

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

**BEFORE MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**AND**

**SHRI OMKARESHWAR CHIDARA (ACCOUNTANT MEMBER)**

**ITA No. 3840/MUM/2024  
Assessment Year: 2021-22**

DCIT Circle 5(3),  
426, 4<sup>th</sup> Floor, Kautilya Bhawan,  
BKC, Mumbai - 400051

**Vs.**

Kotak Mahindra Life Insurance  
Co. Ltd.  
8<sup>th</sup> Floor, 12 BKC Bandra Kurla  
Complex, G- Block,  
Mumbai – 400051  
Maharashtra  
**PAN NO. AAACI 7904G**  
**Respondent**

**Appellant**

Assessee by : Shri Madhur Agrawal a/w. Shri  
Chetan Kakka  
Revenue by : Biswanath Das-CIT DR

Date of Hearing : 13/11/2024  
Date of pronouncement : 01/01/2025

**ORDER**

**PER OMKARESHWAR CHIDARA, AM**

This appeal by the Revenue is directed against order dated 28.05.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – 54 [in short ‘the Ld. CIT(A)’] for assessment year 2021-22.



2. The revenue filed an appeal in the above said appeal raising following grounds of appeal:

1. *"Whether on the facts & circumstances of the case and in law, the Ld. THE LD. CIT(A)(A) erred in interpreting the provisions of Section 44 of the Income Tax, 1961 [“the Act”] read with Rule 2 of the First Schedule along with provisions of Insurance Act, 1938, Insurance Regulatory and Development Authority Act, 1999 and regulations made there under and accordingly allowing adjustment from the ‘surplus’ worked out as per actuarial valuation.?”*

2. *"Whether on the facts and in the circumstances of the case and in law, the Ld THE LD. CIT(A)(A) erred 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”?*

3. *”Whether on the facts and in the circumstances of the case and in law, the Ld. THE LD. CIT(A)(A) 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”?*

3. The Learned DR relied on the orders of the Learned AO and mentioned that these issues were covered in favour of the Assessee in earlier years. But, the Revenue filed appeals in Bombay High Court which are pending.

4. Per contra during the course of hearing before the Bench, Learned AR of the Appellant Company has mentioned that all the three grounds of appeal were covered in its favour by the earlier orders of Hon’ble Tribunal of Bombay. Hon’ble ITAT of Bombay has relied upon the decision of the Hon’ble Supreme Court while giving relief to the Appellant company. In view of the same, the Learned AR of the Appellant has pleaded that the Revenues appeal may be



dismissed. During the course of hearing, the Learned AR of the appellant also submitted that the same issues were raised by the Revenue and from Assessment Year 2007-08 onwards, these issues were continuously held in favour of the Appellant Company. Accordingly, the Learned AR of the Appellant filed copies of the ITAT orders in its own case, from 2007-08 onwards till 2020-21, the latest being the order of ITAT for the Assessment Year 2020-21 ITA No.2352/Mum/2024.

5. Heard both the sides and perused the orders of the ITAT in the Appellant's own case in earlier years. From the order of ITAT, Mumbai, 2020-21 ITA No.2352/Mum/2024, it is observed that all the 3 grounds raised by the Revenue were adjudicated in favour of Assessee. Ground no. 1 & 2 pertain to interpretation/applicability of Section 44 of Act r.w. Rule 2 of first schedule and as mentioned above, the issues are covered. The operative portion of ITAT order at para 7 A.Y. 2020-21 ITA No. 2352/Mum/2024 is reproduced below:

*"2. At the very outset, the Ld. Counsel for the assessee pointed out that the issue involved in the present appeal is squarely covered by the decision of the Tribunal in favour of the assessee in the case of ICICI Prudential Insurance Co. Ltd. Vs. ACIT in ITA Nos. 6854 to 6856 & 6059/Mum/2010. The Ld. Counsel for the assessee submitted the copy of the order of the Tribunal.*

*3. Per contra, the Ld. Departmental Representative submitted the copy of the Tribunal in assessee's own case in ITA No. 8165/M/04 and 397/M/07 and submitted that the issue has been decided against the assessee.*



4. We have carefully considered the rival submissions and perused the orders of the lower authorities and the orders of the Tribunal relied upon by the rival parties. We find that the reliance of the DR on the decision of the Tribunal in assessee's own case is misplaced inasmuch as during that period, the assessee has not started its insurance business. Therefore, provisions of Sec. 44 and in the first schedule would not be applicable in that year. However, for the year under consideration, we find that the assessee is in the insurance business therefore, the issue is squarely covered by the decision of the Tribunal in the case of ICICI Prudential Insurance Co. Ltd (supra). We find that the Tribunal has decided this issue at para-55 of its order which is as under:

"We have heard the rival contentions. As briefly discussed while deciding the issue of taxing surplus, assessee is in life Insurance business and it 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-1 pro-forma 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, incomes in Shareholder's account are to be considered as arising out of Life insurance business only. Moreover 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."*

5.1 Similarly, Ground no. 3 is also covered by the above cited order. The operative portion on this issue is mentioned at page 6 in assessee's own case is reproduced below :

*"7. The last ground of revenue's appeal assails deletion of addition on account of Negative reserve of Rs.399.05 crores by CIT (A). The AO added the same in taxable surplus on the premises that negative reserve means the insurance contract under consideration does not warrant any provision and in fact, is an asset. Relying upon Tribunal judgment, CIT (A) deleted the same. The Ld. AR has supported the stand of CIT (A) and drawn our attention to various Tribunal decision in the case of companies carrying on insurance business, which we have perused. We find that Tribunal in ITA No. 6854 & others / Mum/2010 order dated 14/09/2012 titled as ICICI Prudential Insurance Co. Ltd. Vs. ACIT has concluded that such negative reserves do not give rise to distributable surplus. Similar view has been expressed in bunch of appeals ITA No. 2203 & others titled as HDFC Standard LIC Ltd. vs. DCIT order dated 20/09/2013, copy of which has been placed before us. Respectfully following the settled position, we are inclined to dismiss this ground of revenue's appeal."*

5.2 Thus, all the 3 grounds raised by Revenue were covered against Revenue and in favour of Assessee company as mentioned above.



5.3 Respectfully following the decision of ITAT of earlier years and specifically the order for A.Y.2020-21, the appeal of the Revenue is dismissed.

6. The appeal of Revenue is dismissed.

**Order pronounced in the open Court on 01/01/2025.**

**Sd/-  
(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER**

**Sd/-  
(OMKARESHWAR CHIDARA)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 01/01/2025  
Milan, LDC

**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**