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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 444/2019

PR. COMMISSIONER OF INCOME TAX, CENTRAL-1

..... Appellant

Through: Ms. Lakshmi Gurung and Mr. Dinesh
Sharma, Advocates.

versus

M/S SAHARA INDIA LIFE INSURANCE CO. LTD

..... Respondent

Through: Mr. Aditya Vohra, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

14.02.2020

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C.M. No. 20912/2019

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

ITA 444/2019 and C.M. No. 20911/2019

1. We have heard learned counsel for the parties. Having heard the counsels, we are of the view that the following substantial question of law arises for our question:

Whether on the facts and in the circumstances of the case, the Hon'ble ITAT has not appreciated that without prejudice to the original stand of the revenue, even if it is held that the taxable income of the assessee Company is to be

assessed u/s 44 read with the First Schedule, it does not mean that the AO has been totally precluded from examining the Profits and Gains of Insurance Business declared by the assessee and he has to mandatorily accept whatever has been declared by the assessee, as true and correct Total Income ?

2. The submission of learned counsel for the appellant is that the CIT (Appeals), while partially allowing the appeal of the assessee had directed the Assessing Officer to assess the income of the appellant at the amount of Rs. 1,31,04,000/- and after contribution to policy holders fund of Rs.9,22,41,000/-, the net loss from insurance business of the appellant be taken as Rs.7,91,37,000/-. The submission is that the CIT (Appeals) could not have issued the direction aforesaid in paragraph 4.3, which reads as follows:

“4.3 The net income in the non-technical shareholders’ account of the appellant was Rs.1,31,04,000/- and, after contribution to the policyholders’ fund at Rs.9,22,41,000/-, the net loss from insurance business of the appellant was Rs.7,91,37,000/-. The AO is directed to assess the income of the appellant at this amount.”

3. Learned counsel for the appellant submits that the Tribunal failed to appreciate the submission of the appellant that under Section 44 read with the First Schedule to the Income Tax Act, it is within the jurisdiction of the Assessing Officer to compute income from insurance business in accordance with the Rules contained in the First Schedule to the Act. The submission is that the power of the Assessing Officer to carry out computation of income in accordance with the rules contained in the First Schedule could not be denuded by issuance of such a direction by the CIT (Appeals). On the other

hand, learned counsel for the respondent assessee submits that the direction issued by the CIT (Appeals) in paragraph 4.3 aforesaid was justified, since in accordance with the Rule 2 of the First Schedule “*Profits and gains of business or profession*” and the provisions of sections 30, 31, 32, 34, 36, 37, 38, 40, 40A [other than sub-sections (3) and (4) thereof], 41, 43, and 43A of the Income-tax Act shall, so far as may be, apply accordingly”

4. The submission is that the Assessing Officer is bound to compute the profits from life insurance business in accordance with the aforesaid rules. Learned counsel for the respondent has also placed reliance on the decision of this Court in a batch of appeals, including ITA475/2019, ***Principal Commissioner of Income Tax v. M/s. Sahara India Life Insurance Company, Ltd.***, wherein this Court had dismissed the appeals preferred by the revenue vide order dated 02.08.2019 and in the course of its decision, it observed as follows:

“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.”

5. We may observe that this Court had rejected the said appeal along with the other appeals, without framing a question of law at the preliminary

stage itself.

6. Having heard learned counsel for the parties, we are of the view that the direction issued by the CIT (Appeals) in paragraph 4.3 of its order could not have been issued, since with the issuance of the said direction, the power of the Assessing Officer to discharge his function of carrying out the assessment stands denuded. Merely because profits of life insurance business are liable to be computed in terms of Section 44 read with Rules contained in the First Schedule, it does not follow that the Assessing Officer is denuded of his authority to carry out scrutiny while making the assessment. Even to arrive at a conclusion whether, inter alia, Rule 2 of the first Schedule has been complied with by the assessee, the Assessing Officer would have to look into the books maintained by the assessee and he is not bound to swallow the facts and figures placed before him by the assessee with a claim that the profits of life insurance business have been computed in terms of Rule 2 and the other Rules of the First Schedule.

7. We, therefore, answer the aforesaid question in favour of the revenue. Learned counsel for the respondent has also sought to urge that the CIT (Appeals) could not have remanded the matter back to the Assessing Officer and he was bound to carry out the assessment on his own. However, we find that the assessee did not prefer an appeal against that part of the order passed by the CIT (Appeals) before the Tribunal and also did not prefer any cross objections to that effect before the Tribunal. We are, therefore, not inclined to interfere with the direction of remanding the proceedings to the Assessing Officer.

8. Accordingly, we, while, answering the question in favour of the revenue, direct that the Assessing Officer shall proceed to compute the

profits from life insurance business strictly in terms of Section 44 read with the Rules contained in the First Schedule of the Income Tax Act.

9. The appeal stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

SANJEEV NARULA, J

FEBRUARY 14, 2020

N.Khanna