

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "F" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4373/MUM/2015
Assessment Year: 2011-12**

DCIT 9(3)(2)
2nd Floor, Aayakar Bhavan
M.K. Road,
Mumbai – 400020

Vs.

M/s. Future Generali India Life
Insurance Co. Ltd.
Knowledge House, Gr. Floor, Off
Jogeshwari Vikhroli Link Road,
Shyam Nagar,
Mumbai – 400060

PAN No. AABCF0190Q

(Appellant)

(Respondent)

Revenue by: Ms. S. Padmaja, DR
Assessee by: Mr. Vipul Joshi, AR

Date of Hearing : 30/03/2017
Date of pronouncement: 30/03/2017

ORDER

PER BENCH

This is an appeal filed by the revenue. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner (Appeals) – 16, Mumbai and arises out of assessment made u/s 143(3) of the Income Tax Act, 1961 (the 'Act').

2. The grounds of appeal filed by the revenue read as under:-

1. Whether on the facts and circumstances of the case and in law, the Hon'ble Tribunal was 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/s44 of the Act read with Rule 2 of the first schedule.

2. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was correct in allowing the relief to the assessee by holding that 'surplus' available both in Policy Holders Account and Share Holders Account is to be consolidated and only 'net surplus' is to be taxed as income from Insurance Business.
3. Whether on the facts and in the circumstances of the case and in law, the ITAT is justified in restoring to assessing officer the issue of taxing income of assessee arising from activity unconnected with insurance business (consequent set off loss) without assigning any reasons whatsoever.
4. Whether on the facts and in the circumstances of the case and in law, the ITAT ought to have held the income of assessee arising from activity unconnected with insurance business is taxable under normal provision of the Act to the exclusion of section 44 of the Income Tax Act read with schedule thereto?
5. Whether on the facts and in the circumstances of the case and in law, section 10 of I.T. Act is applicable to insurance business when total income of insurance activity is governed and computed under Schedule 1 of the I.T. Act independent of various computational provisions as prescribed u/s 44 of the Act?
6. Whether on the facts and in the circumstances of the case and in law, income specified to be exempt u/s 10 can be reduced from income of insurance business chargeable to tax u/s 44 of the Act read with Schedule 1 particularly when the section of the Act have to be given effect to in seriatim, unless specified otherwise and consequently having once computed income u/s 44 procedurally, one has to move ahead to compute total income and not go back to section 10 of the Act.
7. Whether on the facts and in the circumstances of the case and in law the ITAT is justified in not confirming the addition made by the AO on account of negative reserve ignored in calculation of liability to arrive at actuarial surplus?

3. Briefly stated, the facts are that M/s. Future Generali India Life Insurance Co. Ltd. (FGILIC) filed its return of income for the A.Y. 2011-12 on 30.09.2011 disclosing total loss of Rs. 300,45,37,430. Subsequently, it filed a revised return of income on 30.03.2012 disclosing total loss of Rs. 320,16,20,117 following the judgement of the Hon'ble Bombay High Court in the case of *CIT vs. Life Insurance Corporation of India Ltd.* 338 ITR 212 (2011) in respect of loss from pension business u/s 10(23AAB) of the Act.

FGLIC is a company registered under the Companies Act, 1956 and has obtained license to undertake the business of life insurance from Insurance Regulatory and Development Authority (IRDA). FGLIC maintains its regular book of accounts in accordance with the directions issued by IRDA which mandate preparation of Policyholders Account (called Revenue Account) and Shareholders Account (called P&L A/c) separately and Balance Sheet for the company as a whole. The Assessing Officer (AO), while making an assessment u/s 143(3) of the Act has made an addition of Rs. 5,83,46,630/- representing the surplus as disclosed in Form - 1. The AO also disallowed the claim of FGLIC of Rs. 19,70,82,716/- on account of loss from pension business.

4. Aggrieved by the order of the AO, the assessee - company filed an appeal before the learned CIT(A). We find that the learned CIT(A) has followed the decision of the Tribunal in the case of (i) ICICI Prudential Insurance Company Ltd. vs. Asst. CIT (ITA No. 6854/55/5659/Mumbai/2010) & (ITA No. 7765/66/6/Mumbai/2010), (ii) *SBI Life Insurance Company Ltd. vs. JCIT* (ITA No. 3800 to 3801, 1501,5670/Mum/2009 & ITA No. 4139/Mum/2008,3346, 5759/Mum/2009 dated 23rd May, 2014) and held that the working of actuarial surplus / deficit is in accordance with the relevant regulations as per IRDA guidelines and the loss disclosed in the computation of income is according to the corresponding provisions of section 44 read with rule 2 of the First Schedule of the Act. Therefore, the learned CIT(A) directed the AO to delete the addition of Rs. 583,46,630/- on account of actuarial surplus.

In respect of the disallowance of claim of Rs. 19,70,82,716/- made by FGLIC, the learned CIT(A) followed the judgement of the Hon'ble Bombay

High Court in *Life Insurance Corporation of India Ltd. (supra)* wherein it is held:

“The fact that income from such fund has been exempted under section 10(23AAB) with effect from 1st April, 1997 does not mean that pension fund ceases to be insurance business so as to fall outside the purview of insurance business covered under section 44 of the Income Tax Act, 1961. In other words, the pension fund like Jeevan Suraksha Fund would continue to be governed by the provisions of section 44 of the Income Tax Act, 1961 irrespective of the fact that the income from such fund are exempted or not. Therefore, while determining the surplus from insurance business the actuary was justified in taking into consideration the loss incurred under Jeevan Suraksha Fund.”

The learned CIT(A) followed the above judgement and held that ‘loss in pension fund is allowed to be adjusted against the surplus amount from insurance business’. Thus the learned CIT(A) allowed the appeal filed by FGILIC.

5. Before us, the learned DR relies on the order of the AO. On the other hand, the learned counsel of the assessee relies on (i) the order of the learned CIT(A), (ii) the judgement of the Hon'ble Bombay High Court in *CIT vs. ICICI Prudential Insurance Co. Ltd.* (2016) 73 taxmann.com 201 (Bom) and *Life Insurance Corporation of India Ltd. (supra)*.

6. We have heard the rival submissions and perused the relevant material on record. We begin with 1st, 2nd & 3rd ground of appeal as they address a common issue. We find that the Hon'ble Bombay High Court in the case of *ICICI Prudential Insurance Co. Ltd. (supra)* has held that “where assessee was carrying on life insurance business and Tribunal following a decision of Supreme Court, while determining assessee’s income under section 44, had taken into consideration total surplus as arrived at by actuarial valuation and further held that income from shareholders account was also to be taxed as a part of life insurance business, there was no substantial question of law arising for consideration”. Reference was made

to the decision in *LIC of India vs. CIT* (1964) 51 ITR 773, wherein the Hon'ble Supreme Court has held that the Assessing Officer has no power to modify the account after actuarial valuation is done.

The issues in 1st, 2nd & 3rd ground of appeal in the instant case are squarely covered by the above judgement. Respectfully following the same, we dismiss 1st, 2nd & 3rd ground of appeal filed by the revenue.

6.1 Now we turn to 4th, 5th, 6th and 7th ground of appeal as they address a common issue. In the case of *Life Insurance Corporation of India Ltd. (supra)*, the assessee was engaged in the life insurance business. In its return of income for the A.Y. 2002-03, it computed actuarial valuation surplus by excluding the provision for reserve on account of solvency margin amounting to Rs. 3,500 crores and loss in Jeevan Suraksha Fund. The AO disallowed the claim of the assessee and passed the assessment order by adding the amount on account of the provision for solvency margin and loss from Jeevan Suraksha Fund, *inter alia*, on the ground that the provision for solvency margin was not an ascertained liability and that income from Jeevan Suraksha Fund being exempt u/s 10(23AAB), the loss incurred from the said fund could not be adjusted against the taxable income. On appeal, the Commissioner (Appeals) confirmed the additions made by the AO. On second appeal, the Tribunal deleted the said addition. The revenue filed appeal against the order of the Tribunal before the High Court. The Hon'ble High Court held that (i) amount set apart by insurance company towards solvency margin as per the direction given by IRDA is to be excluded while computing actuarial valuation surplus, and (ii) pension fund like Jeevan Suraksha Fund would continue to be governed by provisions of section 44 irrespective of the fact that income from such fund is exempted, or not and, therefore, even after insertion of section 10(23AAB), loss incurred from pension fund like Jeevan Suraksha Fund has to be excluded while

determining actuarial valuation surplus from insurance business u/s 44 of the Act.

We find that the issues in the above grounds of appeal are squarely covered by the above judgement of the Hon'ble Bombay High Court. We follow the judgement and dismiss 4th, 5th, 6th and 7th ground of appeal filed by the revenue.

7. In the result, we uphold the order of the learned CIT(A) and dismiss the appeal filed by the revenue.

Order pronounced in the open court on 30/03/2017

Sd/-

(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-

(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai:

Dated: 30/03/2017

Biswajit, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai