



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"I" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI DR. A.L. SAINI, ACCOUNTANT MEMBER**

ITA no.6896/Mum./2016  
(Assessment Year : 2011-12)

Mahindra Insurance Brokers Ltd.  
Ground Floor, Sadhana House  
570, P.B. Marg, Behind Mahindra  
Towers, Worli, Mumbai 400 018  
PAN – AABCM0839M

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Range-6(3), Mumbai

..... Respondent

Assessee by : Shri Prasad Bapat  
Revenue by : Shri Saurabh Kumar Rai

Date of Hearing – 28.06.2018

Date of Order – 29.06.2018

**ORDER**

**PER SAKTIJIT DEY, J.M.**

Aforesaid appeal by the assessee is against order dated 25<sup>th</sup> August 2016, passed by the learned Commissioner (Appeals)-13, Mumbai, for the assessment year 2011-12.

2. The dispute in the present appeal is confined to disallowance of deduction claimed of ₹ 24,79,864, as business expenditure.

3. Brief facts are, the assessee, a company, is engaged in insurance broking business. For the assessment year under dispute, assessee filed its return of income on 30<sup>th</sup> September 2011, declaring total income of ₹ 32,80,89,630. During the assessment proceedings, the Assessing Officer noticing that the assessee has claimed expenditure of ₹ 27,50,394, with regard to re-insurance business called upon the assessee to furnish the necessary details and also to explain how such expenditure was for the purpose of business. In response to such query, the assessee furnished all the details relating to claim of expenditure and also submitted that the expenditure claimed, since, is for the purpose of business is allowable. The Assessing Officer after verifying the details furnished by the assessee found that the expenditure related to re-insurance business for which assessee got license from IRDA in the month of September 2011. Further, he found that the assessee has appointed one Shri R. Chandrashekharan, for project report preparation and IRDA re-insurance broking approval as well as to furnish his report on various issues as enumerated in Para-2.5 of the assessment order. The Assessing Officer observed, the expenses incurred were for the purpose of setting-up of re-insurance broking business for which license was received by the assessee after the end of the relevant previous year. Thus, the Assessing Officer was of the view that the assessee was in the process of setting-up of re-insurance broking business, therefore, the expenses incurred for new

line of business is nothing but a capital business. Though, the assessee tried to reason with the Assessing Officer that the re-insurance broking business is only an extension of insurance broking business being carried on by the assessee, however, the Assessing Officer did not accept the contention of the assessee with the observation that insurance broking and re-insurance broking are two different businesses for which the assessee requires two separate licenses. Thus, on the basis of the aforesaid reasoning, the Assessing Officer disallowed the expenditure claimed of ₹ 27,50,394, by treating it as capital expenditure. Assessee challenged the disallowance before the first appellate authority.

4. The learned Commissioner (Appeals) after considering the submissions of the assessee, however, did not find merit in them. Therefore, he concurred with the view expressed by the Assessing Officer. However, out of the total expenditure disallowed by the Assessing Officer, the learned Commissioner (Appeals) allowed an amount of ₹ 2,70,000, opining that such expenditure was not in relation to re-insurance broking business.

5. The learned Authorised Representative submitted, the assessee basically is in insurance broking business, whether it is for insurance broking or re-insurance broking. Explaining further, he submitted that while in the insurance broking business, the assessee directly deals

with the customers with regard to the products of the insurance company in re-insurance broking business the assessee acts as an intermediary between two insurance companies. He submitted, since re-insurance broking business is primarily between two insurance companies, which may be overseas based, the IRDA requires insurance brokers to complete some additional formalities before formally placing insurance premium. The learned Authorised Representative submitted, though, the assessee had applied for licence for re-insurance broking in March 2011, however, such license was granted in September 2011. The learned Authorised Representative submitted, though, insurance broking and re-insurance broking requires two separate licenses from IRDA, however, it is only for regulatory measures and does not create any difference to assessee's activity as a broker. To emphasize upon the fact that the re-insurance broking business is only an extension of the insurance broking business carried on by the assessee, the learned Authorised Representative submitted that the re-insurance broking business is carried out from the same premises, common management, common employees, common administration and common fund, etc. Thus, both the insurance broking and re-insurance broking constitute the same business. For demonstrating the aforesaid fact, the learned Authorised Representative drew our attention to the details of key management personnel and other employees working in the company who are

continuing from the past and were attending to both the businesses. Thus, he submitted, re-insurance broking business cannot be considered to be new and distinct business activity of the assessee. In support of such contention, the learned Authorised Representative relied upon the following decisions:-

- i) *Produce Exchange Corporation Ltd. v/s CIT, 1970-(IT2)-GJX-0192-SC;*
- ii) *CIT v/s Prithvi Insurance Co. Ltd., 1966-(IT2)-GJX-0289-SC;*
- iii) *ACIT v/s M/s. Gravis Foods Pvt. Ltd., ITA no.1051/Mum./2013 dated 28.08.2015.*

6. Further, the learned Authorised Representative submitted, though, the objects in the memorandum and article of association of the assessee did not specifically refer to re-insurance broking at the initial stage, however, after obtaining the license from IRDA the assessee has amended the objects by incorporating re-insurance business. He submitted, irrespective of the fact whether the objects in the memorandum and article of association provided for re-insurance broking business or not, there is no bar on the assessee to undertake any other business. In support of such contentions, he relied upon the decision of the Tribunal, Delhi Bench, in case of Poysha Oxygen Pvt. Ltd. v/s ACIT, 2007-(ID3)-GJX-0504-TDELT.

7. The learned Departmental Representative submitted, the very fact that the assessee has obtained a separate license for re-insurance broking business indicates that it is a separate business. However, he submitted, what is the necessity of taking a separate license has to be examined in the context of the specific provisions of the IRDA Act, which has not been examined either by the Assessing Officer or by the learned Commissioner (Appeals). The learned Departmental Representative submitted, the contention of the assessee that the re-insurance broking business is being carried out in the same premises with common management, common employees, common fund, etc., was never contended by the assessee before the Departmental Authorities as no discussion in this regard is available either in the assessment order or in the first appeal order. The learned Departmental Representative submitted, though, the assessee might have filed the details of employees working for both the business, however, such fact has not been examined by the Assessing Officer or by the learned Commissioner (Appeals). He submitted, even the decisions now relied upon by the learned Authorised Representative were not cited before the Departmental Authorities. Thus, he submitted, the contention raised before the Tribunal requires to be examined by the Assessing Officer in the light of the ratio of the decisions relied upon.

8. We have considered rival submissions and perused materials on record. The dispute is confined to disallowance of expenditure to the tune of ₹ 24,79,864. The only reason on which the Assessing Officer disallowed the expenditure and the learned Commissioner (Appeals) sustained it is, such expenditure relates to re-insurance broking business which was in the process of being set-up, hence, the expenditure incurred is capital in nature. However, there is no dispute that the assessee basically was involved in the business of broking relating to insurance products. It is explained before us that while in insurance broking the assessee directly deals with the customers with regard to the products of insurance companies, in re-insurance broking, the assessee acts as an intermediary between two insurance companies. However, the nature of business carried on by the assessee remains the same i.e., broking. It is further contended by the assessee that the re-insurance broking business is only an extension of insurance broking business as it is carried out from the same premises with common management, common employees, common funds, etc. therefore, both insurance broking and re-insurance broking constitute one business. In our view, the aforesaid contentions advanced on behalf of the assessee, prima facie, appear to be logical and in consonance with the principle laid down by the Hon'ble Supreme Court in Prithvi Insurance Co. Ltd. (supra) and Produce Exchange Corporation Ltd. (supra). More so, considering the fact that

the business carried on by the assessee is basically that of a broker in insurance products. It is further relevant to observe, though, the assessee has furnished the details of employees, key management personnel, etc. before the Assessing Officer to demonstrate that the employees for both the business are common, however, neither the contentions of the assessee nor the evidences produced appears to have been examined either by the Assessing Officer nor by the learned Commissioner (Appeals). Further, the learned Authorised Representative also fairly submitted that the decisions now cited before us were not cited before the Departmental Authorities. Thus, it is clear that the Departmental Authorities neither had the occasion to examine the assessee's claim that both the businesses were carried out from the same premises with common management, common employees, common administration and common fund, etc, which demonstrate inter-connection, inter-lacing, inter-dependence between the business to constitute one business, nor to go through the decisions cited in support of such contentions. Further, the necessity of obtaining a separate license for re-insurance business needs to be examined in the context of IRDA regulations to find out whether the activities of insurance broking and re-insurance broking are distinct and independent of each other so as to constitute a completely separate business. Since, the aforesaid issues/aspects have not been examined by the Departmental Authorities, we are inclined to restore

the issue to the Assessing Officer for de novo adjudication after due opportunity of being heard to the assessee and keeping in view our observations above as well as the ratio laid down in the decisions cited by the learned Authorised Representative. Grounds are allowed for statistical purposes.

9. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 29.06.2018

**Sd/-**  
**DR. A.L. SAINI**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 29.06.2018**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

(Sr. Private Secretary)  
ITAT, Mumbai