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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 475/2019**

PR. COMMISSIONER OF INCOME TAX, Appellant
Through Mr. Sagar Suri, Standing counsel and
Ms. Lakshmi Gurung, Advocates

versus

M/S SAHARA INDIA LIFE INSURANCE COMPANY, LTD
..... Respondent
Through Mr. Aniket D. Agrawal, Advocate

+ **ITA 426/2019**

PR. COMMISSIONER OF INCOME TAX, (CENTRAL-1)
..... Appellant
Through Mr. Sagar Suri, Standing counsel and
Ms. Lakshmi Gurung, Advocates

versus

M/S SAHARA INDIA LIFE INSURANCE COMPANY, LTD
..... Respondent
Through Mr. Aniket D. Agrawal, Advocate

+ **ITA 427/2019**

PR. COMMISSIONER OF INCOME TAX Appellant
Through Mr. Sagar Suri, Standing counsel and
Ms. Lakshmi Gurung, Advocates

versus

M/S SAHARA INDIA LIFE INSURANCE COMPANY, LTD
..... Respondent
Through Mr. Aniket D. Agrawal, Advocate

+ **ITA 429/2019**

PR. COMMISSIONER OF INCOME TAX, (CENTRAL-1)
..... Appellant
Through Mr. Sagar Suri, Standing counsel and

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Ms. Lakshmi Gurung, Advocates

versus

M/S SAHARA INDIA LIFE INSURANCE COMPANY, LTD

..... Respondent

Through Mr. Aniket D. Agrawal, Advocate

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% 02.08.2019

CM Appl. No. 19863/2019 (Exemption) in ITA No. 426/2019

CM Appl. No. 19865/2019 (Exemption) in ITA No. 427/2019

CM Appl. No. 19869/2019 (Exemption) in ITA No. 429/2019

1. Exemption allowed, subject to all just exceptions.

CM Appl. No. 19862/2019 (delay) in ITA No. 426/2019

CM Appl. No. 19864/2019 (delay) in ITA No. 427/2019

CM Appl. No. 19868/2019 (delay) in ITA No. 429/2019

2. For the reasons stated in the applications, the delay of 30 days in re-filing the appeal is condoned and the application is disposed of.

ITA Nos. 475/2019, 426/2019, 427/2019 and 429/2019

3. These are four appeals by the Revenue against a common impugned order dated 31st October, 2018 passed by the Income Tax Appellate Tribunal ('ITAT').

4. ITA No. 475/2019 is directed against the order passed by the ITAT in ITA No. 6243/Del/2013 for Assessment Year (AY) 2005-2006; ITA No. 426/2019 is directed against an order passed by the ITAT in ITA No. 1347/Del/2013 for AY 2008-2009, ITA No. 427/2019 is directed against an order passed by the ITAT in ITA No. 6246/Del/2013 for AY 2010-2011 and

ITA 475/2019 & other connected matters

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ITA No. 429/2019 is directed against an order passed by the ITAT in ITA No. 3509/Del/2013 for AY 2004-2005 respectively.

5. One common issue sought to be urged by the Revenue in all these appeals is whether the ITAT was justified in upholding the order of the Commissioner of Income Tax (Appeals) ['CIT (A)'] accepting the Respondent/Assessee's revised computation of income in terms of Section 44 read with First Schedule to the Act? There are certain other incidental questions urged which will be discussed hereafter.

6. The facts as far as AY 2004-2005 is concerned, are that the Respondent, which is carrying on life insurance business, filed its return of income which was picked up for scrutiny. Initially the assessment was completed by the Assessing Officer (AO) under Section 143 (3) of the Act on 30th November, 2006. Subsequently, after the expiry of four years thereafter, a notice dated 28th March, 2012 was issued under Section 148 of the Act for initiating re-assessment proceedings.

7. In response to the notice under Section 147, the Respondent filed a return of income, this time computing the income in terms of Section 44 of the Act. However, the AO in the re-assessment order added the difference between the interest as per the balance sheet (which included interest paid at the time of purchase of securities) and the interest as per the Profit and Loss Account to the income of the Respondent whereas the original assessment was computed at a taxable income of Rs.2,89,55,200/-, the re-assessment, after

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making an addition of Rs.2,10,65,809/- led to the computation of a total income of Rs. 5,00,21,010/-.

8. In the appeal before the CIT (A), the re-opening of the assessment by the AO was annulled. On merits also, the CIT (A) held in favour of the Respondent observing that it had followed Accounting Standard 13 issued by the Institute of Chartered Accountants of India (ICAI) with pre-acquisition interest paid and post acquisition interest income. The addition of Rs.2,10,65,809/- made by the AO was deleted.

9. The facts relevant to AY 2005-2006 are that the Respondent filed its return of income on 24th December, 2007 declaring a loss of Rs.9,67,15,218/-. The return was picked up for scrutiny and statutory notices were issued by the AO to the Respondent. After making some additions and disallowances under Sections 28 and 43B of the Income Tax Act, 1961 (hereafter 'Act'), the AO computed the income under the head 'Business' at an assessed loss of Rs.5,48,20,431/-.

10. Subsequently, the AO claimed to have noted that the Respondent had claimed excessive deductions/allowances. In its appeal against this assessment order before the CIT (A), the Respondent raised an additional ground that its income from the insurance business had to be computed in terms of Section 44 of the Act which was applicable exclusively to income derived from such insurance business. Accordingly, it also furnished a revised computation of loss at Rs.7,47,31,918/-. This was accepted by the

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CIT (A) and a direction was issued to the AO to compute the income accordingly.

11. During this second computation, the AO took note of the fact that the Respondent, which had got the license to commence business on 6th February, 2004, had commenced its insurance business activity on 30th October, 2004. The AO held that a sum of Rs.2,62,04,000/- had been claimed by the Respondent as 'amortization charges of investment'. This was held to be capital expenditure and therefore was disallowed and added to the Respondent's total income. The AO also initiated penalty proceedings under Section 271 (1) (c) of the Act. This was done by an order dated 24th December, 2007 under Section 143(3) of the Act.

12. For the second time around, the Respondent filed an appeal before the CIT (A) where one of the main grounds taken was that the AO was not justified in refusing to compute the total income of the Respondent in terms of Section 44 of the Act read with the First Schedule. The CIT (A) by the order dated 10th June, 2014 accepted this plea and deleted the disallowances.

13. The facts for AY 2006-2007 were identical to AY 2005-2006 in so far as the Respondent had initially filed return of income as per Sections 28 to 43 of the Act but later filed revised computation under Section 44 of the Act before the CIT (A). Likewise, for AY 2010-2011 also, where the CIT (A) directed the AO to determine income in terms of Section 44 of the Act.

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14. The Revenue filed appeals for the above AYs before the ITAT. One appeal of the Respondent pertaining to AY 2007-2008 was dismissed by the CIT (A) who upheld the imposition of penalty upon the Assessee under Section 271 (1) (c) of the Act. Against this, the Respondent filed an appeal before the ITAT.

15. The ITAT has in the impugned order noted that for AY 2004-2005 there was no material in possession of the AO other than the observation of the Revenue audit to proceed against the Assessee under Section 147 of the Act. The CIT (A) noted that the case fell squarely within the realm of 'change of opinion' which was impermissible as a basis for re-opening of assessments after a lapse of four years. The CIT (A) expressly annulled the re-assessment proceedings. The ITAT noted that this was not challenged by the Revenue. It only challenged the deletion of the addition on merits. In the absence of any challenge to the quashing of the re-assessment proceedings by the Revenue, the ITAT found no ground to interfere.

16. Learned counsel for the Revenue sought to contend that the ITAT adopted the technical view in precluding the Revenue from urging the merits of the issue only because it had not challenged the order of the CIT (A) annulling the re-assessment proceedings. In the considered view of the Court, this is not a mere 'technical approach'. The fact of the matter is that there was no basis for the re-opening of the assessment except the presumptive observation of the Revenue audit which itself was not based on any tangible material.

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17. Consequently, as far as AY 2004-2005 in is concerned, the Court finds no reason to interfere with the order of the ITAT and no substantial question of law arises.

18. As far as the other appeals are concerned, the central issue is whether the income of the Respondent ought to have been permitted to be computed under Section 44 of the Act? Further, for some AYs, whether it could have been permitted at the stage of the appeal before the CIT (A)?

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.

20. The Court is unable to find any error having been committed in the ITAT in this regard. No substantial question of law arises on this issue as well.

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21. The Respondent had challenged the upholding of the penalty imposed under Section 271(1) (c) of the Act, which was accepted by the ITAT. It followed the decision of the Karnataka High Court in ***CIT v. Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar)*** and observed that the notice issued by the AO would be bad in law if it did not specify which limb of Section 271(1) (c) the penalty proceedings had been initiated under i.e. whether for concealment of particulars of income or for furnishing of inaccurate particulars of income. The Karnataka High Court had followed the above judgment in the subsequent order in ***Commissioner of Income Tax v. SSA's Emerald Meadows (2016) 73 Taxman.com 241 (Kar)***, the appeal against which was dismissed by the Supreme Court of India in SLP No.11485 of 2016 by order dated 5th August, 2016.

22. On this issue again this Court is unable to find any error having been committed by the ITAT. No substantial question of law arises.

23. The appeals are accordingly dismissed.



S. MURALIDHAR, J.



TALWANT SINGH, J.

AUGUST 02, 2019

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