

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "H", MUMBAI
BEFORE SHRI D.T. GARASIA, Judicial Member
AND
SHRI ASHWANI TANEJA, Accountant Member

I.T.A. No. 3025/Mum/2013
(Assessment Year: 2001-02)

HDFC Standard Life Insurance Company Ltd., 19 th Floor, Lodha Exceulus, Apollo Mills Compound, N.M. Joshi Road, Mahalaxmi, Mumbai- 400011	Vs	The Deputy Commissioner of Income Tax 1 (1), Mumbai, Aayakar Bhavan, M.K. Road, Mumbai- 400020
PAN : AAACH8755L		
(Appellant)		(Respondent)

Appellant by	Shri P.J. Pardiwala & Mrs. Arti Vissanji
Respondent by	Shri M.C. Omi Ningshen (DR)

Date of hearing : 02/02/2017
Date of order : 15/02/2017

ORDER

PER ASHWANI TANEJA, AM:

This appeal has been filed against the order of the Commissioner of Income Tax (Appeals)- 4, Mumbai (hereinafter called as Ld. CIT (A) in short) dated 21.01.2013 passed against the Assessment Order of the Assessing Officer (AO) dated 17.11.2006 u/s 143 (3) r.w.s. 147 of the Income Tax Act, 1961 for AY 2001-02 on the following grounds:

1. Ground No. 1 : Re-opening of assessment

"On the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) - 4, Mumbai [CIT(A), failed to appreciate that the jurisdictional pre-conditions necessary for assuming jurisdiction under section 147 of the

Income-tax Act. 1961 (the Act'), were not satisfied and therefore, the reassessment order was illegal and bad in law.

2. Ground No- 2: Taxable income as per revised computation of income

On the facts and in the circumstances of the case and in law, the CIT(A) ought to have held appellate proceedings, the Appellant's taxable income is a loss of Rs. 1,92,56,206 from life insurance business as compared to assessed loss of 57,80,380 under section 148 of the Act.

3. Ground No. 3: Depreciation allowance in the Policyholder's Account

Without prejudice to ground no. 2 above, on the 1,31,87,125 apportioned to the Policyholders' Account from the surplus as per the Policyholders Account, without the necessity of any further verification of the claim.

4. Ground No. 4: Ratio for apportionment of depreciation allowance

Without prejudice to ground nos. 2 and 3 above, on the facts and in the circumstances of the case and in law, the CIT(A) erred in including the contribution of funds from Shareholders' Account to Policyholders' fund of Rs. 5,38,46,000 as part of net turnover in the Policyholders' Account while determining the ratio of turnover between the Policyholders' and the Shareholders' for the purpose of apportioning the total depreciation allowance.

5. Ground No. 5: Claim for preliminary expenses

Without prejudice to ground no. 2 above, on the facts and in the circumstances of the case and in law, the CIT(A) erred in not accepting the claim of the Appellant that the entire preliminary expenses of Rs.36, 40,800 be allowed in determining the taxable income in the Shareholders' Account given that there was no finding in the assessment order by the AO that preliminary expenses should be disallowed.

6. Ground No. 6: Add back of preliminary expenses

Without prejudice to ground nos. 2 and 5 above, on the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the action of the AO in adding back preliminary expenses of Rs. 19,07,780 which were not debited to the Shareholder's Account.

7. Ground NO. 7: Deductibility of preliminary expenses

Without prejudice to ground nos. 2 and 5 above, on the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that the AO has allowed the preliminary expenses in total under both the accounts (i.e. Policyholders and Shareholders') after reallocation, when, in fact, these expenses have not been so allowed.

8. Ground No. 8: Claim for entire stamp duty expenses

Without prejudice to ground no. 2 above, on the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO in not accepting the claim of the Appellant that entire stamp duty expenses of Rs. 3,36,000 ought to be allowed in determining the taxable income in the Shareholders' Account.

9. Ground No. 9: Claim for stamp duty expenses

Without prejudice to ground nos. 2 and 8 above, on the facts and in the circumstances of the case and in law, the CIT(A) ought to have himself decided on ground no. 8 raised before him, and directed the AO to allow the stamp duty expenses of Rs. 3,36,000 as claimed in the revised return of income, without the necessity of any further verification of the claim.

The Appellant craves leave to add to or alter, by deletion, substitution or otherwise, any or all of the above grounds of appeal at or before the hearing of the appeal.”

2. During the course of hearing, Ld. Sr. Counsel stated at the very outset that in this case all the issues raised in this appeal have already reached before the Tribunal and decided by it vide its order dated 20.09.2013 for AY 2002-03 to 2009-10. It was further submitted that in the appeal before Ld. CIT (A), request was made that the issues involved are identical to the issues decided by the Tribunal in the case of ICICI Prudential (ITA No. 6854/M/2010) order dated 14.08.2012 and therefore the same order should be followed for deciding in this appeal. But the same was not followed on the ground that appeal against the same was pending before the Hon'ble High Court. In view of these circumstances, it was requested that now since Tribunal has decided this issues in assessee's own case in all the subsequent years, therefore this appeal can be sent back to the file of Ld. CIT (A) to decide the same

afresh keeping in view order of Tribunal passed in assessee's own case in subsequent years.

3. Per contra, Ld. DR appearing on behalf of the Revenue submitted that he will have no objection if this appeal is sent back to the file of the Ld. CIT (A) to be decided afresh in accordance with the order of the Tribunal.

4. We have gone through the order passed by the Ld. CIT (A). We find that proper reasoning has not been given by the Ld. CIT (A) while deciding this appeal in as much as legal issues and facts have not been properly analysed. Ld. CIT (A) has not given appropriate reason as to why the order passed by the Tribunal in the case of ICICI Prudential, supra was not applicable on this case. It is further noted by us that now Tribunal has passed an order in assessee's own case for AY 2002-03 to 2009-10, wherein identical issues have been decided by the Tribunal. Thus, we agree with the request of the assessee and find it appropriate to send this appeal back to the file of Ld. CIT (A) to be decided afresh after taking into account the order passed by the Tribunal in assessee's own case dated 20.09.2013. Ld. CIT (A) shall give adequate opportunity of hearing to enable the assessee to file written submissions and evidences. The assessee shall be free to raise all legal as well as factual issues. Ld. CIT (A) shall pass the order after taking into account entire material as may be brought on record by the assessee including the judgement of the Tribunal in assessee's own case or any other judgement as may be relied upon by the assessee. With these directions all the grounds raised before us are sent back to the file of the Ld. CIT (A).

5. As a result, this appeal may be treated as allowed for statistical purposes.

Order was pronounced in the open court at the conclusion of the hearing.

Sd/-

(D.T. GARASIA)

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 15 /02/2017

Alindra, PS

Sd/-

(ASHWANI TANEJA)

ACCOUNTANT MEMBER

आदेश प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / 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**