

**| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"I" BENCH, MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**  
**&**  
**SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER**

**I.T.A. No. 3407 & 4710/Mum/2023**  
**Assessment Year: 2020-21 & 2021-22**

<b>Markel Capital Limited,</b> <b>London, UK</b> 20, Fenchurch Street London United Kingdom - 999999 <b>[PAN: AALCM9316M]</b>	Vs	<b>Sarika Jai, DCIT-Int. tax</b> <b>Circle 3(2)(1), Mumbai</b>
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

Assessee by :	Shri Farrokh Irani/ Shri Vishal Shah & Shri Jairaj Purandare & Ms. Shibank Bakshi, A/Rs
Revenue by :	Shri Anil Sant, Addl. CIT, D/R

सुनवाई की तारीख/**Date of Hearing** : 05/08/2024  
घोषणा की तारीख/**Date of Pronouncement** : 14/08/2024

**आदेश/ORDER**

**PER NARENDRA KUMAR BILLAIYA, AM:**

I.T.A. No. 3407 & 4710/Mum/2023, are two separate appeals by the assessee preferred against the two separate orders dt. 31/07/2023 and 26/10/2023 framed u/s 143(3) r.w.s. 144C(13) of the Act pertaining to AY 2020-21 and 2021-22.

2. Since the grievance of the assessee is identical in both the appeals, they were heard together and are being disposed off by way of this common order for the sake of convenience and brevity.

3. Common grievance relates to the computation of book profit in accordance with the provisions of Section 115JB of the Act, thereby making addition to the net profit while computing the book profit in

accordance with Clause (b) of Explanation 1 to Section 115JB of the Act by treating the Reserve for Unexpired Risks ('RFUR'), thereby considering the provisions as an unascertained liability.

4. Since the underlying facts and the issues are identical, at the concession of both the representatives, we have heard the impugned appeals on the facts of AY 2020-21.

5. Briefly stating the facts of the case are that, the assessee is a tax resident of United Kingdom. The re-insurance premium received from Indian Insurance Companies is the primary source of income of the assessee in India. The assessee does not have any office establishment or any physical presence in India. The assessee has returned loss of Rs. 2,26,16,524/-. The return was selected for scrutiny assessment and accordingly statutory notice were issued and served upon the assessee. During the course of scrutiny assessment proceedings, the AO noticed that the assessee has disallowed Rs.4,57,19,196/- on account of provision for unexpired risk. The assessee was asked to showcause why the amount of Rs.4.57 Crores credited as RFUR, be not added to the net profit for the purpose of determining the book profits u/s 115JB of the Act as these are not ascertained liabilities.

5.1. The assessee filed detailed reply explaining why the provisions of Section 115JB of the Act would not apply. Reply of the assessee was considered by the AO but did not find any favour from the AO who was of the firm belief that Clause (b) to explanation 1 to Section 115JB of the Act squarely apply. According to the AO, the amount set aside to provisions made for meeting liabilities other than ascertained liabilities have to be added back while computing the book profit. Referring to the decision of the Hon'ble Delhi High Court in the case of *SREI*

*Infrastructure Finance Ltd. vs Additional Commissioner Of Income tax, (2015) (281 CTR 532)*, the AO treated the amount of Rs.4,57,19,196/-, as unascertained liability for the purpose of computation of book profit as per the Explanation 1(b) of the provision of Section 115JB of the Act and added the same. Objections were raised before the DRP but were of no avail.

6. Before us, the ld. Counsel for the assessee reiterated what has been stated before the lower authorities and explained the accounting entries and vehemently contended that the impugned amount was never debited to the profit and loss account. Therefore, there is no question of imputing the provisions of Section 115JB of the Act. Strong reliance was placed on the decision of the Co-ordinate Benches in the case of *M/s. Munchener Ruckversicherungs-Gesellschaft Akteignesellschaft in Munchen vs. CIT in ITA No. 937/Mum/2021; Deputy Commissioner of Income-tax, Circle-6, Kolkata v. National Insurance Co. Ltd [2016] 72 taxmann.com 116 (Kolkata - Trib.); Cholamandalam MS General Insurance Co. Ltd. vs. D/ACIT(LTU) [2022] 142 taxmann.com 3 (Chennai-Trib.)*.

Per Contra, the ld. D/R strongly supported the finding of the AO and reiterated that the assessee has reduced the impugned amount from the gross receipts because it is an unascertained liability and, therefore, the action of the AO is as per the provisions of law.

7. We have given a thoughtful consideration to the orders of the authorities below. It would be pertinent to understand the accounting entries as the financial statements of the assessee are mandatorily required to be prepared in accordance with Insurance Regulatory Development Authority of India (IRDAI) requirements, 2016 and IRDA (Preparation of Financial Statements and Auditor's Report of Insurance

Companies), Regulations, 2002. In accordance with the aforementioned requirements, the assessee is mandatorily required to recognize premium income over the period of insurance contract or the period of risk whichever is appropriate. Therefore, the assessee is required to disclose the amount of gross premium in its premium schedule which may also include certain premiums pertaining to future financial years. As per the provisions of Insurance Act and the guidelines set out, the assessee is required to compute the amount of premium which is attributable to future financial years i.e., the amount of unexpired risk or unearned premium and deduct this from the gross premium in the premium schedule.

8. The above can be understood from the following schedule of premium earned:-

Schedule-1  
Premium Earned (Net)

(000)

Particulars	Life	Fire	Marine		Miscellaneous*	Total
			Hull	Others		
Premium from Direct business written	-	-	-	-	-	-
Add : Premium on reinsurance accepted	-	-	51,613	-	104,199	155,812
Less : Premium on reinsurance ceded	-	-	-	-	-	-
Net Premium	-	-	51,613	-	104,199	155,812
Reserve for unexpired risks	-	-	13,496	-	32,223	45,719
Total Premium Earned	-	-	38,117	-	71,976	110,093

Note:

Premium Income Earned:	Total					
In India	-	-	38,117	-	71,976	110,093
Outside India	-	-	-	-	-	-
Total Premium Earned (Net)	-	-	38,117	-	71,976	110,093

9. It transpires from the above that the gross premium of Rs.1,55,812,000/- has been reduced by Rs.4,57,19,000/- and the total premium earned during the year credited to the P&L account is Rs.11,00,93,000/-.

10. As per Schedule B of the Notification issued by IRDA dated 30/03/2022, premium has been defined as "premium shall be recognized 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 the current accounting period, shall be disclosed separately in the financial statements. A reserve for unexpired risks shall be credited as the amount representing that part of the premium written which is attributable to and to be allocated to the succeeding accounting periods and shall not be less than as required under section 64 V(1)(ii)(b) of the Act. Premium received in advance which represents premium received prior to the commencement of the risk shall be shown separately under the head "Current Liabilities" in the financial statements of the assessee."*

10.1. Following the aforementioned mandatory compliance, the premium earned as mentioned elsewhere was determined. In our considered opinion, for attracting the provisions of Section 115JB of the Act, the condition precedent is that the amount should have been debited to the P&L account but in the present case, as per the entries discussed hereinabove, the impugned alleged reserved amount was never debited to the P&L account. It is only a provision deducted from the gross premium as ascertained liability to be adjusted in subsequent years. This has been explained lucidly by the DRP as under:-

Particulars	AY	Amount (INR)
Provision - RFUR	2020-21	5,45,86,147
Income offered to tax	2021-22	5,41,49,040
	2022-23	2,50,866
	2023-24	1,86,241

11. It can be seen from the above that the provision of Rs. 4,57,19,196/- has been returned as income in subsequent AYs i.e., AY 2021-22, 2022-23 & 2023-24, meaning thereby that the provisions created in AY 2020-21 is offered to tax by the assessee in the relevant year to

which it pertains, hence there is no case of non-taxing of income. The contention of the ld. D/R that the impugned amount has been reduced from the gross receipts have been taken care of in the subsequent AYs.

12. On identical set of facts, the Co-ordinate Bench in the case of *National Insurance Co. Ltd. (supra)* has considered the following facts and held 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 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 Lawmakers 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 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."*

13. The revenue preferred appeal before the Hon'ble High Court of Calcutta and the Hon'ble High Court in ITA No. 76 of 2019; G.A. No. 2116 of 2017, judgment dt. 16/07/2019, has considered the following two questions:-

*"(a) Whether on the facts and in the circumstances of the case the learned tribunal, has erred in law in deleting the addition of Rs.37,69,96,000/- by holding that the provision for unidentified Motor Third Party Claim is an ascertained liability and should be deducted while computing the book profit under [Section 115JB](#) of the Income Tax Act, 1961 by disregarding that the aforesaid provision made for the liability which has not been crystallized and such provision is neither backed by Insurance Regulatory Development Authority (IRDA) nor by any accounting standards?*

*(b) Whether on the facts and in the circumstances of the case the learned tribunal has erred in law in upholding the order of CIT (A) by holding that the provision for "Liabilities Incurred But not Reported" (IBNR) amounting to Rs.12,77,00,000/- as ascertained liability and should be deducted while computing the book profit under [Section 115JB](#) of the Income Tax Act, 1961 while the same is inadmissible in terms of explanation given below [Section 115JB](#) of the said Act?"*

14. It can be seen from the above that the revenue did not appeal against the aforementioned findings of the Tribunal which has attained finality.

15. Considering the facts of the case in totality in the light of the judicial decisions discussed hereinabove, we direct the AO to delete the impugned addition in both the Assessment Years under consideration.

16. Before parting, we note that the assessee also challenged the validity of the order claiming it to be beyond the period of limitation as mentioned in Section 153 of the Act. Vide letter dt. 30/07/2024, the assessee has withdrawn the said ground. Therefore, the same is dismissed as withdrawn.

17. In the result, both the appeals of the assessee are partly allowed.

**Order pronounced in the Court on 14<sup>th</sup> August, 2024 at Mumbai.**

*Sd/-*

**(RAHUL CHAUDHARY)  
JUDICIAL MEMBER**

*Sd/-*

**(NARENDRA KUMAR BILLAIYA)  
ACCOUNTANT MEMBER**

Mumbai, Dated 14/08/2024

*SC S.P.*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
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Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Mumbai