IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

T.C(A) Nos.41, 43, 44, 46, 49, 51, 52,
54, 58, 59, 62 and 63 of 2019
and
C.M.P.Nos.642, 644, 646, 647, 652, 656, 658,
661, 663, 665, 675 and 684 of 2019

Commissioner of Income Tax,
Larger Taxpayer Unit,
Chennai. ... Appellant
in all the Appeals

-vs-

M/s.Royal Sundaram Alliance
Insurance Company Limited,
"Sundaram Towers",
45 & 46 Whites Road, Chennai - 600 002.
PAN: AABCR 7106G ... Respondent
in all the Appeals

COMMON PRAYER: Tax Case (Appeals) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal, "A" Bench, Chennai, dated 06.08.2018, passed in I.T.A.No.1666/Chny/2011, I.T.A.No.2310/Chny/2014, I.T.A.No.1668/Chny/2011, I.T.A.No.1669/Chny/2011, I.T.A.No.1629/Chny/2011, I.T.A.No.1626/Chny/2011, I.T.A.No.1628/Chny/2011, I.T.A.No.1630/Chny/2011, I.T.A.No.1670/Chny/2011, I.T.A.No.1356/Chny/2013 I.T.A.No.1367/Chny/2013 and I.T.A.No.2371/Chny/2014 for the assessment years 2005-2006 to 2010-2011.

against the Order of the Commissioner of Income Tax (Appeals), Large Tax payer (Unit) II nd Floor, 1775, Jawaharlar Nehru, Inner Ring Road, Anna Nagar western estm, Chennai-101 PAN.No. AABCR 7106G Dated 29/07/2011, 26/03/2013, 26/06/2014
ITA.No. 46/09/-10, (LTU) (A),
ITA.No. 47/9-10 (LTU) (A),
ITA.No. 57/10-11 (LTU) (A),
ITA.No. 57/08-09 (LTU) (A),
ITA.No. 105/11-12/LTU(A),

ITA.No. 19/12-13 /LTU (A),
for the Assessment Years 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, and against the Deputy Commissioner of Income Tax, Large Taxpayer unit , Chennai dated 10/12/2009, 14/12/2009, 24/12/2010, 27/12/2011, 31/12/2012, circle ward DCIT (LTU) Chennai, PAN.No. AABCR T106G, for the Assessment Year 2006-07, 2007-08, 2008-09, 2009-10, and against Additional Commissioner of Income Tax, Large Tax payer Unit, Chennai PAN.No. AABCR7106G Additional LIT(LTU) Chennai, for the Assessment Year 2010-11 and against the Assistant commissioner of Income Tax Large Tax payer unit Chennai dated 26/02/2018, G.I.P.A.No. AABCRT106G Circle ward ACIT/LTU (Chennai) for the Assessment Year 2005-06.

For Appellant
in all the appeals : Ms.V.Pushpa
Senior Standing Counsel
for Mr.M.Swaminathan
Senior Standing Counsel

For Respondent
in all the appeals : Mr.Sandeep Bagmar

COMMON JUDGMENT

(Common Judgment was delivered by T.S.Sivagnanam, J.)

These appeals filed by the revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), are directed against the orders of the Income-tax Appellate Tribunal, "A" Bench, Chennai, dated 06.08.2018, passed in I.T.A.No.1666/Chny/2011,I.T.A.No.2310/Chny/2014, I.T.A.No.1668/Chny/2011,I.T.A.No.1669/Chny/2011, I.T.A.No.1629/Chny/2011, I.T.A.No.1626/Chny/2011,I.T.A.No.1628/Chny/2011, I.T.A.No.1630/Chny/2011, I.T.A.No.1670/Chny/2011, I.T.A.No.1356/Chny/2013 I.T.A.No.1367/Chny/2013 and I.T.A.No.2371/Chny/2014 for the assessment years 2005-2006 to 2010-2011.

2.We have heard Ms.V.Pushpa, learned Senior Standing Counsel appearing for Mr.M.Swaminathan, learned Senior Standing Counsel for the petitioner/revenue and Mr.Sandeep Bagmar, learned counsel for the respondent/assessee.

3.We propose to dispose of these appeals by a common judgment because most of the substantial questions of law arise for all the assessment years. For the sake of convenience, Ms.V.Pushpa, learned Standing Counsel for the appellant/revenue has provided us a tabulated statement, wherein the issues have been specified in brief and the assessment years, case number allotted by the Tribunal and the tax case appeal numbers have also been listed. The tabulated statement consists of tick marks against each of the issues to indicate as to in which of the assessment year, the issues arise. For easy reference, we quote the tabulated statement hereinbelow:

S. No.	Issues	AY 2005-06		AY 2006-07		AY 2007-08		AY 2008-09		AY 2009-10		AY 2010-11	
	TCA No.	51/19	41/19	52/19	44/19	49/19	46/19	54/19	58/19	59/19	62/19	43/19	63/19
	ITA No. IN ITAT	ITA No. 1626/11	ITA No. 1666/11	ITA No. 1628/11	ITA No. 1668/11	ITA No. 1629/11	ITA No. 1669/11	ITA No. 1630/11	ITA No. 1670/11	ITA No. 1356/13	ITA No. 1367/13	ITA No. 2310/14	ITA No. 2371/14
1	Depreciation on UPS	?	?					?	?				
2	MAT/115JB on Insurance Companies	?	?	?	?	?	?	?	?	?	?	?	?
3	Solatium Fund			?	?	?	?	?	?	?	?	?	?
4	Commission for receipt of reinsurance	?	?	?	?	?	?	?	?	?	?	?	?
5	TDS on Survey Fees	?	?	?	?	?	?	?	?	?	?	?	?

4.The revenue filed these appeals by raising the following substantial questions of law:-

"1.Whether the Tribunal was justified and correct in holding that UPS is the part of computer and entitled for depreciation @ 60%?

2.Whether the Tribunal was justified and correct in holding that the provisions of 115JB of the Act which enables the companies to compute book profit may not be applicable to insurance companies?

3.Whether the Tribunal was right in holding that provision made towards contribution to Solatium fund is not liable to taxation?

4.Whether the Tribunal was right in holding that the assessee is not liable to deduct tax at source towards the commission paid for receipt of re-insurance premium?

5.Whether the Tribunal was right in holding that the assessee is not liable to deduct the tax at source towards survey fees paid?"

5.For easy reference and convenience, we indicate the substantial questions of law in a brief manner as indicated in the above tabulated statement.

1.Depreciation on UPS:

6.This issue has been decided by us against the revenue in T.C(A).No.23 of 2019 dated 18.01.2019. Following the same, the appeals filed by the revenue on this ground are dismissed and the above substantial question of law is answered in favour of the assessee.

2.MAT/115JB On Insurance Companies:

7.We have perused the order passed by the Commissioner of Income Tax (Appeals) (CIT(A)) as well as the Tribunal. As rightly pointed out by the Tribunal, the Insurance Companies prepare profit and loss account as per the guidelines issued by the Insurance Regulatory and Development Authority of India and not as per Part II and III of Schedule VI of Companies Act. Furthermore, the applicability of Schedule VI of the Companies Act was specifically excluded in respect of Insurance Companies. The revenue has not been able to dislodge this finding before us in these appeals. We find that the conclusion arrived at by the Tribunal in this regard is proper and valid. Accordingly, the appeals filed by the revenue on this ground are dismissed and consequently, the above substantial question of law is answered in favour of the assessee.

3.Solatium Fund:

8.The revenue is on appeal before us contending that the solatium fund has been estimated in a routine manner and this amount is an unascertained liability and therefore, liable to be disallowed while computing book profit under Section 115JB of the Act. We have perused the finding recorded by the Tribunal in this regard and we find that the contribution of 0.1% of gross premium from motor vehicle insurance is done as per the directions given by the Government of India and this amount has been paid by the assessee as per the decision taken by the General Insurance Council in the meeting held on 04.02.2005.

Therefore, we find that the Tribunal was fully right in rejecting the case of the revenue stating that the estimation was done in a routine manner and it is an unascertained liability. The decision of the High Court of Bombay in the case of Commissioner of Income Tax-I, Pune vs. Bajaj Allianz General Insurance Co. Ltd. reported in [2016] 76 taxmann.com 308 (Bombay) also supports the case of the assessee.

9.At this juncture, we may refer to the operative portion of the said judgment, which reads as follows:

> "6.The only grievance urged on behalf of the Revenue before us is that the payment was made to the Solatium fund only in September 2005 at 0.1%. Therefore, during the subject Assessment Year, the provision could not be allowed as an expenditure as it was a contingent liability.
>
> 7.We note that the impugned order of the Tribunal has after elaborate discussion come to the conclusion that in facts of this case, the order passed by the Assessing Officer dated 24th December 2008, cannot be said to be erroneous in law. The provision made for contribution to the Solatium fund during the subject Assessment Year were as per the scheme introduced by the Central Government and as directed by IRDA. This provision was to be made at the rate of 1% of the premium received during the subject Assessment Year as done in the earlier Assessment Year also. This was to provide for contribution to a fund to be formed to make payment to victims of hit and run accident. The Apex Court in Bharat Earth Movers Ltd. vs. CIT [2000] 245 ITR 428/112 Taxman 61 has observed as under:-
>
> "The law is settled: if a business liability has definitely arises in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a further date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied, the liability is not a contingent one."
>
> In this case, the liability of making a contribution to the Solatium fund at 1% of premium received, is a certain liability in view of IRDA letter dated 13th May, 2004. Therefore, it is not a contingent liability during the subject Assessment Year. In fact, this Court in Shrikant Textiles v. CIT [1971] 81 ITR 222 (Bom.) has held that whether a

liability is ascertained or contingent for a subject Assessment Year, cannot be decided/determined on the basis of the amounts paid in the subsequent/next Assessment Year.

8.Therefore, in the above view, the question as framed does not give rise to any substantial question of law. Thus not entertained."

10.We are in agreement with the decision in the case of Bajaj Allianz General Insurance Co. Ltd.(supra). For the above reasons, no grounds have been made out by the revenue to interfere with the finding recorded by the Tribunal in this regard. Accordingly, the appeals filed by the revenue on this ground are dismissed and consequently, the above substantial question of law is answered against the revenue.

4.Commission for receipt of reinsurance:

11.The assessee had succeeded on this issue before the CIT (A) and the finding has been affirmed by the Tribunal. The CIT (A) took note of the decision taken in the assessee's own case for the assessment year 2009-2010 in which the assessment for the year 2008-2009 was followed and the assessee succeeded before the CIT(A) for the assessment year 2008-2009, wherein the CIT(A) noted that as a matter of industrial practice it was termed as "commission on reinsurance premium received", however, in substance it is discount on re-insurance premium received by an Insurance Company from an other Insurance Company. We find that the Tribunal rightly decided the issue in favour of the assessee and the revenue has not brought out any ground to interfere with the said finding. Accordingly, the appeals filed by the revenue on this ground are dismissed and consequently, the substantial question of law is answered against the revenue.

5.TDS on Survey Fees:

12.Ms.V.Pushpa, learned Senior Standing Counsel would vehemently contend that the fee has been paid for utilizing the expertise of the surveyor and therefore, tax has to be deducted at source.

13.We have heard Mr.Sandeep Bagmar, learned counsel for the assessee on the said issue.

14.As rightly held by the Tribunal, the surveyor who has been engaged to assess the damage to the goods in transit does not have a permanent establishment in India. Furthermore, the surveyor does not share his knowledge for assessing the damage of goods and this aspect is never made known to the assessee. In fact, the assessee succeeded before the CIT(A) on this issue pertaining to the assessment year 2010-2011. The assessee's contention in the said appeal was that M/s.Royal & Sun Alliance, U.K. does not have a permanent establishment in India, the survey fee paid for the service rendered in U.K. is not taxable in India as per DTAA. Further, it was contended that reimbursements do not partake the character of income which is chargeable to tax and therefore do not warrant withholding of tax on the same. The assessee relied on the following decisions in support of this proposition:

1.CIT v. Siemens Aktiongesellschaft 220 CTR 425 (Bombay)

2.CIT v. Industrial Engineering 202 ITR 1014 (Delhi)

15.The CIT(A) on going through the contentions raised by the assessee pointed out that disallowance under Section 40(a)(i) can be made only if taxes are not withheld on income chargeable to tax in India. On facts, it held that the payment was made to Royal and Sun Alliance, U.K. to settle the amounts of various surveyors on cost to cost basis and the surveyor does not make available any technical knowledge which can independently be applied by the assessee and consequently, held that the payment by the assessee would not be taxable as fees for technical services in the hands of the recipient. Furthermore, it is noted that in the absence of permanent establishment, the income in the hands of the recipient is also not taxable in India. The above view taken by the CIT(A) was rightly affirmed by the Tribunal and we find that the revenue has not made out any grounds to interfere with the said finding. Accordingly, the appeals filed by the revenue on this ground are dismissed and consequently, the above substantial question of law is answered against the revenue.

16.Thus, all the tax case (appeals) are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Income-tax Appellate Tribunal,
“A” Bench, Chennai.

2.The Commissioner ofIncome Tax (Appeals),
Large Tax Payer (Unit)
II nd Floor, 1775 Jawharlal Nehru,
Inner Ring Road, Anna Nagar,
Western Extn, Chennai-101.

3.The Deputy Commissioner of Income Tax,
Large Payer Unit, Chennai.

4.The Additional Commissioner ofIncome Tax,
Large Tax Payer Unit,
Chennai.

5.The Assistant Commissioner of Income Tax Payer Unit,
Chennai.

+6cc to Mr.Sandeep Bagmar,, Advocate, S.R.No.4382, 4383, 4384, 4385, 4386, 4388
+1cc to Mr.Swaminathan, Advocate, S.R.No.4666

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and
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AD(CO)
GN(08/03/2019)