus in the share holders account and treating it as part of Insurance Business.?"*



2.1 The grounds raised by the assessee in its cross-objection are reproduced as under:

On the facts and circumstances of the case and in law, IndiaFirst Life Insurance Company Limited (IFLIC' or 'Respondent' or 'Company') respectfully submits that the Learned Commissioner of Appeals -54, Mumbai {CIT(A)} ought to have held that Reassessment Order dated December 20, 2016 passed by Deputy Commissioner of Income-tax, Circle 14(2)(1), Mumbai {Learned AO} under section 143(3) read with section 147 of Income-tax Act, 1961 ('Act') was invalid, without jurisdiction, void and bad in law.

3. The cross-objection has been filed by the assessee with a delay of 24 days. Before us, the Ld. counsel for the assessee referred to the application of the assessee for condoning the delay in filing the cross-objection and submitted that during the relevant period, the company had undergone personnel changes in tax team resulting into inadvertently non meeting compliance deadlines and when issue was brought to the notice of the respondent by the Senior Counsel, immediately the cross-objection had been filed by the assessee. Looking to the sufficient cause for delay in filing cross-objection, we admit the cross-objection of the assessee for adjudication.

4. Briefly stated facts of the case are that the assessee filed its return of income on 24.09.2011 declaring total income at Rs.(-) 52,02,02,239/- which was subsequently revised to Rs.(-) 66,59,72,891/- on 29.09.2012 after claiming exemption u/s 10(23AAB) of the Income-tax Act, 1961 (in short 'the Act') for an amount of Rs.14,56,69,652/-. The return of income filed by the assessee was selected for scrutiny and assessment u/s 143(3) of the



Act was completed on 31.03.2014 determining loss at Rs.(-) 64,75,24,751/- after disallowance of dividend income of Rs.1,84,48,140/- by treating the same as 'income from other sources' for life insurance company.

4.1 The assessment was reopened by way of issue of notice dated 31.03.2016 u/s 148 of the Act. In the reassessment proceedings, the Assessing Officer observed that assessee had claimed loss of Rs.14,56,69,652/- from pension policies/funds u/s 10(23AAB) of the Act. According to the Assessing Officer loss or deficit from pension scheme should not be adjusted against the taxable profit or other scheme. The Assessing Officer stated in the assessment order that assessee had claimed the said income by filing revising computation of income without revising return of income therefore, the Assessing Officer followed the decision of the Hon'ble Supreme Court in the case of **Goetze India Ltd. (2006) 157 Taxman 1 (SC)**, and disallowed the claim of the loss from pension fund and added Rs.14,56,69,652/- to the total income of the assessee.

5. On further appeal, the Ld. CIT(A) following the decision of the Hon'ble Bombay High Court in the case of **CIT v. Pruthvi Brokers and Shareholders Pvt. Ltd. 349 ITR 336 (Bom.)** and other decisions cited in the order, admitted the claim of the assessee. The admission of the claim by the Ld. CIT(A) has not been disputed by the Revenue before us. The Revenue has only disputed the finding of the Ld. CIT(A) on the merit.



6. We have heard rival submission of the parties and perused the relevant material on record. In the case, the Ld. CIT(A) has followed binding decision of the Hon'ble Bombay High Court and decision of the Co-ordinate Bench of the Tribunal in the case of the assessee in ITA No. 7276/Mum/2014 for assessment year 2010-11. The relevant finding of the Ld. CIT(A) is reproduced as under:

"6.4 As regards the merits of the case, it is seen that the issue has been decided in favour of the appellant by my Ld predecessor CIT(A) in his order dated 01.09.2014 relying on the decision of the Hon'ble Bombay High Court in the case of CIT v Life Insurance Corporation of India Ltd [2011] 12 taxmann.com 388 (Bom). The relevant extracts of the Hon'ble High Court decision are as under:

"17..... The fact that the income from such fund has been exempted under section 10(23AAB) with effect from 1st April, 1997, does not mean that the pension fund ceases to be insurance business, so as to fall outside the purview of the insurance business covered under section 44 of the Income-tax Act, 1961..

"18. The object of inserting section 10(23AAB) as per the Board Circular No.762 dated 18th February 1998 was to enable the assessee to attractive terms to the contributors. Thus, the object of inserting section 10(23AAB) was not with a view to treat the pension fund like Jeevan Suraksha Fund outside the purview of insurance business but to promote insurance business by exempting the income from such fund..."

6.4.1 The order dated 01.09.2014 of the Ld CIT(A) was upheld by the Hon'ble Mumbai ITAT in the appellant's own case in ITA No. 7276/M/2014 order dated 11.01.2017, where the Hon'ble ITAT dismissed the revenue's appeal regarding disallowance of claim of loss from pension fund business. The relevant extracts are as under:

.....we find that the finding of the CITA) on the first issue is fair and reasonable. As such, the judgment of the Hon'ble High Court of Bombay in the case of LIC of India (338 TR 212) is directly on the issue. Accordingly, the claim of loss of Pension Fund is an allowable claim. We approve the conclusions drawn by the CIT(A) vide para 4.3 of his order on this issue. Thus, Ground no. 1 raised by the Revenue is dismissed."

6.5 In view of above, respectfully relying the Hon'ble jurisdictional High Court and also the Hon'ble jurisdictional IT AT in-the-appellants own



case, the issue is decided in favor of the appellant and the addition made by the AO is deleted. This ground of appeal is accordingly allowed.”

6.1 Since, the Ld. CIT(A) has followed the binding precedent on the issue in dispute, therefore, we do not find any infirmity in the order of the Ld. CIT(A) and accordingly, we uphold the same. The grounds raised by the Revenue are accordingly dismissed.

6.2 In the cross-objection, the assessee has raised the ground challenging the validity of the reassessment. Since, we have already dismissed the appeal of the Revenue challenging the merit of the addition and therefore, the grounds raised by the assessee are rendered merely academic and hence, we are not adjudicating upon and same are left open to be adjudicated at appropriate stage if so required.

7. In the result, both the appeal of the Revenue as well as cross-objection of the assessee are dismissed.

Order pronounced in the open Court on 29/10/2024.

**Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 29/10/2024
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