

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

**Before Sh. C. M. Garg, Judicial Member**

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

**ITA No. 6281/Del/2016 : Asstt. Year : 2012-13**

DCIT (LTU), Circle-1, New Delhi	Vs	M/s The Oriental Insurance Company, A-25/27, Asaf Ali Road, New Delhi-110002
(APPELLANT)		(RESPONDENT)
<b>PAN No. AAAC0627R</b>		

**ITA No. 6134/Del/2016 : Asstt. Year : 2012-13**

M/s The Oriental Insurance Company, A-25/27, Asaf Ali Road, New Delhi-110002	Vs	DCIT, LTU, New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AAAC0627R</b>		

**Assessee by : Sh. Trandeep Singh, Adv.  
Revenue by : Sh. H. K. Choudhary, CIT-DR**

<b>Date of Hearing: 27.07.2023</b>	<b>Date of Pronouncement: 26.09.2023</b>
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**ORDER**

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

The present appeals have been filed by the assessee and the Revenue against the order of Id. CIT(A)-22, New Delhi dated 03.10.2016.

**ITA No. 6281/Del/2016 (Revenue Appeal)**

**Accrued Interest on Loans, Debentures & Bonds:**

2. This AO disallowed the interest income which the assessee has not recognized as interest as income for the year based on the order of the earlier Assessment Years. The said disallowance has been deleted by the Id. CIT(A) following the

order of the ITAT in assessee's own case. The Hon'ble Delhi High Court in 125 taxman 1094 has dismissed the appeal of the revenue holding as under:

*"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."*

3. Since, the issue has attained finality by the order of the Hon'ble Delhi High Court, the appeal of the revenue on this ground is dismissed.

**Guest House repairing:**

4. The disallowance of expenditure made on account of guest house repairing has been consistently held in favour of the assessee by the Co-ordinate Bench of ITAT for A.Y. 2000-01, A.Y. 2001-02, A.Y. 2003-04, A.Y. 2005-06, A.Y. 2007-08, A.Y. 2008-09, A.Y. 2010-11 and A.Y. 2011-12. Since, the addition has been consistently being deleted, in the absence of any change in the factual matrix and legal proposition, we decline to interfere with the order of the Id. CIT(A).

**Disallowance u/s 14A:**

5. It is now well settled proposition that the income of the assessee is to be computed as per the provisions of Section 44 r.w. Rule 5 of the First Schedule. It has been held consistently that while computing the total income as per Rule 5, the provisions of Section 14A are not applicable. Reliance is placed on the judgments of Co-ordinate Bench of ITAT in assessee's own case for A.Y. 2000-01, A.Y. 2001-02, A.Y. 2003-04, A.Y. 2005-06, A.Y. 2007-08, A.Y. 2008-09, A.Y. 2010-11 and A.Y. 2011-12.

6. In the result, the appeal of the Revenue is dismissed.

**ITA No. 6134/Del/2016 (Assessee Appeal)****Profit on Sale/Redemption Investments:**

7. The Co-ordinate Bench of ITAT in case of the assessee for AY 2011-12 in ITA No. 200/Del/2016 vide order dated 22-11-2022 held that assessee is entitled to claim benefit of exemption u/s 10(38). Diligently following the order of the Co-ordinate Bench of the Tribunal in assessee's own case, we direct the Assessing Officer to verify about status of STT payment before allowing the claim.

**Depreciation Allowance:**

8. Owing to the order of the ITAT as mentioned above, the issue is being remanded back to the file of the Assessing Officer to examine the issue *de novo* with reference to the tax audit report filed.

**Provision for Standard Allowance:**

9. This issue stands adjudicated and the disallowance has been deleted in assessee's own case for the AY 2010-11 in ITA No. 4535/Del/2016 order dated 30-06-2021. In the absence of any change in the facts and legal proposition the ground of appeal is allowed in the instant year.

**Computation u/s 115JB:**

10. No doubt, as per the amendment of Section 115JB vide Finance Act, 2012, the income of the assessee has to be computed u/s 115JB. However, since the amendment was brought with effect from 1<sup>st</sup> day of April, 2013 and will, accordingly, apply in relation to A.Y. 2012-13 onwards. Hence, it is not applicable to the Assessment Year before us.

**Prepaid Taxes:**

11. Due credit for prepaid taxes be given.

12. In the result, the appeal of the assessee is partly allowed for statistical purpose and that of the Revenue is dismissed.

Order Pronounced in the Open Court on 26/09/2023.

Sd/-

**(C. M. Garg)**  
**Judicial Member**

Sd/-

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

**Dated: 26/09/2023**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**