

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'F' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1695/Mum/2023
(Assessment Year :2018-19)**

DCIT-1(3)(1) Room No.535 5 th Floor Aayakar Bhavan M.K.Road Mumbai-400020	Vs.	M/s. Future Generali India Life Insurance Co. Ltd. Unit No.801-802, Tower C-247, Embassy Park LBS Marg, Vikhroli (W) Tagore Nagar, S.O. Mumbai-400 083
PAN/GIR No.AABCF0190Q		
(Appellant)	..	(Respondent)

Assessee by	Ms. Dinkle Hariya
Revenue by	Ms. Zeenia Handa
Date of Hearing	19/07/2023
Date of Pronouncement	24/07/2023

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the Revenue against order dated 16/03/2023 passed by NFAC Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2018-19.

2. In the grounds of appeal, Revenue has raised the following grounds:-

"1. Whether on the facts and in the circumstances of the case Rs. 30,73,76,32 and in law, the Hon'ble Tribunal was justified in denying the addition made by the Assessing Officer on account of Surplus disclosed in Form 1 of Actuarial Report ignoring the Provision of Sec.44 rws 2 of the First Schedule of the IT. Act, 1961?"

2."Whether on the facts and in the circumstances of the case and in law the Ld CIT(A) was correct in allowing relief to the assessee by holding that 'surplus' available both in Policy Holders Account and Share Holder's 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 Ld. CIT(A) was justified in deleting the addition made by the AO on account of loss from pension fund ignoring settled position of law that income includes loss and that income from Pension Fund does not form part of the total income of the assessee corporation u/s 10(23AAB) of the IT Act 1961?"

4. "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 the non-obstante provision of Section 44 also applies to section 10(23AAB) of the IT Act 1961 in view of the fact that section 10 and all its subsections are not non obstante?"

5."Whether on the facts and in circumstances of the case and in Law, Sec 10 of IT Act is applicable to Insurance business when total income of Insurance activity is governed and computed under Schedule 1 of the IT Act independent of various computational provisions as prescribed u/s 44 of the Act?"

3. At the outset ld. Counsel for the assessee submitted that this issue is covered by the series of decisions of the Tribunal in assessee's own case right from A.Y.2009-10 to 2017-18 even the ld. CIT (A) also has followed earlier orders of the Tribunal and

also the decision of the **Hon'ble Jurisdictional High Court in the case of CIT vs. Life Insurance Corporation of India Ltd 338 ITR 212** and **General Insurance Corporation of India 17 taxmann.com 247.**

4. The brief facts of the case are that the assessee company is engaged in the business of life insurance and has obtained license of life insurance business from insurance regulatory and development authority. Accordingly, it was required to maintain books in accordance with the directions issued by IRDA which mandate the preparation of policy holders account (called revenue account) and shareholders account (called profit and loss account) separately and balance sheet for the company as a whole. It has filed its income tax returns on 01/10/2018 disallowing total loss of Rs.144,50,63,150/- from the business after adjusting transfer of Rs.162,48,88,000/- from profit and loss account and revenue account. The ld. AO held that in view of the provision of Section 44 r.w.r.2 which has overriding effect on all the computation provision of the income should be applied and accordingly, surplus appearing in Form No.1 should be offered to tax without any modification. He also noted that though this addition has been deleted in all the previous assessment years by the ld. CIT (A) and the Tribunal, however, further appeal has been filed before the Hon'ble High Court is pending. Accordingly, keeping the issue alive and being consistent with the stand taken by the department, he added an amount of Rs.90,43,14,000/- u/s.10(23AAB) on account of surplus deficit from the pension fund. On this count, he noted

that though the decision of the Hon'ble Bombay High Court in the case of M/s. Life Insurance Corporation of India Ltd (supra) is in the favour of the assessee, however, the department has not accepted the said order and SLP is pending.

5. The ld. CIT(A) after discussing the various judgments of the Hon'ble Bombay High Court in the case of CIT vs. ICICI Prudential Insurance Co. Ltd. 242 Taxman159 and also the decision of the Tribunal in assessee's own case right from A.Y.2009-10 to 2017-18 has deleted the said addition.

6. Similarly with regard to disallowance of profits from pension fund of Rs.6,84,02,000/- u/s. 10(23AAB) relied upon by the decision of the Hon'ble Bombay High Court in the case of Life Insurance Corporation Ltd. (supra) and Group Insurance of India (supra) and also decision of the Tribunal in assessee's own case.

7. The ld. DR though admitted that this issue is covered in favour of the assessee, however, he relied upon the order of the ld. AO.

8. After considering the finding in the impugned orders as well as various decisions of the Tribunal in assessee's own case, it is an undisputed fact that assessee is maintaining its regular books of accounts in accordance with the directions issued by IRDA which mandate preparation of policy holders account and shareholders account separately and since assessee is into life insurance business, the computation of profit and loss account of insurance / business for the purpose of tax has to be made in

accordance with Section 44 r.w.r.2 of first Rule of the Act. We find that this Tribunal consistently has been holding that the view of the Hon'ble High Court in the case of ICICI Prudential Insurance Company, wherein it has been held that surplus amount as added by the AO is to be deleted. As stated above, as per the IRD Act and specific Rules, the Insurance company has to segregate policy holder's account and share holder's account and provides that every insurer or after the commencement of IRD Act 1999, in respect of insurance business transacted by him in respect of shareholder's fund shall at the expiration of each financial year prepare a balance sheet, profit and loss account a separate account of receipts and payments and revenue account in accordance with the regulations made by the authority. Thus, according to the Regulations, Profit and Loss Account (P & L A/C) of Insurance Company is divided into a Technical Account (Policyholder's Account) also called as Revenue Account and Non Technical Account (Shareholder's Account) also called as P & L Account. The Technical Account deals with all the transactions relating to the income by way of premium and expenditures and actuarial provisions shown segment wise. All the transactions relating to Shareholder's like funding the deficit, income earned on investment of share capital and reserves are dealt in non technical Shareholder's account. IRDA (Actuarial Report and Abstract) Regulations 2000 prescribes a method of preparation of actuarial report and abstract. As per Regulation 4(2)(d) item no.iv, Form I was prescribed for purpose of valuation result and to indicate surplus

of deficit in the life insurance business. This precise question was answered by the Hon'ble Jurisdictional High Court in the case of CIT vs. ICICI Prudential Insurance Ltd. wherein the issue was whether the Tribunal was correct in allowing the relief to the assessee by holding that the surplus available in shareholder's account is not to be taxed separately as income from other sources and at the normal corporate rate and holding that surplus cum shareholders account was only part of income from insurance business arrived at after combining surplus available in shareholders account with the surplus available in the policy holders account. The Hon'ble High Court held that the order of the Tribunal holding that income from shareholders account is also to be taxed as part of life insurance business and cannot be found fault with the view of the clear mandate of Section 44 of the Act. The Id. CIT (A) following the earlier year orders of the Tribunal has deleted the addition after observing as under:-

“5.11 I find that the policyholder account and shareholder account forms part of Insurance business and therefore New Form I which includes only Policyholders account cannot be considered for determining the surplus from Life Insurance as it reflects only Policyholder funds and therefore to determine the surplus taxable under Rule 2 of the First Schedule the aggregate of Policyholder's A/c and Shareholder A/c forms part of surplus/deficit of Life Insurance business. The surplus or deficit amount as defined under Rule 2 of First Schedule of Section 44 of The Act should be arrived at after adjusting both accounts i.e. Policyholder Account and Shareholder's Account in view of the above discussion and respectfully following the judgment of the Hon'ble tribunal in the appellant's own case, the addition made by the AO of Rs.90,43,14,000/- on account of considering the surplus disclosed in Form-I as the income of the appellant is deleted. The appeal on this ground is treated as followed.”

9. Thus, the order of the ld. CIT(A) following the earlier orders of the Tribunal is confirmed and consequently, the grounds raised by the Revenue is dismissed.

10. Coming to the issue of disallowance of profits from pension fund of Rs. 6,84,02,000/-, the ld. CIT(A) has deleted the addition after observing as under:-

“6.2 I have carefully considered the facts of the case, the submission of the appellant and evidences on record. The brief facts is that the appellant company has filed its return of income for AY 2018-19 on 01st October 2018 claiming the deduction of Ro. 6.84,02.000/- towards the surplus from pension business exempt under section 10(23AAB) of the act.The AO while in his assessment order under section 143(3) of the Act disallowed the claim for surplus of Rs. 6,84,02,000/- on account of pension business. The AO has disallowed the claim of surplus of pension business of Rs. 6,84,02.000/- stating that the decision of the jurisdictional Bombay High court decision in case of M/s Life Insurance Corporation of India Ltd has not been accepted by the Department and SLP has been filed.

6.3 The jurisdictional Bombay High Court in case of CIT vs Life Insurance Corporation of India Ltd (338 ITR 212 stated that loss incurred from pension business is allowable under section 44 read with First schedule to the Income tax Act, 1961. The relevant extract of the aforesaid decision is as under-

In other words, the pension fund like Jeevan Suraksha Fund would continue to be governed by the provisions of section 44 of Income tax Act, 1961 irrespective of the fact that the income from such fund are exempted or not Therefore, while determining the surplus from the insurance business, the actuary was justified in taking into consideration loss incurred under Jeevan Suraksha Fund

6.4 The jurisdictional Bombay High Court in case of General Insurance Corporation of India (17 taxmann.com 247) also held that exemption under section 10 of the Act is available to

insurance companies. I also find that the aforesaid issue is also decided in the appellant's own case for the A.Y 2017-18 by my learned predecessor. Further, the above issue is also decided in favour of the appellant by the jurisdictional Mumbai ITAT from AYS 2009-10 to 2014-15, 2016-17 and 2017- 18. The co-ordinate bench of Tribunal for A.YS 2009-10 and 2012-13 in assessee's own case which are on identical issue and ground raised have made the following findings-

15. We have considered rival submissions and perused materials on record. At the outset, we must observe that merely because the Revenue has filed SLP against the decision of the Hon'ble Jurisdictional High Court in case of Life Insurance Corporation Ltd, cannot be valid reason for the Assessing Officer in not following the decision of the Hon'ble Jurisdictional High Court which is binding on him. Be that as may, we have noticed that while deciding identical issue raised by the Revenue in assessee's own case for assessment year 2011-12. the Tribunal in the order referred to above, has held as under

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 AY 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 Assessing Officer 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 (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 (a) 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 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"

16. The same view was reiterated by the Co-ordinate Bench while deciding the Revenue's appeal for assessment year 2010-11 (supra) There being no difference in fact pointed out by the learned Departmental Representative, respectfully following the consistent view of the co- ordinate bench in assessee's own case, we uphold the decision of the learned Commissioner (Appeals) on the issue. Grounds raised are dismissed."

6.5 Considering the above discussion and respectfully following the decisions of the Hon'ble jurisdictional High Court as well the decisions of the Hon'ble jurisdictional ITAT in the appellant's own case in earlier AYS, the AO is directed to delete addition made on account of the disallowance of Profits from pension fund of Rs.6,84,02,000. The appeal on this ground is treated as allowed.

11. This issue is squarely covered by the decision of the Tribunal in all the earlier years wherein the judgment of the Hon'ble Bombay High Court in the case of CIT vs. Life Insurance Corporation of India Ltd. has been followed wherein it has been stated that losses incurred from pension business u/s.44 of the Act r.w. First Schedule. Here in the present case, the pension fund scheme was managed by FGILI in A.Y.2010-11 which was approved by IRDA. The assessee had surplus/deficit of Life

Insurance business during the relevant year and same has been taken into consideration while computing actuarial appointed by the assessee. The ld. AO has disallowed the same stating that he is adding the same in order to keep the issue alive. As per the provision of Section 10(23AAB) any income arise from pension scheme is exempt under the Act. Thus, the intention was to bring incentive provided in insurance sector so that terms will be added to the contributors in the insurance industry. In view of the Section 10(23AAB) r.w. First Schedule of Rule 2, assessee had taken into consideration the actuarial valuation report wherein it has considered the total business income / loss without bifurcating into pension / non-pension business. The assessee had surplus from approved pension scheme during the relevant year and since same forms part of the Life Insurance business only, the said amount has been accounted while arriving at the actuarial surplus and that surplus need to be considered for computing profits from life insurance business. This disallowance precisely has been deleted by the Hon'ble High Court in various judgments and also followed by the Tribunal in all the years. Accordingly, the order of the ld. CIT (A) as narrated above is confirmed and the grounds raised by the Revenue are dismissed.

12. In the result, appeal of the Revenue is dismissed.

Order pronounced on 24th July, 2023.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 24/07/2023

KARUNA, sr.ps

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,

(Asstt. Registrar)
ITAT, Mumbai