

आयकर अपीलिय अधिकरण
मुंबई पीठ "सी" मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एम.बालागनेश, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI M.BALAGANESH, ACCOUNTANT MEMBER
आअसं. 6725/मुं/2019 (नि. व.2016-17)
ITA No. 6725/MUM/2019 (A.Y.2016-17)

DCIT-12(2)(2),
Room No. 128F, 1st Floor,
Aayakar Bhavan, Churchgate,
Mumbai-400020

..... अपीलार्थी /Appellant

बनाम Vs.

M/s India First Life Insurance Co. Ltd.
B-301, Tril IT 4, Filmcity Road,
Malad (East),
Mumbai-400097.

PAN: AADCB6215G

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. R.K. Sahu

प्रतिवादी द्वारा/Respondent by : Shri Farookh V. Irani

सुनवाई की तिथि/ Date of hearing : 09/08/2021

घोषणा की तिथि/ Date of pronouncement : 30/08/2021

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-20, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 30.08.2019 for Assessment Year (AY) 2016-17.

2. The Revenue in appeal has raised following grounds of appeal assailing the order of CIT(A):

1. *"On the facts & circumstances of the case and in law, the Ld. CIT(A) has erred in directing to exclude income from pension fund of Rs.17,52,19,809/- u/s 10(23AAB) without considering the fact that such income cannot be allowed as exempt when the profit of the company are taxable as per the provision of section 44 of the Income Tax Act, 1961."*

2. *"On the facts and circumstances of the case and in law, the Ld, CIT(A) has erred in deleting the addition made on account of deduction claimed on Dividend Income u/s 10(34) of the Act, of Rs.24,78,31,300/- without considering the fact that such dividend income was assessable under the head 'income from business and profession' and cannot be computed separately to claim exemption u/s 10(34) of the Act as this will amount to violation of provision of section 44 of the Act."*

3. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance made u/s 14A on account of expense related to exempt income on the ground that the provision of section 44 does not provide for such disallowance and at the same time allowing relief on the taxability of dividend income ignoring the provisions of section 44 of the IT Act 1961."*

3. Sh. Farookh V. Irani appearing on behalf of the assessee submitted at the outset that the issues raised in ground no. 1 & 2 of the appeal by the Revenue have been considered by the Tribunal in preceding AYs in assessee's own case and have allowed the same in favour of the assessee. The Id. Counsel for the assessee submitted that in ground no.1 of appeal, the Revenue has assailed the findings of CIT(A) in excluding income from Pension fund Rs. 17,52,19,809/- under section 10(23AAB) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act']. The Id. Counsel pointed that the assessee had made claim of deduction under section 10(23AAB) of the Act, however, the claim was enhanced by filing revised claim during assessment proceedings. The Assessing Officer (AO) allowed assessee's claim only to the extent made in

return of income. The enhanced claim was disallowed by the AO. In First Appellate proceedings, the CIT(A) following the decision in the case of Pruthvi Brokers and Shareholders P. Ltd. [349 ITR 336] accepted the revised claim. Similar issue had come up before the Tribunal in assessee's own case in appeal filed by the Revenue in ITA No. 1912/Mum/2018 for AY 2013-14 decided on 07.08.2019. The Tribunal upheld the findings of CIT(A) and dismissed the ground in Revenue's appeal.

3.1. The Id. Counsel submitted that the issue in ground no.2 of appeal is deduction claimed on dividend income under section 10(34) of the Act. The issue is perennial, similar issue had come up before the Tribunal in assessee's own case in AY 2010-11, 2011-12 & 2013-14. The Tribunal has consistently decided this issue in favour of the assessee.

The Id. Counsel for the assessee pointed that in ground no.3 of appeal, the Department has assailed the findings of CIT(A) deleting disallowance made under section 14A of the Act. The assessee is engaged in business of Life Insurance, the Tribunal in various decisions has time and again held that the provisions of section 14A are not attracted in the case of companies engaged in Insurance Business. In support of his contentions, the Id. Counsel placed reliance on following decisions:

1. ICICI Prudential Insurance v/s. ACIT, ITA No. 6854/Mum/2010 for AY 2005-06 decided on 14.09.2012.
2. SBI Life Insurance Company Ltd. ITA No. 5670/Mum/2009 for AY 2006-07, decided on 23.05.2014.
3. IDBI Federal Life Insurance Company Ltd., ITA No. 1044/Mum/2018 for AY 2012-13 decided on 24.07.2019.
4. Birla Sun Life Insurance Company Ltd., ITA No. 602/Mum/2009 for AY 2004-05 decided on 09.09.2010.

4. Per contra, Sh. R.K. Sahu representing the Department vehemently defended the assessment order. However, the Id. DR fairly admitted that the issue raised in ground no.1 & 2 of the appeal by the Revenue have been adjudicated by the Tribunal in assessee's own case in preceding AYs. In respect of assessee's enhanced claim of pension fund under section 10(23AAB) of the Act, the Id. DR submitted that to the extent of claim made in return of income be allowed and not enhanced amount as claimed in the computation filed during the course of assessment proceedings.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. Both sides are unanimous in stating that the issue raised in ground no. 1 & 2 of appeal have been considered by the Tribunal in the preceding AYs in assessee's own case. We find that in AY 2013-14 in ITA No. 1912/Mum/2018 (supra), the Revenue had raised ground assailing exemption allowed to the assessee by the Id. CIT(A) u/s. 10(23AAB) of the Act. The co-ordinate bench upheld the order of CIT(A) thereby confirming assessee's claim of exemption under section 10(23AAB) of the Act. The Tribunal held:

"4. Under this issue the revenue has challenged the deletion of addition raised on account of exemption of income from pension scheme u/s 10(23AAB) of the Act in sum of Rs.4,35,76,280/-. The Ld. Representative of the revenue has argued that the income from the pension fund is not liable to the exempt u/s 44 of the I.T. Act, 1961 but the CIT(A) has wrongly deleted the addition, hence, the finding of the CIT(A) is not justifiable and the same is liable to be set aside in the interest of justice. However, on the other hand, the Ld. Representative of the assessee has refuted the said contention and argued that the issue has been squarely covered by the decision of the Hon'ble ITAT in the assessee's own case in ITA. No.7276/M/2014 vide order dated 11.01.2017 for the A.Y.2010-11,

therefore, the CIT(A) has rightly deleted the addition, hence, the issue is liable to be decided in favour of the assessee against the revenue. Before going further, we deem it necessary to advert the finding of the CIT(A) on record:-

"5.3 I have considered the facts of the case and the appellant's submissions. Perusal of the assessment order shows that the AO has mentioned therein that the appellant had filed revised return of income on 02.08.2014. The appellant had also submitted copy of the same wherein claim u/s 10(23AAB) was made. The AO was, therefore, not correct in stating that the appellant had made the claim u/s 10(23AAB) by filing revised computation of income only without filing revised return of income. I find that the issue of whether income/loss from pension fund scheme should be excluded from the computation of income as provided under section 44 of Act has been examined by my Id. predecessor in the appeal for A.Y. 2010-11 wherein it was observed and held as under:

"4.3 I have considered facts and circumstances of The case, appellant's submissions. This issue had come into consideration of Bombay High Court in the case of CIT vs. Life Insurance Corporation of India Ltd. (2011) 12 taxmann.com 388 (Born) wherein it is held as under:

"Section 44 of the Income-tax Act. 1961 - Insurance business- Assessment year 2002-03 - Whether amount set apart by insurance company towards solvency margin as per directions given by IRDA is to be excluded while computing actuarial valuation surplus - Held yes -Whether pension fund like Jeevan Suraksha Fund would continue to be governed by provisions of section 44 irrespective of fact that income from such fund is exempted, or not and, therefore, every after insertion of section 10(23AA8), loss incurred from pension fund like Jeevan Suraksha Fund has to be excluded while determining actuarial valuation surplus from insurance business under section 44 - Held, yes."

Following the above decision where loss in pension fund is allowed to be adjusted against allowed from the surplus amount from the insurance business. Following the above decision this ground of appeal is allowed."

5.4 The above decision of my Id. predecessor has also been affirmed by the Hon'ble Tribunal in ITA No. 7276/M/2014 vide order dated 11.01.2017 by observing and holding as under:

"On perusal of the order of the CIT (A) and the amended provisions of section 10(34) of the Act, whereby the words other insurer engaged in pension fund" are included, we find that the finding of the CIT (A) on the first issue is fair and reasonable. As such, the judgement of the Hon'ble High Court of Bombay in case of the LIC of India Ltd (338 ITR 212) is directly on the issue. Accordingly, the claim of the loss of the Pension Fund is an allowable claim. We approve the conclusions drawn by the CIT (A) vide para 4.3 of his order on this issue. Thus, Ground No. 1 raised by the Revenue is dismissed."

Facts and issue being the same as that of the earlier year, respectfully following the decision of the Hon'ble Tribunal in the appellant's own case, the appellant ground of appeal is allowed."

5. *On appraisal of the above mentioned finding, we find that the CIT(A) has decided the matter of controversy on the basis of the decision of Hon'ble ITAT in the assessee's own case for the A.Y.2010-11 in ITA. No. 7276/M/2014 vide order dated 11.01.2017. The said decision was passed on the basis of decision of the Hon'ble Bombay High Court in case of LIC of India Ltd. (338 ITR 212). Accordingly, the claim of the loss of the Pension Fund was held to be allowable claim. The section 44 of the Act has clearly been distinguished on account of loss in the pension scheme. The facts are not distinguishable at the stage. No law contrary to the law relied by the assessee has been produced before us. Since the case of the assessee has duly been covered by the decision of the Hon'ble ITAT in the assessee's own case (supra), therefore, we are of the view that the finding of the CIT(A) is quite justifiable which is not liable to be disturbed at this stage. Accordingly, this issue is decided in favour of the assessee against the revenue."*

Since the issue in present appeal is identical, the ground no.1 of the appeal is liable to be dismissed for parity of reasons. The second limb of Id. DR's argument is that the claim if at all is to be allowed should be restricted to the claim made in return of income. In the instant case the assessee filed revised computation of claim at the time of assessment proceedings. The CIT(A) accepted the enhanced claim made in revised computation. Once the assessee is held to be eligible for claiming the benefit of exemption u/s. 10(23AAB) of the Act, the exemption of correct amount should be allowed to the assessee. If the assessee failed to revise its claim by way of revised return of income, for any reason whatsoever, the assessee is not estopped to make correct claim by way of revised computation. The revised claim can be entertained in appellate proceedings. We find no infirmity in the action of CIT(A) to allow revised enhanced claim. The ground no.1 of the appeal by Revenue is thus dismissed.

6. The issue raised in ground no.2 of present appeal is in respect of deduction on dividend income under section 10(34) of the Act. The Co-ordinate bench in ITA No. 1912/Mum/2018 (supra) in assessee's own case has considered this issue and held as under:

"6. Issue no.2 is in connection with the deletion of the addition made on account of deduction claimed on dividend income u/s 10(34) of the Act of Rs.13,82,68,575/-. At the very outset, the Ld. Representative of the revenue has argued that the CIT(A) has wrongly allowed the claim of the assessee u/s 10(34) of the Act, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(a) on record: -

" 6.4 I have considered the facts of the case and the appellant's submissions. I find that identical issue had come up for consideration in the appellant's appeal for A.Y. 2010-11 wherein my Id. predecessor had observed and held as under:

"5.3 I have considered the facts and circumstances of the case, appellant's submissions and the case laws supported by the appellant This issue had come into consideration of various judicial rulings which is as under:

(i) ICICI Prudential Insurance vs. ACIT ITA Nos. 6854, to 6856,6509,7765 to 7767 and 7213/Mum/2010

"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 120 (23AA8) of surplus of participation Pension Business and also dividend under section 10(34). Accordingly, revenue ground on this issue is rejected."

(ii) LIC (115 ITR 45)

"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 carries 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 in the case of an assessee whose assessment is governed by section 44 read with rule 2 in the First Schedule is not excluded."

LIC vs. Addl. C/TITA Nos.3702, 3703,6221/Mum/2012

"We find that the issue of admissibility of provisions of section 10(34) has been considered by the 'F' bench of Mumbai Tribunal while deciding the appeals filed by AO in the cases of /CC/ Prudential Insurance (ITA No.

7765/Mum/2010A.Y.2005-06dt.14-09 2012). Respectfully following the above, we hold that the assessee is entitled for exemption u/s.10."

(iv) SBI Life Insurance Company Ltd. vs. „It. CIT ITA Nos.3800 to 3801/Mum/2008, ITA No.1501/Mum/2009, ITA No.5670/Mum/2009. ITA No. 4139/Mum/2008, ITA No. 3346/Mum/2009, IA No. 5759/Mum/2009:

"In connection with Revenue's appeal for AY 2005-06, the parties mentioned that there are four main issues that require specific adjudication. They are... (c) exclusion from total income the exempted income under section 10(34) and 10(38) and 10(23AA8) of the Act.

In connection with issue at (c) above it is the claim of the assessee that the same is required to be adjudicated considering the decisions of tribunal in case of /C/C/ Prudential Insurance and 1_10 supra. These decisions are not in existence at the relevant point of time. Considering the new the said decisions and after granting reasonable opportunity of being heard to the assessee."

Following the above judicial rulings, A. O. is directed to allow appellant's claim of sec. 10(34) of the 1. T. Act. This ground of appeal is allowed."

6.5 The above decision of my Id. predecessor has also been affirmed by the Hon'ble Tribunal in ITA No. 7276/M12014 vide order dated 11.01.2017 by observing and holding as under:

"7. Regarding the 2nd issue, which relates to the disallowance of dividend income u/s 10(34) qua the provisions of section 44 of the Act, we find that the finding of the CIT(A) in para 5.3 of his order is fair and reasonable as the same is taken based on the various binding judicial precedents in the case of LIC vs Addl. CIT. : ICIC Prudential Insurance vs ACIT; SBI Life Insurance Company Ltd vs CIT etc, (contents on page 8 of the CIT (A) order are relevant . Accordingly, we affirm the order of the CIT (A) on this issue too. Thus, both the issues raised by the revenue are allowed in favour of assessee."

Facts and issue being the same as that of the earlier year, respectfully following the decision of the Hon'ble Tribunal in the appellant's own case, the appellant's around of appeal is allowed."

7. On appraisal of the above said finding, we noticed that the CIT(A) has passed the order on the basis of the decision of Hon'ble ITAT in the assessee's own case in ITA. No. 7276/M/2014 vide order dated 11.01.2017 for the A.Y.2010-11. The facts are not distinguishable at the stage. No law contrary to the law relied by the assessee has been produced before us. Since the matter of controversy has duly been covered by the decision of Hon'ble ITAT in the assessee's own case (supra), therefore, we are of the view that the CIT(A) has passed the order judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, we decide this issue in favour of the assessee against the revenue."

The facts in the impugned AY are identical. No contrary decision has been brought to our notice by the Department. We find no reason to take contrary view. Following the decision of co-ordinate bench, the ground no.2 of the appeal is dismissed for parity of reasons.

7. In ground no.3 of appeal, the Revenue has assailed the findings of CIT(A) in deleting disallowance made under section 14A of the Act. We find that in the case of SBI Life Insurance Co. Vs. JCIT (supra) one of the issue before the Tribunal was applicability of provisions of section 14A of the Act to Insurance Companies. The co-ordinate bench after considering various decisions and examining the facts concluded as under:

*“17. We have heard both the parties and perused the orders of the Revenue Authorities as well as the decisions of the Tribunal cited before us. On perusal of the decision of the ITAT in the case of ICICI Prudential Insurance (supra) as well as another decision in the case of HDFC Standard Life Insurance Company (supra), we find revenue raised the arguments revolving around the applicability of the judgment in the case of Godrej & Boyce Mfg Co Ltd, supra. Despite the same, the Tribunal considered the said judgment and still allowed the claim of the assessee. Therefore, in view of the special provisions applicable to the insurance companies, we are of the opinion that the provisions of section 14A r.w.r. 8D were held not applicable to the insurance companies i.e., ICICI Prudential Insurance, HDFC Standard Life Insurance Company. Therefore, the SBI Life Insurance Company Limited assessee in the present case should not be any exception. Considering the settled nature of the issue vide decisions of the Tribunal’s order (supra), ground no.3 raised by the assessee for the AY 2006-07 is **allowed**.”*

8. We find similar view has been taken in the case of ICICI Prudential Insurance v/s. ACIT (supra), IDBI Federal Life Insurance Co. Ltd. (supra) and Birla Sunlife Insurance Co. Ltd. (supra). No contrary decision has been brought to our notice by the Revenue. Therefore, in the light of above decisions, we hold that the provisions of section 14A are not attracted in the case of Insurance Companies. The ground No.3 of appeal is dismissed, accordingly.

9. In the result, impugned order is upheld and appeal of the Revenue is dismissed.

Order pronounced in the open court on **Monday**, the **30th** day of August, 2021.

Sd/-

(M. BALAGANESH)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 30/08/2021

S.K., PS

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

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(Dy./Asstt. Registrar)
ITAT, Mumbai