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**(2015) 07 BOM CK 0350**

**Bombay High Court**

**Case No:** Income Tax Appeal Nos. 688 and 711 of 2013

Commissioner of  
Income Tax-6

APPELLANT

Vs

ICICI Prudential  
Insurance Co. Ltd.

RESPONDENT

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**Date of Decision:** July 20, 2015

**Acts Referred:**

- Income Tax Act, 1961 - Section 10, 10(34), 115B, 14A, 260A

**Hon'ble Judges:** M.S. Sanklecha, J; N.M. Jamdar, J

**Bench:** Division Bench

**Advocate:** Suresh Kumar, for the Appellant; Soli Dastur, Senior Advocate and A. Vissanji, Advocate instructed by S.P. Mehta, Advocates for the Respondent

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### **Judgement**

1. These appeals by the revenue under Section 260A of the Income Tax Act, 1961 (the "Act") challenges a common order dated 14 September 2012 passed by the Income Tax Appellate Tribunal (the "Tribunal"). The impugned common order has been passed in respect of the Assessment Years 2006-07 and 2008-09.

2. Mr. Suresh Kumar, the learned Counsel for the revenue urges the following common substantial questions of law in the two assessment years for our consideration:

"1) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in interpreting that on account of "legislation by incorporation", "only" the "un-amended" Insurance Act 1938 and the Regulations thereunder became part of Section 44 r.w. Rule 2 of the First Schedule of the I.T. Rules?

2) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in interpreting Section 44 r.w. Rule 2 of the First Schedule that the Legislature consciously omitted incorporation of the provision of Insurance Regulatory and Development Authority Act 1999 and Regulations made thereunder in Rule 2 of the First

Schedule which "refers" only to un-amended Insurance Act 1938 and Regulations made thereunder?

3) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in allowing the relief to the assessee by holding that "surplus" available both in Policy Holders Account and Share Holder's Account is to be consolidated and only "net surplus" is to be taxed as income from Insurance Business?

4) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in holding that provisions of Section 14A of the Act did not apply to Insurance business, even when the assessee has claimed exempted income u/s. 10 of the I.T. Act and has also itself made some disallowance u/s 14A of the Act in the return?

5) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in allowing the dividend income of assessee as exempt u/s. 10(34) of the I.T. Act, 1961, ignoring the fact that dividend income is considered as part of income of Life Insurance Business and is included as an "income" by the actuary?

6) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in failing to appreciate that negative reserve has an impact of reducing the "taxable surplus" as per Form-I and therefore corresponding adjustment for "negative reserve" need to be made to arrive at "taxable surplus"?

7) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in deleting the addition made on account of claim of 100% depreciation ignoring the facts that Actuarial surplus is determined on the basis of the total assets of the company and therefore by not capitalizing the above assets, the assets of the assessee company are under-stated in the books and thereby it has an impact of reducing the surplus or increase in the deficit and therefore, the assets so written off are also accordingly required to be considered as part of the surplus and taxable under Section 44 of the I.T. Act?

8) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in allowing relief to the assessee by holding that surplus available in Share Holders Account is not to be taxed separately as "income from other sources" and at the normal corporate rate and holding that surplus from Share Holders Account was only part of income from insurance business arrived at after "combining" surplus available in Share Holders Account with the surplus available in Policy Holders Account and then and taxing this "net surplus" arrived at, at the rate specified u/s. 115B of the Act?"

3. It is agreed between the parties that so far as Question No. 5 is concerned, an appeal by the revenue in respect of Assessment Year 2005-06 being Income Tax Appeal No. 710/2013 raising an identical question in respect of the same respondent was not entertained. Accordingly, following our decision in Income Tax Appeal No. 710/2013 and for reasons indicated therein, Question No. 5 is not entertained.

4. So far as Question No. 6 is concerned, the grievance of the revenue is that the Tribunal after having taken total surplus as arrived by Actuarial valuation ought to have reduced negative reserve amount of Rs. 27.27 crores while determining respondent-assessee"s income under Section 44 of the Act. The impugned order records that the mathematical reserves is a part of the Actuarial valuation and the surplus takes into account the mathematical reserve also. Besides the impugned order follows the decision of the Apex Court in [Life Insurance Corporation Ltd. Vs. Commissioner of Income Tax, Delhi and Rajasthan](#), AIR 1964 SC 1403 : (1964) 34 CompCas 258 : (1964) 51 ITR 773 : (1964) 5 SCR 880 , wherein the Apex Court has held that the Assessing Officer has no power to modify the account after Actuarial valuation is done. It is also pertinent to note that for the Assessment Year 2007-08, the Assessing Officer had raised an identical issue during the assessment proceedings and thereafter by the assessment order dated 30 December 2009 held that no adjustment of the Actuarial valuation is to be done by following the decision of the Apex Court in LIC (supra). Therefore we find no substantial question of law arising for our consideration. In view of the fact that the impugned order has merely followed the decision of the Apex Court, we see no substantial question of law for our consideration. Accordingly, Question No. 6 is not entertained.

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 provided therein. None of the authorities under the Act nor even before us is it urged that the 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.

6. Appeals admitted on Question Nos. 1, 2, 3, 4 and 7.