

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4639/Del./2016  
(ASSESSMENT YEAR : 2013-14)**

ACIT, Central Circle 1, vs. M/s. Sahara India Life Insurance Ltd.,  
New Delhi. R/o Kapoorthala Complex,  
Aliganj, Lucknow.

**(PAN : AAHCS1334B)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Dinesh Verma, Advocate  
Shri Hardeep Singh, CA

REVENUE BY : Dr. Vijay Kumar Chadha, Senior DR

Date of Hearing : 16.09.2019

Date of Order : 04.10.2019

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Appellant, ACIT, Central Circle 1, New Delhi (hereinafter referred to as the 'Revenue') by filing the present appeal sought to set aside the impugned order dated 09.06.2016 passed by the Commissioner of Income - tax (Appeals)-23, New Delhi qua the assessment year 2013-14 on the grounds inter alia that :-

*"1. The order of Ld. CIT(A) is not correct in law and on facts.*

2. *That on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.1,60,78,508/- was made on account of 'Amortization of investment'.*

3. *That on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting addition of Rs.15,364/- was made on account of 'Interest on TDS'.*

4. *That on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting addition of Rs.23,16,650/- was made on account of 'Bonus Unpaid'.*

5. *That on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting addition of Rs.44,29,247/- was made on account of 'Leave Encashment Unpaid'."*

2. Briefly stated the facts necessary for adjudication of the issue at hand are : Assessee company is into the business of carrying out life insurance activities started on 30.10.2004 duly registered and approved by Insurance Regulatory Development Authority (IRDA) and is governed by Insurance Act, 1938. Assessing Officer (AO) noticed that assessee has claimed amortization of investment but declined the benefit of section 44 of the Act on the ground that the investment activity of the assessee is separate and distinct business activity from the business of insurance and thereby made addition of Rs.1,60,78,508.80. AO also made disallowance of Rs.15,364/- by invoking the provisions contained u/s 14A of the Income-tax Act, 1961 (for short 'the Act') being interest on TDS. AO also made disallowance of Rs.23,16,650/- on account of disallowance of bonus unpaid u/s 43B of the Act. AO also made addition of Rs.4929,247/- by way of disallowance of Leave Encashment

Unpaid u/s 43B and thereby assessed the total income at Rs.46,31,25,289/-

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has deleted the additions by accepting the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, the assessee company is into the business of life insurance started w.e.f. 3010.2004, duly registered and approved by IRDA and is governed by Insurance Act, 1938. In the backdrop of the aforesaid facts and circumstances of the case, Id. AR for the assessee at the very outset contended that the issue in controversy has been settled in favour of the assessee by the Tribunal as well as by the Hon'ble Delhi High Court and as such taxable income of the assessee is to be computed in accordance with the provisions contained u/s 44 of the Act read with First Schedule of the Act. This factual position has not been controverted by the Id. DR for the Revenue.

6. *Coordinate Bench of the Tribunal in assessee's own case in ITA Nos. 6243/Del/2013, 6244/Del/2013, 5624/Del/2011, 1347/Del/2013, 6245/Del/2013 and 6246/Del/2013 for AYs 2005-06,*

2006-07, 2007-08, 2008-09, 2009-10 & 2010-11 respectively decided the issue in controversy in favour of the assessee and when the Revenue had challenged the order of the Tribunal before the Hon'ble Delhi High Court, appeals of the Revenue have been dismissed by the Hon'ble Delhi High Court by returning following findings :-

*“18. As far as the other appeals are concerned, the central issue is whether the income of the Respondent ought to have been permitted to be computed under Section 44 of the Act? Further, for some AYs, whether it could have been permitted at the stage of the appeal before the CIT (A)?*

*19. As rightly observed by the ITAT, it is not in dispute that the Respondent carried on the business of life insurance. It is obliged to maintain its books of accounts and prepare its financial statements under the Insurance Act, 1938. Section 44 of the Act read with First Schedule thereof deals exclusively with the computation of Profit and Gains from life insurance business. These provisions, which begin with non-obstante clauses, override other provisions of the Act. There was no option but to compute income for insurance business in terms thereof. Therefore, the Respondent was justified in filing the revised computation under Section 44 of the Act and claiming this as an additional ground before the CIT(A). In the circumstances, the direction given by the CIT(A) to the AO to compute income in terms of Section 44 of the Act was justified.*

*20. The Court is unable to find any error having been committed in the ITAT in this regard. No substantial question of law arises on this issue as well.”*

7. Following the decision rendered by Hon'ble Delhi High Court in assessee's own case, we are of the considered view that when undisputedly the assessee is into the business of life insurance duly registered and approved by IRDA and has been preparing its financial statement under the Insurance Act, 1938, taxable income of the assessee is to be computed in terms of the provisions contained u/s 44 of the Act

read with First Schedule of the Act. Moreover, provisions contained u/s 44 begin with non-obstante clauses which override other provisions of the Act. So, in these circumstances, Id. CIT (A) has rightly deleted the additions made by the AO as taxable income of the assessee to be computed under the provisions contained u/s 44A of the Act and provisions contained u/s 28 to 43B of the Act are not applicable in case of life insurance business. So, finding no illegality or perversity in the impugned order passed by the Id. CIT (A), the appeal filed by the Revenue is hereby dismissed.

**Order pronounced in open court on this 4<sup>th</sup> day of October, 2019.**

**Sd/-  
(N.K. BILLAIYA)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 4<sup>th</sup> day of October, 2019  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-23, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**