IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.10.2021

Pronounced on : 18.11.2021

THE HONOURABLEMRS.JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

T.C.A.Nos.,839,842,848 ,852,853 and 854 of 2018 and
C.M.P.Nos.20685,20688,20700 and 20701 of 2018 and
C.M.P.Nos.14584,14585,14587,14581,14588,14595,14596 and 14597 of 2021

M/s Cholamandalam MS General Insurance Co.Limited,
Dare House,
No.2, NSC Bose Road,
Chennai - 600 001,
PAN AABBC 6633 K. ...Appellant in
T.C.A. No.839 of 2018 / Appellant

M/s Cholamandalam MS General Insurance Co.Limited,
Chennai - 600 001,
PAN AABBC 6633 K. ...Appellant in
T.C.A. No.842 of 2018 / Respondent

M/s Royal Sundaram General Insurance Co.Limited,
Chennai - 600 001,
PAN AABCR7106G ...Appellant in
T.C.A. No.848 of 2018
(Cause Title accepted vide Court order
dated 13.11.2018 made in C.M.P.Nos.15577
to 15584, 15736 to 15745 of 2018)
... T.C.A. No.852 of 2018
... T.C.A. No.853 of 2018
and
... T.C.A. No.854 of 2018 / Respondent

Vs

The Assistant Commissioner of Income Tax,
Large Tax Payer Unit,
Chennai - 600 101. ...Respondent in
T.C.A. No.839 of 2018 / Respondent

The Deputy Commissioner of Income Tax,
Large Tax Payer Unit,
Chennai 600 101 ...Respondent in T.C.A.No.848,852,853
and 854 of 2018 / Appellant 842 of 2018

Prayer in 839 of 2018: This Tax Case Appeal is filed under Section 260A of the Income Tax Act, 1961 to set aside the Order of the Tribunal in I.T.A. No.1620/Chny/2011 dated 31.07.2018. (for all the appeals) against the order dated 03.08.2011 on the file of the Commissioner of Income Tax (Appeals) Large Tax Payer Unit Chennai - 101 made in I.T.A.No.43/09-10/CTV(A) for the Assessment Year 2006-07 and against the order dated 02.12.2009 on the file of the Assistant Commissioner of Income Tax, Large Tax Payer Unit, Chennai for the Assessment year 2006-07.(TCA No.839/2018).

Prayer in 842 of 2018: This Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 to set aside the Order of the Tribunal in I.T.A. No.1366/Chny/2013 dated 31.07.2018 for the Assessment Year 2008-09 against the order dated 26.03.2013 on the file of the Commissioner of Income Tax (Appelas), Large Tax Payer Unit, Anna Nagar, Western Extension, Chennai - 600 101 for the Assessment Year 2008-09 and against the order dated 23.12.2011 on the file of the Deputy Commissioner of Income Tax Large Tax Payer Unit, Chennai made in GI.No.AABLC 6633K for the Assessment Year 2008-09.

Prayer in 848 of 2018: This Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 to set aside the Order of the Tribunal in I.T.A. No. 1367/Chny/2013 dated 06.08.2018 for the Assessment Year 2009-10 against the order dated 26.03.2013 on the file of the Commissioner of Income Tax (Appeals), Large Tax Payer Unit, Chennai - 600 101 made in ITA.No.105/11-12/LTU(A) for the Assessment Year 2009-10 and against the order dated 22.12.2011 on the file of the Assistant Commissioner of Income Tax Large Tax Payer Unit, Chennai made in AABCR7106G for the Assessment Year 2009-10.

Prayer in 852, 853 and 854 of 2018: These Tax Cases Appeal is filed under Section 260A of the Income Tax Act, 1961 to set aside the Order of the Tribunal in I.T.A. No. 1670/Chny/2011, 1668/chny/2011, ITA.No.1669/chny/2011 dated 06.08.2018, 06.08.2018, 06.08.2018 respectively for the Assessment Year 2008-09, 2006-07, and 2007-08 respectively and against the order dated 29.07.2011, 29.07.2011, 29.07.2011, respectively on the file of the Commissioner of Income Tax(Appeals), Large Tax Payer Unit, Anna Nagar, Western Extension, Chennai - 600 101 made in ITA.No.57/10-11/LTU(A) for the Assessment Year 2008-09, ITA.No.46/09-10/LTU(A) for the Assessment Year 2006-07, and ITA.No.47/09-10/LTU(A) for the Assessment Year 2007-08 respectively and against the order dated 24.12.2010, 10.12.2009 and 14.12.2009 respectively on the file of the Deputy Commissioner of Income Tax, Large Tax Payer Unit, Chennai made in AABCR7106G, AABCR7106G and AABCR7106G respectively for the Assessment Year 2008-09, 2006-07, and 2007-08 respectively.

For Appellant in all TCAs	:	Mr.R.Sandeep Bagmar
For Respondent ín all TCAs	:	Mr.M.Swaminathan Senior Standing Counsel assisted by Ms.V.Pushpa, Junior Standing Counsel

JUDGMENT

MOHAMMED SHAFFIQ,J.

This is a batch of six appeals, out of which 4 appeals are filed by M/s Royal Sundaram General Insurance Co. Ltd and the other two appeals are filed by M/s Cholamandalam MS General Insurance Co.Ltd. challenging the orders of the Income Tax Appellate Tribunal thereby raising to the following issues/questions viz.,

(a) Whether the payments of reinsurance premium made by the appellant to non-resident re-insurers is to be disallowed under Section 37 read with Explanation 1 of the Act on the ground that the same is prohibited under the Insurance Act, 1938.

(b) Whether the deductions under Section 14A of the Income Tax Act, 1961 stands excluded while computing income of an Insurance Company, in view of Section 44 of the Income Tax Act, 1961?

(c) Whether the profits on sale of investments is exempted under Income Tax Act, 1961?

(d) Whether the exemption under Section 10(23G) of Income Tax Act, 1961 is not available if investment is made in company, being a infrastructure facility, which is in distribution of electricity.

The four questions of law, do not arise for all the assessment years. Hence for the sake of convenience the details of substantial questions of law arising for consideration in the various tax appeal is furnished in the tabulated statement below:-

C H A R T: M/s RoyalSundaram General Insurance Co.Ltd

ISSUES	TCA No.853/2018 A.Y.2006-2007	TCA No.854/2018 A.Y.2007-2008	TCA No.852/2018 A.Y.2008-2009	TCA No.848/2018 A.Y.2009-2010
Re-Insurance Premium	✔	✔	✔	✔
Disallowance U/s 14A	✔	✔	✔	✔
Profit on Sale of Investment	✔	✔	✔	✔

C H A R T: M/s Cholamandalam MS General Insurance Co.Ltd.

ISSUES	TCA No.839/2018 A.Y 2006-07	TCA No.842/2018 A.Y 2008-09	TCA No.755/2018 A.Y 2009-10
Re-Insurance Premium	✔	✔	✔
Disallowance U/s 14A		✔	✔
Profit on sale of investment		✔	✔
Exemption U/s 10 (23G)	✔		

2. In so far as the first issue namely the payment of Re-Insurance Premium is concerned, it is submitted by both the counsels that the above question was considered by this Court in the matter of Cholamandalam ═General Insurance Company Ltd Vs Deputy Commissioner of Income-Tax, Large Tax payer unit and others reported in [2019] 411 386 (Mad), wherein after finding that no inference could be drawn as done by the Tribunal therein, that there can be a bar or prohibition under the Insurance Company Act, which prohibits ceding with foreign re-insurance outside India, remanded the matter back to the Tribunal to take a decision on the following aspects:

(i) Whether the Assessing Officer was right in dis-allowing the re-insurance premium under Section 40(a)(i) of the Act?

(ii) Whether the Commissioner of Income-Tax (Appeals) was right in rejecting partially the appeal filed by the assessee? and

(iii) Whether the Commissioner of Income-Tax (Appeals) was justified in restricting the claim of the assessee to 15 percent instead of confirming the order passed by the Assessing Officer?

3. We are informed that the matters are pending before the Tribunal pursuant to the order of this Hon'ble High Court in T.C.No.754 of 2018. We are thus inclined to remit the matter back to the Tribunal, issuing the very same directions and directing the Tribunal to examine the above aspects in these appeals as well.

4. In so far as the second issue namely applicability of Section 14A of the Income Tax Act,1961 in computation of Income of an Insurance Company, we find that the issue stands resolved by the decision of the Delhi High Court in the matter of Principal Commissioner of Income Tax LTU, New Delhi Vs Oriental Insurance Company Ltd reported in [2020] 118 taxmann.com 248 (Delhi) wherein in para No.9 it is held that:

> "For computing the profits and gains of the business of insurance company, the AO had to resort to section 44 and the prescribed rules and could not have applied section 28 to 43B, since the same were excluded from the purview of Section 44. This necessarily includes the exception provision enshrined under section 14A of the Act. Therefore in our view, the AO could not have travelled beyond Section 44 in the first schedule of the Act."

5. It is thus clear that Section 14A of Income Tax Act, 1961 stands excluded while computing the Income Tax of an Insurance Company, in view of the non-obstante clause contained in Section 44 of Income Tax Act, 1961, the questions of law stand decided against the assessee.

6. The third issue, whether the profit on sale of investments by the appellant company is exempted, stands resolved by the decision of this Court in the matter of Commissioner of Income Tax Vs. United India Insurance Co. reported in [2019] 111 taxmann.com 217 (Madras). It is submitted by the Revenue that the above matter has been challenged before the Supreme Court by way of a special leave

petition in S.L.P(Civil) Dairy No.5280 of 2020 and the same is tagged with Civil Appeal No.7681 of 2019.

8. The learned counsel for the appellant and the respondent have submitted that the matter may be remitted to the Tribunal to re-examine the issue in the light of the order of the Division Bench of this Court in the matter of United India Insurance Co. reported in [2019] 111 taxmann.com 217 (Madras). Though the question of disallowance of exemption under Section 10(23G) of the Income Tax Act, 1961 is raised in T.C.A.No.839 of 2018, we are informed by the learned counsel for the appellant on instructions that the same has not been pressed. In view of the above, the question of law stands decided against the assessee.

9. In view of the above, the above tax case appeals are disposed of in the following manner:-

(A) In so far as Issue A is concerned, the matters are remanded back to the Tribunal to decide and take into account the directions given above.

(B) In respect of issue B, the question of law is decided against the assessee.

(C) In respect of issue C the matter is remitted back to the Tribunal to re-examine, in the light of the decisions of the Madras High Court in TCA No.323 of 2019 in the case of United India Insurance Co. reported in 111 Taxmann.com 217.

10. In respect of Issue D the question of law stands decided against the assessee, the same is not pressed by the appellant.

11. These appeals are disposed of on the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

smn

To

1. The Assistant Commissioner of Income Tax,
   Large Tax Payer Unit,
   Chennai - 600 101.

2. The Commissioner Income Tax (Appeals),
Large Tax Payer Unit, Anna Nagar,
Western Extension,
Chennai – 600 101.

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

+6ccs to Mr.R.Sandeep Bagmar, Advocate, S.R.No.59519 to 59524
+6ccs to Mr.M.Swaminathan, Advocate, S.R.No.59621 to 59626
+6ccs to Mr.M.Swaminathan, Advocate, S.R.No.59525 to 59530

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NSK 12/01/2022