

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH MUMBAI**  
**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**  
**AND**  
**SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA Nos. 1834 & 1835/MUM/2023**  
**Assessment Years: 2016-17 and 2017-18**

Deputy Commissioner of Income Tax, Circle – 8(3)(1), Mumbai	Vs.	Tata AIG General Insurance Co. Ltd., 15 <sup>th</sup> Floor, Tower-A, Peninsula Business Park, G.K. Marg, Lower Parel, Mumbai – 400 013  (PAN : AABCT3518Q)
<b>(Assessee)</b>		<b>(Respondent)</b>

**ITA Nos. 1815 & 1816/MUM/2023**  
**Assessment Years: 2016-17 and 2017-18**

Tata AIG General Insurance Co. Ltd., 15 <sup>th</sup> Floor, Tower-A, Peninsula Business Park, G.K. Marg, Lower Parel, Mumbai – 400 013  (PAN : AABCT3518Q)	Vs.	Assistant Commissioner of Income Tax – 8(3)(1)
<b>(Assessee)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Shri Madhur Agrawal, Advocate  
Shri Anish Thacker, Advocate

Revenue : Shri Biswanath Das, CIT DR

Date of Hearing : 05.09.2024

Date of Pronouncement : 30.10.2024

## **ORDER**

### **PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

The above captioned appeals filed by the revenue and assessee are against the orders of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order nos. ITBA/NFAC/S/250/2022-23/1051204178(1) and ITBA/NFAC/S/250/2022-23/1051204527(1) dated 23.03.2023, passed against the assessment orders by the ACIT, Circle-8(3)(1), Mumbai, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the "Act"), dated 06.12.2019 and 26.12.2019 for Assessment Years 2016-17 and 2017-18, respectively.

2. Grounds taken by Revenue in ITA No.1834/MUM/2023 is reproduced as under:

a) *"Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in holding that the provisions for Claim Incurred But Not Reported (IBNR) and Claim Incurred But Not Enough Reported (IBNER) amounting to Rs. 155,10,59,561/- is allowable u/s 37(1) of the Income Tax Act, 1961 without appreciating the fact that the such provisions are in the nature of contingent liability?"*

b) *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the re-insurance premium of Rs. 621,52,40,320/- paid to non-resident insurers towards ceding risk by virtue of the provisions of section 37(1) of the Income Tax Act, 1961, when the same was in violation of section 101A(7) r.w.s. 2(9) of the Insurance Act?"*

c) *"Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred by upholding that the provisions of section 40(a)(i) of the Income Tax Act, 1961 would not be attracted in the case of payment of re-insurance premium to foreign insurers and consequently TDS does not require to deduct on such payments?"*

d) *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the deduction of profit on sale of assets amounting to Rs. 17,34,000/-?"*

e) *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the claim of reversal of expenses of Rs. Rs. 26,12,368/- which were disallowed in earlier year?"*

*"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the claim of expenses of Rs. 22,50,000/- under*

*section 40(a)(ia) of the Act which were disallowed in the earlier year and on which tax has been deducted at source in the current year?"*

*g) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the exemption u/s 10(15)(iv)(h) of the IT Act, 1961 in respect of income of Rs. 73,76,19,768/-?"*

*h) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the deduction towards bonus of Rs. 12,77,261/- paid during the year under consideration, which was disallowed in the earlier year under section 43B of the Act?"*

*il "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the deduction for leave encashment amounting to Rs. 57,02,122/-, which was paid during the year and the same was disallowed in the earlier year under section 43B of the Act?"*

*j) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the claim of depreciation amounting to Rs. 22,55,20,305/-under section 32 of the Act?"*

*k) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate the fact that the provisions of section 44 of the IT Act, 1961 read with Rule 5 (a) of the First schedule is a disabling provision and not an enabling provision?"*

*l) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that amount of leave encashment which are paid this year, are to be allowed as deduction u/s 43B of the Act, whereas there is no such specific provision under Rule 5(a) of the First Schedule of Income Tax Act to allow such deduction to be made from the balance of profit calculation?"*

*m) "Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was justified in giving purposive interpretation of the provisions instead of literal interpretation of provisions, ignoring the fact that amendment brought by the Finance Act, 2020 in Rule 5 of first schedule is explicitly prospective in nature and will apply in relation to AY 2020-21 and subsequent assessment year?"*

2.1. Grounds taken by Revenue in ITA No.1835/MUM/2023 is reproduced as under:

*a) Whether on the facts and in the circumstances of the case and in law, the Ld.CITIA) has erred in holding that the provisions for Claim Incurred But Not Reported (IBNR) and Claim Incurred But Not Enough Reported (IBNER) amounting to Rs. 330,3759,905/ is allowable u/s 37(1) of the Income Tax Act, 1961 without appreciating the fact that the such provisions are in the nature of contingent liability?"*

*b) Whether on the facts and in the circumstances of the case and in law, the Ld.CITYA) has erred in allowing the re-insurance premium of Rs 681,82,15,312/- paid to non-resident insurers towards ceding risk by virtue of the provisions of*

section 37(1) of the Income Tax Act, 1961, when the same was in violation of section 101A(7) r.w.s. 2(9) of the Insurance Act?

c) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred by upholding that the provisions of section 40(a)(i) of the Income Tax Act, 1961 would not be attracted in the case of payment of re-insurance premium to foreign insurers and consequently TDS does not require to deduct on such payments?"

d) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the claim of reversal of expenses of Rs. Rs. 1,22,10,347/- which were disallowed in earlier year?"

e) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the exemption u/s 10(15)(iv)(h) of the IT Act, 1961 in respect of income of Rs. 55,50,67,674/-?"

f) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the deduction for leave encashment amounting to Rs. 95,25,264/, which was paid during the year and the same was disallowed in the earlier year under section 43B of the Act?"

g) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the claim of depreciation amounting to Rs. 23,85,90,730/- under section 32 of the Act?

h) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate the fact that the provisions of section 44 of the IT Act, 1961 read with Rule 5 (a) of the First schedule is a disabling provision and not an enabling provision?" L "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that amount of leave encashment which are paid this year, are to be allowed as deduction u/s 43B of the Act, whereas there is no such specific provision under Rule 5(a) of the First Schedule of Income Tax Act to allow such deduction to be made from the balance of profit calculation?"

j) Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was justified in giving purposive interpretation of the provisions instead of literal interpretation of provisions, ignoring the fact that amendment brought by the Finance Act, 2020 in Rule 5 of first schedule is explicitly prospective in nature and will apply in relation to AY 2020-21 and subsequent assessment year?

2.2. Grounds taken by assessee in ITA No.1815/MUM/2023 is reproduced as under:

1. The learned CIT(A) has, on the facts and circumstances of the case and in law, erred in confirming the action of the learned AO of not accepting the revised return of income filed by the Appellant, by holding that it was not a case of discovering of any omission or any wrong statement in the original return of income and thus, the revised return of income filed by the Appellant does not meet the conditions stipulated in section 139(5) of the Act.

2. The learned CIT(A) has, on the facts and circumstances of the case and in law, erred in confirming the action of the learned AO in treating provision of Rs 4,32,01,510 created by the Appellant towards Long Term Incentive Plan (LTIP) for employees as having been made towards bonus and in treating such liability as contingent in nature not allowable under section 37(1) of the Act.

3. Without prejudice to ground no. 2 above, the learned CIT(A) having held that the provision towards LTIP as being in the nature of provision for bonus not allowable under section 37(1) of the Act, ought to have held that the deduction in respect of such liability be allowed in the year of payment in accordance with clause (c) of section 43B of the Act.

4. The learned CIT(A) has, on the facts and circumstances of the case and in law, ought to have allowed exemption under section 10(38) of the Act claimed by the Appellant in the return of income with respect to long-term capital gains amounting to Rs 10,80,66,252 arising on sale of equity shares (subject to securities transaction tax).

5. The learned CIT(A) has, on the facts and circumstances of the case and in law, erred in confirming the action of the learned AO in treating the profit on sale of investments amounting to Rs 58,02,44,507 as income taxable under the head 'profits and gains of business or profession' instead of income under the head 'Capital Gains' as per the position adopted by the Appellant in the revised return of income.

6. The learned CIT(A) has, on the facts and circumstances of the case and in law, erred in confirming the action of the learned AO of rejecting the revised working of reserve for unexpired risk (UEPR) prepared by the Appellant as per rule 6E of the Income-tax Rules, 1962 and considered by the Appellant in the revised return of income.

The learned CIT(A) thereby erred in confirming the disallowance of Rs 30,00,49,000 made by the AO in the assessment order towards UEPR created by the Appellant during the year.

7. The learned CIT(A) has, on the facts and circumstances of the case and in law, erred in confirming the action of the learned AO of not allowing deduction amounting to Rs 14,45,27,567 claimed by the Appellant on account of reversal of UEPR made during the year out of amount disallowed in the immediately preceding year (i.e., AY 2015-16).

The learned CIT(A) erred in doing so by stating that the Appellant did not show before him that the aforesaid amount was offered to tax by the Appellant in which previous years, while no such opportunity was provided by the CIT(A) to the Appellant in this regard.

8. The learned CIT(A) having held in appeal for AY 2017-18 that deduction of Rs 60,24,723 towards rent equalisation adjustment representing rent paid over and above the rent expense recorded in the books of account is not allowable, ought to have held that the rent equalisation adjustment of Rs 60,24,723 representing rent expense recorded in the books of account over and above the rent paid, disallowed in the subject AY is not justified.

9. *The learned CIT(A), on the facts and circumstances of the case and in law, ought to have held that the AO was not justified in levying interest of Rs 5,64,71,392 under section 234A of the Act as the Appellant had filed the original return of income on 25 November 2019 i.e., before the due date of filing of ROI under section 139(1) of the Act.*

10. *The learned CIT(A), on the facts and circumstances of the case and in law, ought to have himself held that the Appellant is entitled to credit of tax deducted at source amounting to Rs 1,10,542.*

2.3. Grounds taken by assessee in ITA No.1816/MUM/2023 is reproduced as under:

1. *The learned CIT(A) has, on the facts and circumstances of the case and in law, erred in confirming the action of the learned AO in treating provision of Rs 2,67,64,603 created by the Appellant towards Long Term Incentive Plan (LTIP) for employees as having been made towards bonus and in treating such liability as contingent in nature not allowable under section 37(1) of the Act.*

2. *Without prejudice to ground no. 1 above, the learned CIT(A) having held that the provision towards LTIP as being in the nature of provision for bonus not allowable under section 37(1) of the Act, ought to have held that the deduction in respect of such liability be allowed in the respective year of payment in accordance with clause (c) of section 438 of the Act.*

3. *The learned CIT(A) erred in confirming the action of the learned AO of not allowing deduction of Rs 73,71,615 under section 80JJAA of the Act claimed by the Appellant in the revised return of income by holding that the essential condition for claiming deduction under section 80JJAA of the Act is that the Appellant should furnish report in Form DA along with original return of income and since the Appellant has not filed Form DA along with the original return of income, the Appellant is not eligible to claim the deduction under section 80JJAA of the Act.*

4. *The learned CIT(A) has, on the facts and circumstances of the case and in law, erred in confirming the action of the learned AO of denying exemption under section 10(38) of the Act claimed by the Appellant with respect to long-term capital gains amounting to Rs 7,41,05,855 arising on sale of equity shares (subject to securities transaction tax).*

5. *The learned CIT(A) has, on the facts and circumstances of the case and in law, erred in confirming the action of the learned AO in treating the profit on sale of investments amounting to Rs 70,56,04,378 as income taxable under the head 'profits and gains of business or profession' instead of income under the head 'Capital Gains' as per the position adopted by the Appellant in the return of income filed by it. 6. *The learned CIT(A) erred in confirming the action of the learned AO in not allowing deduction of Rs 60,24,723 towards rent equalisation adjustment representing rent paid over and above the rent expense recorded in the books of account.**

6. *The learned CIT(A) erred in doing so by stating that no documentary evidence was produced before him as to the said amount having been included in the*

*amount of disallowance of rent equalisation in prior AY, i.e., AY 2016-17, while no such opportunity was provided by the CIT(A) to the Appellant in this regard.*

*7. Without prejudice to ground no. 6 above, the learned CIT(A) having held that no deduction of Rs 60,24,723 is to be allowed in respect of rent equalisation adjustment representing rent paid over and above the rent expense recorded in the books of account, then, ought to have held that no disallowance is called for in the relevant year (i.e AY 2016-17) where rent equalisation adjustment represented rent expense recorded in the books of account over and above the rent paid.*

*8. The learned CIT(A) has, on the facts and circumstances of the case and in law, erred in confirming the action of the learned AO of not allowing deduction of Rs 2,89,63,479 claimed by the Appellant on account of reversal of reserve for unexpired risk ('UEPR') made during the year out of the amount of UEPR disallowed in prior years.*

*The learned CIT(A) erred in doing so by stating that the Appellant did not show before him that the aforesaid amount was offered to tax by the Appellant in which previous years, while no such opportunity was provided by the CIT(A) to the Appellant in this regard.*

*9. The learned CIT(A), on the facts and circumstances of the case and in law, ought to have held that the Appellant is entitled to brought forward losses as per the revised return of income filed for AY 2016-17 on 29 March 2018.*

*10. The learned CIT(A), on the facts and circumstances of the case and in law, ought to have held that the Appellant is entitled to credit of tax deducted at source amounting to Rs 76,216.*

*11. The learned CIT(A), on the facts and circumstances of the case and in law, ought to have held that learned AO erred in levying interest under section 234C of the Act of Rs 1,05,295 instead of Rs 11,561 considered by the Appellant in the revised return of income dated 29 March 2019.*

3. Assessee is engaged in general insurance business pursuant to license issued by Insurance Regulatory and Development Authority of India (IRDAI). These are cross appeals by the assessee and revenue for Assessment Years 2016-17 and 2017-18. Since common issues are involved, we take up all the four appeals together for adjudication by passing a consolidated order.

3.1 We take up appeal by the revenue for Assessment Year 2016-17 wherein grounds raised on various issues are all covered by the three decisions of the Coordinate Bench of ITAT, Mumbai in assessee's own

case, namely, for Assessment Year 2006-07 to Assessment Year 2008-09 in ITA No. 3535 and 1702/Mum/2011 and ITA No. 4167/Mum/2012, dated 20.11.2015, for Assessment Year 2015-16 in ITA No. 14/Mum/2021, dated 08.03.2022 and in ITA No. 1718/Mum/2020, dated 25.04.2022. Copies of the said orders are placed on record. A tabular representation made by the ld. Counsel of the assessee to point out the coverage of all the grounds raised by the revenue in this appeal by the aforesaid orders of the Coordinate Bench in assessee's own case is appreciated. Grounds raised by the revenue are dealt seriatim as under.

4. Assessee filed its return of income on 25.11.2016 reporting a total loss at Rs.25,04,12,817/- which was subsequently revised on 29.03.2018, reporting a total loss at Rs.70,17,29,580/-. Assessment was completed by passing an order u/s.143(3) on 06.12.2019 for total assessed income at Rs.849,67,14,520/- after making various additions/disallowances which is tabulated under:

Sr. No	Particulars	Amount (in Rs.)
1	Disallowance of reinsurance premium paid	621,52,40,320
2	Disallowance of provision made for claims incurred but not reported (IBNR) and claims incurred but not enough reported (IBNER)	155,10,59,561
3	Disallowance of co-insurance administration fees	50,42,700
4.	Capital expenditure	15,55,434
<b>Disallowance u/s 30 to 43B as per the Rule 5 of the First schedule.</b>		

5.	Addition to the income on account of profit on sale of fixed assets	17,34,000
6.	Reversal of expenses offered to tax in previous years	48,62,360
7.	Reversal of performance bonus offered to tax in earlier years	12,77,261
8.	Non granting of exemption of dividend income under section 10(34) of the Act	4,49,12,030
9.	Non granting of exemption of income under section 10(15)(iv)(h) of the Act	73,76,19,768
10.	Earlier year's unpaid provision of leave encashment paid in current year	57,02,122
11.	Disallowance of depreciation under section 32 of the Act	22,55,20,305

5. Assessee went in appeal before the ld. CIT(A) who granted relief on certain issues against which revenue is in appeal before the Tribunal.

6. On the first issue in ground (a) relating to disallowance of provisions for claim Incurred But Not Reported (IBNR) and claim Incurred But Not Enough Reported (IBNER), ld. Assessing Officer during the scrutiny proceedings noted that assessee had debited an amount of Rs.155,10,59,561/- towards these provisions. Assessee was asked to justify the claim for which it replied. After examining the same, ld. Assessing Officer concluded that assessee had created provision in anticipation of settlement of claims that were not ascertained. Assessee was yet to assess the loss and determine the amount to be compensated and therefore, it was in the nature of unascertainable liability. Hence, it was not allowable under the Act. Ld. Assessing Officer further referred to Rule 5 of First Schedule and concluded that provision of IBNR and IBNER are not allowable u/s 37 of the Act.

7. Ld. CIT(A) observed that aforesaid issue had been decided by the Coordinate Bench of ITAT, Mumbai in assessee's own case for A.Y.2015-16 in ITA No.14/Mum/2021. Relevant part is reproduced as under:-

*"9. First ground of appeal is related to the provisions for claim Incurred but Not Reported (IBNR) and claim Incurred But Not Enough Reported (IBNER) amounting to 148,43,01,915/- held to be liable under section 37(1) of the Act by the learned Commissioner of income-tax (Appeals).*

*10. Fact shows that the assessee has debited the above sum to the profit and loss account and claimed as allowable. The Assessing Officer questioned the same and assessee submitted that the above claims are incurred on account of the contractual obligations between the insurance company and the insurer Assessee, insurance company, has an obligation to settle claims incurred. Such settlement of claim involve time so cannot be finally settled during the financial year. Above provision are created as per the guidelines prescribed by the IRDA, the method of provisioning a scientific calculation, it is ascertained liability under section 37(1) of the Act. Therefore, it is an allowable expense.*

*11. The learned Assessing Officer held that it is a provisions created by the assessee in anticipation of claims and it is not ascertained liability so it cannot be allowed. He further noted it is not known that how much liability is good enough to pay out above claims and therefore, it is purely a contingent liability and cannot be allowed as deduction. The Assessing Officer further held that the above claim is not supported by the actual valuation and hence, he disallowed 148,43,01,915/- The Id CIT (A) after considering the decision of the honourable Supreme Court in case of Rotork controls India private limited versus Commissioner of income tax 314 ITR 62 considered that if there is a present obligation with respect to the provision, and it arises out of events involving outflow of resources and can be based on reliable estimation of such obligation then the liability incurred by the assessee company is allowable He further held that the methodology to determine the liability is also certified by actuary in accordance with guidelines and norms issued by the Institute of actuaries of India and insurance regulatory and development authority of India. He further held that such provisioning relates to present obligation and involves outflow of resources. He further considered the provisioning made by the assessee in different years and actual utilization of such provision with respect to those financial years and then he found that the provision was made less than the actual amount incurred in settling those claims. He further held that the coordinate bench in case of DCIT vs. National Insurance co. Ltd. (2016) 72 taxmann.com 116 (Kolkata p Trib.) which has been affirmed by Hon'ble Calcutta High Court in ITA No.76 of 2019 Therefore, he held that such provisioning is allowable u/s 37 (1) of the act and the addition made by the leamed AO was deleted.*

*12. We have carefully considered the rival contentions and perused the orders of the lower authorities. The facts show that during the year the assessee has made a provision of 148,43,01,950/- towards claims Incurred But Not Reported (IBNR) and claims Incurred But Not Enough Reported (IBNER) The above deduction was claimed under section 36(1) of the Act. The basis of the claim was that the provision has been made for all the unsettled claims on the basis of the claims alleged by insured persons. Certain times the loss incurred are not reported in the balance sheet of the insurance company and therefore, such claims are classified as claims incurred but not reported. Certain times such claims are reported, however they were not adequately reported. These are called claims incurred but not enough reported. The assessee made the provisions on the basis of the guidelines provided by insurance regulator and development authority of*

*India. The claims made and provided for, are certified by the Actuary in accordance with the guidelines and norms issued by the Institute of Actuaries of India (IAI) and Insurance Regulatory and Development Authority (IRDA). As according to the assessee, the claims have been approved by Actuary, therefore, the assessee has incurred loss/expenses during the year, and hence, it is allowable under section 37(1) of the Income-tax Act. The Assessing Officer considered the same as unascertained liability because ultimately the settlement of claim happens then, only according to him such claims are settled. We find that the assessee is a General Insurance Company and is covered by the guidelines issued by IRDA. The Insurance Companies are required to settle the claims of insured on the occurrence of the loss, which is covered under insurance. Such claims are required to be accounted despite the fact that such claims would not have finally settled but are pending at various stages of processing. The settlement of such claims may happen in subsequent period. Such claims are accounted by the assessee by making a provision as the liability to pay to the insurer agreed during the year. The learned Assessing Officer held that it is an anticipation of settlement of claim and therefore it cannot be said to be a definite liability. We find that identical issue arose in the case of DCIT vs. Export Credit Guarantee Corporation of India Ltd. in ITA No. 7657/Mum/2014, wherein the co-ordinate Bench vide order dated 11.10.2017 vide para No.3.3 has allowed the identical claims The learned CIT(A) while deciding the issue has relied upon the decision co-ordinate Bench in DCIT vs National Insurance Company Limited (supra) has held that the provisions made available the above claim are based on scientific calculation with a proper and rational and therefore, it could only be termed as ascertain liability. Though the above decision was rendered with respect to the computation of book profit under section 115JB of the Act, however, the learned CIT (A) applied it and allowed the claim of assessee for deduction under section 37(1) of the Act for the reason that the claim of the assessee is ascertained claim, supported by Actuarial valuation and also made on a scientific basis. To reach at this calculation, the learned CIT (A) obtained information for 6 different assessment years and found that the actual claim settled is always higher than the provisions made by the assessee. This it shows that the provisions made are not excessive. Further, it was stated before us that this claim is allowed to the assessee from year to year. In view of this, we find that assessee has incurred an expenditure, which is incurred during the year with respect to the provisions made for the IBNER and IBNR claims, on scientific basis and also certified by the valuer with respect to the methodology adopted in making such provisions. Thus, it satisfies the entire ingredient for its allowance u/s 37 (1) of the act. Thus, there is no infirmity in the order of the learned CIT (A) in allowing the claim of 148,43,01,915/- under section 37(1) of the Act. Accordingly, the ground no. 1 of the appeal is dismissed."*

7.1. Thus, following the decision of Coordinate Bench of ITAT in assessee's own case, ld. CIT(A) allowed the ground of appeal raised by the assessee.

8. We perused the above orders and by taking note of factual position of there being no change in material facts and applicable law in the

present case before us, we do not find any reason to interfere with the findings arrived at by the Id. CIT(A) in following the decision of Coordinate Bench of ITAT, Mumbai in assessee's own case (supra). Accordingly, ground (a) raised by the Revenue is dismissed.

9. Ground (b) is in respect of re-insurance premium payments to foreign re-insurers disallowed u/s. 37(1) of the Act and its related ground (c) on applicability of section 40(a)(i) of the Act on the said payments. During the year, assessee had accrued an amount of Rs. 669,77,45,099/- towards reinsurance premium to non-resident reinsurers which were reflected in the audited financial statements of the assessee. A break-up of the same is provided below:

<b>Particulars</b>	<b>Amount (Rs.)</b>
Swiss Re	26,04,25,372
Swiss Re Singapore	22,20,79,406
Other reinsurers - disallowed u/s 37	621,52,40,320
<b>Total</b>	<b>669,77,45,099</b>

10. Ld. Assessing Officer noted that assessee had paid an amount of Rs.621,52,40,320/- as re-insurance premium to non-resident companies without deducting tax at source and held that these payments are in violation of Insurance Act, 1938 and not allowable u/s 37 of the Act. He also referred to the order of Hon'ble Madras High Court in the case of DCIT v. Cholamandalam Ms General Insurance Company Ltd. [2019] 411 ITR 386 and concluded that the order cannot be applied to the instant assessment year. Thus, ld. Assessing Officer made disallowance u/s 40(a)(i) of Rs.621,52,40,320/- as no TDS was done.

10.1. On the above, Id. CIT(A) observed that the issue had been decided by the Coordinate Bench of ITAT, Mumbai in assessee's own case for A.Y.2015-16 in ITA No.1718/Mum/2020. Relevant part is reproduced as under:-

*“3. The ground Nos. 3 & 4 raised by the assessee are challenging the disallowance of re- insurance premium paid to non-resident reinsurers, who do not have a place of business/branch in India, u/s 37(1) of the Act. The alternative disallowance that was made by the Id. AO in this regard was u/s 40(a)(i) of the Act for payments made without deduction of tax at source.*

*3.1. We have heard rival submissions and perused the materials available on record. We find that assessee is in the business of general insurance. During the year, the assessee paid an amount of Rs. 6,81,13,22,176/- to non-resident companies (foreign reinsurers) as reinsurance premium. The assessee had not withheld tax on these outward remittances except one payment of Rs. 45,55,87,765/- made to Swiss Reinsurance Co. Ltd., The Id. AO observed that the remaining reinsurance premium paid in the sum of Rs 6,35,57,94,411/- was liable for ITA No. 1718/Mum/2020 M/s. Tata AIG General Insurance Co. Ltd., 3 disallowance u/s 37 of the Act in view of the provisions contained in Section 101A r.w.s. 2(9) of the Insurance Act, 1938. Additionally, the Id. AO, on without prejudice basis, also observed that since the said payment of Rs 6,35,57,94,411/- was made without deduction of tax at source, the same would be liable for disallowance u/s. 40(a)(i) of the Act also When assessee was show-caused in this regard, the assessee gave a detailed explanation before the Id. AO which was not considered Accordingly, the Id. AO proceeded to make disallowance of reinsurance premium of Rs 635,57,94,411/ u/s 37(1) and alternatively also stated that the same would be liable for disallowance u/s 40(a)(i) of the Act.*

*3.2. The id. CIT(A) considering the fact that there was an amendment in Section 2(9) of the Insurance Act, 1938 w.e.f. 26/12/2014 held that the assessee shall be allowed deduction on payments made prior to 26/12/2014 and payments made on or after 26/12/2014 shall be covered within the ambit of Explanation 1 to Section 37 of the Income Tax Act liable for disallowance thereon. The Id CIT(A) however, said that since the entire payment was made without deduction of tax at source, the Id. AO was justified in alternatively making disallowance u/s. 40(a)(i) of the Act.*

*3.3. We find that assessee is an independent insurance company registered with Insurance Regulatory and Development Authority of India (IRDA) as provided in Section 3(2A) of the Insurance Act, 1938. It is not in dispute that the assessee has paid reinsurance premium to non-resident insurance companies. It is not in dispute that the said non-resident reinsurance companies do not have any branch or any place of business in India. The case of the Revenue is that the payments made to non-resident reinsurance companies were in violation of provisions of ITA No. 1718/Mum/2020 M/s. Tata AIG General Insurance Co. Ltd., 4 Insurance Act 1938 and accordingly, not allowable as deduction in terms of Explanation-1 to Section 37 of the Act. Hence, the two points that are to be decided in this appeal are as under-*

a) *Whether the re-insurance premium paid to non-resident reinsurance companies was in violation of provisions of the Insurance Act and consequently whether the provisions of Explanation to Section 37(1) of the Act after 26/12/2014 could be brought into force?*

b) *Whether reinsurance payment made would be in violation of provisions of Section 40(a)(i) of the Act?*

3.10. *This was the strong contention of the Revenue to deny the disallowance of reinsurance premium payment made to non-resident reinsurers in the instant case. We find that the aforesaid finding of Chennai Tribunal has been reversed by the Hon'ble Madras High Court in the case of Cholamandalam MS General Insurance Co Ltd vs. DCIT reported in 102 taxmann.com 292 dated 12/12/2018. It would be relevant to reproduce the questions raised before the Hon'ble Madras High Court as under-*

*"2. The common legal issue arising in these appeals relates to disallowance of reinsurance premium ceded to non-resident reinsurers. The assessee has raised the following substantial questions of law for consideration:-*

*(i) Whether the ITAT erred in deciding the validity of reinsurance ceded to the non-resident reinsurers when such issue was not even raised before it by either the Department or the Assessee?*

*(ii) Whether the ITAT erred in holding that the IRDA (General Insurance Reinsurance) Regulation, 2000 is contrary to section 101A of the Insurance Act, 1938 when it does not have the power to decide the validity of regulations made by the IRDA?*

*(iii) Whether the ITAT erred in holding that reinsurance payments to non-residents are prohibited by law and therefore hit by Explanation 1 to section 37 of the Act?*

*(iv) Whether the ITAT erred in failing to follow co-ordinate bench decisions on the very question of reinsurance payments to non-residents when it ought to have referred the matter to a larger bench if it disagreed with such judgments?*

3.11. *The Hon'ble Madras High Court considered Cholamandalam MS General Insurance Co Ltd case in TCA No.754 of 2018 as the lead case. Out of the aforesaid four questions, the question Nos 2 & 3 would be relevant for our adjudication in the instant case. The aforesaid questions were addressed by the Hon'ble Madras High Court by observing as under-*

*"12. The sum and substance of the conclusion of the Tribunal is that the entire reinsurance arrangement of the assessee-company is in violation and contrary to the provisions of Section 2(9) of the Insurance Act and therefore, the entire reinsurance premium has to be disallowed under Section 37 of the Act. The Tribunal holds that there is a clear prohibition for payment of reinsurance premium to the non-resident reinsurance companies.*

13. *As noticed above, it is neither the case of the Revenue, nor the case of the assessee that the claim for deduction was made under Section 37 of the*

*Act. The Tribunal suo-moto has non-suited the assessee by referring Explanation 1 to Section 37 of the Act. Under the said Explanation, it was declared that any expenditure incurred by an assessee for any purpose, which is an offence or which is prohibited by law, shall not have been deemed to be incurred for the purpose of business or supervision and no allocation or allowance shall be made in respect of such expenditure. Admittedly, the Tribunal did not render any finding that the assessee has incurred expenditure for a purpose, which is an offence, However, the Tribunal holds that expenditure incurred by e incurred by the assessee is prohibited by law.*

*14. The larger question would be whether at all this is an expenditure? However, we do not propose to deal with this, as that was never decided by the Tribunal in the impugned order and leave the issue open. Thus, we are required to examine as to whether in the facts and circumstances, the Tribunal was right in holding that payment of reinsurance premium to non-resident insurance companies is prohibited and to be disallowed under Section 37 of the Act.*

*15. As pointed out earlier, neither the Revenue, nor the assessee referred to Section 37 of the Act. Thus, the error committed by the Tribunal firstly is in exceeding the scope of the order of remand passed by the Division Bench of this Court in the earlier decision noted above. Secondly, the Tribunal has no jurisdiction to declare a transaction to be either prohibited or illegal occurring under a different statute over which, it has no control. In other words, the Income-tax Officer cannot declare a transaction as illegal under the provisions of the Insurance Act or the Regulations framed thereunder. The Income-tax Officer can examine as to whether any income accrued in the hands of the assessee is required to be taxed. In the instant case, neither the Assessing Officer, nor the Commissioner of Income-tax (Appeals)-II (for brevity-the CIT(A)II) has made any such endeavour, but the Tribunal has done such an exercise which, in our considered opinion, was without jurisdiction. Nevertheless, as we have heard elaborate arguments on the side of the assessee as well as the Revenue, we are constrained to test the correctness of the order passed by the Tribunal in this regard. Thus, we have to decide as to whether there is a prohibition under law for insurance payments to non-residents so as to attract the rigour of Explanation 1 to Section 37 of the Act.*

*16. In this regard, we may straightaway refer to the statement of objects and reasons for the Insurance (Amendment) Bill, 1961, which was introduced in the Lok Sabha on 14th February, 1961. This Bill was passed and the Insurance Act stood amended. The Hon'ble Finance Minister for the Union of India would state that re- insurance is an essential part of general insurance business and at present (1961), insurance companies, operating in India, are dependent on companies outside India for a very large part of their requirements in this connection and more often than not enter into disadvantageous arrangements. Moreover, re-insurance with companies outside India results in loss of foreign exchange and the Bill is intended to foster the growth of Indian re-insurance companies and also to save foreign exchange. The Bill sought to provide that every insurance company operating in India must re-insure a certain percentage of its business with Indian re-insurance companies approved in this behalf by the Central*

*Government. The Central Government was given power to fix the percentage and this power to be exercised in consultation with the Advisory Committee so constituted. The power was also conferred on the Central Government to allocate the percentage so fixed amongst the approved Indian re-insurance companies. With the aforesaid object, the Bill proposed to insert Part IVA under the head-Re-insurancell containing two provisions, viz., Sections 101A and 1018.*

*17. The Bill had been passed by the Parliament and the Insurance Act stood amended with effect from 01.04.1961. For better appreciation, the same is quoted herein below:-*

*"Re-insurance with Indian re-insurers. Section 101A:-*

*(1) Every insurer shall re-insure with Indian re-insurers such percentage of the sum assured on each policy as may be specified by the [the Authority with the previous approval of the Central Government] under sub-section (2).*

*(2) For the purposes of sub-section (1), [the Authority] may, by notification in the Official Gazette,-*

*(a) specify the percentage of the sum assured on each policy to be re-insured and different percentages may be specified for different classes of insurance: Provided that no percentage so specified shall exceed thirty per cent. of the sum assured on such policy, and*

*(b) also specify the proportions in which the said percentage shall be allocated among the Indian re-insurers.*

*(3) Notwithstanding anything contained in sub-section (1), an insurer carrying on fire insurance business in India may, in lieu of re-insuring the percentage specified under sub-section (2) of the sum assured on each policy in respect of such business, re-insure with Indian re-insurers such amount out of the first surplus in respect of that business as he thinks fit, so however that, the aggregate amount of the premiums payable by him on such reinsurance in any year is not less than the said percentage of the premium income (without taking into account premiums on re-insurance ceded or accepted) in respect of such business during that year. Explanation -For the purposes of this sub-section, the year 1961 shall be deemed to mean the period from 1st April to the 31st December of that year.*

*(4) A notification under sub-section (2) may also specify the terms and conditions in respect of any business of re-insurance required to be transacted under this section and such terms and conditions shall be binding on Indian re-insurers and other insurers.*

*(5) No notification under sub-section (2) shall be issued except after consultation with the Advisory Committee constituted under section 1018.*

(6) *Every notification issued under this section shall be laid before each House of Parliament, as soon as may be, after it is made.*

(7) *For the removal of doubts, it is hereby declared that nothing in subsection (1) shall be construed as preventing an insurer from re-insuring with any Indian re-insurer or other insurer the entire sum assured on any policy or any portion thereof in excess of the percentage specified under subsection (2).*

(8) *In this section, ---*

(1) *"policy" means a policy issued or renewed on or after the 1st day of April, 1961, in respect of general insurance business transacted in India and does not include a re-insurance policy; and (ii) -Indian re-insurerll means an Indian insurance company which has been granted a certificate of registration under sub-section (2A) of section 3 by the Authority to carry on exclusively the re-insurance business in India.]*

18. *The interpretation given by the Tribunal is with regard to the meaning of the term other insurer occurring in sub-Section (7) of Section 101A of the Insurance Act. Sub-Section (7) of Section 101A starts with the words-For the removal of doubts, which would denote that it is clarificatory with regard to what has been stated in sub- Section (1) of Section 101A. It was clarified and declared that nothing in sub- Section (1) of Section 101A shall be construed as preventing an insurer from re-insuring with any Indian reinsurer or other insurer, the entire sum on any policy or any portion thereof in excess of the percentage specified under sub-Section 2 of Section 101A. The Tribunal while explaining the meaning of the words other insurerll, held that the definition of -insurerll under sub-Section (9) of Section 2 of the Act alone should be relied upon and that is the only definition of -insurerll and if such a definition is applied, re-insurance with foreign companies is prohibited by law. The Tribunal held that the word other insurerll provided in Section 101A(7) of the Insurance Act enables the Indian insurer for reinsuring over and above the percentage fixed by the Regulatory Authority and the reinsurance may be either with Indian reinsurer or other insurer. It further held that by taking advantage of the term -other insurerll, the assessee claims that they can re-insure with nonresident reinsurance company ignoring the provisions of the Insurance Act. Il further proceeded to hold that the term other insurerll as provided in Section 101A(7) of the Insurance Act is only the insurer, which is defined in Section 2(9) of the Insurance Act and there cannot be any extended meaning, which can be given to the term other insurerll. Thus, it held an Indian insurer cannot have any reinsurance arrangement with reinsurance company other than the insurer, as defined in Section 2(9) of the Insurance Act. In our considered view, the conclusion of the Tribunal is not sustainable. We support such conclusion with the following reasons.*

19. *In exercise of the powers under Section 114A of the Insurance Act, and Sections 14 and 26 of the Insurance Regulatory and Development Authority Act, 1999, the Central Government framed the Insurance Regulatory and Development Authority Regulations pertaining to General*

*Insurance Reinsurance called Insurance Regulatory and Development Authority (General Insurance - Reinsurance) Regulations, 2000. Chapter II of the said Regulations deals with procedure to be followed for reinsurance arrangements and it would be beneficial to refer to the said provision, which reads as follows:-*

*"Chapter II:-*

*3. Procedure to be followed for Reinsurance Arrangements:-*

*(1) The Reinsurance Programme shall continue to be guided by the following objectives to:*

- a) maximise retention within the country;*
- b) develop adequate capacity,*
- c) secure the best possible protection for the reinsurance costs incurred; d) simplify the administration of business.*

*(2) Every insurer shall maintain the maximum possible retention commensurate with its financial strength and volume of business. The Authority may require an insurer to justify its retention policy and may give such directions as considered necessary in order to ensure that the Indian insurer is not merely fronting for a foreign insurer.*

*(3) Every insurer shall cede such percentage of the sum assured on each policy for different classes of insurance written in India to the Indian reinsurer as may be specified by the Authority in accordance with the provisions of Part IVA of the Insurance Act, 1938.*

*(4) The reinsurance programme of every insurer shall commence from the beginning of every financial year and every insurer shall submit to the Authority, his reinsurance programmes for the forthcoming year, 45 days before the commencement of the financial year;*

*(5) Within 30 days of the commencement of the financial year, every insurer shall file with the Authority a photocopy of every reinsurance treaty slip and excess of loss cover note in respect of that year together with the list of reinsurers and their shares in the reinsurance arrangement*

*(6) The Authority may call for further information or explanations in respect of the reinsurance programme of an insurer and may issue such direction, as it considers necessary:*

*(7) Insurers shall place their reinsurance business outside India with only those reinsurers who have over a period of the past five years counting from the year preceding for which the business has to be placed, enjoyed a rating of at least BBB (with Standard & Poor) or equivalent rating of any other international rating agency. Placements with other reinsurers shall require the*

*approval of the Authority. Insurers may also place reinsurances with Lloyd's syndicates taking care to limit placements with individual syndicates to such shares as are commensurate with the capacity of the syndicate.*

*(8) The Indian Reinsurer shall organise domestic pools for reinsurance surpluses in fire, marine hull and other classes in consultation with all insurers on basis, limits and terms which are fair to all insurers and assist in maintaining the retention of business within India as close to the level achieved for the year 1999- 2000 as possible. The arrangements so made shall be submitted to the Authority within three months of these regulations coming into force, for approval.*

*(9) Surplus over and above the domestic reinsurance arrangements class wise can be placed by the insurer independently with any of the reinsurers complying with sub-regulation (7) subject to a limit of 10% of the total reinsurance premium ceded outside India being placed with any one reinsurer. Where it is necessary in respect of specialised insurance to cede a share exceeding such limit to any particular reinsurer, the insurer may seek the specific approval of the Authority giving reasons for such cession.*

*(10) Every insurer shall offer an opportunity to other Indian insurers including the Indian Reinsurer to participate in its facultative and treaty surpluses before placement of such cessions outside India.*

*(11) The Indian Reinsurer shall retrocede at least 50% of the obligatory cessions received by it to the ceding insurers after protecting the portfolio by suitable excess of loss covers. Such retrocession shall be at original terms plus an over-riding commission to the Indian Reinsurer not exceeding 2.5%. The retrocession to each ceding insurer shall be in proportion to its cessions to the Indian Reinsurer*

*(12) Every insurer shall be required to submit to the Authority statistics relating to its reinsurance transactions in such forms as the Authority may specify, together with its annual accounts. The above Regulations are Statutory Regulations, which bind the stakeholders.*

*20. A conjoint reading of Regulation 3 and sub-Regulations (1) to (10) will clearly show that the objectives were to maximize the retention of revenue within the country. What we are required to see is whether there is any indication in the Insurance Regulatory and Development Authority (General Insurance - Reinsurance) Regulations, 2000 prohibiting reinsurers with a foreign insurer. A reading of Regulations 3(2), 3(4), 3(7), 3(9) and 3(10) clearly show that there is no bar.*

*21. The sum and substance of the Regulations is that every insurer shall cede such percentage of sum assured on each policy, for different*

*classes of insurance written in India to the Indian re-insurer as may be specified by the Authority under Section 101A of the Insurance Act. Therefore, every Indian insurer is to cede, such specified/notified percentage of the sum assured and not the whole. The commencement date for the re-insurance programme is also spelt out in the Regulations. The insurer has to disclose payments made outside India and there is also a restriction on with whom, they can enter into a contract of re-insurance, as the Regulations place an embargo stating that such entity should have enjoyed the rating of at least BBB or equivalent rating of any other international rating agency. Thus, the reading of the Regulations will clearly show there is absolutely no prohibition for re-insurance with a foreign re-insurance company.*

*22. The observations made in the finding rendered by the Tribunal stating that the Regulations are inconsistent with the provisions of the Act are utterly perverse and to be outrightly rejected. In 2008, the Standing Committee on Finance proposed the amendment to the Insurance Laws and the Insurance Laws (Amendment) Bill, 2008 was introduced. The report of the Committee states that the General Insurance Corporation Re is the only national re-insurer operating in India and also has re-insurance business in international market and its share of international business is 44 per cent. The Chairman of the General Insurance Corporation (GIC), who is one of the respondents in these appeals, has deposed before the Standing Committee on Finance and would state that the legal position as of 2008, there was no bar on doing re-insurance business by any foreign reinsurance company in India. The Chairman, GIC expressed deep concern that when GIC has to transact international business in various countries, they are subjected to lot of crosschecks and regulation and there is no corresponding regulation in India, as a result of which, foreign reinsurance companies can accept re-insurance business without taking any licence and without opening any branch in India. Thus, the suggestion was there is a need for regulation for any foreign country coming into India and doing re-insurance business. Ultimately, the Standing Committee on Finance noted that there is no bar on foreign re-insurance business companies carrying on re-insurance business in the country without any licence or opening a branch, nor there was a regulation to control the transaction of foreign re-insurers. This ultimately, led to the amendment to the Insurance Act by amending the definition of -insurerll in Section 2(9) of the Insurance Act to mean a foreign company engaged in re-insurance business through a branch established in India. The Tribunal was of the view that unless and until a branch is opened by the foreign re-insurance company, the question of conducting re-insurance business in India cannot be done. In our considered view, this conclusion of the Tribunal is not sustainable. The answer lies not in any recent proceedings but, a circular issued by the CBDT as early as on 03.10.1956 bearing Circular No. 38(XXXIII-7) (F.No.51(5)- IT/54]. The operative portion of the circular reads as follows:-*

*'Liability to tax or freedom there from of the foreign reinsurer will depend on various factors, such as the existence of reciprocity between the Indian insurer and the foreign reinsurer, the magnitude of local retention as compared with the reinsurance premium paid*

*by the Indian insurer to the foreign reinsurer and so on. The Income-tax Officers will, therefore, have to examine each case in the light of its facts and decide where tax liability is attracted, what portion of the income from the reinsurance should be assessed under section 42(2) of the 1922 Act [corresponding to section 92 of the 1961 Act]."*

23. A reading of the above circular would clearly reveal that at no point of time, the Income-tax Department took a stand that the re-insurance business with a foreign re-insurance company was a prohibited business. Further, the Tribunal fell in error in rendering such a finding without noticing the Re-insurance Regulations, which has been provided by the Insurance Regulatory and Development Authority of India. In the said Regulations, the highlights of the statement and objects for introduction of Chapter IVA to the Insurance Act in the amendment, in the year 1961, had been brought into after which, there is an order of Preference for Reinsurance Cessions. In the order of preference, the last among them is what can be offered to Indian insurers and overseas insurers. Thus, the regulations does not wholly prohibit any re-insurance with overseas reinsurance companies subject to the condition that the other priorities contained in Clauses 1, 2 and 3 of the regulations are exhausted. Furthermore, the Reserve Bank of India, Exchange Control Department, Central Office, Mumbai notified the Foreign Exchange Management (Insurance) Regulations, 2000. The major changes in the procedure as per the memorandum of Exchange Control Regulations relating to General Insurance in India (GIM) were summarised and the relevant Regulation, pertaining to re-insurance arrangement, is as follows:-

*S.No. Subject Matter Changes 1 Reinsurance Arrangement The reinsurance arrangement of public sector general insurance companies registered with ITDA are to be decided by the Reinsurance respective Boards of the insurance companies and IRDA is to be kept informed. ADs designated by these insurance companies are now permitted to make remittances falling under such approved reinsurance arrangements without reference to the bank.*

24. The above will clearly show that re-insurance arrangement with a foreign insurance company is permissible. Thus, it is evidently clear that on and after the introduction of Section 101A to the Insurance Act, there is a mandatory requirement for other insurer to re-insure with the Indian reinsurers and such percentage is put to a maximum of 30% and the language of Section 101A nowhere prohibits the re-insurance with foreign reinsurance companies above the percentage specified by the authority with previous approval by the Central Government. That apart, the Tribunal erred in drawing a presumption regarding prohibition of re-insurance with foreign re-insurance companies. This presumption is erroneous for the simple reason that the statement of objects of the Insurance Act itself clearly stipulates wherever there is a prohibition. By way of illustration, we can refer to Sections 2(c), 2(c)(b), 2(9), 32(a), 40, 41, 42(a) and 52(a). Therefore, no inference could have been drawn, as drawn by the Tribunal and consequently, to be held that there can be no bar or prohibition under the Insurance Act, which prohibits ceding of re-insurance with a foreign re-insurer outside India.

25. Section 2(168) defines re-insurance to mean the insurance of all or part of one insurer's risk by another insurer who accepts the risk for a mutually acceptable premium. There is no distinction drawn between an Indian re-insurer and a foreign re-insurer. As rightly submitted by Mr. M. Vijayaraghavan, learned counsel for CIG, the words "other insurer" occurring in sub-Section 7 of Section 101A of the Insurance Act cannot be treated as a pronoun or a noun and should be read as a verb. This is more so because, there is no separate definition provided for other insurer and considering the scheme of Section 101A of the Insurance Act, "other insurer" should mean the insurer, who is outside India and not a person in terms of the definition under Section 2(9) of the Act. In the light of the above discussion, we are of the clear view that the Tribunal erred in coming to a conclusion that it is not the intention of the Parliament to authorize an Indian insurer to have re-insurance outside the country ignoring the provisions of Insurance Act referred above. The Tribunal had no jurisdiction to declare any provisions of the regulations to be inconsistent with the provisions of the Insurance Act. This was wholly outside the purview of the Tribunal. Thus, the Tribunal clearly exceeded its jurisdiction in stating that the assessee has engaged in a transaction, which is prohibited by law and therefore, not entitled for deduction under Section 37 of the Act. This has never been the case of the Revenue either before the Assessing Officer or before the CIT(A) or before the Tribunal, when they filed appeals challenging that portion of the order passed by the CIT(A), which was against the Revenue.

26. The Tribunal while upholding the order of the Assessing Officer did not assign any independent reasons. The discussion in the impugned order relates to the order did not consider the correctness of the order passed by the Assessing Officer or that of the CIT(A). Therefore, the Tribunal could not have held that the Assessing Officer rightly disallowed the re-insurance premium under Section 40(a)(i). This finding is not supported with any reasons. Therefore, the Tribunal misdirected itself, exceeded the scope of remand as ordered by the Division Bench and ventured into a jurisdiction, which is wholly prohibited in the light of the plain language of Section 254(1) of the Act.

27. Thus, for the above reasons, we are of the clear view that the order passed by the Tribunal calls for interference. Accordingly, the appeals, filed by the assessee are allowed and the substantial questions of law framed are answered in favour of the assessee.

28. In the light of the above, the matter stands remanded to the Tribunal to take a decision on the following points:-

- (1) Whether the Assessing Officer was right in disallowing the re-insurance premium under Section 40(a)(i) of the Act;
- (ii) Whether the CIT(A) was right in rejecting partially the appeal filed by the assessee; and

*(iii) Whether the CIT(A) was justified in restricting the claim of the assessee to 15% instead of confirming the order passed by the Assessing Officer.*

*29. We make it clear that the Tribunal shall decide the above questions alone and nothing more and the decision shall be taken based on the available material and the assessee and the Revenue are not entitled to place any fresh material before the Tribunal so as to enable the Tribunal to take a decision as expeditiously as possible. No costs. Consequently, the connected miscellaneous petitions are closed.*

*3.12. Hence, from the aforesaid decision of Hon'ble Madras High Court, it could be safely concluded that payment of re-insurance premium by the assessee to foreign reinsurers who do not have place of business or branch established in India, is not in violation of provisions with Insurance Act and consequently the provisions of Explanation-1 to Section 37 of the Act could not be applied in the facts of the instant case. To this extent, the assessee succeeds. Accordingly, the bifurcation of payments prior to 26/12/2014 and after 26/12/2014 as done by the Id. CIT(A) in his order need not be gone into as they would become redundant.*

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*3.24. Hence, the entire observations of the lower authorities had been duly addressed in the aforesaid findings by us. At the cost of repetition, we would like to reiterate the fact that there is absolutely no dispute that the foreign reinsurers does not have any place of business in India / permanent establishment in India/branch established in India / Liaison office in India. Hence, any payment made by the assessee company to such foreign insurers would not be chargeable to tax in the hands of the foreign reinsurers in India in terms of Section 195(1) of the Act. Accordingly, as stated earlier, there would be no obligation on the part of the assessee, being a payer, to deduct tax at source and consequently there cannot be any disallowance u/s 40(a)(i) of the Act. Accordingly, assessee succeeds on this ground also.*

*3.25. Accordingly, in view of the aforesaid observations the ground Nos.3 & 4 raised are allowed."*

10.2. Ld. CIT (A) thus, following the decision of Coordinate Bench ITAT in assessee's own case (supra), allowed the ground so raised by the assessee.

11. We perused the above orders and by taking note of factual position of there being no change in material facts and applicable law in the present case before us, we do not find any reason to interfere with the findings arrived at by the ld. CIT(A), following the decision of Coordinate

Bench of ITAT, Mumbai in assessee's own case (supra). Accordingly, grounds (b) and (c) raised by the Revenue are dismissed.

12. Ground no. (d) relates to issue of profit on sale of assets amounting to Rs.17,34,000/-, not allowed as deduction.

13. Ld. Assessing Officer noted that assessee claimed reduction of Rs. 17,34,000/- towards profit on sale of investments and deduction of Rs.22,55,20,305/- towards depreciation while computing income from business and profession. He concluded that these deductions are not allowable as per Rule 5 of the First Schedule to the Act and rejected the claim of the assessee.

13.1. On the above, ld. CIT(A) observed that the issue had been decided by the Coordinate Bench of ITAT, Mumbai in assessee's own case for A.Y.2015-16 in ITA No.1718/Mum/2020. The relevant part is reproduced as under:-

*"5(a) Ground No.5 is seeking deduction in respect of profit on sale of fixed assets from the assessee's total income Since we have already directed the Id. AO to grant depreciation as per Ground No. 10 hereinabove u/s 32 of the Act, then consequently on sale of fixed assets would also have to be as per the provisions of Income Tax Act, hence, this ground No.5 becomes consequential in nature"*

13.2. Ld. CIT(A), thus, following the decision of the Coordinate Bench of ITAT in assessee's own case (supra), allowed the ground of appeal raised by the assessee.

14. We perused the above orders and by taking note of factual position of there being no change in material facts and applicable law in the present case before us, we do not find any reason to interfere with the findings arrived at by the ld. CIT(A), following the decision of Coordinate

Bench of ITAT, Mumbai in assessee's own case (supra). Accordingly, the ground (d) raised by the Revenue is dismissed.

15. Ground no. (e) and (h) relates to reversal of expenses disallowed in earlier years, not allowed as deduction.

16. Ld. Assessing Officer noted that assessee disallowed Rs.26,12,368/- towards reversal of expenses offered to tax in earlier years and Rs. 12,77,261/- as reversal of excess provision of performance bonus offered to tax in earlier years while computing income from business and profession. He concluded that these claims of deduction are not allowable as per Rule 5 of the First Schedule to the Act and rejected the claim of the assessee.

17. Ld. CIT(A) observed that the issue had been decided by the Coordinate Bench of ITAT, Mumbai in assessee's own case for A.Y.2015-16 in ITA No. 1718/Mum/2020. Relevant part is reproduced as under-

*"5(b) Ground No.6 is challenging the action of the Id. CIT(A) not excluding the reversal of expenses credited by the assessee to its profit and loss account which had been disallowed in the previous years*

*5(d). Ground No.8 is challenging the disallowance of deduction of bonus and leave encashment paid during the year under appeal which was disallowed in earlier years u/s 43B of the Act*

*5.1 We find that all the aforesaid items from (b) to (e) above are to be granted deduction and excluded from the total income of the assessee in order to avoid double disallowance. The amendment brought in Finance Act, 2020 also impliedly concluded that there should be no double disallowance. In this regard, assessee has given detailed submissions before the Ld.CIT(A) that are enclosed in pages 217-222 of the paper book filed before us justifying the claim of deduction. The same reasoning that was given by us in ground No. 10 hereinabove would apply to these grounds also Accordingly, the ground Nose to 9 raised by the assessee are allowed"*

17.1. Ld. CIT(A) thus, following the decision of Coordinate Bench of ITAT in assessee's own case, allowed the grounds raised by the assessee.

18. We perused the above orders and by taking note of factual position of there being no change in material facts and applicable law in the present case before us, we do not find any reason to interfere with the findings arrived at by the ld. CIT(A), following the decision of Coordinate Bench of ITAT, Mumbai in assessee's own case (supra). Accordingly, the grounds (e) and (h) raised by the Revenue are dismissed.

19. Ground no. (f) is in respect of deduction not allowed for expenses disallowed in earlier years on which TDS was done in the current year.

20. Ld. Assessing Officer noted that the assessee disallowed Rs.22,50,000/- as reversal of expenses offered to tax in previous years while computing income from business and profession. He concluded that these disallowances are not allowable as per Rule 5 of the First Schedule to the Act and rejected the claim of the assessee.

21. Ld. CIT(A) noted from the records that the issue was decided by the Coordinate Bench of ITAT, Mumbai in assessee's own case for A.Y.2015-16 in ITA No.1718/Mum/2020. Relevant part is reproduced as under:-

"5(b) .....

*(c) Ground No.7 is challenging the action of the Id. CIT(A) disallowing the claim of expenses u/s.40(a)(ia) of the Act which was disallowed in the preceding previous year and on which tax had been deducted at source and paid to the credit of the Central Government in the previous year under appeal.*

*5.1 We find that all the aforesaid items from (b) to (e) above are to be granted deduction and excluded from the total income of the assessee in order to avoid double disallowance. The amendment brought in Finance Act, 2020 also*

*impliedly concluded that there should be no double disallowance. In this regard, assessee has given detailed submissions before the Ld.CIT(A) that are enclosed in pages 217-222 of the paper book filed before us justifying the claim of deduction. The same reasoning that was given by us in ground No. 10 hereinabove would apply to these grounds also. Accordingly, the ground Nose to 9 raised by the assessee are allowed."*

21.1. Ld. CIT(A) thus, following the decision of Coordinate Bench of ITAT in assessee's own case, allowed the ground raised by the assessee.

22. We perused the above orders and by taking note of factual position of there being no change in material facts and applicable law in the present case before us, we do not find any reason to interfere with the findings arrived at by the ld. CIT(A), following the decision of Coordinate Bench of ITAT, Mumbai in assessee's own case (supra). Accordingly, the ground (f) raised by the Revenue is dismissed.

23. For ground no. (i) on deduction not allowed u/s.43B of the Act in respect of leave encashment amount disallowed in earlier year but paid during the year ld. Assessing Officer noted that assessee claimed Rs.57,02,122/- towards unpaid provision of leave encashment of previous years, but paid in this year while computing income from business and profession. He concluded that these disallowances are not allowable as per Rule 5 of the First Schedule to the Act and rejected the claim of the assessee.

24. Ld. CIT(A) observed that the issue had been decided by the Coordinate Bench of ITAT, Mumbai in assessee's own case for A.Y.2015-16 in ITA No. 1718/Mum/2020. Relevant part is reproduced as under:-

*"5(d) Ground No.8 is challenging the disallowance paid during the year under appeal which of deduction of bonus and leave encashment was disallowed in earlier years u/s 43B of the TAX DEPA Act*

*5.1 We find that all the aforesaid items from (b) to (e) above are to be granted deduction and excluded from the total income of the assessee in order to avoid*

*double disallowance. The amendment brought in Finance Act, 2020 also impliedly concluded that there should be no double disallowance. In this regard, assessee has given detailed submissions before the Ld.CIT(A) that are enclosed in pages 217-222 of the paper book filed before us justifying the claim of deduction. The same reasoning that was given by us in ground No. 10 hereinabove would apply to these grounds also. Accordingly, the ground Nos 6 to 9 raised by the assessee are allowed."*

24.1. Ld. CIT(A) thus following the decision of the Coordinate Bench of ITAT in assessee's own case, allowed the ground raised by the assessee.

25. We perused the above orders and by taking note of factual position of there being no change in material facts and applicable law in the present case before us, we do not find any reason to interfere with the findings arrived at by the ld. CIT(A), following the decision of Coordinate Bench of ITAT, Mumbai in assessee's own case (supra). Accordingly, the ground (i) raised by the Revenue is dismissed.

26. For ground no. (g) in respect of denial of exemption u/s.10(15)(iv)(h) of the Act in respect of interest income amounting to Rs.73,76,19,768/- ld. Assessing Officer denied the exemption u/s 10(34) of the Act of Rs.4,49,12,030/- and of Rs.73,76,19,768/- u/s 10(15)(iv)(h) by relying on Rule 5 of First Schedule to the Act stating that these are not permissible under Rule 5 of First Schedule to the Act.

27. Ld. CIT(A) observed that the issue had been decided by the Coordinate Bench of ITAT, Mumbai in assessee's own case for A.Y.2006-07 to 2008-09 in ITA Nos. 3535 & 1702/Mum/2011 and ITA No.4071/Mum/2012. Relevant part is reproduced as under:-

*"8. In Ground No.5, the revenue is aggrieved for CIT(A)'s action for exempting dividend income.*

*9 This issue is also covered by the order of the Hon'ble Bombay High Court in the case of General Insurance Corporation of India, 342 ITR 27.*

.....  
.....

*Respectfully following the above decision of Hon'ble Bombay High Court, we do not find any infirmity in the order of CIT(A) exempting the dividend income.”*

27.1. Ld. CIT(A) placed reliance on the decision of the Hon'ble jurisdictional High Court of Bombay in the case of General Insurance Corporation of India vs. DCIT [2011] 342 ITR 27 (Bom), wherein it is clearly held that exemptions u/s 10 of the Act will be available to general insurance company as well. Ld. CIT(A), thus following the decision of the Coordinate Bench of ITAT in assessee's own case, allowed the grounds raised by the assessee.

28. We perused the above orders and by taking note of factual position of there being no change in material facts and applicable law in the present case before us, we do not find any reason to interfere with the findings arrived at by the ld. CIT(A), following the decision of Coordinate Bench of ITAT, Mumbai in assessee's own case (supra). Accordingly, the ground (g) raised by the Revenue is dismissed.

29. For ground no. (j) in respect of claim of deduction of Rs.22,55,20,305/- for depreciation u/s. 32 of the Act, the issue has already been addressed while dealing with ground no. (d) above. The same is thus dismissed as already noted in the above paragraph.

30. For issues raised in ground nos. (k), (l) and (m) in respect of interpretation of section 44 and amendment in Rule 5 to the First Schedule of the Act as well as there being a specific prohibition against the allowance of expenditure u/s. 30 to 43B of the Act, these aspects have been elaborately dealt with by the Coordinate Bench in assessee's own case for AY 2015-16 in ITA No.1718/Mum/2020 (supra). The Coordinate Bench concluded that the amendment brought in Finance

Act, 2020 is curative in nature and has to be construed as clarificatory having retrospective effect as it was brought in to avoid unintended consequences and discrimination with other assessees. It placed reliance on the decision of Hon'ble Supreme Court in case of Allied Motors Pvt. Ltd. vs CIT, 224 ITR 677, while giving its direction so as to make the computation provisions mentioned in Rule 5 of the First Schedule of the Act, workable. Relevant extracts from the said order are reproduced for ease of reference.

*"4.1. We have heard rival submissions and perused the materials available on record. We find that assessee had debited depreciation in its profit and loss account and also claimed depreciation as per the provisions of Section 32 of the Act in the return of income. The ld. AO placed reliance on the decision of the Co-ordinate Bench of this Tribunal in the case of New India Assurance Company Ltd., vs. Additional CIT reported in 12 taxmann.com 465 and disallowed the claim of depreciation as per Section 32 of the Act by holding that no deductions are permissible from the profits as per the profit and loss account while assessing insurance companies as per Rule 5 of the first schedule to the Act read with Section 44 of the Act. We find that the assessee had added back the book depreciation while filing its return of income. Hence by this process, the assessee was neither granted deduction for book depreciation nor granted deduction for income tax depreciation computed u/s.32 of the Income Tax Act. Hence, it had resulted in a situation that no depreciation at all was granted deduction to the assessee. This action was upheld by the ld. CIT(A). This, in our considered opinion, had resulted in gross injustice to the assessee. In any case, the depreciation computed u/s.32 of the Act is to be granted mandatorily to the assessee as per Explanation 5 to Section 32 of the Act. In our considered opinion, the effect of Rule 5, Clause „a" of schedule-1 is that, if the insurance company has claimed a deduction for any expenditure / allowance or as debited in the ITA No.1718/Mum/2020 M/s. Tata AIG General Insurance Co. Ltd., 31 accounts to the profit and loss account by way of provision or reserve, which is not admissible as per the provisions of Section 30 to 43B of the Income Tax Act, the same shall be liable for disallowance. The natural corollary to this would be that deductions that are otherwise specified u/s.30 to 43B would become allowable under the provisions of the Act and the same would get allowed to insurance company. Hence, logically if book depreciation is not allowed to the assessee, then the depreciation computed as per Section 32 of the Act would become automatically allowable to the assessee. This is irrespective of the fact that income tax depreciation u/s.32 is to be mandatorily allowed to the assessee as per Explanation-5 to Section 32 of the Act. In this regard, the language of the Section and the computation provisions mentioned in Rule 5 of first schedule to the Income Tax Act applicable for insurance companies cannot be given a literal interpretation as it manifestly produces unjust result. Reliance in this regard has been rightly placed by the ld. AR on the decision of the Hon"ble Supreme Court in the case of CIT vs. J H Gotla reported in 156 ITR 323 wherein the relevant portion is reproduced hereunder:-*

*“46. Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the Legislature, the Court might modify the language used by the Legislature so as to achieve the intention of the Legislature and produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the Legislature from the language used. It is necessary to remember that language is at best an imperfect instrument for the expression of human intention. It is well to remember the warning administered by judge, the learned hand that one should not make a fortress out of dictionary but remember that statutes always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meaning.”*

*4.2. We would like to make it clear that the aforesaid purposive interpretation of the provisions are being considered in the instant case only to avoid unjust and absurd results that would otherwise ITA No.1718/Mum/2020 M/s. Tata AIG General Insurance Co. Ltd., 32 prevail in the event of assessee not getting even statutory deductions / allowances while computing the taxable income. The production of unjust and absurd results could never be the intention of the legislature and we are not inclined to make the computation provisions of Rule 5 of first schedule to the Income Tax Act unworkable. Hence, in order to prevent that gross injustice, we are inclined to give purposive interpretation of the provisions instead of literal interpretation.*

*4.3. We also find that the Finance Act 2020 had addressed the very same anomaly by amending the Rule 5 of the first schedule to the Income Tax Act by inserting the proviso after Clause-C of Rule 5 to provide deduction of amounts previously disallowed u/s.43B in the year in which the same is actually paid. The Explanatory Memorandum to the Finance Bill 2020 explaining the provisions relating to direct tax amendments while proposing an amendment in Section 43B to insurance companies had stated as under:-*

*“Section 44 of the Act provides that computation of profits and gains of any business of insurance, including any such business carried on by a mutual insurance company or a co-operative society shall be computed in accordance with the rules contained in the First Schedule to the Act.*

*Section 43B of the Act provides for allowance of certain deductions, irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by the assessee, only in the previous year in which such sum is actually paid.*

*Rule 5 of the said Schedule provides for computation of profits and gains of other insurance business. It states that 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 or the rule made thereunder or the provisions of the Insurance Regulatory and Development Authority Act, 1999 or the regulations ITA No.1718/Mum/2020 M/s. Tata AIG General Insurance Co. Ltd., 33 made thereunder, subject to the condition that any expenditure debited to the profit and loss account which is not admissible under the provisions of sections 30 to 43B shall be added*

*back; any gain or loss on realisation of investment shall be added or deducted, as the case may be, if the same is not credited or debited to the profit and loss account; any provision for diminution in the value of investment debited to the profit and loss account shall be added back. Thus, there is no specific provision, in this rule, in the case of other insurance companies, to allow deduction for any payment of certain expenses specified in section 43B if they are paid in subsequent previous year. There is a possibility that such sum may not be allowed as deduction in the previous year in which the payment is made. This has not been the intention of the legislature.*

*Therefore, it is proposed to insert a proviso after clause (c) of the said rule 5 to provide that any sum payable by the assessee which is added back under section 43B in accordance with clause (a) of the said rule shall be allowed as deduction in computing the income under the rule in the previous year in which such sum is actually paid.*

*This amendment will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.*

*4.4. From the logical reading and understanding of the aforesaid Explanatory Memorandum of Finance Bill 2020, it could be safely inferred and concluded that the legislature never wanted to deny any deduction or allowance that was otherwise allowable to the assessee under the very same provisions of Sections 30 to 43B of the Income Tax Act. It also impliedly mentioned that by this process, the double disallowance that would occur shall be avoided. There would be cases where assessee while making certain provision for certain expenses or provision for certain reserves would add it back voluntarily in the return of income even though the same is an item of legitimate expenditure in the P & L account. When the very same expenditure is actually paid by the assessee in different assessment year, the same should be logically and legally liable for deduction / allowance to the assessee in the year in which such payments are made. This alone ITA No.1718/Mum/2020 M/s. Tata AIG General Insurance Co. Ltd., 34 would address the clear intention of the legislature. Moreover these benefits are otherwise available to all other types of the assessee and there is no logical reason that an Insurance company alone should be deprived of the same. This would be more relevant from the point of discrimination of assessee. Considering the totality of these observations, it could be safely concluded that the amendment brought in Finance Act 2020 addressing this anomaly is merely curative in nature and hence has to be construed as clarificatory having retrospective effect as it was brought in to avoid unintended consequences and to avoid discrimination with other assessees. In this regard, we find that the reliance has been rightly placed by the ld. AR on the decision of the Hon'ble Supreme Court in the case of Allied Motors (P) Ltd., vs CIT reported in 224 ITR 677 wherein it was held that when a proviso is inserted to remedy unintended consequences and to make the section workable, a proviso which supplies an obvious omission in the section and which proviso is required to be read into the section to give it a reasonable interpretation, it could be read to be retrospective in operation, particularly to give effect to the section as a whole. This direction, in our considered opinion, would make computation provisions mentioned in Rule 5 of the first schedule of the Income Tax Act workable. In view of the above observations, we direct the ld. AO to grant allowance of depreciation u/s.32 of*

*the Act for the year under consideration. Needless to mention that the ld. AO should rework the depreciation of subsequent years accordingly due to change in the written down value of the block of assets. Accordingly, the ground No.10 raised by the assessee is allowed.”*

31. We perused the above order and by taking note of factual position of there being no change in material facts and applicable law in the present case before us, we respectfully following the above referred judicial precedent in assessee's own case, dismiss the grounds so raised by the revenue.

32. In the result, appeal of the revenue for Assessment Year 2016-17 in ITA No. 1834/Mum/2023 is dismissed.

33. Similar issues are raised by the revenue in appeal for AY 2017-18, difference being only in the numbering of grounds raised when compared with appeal for AY 2016-17 and the quantum of additions/disallowances. Under the given set of facts and circumstances as already observed above in terms of our findings for Assessment Year 2016-17, this appeal for AY 2017-18 is squarely covered and is therefore accordingly dismissed.

34. In the result, appeal of the revenue for Assessment Year 2017-18 in ITA No. 1835/Mum/2023 is dismissed.

35. We now take appeals filed by the assessee, first being AY 2016-17 in ITA No.1815/Mum/2023. Ground no.1 is in respect of non-acceptance of revised return of income filed by the assessee for which ld. AO held that it was not a case of discovering of any omission or any wrong statement in the original return of income which does not meet the conditions stipulated in section 139(5) of the Act.

35.1. It is undisputed fact that assessee filed its revised return of income within the prescribed time period u/s.139(5) of the Act. As already noted above, assessee had filed its original return reporting a total loss of Rs.25,04,12,817/- which was increased by way of revision to Rs.70,17,29,580/- for the reasons as tabulated below:

Reasons for revision	Impact in revised ROI
While filing the original ROI, the assessee erroneously disclosed profit on sale of investments under 'Income from Business and Profession'. In the revised return, the assessee excluded the same from the 'income form Business and Profession" and offered to tax under the head capital gains	(i) Reduction of business income by Rs. 68,83,10,759 (ii) Increase in capital gains by Rs. 68,83,10,759
Erroneously claimed long term incentive plan as bonus and disallowed the same under S.43B of the Act	Reduction of total amount disallowed under section 43B of the Act by Rs. 4,32,01,510
Erroneously calculated Reserve for unexpired risk (UEPR) in the original ROI	Reduction of business income by Rs. 30,00,49,000

35.2. From the above table, it is noted that assessee filed the revised return upon discovering the following omissions/mistakes in the original return:

- i. Reserve for unexpired risk (UEPR) was incorrectly calculated in the original return, claim of exemption under section 10(38) of the Act was not made,
- ii. Erroneous disclosure of profit on sale of investments under the head profit and gains from business or profession, and
- iii. Payment to be made as per Long Term Incentive Plan (LTIP) erroneously claimed as bonus and disallowed under section 43B of the Act.

35.3. On the above, ld. Assessing Officer held that assessee could not establish that there is an omission or wrong statement on account of

bonafide mistake by not making claim in the original return, finding of which has been confirmed by ld. CIT(A) in the first appeal.

36. On the first reason for revision of the return relating to disclosure of profit on sale of investments as capital gains in the revised return, assessee had erroneously disclosed profit on sale of investments under the head "income from business profession" in the original return which was subsequently revised to be taxed under the head "capital gains" in the revised return. This revision resulted in reduction in business income by Rs.68,83,10,759/- and corresponding increase in the capital gains head. For this revision, assessee placed reliance on the circulars issued by Central Board of Direct Taxes (CBDT) vide circular No. Letter 037/IRDA/F&A/Mar-06 dated 06.03.2006 and CBDT letter F. No. 153/24/2006-TPL dated 21.02.2006 to justify this change in the treatment. Reliance is also placed on Circular No. 06/2016 dated 29.02.2016 issued by the CBDT which provided clarification on charging of income under the head capital gains, hence a change in stance by the assessee.

36.1. For the reliance of assessee on circular 06/2016 dated 29.02.2016, ld. Assessing Officer observed that this was already in the knowledge of assessee when it filed its original return and therefore there is no omission or wrong statement discovered by the assessee, which could justify the revision for this count. According to the ld. Assessing Officer, assessee had been reporting the profits and gains on realisation of investments under the head "business income" for the last so many years. The stance so taken by the assessee for last so many years has been re-characterised based on circular issued by CBDT, dated 29.02.2016, which is not in consonance with the rule of consistency and therefore, assessee cannot be allowed to change its

stand by resorting to filing of revised return u/s. 139(5). He thus, rejected the revision of return to treat profit of sale of investments as business income.

36.2. On the second reason for revision of return relating to long term incentive plan claimed as bonus and disallowed u/s.43B which resulted into reduction of total amount disallowed by Rs.4,32,01,510/-, assessee explained that this payment is made under incentive scheme with the intention of retaining employees and not rewarding them for their performance. According to the assessee, bonus is for services already rendered whereas payments under incentive scheme to employees is for them to continue their service in future with the assessee. Thus, payments made by assessee under long term incentive plan are covered u/s.37(1) and not u/s. 36(1)(ii). On the explanation so given by the assessee, ld. Assessing Officer observed that assessee did not submit any documentary evidence for this long-term incentive scheme, in absence of which the said arguments were not accepted. According to the ld. Assessing Officer, the said payment is inexplicably linked to good performance of the employees and is in the nature of reward since calculation for such payments to employees is with reference to their salary like bonus. According to him, this liability is a contingent liability which cannot be allowed u/s. 37 as claimed by the assessee. Thus, on this count also revision of return to reduce disallowance u/s.43B was rejected.

36.3. On the third reason for revision of return i.e., deduction on changes in reserve for UnExpired Premium Risk (UEPR) leading to reduction of business income by Rs.30,00,49,000/-, assessee submitted that UEPR was erroneously calculated for which a revised working was placed on record. According to the ld. Assessing Officer, it

had not resulted out of bonafide inadvertence thus, failing to meet the requirement of section 139(5) of the Act and hence revision on this account was also rejected.

36.4. Assessment was thus completed by the ld. Assessing Officer taking business income as per the original return filed by the assessee. Ld. CIT(A) upheld the observations and findings arrived at by ld. Assessing Officer on this issue.

37. Before us, ld. Counsel for the assessee submitted that merely because the claim could have been made in the original return but was inadvertently not made, could not mean that the claim of the assessee was not bonafide. According to him, "omission/wrong statement" contained in section 139(5) of the Act covers the case where the claim could have been made at the time of filing the original return but was inadvertently not made, since assessee does not get any benefit by not making such a claim in the original return but making the same subsequently in the revised return. This establishes the bonafides of the assessee of making a claim in the revised return which could have been made at the time of filing the original return but was inadvertently not made.

37.1. He, further referred to the decision of Hon'ble Supreme Court in the case of Goetze (India) Ltd vs. CIT [2006] 284 ITR 323 (SC), wherein it is held that assessee cannot make a fresh claim of deduction before the ld. AO other than by way of filing a revised return. Thus, there is no restriction placed by the Hon'ble Supreme Court for making a fresh claim when claimed by filing a revised return within the prescribed time limit u/s. 139(5) of the Act. He thus contended that once the return of income is revised, it replaces the original return of income and hence

ld. AO is duty bound to consider the revised return of income for the purpose of concluding the assessment proceedings.

38. For better reference, we extract the provisions contained in section 139(5) as under:

*“139(5) if any person, having furnished a return under sub section(1), or sub section (4) discovers any omission or any wrong statement therein, he may furnish a revised return at anytime before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier. “*

38.1. From the above, it is observed that a revised return may be filed by an assessee when, after filing the original return, assessee discovers any omission or wrong statement in the original return so filed. We take note of the reasons as tabulated above for which the original return filed by the assessee was revised resulting into increase in the total loss, reported in the said return which was filed within the prescribed time limit and is an undisputed fact. Assessee has adequately explained the reasons for the revision so undertaken, as narrated above. There are justifiable reasons for revising the return by the assessee which falls within the phraseology referred in section 139(5), *“discovers any omission or wrong statement therein”*. In this context we refer to the decision of Coordinate Bench of ITAT, Mumbai in the case of PCIT Vs. Tata Housing Development Company ltd. [2011] 45 SOT 9 (Mum) which dealt with the definition of the terms *“omission”*, *“wrong statement”* and *“discover”* as under:

- i. *The word 'omission' would connote 'an unintentional act or neglect to perform what the law required'*
- ii. *The words 'wrong statement' would include in their scope 'a statement which was not false to the knowledge of the person making it'*
- iii. *The word 'discover' would, inter alia, take in its ambit anything which was unknown'*

38.2. Further, ITAT Chennai bench in the case of Original Innovative Logistics India (P.) Ltd vs ACIT [2016] 76 taxmann.com 364 held as follows:-

*"The word 'omission' connotes unintentional act or include to perform what the law required; the word 'wrong statement' includes in its scope a statement which was not attentive to the knowledge of the person making it, and the word 'discover would take in its ambit that which was hidden, concealed or unknown. The word 'discovers' connotes discovery of some omission or wrong statement in the return of which the assessee was not aware at the time of filing the original return. If the assessee deliberately omitted the particulars of income and made wrong statement in the original return, the revised return would not bring the case within the scope of section 139(5). Discovery of the omission or wrong statement made by the assessee itself is not sufficient to file the revised return within ambit of section 139(5)"*

38.3. Going by the principles decided in the aforementioned decisions, for a revised return to be valid, the essential condition is that the assessee should not be aware of the mistake while filing the original return of income. Further, when the taxpayer discovers some omission or wrong statement in the original return of income, of which he is not aware of at the time of filing of the original return, the shortcoming can be corrected by filling revised return.

38.4. In this connection, we wish to state that certain reasons which required, a revised return of income to be filed, were in fact incorrect treatment made in the computation in original return of income.

38.5. Further, ITAT Kolkata bench in the case of ITO vs Ramesh Kumar Rathi [2005] 143 Taxman 33 held that when the law permits the assessee to replace the original return by a revised return on detection of any mistake in the original return, there is no reason as to why the said revised return could not be accepted as in place of original return filed under section 139(1).

38.6. In addition to the above discussion, in the decision of Hon'ble Supreme Court in the case of Goetze India Pvt. Ltd. (supra), Hon'ble Court had held that "*nothing impinges on the power of the appellate authorities to entertain such a claim of the assessee*". Thus, without prejudice to the discussions made above as claimed by the assessee, the same could have been raised by the assessee for the first time before an appellate authority which otherwise assessee has taken a prudent approach of filing a revised return within the prescribed time limit u/s. 139(5) of the Act. Given the above, we wish to state that once a revised return of income is filed, the consequence is that it replaces the original return. It is well settled that once a revised return is filed, it has to be considered for the purpose of making assessment since the original return is substituted by the revised return. The original return cannot be adverted to, for the purpose of making an assessment of the assessee for the relevant year. Accordingly, we allow the ground raised by assessee in this respect and direct the Id. AO to accept the revised return of income filed by the assessee for the purpose of making the assessment which shall be subject to the findings arrived at by us on various issues raised both by the assessee and the Revenue in their respect appeals for the year under consideration.

39. Ground nos. 2 and 3 raised by the assessee are in respect of disallowance of provision for long term incentive plan which has been held to be contingent in nature, not allowable u/s. 37(1) of the Act. We note that Id. AO observed about assessee not submitting any documentary evidence for the claim of long-term incentive scheme. He held this claim to be contingent liability not allowable u/s.37. Assessee contends that the amount determined as payable to the employee under the long-term incentive scheme is based on the actual valuation report and is therefore not a contingent liability and also not bonus as per

section 36(1)(ii) since it is paid to the employees with the intention of retaining them and not rewarding them for their performance.

39.1. To substantiate its claim, assessee has placed on record actuarial valuation report dated 20.05.2016 as well as supplementary supporting additional evidence under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 (ITAT Rules). In this respect, assessee has placed on record an application requesting for admission of supplementary supporting evidences as per rule 29 of the ITAT Rules. In the said application, assessee has explained the reasons because of which these evidences could not be filed before the first appellate authority since a very short notice was provided. On going through the explanation furnished by the assessee as well as reasoning given by the ld. AO for its treatment, we find it appropriate to admit these additional evidences contained in the additional paper book for AY 2016-17 which is tabulated as under:

Sr. No.	Particulars	Page number
1	Long Term Incentive Plan (LTIP) Scheme launched in FY 2015-16	1-4
2	Actuarial Valuation Report dated 20.05.2016 certifying Retention Scheme liability as on 31 March 2016	5-101
3	Computation of Income for AY 2014-15 along with relevant extract from return of income	11-17
4	Computation of Income for AY 2015-16 along with relevant extract from return of income	18-27

39.2. Since these evidences are crucial for the purpose of ascertaining the allowability of the claim made by the assessee which have not been gone through by the authorities below while making the assessment, we find it appropriate to remit the matter back to file of Jurisdictional Assessing Officer (JAO) to examine the same and call for any explanation so as to decide on the claim of the assessee in accordance

with the provisions of the law. Accordingly, ground nos. 2 and 3 are allowed for statistical purposes.

40. In ground no.4, assessee has claimed allowance of exemption u/s.10(38) of the Act in respect of long-term capital gains of Rs.10,80,66,252/- arising on sale of equity shares subjected to securities transaction tax (STT) which was part of one of the reasons for revision of return. Ld. AO has completed the assessment based on original return filed by the assessee, negating the claims made in the revised return which has been affirmed by the ld. CIT(A). In terms of our observations and findings stated above, we have held the revised return to be accepted for the purpose of making the assessment of total income in the hands of the assessee.

40.1. In view of this, we now need to consider claim of exemption u/s.10(38) when the assessee has pleaded that section 44 of the Act deals only with computation of income chargeable under various heads and does not affect the exemption provisions of section 10 of the Act which does not override them.

41. Assessee is engaged in the business of general insurance and is governed by the provisions of section 44 of the Act r.w.r. 5 of the First schedule to the Act. For our ease of reference relevant provisions of section 44 r.w.r 5 of Part B of the First Schedule to the Act are reproduced below:

*“5. Computation of profits and gains of other insurance business.—The profits and gains of any business of insurance other than life insurance shall be taken to be the 2 [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, 3 [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 4 [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”*

42. Issue raised in this ground is no longer *res integra* since it has been dealt by the Coordinate Bench of ITAT, Mumbai in the case of General Insurance Corporation vs. ACIT in ITA No. 1080/Mum/2019, dated 30.03.2021 for AY 2011-12. In this order, reliance was placed on the decision of Hon'ble jurisdictional High Court of Bombay in the case of PCIT vs. New India Assurance Ltd. [254] taxmann.com 238 (Bom) which had dealt with communication dated 21.02.2006 of CBDT to the Chairman of IRDA. In the said order, Coordinate Bench also held that CBDT circular No.6/2016 dated 29.02.2016 where in it was stated in para 3(a) that if the assessee desires to treat the income arising from transfer of shares held for more than 12 months as capital gain eligible for exemption u/s. 10(38), the same shall not be disturbed by the Revenue.

42.1. Further, reliance was placed on the decision of the Hon'ble High Court of Delhi in the case of Oriental Insurance Ltd. vs. DCIT, 407 ITR 658 (Del) who had held that in view of strict restrictions imposed on insurance companies by the Insurance Act, 1938 and IRDAI regulations, it is not open for a company carrying on general insurance business to treat any part of its investments as stock in trade. Accordingly, investments held by the assessee engaged in insurance

business cannot be construed to have held as stock in trade. Thus, the Coordinate Bench held that assessee is eligible for exemption u/s. 10(38) of the Act. Relevant observations and findings in this respect from the said order are extracted below:

*“3.8. We find that the assessee’s claim for the exemption under Section 10(38) of the Act in respect of the profits made by it on the sale of equity shares which have been subjected to STT, has been disputed by the revenue by relying upon the amendment made with effect from Asst Year 2011-12 in Rule 5(b) of the First Schedule to the Act. In our considered opinion, there are two independent , distinct and separate issues which need to be addressed herein :-*

- (i) whether profits and gains made by a general insurance corporation, on the sale of investments, are generally taxable?*
- (ii) whether, if such profits and gains are taxable, such a corporation is entitled to the benefit of the exemption in Section 10(38) of the Act?*

*3.8.1. We find that the fact that the above two issues are distinct and separate has been recognised by the Hon’ble Jurisdictional High Court in the case of PCIT vs New India Assurance Co. Ltd reported in 254 Taxman 238 (Bom) where the issue in dispute is squarely addressed by the Court. The question raised before the Hon’ble Court for the Asst Year 2006-07 is as under:-*

*“Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in law in allowing exemption to the assessee u/s 10 of the I.T. Act, 1961?”*

*3.8.2. We find that the Hon’ble Jurisdictional High Court disposed of the aforesaid question by holding as under:-*

*6. Mr. Suresh Kumar draws our attention to the order dated 29th July, 2011 passed by the Tribunal in respect of the same Respondent for the Assessment Year 2004-05. The above decision arose from a Revision under Section 263 of the Act of an Assessment Order. The aforesaid decision arose out of writing off Investments while determining the income of the Assessee. It did not even remotely deal with the issue of exemption under Section 10(38) of the Act i.e. sale of investment as long term capital gain. Thus, it can have no application to the facts of the present case. Further, the decision of the Apex Court in GIC (supra), relied upon by the Revenue also does not deal with the claim for exemption under Section 10(38) of the Act and would have no application to the present facts. The Revenue was unable to point out the manner in which the above decision of the Apex Court applies to the present facts.*

*7. Mr. Suresh Kumar, next submits that on an identical issue in GIC (supra). This Court has admitted the following question on 25th February, 2013 as substantial question of law as under:—*

*“Whether on the facts and in the circumstance of the case and in law the Tribunal was justified in holding that profit on sale of investments are not liable to be taxed in the hands of the assessee in the year under appeal?”*

Therefore, he submits that the question as formulated be admitted.

8. The issue raised in the above question in GIC (*supra*) is not with regard to the exemption claimed under Section 10(38) of the Act as in the present proceedings. The question on which the above appeal has been admitted, is whether profits on sale of investments are liable to be (included) taxed in the hands of the assessee i.e. profits on sale of investments being liable to be tax. It does not deal with the benefit of exemption under Section 10(38) of the Act. The question as raised herein proceeds on the basis that even if sale of investments is liable to be taxed, yet to the extent it relates to long term capital gain falling under Section 10(38) of the Act, the exemption would be available. Thus, the question arising for our consideration in this appeal is different from the question on which the appeal of the GIC (*supra*) was admitted. (Underlining provided by us)

9. Moreover, we find that this Court in General Insurance Corpn. (*supra*) had also relied upon the communication dated 21st February, 2006 of the CBDT to the Chairman of the Insurance Regulatory and Developing Authority.. In the above communication, it has been clarified that exemption available to any other assessee under clause 10(38) relating to long term capital, would also be available to a person carrying on non-life Insurance business. Mr. Suresh Kumar very fairly states that the CBDT communication dated 21st February, 2006 addressed by the CBDT to the Chairman, IRTA, as well as the decision of this Court in GIC (*supra*) would be binding upon the Revenue.

10. In view of the above, the question as framed does not give rise to any substantial question of law.

11. Accordingly, Appeal dismissed. No order as to costs.

3.9. We find that the Hon'ble Jurisdictional High Court on recognizing this difference, dismissed the revenue's appeal challenging the grant of the exemption u/s 10(38) of the Act, even though it had earlier admitted a Revenue appeal regarding the taxability of profit on sale of investments.

3.10. Even otherwise, we find that the assessee's eligibility for the exemption u/s 10(38) of the Act is confirmed by the letter dated 21st February 2006 addressed by the Central Board of Direct Taxes ("CBDT") to the Chairman of the Insurance Regulatory Development Authority ("IRDA") in F.NO.153/24/2006-TPL specifically pointing out that the exemption u/s 10(38) of the Act was available to General Insurance Companies who were at par with other assessees who are eligible for the exemption u/s 10(38) of the Act for Long Term Capital Gain. For the sake of convenience, this letter dated 21.2.2006 is reproduced hereunder:-

F.NO.153/24/2006-TPL  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes  
(TPL Division)  
Room No. 147B-II, North Block  
New Delhi, the 21 st February, 2006



3.11.1. Hence it could be safely concluded that the assessee had duly considered and complied with the amendment brought in Rule 5(b) of First Schedule to the Act with effect from Asst Year 2011-12.

3.12. We also find that the ld AR drew our attention to the fact that the same practice has been consistently followed by the assessee for all the subsequent Asst Years as would be evident from the tabulation below:-

Particulars	Amount (Rs.)							
	A.Y.2011-12	A.Y.2012-13	A.Y.2013-14	A.Y.2014-15	A.Y.2015-16	A.Y.2016-17	A.Y.2017-18	A.Y.2018-19
Total profit on sale of investments	7,156,030,000	3,889,942,000	10,091,973,000	10,944,812,000	18,182,683,000	15,656,361,000	17,291,588,000	20,051,115,000
Less Exemption claimed u/s 10(38) of the Act	5,888,502,720	2,794,596,358	4,159,618,911	9,549,165,332	16,794,900,739	14,815,914,867	15,927,581,738	18,591,429,590
Balance Capital Gains CHARGEABLE TO TAY and offered to tax	1,267,527,280	1,095,345,642	5,932,354,089	1,395,646,668	1,387,782,261	840,446,133	1,364,006,262	1,459,685,410

3.13. Hence wherever the specific conditions stipulated u/s 10(38) of the Act were not complied with the assessee, we find that the assessee had duly offered the profits on sale of investments to tax in subsequent asst years as tabulated above, pursuant to the amendment in Rule 5(b) of First Schedule to the Act. The ld AR further argued that prior to amendment in Rule 5(b) of First Schedule to the Act from Asst Year 2011-12 (i.e upto Asst Year 2010-11) , by drawing specific reference to the relevant page of the factual paper book, the assessee's claim was that entire profits on sale of investments were not subject to tax. Hence it could be seen that the above treatment of the assessee in respect of profit on sale of investments from Asst Year 2011-12 onwards clearly establishes beyond doubt that the amendment with effect from Asst Year 2011-12 to Rule 5(b) of the First Schedule to the Act, has in no way been nullified / rendered ineffective / rendered nugatory by the assessee's claim that it is entitled to the exemption under Section 10(38) of the Act. (Emphasis supplied by us)

3.14. With regard to yet another observation of the lower authorities that the profits on sale of investments would not be construed as long term capital gains for the assessee and rather the same would be business income for the assessee and consequently the provisions of section 44 of the Act would come into operation (which is an overriding provision), we find that the ld AR argued that Section 44 of the Act is applicable to insurance business having overriding power only for the limited purpose of computation of income chargeable under that head. The ld AR argued that Section 44 of the Act can have no application to incomes enumerated in Section 10 of the Act which are ab initio excluded at source from total income. In other words, as incomes enumerated in Section 10 of the Act [including Section 10(38)] do not enter into the scope of total income at all, they are not hit by Section 44 of the Act which specifically applies only to incomes chargeable under different heads. With regard to shift in head of income from capital gains to business income by the lower authorities with regard to profit on sale of investment, the ld AR relied on the CBDT Circular No. 6/2016 dated 29.2.2016 wherein it was stated that all investments sold by the assessee on which shares that were held for more than 12 months shall be eligible for exemption u/s 10(38) of the Act and the same shall not be disturbed by the revenue. For the sake of convenience, the said CBDT Circular (which is binding on the department) is reproduced hereunder:-

*SECTION 45, READ WITH SECTION 28(i), OF THE INCOME-TAX ACT, 1961 -  
CAPITAL GAINS, CHARGEABLE AS - ISSUE OF TAXABILITY OF SURPLUS ON  
SALE OF SHARES AND SECURITIES - CAPITAL GAINS OR BUSINESS  
INCOME - INSTRUCTIONS IN ORDER TO REDUCE LITIGATION*

*CIRCULAR NO.6/2016 [F.NO.225/12/2016-ITA-II], DATED 29-2-2016*

*Sub-section (14) of section 2 of the Income-tax Act, 1961 ('Act') defines the term "capital asset" to include property of any kind held by an assessee, whether or not connected with his business or profession, but does not include any stock-in-trade or personal assets subject to certain exceptions. As regards shares and other securities, the same can be held either as capital assets or stock-in-trade/trading assets or both. Determination of the character of a particular investment in shares or other securities, whether the same is in the nature of a capital asset or stock-in-trade, is essentially a fact-specific determination and has led to a lot of uncertainty and litigation in the past.*

*2. Over the years, the courts have laid down different parameters to distinguish the shares held as investments from the shares held as stock-in-trade. The Central Board of Direct Taxes ('CBDT') has also, through Instruction No. 1827, dated August 31, 1989 and Circular No. 4 of 2007 dated June 15, 2007, summarized the said principles for guidance of the field formations.*

*3. Disputes, however, continue to exist on the application of these principles to the facts of an individual case since the taxpayers find it difficult to prove the intention in acquiring such shares/securities. In this background, while recognizing that no universal principal in absolute terms can be laid down to decide the character of income from sale of shares and securities (i.e. whether the same is in the nature of capital gain or business income), CBDT realizing that major part of shares/securities transactions takes place in respect of the listed ones and with a view to reduce litigation and uncertainty in the matter, in partial modification to the aforesaid Circulars, further instructs that the Assessing Officers in holding whether the surplus generated from sale of listed shares or other securities would be treated as Capital Gain or Business Income, shall take into account the following—*

*(a) Where the assessee itself, irrespective of the period of holding the listed shares and securities, opts to treat them as stock-in-trade, the income arising from transfer of such shares/securities would be treated as its business income,*

*(b) In respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the Assessing Officer. However, this stand, once taken by the assessee in a particular Assessment Year, shall remain applicable in subsequent Assessment Years also and the taxpayers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years;*

*(c) In all other cases, the nature of transaction (i.e. whether the same is in the nature of capital gain or business income) shall continue to be decided keeping in view the aforesaid Circulars issued by the CBDT.*

4. It is, however, clarified that the above shall not apply in respect of such transactions in shares/securities where the genuineness of the transaction itself is questionable, such as bogus claims of Long Term Capital Gain/Short Term Capital Loss or any other sham transactions.

5. It is reiterated that the above principles have been formulated with the sole objective of reducing litigation and maintaining consistency in approach on the issue of treatment of income derived from transfer of shares and securities. All the relevant provisions of the Act shall continue to apply on the transactions involving transfer of shares and securities.

3.14.1. The ld AR further drew our attention to the decision of Hon'ble Delhi High Court in the case of Oriental Insurance Co. Ltd vs DCIT reporte din 407 ITR 658 (Del) wherein at pages 666 and 667 thereon, the Hon'ble High Court had held that in view of the strict restrictions imposed on Insurance Companies by the Insurance Act, it is not open to a company carrying on general insurance business to treat any part of its investments as "stock-in-trade". Hence at any stretch of imagination, the investments held by the assessee engaged in insurance business, could be construed to have held as stock in trade. On this count, also, the observations of the lower authorities are dismissed.

3.15. We find that the learned Special Counsel for the Revenue argued vehemently by stating that the assessee had not made any claim of exemption u/s 10(38) of the Act and in the first round of proceedings, this tribunal had remanded the issue back to the file of ld CITA for fresh adjudication. We find both these arguments advanced by the ld Special Counsel for the Revenue to be factually incorrect. We find from perusal of computation of income, the assessee had indeed made a claim of exemption u/s 10(38) of the Act in respect of profit on sale of investments that were subjected to STT. If it was not claimed, then how the ld AO could have even resorted to deny the claim of exemption u/s 10(38) of the Act in the assessment. With regard to the first round of proceedings where this tribunal had remanded to ld CITA for fresh adjudication, we find that this argument of the ld Special Counsel for the Revenue is misconceived as this tribunal had only remanded the matter to ld CITA for "fresh examination", without in any way examining or pronouncing upon the merits of the assessee's entitlement to the exemption u/s 10(38) of the Act.

3.16. In view of our detailed observations and respectfully following the various judicial precedents relied upon hereinabove, we hold that the assessee is eligible for claim of exemption u/s 10(38) of the Act in the facts and circumstances of the instant case and accordingly Ground Nos. 1.1 to 1.3 raised by the assessee are allowed."

43. Considering the facts on record, claim made by the assessee in its revised return and the jurisdictional precedents referred and discussed above, following the same, we allow the claim of exemption u/s.10(38) in respect of long-term capital gains arising on sale of equity shares subjected to STT. Thus, ground no.4 is allowed.

44. Ground no.5 is inextricably linked to the observations and findings arrived at in ground no.4 above. The issue raised in ground no.5 is in respect of ld. AO treating the profit on sale of investment of Rs.58,02,44,507/- as income taxable under the head “profits and gains of business profession” instead of income under the head “capital gains”, as per the position adopted by the assessee in its revised return of income.

44.1. In respect of this claim, reason for revision is based on CBDT circular No. 06/2016 dated 29.02.2016 by which in its para 3(a), an assessee was allowed to claim exemption u/s. 10(38) by treating the income arising from transfer of listed shares and securities held for more than 12 months immediately preceding the date of its transfer as capital gain and such a treatment by the assessee shall not be put in dispute by the ld. AO. The stand of the ld. AO is that assessee in all the earlier years had treated such income as business income. It is only in this assessment year that it has been characterised as capital gain by way of filing of revised return under section 139(5) of the Act. Thus, the aforesaid CBDT circular has given a concession to the assessee which cannot be denied since circulars issued by the CBDT are binding on the Department. To this effect, assessee placed reliance on the decision of Hon'ble Supreme Court in the case of Uco Bank vs. CIT [1999] 237 ITR 889 (SSC).

*“13.1 It is also important to note about the binding nature of CBDT circular on the Income-tax Authorities for which gainful guidance is taken from the decision of Hon'ble Supreme Court in the case of CIT v. Hero Cycles [1997] 228 ITR 463 (SC) wherein it was held that circulars bind the ITO but will not bind the appellate authority or the Tribunal or the Court or even the assessee.*

*13.2 In the case of UCO Bank [1999] 237 ITR 889 (SC), Hon'ble Supreme Court while dealing with the legal status of such circulars, observed thus (page 896): "Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board thus has power, inter alia, to*

*tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under section 119 of the Income-tax Act, which are binding on the authorities in the administration of the Act. Under section 119(2)(a) , however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage under the Act is given the right to forgo the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorized as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities."*

*13.3 In the matter of Nayana P. Dedhia [2004] 270 ITR 572 (AP), the Hon'ble Andhra Pradesh High Court held that the guidelines issued by the Board in exercise of powers in terms of section 119 of the Act relaxing the rigours of law are binding on all the officers responsible for implementation of the Act and, therefore, bound to follow and observe any such orders, instructions and directions of the Board.*

*13.4 In the decision of DCIT v. Sunita Finlease Ltd. [2011] 330 ITR 491 (CG,) it was held by the Hon'ble High Court of Chhattisgarh in para 16 that the administrative Instruction No. 9/2004 issued by the Central Board of Direct Taxes is binding on administrative officer in view of the statutory provision contained in section 143(2), which provides for limitation of 12 months for issuance of notice under section 143(2). While giving its finding, the Hon'ble High Court of Chhattisgarh placed reliance on the decisions in the case of UCO Bank (supra) and Nayana P. Dedhia (supra).*

*13.5 Hon'ble jurisdictional High Court of Calcutta in the case of Amal Kumar Ghosh [2014] 361 ITR 458 (Cal) dealt with the issue relating to CBDT circular which according to the Department cannot defeat the provisions of law. While giving its observations and finding on the issue, the Hon'ble Court referred to the decision of Hon'ble Chhattisgarh High Court in the case of Sunita Finlease Ltd (supra), which are as under:*

*7. We have considered the rival submissions advanced by the learned Advocates. Even assuming that the intention of CBDT was to restrict the time for selection of the cases for scrutiny within a period of three months, it cannot be said that the selection in this case was made within the aforesaid period. Admittedly, the return was filed on 29th October, 2004 and the case was selected for scrutiny on 6th July, 2005. It may be pointed out that Mrs. Gutgutia was, in fact, reiterating the views taken by the learned Tribunal which we also quoted above. By any process of reasoning, it was not open for the learned Tribunal to come to a finding that the department acted within the four corners of Circulars No.9 and 10 issued by CBDT. The circulars were evidently violated. The circulars are binding upon the department under section 119 of the I.T. Act.*

*8. Mrs. Gutgutia, learned Advocate submitted that the circulars are not meant for the purpose of permitting the unscrupulous assesseees from evading tax. Even assuming, that to be so, it cannot be said that the department, which is*

*State, can be permitted to selectively apply the standards set by themselves for their own conduct. If this type of deviation is permitted, the consequences will be that floodgate of corruption will be opened which it is not desirable to encourage. When the department has set down a standard for itself, the department is bound by that standard and cannot act with discrimination. In case, it does that, the act of the department is bound to be struck down under Article 14 of the Constitution. In the facts of the case, it is not necessary for us to decide whether the intention of CBDT was to restrict the period of issuance of notice from the date of filing the return laid down under section 143(2) of the I.T. Act. [emphasis supplied by us by underline]*

14. Considering the facts on record, perusal of the impugned order, submissions made by the Ld. Counsel and the department, CBDT circular and the judicial precedents including that of Hon'ble Supreme Court and the jurisdictional High Court of Calcutta, we are inclined to adjudicate on the additional ground in favour of the assessee by holding that the order passed by the Ld. CIT(E) is invalid and deemed to have never been issued as it fails to mention DIN in its body by adhering to the CBDT circular no. 19 of 2019. Accordingly, additional ground taken by the assessee is allowed. Having so held on the legal issue raised by the assessee in the additional ground, the grounds relating to the merits of the case requires no adjudication. Accordingly, the appeal of the assessee is allowed in terms of above observations and findings.

45. Considering the facts on record, claim made by the assessee in its revised return and the jurisdictional precedents referred and discussed above, following the same, we allow the claim of the assessee on sale of investments as held by us while adjudicating on ground no. 4 above. Accordingly, ground no. 5 is allowed.

46. Ground no.6 refers to the issue of not allowing aggregate approach for the disallowance under Rule 6E of the Income Tax Rules, 1962 (the Rules) whereby ld. AO did not accept the revised working of reserve for unexpired risk (UEPR) claimed by the assessee in the revised return of income. In this respect, assessee submitted that Rule 5 of First Schedule read with section 44 lays down the adjustments which can be made to the profit and loss account prepared by the assessee in accordance with provisions of Insurance Act, 1938 and IRDAI regulations. Clause (c) of the Rule 5 lays down such adjustment and provides that “such amount carried over to the reserve for unexpired risk as may be prescribed in this behalf shall be allowed as deduction”. In

this regard Rule 6E of the Rules prescribes the limits for UEPR and any amount carried over in excess of such prescribed limits is required to be disallowed. In turn, Rule 6E lays down limits depending on the type of insurance business undertaken by the assessee.

46.1. For the sake of ready reference, Rule 6E is reproduced as under:

*“6E. Limits of reserve for unexpired risks.*

*- In the computation of profits and gains of any business of insurance other than life insurance, the amount carried over to a reserve for unexpired risks including any amount carried over to any such additional reserve which is to be allowed as a deduction under clause (c) of rule 5 of the First Schedule, shall not exceed-*

*(a) where the insurance business relates to fire insurance or engineering insurance and which provides insurance for terrorism risks, 100 per cent of the net premium income of such business of the previous year;*

*(aa) where the insurance business relates to fire insurance or miscellaneous insurance other than the insurance business covered under clause (a), 50 per cent of the net premium income of such business of the previous year;*

*(b) where the insurance business relates to marine insurance, 100 per cent of the net premium income of such business of the previous year:*

*Provided that any amount out of the amount carried over to such reserve or additional reserve which is not allowed as a deduction under this rule in respect of any previous year shall not be included in the total income for the assessment year relevant to the immediately next succeeding previous year in the revenue account relating to which the amount aforesaid is credited.”*

47. According to the assessee, any insurance business other than fire or engineering insurance business which provides for terrorism risk and marine insurance business are covered by clause (A) and clause (B) of Rule 6E of the Rules, respectively, and are to be considered under clause AA of Rule 6E on the consolidated basis. Miscellaneous insurance business as referred in clause AA of Rule 6E includes a host of insurance business such as motor insurance, health insurance, trade credit insurance, personal accident insurance, etc. Accordingly, “such business of the previous year” contained in clause AA of Rule 6E refers to singular or one business class and not different businesses of fire insurance and marine insurance. Accordingly, while determining limits

for UEPR under clause AA of Rule 6E, aggregate of premiums earned from fire insurance business (other than terrorism risk which is covered by clause A) as well as miscellaneous insurance business is to be considered for determining the limit of 50%. This amount is then to be compared with actual reserve created for such insurance businesses. In case, actual reserve created for such insurance businesses in aggregate is higher than the 50% limit, only then, such excess amount is to be disallowed. Based on this understanding, assessee reworked its computation of UEPR and arrived at a position that there is no disallowance to be made under clause AA to Rule 6E for the year under consideration. A detailed working was furnished in this respect. The same is extracted from the impugned assessment order placed at para 3.9.2.

Nature of Business	Net Written premium during the financial year Rs.	Maximum deduction permissible under Rule 6E (as % of net premium) Rs.	Maximum Deduction permissible. Rs.	Actual reserve created Rs.	Amount to be disallowed (only if (D)>(C)) Rs.
	(A)	(B)	(C)=(A)*(B)	(D)	(F)=(D)-(C)
(a) Fire (other than terrorism pool) Fire Insurance	64,97,42,000	50%	32,48,71,000	62,49,20,000	30,00,49,000
(b) Miscellaneous Insurance	18,80,77,07,000	50%	9,40,38,53,500	9,08,45,69,000	-
(c) Marine Insurance (others)	225,07,88,000	100%	2,25,07,88,000	63,60,27,000	-
(d) Terrorism Fire Engineering	6,20,26,000	100%	6,20,26,000		-
	11,762	100%	11,762		-
<b>Total</b>	<b>21,77,02,74,762</b>		<b>12,04,15,50,262</b>	<b>10,34,55,16,000</b>	<b>30,00,49,000</b>
<b>Less: Credited to Profit and loss in AY 2016-17</b>					<b>(14,45,27,567)</b>
<b>Amount to be disallowed</b>					<b>15,55,21,433</b>

48. Ld. Assessing Officer has disregarded these computations merely on the basis of claim being filed in the revised return and the said revised return having been rejected. Considering the facts on record and detailed submissions made before us, we are in agreement with the same to note that fire and engineering insurance which provides for terrorism risk as well as marine insurance require 100% of the net premium whereas for all other insurance businesses covered by clause AA requires 50% of the net premium income to be taken into consideration for computing the limits of UEPR. Since we are in agreement with the computation furnished by the assessee, as tabulated above, the claim so made is allowed. Ground taken by the assessee is thus, allowed.

49. Ground no.7 is linked to the observations made in ground no.6 above whereby assessee has raised the issue of ld. Assessing Officer not allowing the deduction of reversal of UEPR made during the year. In this respect, assessee claims that a deduction Rs.14,45,27,567/- on account of reversal of UEPR made during the year out of the amount disallowed in the immediately preceding year, i.e., Assessment Year 2015-16 ought to have been allowed, for which a detailed working was placed on record before the Tribunal. Through this working, assessee attempts to demonstrate that the aforesaid amount was offered to tax in the previous years and hence is eligible for the claim of deduction for its reversal.

49.1. In this respect, it is important to note the proviso to Rule 6E of the Rules which states that any amount out of the amount carried forward to the reserve which has not been allowed as a deduction in respect of any previous year shall not be included in the total income for the assessment year relevant to the "*immediately next succeeding*

previous year”, in the revenue account relating to which the amount aforesaid is credited. Here important is the Assessment Year relevant to the immediately succeeding previous year which needs to be considered for the purpose of claim made by the assessee on account of reversal of UEPR. Assessee has furnished its working in the form of summary of disallowances / allowances of UEPR from the preceding years which were not there before the authorities below. The same is reproduced below for ease of reference.

Assessment Year (AY)	Provision disallowed in Return of Income (ROI)	Deduction claimed in ROI	Remarks
2014-15	5,89,41,500 (refer page 12 of additional paperbook of AY 2016-17)	-	First year of disallowance. Hence, there is nothing claimed as allowance since no amounts were disallowed in previous years.
2015-16	2,53,10,3000 (refer page no 19 of additional paperbook of AY 2016-17)	5,89,41,500 (refer page no. 19 of additional paperbook of AY 2016-17)	In the Return of income (ROI)/ Computation of income (COI), amount of Rs 2,53,10,3000 is shown as a disallowance. Rs 5,89,41,500 claimed as allowance pertains to immediately preceding year, viz. AY 2014-15.
2016-17 (Original return of Income (ROI))	30,00,49,000	14,45,27,567	In the ROI/ COI, net amount of Rs 15,55,21,433 (i.e., INR 30,00,49,000 less Rs 14,45,27,567) is shown as a disallowance. Rs 14,45,27,567 claimed as allowance pertains to immediately preceding year AY 2015-16.
2016-17 (Revised ROI)	Nil	14,45,27,567	In the revised ROI/ COI, TAGIC adopted aggregate basis approach for making disallowance. On account of which, there was no disallowance made in the revised ROI/ COI. Rs 14,45,27,567 claimed as allowance pertains to immediately preceding year AY 2015-16.
2017-18 (Original ROI)	55,34,79,269	20,43,53,682	Aggregate basis approach followed in original ROI/ COI for making disallowance. Bifurcation of Rs 20,43,53,682 claimed as allowance is: - Rs 17,53,90,203 pertained to immediately preceding year AY 2016-17, and - Balance Rs 2,89,63,479 does not pertain to immediately preceding year but pertains to AY 2015-16.
2017-18 (Revised ROI)	55,34,79,269	2,89,63,479	Aggregate basis approach followed in original ROI/ COI for making disallowance. Since following aggregate basis approach for AY 2016-17 in the revised ROI/ COI, there was no disallowance made in AY 2016-17, consequently, there should not have been an allowance claimed in original ROI/COI for AY 2016-17. The same was rectified by filing revised ROI/ COI. Rs 2,89,63,479 does not pertain to immediately preceding year but pertains to AY 2015-16.

50. Accordingly, considering the facts on record, provisions of applicable law and submissions made before us, we find it appropriate to remit the matter to the file of Jurisdictional Assessing Officer (JAO) for the purpose of verification and examination of the same in compliance with the aforesaid proviso to Rule 6E of the Rules. Ld. Assessing Officer may, accordingly allow the claim of the assessee after having satisfied with the compliance with the conditions prescribed in the said proviso for which reasonable opportunity may be given to the assessee to explain its case. Ground no.7 is thus, allowed for statistical purposes.

51. Ground no.8 is in respect of claim towards rent paid over and above rent recorded in the books of accounts owing to rent equalisation adjustment which is inextricably linked to similar claim for which a ground is raised in appeal for Assessment Year 2017-18. We will adjudicate this ground while adjudicating similar ground in appeal for Assessment Year 2017-18.

52. Ground no.9 and 10 are in respect of levy of interest u/s. 234A and short grant of TDS claim which requires verification of facts at the end of the ld. Assessing Officer. Accordingly, both the issues are remitted back to the file of JAO for the purpose of verification and treatment based thereupon. Thus, both ground nos. 9 and 10 allowed for statistical purposes.

53. Now, we take up appeal for Assessment Year 2017-18 wherein the issues raised by the assessee have already been dealt with in the appeal for Assessment Year 2016-17. Accordingly, our observations and findings on the common grounds in both the years shall apply *mutatis*

*mutandis* to appeal for Assessment Year 2017-18. Thus, ground no.1, 2, 4, 5, 8 and 10 are accordingly adjudicated upon.

54. Ground no.9 and 11 are consequential in nature and therefore not adjudicated upon.

55. Ground no.3 raised by the assessee is towards not allowing deduction u/s.80JJAA, since assessee had not filed Form No.10DA along with the original return of income. Assessee had claimed a deduction of Rs.73,71,615/- u/s. 80JJAA in its revised return of income for which Form No.10DA was filed on 29.11.2018, i.e., after the due date of original return of income but before filing of the revised return. According to the assessee, section 80JJAA r.w.r. 19AB of the Rules do not lay down that Form No.10DA is to be filed with the original return only, for which the due date is prescribed u/s. 139(1) of the Act. It simply says that the form is to be filed along with the return of income.

55.1. In the present case, assessee claims that where Form No.10DA is filed along with the revised return as per section 139(5), the requirement of section 80JJAA is fulfilled and therefore the deduction is to be allowed. In support of its claim, assessee placed reliance on the decision of the Coordinate Bench of ITAT, Hyderabad in the case of DCIT vs. Delhi MSW Solutions Ltd. in ITA No. 888/Hyd/2019, dated 24.02.2021 wherein it held in respect of deduction claimed u/s.80-IA that even if the prescribed Form No.10CCB is filed along with revised return of income, the claim is allowed.

56. Fact of the matter is that assessee has filed the required Form No.10DA, prior to filing of its revised return wherein a deduction u/s. 80JJAA was claimed. There is no dispute on the quantum of deduction

claimed by the assessee except for issue relating to furnishing of report in Form No.10DA, not with the original return. We are in agreement with the submissions made by the assessee, considering the undisputed facts and accordingly, allow the claim so made taking into consideration Form No.10DA which was placed on record by the assessee on 29.11.2018. Ground no.3 is thus, allowed.

57. Now we taken up ground no.6 and 7 in respect of deduction of rent equalisation adjustment claimed by the assessee. In this respect, assessee submitted that in accordance to the applicable Accounting Standards, lease expenditure, i.e. rent expense is recognised in profit and loss account on a straight-line basis over the terms of lease, for example, if rent for three years is 9,000, 10,000 and 11,000 each for the relevant years, in the profit and loss account, Rs.10,000 would be recognised in all the three years. However, from an income-tax perspective, the same is allowable only to the extent the lease expenditure (i.e., rent) which has been actually incurred (i.e., Rs. 9000/- in the first year, Rs 10,000 in the second year and Rs 11,000 in the third year, in the above example. Therefore, there is a reduction from the profit as per the P&L A/c in the computation of income in the earlier year and an additional claim in the later year. However, over the term of the lease, the rent expense recognised in the P&L A/c and the claim made as per the actual payment of the rent is equalised and, hence, the treatment from an income-tax perspective is nothing but a timing difference.

57.1. For the preceding years, rent expenditure accounted in the P&L A/c was higher than the actual rent expenditure incurred by the Assessee. Hence, such excess amount (i.e., amount debited to P&L A/c

vis-à-vis the actual amount of rent paid by the assessee) for the relevant previous year has been disallowed and offered to tax.

57.2. During the captioned year, i.e., AY 2017-18, the actual rent payments made by the Assessee is higher by Rs 60,24,723 vis-à-vis the amount of rent expenditure recorded in the P&L A/c. Since this amount has already been disallowed in the earlier years, the Assessee has claimed a deduction of Rs 60,24,723 during the captioned year and hence, the same should not be disallowed. Further, as the expenditure has been incurred during the relevant year and is for the purpose of the business of the Assessee, the same is allowable as per section 37 of the Act. The Assessee further submits that merely because, the same was not debited to the P&L A/c in the relevant year, is not relevant in view of the facts explained above. Further, as it is a trite law, that entries in the books of account does not determine the treatment of an expenditure for the purpose of computing income under the provision of the Act. Reference is made to the decision of the Apex Court in the case of Kedarnath Jute Mfg. Co. Ltd v. CIT [1971] 82 ITR 363 (SC).

57.3. Further, in relation to section 44 of the Act read with First Schedule, reliance is placed on the Assessee's own decision for AY 2015-16 (ITA No. 1718/Mum/2020) by the co-ordinate bench wherein it had taken a purposive interpretation of Rule 5 of the First Schedule and allowed deduction of expense already disallowed in earlier years. Reference is made to paragraph 4 of the said decision. Reliance is also placed in the case of CIT v J.H. Gotla [1985] 156 ITR 323 (SC) wherein the Hon'ble Apex Court held that the interpretation which results in absurdity is required to be avoided. Assessee thus, prays that the deduction claimed for rent equalisation adjustment of Rs 60,24,723 be allowed.

58. Assessee submits as an alternate ground which would only arise if no deduction of Rs 60,24,723 is allowed in respect of rent equalisation adjustment representing lease expenditure rent paid over and above the rent expense recorded in the books of account, then the rent expenditure recognised in the profit and loss account should be allowed as a tax-deductible expenditure under the provisions of the Act in AY 2016-17. Hence, the disallowance made by the assessee in AY 2016-17 on account of rent expenditure recognised in P&L A/c being higher than the actual rent paid, should also be held as not called for, and the rent expenditure recorded in the P&L A/c should be allowed as a tax deductible expenditure in AY 2016-17.

59. On the given set of facts as narrated above, whereby actual rent payment made by the assessee which is higher by Rs.60,20,723/- as against rent expenditure recorded in profit and loss account which has already been disallowed in the earlier years, is to be allowed. From the accounting perspective, the said amount has not been debited in the profit and loss account in the relevant year. However, income chargeable to tax under the Act is not based on entries in the book of accounts, to determine the treatment of expenditure for the purpose of computing income under the provisions of the Act. This issue has been addressed by the Hon'ble Supreme Court in the case of Kedarnath Jute Manufacturing Company vs. CIT [1971] 82 ITR 1863 (SC). Further, following the decision of Coordinate Bench of ITAT, Mumbai in assessee's own case (supra), we agree to undertake a purposive interpretation of Rule 5 of the First Schedule to allow deduction of expense already disallowed in the preceding years since interpretation which leads to absurdity are required to be avoided as held by Hon'ble Supreme Court in the case of CIT vs. J.H. Gotla [1985] 156 ITR 323 (SC). Accordingly, deduction claimed for rent equalisation adjustment

of Rs. 60,20,723/- is allowed. Thus, ground no.6 taken by the assessee is allowed. Ground no.7 raised by the assessee is an alternate ground to the ground no.6 as held above. Accordingly, the same is rendered infructuous and therefore not adjudicated upon.

60. Ground no.8 in Assessment Year 2016-17 is directly linked to the observations and findings dealt in ground no. 6 and 7 above for Assessment Year 2017-18. Accordingly, our findings given in ground no.6 and 7 for Assessment Year 2017-18, applies *mutatis mutandis* to the ground no.8 for Assessment Year 2016-17. Ground no.8 for Assessment Year 2016-17 is thus, allowed.

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

62. In the result, both the appeals of the revenue are dismissed and both the appeals of the assessee are partly allowed.

Order is pronounced in the open court on 30 October, 2024

Sd/-  
(Anikesh Banerjee)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 30 October, 2024***

MP, Sr.P.S.

**Copy to :**

- 1 The Assessee
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai