

आयकर अपीलीय अधिकरण
कोलकाता 'ए' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)
एवं
डॉ. मनीष बोरड, लेखा सदस्य
के समक्ष

Before

**SRI RAJPAL YADAV, VICE PRESIDENT
&
DR. MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A. No.: 498/KOL/2020
Assessment Year: 2016-17**

ACIT, Cir-6(2), Kolkata.....Appellant

Vs.

***M/s. National Insurance Co. Ltd.....Respondent
[PAN: AAACN 9967 E]***

Appearances by:

Sh. Subhrajyoti Bhattacharjee, CIT(D/R), appeared on behalf of the Revenue.

Sh. S. Bhattacharya, A/R, appeared on behalf of the Assessee.

Date of concluding the hearing : January 30th, 2023

Date of pronouncing the order : April 24th, 2023

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the Revenue pertaining to the Assessment Year (in short "AY") 2016-17 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income Tax (Appeal)-2, Kolkata [in

short “ld. CIT(A)”] dated 02.12.2019 arising out of the Assessment Order framed u/s 143(3) of the Act dated 19.12.2018.

2. Registry has informed that the appeal filed by the Revenue is time barred by 188 days. Condonation application has been filed by the Revenue dated 09.09.2020 stating as follows:

“Sub: Affidavit for Condonation of delay for filing 2nd appeal in the case of M/s National Insurance Co. Ltd. (PAN: AAACN9967E) for the AY 2016-17 - matter reg.-

<u>Dates</u>	<u>Events/Reasons</u>
05.03.2020	Due date for filing of appeal
05.03.2020 to 25.08.2020	Waiting for certificate for filing of 2 nd appeal
26.08.2020	Receipt of Certificate for filing 2 nd appeal
26.08.2020 to 09.09.2020	Necessary documents / papers / details along with petition for condonation of delay required for filing 2 nd appeal before Hon'ble ITAT being collected and prepared.
09.09.2020	2 nd appeal filed

Therefore, it is requested to kindly condone the delay in filing appeal for the sake of substantial justice.”

2.1. Considering the condonation application and the reasons stated therein, we are satisfied that the Revenue was prevented for reasonable cause from filing the instant appeal within statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication on merits.

3. Brief facts of the case as culled out from the records are that the assessee is a limited company engaged in the insurance

business. Loss of Rs. 5,06,84,425/- declared in the return for AY 2016-17 filed on 28.09.2016. Case selected for scrutiny through CASS followed by serving of notices u/s 143(2) & 142(1) of the Act. Ld. AO called for various details through letters sent through ITBA portal dated 05.11.2018 which was duly complied and after considering the written submissions filed by the assessee certain additions were made and book profit assessed at Rs. 385,22,65,093/- in the following manner:

	<i>Profit as per P & L A/c</i>		Rs. 150,49,92,000/-
Add:	<i>Reserve for unexpired Risk</i>	Rs. 381,77,12,000/-	
Add:	<i>U/s 14A</i>	Rs. 65,88,50,000/-	
Add:	<i>Provision for Bad debt & Diminution in value of Investment</i>	Rs. 11,73,20,000/-	459,38,82,000/-
			Rs.609,88,74,000/-
Less:	<i>Dividend income</i>	Rs. 2221890071/-	
Less:	<i>Interest income</i>	Rs. 247,18,836/-	RS.224.66.08.907/J
	<i>Adjusted Book Profit</i>		Rs, 385,22,65,093/-

4. Aggrieved, the assessee preferred appeal before ld. CIT(A) and filed various details and also referred to the orders of this Tribunal in assessee's own case for the preceding year and succeeded on most of the issues.

5. Aggrieved, the Revenue is now in appeal before this Tribunal. Raising the following grounds of appeal:

"1. "Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in directing that a sum of Rs.21,85,000/-, being disallowance of written off depreciated investments, be deleted following the decision of CIT(Appeals) given in respect of AY 2007-08, 2008-09 & 2010-11."

2. "Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in directing that a sum of Rs. 1,28,74,000/-, being amortization of premium paid on investments, should be allowed.

3. "Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in giving direction to the AO to re-compute the disallowance u/s 14A r.w. Rule 8D of the I.T Act, 1961 made by AO."

4. "Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the fact as stated in CBDT's Circular No. 05/2014."

5. "Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in holding that a sum of Rs.381,77,12,000/- being the reserve created for unexpired risk should not be considered while computing the Book Profit u/s 115JB of the I.T. Act."

6. "Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in holding that disallowance u/s 14A amounting to Rs. 65,88,50,000/- should not be added to the total income while computing book profit of the assessee."

7. "Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in holding that a sum of Rs. 11,73,20,000/- being the provision for Bad Debts, should not be considered while computing the Book Profit u/s 115JB of the I.T. Act."

8. That the appellant craves for leave to add, delete amend or modify any ground before or at the time of appellate proceedings."

6. At the outset, ld. Counsel for the assessee submitted that most of the issues raised in the instant appeal have been decided in favour of the assessee by the Hon'ble Tribunal in assessee's own case for AY 2014-15 & AY 2016-17 vide ITA No. 1876/KOL/2017 & ITA No. 1030/KOL/2018. Reference was also made to the following decisions:

Sl. No.	Particulars
1.	Copy of Order dated 29/08/2019 passed by the Hon'ble Calcutta High Court for the Assessment Years 2007-08 and 2010-11 in respect of the appellant.
2.	Copy of Order dated 20/08/2019 passed by the Hon'ble Calcutta High Court for the Assessment Year 2007-08 in respect of the appellant.
3.	Copy of the Order dated 11/12/2019 passed by the Hon'ble Income-tax Appellate Tribunal, 'A' Bench, Kolkata for the Assessment Year 2015-16 in respect of the appellant.

7. On the other hand, ld. D/R though supported the order of ld. AO but failed to controvert the submissions made by ld. Counsel for the assessee that the issues raised in the instant appeal have been decided in favour of the assessee by this Tribunal for preceding assessment years.

8. We have heard rival contentions and perused the records placed before us and carefully gone through the decisions referred by ld. Counsel for the assessee. The Revenue has challenged the finding of ld. CIT(A) allowing the grounds raised by the assessee and the same are now being raised by the Revenue and are decided accordingly.

9. Ground no. 1 relates to the disallowance of written off of depreciated investments. We find that this issue has been dealt by this Tribunal for AY 2015-16 in ITA No. 1030/KOL/2018 dated 11.12.2019 and the finding of this Tribunal reads as follows:

“4. We have heard the arguments of both the sides and also perused the relevant material available on record. As agreed by the learned representatives of both the sides, the issue involved in Ground No. 1 is squarely covered in favour of the assessee by the decision rendered by this Tribunal in assessee’s own case for A.Ys. 2005-06, 2007-08 and 2008-09 vide its common order dated 05.08.2016 passed in ITA Nos. 674, 982 & 983/Kol/2012, wherein a similar issue was decided by the Tribunal vide paragraph no. 9 of its order as under:

“9. Disallowance of Investments written off

The brief facts of this issue is that the assessee wrote off Rs.4,22,26,000/- out of Investments by charging the said sum to its Profit & Loss Account. The ld AO held that the above-mentioned write off could allegedly not be allowed as admissible deduction and he ITA Nos. 674-982-983/Kol/2012 National Insurance Co. Ltd., AYs 2005-06,2007-08 &2008-09 disallowed Rs.4,22,26,000/-. The assessee submitted that the sum of Rs.4,22,26,000/-which had been debited to the Profit & Loss Account had represented the amount of investment

written off and the sum was neither an expenditure nor an allowance. Since the aforesaid sum had not been of the nature of any expenditure or allowance, the same could not be added back as per the provisions of section 44 read with Rule 5 of the First Schedule to the Income tax Act, 1961. The assessee also submits that the ld AO had the power to add back only that expenditure or allowance or a provision which was not admissible under the provisions of sections 30 to 43B. The appellant had brought to the attention of the ld AO of the facts and the decision of the Hon'ble Supreme Court reported in 240 ITR 139 (SC). However, while making the assessment the ld AO had not considered the assessee's reference made to the decision of the Hon'ble Supreme Court as reported in 240 ITR 139 (SC) and he disallowed the sum of Rs.4,22,26,000/-. The assessee further submitted that as per the facts and the decision of the Hon'ble Supreme Court in the case of CIT v. Oriental Fire & General Insurance Co. Ltd. [2007] 291 ITR 371(SC), any amount having been written off, cannot be considered as an expenditure or allowance which could be added back as per the provisions of section 44 read with Rule 5 of the First Schedule.

Without prejudice to the submission made hereinabove, the assessee submitted that as per the provisions of section 44 read with Rule 5 of the First Schedule all the incomes of the assessee were to be considered as assessable under the head "Profits and gains of business or profession ". As per the relevant provisions of the Act, there is no provision for assessment of any income of the assessee under any head other than under the head "Profits and gains of business or profession ". Hence, all the assets of the assessee were to be considered as assets utilised for the assessee's business. Though in the Balance Sheet some of the assets are being shown under the head "Investments ", still those are also to be considered as business or trading assets of the assessee. Any writing off of Investments which have been considered as bad, should be treated as writing off of Bad Debts. Hence, the assessee submitted that writing off of Investments should have been considered by the ld AO as writing off of Bad Debts which were allowable u/s. 36(1)(vii). The ld AO should have appreciated that income from those investments had always been shown under the head "Business income" and, therefore, the requirement of section 36(2) should have been considered as having been fulfilled by the assessee. The assessee further submitted that in respect of the Assessment Year 2002-03 (Ground No. 1) the ld CIT(A) vide his Appellate ITA Nos. 674-982-983/Kol/2012 National Insurance Co. Ltd., AYs 2005-06,2007-08

&2008-09 order dated 24-01-2007 (Paragraph No. 7) deleted the disallowance in respect of the Bad Debts being Investment Written Off On the basis of the above facts, the above-referred two decisions of the Hon'ble Supreme Court as well as the Appellate decision in the assessee's own assessment for the Assessment Year 2002-03, as referred to above, the assessee submitted that the disallowance of Rs. 4,22,26,000/- in respect of Investments Written off, may kindly be deleted.

It was also submitted that the ld CITA had deleted the disallowances on Investments written off for the Asst Years 2000-01 , 2002-03 and 2004-05 vide orders dated 30.1.2009 , 24.1.2007 and 15.6.2009 respectively. The ld CITA deleted the disallowance made by the ld AO. Aggrieved, the revenue is in appeal before us on the following ground:-

"3. The CIT(A) erred on the facts of the case and in law in holding that a sum of Rs. 4,22,26,000/- being the investments written off is an allowable deduction."

9.1. The ld DR vehemently relied on the order of the ld AO. In response to this, the ld AR vehemently relied on the order of the ld CITA.

9.2. We have heard the rival submissions and perused the materials available on record. We find that the ld CITA had deleted the disallowance by observing as under:-

"23. I have carefully considered the observations of the Assessing Officer in the assessment order and submissions of the appellant and both the decisions referred to above of Hon'ble Supreme Court and the copies of the Appellate Orders for the Assessment Years 2000-01, 2002-03 and 2004-05 of the CIT(A)-VI, Kolkata. The Authorised Representative further submitted that the transactions in investments being a part of business of the assessee, the writing off of investments should be considered as deductible for the purpose of computing the business income of assessee. Since the assessee has been carrying on the General Insurance business and consequently its assessment is required to be made in accordance with the provisions of section 44 read with the Rule 5 of the First Schedule to the Income-tax Act, 1961, the Assessing Officer is empowered to make additions/ disallowances only in accordance with the above-mentioned Rule 5. Any sum which has been written off cannot be considered as either "expense" or "allowance" or "provision".

24. It is observed that in the above-referred Rule 5 of the First Schedule it has been mentioned that certain expenditure or allowance

or provision can be added back only if the same is not admissible under sections 30 to 438 of the Act and there is no specific mentioning of adding back of any amount written off out of investments. From the above-referred Supreme Court decisions it is clear that if the particular item of dispute (debit entry made in the Profit & Loss Account) falls under the category of "expenditure" or "allowance" or "provision", and the same is not admissible under the Act, only then the concerned item can be added back in computing the income from general insurance business. From the above facts it appears that the disallowance of the writing off of investments, made by the Assessing Officer is not in accordance with the prescribed specific procedure in the appellant's case.

25. Respectfully following the above-referred two Supreme Court decisions, submissions of the appellant and the Appellate Orders for the Assessment Years 2000-01, 2002-03 and 2004-05 ITA Nos. 674-982-983/Kol/2012 National Insurance Co. Ltd., AYs 2005-06, 2007-08 & 2008-09 of the CIT(A)-VI, Kolkata and in the facts and circumstances of the case as mentioned hereinabove, it is held that because of the restrictions contained in section 44 read with Rule 5 of the First Schedule, there could not be any disallowance of the amount written off out of investments and, accordingly, the disallowance of Rs.4,22,26,000/- is deleted. Hence, Ground No.5 is allowed."

We find that the revenue was not able to controvert the detailed findings of the Id CITA before us. Hence we find no infirmity in the order of the Id CITA in this regard. Accordingly, the Ground No. 3 raised by the revenue for the Asst Years 2007-08 and 2008-09 are dismissed. The decision taken in Asst Year 2007-08 with regard to this ground would apply with equal force to Asst Year 2008-09 as similar disallowance was made in Asst Year 2008-09 except with variance in figures."

The aforesaid decision rendered by the Tribunal for A.Ys. 2005-06, 2007-08 and 2008-09 vide a common order dated 05.08.2016 has been subsequently followed by the Tribunal to decide a similar issue involved in assessee's own case for A.Y. 2014-15 vide its order dated May 29, 2019 in ITA No. 1876/Kol/2017. As the issue involved in the year under consideration as well as all the material facts relevant thereto are similar to that of A.Ys. 2005-06, 2007-08 & 2008-09 and 2014-15, we respectfully follow the orders of the Tribunal for the said years and uphold the impugned order of the Ld. CIT(A) giving relief to the assessee on this issue. Ground No. 1 of the Revenue's appeal is accordingly dismissed."

9.1. As the issue involved in the year under consideration is similar to the issue raised for AY 2015-16, we, therefore, respectfully following the order of this Tribunal confirm the finding of Id. CIT(A) giving relief to the assessee. Ground no. 1 raised by the Revenue is dismissed.

10. Ground no. 2 relates to the amortization of premium paid on investments at Rs. 1,28,74,000/-. We find that this issue has been dealt by this Tribunal for AY 2015-16 in ITA No. 1030/KOL/2018 dated 11.12.2019 and the finding of this Tribunal reads as follows:

“5. As regards the issue involved in Ground No. 2 relating to the deletion by the Ld. CIT(A) of the disallowance of Rs. 5,89,11,000/- made by the Assessing Officer on account of amortization of premium paid on investments, the learned representatives of both the sides have agreed that this issue is also squarely covered in favour of the assessee by the order of the Tribunal dated 05.08.2016 (supra), wherein a similar issue was decided by the Tribunal vide its paragraph no. 8 of its order as under:

“8. Disallowance of Amortisation of Premium paid on Purchase of Investments

The brief facts of this issue is that the assessee claimed Rs. 6,02,18,000/- towards amortization of premium paid on investments. Without assigning any reason, the ld AO stated in his order that the said claim of amortization could allegedly not be allowed as admissible deduction and accordingly disallowed the same. The assessee submitted that it has been carrying on the business of insurance other than life insurance and accordingly its income tax assessments were required to be made in accordance with the provisions of section 44 read with Rule 5 of the First Schedule to the Income Tax Act. According to the aforesaid provisions, the profits and gains of the insurance business other than life insurance shall be taken to be the balance of profits disclosed by the Profit & Loss Account copy of which are required under the Insurance Act, 1938 to be furnished to the Comptroller of Insurance subject to the following adjustments:-

a) Any expenditure or allowance which is not admissible under the provisions of section 30 to 43B shall be added back.

b) Amount carried over to a reserve for any unexpired risks as prescribed in this behalf shall be allowed as a deduction.

The assessee also submitted that the Hon'ble Supreme Court in the case of *General Insurance Corporation of India vs CIT* reported in (1999) 240 ITR 139 (SC) had held that the Assessing Officer had no general power to make any adjustment in the accounts of a general insurance company. The assessee also submitted that the Hon'ble Supreme Court in the case of *CIT vs Oriental Fire & General Insurance Co Ltd* reported in (2007) 291 ITR ITA Nos. 674-982-983/Kol/2012 National Insurance Co. Ltd., AYs 2005-06,200708 &2008-09 370 (SC) had held that provisions made towards income tax and bad and doubtful debts, not being of the nature of expenditure, could not be added back by the Assessing Officer while computing the business income of an assessee carrying on general insurance business covered u/s 44 of the Income Tax Act. The assessee further submitted that as per the above referred section 44 of the Income Tax Act, all classes of income of the assessee are required to be assessed under the head 'Profits and Gains of Business or Profession'. Hence the Assessing Officer should have appreciated that all expenses and/ or adjustments made in the assessee's accounts were to be considered as having direct nexus to the assessee's business of insurance. The assessee further submitted that since there does not exist any specific provision in the Act for disallowance of premium paid on investments, the ld AO should not have made the disallowance of Rs. 6,02,18,000/- as per Rule 5 of the 1st Schedule to the Income Tax Act, 1961. Accordingly, the assessee submitted that the ld AO should have held that premium paid on investments by the assessee could not be disallowed and his action in making the disallowance should be considered as unjustified. It was also submitted that the transactions in investments being a part of the business of the assessee, the amortization of premium paid on investments should be considered as deductible for the purpose of computing the business income of the assessee. It was submitted further that this was the first year in which such disallowance has been made. The assessee buys the Government Securities on Premium. The premium amount is amortised and is being charged to profit & loss account on pro rata basis depending on the number of years when the securities will be paid back. The purchasing of the securities at premium is compulsory as per the guidelines of the Government of India and there is no choice

with assessee for not to buy the same. The assessee distributes the premium paid over a period of holding rather than debiting the same in the year of purchase which will give a distorted look to the Profit & Loss Account and will not be reflecting the true and fair view of the company as per the assessee.

It was further submitted that since the assessee has been carrying on the General Insurance business and consequently its assessment is required to be made in accordance with the provisions of section 44 read with Rule 5 of First Schedule to the Income Tax Act, 1961, the ld AO is empowered to make additions/disallowances only in accordance with the above mentioned Rule 5. Any sum which has been amortised cannot be considered as either 'expense' or 'allowance' or 'provision'. It was submitted that in the above referred Rule 5ITA Nos. 674-982-983/Kol/2012 National Insurance Co. Ltd., AYs 2005-06,2007-08 &2008-09 of the First Schedule, it has been mentioned that certain expenditure or allowance or provision can be added back only if the same is not admissible u/s 30 to 43B of the Act and there is no specific mentioning of adding back of any amount amortised in relation to premium paid on investments. From the above referred Supreme Court decisions, it is clear that if the particular item of dispute (debit entry made in the profit and loss account) falls under the category of 'expenditure' or 'allowance' or 'provision' and the same is not admissible under the Act, only then the concerned item can be added back in computing the income from general insurance business. From the above facts, it is clear that the disallowance of amortised premium paid on investments made by the ld AO is not in accordance with the prescribed specific procedure in the assessee's case. The ld CITA duly appreciated the contentions of the assessee and by following the ratio decidendi of the two Supreme Court decisions supra, deleted the disallowance of Rs. 6,02,18,000/- made by the ld AO. Aggrieved, the revenue is in appeal before us on the following ground:-

"2. The CIT(A) erred on the facts of the case and in law in holding that a sum of Rs.6,02,18,000/- being amortization of premium paid on purchase of investments is an allowable deduction while computing the income."

8.1. The ld DR vehemently relied on the order of the ld AO. In response to this, the ld AR vehemently relied on the order of the ld CITA.

8.2. We have heard the rival submissions and perused the materials available on record. We find that the revenue was not able to

controvert the detailed findings of the ld CITA before us. We also find that the ld CITA had granted relief to the assessee after elaborately discussing the facts of the case and by placing reliance on the two supreme court judgments supra. Respectfully following the same, we find no infirmity in the order of the ld CITA in this regard. Accordingly, the Ground No. 2 raised by the revenue for the Asst Years 2007- 08 and 2008-09 are dismissed. The decision taken in Asst Year 2007-08 with regard to this ground would apply with equal force to Asst Year 2008-09 as similar disallowance was made in Asst Year 2008-09 except with variance in figures.

The aforesaid decision rendered by the Tribunal for A.Ys. 2005-06, 2007-08 and 2008-09 vide a common order dated 05.08.2016 has been subsequently followed by the Tribunal to decide a similar issue involved in assessee's case for A.Y. 2014-15 vide its order dated May 29, 2019 in ITA No. 1876/Kol/2017. As the issue involved in the year under consideration as well as all the material facts relevant thereto are similar to that of A.Ys. 2005-06, 2007-08 & 2008-09 and 2014-15, we respectfully follow the orders of the Tribunal for the said years and uphold the impugned orders of the Ld. CIT(A) giving relief to the assessee on this issue. Ground No. 2 of the Revenue's appeal is accordingly dismissed."

10.1.As the issue involved in the year under consideration is similar to the issue raised for AY 2015-16, we, therefore, respectfully following the order of this Tribunal confirm the finding of ld. CIT(A) giving relief to the assessee. Ground no. 2 raised by the Revenue is dismissed.

11. Ground nos. 3 & 4 relate to the computation of disallowance u/s 14A of the Act read with Rule 8D of the Income Tax Rules, 1962. We find that this issue has been dealt by this Tribunal for AY 2014-15 in ITA No. 1876/KOL/2017 dated 29.05.2019 and the finding of this Tribunal reads as follows:

"4. As regards the issue involved in Ground No. 3 relating to the direction given by the ld. CIT(Appeals) to the Assessing Officer to recompute the disallowance under section 14A read with Rule 8D as per the judicial pronouncement of ITAT, Kolkata, it is observed that

the assessee during the year under consideration had received income of Rs.930.09 crores, which was exempt from tax. During the course of assessment proceedings, it was noticed by the Assessing Officer that the average investment made by the assessee during the year under consideration in the corresponding investment was Rs.10,709.96 crores. According to the Assessing Officer, disallowance under section 14A read with Rule 8D thus was required to be made to the extent of Rs.53,44,98,000/- being 0.5% of such average investment. In this regard, it was submitted by the assessee before the Assessing Officer that even though disallowance of Rs.16,40,60,000/- was made in the computation of total income under section 14A, the actual expenditure incurred in relation to the exempt income was only Rs.8,21,40,421/-. It was also submitted by the assessee that the average investment as worked out by the Assessing Officer was based on re-valued investment as appearing in the balance-sheet and not on the actual investment. These submissions of the assessee were not found acceptable by the Assessing Officer and he proceeded to make a disallowance of Rs.37,14,38,000/- (Rs.53,54,98,000/- minus Rs.16,40,60,000/-) under section 14A read with Rule 8D. The disallowance of Rs.37,14,38,000/- made by the Assessing Officer under section 14A read with Rule 8D while computing the total income of the assessee as per the normal provisions of the Act was challenged in the appeal filed by the assessee before the ld. CIT(Appeals) and by relying, inter alia, on the decision of the Tribunal in the case of REI Agro Limited - vs.- DCIT [144 ITD 141], the ld. CIT(Appeals) directed the Assessing Officer to re-compute the disallowance by taking into consideration the value of only those shares, which had yielded dividend income to the assessee during the year under consideration. Since the decision of the Tribunal in the case of REI Agro Limited (supra) has been upheld by the Hon'ble Calcutta High Court and there is no other decision of the Hon'ble Jurisdictional High Court or the Hon'ble Supreme Court cited by the ld. D.R. taking a contrary view, we uphold the impugned order of the ld. CIT(Appeals) giving relief to the assessee on this issue and dismiss Ground No. 3 of the Revenue's appeal."

11.1.As the issue involved in the year under consideration is similar to the issue raised for AY 2014-15, we, respectfully following the order of this Tribunal confirm the finding of ld. CIT(A) giving relief to the assessee. Ground nos. 3 & 4 raised by the Revenue are dismissed.

12. Ground no. 5 relates to the consideration of reserve created for unexpired risk at Rs. 381.77 Cr for the purpose of computing book profit u/s 115JB of the Act. We find that this issue has been dealt by this Tribunal for AY 2015-16 in ITA No. 1030/KOL/2018 dated 11.12.2019 and the finding of this Tribunal reads as follows:

“6. As regards the issue involved in Ground No. 3 relating to the deletion by the Ld. CIT(A) of the addition of Rs. 488,59,39,000/- made by the Assessing Officer towards reserve created for unexpired risk while computing the book profit of the assessee company u/s 115JB of the Act, the learned representatives of both the sides agreed that this issue is also squarely covered in favour of the assessee by the order of the Tribunal dated 05.08.2016, wherein a similar issue as involved for A.Ys. 2005-06, 2007-08 and 2008-09 was decided by the Tribunal vide paragraph no. 11 of its order as under:

“11. Addition towards Reserve created for Unexpired risk u/s 115JB of the Act

The brief facts of this issue is that while computing the Book Profit u/s. 115JB of the Act for the purpose of MAT, the ld AO considered a sum of Rs.169,45,00,000/- being the Reserve for Unexpired Risk created as per the requirement of law, as allegedly required to be added back. The ld AO added back the aforesaid sum of Rs.169,45,00,000/- in computing the Book profit. The assessee submitted that as per the Insurance Act, 1938, in case of an Insurance Company carrying on General Insurance business, Premium is recognised as income over the contract period or the period of risk, whichever is appropriate. Premium received in advance which represents Premium Income not relating to that particular accounting period in which the said Premium has been received, is separately ITA Nos. 674-982-983/Kol/2012 National Insurance Co. Ltd., AYs 2005-06,2007-08 &2008-09 disclosed in the Financial Statements of an Insurance Company. That part of income which is attributable to the succeeding accounting period or periods is reduced from the total Premiums received during an accounting period by way of creation of a Reserve for Unexpired Risk in accordance with Section 64V(l)(ii)(b) of the Insurance Act, 1938. The aforesaid Reserve is to be created for a minimum amount as prescribed under the above mentioned section. Appreciating the special nature of the Insurance Business, the Law makers prescribed special procedure for Computation of Total Income

of an Insurance Company carrying on Business of Insurance other than Life Insurance which are to be found in Rule 5 of the First Schedule to the Income-tax Act, 1961 read with Rule 6E of the Income-tax Rules, 1962. This particular procedure has to be mandatorily complied with in making the assessment for Income-tax purposes.

Every year adjustments are made to the existing Reserve for Unexpired Risk by way of crediting or debiting by the amount of difference between the Reserve created in the immediate preceding year and the Reserve required to be credited during the current accounting year. This cannot be considered as any alleged "Amount carried to any Reserve" debited to the Profit & Loss Account, but it should be appreciated that this Reserve represents that part of Premium Income which does not relate to the current accounting period. It must be appreciated that as per the Mercantile System of accounting, it is only that Income/Expenditure which relate to the current accounting period, should find places in 'the Revenue/Profit & Loss Account of the year. Hence it was submitted that in case of an Insurance Company (carrying on General Insurance Business), the creation of "Reserve for Unexpired Risk" cannot be considered to be similar to those "Reserves" which have been referred to in Clause (b) of Explanation (1) to Section 115JB(2). It may also be appreciated that the "Reserve for Unexpired Risk" can, in any case, not be considered as any provision made for meeting liabilities, other than ascertained liabilities as referred to in Clause(c) of Explanation (1) to Section 115JB(2)

On the basis of the above facts it may kindly be appreciated that there has not been any requirement to add back any sum in relation to the "Reserve for Unexpired Risk" while computing "Book Profit" u/s.115JB(2) for the Assessment Year 2008-09. Accordingly, the assessee submitted that the "Reserve for Unexpired Risks" not being of the nature as specified in clause (b) of Explanation 1 to section 115JB(2), the action of the ld AO in making an addition of such Reserve should be held as unjustified. Hence, the assessee ITA Nos. 674-982-983/Kol/2012 National Insurance Co. Ltd., AYs 2005-06,200708 &2008-09 submitted that the ld AO may kindly be directed to delete the addition of Rs.169,45,00,000/- made by him in computing the Book profit u/s 115JB of the Act.

11.1. The ld CITA observed that the provisions contained in Rule 6E of the Income-tax Rules, 1962 has also been considered. Section 115JB(2)-Explanation (1)(b) requires increasing "the amounts carried to any reserve, by whatever name called, other than a reserve

specified u/s 33AC" if such amount is debited to the Profit & Loss Account. It is held that the Reserve for Unexpired Risk has not been debited in the Profit & Loss account at any point of time, therefore explanation 1 to sub-section 2 of section 115JB is not applicable in the peculiar facts of the general insurance business carried out by the assessee. In the assessee's case, firstly the concerned reserve for Unexpired Risk has not been created through any debit entry made in the Profit & Loss Account. The reserve has been created in accordance with the relevant provisions of the Insurance Act, 1938, by way of debiting the premium received for adjusting the amount of premium that may be related to future year or years. It is noted that Rule 5 of the First Schedule of the Income-tax Act, 1961, which specifies the procedure to be followed for computing the business income of a General Insurance business, specifically allows deduction for reserve carried over for Unexpired Risk and Rule 6E of the Income-tax Rules, 1962 provides that such deduction will be allowed to the maximum extent of 50% of the net premium received during the relevant year. Hence, this creation of reserve out of the premium received during the year, is a statutory requirement and the same is duly recognised by the Income-tax Act/Rules. As already mentioned hereinabove, this particular reserve does not fall in the category of those reserves which have been specified in Explanation 1 (b) to section 115JB(2). Therefore, this reserve viz., the reserve for Unexpired Risk in the case of a General Insurance business, should not be added back for the purpose of computation of Book Profit u/s. 115JB(2) for MAT purposes. On the basis of this observation, it was held that the ld AO's action in adding back a sum of Rs.169,45,00,000/- being reserve created for Unexpired Risk, was not in accordance with the relevant provisions of the Income-tax Act, 1961 and accordingly deleted the addition.

11.2. Aggrieved, the revenue is in appeal before us on the following ground:-

"4. The CIT(A) erred on the facts of the case and in law in holding the sum of Rs.1694500000 being the reserve created for unexpired risk should be considered as reserve for computing the Book Profit under section 115JB of the Income-tax Act."

11.3. The ld DR vehemently relied on the order of the ld AO. In response to this, the ld AR vehemently relied on the order of the ld CITA.

11.4. We have heard the rival submissions. We find that the ld CITA had dealt this issue very elaborately and had given proper finding that the reserve created for unexpired risk need not be added back for the purpose of computation of book profits u/s 115JB of the Act.

The revenue was not able to controvert the findings of the ld CITA before us. Hence we find no infirmity in the order passed by the ld CITA in this regard. Accordingly, the Ground No. 4 raised by the revenue for Asst Year 2008-09 is dismissed.

The aforesaid decision rendered by the Tribunal for A.Ys. 2005-06, 2007-08 and 2008-09 vide a common order dated 05.08.2016 has been subsequently followed by the Tribunal to decide a similar issue involved in assessee's case for A.Y. 2014-15 vide its order dated May 29, 2019 in ITA No. 1876/Kol/2017. As the issue involved in the year under consideration as well as all the material facts relevant thereto are similar to that of A.Ys. 2005-06, 2007-08 & 2008-09 and 2014-15, we respectfully follow the orders of the Tribunal for the said years and uphold the impugned orders of the Ld. CIT(A) giving relief to the assessee on this issue. Ground No. 3 of the Revenue's appeal is accordingly dismissed."

12.1. As the issue involved in the year under consideration is similar to the issue raised for AY 2015-16, we, therefore, respectfully following the order of this Tribunal confirm the finding of ld. CIT(A) giving relief to the assessee. Ground no. 5 raised by the Revenue is dismissed.

13. Ground no. 6 relates to the consideration of disallowance u/s 14A of the Act for the purpose of computing book profit of the assessee. We find that this issue has been dealt by this Tribunal for AY 2014-15 in ITA No. 1876/KOL/2017 dated 29.05.2019 and the finding of this Tribunal reads as follows:

"6. As regards the issue involved in Ground No. 5 relating to the relief allowed by the ld. CIT(Appeals) on account of disallowance under section 14A while computing the book profit of the assessee-company under section 115JB, it is observed that while computing the book profit under section 115JB, an addition of Rs.16,40,60,000/- was

made by the assessee on account of disallowance under section 14A. Since the disallowance under section 14A as per Rule 8D was worked out by the Assessing Officer at Rs.53,54,98,000/- while computing the total income of the assessee as per the normal provisions of the Act, the Assessing Officer adopted the said computation and made a further addition of Rs.37,14,38,000/- (Rs.53,54,98,000/- minus Rs.16,40,60,000/-) while computing the book profit of the assessee under section 115JB.

7. On appeal, the ld. CIT(Appeals) deleted the said addition made by the Assessing Officer by relying, inter alia, on the decision of this Tribunal in the case of M/s. Philips Electronics India Limited -vs.- DCIT (ITA No. 1815/KOL/2008 dated 03.02.2016), wherein it was held that computation of disallowance under Rule 8D could be used only for computation of income under normal provisions of the Act and not for book profits under section 115JB of the Act. It was further held that unless an item is debited in the profit & loss account, the same could not be the subject matter of addition to book profits under clause (f) of Explanation to section 115JB of the Act. Since this view taken by the Division Bench of the Tribunal has been affirmed by the Special Bench of the Tribunal in the case of Vineet. [82 taxman.com 415] holding that artificial disallowance under section 14A as worked out by applying Rule 8D cannot be added while computing the book profit under section 115JB of the Act and it is only the actual expenditure incurred by the assessee in relation to the exempt income, which is debited to the profit & loss account, can be added. Keeping in view the said decision of the Special Bench of this Tribunal, we find no infirmity in the impugned order of the ld. CIT(Appeals) deleting the disallowance made by the Assessing Officer under section 14A by applying Rule 8D while computing the book profit of the assessee under section 115JB of the Act. Ground No. 5 of the Revenue's appeal is accordingly dismissed."

13.1.As the issue involved in the year under consideration is similar to the issue raised for AY 2014-15, we, therefore, respectfully following the order of this Tribunal confirm the finding of ld. CIT(A) giving relief to the assessee. Ground no. 6 raised by the Revenue is dismissed.

14. Ground no. 7 relates to considering the provision for bad debts at Rs. 11.73 Cr approx. for the purpose of computing book profit u/s 115JB of the Act. We notice that in the return of income the assessee had reduced a sum of Rs. 11,73,20,000/- which had earlier been added back in the years of making those provisions. However, in the assessment order ld. AO, instead of reducing Rs. 11.73 Cr, by mistake added back the said sum. Ld. CIT(A) dealt with this issue observing as follows:

“I have considered the grounds of appeal, statement of facts and submission of the authorized representative of the appellate company as well as the order of the assessing officer framed in the light of the materials available on record before the assessing officer during the assessment proceedings.

The AR of the appellate has submitted that the appellant further submits that since Rs.11,73,20,000 (net) had been credited back in the Profit and Loss Account out of the Provision added back earlier u/s 115JB(2), following the requirement stated in Clause (i) of Explanation (1) to section U5JB(2) it was required of the Assessing Officer to reduce the said sum of Rs.11,73,20,000(net) while computing the Book Profit u/s 115JB(2). However, the Assessing Officer, instead of reducing the sum of Rs.11,73,20,000 made an addition thereof. So, there occurred a Mistake of addition of Rs.11,73,20,000 twice, viz., Rs.23,46,40,000.

In view of above, the appellant shall furnish before the AO the details in the matter. The AO is also directed to verify the same and accordingly re-compute the disallowance. The AO shall allow the appellant an opportunity of hearing before passing any order in this regard. This ground is therefore allowed for statistical purposes.”

14.1. Since ld. D/R failed to controvert the above finding of ld. CIT(A), we fail to find any infirmity in the above finding of ld. CIT(A) directing ld. AO to examine the computation of book profit considering the adjustment made by the assessee during the year

under consideration. Thus, ground no. 7 raised by the Revenue is allowed for statistical purposes.

15. Ground no. 8 is general in nature which needs no adjudication.

16. In the result, the appeal filed by the Revenue is partly allowed for statistical purposes.

Kolkata, the 24th April, 2023

Sd/-
[Rajpal Yadav]
Vice President

Sd/-
[Manish Borad]
Accountant Member

Dated: 24.04.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. ACIT, Cir-6(2), Kolkata.**
- 2. M/s. National Insurance Co. Ltd., Commercial Union House, 3 Middleton Street, Kolkata-700 071.**
3. CIT(A)-2, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata