

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF AUGUST, 2021

PRESENT

THE HON'BLE MRS.JUSTICE S.SUJATHA

AND

THE HON'BLE MR. JUSTICE RAVI V. HOSMANI

**I.T.A.No.128/2018 C/w. I.T.A.No.181/2017 &
I.T.A.No.436/2018**

IN ITA No.128/2018:

BETWEEN :

1. PR. COMMISSIONER OF INCOME TAX-5
BMT C COMPLEX,
KORAMANGALA, BENGALURU.
2. ASSISTANT COMMISSIONER
OF INCOME TAX, CIRCLE-5(1)(2),
BMT C COMPLEX,
KORAMANGALA BENGALURU. ...APPELLANTS

(BY SRI SANMATHI.E.I., ADV.)

AND :

M/S PNB METLIFE INDIA
INSURANCE COMPANY LTD.,
#5, BRIGADE SESHAMAHAL,
VANI VILAS ROAD, BASAVANAGUDI,
BANGALORE-560004.
PAN:AACCM 6448H. ...RESPONDENT

(BY SRI PERCY PARDIWALA, SENIOR COUNSEL
ALONG WITH SRI.T.SURYANARAYANA, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION
260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER

DATED 08/09/2017 PASSED IN ITA NO.179/BANG/2017, FOR THE ASSESSMENT YEAR 2012-13 PRAYING THIS HON'BLE COURT TO DECIDE THE FOREGOING QUESTION OF LAW AND / OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT. (A) SET ASIDE THE APPELLATE ORDER DATED 08/09/2017 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, BENGALURU, IN APPEAL PROCEEDINGS NO. ITA NO. 179/BANG/2017 FOR THE ASSESSMENT YEAR 2012-13 AS SOUGHT FOR IN THIS APPEAL; AND TO GRANT SUCH OTHER RELIEF AS DEEMED FIT, IN THE INTEREST OF JUSTICE.

IN ITA No.181/2017:

BETWEEN :

PR. COMMISSIONER OF INCCME TAX [APPEALS]-5
BMTX COMPLEX,
KORAMANGALA, BENGALURU.

...APPELLANT

(BY SRI SANMATHI.E.I., ADV.)

AND :

M/S PNB METLIFE INDIA
INSURANCE COMPANY LTD.,
#5, BRIGADE SESHAMAHAL,
VANI VILAS ROAD,
BASAVANAGUDI,
BANGALORE.

...RESPONDENT

(BY SRI PERCY PARDIWALA, SENIOR COUNSEL
ALONG WITH SRI.T.SURYANARAYANA, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 22/09/2016 PASSED IN ITA NO.1508/BANG/2015, FOR THE ASSESSMENT YEAR 2011-12 PRAYING THIS HON'BLE COURT TO (1) DECIDE THE FOREGOING QUESTION OF LAW AND / OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND SET ASIDE THE APPELLATE ORDER DATED 22/09/2016 PASSED BY THE ITAT, 'A' BENCH, BENGALURU, AS SOUGHT FOR, IN THE RESPONDENT-ASSESSEE'S CASE, IN APPEAL PROCEEDINGS IN ITA NO. 1508/BANG/2015 FOR A.Y. 2011-12

& GRANT SUCH OTHER RELIEF AS DEEMED FIT, IN THE INTEREST OF JUSTICE.

IN ITA No.436/2018:

BETWEEN :

1. PR. COMMISSIONER OF INCOME TAX-5
BMTc COMPLEX,
KORAMANGALA,
BENGALURU.

2. ASSISTANT COMMISSIONER
OF INCOME TAX,
CIRCLE-5(1)(2),
BMTc COMPLEX,
KORAMANGALA BENGALURU. ...APPELLANTS

(BY SRI SANMATHI.E.I., ADV.)

AND :

M/S PNB METLIFE INDIA
INSURANCE COMPANY LTD.,
#5, BRIGADE SESHAMAHAL,
VANI VILAS ROAD,
BASAVANAGUDI,
BANGALORE-560004.
PAN:AACCM 6448H. ...RESPONDENT

(BY SRI PERCY PARDIWALA, SENIOR COUNSEL
ALONG WITH SRI.T.SURYANARAYANA, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 05.01.2018 PASSED IN ITA NO. 1220/BANG/2017, FOR THE ASSESSMENT YEAR 2013-2014 PRAYING THIS HON'BLE COURT TO (A) DECIDE THE FOREGOING QUESTION OF LAW AND/OR SUCH OTHER QUESTIONS OF LAW AS MAY BE FORMULATED BY THE HON'BLE COURT AS DEEMED FIT. (B) SET ASIDE THE APPELLATE ORDER DATED 05.01.2018 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, BANGALORE, IN APPEAL PROCEEDINGS NO. ITA NO. 1220/BANG/2017 FOR THE ASSESSMENT YEAR 2013-2014 AS SOUGHT FOR IN THIS APPEAL; AND TO GRANT SUCH OTHER RELIEF AS DEEMED FIT, IN THE INTEREST OF JUSTICE.

THESE APPEALS COMING ON FOR HEARING, THIS DAY, **S. SUJATHA, J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

Since akin and common issues are involved in these matters, the same are clubbed, heard together and disposed of, by this common Judgment.

2. These appeals are filed by the revenue under Section 260 A of the Income Tax Act, 1961 [Act' for short] against the order of the Income Tax Appellate Tribunal, Bengaluru Bench (Bengaluru) ('the Tribunal' for short), relating to the assessment year 2011-2012 in ITA No.181/2017, assessment year 2012-13 in ITA 128/2018 and assessment year 2013-14 in ITA No.436/2018.

3. The matters were admitted to consider the following substantial question of law raised in the appeals:-

“(1) Whether, on the facts and in the circumstances of the case, the Tribunal is justified in deciding that assessee – company has correctly computed profits of Life Insurance business even though the assessee – company was not complying with the provision of Section 44 read with First Schedule of the IT Act and Section 115B of the IT Act ?

2) Whether on the facts and in the circumstances of the case, Tribunal is correct in law in interpreting the special provision under Section 44 of the IT Act while granting benefits to assessee- company?”

4. The assessee Company is engaged in the business of life Insurance and filed return of income declaring loss which was computed by aggregating its reporting under shareholders account and policy holders account as prescribed under Insurance Regulatory and Development Authority(IRDA for short).

5. The Assessing Officer completed the assessment under Section 143(3) of the Act, treating the surplus under shareholders account as income from business and taxed at normal rates.

6. Being aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The first appellate authority dismissed the appeal. As such the assessee preferred an appeal before the Tribunal which came to be allowed by following the earlier order in ITA No.756/B/2016 and in so far as the deficit in the policy holders account to be sought for against the surplus as per the shareholders account under Section 70 of the Act as both constitute similar business. The Tribunal has placed reliance on the Judgment of the Mumbai Tribunal Bench in the case of **ICICI Prudential Insurance Co. Ltd., V/a. Assistant Commissioner of Income-tax, Circle-6[1], Mumbai [(2012) 28 taxmann.com 257 (Mum.)]** which has been

confirmed by the Hon'ble Bombay High Court reported in the case of **Commissioner of Income-tax-6 V/s. ICICI Prudential Insurance Co. Ltd., [(2016) 73 taxmann.com 201 (Bombay)]** which is pending before the Hon'ble Apex Court in **Civil Appeal No.3921/2016**. Being Aggrieved by the order of the Tribunal, the revenue has preferred the present appeal.

7. The learned counsel Sri.E.I.Sanmathi appearing for the appellants-Revenue submitted that the Tribunal grossly erred in deciding that the assessee Company has correctly computed the profits of life insurance business albeit the assessee-Company not complied with the provisions of Section 44 read with First Schedule of the Act and Section 115B of the Act. It was further submitted that the appellate Tribunal failed to appreciate the special provision under Section 44 of the Act in right perspective while granting unintended benefits to the assesseees. Placing reliance

on the Judgment of the Hon'ble Apex court in the case of ***Munjal Sales Corporation V/s. Commissioner of Income Tax & Another, [76 CCH 02480 ISCC 448]*** and ***Oriental Fire & General Insurance Company Ltd., V/s. Commissioner Of Income Tax [143 ITR 379]***, submitted that the case on hand falls under Rule-5 Part B of First Schedule to the Act read with Section 44 and 115B of the Act. The income relating to policy holders being different from the income of the shareholders and both of such income derived from the different sources cannot be mixed up as life insurance business to avail concessional rate of tax. The provisions of the Insurance Act, 1938 were referred to, in support of his contention that the share holders profits are to be taxed at normal rate of tax and the policy holders profits are to be at concessional rate of taxes. Thus, the income under different sources to be separately taxed and the losses if any arise in the course of business, the same has to be carried forward

and set off against the profits derived under the same head as per the provisions under Sections 71,72 and 73 of the Act. The learned counsel further argued that the Judgment of **ICICI Prudential Insurance Company Ltd.**, supra is not applicable to the facts of the present case. However, the Tribunal erred in placing reliance on the said Judgment in allowing the appeal filed by the assessee, holding that when Section 44 of the Act is applied, distinction between various heads of income pales into insignificance.

8. The learned Senior counsel Sri Percy Pardiwala, representing the assessee submitted that the Tribunal has rightly observed that in the assessee's very own case in ITA No.756/Bang/2015, the CIT himself has held the assessee was engaged in life Insurance business. Referring to the order of **ICICI Prudential Insurance Company Ltd.**, supra, allowed the appeal holding that the surplus/deficit as per the shareholders

account should be credited with surplus/deficit in the policy holders account for determining the profit/loss of the assessee under Section 44 of the Act.

9. The learned counsel argued that in terms of Section 44 read with First Schedule of the Act, Rule [2] of Part-A would be applicable for life insurance business. Rule (5) of Part-B would deal with computation of profit and gains of other insurance businesses which specifically excludes life insurance business. Hence, Sub-Rule [5] of First Schedule is not attracted.

10. We have heard the learned counsel appearing for the parties and perused the material on record.

11. Part-V of the Insurance Regulatory and Development Authority (Preparation of Financial Statements and Auditor's Report of Insurance

Companies) Regulations, 2002, mandates that the Insurer shall prepare the Revenue Account(policy holders account) and profit and loss account(shareholders account) and the balance sheet in Form-A-RA Form A-PL and Form-A-BS as prescribed in the said part or as a ground thereof as circumstances permit.

12. Section 44 of the Act reads thus:-

“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 co-operative society, shall be computed in accordance with the rules contained in the First Schedule.”

13. The First Schedule has three Parts i.e., A, B and C.

Rule [2] of Part-A reads thus:-

“R.2. Computation of profits of life insurance business.- *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 (4 of 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.*

Rule [5] of Part-B reads thus:-

“R.5. Computation of profits and gains of other insurance business. – *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 and loss account prepared in accordance with the provisions of the*

Insurance Act, 1938 [4 of 1938], or rules made thereunder or the provision of the Insurance Regulatory and Development Authority Act, 1999 [41 of 1999], or 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 sections 30 to 43B in computing the profits and gains of a business shall be added back;

[b] [i] any gain or loss on realisation 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 and loss account;

[ii] any provisions for diminution in the value of investment debited to the profit and loss account, shall be added back;

[c] such amount carried over to a reserve for unexpired risks as may be

prescribed in this behalf shall be allowed as a deduction.

Provided that any sum payable by the assessee under section 43B, which is added back in accordance with clause [a] of this rule, shall be allowed as deduction in computing the income under the said rule in the previous year in which such sum is actually paid.”

14. In the case of ***Life Insurance Corpn. of India Vs. Commissioner of Income-tax [(1964) 51 ITR 773 (SC)]***, the Hon'ble Apex Court while considering Section 44 of the Act [corresponding to Section 10[7] of the Indian Income-tax Act, 1992] has held that in computation of surplus and profits and gains of insurance company, ITO has to accept annual average of surplus disclosed by actuarial valuation made in accordance with the Life Insurance Act in respect of last inter-valuation period and then to arrive at average mentioned in Rule. It is completely governed by rules in

Schedule and there is no power to do anything not contained in it.

15. In the case of **Genral Insurance Corpn. of India V/s. Commissioner of Income-tax [(1999) 106 Taxman 389 (SC)]**, the Hon'ble Apex Court has held that Section 44 is the special provision governing computation of taxable income earned from business of insurance. It opens with a non obstante clause and, thus, has an overriding effect over other provisions contained in the Act. It mandates the assessing authorities to compute the taxable income from business of insurance in accordance with the provisions of the First Schedule.

16. The Insurance Regulatory and Development Authority [Preperation of Financial Statements and Auditor's Report of Insurance Companies] Regulations, 2002 contemplates the procedure for preparation of financial statements, management report and auditor's

report. In terms of the said provision, an insurer carrying on life insurance business, after the commencement of these Regulations, shall comply with the requirements of schedule-A. Schedule-A consists of five parts. Part-V deals with preparation of financial statements. As per clause[1] of the said preparation of financial statements, an insurer shall prepare the Revenue Account [Policyholder's Account], Profit and Loss Account [Shareholder's Account] and the Balance Sheet in Form A-RA, Form A-PL and Form A-BS as prescribed in this Part, or as near therto as the circumstances permit. Audited financial statement for the relevant Assessment Years were prepared in terms of the said Regulations 2002.

17. In the assessee's own case relating to the assessment year 2010-11, considering the challenge made to the order of the CIT that policyholder's account and Shareholders' account has to be considered separately and the benefit of Section 115B of the Act

could be given only to the profits from life insurance business, Tribunal in the Assessee's own case relating the earlier year has held that there is no dispute that assessee was doing only life insurance business as regulated by the IRDA. It has been categorically observed that CIT himself has mentioned that assessee was engaged in life insurance business. The question whether policyholders' account and shareholders' account, in the case of an assessee carrying on only the business of life insurance business was to be separated or consolidated, being considered by the Tribunal of Mumbai Bench in **ICICI Prudential Insurance Co. Ltd.**, supra, applied the same to the assessee's case thereby allowing the appeal of the assessee and the same has reached finality.

18. The order of the Tribunal of the Mumbai Bench in **ICICI Prudential Insurance Co. Ltd.**, supra, was challenged by the Revenue before the High Court of Bombay wherein it is held thus:

“5. So far as Question No.8 is concerned, the grievance of the revenue is that the income on shareholders’ account has to be taxed as income from other sources. This on the ground that the income earned on shareholders’ account is not an income which represents income on account of Life Insurance Business. Therefore it is the revenue’s contention that it has to be taxed as income from other sources. The impugned order while allowing the assessee’s appeal holds that income earned on shareholders’ amount has to be considered as arising out of Life Insurance Business. Moreover in terms of Section 44 of the Act, such income has to be taxed in accordance with First Schedule as assessee is carrying on separate business other than life insurance business. Accordingly, the impugned order holding that the income from shareholders’ account is also to be taxed as a part of Life insurance business cannot be found fault with in view of the clear mandate of Section 44 of the Act. Accordingly question No.8 also does not raise

any substantial question of law. Thus not entertained.”

19. For the subsequent assessment years, the Tribunal has followed the decision of the Tribunal in assessee's own case and has held that the surplus with deficit as per shareholders' account should be aggregated with surplus with deficit in the policyholders' account for determining the profit or loss of the assessee under Section 44 of the Act.

20. Section 3 [4] [f] of the Insurance Act, 1938 makes it clear that the Authority may suspend or cancel the registration of an insurer either wholly or insofar as it relates a particular class of insurance business, as the case may be, if the insurer carries on any business other than insurance business or any prescribed business.

21. Explanatory Notes to the Provisions of the Finance [No.2] Act, 2009 relating to the Taxation of

investment income/loss of Non life insurance business indicates that the profits and gains of the non-life insurance business is computed under Section 44 read with Rule 5 of the First Schedule. Relying on this Explanatory Notes, though the revenue made an endeavor to contend that Rule 5 of the First Schedule would be attracted in the present set of facts, this Explanatory Note dealing with non-life insurance business cannot be made applicable to life insurance business. Admittedly, the assessee is engaged in the life insurance business as could be seen from the assessment order wherein the nature of business at Sl.No.10 is shown as 'life insurance business'. Similarly, in the memorandum of appeal filed by the revenue, it is submitted that the assessee – company is engaged in the 'business of life insurance'. Relating to the earlier assessment orders referred to supra, CIT has categorically admitted that the assessee is engaged in the business of life insurance.

22. In the case of **ICICI Prudential Insurance Company Ltd.**, supra, identical question having considered, the High Court of Bombay has held that shareholders' amount has to be considered as arising out of Life Insurance Business. We find no fault with the Tribunal in following this ruling which is squarely applicable to the case on hand. It is not the case of the revenue that the assessee is carrying on any other business other than life insurance business. Thus, Section 44 read with Rule 2 to Part-A of First Schedule to the Act is applicable to the facts of the present case, not Rule 5 of Part - B as canvassed by the Revenue.

23. It is brought to the notice of this Court that Civil Appeal No.3921/2016 filed by the Revenue against the judgment of the High Court of Bombay in **ICICI Prudential Insurance Company Ltd.**, supra, is pending before the Hon'ble Apex Court.

24. Hence, for the reasons aforesaid, we answer the substantial questions of law in favour of the assessee and against the Revenue, however, subject to the result of C.A.No.3921/2016 pending before the Hon'ble Apex Court.

It is needless to observe that the consequential action shall follow on the disposal of C.A.No.3921/2016, if found necessary.

**SD/-
JUDGE**

**SD/-
JUDGE**

Rsk/NC.