IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.08.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR. JUSTICE G.ARUL MURUGAN**

T.C.A.Nos.1344 and 1345 of 2010

Commissioner of Income Tax – LTU
Chennai ... Appellant in both TCA's

Vs

M/s.Royal Sundaram Alliance
Insurance Company Ltd.,
21, Pattullos Road,
Chennai – 600 002. ... Respondent in both TCA's

PRAYER in TCA.No.1344 of 2010: APPEAL filed under Section 260 A of the Income Tax Act, 1961 against order dated 05.03.2010 passed in I.T.A.No.848/Mds/2008 for the assessment year 2003 - 2004 on the file of the Income Tax Appellate Tribunal Chennai 'D' Bench.

PRAYER in TCA.No.1345 of 2010: APPEAL filed under Section 260 A of the Income Tax Act, 1961 against order dated 05.03.2010 passed in I.T.A.No.849/Mds/2008 for the assessment year 2004 – 2005 on the file of the Income Tax Appellate Tribunal Chennai 'D' Bench.

In both TCA.'s

For Petitioner : Ms.V.Pushpa
Senior Standing Counsel and
Ms.Anu Ganesan
Junior Panel Counsel

For Respondent : Mr.Vikram Vijayaraghavan for M/s.Subbaraya Aiyar Padmanabhan

COMMON JUDGMENT

(Judgment of the Court was delivered by Dr.ANITA SUMANTH,J.)

The appellant is the Commissioner of Income Tax (CIT/Revenue/Appellant) who challenges order dated 05.03.2010 passed in common by the Income Tax Appellate Tribunal (Tribunal), for Assessment Years (A.Ys) 2003-04 and 2004-05 in terms of the provisions of the Income Tax Act, 1961 (Act).

2. The respondent/assessee is an Insurance Company that computes its income in line with the prescription of Section 44 of the Act, which is a specific provision relating to the computation of income of insurance businesses, that has to be in accordance with the Rules contained in the First Schedule.

3. The assessee filed returns of income declaring loss for both assessment years and seeking refunds. The returns were processed and an intimation was made under Section 143(1) for A.Y.2003-04 on 20.11.2003, subsequently rectified under Section 154 of the Act on 13.11.2006. An order of assessment was made under Section 143(3) for A.Y.2004-05 on 13.11.2006, subsequently rectified under Section 154 of the Act on 03.01.2007.

4. In the assessment, the assessee's claim for exclusion of profits from sale of investments was denied. The fact that the assessee had computed its income in accordance with the provisions of Section 44 read with Rule 5 of the First Schedule to the Act is undisputed. Rule 5 of the First Schedule had, at the relevant point in time, not contained any stipulation in relation to the inclusion of profits/loss from sale of investments. The assessee thus excluded from its computation, profits relating to sale of investments.

5. While so, the Assessing Authority, while not disputing that Rule 5(b) that had earlier provided for the inclusion of profits from sale of investments in the computation of income stood deleted, effective this year, proceeded to add back such profits to the computation.

6. According to the Assessing Authority, there was a mandate under the Insurance Act, 1938 for the assessee to disclose the profits from sale of investments to the Controller of Insurance by way of an entry in the Profit and Loss Account ('P&L Account'). Since the Income Tax Act did not contain an express provision to exclude profits from sale of investments, the consequence was that the profits had to be added to the computation of income.

7. In effecting the addition as above, the Assessing Authority relied on the judgment in the case of *Apollo Tyres Ltd. vs Commissioner of Income*

Tax, Kochi [1] (SC). In that case, the Supreme Court had dealt with the computation of net profits based on the entries in the P & L account that was prepared in accordance with Parts II and III of Schedule VI of the Companies Act.

8. Drawing an analogy from that judgment, the Assessing Authority concluded that once an entry was part of the P&L account, it was incumbent on the assessee to proceed with the computation based only upon such entries and there was no leeway available to exclude such profits.

9. As against the assessments, the assessee filed appeals before the first Appellate Authority, who, by common order dated 17.12.2007, allowed the appeals following the ratio of the judgment in *K.P. Varghese vs The Income Tax Officer, Ernakulam, & anr.*[2] This judgment is on the point that due weightage is to be given to the purpose for which a provision had been included/excluded from an enactment.

10. With the deletion of Rule 5(b) from the First Schedule, the purpose was clear, to the effect that the profits/loss earned by an Insurance Company from sale of investments, was to be excluded from the computation of income.

11. Second appeals filed at the instance of the Revenue, were dismissed by the Tribunal vide detailed order dated 05.03.2010, after noting the Circular

1 255 ITR 273
2 131 ITR 597

of the Central Board of Direct Taxes (CBDT) bearing No.528 dated 16.12.1988 as well as the decisions of the Tribunal on the same issue.

12. As against the order of the Tribunal, the Revenue is now in appeal before us under Section 260A raising the following substantial questions of law:

> *Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee was right in excluding the profit on sale of investments for purposes of Income Tax Assessment relying only on the omission of Rule 5(b) of the First Schedule to the Income Tax Act w.e.f.01.04.1989 without considering the other relevant legal provisions and without appreciating that there were no provisions under the statute to exclude such profits from the Profit and Loss Account submitted to the Controller of Insurance?*

13. We have heard the detailed submissions of Mr.Vikram Vijayaraghavan, learned counsel for the assessee and Ms.V.Pushpa, learned Senior Standing Counsel for the Revenue.

14. The admitted facts in this matter are that the assessee is an Insurance Company, which is bound to follow the method of computation as set out under Section 44 read with Rule 5(b) of the First Schedule to the Act. Rule 5, specifically clause (b) thereof, has been subject matter of amendment over the years in that the aforesaid clause stood deleted with effect from 1988 and restored with effect from 01.04.2011 (A.Y.2011-12). We are concerned with the applicability of the said clause for the interregnum period.

15. The purport behind clause (b) to Rule 5 was clear, to either include or exclude profits/losses from sale of investments, specific to insurance businesses. With the deletion of that clause for the periods 1988 to 2011, there is no justification whatsoever to continue to tax profits/losses from sale of investments. Such an interpretation would result in reading clause (b) as continuing on the stature book, even for a period when it had stood deleted.

16. This very issue had come up for consideration before this Court in *Commissioner of Income Tax V. United India Insurance Company.*[3] The co-ordinate Bench of this Court noted the decision of the Delhi High Court in the case of *Oriental Insurance Co. Ltd V. Deputy Commissioner of Income-Tax*[4], wherein the purpose of omitting Rule 5(b) was specifically noticed.

17. That apart, the operative portion of CBDT Circular dated 16.12.1988 touching upon this aspect is also relevant and is extracted below:

> *CBDT Circular No .528 dated 16.12.1988*
>
> . . . .
>
> ***Liberalisation of provisions in respect of taxation of profits and deduction of tax at source applicable to the General Insurance Corporation and its subsidiaries***
> *45.1 Under the existing provisions of s. 44 of the IT Act, the profits and gains of any Insurance business is computed in accordance with the rules contained in the First Schedule to the Act. Under r. 5 of this Schedule, profits and gains of any business of insurance other than life insurance are taken to*

3 2019 – 111 Taxman.com 217 (Mad)
4 (2018) 407 ITR 658

be balance of profits disclosed in the annual accounts furnished to the Controller of Insurance subject to certain adjustments. One of the adjustments provided therein is in respect of any amount either written off or reserved in the accounts to meet depreciation or loss on the realisation of investment which is to be allowed as deduction. Similarly, any sum credited to the account, due to appreciation of or gain on the realisation of investment, is taken as part of the profits and gains of the business. To enable the General Insurance Corporation and its subsidiaries to play a more active role in capital markets for the benefit of policy holders, the Finance Act has amended sub-r.(b) of R. 5 of the First Schedule to provide for exemption of the profits earned by them on the sale of investment. As a corollary, it has also been provided that the losses Incurred by the General Insurance Corporation on the realisation of the investment shall not be allowed as a deduction in computing the profits chargeable to tax.

45.2 This amendment will take effect from the 1st April, 1989, and will accordingly, apply in relation to the asst. yr. 1989-90 and subsequent years.

18. We are thus of the considered view that there is no justification in bringing to tax profits from sale of investments so long as they stand deleted for the periods 1998 to 2011. Admittedly, the position for assessments post 01.04.2011 is different. With the introduction of clause (b) to Rule 5 there is a requirement in law to include profits/loss from sale of investments.

19. This Court in the assessee's own case in several tax cases appeals (TCA Nos.848 of 2018, 852 to 854 of 2018 relating to A.Ys 2006-2007 to 2009-2010) vide order dated 18.11.2021, has noted the applicability of the

earlier decision in the case of *United Insurance*[5].

20. Since there was some ambiguity in order dated 18.11.2021, the assessee filed Review Application Nos.11,12,13,14,16 and 17 of 2022. Both the assessee as well as the learned Standing Counsel have put forth the submission that the decisions of the Delhi High Court in *Oriental Insurance Co. Ltd*[6] and this Court in *United India Insurance Company*[7] are in favour of the assessee.

21. To this extent, an error has been noted in order dated 18.11.2021, by way of review order dated 14.02.2022. However, since, in conclusion, the matter had only been remanded to the Tribunal, the Bench has clarified that there was no prejudice caused to the assessee, as the issue could well be gone into by the Tribunal. The Review Petitions were ultimately closed with those observations. Consequent upon the aforesaid orders of this Court, the Tribunal has passed an order on 28.06.2023, applying the ratio of the decision in *United India Insurance Company*[8] and deciding the issue in favour of the petitioner.

22. With this, we find no necessity whatsoever to remand the matter as the facts in issue as well as the applicability of law to those facts is very clear

5 Foot Note Supra 3
6 Foot Note Supra 4
7 Foot Note Supra 3
8 Foot Note Supra 3

as borne out from the statutory position, and the decisions in *United India Insurance Company*[9] and *Oriental Insurance Co. Ltd*[10].

23. As regards the reference to the judgment in *Apollo Tyres Ltd.*[11], we are of the considered view that that judgment would have no relevance to the present case as it was delivered in the context of the computation of income under Minimum Alternate Tax (MAT) for which the basis is the profit and loss account, as confirmed by the shareholders in the Annual General Body Meeting of that company.

24. In the present case, the situation is entirely different and distinguishable as the assessments are under regular computation, and are premised upon the application of Section 44 which is specific to Insurance business, read with Rule 5 of the First Schedule.

25. The question of law is answered in favour of the assessee and against the Revenue. These Tax Case (Appeals) are dismissed. No costs.

(A.S.M.,J) (G.A.M.,J)
09.08.2024

Index:Yes
Speaking order
Neutral Citation: Yes
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9 Foot Note Supra 3
10 Foot Note Supra 4
11 Foot Note Supra 1

To
The Income Tax Appellate Tribunal Chennai 'D' Bench.

DR. JUSTICE ANITA SUMANTH
and
MR. JUSTICE G.ARUL MURUGAN
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