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

BEFORE SHRI AMIT SHUKLA (JUDICIAL MEMBER)
AND
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)

I.T.A. No.1775/Mum/2023 - A.Y. 2017-18
I.T.A. No.1848/Mum/2023 - A.Y. 2018-19

ACIT-1(1)(1), 579, Aayakar Bhavan M.K. Road, Mumbai-400 020	vs	HDFC Life Insurance Company Limited, 13th Floor, Lodha Excelus, Apollo Mills Compound, Joshi Marg, Mahalaxmi, Mumbai-400 011 **PAN : AAACH8755L**
APPELLANT		**RESPONDENT**

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C.O. Nos.75 & 76/Mum/2023
(Arising out of I.T.A. Nos.1775 & 1848/Mum/2023)
(Assessment years, 2017-18 & 2018-19)

HDFC Life Insurance Company Limited, 13th Floor, Lodha Excelus, Apollo Mills Compound, Joshi Marg, Mahalaxmi, Mumbai-400 011 **PAN : AAACH8755L**	vs	ACIT-1(1)(1), 579, Aayakar Bhavan M.K. Road, Mumbai-400 020
APPELLANT		**RESPONDENT**

Present for the Assessee	Shri P.J. Pardiwalla a/w Mrs. Aarti Vissanji
Present for the Department	Shri Biswanath Das – CIT DR

Date of hearing	21/09/2023
Date of pronouncement	01/11/2023

O R D E R

Per Padmavathy S (AM):

These appeals by the Revenue and the cross objections by the Assessee are against the separate orders of the Commissioner of Income-tax, (National Faceless Appeal Centre, Delhi [in short, 'the CIT(A)] dated 24/3/2023 for the assessment year 2017-18 and dated 28/03/2023 for assessment year 2018-19.

2. The common issues contended in these appeals is the relief given by the CIT(A) in computing taxable income by the assessee as per section 44 read with rule No.2 of Schedule I which was modified by the assessing officer by making the following adjustments while re-computing the income of the assessee -

(i) Not adjusting the actuarial surplus of previous year relevant to assessment year under consideration. i.e. The surplus as on 31st March of the financial year as the income of the assessee from life insurance business without adjusting the opening surplus – **Ground No.1**
(ii) Not accepting the basis of computation as per section 44 read with rule No.2 of Schedule I – **Ground Nos. 2 to4**
(iii) Not consolidating the policy holder account and share holders account for the purpose arriving at the income from life insurance business of the assessee – **Ground No.5, 9 & 10**
(iv) Transfer to revenue account from P&L account – **Ground No.6**
(v) Adding the negative reserves to the surplus of the actuarial valuation of the life insurance business – **Ground No.7**
(vi) Disallowance under section 14A r.w.r.8D in respect of negative income – **Ground No.8**
(vii) Denial of exemption under section 10 towards dividend income, interest income from tax free bonds and income from pension line of business – **Ground No.11 to 13**

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3. The assessee is engaged in the business of life insurance which includes term insurance linked business, pension business, general annuity business, etc. falling within the definition of the term 'life insurance business' under the Insurance Act, 1938. The assessee is regulated by the Insurance Act, the Insurance Regulatory & Development Authority Act, 1999 (IRDA) and the rules and regulations there under.

ITA No.1775/Mum/2023 & CO No.75/Mum/2023

4. The assessee filed the return of income for A.Y. 2017-18 on 31/10/2017 declaring a total income of Rs.504,60,59,780/-. The case was selected for scrutiny and statutory notices were duly served on the assessee. The assessee disclosed its income on the basis of surplus of Form I which is the actuarial valuation as prescribed by the IRDA. The Assessing Officer made recomputed the income from insurance business of the assessee by modifying the computation by making adjustments as listed above. Aggrieved, the assessee preferred further appeal before the CIT(A). The CIT(A) gave relief to the assessee by placing reliance on the decision of the co-ordinate bench in assessee's own case for A.Y. 2008-09. Against the order of the CIT(A), the Revenue is in appeal before the Tribunal.

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5. The Ld.AR submitted that the assessee has computed its income as per the provisions of section 44 read with rule No.2 of Schedule I according to which, the difference between the actuarial valuation done in accordance with Fourth Schedule of Insurance Act, 1938 and the difference between the closing balance of the opening balance is treated as the income in the hands of the assessee. The Ld.AR drew our attention to Rule 5 of Schedule I wherein the company engaged in the life insurance business is excluded for the purpose of computing income as per the IRDA Act. It was submitted that though the assessee prepares the financial

statements as per the IRDA regulations, for the purpose of taxation provisions of section 44 would apply. The Ld.AR further submitted that re-computation of income by the revenue making additions/disallowances as listed above have been a recurring issue which has been considered by the co-ordinate bench in assessee's own case for A.Ys 2002-03 to 2009-10. The ld AR also submitted that the CIT(A) has correctly following the decision of the coordinate bench to give relief to the assessee and that there is no infirmity in the order of the CIT(A). The facts for the year under consideration being identical, the Ld.AR submitted that the issue is covered by the decision of the co-ordinate bench.

6. The Ld. DR, on the other hand, relied on the order of the Assessing Officer.

7. We heard the parties and perused the material on record. The co-ordinate bench in assessee's own case (ITA No.2203 to 2206/Mum/2012 dated 20.09.2013) has considered the various issue with regard to the computation of income. The relevant extract with regard to each of the issues is extracted below –

Computing taxable income as per section 44 read with rule No.2 of Schedule I

2.5.1.So, we would like to decide the issue of computing surplus/deficit disclosed by the actuarial valuation as per rule 2 of the First Schedule.As per the assessee, surplus/deficit had to be calculated in form I of the fourth schedule to the Insurance Act,1938 prior to its amendment by the Insurance(Amendment)Act,2002.We find that similar issue had arisen in the case IPLIC (supra). Deciding the matter Mumbai Bench of the Tribunals has dealt the issue as under :

27.Respectfully following the above principles and examining the provisions of IT Act, we are of the opinion that the 'actuarial valuation made in accordance with the Insurance Act, 1938' do mean that the actuarial valuation done in accordance with the Insurance Act, 1938. In arriving at the above decision we have also taken into consideration that Rule-5 in Part-B of the first schedule with reference to 'other insurance business' did incorporate the IRDA and its Regulations as amended by the Finance Act 2009 w.e.f. 1.4.2011 which is as under:

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"B- Other Insurance Business:

Computation of profits and gains of other insurance business.

5. The profits and gains of any business of insurance other than life insurance shall be taken to be the profit before tax and appropriations as disclosed in the Profit & Loss A/c prepared in accordance with the provisions of the Insurance Act, 1938 (4 of 1938) or the rules made thereunder or the provisions of the Insurance Regulatory and Development Authority Act, 1999 (4 of 1999) or the Regulations made thereunder subject to the following adjustments:-

(a) subject to the other provisions of this rule, any expenditure or allowance including any amount debited to the profit and loss account either by way of a provision for any tax, dividend, reserve or any other provision as may be prescribed which is not admissible under the provisions of section 30 to 43B in computing the profits and gains of a business shall be added back:

(b) (i) any gain or loss on realization of investments shall be added or deducted, as the case may be, if such gain or loss is not credited or debited to the Profit & Loss A/c ;

(c) such amount carried over to a reserve for unexpired risks as may be prescribed in this behalf shall be allowed as a deduction". (emphasis supplied) This indicates that the legislature consciously omitted incorporating the provisions of IRDA or the Regulations made there under in Rule 2 which still refers to the Insurance Act 1938 only.

28.Further, we also notice that the Insurance Act itself was amended along with the introduction of IRDA Act 1999. Along with the said IRDA Act, there are various amendments proposed in the Insurance Act in tune with IRDA Act by amending the relevant provisions of Insurance Act 1938. However, since the Rule 5 was amended in the First schedule by specifically referring to the IRDA Act 1999 or the Regulations made there under, we are of the opinion that the legislature intended not to modify or amend the Rule-2. This indicates the intention of legislature that the actuarial valuation has to be made in accordance with the unamended Insurance Act, 1938. We are of the firm opinion that the unamended provisions of Insurance Act 1938 were only incorporated into the Income Tax Act as far as life insurance business is concerned. Therefore, AO's action in following the format prescribed under the Regulations of IRDA Act is not in accordance with the spirit of Rule-2 and provisions as made applicable under the Income Tax Act.

30.The First to Fourth Schedule of the Insurance Act 1938 was omitted by the Insurance Amendment Act 2002 after incorporation of the relevant schedules

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> in the IRDA Act. Even though the said schedules were omitted from the Insurance Act, 1938, we are of the opinion that as far as Rule-2 is concerned by the principle of 'Legislation by incorporation' unamended Insurance Act, 1938 is applicable and the actuarial valuation has to be made in accordance with the then existing Part-I of the Fourth Schedule and in conformity with the requirements of Part-II of that schedule. Therefore, assessee's contention that the IRDA Regulations even though are applicable to assessee since it has commenced business after the commencement of the IRDA Act, 1999, for the purpose of Rule-2, the actuarial valuation has to be done in accordance with the Regulations contained in erstwhile Fourth schedule Part-I and Part-II. This is what assessee is contending and merging the accounts of Policy-holders' and Share-holders' account and arriving at the actuarial deficit, without taking into consideration the transfer of funds from the Share-holders' account to Policyholders' account."

Respectfully, following the same we hold that the actuarial valuation has to be done in accordance with the Regulations contained in erstwhile Fourth schedule Part-I and Part-II. Grounds no. 1and 2 are decided in favour of the assessee.

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<u>Adjustment of earlier year surplus</u>

2.5.5.Sixth Ground of appeal is about adjustment of earlier years'surplus.While completing the assessment for the year under consideration, the AO assessed entire surplus appearing in the books of accounts as on 31.03.2008 without excluding the surplus determined as on the last day of the previous financial year i.e. on 31.03.2007.Adjustment of earlier year's surplus, while computing income of a particular year was dealt by the Tribunal in the case of IPLCI as under:

> "Rule-2 is the main computation provision which is applicable to the life insurance business. As per Rule-2 the profits and gains of life insurance business shall 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,in respect of the last inter valuation period so as to exclude any surplus or deficit included therein which was made in any inter valuation period.According to the rule the surplus or deficit between two valuation periods can only be taken as income or loss of the period. Thus if there is a surplus in earlier valuation of 'Y' amount and surplus in the later valuation at 'X' amount, the difference between X & Y will be the income of the inter valuation period for the purpose of Rule 2.Therefore, actuarial evaluation done in respective periods has importance. Before the IRDA Act, only Life Insurance Corporation was permitted to involve itself in life insurance business.The actuarial valuation was not undertaken every year but once in three years.Therefore, the rule provides for only average of the surplus

to arrive between two inter valuation periods. However, with the enactment of IRDA Act 1999 and Regulations therein not only the private participants were permitted to do business but presentation of accounts and reports were modified….. ….

…The profits and gains of life insurance business shall 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 from it any surplus or deficit included therein which was made in any earlier inter-valuation period."

Respectfully following the above ground no.6 is decided in favour of the assessee.

Surplus from Policy holder account and shareholder account to be consolidate and taxed under Income from Insurance business

2.5.4. Fifth Ground is about setoff of deficit in Share-holder's account.We find that identical issue had arisen in the case of IPLCI(supra).Deciding the issue in favour of the assessee,Tribunal held that IRDA Regulations specifically required to maintain the Policy-holders' account and the Share-holders'account separately and permitted transfer of funds from Share-holders' account to Policy -holders' account as and when there was a deficit in Policy-holders' account,that Hon'ble Bombay High Court had held that as a policy, company was transferring funds/assets from Shareholders' account to Policy-holders' account even during the year periodically as and when the actuarial valuation was arrived at in Policy-holders' account,that most of the companies were required to submit quarterly accounts under the Company Law,that there was requirement of actuarial valuation report periodically and accordingly assessee was transferring funds from the Share-holders' account to Policy-holders' account,that the insurance business would not yield the required profits in the initial 7 to 10 years,that lot of capital had to be infused so as to balance the deficit in the policy holder's account,that the assessee had issued fresh capital to the extent of Rs.250 crores and transferred funds to the extent of Rs.233 crores from the Share-holders' account to Policy-holders' account in that year,that assessee was having only one business of life insurance, that the entire transactions both under the Policy-holders' and Share-holders' account pertained to the life insurance business only,that the assessee was not permitted to do any other business,that once assessee was in the life insurance business the computation had to be made in accordance with the Rule-2 as per provisions of section 44,that both the Policy-holders' and Share -holder's account had to be consolidated into one and transfer from one account to another was tax neutral,that the AO had taxed the surplus after the funds had been transferred from Share -holder's account to the Policy-holders' account at the gross level while ignoring such transfer in share holder's account,that

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as per the provisions of section 44 of Act heads of income like income from other sources,capital gains, house property or even interest on securities did not come into play and only first schedule had to be invoked to arrive at the profit,that both accounts-the Policyholders' and Share-holders' account- had to be consolidated for the purpose of arriving at the deficit or surplus.We further find that the Hon'ble Bombay Court in the case of IPLIC has also dealt with issue as has held that any deficit in the Share-holder's account ought to be set off against the Policy-holder's account. Respectfully following the above,we decide ground no.5 in favour of the assessee.

2.5.6.Last ground of appeal,related with life insurance business(Ground no.7) is about taxability of income in Share-holder's account.While deciding the Ground no.3 we have held that amount disclosed in Share-holder's account (Rs.29.62 Crores) is not to be taxed under the head 'income from other sources',but same has to be assessed under the head income from business and profession.We are of the opinion that business carried out by the assessee is governed by the 14 ITA No. 2203/Mum/2012 & Ors. HDFC Standard Life Insurance Company Ltd provisions of section 44 of the Act.Therefore,Rs.29.62 appearing in Share-holder's account has to be assessed as business income.

Transfer from shareholder account to policy holder account

2.5.3.Ground of appeal no.4 is about transfer of Rs.324.82 Crores from Share-holders'account to the Policy-holders'account.We find that similar issue has been adjudicated by ITAT Mumbai in the case of IPLIC(supra).Holding that transfer of funds from Share-holders' account to the Policy -holders'account did not result in income chargeable to tax,Tribnal,in the matter of IPLIC, (supra), held as under:

> "….As seen from the orders of the authorities, the 'Total surplus' prepared under Regulation 8 was taken as basis ignoring the Form-I of Regulation 4. While accepting the Ld.CIT DR argument that for the purposes of Life insurance business the act provides for surplus of valuation to be taxed at lesser rate, we cannot accept the argument that surplus is Total surplus including Transfers from share holder's account. Basically transfers are tax neutral as a credit in one account gets cancelled by debit in other account when accounts are consolidated. What the Rule.2 prescribed was only 'average surplus' arrived by adjusting the surplus disclosed in the actuarial valuation made with regard to the Insurance Act, 1938 in respect of inter valuation period. Assessee in the course of the assessment proceedings has furnished general balance sheet in Form-A…. …..
>
> In our opinion what assessee has done in reconciling the IRDA format with that of old Insurance Form is correct and accordingly the loss disclosed in the

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> computation of income is according to the actuarial surplus/deficit under the Insurance Act, 1938 prescribed under Rule 2 of the first schedule part-A. In view of this, we are of the opinion that insistence by AO to bring to tax the entire amount shown under the new Regulations including transfer from Share-holders' account is not correct. Instead of AO in taking the surplus at Regulation 8(1)(a) which is the actuarial surplus / deficit for the year took the amount as disclosed at Regulation 8 (1) (f) (total surplus after transfer from Share-holders' account) which is not at all correct."

Respectfully following the order of the IPLCI (supra)we decide ground no.4 in favour of the assessee.

<u>Negative reserve</u>

6.3.We have heard rival submissions and perused the material before us. We are of the opinion that treatment given to negative reserves by actuary cannot be disturbed by the AO.Here,it would be useful to understand meaning of negative reserve in simple terms.While making actuarial valuation,requirement of reserve to service insurance policies issued is ascertained.Such reserve (called mathematical reserve or value of liability)is equal to present value of future benefits payable and future expenses to be incurred less present value of future premium receivable. When the present value of future premium is more than the present value of future benefits payable and future expenses to be incurred, this amount becomes negative, known as 'negative reserve'. In simple words, it means that the insurance contracts under consideration do not warrant any provision and is,in fact,an asset.However, in certain circumstances, such as for following IRDA guidelines, insurers may not treat policies as assets and they set any negative reserves to zero.For example,if an insurer had two policies, one with a reserve of 100 and the other with a reserve of -10,it might think of its liabilities at100 rather than 90 to take into account the eventuality in case the second policy lapsed. This process is called eliminating negative reserves. As mentioned earlier, a policy which has a negative reserve is in nature of an asset. We find that in the case of ICICI Prudential Insurance Co.(supra),AO had disallowed negative reserve related to Life Insurance business of the assessee. In appellate proceedings FAA allowed the appeal of the assessee.AO challenged the order of the FAA before the Tribunal. We find that AO has raised the following ground of appeal in the appeal filed by him for AY 2006-07.

> "On the facts and in the circumstances of the case and in law, the learned CIT(A)erred in not subjecting the negative reserve amounting to Rs.27.27 Crores ignoring the facts that negative reserves has impact of reducing the taxable surplus as per From I."

Disposing his appeal, Tribunal held as under:

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> "After considering the rival submissions and examining the method of accounting and the mandate given by regulations to appoint Actuarial on the concept of mathematical reserves we do not see any reason to interfere with the order of the CIT(A).The mathematical reserve is a part of Actuarial valuation and the surplus as discussed in Form-I under Regulation 4 takes in to consideration this mathematical reserve also. Therefore the order of the order of the CIT(A) is approved.Moreover the Assessing Officer has no power to modify the amount after actuarial valuation was done, which was the basis for assessment under Rule 2 of 1st Schedule r.w.s.44 of the I.T. Act.The principle laid down by the Hon'ble Supreme Court in LIC vs.CIT 51ITR773 about the power of the Assessing Officer also restricted the scope and adjustment by the AO. In view of this uphold the order of the CIT(A) and dismiss the Revenue's ground."

Respectfully, following the above we decide effective ground of appeal against the AO.

9. We notice that the assessing officer while recomputing the income of the assessee has made the adjustment stating that the revenue in earlier assessment years has done a similar adjustment. The CIT(A) has given relief to the assessee by relying on the decision of the coordinate bench in assessee's own case for earlier assessment years. Therefore there is merit in the contention that the facts for the year under consideration are identical to that of the earlier years and that the decision of the coordinate bench for earlier years are mutatis mutandis applicable to the year under consideration also. We notice that in the above case, the co-ordinate bench has considered the various adjustments made to the income of the assessee and has held that in assessee's case the income should be computed as per the provisions of section 44 and accordingly, to be taxed under section 115B. Therefore respectfully following the above, we see no reason to interfere with the decision of the CIT(A).

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11. The next issue contended is the disallowance under section 14A. The Ld.AR in this regard submitted that the co-ordinate bench in assessee's own case (supra) has considered this issue also wherein it is held that –

> *3.3.We find that similar issue had arisen in the case of IPLCI(supra)also.We would like to reproduce the ground raised before the tribunal :*
>
> > *"AO and the CIT (A) erred in invoking the provisions of section 14A of the Income Tax Act 1961 and disallowing expenses attributable to earning exempted income, without appreciating the fact that the provisions of section 14A are not applicable to Insurance Companies".*
>
> *Deciding the issue in favour of the assessee Tribunal held as under :*
>
> > *"This issue is already decided by the Coordinate Benches in various cases.For the sake of record, the order in the case of General Insurance Corporation of India (supra) vide Para 9 is as under:*
> >
> > *9. "Issue No.6 Non applicability of provisions of section 14A. (Modified Ground of Appeal No.3.1 to 3.4 - Original Ground of Appeal No.3.1 to 3.5). The issue is with reference to the applicability of section 14A and disallowance of expenditure in respect of sale of investment which are not taxed. We have heard the rival contentions. We also note that this issue is also considered by the Coordinate Bench in assessee's own case for 2006-07 vide Para 7 to 9:*
> >
> > *7. Grounds of appeal no.4 regarding the expenditure under section 14A.*
> >
> > *8.We have heard the rival contentions and perused the relevant record. We note that this issue has been considered and decided by the Pune Bench of this Tribunal in the case of Bajaj Allianz General Insurance Company limited v. Addl. CIT in ITA No.1447/PN/2007 for the assessment year 2003-04 order dated 31.08.2009. This Tribunal in the case of JCIT v. M/s Reliance General Insurance co. in ITA No.3085/Mum/2008 for the assessment year 2005-06 vide order dated 26.2.2010 has considered this issue and decided in favour of the assessee. This order was followed by this Tribunal while deciding the issue in ITA No.781/Mum/2007 vide order dated 30.4.2010.Thus, this issue has been consistently decided in favour of the assessee and against the revenue by this Tribunal. The Pune Bench of this Tribunal in the case of Bajaj Allianz General Insurance Company limited v. Addl. CIT (supra) has decided this issue in paragraphs 17 to 20 as under:*

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"17. Finally the quest ion to be answered is about the applicability of s. 14A in respect of sale of investment which is not taxed under the special circumstances of deletion of a sub-rule from the statute.It is not questioned that the impugned profit was non-taxable per se rather the accepted legal position is that the impugned profit was very much taxable in the past. Now it has been informed that this controversy in respect of insurance company set at rest by a decision of Tribunal, Delhi Bench verdict in the case of Oriental Insurance Co. Ltd. (ITA Nos. 5462 & 5463/ Del/2003)asst. yrs. 2000-01 and 2001-02 order dt. 27th Feb. 2009 [reported as Oriental Insurance Co. Ltd. v. Asstt. CIT [2010life insurance business 130 TTJ (Delhi)388 : [2010life insurance business 38 DTR (Delhi) 225-Ed.life insurance business. Therefore considering the vehement reliance of learned Authorized Representative it is worth to mention at the outset itself that the issue now stood resolved by this latest decision of Delhi, Tribunal in the case of Oriental Insurance Co. Ltd. (supra), the relevant portion reproduced below:

"17. We have heard rival submissions of the parties and have gone through the material available on record.Identical issue arose in assessee's own case for asst. yr. 1985-86.The Tribunal accepted the plea of the assessee and in fact the issue went up to the Hon'ble Delhi High Court in asst . yrs. 1986-87 to 1988-89, which is reported as CIT v. Oriental Insurance Co. Ltd. [2003life insurance business 179 CTR (Delhi) 85 : [2002life insurance business 125 Taxman 1094 (Delhi), decided the issue in favour of the assessee by holding that s. 44 of the Act is a special provision dealing with the computation of profits and gains of business of insurance. It being a non obstinate provision, has to prevail over other provisions in the Act. It clearly provides that income from insurance business has to be computed in accordance with the rule contained in the First Schedule. It is not the case of the Revenue that the assessee has not computed the profits and gains of its insurance business in accordance with the said rules. Reliance was placed on the scope of s. 14A, as held in the case of General Insurance Corporation of India v.CIT [1999life insurance business 156 CTR(SC) 425 :[1999life insurance business240 ITR 139 (SC), where -in their Lordships of the apex Court have categorically held that the provisions of s. 44 being a special provision govern computation of taxable income earned from business of insurance. It mandates the tax authorities to compute the taxable income in respect of insurance business in accordance with the provisions of the First Schedule to the Act. In the light of these, their Lordships of Delhi High Court have held that no quest ion of law, much less a substantial question of law survives for their consideration. In other words, order of the Tribunal has been affirmed. Following the same reasoning, addition made by the AO is deleted.

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……… s. 44 applies notwithstanding anything to the contrary contained within the provisions of the IT Act relating to computation of income chargeable under different heads. We agree with the learned counsel that there is no requirement of head-wise bifurcation called for while computing the income under s. 44 of the Act in the case of an insurance company. The income of the business of insurance is essentially to be at the amount of the balance of profits disclosed by the annual accounts as furnished in the Controller of Insurance. The actual computation of profits and gains of insurance business will have to be computed in accordance with r. 5 of the First Schedule. In the light of these special provisions coupled with non obstante clause the AO is not permitted to travel beyond these provisions.

Sec. 14A contemplates an exception for deductions as allowable under the Act are those contained under ss. 28 to 43B of the Act. Sec. 44 creates special application of these provisions in the cases of insurance companies. We therefore, agree with the assessee and delete the act as according to us, it is not permissible to the AO to travel beyond s. 44 and First Schedule of the IT Act."

It may not be out of place to mention that the respected Co-ordinate Bench has duly taken the note of an earlier decision of that very Bench decided in the case of that very assessee vide order dt. 29th Sept. 2004 bearing ITA Nos. 7815/Del/1989, 3607 to 3609/Del /1990; 5035/Del / 1998 and 3910/Del /2000 named as Dy. CIT v. Oriental General Insurance Co. Ltd. [2005life insurance business 92 TTJ (Delhi) 300. As seen from the Paras reproduced above on due consideration of the relevant provisions as applicable to resolve this issue a conclusion was drawn that since the Courts have held, s. 44 creates a special provision in the cases of assessment of insurance companies therefore it was not permissible to the AO to travel beyond s. 44 of First Schedule of IT Act. The next common dispute relates to the order of the CIT (A) in sustaining the act ion of AO in al lowing only 50 per cent of the management expenses by invoking the provisions of s. 14A of the Act. The addition is made by the AO on the plea that the provisions of s.14A was inserted by Finance Act, 2001 w.e.f. 1st April, 1962. It is stated that the investments made by the assessee are both taxable as well as tax free. An estimated disallowance of 50 per cent out of the management expenses incurred and as claimed in the P&L a/c is treated as expenses incur red in connect ion with the looking after tax-free investment.

The learned counsel for the assessee vehemently argued that the income of the assessee is to be computed under s.44 r/w r. 5 of Sch. 1 of the IT Act. Sec. 44 is a non obstinate clause and applies notwithstanding anything to the contrary contained within the provisions of the IT Act relating to computation of income chargeable under different heads, other than the income to be

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computed under the head 'Profit and gains of business or profession'. For computation of profits and gains of business or profession the mandate to the AO is to compute the said income in accordance with the provisions of ss. 28 to 43B of the Act.In the case of the computation of profits and gains of any business of insurance, the same shall be done in accordance with the rules prescribed in First Schedule of the Act,meaning thereby ss. 28 to 43B shall not apply. No other provision pertaining to computation of income will become relevant. According to the learned counsel, two presumptions that follow on a combined reading of ss. 14, 14A, 44 and r. 5 of the First Schedule are:

(a) That no head-wise bifurcation is called for.The income, inter alia, of the business of insurance is essentially to be at the amount of the balance of profits disclosed by the annual accounts as furnished to the Controller of Insurance under the Insurance Act, 1938. The said balance of profits is subject only to adjustments there under. The adjustments do not refer to disallowance under s. 14A of the Act.

(b)Profits and gains of business as referred to in (a) above have only to be computed in accordance with r. 5 of the First Schedule.

Sec.44 creates a specific except ion to the applicability of ss. 28 to 43B.Therefore, the purpose, object and purview of s.14A has no applicability to the profits and gains of an insurance business.

The learned Departmental Representative strongly justified the act ion of the AO and that of the CIT(A) in the light of the clear provisions of s. 14A of the Act. Since the view has already been expressed by respected Co-ordinate Bench therefore, we have no reason to take any other view except to follow the same. With the result we hereby accept the argument of learned Authorized Representative to the extent that in the present situation the provisions of s.14A need not to apply while granting exempt ion to an income earned on sale of investment primarily because of the reason of the withdrawal or deletion of sub-r.5(b) to First Schedule of s. 44 of IT Act. Once we have taken this view therefore the enhancement as proposed by learned CIT(A) is reversed and the directions in this regard are set aside. Resultantly ground No. 1 is allowed consequent thereupon ground No. 2 automatically goes in favour of the assessee".

Accordingly,by following the orders of this Tribunal,we decide this issue in favour of the assessee. Therefore, the ground is allowed".

Respectfully following the orders of the coordinating benches we decided ground no.8 in favour of the assessee.As the ground no.8 has been decided in faovur of the

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assessee,so the grounds no.9 and 10 become academic. Both the grounds are decided in favour of the assessee for statistical puoposes."

12. Respectfully following the above decision, we hold that the provisions of section 14A are not applicable in assessee's case and allow the ground raised in this regard in favour of the assessee.

13. The next issue is with respect to claiming exemption towards dividend income, interest income from tax free bonds and income from pension line of business. We notice in this regard that the coordinate bench in the case of ICICI Prudential Insurance Co. Ltd vs ACIT [2012] 28 taxmann.com 257 (Mum.) has considered the issue of claiming exemption towards income from pension line of business and dividend income and held that -

> ***48.*** *All the above three grounds are on the issue whether exemption under Sec 10 can be allowed when incomes are computed under Sec.44 of the IT Act. In arriving at the deficit from the insurance business, assessee claimed certain exempt incomes under section 10(23AAB) with reference to Pension Business and dividend under section 10(34). AO did not allow the amounts on the reason that these incomes are part of income of life insurance business and it is included as income by the actuary, therefore, they cannot be exempted. This issue is covered in favour of assessee and against the Revenue by the orders of the General Insurance Company of India (supra) wherein the issue of deduction under section 10 have been considered and allowed following the Hon'ble Bombay High Court judgment in General Insurance Corpn. of India v. CIT [2012] 204 Taxman 587/17 taxmann.com 247. The order in the case of General Insurance Corpn. of India (supra) vide Para 7 to 8 is as under:*
>
> > *7. "Issue No.5: Availability of Section 10 Exemption (Modified Ground of Appeal No.2 - Original Ground of Appeal No.2.1 & 2.2) -. The issue arises in a peculiar manner in this assessment year. While dealing with the issue of profit on sale of investments, the Assessing Officer proposed to differ from assessee stand and bring to tax the profit on sale of investment. The assessee alternately submitted that the deduction under section 10(38) in respect of long term capital gain was available. When this issue came up before the CIT (A), the CIT (A) not only rejected the claim under section 10(38) but also considered and elaborately*

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discussed how and why the assessee was not eligible for deductions already allowed by the Assessing Officer in respect of 'interest on tax free bonds' amounting to Rs. 3,45,19,352/- under section 10(15) and dividend income amounting to Rs. 270,66,46,489/- under section 10(34). He has elaborately discussed this issue from Para 6 onwards and ultimately made an enhancement of income to an extent of Rs. 274,11,65,844/- the amount which was allowed by the Assessing Officer as exempt under section 10. The contention of the CIT (A) was that the assessee was not eligible for deduction under section 10, once the incomes are brought to tax under section 44 r.w. Rule 5 of First Schedule to the Income Tax Act, 1961.

8. There is no need to consider the arguments of the CIT (A) and how he has arrived at that conclusion in this order as this issue was decided by the Hon'ble Bombay High Court in favour of the assessee in writ petition No.2560 of 2011 in the assessee's own case dated 1.12.2011. Consequent to the findings of the CIT(A) in AY 2007-08 (impugned AY) the Assessing Officer seems to have issued notice under section 148 for reopening the assessment for the AY 2006-07 on the reason that the assessee was not eligible for claiming income as exempt under sub-sections 15, 23G, 34 and 38 of Section 10 and assessee challenged the issue by way of writ petition. The Hon'ble Bombay High Court not only disapproved the reopening of the assessment but gave the findings on merit also which are as under:-

"11. Section 44 of the Income Tax Act, 1961 stipulates as follows:

"44. Notwithstanding anything to the contrary contained in the provisions of this Act relating to the computation of income chargeable under the head "interest on securities", "Income from house property", "Capital gains" or "Income from other sources", or in section 199 or in sections 28 to (43B), the profits and gains of any business of insurance, including any such business carried on by a mutual insurance company or by a cooperative society, shall be computed in accordance with the rules contained in the First Schedule".

Section 44 provides that the profits and gains of any business of insurance of a mutual insurance company shall be computed in accordance with the rules in the First Schedule. Part 'A' of the First Schedule containing Rules 1 to 4 deals with profits of life insurance business while Part B consisting of Rule 5 deals with computation of profits and gains of other insurance business. Rule 5 provides as follows:

"5. The profits and gains of any business of insurance other than life insurance shall be taken to be the balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act, 1938 (4 of 1938), to be furnished to the Controller of Insurance subject to the following adjustments:

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(a) Subject to the other provisions of this rule, any expenditure or allowance (including any amount debited to the profit and loss account either by way of a provision for any tax, dividend, reserve or any other provision as may be prescribed) which is not admissible under the provisions of section 30 to (43B) in computing the profits and gains of a business shall be added back;

(b) (………)

(c) Such amount carried over to a reserve for unexpired risks as may be prescribed in this behalf shall be allowed as a deduction".

The Assessing Officer has in the reasons for reopening the assessment proceeded on the premise that in computing the profits and gains of business for an assessee who carries on general insurance business no other section of the Act would apply and that the computation could be carried out only in accordance with section 44 read with Rule 5 of the First Schedule. In Life Insurance Corporation of India, Bombay v. Commissioner of Income Tax Bombay City-III, a Division Bench of this Court construed the provisions of section 44 and of the First Schedule. The assessee in that case which carried on life insurance business had made a claim to exemption under section 10(15) and section 19(1). In a reference before the Court, the questions referred included whether in computing the profits and gains of the business of insurance under section 44 read with the First Schedule certain items which were ordinarily not includible in the total income were rightly included in the taxable surplus. The Division Bench of this Court held as follows:

"The question which essentially falls to be determined in this reference is whether, in view of the provisions in section 44 or rule 2 of the first Schedule, the Life Insurance Corporation will not be entitled to claim the deductions which are otherwise admissible in the case of an assessee, computation of whose income is governed by the other provisions of the Act. The argument of Mr. Kolah for the Life Insurance Corporation is that unless there are express provisions which disable the Corporation from claiming the deductions referred to above, the Corporation cannot be deprived of the benefit of the provisions referred to in the questions Nos. 1 to 6. Section 44, which deals with computation of profits and gains of business of insurance, begins with a non-obstante clause, the effect of which is that the provisions of the Act relating to the computation of income chargeable under the head "Interest on securities", "Income from house property", "Capital gains" or "Income from other sources", do not apply in the case of computation of income from insurance business. The effect of the non-obstante clause so far as the earlier part of section 44 is concerned, therefore, is that the provisions of section 44 will prevail notwithstanding the fact that there are contrary provisions in the Act relating to computation of income chargeable under the four heads mentioned in section 44. The only other overriding effect of section 44 is that its provisions operate notwithstanding the provisions of section

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191 and of section 28 to 43A. Thus, the only effect of section 44 is that the operation of the provisions referred to therein is excluded in the case of an assessee who carried on insurance business and in whose case the provisions of rule 2 of the First Schedule are attracted. If the deductions which are claimed by the assessee do not fall within the provisions which are referred to in section 44, it will have to be held that the applicability of those provisions in the case of an assessee whose assessment is governed by section 44 read with rule 2 in the First Schedule is not excluded".

This judgment is sought to be distinguished by the Assessing Officer while disposing of the objections on the ground that the decision was rendered in the context of an assessee which carried on life insurance business to whom Rules 1 to 4 of the First Schedule applied whereas in the case of the assessee in this case which carries on general insurance business Rule 5 could apply. According to the Assessing Officer, Rule 5 would not permit any adjustment to the balance of profit as per annual accounts prepared under the Insurance Act, and hence the judgment would not be applicable. The Assessing Officer has clearly not noticed that the decision in Life Insurance Corporation (supra) though rendered in the context of an assessee which carries on life insurance business, followed an earlier decision of a Division Bench of this Court in Commissioner of Income-Tax v. New India Assurance Co Ltd. That was a case of an assessee which carried on non life insurance business. In New India Assurance Co. Ltd. the Division Bench dealt inter alia with the provisions of section 19(7) of the Income Tax Act, 1922. The questions referred to this Court included whether the assessee was entitled to claim an exemption from tax under section 15B and 15C (4) and in respect of interest on a government loan under a notification issued under section 60. Section 10(7) of the Income Tax Act, 1922 provided that notwithstanding anything to the contrary contained in section 8,9,10,12 or 18, the profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to the Act. The Division Bench held that upon the language of sub-section (7) of section 10 read along with rule 6 it was impossible to hold that the provisions relating to exemptions stood excluded from operation. In that context the Division Bench held as follows:

"It is only after the profits and gains of a business are computed that any question of granting exemptions arises and if the latter stage were intended to be excluded by the law we should have thought that a clearer provision than is made in sub-section (7) of section 10 and in rule 6 would have been made".

In the subsequent judgment of the Division Bench in Life Insurance Corporation (supra), the Division Bench noted that there was a difference in the language of section 10(7) of the Act of 1922 when compared with section 44 of the Act of 1961 since section 44 does not refer to the computation of tax but

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merely to the computation of profits and gains in the business of insurance. The Division Bench held that this would however not make any difference to the principle laid down by the Court in the earlier decision in the case of New India Assurance Co. Ltd. Accordingly, the decision of Life Insurance Corporation (Supra) could not have been ignored by the Assessing Officer on the supposition that the decision was rendered in the context of an assessee who carried on life insurance business and was, therefore, not available to an assessee which carries on general insurance business.

12. In General Insurance Corporation of India v. Commissioner of Income-Tax, the Supreme Court considered in an appeal arising out of a judgment of the High Court the issue as to whether a sum of Rs. 3 crores, being a provision for redemption of preference shares, was not liable to be added back in the total income of the assessee for AY 1977-78?. The Supreme Court held that a plain reading of rule 5(a) of the First Schedule made it clear that in order to attract the applicability of the provision the amount should firstly be an expenditure or allowance and secondly it should be one not admissible under the provisions of section 30 to 43A. The Supreme Court held that the sum of Rs. 3 crores in that case which was set apart as a provision for redemption of preference shares could not have been treated as an expenditure and hence could not have been added back under rule 5(a). In that context the Supreme Court held as follows:

"There is another approach to the same issue. Section 44 of the Income-tax At read with the rules contained in the First Schedule to the Act lays down an artificial mode of computing the profits and gains of insurance business. For the purpose of income-tax, the figures in the accounts of the assessee drawn up in accordance with the provisions of the First Schedule to the Income-tax Act and satisfying the requirements of the Insurance Act are binding on the Assessing Officer under the Income-tax Act and he has no general power to correct the errors in the accounts of an insurance business and undo the entries made therein".

The question whether an assessee who carries on general insurance business would be entitled to avail of an exemption under section 10 did not arise. The issue as to whether the assessee which carries on the business of general insurance would be entitled to the benefit of an exemption under clauses (15), (23G) and (33) of section 10 is directly governed by the decision rendered by the Division Bench in Life Insurance Corporation v. Commissioner of Income-tax (Supra) following the earlier decision in Commissioner of Income-tax v. New India Assurance Co. Ltd (supra). The Assessing Officer could not have ignored the binding precedent contained in the two Division Bench decisions of this Court. Moreover, the Assessing Officer in allowing the benefit of the exemption in the order of assessment under section 143(3) specifically relied upon the view taken by the CBDT in its communication dated 21 February 2006 to the

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> *Chairman of IRDA. The communication clarifies that the exemption available to any other assessee under any clauses of section 10 is also available to a person carrying on non-life insurance business subject to the fulfillment of the conditions, if any, under a particular clause of section 10 under which exemption is sought. It needs to be emphasized that it is not the case of the Assessing Officer that the assessee had failed to fulfill the condition which attached to the provisions of the relevant clauses of section 10 in respect of which the exemption was allowed. This of course is apart from clause (38) of section 10 where the Assessing Officer had rejected the claim for exemption in the original order of assessment under section 143(3). The Assessing Officer above all was bound by the communication of the CBDT. Having followed that in the order under section 143(3) he could not have taken a different view while purporting to reopen the assessment. Having applied his mind specifically to the issue an having taken a view on the basis of the communication noted earlier, the act of reopening the assessment would have to be regarded as a mere change of opinion which has also not been based on any tangible material. Consequently, we hold that the reopening of the assessment is contrary to law. The Petition would have, therefore, to be allowed".*
>
> *Respectfully following the above, we hold that the assessee is entitled for exemption under section 10. The enhancement made by the CIT (A) is therefore, cancelled. Ground is accordingly allowed".*

49. *In view of the above and respectfully following the same, we hold that assessee is entitled to exemption under section 10. Therefore, we do not see any reason to differ from the order of the CIT (A) where he has allowed assessee's claim of exemption under section 10(23AAB) of surplus of Participating Pension Business and also dividend under section 10(34). Accordingly Revenue ground on this issue is rejected.*

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14. The ratio laid down in the above decision is that the only effect of section 44 is that the operation of the provisions referred to therein is excluded in the case of an assessee who carried on insurance business and in whose case the provisions of rule 2 of the First Schedule are attracted. If the deductions which are claimed by the assessee do not fall within the provisions which are referred to in section 44, it will have to be held that the applicability of those provisions in the case of an assessee whose assessment is governed by section 44 read with rule 2 in the First Schedule is not excluded. Therefore respectfully following the above decision of

the ccordinate bench we hold that the assessee is entitle to claim exemption under section 10(15) towards interest income from tax free bonds, under section 10(34) towards dividend income and under section 10(23AAB) towards surplus of Participating Pension Business.

15. In result the appeal of the revenue is dismissed.

CO No.75/Mum/2023 filed by the assessee

16. In view of our decision in the appeal filed by the revenue, the cross objection filed by the assessee for A.Y. 2017-18 have becomes infructuous, therefore, dismissed.

ITA No. 1848/Mumbai-2023 (A.Y. 2018-19) & CO No.76/Mum/2023

16. The assessee filed the original return of income for A.Y. 2018-19 on 31/10/2018 declaring a total loss of Rs.582,71,94,990/-. The case was selected for scrutiny and statutory notices were duly served on the assessee. The assessee disclosed its income on the basis of surplus of Form I which is the actuarial valuation as prescribed by the IRDA. The Assessing Officer held that the assessee cannot adjust the actuarial surplus of the previous year and treated the entire closing actuarial surplus as the income of the assessee. Further the assessing officer made an addition towards the negative reserves as per the actuarial report. IN addition to these adjustments the assessing officer also held that the assessee is not entitled to claim exemption of pension business under section 10(23AAB), interest under section 10(15)(iv)(h) and dividend income under section 10(34) / 10(35). And also made a disallowance under section 14A. Further, the Assessing Officer treated the income from life insurance business as income under section 44 taxable at 12.5% and treated the profit as per shareholders' account as 'Income from other

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sources' which has to be taxed at normal rate i.e. at 30%. Aggrieved, the assessee preferred further appeal before the CIT(A). The CIT(A) gave relief to the assessee by placing reliance on the decision of the co-ordinate bench in assessee's own case for A.Y. 2008-09. Against the order of the CIT(A), the Revenue is in appeal before the Tribunal.

17. The issues contended in the appeal for A.Y. 2018-19 are identical to the issues and facts of A.Y. 2017-18; therefore, the decision arrived at therein while disposing of the appeal for A.Y. 2017-18 shall apply mutatis mutadis to this appeal and the cross objection also.

18. In the result, the appeal by the revenue as well as the Cross objection of the assessee for the A.Y. 2018-19 are dismissed.

19. In result, the appeals for AY 2017-18 and 2018-19 by the Revenue and the Cross objections filed by the Assessee are dismissed.

Order pronounced in the open court on 01/11/2023

Sd/- **sd/-**

(AMIT SHUKLA)	**PADMAVATHY S.**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dt : 1st November, 2023
Pavanan

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy// Asstt. Registrar / Senior Private Secretary**, ITAT, Mumbai**

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