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

INCOME TAX REFERENCE NO.1075 OF 1998

The Commissioner of Income-tax,
Bombay City – III, Bombay .... Applicant
Vs.
The New India Assurance Co. Ltd. .... Respondent

Mr. Suresh Kumar with Ms Samiksha Kanani for the Applicant.

Mr. F.V. Irani with Mr. Rajesh Poojary i/by Mulla & Mulla & C.B. & Caroe for the Respondent.

CORAM: S.C. DHARMADHIKARI &
SMT. VIBHA KANKANWADI, JJ.

DATE : AUGUST 29, 2017

P.C:

1. This income tax reference at the instance of the Revenue, though not on Board, on request, it is taken up for hearing. The following question of law has been referred for opinion and answer by this Court:-

"Whether, on the facts and in the circumstances of the

> *case, the Tribunal was justified in holding that the assessee, which is a general insurance company, was entitled to relief admissible under section 35B of the Income-tax Act, 1961, having particular regard to the provisions of section 44 of the Income-tax Act, read with rule 5 of the First Schedule to that Act?"*

2. The statement of the case and pertaining to Assessment Years 1975-76 and 1976-77 & 1977-78 discloses that for the three assessment years under consideration a deduction under Section 35B of the Income Tax Act, 1961 ("I.T. Act, 1961" for short), in respect of an expenditure which was incurred by the assessee-company in insurance business, was the subject matter or an issue before the Tribunal. The assessee's claim was for weighted deduction under Section 35B of the Income Tax Act, 1961. The assessee was having a large number of branches outside India and therefore in respect of the business done by those branches the assessee was engaged in export of insurance services outside India. It was accordingly entitled to weighted deduction under Section 35B in respect of the expenditure incurred in connection with such insurance services. This claim was rejected by the Income Tax Officer and

by the First Appellate Authority. Thereafter, the matter was carried to the Tribunal and the Tribunal found that relief under Section 35B was permissible to an insurance company carrying on general insurance business and whose income had to be computed under Section 44 r/w Rule 5(a) of the First Schedule to the I.T. Act, 1961. There is a decision of this Court reported in (1969) *71 I.T.R. 761* **{*Commissioner of Income Tax, Bombay City II, Bombay Vs. New India Assurance Co. Ltd.*}** but what it found was that there was a second question as well and after that question was restored for consideration of the Tribunal, it appeared that there has been an amendment brought to the statute. It is in such circumstances and on account of the scheme of the New Income Tax Act that the question, as reproduced above, arose for consideration. That is how it was referred to this Court.

3. We have heard Mr. Suresh Kumar, appearing on behalf of the Revenue and Mr. Irani, appearing on behalf of the assessee.

4. Reliance was placed by Mr. Suresh Kumar on the Judgment of the Hon'ble Supreme Court in the case of **Commissioner of Income Tax v. Hero Cycles Pvt. Ltd. and another**, reported in Vol-228 I.T.R. 463 (SC).

5. In that decision, the Hon'ble Supreme Court considered the scope of Section 44 of the I.T. Act, 1961. The Hon'ble Supreme Court in answering such question held as under:-

> *"The question in this case relates to the scope of Section 44 of the Income Tax Act, 1961. The Section states:*
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> > "*Section 44. 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.*"
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> *A plain reading of the section will go to show that notwithstanding the other provisions of the*

Income-tax Act, in particular, the provisions of sections 28 to 43B, the profits and gains of any business of insurance shall be computed in accordance with the rules contained in the First Schedule. This is a non obstante clause and rules have been specially made for computation of profits and gains of insurance business. The rules are contained in the First Schedule to the Act. There is a rule for computation of profits of life insurance business (rule 2). Another rule has been framed (rule 5) for computation of profits and gains of other insurance business. This means that profits and gains of insurance business (whether the life insurance or general insurance) can only be assessed in the manner laid down in the rules contained in the First Schedule and not in any other manner.

Mrs. Ramachandran, learned counsel appearing for the assessee, has contended that section 44 speaks of "section 28 to section 43B". It does not specifically mention section 35B. Therefore, the assessee was entitled to the benefit of section 35B. Section 35B was inserted in the Act by way of amendment. When the original Act was passed section 35B was not in the statute book. The contention of Mrs. Ramachandran is that when section 35B was inserted, it was not specifically mentioned that section 35B will not apply to insurance companies. Therefore, the benefit of section 35B will have to be given to the insurance company.

We are unable to accept this contention for two reasons. First, when the Act speaks of section 28 to section 43B, then each one of the sections from section 28 to section 43B will be included. The newly inserted section 35B was not specifically mentioned because it was not necessary to do so, just as it was not necessary to specifically mention section 35B in section 29, which *lays down that computation of profits and gains of business or profession shall be computed in accordance with the provisions contained in sections 30 to 43C.*

Moreover, when the Act specifically says that profits and gains of insurance business shall be computed in accordance with the rules contained in the First Schedule then such computation has to be made according to that rule and not any other rule. We are unable to accept the contention of Mrs. Ramachandran that the benefit of section 35B should also be given to any insurance company."

6. Mr. Suresh Kumar would submit that this Judgment of the Hon'ble Supreme Court squarely answers the question referred in favour of the Revenue.

7. Mr. Irani, appearing for the assessee, would submit that such a Judgment has been pronounced by the Hon'ble Supreme Court and dealing with the very question referred for our opinion. He was unable to point out anything contrary to the opinion expressed by the Hon'ble Supreme Court and which binds us. He could not also point out from the statutory provisions that the position is altered in any manner.

8. In such circumstances, we answer the question referred in favour of the Revenue and against the assessee. The reference stands disposed of accordingly. No costs.

(SMT. VIBHA KANKANWADI, J.) (S.C. DHARMADHIKARI, J.)