



T.C.A.Nos. 755, 855 of 2018, 49, 51 & 52 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 19.12.2024

Pronounced On : 16.04.2025

CORAM :

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

**T.C.A.Nos. 755, 855 of 2018, 49, 51 & 52 of 2023
and
C.M.P.Nos. 2153, 2155, 2177, 2203 & 2205 of 2023**

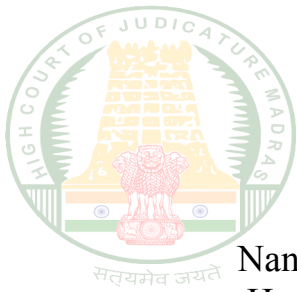
T.C.(A).No. 755 of 2018

M/s. Cholamandalam MS General Insurance Co Ltd
Dare House,
No.2, NSC Bose Road,
Chennai – 600 001
PAN AABCC 6633 K

.. Appellant

VS

- 1.The Deputy Commissioner of Income Tax
Large Tax Payer Unit,
Chennai – 600 101.
- 2.Ministry of Finance,
Department of Financial Services,
Rep. By its Secretary, Jeevan Deep Building,
Parliament Street, New Delhi – 110 001.
- 3.Insurance Regulatory and Development Authority of India,
Rep. By its Chairman,
Sy No.115/1, Financial District,



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Nanakramguad, Gachibowli,
Hyderabad – 500032.

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4.The Central Board of Direct Taxes,
Rep. By its Chairman, 9th Floor, Lok Nayak Bhavan,
Khan Market, New Delhi – 3.

5.General Insurance Council,
Rep. By its Secretary General,
5th Floor, National Insurance Building,
14, Jamshedji Tata Road, Churchgate,
Mumbai – 20.

(R2 to R5 impleaded vide order dated 20.11.2018)

.. Respondents

T.C.(A).No.855 of 2018

M/s. Royal Sundaram General Insurance Co Ltd
“Sundaram Towers”,
45 & 46, Whites Road,
Chennai – 600 002.
PAN AABCR7106G

.. Appellant

Vs

The Deputy Commissioner of Income Tax,
Large Tax Payer Unit,
Chennai – 600 101.

.. Respondent

T.C.(Appeal) No. 49 of 2023

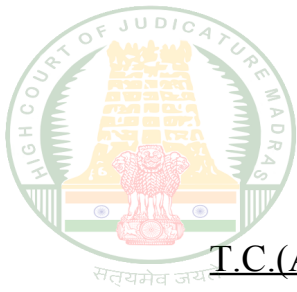
M/s.Cholamanadlam MS General Insurance Co. Ltd
No.2, Dare House, NSC Bose Road,
Chennai – 600 001.
PAN AABCC 6633K

.. Appellant

Vs

The Deputy / Assistant Commissioner of Income Tax
Large Taxpayer Unit – 2,
Chennai – 600 034.

.. Respondent



T.C.A.Nos. 755, 855 of 2018, 49, 51 & 52 of 2023

T.C.(Appeal) Nos. 51 & 52 of 2023

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M/s.Cholamanadlam MS General Insurance Co. Ltd
No.2, Dare House, NSC Bose Road,
Chennai – 600 001.
PAN AABCC 6633K

.. Appellant

Vs

The Assistant / Deputy Commissioner of Income Tax
Large Taxpayer Unit – 2,
Chennai – 600 034.

.. Respondent

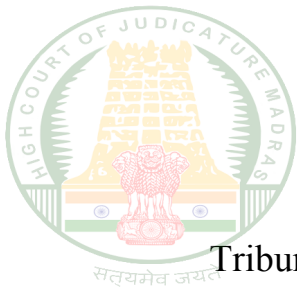
Prayer in T.C.(A).No. 755 of 2018: Appeal filed under Section 260A of the Income-Tax Act, 1961 against the order of the Income-Tax Appellate Tribunal, ‘A’ Bench, Chennai dated 31.07.2018 in ITA No.2372/Chny/2014 for assessment year 2009 – 10.

Prayer in T.C.(A).No. 855 of 2018: Appeal filed under Section 260A of the Income-Tax Act, 1961 against the order of the Income-Tax Appellate Tribunal, ‘A’ Bench, Chennai dated 06.08.2018 in ITA No.2371/Chny/2014 for assessment year 2010 – 11.

Prayer in T.C.(A).No. 49 of 2023: Appeal filed under Section 260A of the Income-Tax Act, 1961 against the order of the Income-Tax Appellate Tribunal, ‘C’ Bench, Chennai dated 26.08.2022 in ITA No.771/Chny/2020 for assessment year 2014 – 15.

Prayer in T.C.(A).No. 51 of 2023: Appeal filed under Section 260A of the Income-Tax Act, 1961 against the order of the Income-Tax Appellate Tribunal, ‘C’ Bench, Chennai dated 26.08.2022 in ITA No.950/Chny/2018 for assessment year 2010 – 11.

Prayer in T.C.(A).No. 52 of 2023: Appeal filed under Section 260A of the Income-Tax Act, 1961 against the order of the Income-Tax Appellate



T.C.A.Nos. 755, 855 of 2018, 49, 51 & 52 of 2023

Tribunal, 'C' Bench, Chennai dated 26.08.2022 in ITA
No.951/Chny/2018 for assessment year 2013 – 14.

For Appellants : Dr.S.Muralidhar, Senior Counsel
For Mr.R.Sandeep Bagmar
(in TCA Nos. 755/2018, 49, 51 & 52/2023)
Mr.Arvind P. Datar, Senior Counsel
For Mr.R.Sandeep Bagmar
(in TCA No. 855/2018)

For Respondents : Mrs.V.Pushpa
Senior Standing Counsel
(in all TCAs)

COMMON JUDGMENT

Dr. ANITA SUMANTH.,J

TC(A) Nos.755 of 2018 and 49, 51 and 52 of 2023 have been filed by Cholamandalam MS General Insurance Co. Ltd and TC(A) No.855 of 2018 has been filed by Royal Sundaram General Insurance Co. Ltd under Section 260A of the Income tax Act 1961 (Act). The appeals relate to assessment years (AYs) 2009-10 (TC(A) 755 of 2018), 2010-11 (TC(A) No.855 of 2018), 2010-11 (TC(A) No.51 of 2023), 2013-14 (TC(A) No.52 of 2023) and 2014-15 (TC(A) No.49 of 2023).

2. The substantial questions of law admitted for consideration in T.C.(A)Nos.755 and 855 of 2018 are as follows:



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T.C.A.Nos. 755, 855 of 2018, 49, 51 & 52 of 2023

'Reinsurance Premium:

1. Whether the Tribunal has the jurisdiction to adjudicate upon validity and legality of payments of reinsurance premium made by the appellant to non-resident reinsurers under the Insurance Act, 1938 ?

2. Whether the Tribunal has the jurisdiction to adjudicate upon the grounds, which were never raised by the appellant and the respondent in its grounds of appeal ?

3. When this issue did not arise out of appeal before the Tribunal, whether the Tribunal was correct in holding that the payments of reinsurance premium made by the appellant to non-resident reinsurers are in violation of the provisions of the Insurance Act, 1938 ?

4. Whether the Tribunal has the jurisdiction to adjudicate upon validity and legality of the IRDA (General Insurance- Reinsurance) Regulations, 2000, which permit general insurance companies in India to place reinsurance premium outside India and to hold that these Regulations are not inconsistent with the provisions of the Insurance Act, 1938?

5. Whether the Tribunal was correct in questioning the intention of the Parliament by holding that it cannot be the intention of the Parliament to authorize Indian insurer to have insurance outside the country ignoring the provisions of the Insurance Act, when, on other hand, the Regulations being the IRDA (General Insurance-Reinsurance) Regulations, 2000, which were tabled before the Parliament, permit Indian insurer to place reinsurance outside India ?

6. When the Tribunal was correct in holding that the other insurer in Section 101A(7) of the Insurance Act would only mean the insurer as defined under Section 2(9) of the Insurance Act ?

7. When the finding of the Tribunal that the learned Senior Counsel for the assessee very fairly submitted before the Tribunal that after 2014, the assessee started deducting tax on the reinsurance premium paid to the non-resident reinsurance company is erroneous and perverse ?

8. Whether the Tribunal was correct in holding that the



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payments of reinsurance premium made by the appellant to non-resident reinsurers 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?

9. Whether the Tribunal was correct in not adjudicating on any of the grounds raised by the appellant and the respondent in respect of non applicability of provisions of Section 195 being withholding of taxes on reinsurance premium paid to foreign insurers?

10. Whether the Tribunal was correct in holding that the payments of reinsurance premium made by the appellant to non-resident reinsurers is to be disallowed under Section 40(a)(i) of the Act, when the Tribunal has not decided the taxability of these payments under the Act as per Section 195 of the Act ?

11. Whether the Tribunal was correct in distinguishing the judgments of the Supreme Court in the case of Vodafone and the decision of the Mumbai Tribunal in Swiss Reinsurance Company Ltd., and the Pune Tribunal in Bajaj Alliance, which has decided the grounds in appeal before the Tribunal in favour of the assessee?

12. Whether the Tribunal was correct in distinguishing the decisions of the Mumbai and the Pune Benches of the Tribunal without referring the appeal to a Larger Bench ?

Disallowance of IBNR and IBNER :

13. Whether the Tribunal was correct in holding that the provisions on account of IBNR and IBNER was not determined during the subject assessment year and consequently, not to be allowed in the subject assessment year?

14. Whether the order of the Tribunal is erroneous and perverse as it did not consider the IRDA (Preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations, 2002 basis, which the appellant has worked out the liability for IBNR and IBNER certified by actuary on basis of actuarial valuation ?

15. Whether the order of the Tribunal is erroneous and perverse as it did not consider the decision of the Kolkata



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Tribunal in National Insurance Company Limited and the Mumbai Tribunal in Export Credit Guarantee Corporation, which has decided the grounds in appeal before the Tribunal in favour of the assessee?

16. Whether the Tribunal was correct in distinguishing the decisions of the Kolkata and the Mumbai Tribunals without referring the matter to a Larger Bench ?

Disallowance under Section 14A :

17. Whether the Tribunal was correct in holding that Section 14A is applicable to insurance companies when it is undisputed that income of Insurance companies is to be computed as per Section 44 read with First Schedule of the Act?

18. Whether the order of the Tribunal is erroneous and perverse as it did not adjudicate on the issue of non applicability of Section 14A to insurance companies, when a specific ground was raised before it ?

19. Whether the order of the Tribunal is erroneous and perverse as it did not consider the decisions of the Bombay High Court in Kotak Mahindra Old Mutual Life Insurance Limited, Delhi Tribunal in Oriental Insurance Company Ltd., the Mumbai Tribunal in ICICI Prudential Life Insurance and the Mumbai Tribunal in Reliance General Insurance, which has decided the grounds in appeal before the Tribunal in favour of the assessee ?

20. Whether the Tribunal was correct in distinguishing the decisions of the other Tribunals without referring the matter to a Larger Bench ?

Profit on sale of investment:

21. Whether the Tribunal was correct in holding that the profit on sale of investment is taxable in view of deletion of Rule 5(b) to the First Schedule of the Act ?

22. Whether the order of the Tribunal is holding that the profit on sale of investment is erroneous and perverse as the Explanatory Notes to the Finance Act, 1988 described by the CBDT circular No. 528 dated 16.12.1988 that the intent of deletion of Rule 5(b) to the First Schedule is not to tax gain on sale of investments ?



23. *Whether the order of the Tribunal is erroneous and perverse as it did not consider the decision of the Pune Tribunal in Bajaj Alliance General Insurance Company Limited and the Mumbai Tribunal in General Insurance Corporation of India, which have considered the effect of the deletion of Rule 5(b) and decided the grounds in appeal before the Tribunal in favour of the assessee ? and*

24. *Whether the Tribunal was correct in distinguishing the decisions of the other Tribunals without referring the matter to a Larger Bench ?*

3. The substantial questions of law that arise for consideration in

T.C.(A)Nos.49, 51 and 52 of 2023 are as follows:

Disallowance of IBNR and IBNER:

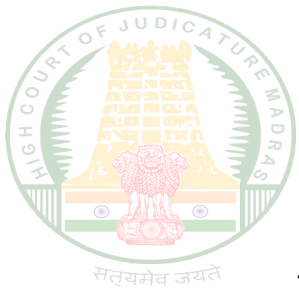
1. *Whether the Tribunal was correct in holding that the provisions on account of IBNR and IBNER was not determined during the subject assessment year and consequently, not to be allowed in the subject assessment year?*

2. *Whether the Tribunal erred in not allowing the claim of IBNR and IBNER which was determined by an independent actuary based on IRDA (Preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulation, 2002 and the methodology of the same was not in dispute?*

3. *Whether the Tribunal was correct in following the decision in appellant's own case in ITA NO.2372 dt.31/07/2018 for AY 2009-10, when the view taken by the Chennai Bench of the Tribunal was found to be per-incuriam by the Bombay High Court in General Insurance Corporation of India V. ACIT 422 ITR 248 (Bom)?*

4. *Whether the Tribunal erred in failing to follow the co-ordinate bench decisions on the very question of disallowance of IBNR and IBNER?*

5. *Whether the order of the Tribunal is perverse as it*



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failed to take note of binding judicial precedents which were placed on record and referred to for its consideration?

4. An additional question of law that has been raised for consideration in TC(A)No. 49 of 2023 is as follows:

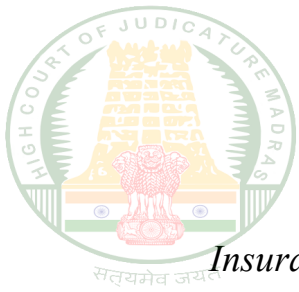
Disallowance of payments made to Motor vehicle dealers.

Whether the Tribunal was correct in remitting the issue of disallowance of payments made to motor vehicle dealers to the file of the AO when all facts relating to the said issue have been adjudicated in favour of the assessee?

5. Learned counsel for the appellant in TC(A)Nos.755 and 855 of 2018 has made an endorsement to the effect that the appellant companies do not press questions 1 to 12 under the caption 'reinsurance premium' raised in TC(A)Nos.755 and 855 of 2018. Hence, these questions are returned as unanswered.

6. As against questions 21 to 24 under the caption *Profit on sale of investment*, raised in TC(A)Nos.755 and 855 of 2018, all learned counsel would concur on the position that the issues are to be answered in favour of the assessee by virtue of 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*

¹ (2020) 117 taxmann.com 849(SC)



Insurance Co².

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7. The operative portion of the judgement in the case of

*Commissioner of Income-Tax v United India Insurance Co*³ qua the issue

Profit on sale of investment is extracted below:

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.

² (2019) 111 taxmann.com 217 (Madras)

³ (2019) 111 taxmann.com 217 (Madras)



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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 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.*

8. We have had an 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.*⁴, wherein we have held as follows:

4 T.C.(A) Nos.1344 and 1345 of 2010



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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 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 Company⁵. 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-Tax⁶, 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

⁵ 2019-111 Taxman.com 217 (Mad)

⁶ (2018) 407 ITR 658



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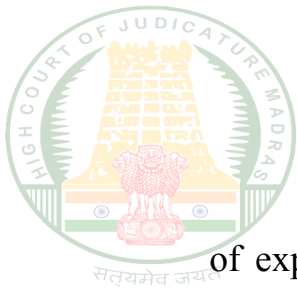
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the General Insurance Corporation and its subsidiaries

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 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.

9. 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



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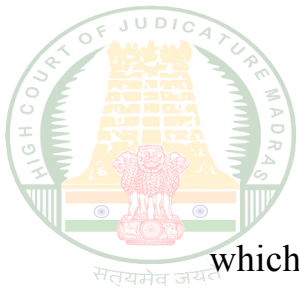
of expenses, which are not for the purposes of insurance business and, directing that the same are to be added back.

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

11. 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.

12. 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. We have extracted Section 44 as well as Rule 5 of the First Schedule in the latter portion of this order. (see paragraphs 35 and 36).

13. Section 14 A states that no deduction shall be allowed in respect of the expenditure incurred by the assessee in relation to income



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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.

14. 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.

15. 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 the First Schedule alone.



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16. 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.

17. Clause (a) of Rule 5 is specific in that, it states that 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.

18. Barring the aforesaid adjustments, there can be no other adjustments contemplated to the scheme of computation of profits and gains of other insurance businesses. Reference to Section 14A thus does



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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 businesses. The substantial question of law in relation to this issue is thus answered in favour of the assessee and against the revenue.

19. What remains are questions 13 to 16 raised in TC(A)Nos.755 and 855 of 2018 and questions 1 to 5 raised in T.C.(A)Nos.49, 51 and 52 of 2023 dealing with disallowance of the provisions made on account of the expenditure '*incurred but not reported (IBNR)*' and '*incurred but not enough reported (IBNER)*' and additional question raised in TC(A)No.49 of 2023 dealing with disallowance of payments made to motor vehicle dealers.

20. Detailed submissions have been advanced by Dr.S.Muralidhar, learned Senior Counsel appearing for Mr.R.Sandeep Bagmar, learned counsel on record for the appellant in TCA Nos. 755 of 2018, 49, 51& 52 of 2023 and Mr.Arvind P. Datar, learned Senior Counsel, appearing for Mr.R.Sandeep Bagmar, learned counsel on record for the appellant in TCA No. 855 of 2018 as follows.



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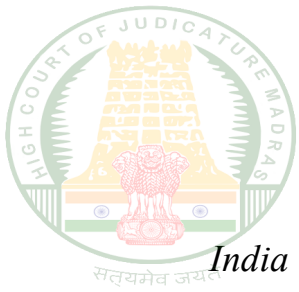
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21. Returns of income have been filed within time for the assessment years in question. Both companies are engaged in the business of General Insurance including marine and motor vehicle insurance. In the course of assessments and on verification of the financials, the Assessing Authority had noted the deduction claimed from the profits on account of IBNR and IBNER. Being provisions, and being of the view that they were contingent and unascertained, the Assessing Authority sought a justification for the claim.

22. Explanations were tendered to the effect that both IBNR and IBNER claims were made on scientific basis. The determination of liability was on actuarial principles made by the appointed actuary, and in line with the guidelines and norms issued by the Institute of Actuaries of India as well as the Insurance Regulatory and Development Authority (IRDA).

23. Thus, the appellant companies had reiterated their claims as being appropriate and in line with the mandate of Section 37 of the Act. Reliance was placed on the judgments of the Supreme Court in *Bharath Earth Movers v Commissioner of Income-Tax*⁷, *Metal Box Company of*

⁷ 245 ITR 428 (SC)



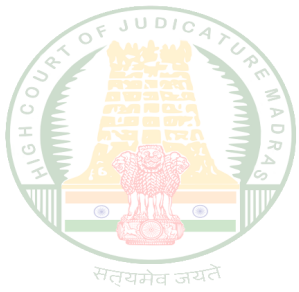
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*India Ltd v Their Workmen*⁸ and *Rotork Controls India (P) Ltd v Commissioner of Income-Tax*⁹.

24. Overriding the submissions made, the Assessing Authority disallowed the provisions on the ground that they were unascertained. While noting that the provisions had been created as per the extant Regulations and guidelines, the assessing authority sill proceeds to disallow the same on the ground that the liabilities had not crystallized under either regular provisions or Minimum Alternate Tax (MAT) under Section 115JB of the Act.

25. The first appeal filed by the appellant companies came to be allowed, the Commissioner of Income Tax (Appeals) (CIT(A)) disagreeing with the Assessing Officer that the liability was unascertained. The CIT(A) holds that the liability of the appellant companies stands crystallized as soon as the incident covered by the policy accrues. What remained thereafter was only the quantification of the amount, which constituted a mere computation. According to him, the creation of a provision would protect the company from erratic display of profits over the years.

⁸ 73 ITR 53 (SC)
⁹ 314 ITR 62 (SC)



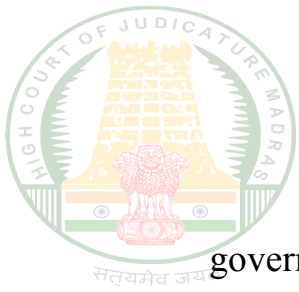
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26. Aggrieved by the order of the CIT(A), the Revenue approached the Income Tax Appellate Tribunal (in short, ITAT/Tribunal), which reversed the order in first appeal restoring the disallowance made by the Assessing Officer.

27. Learned Senior Counsel argue that the order of the Tribunal is cryptic, non-speaking and has not considered the detailed and voluminous submissions made. Specific reference is drawn to the observations of the Tribunal that the liability to make payment accrues to the assessee only in the year in which the loss or damage was ascertained and compensation payable to insured person is determined.

28. It thus follows that since the appellant is a company following mercantile method of accounting, liability accrues in the year in which the event has occurred and hence the creation of a provision in that year, according to the appellant, is perfectly appropriate. As far as the quantification is concerned, the appellant draws attention to voluminous material filed by it to demonstrate the process by which the amount has been crystallized, which process has been completely ignored by the Tribunal in its conclusion.

29. Dr.Muralidhar takes us through the scheme of taxation



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governing insurance companies commencing from Section 44 of the Act and the First Schedule to the Act, as well as the prescription under the Insurance Regulatory and Development (Preparation of Financial Statements and Auditors Report of Insurance Companies) Regulations, 2002 (in short, IRDA 2002 Regulations) which the Appellant is bound to follow.

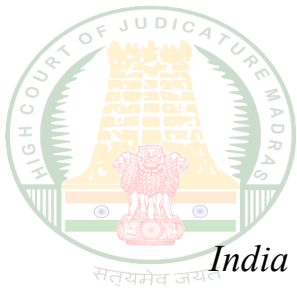
30. He also takes us through a sample actuarial certificate which reflects the summary of IBNR and IBNER proceedings issued by an appointed actuary who is a fellow of Institute of Actuaries of India. It is that figure which has been adopted by the appellant companies as their claim towards provisions made.

31. Apart from the decisions already cited before the authorities, Appellants rely on the decisions of the Delhi High Court in *Principal Commissioner of Income-Tax v Care Health Insurance Ltd*¹⁰, *Commissioner of Income-Tax v Whirlpool of India Ltd*¹¹, Calcutta High Court in *Principal Commissioner of Income-Tax v National Insurance Co. Ltd*¹², Bombay High Court in *General Insurance Corporation of*

¹⁰ (2024) 164 Taxmann.com 53 (Delhi)

¹¹ 242 CTR 245 (Del)

¹² (Calcutta HC) ITA No. 76 of 2019 dated 16.07.2019



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*India v Assistant-Commissioner of Income-Tax and others*¹³ and Kerala

High Court in *Commissioner of Income-Tax v Kerala Transport Company*¹⁴ praying that the appeals be allowed.

32. Per contra, Ms.V.Pushpa, learned Senior Standing Counsel for the Department contests the matter pointing out that the settlement of the insurance claim is based on a contract between the parties. There is no record, according to her, to show how that the claim has evolved from the time of entering into a contract of insurance, occurrence of an event, processing of the claim and thereafter settlement of the claim.

33. There is no material produced by the appellant companies that would support their stand that the claims have crystallized, on the mere occurrence of an event. As far as the creation of a provision is concerned, such provision would have to be tested on a case on case basis only and cannot be generalized.

34. In the present case, apart from producing the actuarial certificate, which is only a self-serving document, no other material has been produced in support of the claim. According to her, the decisions relied on do not support the appellants' case and for her part, she relies

¹³ 422 ITR 248 (Bom)

¹⁴ 239 ITR 183 (Ker)



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on the following decisions:

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1. *Rotork Controls India (Private) Limited v Commissioner of Income-Tax*¹⁵
2. *Renowned Auto Products Mfrs Limited v Income Tax Officer*¹⁶
3. *Commissioner of Income-Tax v Tamil Nadu Small Industries Development Corporation Limited*¹⁷
4. *EID Parry (India) Limited v Assistant Commissioner of Income Tax*¹⁸
5. *Principal Commissioner of Income-Tax LTU, New Delhi v Oriental Insurance Co., Ltd*¹⁹
6. *Commissioner of Income Tax v Birla Global Asset Finance Co., Ltd*²⁰
7. *The Commissioner of Income Tax v M/s. Johnson Lifts Pvt Ltd*²¹

35. We have heard the rival contentions and perused the material records and our decision is as follows. The scheme of taxation that governs Insurance Companies has its genesis in Section 44 of the Act, a special provision touching upon the taxation of the Insurance business reading as follows:

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

15 314 ITR 62 (SC)

16 354 ITR 127 (Madras)

17 370 ITR 449 (Madras)

18 425 ITR 508 (Madras)

19 (2020) 118 taxmann.com 248 (Delhi)

20 (2012) 76 DTR 342 (Bom)

21 TCA No. 54 of 2015 (dated 29.10.2024)



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insurance company or by a co-operative society, shall be computed in accordance with the rules contained in the First Schedule.

36. The computational methodology as stipulated under the First Schedule to the Act and under Part B, extracted below, sets out the detailed manner by which the computation of profits and gains of other Insurance business is to be carried out. To be noted, Part A deals with the Life Insurance business with which we are not concerned in these appeals.

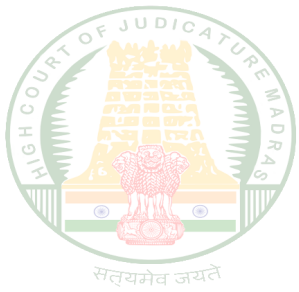
B.—Other insurance business

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



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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.

37. The Appellants are thus bound to comply with the prescription under the IRDA 2002 Regulations and subsequent editions of those Regulations as and when issued. Those Regulations provide for the detailed methodology to be adopted for various aspects of the insurance business including methods of presentation of claims, preparation of financial statements, the break-up of the claims and the presentation thereof in the financials and all other details which an Insurance company is mandated to prepare and present as part of the financial statements itself.

38. Incidentally, the IRDA had issued Insurance Regulatory and Development Authority of India (Assets, Liabilities and Solvency



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Margin of General Insurance Business) Regulations, 2016 (in short 'IRDA 2016 Regulations), effective from 01.04.2016 where there are procedural differences in the reporting of claims and creation of claim reserves.

39. However, there is no effective difference, as far as the appellant companies are concerned, in that, the mandate to have a transparent disclosure of the claims and the manner in which such claims are to be crystallized continues to be the same even in the 2016 Regulations. Thus, for all practical purposes, the appellants would be equally entitled to the grant of provision both under the 2002 as well as 2016 Regulations.

40. That apart, the Actuarial Certificate issued by a registered Actuary sets out the summary of IBNR and IBNER proceedings which is the basis of the claim made by the appellants towards provision. A copy of the sample summary as on 31.03.2009 has been placed before us in the paper book to indicate the basis on which the claims have been made.

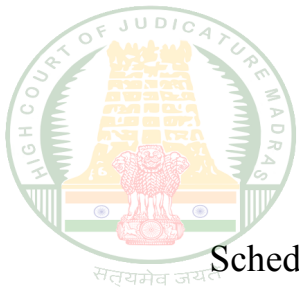
41. Section 37 encompasses claims which are general in nature, not covered under Sections 30 to 36 that are specific in nature. A combined reading of Section 44 with the First Schedule indicates to us



that the IRDA guidelines stand incorporated into the very scheme of taxation of an insurance business, by reference therein, to those guidelines. Thus, it follows that once an insurance company applies those guidelines and parametres in the maintenance of its accounts and computation of claims, there remains nothing further to be verified qua the veracity of the claims made.

42. Various High Courts, the Delhi High Court in *Care Health Insurance Ltd* and *Whirlpool of India Ltd*, Calcutta High Court in *National Insurance Co. Ltd*, Bombay High Court in *General Insurance Corporation of India* and Kerala High Court in *Kerala Transport Company* have considered the identical issue, allowing them in favour of the Insurance companies.

43. The objection of the Department is that the claim is based merely on a contract between the parties. In our view, this is an over simplification of the matter, as it has been demonstrated that the claim is based on a scientific assessment of the risk as well as other parametres. The materials placed before us now are on record from the stage of assessment and point to the unambiguous position that the Appellant has been adhering to the mandate of the stipulations under the Second



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Schedule to the Income Tax Act and the IRDA Regulations.

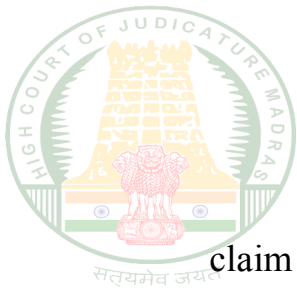
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44. Ultimately, the assessment and valuation of risk has been made by a Registered Actuary, and in our view this would amount to a sound and scientific basis for the claim of expenditure. Hence, we find that there is a scientific basis for the claim of the provisions based on the stipulations under the applicable statutory and other prescriptions.

45. The Chairman of the IRDA appears, in fact, to have sought a clarification from the Chairperson of the Central Board of Direct Taxes (CBDT) about the subject claim, setting out the history of the working of Insurance Companies, the relevant statutory provisions and Guidelines which govern their functioning, and the manner of preparation and presentation of the financial statements. That communication, dated 13.02.2013, has not found favour of response.

46. In light of the aforesaid discussion, we answer the substantial questions of law in regard to claim in regard to IBNR and IBNER in favour of the assessee and against the Revenue.

47. In regard to the substantial question of law regarding *Disallowance of payments made to Motor vehicle dealers*, we find that during the course of assessment, the Assessing Authority examined the



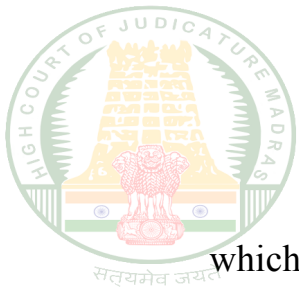
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claim of expenditure to motor vehicle dealers. Prior thereto, information had been received from the Director of Income Tax (Investigation, Chennai) in regard to that expenditure and verifications undertaken by them.

48. The claim related to input credit available on service tax paid to automobile companies, such as Toyota Kirloskar Motor India Pvt. Limited, Ashok Leyland and Nissan among others. It appears that statements had been recorded from the employees of those companies to the effect that no service had been rendered by them, based on which the expenditure claim was disallowed.

49. That very issue, being the claim of input tax, had been the subject matter of adjudication by the service tax authorities that had travelled before the Customs, Excise and Service Tax Appellate Tribunal (in short, CESTAT), which had held that the motor vehicle dealers had, indeed, rendered services. That order of the CESTAT had been produced before the Tribunal relying on the factual findings therein that services had been rendered by the automobile manufacturers.

50. The Tribunal has thus remitted the matter to the file of the Assessing Officer, since the order of the CESTAT is dated 24.02.2021,



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which order was not available before the Assessing Officer when the orders of assessment had been passed. In fact, the Tribunal has, in remanding the matter, stated that the remand was for the limited purpose of enabling the Assessing Authority to verify the issue with reference to the CESTAT order.

51. We find nothing untoward in the order of remand and hence the conclusion of the Tribunal in this regard is affirmed. This substantial question of law is answered against the assessee.

52. In fine, the substantial questions are answered as follows:

(i) Reinsurance Premium – not pressed and hence unanswered.

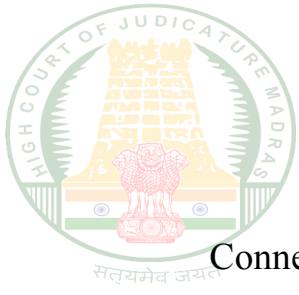
(ii) Profit on sale of investment – answered in favour of the assessee.

(iii) Disallowance of IBNR and IBNER – answered in favour of the assessee.

(iv) Disallowance under Section 14A – answered in favour of the assessee.

(v) Disallowance of payments made to Motor vehicle dealers – answered in favour of the revenue.

53. These Tax Case (Appeals) are disposed as above. No costs.



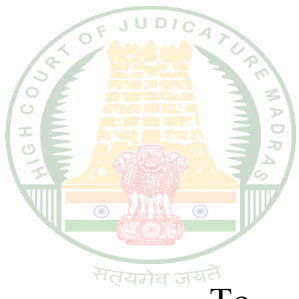
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Connected Miscellaneous Petitions are closed.

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[A.S.M., J] [G.A.M., J]
16.04.2025

Index:Yes
Speaking Order
Neutral Citation:Yes
sl



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To

1. The Deputy Commissioner of Income Tax
Large Tax Payer Unit,
Chennai – 600 101.
2. The Secretary, Ministry of Finance,
Department of Financial Services,
Jeevan Deep Building,
Parliament Street, New Delhi – 110 001.
3. The Chairman,
Insurance Regulatory and Development Authority of India,
Sy No.115/1, Financial District,
Nanakramguad, Gachibowli,
Hyderabad – 500032.
4. The Chairman,
Central Board of Direct Taxes,
9th Floor, Lok Nayak Bhavan,
Khan Market, New Delhi – 3.
5. The Secretary General,
General Insurance Council,
5th Floor, National Insurance Building,
14, Jamshedji Tata Road, Churchgate,
Mumbai – 20.
6. The Deputy Commissioner of Income Tax,
Large Tax Payer Unit,
Chennai – 600 101
7. The Deputy / Assistant Commissioner of Income Tax
Large Taxpayer Unit – 2,
Chennai – 600 034.