IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1440 OF 2018

Commissioner of Income Tax-1 ...Appellant
vs.

SBI Life Insurance Company Ltd. ...Respondent

Mr. Suresh Kumar for Appellant .
Mr. Atul K. Jasani a/w. Mr. P. C. Tripathi for Respondent.

CORAM : K. R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATE : 22 OCTOBER 2021

P. C. :

Respondent carried out life insurance business for the Assessment Year 2003-2004 and filed return of income on 24/11/2003 showing total loss of Rs.7,46,63,410/-. The same was processed under Section 143(1) on 25/2/2004. Thereafter the case was selected for scrutiny and notices under Section143(2) and under Section 142(1) of the Act were issued and served on respondent.

2. During the course of assessment respondent furnished copy of actuarial report and abstract of the company as on 31/3/2003. From the examination of actuarial report, Assessing Officer noted that the total surplus disclosed by actuarial evaluation made in accordance with the Income Tax Act was Rs.81,000/-.

Respondent was asked to explain why this amount of Rs.81,000/- should not be taxed as total income of assessee. Assessee filed a reply and also contended that allocation of bonus of Rs.81,000/- appearing in the revenue account of the company was for the year ended 31/3/2003 and is in line with IRDA Regulations and does not in any way represent surplus in the revenue and thus cannot be brought to tax under the Act. Assessing Officer took the view that as per the overriding provision of Section 44 read with Rule 2 of the First Schedule of the Income Tax Act, the profit and gains of life insurance business is to be taken to be the annual average of the surplus disclosed in the actuarial valuation report for the year and hence profit and gains of life insurance business of the assessee for Assessment Year 2003-2004 is taken at Rs.81,000/- and completed the assessment under Section 143(3) of the Act on 21/3/2006.

3. The case was reopened on 26/3/2010 and notice under Section 148 of the Act dated 26/3/2010 was issued on Respondent. The reasons for reopening was communicated to the assessee on 26/4/2010 and notice under Section 143(2) of the Income Tax Act dated 26/4/2010 was also served. The reasons for reopening were as under:

> *"During the AY 2003-2004, the assessee has negative reserves of Rs.1,55,05,000/-. This negative reserve has not formed part of the actuarial surplus which is not in order. To that extent, the actuarial surplus has been understated. The assessee not offering the incremental negative reserves*

as a part of surplus arrived at as per actuarial valuation, for the purpose of computing income from the insurance business, has resulted in income escaping assessment to the tune of Rs..1,55,05,000/- within the meaning of Section 147 of the IT Act, 1961."

4. Assessing Officer completed re-assessment under Section 143(3) read with 147 of the Act by order dated 26/11/2010 disallowing the provision for negative reserve amounting to Rs.1,55,05,000/-

5. Aggrieved by this order of Assessing Officer respondent preferred an appeal before CIT(A). CIT(A) allowed the appeal by order dated 28/8/2013 holding that the proceedings initiated under Section 147 of the Act were not valid. This order was impugned before ITAT by Revenue. ITAT by its order dated 23/6/2017 dismissed the appeal of Revenue. ITAT also noted that Assessing Officer did not bring any tangible material on record to show that there was any failure on the part of respondent to disclose fully and truly all material facts on record necessary for assessment and concluded that it was merely a change of opinion. Other observations were also made on merits and ITAT concluded that even on merits, Assessing Officer had gone wrong in passing his order dated 26/11/2010. Aggrieved by this order and assessment, Revenue has preferred this appeal and substantial law of questions proposed are as under:

1. Whether on the facts & circumstances of the case and *in law, the Hon'ble ITAT was justified in holding that the proceedings under Section 147 of the I. T. Act are not valid and holding that the reopening of the assessment was merely based on change of opinion ?*

2. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in holding that the AO has not brought any tangible material on record to indicate that there was an omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment, ignoring the fact that the assessee has understated the income by not showing the negative surplus of Rs.1,55,05,000/- as part of actuarial surplus ?

3. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition of Rs.1,55,05,000/- made on account of negative reserve without appreciating that the negative reserve has an impact on reducing the "taxable surplus" as per Form "I" and therefore corresponding adjustment for negative reserve need to be made to arrive at taxable surplus ?

6. The conclusion of ITAT can be found in paragraph No.5 of its order particularly regarding lack of jurisdiction of Assessing Officer while reopening under Section 148 of the Act.

7. We have considered the submissions made by Mr. Suresh Kumar for Appellant and Mr. Atul K. Jasani for Respondent and with their assistance, we have also perused the impugned order.

8. This Court in a recent judgment in ***Ananta Landmark (P.) Ltd. vs. Deputy Commissioner of Income Tax***[1] has held that where assessment was not sought to be reopened on reasonable belief that income had escaped assessment on account of failure of assessee to disclose truly and fairly full material fact that were necessary for computing of income it was not the case wherein assessment as sought could be reopened. On account of change of opinion of Assessment Officer about the manner of computation to deductions under Section 57 of the Act, reopening was not justified. The proposition in this judgment squarely applies to the case in hand as well. ITAT has concluded that during the assessment proceeding respondent had furnished actuarial form that showed negative result and the Assessing Officer had made addition of Rs.81,000/- during the original assessment proceeding on account of actuarial surplus. Negative reserve was part of document furnished during the assessment and therefore it cannot be said that there was non disclosure of material facts relevant for assessment. ITAT has also observed that Assessing Officer while passing assessment order has referred to the actuarial report as on 31/3/2003 and hence it cannot be said that Assessing Officer has not made any inquiry in respect of negative reserve which has been shown in actuarial report. ITAT has

1 *(2021) 131 taxmann.com 52 (Bombay)*

also observed that the assessment order was passed with due application of mind and the Assessing Officer has not brought any tangible material on record to show that there was any failure on the part of the assessee to disclose fully and truly all material on record necessary for assessment.

9. As such, we do not find any infirmity in the impugned order. Question Nos.1 and 2 are answered in the negative. Question No.3 is on merits. Since the assessment order itself has been set aside, this question will not arise as a substantial question of law.

(AMIT B. BORKAR, J) **(K. R. SHRIRAM, J.)**

RAJESHWARI SUBODH KARVE

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