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

SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 2384/MUM/2024	**ITA No.3003/MUM/2024**
(Assessment Year: 2020-21)	**(Assessment Year: 2021-22)**

Deputy Commissioner of Income Tax,
Central Circle 6(2), Mumbai
Room No.450, 4th Floor, Kautiliya Bhawan,
BKC, Mumbai – 400051, Maharashtra. ..... **Appellant**

Vs

ICICI Prudential Life Insurance Limited
ICICI Prulife Towers, 1089,
Appasaheb Marathe Marg, Prabhadevi,
Mumbai- 400025, Maharashtra. ..... **Respondent**
[PAN: AAAC1735IP]

Appearance

For the Appellant/Department	**:**	Ms. Madhu Malati Ghosh
For the Respondent/Assessee	**:**	Ms. Arati Vissanji

Date

Conclusion of hearing	**:**	05.09.2024
Pronouncement of order	**:**	.12.2024

O R D E R

Per Rahul Chaudhary, Judicial Member:

1. These are two appeals preferred by the Revenue pertaining to Assessment Years 2020-2021 and 2021-2022. Since identical issues were raised in the appeals, the same were heard together and are, therefore, being disposed by way of a common order.

2. We would first take appeal for Assessment Year 2020-2021.

ITA No.2384/Mum/2024 (Assessment Year 2020-2021)

3. This appeal has been preferred by the Revenue against the order, dated 14/02/2024, passed by the Commissioner of Income Tax (Appeals)-54, Mumbai [hereinafter referred to as the '**CIT(A)'**] for

the Assessment Year 2020-2021, whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 22/09/2022, passed Under Section 143(3) read with Section 144B of the Income Tax Act, 1961 [hereinafter referred to as '**the Act**'].

4. The relevant facts are brief are that the Assessee is a public limited company carrying on life insurance business. For the Assessment Year 2020-2021 the Assessee filed return of income on 17/12/2020 declaring total income of INR.17,87,01,63,078/-. The case of the Assessee was selected for regular scrutiny. The Assessing Officer completed the assessment, vide Assessment Order, dated 22/09/2022, passed under Section 143(3) read with Section 144B of the Act assessing the total income of Assessee at INR.21,66,82,56,980/- computing the same as under:

	Particulars	**Amount (INR)**	**Amount (INR)**
	Income as per Rule 2 of Schedule 1 of the Act	1156,40,75,000	
Less:	Exemption of pension business u/s 10(23AAB)	162,73,27,000	
Less:	Exemption of dividend income u/s. 10(34) (Net of Disallowance u/s 14A)	263,87,88,271	
Less:	Exemption for interest on tax free bonds u/s.10(15)	17,37,65,963	
Add:	Negative Reserve	877,26,91,000	
Add:	Asset charged to P&L Account (100% Depreciation)	7,85,212	
A.	Total income under the head Income from Business and Profession		1589,77,69,978
B.	Income from other sources		577,04,87,000
C.	Surplus in shareholders account		2166,82,56,978
	Total Assessed Income (Rounded off)		21,66,82,56,980

5. Being aggrieved, the Assessee preferred the appeal before the CIT(A) which was disposed off as partly allowed vide order, dated 14/02/2024.

6. Being aggrieved by the relief granted by the CIT(A), the Revenue has preferred the present appeal before the Tribunal.

Ground No.1 to 5:

7. We would first take up Ground No. 1 & 5 raised by the Revenue which read as under:

1. *Whether, on the facts and the circumstances of the case in law, the Ld.CIT(A) is correct in interpreting the provisions of section 44 of the IT Act r.w. rule 2 of the First Schedule alongwith provisions of Insurance Act 1938, IRDA Act 1999 and regulations there under accordingly allowing adjustment from the 'surplus' worked as per "actuarial valuation" and as shown by the assessee in Form-1 in violation of the ratio of the Apex Court in the case of LIC vs CIT 51 ITR 778?.*

2. *Whether on the facts & circumstances of the case and in law, the Ld. CIT(A) is correct In concluding that transfer from share Holders Account to Policy Holder's Account and shown as part of 'surplus' in the "actuarial valuation" was only transfer of capital asset and not taxable u/s 44 of the Act r.w Rule 2 of the First Schedule?"*

3. *Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) is correct 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 rule 2 of the First Schedule of the I.T Rules?"*

4. *Whether on the facts and in the circumstance of the case and in law, the Ld. CIT(A) is correct in interpreting section row Rule 2 of the First Schedule that the Legislature Consciously omitted incorporation of the provision of IRDA Act 1999 and regulations made there under rule 2 of the First Schedule which refers' only to unamended insurance Act 1938 and regulations made there under?"*

5. *Whether on the facts and in the circumstance of the case and in law, the Ld. CIT(A) is correct to appreciate the provisions of section 28 of IRDA Act 1999 which clarifies that provisions of IRDA Act are in addition and not in derogation of Insurance Act 1938, thereby implying adoption of IRDA Act and its regulation*

as "legislation by reference" in section 44 of the 1.T Act r.w rule 2 of the First Schedule?

7.1. Ground No.1 to 5 raised by the Revenue are connected as the same pertain to the method and basis of computation of Income under Section 44 of the Act read with Rule 2 of First Schedule.

7.2. Section 44 r.w. Rule 2 of the First Schedule to the Act specifically requires that the profits and gains of life insurance business shall be the surplus/deficit arrived at on the basis of the actuarial valuation made in accordance with the Insurance Act, 1938. Accordingly, the Assessee filed its returns of income on the basis of the financial statements which reflects surplus/deficit as per actuarial valuation made in accordance with the provisions of the Insurance Act. During the assessment proceedings the Assessee was asked to furnish computation of surplus declared from the insurance business amounting to INR.9,02,41,81,040/-. After examining the same the Assessing Officer formed a view that the Assessee has not followed provision contained in Section 44 of the Act and has merely taken the value from the financial accounts and not actuarial valuation of the Assessee. Therefore, the Assessee was asked to furnish explanation in relation to the same. Vide letter dated 05/01/2022, the Assessee, inter-alia, submitted that the Assessee, being an insurance Company was governed by the provision of Section 44 of the Act read with the First Schedule to the Act. Section 44 of the Act provides that Profit and Gains of any business of insurance shall be computed in accordance with the rules contained in First Schedule. As per Rule 2 of First Schedule, the Profit and Gains of Life Insurance business shall be taken to be the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made in accordance with the Insurance Act, 1938, in respect of last inter-valuation period ending before the commencement of the Assessment Year *(so as to exclude from it any surplus or*

deficit included therein which was made in any earlier inter-valuation period). The formats for presentation of insurance accounts have been prescribed by IRDA (Actuarial Report and Abstract) Regulations, 2002. As per the said formats the impact of the actuarial valuation in transferred to the Revenue Account relating to policyholders for the year and the surplus/deficit is disclosed therein. It was explained that the Assessee had computed Profit and Gains in compliance of Provisions of Section 44 of the Act read with the Rule 2 of the First Schedule. The Assessee had aggregated the Shareholders' Surplus with Policyholders Surplus/Deficit, along with exempt income, tax free bond interest and exempt pension interest to arrive at profit of INR.9,02,41,81,040/-. The Policyholders Deficit as appearing in the policy holders account (Form A-RA) has been made good by a transfer from the Shareholders Account. It was submitted on behalf of the Assessee that the transfer between Policyholders Account and Shareholders Account should be considered as tax neutral. The term 'Surplus' should be interpreted to the surplus of business as a whole. Therefore, it was contended on behalf of the Assessee that the actuarial valuation of the surplus should be considered as surplus as per Form I as reduced by 'Deficit' as per Form A-RA. The aforesaid forms are integral part of the complete actuarial report and therefore, the same should be considered as whole in order to arrive at the surplus of the life insurance business. The aforesaid submission/explanation furnished by the Assessee was rejected by the Assessing Officer who did not find any merit in the same. Referring to the provisions contained IRDA Act, 1999, the Assessing Officer concluded that it was clear that as per Section 44 of the Act that 'Surplus' as per actuarial valuation report given in Form I was to be taken for determining the profits of insurance business. Though, the decisions of the Tribunal in the case of Assessee for the preceding assessment years were placed before the Assessing Officer, the Assessing

Officer declined to follow the same observing that the Revenue had not accepted the same and had challenged the same in appeal before the Hon'ble High Court since the Tribunal had incorrectly relied upon the provisions of Insurance Act, 1938 without taking into consideration the provision of IRDA Act, 1999. Thus, the Assessing Officer computed the 'Surplus' at INR.11,56,40,75,000/- [on the basis of Form I only] as against INR.9,02,41,81,037/- [disclosed by the Assessee].

7.3. Being aggrieved, the Assessee carried the issue before the CIT(A). The CIT(A) accepted the contention of the Assessee by following the decision of the Tribunal in the case of Assessee for Assessment Years 2005-2006 to 2008-2009; and the subsequent assessment years. The CIT(A) issued directions to the Assessing Officer to accept the method/basis of computation adopted by the Assessee in the return of income. The CIT(A) also directed the Assessing Officer to consolidate the surplus disclosed in Policyholders Accounts and Shareholders' Accounts for the purpose of determining actual surplus/deficit in accordance with Rule 2 of the First Schedule to the Act.

7.4. Being aggrieved, the Revenue has preferred appeal before the Tribunal on this issue challenging the above relief granted by the CIT(A).

7.5. We have heard both the sides and perused the material on record. Both the sides reiterated their respective stand/submission made in the proceedings before the Assessing Officer/CIT(A). While the Learned Departmental Representative placed reliance upon the Assessment Order, the Learned Authorized Representative for the Assessee relied upon the order passed by the CIT(A) and decisions/judgments in the case of the Assessee for the preceding assessment years.

7.6. We note that as per IRDA had notified new Regulations in year 2000 for Preparation of Financial Statements. The format for presentation of insurance accounts is prescribed by the IRDA (Preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations, 2002, (for short '**the Regulations'**). According to the Regulations, the Profit and Loss Account of a Life insurance company is divided into a Technical Account ('Policyholder Account' also called as 'Revenue Account') and Non-Technical Account ('Shareholder's Account' also called 'Profit and Loss Account'). Technical Account i.e. Policyholder Account deals with all the transactions relating to Policyholders including income from premium and investments, operating expenditure and actuarial provision (shown segment wise). All the transactions relating to Shareholders like funding the deficit of the policyholders account, income earned on investments from Share Capital and Reserves are dealt with in the Shareholder's Account. It is the contention of the Revenue that surplus computed the 'Surplus' at INR.11,56,40,75,000/- on the basis of Shareholder's Account in Form I only, whereas the contention of the Assessee, which has been accepted by the CIT(A), is that the term 'Surplus' should be interpreted to the surplus of business as a whole, and therefore, surplus as per Shareholder's Account Form I as reduced by 'Deficit' as per Policyholder Account in Form A-RA should be taken as taxable surplus. We note that the CIT(A) had granted relief to the Assessee by following the bindings decisions of the Tribunal in the case of the Assessee. On perusal of the common order, dated 14/09/2012, passed by the Tribunal in the case of the Assessee in ITA Nos. 6059, 6854-6856, 7213 & 7767/M/2010 for the Assessment Year 2005-06 to 2008-09, we find that identical issue had come up for consideration before the Tribunal and was decided by the Tribunal in favour of the Assessee and against the Revenue. Relevant extract of the aforesaid decision of the Tribunal reads as under:

"18. We have considered the submissions and perused the record and relevant provisions and the case laws relied upon. There is no dispute with the taxability of insurance business as governed by the provisions of section 44 of the Act r.w. First schedule of Income Tax Act 1961. Section 44 provides as under:

> *"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 co-operative society, shall be computed in accordance with the rules contained in the First Schedule.*

The First schedule contains three parts A, B & C. Part-A pertains to life insurance business, Part-B for other business and Part-C other provisions. The relevant rules in Part A for life insurance business are as under:

> *"Profits of Life Insurance business to be computed separately*
>
> *1. In the case of a person who carries on or at any time in the previous year carried on life insurance business, the profits and gains of such person from that business shall be computed separately from his profits and gains from any other business.*
>
> *Computation of profits of life insurance business*
>
> *2. The profits and gains of life insurance business shall be taken to be the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made in accordance with the Insurance Act, 1938 (4 of 1938) in respect of the last inter-valuation period ending before the commencement of the assessment year, so as to exclude from it any surplus or deficit included therein which was made in any earlier inter-valuation period.*
>
> *Deductions*
>
> *3. Omitted*
>
> *Adjustment of tax paid by deduction at source*

4. Where for any year an assessment of the profits of life insurance business is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months, then in computing the income-tax payable for that year, credit shall not be given in accordance with section 199 for the income-tax paid in the previous year, but credit shall be given for the annual average of the income-tax paid by deduction at source from interest on securities or otherwise during such period".

Rule-7 defines 'life insurance business' means life insurance business as defined in clause-2 of section 2 of Insurance Act 1938. Assessee incorporated after the enactment of the IRDA 1999, is in the life insurance business and there is no dispute with that. As per section 44 for a business involved in insurance business notwithstanding contained in any other head of income like interest on securities, house property, capital gains and other sources, the income from profits and business are to be computed according to the first schedule. Primacy of Sec.44 and power of AO to compute as per Rule 2 of First Schedule was also decided by Hon'ble Supreme Court in number cases relied on by both parties. As the dispute is not with the above, there is no need to reiterate those principles or discuss cases in this order.

19. *Rule-2 is the main computation provision which is applicable to the life insurance business. As per Rule-2 the profits and gains of life insurance business shall be taken to be the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made in accordance with the insurance act, in respect of the last inter valuation period so as to exclude any surplus or deficit included therein which was made in any inter valuation period. According to the rule the surplus or deficit between two valuation periods can only be taken as income or loss of the period. Thus if there is a surplus in earlier valuation of 'Y' amount and surplus in the later valuation at 'X' amount, the difference between X & Y will be the income of the inter valuation period for the purpose of Rule 2. Therefore, actuarial evaluation done in respective periods has importance. Before the IRDA Act, only Life Insurance Corporation was permitted to involve itself in life insurance business. The actuarial valuation was not undertaken every year but once in three years. Therefore, the rule provides for only average of the surplus to arrive between two inter valuation periods. However, with the enactment of IRDA Act 1999 and Regulations therein not only the private*

participants were permitted to do business but presentation of accounts and reports were modified.

20. xx xx

21. The dispute in this case is in adopting the amount of surplus or deficit as per actuarial valuation. There is no dispute with method of actuarial valuation. The dispute is centered around the amounts represented in Form-I as per the IRDA Regulations. Consequent to changes brought by IRDA Act, and its Regulations the revised format in Form I deviates from the Form-I prescribed under Insurance Act 1938. Assessee reconciles the form with old Regulations and filed return of income/ loss. The AO adopts the 'Total Surplus' stated in Form-I under new Regulations ignoring the assessee submissions about changes in accounting procedures and need for reconciliation. This aspect was examined by the Hon'ble Bombay High Court in the assessee own case of ICICI Prudential Life Insurance Co. Ltd. (supra). The facts examined by the Hon'ble Bombay High Court pertain to the assessment year 2003-04 wherein consequent to the reopening of the assessment under section 148, the matter was challenged before the Hon'ble Bombay High Court. The entire scheme, various Regulations applicable, change in formats and method of accounts were elaborately discussed by the Hon'ble Bombay High Court as under:

> *xx xx*
>
> *Before 1999, companies engaged in the business of life insurance were required to prepare one consolidated account. Section 11 of the Insurance Act, 1938 was amended so as to include sub-sections (1A) and (1B). Subsection (1A) to section 11 provides that every insurer, on or after the commencement of the IRDA Act, 1999, in respect of insurance business transacted by him and in respect of shareholder's' funds, shall, at the expiration of each financial year, prepare with reference to that year, a balance sheet, a profit and loss account, a separate account of receipts and payments, and revenue account in accordance with the Regulations made by the Authority. Section 13(1) provides that every insurer carrying on life insurance business shall, inter alia, in respect of the life insurance business transacted in India, cause an investigation to be made each year by an actuary into the financial condition of the life insurance business carried on by him, including a valuation of his liabilities and shall cause an abstract of the report of such actuary to be made in*

accordance with the Regulations laid down in Part I of the Fourth Schedule and in conformity with the requirements of Part II of that Schedule. The fifth proviso to section 13 stipulates that on or after the commencement of the IRDA Act, 1999 every insurer shall cause an abstract of the report of the actuary to be made in the manner specified by the Regulations made by the Authority.

In exercise of the powers conferred by section 114A of the Insurance Act, 1938, the IRDA notified the Insurance Regulatory and Development Authority (Actuarial Report and Abstract) Regulations, 2000. Regulations 3 and 4 stipulate the procedure for preparation of actuarial reports and abstracts and the requirements applicable. Under Regulation 3(4)(v), each abstract and statement is to be accompanied by a certificate signed by the appointed actuary, inter alia, stating that in his opinion, the mathematical reserves are adequate to meet the insurer's future commitments under contracts and the reasonable expectation of policyholder's. Each insurer is required to prepare statements which are to be annexed to the abstract and a list of those statements is set out in Regulation 4(2). Regulation 8 provides that a statement showing the total amount of surplus arising during the inter-valuation period and allocation of such surplus, shall be furnished separately for participating business and for non-participating business, together with the particulars as mentioned in the Regulation. The composition of surplus, inter alia, includes the surplus shown by Form I, interim bonuses, loyalty additions and sums transferred from shareholder's' funds during the inter-valuation period.

The Authority has also notified the Insurance Regulation and Development Authority (Preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations, 2002. Part V deals with the provision of financial statements. Every insurer is required to prepare (i) a revenue account which is also described as a policyholder's' account; and (ii) a profit and loss account, which is also described as a shareholder's' account, apart from a balance-sheet. The statutory forms are prescribed by the Regulations. Form A-RA is prescribed for the preparation of the revenue account or the policyholder's' account. Form A-RA reflects the surplus or, as the case may be, the deficit generated in the revenue account for the year ending 31st March.

As a result of the Regulations, the petitioner which is engaged in the business of life insurance is required to

prepare and maintain two accounts namely, (i) a revenue account of policyholder's, and (ii) a profit and loss account of shareholder's. For the previous year which ended on March 31, 2003, the policyholder's' account reflected a deficit of Rs. 158.37 crores. This deficit was made good by the transfer of an amount of Rs. 158.37 crores from the shareholder's' account to the policyholder's account. This was essentially an internal transfer of funds. Form I which has been prepared by the petitioner in pursuance of the IRDA Regulations of 2000 reflected a nil deficit consequent upon the transfer of an amount of Rs. 158.37 crores from the shareholder's' account to the policyholder's account. The source for making a transfer of Rs. 158.37 crores from the shareholder's' account originated in the infusion of capital from shareholder's during the course of the previous year relevant to the assessment year in question.

During the course of the assessment proceedings for the assessment year 2003-04, the petitioner furnished a note to the computation of income. The salient aspects which were highlighted in the note were as follows:

(i) The erstwhile format for the presentation of surplus/deficit required each insurance company to aggregate the results relating to shareholder's' operations and policyholder's' operations. The impact of the consolidated revenue account was transferred to the actuary's valuation balance-sheet in Form I which disclosed the surplus/deficit for the year;

(ii) The format for presentation of the insurance accounts was amended by the Regulations of 2000 and by the revised format, the impact of the actuarial valuation was transferred to the revenue account relating to the policyholder's for the year and the surplus/deficit was disclosed therein ;

(iii) The profit and loss for shareholder's and the surplus/deficit for policyholder's are since segregated into two separate accounts after the amended Regulations;

(iv) For the financial year ending March 31, 2003, the actuarial valuation as disclosed in Form I shows a nil surplus/deficit as regards the business of policyholder's. The actual deficit of Rs. 158.37 crores in the policyholder's' account (Form A-RA) was made good by a transfer of an equivalent sum from the shareholder's' account. Hence, the figures showing a nil deficit in Form I were subsequent to the transfer;

(v) The total deficit in the policyholder's' account for tax purposes was Rs. 109.90 crores (Rs.158.37 crores less an amount of Rs. 48.47 crores on account of exempt pension schemes);

(vi) In the shareholder's' account, there was a net surplus of Rs. 11.19 crores;

(vii) Consequently, while there was a net surplus in the shareholder's' account of Rs. 11.19 crores, there was a net deficit in the policyholder's' account of Rs. 109.90 crores;

(viii) Consequently, in determining the profits and gains under section 44 read with rule 2, the loss was computed at Rs. 98.70 crores by aggregating the surplus in the shareholder's' account with the deficit in the policyholder's' account for the purposes of taxation.

During the course of the assessment proceedings, letters were addressed to the Assessing Officer specifically in order to clarify the position of the deficit in the policyholder's' account. By its letter dated December 27, 2005, the petitioner clarified that the deficit in the policyholder's' account as reflected by Form A-RA had been met by a transfer from the shareholder's' account. The figures relating to surplus/deficit in Form I were subsequent to the internal transfer of funds. The assessee contended that the transfer from the shareholder's' to the policyholder's' account was an internal adjustment and was tax neutral. Before the assessment proceedings came to be concluded for the assessment year 2003-04, an audit query was raised with reference to the assessment year 2002-03. The audit report dated May 4, 2005 specifically raised a question as to whether the petitioner should have been allowed to claim a deficit in the policyholder's' account since the deficit disclosed by the actuarial valuation in Form I was shown to be nil. In response to the audit query, the petitioner addressed a letter dated December 29, 2005, contending that the First Schedule to the Income-tax Act did not refer to any particular form for calculating the taxable surplus and instead mentions that the actuarial surplus calculated under the provision of the Insurance Act, 1938, has to be considered. The petitioner reiterated its position that Form I showed a zero surplus because, it has already considered, inter alia, the transfers made from the shareholder's' account to the policyholder's' account to nullify the deficit as per the IRDA

Regulations. The same position has been reiterated by a letter dated December 30, 2005 to the Assessing Officer".

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22. *xx xx*

23. *xx xx*

24. *xx xx*

25. *xx xx*

26. *xx xx*

27. *Respectfully following the above principles and examining the provisions of IT Act, we are of the opinion that the '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 which is as under:*

> *"B- Other Insurance Business:*
>
> *Computation of profits and gains of other insurance business.*
>
> *5. The profits and gains of any business of insurance other than life insurance shall be taken to be the profit before tax and appropriations as disclosed in the Profit & Loss A/c prepared in accordance with the provisions of the Insurance Act, 1938 (4 of 1938)* ***or the rules made thereunder or the provisions of the Insurance Regulatory and Development Authority Act, 1999 (4 of 1999) or the Regulations made thereunder*** *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) (i) any gain or loss on realization of investments shall be added or deducted, as the case may be, if such gain or loss is not credited or debited to the Profit & Loss A/c ;

(c) such amount carried over to a reserve for unexpired risks as may be prescribed in this behalf shall be allowed as a deduction". (emphasis supplied)

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 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 business is 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. *We also notice that the actuarial report and abstracts under the Insurance Act 1938 has to be prepared vide section 13 of that Act in accordance with the Regulations contained in Part-I of the Fourth schedule and in conformity with the requirement of Part-II of that schedule. Section 13 of Insurance Act 1938(as amended now) is as under:*

*"**13. Actuarial report and abstract.***

(1) Every insurer carrying on life insurance business shall, in respect of the life insurance business transacted by him in India, and also in the case of an insurer specified in sub- clause (a) (ii) or sub- clause (b) of clause (9) of section 2 in respect of all life insurance business transacted by him,(every year)

cause an investigation to be made by an actuary into the financial condition of the life insurance business carried on by him, including a valuation of his liabilities in respect thereto and shall cause an abstract of the report of such actuary to be made 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:

Provided that the Authority may, having regard to the circumstances of any particular insurer, allow him to have the investigation made as at a date not later than two years from the date as at which the previous investigation was made:

Provided ….
Provided…..
Provided….

Provided also that every insurer on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999 shall cause an abstract of the report of the actuary to be made in the manner specified by the Regulations made by the Authority".

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 analysing possible out comes 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 to maintain 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. *Let us examine whether AO'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. In fact the old form -I has this format:*

The Insurance Act, 1938
Form I

Valuation of Balance Sheet of as at 19

Net liability under business as shown in the summary and valuation of policies	*Rs.*	*Balance of Life Insurance Fund as shown in the Balance sheet*	*Rs.*
Surplus, if any……		*Deficiency, if any…..*	

NOTE

If the proportion of surplus allocated to the insurer, or in the case of an insurance company to shareholder's, is not uniform in respect of all classes of insurances, the surplus must be shown separately for the classes to which the different proportions relate.

New Form-I *under the IRDA Actuarial Report and Abstracts 2000 is as under which was prescribed under the* ***Regulations 4****.*

(Form-I)
(See Regulation 4)
Insurance Regulatory and Development Authority
(Actuarial Report and Abstract) Regulations, 2000

Valuation Results as at 31st March, 20__

Form Code_____
Name of Insurer: Regn.No. Date of Regn.

Item No.	*Description*	*Balance of Fund shown in Balance Sheet*	*Mathematical reserves (excluding cost of bonus allocated)*	*Surplus*	*Negative Reserve*	*Surrender Value Deficiency Reserve*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*	*(7)*
01	*Business within India Par policies*					
02	*Non-Par Policies*					
03	*Total*					
04	*Total Business Par Policies*					
05	*Non Par Policies*					
06	*Totals*					

34. xx xx

35. xx xx

36. xx xx

37. xx xx

38. The above 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. In our opinion 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.

41. xx xx

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. Ground Nos.1 to 3 are considered allowed."

The above decision of the Tribunal [reported in (2013) 140 ITD 41 (Mumbai)(dated 14/09/2012)] was confirmed by Hon'ble Bombay High Court vide judgment dated 20/07/2015 passed in IT Appeals Nos. 688 & 711 of 2013, dated July 20, 2015 [reported in (2016) 242 Taxman 159 (Bombay)].

7.7. We further note that identical view has been taken by the Tribunal while deciding appeals in the case of the Assessee pertaining to subsequent assessment years, the Learned Authorised Representative for the Appellant has placed on record:

- Assessment Year 2009-10
  Order, dated 26/12/2014, passed in ITA No.1563 & 1616/Mum/2013

- Assessment Year 2010-11 & 2011-12
  Order, dated 14/01/2015, passed in ITA No.5251, 5252, 5529 & 5530/Mum/2013

- Assessment Year 2012-13
  Order, dated 22/11/2019, passed in ITA No.384 & 632/Mum/2015

- Assessment Year 2014-15 to Assessment Year 2018-19
  Common Order, dated 28/07/2023, passed in ITA No.1453, 1454, 1455, 1456 & 1457/Mum/2023

7.8. In view of the above, respectfully following the above decisions/judgments, we hold that there is not infirmity in the order of the CIT(A) holding that term 'surplus' should be

interpreted to the surplus of business as a whole, and therefore, surplus as per Shareholder's Account reduced by 'deficit' as per Policyholder Account should be taken as taxable surplus. Accordingly, we decline to interfere with the order passed by the CIT(A) on this issue. Ground No.1 to 5 raised by the Revenue are, therefore, dismissed.

Ground No.6

8. The Ground No.6 raised by the Revenue is as under:

> *"6. Whether on the facts and in the circumstance of the case and in law, the Ld. CIT(A) Was justified in holding that provisions of section 14A of the Act did not apply to Insurance business, even when the assessee has claimed exempted income u/s 10 of the IT and has also itself made some disallowance u/s 14A of the Act in the return?"*

8.1. The relevant facts in brief are that in the return of income, the Assessee did not offer any disallowance under Section 14A of the Act since the Assessee was of the view that the provisions of Section 14A of the Act would not be applicable to a company carrying on business of life insurance. While framing the assessment, the Assessing Officer rejected the aforesaid contention of the Assessee and proceeded to make disallowance under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962, observing that the Assessee had itself claimed exemption in respect of dividend income.

8.2. In appeal, the CIT(A) accepted the contention of the Assessee and deleted the addition/disallowance made under Section 14A of the Act holding that no disallowance under Section 14A can be made in computing total income of an Assessee engaged in business of insurance whose profits and gains from the insurance business are computed in accordance with provisions contained in Section 44 of the Act read with First Schedule by following the following judicial precedents:

- HDFC Standard Life Insurance Company Ltd. Vs. DOT (ITA No.2203/Mum/2012)(Mumbai)

- Bajaj Alliance General Insurance Co. Ltd. Vs. ACIT (130 TTJ 398) (Pune)

- Oriental Insurance Co. Ltd. Vs. ACIT (40 SOT 19) (Delhi)

- Order dated 14/09/2012, passed by the Tribunal in the case of the Assessee in ITA Nos. 6059, 6854-6856, 7213 & 7767/M/2010 for the Assessment Year 2005-06 to 2008-09, [reported in (2013) 140 ITD 41 (Mumbai)] confirmed by Hon'ble Bombay High Court vide judgment dated 20/07/2015 passed in IT Appeals Nos.688 & 711 of 2013, dated July 20, 2015 [reported in (2016) 242 Taxman 159 (Bombay)]

8.3. The Revenue is now in appeal before the Tribunal challenging the above relief granted by the CIT(A).

8.4. Having considered the rival submission and on perused of the record, we are of the view that the order passed by the CIT(A) deleting the disallowance made under Section 14A of the Act was in line with the above judicial precedents on which reliance was placed by the CIT(A).

8.5. We note that in the case of Oriental Insurance Co. Ltd. Vs. ACIT (40 SOT 19) (Delhi), the Tribunal has, following the decision on the Hon'ble Delhi High Court, has held as under:

> *"17. We have heard rival submissions of the parties and have gone through the material available on record. Identical issue arose in assessee's own case for assessment year 1985-86. The Tribunal accepted the plea of the assessee and in fact the issue went up to the Hon'ble Delhi High Court in assessment years 1986-87 to 1988-89, which is Oriental Insurance Co. Ltd.'s case (supra), decided the issue in favour of the assessee by holding that section 44 of the Act is a special provision dealing with the computation of profits and gains of business of insurance. It being a non obstante provision, has to prevail over other provisions in the Act. It clearly provides that income from insurance business has to be computed in accordance with the rules contained in the First Schedule. It is not the case of the revenue that the assessee has not computed the profits and gains of its insurance business in accordance with the said rules. Reliance was placed on the scope of section 44, as held in the case of General Insurance Corpn. of*

India v. CIT [1999] 240 ITR 139[1] (SC), wherein their Lordships of the Apex Court have categorically held that the provision of section 44 being a special provision, governs computation of taxable income earned from business of insurance. It mandates the tax authorities to compute the taxable income in respect of insurance business in accordance with the provisions of the First Schedule to the Act. In the light of these, their Lordships of Delhi High Court have held that no question of law, much less a substantial question of law survives for their consideration. In other words, order of the Tribunal has been affirmed. Following the same reasoning, addition made by the Assessing Officer is deleted.

18. The next common dispute relates to the order of the CIT(A) in sustaining the action of Assessing Officer in making (sic) allowing only 50 per cent of the management expenses by invoking the provisions of section 14A of the Act. The addition is made by the Assessing Officer on the plea that the provision of section 14A was inserted by Finance Act, 2001 with effect from 1-4-1962. It is stated that the investments made by the assessee are both taxable as well as tax-free. An estimated disallowance of 50 per cent out of the management - expenses incurred and as claimed in the profit and loss account is treated as is expenses incurred in connection with the looking after tax-free investment.

19. The learned counsel for the assessee vehemently argued that the income of the assessee is to be computed under section 44 read with rule 5 of Schedule I of the Income-tax Act. Section 44 is a non obstante clause and applies notwithstanding anything to the contrary contained within the provisions of the Income-tax Act relating to computation of income chargeable under different heads, other than the income to be computed under the head "Profits and gains of business or profession". For computation of profits and gains of business or profession the mandate to the Assessing Officer is to compute the said income in accordance with the provisions of sections 28 to 43B of the Act. In the case of the computation of profits and gain of any business of insurance, the same shall be done in accordance with the rules prescribed in First Schedule of the Act, meaning thereby sections 28 to 43B shall not apply. No other provision pertaining to computation of income will become relevant. According to the learned counsel, two presumptions that follow on a combined reading of sections 14, 14A and 44 and rule 5 of the First Schedule are :

(a) That no head-wise bifurcation is called for. The income, inter alia, of the business of insurance is essentially to be at the amount of the balance of profits disclosed by the annual accounts as furnished to the Controller of Insurance under the Insurance Act, 1938. The said balance of profits is subject only to adjustments thereunder. The adjustments do not refer to disallowance under s. 14A of the Act.

(b) Profits and gains of business as referred to in

(a) above have only to be computed in accordance with rule 5 of the First Schedule.

20. Section 44 creates a specific exception to the applicability of sections 28 to 43B. Therefore, the purpose, object and purview of section 14A has no applicability to the profits and gains of an insurance business.

21. The learned Departmental Representative strongly justified the action Of the Assessing Officer and that of the CIT(A) in the light of the clear provisions of section 44A of the Act.

22. We have considered the rival contentions and gone through the records. The provisions of section 44 read as under :

> *"44. Insurance business.—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 co-operative society, shall be computed in accordance with the rules contained in the First Schedule."*

23. The above provision makes it very clear that section 44, applies notwithstanding anything to the contrary contained within the provisions of the Income-tax Act relating to computation of income chargeable under different heads. We agree with the learned counsel that there is no requirement of head-wise bifurcation called for while computing the income under section 44 of the Act in the case of an insurance company. The income of the business of insurance is essentially to be at the amount of the balance of profits disclosed by the annual accounts as furnished to the Controller of Insurance. The actual computation of profits and gains of insurance business will have to be computed in accordance with rule 5 of the First Schedule. In the light of these special provisions coupled with non obstante clause the Assessing Officer is not permitted to travel beyond these provisions."

24. Section 14A contemplates an exception for deductions as allowable under the Act are those contained under sections 28 to 43B of the Act. Section 44 creates special application of these provisions in the cases of insurance companies. We therefore, agree with the assessee and delete the disallowance made by the Assessing Officer which is based on the application of section 14A of the Act as according to us, it is not permissible to the Assessing Officer to travel beyond s. 44 and First Schedule of the Income-tax Act." (Emphasis Supplied)

8.6. The Mumbai Bench of the Tribunal has, vide order dated 28/07/2013 passed in ITA Nos.1453, 1454, 1455, 1456 & 1457/M/2023, in Assessee's own case for the Assessment Year 2014-15, 2015-16, 2016-17, 2017-18 & 2018-19 has decided this issue in favour of the Assessee against the Revenue by, inter alia, placing reliance on the above decision of the Tribunal.

8.7. Respectfully following the above decisions/judgments we hold that the CIT(A) had rightly deleted the disallowance made under Section 14A of the Act and therefore, order passed by the CIT(A) on this issue does not call for interference. Ground No.6 raised by the Revenue is, therefore, dismissed.

Ground No.7

9. The Ground No.7 raised by the Revenue is as under:

> *"7. Whether on the facts and in the circumstance of the case and in law, the Ld. CIT(A) is correct in falling to appreciate that negative reserve has an impact of reducing the taxable surplus' as per Form-l and therefore corresponding adjustment for "negative reserve" need to be made to arrive at "taxable surplus?"*

9.1. While framing the assessment, the Learned Assessing Officer added the 'Negative Reserve' amounting to INR.877,26,91,000/- to the business income of the Assessee holding that the same had the impact of reducing the taxable surplus. However, in appeal the CIT(A) deleted the addition by following the Judgment, dated 20/07/2015 , passed by the Hon'ble Bombay High Court in IT Appeals Nos. 688 & 711 of 2013 [reported in (2016) 242 Taxman 159 (Bombay)] whereby the decision of the Tribunal in the case of the Assessee for the Assessment Year 2006-2007 and 2007-2008 [reported in (2013) 140 ITD 41 (Mumbai)(dated 14/09/2012)] was confirmed. Therefore, the Revenue is in appeal before the Tribunal on this issue.

9.2. After hearing both the sides on this issue and on perusal of record we find that this is a recurring issue which has been consistently decided in favour of the Assessee and against the Revenue by the Tribunal in the case of the Assessee for the preceding assessment years. On perusal of the order passed by the CIT(A) we find that the CIT(A) has granted relief by following the binding judgment of the Hon'ble Bombay High Court in the case of the Assessee [reported in (2016) 242 Taxman 159 (Bombay)]. On perusal of the aforesaid judgment we find that the Revenue has raised following question of law on the issue under consideration:

> *"(6) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in failing to appreciate that negative reserve has an impact of reducing the 'taxable surplus' as per Form-I and therefore corresponding adjustment for "negative reserve" need to be made to arrive at "taxable surplus"?*

9.3. Declining to admit the above question of law raised by the Revenue in appeal pertaining to Assessment Year 2006-07 and 2007-08, the Hon'ble Bombay High Court held as under:

> *"**4.** So far as Question No. 6 is concerned, the grievance of the revenue is that the Tribunal after having taken total surplus as arrived by Actuarial valuation ought to have reduced negative reserve amount of Rs. 27.27 crores while determining respondent-assessee's income under Section 44 of the Act. The impugned order records that the mathematical reserves is a part of the Actuarial valuation and the surplus takes into account the mathematical reserve also. Besides the impugned order follows the decision of the Apex Court in LIC of India v. CIT [1964] 51 ITR 773, wherein the Apex Court has held that the Assessing Officer has no power to modify the account after Actuarial valuation is done. It is also pertinent to note that for the Assessment Year 2007-08, the Assessing Officer had raised an identical issue during the assessment proceedings and thereafter by the assessment order dated 30 December 2009 held that no adjustment of the Actuarial valuation is to be done by following the decision of the Apex Court in LIC of India's case (supra). Therefore we find no substantial question of law arising for our consideration. In view of the fact that the impugned order has merely followed the decision of the Apex Court, we see no substantial question of law for our consideration. Accordingly, Question No. 6 is not entertained."*

9.4. Further on perusal of the decision of the Tribunal in the case of

the Assessee for the Assessment Years 2014-15, 2015-16, 2016-17, 2017-18 & 2018-19 [ITA Nos.1453, 1454, 1455, 1456 & 1457/Mum/2023, decided by common order dated 28/07/2013], we find that the Tribunal had upheld the order of the CIT(A) deleting identical addition made by the Assessing Officer in respect of 'Negative Reserve' holding as under:

> *"21. AO after noticing that the assessee is having negative reserve of Rs.69,48,41,27,210/- including negative reserve of Rs.17,23,86,03,020/- on account of pension proceeded to hold that these negative reserves have an impact of reducing the taxable surplus as per form No.1 and thereby held that the increase in negative reserve during the year under consideration as on 31/3/2013 as adjusted for negative reserve on account of pension fund amounting to Rs.8,11,95,90,000/- is also taxable as income of the assessee from insurance business.*
>
> *22. The Ld. CIT(A) deleted the addition made by the AO by directing not to include the incremental negative reserve of Rs.8,11,95,90,000/- in the surplus to be taxed as profit and gains from the business of life insurance by following the order passed by Tribunal in assessee's own case for A.Y. 2005 – 06 to 2008 – 09.*
>
> *23. We have perused the order passed by co-ordinate bench of Tribunal (supra) on the identical issue the operative part of which is extracted for ready perusal as under:*
>
> > *"57. Ground No. 1 is on the issue of treating negative reserve and disallowing the amount. While completing the assessment of life insurance business the AO, after taking the total surplus from Form-I, reduced the negative reserve amounting to Rs.27.27 crores. Assessee submitted before the CIT(A) as under: -*
> >
> > *"Method of Determination of Mathematical Reserves*
> >
> > *(1) Mathematical Reserves shall be determined separately for each contract by a prospective method of valuation in accordance with sub-paras (2) to (4).*
> >
> > *(2) The valuation method shall take into account all prospective contingencies under which any*

premiums (by the policyholder) or benefits (to the policyholder/beneficiary) may be payable under the policy, as determined by the policy conditions. The level of benefits shall take into account the reasonable expectations of policyholders (with regard to bonuses, including terminal bonuses, if any) and any established practices of an insurer for payment of benefits.

(3) The valuation method shall take into account the cost of any options that may be available to the policyholder under the terms of the contract.

(4) The determination of the amount of liability under each policy shall be based on prudent assumptions of all relevant parameters. The value of each such parameter shall be based on the insurer's expected experience and shall include an appropriate margin for adverse deviations (hereinafter referred to as MAD) that may result in an increase in the amount of mathematical reserves.

(5) (i) The amount of mathematical reserve in respect of a policy, determined in accordance with sub-para (4), may be negative (called "negative reserves") or less than the guaranteed surrender value available (called "guaranteed surrender value deficiency reserves") at the valuation date.

(ii) The appointed actuary shall, for the purpose of section 35 of the Act, use the amount of such mathematical reserves without any modification.

(iii) The appointed actuary shall, for the purpose of sections 13, 49, 64V and 64VA of the Act, set the amount of such mathematical reserve to zero, in case of such negative reserve, or to the guaranteed surrender value, in case of such guaranteed surrender value deficiency reserves, as the case may be.

(6) The valuation method shall be called "Gross Premium Method".

(7) If in the opinion of the appointed actuary, a method of valuation other than the Gross Premium Method of valuation is to be adopted, then, other approximations (e.g. retrospective method) may be used. Provided that the amount of calculated reserve is expected to be atleast equal to the amount that shall be produced by the application of Gross Premium Method.

(8) The method of calculation of the amount of liabilities and the assumptions for the valuation parameters shall not be subject to arbitrary discontinuities for one year to the next.

(9) The determination of the amount of mathematical reserves shall take into account the nature and term of the assets representing those liabilities and the value placed upon them and shall include prudent provision against the effects of possible future changes in the value of assets on the ability to the insurer to meet its obligations arising under policies as they arise.

Mandate to Appointed Actuary under regulations

Sub-Rule 4 mandates Appointed Actuary to have prudent assumption of all relevant parameters and to include an appropriate margin for adverse deviations that may result in an increase in the amount of mathematical reserves.

Sub-Rule 5 defines such margin as "Negative Reserve", which is being disclosed in column 6 of the Form 1.

Further, clause (iii) to Sub-Rule 5 mandates appointed actuary to provide for negative reserve in mathematical reserve, accordingly not to include in distributable surplus as per Section 49 of the Insurance Act, 1938.

Clause (ii) to Sub-Rule 5 mandates appointed actuary to include negative reserve in mathematics reserve only at the time of Amalgamation and transfer of insurance business and otherwise.

Taxable surplus

Since taxation of Life Insurance Business is on surplus disclosed as per Section 49 which is covered by Rule 2(5)(iii), where in appointed actuary is mandated to arrive at surplus after excluding negative reserve.

In view of the above we humbly submit before your goodself to kindly not treat negative reserve as taxable. Sub-Rule 4 mandates Appointed Actuary to have prudent assumption of all relevant parameters and to include an appropriate margin for adverse deviations that may result in an increase in the

amount of mathematical reserves."

58. The CIT(A), in his brief order vide para 17, considered the detailed explanation above and accepted that the negative reserve disclosed in Form-I does not give rise to distributable surplus. Accordingly he disallowed the same.

59. After considering the rival submissions and examining the method of accounting and the mandate given by regulations to appoint Actuarial on the concept of mathematical reserves, we do not see any reason to interfere with the order of the CIT(A). The mathematical reserve is part of Actuarial valuation and the surplus as discussed in Form-I under Regulation 4 takes into consideration this mathematical reserve also. Therefore the order of the CIT(A) is approve. Moreover the Assessing Officer has no power to modify the amount after actuarial valuation was done, which was the basis for assessment under Rule 2 of 1st Schedule r.w.s. 44 of the I.T. Act. The principles laid down by the Hon'ble Supreme Court in LIC vs. CIT 512 ITR 773 about the powers of Assessing Officer also restricts the scope and adjustments by the AO. In view of this we uphold the order of the CIT(A) and dismiss the Revenue ground."

24. So following the order passed by Tribunal Ld. CIT(A) has legally and validly deleted the amount which is in consistence with the accounting principles followed by the assessee and the provisions contained under section 44 read with rule 2 of first schedule.

25. So we find no reason to interfere into the findings returned by Ld. CIT(A) hence ground No.10 raised by the Revenue is hereby dismissed." (Emphasis Supplied)

9.5. There is no change in the facts and circumstances of the case. We find no reason to depart from the above view taken by the Tribunal. Accordingly, we decline to interfere with the order passed by the CIT(A) on this issue. Therefore, Ground No. 7 raised by the Revenue is dismissed.

Ground No.8

10. The Ground No.8 raised by the Revenue is as under:

8. Whether on the facts and in the circumstance of the case and in law, the Ld. CIT(A) is correct in deleting the addition made on account of claim of 100% depreciation ignoring the facts that Actuarial surplus is determined on the basis of the total assets of the company and therefore by not capitalizing the above assets, the assets of the assessee company are under- stated in the books and thereby it has an impact of reducing the surplus or increase in the deficit and therefore, the assets so written off are also accordingly required to be considered as part of the surplus and taxable u/s 44 of the 1.T. Act?

10.1. The Assessing Officer had made an addition of INR.7,37,363/- holding that the same were assets charged to Profit and Loss Account.

10.2. In appeal before CIT(A) it was submitted that the Assessee had purchased assets costing less than INR.5,000/- during the relevant previous year and the same were written off and thus, the aggregate cost of INR.7,37,636/- was debited to the Profit and Loss Account in the books of accounts and no tax Depreciation has been claimed under Section 32 of the Act. The Assessee had been consistently following this accounting policy over the year, and IRDA had accepted the audited accounts of the Assessee. In the preceding assessment years also the approach adopted by the Assessee has been held by the Tribunal to be consistent with the accounting principles and the provision contained in Section 44 of the Act and Rule 2 of the First Schedule. Following the decision of the Tribunal in the case of the Assessee for the Assessment Years 2005-2006 to 2008-2009 Reported in [2013 140 ITD 41] the CIT(A) accepted the aforesaid contention of the Assessee and deleted the addition/disallowance made by the Assessing Officer.

10.3. Now the Revenue is in appeal before the Tribunal on this issue.

10.4. Having heard both the sides on this issue, we find that this is a recurring issue which has been decided in favour of the Assessee in appeals pertaining to the Assessment Years 2014-15 to 2018-19. The relevant extract of the common order, dated 28/07/2013,

passed by the Tribunal in ITA Nos.1453, 1454, 1455, 1456 & 1457/Mum/2023 pertaining to Assessment Year 2014-15, 2015-16, 2016-17, 2017-18 & 2018-19, respectively, reads as under:

> *"17. The AO made addition on account of 100% claim of depreciation of the assessee on the ground that actuarial surplus is determined on the basis of total assets after company and therefore by not capitalising the aforesaid assets, the assets of the assessee company are understated in the books of account and thereby it has an impact of reducing the surplus or increase in the deficit. So the AO has considered the assets so written off by the assessee as part of the surplus and taxed accordingly under section 44 of the Act.*
>
> *18. However, the Ld. CIT(A) deleted the addition by following the order passed by co-ordinate bench of Tribunal in assessee's own case for A.Y. 2005 – 06 to 2008 – 09 (supra). The Revenue has challenged the order passed by Ld. CIT(A) on the only ground that the revenue has not accepted the order passed by the Tribunal having already been challenged before the Honourable High Court. For the sake of repetition it is reiterated that this is nothing but breach of judicial protocol as the order passed by final fact finding authority, the Tribunal in this case cannot be thrown into the dustbin merely on the basis of non sustainable ground.*
>
> *19. We have perused the order passed by co-ordinate bench of Tribunal which is on identical issue having been decided in favour of the assessee by returning following findings:*
>
> > *"60. Ground No.2 is about deletion of addition made on account of claim of 100% depreciation of Rs.15,79,707/-. It was the contention of the Revenue that the CIT(A) ignored the actuarial surplus determined on the basis of the total assets if the company and therefore not capitalized in the above assets. The assets of assessee to that extent are not stated, therefore, it has an impact of reducing the total surplus.*
> >
> > *61. Before the CIT(A) it was submitted that the assessee prepared its accounts as per the format prescribed by the IRDA in tune with the Insurance Act 1938. The assets were originally capitalized in the books and being eligible for 100% depreciation they are written off. The CIT(A), after considering the submissions,*

accepted the contention as under: -

> *"19. The appellant has to prepare its accounts as per the formats prescribed by the IRDA under the Insurance Act, 1938. These accounts have accordingly been prepared by the appellant and have been subject to statutory audit. Further, the accounting policy of claiming 100% depreciation in its financial statements has been consistently followed by the appellant and has also been duly accepted by the IRDA. The appellant has stated that the assets on which depreciation has been claimed have been initially capitalized in the books and then 100% depreciation has been claimed on these assets. Taxation of Life Insurance is presumptive taxation with only the surplus as disclosed by Form I being subjected to tax. In my view, as per the provisions of law only those adjustments which are expressly not prohibited under section 44 of the Act could be made. Consequently depreciation which has been debited in the audited accounts as per the consistently followed and accepted accounting policy need not be disallowed."*

62. *After considering the rival submissions, we are of the opinion that the action of the CIT(A) in deleting the amount is consistent with the accounting principles followed and the provisions of section 44 read with Rule 2 of the 1st Schedule. Therefore we uphold the order of the CIT(A) and dismiss the ground raised by the Revenue."*

20. *So in view of what has been discussed above we are of the considered view that when the assessee has not claimed any depreciation under section 32 of the Act on the ground that said section is not applicable for computation of income from Life Insurance business which has its own scheme, the depreciation so charged is not required to be added to the surplus as such an adjustment is barred under section 44 of the Act. So in view of the findings returned by co-ordinate bench of Tribunal on this issue we find no illegality or perversity in the impugned findings. So ground No.9 is determined against the Revenue."*

10.5. Respectfully following the above decision of the Tribunal, we declined to interfere with the order passed by the CIT(A) on this issue. Therefore, Grounds No. 8 raised by the Revenue is

dismissed.

Ground No.9 & 10

11. Next we will take up Ground No. 9 & 10 raised by the Revenue which read as under:

> *"9. Whether on the facts and in the circumstance of the case and in law, the Ld. CIT(A) incorrect in allowing relief to the assessee by holding that surplus available in Share Holders Account is not to be taxed separately as "income from other sources" and at the normal corporate rate and holding that surplus from Share Holders Account with the surplus available in Policy Holders Account and then and taxing this 'net surplus' arrived at, at the rates specified u/s.115B?."*
>
> *"10. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in ignoring the fact that 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?"*

11.1. The Assessing Officer computed income of the Assessee by treating income in Shareholder's Account as "Income from other sources" taxable at normal corporate tax rate as opposed to income from Life Insurance Business taxable under the head "Profits and gains of business or profession" at the rate of 12.5% in terms of Section 115B of the Act.

11.2. Before the CIT(A), it was contended on behalf of the Appellant that as per the certificate of registration issued by IRDA under Section 3(2A) of the Insurance Act, 1938 the Assessee holds license to carry out Life Insurance Business only. All the activities carried out by the Assessee are for the furtherance of Life Insurance Business including maintaining adequate capital in compliance with the IRDA (Assets, Liabilities, and Solvency Margin of Insurers) Regulations, 2000. Only on account of the regulatory requirements two accounts, namely Policyholders' Account and Shareholders' Account, are shown separately. The life insurance

business has a long gestation industry. It normally takes between 8 to 10 years for a company in life insurance business to start making profit. The companies generally incur losses in the initial years due to new business strain caused by upfront commission, recruitment and training of agents and establishment costs. Hence, in the initial years, when the Policyholder's Account (Technical Account) has a deficit, the Shareholders transfer funds to the Policyholder's Account to meet the deficit in Policyholder's Account. Income earned on capital so infused in the business is also an integral part of Life Insurance Business. Hence, the income in Shareholder's Account should be assessed as income from Life Insurance Business taxable under the head 'Profits and Gains of Business' taxable at the rate of 12.5% prescribed in Section 115B of the Act and not as 'Income from other sources'. In support of the above submission, reliance was placed by the Assessee on the non-obstante nature clause contained in Section 44 of the Act. The aforesaid submissions found favour with the CIT(A) who accepted the contention of the Appellant and directed the Assessing Officer to compute the income of the Assessee by treating income in Shareholder's Account as income from Life Insurance Business taxable under the head 'Profits and Gains of Business or Profession" taxable at the rate of 12.5 % prescribed in Section 115B of the Act.

11.3. Being aggrieved by the above relief granted by the CIT(A), the Revenue has carried the issue in appeal before the Tribunal.

11.4. We have considered the rival submissions and perused the material on record. We note that the CIT(A) had granted relief to the Assessee by following decision of the Tribunal in Assessee's own case for the Assessment Years 2005-2006 to 2008-2009 Reported in [2013 140 ITD 41]. We find that this is recurring issue which has also been decided in favour of the Assessee in the

Assessment Years 2014-15, to 2018-19. The relevant extract of the common order, dated 28/07/2013, passed by the Tribunal in ITA Nos.1453, 1454, 1455, 1456 & 1457/Mum/2023 pertaining to Assessment Year 2014-15, 2015-16, 2016-17, 2017-18 & 2018-19, respectively, reads as under:

> *"14. The Revenue has challenged the relief given by the Ld. CIT(A) to the assessee by holding that surplus available in shareholders account is not to be taxed separately as income from other sources at the normal corporate rate by observing that the surplus from shareholders account was only part of the income from insurance business arrived at after combining surplus available in shareholders account with the surplus available in policy holders account and then taxing the net surplus arrived at the rate specified under section 115B of the Act. The Ld. CIT(A) returned these findings after following the order passed by the Tribunal in assessee's own case for A.Y. 2005 – 06 to 2008-09.*
>
> *15. We have perused the findings returned by the Tribunal in assessee's own case from para 46 to 57 of the order available at page 1 to 112 of the paper book which is on the identical issue. The Revenue has challenged the findings on the only ground that appeal before The Honourable Bombay High Court against these findings is pending consideration. Operative part of the finding is as under:*
>
> > *"54. Ground no 4 and 7 is on the issue of treating incomes in shareholders account as income from other sources. This issue arises for the first time in this year. The assessing officer was of the view that policy holders account represent life insurance business to be taxed u/s 44 where as shareholders account is separate investment account of assessee and incomes are to be taxed under the head 'income from other sources'. An amount of Rs.27,33,67,000, adjusted by assessee in deficit in policy holders account, was brought to tax separately, while considering the Total surplus in Life insurance business. The CIT(A) upheld the same stating that income of Life insurance activity is to be computed as per Form I and since there is income from other activities not included in Form I, same should be subjected to tax as income from other sources.*

55. We have heard the rival contentions. As briefly discussed while deciding the issue of taxing surplus, assessee is in life Insurance business and it is not permitted to do any other business. All activities carried out by assessee are for furtherance of Life Insurance business. Maintaining adequate capital is necessary to comply with IRDA (Assets, Liabilities and Solvency margin of insurers)Regulations,2000. Income earned on capital infused in business is integral part of Life Insurance business. The LD. CIT(A) gives a finding that assessee is exclusively in Life Insurance business. However, since he gave primacy to Form I proforma he concluded that other incomes are not of Life Insurance business. We have already considered and decided that assessee was mandated to maintain separate accounts by IRDA Regulations. Just because separate accounts are maintained the incomes in Shareholder's account does not become separate from Life insurance business. As per Insurance Act 1938 all incomes are part of one business only and these incomes are considered as part of same business. Therefore, the incomes in Shareholder's account are to be considered as arising out of Life insurance business only. More over Sec 44 mandates that only First Schedule will apply for computing incomes and excludes other heads of income like, Interest on Securities, income from house property, Capital gains or Income from other sources. Being non-obstante clause, sec. 44 mandates that the profits and gains of insurance business shall be computed in accordance with the rules contained in First Schedule. Therefore, the incomes in Shareholder's account are to be taxed as part of life insurance business only, as they are part of same business and investments are made as part of solvency ratio of same business. The grounds are allowed. AO is directed to treat them as part of Life Insurance Business and tax them u/s 115B."

16. So following the findings returned by co-ordinate bench of the Tribunal in assessee's own case we are of the considered view that the income in shareholders account is required to be taxed as income from Life Insurance business only as

they are part of the same business and investments are made as part of the solvency ratio of same business. Moreover as per section 44 only first schedule will apply for computing the income and excludes other heads of income like insurance, interest on security, income from house property, capital gain of income from other sources. So section 44 being a non obstante class provides that profits and gains of insurance business shall be computed in accordance with the rules contained in the first schedule. So finding no illegality or infirmity in the impugned findings returned by the Ld. CIT(A) challenged by the revenue, ground no.8 is determined against the Revenue." (Emphasis Supplied)

11.5. It is admitted position that during the relevant previous year there was no change in the facts and circumstances. Further, the Revenue has failed to bring on record any material or submission to persuade us to take a view different from the view taken by the Tribunal in the case of the Assessee for the Assessment Years 2005-2006 to 2008-2009 and Assessment Years 2014-2015 to 2018-2019. We further note that vide judgment, dated 20/07/2015, passed by the Hon'ble Bombay High Court in IT Appeal Nos. 688 & 711 of 2013, the decision of the Tribunal for the Assessment Years 2006-2007 and 2007-2008 on this issue has been confirmed. Accordingly, in view of the aforesaid, we declined to interfere with the order passed by the CIT(A), and dismiss Grounds No.9 and 10 raised by the Revenue.

12. **ITA No. 3003/Mum/2024 (Assessment Year 2021-2022)**

12.1. Now we will take appeal for the Assessment Years 2021-22, preferred by the Revenue against the order, dated 01/03/2024, passed by the CIT(A) for the Assessment Year 2021-2022, whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 27/12/2022, passed Under Section 143(3) read with Section 144B of the Act.

12.2. For the Assessment Year 2021-2021 the Assessee filed return of

income on 01/02/2022 declaring total income of INR.1806,98,69,000/-. The case of the Assessee was selected for regular scrutiny. The Assessing Officer completed the assessment, vide Assessment Order, dated 27/12/2022, passed under Section 143(3) read with Section 144B of the Act assessing the total income of Assessee at INR.2376,34,87,120/- computing the same as under:

	Particulars	Amount (INR)	Amount (INR)
	Income as per Rule 2 of Schedule 1 of the Act	211,64,27,000	
Less:	Exemption of pension business u/s 10(23AAB)	243,90,44,000	
Less:	Exemption for interest on tax free bonds u/s.10(15)	17,33,89,000	
Add:	Negative Reserve	1713,84,32,120	
A.	Total income under the head Income from Business and Profession		1664,24,26,120
B.	Income from other sources		-
C.	Surplus in shareholders account		712,10,61,000
	Total Assessed Income (Rounded off)		2376,34,87,120

12.3. Being aggrieved, the Assessee preferred the appeal before the CIT(A) which was disposed off as partly allowed vide order, dated 01/03/2024.

12.4. Being aggrieved by the relief granted by the CIT(A), the Revenue has preferred the present appeal before the Tribunal.

12.5. During the course of hearing both the sides agreed that the finding/adjudication in relation to appeal for the Assessment Year 2020-21 above shall apply mutatis mutandis to corresponding grounds/issues raised in the aforesaid appeal. Ground No. 1, 2, 3, 4, 5, 7, 9 and 10 raised in the present appeal are identical to Ground No. 1, 2, 3, 4, 5, 7, 9 and 10 raised in the appeal for the

Assessment Year 2020-21. Therefore, adopting the reasoning given while disposing off the corresponding grounds raised in appeal for the Assessment Year 2020-21, Ground Nos. 1, 2, 3, 4, 5, 7, 9 and 10 raised in the present appeal are dismissed. We note that Ground No.6 and Ground No.8 raised by the Revenue do not arise from the order passed by the CIT(A) and therefore, the same are dismissed as being misconceived.

13. Accordingly, both the appeals preferred by the Revenue are dismissed.

Order pronounced on 04.12.2024.

Sd/-	***Sd/-***
(Amarjit Singh)	**(Rahul Chaudhary)**
Accountant Member	**Judicial Member**

मुंबई Mumbai; दिनांक Dated 04.12.2024
Milan, LDC

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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