

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.3541/Del./2018
(ASSESSMENT YEAR : 2013-14)**

**ITA No.3542/Del./2018
(ASSESSMENT YEAR : 2014-15)**

**ITA No.5603/Del./2019
(ASSESSMENT YEAR : 2015-16)**

JCIT (OSD), Circle 21 (1),
New Delhi.

vs. M/s. Religare Health Insurance Co. Ltd.
2nd Floor, Rajlok Building,
24, Nehru Place,
New Delhi – 110 019.

(PAN : AADCR6281N)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ajay Vohra, Sr. Advocate
Shri Kishor Kunal, Advocate
Shri Parth, Advocate
REVENUE BY : Ms. Princy Singla, Sr. DR

Date of Hearing : 04.05.2023
Date of Order : 10.05.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These are appeals filed by the Revenue against the respective orders of Id. CIT (Appeals)-38, New Delhi pertaining to AYs 2013-14, 2014-15 & 2015-16.

2. Since the appeals were heard together these are disposed off by this common order.

3. For the sake of reference, we are giving the grounds raised by the Revenue for the Assessment Year 2013-14 as under :-

“1. On facts and under circumstances of the case the Ld. CIT(A) has erred in law and facts in deleting the disallowance of Rs.49,00,867/- being claims outstanding as on 31.03.2013 ignoring that this amount is shown as a provision in books of accounts of the assessee and can be allowed in the year when it is materialized and not in the year under consideration.

2. On facts and under circumstances of the case the Ld. CIT (A) has erred in law and facts in deleting the disallowance of Rs. 4,47,15,583/- on account of provision for unlogged claim ignoring that this provision was purely on ad-hoc basis and the assessee was already allowed special provision of Rs.17,31,41,001/- in terms of Rule 6E of the IT Act.”

4. Assessee in this case is incorporated under the Companies Act, 1956 and is registered with the Insurance Regulatory and Development Authority (IRDA). It is further engaged in the business of selling health insurance products to individuals and corporate. Ld. Counsel of the assessee has summarized the assessee's operation as under :-

“2. The Respondent is contractually and legally bound to settle all rightful claims lodged by the insured as per the terms and conditions of the policy taken. Settlement is done through:

i. Cashless Mode - The insured's bill is directly settled between the Respondent and the concerned network hospital in which the insured is admitted. There is always a time lag between date of discharge of insured from the hospital and payment of claim by the Respondent to the hospital and as

such, the cashless claims remain outstanding till all the related documents from the hospital are received and the claims are appropriately verified.

ii. Reimbursement Mode - The insured may get admitted to a non-network hospital where cashless mode of settlement is not available to the insured. The insured may also settle the bill out of his own funds even in a network hospital and later on submit the relevant documents to the Respondent for reimbursement. The documents submitted are then assessed by a panel of independent doctors/ investigators. The said claims are acknowledged by the Respondent but remain unsettled till the receipt and verification of all related documents from the hospital.

In case where the claims have been received by the Respondent but settlement of the same are pending on account of any reason, the Respondent creates a provision for such outstanding claims in its books. Further, as there exists a time lag between the claims incurred by the insured and the reporting of the same with the Respondent, there is a strong probability that details regarding the said claims emanating in a particular financial year have not been furnished to the Respondent till the end of the said financial year. Thus, the Respondent based on actuarial valuation creates reserves for each financial year in respect of such unreported claims.

5. In the assessment order passed for Assessment Years 2013-14, 2014-15 & 2015-16, the AO made the following disallowances :-

Particulars	AY 2013-14	AY 2014-15	AY 2015-16
Returned income	(-)40,98,65,043	(-)79,44,57,040	(-)67,06,94,506
Provision for unsettled claims outstanding as on March 31 st	49,00,867	3,99,26,327	4,74,48,153
Provision for IBNR Claims	4,47,15,583	4,79,30,912	8,11,23,768
Total disallowances	4,96,16,450	8,69,56,519	12,85,71,921
Assessed income	(-)36,02,48,593	(-)70,75,00,521	(-)54,22,22,595

6. The reasoning for the above said disallowances by the AO has been summarized as under :-

“i. The provision for unsettled claims outstanding as on March 31 st is adhoc provision made on account of contingent liabilities and not ascertained liabilities and therefore not allowable under Section 37 of the Income Tax Act, 1961 ("Act").

ii. The provision for IBNR claims have also been made for contingent liabilities. Further, the Respondent is not entitled to claim the same as a deductible expense since in accordance with Rule 6E of the Income tax Rules, 1962, it has claimed 50% of the net premium received by it during the relevant AY as a deduction towards unexpired risk.”

7. Upon assessee’s appeal, ld. CIT (A) deleted the same. Ld. CIT (A) recorded the following findings :-

“i. The provision for unsettled claims outstanding as on March 31"t is not an adhoc provision, but is made on the basis of actual communication received from policy holders. Thus, the same is allowable in terms of principles of law laid down in Kerala Transport Co. vs ACIT, [1994] 50 TT J 435 (Coch. ITAT).

ii. The provision for IBNR claims has been made for ascertained liabilities in accordance with IRDA Regulations and therefore the same must be allowed in terms of law laid down in Deputy Commissioner of Income Tax vs National Insurance Co. Ltd. {2016} 72 taxmann.com 116 (Kol. Trib.).”

8. Against this order, Revenue is in appeal before us. We have heard both the parties and perused the records.

9. Ld. DR for the Revenue relied upon the orders of the AO.

10. The submissions of the Id. Counsel of the assessee in relation to disallowances read as under :-

“A. Provision for unsettled claims outstanding as on March 31st of the relevant year

6. The provision in relation to unsettled claims cannot be construed to be an estimate or an adhoc provision created by the Respondent when it is an undisputed fact that the Respondent records the outstanding claims to the extent lodged by the policy holders. The customer wise details of such lodged claims by policy holders were filed before the Ld. AO during the course of assessment proceedings for the relevant AYs. On the basis of such lodged claims, the Respondent had created a provision of the same in its books of accounts as on 31st March of the relevant financial year. It is only at the time of verification of the aforesaid claims that there were certain claims which were found to be fraudulent/erroneous in nature and therefore, were rejected.

7. The Respondent follows mercantile system of accounting and therefore, the actual claims lodged by the policy holders are recorded in the books of accounts. All that remains to be settled is the quantification of claim so raised which cannot be foreseen at the time of creating the said provision and is settled basis the medical evaluation of the claim documents so filed. It must be noted that the event of occurrence that led to settlement of the claims was within the relevant year under consideration and it is only the quantification of the claims that was concluded in the subsequent period. Merely because the amount of claim varies because of post facto circumstances, the extent of which cannot be envisaged at the time of accrual of expenditure does not mean that the said provision is not allowable under the provisions of the Act. In this regard, reliance is placed on Kerala Transport Co. vs. ACIT, [1994] 50 TTJ 435 (Coch. ITAT) [Paras 4@Pgs. 6-91 Compilation], the reasoning of which has also been upheld by the Hon'ble Kerala High Court in CIT vs. Kerala Transport Co., [1999] 2391TR 183 (Ker.) [Paras 10-11@Pgs. 3-41 Compilation].

8. Without prejudice to the above, the unutilised provision consisting of rejected claims for each relevant financial year have been reversed by the Respondent and offered to tax in the subsequent year. In CIT vs Realest Builders & Services Ltd., [2008] 307 ITR 202 (SC) [Para 7@Pg. 471 Compilation], it is held that where an assessee has been following consistent method of accounting, in absence of any proof of underestimation of profits, the presumption shall always be that the entire exercise is revenue neutral. Thus, if the Department's contentions are accepted, the same would amount to double disallowance of the provisions in the hands of the Respondent. Attached herewith as Annexure-1 is a chart clearly depicting this position in the Respondent's case.

B. Provision for IBNR Claims

9. The provision in relation to IBNR claims are created in relation to claims incurred but yet to reported by the insured to the Respondent. The Respondent creates the aforesaid provision for unreported claims on the basis of actuarial valuation as mandated by IRDA.

10. It is submitted that the issue in relation to provision for IBNR claims is now well settled. The Respondent relies upon the following orders/judgments wherein it is held that provision for IBNR claims made as per the IRDA regulations are based on actuarial valuation and therefore are ascertained liabilities arrived on a scientific basis:

- a) DC IT vs. Export Credit Guarantee Corporation, ITA No. 7657 of 2014 (Bom ITAT) [Paras 3.3-3.3.4@Pgs. 16-181 Compilation]
- b) PCIT VS. National Insurance Co. Ltd., ITA No. 76 of 2019 (Cal HC) [Pg. 211 Compilation]
- c) National Insurance Co. Ltd. vs. DC IT, ITA No. 812 of 2009 (Kol. ITAT) [Para 13@Pg. 311 Compilation]

- d) DCIT VS. National Insurance Co. Ltd., [2016] 72 taxmann.com 116 (Kol. Trib.) [Paras 3.2-3.6@Pg. 371 Compilation]

11. IBNR claim is entirely different from Reserves for unexpired risks ("URR") as prescribed under Rule 6E of Income Tax Rules r.w. Part B of First Schedule of the Act. The Ld. AO has incorrectly alleged that the Respondent has already claimed a provision on account of URR being 50% of the premium received during the relevant year and accordingly, is not eligible to make provision for contingent liability over and above the special provision allowed by the Act.

12. The Ld. AO has failed to appreciate the purpose for which URR is created by the Respondent. URR represents that portion of the premium which is not earned by the Respondent i.e., the amount of premium that relates to the policy period which is yet to be utilized or it is still an ongoing concern for the unexpired future periods of the cover. Thus, it pertains to the methodology of recognizing premium income in the books of insurance companies. On the contrary, IBNR is created for claims already incurred in the current period but not reported to the Respondent and thus, relates to expense recognition. The very purpose of these two provisions vary and the law does not in any way prohibit the Respondent from claiming deduction for both URR and IBNR simultaneously subject to the provisions of Part B of First schedule of the Act.

13. It is reiterated that provision for IBNR is an allowable expenditure under section 37 of the Act being provision for ascertained liability which has been created on actuarial basis in light of the favourable judicial pronouncements on this issue. Thus, the same cannot be disallowed merely on the ground of being over and above the URR for reasons cited above.

14. In view of the above, it is humbly submitted that the Ld. CIT(A) has rightly held that the provision for IBNR claims is ascertained liabilities and therefore, allowable as expenditure under Section 37 of the Act.

15. Based upon the above contentions, it is humbly submitted that the deletion of disputed disallowances by Ld. CIT(A) for AYs 2013-14 to 2015-16 is in accordance with settled principles of law and therefore, the Department appeals ought to be dismissed.

11. Upon careful consideration, we find that as regards provision for unsettled claims, the AO has made the disallowance by holding that these are adhoc provisions made on account of contingent liabilities and not ascertained liabilities and, therefore, not allowable under section 37 of the Income-tax Act, 1961 (for short 'the Act'). Ld. CIT (A)'s order in this regard read as under :-

“4.2 I have carefully considered the facts of the case, submissions of the appellant and the impugned order of the AO. The fundamental submission of the appellant is that since the provision for unsettled claims has been made on basis of actual communication received from the policy holders, it can by no stretch of imagination be considered to be ad-hoc in nature as alleged by the Ld. AO. The appellant has submitted that incurrence of liability and its quantification are two separate aspects and merely because some claims are rejected subsequently being fraudulent/ erroneous in nature, the same cannot be considered to be an ad-hoc provision against contingent liability resulting in disallowance of the said liability,

The principle enunciated in the case of Kerela Transport Company vs Assistant Commissioner of Income Tax [1994]50 TTJ 435 supra squarely applies to the facts on hand, In the light of above, I do not find any merit in the addition made by the AO in this case. Accordingly, ground no 3 is allowed in favour of the appellant.”

12. Upon due consideration, we find that AO has erred in holding provision for unsettled claims as contingent liability. In the light of assessee's submissions noted above and case laws submitted, we find that ld. CIT (A) has passed correct order which does not need any interference from us. The liability in this regard is duly ascertained. Hence, this ground raised by the Revenue is dismissed.

13. The AO made disallowance for provision for IBNR claims as contingent liability. Ld. CIT (A) deleted the addition by relying upon the decision of Kolkata ITAT Bench in the case of DCIT vs. National Insurance Co. Ltd.. The concluding part of the order of ld. CIT (A) read as under :-

"5.2 I have carefully considered the facts of the case, submissions of the appellant and the impugned order of the AO. The fundamental submissions of the appellant is that the provision for claims incurred but not reported is in accordance with the IRDA Regulations and the appellant being an insurance company is bound by such regulation.

Further, the recent ruling of the Kolkata ITAT Bench in the case of Deputy Commissioner of Income tax vs National Insurance Co. Ltd. (2016) 72 taxmann.com 116 (supra) is squarely applicable to the facts of the case as reproduced hereunder:

"3.6 We have heard the rival submissions and gone through facts and circumstances of the case. We find that the Ld CIT(A) had given a categorical finding that the provision made for liabilities incurred but not reported (IBNR) made by the assessee as per the regulations framed by Insurance Regulatory Development Authority (IRDA) based on a scientific calculation with a proper rationale could only be termed as ascertained liability. Hence the same need not be added back by treating the same as an unascertained liability

while computing the book profits ii/» 115JB of the Act. The revenue was not able to controvert the findings given by the Ld CITA before us. Hence, we find no infirmity in the order of the Ld. CITA in this regard and accordingly dismiss the Ground No. 1 raised by the revenue.”

Thus, as said provision has been created by it to meet ascertained liabilities, the Company is entitled to claim a deduction of the same while computing its income under the head 'profits & gains from business and profession'. Therefore, respectfully following the decision of the Hon'ble ITAT in the case of National Insurance above, I do not find any merit in the addition made by the AO in this case. Hence, this ground of appeal is allowed.”

14. We have heard both the parties and perused the records. In the light of the assessee's submissions herein above, we find that Id. CIT (A) has taken correct decision, which does not need any interference on our part. The case law from Kolkata Bench of ITAT duly holds that these are ascertained liabilities. Hence, we uphold the order of Id. CIT (A).

15. Our above adjudication applies *mutatis mutandis* to all the years in appeals before us.

16. In the result, all the appeals filed by the Revenue stand dismissed.

Order pronounced in the open court on this day of 10th May, 2023.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated the 10th day of May, 2023
TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-7, New Delhi.
- 5.CIT(ITAT), New Delhi.

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