IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI

BEFORE,
SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANTMEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No.5611/Del/2018
(ASSESSMENT YEAR-2014-15)

ITA No.5612/Del/2018
(ASSESSMENT YEAR-2015-16)

M/s The Oriental Insurance Co. Ltd. A-25/27, Asaf Ali Road New Delhi-110 002 PAN-AAACT 0627R	Vs.	The DCIT, LTU New Delhi
(Appellant)		**(Respondent)**

Appellant by	Sh. Tarandeep Singh, Adv.
Respondent by	Sh. Sanjay Gupta, CIT-DR

Date of Hearing	04/01/2024
Date of Pronouncement	08/01/2024

ORDER

PER YOGESH KUMAR U.S., JM:

These two appeals filed by the Assessee against the orders of Learned Commissioner of Income Tax (Appeals)-22, New Delhi, ["Ld. CIT(A)", for short], dated 29/06/2028 for Assessment Years 2014-15 and 2015-16 respectively. The assessee has taken the following common grounds of appeal except variance of figures:

"1. That on the facts and in law the CIT(A) erred in upholding an addition to total come of Rs 8,59,95,45,000/ on account of Profit on Sale/Redemption of Investments.

1.1 That on facts and in law the CIT(A) erred in upholding the action of AO in denying benefit of exemption u/s 10(38) of the Income Tax Act.

2. Without prejudice, on facts and in law the CIT(A) erred in upholding the action of AO in denying benefit of concessional rate of tax as per section 111A and / or section 112 of the Income Tax Act.

3. That on facts and in law the CIT(A) erred in upholding a disallowance of Rs.37,54,602/- out of the total depreciation allowance of Rs.1,29,46,903/- claimed by the appellant under section 32 of the Act.

3.1 That on facts and in law the AO/CIT(A) erred in making/upholding the above disallowance without considering the fact that unlike earlier years assessments/ appeals all necessary details relevant to depreciation allowance claim for AY 2014-15 were on record.

4. That on facts and in law the CIT(A) erred in upholding a disallowance of Rs 1,87,82,355/-being Provision made for Standard Assets.

5. That on facts and in law the CIT(A) / AO erred in computing income of the Appellant under section 115JB of the Act without appreciating that provisions of Section 115JB are not applicable.

6. That without prejudice, on facts and in law the CIT(A) erred in upholding an addition of Rs. 1,87,82,355/ on account of Provisions for Standard Assets to the taxable Book Profits computed as per provisions of section 115JB of the Act.

7. That on facts and in law the order of assessment u/s 143(3) passed by the Assessing Officer (hereinafter referred to as the "AO") is bad in law and void ab-initio.

8. That on facts and in law the order passed by Commissioner of Income Tax {hereinafter referred to as the "CIT(A)}" to the extent it upholds the assessment order in part is bad in law and void ab-initio.

The appellant craves leave to add to, modify, amend or withdraw any ground at any state of the appeal."

2. The Ld. Counsel for the assessee submitted that issues involved in the present appeals are squarely covered in Assessee's own case for the A.Y. 2010-11 and other subsequent years, thus, prayed for deciding the issues in the similar lines.

3. The Ld. DR relied on the orders of the lower authorities and prayed for dismissal of the appeal.

4. We have heard the parties, perused the materials on record and also carefully considered the decisions of the Co-ordinate Bench in Assessee's own case for A.Y. 2010-11, 2013-14 and also for A.Y. 2016-17 and found that all the issues involved in the present appeals have been considered by the Tribunal.

5. The issue involved in ground No.1 and its sub-ground have been decided by the Tribunal in Assessee's own case for A.Y.2016-17 in ITA No.6444/Del/2019 by following the order of the Co-ordinate Bench of the Tribunal in Assessee's own case for A.Y. 2013-14 vide ITA No.1952/Del/2018 & 1750/Del/2018 wherein held as under:

"5. Issues raised vide ground No.1 with all its sub grounds was considered by this Tribunal in ITA No.1952/Del/2018 and 1750/Del/2018 for A.Y. 2013-14. A similar issues was considered at para -6 of its order and at para 6.1 the Co-ordinate Bench followed the order of this Tribunal for A.Y. 2011-12 and concluded as under:-

> *"Accordingly, the issue is decided in favour of the assessee and Ld. AO is directed to verify about the status of STT payment and accordingly allow the exemption u/s10(38) of the Act."*

6. On finding parity of facts we order accordingly."

6. Considering the above facts and circumstances and finding the parity, we hereby direct the AO to verify about the status of the STT payment and accordingly allow the exemption u/s 10(38) of the Act. Accordingly, the issues involved in ground No.1 and its sub ground are remanded to the file of the Ld. AO for fresh consideration.

7. Ground No.2 in both the appeals being consequential, requires no separate adjudication.

8. The issue involved in ground No.3 of both the appeals have been considered and remanded to the file of the AO in following manners in assessee's own case for AY 2016-17 in ITA No.6444/Del/2019.

"8. Issue raised vide ground No.3 have been considered by the Co-ordinate Bench at para 6.2 of its order for A.Y.2013-14 (supra) and at para-6.3 followed the order for A.Y.2011-12 and concluded as under:-

> *"Ld. DR has not pointed and distinguishing the facts so the ground is decided in favour of the assessee and issue restored to the file of Ld. AO to decide afresh as directed for A.Y.2010-11 to 2011-12.*

9. Respectfully following the same we direct accordingly."

9. By following the principle of consistency, we remand the issued involved in ground No.3 of both the appeals to the file of AO to decided afresh as directed for AY 2010-11 to 2011-12. Accordingly, ground No.3 of the assessee is partly allowed for statistical purposes.

10. Ground No.4 is regarding upholding of disallowance being provision made for standard assets. The Co-ordinate Bench of the Tribunal in Assessee's own case for AY 2010-11 in ITA No.4535/Del/2016 deleted the similar disallowance in following manners:

"11.0 We have carefully considered the facts of the case and the material available on record. The assessee is engaged in the business of General Insurance. Its taxability is governed by provisions of section 44 of the Act which provides as under:-

> *"44. Insurance business.—Notwithstanding anything to the contrary contained in the provisions of this Act relating to the computation of income chargeable under the head "Interest on securities", "Income from house property", "Capital gains" or "Income from other sources", or in section 199 or in sections 28 to 43B, the profits and gains of any business of insurance, including any such business carried on by a mutual insurance company or by a co-operative society, shall be computed in accordance with the rules contained in the First Schedule."*

11.1 First Schedule to the Income Tax Act is divided into two parts, viz., Part A which is applicable to Life Insurance Business and Part B which is applicable to insurance companies other than life insurance. Rule 5 states as under:

"5. The profits and gains of any business of insurance other than life insurance shall be taken to be the profit before tax and appropriations as disclosed in the profit and loss account prepared in accordance with the provisions of the Insurance Act, 1938 (4 of 1938) or the rules made thereunder or the provisions of the Insurance Regulatory and Development Authority Act, 1999 (4 of 1999) or the regulations made thereunder, subject to the following adjustments:—

(a) subject to the other provisions of this rule, any expenditure or allowance including any amount debited to the profit and loss account either by way of a provision for any tax, dividend, reserve or any other provision as may be prescribed which is not admissible under the provisions of sections 30 to 43B in computing the profits and gains of a business shall be added back;

(b) (i) any gain or loss on realisation of investments shall be added or deducted, as the case may be, if such gain or loss is not credited or debited to the profit and loss account;

(ii) any provision for diminution in the value of investment debited to the profit and loss account, shall be added back;

(c) such amount carried over to a reserve for unexpired risks as may be prescribed in this behalf shall be allowed as a deduction."

11.2 Owing to the non obstante clause in section 44 all other provisions relating to the computation of total income stand excluded and the process of computation of the total income of the assessee requires firstly, picking up the figure of profit disclosed by the Profit and Loss Account and then making adjustments as per clauses (a) and (c) of Rule 5. Section 44 read with Rule 5 of the First Schedule makes the figure of profit disclosed by the Profit and Loss account drawn as per the Insurance Act as absolute and binding. Only the adjustments specified in clauses (a) and (c) can be given effect to while computing the total income. The above legal position is now well settled, in case of assessee itself by the Hon'ble Apex Court in its judgment reported in 291 ITR 370(SC) as under:

"13. Insurance companies in view of the provisions of the said Act, however, are dealt with also under the 1961 Act differently. Section 44 thereof, as noticed hereinbefore, begins with a non obstante clause. The jurisdiction of the Income-tax Officer in passing the orders of assessment is limited. Keeping in view the fact that the business carried out by the assesse is not governed by the ordinary principles applicable to business computation as laid down in section 10 of the 1961 Act, the insurance companies do not compute their profits annually in the manner laid down therein.

14. A bare perusal of rule 5(a) of the 1961 Act would categorically demonstrate that ordinarily the annual accounts furnished before

the Controller of Insurance would be taken to be the balance of the profits disclosed thereby. The same, however, is subject to the adjustments mentioned therein, namely, any expenditure or allowance which is not admissible under the provisions of sections 30 to 43A in computing the profits and gains of the business. If the said provision is found to be applicable, the amount may be added back."

11.3 At this stage it will be relevant to understand the nature of Provision made for Standard Assets. The Ld AR has filed before us copy of Prudential Norms issued by Insurance Regulatory and Development Authority (IRDA). It is submitted that "Provision for Standard Assets" has been made as per IRDA mandate. IRDA has issued "Guidelines on Prudential Norms for Income Recognition, Asset Classification, Provisioning and Other Related Matters in respect of Loans and Advances". IRDA has prescribed as under:

"3 GUIDELINES ON PRUDENTIAL NORMS FOR INCOME RECOGNITION, ASSET CLASSIFICATION, PROVISIONING AND OTHER RELATED MATTERS IN RESPECT OF LOANS & ADVANCES:

The guidelines are based on the RBI guidelines issued in this regard, duly modifying, keeping in view the industry specific requirements. Any item not covered below will be governed by the provisions as mandated by the RBI for banks.

3.1 Asset Classification

Adequate provision shall be made for estimated loss arising on account from/under recovery of loans and advances (other than loans and advances granted against insurance policies issued by the insurer) outstanding at the balance sheet date. Insurers shall classify their loans/advances into four categories, viz., (i) standard assets, (ii) sub-standard assets, (iii) doubtful assets and (iv) loss assets. Classification of assets into these categories shall be done taking into account ability of the borrower to repay and the extent of value and realizability of security

3.1.1 Standard assets

Standard asset is one which does not disclose any problem and which does not carry more than normal risk attached to the business. Such an asset is not an NPA. The insurer should make a general provision on Standard Assets of a minimum of 0.40 per cent of the value of the asset."

11.4 The assessee has not denied the fact that Standard Assets do not disclose any problem and are not NPA. However, the prudential norms adopt a conservative view and mandate recognition of general provision in

the books of accounts. "Provision made for Standard Asset" is therefore a reserve created for Contingent Loss and is not "expenditure".

11.5 The moot issue now to be deliberated upon is whether Rule 5 prescribes for an adjustment by adding back the provision made for standard assets?

11.6 Clearly, clauses (b) and (c) of Rule 5 are not relevant. Rule 5(b) is applicable w.e.f. from AY 2011-12. Even otherwise, Rule 5(b) prescribes for an adjustment on account of profit or loss vis a vis investments. Rule 5(c) again is not relevant as it deals with reserve for unexpired risk. Rule 5(a) being relevant mandates an adjustment as under:

> *"(a) subject to the other provisions of this rule, any expenditure or allowance including any amount debited to the profit and loss account either by way of a provision for any tax, dividend, reserve or any other provision as may be prescribed which is not admissible under the provisions of sections 30 to 43B in computing the profits and gains of a business shall be added back;"*

11.7 Prior to the amendment made by Finance (No. 2) Act 1998 with retrospective effect from 01st April 1989, Rule 5(a) restricted adjustment only vis a vis "expenditure or allowance….not admissible under the provisions of section 30 to 43B". Finance (No. 2) Act 1998 expanded the scope of adjustment even to "amount debited to the profit and loss account either by way of a provision for any tax, dividend, reserve or any other provision as may be prescribed". A literal reading of the first part of Rule 5(a) makes it clear that in order to attract the applicability of the said provision the amount should either be an "expenditure" or an "allowance" and secondly, the "expenditure" or "allowance" should be one not admissible under the provisions of sections 30 to 43A of the Act. Hon'ble Apex Court in case of General Insurance Corporation reported in 240 ITR 139(SC) has held that amount set apart for redemption of preference shares cannot be treated as expenditure in ordinary commercial sense of the term and as such, it cannot be added back for computing profits and gains of business including it in 'expenditure not admissible under provisions of sections 30 to 43A' by reference to rule 5(a) of First Schedule. In this regard explaining the meaning of word "expenditure" it was held that:

> *"11. The term 'expenditure' came up for consideration of this Court in Indian Molasses Co (P) Ltd vs. CIT [1959] 37 ITR 66. It was held:*
>
> > *" 'Spending' in the sense of 'paying out or away' of money is the primary meaning of 'expenditure'. 'Expenditure' is what is paid out or away and is something which is gone irretrievably. Expenditure, which is deductible for income-tax purposes, is one which is towards a liability actually existing at the time, but the*

putting aside of money which may become expenditure on the happening of an event is not expenditure." (p. 66)

12. In Pandyan Insurance Co. Ltd. v. CIT [1965] 55 ITR 716 also this Court has held that 'expenditure' meant 'disbursement' and, hence, did not include depreciation."

11.8 As noted above, "Provision made for Standard Asset" is a reserve made for Contingent Loss and is not "expenditure". It can also not be an "allowance" as "allowances" are statutorily prescribed in the Act, for example Depreciation Allowance u/s 32 and Investment Allowance u/s 32A.

11.9 Now let's deliberate upon the second part of Rule 5(a) which prescribes for an adjustment on account of "provision for any tax, dividend, reserve or any other provision as may be prescribed which is not admissible under the provisions of sections 30 to 43B". Although in the instant case the amount debited to profit and loss account is termed as "Provision for Doubtful Assets", however in substance it is a "Reserve" and not a "Provision". The difference between the two is now well settled. In case of State Bank of Patiala v. CIT reported in 219 ITR 706(SC) it was held by the Hon'ble Apex Court that:

"A fair reading of the above decisions would go to show that if the transfer of amount is made ad hoc, when there is no known or anticipated liability, such fund will only be treated as reserve. In this case, substantial amounts were set apart as reserves. No amount of bad debts was actually written off or adjusted against the amount claimed as reserves. No claim for any deduction by way of bad debts were made during the relevant assessment years. The assessee never appropriated any amount against any bad and doubtful debts. The amounts throughout remained in the account of the assessee by way of capital and the assessee treated the said amounts as reserves and not as provisions designed to meet liability, contingency, commitment or diminution in the value of assets known to exist at the relevant dates of Balance sheets. These facts have been found by the Tribunal. On the facts, the amount set apart as reserves cannot be said to be so earmarked, when any liability has actually arisen or was anticipated by the assessee. It cannot be said either, that the amounts set apart out of the profits were designed to meet any known liability, that existed at the date of the Balance sheet. Tested in the light of the decisions of this Court, referred to hereinabove, it appears to us, that the amounts set apart towards bad and doubtful debts in these cases are reserves qualifying for appropriate relief under rule 1(xi)(b) of the First Schedule and rule 1(iii) of the Second Schedule of the Act."

11.10 Finance (No. 2) Act 1998 has expanded the scope of adjustment even to "amount debited to the profit and loss account either by way of a provision for any tax, dividend, reserve or any other provision as may be prescribed". Apparently, "Provision made for Standard Assets" is neither:

(i) A provision for any tax,
(ii) A provision for any dividend,
(iii) Although statute has expanded scope of adjustment to "reserve or any other provision ***as may be prescribed****", however till date no notification is issued by CBDT expanding such scope. Ld CIT(DR) has not brought on record any notification issued by CBDT in this regard.*

11.11 As a result, we find that there is no enabling mechanism in Rule 5(a) mandating an adjustment to disclosed profits by making an addition on account of provision made for Standard Assets. The Ld. CIT (DR) has relied upon decision of the coordinate bench of this Tribunal in case of Chaitanya Godavari Grameena Bank (supra). However, in that case the assesee was a bank and had claimed deduction on account of Provision for Standard Assets u/s 36(1)(viia). This was not a case of an Insurance Company to which provisions of Rule 5 was applicable. As already held above, under Rule 5 the Statute makes profit disclosed in Profit and Loss account sacrosanct subject only to adjustments prescribed in Rules 5(a) to 5(c). The case law relied is, therefore, distinguishable. The Ld. CIT (A), in AY 2011-12, has also not properly addressed the issue. Relevant statutory provisions have been inadvertently misread and hence not properly understood. We therefore delete the disallowance and for reasons given by us above Ground No 4 is allowed."

The Co-ordinate Bench of the Tribunal has also followed the above said order for the A.Y. 2010-11 in the subsequent assessment years by deleting the disallowance made against the Assessee. Thus, by respectfully following the orders of the Co-ordinate Bench of the Tribunal, we allow the ground No.4 of the assessee by deleting the disallowance made by the AO.

11. Ground No.5 is regarding adjustment made by the AO while computing the taxable book profits. We direct the AO to re-compute the book profit u/s 115JB of the Act by giving reasons for making adjustment and giving an opportunity of being heard to the assessee. Accordingly, the ground No.5 of the assessee is partly allowed for statistical purposes.

12. Ground No.6 being general in nature requires no adjudication.

13. In the result, the both appeals of the Assessee in ITA No.5611/Del/2018 and ITA No.5612/Del/2018 are partly allowed for statistical purposes.

Order pronounced in open Court on 08th January, 2024.

Sd/-	Sd/-
(NARENDRA KUMAR BILLAIYA)	**(YOGESH KUMAR U.S.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 08/01/2024
Pk/Sr.ps
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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