आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य **के समक्ष**

BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.1279/Chny/2024**
निर्धारण वर्ष**/Assessment Year: 2008-09**

M/s. Cholamandalam MS General-Insurance Co. Ltd., Dare House, 2nd Floor, No.2, N.S.C. Bose Road, Chennai-600 001.	**v.**	The DCIT, Non Corporate Circle-8, Chennai.
[**PAN: AABCC 6633 K**]		
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

आयकर अपील सं./**ITA No.1338/Chny/2024**
निर्धारण वर्ष**/Assessment Year: 2008-09**

The DCIT, Non Corporate Circle-8, Chennai.	**v.**	M/s. Cholamandalam – MS General – Insurance Co. Ltd., Dare House, 2nd Floor, No.2, N.S.C. Bose Road, Chennai-600 001.
		[**PAN: AABCC 6633 K**]
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

आयकर अपील सं./**ITA No.1280/Chny/2024**
निर्धारण वर्ष**/Assessment Year: 2009-10**

M/s. Cholamandalam MS General-Insurance Co. Ltd., Dare House, 2nd Floor, No.2, N.S.C. Bose Road, Chennai-600 001.	**v.**	The DCIT, Non Corporate Circle-8, Chennai.
[**PAN: AABCC 6633 K**]		
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

आयकर अपील सं./**ITA No.1281/Chny/2024** निर्धारण वर्ष**/Assessment Year: 2011-12**		
M/s. Cholamandalam MS General- Insurance Co. Ltd., Dare House, 2nd Floor, No.2, N.S.C. Bose Road, Chennai-600 001.	**v.**	The DCIT, Non Corporate Circle-8, Chennai.
[**PAN: AABCC 6633 K**]		
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
आयकर अपील सं./**ITA No.1488 & 1489/Chny/2024** निर्धारण वर्ष**/Assessment Year: 2011-12**		
The DCIT, Non Corporate Circle-8, Chennai.	**v.**	M/s. Cholamandalam MS General Insurance Co. Ltd., Dare House, 2nd Floor, No.2, N.S.C. Bose Road, Chennai-600 001.
		[**PAN: AABCC 6633 K**]
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
Assessee by	:	Mr. Sandeep Bagmar, Advocate; Mr. Balachandar, FCA
Department by	:	Mr. Nilay Baran Som, CIT
सुनवाईकीतारीख/Date of Hearing	:	22.01.2025
घोषणाकीतारीख /Date of Pronouncement	:	19.03.2025

आदेश / O R D E R

PER ABY T. VARKEY, JM:

These are cross-appeals preferred by the assessee as well as the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter referred to as 'Ld.CIT(A)'), Delhi, dated 07.03.2024 for the Assessment Year (hereinafter referred to as 'AY') 2008-09 & 2011-12; and appeal preferred by the assessee for AY 2009-10.

2. First we will deal with the cross-appeals for AY 2008-09.

3. Grounds of appeal raised by the assessee are as under:-

Part A-Issues on Jurisdiction

Issue 1-Reopening of assessment

1. The Learned CIT(A) has erred in confirming the reassessment which is without jurisdiction and time barred since the same was initiated after four years from the end of the relevant Assessment Year and there has been no failure on the part of the Appellant to disclose fully and truly any material record information during the course of original assessment.

2. The Learned CIT(A) has erred in confirming the reassessment, which was framed on the basis of change of opinion on the same set of facts as were available at the time of the scrutiny assessment, thereby acting against the well settled law that change of opinion cannot be a basis of reassessment:

i) The Learned AO erred in reopening the assessment though the information pertaining to IBNR/ IBNER was available in the financials submitted in the course of original assessment

ii) The Learned AO erred in reopening the assessment for disallowing the unexpired risk reserve in respect of Third Party Motor Pool while the necessary information on the same was provided during Scrutiny proceedings, post consideration of which it was disallowed for MAT purposes and allowed for normal tax purposes in the course of original assessment.

Part B-Issues under Normal Provisions of the Income-tax Act, 1961 ('the Act')

Issue 2 Disallowance of Reserve for Unexpired Risk ('URR') pertaining to Third Party Motor Pool

3. The Learned CIT(A) has erred in law and facts by disallowing the URR pertaining to Indian Motor Third Party Insurance Pool ('IMTPIP'), without appreciating the fact that the same is allowable under Rule 6E of the Income-tax Rules, 1962 (the Rules').

Part C-Issues under Provisions of Section 115JB of the Act

Issue 3-Applicability of MAT Provisions under section 115JB of the Act to insurance Companies

4. The Learned CIT(A) ought to have appreciated that the provisions of section 115JB are not applicable to the Appellant being an Insurance Company.

5. The Learned CIT(A) has erred in not considering the favourable decision of Hon'ble Madras High Court ('HC') in the Appellant's own case for AY 2009-10 vide TCA No. 93 to 100 of 2019 dated 28 January 2019 wherein it was held that the provisions of sec 115JB are not applicable to the appellant

6. The Learned CIT(A) has erred in not considering the recent favourable order of Commissioner of Income-tax Appeals [CITTA'] in the Appellant's own case for AY 2012-13 in Appeal No. CIT (A), Chennai 17/ 10039/ 2016-17 dated 29 December 2023, wherein the Learned predecessor has considered the above judgment of the Hon'ble HC and have held the issue in favour of the appellant

The Appellant craves leave to add, after, vary, omit, substitute or amend the above grounds of appeal, before commencement of/during proceedings before Tribunal.

4. Grounds of appeal raised by the Revenue are as under:

1. The order of the learned Commissioner of Income Tax (Appeals) in ITA No.ITBA/NFAC/S/250/2023-24/1062193247(1) dated 07/03/2024for the Assessment year 2008-09 is erroneous in law, facts and circumstances of the case.

2. The learned Commissioner of Income Tax (Appeals) erred granting relief on the disallowance made of Rs.8,78,92,000/- representing the IBNR and IBNER claims on the ground that liability had crystallized during the relevant Financial Year without appreciating that in the assessee's own case on this very issue for the AYs:2010-11, 2013-14, 2014-15, the Hon'ble ITAT has directed the AO to disallow the provisions made on account of IBNR/IBNER and allow them on actual payment basis.

3. The learned CIT(A) has erred in deleting the disallowance made u/s 40(a)(ia) in respect of payment towards claim settlement under cashless scheme to Third Party Administrators (TPAs) without appreciating that the

assessee was mandatorily required to make TDS on the payments made to the TPAs which was not made and therefore disallowable u/s 40(a)(ia).

4. The learned CIT(A) has erred in holding that the provisions of Section 115JB are not applicable to insurance companies without appreciating that the provision of section 115JB do not allow any specific exemption for computation and taxation of book profits to insurance companies.

5. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT (A) may be set aside and that of the Assessing Officer be restored.

6. The appellant craves leave to add or amend any ground of appeal before it is finally disposed off.

5. By raising ground No.1 (issue no.1), the assessee has challenged the jurisdiction of the AO to have reopened the assessment, after four years from the end of the relevant assessment year, without satisfying the additional condition precedent as provided for under the first proviso to section 147 of the Income-tax Act, 1961 (hereinafter in short "the Act") i.e. *without satisfying that there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment*.

6. The brief facts relevant for the adjudication of the legal issue are that the assessee is engaged in the business of general insurance and has filed its return of income (in short RoI) for AY 2008-09 on 30.09.2008 declaring income from its business of Rs.6,33,83,046/- and income from capital gains of Rs.2,70,40,910/- as per the normal provisions of the Act, which was selected for scrutiny, and the AO having issued statutory notices u/s.143(2), u/s.142(1) etc., called for details/answers to the

queries, which were replied with supporting material, and the assessment was completed on 28.12.2011; and subsequently revised u/s. 154 of the Act on 07.02.2012 and the income was assessed at Rs.73,31,81,227/-. Thereafter, the AO is noted to have issued the impugned reopening notice on 26.03.2015 u/s.148 of the Act; and pursuant to which, assessee filed return on 16.04.2015, and requested for the reasons for reopening which was given to the assessee, contents of which are reproduced as under:

> Vide the reference cited, the assessee requested for the reason for reopening the assessment, hence the same is given below.
>
> 1. "On verification of various provisions for liabilities debited in the profit and loss account it is observed that 'provisions on account of IBNR (incurred but not reported) and IBNER (incurred but not enough reported) claimed and charged to the profit and loss account' amounting to Rs.8,78,92,000/- i.e. IBNR & IBNER claims provided for Financial year 2007-08 (closing balance of IBNR & IBNER provision excluding motor TP pool as on 31.03.2008 - Opening balance of IBNR &IBNER provision excluding motor TP pool as on 01.03.2007 i.e. Rs.174,900,000 - Rs.87,008,000 = Rs.8,78,92,000). These provisions are made merely on the basis of assumptions and quantified on a mathematical method of assumption. The claims for which these provisions are made have not been ascertained and not known to the assessee company while making the provisions. It is merely based on the assumption that "the claims might have been incurred prior to the end of the current accounting period, but have not been reported or claimed or not enough reported".
>
> As per clause 5(a) of First Schedule - "Subject to the other provisions of this rule, any expenditure or allowance (including any amount debited to the profit and loss account either by way of a provision for any tax, dividend, reserve or any other provision as may be prescribed) which is not admissible under the provisions of sections 30 to 438 in computing the profits and gains of a business shall be added back".
>
> Therefore, such reserve based on assumptions without specifying the requirement of crystallization of the liability cannot be allowed as a

deduction against the profits of the year and therefore the amount of Rs.8,78,92,000 is to be disallowed.

2. It is seen from the Memo of Income statement, the assessee has added back the Reserve for Unexpired Risk as per book (IRDA) amounting to Rs.72,27,11,697, which includes Rs.19,57,26,000 in respect of Indian Motor Third Party Insurance Pool {IMTPIP}. Since, the amount is not covered under Rule 6E of the I. T. Rules for unexpired risks, the amount of Rs.19,57,26,000 payable to IMTPIP needs to be added back to the total income and brought to tax. Further, as per Rule 6E, the provision created should not exceed the amount determined under Rule 6E. However, the reserve of Rs.72,27,11,697 is less than amount allowable of Rs.73,43,77,647 determined under Rule 6E. Hence, the amount determined under Rule 6R is incorrect and not to be allowed.

7. The objections raised by the assessee against the reopening of assessment and particularly that the essential conditions precedent for invoking the jurisdiction to reopen was disposed off by the AO; and the AO thereafter issued requisitions u/s. 143(2) & 142(1) of the Act, *inter alia*, calling for the information pertaining to IBNR/IBNER as well as the details about the unexpired risk reserve in respect of third party motor pool and made addition of, inter alia, provision for IBNR/IBNER and reserve for unexpired risk payable to IMTPIP and re-assessed business income at Rs.87,91,42,980/- under normal provisions and re-assessed book profit by adding provision for IBNR/IBNER to the tune of Rs.8,78,92,000/- and re-assessed book profit at Rs.19,23,80,807/- by passing the re-assessment order on 31.03.2016.

8. Aggrieved, the assessee filed appeal before the Ld.CIT(A) and brought to his notice that the two issues which were raised by the AO in

his 'reasons recorded' for re-opening the assessment were arising from the details submitted by the assessee during the original assessment proceedings, and that without any fresh tangible material in his possession, the AO ought not to have resorted to re-opening of the assessment and inter alia cited the decision of the Hon'ble Supreme Court in the case of CIT Vs. Kelvinator of India Limited reported in [2010] 320 ITR 561 (SC). However, the Ld.CIT(A) rejected the legal issue and on merits, he gave partial relief to the assessee. Therefore, the assessee as well as the revenue are before us assailing the action of the Ld.CIT(A) on the grounds of appeal as reproduced (supra); and as noted supra, since the assessee has raised the legal issue against re-opening the assessment, we will deal with it first.

9. Assailing the action of the Ld.CIT(A), the Ld. AR submitted that the Ld. CIT(A) didn't appreciate the contentions raised objecting to reopening of the regular/original assessment under Section 147 of the Act. He submitted that in the present case, the original assessment was passed after scrutiny u/s143(3), and the proceedings u/s.147 were initiated after the expiry of four years from the end of the relevant assessment year. The Ld.AR therefore argued that for valid initiation of proceedings u/s.147 it was necessary for the AO to show that while recording the reasons u/s 148, he was prima facie satisfied that the escapement of the income

chargeable to tax for the relevant assessment year was as a result of the failure on the part of the assessee to disclose truly and fully, all material facts necessary for assessment. He submitted that from the recorded reasons itself, such satisfaction should have been discernible; and in this case, it is absent and to buttress such a point, drew our attention to the reasons recorded (supra) [copy of which is found placed at Page Nos. 78 & 79 of the Paper Book]. The Ld.AR pointed out that the reasons recorded by AO to reopen the assessment, starts with expression "*On verification of various provisions of liability debited in the profit and loss account, it is observed that* ……." which shows that there was no fresh/tangible material on the basis of which the AO has restored to reopen the assessment. This admission of the AO itself shows that the assessee has fully disclosed all the material facts necessary for the assessment. The Ld.AR therefore submitted that besides there being no tangible material available with the AO, the reopening of assessment was based only on material available on the records given by assessee during original assessment; and hence, proceedings u/s.147 suffered from incurable infirmity.

10. Further, the Ld.AR submitted that both issues raised by AO in his reasons recorded have been duly disclosed and the AO during the original assessment proceedings had applied his mind on these issues before

passing the scrutiny assessment 28.12.2011; and drew our attention to the notice issued by the AO dated November, 2011 directing the assessee to give all details called for by him before 14.11.2011 and has asked queries which are given in annexure placed at Page 42 & 43 of PB, wherein the Assessing Officer had asked the assessee to provide the details of working claim and reserve for unexpired risk under Rule 6E of the Income Tax Rules, 1962 (hereinafter 'the Rules') in a particular format. Thereafter, referring to Page Nos.32 & 33 of the annual report, the AO asked assessee to provide detailed note and also its impact in the profit and loss account which was furnished by the assessee. The Ld.AR also drew our attention to Page No.40 of PB, wherein the memo of income is found placed expenses underneath sub total expenses allowable under the Act, the reserve for unexpired risk as per Rule 6E – Closing – 31.03.2008 is shown as Rs.16,07,236,766/- (-) Less reserve for unexpired as per Rule 6E – Closing – 31.03.2007 Rs.8,72,859,119/- which comes to Rs.73,43,77,647/- which is the figure shown in reasons records at Para No.2;

11. The Ld.AR submitted that the assessee being in the business of Insurance, it has major expense which related to insurance claim which are reflected in Schedule-II as well as Schedule-16 of the financial statements; and therefore, the AO while scrutinizing such claim of

expenses, reflected in the said schedules had applied his mind while allowing such claims; and the undisputed fact is that the claims of IBNR/IBNER has been specifically disclosed in the financial statement in 'Scheudle-2 – claims incurred'', and in support of such contention, he drew our attention to Page No.12 of the Paper Book. Further, he drew our attention to Schdule-16 [Page No.29 of the Paper Book] "not to financial statement at Sl.No.6'' where the assessee has provided notes on IBNR/IBNER. Thus, according to him, the action of the AO to re-open the assessment for this issue tantamounts to review of the assessment which he is not empowered to. For such a proposition, he cited the decision of the Hon'ble Madras High Court (Division Bench) in the case of M/s. TANMAC India in TCA No. 1426 of 2017 dated 19.12.2016, wherein even the AO's action to re-open the assessment, in which case, an intimation u/s.143(1) of the Act was passed, had been struck down, since the re-opening was based on the same material which was disclosed by the assessee in its RoI, and no new material/tangible material was in the possession of the AO to justify re-opening the assessment when the intimation u/s.143(1) was passed for that assessment year. According to the Ld.AR, when compared with the case of TANMAC India, the present assessee's case stand on a better footing and therefore, the action of the AO to re-open the assessment without any tangible material is bad in law

as held by the Hon'ble Delhi High Court in the case of Kelvinator of India Ltd.(supra).

12. Thus, according to the Ld.AR, the AO has asked relevant questions and after going through the replies and materials in support to it has duly applied his mind to the entire financials submitted by the assessee and thereafter has issued notices calling for the aforesaid details which were subject matter of the reopening after four years from the end of the relevant assessment year, which is not permissible, unless the AO has made an allegation that the assessee failed to disclose fully and truly all relevant material for the assessment.

13. Drawing our attention to the reasons recorded (supra), the Ld.AR pointed out that there was no whisper about the assessee having failed to disclose fully and truly any material facts necessary for the assessment. Therefore, according to the Ld.AR, the omission on the part of the AO to make such allegation that assessee failed to disclose material facts necessary for assessment vitiates the impugned reopening of assessment and therefore, is bad in law and prayed to quash it.

14. Per contra, the Ld.DR submitted that the assessee has filed only the financials, audit report etc which cannot be said that the assessee has fully and truly disclosed all material facts necessary for the assessment.

Therefore, the AO has rightly reopened the assessment and therefore, he doesn't want us to interfere with the impugned action of the AO to have reopened the assessment.

15. Before we advert to deal with the legal issue, let us understand the settled position of law on the issue at hand. To begin with, it should be kept in mind that the concept of assessment is governed by the time-barring Rule, and the assessee acquires a right as to the finality of proceedings. Queitus of the completed assessment is the Fundamental Rule and exception to this rule is Re-opening of assessment by AO under section 147 or exercise of Revisional jurisdiction by CIT under section 263 of the Act. Therefore, the Parliament in its wisdom has provided safeguards for exercise of the reopening of assessment jurisdiction to AO; and revisional jurisdiction of CIT by providing *condition precedent* which is *sine qua non* for assumption/usurpation of jurisdiction. In the case of reopening of assessment, section 147 provides that where the Assessing Officer has *reason to believe escapement of income* [is the jurisdictional fact & law] he shall record his reasons for doing so and assess or reassess the income which has escaped assessment; and for exercising revisional jurisdiction u/s. 263 the CIT has to find the *assessment order of the AO to be erroneous as well as prejudicial to the revenue*. Unless the condition precedent is satisfied, the AO or the CIT can't exercise their reopening

jurisdiction or revisional jurisdiction respectively. The legislative history is that in respect to the reopening u/s. 147 of the Act, the Parliament by Direct Tax Laws (Amendment) Act 1987 w.e.f. 01.04.1989 had substituted "for reason to believe escapement of income" to 'for reasons to be recorded by him in writing, is of the opinion'' which gave unbridled subjective satisfaction to the AO was later substituted back to 'reason to believe escapement of income'', by the Direct Tax Laws (Amendment) Act, 1989. The Hon'ble Apex Court as well as the Hon'ble jurisdictional High Court as well as other Hon'ble High Courts have already held in plethora of cases the test of a prudent person instructed in law in understanding jurisdictional fact & law (mixed question of fact and law) the reason to believe escapement of income (supra).

16. As noted, the AO, who is a quasi-judicial authority is empowered to reopen the assessment only in a given case wherein there is reason to believe escapement of chargeable income to tax, which he has to record before issuing notice u/s 148 of the Act. In this regard, it must be borne in mind that *reasons to believe* postulates foundation based on information, and belief based on reason. After a foundation based on information, is made, there still must be some reason, which should warrant the holding of a belief that income chargeable to tax has escaped assessment. It has to be kept in mind that the Hon'ble Supreme Court in

Ganga Saran & Sons P. Ltd. Vs. ITO (1981) 130 ITR 1 (SC) held that the expression "reason to believe" occurring in sec. 147 "is stronger" than the expression "if satisfied" and such requirement has to be met by the AO in the reasons recorded before usurping the jurisdiction u/s. 147 of the Act.

17. And, if the AO intends to re-open the assessment [scrutinized u/s 143(3)] after four years from the relevant assessment year, then as per first proviso to section 147 of the Act, an additional safeguard or condition that escapement of income was due to fault of the assessee, in not fully and truly disclosing the material facts at the time of original assessment needs to be satisfied. In this context, it is gainful to refer to the Hon'ble Supreme Court decision endorsing the Full Bench decision of the Hon'ble Delhi High Court in CIT vs. Kelvinator of India Ltd. [320 ITR 561] wherein inter-alia, it was held that Assessing Officer has no power to review; and emphasized that AO in absence of "tangible material" should not resort to reopening. The Hon'ble Supreme Court held that merely on "change of opinion" the AO should not re-open the assessment because he doesn't enjoy the power to review his own order.

18. Thus, as noted before the AO assumes jurisdiction to re-open it is necessary that the conditions laid down in the said section 147 has to be satisfied viz., AO should record "reason to believe" that the income

chargeable to tax for that assessment year has escaped assessment. And, if the AO intends to re-open an assessment [scrutinized u/s 143(3)] after four years from the relevant assessment year, then an additional condition needs to be satisfied viz escapement of income was due to fault of the assessee, in not fully and truly disclosing all the material facts necessary at the time of original assessment. If the conditions stipulated by statute are not satisfied at the first place, then it cannot be said that AO has validly assumed jurisdiction u/s.147 of the Act. Therefore, the question for consideration is whether on the basis of the reasons recorded by the AO, he could have validly reopened the assessment. For that it has to be seen as to whether the AO on the basis of whatever material before him, [which he had indicated in his "reasons recorded"] had reasons warrant holding a belief that income chargeable to tax has escaped assessment. At this stage, it is also important to bear in mind that the reasons recorded by AO to reopen has to be evaluated on a *stand-alone* basis and no addition/extrapolation can be made or assumed, while adjudicating the legal issue of AO's usurpation of jurisdiction u/s. 147 of the Act. The Hon'ble Bombay High Court, in the case of Hindustan Lever Ltd. vs. R.B. Wadkar [(2004) 268 ITR 332], has, *inter alia*, observed that "……. *It is needless to mention that the reasons are required to be read as they were recorded by the AO. No substitution or deletion is*

*permissible. No additions can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded. It is for the AO to disclose and open his mind through the reasons recorded by him. He has to speak through the reasons."*Their Lordships added that "*The reasons recorded should be self-explanatory and should not keep the assessee guessing for reasons. Reasons provide link between conclusion and the evidence…."*. Therefore, the reasons are to be examined only as they were recorded by the AO before the issue of the notice.

19. From the aforesaid understanding of law governing the issue at hand, we have to examine the reasons recorded by AO to reopen which has been already set out above, and test whether the condition precedent necessary to usurp the re-opening jurisdiction as required u/s. 147 of the Act is satisfied or not ? And in the present case, since four years have elapsed from the end of the relevant AY and original assessment has been completed u/s. 143(3) of the Act, it needs to be examined as to whether the addition condition precedent as laid down in first proviso to section 147 of the Act is also satisfied or not ? For doing that we have to examine on a standalone basis the reasons recorded by the AO to reopen the assessment (refer Page No.2 supra). The AO in the reasons recorded, is noted to have raised two (2) issues, and first issue is regarding claim of 'provisions on account of IBNR and IBNER' claimed as expenses to the

tune of Rs 8,78,92,000/- & the second issue is in respect of claim of IMTPIP to the tune of Rs 19,57,26,000/-. Both the issues, we find to have been duly disclosed by the assessee during the first round of original assessment which got completed in December 2016, which fact gets strengthened by the undisputed fact that the assessee had filed the very same material/evidence during the re-assessment proceedings. In this regard, it is noted that during original assessment, the assessee is noted to have filed the relevant evidences i.e. its books, balance sheet, income & expenditure, audit report, financials; From the evidence placed on record, it clearly shows that the assessee had produced the aforesaid documents as well as the annual report for AY 2008-09, tax audit report (Form no.3D with all relevant enclosures) along with other statutory auditor certificate against additional report, statement of income & expenditure which facts are discernible from the notice of the AO during original assessment proceedings dated 01.06.2010 and reply of assessee dated 11.06.2010 which are found placed (at page 1 & 2 respectively of Paper Book); and a perusal of the balance sheet as on 31.03.2008, clearly shows that as on that date (refer page 8 of PB) assessee has shown, provision of Rs.1,68,80,21,000/-; and at page 10 of PB schedule 2 claims incurred [net] has been clearly shown; at page 12, schedule 2 claims incurred [net] including the estimate of IBNR and IBNER at the end of the

year, which is shown as Rs.1,74,900,000/- and estimate of IBNR and IBNER at the beginning of the year Rs.87,008,000/- (i.e. Rs.17.4 crores minus Rs.8.7 crores) is Rs.8,78,92,000/-, (refer para one of the reasons recorded) which is the exact figure given in the impugned reasoning for reopening and perusal of Schedule 16 " Notes to finanancial statements" (refer page 29 PB) at serial number six (6), the assessee had provided a detailed note on IBNR & IBNER ; Coming to the next issue raised in Para No.2 of the reasons recorded i.e. in respect of IMTPIP, it is noted that Page No.14 of PB – Pool management expenses has been clearly shown and a perusal of Page No.23 of PB reveals the reserve for unexpired risk including the sum of Rs.19,57,26,000/- in respect of IMTPIP which figure of Rs.19,57,26,000/- is found mentioned in the reasons recorded. Further it is noted that AO had issued notice dated November, 2011 directing the assessee to give all details called for by him before 14.11.2011 and has asked queries which are given in annexure placed at Page 42 & 43 of PB, wherein the Assessing Officer had asked the assessee to provide detailed working for claim of reserve for unexpired risk under Rule 6E of the Income Tax Rules, 1962 (hereinafter in short 'the Rules') in a particular format. Thereafter, referring to Page Nos.32 & 33 of the annual report, the AO asked assessee on 21 November 2011 to provide detailed note relating to IMTPIP and also its impact in the profit and loss

account which reply was furnished by the assessee (refer page 48 PB). Thus, we note that the AO has asked relevant queries and after going through the replies and materials in support to it, has duly applied his mind to the entire financials submitted by the assessee and thereafter has framed the original assessment in December 2011. Therefore, the AO's action to reopen the assessment on issues [i.e. two issues referred supra in the reasons recorded] which were duly disclosed/subject matter of inquiry of original assessment, is not permissible, after four years from the end of the relevant assessment year, unless the AO has made an allegation that the assessee failed to disclose fully and truly all relevant material for the assessment and spells out what was not fully & truly not disclosed by assessee during the original assessment. And since, we find that the assessee during the original assessment itself had disclosed all the relevant facts, including the issues flagged by AO in order to reopen viz claim of IBNR/IBNER & claim of IMTPIP under Rule 6E, which were necessary for assessment of insurance business, therefore, the AO didn't satisfy the requisite/requirement of law to re-open the assessment after four (4) years from the end of the assessment year

20. Moreover, a perusal of the reasons recorded by the AO to reopen the assessment, nowhere disclosed that in his (AO's) opinion escapement of income had resulted because of assessee's failure to disclose truly &

fully all material facts for its assessment. On the contrary, the opening sentences of the reasons recorded reveals that he has obtained these information from perusal of the profit & loss account filed by the assessee/memo of income statement. Therefore, according to us, when the assessee had undergone scrutiny assessment u/s.143(3) for AY 2008-09 by order dated 28.12.2011, re-opening after four (4) years can be done only if the AO is successful in showing that assessee failed to disclose the relevant material during first round of assessment itself. Thus, we find that the twin conditions embedded in section 147 were not fulfilled in this case. In such a scenario, the initiation of reassessment would have been permissible only if the AO was having in his possession fresh & tangible material which came in his possession, [subsequent to passing of the order u/s 143(3)] and its (tangible material) relation with formation of belief in respect of escapement of income should have been spelt out in the reasons recorded to justify reopening. According to us, the AO had miserably failed to demonstrate the foregoing in the recorded reasons which vitiated the usurpation of reopening jurisdiction for AY 2008-09. Therefore, assessee succeeds on legal issue and we therefore quash the notice dated 26.03.2015 u/s 148 of the Act and the reassessment order dated 31.03.2016 is held to be null in the eyes of law.

21. All other issues raised by assessee as well as by Revenue are academic and therefore, doesn't deserve adjudication.

22. In the result, appeals filed by the assessee is allowed and appeal filed by the Revenue stands dismissed.

ITA No.1280/Chny/2024 for AY 2009-10:

23. Grounds of appeal raised by the assessee are as under:

Issue 1 - Reopening of assessment

1. The Learned CIT(A) has erred in approving the reassessment which was framed by forming a different opinion on the same set of facts submitted to the learned AO during the course of original assessment and thereby acting against the well settled law that change of opinion cannot be a basis for reassessment

Issue 2 - Disallowance of Contingency Reserve for Unexpired Risks ('CRR') (Adjustment amount-INR 5,60,67,997)

2 The Learned CIT(A) has erred in disallowing the amount relating to CRR without appreciating the fact that the same is a permissible expenditure under Rule 6E of the Income-tax Rules, 1962 ('the Rules') and has been transferred in accordance with the IRDA Circular No. IRDA/F&NCIR/49/ Mar-09 dated 24 March 2009.

3. The Learned CIT(A) has erred in not appreciating the fact that the deduction of UPR at the rates prescribed in Rule 6E includes the amount carried to CRR as it represents 'any amount carried to any such additional reserve.

4. Without prejudice to the above, the Learned CIT(A) failed to appreciate that the amount claimed as CRR in AY 2009-10, was credited and included in the taxable income declared for the AY 2010-11 & 2011-12 and therefore disallowance of CRR in AY 2009-10 results in double disallowance of the same amount.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, before commencement of/during proceedings before Tribunal.

24. Since the assessee has raised the legal issue challenging the reopening of assessment, we will deal with it first.

25. Brief facts related to the legal issue are that the assessee is a general insurance company and has filed its return of income for AY 2009-10 on 29.09.2009 declaring a total income of Rs.5,82,72,087/- and Long Term Capital Gain (LTCG) of Rs.11,58,141/- thus declaring total income of Rs.5,94,30,228/-. The original assessment was completed u/s.143(3) of the Act on 28.03.2013.

26. Thereafter, the case of the assessee was reopened u/s.147 of the Act by issue of the impugned notice u/s.148 of the Act dated 28.03.2014, wherein the income was reassessed at Rs.24,58,77,167/- u/s.143(3) r.w.s. 147 of the Act dated 30.12.2014. Aggrieved, assessee preferred an appeal before the Ld.CIT(A), who was pleased to partly allow the appeal of the assessee. Still not satisfied, the assessee is before us.

27. First of all, we will deal with the legal issue raised by the assessee against the reopening of assessment. It is a trite law that the AO before reopening an assessment has to record his reason to believe escapement of income. The reason to believe postulates foundation based on information and belief based on reason. Even if foundation based on

information is there, still, there must be reason warrant holding a belief that income chargeable to tax has escaped assessment. At this juncture, we would like to note that pursuant to notice u/s.148 of the Act dated 28.03.2014, the assessee filed a letter dated 08.05.2014 seeking reason for reopening of the assessment (refer page 141 of PB). According to Ld.AR, the AO did not furnish copy of the reasons recorded, but replied vide letter dated 06.05.2014 asking the assessee file electronically the return of income as per the provisions of section 148 of the Act and pursuant to it, the assessee filed a letter dated 08.05.2024 and digitally signed original return of income for AY 2009-10 u/s.148 of the Act electronically through online and again requested for reasons recorded for reopening of assessment. According to Ld.AR, then also the AO didn't give copy of the reasons recorded as such, but issued notice on 08.08.2024 calling for the explanation/details on two (2) issues (i) excess claim of Rs.5.60 Cr. by transferring it to Contingency Risk Reserve (CRR) without crediting it to Reserve for unexpired risks and (ii) depreciation claim @50% on new motor vehicles put to use after 01.01.2009, as under:-

> *"The assessee company is engaged in the business of general insurance. As per Rule 6E of Income Tax Rules, 1962, Unexpired Risk Reserve (UPR) in respect of Health Business was to be created at 50% of NWP. The Insurance Regulatory and Development Authority (RDA), vide its Circular No. IRDA/F&A/CIR/49/Mar-09 dated 24-Mar-2009, gave the option to the General Insurance Companies to maintain UPR under 1/365 method in*

respect of health business, subject to transfer of an amount equivalent to the difference between the UPR amount calculated @ 50% and calculated under 1/365 method, subject to availability of profits. This amount was to be an appropriation of profits and could be transferred to General Reserve at the end of the succeeding year.

Accordingly, the company transferred an amount of Rs.5,60,67,997 to Contingency Risk Reserve (CRR) towards appropriation. However, the assessee company claimed deduction under rule 6E of the IT Rules including this amount of Rs.5,60,67,997.

The excess amount of Rs.5,60,67,997 as shown above, was not credited in the Reserve for unexpired risks and was credited only in the Contingency Reserve directly this amount credited to the Contingency Reserve Unlike the Reserve for Unexpired Risks, this could be utilised at any future date only with prior approval of the regulatory authority. Further, this amount is to be transferred to General Reserve at the end of the Succeeding year. Hence, this amount is different from the Reserve for Unexpired Risks as prescribed under Rule 6E and the same is not eligible for deduction under Rule 6E of the IT Rules" The assessee provided with an opportunity to showcause the taxability of the same.

In respect of depreciation claimed as per IT Rules, please furnish the detailed information in support of the rate of depreciation claim. It is observed that the depreciation on new motor vehicles put to use after 1.1.2009 was claimed @ 50%. Please clarify whether the said vehicles were involved in the business of running on hire. If not, please showcause why the depreciation claim should not be restricted to 15%.

28. According to the Ld.AR, the aforesaid two (2) issues flagged by the AO has already been enquired into by the AO during the original assessment and to support such a contention he invited our attention to page No.1 of the Paper Book, wherein issue of "*risk reserve*" drew our attention to page 1 of PB, wherein the assessee had vide letter dated 12.10.2009, to the ACIT, Large Taxpayer Unit, had brought to his notice

as a general insurer company, its annual accounts prepared in the format prescribed by IRDA regulations, and clarifying that Income Tax Return (ITR) doesn't have suitable heads to show the major claim of expenses/provisions related to general insurance companies and drawing his attention, inter alia, to balance sheet schedule profit & loss account schedules and Schedule BP – "Reserve for Unexpired Risks to the tune of Rs.54.38 crores", wherein, inter-alia, it has been clearly shown that Rs.54.38 crores being reserve for unexpired risks computed as per Rule 6E of the Income Tax Rules, 1962 has been shown as deduction which amount includes Rs.5.61 crores of reserve for unexpired risks which was the issue which was flagged by the AO in his reasons recorded and thus, according to the Ld.AR, the relevant fact has been clearly brought out during the original assessment proceedings. Further the Ld.AR drew our attention to Page 3 of PB, wherein the AO had issued notice u/s.142(1) of the Act directing from the assessee to provide detailed working on the claim of reserve for unexpired risks under Rule 6E of the Income Tax Rules by giving a particular format also which fact is discernable from perusal of Page 5 of PB, item No.17 wherein assessee had been asked to explain why the deduction claimed on UPS under the head 'computer' should not be treated as plant & machinery as done in the earlier assessment year and depreciation claimed @50% not allowed, which is

noted to be second issue, which has been flagged by the AO in the reasons recorded for reopening the assessment.

29. Thereafter the Ld.AR drew our attention to page 6, the reply of the assessee dated 20.12.2012 giving the details of the claim of reserve for unexpired risks under Rule 6E of the Income Tax Rules, copy of which is found at Annexure – 1 at page 9 of the PB, similarly depreciation claimed on UPS has also been given at Annexure – 10 which is found placed at page 63 of the PB. The Ld. AR also drew our attention to page 9 of the PB, wherein the calculation of unexpired risk reserved as per Rule 6E is found placed, wherein the reserve for contingency risk reserve as per IRDS circular to the tune of Rs.5,60,68,000/-, details of which is found placed at page 179 of the PB. Thus, according to the Ld.AR, the first issue as well as the second issue regarding depreciation has been enquired into by the AO during the original assessment, therefore the AO again looking into the same issue tantamount to review of the order and therefore, he prayed to quash the impugned notice u/s.148 for re-opening of assessment.

30. Per contra, the Ld.DR supported the action of the AO and the Ld.CIT(A) doesn't want us to interfere with the action of the AO to re-open the assessment.

31. Having heard both the parties on the legal issue against re-opening of assessment which has already undergone scrutiny assessment dated 28.03.2013 u/s.143(3) of the Act, we note that both the issues on which the AO has re-opened the assessment [(i)*Contingency Reserve for Unexpired Risk; and (ii) higher depreciation claim on new motor vehicles*] has been disclosed by the assessee in the original round of assessment which was completed u/s.143(3) of the Act on 28.03.2013 for AY 2009-10. The Ld.AR of the assessee has brought to our notice that both the issues had been disclosed at the time of original assessment which fact is discernable from perusal of Page No.1 of the Paper Book i.e. letter written by the assessee dated 12.10.2009 clarifying that Income Tax Return (ITR) doesn't have suitable heads to show the major claim of expenses/provisions related to general insurance companies viz balance-sheet schedule, profit & loss account schedules, and Schedule BP – "Reserve for Unexpired Risks to the tune of Rs.54.38 crores", wherein, inter-alia, it has been clearly shown that Rs.54.38 crores being reserve for unexpired risks computed as per Rule 6E of the Income Tax Rules, 1962 has been shown as deduction which amount includes Rs.5.61 crores of reserve for unexpired risks which was the issue which was the first issue flagged by the AO in his reasons recorded. Moreover, a perusal of Page 3 of PB, would reveal the notice issued by the AO u/s.142(1) of the

Act dated 30.11.2012, directing the assessee to provide detailed working on the claim of reserve for unexpired risks under Rule 6E of the Income Tax Rules by giving a particular format, and pursuant to it, the assessee's reply dated 20.12.2012 is found placed at page 6 PB, wherein assessee has given details of the claim of reserve for unexpired risks under Rule 6E of the Income Tax Rules, copy of which is found at Annexure – 1 at page 9 of the PB; and at page 9 of the PB, the calculation of unexpired risk reserved as per Rule 6E is found placed, wherein the reserve for contingency risk reserve as per IRDS circular to the tune of Rs.5,60,68,000/-, was filed before AO vide letter dated 20.12.2012, details of which is found placed at page 179 of the PB. And further the AO is noted to have asked assessee about the next issue i.e. higher depreciation claim on new motor vehicles vide notice u/s 142(1), [copy of which is found placed at Page 5 of PB, refer item No.17], to explain why the deduction claimed on UPS under the head 'computer' should not be treated as plant & machinery as done in the earlier assessment year and depreciation claimed @50% not allowed, and the depreciation claimed on UPS has also been given at Annexure – 10 is found placed at page 63 of the PB. Thus, we find that both the issues, (i)Contingency Reserve for Unexpired Risk; and (ii) higher depreciation claim on new motor vehicles has been enquired into by the AO during the original assessment,

therefore the impugned action of the AO again to reopen the assessment for examining the very same issues tantamount to review of the assessment order, which is impermissible and therefore, we quash the impugned notice u/s.148 dated 28.03.2014 for re-opening of assessment for AY 2009-10. Since the legal issue is answered in favour of the assessee, other issues are academic and therefore not adjudicated. In the result, appeal filed by the assessee is allowed.

ITA Nos.1281, 1488 & 1489/Chny/2024 for AY 2011-12:

32. At the outset, it is noted that the Revenue has filed two appeals for AY 2011-12 [ITA Nos.1488 & 1489/Chny/2024]. The Ld.DR clarified that by mistake, the Revenue has filed in duplicate. Therefore, ITA No.1489/Chny/2024 is taken as infructuous and dismissed.

33. Now, first we will take up the assessee's appeal in ITA No.1281/Chny/2024 and then the Department appeal in ITA No.1488/Chny/2024.

34. At the outset, the Ld.AR submitted that even though they have raised legal issue against the re-opening of assessment, it may be left open; since both the disputed issues (on merits) arising from the appeals

for AY 2011-12 are no longer res integra. Therefore, we take up the issues on merits which are arising from these appeals.

35. The sole issue arising from assessee's appeal, relates to depreciation on software license.

36. Brief facts are that the assessee company had claimed depreciation on computer software @ 60% by including it in the block of computers. However, the AO included the Software license in the block of "Intangible Assets" rather than "Computer" for the purpose of computing depreciation as per the Act and restricted the depreciation @ 25%, on the reason that the assessee has shown the same as intangible assets and consequently, disallowed Rs.77,70,000/-.

37. Before the Ld.CIT(A), the assessee explained that it had classified the computer software as intangible assets, only for the purposes of disclosure in the books of accounts in accordance with the mandatory Accounting Standard 26. However, for the purpose of Income Tax Act, the computer software has been classified as eligible for depreciation at 60% under the sub-clause 5 of Clause III of Part A of New Appendix under "block of Computers" as per the Rules; and also pointed out that the software cannot function independently without a computer. And, thus

justified its claim of depreciation @60%. However, the Ld CIT(A)dismissed the ground of appeal, by confirming the action of AO.

38. Aggrieved the assessee is before us.

39. At the outset, the Ld.AR submitted that this issue has been decided in favour of the assessee by the order of this Tribunal in the case of M/s.Royal Sundaram General Insurance Company Limited in ITA No.491/Chny/2018 order dated 08.01.2025, wherein the Tribunal has held as under:

> 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 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 , computors 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 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 ld. Authorised Representative of assessee appeared from time to time and furnished details as called for by the ld. Assessing Officer. In the assessment proceedings, the ld. 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 ld. Authorised Representative submitted break up Written Down Value (WDV) of computer and software license. The ld. Assessing Officer considering the claim of the assessee on depreciation rate and applicability of inclusive definition of intangible assets has disallowed the excess 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 ld. Authorised Representative argued on the grounds and explained the facts an 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 01.04.2010 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 ld. Commissioner of Income Tax (Appeals) considered the grounds, arguments, facts of the case, findings of the ld. 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 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 ld. Departmental Representative reiterated the facts and argued the grounds and relied on the findings of the ld. Assessing Officer were computer and computer software license are different as the software takes the character of tangible asset wereas software license is a intangible asset and depreciation is allowable @25% as per part B of Appendix 1 of depreciation table and the ld. 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 ld. 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 ld. 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 ld. 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) were 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 20.1.20166, 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 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.

40. Therefore, the assessee prays that it may be granted depreciation @60% rather than 25%.

41. Per contra, the Ld.DR supported the action of the Ld.CIT(A)/AO and doesn't want us to interfere in the action of the Ld.CIT(A).

42. We have heard both the parties and perused the records. We note that the assessee had claimed depreciation @60% on software purchased under the sub-clause 5 of Clause III of Part A of New Appendix under "block of Computers" as per the Rules and pointed out that software on its own can't function without the computer. Therefore, it justified its claim of depreciation @60% instead of 25%. However, the AO restricted the depreciation @25% treating it as intangible asset. In this regard, we find that this issue is no longer res integra and note that Special Bench of this Tribunal has categorically held that with effect from 01.04.2003 "computer software" has to be classified as "tangible asset" under the head 'plant' as mentioned in Appendix-I to Income Tax Rules, 1962. Therefore, we don't countenance the impugned action of Ld CIT(A). Moreover, this Tribunal has also decided the issue in favour of the

assessee in the case of M/s.Royal Sundaram General Insurance Company Limited (supra). Since no change in facts or law could be pointed out by the Revenue, respectfully following the decision of the Tribunal in the case of M/s.Royal Sundaram General Insurance Company Limited (supra), we direct the AO to grant 60% depreciation on software license claimed by the assessee. The legal issue raised by the assessee is left open, since we have decided the grounds of appeal raised by it on merits.

43. In the result, appeal of the assessee is allowed.

44. Coming to the department appeal, the sole issue raised in its appeal, is against the action of Ld CIT(A) deleting the disallowance of payments made to Third Party Administrators (TPAs).

44.1 The assessee had availed the services of TPAs for processing and finalizing the claims of insurers in respect of various insurance policies. According to the assessee, the TPAs processes, verify and finalize the claim settlements of the insured. According to the assessee, the claim-settlements made by the TPAs are reimbursed by the assessee company. However, the AO disallowed the entire amount paid to TPAs u/s.40(a)(ai) of the Act, for non-withholding of TDS and disallowed amount of Rs.8,41,40,328/-.

44.2 On appeal, the Ld.CIT(A) has relied on the decision of the CBDT Circular No.8/2009 dated 24.11.2009 and this Tribunal orders in the assessee's own case in ITA No.711/Chny/2020 dated 26.08.2022 and deleted the additions made by the AO.

44.3 Aggrieved the Revenue is before us.

44.4 We have heard both the parties and perused the records. We note that the assessee company has availed the services of the TPAs who processed, verified and finalized the claim settlement of the insured; and in that process, made payments to Hospital. Such claim settlements, made by the TPAs, were reimbursed by the assessee company, which expenditure was disallowed by the AO, on the ground that the assessee didn't withhold the TDS and thereby applying sec.40(a)(ai) of the Act, he disallowed the same. The Ld.CIT(A) has deleted the addition by relying on the decision of the CBDT Circular No.8/2009 dated 24.11.2009 as well as this Tribunal order in the assessee's own case dated 26.08.2022. Since there is no change in facts or law, which could be pointed out by the Ld.DR, we are of the view that the Ld.CIT(A) has rightly deleted the additions made by the AO on this score. And hence, we dismiss this ground of appeal of the revenue.

45. In the result, appeal filed by the assessee for AY 2011-12 is allowed and appeals filed by the Revenue for AY 2011-12 stands dismissed.

46. In the result, appeal filed by the assessee in ITA No.1279/Chny/2024 for AY 2008-09 is allowed and appeal filed by the Revenue in ITA No.1338/Chny/2024 for AY 2008-09 is dismissed and appeal filed by the assessee in ITA No.1280/Chny/2024 for AY 2009-10 is allowed and appeal filed by the assessee in ITA No.1281/Chny/2024 for AY 2011-12 is allowed and appeals filed by the Revenue in ITA Nos.1488 & 1489/Chny/2024 for AY 2011-12 are dismissed.

Order pronounced on the 19th day of March, 2025, in Chennai.

Sd/-	**Sd/-**
(मनोज कुमार अग्रवाल)	**(एबी टी. वर्की)**
(MANOJ KUMAR AGGARWAL)	**(ABY T. VARKEY)**
लेखा सदस्य**/ACCOUNTANT MEMBER**	न्यायिक सदस्य**/JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 19th March, 2025.
TLN

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

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