

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 5213/DEL/2024 [A.Y. 2017-18]

The Dy. C.I.T [OSD]
Range - 10
New Delhi

Vs. M/s Max Life Insurance Company Ltd
Plot No. 90A, Sector 18, Udyog Vihar
Gurgaon, Haryana

PAN - AACCM 3201 E

ITA No. 1562/DEL/2024 [A.Y. 2017-18]

M/s Max Life Insurance Company Ltd
Plot No. 90A, Sector 18, Udyog Vihar
Gurgaon, Haryana

Vs. The A.C.I.T[OSD]
Circle - 10(1)
New Delhi

PAN - AACCM 3201 E

(Applicant)

(Respondent)

Assessee By : Shri Prashant Meharchandani, Adv
Shri Jainender Katariya, Adv

Department By : Shri Sanjeev Kaushal, CIT-DR

Date of Hearing : 11.03.2025

Date of Pronouncement : 04.06.2025

ORDER

PER NAVEEN CHANDRA, A.M:-

The above captioned two cross appeals by the assessee and the Revenue are preferred against the order of the NFAC, Delhi dated 14.02.2023 for A.Y 2017-18.

ITA No. 1562/DEL/2024 [A.Y. 2017-18] Assessee's appeal

2. The grievances of the Assessee read as under:

"1. That on the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the disallowance of INR 10,03,97,000, made by the Ld. AO on account of Corporate Social Responsibility expenditure ('CSR'), without appreciating the facts that the provisions of section 37 of the Act do not apply to life Insurance Companies which are governed by the specific provisions prescribed under section 44 read with First schedule to the Act and the normal provisions of the Act are not applicable to the Appellant.

1.1 Without prejudice to Ground no. 1 above, the Hon'ble CIT(A)/Ld. AO erred in not allowing the deduction under section 80G of the Act during the previous relevant to the subject year.

2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not allowing exemption amounting to INR 4,09,87,171 allowable to the Appellant in accordance with provisions of the section 10(15)(iv)(h) of the Income Tax Act, 1961 on account of interest income earned by the Appellant from specified investments in the course of carrying on its business of life insurance business.

2.1. That on the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in interpreting the decision of Hon'ble Supreme Court in the case of Goetze India Ltd v CIT: [2006] 157 Taxman 1 and holding that the claim cannot be entertained at the appellate level if the same was not made in the original return of the income or before the AO.

2.2. That the Ld. CIT(A) erred in not following the decision of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd v CIT: [1998] 229 ITR 383 wherein it was held that assessee can raise a question of law before an appellate authority even though it was not raised earlier."

3. Ground No. 1 has not been pressed. The same is dismissed as not pressed.

4. Facts relating to deduction u/s 80G of the Act are that during the A.Y under consideration, the assessee has claimed expenses of Rs. 10,03,97,000/- on account of expenditure incurred on corporate social responsibility ('CSR') in Profit and Loss account/ Shareholders' account.

5. At the very outset, the ld. counsel for the assessee that even if such a disallowance were to be made, deduction u/s 80G of the Act is to be allowed. However, the ld. CIT(A) rejected the claim of the assessee on the ground that the assessee has not claimed the expenditure as donation u/s 80G of the Act and therefore, CSR cannot be directed to be treated as donation u/s 80G of the Act. The ld. counsel for the assessee contended that the issue is covered in favour of the assessee vide ITAT order in its own case in earlier years.

6. Per contra, the ld. DR fairly conceded to the same.

7. We have heard the rival submissions and have perused the relevant material on record. We find that the issue is squarely covered in favour of the assessee and against the Revenue by the order of the co-ordinate bench in various A.Ys. In A.Y 2006-07 ITA No. 5643/DEL/2010 order dated 22.04.2019, the co-ordinate bench has held as under:

“41. The 2nd additional ground is with respect to the claim of deduction u/s 80 G of the income tax act with respect to the donation disallowed in the hands of the assessee. As the donation expenditure has been disallowed in the hands of the assessee and added to the total income of the assessee naturally, the assessee is entitled to deduction under Chapter VI- A of the income tax act with respect to the donation u/s 80 G of the act. As the requisite details as required by that section has not been furnished before us we direct the assessee to furnish the relevant information before the assessing officer in accordance with the law to claim any deduction under section 80G of the income tax act along with all donation receipts and the 80G certificates issued by the Donee to the assessee within one month of this order. The learned assessing officer may verify the detail in accordance with the law and if found proper, may grant the deduction. Accordingly the 2nd additional ground of the appeal of the assessee is allowed with above direction.”

8. Respectfully following the same, we set aside the issue of deduction u/s 80G to the file of the AO for verification with same direction that as the requisite details as required by section 80G has not been furnished before us, the assessee shall furnish the relevant information before the AO to claim deduction under section 80G of the Income Tax Act along with all donation receipts and the 80G certificates issued by the Donee to the assessee within one month of this order. The Assessing Officer shall verify

the detail in accordance with the law and if found proper, may grant the deduction. We accordingly allow the ground 1.1 with the above direction.

9. Facts relating to Ground No. 2 are that during the year under consideration, the assessee earned a total interest of Rs. 4,09,87,171/- on the investments in Rural Electrification Corporation Limited, India Infrastructure Finance Company Limited, Indian Railway Finance Corporation Limited and Housing and Urban Development Corporation Limited. The Assessee claimed exemption for the interest amount u/s Section 10(15)(iv)(h) of the Act for the first time before the Ld. CIT(A). The interest certificate was furnished on record as Annexure-2.

10. The Ld. CIT(A) has rejected the claim of the assessee on the ground that the claim cannot be allowed at an appellate stage when such claim has not been made in the return of income.

11. We find that the facts and circumstances involved in this ground are mutatis mutandis identical to those dealt by ITAT in assessee's own case for A.Ys 2015-16 and 2016-17 wherein it has been held as under:

"12. Having heard the rival submission, we find that the Supreme Court in NTPC (supra) has held as follows:

"5. Under section 254 of the Income-tax Act, 1961, the Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is, thus, expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier."

13. *The Supreme Court permits the ITAT to entertain additional grounds u/s 254 of the IT Act for the first time with the only caveat that the relevant facts are on record in respect of that item. In the instant case the relevant facts of investment in PSU Bonds/debentures etc are available in the audited balance sheet and was before the assessing officer. Further, we find from*

*the recent decision of the Hon'ble Bombay High Court cited by the Id AR in the case of **Siva Equipment (P.) Ltd. v. ACIT** [2020] 423 ITR 20 (Bombay) which held that a taxpayer is entitled to raise not merely additional legal submissions before the appellate authorities but is also entitled to raise additional claims before the appellate authorities. In view of the above, we admit the additional ground raised.*

14. *We are of the considered view that the though the facts of the investments in PSU Bonds and debentures are available in the audited accounts, the assessing officer needs to examine the same with regard to the eligibility of assessee's claim considering the eligibility criteria laid down in section 10(15)(iv)(h). For this purpose, we find it fit to set aside this issue to the file of the assessing officer for examining the claim of the assessee. Where the claim made is as per the law, the same should be allowed. The additional ground is allowed for statistical purpose."*

12. Respectfully following the same, we set aside the issue of exemption u/s 10 (15)(iv)(h) of the Act to the file of the Assessing Officer with the above direction and to examine whether the instruments fall within the scope of Notification No. 61/2013[F.NO.178/37/2013-(ITA-I)J/SO 2424(E)] ("Notification"). Ground No. 2.1 and 2.2 are allowed for statistical purposes.

13. As a result, the appeal of the Assessee is partly allowed for statistical purposes.

ITA No. 5213/DEL/2024 [Revenue's appeal]

14. The grounds raised by the Revenue read as under:

1. On the facts and in the circumstances of the case and in law, Ld. CIT (A) has erred in directing the AO to compute the taxability of company engaged in the business of providing life insurance services is covered by specific provisions of providing life insurance services in holding that such expense relates to life insurance business only and section 44 of the IT Act 1961 was applicable with regard to such expenses and any other provision of the Act from section 28 to section 43B cannot be applied.

2. Ld. CIT(A) has erred both in law and facts by deleting the addition of Rs. 213,34,09,000/- being profit from sale of investment made by AO relied upon the Hon'ble Delhi ITAT decision in the case of ICICI Prudential Insurance Co. Ltd. and direct the Assessing Officer to take profit shown in shareholders profit and loss account as income derived from life insurance business.

3. Ld. CIT(A) has erred both in law and facts by deleting the addition of Rs. 92,91,66,000/- made by AO on account of amount appropriated towards Funds for Future Appropriation (FFA) and addition of Rs. 852,27,09,000/- made by AO on account of bonus allocated to policy holder respectively by treating FFA and bonus as charge on the profit while determining the profit and gains from the life insurance business.

3.1 Whether the Ld. CIT(A) is legally justified in allowing deduction of bonus allocated to policy holders and amount appropriated to funds for future appropriation out of taxable actuarial surplus in contravention to Rule 2 of First Schedule of Income Tax Act, 1961 (the Act) which does not stipulate such deduction?

3.2 Whether the Ld. CIT(A) is legally justified in allowing deduction of bonus allocated to policy holders and amount appropriated to funds for future appropriation out of taxable actuarial surplus because ascertainable liabilities are allowable as deduction in computing total income by ignoring that the provisions of Rules contained in the first schedule stipulate for taxation of actuarial surplus as determined by IRDA regulation and not under other provisions of the Act? 4 Whether the Ld. CIT(A) has erred both in law and facts by deleting the addition of Rs 7,14,54,500/- on account of expenditure incurred towards dividend income claimed as exempt u/s 10(34) of the Act?

5. The appellant craves leave to, add to, alter, amend or vary from the above grounds of appeal at or before the time of hearing.

15. Ground no 1 relates to the taxability of the assessee life insurance business and it being governed under specific provisions prescribed under Section 44 read with the First Schedule to the Act and that normal provisions from section 28 to 43B of the Act are not applicable on the assessee. We find that the issue is covered by the ITAT order in the assessee's own case for AY 2010-11 and AY 2015-16 & AY 2016-17. The ITAT in the AY 2010-11 held as under:

"68. We noted that Section 44 of the Act start with a non-obstante clause and overriding other provisions of the Act, provides for profits and gains from life insurance business to be computed in accordance with the rules contained in the First Schedule to the Act. As per rule 2 of the First Schedule to the Act, profits and gains of life insurance business has to 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 the last inter valuation period ending before the commencement of the

*assessment year, so as to exclude any surplus or deficit included therein, which was made in any earlier inter valuation period. According this rule as is applicable from A.Y.1977-78, the surplus or deficit between two inter valuation periods disclosed by the actuarial valuation made in accordance with Insurance Act, 1938, can only be taken as income or loss of the period. The old Rule 2 which was in existence prior to amendment made by Finance Act, 1976 contains two methods of determining profits and gains of the insurance business and greater of these two method was regarded to be the profit and gains of life insurance business. The first method prescribes calculation of net income = Gross external incomings of the previous year from that business less the management expenses of that year. Clause (2) of old rule 2 restricts the deduction of management expenses under old Rule (1). Old Rule 2 (2) refers to average surplus arrived at by adjusting the surplus disclosed in the actuarial valuation made with regard to the Insurance Act, 1938 in respect of inter valuation period. We noted by amendment made by Finance Act 1976 Sub Rule (1) of Rule 2 was omitted but sub rule (2) has been substituted by new Rule 2 in amended form, which does not require computation of profit and gains of the life insurance business on the basis of gross external income and deducting therefrom the management expenses. New Rule 2 prescribes the profits and gains of the life insurance business to be taken 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 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 intern valuation period. ******

75. We therefore respectfully following the decision of this Tribunal in the case of ICICI Prudential Insurance Co. Ltd. (supra), set aside the order of CIT(A) on this issue and direct the assessing officer to take profit shown in shareholders' profit and loss account i.e. Form A-PL to be part of the income derived from life insurance business. Thus these grounds are allowed.

Respectfully following the ITAT decision in AY 2010-11, the ground no 1 is dismissed.

16. Ground no 2 relating to Profit on sale of investments being treated as income from insurance business, we find that the same has been decided in favour of the assessee by the ITAT in its own case in AY 2006-07 to AY 2016-17. The ITAT in AY 2007-08 and 2009-10 held as under:

"8. Following the decision rendered by the coordinate Bench of the Tribunal for AY 2006-07 in assessee's own case (supra), we are of the considered view that investment made by the assessee are part and parcel of insurance business and the assessee has rightly treated the income from sale of investment as part of business of insurance. Moreover, in 2005-06, the Revenue itself has decided this issue in favour of the assessee by holding that profit and loss arising from the sale of investment is not chargeable to tax separately. In other words, it is beyond the purview of section 44 of the Act. Consequently, we are of the considered view that AO/CIT(A) have erred in making addition on account of income from sale of investment and as such are ordered to be deleted, thus grounds no.1 & 2 of AYs 2007-08, 2008-09 & 2009-10 are determined in favour of the assessee".

As no contrary decision has been cited by the ld DR we, following the above decision of ITAT, dismiss the ground no 2 of the Revenue.

17. Ground no 3 and its sub-grounds relates to the expenditure incurred on Bonus allocated to policy holders and on account of amount appropriated towards Funds for Future Appropriation (FFA) which must not be allowed as deduction while determining the actuarial surplus. The Ld CIT(A) deleted the addition relying on the Hon'ble ITAT's order for AY 2010-11 and his own order for A.Y. 2015-16 and AY 2016-17. We find that the

issue is covered in favour of the assessee by ITAT in the assessee's own case in AY 2010-11. For bonus, the ITAT decided the issue at paras 76-86 at pages 106- 115 of the ITAT order; for Funds for Future Appropriation (FFA) at paras 87-92 at pages 50-59 of order of ITAT; In AY 2014-15 at Paras 17-21 at pages 24-30 of the ITAT order and for AY 2015-16 & AY 2016-17 at Para 27 at page 14 of the ITAT order. Following the same we dismiss the ground no 3 and its sub-grounds.

18. Ground no 4 relates to deletion of the addition u/s 14A on account of expenditure, incurred towards dividend income claimed as exempt u/s 10(34) of the Act. The Ld. CIT(A) deleted the addition relying on Hon'ble ITAT's order for AY 2010-11 and AY 2014-15. We find that that the issue is covered in favour of the assessee by ITAT in the assessee's own case in AY 2006-07 at Paras 39-40 at pages 37-39 of the order; in AY 2007-08 to 2009-10 at Para 13 at pages 15-16 of the order; in AY 2010-11-Paras 97-98 at page 67 of the order which was upheld by Hon'ble High Court of Delhi in ITA 870/2018 at para 10 of High Court order; in AY 2012-13 and 2013-14-Para 10 at page 6 of the order and in AY 2014-15 at Paras 30-34 at pages 33-34 of the order. Following the same we dismiss the ground no 4.

19. As a result, the appeal of the Revenue is dismissed.

20. In the result, the appeal of the assessee in ITA No. 1562/DEL/2024 are partly allowed for statistical purposes and the appeal of the Revenue in ITA No. 5213/DEL/2024 is dismissed.

The order is pronounced in the open court on 04.06.2025

Sd/-

**[MADHUMITA ROY]
JUDICIAL MEMBER**

Sd/-

**[NAVEEN CHANDRA]
ACCOUNTANT MEMBER**

Dated: 04th June, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Sl No.	PARTICULARS	DATES
1.	<i>Date of dictation of Tribunal Order...</i>	
2.	<i>Date on which the typed draft Tribunal Order is placed before the Dictation Member</i>	
3.	<i>Date on which the fair Tribunal Order is placed before the other Member</i>	
4.	<i>Date on which the approved draft Tribunal Order comes to the Sr. P.S./P.S.</i>	
5.	<i>Date on which the fair Tribunal Order is placed before the Dictating Member for pronouncement</i>	
6.	<i>Date on which the signed order comes back to the Sr. P.S./P.S</i>	
7.	<i>Date on which the final Tribunal Order is uploaded by the Sr. P.S./P.S. on official website</i>	
8.	<i>Date on which the file goes to the Bench Clerk alongwith Tribunal Order</i>	
9.	<i>Date of killing off the disposed of files on the judiSIS portal of ITAT by the Bench Clerks</i>	
10.	<i>Date on which the file goes to the Supervisor (Judicial</i>	
11.	<i>The date on which the file goes to the Assistant Registrar for endorsement of the order</i>	
12.	<i>Date of Dispatch of the Order</i>	