

**आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'D' BENCH: CHENNAI**

**श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष**

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND**  
**SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA Nos.86, 87, 88, 89, 90, 91, 92 & 93 /Chny/2018**

**निर्धारण वर्ष /Assessment Years: 2008-09, 2009-10, 2010-11, 2011-12, 2011-12, 2012-13,**  
**2013-14, 2014-15,**

<b>M/s.Royal Sundaram General Insurance Company Limited, Vishranthi Melaram Towers, No.2/319, Rajiv Gandhi Salai(OMR), Karapakkam, Chennai-600 097. [PAN: AABCR7106G]</b>		<b>Dy. Commissioner of Income Tax, Large Tax Payer Unit, Chennai.</b>
<b>आयकर अपील सं./ITA Nos.491, 492, 493, 494, 495 &amp; 496 /Chny/2018</b>		
<b>निर्धारण वर्ष /Assessment Years: 2008-09, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15</b>		
<b>Dy. Commissioner of Income Tax, Large Tax Payer Unit, Chennai.</b>		<b>M/s.Royal Sundaram General Insurance Company Limited, Vishranthi Melaram Towers, No.2/319, Rajiv Gandhi Salai(OMR), Karapakkam, Chennai-600 097. [PAN: AABCR7106G]</b>
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>
अपीलार्थी की ओर से/ Assessee by	:	Shri Vikaram Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से /Revenue by	:	Shri A.Sanjay for Ms V.Pushpa, Sr.Standing Counsel for IT Dept.
सुनवाई की तारीख/Date of Hearing	:	15.10.2024
घोषणा की तारीख /Date of Pronouncement	:	08.01.2025

**आदेश / O R D E R**

**PER BENCH:**

The following appeals have been raised by the appellant assessee and appellant revenue contesting assessment / appellate orders for AYs 2008-09 to AY 2014-15. As the grounds of appeal in respective appeals of

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assessee and revenue are largely common, all the appeals are adjudicated through this common orders.

S. No.	Appeal Nos.	AYs	Appellate	CIT(A) Order Details	Revenue
A	B	C	D	E	F
1	ITA-86/2018	2008-09	<b>M/s.Royal Sundaram General Insurance Company Limited, Vishranthi Melaram Towers, No.2/319, Rajiv Gandhi Salai(OMR), Karapakkam, Chennai-600 097. [PAN: AABCR7106G]</b>	ITA Nos. 13, 14, 38 & 39 / 2016-17 dated 14.12.2017.	Dy. Commissioner of Income Tax, Large Tax Payer Unit, Chennai.
2	ITA-87/2018	2009-10		ITA Nos. 13, 14, 38 & 39 / 2016-17 dated 14.12.2017.	
3	ITA-88/2018	2010-11		ITA Nos. 13, 14, 38 & 39 / 2016-17 dated 14.12.2017.	
4	ITA-89/2018	2011-12		ITA Nos. 13, 14, 38 & 39 / 2016-17 dated 14.12.2017.	
5	ITA-90/2018	2011-12		ITA Nos. 24/14-15, 12/16-17, 73/16-17 & 72/16-17 dated 14.12.2017.	
6	ITA-91/2018	2012-13		ITA Nos. 24/14-15, 12/16-17, 73/16-17 & 72/16-17 dated 14.12.2017.	
7	ITA-92/2018	2013-14		ITA Nos. 24/14-15, 12/16-17, 73/16-17 & 72/16-17 dated 14.12.2017.	
8	ITA-93/2018	2014-15		ITA Nos. 24/14-15, 12/16-17, 73/16-17 & 72/16-17 dated 14.12.2017.	
9	ITA-491/2018	2008-09		ITA Nos.13,14,38 & 39 / 2016-17 dated 14.12.2017	
10	ITA-492/2018	2010-11		ITA Nos. 13, 14, 38 & 39 / 2016-17 dated 14.12.2017.	
11	ITA-493/2018	2011-12		ITA Nos. 24/14-15, 12/16-17, 73/16-17 & 72/16-17 dated 14.12.2017.	
12	ITA-494/2018	2012-13		ITA Nos. 24/14-15, 12/16-17, 73/16-17 & 72/16-17 dated 14.12.2017.	
13	ITA-495/2018	2013-14		ITA Nos. 24/14-15, 12/16-17, 73/16-17 & 72/16-17 dated 14.12.2017.	
14	ITA-496/2018	2014-15		ITA Nos. 24/14-15, 12/16-17, 73/16-17 & 72/16-17 dated 14.12.2017.	

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**ITA Nos.86, 87, 88, 89, 90, 91, 92 & 93 /Chny/2018 for Assessment Years: 2008-09, 2009-10, 2010-11, 2011-12, 2011-12, 2012-13, 2013-14, 2014-15.**

2.0 The assessee has raised above mentioned appeals which we take first for adjudication. In respect of ITA Nos. 86, 87, 88 & 89 for Assessment Years: 2008-09, 2009-10, 2010-11 & 2011-12 respectively the assessee has raised grounds of appeal thereby challenging the assessment on legal grounds. Thus through grounds of appeal no.1 the legality of the assessment orders has been challenged being reassessment orders passed without jurisdiction.

2.1 As the matter strikes at the very foundation of the assessment order we would like to consider the same first. The facts of the case for both the ITA Nos. 86 & 87 for Assessment Years: 2008-09 & 2009-10 respectively are identical and hence the two appeals are adjudicated together. It is the case of the assessee that the reopening constitutes an action based upon change of opinion and which is not permissible by law. It has been contended that there was no failure on the part of the appellant to disclose fully and truly any material record or information and that therefore the notice u/s 148 issued to it becomes bad in law. For the purposes of this adjudication we would consider the facts recorded by the Ld. AO in the order for in AY-2008-09 dated 22.03.2016. The assessee company is engaged in the business of

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offering non-life insurance ranging from motor car, health, travel, property etc. Original return of income filed on 26.09.2008 declaring income of Rs.23,25,92,404/-. Order u/s. 143(3) was passed on 24.10.2010 at Rs.85,13,49,090/-. Consequently, some information had come in possession of the revenue leading to formation of reasons to believe that income had escaped assessment. Notice u/s 148 issued on 28.03.2015. Briefly put the reopening was done as the assessee had allegedly not discharged its TDS liabilities. The Ld. AO proceeded to reject the arguments taken by the assessee qua legality of the reopening proceedings and re-determine taxable income through his order dated 22.03.2016.

2.2 The Ld. First Appellate Authority also dismissed the objections qua reassessment proceedings and confirmed the order of the Ld. AO. He held that material gathered by the assessing officer after due diligence will not amount to change of opinion because it would be hard to conclude that assessing officer had expressed opinion on an issue that he was not fully aware of in the first place. He concluded that availability of "reasons to believe" is important rather than an established facts of escapement in any case for initiation of action u/s 148.

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2.3 We have heard the rival submissions in the light of material available on records. The Ld. Counsel for the assessee invited our attention to the following reasons recorded by the revenue.

Reasons recorded for AY-2008-09

*“....As requested by you vide above referred letter, the reasons recorded for initiation of proceedings u/s 147 of the Income-tax Act, in your case for Assessment Year 2008-09 are reproduced below:*

*The information existing as per records reflect the fact M/s. Paramount Health Services TPA Pvt. Ltd. (PAN: AACCP4465H) is a TPA (Third Party Administrator) for M/s. Royal Sundaram Alliance Insurance Company Limited. The assessee being insurance company through the TPA reimbursed the following amounts to various hospitals and insured persons.*

<i>Financial Year 2007-08 (AY-2009-10)</i>		
<i>Payments to Hospitals (Cashless)</i>	<i>Payments to insured persons (Reimbursement claims)</i>	<i>Total payments from Float accounts</i>
<i>61,08,161</i>	<i>-</i>	<i>61,08,161</i>

*The provisions of Section 194J(1) of the IT Act cast liability on the persons responsible for paying to resident any sum by way of fees for professional services. The assessee availed the professional services and responsible for paying fees to M/s Paramount Health Services TPA Pvt. Ltd. Further, in the explanation of section 40(a), 'Professional Services' have been defined to have the same meaning as in section 194J. The said payment for professional services is subject to deduction of tax at source u/s 194J as per chapter XVII of the IT Act. In the instant transaction made by the assessee for the F.Y.2007-08, the assessee failed to comply the provisions of section 194J and such failure attracts the consequential non-deductibility of the amounts as per section 40(a)(ia) of the IT Act.*

*The payments mentioned supra have been made by the assessee M/s Royal Sundaram Alliance Insurance Company Limited to various Hospital/Insured person of the time of credit of the said sum and payment failed to deduct tax at source as per the applicable rates of TDS and its remittance into Govt. Account.*

*In view of the above, I have reason to believe that income chargeable to tax has escaped assessment and accordingly, the assessment needs to be reopened u/s 147 of the Income-tax Act....”.*

Reasons recorded for AY-2009-10

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“.....With reference to the above, the reasons for initiation of proceedings u/s 147 of the Income-Tax Act, for the Assessment Year 2009-10 are given below:-

Perusal of the records revealed that the Return of Income was filed admitting taxable income of Rs.8,54,11,950/- as income under normal provisions of the Income Tax and shown Book Profit of Rs.8,69,24,502/-. This was selected for scrutiny and assessment u/s 143(3) was completed determining total Income at Rs.89,66,31,002/- as business income and Income u/s 115JB of Rs.79,47,81,502/- vide order dated 27. 12.2011.

During the course of Assessment proceedings for the Assessment Years: 2008-09, 2010-11 and 2012-13 it was gathered that you had entered into agreement with M/s TATA Motors, M/s Ford India Pvt Ltd, M/s Honda Cars India Ltd, and M/s Tata Business Support Services for issuance of Insurance policies through their Dealer network and the company was availing ineligible CENVAT credit in respect of Motor Vehicles. The vehicle dealers collected premium from the customers and issued policies to them by accessing the portal of the Insurance Brokers. For insuring the vehicles, dealers are given Payout calculated at a given percentage on Own Damage premium by your Insurance Company. On the basis of the invoices issued by the dealers, the Assessee -M/s Royal Sundaram Alliance Insurance Co.Ltd., (RSAICL) had taken CENVAT Input Service Credit. The Dealers had admitted that though they had not provided any service as mentioned in the invoices, they simply issued the same as per the directions of insurance companies.

It is further noticed that the rates are not fixed according to the services mentioned in the invoices but calculated on the basis of the percentage on Own damage premium and dealers are paid accordingly. The ineligible CENVAT credit on this count worked out for this Assessment Year 2009-10 is as under:

(1) CENVAT Value for the FY:2008-09	- Rs.2,52,85,336
(2) Service Tax rate applicable for FY:2008-09	- 10.30%
(3) Corresponding Expenditure (a)/(b)	- Rs.24,54,88,699

In as much as the CENVAT credit has been wrongly claimed, the corresponding expenditure amounting to Rs.24,54,88,699/- debited in the accounts needs to be disallowed.

In view of the above, there is a reason to believe that income chargeable to tax has escaped assessment within the meaning of Section 147 for this Assessment Year 2009-10....”.

2.4 The Ld. Counsel for the assessee has argued that notice u/s 148 was issued after the expiry of four year period and therefore provisions of the first proviso to section 147 were applicable in its case in as much as there ought to have been a failure on the part of the assessee to make a return of income u/s 139 or u/s 142(1) or to disclose fully and truly all

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facts necessary for his assessment. It is the case of the assessee that none of these conditions were not satisfied in its case and therefore the notice u/s 148 and consequent reassessment orders were void ab initio. The Ld. Counsel for the assessee has submitted that for AY-2008-09 and 2009-10 orders u/s 143(3) were passed on 24.12.2010 and 27.12.2011 respectively. It has been contended that the assessee had disclosed all the transactions, which have been later contested by the revenue u/s 148 for non-deduction of TDS, through its financial and submissions made during assessment proceedings. The Ld. AO thus had clearly considered the same and applied his mind before arriving at his orders dated 24.12.2010 and 27.12.2011 supra. In the light of the same the initiation of reassessment proceedings on the same set of material evidences falls under the mischief of first proviso to section 147.

2.5 In support of its contentions, the Ld. Counsel for the assessee placed his reliance upon catena of judicial pronouncements including the one pronounced by Hon'ble Apex Court in the case of Kelvinator of India 328 ITR 561 (SC). The Ld. Counsel had contended that reassessment of any proceedings on the basis of change of opinion is not permissible in law. It has been submitted that as per extant statutory provisions covering the subject, reassessment u/s 148 is only permissible if either some new facts have come to the notice of the department post

conclusions of original proceedings or the assessee is found guilty of concealing true particulars of its facts before the AO during the original assessment proceedings. The Ld. Counsel has argued that in its case no such circumstances exists. During the course of original assessment proceedings each and every information covering the transactions, was provided to the Ld. AO and that therefore there cannot be any case for reopening u/s 148.

2.6 At this stage we deem it necessary to examine the statutory provisions of Income escaping assessment postulated u/s 147 of the act reproduced herein below.

*“.....147. Income escaping assessment.—If the 2[Assessing Officer]3[has reason to believe] that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year): Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year....”.*

2.7 The central theme thus emanating from above mentioned statutory provisions as well as the judicial pronouncements, principally led by Hon'ble Apex Court in its decision of Kelvinator of India is that no

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action u/s 148 can be taken on the basis of change of opinion. Income Tax Authorities cannot revisit their decisions merely by having a change of mind. The latter is permissible only in existence of certain facts and circumstances and cannot be an arbitrary or adhoc decision. Hon'ble Apex Court in its decision of Kelvinator of India postulated that there is a conceptual difference between "power to review" and "power to reassess". Whereas Direct tax statute empowers an assessing authority the power to reassess, it nowhere provides any power to review. In the case referred above it has been laid down that 148 proceedings after four years would be only justified if some new material comes to the fore or else there was a definite failure on part of the assessee to have disclosed true material facts during the course of original assessment. Thus, once an assessing officer has applied his mind to certain material, during an assessment proceedings, and drawn his conclusions, it is not permissible to reappraise the same material and take a different decision by taking recourse to 148 proceedings. Thus as vividly pronounced by Hon'ble Apex Court in the Kelvinator of India Limited that the "reason to believe" on which a reassessment can be validly ordered should necessarily be based on "tangible material" which an assessing officer comes by after the assessment.

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2.8 The facts of the present case, when viewed in the light of above mentioned judicial pronouncements, clearly indicate that the case of revenue qua reopening u/s 148 rests upon a very weak rather negligible foundation. During the original assessment proceedings u/s 143(2), the issues qua which reassessment proceedings were initiated for non-deduction of TDS, were examined and considered by the Ld. AO. Thus it is crystal clear that full application of mind was made to the facts of the case surrounding determination of taxable income of the assessee. In view of the elaborate enquiries and discussions made in the assessment order in respect of impugned transactions the AO is precluded from changing his opinion subsequently and reopening the case u/s 148.

2.9 The reasons recorded by the Ld. AO and as approved by his supervisory authorities, reproduced herein above do not in any way demonstrate that there was any failure on part of the assessee to have not fully and truly disclosed true facts of the case. The action of the AO in initiating proceedings u/s 148 is thus hit by the concept of “change of opinion” or a case of “review of the assessment order” and the same cannot be approved. We have also noted that there is no fresh and tangible material which has been brought on record by the Ld. AO to justify his action. We have also noted that, from the reasons recorded in the case extracted herein above, there is not even a whisper that the

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assessee is in any way guilty of suppressing any disclosure of any material. It is a certain position of law that reasons recorded in a case must be viewed on a stand alone basis and that nothing can be added or subtracted therefrom. Besides there is no mention as to source of information except a vague assertion of “details of information received ”. We have noted that all the documents comprising Balance sheet and P&L account of assessee discussed by the Ld AO in the impugned reasons were very much before him during original assessment proceedings. Thus, no case of any valid escapement of income falling within the tenets of section 147 rws 148 is made out against the assessee. As the reasons u/s 147 / 148 themselves are not supported by valid legal authority, consequent reassessment order arising therefrom would be a case of nullity and an order being void ab initio. Accordingly, we are of the view that the proceedings u/s 148 are bad in law and deserves to be quashed. **We therefore quash the proceedings u/s 148 as being bad in law and allow the grounds of appeal No.1 raised by the assessee. Consequently the assessment orders for AY-2008-09 and 2009-10 orders u/s 143(3) passed on 22.03.2016 and 27.10.2016 are set aside. The order of the Ld. CIT(A) for the impugned assessment year also stands set aside.**

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3.0 As the legal grounds qua validity of notice u/s 148 has been allowed in favour of the assessee and the impugned notice declared bad in law , **therefore the grounds of appeal raised by the assessee and revenue qua merits of addition for respective assessment years have become academic in nature and do not require any specific adjudication.**

4.0 It has been noted that the revenue has contested the decision of Ld.CIT(A) for AY-2008-09 vide its ITA No. 491. **In view of the decision taken herein above to quash the proceedings u/s 148 and to set aside the consequent assessment and appellate orders, the grounds of appeal raised by the revenue are dismissed.**

5.0 In the result the appeal of the assessee in respect of ITA Nos. 86 & 87 for Assessment Years: 2008-09 & 2009-10 is allowed and of revenue for AY-2008-09 vide ITA No. 491 is dismissed. **As regards ITA Nos. 88 & 89 for Assessment Years: 2010-11 & 2011-12, we have noted that no satisfactory case exists for the assessee qua its challenge for the reopening and hence the ground of appeal no.1 raised by the assessee for the impugned ITA Nos. 88 & 89 for Assessment Years: 2010-11 & 2011-12 is dismissed.**

**ITA Nos.89, 91, 92 & 93 /Chny/2018 for Assessment Years: 2011-12, 2012-13, 2013-14, 2014-15 of assessee's appeal and ITA Nos.493 to 496 for AYs-2011-12 to AY-2014-15, of revenues appeal.**

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6.0 The first issue raised by the assessee and revenue vide its ground of appeals in above indicated ITA Nos. is regarding the disallowance of insurance premium paid to Non-Resident Insurers. Brief facts of the case are that the assessee has been paying reinsurance premium to Non-resident entities. It is the case of the revenue that the amounts remitted by the assessee to Non-resident entities is exigible to TDS deduction u/s 40(a)(i) of the act. The issue has been considered at length by the Hon'ble Coordinate Benches of this tribunal and decided in favour of the assessee's and against the revenue. We have noted that identical facts exists in the present case as well. On the available judicial landscape, the Ld. Counsel for the assessee has invited our attention to the decision of Hon'ble Coordinate Bench of this tribunal in the case of Cholamandalam General Insurance ITA No.711 / Chny/2020 dated 26.08.2022, United India Insurance Company Limited ITA No.1085/Chny/2017 dated 19.07.2024. Additionally reliance has also been placed upon decisions of Hon'ble Coordinate Benches of ITAT, Mumbai, Delhi Pune etc holding that TDS provisions u/s 40(a)(i) are not exigible in respect of reinsurance premium paid to overseas entities. The Ld. Counsel for the assessee submitted that considering the above cited judicial pronouncements the addition made by the Ld AO deserves to be

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deleted. The Ld. DR fairly conceded that the issues covered in the favour of assessee by orders of this tribunal.

6.1 We have heard the rival submissions in the light of material available on records. We have noted in the case of United India Insurance vide order dated 19.07.2024 supra the following has been observed:-

*“.....5. The first and foremost common issue raised by the assessee in its appeals for our consideration relevant to assessment years 2013-14 to 2016-17 and by the Revenue for the assessment years 2017-18 to 2019-20 is against disallowance upto the extent of 15% of the reinsurance premium ceded by the Appellant to non-resident reinsurers (NRRs) u/s 40(a)(i) of the Act. At the outset, the learned counsel for the assessee submitted that an identical ground has been raised by the Revenue in assessee's own case for the assessment year 2007-08 and the co-ordinate Bench of this Tribunal in ITA No.1692/Chny/2011 dated 28.06.2023 has considered the issue at length as per directions of the Hon'ble High Court of Madras, since the assessee preferred an appeal before the Hon'ble High Court, in favour of the assessee and dismissed the ground raised by the revenue by following the earlier decision of the Tribunal in ITA Nos.1673, 1688, 1689, 1691/Chny/2011 dated 26.08.2022 in assessee's own case for assessment years 2003-04 to 2006-07 and 2008-09 to 2010-11. The Learned Sr.Standing Counsel for the Revenue also fairly agreed that this issue is covered in favour of the assessee by the decision of this Tribunal in assessee's own case for earlier assessment years.*

*6. We find that an identical issue has been dealt with by the co-ordinate Bench of this Tribunal in assessee's own case in ITA No.1692/Chny/2011 dated 28.06.2023 by following the earlier decision of the Tribunal in ITA Nos.1673, 1688, 1689, 1691/Chny/2011 dated 26.08.2022 in assessee's own case came to the conclusion that reinsurance premium ceded to NRRs, is not taxable in India under the Income Tax Act, 1961 or under DTAA between India and respective countries, where the NRRs are tax residents, and thus, reinsurance premium cannot be disallowed u/s.40(a)(i) of the Act, for non-deduction of TDS u/s.195 of the Act. The relevant portion of the findings of the Tribunal in para 6 & 7 of the order in ITA No.1692/Chny/2011 dated 28.06.2023 are extracted herein below:-*

*“6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the Tribunal in the assessee's own case in ITA Nos.1673, 1688, 1689, 1691/Chny/2011 for AYs 2003-04, 2004-05, 2005-06, 2006-07, order dated 26.08.2022, and after considering relevant facts held that reinsurance premium ceded to NRRs, is not taxable in India under the Income Tax Act, 1961*

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or under DTAA between India and respective countries, where the NRRs are tax residents, and thus, reinsurance premium cannot be disallowed u/s.40(a)(i) of the Act, for non-deduction of TDS u/s.195 of the Act. The relevant findings of the Tribunal are as under:

10. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The assessee is an insurance company engaged in the business in General insurance in terms of IRDAI regulations and Insurance Act, 1938. The business of the assessee is regulated by IRDAI through various regulations. All the insurance companies which are carrying on insurance business in India have to necessarily comply with provisions of the Insurance Act, 1938 as amended and rules there under. The contract of insurance and contract of reinsurance are two separate and distinct contracts. The reinsurance contract is completely independent of contract of insurance between insured and insurer. The term 'reinsurance' was not defined under the Insurance Act, 1938 until 2015. However, by Insurance Laws (Amendment) Act, 2015, definition of term 'reinsurance' was inserted in the Insurance Act, 1938. As per which, the term 'reinsurance' means insurance of part of one insurer's risk by another insurer, who accepts risk for mutually acceptable premium. Therefore, the assessee being in general insurance business as part of their strategy has taken reinsurance policy with reinsurance companies. Further, every insurance company in India has to place their reinsurance program 45 days prior to commencement of financial year before the IRDAI in terms of para 3.4 of IRDAI (General insurance, Reinsurance) Regulation, 2000, and within 30 days of commencement of the financial year, every insurance company has to file reinsurance treaty slips with IRDAI in terms of para 3.5 of IRDAI (General insurance, Reinsurance) Regulation, 2000. As per IRDAI Regulation, 2000, the insurance companies in India have to mandatorily reinsure with the Indian reinsurer being General Insurance Corporation (GIC). However, over and above specified percentage of reinsurance, general insurance companies in India can have their reinsurance arrangement with foreign reinsurer in terms of para 3.7 of said regulations. In this case, there is no dispute with regard to fact that the assessee has complied with provisions of Insurance Act, 1938 and regulations made there under by the IRDAI. In fact, the Assessing Officer has accepted fact that the assessee has complied with reinsurance regulations by taking required percentage of reinsurance contract with General Insurance Corporation of India. But disputed reinsurance premium ceded to non-resident reinsurer companies. In the earlier round of litigation, the Tribunal had discussed the issue of payments made to non-resident reinsurer, in light of provisions of section Insurance Act, 1938 and IRDAI Regulations on reinsurance and concluded that the assessee has violated provisions of Insurance Act, 1938 and consequently, reinsurance premium ceded to NRRI is not deductible u/s.37 (1) Of the Income Tax Act, 1961. The matter

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travelled to the Hon'ble High Court of Madras and the Hon'ble High Court has remanded the issue back to the Tribunal and directed the Tribunal to decide the issue on three points:-

- i) Whether the Assessing Officer was right in disallowing reinsurance premium u/s.40(a)(i) of the Act;
  - ii) Whether the CIT(A) was right in rejecting partially the appeal filed by the assessee; &
  - iii) Whether the CIT(A) was justified in restricting claim of the assessee to 15% instead of confirming order passed by the Assessing Officer.
- The Hon'ble High Court of Madras also observed that the Tribunal shall decide above questions alone and nothing more and decision shall be taken based on the available material and the assessee & the Revenue are not entitled to place any fresh materials before the Tribunal so as to enable the Tribunal to take decision. Therefore, from the above, it is very clear that controversy with regard non-compliance with provisions of Insurance Act, 1938 and regulations made there under by the IRDAI is put to rest by the Hon'ble High Court and the Tribunal does not have power to examine legality or otherwise of payment made by the assessee to non-resident reinsurance companies. Therefore, issue on hand should be decided only in the context of payment made by the assessee to NRRs in light of provisions of Income Tax Act, 1961, and relevant DTAA between India and other contracting States.....

19. In this view of the matter and considering facts and circumstances of the case and also by following various case laws discussed hereinabove, we are of the considered view that reinsurance premium ceded to non-resident reinsurer is not taxable in India under the Income Tax Act, 1961 or under DTAA between India and respective countries where NRRs are tax residents and thus, on impugned payments the assessee is not liable to deduct TDS u/s.195 of the Income Tax Act, 1961. Consequently, payments made to NRR cannot be disallowed u/s.40(a)(i) of the Act, 1961. Hence, we direct the Assessing Officer to delete additions made towards disallowance of reinsurance premium ceded to NRRs u/s 40(a)(i) of the Act.

**7.** In this view of the matter and consistent with view taken by the coordinate Bench in the assessee's own case, we are inclined to uphold the findings of the Ld.CIT(A) and direct the AO to delete the disallowance of reinsurance premium paid to NRRs u/s.40(a)(i) of the Act, for failure to deduct TDS u/s.195 of the Act."

7. In view of the above, respectfully following the said decision of the co-ordinate Bench of this Tribunal, we set aside order of the Ld.CIT(A) in restricting the claim of the assessee to 15% of payment made to NRRs of other countries and direct the Assessing Officer to delete the additions made towards disallowance of reinsurance premium ceded to NRRs u/s.40(a)(i) of the Act for

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*the assessment years 2013-14 to 2016-17. Thus, the ground raised by the assessee on this issue for the assessment years 2013-14 to 2016-17 is allowed and that of the Revenue for the assessment years 2017-18 to 2019-20 is dismissed....”.*

6.2 We have noted the facts of the present case are identical to the decision taken herein above and the same has not been distinguished in any way. Accordingly, in respectful compliance to the decision of Hon'ble Coordinate Bench in the case of United India Insurance Limited supra, the order of lower authorities is set aside and the Ld.AO is directed to delete the additions made towards disallowance of reinsurance premium conceded to NRRs u/s.40(a)(i) of the Act for the assessment years 2011-12, 2012-13, 2013-14 and 2014-15. **Thus, the grounds of appeal raised by the assessee on this issue for the assessment years 2011-12, 2012-13, 2013-14 and 2014-15 are allowed and that of the Revenue for the assessment years 2011-12, 2012-13, 2013-14 and 2014-15 are dismissed.**

7.0 The next issue raised by the assessee vide ground of appeal bearing ITA No. 89 and 91 for AY 2011-12 and 2012-13 are regarding the disallowance of excess depreciation claimed on projectors and UPS. Perusal of the assessment order for AY-2011-12 and 2012-13 shows that the Ld.AO has made the addition of Rs.1,00,999/- and Rs.37,365/- on account of projector and Rs.4,37,870/- and Rs.617915/- on account of UPS respectively. The Ld. AO had made the impugned additions in

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synk with past history of assessee's case. The Ld. First Appellate Authority concurred with the findings of the Ld. AO.

7.1 We have heard rival submissions in the light of material available on records. The Ld. Counsel for the assessee has placed reliance upon the decision of Hon'ble Coordinate Bench of this tribunal in the case of Cholamandalam General Insurance Company Limited in ITA No.711/Chny/2020, Sundram Asset Management Company Limited 145 ITD 017, International Flowers and Fragrance Limited 66 SOT 261 and of Hon'ble Delhi High Court in the case of BSES Yamuna Powers Limited 358 ITR 47 Delhi High Court. It has been contended that the issue is squarely covered in its favour by the decision of this tribunal in the case of Cholamandalam General Insurance Company Limited. The Ld. Standing Counsel of the revenue would like make us to believe on the correctness of the order of lower authorities.

7.2 We have noted that in the case of Cholamandalam General Insurance Company Limited, the Hon'ble Coordinate Bench of this tribunal has noted as under:-

*".....22. The next issue that came up for our consideration from the Department appeal for the assessment year 2010-11 and 2013-14 is disallowance of excess depreciation on UPS.*

*23. Mr. Percy J. Pardiwalla, learned Sr. counsel for the assessee submitted that this issue is covered in favour of the assessee by the decision of the ITAT., Chennai, in assessee's own case for the assessment year 2008-09 in ITA 1350/Chny/2013, 2276/Chny/2014 782 to 784/Chny/2018 & 711/Chny/2020*

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*1366/Chny/2013 & 949 to 951/Chny/2018 No.1366/Mds/2013 dated 31.07.2018, where the Tribunal has allowed 60% depreciation on UPS as applicable to computer software.*

*24. Mr. M.Swaminathan, learned Senior Standing Counsel for the Revenue fairly agreed that this issue is covered in favour of the assessee by decision of the ITAT, Chennai in assessee's own case for the earlier year.*

*25. We have heard both the parties and considered relevant materials on record and we find that the ITAT., Chennai in assessee's own case for the assessment year 2008-09 in ITA No.1366/Mds/2013 had considered an identical issue and held that UPS is part of computer and eligible for depreciation @ 60% and directed the Assessing Officer to allow 60% on UPS also. Therefore, consistent with the view taken by the co-ordinate Bench, we are inclined to uphold findings of the learned CIT(A) and direct the Assessing Officer to allow depreciation on UPS @ 60% as claimed by the assessee.....”.*

7.3 It has been noted that the facts of the present case identical to the one existing in the case of Cholamandalam General Insurance Company Limited. Accordingly, in respectful compliance to the decision of Hon'ble Coordinate Bench supra we set aside the order of the lower authorities and direct the Ld. AO to allow depreciation @ 60% on UPS. As regards claim of depreciation on projectors, we do not find any infirmity with the findings of the Ld.CIT(A) that a projector is neither nor an output device or a computer and can be used independently also as an electronic gadget. Consequently, the decision of the Ld. CIT(A) on the issue of the projector is confirmed. **Accordingly, the ground of appeal raised by the assessee ITA No. 89 and 91 for AY 2011-12 and 2012-13 are partly allowed.**

8.0 The next ground of appeal raised by the assessee for AYs 2010-11, 2011-12, 2011-12, 2012-13, 2013-14, 2014-15 is regarding the

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disallowance of payment made to motor vehicle dealers. Brief factual matrix of the controversy at hand in all the above years is that the assessee had entered into agreements with motor car companies Viz Tata Motors, Ford India, Honda etc thereby empowering the motor car dealers for issuance of Insurance policies on behalf of the company. The motor vehicle dealers were collecting premium from the customers and issuing policies. The revenue contended that no services were rendered and hence disallowed the expenses incurred by the assessee company. The Ld. Counsel for the assessee has relied upon the decisions in the case of Cholamandalam general Insurance Company Limited 711/Chny/2020 and United India insurance company limited in ITA 1149 & 364 Chny 2016.

8.1 We have noted that identical controversy had come up for consideration of Hon'ble Coordinate Bench of this tribunal in the case of Cholamandalam general Insurance Company Limited 711/Chny/2020 qua appeal of the revenue. In the impugned decision it was observed as under:-

*".....70. The next issue arises for consideration is disallowance of infra payment made to car dealers under Section 37(1) of the Act. This issue arises for consideration in the Revenue's appeal for assessment year 2013-14. 71. We heard Shri M. Swaminathan, the Ld. Sr. Standing Counsel for the Revenue and Shri P.H. Arvinth Pandian, the Ld. Sr. counsel for the assessee. The Assessing Officer disallowed the claim of the assessee on the ground that genuineness of payment was not proved. The entire payment was said to be made to motor car*

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dealers as per the agreement. The copy of the agreement is not available on record. The claim of the assessee before the CIT(Appeals) was that the services were actually rendered by the motor car dealers by providing space, computer stationeries, etc. in their showroom for enabling software integration with the assessee company. The assessee claimed before the Assessing Officer that tax was deducted at source and paid to the Government account. From the material available on record it appears that the assessee company in order to propagate its insurance business, had arrangement with motor car dealers in their showroom for providing space, computer stationeries, etc. For that, the assessee appears to have made the payment. The assessee has filed copies of invoice, confirmation letters from service providers and details of premium collected by the motor vehicle dealers from the customers. There is no doubt about the genuineness of service rendered by the car dealers. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed....”

8.2 We have also noted that identical controversy had come up for consideration of Hon’ble Coordinate Bench of this tribunal in ITA NO.1085/Chny/2017 dated 19.07.2024 in the case of United India Insurance Company Limited.

“.....22. The next issue that came up for our consideration from the Revenue appeals for the assessment years 2014-15 to 2019-20 is in regard to disallowance of amount paid to motor car dealers towards infra payment u/s.37 of the Act amounting to Rs.63.94 crores for assessment year 2014-15.

22.1 The learned counsel for the assessee, at the outset submitted that this issue of payment made to motor car dealers by the assessee towards infra payment u/s.37(1) of the Act is also covered in favour of the assessee by the earlier decision of this Tribunal dated 28.08.2018 in assessee’s own case for the assessment year 2013-14, which was affirmed by the Hon’ble High Court of Madras in TCA No.339 to 342 of 2019 vide order dated 21.06.2019 and a copy of which is placed on record as Annexure-4 at pages 174 to 181 of the paper book filed by the assessee. The Ld. Senior Standing Counsel fairly agreed that the issue is decided against the Revenue.

22.2 Heard rival submissions and perused materials placed on record. In the judgement of the Hon’ble High Court of Madras dated 21.06.2019, it was observed that the addition was made as sequel to information received from the service tax department whose own enquires had not reached finality. The Hon’ble High Court laid down that the Revenue would be free to exercise its authority under the Act in the event of Service tax department holding against the assessee. **Respectfully following the said judgement of the Hon’ble High Court of Madras dated 21.06.2019, we confirm the order of the CIT(A) on the issue of infra**

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***payments made by the assessee to motor car dealers and reject the grounds raised by the Revenue in assessment years 2014-15 to 2019-20....”***

8.3 Accordingly, in respectful compliance to the decision of Hon’ble Madras High Court supra and of Hon’ble Coordinate Bench of this tribunal, we set aside the order of lower authorities and direct the Ld. AO to delete the impugned addition. As observed by the Hon’ble Madras High Court in their decision mentioned supra, the revenue would be at liberty to take any remedial action on conclusion of enquiries of GST department, as per provisions of the IT Act. **The grounds of appeal raised by the assessee for AYs 2010-11 to 2014-15 are therefore allowed.**

9.0 The next issue raised by the assessee for ITA Nos.92 & 93 for AY-2013-14 & 2014-15 pertains to addition of UPR to book profit u/s 115JB of the act. Facts of the case for AY-2013-14 & 2014-15 are common except of variations in figures. The Ld. AO has discussed the issued in para 13.1 to 13.5 of his order for AY-2013-14. The assessee company had reduced insurance premium amount of Rs.79,47,53,000/- from the profit of the business being related to premium for the purposes of “reserve for unexpired risks”. The Ld. AO held the view that the above amount is in effect but the reserve made from insurance premium collected and hence eligible for adding back for computation of book profit u/s 115JB. Consequently rejecting the arguments put forth by the

assessee he made the impugned addition of Rs.79,47,53,000/-. The Ld. First Appellate Authority concurred with the findings of the Ld.AO holding that unexpired premium reserve falls under clause(c) of explanation-1 to section 115JB and confirmed the addition.

9.1 We have heard the rival submissions in the light of material available on records. It is the case of the assessee that the impugned addition is unwarranted. It has been argued that UPR created in the books of accounts is based on the guidelines issued by IRDA and not on any adhoc basis. It was further argued that UPR is neither a reserve nor a provision for any unascertained liability and therefore cannot be exigible for any adjustments u/s 115JB. The Ld. Counsel for the assessee would like to place reliance upon the decision of Hon'ble Coordinate Bench of this tribunal in the ITA No.711/Chny/2020 Supra holding that UPR cannot be subject matter for inclusion in 115JB. Reliance was also placed upon the decision of Hon'ble Kolkatta Bench in the case of National Insurance Company Limited. The Ld. Counsel for the revenue would like to place reliance upon the decision of lower authorities.

9.2 We have noted the following decision of Hon'ble Coordinate Bench of this tribunal in the case of Cholamandalam Insurance Company Limited Supra, relevant part of which is reproduced hereunder:-

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“.....The next issue that came up for our consideration from appeal of the assessee for the assessment years 2013-14 & 2014-15 is addition made towards UPR to book profit u/s.115JB of the Act. The assessee has made provision for UPR and deducted income and shown under the head 'liabilities'. The Assessing Officer has disallowed excess claim of UPR on the ground that the assessee could not file necessary evidence to prove said provision is in accordance with Rule 5 of First Schedule of the Act. The Assessing Officer had also made similar adjustments towards UPR u/s.115JB of the Income Tax Act, 1961.

62. The learned Sr. counsel for the assessee submitted that this issue is squarely covered in favour of the assessee by the decision of ITAT., Mumbai in the case of *M/s.Munchener Ruckversicherungs Gesellschaft Aktiengesellschaft in Munchen Vs. CIT in ITA No. 937/Mum/2021 dated 13.05.2022* and also decision of the ITAT., Kolkata Bench in the case of *DCIT Vs. National Insurance Co.Ltd. (2016) 72 taxmann.com 116*, where it has been held that provision made for UPR is not an item contemplated to be added in Explanation 1 to section 115JB(2) of the Income Tax Act, 1961.

63. The learned Sr. Standing Counsel for the Revenue, on the other hand, supporting order of the learned CIT(A) submitted that once liability has been treated as unascertained liability, then same needs to be added back to the book profit computed u/s.115JB of the Income Tax Act, 1961, and thus, the Assessing Officer has rightly added UPR to book profit and their orders should be upheld.

64. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The addition of UPR to book profit u/s.115JB of the Act had been subject matter of deliberations by the ITAT., Mumbai in the case of *M/s.Munchener Ruckversicherungs Gesellschaft Aktiengesellschaft in Munchen Vs. CIT in ITA No. 937/Mum/2021 dated 13.05.2022*, where the Tribunal by following decision of the ITAT., Kolkata Bench in the case of *DCIT Vs. M/s. National Insurance Co.Ltd. (supra)*, held that provision for UPR is not an item contemplated to be added in Explanation 1 to section 115JB(2) of the Income Tax Act, 1961. The relevant findings of the Tribunal are as under:-

"3. We have heard the rival submissions and perused the materials available on record. We find that the assessee is a German re-insurance company *Munchener Ruckversicherungs Gesellschaft Aktiengesellschaft in Munchen (Munich Re)* which provides re-insurance solutions worldwide and operates in three segments namely, non-life reinsurance, life insurance and health solutions. The assessee is registered with Insurance Regulatory and Development Authority of India ('IRDAI') from 01/02/2017 and carries on various activities through its Indian Branch including receipts of premium on re-insurance treaties and purchase / sale of investment as per IRDAI guidelines. The assessee is regulated by the IRDAI and it maintains books of account as per the IRDAI guidelines. The assessee maintains its regular books of accounts by preparing a policyholders account (called revenue account) and shareholders account (profit and loss account) separately and a balance sheet as a whole which is mandated by IRDAI. The assessee is also audited under the regulation of IRDAI. The creation of reserves, accounting of liabilities, etc. is determined by the actuary in accordance with the Insurance Regulatory and Development Authority of India Act, 1999 ('IRDA Act') and its regulations related thereto.

4. We find that the expenditure and "reserves" are created as per IRDAI guidelines and one such entry booked by the assessee pertains to "reserve for unexpired risk". The "reserve for unexpired risk" is an amount calculated using statistical method for covering risks which have not expired on the reporting date but the premium for which is received during the year under consideration and it reflected the same as a reduction from the premium earned. Hence, the reserve for unexpired risk is not ad-hoc but a sum created statistically to cover the risk of reinsurance policies underwritten by the assessee.

5. We find that the assessee has claimed a deduction for the "reserve for unexpired risk" to the extent of Rs. 5,24,000/- in accordance with Rule 6E while computing its total income under the normal provisions of the Act. However, while computing its book profits u/s 115JB of the Act, no adjustment was made in respect thereof as it would not fall within any of the items specified in clause (a) to (k) of Explanation 1 to section 115JB(2) of the Act. However, the ld. AO restricted the allowance in terms of rule 6E to Rs. 8,75,44,500 as evident from page 15 of the assessment order. The ld. DRP deleted the addition of Rs. 5,32,31,500/- made by the ld. AO under the normal

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provisions of the Act. This has been accepted by both the assessee as well as the revenue and no appeal is preferred before this Tribunal on the same. 5. We deem it fit and appropriate to narrate the facts relevant for the issue in dispute and the basis of disallowance made by the ld. AO in respect of provision for unexpired risks and premium deficiency while computing the book profits u/s 115JB of the Act as under:-

a) The ld. AO passed a draft assessment order making an adjustment of Rs.14,13,00,000/- on account of provision for unexpired risk and premium deficiency reserve of Rs. 7,73,000/- totaling Rs. 14,20,95,000/- for the year under consideration for the purpose of calculating book profits u/s 115JB of the Act.

b) The ld. AO in his draft assessment order relied on clause (b) of Explanation 1 to section 115JB(2) of the Act which provides that the amount carried to any reserves, by whatever name called, should be added and held that the entry passed in respect of the reserve for unexpired risk should be added for the purpose of computation of book profit. The ld. AO observed that the word 'any reserve' in clause (b) of Explanation 1 to section 115JB(2) of the Act refers to all kinds of reserves and encompasses all types and categories and only excludes the reserve specified under section 33AC of the Act.

c) The ld. AO observed that the assessee has deferred its income by creating 'the Reserve for Unexpired Risk' but has not deferred the expenditure incurred for earning the same during the year and is accumulating the premium over time by a reserve for unexpired risk without any taxation. The ld. AO observed that the accounting treatment of the assessee does not fulfil the matching concept of accounting.

d) Further, the ld. AO while making the adjustment, considered the reserve for unexpired risks as an unascertained liability which is required to be added and included for the purpose of book profits u/s 115JB of the Act. The reliance placed by the assessee on *Bharat Earth Movers v. CIT* (2000) 245 ITR 428 (SC) was disregarded on the basis that it is in respect of actuarial valuation of leave encashment and not applicable to facts of the assessee.

6. We find that the ld. AR submitted that the "Reserve for Unexpired Risk" represents that part of net premium which is attributable to and set aside for subsequent risks to be borne by the assessee under contractual obligations on contract period basis or risk period basis. Premium deficiency is recognised if the ultimate amount of expected net claim costs, related expenses and maintenance costs exceeds the sum of related premium carried forward to the subsequent accounting period as the reserve for unexpired risk. The reserve for unexpired risk is provided as determined by the actuary and the expected claim costs is also calculated and duly certified by the actuary. It was submitted that the premium received in advance which is not related to a particular accounting period is separately disclosed in the financial statements of the assessee and is reduced from the total premium received during the accounting period by way of creation of a 'Reserve for Unexpired

Risk'. The Unexpired Risk Reserve is created to cover expected claims and expenses arising from active portfolio of the insurer. Reserve for Unexpired Risk is defined as a prospective assessment of amount that needs to be set aside in order to provide for claims and expenses which emerge from unexpired risks covered under insurance contract period. The reserve is calculated using statistical methods and is determined and certified by the actuaries using statistical methods. The certificate as per IRDAI Regulations, 2016 is provided in Form IRDAI-GI-TR, i.e., the statement of liabilities as on 31/03/2017 which is certified by the appointed actuary and statutory auditor of the assessee. Thus, it is submitted that insurance companies are required to provide for reserve for unexpired risk in the books of accounts while preparing financial statements for the year under consideration.

7. We find that the aforesaid facts and submissions made by the ld. AR remain undisputed and hence the same are not reiterated for the sake of brevity. From the perusal of the above, in our considered opinion, the reserve for unexpired risk does not fall under clause (b) of Explanation 1 to section 115JB(2) of the Act as the premium is recognized as income over the contract period or the period of risk, whichever is appropriate. Premium received in advance which represents premium income not relating to the particular accounting period in which the said premium has been received, is separately disclosed in the financial statements. Hence logically that part of

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income which is attributable to the succeeding accounting period is reduced from the total premiums received during an accounting period by way of creation of a reserve for unexpired risk which is in accordance with the Insurance Act, 1938. In this regard, the ld. AR also submitted that every year adjustments are made to the existing reserve for unexpired risk by way of crediting or debiting the amount of difference between the reserve created in the immediately preceding year and the reserve required to be credited during the current accounting year. Accordingly, we hold that it cannot be considered as any "amount carried to any reserve" debited to the Profit & Loss Account, but it represents that part of premium income which does not relate to the current accounting period. Hence, in our considered opinion, the creation of a reserve for unexpired risk cannot be considered to be similar to those "reserves" which have been referred to in clause (b) of Explanation (1) to section 115JB(2) of the Act. The amount of provision for unexpired risk has been reduced from the net premium received and there is no debit to the profit and loss account at any point of time. It is elementary that the provisions of section 115JB of the Act require an amount referred to in clause (a) to (k) to be debited to the profit and loss account. Since, there is no debit to the profit and loss account, there is no need to make an addition to the provision for unexpired risk and premium deficiency.

8. Further, the ld. AR also drew our attention to the Companies Act, 1956 and also relied on certain decisions of Hon'ble Supreme Court to cull out the meanings of "provision" and "reserve" as understood by the courts. We do not deem it fit to get into the same as we would like to address the entire issue in dispute on first principle itself as above.

9. We find that the assessee has prepared the financial statements as per the principles and guidelines prescribed by IRDAI. The expenditure claimed by the reinsurer are calculated and certified by the actuary and the computation of expenditure like reserve for unexpired risk and premium deficiency reserve is certified by the actuary and filed with IRDAI. Further, the statutory auditor in IRDAI-GI-TR has stated that liabilities of the assessee have been determined in the manner prescribed in IRDAI Regulations, 2016 and the amount of liabilities are fair and reasonable. Further, the statutory auditor has also certified that the outstanding claims reserves are estimated using statistical methods determined by the actuaries. Based on the above, it is submitted that the regulatory requirement for creation of a reserve for unexpired risk is created using statistical methods under the IRDAI guidelines and certified by the statutory auditor and actuary and, therefore, it is an ascertained liability and it cannot be construed as an adhoc or contingent liability. Hence the same would not fall under clause (c) of Explanation 1 to section 115JB(2) of the Act also under the category of unascertained liability. We find that the Hon'ble Supreme Court in the case of Bharat Earth Movers reported in 245 ITR 428 (SC) has held that the provision for leave encashment based on actuarial valuation is allowed although the liability may have to be quantified and discharged at a future date. The fact that it is capable of being estimated with reasonable certainty although actual quantification may not be possible and such liability cannot be a contingent one. This decision would be squarely applicable for the reserve for unexpired risk and premium deficiency made by the assessee in the instant case as they are not only estimated but are also derived based on statistical method and the same has been duly certified by the actuary and the auditors of the assessee. Hence we hold that the same should be excluded for the purpose of computing book profit.

10. Our aforesaid view is also fortified by the decision of Co-ordinate Bench of Kolkata Tribunal in the case of DCIT v. National Insurance Co.Ltd reported in 72 taxmann.com 116, wherein it was held that a reserve created for unexpired risk in case of general insurance business cannot be added back for the purpose of computation of book profits u/s 115JB of the Act as it does not fall in the category of reserves specified in clause (b) of Explanation 1 to section 115JB(2) of the Act. The relevant facts and the adjudication thereon by the Kolkata Tribunal are reproduced hereunder for the sake of convenience:-

11. Addition towards Reserve created for Unexpired risk u/s 115JB of the Act The brief facts of this issue is that while computing the Book Profit u/s. 115JB of the Act for the purpose of MAT, the ld AO considered a sum of Rs.169,45,00,000/- being the Reserve for Unexpired Risk created as per the requirement of law, as allegedly required to be added back. The ld AO added back the

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aforesaid sum of Rs.169,45,00,000/- in computing the Book profit. The assessee submitted that as per the Insurance Act, 1938, in case of an Insurance Company carrying on General Insurance business, Premium is recognised as income over the contract period or the period of risk, whichever is appropriate. Premium received in advance which represents Premium Income not relating to that particular accounting period in which the said Premium has been received, is separately disclosed in the Financial Statements of an Insurance Company. That part of income which is attributable to the succeeding accounting period or periods is reduced from the total Premiums received during an accounting period by way of creation of a Reserve for Unexpired Risk in accordance with Section 64V(1)(ii)(b) of the Insurance Act, 1938. The aforesaid Reserve is to be created for a minimum amount as prescribed under the above mentioned section. Appreciating the special nature of the Insurance Business, the Lawmakers prescribed special procedure for Computation of Total Income of an Insurance Company carrying on Business of Insurance other than Life Insurance which are to be found in Rule 5 of the First Schedule to the Income-tax Act, 1961, read with Rule 6E, of the Income-tax Rules, 1962. This particular procedure has to be mandatorily complied with in making the assessment for Income- tax purposes. Every year adjustments are made to the existing Reserve for Unexpired Risk by way of crediting or debiting by the amount of difference between the Reserve created in the immediate preceding year and the Reserve required to be credited during the current accounting year. This cannot be considered as any alleged "Amount carried to any Reserve" debited to the Profit & Loss Account, but it should be appreciated that this Reserve represents that part of Premium Income which does not relate to the current accounting period. It must be appreciated that as per the Mercantile System of accounting, it is only that Income/Expenditure which relate to the current accounting period, should find places in 'the Revenue/Profit & Loss Account of the year. Hence it was submitted that in case of an Insurance Company (carrying on General Insurance Business), the creation of "Reserve for Unexpired Risk" cannot be considered to be similar to those "Reserves" which have been referred to in Clause (b) of Explanation (1) to Section 115JB(2). It may also be appreciated that the "Reserve for Unexpired Risk" can, in any case, not be considered as any provision made for meeting liabilities, other than ascertained liabilities as referred to in Clause(c) of Explanation (1) to Section 115JB(2). On the basis of the above facts it may kindly be appreciated that there has not been any requirement to add back any sum in relation to the "Reserve for Unexpired Risk" while computing "Book Profit" u/s.115JB(2) for the Assessment Year 2008-09. Accordingly, the assessee submitted that the "Reserve for Unexpired Risks" not being of the nature as specified in clause (b) of Explanation 1 to section 115JB(2), the action of the ld AO in making an addition of such Reserve should be held as unjustified. Hence, the assessee submitted that the ld AO may kindly be directed to delete the addition of Rs.169,45,00,000/-made by him in computing the Book profit u/s 115JB of the Act.

11.1 The ld CITA observed that the provisions contained in Rule 6E of the Income-tax Rules, 1962 has also been considered. Section 115JB(2)- Explanation (1)(b) requires increasing "the amounts carried to any reserve, by whatever name called, other than a reserve specified u/s 33AC" if such amount is debited to the Profit & Loss Account. It is held that the Reserve for Unexpired Risk has not been debited in the Profit & Loss account at any point of time, therefore Explanation 1 to sub-section 2 of section 115JB is not applicable in the peculiar facts of the general insurance business carried out by the assessee. In the assessee's case, firstly the concerned reserve for Unexpired Risk has not been created through any debit entry made in the Profit & Loss Account. The reserve has been created in accordance with the relevant provisions of the Insurance Act, 1938, by way of debiting the premium received for adjusting the amount of premium that may be related to future year or years. It is noted that Rule 5 of the First Schedule of the Income-tax Act, 1961, which specifies the procedure to be followed for computing the business income of a General Insurance business, specifically allows deduction for reserve carried over for Unexpired Risk and Rule 6E of the Income-tax Rules, 1962 provides that such deduction will be allowed to the maximum extent of 50% of the net premium received during the relevant year. Hence, this creation of reserve out of the premium received during the year, is a statutory requirement and the same is duly recognised by the Income-tax Act/Rules. As already mentioned hereinabove, this particular reserve does not

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fall in the category of those reserves which have been specified in Explanation 1 (b) to section 115JB(2). Therefore, this reserve viz., the reserve for Unexpired Risk in the case of a General Insurance business, should not be added back for the purpose of computation of Book Profit u/s. 115JB(2) for MAT purposes. On the basis of this observation, it was held that the ld AO's action in adding back a sum of Rs.169,45,00,000/- being reserve created for Unexpired Risk, was not in accordance with the relevant provisions of the Income-tax Act, 1961 and accordingly deleted the addition.

11.2 Aggrieved, the revenue is in appeal before us on the following ground:--

"4. The CIT(A) erred on the facts of the case and in law in holding the sum of Rs.1694500000 being the reserve created for unexpired risk should be considered as reserve for computing the Book Profit under section 115JB of the Income-tax Act."

11.3 The ld DR vehemently relied on the order of the ld AO. In response to this, the ld AR vehemently relied on the order of the ld CITA.

11.4 We have heard the rival submissions. We find that the ld CITA had dealt this issue very elaborately and had given proper finding that the reserve created for unexpired risk need not be added back for the purpose of computation of book profits u/s 115JB of the Act. The revenue was not able to controvert the findings of the ld CITA before us. Hence we find no infirmity in the order passed by the ld CITA in this regard. Accordingly, the Ground No. 4 raised by the revenue for Asst Year 2008-09 is dismissed.

10.1. We further find that this decision of Kolkata Tribunal has been subsequently affirmed by the Hon'ble Calcutta High Court in ITA No. 76 of 2019.

11. Before we conclude the issue, we would also like to address the issue in dispute that Rule 5 of the First Schedule of the Act specifies the computation mechanism of profits/gains arising from general insurance business and specifically allows deduction for reserve for unexpired risk while computing taxable income for the year under consideration. Rule 6E of the Income-tax Rules, 1962 prescribes certain percentage of the net premium for creating reserve for unexpired risks which is allowed as a deduction. Accordingly, in view of the special nature of insurance business, the Act prescribes special procedure for computation of total Income of an Insurance Company. The creation of a reserve for unexpired risk out of the premium received during the year, is a statutory requirement and the same is duly recognised by the provisions of the Act. Accordingly, it can be inferred that the intent of the law has been to allow the said reserve for unexpired risk created by the insurance companies to the extent of specified limits which is derived as a percentage of net premium.

Therefore, in our considered opinion, making an addition of reserve for unexpired risk u/s 115JB of the Act would defeat the purpose of the Act which allows deduction of the said reserve to the extent of prescribed limits. Further, the provisions of section 115JB of the Act do not specifically provide for any adjustment in connection with the reserve for unexpired risk and no adjustment is permitted to such profits other than those listed in Explanation 1 to section 115JB of the Act. Reliance in this regard is rightly placed on the decision of Hon'ble Supreme Court in the case of Apollo Tyres Ltd reported in 255 ITR 273 (SC).

12. We further find that the premium deficiency of Rs 773000 has been allowed by the ld. AO under the normal provisions of the Act but the same has been added back while computing book profits u/s 115JB of the Act. As stated supra, this is not an item contemplated to be added in the Explanation 1 to section 115JB(2) of the Act. Hence the revenue grossly erred in adding back the same while computing book profits u/s 115JB of the Act.

13. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we direct the ld. AO to delete the addition made in respect of reserve for unexpired risk and premium deficiency while computing the book profits u/s 115JB of the Act. Accordingly, the grounds raised by the assessee are allowed."

65. In this view of the matter and consistent with the view taken by the co-ordinate Bench, we direct the Assessing Officer to delete additions made towards UPR to book profit u/s.115JB of the Income Tax Act, 1961, for both the assessment years...."

9.3 We have also noted that the facts of the present case are identical to those in the case of M/s. Cholamandalam Insurance Supra. Accordingly, in respectful compliance to the ratio laid down by Hon'ble Coordinate Bench above, the order of the lower authorities is set aside and the Ld. AO is directed to delete the additions made towards UPR to book profits u/s 115JB of the act. **The ground of appeal raised by the assessee on the issue of non-inclusion of UPR to book profits u/s 115JB of the act is therefore allowed.**

10.0 The next issue raised by the assessee for ITA Nos.88 & 90 for AY-2010-11 & 2011-12 pertains to addition of insurance premium received in respect of long term policy. Facts of the case for AY-2010-11 & 2011-12 are common except of variations in figures. The Ld. AO has while making an addition of Rs.15,64,68,000/-, discussed the issue in para 10(2)(i) of his order for AY-2010-11. The Ld. First Appellate Authority endorsed the decision of the Ld. AO. As per brief factual matrix of the case the assessee company had changed its policies of accounting in respect of long term health and personal accident policies. Thus the premium received which was hitherto accounted for in the year of receipt was deferred over duration of policy. The Ld. AO rejected the arguments of the assessee and while relying upon the decision of Hon'ble Madras High Court in the case of GSR Krishnamoorthy 262 ITR 293 and of

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Hon'ble Apex Court in the case of British Paints India Limited 54 Taxman 499 brought the deferred premium to tax in year of receipts. The Ld. First Appellate Authority concurred with the Ld. AO's finding by relying upon the decision of Hon'ble Apex Court in the case of British Paints India Limited holding that the Ld.AO has right to ensure that book results disclose true state of accounts and the correct income and that section 145 of the act confers upon the Ld. AO exclusive powers or rather duty to make computation of income in a manner he deems appropriate for determination of correct profit and gains.

10.1 We have heard rival submissions in the light of material available on records. The Ld. Counsel of the assessee argued that it is offering the income on receipt basis in subsequent years and that the addition tantamount to double taxation. The Ld. Counsel for the revenue argued that the decision of lower authorities is based upon correct understanding and appreciation of the facts case and does not require any interference at this stage. It was argued that the assessee cannot have two different accounting for different products offered to its customers. We have considered the order of Ld. CIT(A) and are of the view that no interference is required in the same at this stage. Accordingly, in respectful compliance to the decision of Hon'ble Apex Court in the case of British Paints India Limited at 188 ITR 44 we hold the view that the Ld.AO

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is fully empowered to determine the correct taxable income by making correct interpretation of books results. **Accordingly the order of the Ld. First Appellate Authority in making the impugned addition is sustained and the grounds of appeal raised by the assessee vide ITA Nos.88 & 90 for AY-2010-11 & 2011-12 pertaining to addition of insurance premium received in respect of long term policy is dismissed.**

**ITA Nos.491, 492, 493, 494, 495 & 496 /Chny/2018  
AYs: 2008-09, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15**

11.0 We now proceed to take up the remaining issues raised in the appeal of the revenue save those adjudicated herein above. The first issue raised by the revenue is regarding depreciation on computer software raised vide ITA Nos. 491 492, 494, 495 & 496 /Chny/2018 for AYs: 2008-09, 2010-11, 2012-13, 2013-14, 2014-15. As regards ITA No. 491 for AY-2008-09 is concerned the Assessment order per se which is based upon proceedings u/s 147 / 148 has been found to be barred by limitation on account of suffering from incurable deficiencies. The appeal of the revenue for impugned year vide ITA No. 491 for AY-2008-09 is therefore dismissed in limine.

11.1 The issue seminal to all the remaining ITA Nos. 492, 494, 495 & 496 / Chny / 2018 for AYs: 2010-11, 2012-13, 2013-14, 2014-15 contested by the appellate revenue is regarding allowance of depreciation

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on computer software. It is the case of the revenue that the assessee is eligible for claim of depreciation @ 25% on computer software since the license to use software is an intangible asset and that therefore the action of Ld. CIT(A) is erroneous in allowing depreciation @ 60%. For the purposes of this appeal the figures for the AY-2010-11 are taken. The Ld. AO had noted the fixed asset schedule of the assessee showed that for the “block computers” depreciation has been claimed at 60% and that the same included an amount of Rs.3,25,90,355/- being on account of computer software. The Ld. AO subscribed to the view that a computer software is an intangible asset for which permissible depreciation was @ 25%. The Ld. AO observed that in the present case the assessee company was not the owner of the software but had merely acquired license to use and therefore admissible for 25% depreciation. Before the Ld.AO the assessee had argued that within the meanings of AS 26 or accounting standard 26 – intangible asset, it was eligible for depreciation @ 60%. The Ld CIT(A) held that that within meanings of new appendix to Rule 5 of Income Tax Rules , computers including computer software are eligible for depreciation @ 60%. Consequently he allowed depreciation @ 60%. While doing so he relied upon the decision of Hon’ble coordinate bench of this tribunal in the case of TNQ books and journals private

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limited at ITA no. 330/mds/2016 . In appeal of the revenue , the Ld Departmental Standing Counsel relied upon the orders of the Ld AO.

11.2 We have heard rival submissions in the light of material available on records . We have also noted decision in the case of TNQ books and journals private limited supra as under, which is on nearly identical facts:-

*“.....The Revenue has raised sole substantive ground that the Commissioner of Income Tax (Appeals) erred in allowing depreciation for software license at the rate of 60% instead of 25% allowable as per Income Tax Rules and further erred on relying on the judicial decisions which are not relevant to the assessee’s case. 3. The Brief facts of the case are that the assessee company is in the business of data processing, prepress services and export of software and filed return of income electronically on 27.09.2012 with total income of 16,27,41,050/- and was processed u/s.143(1) of the Act and subsequently, the case was selected for scrutiny and notice u/s.143(2) and 142(1) of the Act was issued. In compliance to notice, the Id. Authorised Representative of assessee appeared from time to time and furnished details as called for by the Id. Assessing Officer. In the assessment proceedings, the Id. Assessing Officer on perusal of form No. 3CD found that the assessee company has claimed depreciation on software licence at the rate of 60% instead of 25% allowable on intangible assets as the software license being intangible amount as per part B of depreciation schedule and the Id. Authorised Representative submitted break up Written Down Value (WDV) of computer and software license. The Id. Assessing Officer considering the claim of the assessee on depreciation rate and applicability of inclusive definition of intangible assets has disallowed the excess :- 3 :- ITA No.330/Mds/2016. claim of depreciation and Assessed total income of 16,80,88,230/- vide order u/s.143(3) of the Act dated 18.03.2015. Aggrieved by the order, the assessee filed an appeal before us. 4. In the appellate proceedings, the Id. Authorised Representative argued on the grounds and explained the facts and reasons on claim of depreciation on software license. The assessee company purchased software license and added to the opening written down value (WDV) of Block of computers and computer software and license ” as on 01.04.2011 and the same being part of the Block cannot be segregated and entitled for depreciation at 60% and not the rate applicable to the intangible assets. The Id. Commissioner of Income Tax (Appeals) considered the grounds, arguments, facts of the case, findings of the Id. Assessing Officer, and written submissions with the judicial decisions of Amway India Enterprises vs. DCIT 111 ITR 112 and Navneet Publications India Ltd in ITA No.1137/Mum/2010, and found that similar issue in assessee case was decided favorably and observed at para 7.2.1 of the order:- “7.2.1. Further, the appellant’s Authorised Representative submitted that the same issue was decided in favor of the appellant by the Commissioner of Income Tax (Appeals) for the earlier A.Y. 2010-2011 vide order in IAT No.1889/201314 dated 31.12.2014. For the sake of convenience, the relevant portion of the above order of the Commissioner of Income Tax (Appeals) is reproduced hereunder:- “The AO restricted the depreciation claim*

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on the appellant to 25% as against 60% in doing so he relied on the decision of SONY Indi vs. Addl. CIT 56 DTR 156. On the issue of depreciation the Assessing Officer disallowed stating that the appellant had paid money for the use of software whereas the appellant submits that the amounts were paid towards purchase of license version of software and the company is absolute owner of the same without restriction of time limit. On going through the relevant decision, the issues mentioned there is the case law cited by the Assessing Officer is on 35DDA and 37(1). Similar issue had come up before the Hon'ble Special bench of ITAT, Delhi in the case of AMYWAY India Enterprises vs. DCIT Circle 1(1) New Delhi wherein the Hon'ble ITAT held that computer software has been classified as tangible asset under heading plant and would be entitled to depreciation at the rate of 60% w.e.f. 01.04.2013 (111 ITD 112 Delhi SB). Hence, the disallowance made by the Assessing Officer is deleted and the ground is allowed. and deleted the addition of excess claim of depreciation and allowed the appeal. Aggrieved by the Commissioner of Income Tax (Appeals) order, the Revenue has assailed an appeal before Tribunal. 5. Before us, the Id. Departmental Representative reiterated the facts and argued the grounds and relied on the findings of the Id. Assessing Officer were computer and computer software license are different as the software takes the character of tangible asset whereas software license is a intangible asset and depreciation is allowable @25% as per part B of Appendix 1 of depreciation table and the Id. Commissioner of Income Tax (Appeals) has erred in allowing depreciation @60% relying on the judicial decisions not relevant to the facts of the assessee and prayed for allowing the appeal. 6. :- 5 :- ITA No.330/Mds/2016. Contra, the Id. Authorised Representative relied on the orders of Commissioner of Income Tax (Appeals) and the assessee's own case for the assessment year 2010-2011 allowed in favour of the assessee on similar issue and submitted judicial decisions and prayed for dismissing the appeal. 7. We heard the rival submissions, perused the material on record and judicial decisions cited. The crux of the issue dealt as per the arguments of the Id. Departmental Representative that the depreciation on software license should be restricted to 25% rate and treated as Intangible Asset and shall not be included in Block of computers. The Id. Authorised Representative contravened the arguments and substantiate that in assessee's own case the Coordinate of this Tribunal has allowed the depreciation on software licence @60% and supported his submissions with the decision of Hyderabad Tribunal in the case of Srinivasa Resorts vs. ACIT (2014) 41 taxmann.com 350 (Hyd. Trib) where it was observed that the computer software alongwith computer has to be treated as capital asset and Higher rate of depreciation @60% has been allowed based on the life and usage of computer software. We found that similar issue was decided by the Co-ordinate Bench in favour of the assessee in assessee's own case in ITA No.1368/Mds/2015, for the year 2010-2011, dated 20.1.2016, where the Tribunal observed in para No 8 as under:- "8. Ground No.2 - Restriction of excess depreciation claimed on software:- During the course of assessment proceedings it was observed by the learned Assessing Officer that the assessee had claimed depreciation on purchase of software of Rs.1,28,45,163/- @ 60%. However, following the decisions in the case of Sony India Vs. Additional. CIT (ITAT., Delhi) reported in 56 DTR 156), the Ld. Assessing Officer allowed depreciation @ 25%. On appeal, the learned CIT relying on the decision in the case of Amway India Enterprises Vs. DCIT held that the assessee would be entitled for depreciation @ 60% since "computer software" falls in the category of "plant". On perusing the facts of the case, we find the decision of learned CIT(A) to be justified because the

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*Special Bench of the Tribunal (supra) has categorically held that with effect from 01.04.2003 “computer software” has to be classified as “tangible asset” under the heading ‘plant’ as mentioned in Appendix I to Income Tax Rules, 1962. Therefore we do not find it necessary to interfere with the order of the CIT (A) on this issue”. We, respectfully following the Co-ordinate Bench decision, dismiss the ground of the Revenue. 8. In the result, the appeal of the Revenue in ITA No.330/Mds/2016 is dismissed....”*

11.3 The only issue seminal to the controversy is as to whether computer software taken on lease by an assessee would be eligible for 60% depreciation or not. It has been noted that the Hon’ble Coordinate Bench of this tribunal in the case of TNQ Books and Journal Pvt Ltd supra has comprehensively dealt the subject so as to conclude admissibility of depreciation @ 60% in similar situations. As the facts of the case are identical, we do not find any need to interfere with the findings of the Ld. First Appellate Authority. **Accordingly, the decision of Ld. CIT(A) is sustained and grounds of appeal raised by the appellate revenue is dismissed.**

12.0 The next issue raised by the revenue vide ITA Nos. 492, 493, 494, & 495/Chny/2018 AYs: 2010-11, 2011-12, 2012-13 & 2013-14 is regarding the disallowance of amortization of premium on investments. For the purposes of this appeal, we consider the assessment order for AY-2010-11 as facts of all the remaining years are identical. The Ld. AO has discussed the issue on page 12 to page 16 of his order. It is the case of the Ld. AO that the method of differing the premium income in

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miscellaneous insurance business is not in accordance with the provisions of the act and consequently he proceeded to add back the same. The Ld. First Appellate Authority has deliberated upon this issue in para 4.6.1 on page 7 of his order. Placing reliance upon the decision of on Hon'ble ITAT Kolkata in the case of National Insurance Company Limited 72 Taxmann.com 116 he deleted the addition of the Ld. AO.

12.1 We have heard the rival submissions in the light of material available on records. The Ld. Counsel for the assessee has apart from endorsing the views of Ld.First Appellate Authority also drawn our attention to the order of this tribunal in the case of United India Insurance vide ITA No.1085/Chny/2017 dated 19.07.2024 and requested for sustaining the order of Ld.CIT(A). The Ld. Sr.Standing Counsel for the revenue fairly conceded that the issue is covered by the decision of this tribunal. We have noted that on identical facts in the case of United India Insurance it was held as under:-

*"....8. The second common ground raised by the assessee is with regard to disallowance towards amortization of premium paid on purchase of securities for the assessment years 2013-14 to 2019-20. The learned counsel for the assessee submitted that similar issue had been raised by the assessee for consideration in the assessment year 2003-04, wherein the Ld.CIT(A) decided the issue against the assessee by following his predecessor's order and on further appeal, the Tribunal confirmed the order of the CIT(A). Even in subsequent assessment years 2004-05 to 2013-14 also, the Tribunal decided the issue of amortization of premium paid on purchase of securities against the assessee. Pertinently, in ITA No.2107/Chny/2008, in assessee's case for AY 2004-05, the co-ordinate Bench of this Tribunal has observed as under:-*

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*“37. The next issue arises for consideration is amortization of premium on securities. This issue arises for consideration in the assessee's appeals for assessment years 2004-05 to 2013-14.*

*38. Shri P.H. Arvinth Pandian, the Ld. Sr. counsel for the assessee, submitted that the CIT(Appeals) decided the issue against the assessee by following his own order for assessment year 2003-04. On appeal by the assessee against the order of the CIT(Appeals) for assessment year 2003-04, according to the Ld. Sr. counsel, this Tribunal confirmed an identical order of CIT(Appeals).*

*39. We heard Shri M. Swaminathan, the Ld. Sr. Standing Counsel also. This Tribunal for the assessment year 2003-04, confirmed a similar disallowance towards amortization of premium on securities. For the reason stated by this Tribunal for assessment year 2003-04 in I.T.A. No.801/Mds/2007, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.”*

9. After hearing both the sides, we find that the Tribunal has already decided the issue against the assessee in earlier assessment years 2004-05 to 2013-14 vide its order dated 28.08.2018. Accordingly, we see no reason to interfere with the order of the CIT(A) for the assessment years 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 & 2019-20 on the issue of disallowance towards amortization of premium paid on purchase of securities. **Therefore, the ground raised by the assessee on this issue of amortization of premium paid on purchase of securities for the assessment years 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 & 2019-20 is dismissed....”**

12.2 We have noted that there is no difference in facts pointed out by the Ld.Counsel for the revenue in the present case viz a viz those available in the case of United India Insurance supra. **Respectfully following the decision, we hold that there is no need to interfere with the order of the Ld.CIT(A) and the same is therefore confirmed.**

13.0 The next issue raised by the revenue vide ITA Nos. 493, 494, 495 & 496 /Chny/2018, AYs: 2011-12, 2012-13, 2013-14, 2014-15 is regarding disallowance of provisions for claims incurred but not reported (IBNR) and incurred but not enough reported (IBNER). Brief factual matrix of the

controversy at hand is that in the assessee's line of business claims arise qua insurance policies sold by it to its customers. With a view to factor in its liabilities arising on account of claims, the assessee creates provisions qua claims incurred but which have not been reported and claims incurred but which have not been enough reported. The only difference between the two being quantity of claims made. The assessee had been claiming by way of provisions the impugned claims. It is an undisputed fact on records that the impugned provisions are required to be created by the assessee in compliance to the directions of the parent body of insurance sector being insurance regulatory development authority(IRDA). It is also an undisputed facts on record that the respective claims for IBNR and IBNER in respect of the assessee are calculated by an actuarial valuer appointed by the IRDA. It is the case of the revenue that the impugned claims are unascertained contingent liabilities and hence cannot be allowed as deduction u/s 37(1). The same have been added by the Ld. AO in the case of the assessee. The Ld. First Appellate Authority held that the impugned liabilities is an ascertained liability and directed the Ld.AO to delete the addition.

13.1 We heard rival submissions in the light of the material available on records. The Ld. Revenue's counsel vehemently protested against the impugned action of the Ld.First Appellate Authority and argued that

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IBNR and IBNER claims are unascertained contingent liabilities and hence cannot be allowed as deduction u/s 37(1). The Ld. Counsel for the revenue heavily relied upon the decision of the Hon'ble Coordiante Bench of this tribunal in the case of United India insurance company limited vide ITA No.1085 / Chny / 2017 dated 19.07.2024 and invited our reference to the following parts of the decision and accordingly requested for restoring the order of the Ld. Assessing Officer:-

*“.....10. The next common issue that came up for our consideration in the appeals of the assessee for the assessment years 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 & 2019-20 is disallowance of provision for IBNR and IBNER.*

*11. The learned counsel for the assessee submitted that during the relevant assessment years, the assessee has made provision for claims incurred, but were not reported (IBNR) and claims incurred, which were not enough reported (IBNER) and such provision has been made for all unsettled claims on the basis of claim lodged by insured persons. According to the learned counsel, date of damage/loss was considered for recognizing the claim in a particular year. In certain circumstances, damages / loss were not reported in the balance sheet of the insurance company and such claims are known as claims incurred, but not reported. Sometimes, damage/loss incurred may be reported, however, it was not enough reported and therefore, the assessee has made provision as per IRDAI guidelines. The liability of the assessee company is determined based on the actual loss / damage. Therefore, such provision is in accordance with guidelines and norms issued by IDRAI and thus, is deductible u/s.37(1) of the Income Tax Act, 1961.*

*12. On the other hand, the Ld. Sr. Standing Counsel for the Revenue submitted that the assessee has created provision in anticipation of settlement of claims that were not ascertained. What is reported to the assessee is damage/ loss caused to the insured persons. According to the Sr. Standing Counsel, the assessee is yet to assess loss and determine amount to be compensated. Therefore, it is unascertained liability and same cannot be allowed as deduction. The Sr. Standing Counsel further submitted that this issue is covered by the decision of the ITAT., Chennai in assessee's own case for earlier assessment years, where the Tribunal has held that provision made for IBNR and IBNER is not deductible, because merely incident happened during the year which is basis for making claim, that cannot be a reason for allowing compensation payable by the assessee in the subsequent financial years.*

*13. After hearing both the parties and going through material records, we find that an identical issue has been considered by the Tribunal in assessee's own case in ITA Nos. 2107/Chny/2008 &Ors. vide order dated 28.08.2018 for relevant assessment years and after considering relevant facts held that provision for IBNR & IBNER is not deductible u/s.37(1) of the Income Tax Act, 1961, because such provision is only on unascertained liability, which is not accrued to the assessee for the relevant assessment year. The relevant findings of the Tribunal are as under:-*

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“43. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the assessee made provision in respect of claims incurred but not reported and in respect of claims incurred but not enough reported. The compensation for making insurance claim arises on the date of loss or damage occurred to the insured property. But, the actual liability to make the payment arises on the date on which the loss or damage was assessed and the amount was determined. In this case, the accident or loss was reported to the assessee but the actual loss or compensation was not determined during the assessment year 2009-10. Therefore, as rightly submitted by the according to the Ld. Sr. Standing Counsel for the Revenue, the liability to make the payment accrues to the assessee only in the year in which the loss or damage was ascertained and compensation payable to insured person is determined. Admittedly, the compensation payable to insured person was not determined during the assessment year 2009-10. Therefore, this Tribunal is of the considered opinion that merely because the incident happened during the year which is the basis for making claim, that cannot be a reason for allowing the compensation payable by the assessee for the assessment year 2009-10. In other words, the compensation payable by the assessee has to be allowed in the year in which the amount of compensation was determined. Since the amount was not determined during the year under consideration, this Tribunal is of the considered opinion that the same cannot be allowed for assessment year 2009-10. Hence, the CIT(Appeals) is not correct in allowing the claim of the assessee. Accordingly, the order of the CIT(Appeals) is set aside and that of the Assessing Officer is restored.”

14. In this view of the matter and consistent with view taken by the co-ordinate Bench, we are of the considered view that the assessee is not entitled for deduction towards provision created for IBNR & IBNER and thus, we uphold the findings of the learned CIT(A) on this issue for the assessment years 2014-15, 2015-16, 2016-17, 2018-19 & 2019-20 and reject grounds taken by the assessee. Further, the assessee has also pleaded that with respect to AY 2017-18, the amount disallowable with respect to provisions for IBNR and IBNER claims cannot exceed Rs.1250.89 crores being the amount debited to the revenue accounts of the assessee. The assessee submitted that the additional amount of Rs.1582.58 crores being the amount not debited to the profit & loss account be deleted. We are in conformity with the views of the assessee that amount of monies, as provisions, not debited to the profit & loss account cannot be a part of the disallowance. Accordingly, the AO is directed to recalculate the disallowance with respect to provisions for IBNR and IBNER claims and restrict it to the extent of the amounts debited to profit & loss account as per law during the assessment year 2017-18. **Accordingly, the grounds of appeal raised by the assessee on this issue for AYs 2014-15 to 2016-17 and 2018-19 & 2019-20 are dismissed and that of the AY 2017-18 is treated as allowed for statistical purposes.....”.**

13.2 The Ld. Counsel for the assessee vehemently opposed the arguments of Ld. The Revenue and submitted that the matter now stands decided in assessee's favour by the decisions of Hon'ble Delhi

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High Court, Bombay High Court as well as Coordinate Benches of Delhi, Kolkata and Mumbai Tribunals. The Appellant assessee has placed on records through its paper book, copies of the decisions of above authorities. The Ld. Counsel for the revenue submitted that there are favorable decisions of Hon'ble High Court in favour of revenue on the impugned subject. The revenue was asked to provide copies of the impugned orders for consideration, but the same were not placed on records. The Ld. Counsel for the assessee countered that even if there is any such favorable decisions of Hon'ble High Court in favour of revenue on the impugned subject, the same would not be helpful for the revenue given the ratio laid down by the Hon'ble Apex Court in the case of Vegetable Products.

13.3 Hon'ble Coordinate Bench of ITAT, Mumbai in the case of M/s.TATA AIG general insurance company limited ITA no.14 / mum/ 2021 dated 08.03.2022 has ruled as under:-

*".....06. The learned Departmental Representative vehemently supported the order of the learned Assessing Officer and merely referred to the order of the learned Assessing Officer and learned CIT (A) stating relevant paragraph of the issues involved. It was submitted that the issues are decided in favour of the assessee by the co-ordinate Bench in assessee's own case; however, the above Page | 5 ITA No.14/Mum/2021 Tata AIG General Insurance Co. Ltd.; AY 15-16 disallowance should not have been deleted by the learned Commissioner of Income-Tax (Appeals) for the reason given in assessment order by the Id AO. He extensively referred assessment order on all these [3] issues. 07. 08. 09. The Authorised Representative submitted that the appeal of the Revenue deserves to be dismissed in view of the issues already decided in favour of the assessee by the co-ordinate Bench in assessee's own case for earlier years as well as in case of other insurance companies involving similar issues. He placed on record the decision of ITAT in assessee's own case in ITA No. 3535 and 1702/Mum/2011*

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and ITA No. 1584 and 3596/Mum/2011 preferred by both the parties for Assessment Year 2006-07 and also appeal for Assessment Year 2008-09 dated 20/11/2015. He also submitted a case law compilation to support that issues are covered in this appeal. We have carefully considered the rival contentions and perused the orders of the lower authorities. We have also considered the order of the coordinate bench in assessee's own case as well other decision of coordinate benches involving similar issues. First ground of appeal is related to the provisions for claim Incurred but Not Reported (IBNR) and claim Page | 6 ITA No.14/Mum/2021 Tata AIG General Insurance Co. Ltd.; AY 15-16 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). 010. 011. 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. 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 Page | 8 ITA No.14/Mum/2021 Tata AIG General Insurance Co. Ltd.; AY 15-16 u/s 37 (1) of the act and the addition made by the learned AO was deleted. 012. 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

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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 Page | 9 ITA No.14/Mum/2021 Tata AIG General Insurance Co. Ltd.; AY 15-16 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 Page | 10 ITA No.14/Mum/2021 Tata AIG General Insurance Co. Ltd.; AY 15-16 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 Page | 11 ITA No.14/Mum/2021 Tata AIG General Insurance Co. Ltd.; AY 15-16 infirmity in the order of the learned CIT (A) in allowing the claim of

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₹148,43,01,915/- under section 37(1) of the Act. Accordingly, the ground no.1 of the appeal is dismissed....”

It is noted that the Hon'ble Coordinate Bench has considered the ratios laid down by Hon'ble Coordinate Bench of Kolkata Tribunal as well as the decision of Hon'ble Kolkata High Court.

13.4 Further we have noted that Hon'ble Delhi High Court order in the case of Care Health Insurance Limited (164 taxmann.com 53) observed as under:-

“.....6. Insofar as the question of IBNR is concerned, the Tribunal has essentially followed the view taken by its Kolkata Bench in Deputy Commissioner of Income Tax vs. National Insurance Co. Ltd.

7.Dealing with this aspect, the Tribunal has held:-

"13. The AO made disallowance for provision for IBNR claims as contingent liability. Ld. CIT (A) deleted the addition by relying upon the decision of Kolkata ITAT Bench in the case of DCIT vs. National Insurance Co. Ltd.. The concluding part of the order of Ld. CIT (A) read as under :-

"5.2 I have carefully considered the facts of the case, submissions of the appellant and the impugned order of the AO. The fundamental submissions of the appellant is that the provision for claims incurred but not reported is in accordance with the IRDA Regulations and the appellant being an insurance company is bound by such regulation. Further, the recent ruling of the Kolkata ITAT Bench in the case of Deputy Commissioner of Income tax vs National Insurance Co. Ltd. (2016) 72 taxmann.com 116 (supra) is squarely applicable to the facts of the case as reproduced hereunder:

"3.6 We have heard the rival submissions and gone through facts and circumstances of the case. We find that the Ld CIT(A) had given a categorical finding that the provision made for liabilities incurred but not reported (IBNR) made by the assessee as per the regulations framed by Insurance Regulatory Development Authority (IRDA) based on a scientific calculation with a proper rationale could only be termed as ascertained liability. Hence, the same need not be added back by treating the same as unascertained liability while computing the book profits u/s 115JB of the Act. The revenue was not able to controvert the findings given by the Ld CITA before us. Hence, we find no infirmity in the order of the Ld. CITA in this regard and accordingly dismiss the Ground No. 1 raised by the revenue." Thus, as said provision has been created by it to meet ascertained liabilities, the Company is entitled to claim a deduction of the same IT APPEAL NOS. 674, 982 & 983 (KOL.) OF 2012 while computing its income under the head 'profits & gains from business and profession'. Therefore, respectfully following the decision of the Hon'ble ITAT in the case of National Insurance above, I do not find any merit in the addition made by the AO in this case. Hence, this ground of appeal is allowed."

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14. We have heard both the parties and perused the records. In the light of the assessee's submissions herein above, we find that Id. CIT (A) has taken correct decision, which does not need any interference on our part. The case law from Kolkata Bench of ITAT duly holds that these are ascertained liabilities. Hence, we uphold the order of Id. CIT (A). "

7. The computation of profits of general insurance business is undisputedly regulated by the provisions made in the First Schedule of the Act and which requires an entity engaged in the business of insurance to compute its profits and gains from business as per its profit and loss account prepared in accordance with the Insurance Act, 1938, the rules framed under the said enactment or the Insurance Regulatory and Development Authority Act, 1999 and the rules and regulations framed by the IRDA. We find that the provisioning for IBNR is based upon the Insurance Regulatory and Development Authority of India (Assets, Liabilities and Solvency Margin of General Insurance Business) Regulations, 20168.

8. The determination of amount of liabilities of a general insurer is regulated by Regulation 5 and which requires a general insurer to prepare a statement of liabilities in accordance with Schedule II of those Regulations. The subject of claims reserve is regulated by Clause 3 of Schedule II of the Regulation which reads as follows:-

" 3. CLAIMS RESERVE (1) The Claims Reserve shall be determined as the aggregate amount Regulations of Outstanding Claims Reserve and Incurred but Not Reported Claims Reserve (IBNR) as described below for the following lines of business: xxxx xxxx xxxx (2) Outstanding Claims Reserve The outstanding claims reserve shall be determined in the following manner:

(a) Where the amount of outstanding claims of the insurers is known, the amount is to be provided in full;

(b) Where the amount of outstanding claims can be reasonably estimated according to the insurer, insurer shall follow the 'case by case method' after taking into account the explicit allowance for changes in the settlement pattern or average claim amounts, expenses and inflation;

(c) For lines of business, where the Appointed Actuary is of the view that the statistical method is most appropriate for the estimation of Outstanding claims, the Appointed Actuary may use the appropriate statistical method of claims reserving instead of following case by case method. In such cases, the claims outstanding reserve shall be certified by Appointed Actuary. Where the Appointed Actuary identifies material changes in the claims handling practices, their impact on the outstanding claims reserve pattern shall be taken into account and reported.

(3) Incurred But Not Reported (IBNR) Claims Reserve

(a) The incurred but not reported (IBNR) claims reserve shall be determined using actuarial principles and methods detailed in clause 4 below

(b) The IBNR shall be estimated using appropriate actuarial principles and shall be certified by the Appointed Actuary.

(c) The Appointed Actuary shall estimate IBNR on both net of reinsurance and gross of reinsurance basis.

(d) The Appointed Actuary shall estimate the provision for IBNR for each year of occurrence and the figures shall be aggregated to arrive at the total amount to be provided.

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(e) If estimate of IBNR provision for any year of occurrence is negative, the Appointed Actuary shall reexamine the underlying assumptions. Even after re-examination, if the mathematics produces negative value, the Appointed Actuary shall ignore the IBNR provision for that year of occurrence.

(f) The estimation process shall not discount the estimated future development of paid claims to the current date."

9. While dealing with IBNR claims reserve, Clause 3(3) of Schedule II provides that IBNR would be estimated by usage of appropriate actuarial principles. IBNR itself is to be estimated on the basis of a study undertaken by an appointed actuary. Clause 4 then prescribes the various actuarial methods that may be used for the estimation of IBNR reserves. The said Clause reads as follows:-

"4. ACTUARIAL METHODS (1) The following Standard Actuarial Methods may be used for the estimation of IBNR reserves:

(a) Basic Chain Ladder Method (both on incurred and paid claims)

(b) Bornhuetter Ferguson Method (both on incurred and paid claims)

(c) Frequency - Severity Method (2) The Appointed Actuary shall use more than one method to arrive at an estimate that s/he believes is adequate to meet the future liabilities.

(3) Appointed Actuary may use methods other than standard actuarial methods of IBNR estimation.

(4) In his/her annual report submission to the Regulator, Appointed Actuary should provide an explanation of the rationale underlying the selection of a particular method over the other available methods along with the advantages and disadvantages of doing so. (5) Where the results of different methods or assumptions differ significantly, an Appointed Actuary must comment on the likely reasons for the differences and explain the basis for the choice of results. "

10. As is evident from the aforesaid, IBNR reserves are created by general insurers based on an actuarial exercise which is undertaken in accordance with one of the stipulated methods noticed in Clause 4. It is thus an empirical estimation for claims on the basis of an identified predictive methodology which in the opinion of the general insurer have already been incurred but may not have been reported at the time when a provision is made. We were informed by Mr. Vohra that the aforesaid procedure has been historically followed in the general insurance business. It was in the aforesaid backdrop that Mr. Vohra had sought to draw a parallel between IBNR and warranties that may be issued by entities and the various judgments rendered with respect to the latter.

11. Having heard learned counsels for respective sides at some length, we find merit in the stand as struck by the respondents for reasons which are set out hereunder. One of the seminal decisions rendered by the Supreme Court in the context of warranties and whether provisions made in respect thereof would amount to contingent liabilities is the one rendered in *Rotork Controls India Private Limited. vs. Commissioner of Income Tax, Chennai 9*. In the aforesaid matter, the Supreme Court was concerned with whether a standard warranty which had been provided by the assessee in respect of claims likely to arise could be construed to be a contingent liability and thus not allowable as a deduction under Section 37.

12. While expounding upon the concept of a provision being made in the books of account, the Supreme Court pertinently observed as follows:-

"22. What is a provision? This is the question which needs to be answered. A provision is a liability which can be measured only by using a substantial degree of

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estimation. A provision is recognised when: (a) an enterprise has a present obligation as a result of a past event; (b) it is probable that an outflow of resources will be required to settle the obligation; and (c) a reliable estimate can be made of the amount of the obligation. If these conditions are not met, no provision can be recognised.

23. Liability is defined as a present obligation arising from past events, the settlement of which is expected to result in an outflow (2009) 13 SCC 283 from the enterprise of resources embodying economic benefits. A past event that leads to a present obligation is called as an obligating event. The obligating event is an event that creates an obligation which results in an outflow of resources. It is only those obligations arising from past events existing independently of the future conduct of the business of the enterprise that is recognised as provision. For a liability to qualify for recognition there must be not only present obligation but also the probability of an outflow of resources to settle that obligation. Where there are a number of obligations (e.g. product warranties or similar contracts) the probability that an outflow will be required in settlement, is determined by considering the said obligations as a whole.

24. In this connection, it may be noted that in the case of a manufacture and sale of one single item the provision for warranty could constitute a contingent liability not entitled to deduction under Section 37 of the said Act. However, when there is manufacture and sale of an army of items running into thousands of units of sophisticated goods, the past event of defects being detected in some of such items leads to a present obligation which results in an enterprise having no alternative to settling that obligation.

25. In the present case, the appellant has been manufacturing and selling valve actuators. They are in the business from Assessment Year 1983-1984 onwards. Valve actuators are sophisticated goods. Over the years the appellant has been manufacturing valve actuators in large numbers. The statistical data indicates that every year some of these manufactured actuators are found to be defective. The statistical data over the years also indicates that being sophisticated item no customer is prepared to buy valve actuator without a warranty. Therefore, warranty became integral part of the sale price of the valve actuator(s). In other words, warranty stood attached to the sale price of the product. These aspects are important. As stated above, obligations arising from past events have to be recognised as provisions. These past events are known as obligating events.

26. In the present case, therefore, warranty provision needs to be recognised because the appellant is an enterprise having a present obligation as a result of past events resulting in an outflow of resources. Lastly, a reliable estimate can be made of the amount of the obligation. In short, all three conditions for recognition of a provision are satisfied in this case. "

13. As is evident from the principles enunciated above, the Supreme Court explained the concept of provisioning for liabilities as being based upon a present obligation which may come to be owed by an enterprise as a result of a past event and the probability of an outflow of resources that may be required to settle that obligation. One of the crucial aspects which was highlighted in this regard was of the enterprise being entitled to make a reliable estimate and whether such an estimation could be made of the amount that may be ultimately owed on account of the obligation. Apart from obligations flowing from past events, the Supreme Court also recognized the concept of historical trends and those justifying the

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making of an appropriate provision. Historical trend was acknowledged to be a study of defects detected over a period of time and the data collated in respect thereof. The concept of historical trends was explained as under:-

"35. In the present case, the High Court has principally gone by the judgment of the Supreme Court in *Shree Sajjan Mills* [(1985) 4 SCC 590 : 1986 SCC (Tax) 82 : (1985) 156 ITR 585] . That was the case of gratuity. For Assessment Year 1974-1975 the assessee Company sought to deduct a sum of Rs 18,37,727 towards the amount of gratuity payable to its employees and worked out actuarially. No provision was made for Rs 18,37,727. The claim for deduction was made on the ground that the liability stood ascertained by actuarial valuation and, therefore, was deductible under Section 37 of the 1961 Act. The Income Tax Officer allowed the deduction only in respect of the amounts actually paid by the assessee and the rest was disallowed on the ground of non-compliance with the provisions of Section 40-A(7) of the 1961 Act. This view of ITO was affirmed by CIT(A).

36. The Tribunal in *Shree Sajjan Mills* [(1985) 4 SCC 590 : 1986 SCC (Tax) 82 : (1985) 156 ITR 585] held that for the earlier assessment year relating to 1973-1974, actuarially ascertained liability for gratuity arising under the Payment of Gratuity Act, 1972 was an allowable deduction. However, for the assessment year in question, the Tribunal held that the increased liability claimed by the assessee for deduction was allowable on general principles of accounting. This view was taken by the Tribunal on the basis that the actuarially determined liability was not provided for in the assessee's books of account.

37. In appeal by the Department, the High Court held that the assessee therein was not entitled to deduction without complying with the provisions of Section 40-A(7) of the 1961 Act. This view of the High Court was affirmed by this Court in *Shree Sajjan Mills* [(1985) 4 SCC 590 : 1986 SCC (Tax) 82 : (1985) 156 ITR 585] . It was held that Section 40-A(7) which stood inserted by the Finance Act, 1975 w.e.f. 1-4-1973 has been given an overriding effect over Section 28 as well as Section 37 of the 1961 Act. Consequently, the deduction allowable on general principles was ruled out as Section 40-A(1) made it clear that Section 40-A had effect notwithstanding anything contained in Sections 30 to 39 of the 1961 Act. In other words, as regards deduction in respect of gratuity, the assessee was required to comply with the provisions of Section 40-A(7) after the Finance Act, 1975.

38. It is interesting to note that prior to 1-4-1973 actual payment or provision for payment was eligible for deduction either under Section 28 or under Section 37 of the 1961 Act. This has been reiterated in *Shree Sajjan Mills* [(1985) 4 SCC 590 : 1986 SCC (Tax) 82 : (1985) 156 ITR 585] . The position got altered only after 1-4-1973. Before that date, provision made in the profit and loss account for the estimated present value of the contingent liability properly ascertained and discounted on an accrued basis could be deducted either under Section 28 or Section 37 of the 1961 Act. This has been explained in *Shree Sajjan Mills* [(1985) 4 SCC 590 : 1986 SCC (Tax) 82 : (1985) 156 ITR 585] at p. 599.

39. Section 40-A(7) deals only with the case of gratuity. Even in the case of gratuity but for insertion of Section 40-A(7), provision made in the profit and loss account on the basis of present value of the contingent liability properly ascertained and discounted on an accrued basis was entitled to deduction either under Section 28 or under Section 37 of the said Act. This aspect, therefore, indicates that the present value of the contingent liability like the warranty

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expense, if properly ascertained and discounted on accrued basis, could be an item of deduction under Section 37 of the said Act. This aspect is not noticed in the impugned judgment.

40. We may add a caveat. As stated above, the principle of estimation of the contingent liability is not the normal rule. As stated above, it would depend on the nature of business, the nature of sales, the nature of the product manufactured and sold and the scientific method of accounting being adopted by the assessee. It will also depend upon the historical trend. It would also depend upon the number of articles produced. As stated above, if it is a case of single item being produced then the principle of estimation of contingent liability on pro rata basis may not apply.

41. However, in the present case, it is not so. In the present case, we have the situation of large number of items being produced. They are sophisticated goods. They are supported by the historical trend, namely, defects being detected in some of the items. The data also indicates that the warranty cost(s) is embedded in the sale price. The data also indicates that the warranty is attached to the sale price. In the circumstances, we hold that the principle laid down by this Court in *Metal Box Co. of India* [AIR 1969 SC 612 : (1969) 73 ITR 53] will apply.

42. In *Metal Box Co. of India* case [AIR 1969 SC 612 : (1969) 73 ITR 53] this Court held that contingent liabilities discounted and valued as out of necessity could be taken into account as trading expenses if these were capable of being valued. It was further held that an estimated liability even under a gratuity scheme even if it was a contingent liability if properly ascertainable and if its present value stood fairly discounted, was deductible from the gross profits while preparing the profit and loss account. In view of this decision it became permissible for an assessee to provide, in his profit and loss account, for the estimated liability under a gratuity scheme by ascertaining its present value on accrued basis and claiming it as an ascertained liability to be deducted in the computation of profit and gains of the previous year either under Section 28 or under Section 37 of the 1961 Act. However, the above principle would not apply after insertion of Section 40-A(7) w.e.f. 1-4-1973. It may be stated that the principles of commercial accounting, mentioned above, formed the basis of the judgment of this Court in *Metal Box Co. of India* [AIR 1969 SC 612 : (1969) 73 ITR 53] and those principles are affirmed by the judgment of the Supreme Court in *Shree Sajjan Mills* [(1985) 4 SCC 590 : 1986 SCC (Tax) 82 : (1985) 156 ITR 585] up to 1-4-1973. "

14. What follows from the above is the right of an enterprise to make provisions for a liability which could be measured by and as the Supreme Court described a "substantial degree of estimation". It was thus held that as long as a liability is properly ascertainable on the basis of empirical data or a known methodology, the same cannot possibly be held to be a contingent liability.

15. The Supreme Court ultimately in *Rotork Controls* held as follows:-

"47. At this stage, we once again reiterate that a liability is a present obligation arising from past events, the settlement of which is expected to result in an outflow of resources and in respect of which a reliable estimate is possible of the amount of obligation. As stated above, *Indian Molasses Co.* [AIR 1959 SC 1049 : (1959) 37 ITR 66] is different from the present case. As stated above, in the present case we are concerned with an army of items of sophisticated (specialised) goods manufactured and sold by the assessee whereas *Indian Molasses Co.* [AIR 1959 SC 1049 : (1959) 37 ITR 66] was restricted to an individual retiree. On the other

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hand, *Metal Box Co. of India* [AIR 1969 SC 612 : (1969) 73 ITR 53] pertained to an army of employees who were due to retire in future.

48. In *Metal Box Co. of India* case [AIR 1969 SC 612 : (1969) 73 ITR 53] the company had estimated its liability under two gratuity schemes and the amount of liability was deducted from the gross receipts in the profit and loss account. The company had worked out its estimated liability on actuarial valuation. It had made provision for such liability spread over to a number of years. In such a case it was held by this Court that the provision made by the assessee Company for meeting the liability incurred by it under the gratuity scheme would be entitled to deduction out of the gross receipts for the accounting year during which the provision is made for the liability.

49. The same principle is laid down in the judgment of this Court in *Bharat Earth Movers* [(2000) 6 SCC 645 : (2000) 245 ITR 428] . In that case the assessee Company had formulated leave encashment scheme. It was held, following the judgment in *Metal Box Co. of India* [AIR 1969 SC 612 : (1969) 73 ITR 53] , that the provision made by the assessee for meeting the liability incurred under leave encashment scheme proportionate with the entitlement earned by the employees, was entitled to deduction out of gross receipts for the accounting year during which the provision is made for that liability.

50. The principle which emerges from these decisions is that if the historical trend indicates that large number of sophisticated goods were being manufactured in the past and in the past if the facts established show that defects existed in some of the items manufactured and sold then the provision made for warranty in respect of the army of such sophisticated goods would be entitled to deduction from the gross receipts under Section 37 of the 1961 Act. It would all depend on the data systematically maintained by the assessee.

51. It may be noted that in all the impugned judgments before us the assessee(s) has succeeded except in Civil Appeals Nos. 3506-10 of 2009 -- arising out of SLPs (C) Nos. 14178-82 of 2007 -- *Rotork Controls India (P)Ltd. v. CIT*, in which the Madras High Court has overruled the decision of the Tribunal allowing deduction under Section 37 of the 1961 Act. However, the High Court has failed to notice the "reversal" which constituted part of the data systematically maintained by the assessee over last decade. "

16. A lucid explanation of the concept of contingent liabilities is then found in *The Commissioner of Income Tax vs. Whirpool of India Ltd.* 10 In the facts of that case, this Court found that the assessee there had been consistently making provisions on the basis of actuarial valuation in respect of machines sold and warranty claims lodged. Both the AO as well as the CIT(A) in that case had taken the view that claims pertaining to unexpired periods of warranty could be considered only when actual claims may arise and that the assessee would not be justified in estimating a warranty liability.

17. While dealing with this aspect, the Court observed:-

"14. We may take note of a decision of this Court in *CIT Vs. Vintec Corporation (P) Ltd.* 278 ITR 337 which is referred by the Tribunal also. In that case the assessee had claimed deduction under Section 37 of the Act, inter alia, on the provision made by it in the year against future claims by customers under the warranty clause which was part of the sale. The AO disallowed the claim on the ground that it was a contingent liability. The Tribunal, however, accepted the assessee's claim holding that the liability was definite and certain quantification

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was done on estimate basis after taking into consideration the data for past years of the percentage of warranty expenses. The High Court affirmed the decision of the Tribunal holding that the warranty clause was a part of the sale document and imposed a liability upon the assessee to discharge its obligation under that clause for the period of warranty. It was a liability, which Neutral Citation: 2011 DHC:394-DB was capable of being construed in definite terms, which had arisen in the accounting year, although its actual quantification and discharge might be deferred to a future date. Once the assessee is maintaining his accounts on the mercantile system, a liability accrued, though to be discharged at a future date, would be a proper deduction while working out the profits and gains of his business, regard being had to the accepted principles of commercial practice and accountancy. In forming the aforesaid view, the Court applied the test laid down in *Bharat Earth Movers, Vs. CIT, 245 ITR 428* and analyzed the said judgment and another judgment of Privy Council in the following terms:-

"In our opinion, the judgment of the Supreme Court in *Bharat Earth Movers (supra)* has a direct bearing on the issue in controversy before us. Dealing with the preposition whether the assessed would be allowed to deduction in the accounting year, although the liability may have to be quantified and discharged at a future date, the liability is to be treated in the present time and would or would not be a contingent liability, the Court held as under :-

"So is the view taken in *Calcutta Co.Ltd. v. CIT [1959]37 ITR1 (SC)* wherein this Court has held that the liability on the assessed having been imported, the liability would be an accrued liability and would not convert into a conditional one merely because the liability was to be discharged at a future date. There may be some difficulty in the estimation thereof but that would not convert the accrued liability into a conditional one; it was always open to the tax authorities concerned to arrive at a proper estimate of the liability having regard to all the circumstances of the case. Applying the above said settled principles to the facts of the case at hand we are satisfied that the provision made by the appellant-company for meeting the liability incurred by it under the leave encashment scheme proportionate with the entitlement earned by employees of the company, inclusive of the officers and the staff, subject to the ceiling on accumulation as applicable on the relevant date, is entitled to deduction out of the gross receipts for the accounting year during which the provision is made for the liability. The liability is not a contingent liability. The High Court was not right in taking the view to the contrary.

The appeal is allowed. The judgment under appeal is set aside. The question referred by the Tribunal to the High Court is answered in the affirmative, i.e. in favor of the assessed and against the Revenue." It will be useful for us to make a reference to the judgment of the Privy Council in the case of *Commissioner of Inland Revenue (supra)* where the Privy Council dealing with a taxpayer who was selling new motor vehicles to the dealers to indemnify them against warranty claims which, in turn, resulted in providing of warranty clause for 12 months from the date of delivery to the purchaser by the dealer, held as under :-

"Held, dismissing the appeal, that, although the taxpayer's liability under the warranty for each vehicle sold was contingent on a defect appearing and being notified to the dealer within the warranty period so that no liability was incurred by the taxpayer until those conditions were satisfied, regard could be had to its estimation of warranty claims based on statistical information, which showed that as a matter of existing fact not future contingency 63 per cent. of all vehicles sold

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by the taxpayer contained defects likely to be manifested within the warranty period and require work under warranty; that since theoretical contingencies could be disregarded, the taxpayer was in the year of sale under an accrued legal obligation to make payments under those warranties and even though it might not be required to do so until the following year, it was definitively committed in the year of sale to that expenditure; and that, accordingly, in computing the profits or gains derived by the taxpayer from its business in the year in which the vehicles were sold, the taxpayer was entitled under section 104 to deduct from its total income the provision which it had made for the costs of its anticipated liabilities under outstanding warranties in respect of vehicles sold in that year."

The ratio decidendi of the above cases is squarely applicable to the facts of the present case. It is not disputed that the warranty clause is part of the sale document and imposes a liability upon the assessed to discharge its obligations under that clause for the period of warranty. It is a liability which is capable of being construed in definite terms which has arisen in the accounting year. May be its actual quantification and discharge is deferred to a future date. Once an assessed is maintaining his accounts on the mercantile system, a liability is accrued, though to be discharged at a future date, would be a proper deduction while working out the profits and gains of his business, regard being had to the accepted principles of commercial practice and accountancy"

18. After noticing the judgment in Rotork Controls, the Court held:-

"17. The Court then proceeded to determine as to what would be the most appropriate method for making a provision for 'product warranty', based on historical trend and held that:-

(a) It should be based on historical trend and for determining a proper historical trend, the company should have proper accounting system for capturing of sales, warranty provisions made and the actual expenses incurred subsequently.

(b) A detailed assessment of the warranty provisioning policy is required particularly if the experience suggests that warranty provisions are generally reversed if they remained unutilized based on past experience.

(c) The warranty provision for the product should be based on estimate at year end of future warranty expense. This becomes clear from the following discussion in the said judgment:-

"For determining an appropriate historical trend, it is important that the company has a proper accounting system for capturing relationship between the nature of the sales, the warranty provisions made and the actual expenses incurred against it subsequently. Thus, the decision on the warranty provision should be based on past experience of the company. A detailed assessment of the warranty provisioning policy is required particularly if the experience suggests that warranty provisions are generally reversed if they remained unutilized at the end of the period prescribed in the warranty. Therefore, the company should scrutinize the historical trend of warranty provisions made and the actual expenses incurred against it. On this basis a sensible estimate should be made. The warranty provision for the products should be based on the estimate at year end of future warranty expenses. Such estimates need reassessment every year."

18. Apart from other things, the Court highlighted that provision for warranty on turnover of the company based on past experience fulfills accrual concept as well the matching concept. The Court not only laid stress on the past experience based

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on historical trend of warranty provisions, it was also emphasized that this provided estimates under the assessment every year.

19. We may also point out at this stage itself that the Supreme Court distinguished the judgments in Sajjan Mills (supra) as well as Indian Molasses Co. (supra). We would also like to refer to the judgment of the Supreme Court in CIT Vs. Woodward Governor India P. Ltd. 312 ITR 254 wherein it was held that the accounting method followed by the assessee continuously for a given period of time has to be presumed to be correct till the AO comes to the conclusion for the reasons to be given that the estimate does not reflect to be true and correct profits.”

19. Upon due consideration of the principles enunciated in the aforementioned decisions, we come to the firm conclusion that it would be wholly incorrect to understand IBNR provisioning to be a contingent liability. We, in this regard, bear in consideration the precepts of reasonable estimation, the capability of a liability being quantified based upon historical trends and the known actuarial methods for estimation which are liable to be adopted in accordance with the IRDA Regulations. We consequently find no error in the view ultimately taken by the Tribunal....”

13.5 We have also noted that the latest decision on the subject has been delivered by Hon'ble Bombay High Court in the Writ petition No.2271 of 2019 as at 422 ITR 248 in the case of General Insurance Corporation of India holding as under:-

“.....11. So far as Issue No.1 above is concerned, the Petitioner submits that same stands concluded in its favour by virtue of the decision dated 11 October 2017 of the Mumbai Bench of the Tribunal in Dy. CIT V. ECGC (IT Appeal No. 7657 (Mum.) of 2014] and the Kolkata Bench of the Tribunal in the case of Dy. CIT v. National Insurance Co. Ltd. [2016] 72 taxmann.com 116 in favour of the Petitioner. However, the impugned order still directed a deposit of 10% of disputed demand on this Court in view of the decision of Chennai Bench of the Tribunal in the case of United India Insurance Co. Ltd. v. Jt. CIT [2018] 97 taxmann.com 466. **We note that the Chennai Bench decision of the Tribunal has ignored the co-ordinate bench decision of Mumbai and Kolkata benches of the Tribunal. Therefore, prima facie per incurium.** In any case the CBDT Circular No. 530 dated 6 March 1989 states that stay of demand be granted where there are conflicting decisions of the High Court. This principle can be extended to the conflicting decisions of the different benches of the Tribunal. Thus, in the above facts the complete stay of the demand on the above head i.e. Item No.1 of the above chart was warranted in the Petitioner's favour....”

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13.6 The above judicial ratios were not available on records while adjudicating the appeal in the case of United India Insurance supra as at ITA 1085 / Chny /2017 dated 19.07.2024. The matter of allowance of IBNR and IBNER as an ascertained liability or as an unascertained liability has been considered. It is noted that in the case of appellant assessee the same meets the criteria laid down by the Hon'ble Coordinate Benches of Kolkata, Delhi and Mumbai as well as the Hon'ble Delhi and Mumbai High Courts. The impugned liability principally arising in view of guidelines formulated by IRDA and calculated by a IRDA approved actuarial valuer fulfills the ratio laid down by Hon'ble Apex Court mandating the that as long as a liability is properly ascertainable on the basis of empirical data or a known methodology, the same cannot possibly be held to be a contingent liability. The Hon'ble Supreme Court thus held that it is the right of an enterprise to make provisions for a liability which could be measured by a "substantial degree of estimation" and consequently that its allowance as an valid expenditure would be permissible. We have noted that facts of the case as existing in the present appeal are identical to those as in the cases adjudicated by the Hon'ble Coordinate Benches of Kolkata, Delhi and Mumbai Tribunals. No distinguishment of facts could be pointed out by the appellant revenue.

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Accordingly, respectfully following the ratio decided in the judicial decisions discussed herein above, we hold that IBNR and IBNER are ascertained liability and therefore allowable as a deduction. Accordingly we hold that the order of the Ld. First Appellate Authority does not requires any interference at this stage. **The order of the Ld.CIT(A) is confirmed and the grounds of appeal raised by the revenue are dismissed.**

14.0 Another issue raised by the revenue vide ITA Nos. 493, 494, 495 & 496 /Chny/2018, AYs: 2011-12, 2012-13, 2013-14, 2014-15 is regarding deletion of disallowance of 14A of the act made by the AO . For the purpose of this adjudication order of the Ld. AO for AY-2011-12 has been considered as facts are common for all the remaining years. The Ld. AO made the addition of Rs.5,72,27,000/- as per discussions on page 16 to 18 of his order. While making the impugned addition, the Ld. AO noted that the assessee had earned exempted income but had not claimed any expenditure qua earning of said exempt income. The Ld. AO held that there is no restriction in the law stipulating that disallowance can only be made if corresponding expenses have been claimed. In support of its contentions the Ld. AO relied upon the stipulations prescribed under rule 8D(2) of the IT rules. The Ld. CIT(A) deleted the addition made by the Ld.AO as per discussions made in para 8.1 to 8.2 of his order. In

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principle he relied upon decisions of his predecessors in assessee's own case for AY-2009-10 and 2010-11 wherein it was held that section 14A is not applicable to insurance companies which are governed by section 44 r.w. first schedule of the income tax act.

14.1 We have heard the rival submissions in the light of material available on records. The Ld. Counsel for the assessee has apart from placing reliance upon the decision of Ld.First Appellate Authority has rested his arguments upon the decision of Hon'ble Madras High Court in its own case delivered in TCA 854 of 2018 and of the Hon'ble Coordinate Bench of this tribunal in the case of United India Insurance supra. The Ld. Standing Counsel for the revenue fairly conceded that the issue is covered by the cited decision of Hon'ble Madras High Court as well this tribunal.

14.2 We have noted that in the case of United India Insurance supra the following has been observed.

*"....18. The next common issue that came up for our consideration from the Revenue appeals for the assessment years 2014-15 to 2016-17 and 2018-19. The Assessing Officer has made disallowance for assessment years 2014-15 to 2016-17 and 2018-19. However, for assessment years 2017-18 & 2019-20, no disallowance was made by the Assessing Officer u/s.14A read with Rule 8D of the Income Tax Rules, 1962.*

*18.1 During the previous year relevant to assessment years under consideration, the assessee has earned exempt income, and made suomotu disallowance voluntarily towards expenditure relatable to exempt income u/s.14A. The Assessing Officer has disallowed*

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expenditure relatable to exempt income u/s.14A of the Act by invoking Rule 8D of Income Tax Rules, 1962, as substantial amount of investments in equities and mutual funds have been made by the assessee and part of remuneration and other expenses attributable to top executives are linked to this exempt income that would be earned out of such investments and the assessee has also earned tax free income. It was explanation of the assessee before the Assessing Officer that provisions of section 14A of the Income Tax Act, 1961 does not apply to insurance companies and the assessee relied on catena of judgements and urged that the Ld.CIT(A) has decided the issue in favour of the assessee by placing reliance on order of various High Courts in support of its claim. The learned counsel for the assessee argued that there is no satisfaction from the Assessing Officer as required u/s.14A(2) of the Act having regard to books of account of the assessee that suo motu disallowance made is not correct. The assessee relied upon ITAT., Pune Bench in the case of M/s. Bajaj Alliance General Insurance Company (ITA No. 1578/Pune/2008). The assessee has also placed reliance on a plethora of judgements on the matter of various Tribunals and High Courts viz., ITAT Delhi: DCIT vs. Oriental Insurance Co. Ltd (2015-TIOL-139-ITAT-DEL), Oriental Insurance Co. Ltd v s. ACIT (2009-TIOL-172-ITAT-DEL), ITAT Mumbai in the case of DCIT v. ICICI Prudential Life Insurance Co. Ltd (2015 (1) TMI 9), ICICI Lombard General Insurance Co. Ltd vs. ACIT (ITA No. 4287/Mum/2009), Reliance General Insurance Co. Ltd vs. DCIT (2010-TIOL-473-ITAT-MUM), Birla Sun Life Insurance Co. Ltd vs. DCIT (2010-TIOL-535-ITAT-MUM), the Hon'ble Delhi High Court in the case of Oriental Insurance Co. Ltd. In ITA No.172 of 2020 dated 04.03.2020 and other cases mandating that provision of section 14A were not applicable in the case of insurance companies which were taxed under the provisions of section 44 of the Act. It was also submitted that the department has accepted the order of the Ld.CIT(A) and not filed any appeal before any appellate authority. The Ld. Sr. Standing Counsel, however relied upon the order of the Assessing Officer on this issue.

18.2. We have heard the rival submissions in the light of materials available on records. Insurance Companies are liable for taxation within the meaning of section 44 of the Act. The said section begins with a non-obstante clause thus precluding application of computation of income u/s.28 to 43 which has bearing with section 14A . Accordingly, we concur with the findings of the Hon'ble Tribunals cited supra as well as the Hon'ble High Court of Delhi and hold that no interference can be made to the assessee's income by provisions of section 14A. **Accordingly, the grounds of appeal raised by the Revenue for AY 2014-15 to 2016-17**

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**and 2018-19 are therefore dismissed and thus, the Ld.AO is directed to delete additions made...”**

14.3 Again the Hon'ble Madras High court in assessee's own case in TCA No.854 of 2018 have observed as under:-

“.....The petitioners have filed these application seeking a review of the Judgment dated 18.11.2021 in T.C.A.Nos. 839, 842, 848, 852, 853 and 854 of 2018 on the premise that the same suffers from errors apparent on the face of the record with regard to the substantial questions of laws (B) and (C) raised and considered in the above Tax Case Appeal:

B. Whether the deductions under Section 14A of the Income Tax Act, 1961 stands excluded while computing income of an Insurance Company, in view of Section 44 of the Income Tax Act, 1961?

C. Whether the profits on sale of investments is exempted under Income Tax Act, 1961? :

2. It is submitted that with regard to question B, this Court, after referring to the Judgment of the Delhi High Court in Principal Commissioner of Income Tax LTU, New Delhi Vs Oriental Insurance Company Ltd reported in [2020] 118 taxmann.com 248 (Delhi) and extracting the relevant portions of the said Judgment which would show that the question of law stood decided against the Revenue at Para No.5 of the order dated 18.11.2021 concluded that the question of law was decided against the assessee. The relevant portion of which reads as under:

5. It is thus clear that Section 14A of Income Tax Act, 1961 stands excluded while computing the Income Tax of an Insurance Company, in view of the non-obstante clause contained in Section 44 of Income Tax Act, 1961, the questions of law stand decided against the assessee.

3. It was thus submitted by the learned counsel for the appellant that the Judgment suffers from error apparent on the face of the record.

Mr.M.Swaminatham, learned Senior Standing Counsel appearing for the respondents would also submit that the Judgment of the Delhi High Court in the matter of Principal Commissioner of Income Tax LTU, New Delhi Vs Oriental Insurance Company Ltd reported in [2020] 118 taxmann.com 248 (Delhi), which has been referred to by this Court has decided the question of law in favour of the assessee. On going through the Judgment dated 18.11.2021, we find that Para No.5 ought to have read "the question of law stands decided against the Revenue". Instead by <https://www.mhc.tn.gov.in/judis> mistake it reads "the question of law stands decided against the assessee". The said error being typographical and apparent on the face of the record, the order at Para No.5 stands modified and would read as under:

It is thus clear that Section 14A of Income Tax Act, 1961 stands excluded while computing the Income Tax of an Insurance Company, in view of the non-obstante

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clause contained in Section 44 of Income Tax Act, 1961, the questions of law stand decided against the Revenue.

4. It is submitted by the learned counsel for the appellant with regard to question C, the matter stands covered by the Judgment of this Court in *Commissioner of Income Tax Vs. United India Insurance Co.*

reported in [2019] 111 taxmann.com 217 (Madras ). It is further submitted that this Court after having found that the issue stands decided in favour of the assessee, ought not to have remitted back to the Tribunal and therefore the above directions ought to be reviewed.

5. We are afraid we are unable to agree with the submissions of the learned counsel for the appellant inasmuch as the above direction does not suffer from any error apparent on the face of the record. The scope of a review application is limited to rectify errors apparent on the face of the record, however the Judgment dated 18.11.2021 insofar as it holds that <https://www.mhc.tn.gov.in/judis> the issue stands covered by the decision in Commissioner of Income Tax Vs. United India Insurance Co. reported in [2019] 111 taxmann.com 217 (Madras ) and remitting the matter back to the Tribunal cannot be said to be order which suffers from any error apparent on the face of the record. In any view it has only been directed that the Tribunal shall re-examine the matter keeping in view the above decision of this Court and thus no prejudice whatsoever is caused.

6. In view of the above, paragraph 5 of the order dated 18.11.2021 made in T.C.A No. shall stand modified as under:

It is thus clear that Section 14A of Income Tax Act, 1961 stands excluded while computing the Income Tax of an Insurance Company, in view of the non-obstante clause contained in Section 44 of Income Tax Act, 1961, the questions of law stand decided against the Revenue.

*In all other respects the order dated 18.11.2021 shall remain unaltered....”*

14.4 The position of applicability of section 14A qua insurance company is thus now finally settled. It has been clearly postulated in the statute that as the taxability of insurance companies is governed by provisions of 44 of the act, section 14A would not apply therein. Accordingly, in consideration of the candid statutory provisions as well as in respectful compliance to the decision of Hon'ble Delhi High court, Hon'ble Madras High Court as also of the Hon'ble Coordinate Bench

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supra, we hold that no case of interfering with the order of Ld.CIT(A) is made out at this stage. **Therefore, we confirm the order of the Ld.CIT(A) and dismiss the grounds appeal raised by the revenue vide ITA Nos. 493, 494, 495 & 496 /Chny/2018, AYs: 2011-12, 2012-13, 2013-14, 2014-15.**

15.0 The next issue raised by the revenue vide **ITA Nos. 493, 494, 495 & 496 /Chny/2018, AYs: 2011-12, 2012-13, 2013-14 and 2014-15** is regarding disallowance of UPR. As the facts of all the years are identical, the order of the Ld.AO AY-2011-12 is considered. The Ld. AO has discussed the issue in para 6 to para 6.6 from page 20 to page 21 of his order. The Ld. AO observed that the assessee had claimed an amount of Rs. 27,58,64,558/- as a deduction on account of unexpired premium reserve created in excess of rule 6E of IT rules. The Ld. AO held the view as per Rule 6E of IT Rules, reserve for unexpired risks is allowable on the net premium income of such business entities. It was contended that as per provision under Rule 6E any amount of the amount carried over to such reserve or additional reserve which is not allowable 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. The Ld. CIT(A)

deleted the addition made by the Ld. AO in the light of discussions made in para 10.1 on page 10 of his order. While doing so he relied upon the order of his predecessor in assessee's own case for AY 2009-10. The Ld. Standing Counsel for the department relied upon the order of the Ld. Assessing Officer.

15.1 The order of the Ld. AO as well as Ld. First Appellate Authority on the subject controversy suffers from the deficiency of a non-speaking order in as much as facts and figures have not been clearly brought out on records. The amounts of money credited to profit and loss account would include amount of UPR disallowed by the assessee in earlier years. Within the meanings of proviso to Rule 6E, the amount disallowed in earlier years cannot be included in the current year, as the same would tantamount to double taxation. It is trite law that double taxation of income is not permitted under the income tax act. Be that as it may be we are of the view that ends of justice would met if the Ld. AO is given one more chance to readjudicate the matter. Accordingly, we set aside the order of the lower authorities and direct the Ld. AO to verify whether the amounts disallowed in earlier year have been credited to profit and loss account and if yes to reduce them from the amounts of the present year, in accordance with provisions of rule 6E. **The Grounds of appeal raised by the revenue vide ITA Nos. 493, 494, 495 & 496**

**/Chny/2018, AYs: 2011-12, 2012-13, 2013-14 and 2014-15 are therefore allowed for statistical purposes.**

16.0 The next issue raised by the revenue vide ITA Nos. 493, /Chny/2018, AYs: 2011-12, is regarding disallowance of reinsurance premium paid to residents. The Ld. AO has discussed the issue on para 2 to 2.3 page 10 to 11 of his order. The Ld. CIT(A) deleted the addition made by the Ld. AO in the light of discussions made in para 6.1 and 6.2 of his order. While doing so he relied upon the order of his predecessor in assessee's own case for AY 2009-10. The Ld. Standing Counsel for the department relied upon the order of the Ld. Assessing Officer.

16.1 We have heard rival submissions in the light of material available on records. At the outset it is noted that the order of the Ld. AO is very sketchy and facts of the case as well as analysis thereof have not been properly brought on records. The Ld. CIT(A) on his part has also merely concluded by relying upon the order of the predecessors. The Ld. Counsel for the assessee has placed reliance upon order of Hon'ble Coordinate Bench of this tribunal in assessee's own case for AY 2009-10 and 2010-11 vide ITA No.1367 and 2371 of 2014. We have noted that the Hon'ble Coordinate Bench has settled the matter in assessee's favour observing as under:-

*".....62. The next issue arises for consideration is disallowance of commission paid for receipt of re-insurance premium. This issue arises for consideration in the*

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Revenue's appeals for assessment years 2005-06, 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11.

63. Shri M. Swaminathan, the Ld. Sr. Standing Counsel for the Revenue, submitted that the assessee has paid commission for receipt of re-insurance premium. However, the assessee has not deducted tax at source. Therefore, according to the Ld. Sr. Standing Counsel, the Assessing Officer disallowed the payment of commission under Section 40(a)(ia) of the Act, hence, the CIT(Appeals) is not justified in allowing the claim of the assessee.

64. On the contrary, Shri Percy J. Pardiwalla, the Ld. Sr. counsel for the assessee, submitted that the assessee received re- insurance premium from M/s Cholamandalam MS General Insurance Company on discount basis, therefore, there is no question of deduction of tax. On identical circumstances, according to the Ld. Sr. counsel, the Mumbai Bench of this Tribunal in General Insurance Corporation of India (2009-TIOL-191) found that TDS need not be made in respect of discount given to insurance company for re-insurance premium. The CIT(Appeals), in fact, placed his reliance on the decision of Mumbai Bench of this Tribunal in General Insurance Corporation of India (supra).

65. We have considered the rival submissions on either side and perused the relevant material available on record. While making re- insurance premium, the assessee can retain the commission at the agreed rate and pay the balance to the re-insurer. The re-insurer may be either domestic insurance company or General Insurance Corporation. Hence, the assessee can retain the so-called commission. It is not a case of payment of commission. At the best, it can be termed as discount given to the insurance companies for making re-insurance premium. Therefore, as rightly found by Mumbai Bench of this Tribunal in General Insurance Corporation of India (supra), such payment cannot be construed as commission. Therefore, the assessee is not liable for deduction of tax. In view of the above, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed....”.

16.2 We have noted the facts of the present case are identical to those as available in assessee's case for earlier years adjudicated by the Hon'ble Coordinate Bench supra. We find ourselves to be in agreement with the views of the Hon'ble Coordinate Bench supra that the impugned payments are typically in the nature of discounts and cannot be construed as commission. Now, once the same are not in the nature of

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commission, TDS provisions of the act would not apply. In respectful compliance to the decision of Hon'ble Coordinate Bench supra, we hold the view that there is no case for interference to the order of the Ld.CIT(A). **Accordingly, the decision of the Ld.CIT(A) is confirmed and the grounds of appeal raised by the revenue vide ITA No.93 for AY-2011-12 is dismissed.**

17. The next issue raised by the revenue vide ITA Nos. 493, 494, 495 & 496 /Chny/2018, AYs: 2011-12, 2012-13, 2013-14, 2014-15 is regarding the addition of IBNR under section 115JB. The Ld. AO has discussed this issue in para 3.1 to 3.6 of his order for AY-2011-12. Facts of case for all the years have found to be identical. The Ld. AO has held in para 3.6 that the provision for IBNR and IBNER amounting to Rs.15 Crs is an unascertained liability and hence not allowable u/s 37(1). Consequently he proceeded to make addition u/s 115JB for the purpose of computation of income. The Ld. First Appellate Authority held that since the provision for IBNR and IBNER were held to be ascertained liability they were not liable for addition to book profits u/s 115JB of the act.

17.1 We have heard the rival submissions in the light of material available on records. The Ld. Counsel for the assessee accordingly pleaded for confirmation of the order of Ld. First Appellate Authority whereas the Ld. Standing Counsel for the revenue would like to place

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reliance from the order of Ld.AO. We have noted that there is no infirmity in the conclusion of the Ld. First Appellate Authority. **Accordingly, we sustain the order of the Ld.CIT(A) and dismiss the grounds of appeal raised by the revenue for AYs 2011-12 to 2014-15.**

18.0 The next issue raised by the revenue vide ITA Nos. 493, 494, 495 & 496 /Chny/2018, AYs: 2011-12, 2012-13, 2013-14, 2014-15 is regarding the addition of 14A under section 115JB. The Ld. AO vide para 4.8 of his order for AY 2011-12 held the view that suitable adjustments were required u/s 115JB qua the disallowance made u/s 14A r.w. Rule 8D. The Ld. First Appellate Authority deleted the addition by relying upon the decision of Special Bench of the Tribunal in the case of ACIT vs. Vireet Investments (P) Ltd. [2017] 165 ITD 27 (Delhi – Trib.) (SB).

18.1 We have heard the rival submissions in the light of material available on records. As regards the order of the Ld. AO we have noted that the same has been passed in a summary manner without any apparent application of mind. The Ld. Counsel for the assessee also submitted that the impugned controversy is covered in its favour by the decision of Special Bench of the Tribunal in the case of ACIT vs. Vireet Investments (P) Ltd. [2017] 165 ITD 27 (Delhi – Trib.) (SB). We have

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also noted that the Ho'ble Coordinate Bench of this tribunal in the case of United India Insurance Company Limited, Vide ITA No.1085/Chny/2017 dated 19.07.2024 on the impugned controversy concluded as under:-

*".....17.1 At the outset, learned counsel for the assessee stated that this issue is squarely covered by the decision of Special Bench of the Tribunal in the case of ACIT vs. Vireet Investments (P) Ltd. [2017] 165 ITD 27 (Delhi – Trib.) (SB), wherein the Special Bench has considered an identical issue and after considering relevant facts held that computation under clause (f) of Explanation 1 to section 115JB(2) of the Act is to be made without resorting to computation as contemplated u/s.14A read with Rule 8D of I.T. Rules, 1962. The relevant portion of the decision of Special Bench of this Tribunal in the case of ACIT Vs. Vireet Investments is reproduced as under:-*

*"6.22 In view of above discussion, we answer the question referred to us in favour of assessee by holding that the computation under clause (f) of Explanation I to section 115JB(2) is to be made without resorting to the computation as contemplated u/s 14A read with Rule 8D of the Income-tax Rules, 1962."*

*17.2 For this proposition, the learned Sr.Standing Counsel could not controvert the above position and could not bring any contrary decision before us on this issue.*

*17.3 After hearing both the sides and going through the records of this case, we find that the issue in hand is squarely covered by the decision of the Special Bench of the Tribunal in the case of ACIT Vs. Vireet Investments ( supra), wherein the Special Bench has categorically held that provisions of section 14A read with Rule 8D will not apply while computing the book profit u/s.115JB of the Act. Respectfully following the Special Bench decision cited above, we delete the disallowance made by invoking the provisions of section 14A read with Rule 8D of Income Tax Rules, 1962 while computing book profit u/s.115JB of the Act. We, therefore, affirm the impugned order of Ld.CIT(A) on this issue and allow the claim of the assessee for assessment year 2013-14 and reject the grounds taken by the Revenue for the assessment year 2013-14. **In the result, the ground raised by the Revenue for assessment year 2013-14 on the issue of disallowance by invoking the provisions of section 14A read with Rule 8D of Income Tax Rules, 1962 while computing book profit u/s.115JB of the Act is dismissed...**"*

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18.2 We have noted that the facts of the present case are identical to those as in the case of United India Insurance supra. **Accordingly in respectful compliance to the decision of Hon'ble Special Bench in the case of Vireet Investments, therein we confirm the order of the Ld. CIT(A) and dismiss the grounds appeal raised by the revenue.**

19.0 During the course of present proceedings, the assessee raised an additional ground on the issue of allowability of education cess and higher secondary education cess while computing the tax liability for AY-2013-14. In support of its contentions, the appellant placed reliance upon a catena of judicial rulings of Hon'ble tribunals, Hon'ble Madras High Court and Hon'ble Apex Court both upon the issue of admission per se of additional ground during present proceedings and upon the merits of the ground itself. The Ld. Counsel for the revenue argued that there is no merit in the contention of the assessee and that first proviso to provisions of section 40(a)(ii) mandate otherwise.

19.1 We have heard the rival submissions in the light of material available on records. It is the case of the assessee that it is eligible for claim of education cess and higher secondary education cess while

computing the tax liability for AY-2013-14. We have noted the following statutory provisions of section 40(a)(ii):-

*“.....40. Amounts not deductible — Notwithstanding anything to the contrary in 3[section 30 to 38], the following amounts shall not be deducted in computing the income chargeable under the head —Profits and gains of business or profession,—*

*(a) in the case of any assessee—*

.....  
.....

*(ii) any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains.*

*5[Explanation 1.—For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, any sum paid on account of any rate or tax levied includes and shall be deemed always to have included any sum eligible for relief of tax under section 90 or, as the case may be, deduction from the Indian income-tax payable under section 91.]....”.*

19.2 A perusal of the above statutory provisions indicate that contemporaneous law clearly mandates that no deduction of any amount partaking the nature of any tax or rate or levy shall be allowed while computing income under the head profit and gains from business or profession. There is no doubt that the amounts comprising education cess and higher secondary education cess would thus be ineligible for any allowance since they are a part of the tax. There exists a catena of cases laying down that when provisions of statute are clear and unambiguous there cannot be any scope for their different interpretations. Consequently the assessee do not succeeds qua merits of additional ground of appeal raised by it and therefore the additional ground of appeal raised by assessee is dismissed.

20.0 In the result, the appeals of the assessee and Revenue are dealt as under:-

<b>ITA Nos</b>	<b>Assessment Year</b>	<b>Result</b>	<b>Appeal by</b>
ITA No.86/Chny/2018	2008-09	Allowed	Assessee
ITA No.87/Chny/2018	2009-10	Allowed	Assessee
ITA No.88/Chny/2018	2010-11	Partly Allowed	Assessee
ITA No.89/Chny/2018	2011-12	Partly Allowed	Assessee
ITA No.90/Chny/2018	2011-12	Partly Allowed	Assessee
ITA No.91/Chny/2018	2012-13	Partly Allowed	Assessee
ITA No.92/Chny/2018	2013-14	Allowed	Assessee
ITA No.93 /Chny/2018	2014-15	Allowed	Assessee
ITA No.491/Chny/2018	2008-09	Dismissed	Revenue
ITA No.492/Chny/2018	2010-11	Dismissed	Revenue
ITA No.493/Chny/2018	2011-12	Partly Allowed	Revenue
ITA No.494/Chny/2018	2012-13	Partly Allowed	Revenue
ITA No.495/Chny/2018	2-13-14	Partly Allowed	Revenue
ITA No.496 /Chny/2018	2014-15	Partly Allowed	Revenue

:- 70 -:

Order pronounced on 8<sup>th</sup> January-2025 at Chennai.

**Sd/-**

**( एबी टी. वर्की )**

**(ABY T VARKEY)**

**न्यायिक सदस्य / Judicial Member**

**चेन्नई/Chennai, दिनांक/Dated: 8<sup>th</sup>**

**KB/-**

**Sd/-**

**(अमिताभ शुक्ला)**

**(AMITABH SHUKLA)**

**लेखा सदस्य /Accountant Member**

**January-2025.**

**आदेश की प्रतिलिपि अग्रेषित/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF