

आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, CHENNAI

माननीय श्री एबी टी. वर्की, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI ABY T. VARKEY, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.1552/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2018-19)

M/s Star Health and Allied Insurance Company Limited #148, Acropolis, Dr. Radha Krishnan Salai, Mylapore, Chennai-600 004.	बनाम/ Vs.	Pr.CIT Chennai-3.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AAJCS-4517-L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri P.S. Prabhakar (CA) - Ld.AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri Nilay Baran Som (CIT) - Ld. DR

सुनवाईकी तारीख/ Date of Hearing	:	22-08-2024
घोषणाकी तारीख / Date of Pronouncement	:	03-09-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee assails invocation of revisionary jurisdiction u/s 263 by Ld. Pr. Commissioner of Income Tax Chennai-3 (Pr.CIT) vide impugned order dated 29-03-2024 in the matter of an assessment framed by Ld. AO u/s.143(3) r.w.s 144B of the Act on 24-09-2021. The grounds taken by the assessee are as under: -

1. For that the order of the Principal Commissioner of Income Tax is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and at any rate is opposed to the principles of equity, natural justice and fair play.

2. For that the Principal Commissioner of Income Tax has erred that the order is erroneous and is prejudicial to the interest of revenue.
3. For that the Principal Commissioner of Income Tax has erred in initiation of the proceedings, since Section 263 proceedings cannot be based out of audit objections and the PCIT has not addressed the points made on this score by the assessee with the strength of judicial precedents, in his order.
4. For that the Principal Commissioner of Income Tax has erred in assuming jurisdiction under Section 263 of the Act and in setting aside an order dated 24.09.2021 passed under Section 147 r.w.s. 144 of the assessing officer.
5. For that the Principal Commissioner of Income Tax has erred in holding that the AO has not verified the details while passing the order dated 24.09.2021 as he did not have any proof that the AO has not verified the details.
6. For that the PCIT has erred in directing the to examine again the Unexpired Reserve Risk for the purpose of computation of book profit u/s 115JB of the Income-tax Act, which is correctly accepted by Assessing officer.

2. The Ld. AR advanced arguments assailing the impugned revision of the order whereas Ld. CIT-DR has submitted that no enquiries were conducted by Ld. AO on the flagged issues while framing the assessment and therefore, revision is justified in law. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

3. From case records, it emerges that the assessee's case was selected for complete scrutiny and various issues were identified therein viz. investments / advances / loans, Default in TDS, refund claim and ICDS compliance etc. The assessee furnished reply along with financial statements and computation sheet. It was noted by Ld. AO that the assessee was involved in health insurance business and guided by IRDA. After considering the submissions of the assessee, the returned income of Rs. 'Nil' was accepted in assessment order dated 24-09-2021.

4. Subsequently, Ld. Pr. CIT, upon perusal of case records, observed that the assessee debited sum of Rs.456.43 Crores as 'Adjustment of Change in reserve for unexpired risk' and increased the provisions to that extent. As per Explanation-1 to Sec.115JB, the amount carried to

any reserves, by whatever name called, was required to be added back to the Book-Profits which was not done. The Ld. AO did not make any enquiry in this regard. Accordingly, the assessee was show-caused.

5. The assessee assailed the same on the ground that the proceedings were initiated on audit objections. The assessee also relied on the decision of Tribunal in **M/s Cholamandalam MS General Insurance Company Ltd.** holding that there was no such requirement to add back this amount to Book-Profits. This item was ascertained liability. Therefore, the assessee pleaded for dropping of proposed revision of the order.

6. The Ld. Pr. CIT concurred that the assessee was bound by the directives of IRDA which mandated the creation of Reserve for Unearned premium subject to maximum cap of 50 per cent of the net premium income of such business of the previous year. Further, as per Explanation-3 under sub-section (1) of section 115JB, the assessee has option to prepare its statement of profit and loss for the relevant previous year either in accordance with the provisions of Schedule III to the Companies Act, 2013 or in accordance with the provisions of the Act governing such company. However, unlike the normal provisions which allow the URR @50% as per first Schedule to the Income-tax Act, 1961, there was no such provision to allow the URR for the purpose of computation of book-profit u/s 115JB of the Act. It was not disputed that URR was a provisional reserve and categorized by the assessee as liability. As per clause (c) of Explanation-1 u/s 115JB, the book profit being profit shown in the statement of profit and loss is required to be increased by "the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities". The fact that the

assessee itself is adding the provision in the following year would show that in the relevant assessment year, it would be an unascertained liability and therefore, not allowable under the provisions of Section 115JB of the Income-tax Act, 1961. The Hon'ble Madras High Court in the case of **CIT Vs United India Insurance Company (Tax Case Appeal Nos. 339 of 2019 order dated 08-12-2020)** for AY 2013-14 set aside the issue of dis-allowance of reserve for unexpired risk provision made by the Assessing Officer back to the Tribunal for passing orders on merit. Though the issue in the cited case of **M/s Cholamandalam MS General Insurance Company Ltd.** was decided favorably by the Tribunal, the department had not accepted the decision and further appeal was pending before the Hon'ble Madras High Court in TCA Nos. 174/2023, 179/2023, 180/2023, 184/2023, etc. Thus, the issue is under contest and no decision of the Jurisdictional High Court was available for the Assessing Officer to follow in this case. When the issue is still agitated by the Department in higher forum, the AO ought to have added the provision of URR in the computation of book-profit u/s 115JB of the Income-tax Act, 1961 keeping in view of the stand of the Department. In this present case, the AO even did not cause any enquiry and therefore, it was a case of non-enquiry. Accordingly, the assessment order is deemed to be erroneous in so far as it is prejudicial to the interest of revenue in terms of clause (a) of Explanation 2 to Section 115JB of the Income-tax Act, 1961. The said view was in accordance with the decision of Delhi Tribunal in **Hindustan Tin Works Ltd. vs. DCIT [92 ITD 101 (Delhi)(Trib)]** holding that revision could be made under these circumstances. Therefore, the twin conditions prescribed under section 263 were fully satisfied in the present case of the assessee.

7. The Hon'ble Supreme Court in the case of **Malabar Industrial Co. Ltd. vs. CIT (109 Taxman 66)** held that when the AO did not apply his mind to the issue at hand or violates any of the principles of natural justice, the order shall be prejudicial to the interests of the Revenue. Also, an incorrect assumption of facts or incorrect application of law by the AO would make the order of assessment erroneous and prejudicial to the interests of the Revenue. As the Assessing Officer did not enquire into the issue at all, the case law as cited by the assessee would have no application. Finally, the assessment order was held to be deemed to be erroneous in so far prejudicial to the interests of revenue in terms of clause (a) of Explanation (2) to section 263 of the Income-tax Act, 1961 since it was passed without causing necessary enquiries which should have been done. The assessment order was thus partly set aside and Ld. AO was directed to examine the flagged issue after affording opportunity of hearing to the assessee. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

8. Upon perusal of case records, it could be seen that the assessee's case was selected for complete scrutiny and various issues were identified therein viz. investments / advances / loans, Default in TDS, refund claim and ICDS compliance etc. Notice u/s 142(1) was issued in this regard and the assessee furnished its reply along with financial statements and computation sheet. Considering the same, the Ld. AO accepted the return of income as filed by the assessee. However, the issue of computation of Book-Profits u/s 115JB was not considered, at all, by Ld. AO while framing the assessment. This issue was not identified in the scrutiny and nothing has been shown to us that any

enquiry, in this regard, was ever raised by Ld. AO. The same is further evidenced by the fact that Book-Profits has not been even computed in the assessment order. All these facts would show that the issue of computation of Book-Profits u/s 115JB was never considered by Ld. AO while framing the assessment and it was a case of no enquiry so far as the computation of Book-Profit is concerned.

9. The Ld. Pr. CIT has flagged the issue of unexpired risk reserve and took a view that the same being unascertained liability, was to be added back while computing Book-Profits as per Explanation-1 to Sec. 115JB. The assessee has relied on the decision of this Tribunal in **M/s Cholamandalam MS General Insurance Company Ltd.** to submit that there was no such requirement to add back this amount to Book Profits. This item was ascertained liability. However, the said plea was negated by Ld. Pr. CIT on the ground that the said decision was not accepted and the same was in further agitation before higher judicial forum. In the case of **United India Insurance Company (supra)**, this issue was restored back to Tribunal by Hon'ble High Court of Madras. Therefore, it could be said that the issue has not attained finality yet.

10. In the present case, we concur with the stand of Ld. Pr. CIT that no enquiries on the flagged issue were ever made by Ld. AO during the course of assessment proceedings and therefore, it was a case of no-enquiry. In such a case, the assessment order would be deemed to be erroneous and prejudicial to the interest of revenue in terms of clause (a) of Explanation 2 to Section 115JB of the Income-tax Act, 1961. The case laws being relied upon by Ld. Pr. CIT have correctly been applied. Therefore, the revisionary proceedings, in our considered opinion, could not be faulted with. It would be immaterial that the revisionary

proceeding stem from audit objections. So long as the twin conditions viz. the assessment order being erroneous and prejudicial to the interest of revenue as prescribed u/s 263 are fulfilled, the proceedings need not be interfered with. We order so.

11. However, we make it clear that our aforesaid adjudication would not be seen to be any expression on the merits of the issue. The assessee is free to agitate the issue, on merits, in any manner before Ld. AO.

12. The appeal stands dismissed.

Order pronounced on 3rd September, 2024

Sd/-
(ABY T. VARKEY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :03-09-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF