IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.323, 324, 328, 330, 333, 336, 329, 332, 335, 337, 331, 326, 334, 338, 340, 343, 341, 344 and 345 of 2019
and
C.M.P.Nos.12062, 12064, 12081, 12084, 12086, 12080, 12083, 12087, 12088, 12073, 12082, 12089, 12092, 12095, 12101, 12103, 12104 and 12106 of 2019

Commissioner of Income Tax,
Chennai. .. Appellant in all T.C. Appeals

-vs-

M/s.United India Insurance Company,
24, Whites Road, Chennai-600 014.
PAN: AAACU5552C .. Respondent in all T.C. Appeals

T.C.Nos. 323 & 324/2019:

Tax Case Appeals filed under Section 260A of the Income-tax Act, 1961, against the order dated 28.08.2018 made in I.T.A.No.30/Chny/2014 and I.T.A.No.36/Chny/2014 on the file of the Income Tax Appellate Tribunal 'A' Bench, Chennai, for the assessment year 2009-10 and against the order dated 28.10.2013 made in CIT(A) No. 86/11-12/LTU(A) passed by the Commissioner of Income Tax, LUT(Appeals) Large Tax Payer Unit, Chennai and against the order dated 31.12.2011 passed by the Deputy Commissioner of Income Tax, Large Tax Payer Unit, Chennai.

T.C.Nos. 328, 330, 333 & 336/2019:

Tax Case appeals filed under Section 260A of the Income Tax Act 1961, against the order dated 28.08.2018 made in I.T.A.Nos.2107/Chny/2008, I.T.A.No.1605/Chny/2018, I.T.A.No.906/Chny/2011 and I.T.A.No.217/Chny/2009 on the file of the Income Tax Appellate Tribunal 'A' Bench, Chennai for the assessment year 2004-2005 and against the order dated 20.07.2011 made in I.T.A.No.60/09-10/LTU(A) passed by the Commissioner of Income Tax (Appeals)Large Tax Payer Unit, Chennai and against the order dated 17.12.2009 passed by the Additional Commissioner of Income Tax, LTU, Chennai and against the order dated 28.08.2008 made in I.T.A.No.851/2006-2007-AIII/AY 2004-2005 and

I.T.A.No.1/2008-2009/LTU/AY/2004-2005 passed by the Commissioner of Income Tax(appeals) Large Tax Payer Unit, Chennai and against the order dated 29.12.2006 passed by the Joint Commissioner of Income Tax, Company Range III, Chennai 34.

T.C.A.Nos.329, 332, 335, 337/2019:

Tax Case Appeals filed under Section 260 A of the Income Tax Act 1961, against the order dated 28.08.2018 made in I.T.A.No.1608/Chny/2011, I.T.A.No.34/Chny/2014, I.T.A.No.29/Chny/2014 and I.T.A.No.1688/Chny/2011 passed by the Income Tax Appellate Tribunal 'A' Bench, Chennai for the Assessment year 2004-2005, 2007-2008, 2007-2008 and 2007-2008 respectively and against the order dated 28.10.2013 made in I.T.A.No.15/2012-2013/LTU(A) passed by the Deputy Commissioner of Income Tax, Large Tax Payer Unit, Chennai and against the order dated 03.12.2012 passed by the Deputy Commissioner of Income Tax, Large Tax Payer Unit, Chennai and against the order dated 20.07.2011 made in I.T.A.No.61/09-2010/LTU(A) passed by the Commissioner of Income Tax Appeal, Large Tax Payer Unit, Chennai and against the order dated 18.12.2019 passed by the Additional Commissioner of Income Tax, LTU, Chennai.

T.C.A.No.331 & 326/2019:

Tax Case Appeal filed under Section 260 A of the Income Tax Act 1961, against the order dated 28.08.2018 made in I.T.A.No.1606/Chny/2011 and I.T.A.No.1673/Chny/2011 passed by the Income Tax appellate Tribunal 'A' Bench Chennai for the Assessment year 2005-2006 and against the order dated 22.07.2011 and 20.07.2011 made in I.T.A.No.456/2007-2008/LTU(A) and I.T.A.No.49/10-11/LTU(A) passed by the Commissioner of Income Tax (APPEals) LTU, Chennai and Deputy Commissioner of Income Tax, LTU, Chennai and against the order dated 20.12.2010 passed by the Deputy Commissioner of Income Tax LTU, Chennai and against the order dated 31.12.2007 passed by the Assistant Commissioner of Income Tax Company Circle III(3) Chennai.

T.C.A.No.334, 338/2019, 340 & 343/2019:

Tax Case Appeals filed under Section 260A of the Income Tax Act 1961, against the order dated 28.08.2018 in I.T.A.No.764/Chny/2014, I.T.A.No.696/Chny/2014, I.T.A.No.1689/Chny/2014 and I.T.A.No.1610/Chny/2011 passed by the Income Tax Appellate Tribunal 'A' Bench Chennai for the assessment year 2010-2011, 2010-2011, 2008-2009, 2008-2009 and against the order dated 23.01.2014, 23.01.2014, 20.07.2011 and 20.07.2011 made in I.T.A.No.12/2013-2014/LTU(A), I.T.A.No.12/2013-2014/LTU(A), I.T.A.No.51/2010-2011/LTU(A) and I.T.A.No.51/2010-2011/LTU(A) passed by the Commissioner of

Income Tax (Appeals) LTU, Chennai and Deputy Commissioner of Income Tax, LTU, Chennai and against the order dated 27.03.2013, 27.03.2013, 28.12.2010 and 28.12.2010 respectively passed by the Deputy commissioner of Income Tax, LTU, Chennai.

T.C.A.No.341, 344 & 345/2019:

Tax Case Appeals filed under Section 260A of the Income Tax Act 1961, against the order dated 28.08.2018 in I.T.A.No.892/Chny/2007, I.T.A.No.905/Chny/2011, I.T.A.No.1753/Chny/2011 passed by the Income Tax Appellate Tribunal 'A' Bench, Chennai for the Assessment year 2003-2004, 2003-2004, 2003-2004 and against the order dated 21.02.2011, 20.07.2011 and 15.09.2011 made in I.T.A.No.61/2008-2009/LTU(A), I.T.A.No.60/2008-2009/LTU(A) and I.T.A.No.50/2010-2011/LTU(A) respectively passed by the Commissioner of Income Tax (Appeals) LTU, Chennai and against the order dated 26.12.2008, 26.12.2008 and 20.12.2010 passed by the Additional Commissioner of Income Tax LTU, Chennai, Additional Commissioner of Income Tax (LTU) Chennai and Deputy Commissioner of Income Tax, LTU, Chennai and against the order dated 22.01.2007 made in I.T.A.No.583/2005-2006/A.VIII Passed by the Commissioner of Income Tax (Appeals) VIII, Chennai 34 and against the order dated 18.01.2006 passed by the Assistant Commissioner of Income Tax, Company Circle III (2) Chennai-34 for the Assessment year 2003-2004.

For Appellant (In all Appeals)	:	Mr.M.Swaminathan, Senior Standing Counsel
For Respondent (In all Appeals)	:	Mr.H.S.Hredai, for Mr.M.V.Swaroop

COMMON JUDGMENT
(Delivered by T.S.Sivagnanam, J.)

These appeals are filed by the Revenue under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as “the Act”), challenging the common order dated 28.08.2018, passed by the Income-tax Appellate Tribunal 'A' Bench, Chennai (for brevity, “the Tribunal”) in

I.T.A.No.30/Chny/2014, for the assessment year 2009-10;
I.T.A.No.36/Chny/2014, for the assessment year 2009-10;
I.T.A.No.2107/Chny/2008, for the assessment year 2004-05;
I.T.A.No.1605/Chny/2011, for the assessment year 2004-05;
I.T.A.No.906/Chny/2011, for the assessment year 2004-05;
I.T.A.No.217/Chny/2009, for the assessment year 2004-05;
I.T.A.No.1608/Chny/2011, for the assessment year 2004-05;

I.T.A.No.34/Chny/2014, for the assessment year 2007-08;
I.T.A.No.29/Chny/2014, for the assessment year 2007-08;
I.T.A.No.1688/Chny/2011, for the assessment year 2007-08;
I.T.A.No.1606/Chny/2011, for the assessment year 2005-06;
I.T.A.No.1673/Chny/2011, for the assessment year 2005-06;
I.T.A.No.764/Chny/2014, for the assessment year 2010-11;
I.T.A.No.696/Chny/2014, for the assessment year 2010-11;
I.T.A.No.1689/Chny2011, for the assessment year 2010-11;
I.T.A.No.1610/Chny/2011, for the assessment year 2008-09;
I.T.A.No.892/Chny/2007, for the assessment year 2003-04;
I.T.A.No.905/Chny/2011, for the assessment year 2003-04; and
I.T.A.No.1753/Chny/2011, for the assessment year 2003-04 respectively.

2.For the sake of clarity and convenience, we give the relevant details, viz., the assessment years, the orders passed by the Assessing Officer, the appeals filed against the orders of assessment and the appeals filed before the Tribunal in a tabulated form as hereunder:-

Assessment Year	143(3) Order date	143 rws 147 Order date	143(3) rws 147 Order date	143(3) rws 263 Order date
2003-2004	18.01.2016	20.12.2010	26.12.2008	26.12.2008
2004-2005	29.12.2006	17.12.2009	--	--
2005-2006	13.12.2007	20.12.2010	--	--
2007-2008	18.12.2009	03.12.2012	--	--
2008-2009	28.12.2010	--	--	--
2009-2010	31.12.2011	--	--	--
2010-2011	27.03.2013	--	--	--
2011-2012	31.03.2014	--	--	--
2012-2013	06.03.2015	--	--	--
2013-2014	27.03.2016	--	--	--

Assessment Year	ITA No.	Order Date	ITA No.	Order Date	ITA No.	Order Date
2003-2004	061/08-09	21.02.2011	60/08-09	20.07.2011	50/10-11	15.09.2011
2004-2005	851/06-07	28.08.2008	60/09-10	20.07.2011	--	--
2005-2006	456/07-08	22.07.2011	49/10-11	20.07.2011	--	--

Assessment Year	ITA No.	Order Date	ITA No.	Order Date	ITA No.	Order Date
2007-2008	061/09-10	20.07.2011	15/12-13	28.10.2013	--	--
2008-2009	051/10-11	20.07.2011	--	--	--	--
2009-2010	086/11-12	28.10.2013	--	--	--	--
2010-2011	012/13-14	23.01.2014	--	--	--	--
2011-2012	443/14-15	29.02.2016	--	--	--	--
2012-2013	035/15-16	21.12.2016	--	--	--	--
2013-2014	101/16-17	28.03.2017	--	--	--	--

Assessment Year	ITA No.	ITA No.	ITA No.	ITA No.
2003-2004	1753/Chny/2011	892/Chny/2007	905/Chny/2011	--
2004-2005	2107/Chny/2008	217/Chny/2009	906/Chny/2011	1605/Chny/2011
2005-2006	1606/Chny/2011	1673/Chny/2011	--	--
2007-2008	1608/Chny/2011	1688/Chny/2011	34/Chny/2014	29/Chny/2014
2008-2009	1610/Chny/2011	1689/Chny/2011	--	--
2009-2010	30/Chny/2014	36/Chny/2014	--	--
2010-2011	764/Chny/2014	696/Chny/2014	--	--
2011-2012	1149/Chny/2016	1511/Chny/2016	--	--
2012-2013	364/Chny/2016	626/Chny/2016	--	--
2013-2014	1085/Chny/2017	1571/Chny/2017	--	--

3.Common issues arise in all these tax case appeals. However, in all the tax case appeals, all the issues are not raised.

4.Four substantial questions of law to be considered are as follows:-

> "(i) Whether the Tribunal was justified in holding that profit on sale of investments is exempt thereby ignoring that profits realized from investments are real and hypothetical?
>
> (ii) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that the assessee is not liable to deduct the tax at source made to surveyors outside the country was not taxable in India?
>
> (iii) Whether on the facts and circumstances of the case and in law, the Tribunal was justified and correct in holding that the provisions of Section 115JB of the Act which enables the companies to compute book profit may not be applicable to insurance companies? and
>
> (iv) Whether on the facts and circumstances of the case and in law, the Tribunal was justified and correct in holding that the assessee is not liable to deduct the tax at source towards the commission paid for receipt of re-insurance premium?"

5.As observed above, all the four questions do not arise for all the assessment years and for the sake of convenience, we furnish the details of the substantial questions of law arising for consideration in the various tax case appeals relevant to the assessment years under consideration. These details are furnished in the tabulated statement below and the substantial question of law which arises for each of the assessment year, that is, in each of the tax case appeals is indicated with a tick mark.

Assessment Years	2003-04	2004-05	2005-06	2007-08	2008-09	2009-10	2010-11
Profit on Sale of Investments	?	?	?	?	?	?	?
TDS on Surveyors	?	?	?	?	?	?	?
115JB	?	?	?	?	?	?	?
TDS on Commission	?	?	?	?	?	?	?

6.So far as the first substantial question of law is concerned, viz., profit on sale of investments whether it is exempt or not, the issue came up for consideration before the

High Court of Delhi in the case of Oriental Insurance Co. Ltd., vs. Deputy Commissioner of Income-tax reported in [2017] 84 taxmann.com 312 (Delhi). The Court analysed Rule 5(b) of the First Schedule to the Act, which stood omitted by Finance Act, 1988 and was re-introduced by Finance Act, 2009 with effect from 1st April, 2011. It was pointed out that the rationale for omitting Rule 5(b) was to exempt profits and gains in investments by the General Insurance Corporation of India and the four companies formed under Section 16 of the General Insurance Business (Nationalisation) Act, 1972. After referring to the relevant provisions, the explanation offered in the memorandum to the Finance Bill, 1988, and the circular of the CBDT in Circular No.528, dated 16.12.1988, the Court held as follows:-

> "38.Thus, the major change, therefore, sought to be brought about by the 2009 amendment was to align it with the IRDA Regulations regarding preparation of accounts of general insurance companies. The changed norms, in terms of said Regulations, required a non-life insurance company to include in its Profit and Loss ('P & L') Account or Revenue Account "profit or loss on realisation/sale of investment". This was said to be consistent with the international standards.
>
> 39.With the Assessee carrying on a general insurance business, it was bound by the provisions of the IA as well as the IRDA Regulations referred to hereinbefore. Even the CBDT, in its Circular No.5/2010 dated 3rd June, 2010, acknowledged that, after the introduction of the IRDA Regulations in 2002, non-life insurance companies are required to credit income from the sale of investments directly to the P&L Account. This requirement, which would make the income so earned amenable to tax, was made applicable only from AY 2011-12. Prior to 1st April, 2011, there was no provision which required the Revenue to disallow the deduction of loss on sale of investments."

7.In terms of the above decision, prior to 1st April, 2011, there was no provision which required the Revenue to disallow the deduction of loss on sale of investments.

8.In the respondent/assessee's case, identical view was taken by the Commissioner of Income-tax (Appeals), Large Taxpayer Unit, Chennai (for brevity, "the CIT(A)"), and the order was confirmed by the Tribunal. The finding in favour of the assessee was on the ground that prior to 1st April, 2011, there was no provision which required the Revenue to disallow the deduction of loss on sale of investments.

9.We respectfully agree with the view taken by the High Court of Delhi in Oriental Insurance Co. Ltd. (supra). Accordingly, the first substantial question of law is answered against the Revenue.

10.So far as the second, third and fourth substantial questions of law are concerned, a Division Bench of this Court in the case of Commissioner of Income Tax vs. M/s.Royal Sundaram Alliance Insurance Company Limited in T.C.(A) Nos.41 of 2019 and etc., batch, considered these three substantial questions of law by judgment dated 18.01.2019 and the substantial questions of law were decided against the Revenue.

11.Furthermore, with regard to the third substantial question of law, with regard to whether the Tribunal is correct in holding that the provisions of Section 115JB of the Act which enables the companies to compute book profit may not be applicable to insurance companies, this Court had an occasion to consider the same question in the case of The Commissioner of Income Tax vs. M/s.Cholamandalam MS General Insurance Company Limited T.C.A.Nos.93 to 100 of 2019 dated 28.01.2019 and the same was rejected and held against the Revenue.

12.Thus, following the above decisions, substantial questions of law 2, 3 and 4 are decided against the Revenue.

13.In the result, the appeals are dismissed and the substantial questions of law are answered against the Revenue. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

abr
To
1.The Deputy Commissioner of Income-tax,
Large Taxpayer Unit, Chennai.

2.The Commissioner of Income Tax (Appeals),
Large Taxpayer Unit, II Floor,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension, Chennai-600 101.

3.The Income Tax Appellate Tribunal 'A' Bench, Chennai.

4.The Additional Commissioner of Income Tax
LTU, Chennai

5.The Joint Commissioner of Income Tax
Company Range III, Chennai 34.

6.The Assistant Commissioner of Income Tax
Company Circle III(3) Chennai

7.The Commissioner of Income Tax
Chennai

+9 Ccs to Mr. M. Swaminathan, Advocate sr 48438.

Tax Case Appeal Nos.323, 324, 328, 330,
333, 336, 329, 332, 335, 337, 331, 326,
334, 338, 340, 343, 341, 344 and 345 of 2019

SAI(CO)
SP(15/10/2019)