

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. H. S. Sidhu, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 2671/Del/2017 : Asstt. Year : 2006-07

Deputy Commissioner of Income Tax, Circle-1, LTU, Delhi	Vs	M/s The Oriental Insurance Co. Ltd., A-25/27, Asaf Ali Road, New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAAC0627R		

Assessee by : None

Revenue by : Sh. H. K. Chodhary, CIT DR

Date of Hearing: 06.01.2021

Date of Pronouncement: 13.01.2021

ORDER

Per Dr. B.R.R. Kumar, Accountant Member:

The present appeal has been filed by the revenue against the order of Id. CIT (A)-22, New Delhi dated 01.03.2017.

2. Following grounds have been raised by the revenue:

"1. On the facts and circumstances of the case and in law, Id. CIT (A) has erred in deleting disallowance of Rs.2,31,07,000/- made by the AO on account of investment written off.

2. On the facts and circumstances of the case and in law, Id. CIT (A) has erred in deleting the addition on account of accrued interest on loans, bonds and debentures amounting to Rs.15,55,75,000/- made by the AO.

3. On the facts and circumstances of the case and in law Id. CIT (A) has erred in deleting 50%

disallowance of Rs.9.90,688/- on account of expenses incurred on Guest House repairing made by the AO."

Addition on account of Investments written off :

3. On the issue of investments written off, the Id. CIT (A) has dealt this issue comprehensively which is as under:

"6. Section 44 of the Income Tax Act provides that the profits and gains of any business of insurance shall be computed in accordance with rules contained in the First Schedule. The rule 5 of the First Schedule provides that the profits and gains of any business of insurance, other than Life Insurance, shall be the profit before tax and appropriation as disclosed in the profit and loss account prepared in accordance with the provisions of Insurance Act, 1938 (4 of 1938) or the rules made thereunder or the provisions of the IRDA Act, 1999 (4 of 1999) or the regulations made thereunder. Further, the sub-clause 'a' 'b' & 'c' provide for certain adjustments, which can be made to such profit before tax and appropriation. Clause 'a' provides that any expenditure or allowance which is not admissible under the provisions section 30 to section 43 B in computing the profits and gains of business shall be added back. This means that any expenditure or allowance which is not allowable for computation of profit and gains as per section 29 will be added back as per First Schedule as well. The decision of the Apex Court reported in 291 ITR 370 in the case of Oriental Fire and General Insurance Co. Ltd., relied upon by the appellant, made a distinction between a provision and reserve by holding that the provision is a charge against profits and reserve is an appropriation of profit. The Hon'ble Court further held that every provision need not be in the nature of expenditure. This means that the Hon'ble Court did not hold that no provision would be in the nature of expenditure. Therefore, even after considering the decision of the Hon'ble Apex Court, those

provisions which are in the nature of expenditure or allowance and are not admissible, under the provisions of Act from the section 30 to section 43 B would be added back. As regards, the amendment made with effect from 01-04-1989, the said amendment only gives an inclusive definition and includes in the definition of 'expenditure or allowance' any amount debited to P&L account as 'provision for any tax', 'provisions for dividend', 'provision for reserve' or any other specified provision. This amendment nullifies the decision of the Apex Court (supra) regarding the 'provision for Income Tax' and distinction between "Provision" and "Reserve" debited to profit and loss account from assessment year 1989-90 onwards. The words 'any other provision as may be prescribed' does not apply to any provision which is in the nature of expenditure or allowance. The words 'any other provision as may be prescribed' is only in respect of those provisions which are not in the nature of expenditure or allowance. The amendment only brings certain provisions within the definition of expenditure or allowance, which otherwise were not so being crown's share (provision for tax) and appropriation of profit (provision for dividend and reserve). The decision of the Hon'ble Apex Court does not apply after AY 1989-90 in respect of these three provisions.

6.1 As per the clause 5(b) (i) any gain on realisation of investment is to be taxed and any loss on realisation of investment is to be deducted, if such gain or loss is not credited or debited to the P&L account. The clause 5b(ii) also provides that any provision for diminution in the value of investment shall be added back. This clause 5b (i) and 5b(ii) were inserted w.e.f. 01.04.2011. The corresponding clause did not exist from 01.04.1989 to 01.04.2011. Prior to 01.04.1989, the old clause 5b(i), provided for deduction of any amount written off or provided to meet diminution in or loss on realisation of

investments in accordance with regulations made by IRDA old clause 5b(ii) It also provided for an addition on account of appreciation or gains on realisation of investments in accordance with the regulations made by IRDA. Therefore, prior to 01.04.1989, the rule 5b(i) and 5b(ii) of First Schedule specifically provided for deduction of provision to meet diminution in the value of investments and taxing the appreciation of such investments. The said section was removed from 01.04.1989 to 01.04.2011. Therefore, it cannot be said that in the intervening period deduction of diminution in the value of investment was allowed. Ground no. 4 pertains to claim of investments written off. The Decision of Hon'ble ITAT dt. 29.09.2004, reported in 92 TTJ Del(300) is stated to be in favour of appellant on this issue. The said decision examined whether write off/write down of investments is an expenditure or allowance. The said decision is for AY 1990-91 i.e. after the amendment w.e.f. 01.04.1989. However, it allows a deduction which was specifically taken off the statute book for the period from 01.04.1989 to 01.04.2011. Even after 01.04.2011, deduction for diminution in the value of investment or write off of the same has not been allowed. Only loss on realization has been allowed. Therefore, the interpretation of Hon'ble ITAT is in conflict with the decision of the Hon'ble Apex Court in the case of Surat Art Silk cloth Manufactures Association, reported in 121 ITR 1, in the said decision the Hon'ble Apex Court (in para 12 of the order) held that any construction of statute which makes a provision superfluous and reduces it to silence cannot be accepted. The decision of Hon'ble ITAT reduces the legislative amendment w.e.f. 1989 superfluous and reduces it to silence.

6.2 *However, notwithstanding the discussion in para 6 and 6.1, the ground no. 4 of the appeal is to be allowed, in view of the decision*

of jurisdictional ITAT in the case of appellant, as far as write off of investment in concerned. If the Revenue wishes to contest this issue, it has to be done at the appropriate forum.

7. In view of the above ground No. 2, 2.1, 2.2, 2.3, 2.4 and ground No. 6 are dismissed." (dealing with the issue of investment written off)

4. In the earlier years, the matter further travelled to Hon'ble High Court of Delhi wherein the Hon'ble Court concurred with the view taken by the revenue. The Id. CIT DR explained in detail about the issue and the order of the Hon'ble Jurisdictional High Court.

5. The relevant part of the order of the Hon'ble High Court in case of the assessee reported in 407 ITR 658 is as under:

"On the disallowance of investments written off

50. The disallowance of the investments written off is the subject matter of the Revenue's ITA No. 448/2015. The ITAT has in the impugned order while setting aside the disallowance, followed its decision for AYs 2000-01 and 2001-02. The ITAT held that the guidelines issued by the GIC permitted insurance companies to book the loss in their accounts rather than waiting for the actual loss on the sale of investment. Since it represented a loss and not an expenditure or allowance, the AO was held to have erred in adding back the said loss in the computation of the Assessee's income. Reliance was placed on the decision in General Insurance Corporation of India v. CIT [1999] 240 ITR 139 (SC).

51. The contention of the Revenue is that contradictory pleas have been taken by the Assessee before the ITAT in the appeal for the AY 1990-91 where, on the issue of write off of investments, it was contended that since Rule 5(b) had been omitted, no exemption has been provided in respect of the profits earned and that since they were chargeable to tax, the losses, if any, were required to be allowed as a deduction.

52. In the written note of submissions filed on behalf of the Assessee, it is stated that: "When the petitioner is availing the non-taxation of its profits from sale of investments it is also not claiming the loss suffered on these investments. The AO has not only taxed the profits on sale of investment but has also disallowed the losses." (emphasis supplied) Therefore, even the Assessee acknowledges that if it succeeds, as it has, in its plea that the profit from sale/redemption of investments must be exempt from tax, then it cannot seek deduction as a result of losses on the write off of such investments.

53. Consequently the question framed in the Revenue's ITA No. 448/2015 is answered in the negative, i.e. in favour of the Revenue and against the Assessee.."

6. With the judgment of the Hon'ble Jurisdictional High Court, the issue has come to rest. The appeal of the revenue on this ground is allowed.

Addition on account of accrued interest on loans, bonds and debentures:

7. Brief facts of the case are that the assessee is a public sector undertaking of Government of India, conducting the business of non-life insurance for large projects, motor car, health, medi-claim and for other products and establishments. During the year, the company has received an interest income of Rs.15,55,75,000/- which the Assessing Officer brought to tax on the grounds that the interest is accruing to it every year on debentures, loans and bonds has been provided for. The matter has reached to the level of Tribunal on the earlier years from 2002 onwards wherein the matter from 2002-03, 2004-05, 2007-08, 2008-09 and 2011-12 has been deleted the addition continuously.

8. We have perused the various orders passed by the coordinate Benches of the Tribunal in assessee's own case for

AYs 2002-03 to 2010-11, which goes to prove that this issue has already been decided in favour of the assessee by returning following findings:- (reproduced for the sake of ready reference from the order in ITA No. 4818/Del/2016 Asstt. Year 2010-11 dated 22.10.2019)

"9. We have heard both the parties and gone through the material available on record. ITAT in order dated 27TH 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 Assessing Officer is deleted."

5. *Since the facts of the case before us are identical to the facts of the case for the earlier assessment years, we respectfully following the decision of the ITAT in assessee's own case for earlier assessment years, this issue is being decided in favour of the assessee.*

6. *The 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, respectfully 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.92,00,59,000/- 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."

9. During the year, the amount involved was Rs.15,55,75,000/-. The Id. CIT DR vehemently argued based on the orders of the Assessing Officer and argued that interest accrued on loans cannot be given a different treatment for the purpose of taxation when the amount is received was a part of business income for the assessee company.

10. We have gone through the record before us and find that the matter has also been adjudicated by the ITAT for several prior years and by the Hon'ble Jurisdictional High Court also. Since, we find no material change in

the facts of the case and the interpretation of the law laid down, we decline to interfere with the order of the Id. CIT (A).

Addition on account Guest House:

11. The Id. CIT (A) deleted 50% of the disallowance of Rs.9,90,688/- made by the AO on account of expenses incurred on guest house. 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. The matter also stands adjudicated by the ITAT in ITA No.4818/Del/2016 for the assessment year 2010-11. 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(a)(ii) of the Act. Once the expenditure is allowable under section 30(a)(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."

12. Hence, 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) of the Act and hence, we decline to interfere with the order of the Id. CIT (A).

13. In the result, the appeal of the revenue is partly allowed.

Order Pronounced in the Open Court on 13/01/2021.

Sd/-

(H. S. Sidhu)
Judicial Member

Dated: 13/01/2021

Subodh

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR