

Rs.3,36,17,06,542/-. Assessment was completed by order dated 7.12.2010 u/s 143(3) by making certain additions like Rs.5,70,03,36,179/- on account of profit on sale/redemption of investment,. Rs.1,55,13,166/- by disallowing the expenses u/s 40(a)(ia) of the Act and also computing the income u/s 115JB of the Act.

3. In appeal, learned CIT(A) confirmed these additions and method of computation and allowed the appeal in part. Hence, the assessee is before us mainly challenging the addition of Rs.570,03,36,179/- on account of profit on sale/redemption of investments in view of CBDT Circular No.528 dated 16.12.1988, disallowance of expenses to the tune of Rs.1,55,13,166/- u/s 40(a)(ia) and the computation of income of the assessee u/s 115JB of the Act including the addition of Rs.5,38,40,920/- by invoking Section 14A read with Rule 8D of the Rules. Though the assessee preferred the appeal on as many as 8 grounds, at the time of arguments, assessee withdrew grounds Nos.2 and 2.2 and argued ground Nos. 1,3 & 4 while submitting that ground no.5 is only consequential in nature. So also ground No.6 in respect of interest . Ground Nos.7 & 8 are general in nature.

Ground No.1:

4. Learned AO made an addition of Rs.570,03,36,179/- on the profit realized by the assessee on the sale/redemption of investment and the learned CIT(A) following his order in assessee's case for the AY 2011-12 passed on 16.11.2005 in Appeal No.40/13-14/CIT(A)-22 dismissed this appeal.

5. Learned AR submitted that this ground is no longer res integra and the Hon'ble jurisdictional High Court in the case of the assessee reported in (2018) 407 ITR 658 (Del) decided this issue in favour of the assessee. We have gone through the order. Vide para 34, the Hon'ble High Court observed that the current clause (b) of Rule 5 of First Schedule of the Act was omitted by Finance Act, 1988 w.e.f. 1.4.1989 and re-inserted it by Finance Act (No.2) of 2009 w.e.f. 1.4.2011 and was re-substituted the same by Finance Act, 2011 w.e.f. 1.4.2011, and after noticing Circular No.528 in Para 45 of the order that for the period during which there was no rule 5(b), the profits on sale of investment were not taxable in the hands of the assessee. In view of the decision of the Hon'ble jurisdictional High Court, we are of the considered opinion that this issue is squarely covered and while respectfully following the same, we hold that the addition on account of sale or redemption of shares cannot be sustained. Ground Nos. 1 and 1.1 are answered in favour of the assessee.

Ground No.3:

6. This ground relates to the disallowance of expenses u/s 40a(ia) of the Act to the tune of Rs.1,55,13,166/-.

7. During the year the assessee has not deducted or short deducted the tax at source and the amount involving no deduction of tax till 31.3.2008 was added to the total or the tax has been deposited before filing of return. On a perusal of Annexure 'F' attached to Form 3CD, learned AO found that the assessee has not at all deducted tax or

deducted but not deposited within stipulated time in some cases, as such learned AO made an addition of Rs.1,01,98,334/-. However, learned AO on a reappraisal of the material available before him and looking at the breakup of the amount of Rs.4,01,14,419/- found that in respect of a sum of Rs.1,55,13,166/- there has been a tax deduction but full amount of deduction was not made.

8. Though the learned CIT(A) considered the submissions of the assessee that since it was only a case of short deduction but not a case of non deduction or not payment, the disallowance should not have been made but have confirmed the deduction on proportionate basis on the expenditure corresponding to short deduction only and directed the AO to recomputed the disallowance u/s 40(a)(ia) of the Act by substituting the disallowance with the figure of Rs.1,55,13,166/-.

9. Learned AR relied upon the decision of the Cochin Bench of the Tribunal in the case of Apollo Tyres vs DCIT (2013) 155 TTJ 470 where the Tribunal vide para 13 observed that Section 40(a)(ia) does not envisage a situation where there was short deduction or lesser deduction as in case of section 201(1A) of the Act and there is an obvious omission to include short deduction/lesser deduction in Section 40(a)(ia)of the Act and therefore, in cases of short or lesser deduction of the tax, the entire expenditure whose genuineness was not doubted by the AO, cannot be disallowed.

10. In view of the above settled position of law and while respectfully following the ratio laid down by the Cochin Bench of this

Tribunal, we find it difficult to sustain this addition and the same is accordingly directed to be deleted.

Ground Nos. 4 to 4.2

11. Now coming to Ground Nos. 4 to 4.2 which relates to the computation of income u/s 115JB of the Act, again the assessee placed reliance on the decision of the Hon'ble jurisdictional High Court in their own case reported in (2018) 407 ITR 658 (Del) wherein the Hon'ble jurisdictional High Court clearly held vide para 54 to 56 that Section 115JB of the Act has no application to insurance companies. On this aspect, the observations of the Hon'ble jurisdictional High Court are that from a reading of Section 44 read with the First Schedule of the Act, it is plainly clear that insurance companies are required to prepare accounts as per the IA and the regulations of the IRDA and not as per Parts II and III of Schedule VI of the Companies Act and the assessee prepares its accounts as per the IRDA principles, which regulations govern the preparation of the auditor's report. Hon'ble High Court, therefore, held that Section 115JB of the Act has no application to the insurance companies. In view of this decision of the Hon'ble jurisdictional High Court, while respectfully following the same, we answer Ground Nos.4 to 4.2 in favour of the assessee and against the revenue and consequently, also hold that ground nos. 5 & 5.1 are infructuous.

10. As already stated, ground nos.7 & 8 are general and do not require any adjudication.

11. In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 26th March, 2019.

Sd/-

**(G.D. AGARWAL)
VICE PRESIDENT**

sd/-

**(K. NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 26th March, 2019

VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
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