



ITA.No.3741/Mum/2017
HDFC Ergo General Insurance Co.Ltd.
Assessment Year-2012-13

आयकर अपीलीय अधिकरण "एच" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"H" BENCH, MUMBAI

श्री मनोज कुमार अग्रवाल, लेखा सदस्य एवं
श्री रविश सूद, न्यायिक सदस्य
के समक्ष।

BEFORE SHRI MANOJ KUMAR AGGARWAL, AM
AND
SHRI RAVISH SOOD, JM

आयकरअपीलसं./I.T.A. No.3741/Mum/2017
(निर्धारणवर्ष / Assessment Year: 2012-13)

Assistant Commissioner of Income Tax-1(1)(2) Room No.579 Aaykar Bhavan, M.K.Marg Mumbai-400 020	बनाम/ Vs.	HDFC Ergo General Insurance Co.Ltd. Ramon House, H.T.Parekh Marg 169, Backbay Reclamation Mumbai-400 020
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AABCH-0738-E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Madhur Agarwal, Ld. AR
Revenue by	:	Manoj Kumar Singh, Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	19/09/2018
घोषणा की तारीख / Date of Pronouncement	:	05/10/2018

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [AY] 2012-13 contest the order of Ld. Commissioner of Income-Tax (Appeals)-2 [CIT(A)], Mumbai, *Appeal No.CIT(A)-2/IT-267/2015-16 dated 15/02/2017* by raising the following grounds of appeal:-



ITA.No.3741/Mum/2017
HDFC Ergo General Insurance Co.Ltd.
Assessment Year-2012-13

1. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in holding that the amortized amount of the premium on investments amounting to Rs.1,43,76,113/- cannot be added back to the balance of the profits as there is no specific prohibition against the allowance of such expenditure under Sections 30 to 43B of the Income Tax Act, 1961 even though such expenditure is to be added back in terms of Clause 5(a) of the First Schedule of the Income tax Act, 1961?"
2. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in holding that the amortized amount of the premium on investments, which is not admissible under Sections 30 to 43B of the Income Tax Act and is required to be added back as per the provisions of Clause 5(a) of the First Schedule of the Income Tax Act, cannot be allowed to be added back to the balance of profits as there is no specific prohibition against the allowance of such expenditure under section 30 to 43B of the Income Tax Act, 1961?"

2.1 Briefly stated the assessee being *resident corporate entity* engaged in the business of *General Insurance* was assessed for impugned AY u/s 143(3) on 06/02/2016 by *Ld. Deputy Commissioner of Income Tax, Circle 1(1)(2)* wherein the returned loss of the assessee was reduced by Rs.143.76 Lacs on account of *Amortization of debt securities* as claimed by the assessee as an expenditure in the Profit & Loss Account. The profits and gains of the insurance business has been computed u/s 44 of the income Tax Act as per *Part-B - other insurance business* of the First Schedule of the Income Tax Act, 1961. The sole subject matter of this appeal is assessee's claim on account of *amortization of debt securities*.

2.2 Before Ld. AO, it was submitted that the *debt securities* are considered as *held to maturity* and are valued at historical cost subject to amortization. It was further explained that the securities were bought at a premium / discount on the basis of its *yield rate* as compared with *current market yield rate*. Where the yield was higher than the market yield, the security is quoted at premium and conversely, where the yield is lower than the market yield, the securities are quoted at a discount. The premium paid for the purchase of security over and above its face



value is paid in anticipation of the higher rate of interest that the company expects to earn *there-from* over the balance period, from the date of purchase of security to the date of its maturity. Since the interest earned from securities is credited to the Profit & Loss Account and offered for tax as revenue income in the year in which it is accrued / received, the premium paid for purchase of security needs to be spread evenly over its balance period to the date of maturity. In this background, it was explained that the amount of Rs.143.76 Lacs towards amortization of debt securities as claimed is the net amount i.e. difference between diminution in the value of investment and the appreciation in the value of investment during the impugned AY. The same was stated to be allowed in specific terms of Section 44 *read with First Schedule*. The attention was also drawn to the favorable decision of this Tribunal rendered in assessee's own case for AY 2007-08 which was rendered after considering the decision of the Tribunal rendered in *TATA AIG General Insurance Co. Ltd.* However, not convinced, Ld. AO disallowed the same treating the same as capital expenditure and reduced the loss of the assessee to that extent. The perusal of the quantum assessment order reveals that no discussion, whatsoever, has been made by Ld. AO as to the decision of the Tribunal rendered in assessee's own case for AY 2007-08.

3. Aggrieved, the assessee agitated the same with success before first appellate authority vide impugned order dated 15/02/2017 wherein Ld. CIT(A) concurred with the claim of the assessee by observing as under:-



ITA.No.3741/Mum/2017
HDFC Ergo General Insurance Co.Ltd.
Assessment Year-2012-13

4.2 The AO has added a sum of Rs.1,43,76,113/- under the head Amortization of Debts securities as discussed in para 4 of the assessment order dated 06.02.2016 treating it as capital expenditure. On the other hand, the AR of the appellant argues that the appellant company consistently has been following the accounting date from time to time and discounted purchase of Government securities there is an occasion the appellant gets more of discounted securities and premium securities which sometimes is less than the discounted securities. So that discounted securities are accepted as right one. The AO should have allowed for premium paid for the purchase of securities. So in this connection the appellant relied on the following jurisdictional decision in the case of Tata AIG General Insurance Co. Ltd. Vs ITO-2(3)(3) ITA No. 2597/Mum/2009 wherein it is held as under:

"It is common ground that there is no such specific prohibition against the allowance of the expenditure in the above sections of the Act. It may be noted that though rule 5(a) of the First Schedule considered by the Supreme Court in the above judgment was slightly different, but the words, "any expenditure or allowance which is not admissible under the provisions of sections 30 to 43A" were present and the same words being present in the amended sub-rule, they have to be given the same meaning as was given by the Supreme Court. Therefore, even if the debit for amortization is considered as an expenditure or allowance, there being no specific prohibition against the expenditure or allowance in sections 30 to 43B, the departmental authorities were not justified in adding back the amount to the balance of the profits. The judgment of the Supreme Court in the case of General Insurance Corporation of India (supra) takes care of all the arguments advances on behalf of the Revenue. We, therefore, delete the addition of Rs.1,91,33,945/- and allow the first ground."

Further the AR also relies on the appellant own case for AY 2007-08 passed by CIT(A)-4 vide order no. CIT(A)-4/IT-18/DCIT-1(1)/2012-13 dated 29.05.2013. The relevant part of the decision is as under:

"The facts of the case are similar to the case of the appellant for the assessee, therefore, respectfully following the decision of Hon'ble ITAT in the case of Tata AIG General Insurance Co. Ltd (supra) the addition is deleted. In result, the ground of appeal is allowed."

4.3 I have gone through the assessment order and submissions given by the AR. I am in agreement with the AR of the appellant that the amortization expenditure claimed by the appellant company is arising out of payment towards premium while purchasing Government securities. Similarly, the AR argues that the appellant company did receive sometimes discounted Government securities also. So accordingly considering the above judicial decision and facts of the case, I am of the opinion that this is an allowable expenditure. The AO is directed to delete the addition made. This ground of appeal is allowed.

Aggrieved as aforesaid, the revenue is in further appeal before us.

4. The Ld. Authorized Representative for Assessee, *Shri Madhur Agarwal*, at the outset, pointed that the issue stood squarely covered in



assessee's favor by the judgment of this Tribunal in assessee's own case for 2007-08 and therefore, the stand of Ld. CIT(A) require no interference. Per *Contra*, Ld. Departmental Representative [DR], *Shri Manoj Kumar Singh* placed reliance on the stand of Ld. AO and submitted that the issue has not attained finality yet. However, Ld. DR could neither distinguish factual matrix nor able to bring on record any binding judicial precedent to controvert the same.

5. We have carefully considered the same. It is admitted position that a view has already been taken by the Tribunal under identical facts & circumstances in assessee's own case for AY 2007-08, the operative portion of which is extracted as follows:-

3. Apropos Ground No.2, it was submitted that the issue is covered by the decision of Tribunal in the case of TATA AIG General Insurance Vs. ACIT, order dated 22/10/2010 in ITA No.2597/Mum/2009. (copy of order placed on our record and also given to Ld. DR.

3.1 According to facts of the present case, the assessee has amortized debit securities for Rs.3,27,69,854/- involving bonds/investments and debit securities and claimed as deduction in the return of income claiming that premium/discount relating to the securities is amortized over a period till the maturity. The AO did not agree and reject the claim of the assessee. Ld.CIT(A) has accepted the claim of the assessee on the basis of aforementioned decision of ITAT in the case of TATA AIG General Insurance vs. ACIT(supra) and referred to the following observations of the Tribunal:

"7. On a careful consideration of the facts and the rival contentions, we are of the view that the amortization claim cannot be considered as an expenditure or allowance within the meaning of rule 5(a) of the First Schedule. As held by the Supreme Court in the case of Indian Molasses Co. (Private) Ltd. vs. CIT, West Bengal (1959) 37 ITR 66 (SC), spending in the sense paying out or away of money is the primary meaning of expenditure. Expenditure is what is paid out or away and is something which is gone irretrievably. Expenditure, which is deductible for income tax purposes, is one which is towards a liability actually existing at the time, but the putting aside of money which may become expenditure on the happening of an event is not expenditure. If this meaning is to be given to the word "expenditure" occurring in rule 5(a), the amortization claim cannot be considered as expenditure and, therefore, cannot be added back to the balance of the profits. In General Insurance Corporation of India vs. CIT (1999) 240 1TR 139 (SC), the Supreme Court held that even if an item of debit is considered as an expenditure, it should



ITA.No.3741/Mum/2017
HDFC Ergo General Insurance Co.Ltd.
Assessment Year-2012-13

further be such an expenditure contemplated in sections 30 to 43A and, therefore, unless there was a specific prohibition for such an allowance, the departmental authorities would not be justified in adding back the amount under rule 5(a). Therefore, even if the debit for amortization is considered as an expenditure, there is no specific prohibition against allowing such an expenditure under the provisions of sections 30 to 43B. The words "expenditure or allowance Which is not admissible under the provisions of sections 30 to 43B" appearing in the subrule has been explained by the Supreme Court to mean that there should be a specific prohibition against the expenditure or allowance in which case alone the Assessing Officer can add back the same to the balance of profits. it is common ground that there is no such specific prohibition against the allowance of the expenditure in the above sections of the Act. it may be noted that though rule 5(a) of the First Schedule considered by the Supreme Court in the above judgment was slightly different, but the words "any expenditure or allowance which is not admissible under the provisions of sections 30 to 43A" were present and the same words being present in the amended sub-rule, they have to be given the same meaning as was given by the Supreme Court. Therefore, even if the debit for amortization is considered as an expenditure or allowance, there being no specific prohibition against the expenditure or allowance in sections 30 to 43B, the departmental authorities were not justified in adding back the amount to the balance of the profits. The judgment of the Supreme Court in the case of General insurance Corporation of India (supra) takes care of all the arguments advanced on behalf of the Revenue. We, therefore, delete the addition of Rs. 1,91,33,945/- and allow the first ground."

3.2 We have heard both the parties and their contentions have carefully been considered. Ld. DR did not dispute the contention of Ld.AR that the issue is covered by the aforementioned decision of Tribunal in the case of TATA AIG General Insurance vs. ACIT (supra). In this view of the situation, respectfully following the said decision, we hold that Ld. CIT(A) did not commit any error in accepting the claim of the assessee and this ground of the Revenue is dismissed.

The above decision of the Tribunal draws strength from the decision of the Tribunal rendered in *TATA AIG General Insurance Vs. ACIT*. The Ld. CIT(A), for the impugned AY, has also relied upon the same. Therefore, respectfully following the earlier view of the Tribunal, we confirm the stand of Ld. first appellate authority.

6. The appeal stand dismissed.

Order pronounced in the open court on 05th October, 2018.



ITA.No.3741/Mum/2017
HDFC Ergo General Insurance Co.Ltd.
Assessment Year-2012-13

Sd/-
(Ravish Sood)

न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated 05.10.2018
Sr.PS:-Thirumalesh

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai