



T.C.A.No.193 of 2023 etc

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2025

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CORAM :

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

T.C.(A).Nos. 193, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184,
192, 195, 196 & 197 of 2023

and

C.M.P.Nos. 575, 584, 588, 596, 607, 614, 624 & 637 of 2025
C.M.P.Nos.792 to 797, 799 and 800 of 2025

The Principal Commissioner of Income Tax – 4,
Chennai.

.. Appellant
In all appeals

VS

M/s.Cholamandalam MS General Insurance
Company Ltd.,
No.2, Dare House, NSC Bose Road,
Chennai – 600 001.
PAN : AABCC6633K

.. Respondent
In all appeals

Prayer in TC(A) No. 193 of 2023: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, Chennai dated 26.08.2022 in ITA No.2146/Chny/2008 for assessment year 2005 – 06.

Prayer in TC(A) No. 174 of 2023: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate



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Tribunal Madras 'C' Bench, Chennai dated 26.08.2022 in ITA No.949/Chny/2018 for assessment year 2010 – 11.

Prayer in TC(A) No. 175 of 2023: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, Chennai dated 26.08.2022 in ITA No.2276/Chny/2014 for assessment year 2009 – 10.

Prayer in TC(A) No. 176 of 2023: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, Chennai dated 26.08.2022 in ITA No.783/Chny/2018 for assessment year 2010 – 11.

Prayer in TC(A) No. 177 of 2023: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, Chennai dated 26.08.2022 in ITA No.788/Chny/2018 for assessment year 2010 – 11.

Prayer in TC(A) No. 178 of 2023: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, Chennai dated 26.08.2022 in ITA No.782/Chny/2018 for assessment year 2013 – 14.

Prayer in TC(A) No. 179 of 2023: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, Chennai dated 26.08.2022 in ITA No.951/Chny/2018 for assessment year 2013 – 14.

Prayer in TC(A) No. 180 of 2023: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, Chennai dated 26.08.2022 in ITA No.711/Chny/2020 for assessment year 2014 – 15.

Prayer in TC(A) No. 181 of 2023: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, Chennai dated 26.08.2022 in ITA No.1350/Chny/2013 for assessment year 2008 – 09.



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Prayer in TC(A) No. 182 of 2023: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, Chennai dated 26.08.2022 in ITA No. 40/Chny/2009 for assessment year 2005 – 06.

Prayer in TC(A) No. 183 of 2023: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, Chennai dated 26.08.2022 in ITA No. 1621/Chny/2011 for assessment year 2007 – 08.

Prayer in TC(A) No. 184 of 2023: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, Chennai dated 26.08.2022 in ITA No. 950/Chny/2018 for assessment year 2010 – 11.

Prayer in TC(A) No. 192 of 2023: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, Chennai dated 26.08.2022 in ITA No. 1676/Chny/2011 for assessment year 2007 – 08.

Prayer in TC(A) No. 195 of 2023: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, Chennai dated 26.08.2022 in ITA No. 1759/Chny/2011 for assessment year 2006 – 07.

Prayer in TC(A) No. 196 of 2023: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, Chennai dated 26.08.2022 in ITA No. 1620/Chny/2011 for assessment year 2006 – 07.

Prayer in TC(A) No. 197 of 2023: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, Chennai dated 26.08.2022 in ITA No. 1366/Chny/2013 for assessment year 2008 – 09.



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For Appellant : Mrs.V.Pushpa
Senior Standing Counsel
(in all cases)

For Respondent : Dr.S.Muralidhar,
Senior Counsel
For Mr.Sandeep Bagmar
(in all cases)

COMMON JUDGMENT
(Delivered by Dr. ANITA SUMANTH.,J)

This common order is passed in respect of 16 appeals filed by the Revenue for Assessment Years (A.Ys) 2005-06 to 2014-15 and arising from order of the Income Tax Appellate Tribunal (in short 'Tribunal') dated 26.08.2022. The following substantial questions of law arise for consideration in these appeals.

1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the Assessee was not liable to deduct tax at source on the payments made to surveyors outside the Country and that they are not taxable in India?

(T.C.(A) Nos.182, 193, 195, 196, 183, 192, 181, 197, 175, 174, 176, 177, 184, 178, 179 and 180, of 2023 – A.Ys. 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2013-14 and 2014-15).

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that assessee is not liable to deduct the tax at source towards the commission paid for receipt of reinsurance premiums?



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(T.C.(A) Nos.182, 193, 195, 196, 183, 192, 181, 197, 175, 174, 176, 177, 184, 178, 179 and 180, of 2023 – A.Ys. 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2013-14 and 2014-15).

3. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the profit on sale of investment is exempt ignoring the fact that the profits realized from investments are real and hypothetical ?

(T.C.(A) Nos. 197, 175, 174, 176, 177 and 184 of 2023 – A.Ys. 2008-09, 2009-10, and 2010-11).

4. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that UPS is part of the computer entitled to higher depreciation at 60% and not 15% which the AO had restricted being the rate applicable to plant and machinery ?

(T.C.(A) Nos. 174, 176, 177, 184, 178 and 179 of 2023 – A.Y.2010-11 and 2013-14)

5. Whether the deduction u/s.14A of the Income tax Act stand excluded while computing income of an insurance companies in view of Section 44 of the Income tax Act, 1961?

(T.C.(A) Nos. 174, 176, 184, 177, 178, 179, 180 of 2023 – A.Y.2010-11, 2013-14 and 2014-15).

6. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the Assessee is entitled for a higher rate of deprecation at 50% on motor vehicles, especially when Appendix -I appended for Rule 5 of the Income tax Rules 1962 provides for higher rate of depreciation only if the vehicles are used in the business of running them on hire which is not the case on hand?

(T.C.(A) Nos. 174, 176, 184, 177, 178, 179 of 2023 – A.Y.2010-11 and 2013-14).

7. Whether on the facts and in the circumstances of the case,



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the Tribunal was justified in holding that the provision of Section 115JB of the Act which enables the Company to compute the book profits are not applicable to insurance companies? (T.C.(A) Nos. 174, 176, 184, 177, 178, 179, 180 of 2023 – A.Y.2010-11, 2013-14 and 2014-15).

2. The substantial question of law admitted on 18.04.2023, in T.C.(A).Nos.193, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 192, 195, 196 & 197 of 2023 reads as follows:

Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that UPS is part of the computer entitled to higher depreciation at 60% and not 15% which the AO had restricted being the rate applicable to plant and machinery ?

3. Both learned counsel agree that many of the issues that arise for consideration have been answered by the Supreme Court or this Court and hence, stand covered by virtue of those judgements.

4. The substantial questions of law in regard to the issue *of profit on sale of investments* are answered in favour of the assessee in light of the judgement of the Supreme Court in *Commissioner of Income-Tax v United India Insurance Co¹* affirming the decision of this Court in *Commissioner of Income-Tax v United India Insurance Co²*. The

¹ (2020) 117 taxmann.com 849(SC)

² (2019) 111 taxmann.com 217 (Madras)



relevant paragraphs read thus:

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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



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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.

5. We have had occasion to deal with the same issue, ‘*profit on sale of investments*’ in *Commissioner of Income Tax –LTU V. Royal Sundaram Alliance Insurance Company Ltd.*³, wherein we have held as follows:

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

³ T.C.(A) Nos.1344 and 1345 of 2010



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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 statute 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*⁴. 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*⁵, 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

⁴ 2019-111 Taxman.com 217 (Mad)

⁵ (2018) 407 ITR 658



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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 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.

6. Coming to the issue relating to *MAT/115 JB on Insurance Companies*, the said issue is answered in favour of the assessee in light of the decision of the Madras High Court in *CIT V. Royal Sundaram Alliance Insurance Co. Ltd.*⁶ The relevant paragraphs read thus:

2.MAT/115JB On Insurance Companies:

⁶ T.C.(A) Nos.41 of 2019 dated 18.01.2019



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7. We have perused the order passed by the Commissioner of Income Tax (Appeals) (CIT(A)) as well as the Tribunal. As rightly pointed out by the Tribunal, the Insurance Companies prepare profit and loss account as per the guidelines issued by the Insurance Regulatory and Development Authority of India and not as per Part II and III of Schedule VI of Companies Act.

Furthermore, the applicability of Schedule VI of the Companies Act was specifically excluded in respect of Insurance Companies. The revenue has not been able to dislodge this finding before us in these appeals. We find that the conclusion arrived at by the Tribunal in this regard is proper and valid. Accordingly, the appeals filed by the revenue on this ground are dismissed and consequently, the above substantial question of law is answered in favour of the assessee.

7. The substantial questions of law in regard to the issue relating to *Commission paid for receipt of re-insurance* are also answered in favour of the assessee in light of the decision of the Madras High Court in *Royal Sundaram Alliance Insurance Co. Ltd.* (supra). The relevant paragraphs read thus:

Commission for receipt of reinsurance:

11. The assessee had succeeded on this issue before the CIT(A) and the finding has been affirmed by the Tribunal. The CIT(A) took note of the decision taken in the assessee's own case for the assessment year 2009-2010 in which the assessment for the year 2008-2009 was followed and the assessee succeeded before the CIT(A) for the assessment year 2008-2009, wherein the CIT(A) noted that as a matter of industrial practice it was termed as "commission on reinsurance premium received", however, in substance it is discount



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on re-insurance premium received by an Insurance Company from another Insurance Company. We find that the Tribunal rightly decided the issue in favour of the assessee and the revenue has not brought out any ground to interfere with the said finding. Accordingly, the appeals filed by the revenue on this ground are dismissed and consequently, the substantial question of law is answered against the revenue.

8. The substantial questions of law in regard to the issue relating to *TDS on payments made to surveyors outside the Country* have been considered earlier and are answered in favour of the assessee in light of the decision in *Royal Sundaram Alliance Insurance Co. Ltd.* (supra), the relevant paragraphs reading thus:

TDS on Survey Fees:

12.Ms.V.Pushpa, learned Senior Standing Counsel would vehemently contend that the fee has been paid for utilizing the expertise of the surveyor and therefore, tax has to be deducted at source.

13.We have heard Mr.Sandeep Bagmar, learned counsel for the assessee on the said issue.

14.As rightly held by the Tribunal, the surveyor who has been engaged to assess the damage to the goods in transit does not have a permanent establishment in India. Furthermore, the surveyor does not share his knowledge for assessing the damage of goods and this aspect is never made known to the assessee. In fact, the assessee succeeded before the CIT(A) on this issue pertaining to the assessment year 2010-2011. The assessee's contention in the said appeal was that M/s.Royal & Sun Alliance, U.K. does not have a permanent establishment



in India, the survey fee paid for the service rendered in U.K. is not taxable in India as per DTAA. Further, it was contended that reimbursements do not partake the character of income which is chargeable to tax and therefore do not warrant withholding of tax on the same. The assessee relied on the following decisions in support of this proposition:

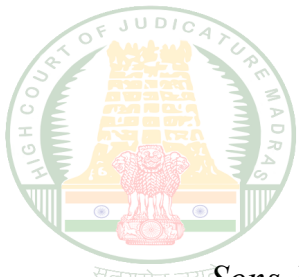
1.CIT v. Siemens Aktiengesellschaft 220 CTR 425 (Bombay)

2.CIT v. Industrial Engineering 202 ITR 1014 (Delhi)

15.The CIT(A) on going through the contentions raised by the assessee pointed out that disallowance under Section 40(a)(i) can be made only if taxes are not withheld on income chargeable to tax in India. On facts, it held that the payment was made to Royal and Sun Alliance, U.K. to settle the amounts of various surveyors on cost to cost basis and the surveyor does not make available any technical knowledge which can independently be applied by the assessee and consequently, held that the payment by the assessee would not be taxable as fees for technical services in the hands of the recipient.

Furthermore, it is noted that in the absence of permanent establishment, the income in the hands of the recipient is also not taxable in India. The above view taken by the CIT(A) was rightly affirmed by the Tribunal and we find that the revenue has not made out any grounds to interfere with the said finding. Accordingly, the appeals filed by the revenue on this ground are dismissed and consequently, the above substantial question of law is answered against the revenue.

9. The substantial questions of law in regard to the issue of *Depreciation on UPS* are also answered in favour of the assessee in light of the decision of the Madras High Court in *T.V.Sundaram Iyengar &*



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Sons Ltd vs The Commissioner Of Income Tax⁷ The relevant paragraphs
read thus:

4. As regards the third question of law, the learned counsel for the appellant fairly submitted that the same has already been considered and decided by this court by order dated 18.01.2019 in TCA No.23 of 2019, wherein, it was held that the assessee would be entitled to depreciation at 60% on UPS and Voltage Stabilizer, the relevant paragraphs of which are usefully reproduced below:

"4...with regard to the rate of depreciation that can be claimed for UPS and Routers, the Tribunal in the impugned order relied upon earlier decision of the Chennai Tribunal as well as the decision of the High Court of Delhi in the case of CIT vs. Oriental Ceramics and Industries Limited reported in (2013) 358 ITR 49 (Del.) and held that the assessee would be entitled to depreciation at 60%. Therefore, we are of the considered view that the finding rendered by the Tribunal is just and proper.

5. An UPS which is capable of giving uninterrupted power supply for a computer of a stipulated period has not been established to have a independent usage by placing any material. If the revenue disputes that the UPS can independently function, then the Assessing Officer should have material to the said effect. We are informed that the configuration of the power output for the UPS is designed to suit the equipment for which it shall supply uninterrupted power. Similarly, Routers also are to be considered as an integral part of computer.

6. This Court had an occasion to consider as to whether

⁷ T.C.(A) No.684 of 2009 dated 30.11.2021



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the printers are eligible for depreciation at 60%. In the case of CIT vs. Cactus Imaging India (P) Ltd., reported in [2018] 406 ITR 406 (Mad) and held that the assessee was entitled to depreciation at 60%. We find that there is no finding recorded by the Tribunal on the said head. Accordingly, Substantial Question of Law No.1 stands rejected. "

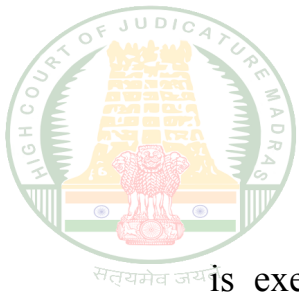
Therefore, the learned counsel agreed that the depreciation value of the UPS and stabilizer can be fixed at 60% instead of 100% as claimed by the assessee.

5. There is no serious objection on the side of the respondent/revenue on the above submissions made by the learned counsel for the petitioner.

6. In the light of the aforesaid decisions and taking note of the submissions made by the learned counsel appearing for both sides, we hold that the questions of law 1 and 2 are decided in favour of the assessee and against the revenue; and the third question of law is decided to the effect that the assessee is entitled to the depreciation at 60% as against 25% assessed by the respondent / revenue.

10. Coming to the substantial questions of law in relation to disallowance under Section 14A, the Tribunal has concluded the issue adverse to the assessee holding that Rule 5(a) militates against the grant of expenses, which are not for the purposes of insurance business and, directing that the same are to be added back.

11. The Assessing Authority, in the course of assessment, had disallowed the expenditure on the ground that it relates to income which



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is exempt and applying the computational methodology in Rule 8D.

However, there was no impact, since the profit on sale of investments had been taxed as income from regular business activity.

12. By virtue of the present order, we have allowed the issue in relation to profit on sale of investments in favour of the assessee, and hence there would be a revenue impact by virtue of the disallowance under Section 14A.

13. The assessee's arguments are that the computational methodology governing them are set out under Section 44 read with Rule 5 of the First Schedule to the Act and hence there would be no application of Section 14A to their case.

14. Section 44 as well as Rule 5 of the First Schedule are extracted below:

44. Insurance business.

Notwithstanding anything to the contrary contained in the provisions of this Act relating to the computation of income chargeable under the head "Interest on securities", "Income from house property", "Capital gains" or "Income from other sources", or in section 199 or in sections 28 to 43-B, 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.



B.—Other insurance business

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Computation of profits and gains of other insurance business.

5. The profits and gains of any business of insurance other than life insurance shall be taken to be the profit before tax and appropriations as disclosed in the profit and loss account prepared in accordance with the provisions of the Insurance Act, 1938 (4 of 1938) or the rules made thereunder or the provisions of the Insurance Regulatory and Development Authority Act, 1999 (4 of 1999) or the regulations made thereunder, subject to the following adjustments:—

(a) subject to the other provisions of this rule, any expenditure or allowance including any amount debited to the profit and loss account either by way of a provision for any tax, dividend, reserve or any other provision as may be prescribed which is not admissible under the provisions of sections 30 to 43B in computing the profits and gains of a business shall be added back;

(b) (i) any gain or loss on realisation 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;

(ii) any provision for diminution in the value of investment debited to the profit and loss account, shall be added back;

(c) such amount carried over to a reserve for unexpired risks as may be prescribed in this behalf shall be allowed as a deduction.

Provided that any sum payable by the assessee under section 43B, which is added back in accordance with clause (a) of this rule, shall be allowed as deduction in computing the income under the said rule in the previous year in which such sum is actually paid.

15. Section 14A states that no deduction shall be allowed in

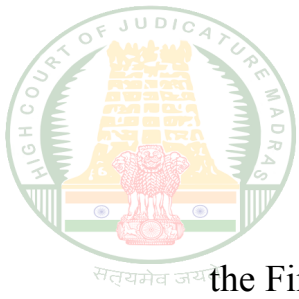


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respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. However, in framing of assessments in the case of insurance companies, it is purely Section 44 read with Rule 5 of the First Schedule that would apply.

16. This position is made clear by Section 44 itself which says that the methodology for computation shall be as per Rule 5 of the First Schedule that excludes specifically the application of Sections 28 to 43B and Section 199 of the Act. We are thus of the considered view that in a specialised assessment of this nature, where the methodology for computation is not as stipulated under Section 28 to 43B, there is no role for Section 14A at all.

17. The fact that such an assessment would stand outside the ambit of application of Section 14A is made clear by the non-obstante clause contained in Section 44 which states that notwithstanding anything to the contrary contained in this Act relating to the computation of income chargeable under the heads of interest on securities, house property, Capital gains or other sources, or Section 199 or Sections 28 to 43B dealing with the computation of business income, the assessment of insurance business would be in accordance with the Rules contained in



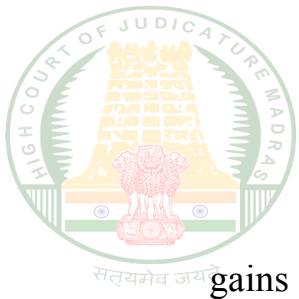
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the First Schedule alone.

18. Rule 5 of the First Schedule provides for a self-contained methodology for computation of profits and gains of other insurance businesses. It sets out the manner by which the profits and gains of other insurance business would be computed and stipulates specifically what the adjustments are, that are to be made to the profit before tax and appropriations as per the profit and loss account prepared in accordance with the Insurance and IRDA Acts and the Rules and Regulations.

19. Clause (a) of Rule 5 is specific in that, the expenditure or allowances inadmissible under the provisions of Sections 30 to 43B in computing profits and gains of the business are to be added back. Clause (b) states that gain or loss on realisation of investments, if not credited or debited to profit and loss account, shall be added back, and similarly, provision for diminution in the value of investments debited to profit and loss account are to be added back. Clause (c) states that any amounts carried over to a reserve for unexpired risks as may be prescribed are to be allowed as a deduction.

20. Barring the aforesaid adjustments, there can be no other adjustments contemplated to the scheme of computation of profits and



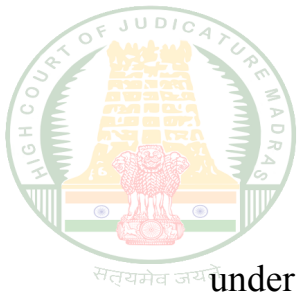
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gains of other insurance businesses. Reference to Section 14A thus does not arise in the context of such computation. In the scheme as we have set out above, the legislative intent is clear, to put in place a distinct and different scheme for computation of profits from other insurance business. The substantial question of law in relation to this issue is thus answered in favour of the assessee and against the revenue.

21. The issue in regard to depreciation at 50% on motor vehicles does not arise and the learned counsel does not pursue the same. Hence, this question is returned as unanswered.

22. With this, these appeals ought to have been closed except for the submission by learned Senior Standing Counsel that although grounds of appeal had been filed in respect of liability under Section 40(a)(i) of the Income Tax Act, 1961 (in short 'Act'), substantial questions of law had been omitted to be raised.

23. We had hence granted opportunity to the Department to file applications seeking admission of those issues in terms of Section 260(3) of the Act. Thereafter, Miscellaneous Petitions numbering 16 have been filed, of which 8 have been numbered and listed today (C.M.P.Nos. 575, 584, 588, 596, 607, 614, 624 & 637 of 2025). The remaining 8 are listed



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under a special list today (C.M.P.Nos.792 to 797, 799 and 800 of 2025).

A common counter has been filed to all the Miscellaneous Petitions.

Hence, this order disposes all Miscellaneous Petitions also.

24. The substantial questions of law that are sought to be admitted now are as follows:

1. *Whether on facts and circumstances of the case, was the Hon'ble Tribunal right in holding that the re-insurance premium ceded to NRRs are not liable to be taxed under the Indian Income Tax Act?*
2. *Whether on facts and circumstances of the case, was the Hon'ble Tribunal right in deleting the additions made by the Ld. AO towards disallowance of reinsurance premium ceded to NRRs under Sec.40(a)(i) of the Act, for non-deduction of TDS under Sec.195 of the Act?'*

25. We have heard Dr.S.Muralidhar, learned Senior Counsel for Mr.R.Sandeep Bagmar for the appellant and Mrs.V.Pushpa, learned Senior Standing Counsel for the Income Tax Department.

26. The Department pleads that the above substantial questions of law have inadvertently been omitted from being raised in the original appeal memorandum. Our attention is drawn to the order of the Tribunal impugned in these appeals, to state that the issue relating to liability under Section 40(a)(i) does arise from that order. That apart, it is a legal



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issue on which a resolution is required. Grounds of appeal have also been raised. Hence, the Department would urge that the substantial questions of law may be admitted for resolution.

27. Per contra, the submissions of the learned Senior Counsel are to the effect that raising of substantial questions of law now, at a distance of more than two years from the date of institution of the appeals, is wholly unwarranted and unjustified.

28. The proceedings for assessment for the subsequent years would indicate acquiescence by the Department that there was no liability under Section 40(a)(i). Our attention is drawn to the orders of assessment for AY 2020-21, 2021-22 and 2022-23 dated 19.09.2022, 19.02.2024 and 27.02.2024 respectively. As far as order of assessment dated 19.09.2022 is concerned, this is what the Assessing Officer has stated in regard to the liability under Section 40(a)(i):

Thus, to sum up the above issue, the jurisdictional Madras HC in its order dated 12.12.2018 observed that reinsurance premium ceded to the non-resident companies cannot be disallowed u/s 37(1). This decision was upheld by Hon'ble SC who also dismissed the SLP filed by dept against Madras HC judgment. Further the SC set aside the issue to ITAT to decide the allowability of reinsurance premium ceded to the non-resident companies under S 40(a)(i).



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The ITAT in its judgment dated 26.08.22 observed that payments made to NRR cannot be disallowed u/s 40(a)(i). Therefore, in view of the above, this issue has reached legal finality that payments made to NRR cannot be disallowed u/s 40(a)(i). Therefore, no disallowance made on this issue.

29. Clearly, there has been application of mind by the Assessing Officer to the issue under Section 40(a)(i) culminating ultimately in an order in favour of the Assessee. As far as the remaining assessment years are concerned, the Assessing Officer has accepted the claim without question and has not even thought it necessary to refer to Section 40(a)(i) in the assessment order.

30. This would indicate wholehearted acceptance of the Department in regard to the non-applicability of Section 40(a)(i) and there is thus no justification in the Department seeking to re-open that very issue now, that too for the previous years.

31. In respect of assessment year 2020-21, proceedings were initiated under Section 263 of the Act for revision of assessment. Notably, the Commissioner of Income Tax did not believe it necessary to advert to the issue in regard to Section 40(a)(i). A copy of order under Section 263 dated 20.11.2024 is placed before us that illustrates that the



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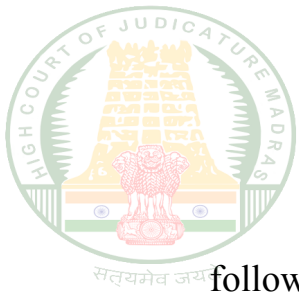
Commissioner of Income Tax has proceeded only on other issues, extraneous to Section 40(a)(i) of the Act.

32. Incidentally, it is the same Commissioner of Income Tax who has also filed the present Miscellaneous Petitions seeking admission of the substantial questions of law.

33. The question of liability under Section 40(a)(i) has been a matter of litigation for various assessment years between 2003-04 to 2010-11. In the assessments framed originally for those assessment years, the Assessing Authority proceeded on the basis that the assessee ought to have deducted tax under Section 195 of the Act, effecting disallowance under Section 40(a)(i) of the Act.

34. In appeal before the Income Tax Appellate Tribunal, the Tribunal, by its order dated 09.05.2012 proceeded on a tangent, holding that the ceding of the payments of re-insurance to non-residents was itself contrary to law. Hence the claim of the assessee under Section 37 was disallowed. The matter was remanded to the Assessing Officer to be re-done de novo.

35. Appeals were filed before this Court in T.C.(A)Nos.361 of 2012 etc. batch, which were come to allowed on 17.06.2013 in the

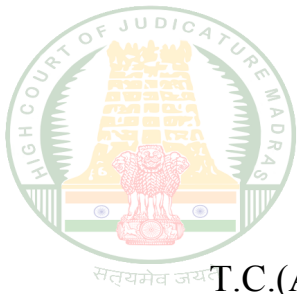


following terms:

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'18. We may point out that the order of the Tribunal makes no mention at all as to what were the documents filed before the Tribunal as by way of fresh document, necessitating remand. In the background of the facts pleaded and admitted by the Revenue, we set aside the order of the Tribunal and remand the appeal to the Tribunal to bestow its attention in all sincerity to the issues raised by the Revenue as well as by the assesseees in their appeals and pass orders in accordance with law. This would include consideration of the relevance of the retrospective amendment to Section 9 of the Income Tax Act after the Vodafone Case to the facts of the case. Thus taking note of the submissions of the learned senior counsel appearing for the assessee and the learned standing counsel appearing for the Revenue, particularly on the amendment to the Act consequent on the Vodafone case, we direct the Income Tax Appellate Tribunal to consider the case of the assesseees afresh on the materials placed and the effect of the amended provision on the assesseees' cases. It is open to the assesseees to file such additional grounds on the points of law before the Tribunal for a full-fledged hearing on the issues raised.'

36. In remand, orders were passed on 31.07.2018 by the Tribunal that travelled to the High Court in Tax Case (Appeals) No.754 of 2018 and batch which came to be disposed by order dated 12.12.2018 wherein the legality of the payments was accepted. The Court held that the Tribunal had misdirected itself and exceeded the scope of remand as ordered by the Division Bench in the earlier round of proceedings in



T.C.(A)Nos.361 of 2012 etc batch.

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37. Hence, while upholding the legality of the payments made, the matters stood remanded to the Tribunal to take a decision on whether the Assessing Officer was right in disallowing the re-insurance premium under Section 40(a)(i) of the Act. The observations of this Court read as follows:

26. The Tribunal while upholding the order of the Assessing Officer did not assign any independent reasons. The discussion in the impugned order relates to the validity of re-insurance business outside India done by an Indian insurer. The Tribunal did not consider the correctness of the order passed by the Assessing Officer or that of the CIT(A). Therefore, the Tribunal could not have held that the Assessing Officer rightly disallowed the re-insurance premium under Section 40(a)(i). This finding is not supported with any reasons. Therefore, the Tribunal misdirected itself, exceeded the scope of remand as ordered by the Division Bench and ventured into a jurisdiction, which is wholly prohibited in the light of the plain language of Section 254(1) of the Act.

27. Thus, for the above reasons, we are of the clear view that the order passed by the Tribunal calls for interference. Accordingly, the appeals, filed by the assessee are allowed and the substantial questions of law framed are answered in favour of the assessee.

28. In the light of the above, the matter stands remanded to the Tribunal to take a decision on the following points:-

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



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(ii) *Whether the CIT(A) was right in rejecting partially the appeal filed by the assessee; and*

(iii) *Whether the CIT(A) was justified in restricting the claim of the assessee to 15% instead of confirming the order passed by the Assessing Officer.*

29. We make it clear that the Tribunal shall decide the above questions alone and nothing more and the decision shall be taken based on the available material and the assessee and the Revenue are not entitled to place any fresh material before the Tribunal so as to enable the Tribunal to take a decision as expeditiously as possible. No costs. Consequently, the connected miscellaneous petitions are closed.

38. The above order dated 12.12.2018 has been confirmed by the Supreme Court in SLP (C) Nos.17028 of 2019 dated 15.04.2021, filed at the instance of the Revenue. Pursuant to order dated 12.12.2018, the Tribunal addressed itself to the issue yet again passing order dated 26.08.2022, impugned before us.

39. The discussion commences from paragraph 13 onwards. We find that the Tribunal has considered the issue in detail taking note of various judgments including the judgment of the Supreme Court in *Vodafone International Holdings B.V. V. Union of India*⁸ that overruled the decision of the Bombay High Court in *Vodafone International*



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*Holdings B.V. V. Union of India*⁹.

40. The conclusion of the Tribunal is as follows:

'20. Insofar as case laws relied upon by the learned CIT (A), of the Hon'ble Bombay High Court in case of Vodafone International Holdings (329 ITR 126), in upholding action of the AO of subjecting reinsurance premium to tax in India, we find that the Hon'ble Supreme Court has subsequently overruled this decision and same has been reported in 341 ITR 1 (SC) and thus, entire basis for the decision of the CIT (A) for the assessment year 2007-08 has no legs to stand. Further, the learned CIT (A) for the assessment year 2007-08 did not follow order of his predecessor for the assessment year 2005-06 on the ground that judgment of the Hon'ble Bombay High Court in Vodafone International Holdings (supra) and of the Hon'ble Supreme Court in the case of Kanchanganga were not considered. We find that the Hon'ble Supreme Court has reversed decision of the Hon'ble Bombay High Court in the case of Vodafone International Holdings and thus, basis of the CIT (A) to rest his decision on basis of said judgment is no longer justifiable. As regards decision of the Hon'ble Supreme Court in the case of Kanjanganga, we find that facts of the said case is completely distinguishable and only issue which was decided therein was whether there was receipt of income in India which gave rise to a charge. In this case, it was clearly held that sum paid by the assessee to NRR is not taxable in India under the Act as well as DTAA between India and respective countries and thus, case laws relied upon by the Assessing Officer on the issue is incorrect.

21. In this view of the matter and considering facts and

⁹ 329 ITR 126



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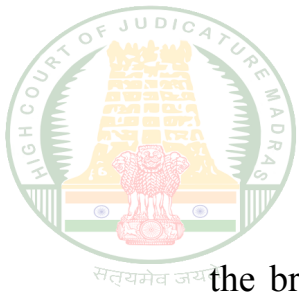


T.C.A.No.193 of 2023 etc

circumstances of the case and also by following various case laws discussed hereinabove, we are of the considered view that reinsurance premium ceded to non-resident reinsurer is not taxable in India under the Income Tax Act, 1961 or under DTAA between India and respective countries where NRRs are tax residents and thus, on impugned payments the assessee is not liable to deduct TDS u/s 195 of the Income Tax Act, 1961. Consequently, payments made to NRR cannot be disallowed u/s 40(a)(i) of the Act, 1961. Hence, we direct the Assessing Officer to delete additions made towards disallowance of reinsurance premium ceded to NRRs.'

41. The Tribunal has delved in detail into the factual aspects of the matter both in the context of domestic law and the Double Taxation Avoidance Agreements (DTAA), addressing specifically the question as to whether a 'broker' would constitute a Permanent Establishment in terms of Article 5 of the DTAAs between India and Switzerland, Malaysia, Thailand, Qatar, Korea, Japan, Germany, United States of America, Singapore, United Kingdom, Spain, France, Australia and Kuwait.

42. The submission of the assessee to the effect that re-insurers were situated outside India and their source of income was outside India was found to be factually correct. The specific line of argument was that



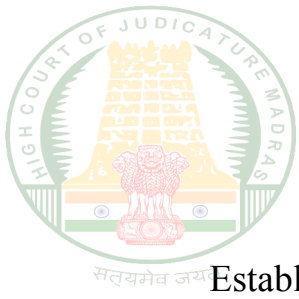
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the brokers in India were acting as independent entities merely playing the role of facilitators/communication channels. They did not engage in negotiation of the terms and neither did they finalize the percentages of commission in regard to the reinsurance contracts.

43. Though the allegation of the Department was that the role of the brokers was far more than what was claimed by the assessee, the Tribunal notes, as a matter of fact towards the conclusion at paragraph 14, that nothing was brought on record by way of evidence by the Department to justify its stand in this regard.

44. The Tribunal also makes reference to the IRDAI (Insurance Brokers) Regulations, 2002 which casts a mandate on reinsurance agents/brokers to act only as facilitators sans the authority to conclude contracts on behalf of the non-residents. The Tribunal thus concludes that the amounts collected by the brokers would only be in their capacity as trustees of the money that was ultimately held in a separate bank account.

45. In light of this factual decision, the Tribunal concludes that the brokers did not either constitute a business connection in terms of Explanation (2) to Section 9(1)(i) of the Act or a Permanent



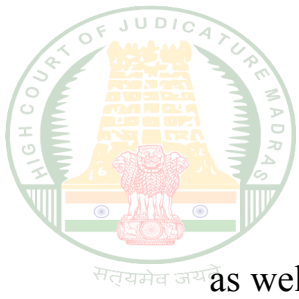
Establishment in terms of Article 5 of the relevant DTAA's.

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46. No material is produced by the Department before us to dislodge the factual findings rendered by the Tribunal. The discussion in the order of the Tribunal sets out the relevant facts making it clear that the brokers were acting in an independent capacity and their role under the authority of the IRDAI Regulations, is as a facilitator and nothing more.

47. Moreover, it is only after in-depth examination of the matter for AY 2020-21, that the Assessing Authority has concluded the issue in favour of the assessee. Clearly, the intention of the Department is to accept the findings in the order of the Tribunal dated 26.08.2022 for all subsequent years. We hence, we find no justification in the present lukewarm attempt to re-open and re-argue this issue.

48. In this context, we draw support from the judgment of the Supreme Court in *Berger Paints India Ltd. V. CIT*¹⁰, where the Supreme Court has held that where the Department has accepted the interpretation of a statutory provision in a given factual matrix, that interpretation should govern the assessments of that issue in regard to other assesseees



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as well, who stand on an identical/comparable footing.

49. In the present case, the assessee stands on a better plane, seeing as in its own case, the question of liability under Section 40(a)(i) has been accepted by the Department for A.Y.2020-2021. We may, in this regard, make useful reference to the ratio of the judgment in *Commissioner of Income-tax V. Excel Industries Ltd.*¹¹, where the Supreme Court has held that once a view has been taken in favour of the assessee on a particular issue, the Court will not be persuaded to take a different view for a different year without any convincing reason.

50. In these circumstances, it would be wholly inappropriate for the Department to canvass a view contrary to the view adopted by it for assessment years commencing 2020-21 onwards, till date.

51. Learned counsel for the Department has, for her part, cited the following decisions. The question in *C.K.Gangadharan V. CIT*¹² and *CIT V. J.K.Charitable Trust*¹³ was that the High Court would not decide a substantial question merely on the ground that no appeal had been preferred by the revenue in respect of that very issue for other years.

52. That is not the issue that arises before us. We find from the

¹¹ 358 ITR 295

¹² 304 ITR 61

¹³ 308 ITR 161



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records that the Department had contested the issue of liability under Section 40(a)(i) upto A.Y.2014-15 upto the level of the High Court, under Section 260A of the Act, for A.Ys.2015-16 and 2018-19 before the Income Tax Appellate Tribunal and has not contested the issue from A.Y.2020-21 onwards, accepting the stand of the assessee in full, at the stage of assessment. Hence, the ratio of the judgements in *C.K.Gangadharan*¹⁴ and *J.K.Charitable Trust*¹⁵ are distinguishable.

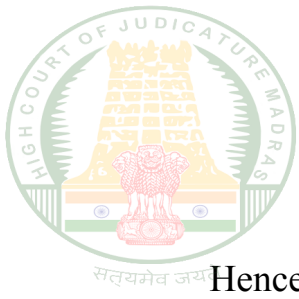
53. As far as the decision in *CIT V. Oswal Agro Mills Ltd*¹⁶ is concerned, the issue that arose for consideration there, is related to eligibility of deduction of expenses incurred as ‘management expenses’. The Tribunal and the High Court had acceded to the stand of the assessee on the basis of Rule of consistency. Those orders were reversed, the Supreme Court expressing the view that that ought not to have been the sole basis for answering the substantial questions of law.

54. We have, in the present order, also looked into the substantive issue of liability under Section 40(a)(i) and invocation of the Rule of consistency is additional, intended only to buttress on conclusion.

14 Foot Note Supra (7)

15 Foot Note Supra (8)

16 313 ITR 28



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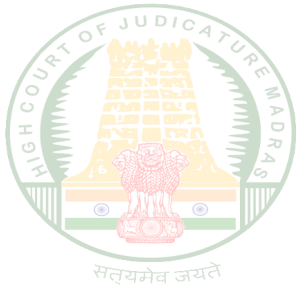
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Hence, and in light of the discussion as aforesaid, we see no necessity to admit the substantial questions of law now raised under the Miscellaneous Petitions.

55. In light of the above discussion, all appeals and the Miscellaneous Petitions are dismissed. The substantial questions admitted in T.C.(A).Nos.193, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 192, 195, 196 & 197 of 2023 are answered in favour of the Assessee and the Miscellaneous Petitions are dismissed as no Substantial Question arises therein for consideration of the Court. No costs.

[A.S.M., J] [G.A.M., J]
09.01.2025

Index:Yes
Speaking Order
Neutral Citation:Yes
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T.C.A.No.193 of 2023 etc

DR. ANITA SUMANTH.,J.
and
G. ARUL MURUGAN.,J.

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T.C.A.Nos. 193, 174, 175, 176,
177, 178, 179, 180, 181, 182,
183, 184, 192, 195, 196 & 197 of 2023

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