IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.07.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.8495 of 2014
and
W.M.P.No.13819 of 2021

M/s.United India Insurance Co.Ltd.,
24, Whites Road,
Chennai - 600 014. ...Petitioner

Vs

Deputy Commissioner of Income Tax,
Large Taxpayer Unit,
1775, Jawaharlal Nehru Inner Ring Road,
Annanagar Western Extension,
Chennai - 600 101. ... Respondent

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records of the respondent dated 28.03.2013 in the case of the petitioner (PAN No.AAACU 5552C), and quash the impugned notice under Section 148 of the Income Tax Act, 1961 for the assessment year 2008 - 09.

For Petitioner :Mr.Aravind P.Datar, Senior Counsel for M/s.M.V.Swaroop

For Respondents :Mrs. Hema Muralikrishnan Senior Standing Counsel (Income Tax)

O R D E R

The writ on hand is filed challenging the notice issued under Section 148 of the Income Tax Act, dated 28.03.2013.

2. The learned Senior Counsel appearing on behalf of the writ petitioner made a submission that the issues raised in the present writ petition are no more res-integra and in the case of the petitioner itself the Hon'ble Division Bench decided the substantial questions of law in favour of the petitioner and the said principles are to be applied for the purpose of setting aside the impugned notice issued under Section 148 of the Income

Tax Act.

3. The learned Senior Counsel referred the Judgment of the Hon'ble Division Bench in the case of Commissioner of Income Tax vs. United India Insurance Company reported in [2019] 111 taxmann.com 217 (Madras), dated 14.06.2019. The substantial questions of law raised are that 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? Yet another question of law is that 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?

> The Hon'ble Division Bench decided the first substantial question of law in favour of the assessee held that "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."
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> With reference to the third substantial question of law, it is held that "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 CIT v. Cholamandalam Ms.General Insurance Co.Ltd. [T.C.A.Nos.93 to 100 of 2009, dated 28.01.2019] and the same was rejected and held against the Revenue.

4. Relying on the above judgment delivered in the case of the very same petitioner on hand, the learned Senior Counsel referred Section 44 of the Income Tax Act, which is exclusively provided for Insurance Business.

> Section 44 stipulates, notwithstanding anything to the contrary contained in the provisions of "Interest on securities", "Income from house property", "Capital gains" or "Income from other sources", or in section 199 or in sections 28 to 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.
>
> Rule 5 of the first schedule provides computation of profits and gains of other insurance business and Clause 5(b) enumerates "any gain or loss on realization

of investments shall be added or deducted, as the case may be, if such gain or loss is not credited or debited to the profit and loss account".

5. The learned senior counsel reiterated that the doubt raised in the impugned notice regarding Section 10 (38) of the Act, would not arise at all. The petitioner / Insurance Company has not claimed any exemption under Section 10 (38) of the Act. The said section is an exclusion clause and, when there is no request for such an exemption, Section 44 would be applicable and accordingly, the benefit of the judgment delivered by the Hon'ble Division Bench cited supra, is to be extended as far as the petitioner is concerned. Thus, the impugned notice itself is not based on any tangible material or otherwise. The very basis for issuance of notice under Section 148 of the Act, is based on wrong interpretation of the provision and in violation of the judgment of the Hon'ble Division Bench in the Case of Commissioner of Income Tax vs. United India Insurance Company, cited supra.

6. The learned Senior Standing Counsel appearing on behalf of the respondents could not able to dispute the application of the Judgment of the Hon'ble Division Bench in the case of the petitioner in this writ petition. However, the learned Senior Standing Counsel made a submission that the judgment was delivered after issuance of the notice by the respondent under Section 148 of the Act. However, the said submission deserves no consideration as the Hon'ble Division Bench answered the substantial question of law in favour of the assessee and the arguments advanced on behalf of the Revenue was rejected.

7. This being the factum of the case, this Court has no hesitation to consider the case on hand and accordingly, the impugned notice issued by the respondent in proceedings PAN No.AACU 5552C under Section 148 of the Act, is quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

Pns

To

The Deputy Commissioner of Income Tax,
Large Taxpayer Unit,
1775, Jawaharlal Nehru Inner Ring Road,
Annanagar Western Extension,
Chennai - 600 101.

+1cc to Mr.M.V.Swaroop, Advocate, S.R.No.30675
+1cc to Mrs.Hema MuraliKrishnan, Advocate, S.R.No.30780

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and
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PCH(CO)
CB(05/08/2021)