

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'C' : NEW DELHI)**

**BEFORE HON'BLE VICE PRESIDENT, SHRI G.D. AGRAWAL  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.485/Del./2016  
(ASSESSMENT YEAR : 2011-12)**

DCIT, Circle 1, LTU, vs. The Oriental Insurance Co. Ltd.,  
New Delhi. A – 25/27, Asaf Ali Road,  
New Delhi – 110 002.

**(PAN : AA ACT0627R)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Tarandeep Singh, Advocate  
REVENUE BY : Shri Amit Katoch, Senior DR

Date of Hearing : 31.01.2019

Date of Order : 25.02.2019

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

The Appellant, DCIT, Circle 1, LTU, New Delhi (hereinafter referred to as the 'Revenue') by filing the present appeal sought to set aside the impugned order dated 16.11.2015 passed by the Commissioner of Income-tax (Appeals)-22, New Delhi qua the assessment year 2011-12 on the grounds inter alia that :-

*“1. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition on account of accrued interest on loans, debentures and bonds amounting to Rs.80,52,21,000/- made by the AO.*

*2. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting 50% disallowance of Rs.47,43,236/- on account of expenses incurred on Guest House repairing made by the AO.*

*3. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs.49,84,91,810/- u/s 14A of the Act, made by the AO.”*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee, a public sector undertaking of Government of India, is into the business of non-life insurance product offering insurance cover for large projects like power plants, petrochemical, steel and chemical plants as well as offering products like motor insurance policies, health and medi-claim/ overseas medi-claim, personal accident, etc. AO noticed that the assessee company has received an interest income of Rs.80,52,21,000/- which was recognised as income for the year under assessment. AO also noticed that in the preceding year, similar interest income of Rs.92,00,59,000/- was brought to tax. Declining the contentions raised by the assessee, AO proceeded to make addition of Rs.80,52,21,000/- on account of accrued interest on loans, debentures and bonds. AO made addition of Rs.47,43,236/- by disallowing 50% of the total expenditure of Rs.94,86,472/- claimed by the assessee being guest house expenditure on the ground that the assessee could not substantiate

that the expenditure was wholly and exclusively incurred for the purpose of maintenance of guest houses.

3. AO also made addition of Rs.49,84,91,810/- under section 14A of the Income-tax Act, 1961 (for short 'the Act') read with Rule 8D of the Income-tax Rules, 1962 (for short 'the Rules') rejecting the contentions raised by the assessee that it has not incurred any expenditure to earn the exempt income. AO thereby assessed the total income/loss of the assessee u/s 143 (3) of the Act at (-) Rs.1,12,37,16,049/- and (-) Rs.2,18,28,09,334/-.

4. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has deleted the additions made by the AO by partly allowing the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

#### **GROUND NO.1**

6. At the very outset, it is brought to our notice by the Id. AR for the assessee that this ground has already been decided in favour of the assessee in *AYs 2002-03 & 2004-05 in ITA No.3908 & 3909/Del/2007 order dated 29.05.2009, AY 2003-04 in ITA*

*No.2242/Del/2007, AY 2005-06 in ITA Nos.4786 & 4493/Del/2012 dated 21.11.2014*, which have been confirmed by the Hon'ble Delhi High Court.

7. Perusal of the *order dated 29.05.2009 passed by the coordinate Bench of the Tribunal in assessee's own case for AYs 2002-03 and 2004-05*, available at pages 41-49 of the paper book, goes to prove that this issue has already been decided in favour of the assessee by returning following findings :-

*“9. We have heard both the parties and gone through the material available on record. ITAT in order dated 27<sup>TH</sup> February, 2009 deleted the addition on the ground that income of insurance company is to be computed in accordance with the provisions of section 44 of the Act. The Bench while deleting the addition held as under :-*

*“17. We have heard rival submissions of the parties and have gone through the material available on record. Identical issue arose in assessee's own case for AY 1985-86. The Tribunal accepted the plea of the assessee and in fact the issue went up to the Hon'ble. Delhi High Court in AY 1986-87 to 1988-89, which is reported as 125 Taxman 1094 (Del.), decided the issue in favour of the assessee by holding that section 44 of the Act is a special provision dealing with the computation of profits and gifts of business of insurance. It being a non obstinate provision has to prevail over other provisions in the Act. It clearly provides that income from insurance business has to be computed in accordance with the rules contained in the First Schedule. It is not the case of the Revenue that the assessee has not computed the profits and gains of its insurance business in accordance with the said rules. Reliance was placed on the scope of section 44, as held in the case of General Insurance Corpn. of India Vs. CIT (1999) 240 ITR 139 (SC), wherein Their Lordships of the Apex Court have categorically held that the provision of section 44 being a special provision, govern computation of taxable income earned from business of insurance. It mandates the tax authorities to compute the taxable income in respect of insurance business in accordance*

*with the provisions of the First Schedule to the Act. In the light of these, their Lordships of Delhi High Court have held that no question of law, much less a substantial question of law survives for their consideration. In other words, order of the Tribunal has been affirmed. Following the same reasoning, addition made by the AO is deleted.”*

*10. Since the facts of the case before us are identical to the facts of the case for assessment years 2000-01 and 2001-01, we respectfully following the decision of the ITAT in assessee’s own case for assessment years 2000-1 and 2001-02, this issue is decided in favour of the assessee.”*

8. Hon’ble Delhi High Court has also decided the issue in question in assessee’s own for AYs 1986-87 & 1988-89 by returning following findings :-

*“8. We find substance in the contention of learned counsel for the assessee.*

*9. Section 44 of the Act is a special provision dealing with the computation of profits and gains of business of insurance. It being a non obstante provision, has to prevail over other provisions in the Act. It clearly provides that income from insurance business has to be computed in accordance with the rules contained in the First Schedule. It is not the case of the Revenue that the assessee has not computed the profits and gains of its Insurance business in accordance with the said rules. The scope of section 44 of the Act came up for consideration before the Supreme Court in General Insurance Corpn.’s case (supra), and their Lordships observed thus*

*“Section 44 of the Income-tax Act is a special provision governing computation of taxable income earned from business of insurance. It opens with a non obstante clause and thus has an overriding effect over other provisions contained in the Act. It mandates the assessing authorities to compute the taxable income for business of insurance in accordance with the provisions of the First Schedule. A plain reading of rule 5(a) of the First Schedule makes it clear that in order to attract the applicability of the said provision the amount should firstly be an expenditure or allowance. Secondly, it should be one not admissible under the provisions of sections 30*

*to 43A. If the amount is not an expenditure or allowance, the question of testing its eligibility for adjustment by reference to rule 5(a) of the First Schedule would not arise at all." (p.144)*

*10. In view of the said authoritative pronouncement, and in the absence of any finding by the Assessing Officer that the taxable income has not been computed in accordance with section 44 of the Act, no fault can be found with the view taken by the Tribunal. No question of law, much less a substantial question of law, survives for our consideration. Consequently, both the appeals are dismissed."*

9. So, following the decision rendered by the coordinate Bench of the Tribunal as well as Hon'ble High Court in the assessee's own case, as discussed in the preceding paras, we are of the considered view that the assessee company had rightly not recognised an amount of Rs.80,52,21,000/- as income for the years as per its accounting policy and as per policy issued by the Insurance Regulatory Development Authority (IRDA). So, finding no illegality or perversity in the findings returned by the Id. CIT (A), ground no.1 is determined against the Revenue.

### **GROUND NO.2**

10. The Id. CIT (A) deleted 50% of the disallowance of Rs.47,43,236/- made by the AO on account of expenses incurred on guest house repairing. Again, it is brought to our notice by the Id. AR for the assessee that this issue has already been decided in favour of the assessee by the coordinate Bench of the Tribunal

right from AYs 2001-02 to 2005-06. Coordinate Bench of the Tribunal in *AY 2005-06 determined this issue in favour of the assessee by following the order of AY 2000-01 and 2001-02 in assessee's own case* by returning following findings :-

*“10. The learned counsel for the assessee pointed out that in assessment year 1999-2000, the Tribunal vide order dated 25.7.2008 in ITA No.4565/ Delhi/2002 has accepted the assessee's contentions, A copy of the said order of the Tribunal is placed at pp, 78 to 82 of the paper book.*

*11. The learned Departmental Representative, on the other hand, strongly justified the order of the CIT(A), in the light of his discussion in the impugned order.*

*12. We have carefully considered; the rival contentions and gone through the records, The Tribunal in assessment year 1999-2000 has held that expenditure incurred for maintenance of the company's own guest houses is covered under section 30(a)(ii) of the Act. Therein the Tribunal accepted the plea of the assessee that in respect of the guest houses owned by the assessee, repair expenses will have to be allowed as deduction under section 30(O)(ii) of the Act. Once the expenditure is allowable under section 30(O)(ii), if the expenditure of incurred on repair and maintenance of guest house taken on lease should also be allowed. In the light of the aforesaid order of the Tribunal, we decide the matter, for the AYs in question, in favour of the assessee.”*

11. So, following the decision rendered by the coordinate Bench of the Tribunal, we are of the considered view that when the expenditure incurred by the assessee company for maintenance of company's own guest houses, the same is covered u/s 30(a)(ii) of the Act. The repair expenses thereof would also be allowed as deduction as section 30(a)(ii) of the Act. So, we find no ground to

interfere with the findings returned by the Id. CIT (A) and consequently ground no.2 is determined against the Revenue.

### **GROUND NO.3**

12. The Id. CIT (A) deleted the addition of Rs.49,84,92,820/- made by the AO by invoking the provisions contained u/s 14A read with Rule 9D by following the decision rendered by the coordinate Bench of the Tribunal in AYs 2001-02, 2002-03, 2003-04, 2004-05 and 2005-06. However, on the other hand, Id. DR for the Revenue filed the written submissions on this ground by relying upon the decision rendered by the *Hon'ble Apex Court in the case of Maxopp Investment Ltd. vs. CIT – (2018) 91 taxmann.com 154 (SC)* and contended that since *Maxopp Investment Ltd.* (supra) judgment was rendered by Hon'ble Supreme Court on February 12, 2018, the Tribunal was not having its benefit to rely upon.

13. The coordinate Bench of the Tribunal in AY 2005-06 decided this issue in favour of the assessee by relying upon the decision in AYs 2000-01 & 2001-02 by returning following findings :-

*“18. The next common dispute relates to the order of the CIT(A) in sustaining the action of AO in making (sic) allowing only 50 per cent of the management expenses by invoking the provisions of s. 14A of the Act. The addition is made by the AO on the plea that the provision of s. 14A was inserted by Finance Act, 2001 w.e.f. 1st April, 1962. It is stated that the investments made by the assessee are both taxable as well as tax-*

*free. An estimated disallowance of 50 per cent out of the management expenses incurred and as claimed in the P&L a/c is treated as expenses incurred in connection with the looking after tax-free investment.*

*19. The learned counsel for the assessee vehemently argued that the income of the assessee is to be computed under s. 44 r/w r. 5 of Sch. I of the IT Act. Sec. 44 is a non obstante clause and applies notwithstanding anything to the contrary contained within the provisions of the IT Act relating to computation of income chargeable under different heads, other than the income to be computed under the head "Profits and gains of business or profession". For computation of profits and gains of business or profession the mandate to the AO is to compute the said income in accordance with the provisions of ss. 28 to 43B of the Act. In the case of the computation of profits and gain of any business of insurance, the same shall be done in accordance with the rules prescribed in First Schedule of the Act, meaning thereby ss. 28 to 43B shall not apply. No other provision pertaining to computation of income will become relevant. According to the learned counsel, two presumptions that follow on a combined reading of ss. 14, 14A and 44 and r. 5 of the First Schedule are :*

- (a) That no head-wise bifurcation is called for. The income, inter alia, of the business of insurance is essentially to be at the amount of the balance of profits disclosed by the annual accounts as furnished to the Controller of Insurance under the Insurance Act, 1938. The said balance of profits is subject only to adjustments thereunder. The adjustments do not refer to disallowance under s. 14A of the Act.*
- (b) Profits and gains of business as referred to in (a) above have only to be computed in accordance with r. 5 of the First Schedule.*

*20. Sec. 44 creates a specific exception to the applicability of ss. 28 to 43B. Therefore, the purpose, object and purview of s. 14A has no applicability to the profits and gains of an insurance business.*

*21. The learned Departmental Representative strongly justified the action of the AO and that of the CIT(A) in the light of the clear provisions of s. 44A of the Act.*

*22. We have considered the rival contentions and gone through the records. The provisions of s. 44 read as under :*

*"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 s. 199 or in ss. 28 to 43B, 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."*

23. *The above provision makes it very clear that s. 44 applies notwithstanding anything to the contrary contained within the provisions of the IT Act relating to computation of income chargeable under different heads. We agree with the learned counsel that there is no requirement of head-wise bifurcation called for while computing the income under s. 44 of the Act in the case of an insurance company. The income of the business of insurance is essentially to be at the amount of the balance of profits disclosed by the annual accounts as furnished to the Controller of Insurance. The actual computation of profits and gains of insurance business will have to be computed in accordance with r. 5 of the First Schedule. In the light of these special provisions coupled with non obstante clause the AO is not permitted to travel beyond these provisions.*

24. *Sec. 14A contemplates an exception for deductions as allowable under the Act are those contained under ss. 28 to 43B of the Act. Sec. 44 creates special application of these provisions in the cases of insurance companies. We therefore, agree with the assessee and delete the disallowance made by the AO which is based on the application of s. 14A of the Act as according to us, it is not permissible to the AO to travel beyond s. 44 and First Schedule of the IT Act."*

14. Following the decision rendered by the coordinate Bench of the Tribunal, we are of the considered view that the argument addressed by the Id. DR for the Revenue by relying upon the decision rendered by Hon'ble Supreme Court in *Maxopp Investment Ltd.* (supra) are not sustainable because of the fact that in case of insurance company, the assessee in this case, the income

is to be computed as per provisions contained u/s 44 read with Rule 5 of First Schedule, coupled with non-obstante clause and in these circumstances, the AO is not empowered to travel beyond these provisions. Even otherwise, section 14A contemplates an exception for deduction as allowable under the Act are those contained under sections 228 to 438 of the Act and section 44 creates special application of these provisions in case of the insurance companies. The ld. AR for the assessee stated at Bar that the decision rendered by coordinate Bench of the Tribunal right from AYs 2000-01 to 2005-06 have not been challenged in the Hon'ble High Court. So, finding no illegality or perversity in the findings deletion made by the ld. CIT (A), ground no.3 is determined against the Revenue.

15. Resultantly, the appeal filed by the Revenue is dismissed.

**Order pronounced in open court on this 25<sup>th</sup> day of February, 2019.**

**Sd/-  
(G.D. AGRAWAL)  
VICE PRESIDENT**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 25<sup>th</sup> day of February, 2019  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-22, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.