

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"I" BENCH, MUMBAI**

**SHRI VIKRAM SINGH YADAV , ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.2617/MUM/2024  
Assessment Year: 2010-2011**

**ITA No.2616/Mum/2024  
Assessment Year: 2012-2013**

**ITA No.2618/Mum/2024  
Assessment Year: 2013-2014**

**ITA No.2619/Mum/2024  
Assessment Year:2015-2016**

**ITA No.2620/Mum/2024  
Assessment Year: 2016-2017**

**ITA No.2621/Mum/2024  
Assessment Year: 2017-2018**

**ITA No.2622/Mum/2024  
Assessment Year: 2018-2019**

**ITA No.2623/Mum/2024  
Assessment Year: 2019-2020**

&

**C.O.96/Mum/2024  
Assessment Year: 2014-2015**

**C.O.97/Mum/2024  
Assessment Year: 2012-2013**

**The New India Assurance Co. Ltd.**  
87, New India Assurance Building, M. G. Road,  
Fort, Mumbai - 400001, Maharashtra.  
[PAN:AAACN4165C]..... **Appellant**

**Vs.**

**Deputy Commissioner of Income  
Tax Circle 3(2)(2), Mumbai**  
Aayakar Bhavan, Maharshi Karve  
Road,Mumbai-400020, Maharashtra

..... **Respondent**

&

**ITA No.2845/MUM/2024  
Assessment Year: 2012-2013**

**ITA No.2841/MUM/2024  
Assessment Year: 2014-2015**

**ITA No.2836/Mum/2024  
Assessment Year: 2015-2016**

**ITA No.2834/Mum/2024  
Assessment Year: 2016-2017**

**ITA No.2827/Mum/2024  
Assessment Year:2017-2018**

**ITA No.2830/Mum/2024  
Assessment Year:2018-2019**

&

**ITA No.2823/Mum/2024**  
**Assessment Year:2019-2020**

**Deputy Commissioner of Income Tax  
3(2)(1), Mumbai**

Room No.608, 6<sup>th</sup> Floor, Aayakar Bhavan,  
Maharshi Karve Road,  
Mumbai-400020, Maharashtra

..... **Appellant**

**Vs.**

**The New India Assurance Co.  
Limited**

87, New India Assurance Building, M.  
G. Road,  
Fort, Mumbai - 400001, Maharashtra.  
[PAN:AAACN4165C]

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Shri Farooq Irani  
For the Respondent/Department : Shri Satya Pal Kumar &  
Shri Krishna Kumar

**Date**

Conclusion of hearing : 06.10.2025  
Pronouncement of order : 21.11.2025

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**ORDER**

**Per Bench:**

1. The present batch of matters consists of appeals, cross-appeal, and cross-objection pertaining to Assessment Year 2010-2011, 2012-2013 and 2013-2014 to 2019-2020 details which are as under:

Appeal No. / Cross Objection No.	Assessee/ Department	Assessment Year
2617/Mum/2024	Assessee	2010-2011
2616/Mum/2024 2845/Mum/2024 C.O.97/Mum/2024	Assessee Department Assessee	2012-2013 2012-2013 2012-2013
2618/Mum/2024	Assessee	2013-2014
2841/Mum/2024 C.O.96/Mum/2024	Department Assessee	2014-2015 2014-2015

2619/Mum/2024 2836/Mum/2024	Assessee Department	2015-2016
2620/Mum/2024 2834/Mum/2024	Assessee Department	2016-2017
2621/Mum/2024 2827/Mum/2024	Assessee Department	2017-2018
2622/Mum/2024 2830/Mum/2024	Assessee Department	2018-2019
2623/Mum/2024 2823/Mum/2024	Assessee Department	2019-2020

2. Since the all the above matters involved common issues arising from similar factual matrix, the same were heard together and are being disposed off by way of a common order.

### **ASSESSMENT YEAR 2010-2011**

#### **ITA No.2617/Mum/2024 (Assessee's Appeal)**

3. We would first take up appeal preferred by the Assessee for the Assessment Year 2010-2011 against the Order, dated 20/03/2024, passed by National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the **CIT(A)**'] dismissing appeal preferred by the Assessee against the Assessment Order, dated 29/12/2017, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'].
4. The relevant facts in brief are that the Assessee filed return of income on 24/09/2010 declaring total loss of INR.674,35,12,097/- for the Assessment Year 2010-2011. The aforesaid return was revised on 24/03/2011 declaring total loss of INR.674,35,12,097/-. The case of the Assessee was selected for scrutiny and assessment was completed under Section 143(3) of the Act on 30/03/2011 assessing the income at

INR.1,03,31,85,340/-. Thereafter, the case was reopened under Section 147 of the Act vide notice dated 16/03/2016 issued under Section 148 of the Act. The assessment culminated into passing of the Assessment Order, dated 29/12/2017, under Section 143(3) read with Section 147 of the Act whereby income of the Assessee was determined at INR.3,44,52,52,130/- under normal provisions of the Act and Book Profit under Section 115JB of the Act were determined at INR.1,70,14,98,778/-. Thereafter, reassessment proceedings were again initiated under Section 147 of the Act by issuance of notice, dated 31/03/2017, under Section 148 of the Act. In response the Assessee, vide letter dated 17/04/2017, filed response stating that the revised return filed on 24/03/2011 be treated as return filed in response to the notice issued under Section 148 of the Act. A copy of the reasons recorded for reopening assessment was furnished to the Assessee. The Assessee filed objections against the reasons recorded for reopening assessment which was disposed off by the Assessing Officer vide order, dated 20/12/2017. The aforesaid reassessment proceedings culminated into passing of Assessment Order, dated 29/12/2017, under Section 143(3) read with Section 147 of the Act.

5. Being aggrieved, Assessee preferred appeal before the Learned CIT(A) which was disposed off a dismissed vide order, dated 20/03/2024.
6. The Assessee has now preferred the present appeal before this Tribunal. The grounds raised by the Assessee in the present appeal are taken up hereinafter in seriatim.

**Ground No.1 & 2:**

7. Ground No. 1 & 2 raised by the Assessee challenged the validity

of the reassessment proceedings and read as under:

- "1. *The CIT(A) erred in confirming the action of the AO by treating the reassessment order passed under section 143(3) read with section 147 of the Income Tax Act ('the Act') as valid.*
  2. *The CIT(A) failed to appreciate the fact that in the reasons recorded, the AO has not disclosed any specific non-disclosure of material facts by the appellant."*
8. We have heard the both the sides in relation to the validity of reassessment proceedings and have perused the material on record including the relevant submissions/synopsis, documents forming part of the paper book relied upon during the course of hearing and the orders passed by the authorities below.
9. The record shows that for the Assessment Year 2010–2011 regular assessment under Section 143(3) of the Act was framed vide Assessment Order dated 30/03/2011. Thereafter, reassessment proceedings were initiated in the case of the Assessee which culminated into passing of Assessment Order, dated 29/06/2016 under Section 143(3) read with Section 147 of the Act. Thereafter, the case was again reopened under Section 147 of the Act after recording the reason and after obtaining the approval from the competent authority. The notice under Section 148 of the Act was issued to the Assessee on 30/03/2017 which was served on the Assessee on 31/03/2017. In response the Assessee vide letter, dated 17/04/2017, the Assessee submitted that the revised return of income filed on 24/03/2011 declaring loss of INR.6,74,35,12,097/- may be treated as filed in response to the notice under Section 148 of the Act. The Assessee was provided a copy of reasons recorded for reopening the assessment and the same read as under:

*"The assessee has filed his revise return of income for A.Y.2010.11 on 24.03.2011 declaring total income of Rs. Nil. The return was processed u/s 143(1) accepting the returned income. The case was selected for scrutiny and assessment u/s 143(3) was completed on 20.03.2013 assessing the total income at Rs. 103,31,85,340/-*

*Information has been received from Directorate of Income-Tax (Inv.). Chennai that the Additional Director General of Central Excise Intelligence, Chennai Zonal Unit, Chennai has earned out some investigations in the cases of General Insurance Companies. On the basis of intelligence gathered it was noticed that the insurance companies are availing wrong Cenvat Credit on the basis of Invoice issued by the Dealers of Motor Vehicle for the services which were never provided by them.*

*Since the dealers of Motor Vehicles are not Agents / Brokers / Intermediaries of the Insurance Companies, they are not permitted to do insurance business and thereby not entitled to receive any commission. It was gathered from the investigation that the car dealers collect the total amount towards the road price of the car from the customers which included the amount towards the insurance premium which are being remitted to the insurance companies by issue of cheques. The car dealers are being paid a percentage of own damage premium as Payout' by the insurance companies The car dealers are neither providing any service to the insurance company not are they authorized to sell, the motor vehicle insurance policies, not being insurance agent or broker approved by IRDA In order to receive commission from insurance companies, the dealers have been advised to raise invoices in the guise of claiming Reimbursement of Expenses like providing infrastructure, promotional expenses etc which were not provided by them at any point of time.*

*1. Findings of the Investigations conducted with the General Insurance Companies.*

*All the dealers investigated by this office have accepted that they have not provided to the insurance company any service as specified in their invoice issued by them. Since most invoices are for reimbursement, it is a verifiable fact. as any expenditure claimed as reimbursement has to be first spent and then only can be claimed. However, none of the dealers could provide any evidence for expenditure of any amount whose reimbursements are claimed by them from the insurance companies.They have all*

accepted that the amount claimed vide these reimbursement invoices are nothing but PAY-OUT as agreed upon between the insurance companies and the car-manufacturer informally.

The investigations have established that car dealers are not providing any service to the insurance companies, However, they are getting all their illegal pay-out from the insurance companies on the basis of the false invoices issued by them on the instructions of insurance companies.

2. As per Section 40(1) of the Insurance Act, 1938, no person shall after the expiry of six months from the commencement of this Act, pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or an intermediary or insurance intermediary.

3. As per IRDA Circular Ref: 011/IRDA/ Brok-Comm/ August 2008 dated 25-08-2008 issued under Section 14 of IRDA Act, 1999, which limits the payment of Commission or brokerage to 10. The circular specifically state No payment of any kind including "administrative or servicing charges is permitted to be made to the agent or broker in respect of the business in respect of which he is paid agency commission or brokerage. Since Dealers are not licensed as agents/brokers/intermediaries of the Insurance Company, they are not entitled to receive any Commission directly from the Insurance Companies;

4. Divisional Manager of M/s The New India Assurance Company Ltd also admitted that the dealers are paid payout as a percentage on the OD premium every month for new policies as well as renewals sold by the Dealer, that Dealer has not provided the services as mentioned in their invoices and the format has been prescribed by the company long ago, the insurance company has not entered into any agreement with dealer for any services, that the percentage of payout varies according to the discount extended for premium amount.

5. Chief Manager, Auto The Up of M/s The New India Assurance Company Ltd also admitted that the Divisional Manager is competent to state about services provided by Dealers in their areas; that the dealers have not provided services as mentioned in their invoices, the dealers have been paid payout as a percentage on OD premium.

6. Manager-Business Development of M/s The New India Assurance Company Limited also admitted that they calculate invoice amount on the basis of MIS reports received from TBSS every month which contains details of Number of policies issued by Dealers, 00 Premium, TP premium and Total Premium and that the amount is calculated on a percentage on 00 Premium, they get amount as 3 on OD premium

7. IRDA in its order dated 17.03.2016 Aus held that the assessee company has violated Point 3(x), 8 and 11 of F & U Guideline dated 28/9/2006 and Circular Ref No IRDA/CIR/011/2003 dated 27/03/2013 as stated above

8. As seen in the above Paras, the payments made to the motor dealers were clearly in the nature of commission which was paid to the motor dealers and is hence a violation of:

- a) Violation of Point 3(ix), 8 & 11 of F&U guidelines dated 28/09/2006 and circular no:048/IRDA/De-tariff/Dec-07 dated 18th Dec, 2007.
- b) Circular ref.no.IRDA/CIR/011/2003 dated 27-03-2003.
- c) Commission circular ref.no.011/IRDA/Brok-comm/Aug-08, dated 25-08-2008 and para 30 of F&U guidelines dated 28/09/2006.
- d) Regulation 3 of IRDA (Licensing of Corporate Agent) Regulation, 2002 and clause 21 of IRDA circular ref.017/IRDA/Circular/CA guidelines/2005 dated 14.07.2005 by entering into additional relationship with tied corporate agent of another general insurer.
- e) Regulation 7 (C) of IRDA (Registration of Companies) Regulations, 2000.

For the AY.2014-15, the above issue was examined in detail and the expense made to the motor dealers amounting to Rs. 183.11.32.413/- was disallowed u/s.37 and added back to the total income.

For the A.Y.2010-11, the nature of expenses in the form of payments made to motor car dealers needs to be examined on the same issue as in A.Y.2014-15, such payments made to the motor dealers are clearly in the nature of commission which was paid to the motor dealers which is not an allowable expense u/s

37. In view of all the above, for the A.Y. 2010-11 I have reason to believe that income assessable to tax amounting to more than rupees fifty thousand has escaped assessment and hence notice u/s 148 is to be issued.” (Emphasis Supplied)

10. The contention advanced on behalf of the Assessee is that the reassessment proceedings are bad in law since the same do not conform to the requirements of Section 147 read with First Proviso thereto.
11. The reassessment proceedings were initiated in the case of the Assessee for the Assessment Year 2010-2011 way of issuance of notice, dated 30/03/2017, under Section 148 of the Act. Since, the notice was issued after the expiry of four years from the end of the relevant assessment year, First Proviso to Section 147 of the Act, reproduced hereunder, was applicable.

*“147. If the Assessing Officer 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”*

12. As per First Proviso to Section 147 of the Act, no action under

Section 147 of the Act shall be taken after the expiry of four years from the end of the relevant assessment year unless income chargeable to tax had escaped assessment by reason of the failure on the part of Assessee to disclose fully and truly all material facts necessary for assessment for the relevant assessment year.

13. It is the contention of the Assessee that the reassessment proceedings are bad in law as, inter-alia, the reasons recorded by the Assessing Officer for reopening assessment reasons recorded fail to demonstrate link between the tangible material and formation of belief that income chargeable to tax had escaped assessment on account of failure of the Assessee to disclose fully and truly all material facts necessary for framing assessment for the Assessment Year 2010-2011.
14. Per contra, the Learned Departmental Representative placed reliance upon the order passed by the Learned CIT(A). Reliance in this regard was placed on Paragraph 6.1.1 and 6.1.2 of the order impugned.
15. On perusal of reasons recorded for reopening assessment for the Assessment Year 2010-2011, we find that the Assessing Officer has stated that the reassessment proceedings were initiated on the basis of information received from Director of Income Tax (Inv.), Chennai according which, inter-alia, the Assessee was making payment to car dealers in violation of Section 40(1) of the Insurance Act, 1938. Commission was being paid to the car dealers in the grab of making payments towards reimbursement of expenses or payments towards outsourced services. For the Assessment Year 2014-2015, disallowance of expenses aggregating to INR.1,83,11,32,413/- was made under Section 37

of the Act in respect of identical payments made to motor car dealers by the Assessee. After referring to the tangible material, the Assessing Officer initiate reassessment proceedings concluding as under:

*"For the A.Y.2010-11, the nature of expenses in the form of payments made to motor car dealers needs to be examined on the same issue as in A.Y.2014-15, such payments made to the motor dealers are clearly in the nature of commission which was paid to the motor dealers which is not an allowable expense u/s.37. In view of all the above, for the A.Y.2010-11 I have reason to believe that income assessable to tax amounting to more than rupees fifty thousand has escaped assessment and hence notice u/s.148 is to be issued." (Emphasis supplied)*

16. On perusal of above, we find merit in the contention advanced on behalf of the Assessee that the Assessing Officer had failed to alleged that there was a failure on the part of the Assessee to disclose fully and truly any material fact necessary for framing assessment for the Assessment Year 2010-2011. While the reasons recorded demonstrate a link between material before the Assessing Officer and the formation of belief that income chargeable to tax had escaped assessment, the reasons recorded fall short of the requirements laid down by First Proviso to Section 147 of the Act. We are of the view that after recording the facts leading to formation of belief that income chargeable to tax has escaped assessment, the Assessing Officer has failed to record that the non-disclosure of full and true facts or material by the Assessee had resulted in escapement of income chargeable to tax for the Assessment Year 2010-2011. Though it is clear from the reasons recorded that the Assessing Officer had formed a view that there has been failure on the part of the Assessee to disclose true nature of arrangement between the

Assessee and the motor car dealers, the Assessing Officer failed to record the belief that the aforesaid failure by the Assessee had resulted in escapement of income.

17. During the course of hearing Learned Authorized Representative has placed reliance upon the Judgment of the Hon'ble Bombay High Court in the case of Hon'ble Bombay High Court in the case of **Hindustan Lever Ltd. Vs. R.B.Wadkar** in Writ Petition No.1505 of 2003, dated 25/02/2004 [**2004**] **137 Taxman 479 (Bom)** wherein it was held as under:

"20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between

*the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced."*

18. The above judgment of Hon'ble Bombay High Court supports the contention of the Assessee that in a case where assessment has been framed under Section 143(3) of the Act and thereafter, reassessment proceedings are to be initiated, the reasons recorded must provide that the income chargeable to tax has escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, for that assessment year. Since, in the present case the reasons recorded for reopening the assessment fail to meet the aforesaid mandate of Proviso to Section 147 of the Act, the same cannot be sustained and are, hereby, quashed as being bad in law. Consequently, the reassessment proceedings under Section 147 of the Act and the Assessment Order, dated 29/12/2017, passed under Section 143(3) read with Section 147 of Act are also quashed. Thus Ground No.1 raised by the Assessee is allowed and Ground No.2 is dismissed as having been rendered infructuous.

**Ground No.3 to 7:**

19. Ground No. 3 to 7 raised by the Assessee pertains to disallowance of payments made to auto dealers read as under:

"3. *The CIT(A) was wrong in observing that the appellant was very well aware about the disallowance of payment to auto dealer issues and inquires, but that it had not suo-moto disclosed such information before the AO at that point of time.*

4. *The CIT(A) was not justified in confirming the action of the AO of disallowing the payment of Rs.26,13,19,736 by the Appellant to the Auto Dealers.*
  5. *The CIT(A) erred in confirming the action of the AO, without appreciating the fact that the year under consideration was not the year for which order was passed by the Service Tax Department.*
  6. *The CIT(A) was wrong in observing that it has not been brought out as to when the appellant had asked for the cross-examination of the auto dealers, as to how the appellant was prejudiced if the AO did not provide it an opportunity to cross-examine the auto dealers, and whether the auto dealers, if any had retracted their statements.*
  7. *The CIT(A) further erred in confirming the action of the AO without providing an opportunity to the appellant to cross-examine the auto dealers.”*
20. Since we have allowed Ground No.1 raised by the Assessee and have quashed Assessment Order, dated 29/12/2017, passed under Section 143(3) read with Section 147 of Act, the additions/disallowance made by the Assessing Officer stand deleted. Accordingly, in terms of the aforesaid, Ground No. 3 to 7 raised by the Assessee pertaining to merits of such additions/disallowances are dismissed as having been rendered infructuous.
21. In result, appeal preferred by the Assessee for the Assessment Year 2010-2011 (ITA No.2617/Mum/2024) is allowed.

### **ASSESSMENT YEAR 2012-2013**

22. For the Assessment Year 2012-2013 there are two appeals and one cross-objection.

23. The Assessee has preferred appeal (ITA No.2616/Mum/2024) challenging the order, dated 20/03/2024, passed by the Ld. CIT(A) whereby Ld. CIT(A) has dismissed the appeal preferred by the Assessee against the Assessment Order, dated 29/12/2017, for the Assessment Year 2012-2013.
24. The Revenue has filed an Appeal (ITA No.2845/Mum/2024) Against the aseparate Order, dated 20/03/2024, passed by the Ld. CIT(A) disposing off the appeal preferred by the Assessee against the Assessment Order, dated 27/12/2019, passed under Section 143(3) read with Section 147 of the Act. In the aforesaid appeal the Assessee has filed Cross-objections (C.O. No.97/Mum/2024).

**ITA No.2616/Mum/2025 (Assessee's Appeal)**

25. We would take up ITA 2616/Mum/2025 preferred by the Assessee which is directed against the Order, dated 20/03/2024, passed by the CIT(A) whereby the appeal preferred by the Assessee against the Assessment Order, dated 29/12/2017, passed under Section 143(3) read with Section 147 of the Act was disposed off as dismissed. The Assessee has raised 6 grounds of appeal which are taken up hereinafter in seriatim.

**Ground No.1 & 2**

26. Ground No. 1 & 2 raised by the Assessee challenged the validity of the reassessment proceedings read as under:

- "1. *The CIT(A) erred in confirming the action of the AO by treating the reassessment order passed under section 143(3) read with section 147 of the Income Tax Act ('the Act') as valid.*
2. *The CIT(A) failed to appreciate the fact that in the reasons recorded, the AO has not disclosed any specific non-*

*disclosure of material facts by the appellant.”*

27. We have heard the both the sides in relation to the validity of reassessment proceedings and have perused the material on record including the relevant submissions/synopsis, documents forming part of the paper book relied upon during the course of hearing and the orders passed by the authorities below.
28. The Assessee has challenged the validity of reassessment proceedings contending that the same are bad in law. The primary submission advanced by the Learned Authorized Representative for the Assessee was that the reasons recorded by the Assessing Officer for reopening assessment did not disclose any specific non-disclosure of material fact by the Assessee necessary for framing assessment for the Assessment Year 2012-2013. Therefore, the jurisdictional pre-condition for initiating reassessment proceedings under Section 147 of the Act were not satisfied. Reliance in this regard was placed on the judicial precedents including:
- Hindustan Lever Ltd. Vs. R.B.Wadkar (Writ Petition No. 1505 of 2003, dated 25/02/2004) [2004] 137 Taxman 479 (Bom)
  - NYK Line (India) Ltd. Vs. Deputy Commissioner of Income Tax (No.2):[2012] 346 ITR 361 (Bom).
29. Per contra, the Learned Departmental Representative placed reliance upon the order passed by the Learned CIT(A) and submitted that in the present case the reassessment proceedings were initiated within a period of four years from the end of the relevant assessment year and therefore, First Proviso to Section 147 of the Act was not applicable. Placing reliance upon Paragraph 6.1.1 and 6.1.2 of the order impugned, the Learned Departmental Representative submitted that the reasons

recorded fully satisfied the requirement of Section 147 of the Act.

30. On perusal of record we find that the reasons recorded by the Assessing Officer for reopening the assessment for the Assessment Year 2012-2013 read as under:

"2.2. *The reasons recorded before issue of notice u/s 148 of the Act are as under.*

*The assessee has filed his revise return of income for A.Y. 2012-13 on 23/05/2013 declaring total income of Rs. Nil. The return was processed u/s 143(1) accepting the returned income. The case was selected for scrutiny and assessment u/s 143(3) was completed on 23.03.2015 assessing the total income at Rs. 152,12,31,353/-*

*Information has been received from Directorate of Income-Tax (Inv.), Chennai that the Additional Director General of Central Excise Intelligence, Chennai Zonal Unit, Chennai has carried out some investigations in the cases of General Insurance Companies. On the basis of intelligence gathered it was noticed that the insurance companies are availing wrong Cenvat Credit on the basis of Invoice issued by the Dealers of Motor Vehicle for the services which were never provided by them.*

*Since the dealers of Motor Vehicles are not Agents / Brokers/Intermediaries of the Insurance Companies, they are not permitted to do insurance business and thereby not entitled to receive any commission. It was gathered from the investigation that the car dealers collect the total amount towards the road price of the car from the customers which included the amount towards the insurance premium which are being remitted to the insurance companies by issue of cheques. The car dealers are being paid a percentage of own damage premium as 'Payout' by the insurance companies. The car dealers are neither providing any service to the insurance company not are they authorized to sell, the motor vehicle insurance policies, not being insurance agent or broker approved by IRDA. In order to receive commission from insurance companies, the dealers have been advised to raise invoices*

in the guise of claiming Reimbursement of Expenses like providing infrastructure, promotional expenses etc which were not provided by them at any point of time.

1. Findings of the Investigations conducted with the General Insurance Companies

All the dealers investigated by this office have accepted that they have not provided to the insurance company any service as specified in their invoice issued by them. Since most invoices are for reimbursement, it is a verifiable fact, as any expenditure claimed as reimbursement has to be first spent and then only can be claimed. However, none of the dealers could provide any evidence for expenditure of any amount whose reimbursements are claimed by them from the insurance companies. They have all accepted that the amount claimed vide these reimbursement invoices are nothing but PAY-OUT as agreed upon between the insurance companies and the car-manufacturer informally.

The investigations have established that car-dealers are not providing any service to the insurance companies, However, they are getting all their illegal pay-out from the insurance companies on the basis of the false invoices issued by them on the instructions of insurance companies.

2. As per Section 40(1) of the Insurance Act, 1938, no person shall after the expiry of six months from the commencement of this Act, pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or an intermediary or insurance intermediary.

3. As per IRDA Circular Ref: 011/IRDA/ Brok-Comm/ August 2008 dated 25-08-2008 issued under Section 14 of IRDA Act, 1999, which limits the payment of Commission or brokerage to 10. The circular specifically state, "No payment of any kind including "administrative or servicing charges" is permitted to be made to the agent or broker in respect of the business in respect of which he is paid agency commission or brokerage. Since Dealers are not licensed as agents/brokers/intermediaries of the Insurance Company, they are not entitled to receive any Commission directly from the Insurance Companies;

4. Divisional Manager of M/s The New India Assurance Company Ltd also admitted that the dealers are paid payout as a percentage on the 00 premium every month for new policies as well as renewals sold by the Dealer, that Dealer has not provided the services as mentioned in their invoices and the format has been prescribed by the company long ago; the insurance company has not entered into any agreement with dealer for any services; that the percentage of payout varies according to the discount extended for premium amount.

5. Chief Manager, Auto Tie Up of M/s The New India Assurance Company Ltd also admitted that the Divisional Manager is competent to state about services provided by Dealers in their areas; that the dealers have not provided services as mentioned in their invoices; the dealers have been paid payout as a percentage on OD premium.

6. Manager-Business Development of M/s The New India Assurance Company Limited also admitted that they calculate invoice amount on the basis of MIS reports received from TBSS every month which contains details of Number of policies issued by Dealers, 00 Premium, TP premium and Total Premium and that the amount is calculated on a percentage on 00 Premium; they get amount as 3 on OD premium.

7. IRDA in its order dated 17.03.2016 has held that the assessee company has violated Point 3(ix), 8 and 11 of F & U Guideline dated 28/9/2006 and Circular Ref No IRDA/CIR/011/2003 dated 27/03/2013 as stated above.

8. As seen in the above Paras, the payments made to the motor dealers were clearly in the nature of commission which was paid to the motor dealers and is hence a violation of

a) Violation of Point 3(ix), 8 & 11 of F&U guidelines dated 28/09/2006 and circular no. 048/IRDA/De-tariff/Dec-07 dated 18th Dec, 2007.

b) Circular ref.no.IRDA/CIR/011/2003 dated 27-03-2003.

c) Commission circular ref.no.011/IRDA/Brok-comm/Aug-

*08, dated 25-08-2008 and para 30 of F&U guidelines dated 28/09/2006.*

*d) Regulation 3 of IRDA (Licensing of Corporate Agent) Regulation, 2002 21 of IRDA circular ref 017/IRDA/Circular/CA guidelines/2005 dated 14.07.2005 by entering into additional relationship with tied corporate agent of another general insurer.*

*e) Regulation 7 (C) of IRDA (Registration of Companies) Regulations, 2000.*

*For the A.Y.2014-15, the above issue was examined in detail and the expense made to the motor dealers amounting to Rs. 183,11,32,413/- was disallowed u/s 37 and added back to the total income.*

*For the A.Y.2012-13, the nature of expenses in the form of payments made to motor car dealers needs to be examined on the same issue as in A.Y.2014-15, such payments made to the motor dealers are clearly in the nature of commission which was paid to the motor dealers which is not an allowable expense u/s 37. In view of all the above, for the A.Y. 2012-13 I have reason to believe that income assessable to tax amounting to more than rupees fifty thousand has escaped assessment and hence notice u/s 148 is to be issued.” (Emphasis Supplied)*

31. From the material on record it is apparent that the Assessing Officer had initiated reassessment proceedings for the Assessment Year 2012-2013 under Section 147 of the Act by issuance of notice under Section 148 of the Act on 30/03/2017. Thus, reassessment proceedings were initiated within a period of 4 years from the end of the relevant Assessment Year.
32. During the course of hearing extensive reliance was placed by the Learned Authorized Representative for the Assessee on the judgment of the Hon'ble Bombay High Court in the case of **Hindustan Lever Ltd. Vs. R.B.Wadkar: [2004] 137 Taxman 479 (Bom)** and in the case of **NYK Line (India) Ltd. Vs.**

**Deputy Commissioner of Income Tax (No.2):[2012] 346  
ITR 361 (Bom).**

33. The relevant extract of the judgment in the case of **Hindustan Lever Ltd.** (Supra) reads as under:

"17. *Having heard the parties at length, we are of the opinion that the petitioner can be disposed of on the first contention raised by the petitioner, wherein the petitioner has contended that the notice issued under section 148 is without jurisdiction being hit by the proviso to section 147 of the Act as such not within the prescribed period provided under proviso to section 147 of the Act. In the circumstances, it would be necessary to turn to section 147 of the Act, which reads as under:*

"147. *Income escaping assessment.—If the Assessing Officer 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 (hereinafter 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."**

18. *Reading of proviso to section 147 makes it clear that if the Assessing Officer 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 proceeding under section 147, or recompute the loss or the depreciation allowance or any other allowance, as the case may be for the concerned assessment year. However, where an assessment under sub-section (3) of section 143 has been made for relevant assessment year, no action can be taken under section 147 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 reasons of the failure on the part of the assessee to disclose all material facts necessary for his assessment for that assessment year.*
19. *In the case in hand it is not in dispute that the assessment year involved is 1996-97. The last date of the said assessment year was 31st March, 1997 and from that date if four years are counted, the period of four years expired on 1st March, 2001. The notice issued is dated 5th November, 2002 and received by the assessee on 7th November, 2002. Under these circumstances, **the notice is clearly beyond the period of four years.***
20. **The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year.** *It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. **It is for the Assessing***

**Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment.** The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced.

21. Having recorded our finding that the impugned notice itself is beyond the period of four years from the end of the assessment year 1996-97 and does not comply with the requirements of proviso to section 147 of the Act, the Assessing Officer had no jurisdiction to reopen the assessment proceedings which were concluded on the basis of assessment under section 143(3) of the Act. On this short count alone the impugned notice is liable to be quashed and set aside. " (Emphasis Supplied)

34. On perusal of the above extract it becomes clear that in the case of Hindustan Lever Ltd. (supra) the notice under Section 148 of the Act was issued after the expiry four years from the end of

the relevant assessment years and since the regular assessment under Section 143(3) of the Act was framed on the Assessee, the provisions contained in Proviso to Section 147 of the Act. In the case of Hindustan Lever Ltd. (Supra), keeping in view the language of Proviso to Section 147 of the Act, it was held by the Hon'ble High Court that the Assessing Officer was required to state in the reasons recorded for reopening the assessment:

- (a) the facts or material that was not disclosed fully and truly (by the assessee) which were necessary for framing assessment for the relevant assessment year so as to establish vital link between '*conclusion and evidence*', and
- (b) that there was failure on the part of the assessee to make the aforesaid disclosure.

35. In the above context it has been held in various judgments that the duty of an assessee to make full and true disclosure is limited to the primary facts only. Assessee is not under obligation to disclose the inference drawn from the aforesaid primary facts.
36. It settled position that the First Proviso to Section 147 of the Act applies where notice under Section 148 has been issued after the expiry of four years from the end of the relevant assessment year. Therefore, the requirements for First Proviso cannot be applied to a case of reopening of assessment within a period of 4 years from the end of the relevant assessment year. Accordingly, where the reassessment proceedings have been initiated before the expiry of 4 years from the end of the relevant assessment year, Assessing Officer is not under obligation to disclose/allege in the reasons recorded for reopening assessment that income had escaped assessment on account of failure of the Assessee to

disclose fully and truly facts necessary for framing assessment. Therefore, the requirement of stating in the reasons recorded for reopening assessment the material facts or material necessary for framing assessment but not disclosed by the Assessee does not apply. For initiating reassessment proceedings before the expiry of four years from the end of the relevant previous year, the requirement of Section 147 of the Act is that the assessing officer must have reasons to believe that income chargeable to tax had escaped assessment. The Assessing Officer is not required to meet the requirements laid down in Proviso to Section 147 of the Act.

37. Having noted as above, we find that in the case of **Commissioner of Income-tax, Delhi vs. Kelvinator of India Ltd. [2010] 320 ITR 561 (SC)[18-01-2010]**, it was held by the Hon'ble Supreme Court that reassessment proceedings cannot be initiated merely on account of 'change of opinion'. In the aforesaid case, the following issue had come up for consideration before the Hon'ble Supreme Court:

"2. *A short question which arises for determination in this batch of civil appeals is, whether the concept of "change of opinion" stands obliterated with effect from 1-4-1989, i.e., after substitution of section 147 of the Income-tax Act, 1961 by Direct Tax Laws (Amendment) Act, 1987?"*

38. Answering the question in favour of the assessee, the Hon'ble Supreme Court concluded that even after the substitution of Section 147 of the Act with effect from 01/04/1989 the concept of 'change of opinion' has not been obliterated. The concept of 'change of opinion' must be treated as an in-built test to check abuse of power by the assessing officer who does not have power to review under the provisions of the Act. Hence, even

after 01/04/1989, Assessing Officer has the power to reopen, provided there is 'tangible material' to come to a conclusion that there has been escapement of income from assessment. Reasons must have a 'live link' with the formation of the belief. The relevant extract of the judgment of the Hon'ble Supreme Court has been reproduced hereinbelow for ease of reference:

"4. *On going through the changes, quoted above, made to section 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987 , re- opening could be done under above two conditions and fulfilment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the Act [with effect from 1-4-1989], they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re-open the assessment. Therefore, post 1-4-1989 , power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1-4-1989 , Assessing Officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. **Reasons must have a live link with the formation of the belief.** Our view gets support from the changes made to section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987 , Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in section 147*

*of the Act. However, on receipt of representations from the Companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer. We quote hereinbelow the relevant portion of Circular No. 549, dated 31-10-1989, which reads as follows:*

*"7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression 'reason to believe' in section 147.—A number of representations were received against the omission of the words 'reason to believe' from section 147 and their substitution by the 'opinion' of the Assessing Officer. It was pointed out that the meaning of the expression, 'reason to believe' had been explained in a number of court rulings in the past and was well settled and its omission from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended section 147 to reintroduce the expression 'has reason to believe' in place of the words 'for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new section 147, however, remain the same." [Emphasis supplied]*

5. *For the aforesaid reasons, we see no merit in these civil appeals filed by the Department, hence, dismissed with no order as to costs." (Emphasis Supplied)*

Thus, while the Assessing Officer is not required to meet the requirements of Proviso to Section 147 of the Act while initiating reassessment proceedings within a period of 4 years from the end of the relevant assessment year, reopening of assessment was not permitted on account of 'change of opinion'. Therefore, the reasons recorded must be based upon tangible material and should have live link with formation of belief that income chargeable to tax has escaped assessment.

39. We note that by way of above judgment the Hon'ble Supreme Court had dismissed a batch of civil appeals preferred by the

Revenue including one that arose from the judgment of the Full Bench of the Hon'ble Delhi High Court in the case of **Commissioner of Income-tax vs. Kelvinator of India Ltd. [2002] 123 Taxman 433 (Delhi)/[2002] 256 ITR 1 (Delhi)/[2002] 174 CTR 617 (Delhi)[19-04-2002]**. The Full Bench of the Hon'ble Delhi High Court had held that Section 147 of the Act does not postulate conferment of power upon the Assessing Officer to initiate reassessment proceeding upon mere 'change of opinion'. However, it was clarified that if 'reason to believe' is founded on information which might have been received by the Assessing Officer after the completion of assessment, it may be a sound foundation for exercising the power under Section 147 read with Section 148 of the Act. The relevant extract of the aforesaid Full Bench judgment reads as under:

*"21. Another aspect of the matter also cannot be lost sight of. A statute conferring an arbitrary power may be held to be ultra vires article 14 of the Constitution of India. If two interpretations are possible, the interpretation which upholds constitutionality, it is trite, should be favoured.*

*In the event it is held that by reason of section 147 if the ITO exercises its jurisdiction for initiating a proceeding for reassessment only upon mere change of opinion, the same may be held to be unconstitutional. We are, therefore, of the opinion that section 147 does not postulate conferment of power upon the Assessing Officer to initiate reassessment proceeding upon his mere change of opinion.*

**We, however, may hasten to add that if 'reason to believe' of the Assessing Officer is founded on an information which might have been received by the Assessing Officer after the completion of assessment, it may be a sound foundation for exercising the power under section 147 read with section 148.**

**22.** *We are unable to agree with the submission of Mr. Jolly to*

*the effect that the impugned order of reassessment cannot be faulted as the same was based on information derived from the tax audit report. The tax audit report has already been submitted by the assessee. It is one thing to say that the Assessing Officer had received information from an audit report which was not before the ITO, but it is another thing to say that such information can be derived by the material which had been supplied by the assessee himself.*

**23.** *We also cannot accept submission of Mr. Jolly to the effect that only because in the assessment order, detailed reasons have not been recorded on analysis of the materials on the record by itself may justify the Assessing Officer to initiate a proceeding under section 147. The said submission is fallacious. An order of assessment can be passed either in terms of sub-section (1) of section 143 or sub-section (3) of section 143. When a regular order of assessment is passed in terms of the said sub-section (3) of section 143, a presumption can be raised that such an order has been passed on application of mind. It is well-known that a presumption can also be raised to the effect that in terms of clause (e) of section 114 of the Indian Evidence Act the judicial and official acts have been regularly performed. If it be held that an order which has been passed purportedly without application of mind would itself confer jurisdiction upon the Assessing Officer to reopen the proceeding without anything further, the same would amount to giving premium to an authority exercising quasi-judicial function to take benefit of its own wrong.*

*For the reasons aforementioned, we are of the opinion that answer to the question raised before this Bench must be rendered in the affirmation, i.e., in favour of the assessee and against the revenue. No order as to costs.” (Emphasis Supplied)*

40. Therefore, in a case where an Assessee contends that reassessment proceedings are bad in law on account of 'change of opinion', the issues that arise for consideration is whether during the original assessment proceedings the issue was scrutinized by the Assessing Officer. In case the answer is in affirmative, then it can be contended that since the assessing officer had formed a view on the issue during the original assessment proceedings, the assessing officer cannot review his

decision and is not permitted to form 'another view' on the same material that was available with the assessing officer during the assessment proceedings. However, information which might have been received by the Assessing Officer after the completion of assessment can be a sound foundation for exercising the power under Section 147 read with Section 148 of the Act.

41. At this juncture we deem it appropriate to refer to the relevant extract of the judgment in the case of **NYK Line (India) Ltd.** (Supra) cited on behalf of the Assessee during the course of hearing which reads as under:

*"14. Now, undoubtedly an order of assessment which has been passed for a subsequent assessment year may furnish a foundation to reopen an assessment for an earlier assessment year. However, there must be **some new facts which come to light in the course of assessment for the subsequent assessment** year which emerge in the order of assessment. Otherwise, a mere change of opinion on the part of the Assessing Officer in the course of assessment for a subsequent assessment year would not by itself legitimise the reopening of an assessment for an earlier year.*

*15. In Raymond Woollen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC), the case 15 of the Revenue was that the assessee was charging to its profit and loss account, fiscal duties paid during the year as well as labour charges, power, fuel, wages, chemicals, etc. However, while valuing its closing stock, the elements of fiscal duty and the other direct manufacturing costs were not included by the assessee. This resulted in undervaluation of inventories and understatement of profits. This information, as the Supreme Court emphasized, was obtained by the Revenue in the assessment proceedings of a subsequent year. Consequently, the reopening of the assessment was held to be valid. The point to be emphasized is, therefore, that where in the case of assessment proceedings for a subsequent year certain **additional information** is obtained by the Revenue **which was not available** to it in the course of an assessment for an earlier year, that may legitimately be utilized as a ground for reopening an assessment of the earlier year. **Where the reopening has***

**taken place within four years that may legitimately give rise to an inference of escapement of income. The new information which has come to the knowledge of the Revenue would, therefore, constitute tangible material.**

16. The judgment of the Division Bench of this court in Multiscreen Media 16 P. Ltd. v. Union of India (No. 2) [2010] 324 ITR 54 (Bom) adverts to a decision of the Supreme Court in Ess Ess Kay Engineering Co. P. Lid. v. CIT [2001] 247 ITR 818 (SC) as laying down the principle that merely because the case of the assessee was accepted as correct in the original assessment for the assessment year in question that would not preclude the Assessing Officer to reopen an assessment of an earlier year on the basis of a finding of fact made on the basis of fresh material in the course of an assessment for a subsequent assessment year. This court in its judgment in Multiscreen Media (No. 2) [2010] 324 ITR 54 (Bom) also adverted to a decision of the Division Bench in Siemens Information System Ltd. v. Asst. CIT [2007] 295 ITR 333 (Bom). The Division Bench held that the judgment in Siemens Information System [2007] 295 ITR 333 (Bom) would not preclude the Assessing Officer to reopen an assessment for an earlier year on the basis of fresh material which has come in the course of assessment for a subsequent assessment year.

17. Now, in this background and considering these tests, the facts of the present case would have to be evaluated. The assessee, in the present case, had made a disclosure in the notes forming part of the accounts of the nature of payments required to be made to the foreign principal on account of container detention charges. A reference was made to the fact that as a result of a circular issued by the Reserve Bank of India, the assessee was not permitted to remit a certain proportion equivalent to US \$ 1.5 for each container. The statutory auditors had also included a note in the report. During the course of the assessment proceedings, the assessee addressed a comprehensive letter dated November 18, 2009, making a full disclosure of facts. Now, it is in this background that the order of assessment under section 143(3) must be considered. The Assessing Officer specifically discussed in the course of the assessment order the matters in respect of which he has made a disallowance either fully or in part. Since the Assessing Officer did not find any justification to reject the claim of the assessee in respect of the issue of container detention charges, there was no specific discussion in the

**course of order.** In this regard, the following observations of a Division Bench of this court in *Idea Cellular Ltd. v. Deputy CIT [2008] 301 ITR 407 (Bom)* have relevance (page 414):

*"It was also sought to be contended that since the Assessing Officer had not expressed any opinion regarding this matter in his original assessment order, it could not be said that there was any change of opinion in this case. In our view, once all the material was before the Assessing Officer and he chose not to deal with the several contentions raised by the petitioner in his final assessment order, it cannot be said that he had not applied his mind when all material was placed by the petitioner before him."*

18. Consequently and **in this background** the mere fact that the Assessing Officer for the assessment year 2007-08 had come to a different conclusion would not justify the reopening of the assessment for the assessment year 2006-07. In order to establish that the reopening of the assessment for the assessment year 2006-07 is not a mere change of opinion, the Revenue must demonstrate before the court that during the course of the assessment proceedings for the subsequent year, i.e., the assessment year 2007-08 **some new information or material had been brought on record which was not available when the assessment order was passed** for the assessment year 2006-07. That indeed is not the case of the Revenue. All material which was relevant to the determination was available when the assessment was completed for the assessment year 2006-07. Consequently, the mere formation of another view in the course of the assessment proceedings for the assessment year 2007-08 would not justify the Revenue in reopening the assessment for the assessment year 2006-07. **Though the reopening of the assessment has taken place within a period of four years. The power to reopen assessments is structured by law.** The guiding principles which have been laid down by the Supreme Court in *Kelvinator [2010] 320 ITR 561 (SC)* must be fulfilled. In the present case, there was no tangible material, **no new information** and no fresh material which came before the Revenue in the course of assessment for the assessment year 2007-08 which can justify the reopening of the assessment for the assessment year 2006-07.

Moreover, it must be noted that in pursuance of the agreement which 19 was entered into by the assessee with its foreign

*principal on May 25, 2009, allowing the assessee to retain an amount of US \$ 1.5 per container, the assessee has offered to tax the entire amount collected between 1993 to 2009 in the immediately following the assessment year 2010-11. The entire amount has consequently been offered to tax.*

*For these reasons, we allow the petition by making rule absolute by quashing and setting aside the impugned notice dated March 28, 2011. There shall be no order as to costs.” (Emphasis Supplied)*

42. We note that in paragraph 17 of the judgment in the case of NYK Line (India) Ltd. (Supra), the Hon'ble Bombay High Court has noted that in that case the assessee had made a disclosure in the notes forming part of the accounts of the nature of payments; the statutory auditors had also included a note in the audit report; during the course of the assessment proceedings; and the Assessee had addressed a comprehensive letter making a full disclosure of facts. Taking note of the aforesaid factual background, the Hon'ble High Court observed that the assessing officer had specifically taken up the issue during the course of assessment proceedings and did not find any justification to reject the claim of the Assessee in respect container detention charges. Even though there was no specific discussion in the assessment order in this regard, it cannot be said that the assessing officer had not applied his mind to the issue and/or had not expressed any opinion on the same. Thus, the Hon'ble High Court noted that the Assessing Officer had formed a view on the issue of allowability of container detention charges during the assessment proceedings and on the basis of the aforesaid concluded that the reassessment proceedings could not be have been initiated on account of 'change of opinion'. In the aforesaid context the Hon'ble High Court had observed that mere formation of 'another view' in the course of the assessment proceedings for the assessment year 2007-08 would not justify

reopening the assessment for the assessment year 2006-07 even though the reopening of the assessment has taken place within a period of four years. The mere fact that for the assessment year 2007-08 the assessing officer had come to a different conclusion would not justify the reopening of the assessment for the assessment year 2006-07. To establish that the reopening of assessment for the assessment year 2006-2007 was not a mere change of opinion, the Revenue was required to demonstrate that during the course of the assessment proceedings for the subsequent year, i.e., the assessment year 2007-08 some new information or material had been brought on record (*which was not available when the assessment order was passed for the assessment year 2006-07*). Observing as aforesaid, the Hon'ble High Court returned following factual finding while quashing the reassessment notice:

*"18. Consequently and in this background the mere fact that the Assessing Officer for the assessment year 2007-08 had come to a different conclusion would not justify the reopening of the assessment for the assessment year 2006-07..... In the present case, there was no tangible material, no new information and no fresh material which came before the Revenue in the course of assessment for the assessment year 2007-08 which can justify the reopening of the assessment for the assessment year 2006-07.*

xx xx

*For these reasons, we allow the petition by making rule absolute by quashing and setting aside the impugned notice dated March 28, 2011. There shall be no order as to costs."* (Emphasis Supplied)

43. Thus, in the case of NYK Line (India) Ltd (Supra) the Hon'ble High Court had given a clear finding that (a) during the course of original assessment proceedings the issue of allowability of container detention charges was taken up by the assessing

officer, and (b) the assessing officer did not have any tangible material, new information and fresh material which was obtained/received after the completion of the original assessment. On the basis of the aforesaid, the reassessment proceedings were quashed by the Hon'ble Bombay High Court. However, in the case before us, the Assessing Officer had not scrutinized the issue of deductibility of payments made to auto dealers under Section 37 of the Act (read with Explanation 1 thereto) during the regular scrutiny assessment proceedings. Therefore, the question of the Assessing Officer forming 'another view' on account of 'change of opinion' for the Assessment Year 2012-2013 does not arise. We reject the contention of the Assessee that that Assessing Officer had reviewed its earlier decision. Clearly, the case before us is not a case of change of opinion and therefore, the defense of 'change of opinion' is not available to the Assessee for the Assessment Years 2012-2013.

44. We note that the Hon'ble Bombay High Court has held that where the reopening has taken place within four years that may legitimately give rise to an inference of escapement of income. The 'new information' which has come to the knowledge of the Revenue subsequent to framing of assessment under Section 143(3) of the Act would, therefore, constitute 'tangible material'. It was emphasized by the Hon'ble High Court that where in the case of subsequent assessment proceedings certain 'additional information' is obtained by the Revenue that was not available in the course of earlier assessment, the Assessing Officer may legitimately utilized the same as a ground for reopening assessment. Therefore, assessment order which has been passed for a subsequent assessment year may furnish a foundation to reopen an assessment for an earlier assessment year. However, there must be some new facts which come to light in the course

of assessment for the subsequent assessment year.

45. On perusal of reasons recorded for reopening assessment for the Assessment Year 2012-2013, we find that the Assessing Officer had sufficient tangible material to form a belief that income chargeable to tax had escaped assessment. The reasons recorded clearly and unambiguously identify the material on the basis of which the Assessing Officer had formed belief that income chargeable to tax had escaped assessment.
46. The Assessing Officer has stated that the Assessing Officer had received information from Director of Income Tax (Inv.), Chennai to the effect that the Additional Director General of Central Excise Intelligence, Chennai had carried out investigation in the case of general insurance companies which revealed that the insurance companies were incorrectly claiming CENVAT Credit on the basis of invoice issued by the auto dealers for the services which were allegedly never provided to the insurance companies. The auto dealers were being paid a percentage of own damage premium as 'Payout' by the insurance companies in violation of provisions of Insurance Act, 1938 in the grab of making payments towards reimbursement of expenses or payments towards outsourced services. The auto dealers were raising false invoice upon insurance companies for the purpose of receiving the aforesaid payments. It is admitted position that financial years relevant to Assessment Years 2011-2012 to 2016-2017 were covered by the above investigations and order passed by the service tax department.
47. Reference was also be made to the statements given by the employees of the Assessee. The statements given by the (a) Divisional Manager (b) Chief Manager (Auto Tie Up) and (c)

Manager (Business Development) of the Assessee-Company supported the allegation that services as stated in the invoices raised by the auto dealers were not provided by the auto dealers to the Assessee. During the course of hearing reliance was placed on behalf of the Assessee on a number of judicial precedents. However, none of the judicial precedents would apply to the facts of the present case, since fresh tangible material in the form of the aforesaid statements of the employees of the Assessee-Company recorded by after the completion of the assessment was available with the Assessing Officer at the time of recording reasons for reopening the assessment.

48. Even the disclosure made by the Assessee in the books of accounts and financial statements regarding the payments made by the Assessee to auto dealers would not advance the case of the Assessee. The case set up by the service tax authorities was that the commission payments were made by the Assessee-company to auto dealers for sale of insurance policy. Since the same were prohibited as per the provisions of the Insurance Act, 1938, bogus invoices were raised by the auto dealers for provisions of services and reimbursement of expenses on the Assessee-company and in respect of the same CENVAT Credit was being claimed by the Assessee incorrectly. While reliance was placed by the Assessee on the decision of CESTAT and the judgment of the Hon'ble Madras High Court in the case of other insurance companies, it is admitted position that the appeals preferred by the Assessee challenging the aforesaid allegations were pending before the CESTAT.
49. It was vehemently contended on behalf of the Assessee that while recording reasons for reopening the assessment the

Assessing Officer had placed relied upon additions made by the Assessing Officer for the Assessment Year 2014-2015. It was submitted that the addition made by the Assessing Officer on identical grounds for Assessment Year 2014-2015 were deleted by the Tribunal in the Assessee's own case in ITA No.2594/M/2018. Therefore, the substratum on which the re-assessment is based was no longer in existence and, on this ground alone, the re-assessment proceedings should be struck down. We do not find any merit in the aforesaid contention advanced on behalf of the Assessee. The aforesaid decision of the Tribunal for the Assessment Year 2014-2015 was pronounced on 11/03/2025 which is much after the reasons for reopening the assessment were recorded by the Assessing Officer for the relevant assessment year. In our view, the subsequent decision of the Tribunal to delete the additions made by the Assessing Officer on merits cannot make valid reasons recorded for reopening assessment based upon tangible material invalid.

50. It is settled legal position that at the time of recording reasons for reopening assessment within a period of 4 years from the relevant assessment year, the Assessing Officer is required to form a belief that income chargeable to tax had escaped assessment. In this regard, we find that the CIT(A) has relied upon the judgment of the Hon'ble Bombay High Court in the case of **Ideal Associates vs. Assistant Commissioner of Income tax [2023] 146 taxmann.com 225 (Bombay)/[2022] 448 ITR 260 (Bombay)[07-04-2022]** while rejecting the challenge to the validity of reassessment proceedings. The relevant extract of the said judgment reads as under:

*"2. Here is a case where Petitioner had filed return of income*

*showing a total income of Rs. 1,93,550/- and return of income has been processed under section 143(1). Therefore, even though more than four years have expired from the end of the relevant assessment year at the time when notice dated 31st March, 2021 was issued, what we have to see is only whether the assessing officer had some tangible material to come to the conclusion that there is an escapement of income from assessment. If Assessing Officer has such tangible material, the power to reopen can be exercised. It is settled law that at the stage when the Assessing Officer reopens the assessment, it is not necessary that material before the Court should conclusively prove or establish that income has escaped assessment. We find support for this view in Export Credit Guarantee Corporation of India Ltd. v. Addl. CIT [2013] 30 taxmann.com 211/[2015] 228 Taxman 28 (Mag.)/[2013] 350 ITR 651/259 CTR 465 (Bom.) In Export Credit Guarantee Corporation of India Ltd. (supra), His Lordship Dr. D.Y. Chandrachud (as he then was), has expressed that a reason to believe at the stage of re-opening is all that is relevant. The test to be applied is whether there is tangible material to do so. What is tangible is something which is not illusory, hypothetical or a matter of conjecture. At this stage, the test to be applied is only whether there was reason to believe that income had escaped assessment and whether the Assessing Officer has tangible material before him for the formation of that belief. A reason to believe is what is relevant not an established fact of escapement of income." (Emphasis Supplied)*

51. We have concluded hereinabove that in the case before us the Assessing Officer has sufficient tangible material in the form of information/report of DGCEI and statement of employees of the Assessee and the factual information regarding the nature of arrangement between the assessee and auto dealers flowing from the assessment order for the Assessment Year 2014-2015. On the basis of the aforesaid tangible materials (which were also

corroborative in nature) the Assessing Officer formed a belief that income chargeable to tax had escaped assessment. We hold that the belief formed by the assessee at the time of recording reasons cannot be questioned on the basis of subsequent developments. As observed by the Hon'ble Bombay High Court, it was settled position that it is settled law that at the stage when the Assessing Officer reopens the assessment, it is not necessary that material before the Assessing Officer should conclusively prove or establish that income has escaped assessment. A reason to believe at the stage of re-opening is all that is relevant. At this stage, the test to be applied is only whether there was reason to believe that income had escaped assessment and whether the Assessing Officer has tangible material before him for the formation of that belief. A reason to believe is what is relevant not an established fact of escapement of income.

52. We note that in this connection, the Assessee had also relied upon the judgment of the Hon'ble Andhra Pradesh High Court in the case of **Perla Krishna Rao vs. ITO 159 ITR 299**. We are of the view that the aforesaid judgment of the Hon'ble Andhra Pradesh High Court supports the case of the Revenue. In the aforesaid case search was conducted by Excise Officers of Cuttack Division which resulted in recovery of gold from two persons who recorded the statement that the gold belonged to the assessee in that case. On the basis of aforesaid Collector of Central Excise and Customs conducted inquiry and passed order dated 01/10/1977 holding that the seized gold belonged to the assessee (i.e. Perla Krishna Rao). The Appellate Authority (Gold Control Administrator) vide order, dated 28/06/1981, confirmed the aforesaid findings. On the basis of aforesaid reassessment proceedings were initiated and notice, dated 23/09/1983, was

issued to the assessee under Section 148 of the Act. The order of Collector of Central Excise & Customs and the Gold Control Administrator which formed the basis of issuance of notices under Section 148 of the Act were set aside vide Order, dated 07/10/1982, passed by the Central Government. Therefore, when the notice under Section 148 was issued, the orders which formed the basis of the notice stood set-aside. In the aforesaid facts, the Hon'ble High Court had quashed the notice as based upon order which were non-existent in the eyes of law.

The relevant extract of the decision of the Hon'ble Andhra Pradesh High Court has been reproduced below for ready reference:

*"It is unnecessary to quote clause (b) of the said section, as it is common case that the impugned notice was issued under clause (a). A reading of clause (a) of section 147 shows that, for issuing a notice, the Income-tax Officer must have reason to believe that certain income had escaped assessment due to the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that year. Whether he has reason to believe or not depends upon the existence of some material. If there is some material on which the belief could be reasonably based, it is not for this court to consider whether that material is sufficient or not. But if there is no material whatsoever, the Income-tax Officer would have no jurisdiction to initiate proceedings under section 147 of the Act. We have read the counter-affidavit and examined the connected file. The sole ground on which the impugned notice was issued was that the Collector of Central Excise, in his adjudication order dated October 1, 1977, found that the gold weighing 6,930.100 grams seized from the above two persons by the Central Excise officials belonged to the assessee and that the said order was confirmed on appeal by the Gold Control Administrator. In fact, the proposals sent up by the Income-tax Officer to the Commissioner of Income-tax also mentioned these facts. But it appears from the counter-affidavit itself that these orders were set aside in revision by the Government of India, by its order dated **October 7, 1982**. Apparently, the Income-tax Officer was not aware of this fact and this is more true because, in his proposals to the Commissioner of Income-tax for obtaining his sanction, the Income-tax Officer refers to this matter and says that a revision is pending against these orders, while, in fact, by the time he sent up these proposals, the revision was disposed of*

and the matter ended in favour of the assessee and the orders levying penalty were set aside. It may be relevant to notice a few observations in the order of the Central Government dated October 7, 1982:

*"It cannot be said that the case against Krishna Rao is established beyond reasonable doubt. There is no evidence brought on record by the Collector on the basis of which it could be said that the facts narrated in the statements of Prabhakara Rao and Nanaji have been corroborated in material particulars.....there could be only suspicion about the involvement of Krishna Rao and nothing more. It is well established that suspicion, however grave, cannot be substituted for proof. In the circumstances, Government are inclined to accept the proposition urged on behalf of Krishna Rao that the evidence against him does not take the case beyond the realm of suspicion....."*

With these observations, the revision petition was allowed and the orders of the Collector of Central Excise and the Gold Control Administrator were set aside. The effect of this order would be that there was no order of the Collector of Central Excise or the appellate authority (Gold Control Administrator) existing in law. Since the impugned notice was issued only on the basis of the orders of the Collector of Central Excise and the Gold Control Administrator, which do not exist in the eye of law, the impugned notice cannot be sustained and it must be held that it is based on no material.

*It is submitted by Mr. Suryanarayana Murthy, the learned standing counsel for the Department, that the proceedings regarding confiscation of gold are still pending and the enquiry in regard to the ownership of the gold is in progress. As and when such enquiry is completed, it is open to the Government to take such appropriate action in accordance with law and in accordance with the findings arrived at the enquiry. But, so far as the present notice is concerned, we are of the view that it cannot be upheld and it must be held to be void as it is based on no valid material.*

*For the foregoing reasons, we quash the impugned notice. The writ petition is accordingly allowed. No costs." (Emphasis Supplied)*

It is not the case of the Assessee that the Assessment Order for the Assessment Year 2014-2015 was set aside before the issuance of notice under Section 148 of the Act for the Assessment Year 2014-2015. Therefore, the above judgment is

distinguishable on facts and does not advance the case of the Assessee.

53. At this stage, we deem it appropriate to reproduce Paragraph 15 of the judgment of the Hon'ble Bombay High Court in the case of NYK Line (India) Ltd. (supra) wherein, after taking into consideration the judgment in the case of Raymond Woollen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC), it was observed by the Hon'ble High Court that the Hon'ble Supreme Court had upheld reopening of assessment in that case on the basis of information obtained by Revenue in the assessment proceedings of the subsequent year in the following manner:

*"15. In **Raymond Woollen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC)**, ..... This **information**, as the Supreme Court emphasized, was obtained by the Revenue in the assessment proceedings of a subsequent year. Consequently, the reopening of the assessment was held to be valid. The point to be emphasized is, therefore, that where in the case of assessment proceedings for a subsequent year certain **additional information** is obtained by the Revenue which was not available to it in the course of an assessment for an earlier year, that may legitimately be utilized as a ground for reopening an assessment of the earlier year. Where the reopening has taken place within four years that may legitimately give rise to an inference of escapement of income. **The new information which has come to the knowledge of the Revenue would, therefore, constitute tangible material.**" (Emphasis Supplied)*

54. In the case before us the Assessing Officer had noted that such payments to the auto dealers by the Assessee-Company had come up for consideration for the first time during the assessment proceedings for the Assessment Year 2014-2015. The Assessing Officer had made disallowance of expenses aggregating to INR.1,83,11,32,413/- under Section 37 of the Act (read with Explanation 1 thereto) in respect of payments made by the Assessee to auto dealers during the previous year relevant to Assessment Year 2014-2015. Thereafter, the Assessing Officer proceeded to initiate reassessment proceedings

after recording/concluding as under:

*"For the A.Y.2010-11, the nature of expenses in the form of payments made to motor car dealers needs to be examined on the same issue as in A.Y.2014-15, such payments made to the motor dealers are clearly in the nature of commission which was paid to the motor dealers which is not an allowable expense u/s.37. In view of all the above, for the A.Y.2010-11 I have reason to believe that income assessable to tax amounting to more than rupees fifty thousand has escaped assessment and hence notice u/s.148 is to be issued."*

55. In view of the above we reject the contention of the Assessee that the reassessment proceedings were initiated to make fishing/roving inquiries or for the purpose of mere verification. During the course of hearing it was contended on behalf of the Assessee that re-assessment cannot be initiated for the purpose of making fishing enquiry. It was submitted that the reasons recorded state:

*"... The nature of expenses in the form of payments made to motor car dealers needs to be examined on the same issue as in Assessment Year 2014-15 ...". (emphasis added).*

56. We have also perused the three judgment of the Hon'ble Bombay High Court in the cases reported in [A] 462 ITR 50, [B] 102 taxmann.com 188 and [C] 160 taxmann.com 404. In our view, all the aforesaid decisions are distinguishable on facts. The reasons recorded in each of the aforesaid cases were worded differently. On perusal of the reasons recorded as reproduced in the aforesaid judgments we find that either the reasons recorded did not make reference to tangible material or did not record clearly the belief formed by the Assessing Officer regarding disallowance of deduction or chargeability of income to tax. In

the present case, we have taken note of the tangible material available with the Assessing Officer at the time of recording reasons, as well as the manner in which the Assessing Officer had applied its mind to the said tangible material to conclude that deduction for payments made to auto deals were incorrectly allowed to the Assessee; the same were to be disallowed in terms of Explanation 1 to Section 37 of the Act and thus, to formed a belief that income chargeable to tax had escaped assessment. Further, in our view, statement recorded by the Assessing Officer must be read in entirety and part thereof cannot be read de hors the context to contend that the Assessing Officer has initiated reassessment proceedings merely for verification or for making fishing inquiry. Perusal of reasons recorded in the present case clearly shows that after referring to tangible material the Assessing Officer had concluded/recorded that the payments made to auto dealers were in the nature of commission which were not an allowable as deduction under Section 37(1) of the Act and that the Assessing Officer had reason to believe that income assessable to tax had escaped assessment.

57. We note that Section 147 does not refer to the requirement of fresh tangible material. The requirement of existence of fresh tangible material and its link with formation of belief that income chargeable to tax has been read into Section 147 of the Act by way of judicial precedents to guard against the arbitrary action on the part of assessing officer on account of mere change of opinion. We have already concluded hereinabove that the case before us is not one of 'change of opinion'. Further, we have also noted hereinabove that the Assessing Officer had sufficient tangible material on the basis of which the Assessing Officer formed a belief that income chargeable to tax had escaped

assessment. Therefore, we hold that in the present case the mandatory preconditions for initiating reassessment proceedings for the Assessment Year 2012-2013 within a period of 4 years from the end of the relevant previous year stood satisfied. Accordingly, we reject all the contentions raised by the Assessee challenging the validity of the reassessment proceedings for the Assessment Year 2012-2013. We hold that in the present case jurisdictional requirements for reopening of the assessment were 'strictly satisfied'. Accordingly, Ground No.1 & 2 raised by the Assessee are dismissed.

**Ground No.3 to 6:**

58. Ground No. 3 to 6 raised by the Assessee pertains to disallowance of payments made to auto dealers read as under:

- "3. *The CIT(A) was wrong in observing that the appellant was very well aware about the disallowance of payment to auto dealer issues and inquires, but that it had not suo-motu disclosed such information before the AO at that point of time.*
4. *The CIT(A) was not justified in confirming the action of the AO of disallowing the payment of Rs.72,96,29,567 by the Appellant to the Auto Dealers.*
5. *The CIT(A) was wrong in observing that it has not been brought out as to when the appellant had asked for the cross-examination of the auto dealers, as to how the appellant was prejudiced if the AO did not provide it an opportunity to cross-examine the auto dealers, and whether the auto dealers, if any had retracted their statements.*
6. *The CIT(A) further erred in confirming the action of the AO without providing an opportunity to the appellant to cross-examine the auto dealers."*

59. The relevant facts for adjudication of Ground No.3 to 6 are that for the Assessment year 2012-13, vide Assessment Order dated

29/12/2017 passed under 143(3) read with Section 147 of the Act the Assessing Officer, inter-alia, disallowed deduction claimed by the Assessee for aggregate expenses of INR.72,96,29,567/- in respect of the payments made by the Assessee to the auto dealers. The Ld. CIT(A) confirmed the aforesaid disallowance vide Order, dated 20/03/2024. Being aggrieved, the Assessee has carried the issue in appeal before this Tribunal by way of Ground No.3 to 6 raised in the present appeal.

60. We have heard both the sides on this issue and have perused the material on record.
61. During the course of hearing reliance was placed on behalf of the Assessee on the decision of the Tribunal in the case of **HDFC ERGO General Insurance Company Ltd. Vs. Assistant Commissioner of Income Tax**[ITA No.2836 to 2841/Mum/2025 & ITA No.3277 to 3281/Mum/2025 for the Assessment Year 2010-2011, 2011-2012, 2013-2014, 2015-2016 & 2016-2017]. It was submitted that identical disallowance of payments made to auto dealers by the general insurance company was deleted by the Co-ordinate Bench of the Tribunal holding that the payments made to the auto dealers were allowable as deduction under Section 37(1) of the Act. We have perused the aforesaid decision of the Tribunal in that case it was stated, during the assessment proceeding, the assessing officer noted that as per material available on record, the Director General of Central Excise Intelligence, Chennai Zone (**DGCEI**) had carried out investigation in respect of certain auto dealers and intermediaries. In course of such investigation, it was found that the insurance companies were making payouts on account of commission to various auto dealers through

intermediaries/aggregators. As per the report of DGCEI, auto dealers were not licensed as agents/brokers/intermediaries of the insurance company and therefore, not entitled to receive any commission from the insurance company. The investigations revealed that the insurance company was also claiming CENVAT Credit on the aforesaid commission payments. The aforesaid report of the DGCEI was forwarded to the Assessing Officer by the Director of Income Tax (Investigation), Chennai. Based upon the aforesaid report of DGCEI, the Assessing Officer scrutinized the identical payments made to auto dealers. Placing reliance upon Section 40(1), 40(2A), 42E of Insurance Act, 1938 and circulars issued by Insurance Regularity and Development Authority of India (IRDAI), the Assessing Officer observed that the quantum of commission/brokerage that can be paid on general insurance cannot exceed 10% of the premium amount. He further observed that no brokerage can be paid where agency commission is payable and likewise, agency commission can be paid where brokerage is payable. However, the Assessing Officer concluded that (a) the payments made to auto dealers exceeded the threshold limit; and (b) procurement of insurance constituted a core activity which could not have been outsourced. Since there was violation of statutory provisions and the applicable rules, payments to auto dealers were hit by Explanation 1 to Section 37 of the Act and therefore, could not be allowed as deduction. Before the appellate authorities, the insurance company took a stand that the payment made to the intermediaries/aggregators was not commission for insurance policy. Payment to auto dealers was made for facilitating non-core activities such as filling up of form, collection of documents, verification of customer, discrepancies securing, tally verification, welcome calling services, payment pickup from customers etc

and other related activities. Auto dealers engaged persons and provided space in their premises for facilitating the process of insurance of vehicle purchased in case the customer was interested in availing their services in getting the vehicle insured. Further, the payment made to auto dealers were neither prohibited by law nor constituted an offence under Insurance Act, 1938. Hence, no disallowance under Section 37 of the Act could be made. The aforesaid contention of the insurance company was accepted by the Tribunal. Deleting the disallowance made by the Assessing Officer under Section 37(1) of the Act [read with Explanation 1 thereto], the Mumbai Bench of the Tribunal held as under:

"20 *Having held so, it is now necessary to advert to the issue as to whether, the payment can at all be disallowed by invoking Explanation-1 to Section 37(1) of the Act. On a reading of Explanation-1 to Section 37(1) of the Act it becomes clear that any expenditure incurred by assessee for any purpose, which is an offence or is prohibited by law shall not be regarded as expenditure incurred for the purpose of business, hence, no deduction can be allowed. So the exceptions are, the expenditure incurred must not be for any purpose which is an offence, secondly which is prohibited by law. As far as the first limb of Explanation 1 is concerned, it cannot be said that the expenditure incurred by the assessee is in the nature of an offence. At least there is nothing on record to suggest that any prosecution has been launched against the assessee to try any offence committed under the Insurance Act or the assessee has been held guilty for committing any offence. Second limb of the explanation is for expenditure prohibited by law. The relevant law in the present case is the Insurance Act. The AO has alleged that the assessee has violated the provision of Sections 40(1) and 40(2A) of the Insurance Act and IRDAI guidelines. In this context, the allegation of the Departmental Authorities is the assessee has paid commission in excess of what is authorized under the Insurance Act. Per contra, assessee has claimed that it has paid agency commission for motor*

insurance purely in accordance with the provisions of Insurance Act, which is 10% of the premium value. It is the case of the assessee that the alleged excess payment made is not insurance commission but payment made towards services rendered in relation to non-core activities such as policy servicing and related activities.

21. Though, the Departmental Authorities have not accepted the aforesaid claim of the assessee, however, there is no material on record to demonstrate that any action has been taken by the competent authorities under the Insurance Act. As per our understanding, Sections 102, 103, 104, 105, 105A and 105B contain provisions to impose penalty for default in complying with or acting in contravention of any provisions of the Act. Whereas, Section 105A deals with offences by company and awarding of punishment in case a company is found to be guilty of any offence. No material has been brought on record by the Department to demonstrate that the competent authority under the Insurance Act or the IRDAI has taken any punitive or penal action against the assessee for violation or contravention of any of the provisions of Insurance Act, as alleged by the AO. Thus, when the assessee has not been declared to be guilty of any offence nor there is any penal action initiated against the assessee for violation of the provisions of the Insurance Act or IRDAI guidelines, in our humble opinion, the exceptions provided under Explanation-1 to Section 37(1) of the Act would not apply. In this context, we respectfully agree with the observations made by the coordinate Bench in case of Milestone Real Estate Fund (Supra). Pertinently, in case of M/s Cholamandalam MS General Insurance Co. Ltd. [2025] 174 taxmann.com 603 (Mad.), identical issue of disallowance of payment made to motor vehicle dealers u/s. 37(1) of the Act came up for consideration. While deciding the issue, the Hon'ble Court upheld the decision of the Tribunal restoring the issue to the AO to decide afresh. Keeping in view the order of CESTAT in case of the same party. The decision taken by the Tribunal to restore the issue was for the fact that the CESTAT decision was not available before the Departmental Authorities. However, in the facts of the present appeal, the material on record do establish that the orders of CESTAT, though, were furnished before learned First Appellate Authority, however, they were completely ignored. Therefore, we do

*not intend to remit the issue to the Departmental Authorities. Thus, on overall consideration of facts and materials on record, we are inclined to accept assessee's claim and hold that the payment made is allowable as deduction u/s. 37(1) of the Act. In view of our decision on merits as above, other grounds raised by the assessee have become infructuous hence, dismissed." (Emphasis Supplied)*

62. In the above decision, the Tribunal had taken note of the fact that the Revenue had failed to bring on record any material to show that any punitive or penal action was taken by IRDA in case of payments made by the insurance company to the auto dealers. During the course of hearing the Assessee was directed to submit copy of all the orders passed by IRDA levying penalty on the Assessee. It was submitted by the Learned Counsel appearing for the Assessee that the no penalty was levied in relation to the payments made to auto dealers. Following details were furnished by the Assessee during the course of hearing along with the copy of the relevant orders, dated 11/03/2016 and 13/09/2019:

*"Details of Penalty imposed on New India Assurance Company Ltd. by IRDAI*

A.Y.	Penalty order	Description	Penalty imposed on New India
2012-2013	IRDAI/Enf/O RD/ONS/046 /03/2016  Dated 11/03/2016	Charge 3 Insurer has violated the F&U guidelines dated 28/09/2006 by not following the rating and discount structure filed with the Authority  Charge 7: allowed regional office in-charge to offer 'discretionary/commercial' discounts without any upper limit	In view of the violation of the F&U guidelines observed at charge 3 & 7, a penalty of Rs.5 lakhs is imposed
2018-2019	IRDAI/Enf/O RD/ONS/164 /09/2019  Dated	Charge 1 Violation of F & U Guidelines/Circulars	Only observation and no penalty imposed as no violation post above penalty order of 11/03/2016

	13/09/2019		
		<i>Charge 2: IRDA (protection policyholders interest) Regulation, 2002</i>	<i>Penalty of Rs.3 Lakhs (not related to payment to autodealer)</i>

63. We note that in the present case also the Revenue has failed to bring any material on record to controvert the above submission of the Assessee. The contention of the Assessee that no penalty has been levied upon the Assessee in respect of the relevant assessment years in relation to payments made to auto dealers (which has been supported by way of the orders specified in the above table) has gone uncontroverted. It is admitted position that IRDA is the insurance market regulator exercising regulatory/supervisory powers over the functioning of the general insurance company including the Assessee. The Assessee has placed on record a letter, dated 12/08/2015, written by Chairman of IRDA to Chairperson of Central Board of Excise & Customs. A perusal of the said letter shows that the IRDA had knowledge of the investigation carried out by DGCEI in relation to issues payments made by the general insurance companies to auto dealers. The fact that no action has been taken by the IRDA against the Assessee for the alleged violation of provisions of Sections 40(1) and 40(2A) of the Insurance Act, 1938 and IRDA guidelines, supports that stand of the Assessee that the payments made to auto dealers were not in violation of the aforesaid provisions. Further, the Revenue has failed to distinguish the above decision of the Tribunal in the case of HDFC ERGO General Insurance Company Ltd. (supra) either on facts or in law. Therefore, respectfully following the same, we delete the disallowance of INR.72,96,29,567/- made under Section 37(1) of the Act (read with Explanation 1 thereto).
64. Accordingly, Ground No. 3 to 6 raised by the Assessee are

allowed.

65. Thus, appeal preferred by the Assessee [ITA No.2616/Mum/2025] is partly allowed.

**ITA No.2845/Mum/2024 [Revenue's Appeal]**  
**& Cross Objection No.97/Mum/2024 [in Revenue's Appeal]**

66. Now we would take up appeal preferred by the Revenue for the Assessment Year 2012-2013 (ITA No.2845/Mum/2024) which is directed against the Order, dated 20/03/2024, passed by the Learned CIT(A) whereby the appeal preferred by the Assessee against the Assessment Order, dated 27/12/2019, passed under Section 143(3) read with Section 147 of the Act was disposed off as partly allowed. Assessee has also filed Cross Objection (C.O. No.97/Mum/2024) in Revenue's Appeal.

**ITA No.2845/Mum/2024 [Revenue's Appeal]**

67. The Revenue has raised three grounds of appeal in ITA No. 2845/Mum/2024 which are taken up hereinafter in seriatim.

**Ground No.1**

68. Ground No. 1 raised by the Revenue reads as under:

"1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the claim of the appellant for IBNR and IBNER without appreciating the fact the assessee company has created the provisions in anticipation of settlement of claims that were not ascertained and ignoring the fact the assessee company is yet to assess the loss and determined the amount of compensation thereby making this liability as unascertained liability.*"

69. Ground No.1 raised by the Revenue challenges the order of CIT(A) whereby the Learned CIT(A) had deleted the disallowance

of INR.8,58,10,00,000/- made by the Assessing Officer in respect of claims 'Incurred But Not Reported' (IBNR) and 'Incurred But Not Enough Reported' (IBNER).

70. The relevant facts in brief are that the Assessee had claimed deduction for Provision towards IBNR and IBNER claims for the Assessment Year 2012-2013. The Assessing Officer disallowed the aforesaid claim treating the provision towards IBNR & IBNER as contingent liability and not actual expenditure. In appeal, the Learned CIT(A) deleted the disallowance. Being aggrieved, the Revenue has challenged the relief granted by the Learned CIT(A) in appeal before this Tribunal.
71. We have heard both the sides and have perused the material on record in relation to aforesaid issue.
72. We find that identical issue had come up for consideration before Mumbai Bench of this Tribunal in the case of **Dy. CIT Vs Tata AIG General Insurance Company Limited [ITA No.14/Mum/2021, dated 08/03/2022]**. The Mumbai Bench of the Tribunal had decided the issue in favour of the Assessee and deleted the disallowance made by the Assessing Officer in respect of provisions for claims 'Incurred But Not Reported' (IBNR) and 'Incurred But Not Enough Reported' (IBNER) holding as under:

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

010. 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.*

011. *The learned Assessing Officer held that it is a provisions created by the assessee in anticipation of claims and it is not ascertained liability so it cannot be allowed. He further noted it is not known that how much liability is good enough to pay out above claims and therefore, it is purely a contingent liability and cannot be allowed as deduction. The Assessing Officer further held that the above claim is not supported by the actual valuation and hence, he disallowed 148,43,01,915/-. The Id CIT(A) after considering the decision of the Honourable Supreme Court in case of Rotork controls India private limited versus Commissioner of income tax 314 ITR 62 considered that if there is a present obligation with respect to the provision, and it arises out of events involving outflow of resources and can be based on reliable estimation of such obligation then the liability incurred by the assessee company is allowable. He further held that the methodology to determine the liability is also certified by actuary in accordance with guidelines and norms issued by the Institute of actuaries of India and insurance regulatory and development authority of India. He further held that such provisioning relates to present obligation and involves outflow of resources. He further considered the provisioning made by the assessee in different years and actual utilization of such provision with respect to those financial years and then he found that the provision was made less than the actual amount incurred in settling those claims. He further held that the coordinate bench in case of DCIT vs. National Insurance co. Ltd. (2016) 72 taxmann.com 116 (Kolkata p Trib.) which has been affirmed by Hon'ble Calcutta High Court in ITA No.76 of 2019. Therefore he held that such provisioning is allowable u/s 37 (1) of the act and the addition made by the 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 claim was that the provision has been made for all the unsettled claims on the basis of the claims alleged by insured persons. Certain times the loss incurred are not reported in the balance sheet of the insurance company and therefore, such claims are classified as claims incurred but not reported. Certain times such claims are reported, however they were not adequately reported. These are called claims Incurred but not enough reported. The assessee made the provisions on the basis of the guidelines provided by Insurance regulator and development authority of India. The claims made and provided for, are certified by the Actuary in accordance with the guidelines and norms issued by the Institute of Actuaries of India (IAI) and Insurance Regulatory and Development Authority (IRDA). As according to the assessee, the claims have been approved by Actuary, therefore, the assessee has incurred loss /expenses during the year, and hence, it is allowable under section 37(1) of the Income-tax Act. The Assessing Officer considered the same as unascertained liability because ultimately the settlement of claim happens then, only according to him such claims are settled. We find that the assessee is a General Insurance Company and is covered by the guidelines issued by IRDA. The Insurance Companies are required to settle the claims of insured on the occurrence of the loss, which is covered under insurance. Such claims are required to be accounted despite the fact that such claims would not have finally settled but are pending at various stages of processing. The settlement of such claims may happen in subsequent period. Such claims are accounted by the assessee by making a provision as the liability to pay to the insurer agreed during the year. The learned Assessing Officer held that it is an anticipation of settlement of claim and therefore it cannot be said to be a definite liability. We find that identical issue arose in the case of DCIT vs. Export Credit Guarantee Corporation of India Ltd. in ITA No.7657/Mum/2014, wherein the co-ordinate Bench vide order dated 11.10.2017 vide para*

*No.3.3 has allowed the identical claims. The learned CIT(A) while deciding the issue has relied upon the decision co-ordinate Bench in DCIT vs. National Insurance Company Limited (supra) has held that the provisions made available the above claim are based on scientific calculation with a proper and rational and therefore, it could only be termed as ascertain liability. Though the above decision was rendered with respect to the computation of book profit under section 115JB of the Act, however, the learned CIT(A) applied it and allowed the claim of assessee for deduction under section 37(1) of the Act for the reason that the claim of the assessee is ascertained claim, supported by Actuarial valuation and also made on a scientific basis. To reach at this calculation, the learned CIT(A) obtained information for 6 different assessment years and found that the actual claim settled is always higher than the provisions made by the assessee. This it shows that the provisions made are not excessive. Further, it was stated before us that this claim is allowed to the assessee from year to year. In view of this, we find that assessee has incurred an expenditure, which is incurred during the year with respect to the provisions made for the IBNER and IBNR claims, on scientific basis and also certified by the valuer with respect to the methodology adopted in making such provisions. Thus, it satisfies the entire ingredient for its allowance u/s 37 (1) of the act. Thus, there is no infirmity in the order of the learned CIT(A) in allowing the claim of INR.148,43,01,915/- under Section 37(1) of the Act. Accordingly, the Ground No.1 of the appeal is dismissed.*

73. On perusal of the above decision and the decisions cited therein it becomes clear that the Co-ordinate Benches of the Tribunal have noted that insurance companies are statutorily required by Insurance Regulatory & Development Authority of India (IRDAI) to provide for IBNR and IBNER claims. The provisions so created were based on actuarial valuation and guidelines of the IRDAI and the Institute of Actuaries of India. Therefore, the said provisions constituted ascertained liabilities allowable as deductions under Section 37(1) of the Act since they are incurred during the year in the normal course of business and

were computed based on scientifically validated actuarial estimates.

74. The Revenue has failed to bring on record any material to distinguish the above decisions of the Tribunal either of facts or in law. Therefore, we decline to interfere with the order passed by the CIT(A) deleting the disallowance of INR.8,58,10,00,000/- made by the Assessing Officer in respect of provisions for IBNR and IBNER. Accordingly, Ground No. 1 raised by the Revenue is dismissed.

### **Ground No.2**

75. Ground No.2 raised by the Revenue is as under:

"2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on account of reinsurance premium paid outside India of Rs.17,30,60,501/- without appreciating the fact that the deduction of TDS was not made on these payment u/s.195 of the Act, and it was neither approached the department u/s.195(2) before remitting the payment to non-resident nor filed the prescribed undertaking alongwith the certificate from an accountant while making remittance reinsurance. Further the Ld. CIT(A) has also not appreciated the fact that the payment of reinsurance premium is in violation of section 2(9) of the Insurance Act, 1938 and accordingly the said payment is contravention of the existing law and also not allowable expenses u/s.37(1) of the Act."*

76. Ground No.2 raised by the Revenue challenges the order of CIT(A) deleting the disallowance of INR.17,30,60,501/- made by the Assessing Officer in respect of reinsurance premium paid outside India. The Assessing Officer has made the aforesaid disallowance holding that the payment of reinsurance premium outside India was prohibited as per Section 2(9) of the Insurance Act, 1938 and therefore, as per Explanation 1 to Section 37(1) of the Act deduction could not be allowed for the same. Further,

since the Assessee had failed to discharge the tax withholding obligations in terms of Section 195 of the Act, the deduction for the payment made outside India towards reinsurance premium could be allowed as a deduction in terms of Section 40(a)(ia) of the Act. However, in appeal the CIT(A) overturned the decision of the Assessing Officer and allowed Assessee's claim for deduction of reinsurance premium of INR.17,30,60,501/- paid outside India. Being aggrieved, the Revenue has challenged the aforesaid relief granted by the CIT(A) in appeal before the Tribunal.

77. We have heard both the sides on this issue and have perused the relevant material on record.

78. We note that following issue had come up for consideration before the Hon'ble Madras High Court in the case of **Cholamandalam Ms General Insurance Co. Ltd. vs. Deputy Commissioner of Income-tax, LTPU, Chennai [2019] 411 ITR 386 (Madras)[12-12-2018]**

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

79. Answering the above issue in favour of the Assessee and against the Revenue by the Hon'ble Madras High Court held as under:

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

13. xx xx

14. *The larger question would be whether at all this is an expenditure? However, we do not propose to deal with this, as that was never decided by the Tribunal in the impugned order and leave the issue open. Thus, we are required to examine as to whether in the facts and circumstances, the Tribunal was right in holding that payment of reinsurance premium to non-resident insurance companies is prohibited and to be disallowed under Section 37 of the Act.*
15. xx xx
16. *In this regard, we may straightaway refer to the statement of objects and reasons for the Insurance (Amendment) Bill, 1961, which was introduced in the Lok Sabha on 14th February, 1961. This Bill was passed and the Insurance Act stood amended. The Hon'ble Finance Minister for the Union of India of general insurance business and at hould te companies, operating in India, are dependent on companies outside India for a very large part arrangements. Moreover, re-insurance with companies outside India results in loss of foreign exchange of their requirements in this connection and more often than not enter into disadvantageous and the Bill is intended to foster the growth of Indian re-insurance companies and also to save foreign exchange. The Bill sought to provide that every insurance company operating in India must re-insure a certain percentage of its business with Indian re-insurance companies approved in this behalf by the Central Government. The Central Government was given power to fix the percentage and this power to be exercised in consultation with the Advisory Committee so constituted. The power was also conferred on the Central Government to allocate the percentage so fixed amongst the approved Indian re-insurance companies. With the aforesaid object, the Bill proposed to insert Part IVA under the head "Re-insurance" containing two provisions, viz., Sections 101A and 101B.*
17. xx xx
18. xx xx
19. xx xx
20. *A conjoint reading of Regulation 3 and sub-Regulations (1) to (10) will clearly show that the objectives were to maximize the retention of revenue within the country.*

What we are required to see is whether there is any indication in the Insurance Regulatory and Development Authority (General Insurance Reinsurance) Regulations, 2000 prohibiting re-insurers with a foreign insurer. A reading of Regulations 3(2), 3(4), 3(7), 3(9) and 3(10) clearly show that there is no bar.

21. The sum and substance of the Regulations is that every insurer shall cede such percentage of sum assured on each policy, for different classes of insurance written in India to the Indian re-insurer as may be specified by the Authority under Section 101A of the Insurance Act. Therefore, every Indian insurer is to cede, such specified/notified percentage of the sum assured and not the whole. The commencement date for the re-insurance programme is also spelt out in the Regulations. The insurer has to disclose payments made outside India and there is also a restriction on with whom, they can enter into a contract of re-insurance, as the Regulations place an embargo stating that such entity should have enjoyed the rating of at least BBB or equivalent rating of any other international rating agency. Thus, the reading of the Regulations will clearly show there is absolutely no prohibition for re-insurance with a foreign re-insurance company.
22. The observations made in the finding rendered by the Tribunal stating that the Regulations are inconsistent with the provisions of the Act are utterly perverse and to be outrightly rejected. In 2008, the Standing Committee on Finance proposed the amendment to the Insurance Laws and the Insurance Laws (Amendment) Bill, 2008 was introduced. The report of the Committee states that the General Insurance Corporation Re is the only national re-insurer operating in India and also has re-insurance business in international market and its share of international business is 44 per cent. The Chairman of the General Insurance Corporation (GIC), who is one of the respondents in these appeals, has deposed before the Standing Committee on Finance and would state that the legal position as of 2008, there was no bar on doing re-insurance business by any foreign re-insurance company in India. The Chairman, GIC expressed deep concern that when GIC has to transact international business in various countries, they are subjected to lot of crosschecks and regulation and there is no corresponding regulation in India, as a result of which, foreign re-insurance companies can accept re-insurance business without taking any licence and without opening any branch in India. Thus, the suggestion was there is a need for regulation for any foreign country coming into India and doing re-insurance business. Ultimately, the Standing Committee on Finance

*noted that there is no bar on foreign re-insurance business companies carrying on or opening a branch, nor there to control the transaction of foreign re-insurers. This ultimately, led to the amendment to the Insurance Act by amending the definition of "insurer" in Section 2(9) of the Insurance Act to mean a foreign company engaged in re-insurance business through a branch established in India. The Tribunal was of the view that unless and until a branch is opened by the foreign re-insurance company, the question of conducting re-insurance business in India cannot be done. In our considered view, this conclusion of the Tribunal is not sustainable. The answer lies not in any recent proceedings but, a circular issued by the CBDT as early as on 03.10.1956 bearing Circular No. 38(XXXIII-7) [F.No.51(5)-IT/54]. The operative portion of the circular reads as follows:-*

*"Liability to tax or freedom therefrom of the foreign reinsurer will depend on various factors, such as the existence of reciprocity between the Indian insurer and the foreign reinsurer, the magnitude of local retention as compared with the reinsurance premium paid by the Indian insurer to the foreign reinsurer and so on. The Income-tax Officers will, therefore, have to examine each case in the light of its facts and decide where tax liability is attracted, what portion of the income from the reinsurance should be assessed under section 42(2) of the 1922 Act [corresponding to section 92 of the 1961 Act]."*

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

changes in the procedure as per the memorandum of Exchange Control Regulations relating to General Insurance in India (GIM) were summarised and the relevant Regulation, pertaining to re-insurance arrangement, is as follows:-

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

24. The above will clearly show that re-insurance arrangement with a foreign insurance company is permissible. Thus, it is evidently clear that on and after the introduction of Section 101A to the Insurance Act, there is a mandatory requirement for other insurer to re-insure with the Indian re-insurers and such percentage is put to a maximum of 30% and the language of Section 101A nowhere prohibits the re-insurance with foreign re-insurance companies above the percentage specified by the authority with previous approval by the Central Government. That apart, the Tribunal erred in drawing a presumption regarding prohibition of re-insurance with foreign re-insurance companies. This presumption is erroneous for the simple reason that the statement of objects of the Insurance Act itself clearly stipulates wherever there is a prohibition. By way of illustration, we can refer to Sections 2(c), 2(c)(b), 2(9), 32(a), 40, 41, 42(a) and 52(a). Therefore, no inference could have been drawn, as drawn by the Tribunal and consequently, to be held that there can be no bar or prohibition under the Insurance Act, which prohibits ceding of re-insurance with a foreign re-insurer outside India.
25. Section 2(16B) defines "re-insurance" to mean the insurance of all or part of one insurer's risk by another insurer who accepts the risk for a mutually acceptable premium. There is no distinction drawn between an Indian re-insurer and a foreign re-insurer. As rightly submitted by Mr.M.Vijayaraghavan, learned counsel for CIG, the

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

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

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

80. On perusal of the above extract of the judgment of Hon'ble Madras High Court it becomes clear that the Hon'ble High Court held that there was no absolute prohibition under India

Insurance laws on payment of reinsurance premium outside India to a foreign re-insurer. Therefore, the Tribunal erred in invoking provisions contained in Explanation 1 to Section 37(1) of the Act. In our view, the ratio of the aforesaid judgment would squarely apply in the case before us. Accordingly, respectfully following the above judgment of Hon'ble Madras High Court in the case of Cholamandalam Ms General Insurance Co. Ltd (supra) we reject the contention of the Revenue that reinsurance premium paid outside India cannot be allowed as deduction in view of Explanation 1 to Section 37(1) of the Act.

81. As regards, the issue of disallowance of reinsurance premium made by the Assessing Officer invoking the provisions of Section 40(a)(ia) of the Act is concerned, we note that the Learned CIT(A) has disposed off the issue in the following manner:

*"6.3 Ground no. 3: It pertains to addition on account of reinsurance premium of Rs. 17,30,60,501/- ceded outside India.*

*6.3.1 The AO noted that appellant had collected premium from clients in India and ceded a portion of the premium to foreign insurers depending upon quantum of business, risk-sharing and negotiations. Such premium had been deducted from total premium declared in P/L account. When asked as to whether TDS had been deducted/withholding tax made on these amounts, appellant's submissions on this issue before AO are summarized below:*

- (i) As per IRDA guidelines/regulations, appellant can undertake such reinsurance business outside India with such cross-border re-insurers who do not have any branch in India.*
- (ii) No withholding tax obligations arises to appellant on such remittances as the cross-border insurers (except Swiss Reinsurance Company Ltd.) did not have any*

*presence/permanent establishment in India.*

- (iii) *Appellant also relied upon Hon'ble ITAT Mumbai in case of Aon Global insurance Services Ltd (ITA No. 5184 to 5186/Mum/2009), Swiss Reinsurance Co. Ltd ITA No. 1667/Mum/2014 (AY 2010-11) and M/s Bharti AXA Life Insurance Co. Ltd (ITA no.4805-4808) to support its claim.*

6.3.2 *The AO did not accept contentions of appellant and his reasons for doing so are summarized below:*

- (a) *The event of selling the insurance policy by the appellant takes place in India, any liability/loss claim on such reinsurance transactions arise in India through the brokers (most of whom are situated in India), most of the time reinsurance premium is received from Indian Insurer (II) by the broker in India who also settle the claim (if any) and after deducting their commission remit the net amount to the non-resident insurer (NR). These events establish that reinsurance income of NR accrues and arises in India and is also received in India wherever the broker is located in India. Thus, section 5(2) of Income Tax Act is applicable in such cases of reinsurance remitted to NRs by appellant. Once chargeability of income in India is so established, provisions of withholding tax u/s 195 of Income Tax Act 1961 kick in which appellant has not adhered to.*
- (b) *The NRs and appellant are not doing one-off transaction but are involved in continuous transactions over the period of treaty/agreement between NRs and appellant while such treaties keep on getting over for some cases and get created for some other cases. NRs depend fully upon appellant with respect to any risk analysis and NRs reimburse any claims made by appellant.*
- (c) *Due to amendment in as per Insurance Law (Amendment) Act 2015 and IRDA (General insurance-reinsurance) Regulations 2016, a foreign company engaged in reinsurance business can do so only through a branch established in India and hence presence of a PE is prerequisite for NR to carry out*

*any such business in India. Also, rule 6 of First schedule to income Tax Act becomes applicable in such cases.*

- (d) In cases where brokers remit the reinsurance premium to NRs, said brokers act as agent of NR and liabilities of appellant stands discharged as per IRDA guidelines. Thus, principal & agent relationship exists between reinsurance agent and NRs.*
- (e) AO also cited case laws in favour of the Department:*
  - (i) R.D. Aggarwal & Company 56 ITR 20, 128 ITR 27 (Mad)-w.r.t. business connection*
  - (ii) Kanchan ganga Sea Foods Ltd AIT 2010 264 SC, Van Oordac Jet India P Ltd 112 ITD 79, Transmission Corporation of Andhra Pradesh 239 ITR 587, Poompuhar Shipping Corporation Ltd 109 ITD 226, Frontier Offshore Exploration India Ltd ITA No. 2037/Mads/06, West Asia Maritime Ltd (ITAT Chennai), AAR in Rajiv Malhotra (in Re)- w.r.t. withholding tax*
- (f) AO also held, without prejudice to the above reasons, that such payments were allowable u/s 37(1) of the Act also in view of decision in case of United India Insurance Co. Ltd (ITA No. 2107/Chny/2014 dated 28/08/2018)*

*6.3.3 During the present appeal proceedings, appellant made similar submissions as made before the AO. Appellant also relied upon more decisions, as below, in its favor:*

- (a) Cholamandalam MS General Insurance Co Ltd 102 Taxmann.com 292 (Mad HC)*
- (b) Cholamandalam MS General Insurance Co Ltd 142 Taxmann.com 3 (ITAT Chennai)*
- (c) Tata AIG General Insurance Co. Ltd 141 taxmann.com 70 (Mumbai ITAT)*

*6.3.4 Admissibility of additional evidences: Vide notice dated*

*30/08/2023, this office had specifically asked the appellant to produce the copies of agreement between appellant and Non Resident Insurers (NRs), details of premium ceded in this assessment year, details of TDS deducted and paid along with explanation if no TDS deducted/less deducted, evidences that all NRs were registered/certified in their home country and if it were not so, then copy of approval of IRDA and copy of reinsurance program approved by IRDA.*

*Vide submissions dated 14/09/2023, the appellant filed the details in support of its claim which were sent to the AO by this office on 13/10/2023.*

*Vide report dated 09/01/2024, the AO stated that the Hon'ble ITAT Chennai in case of United India Insurance vs DCIT(LTU) ITA No. 1753, 1605, 1606,1607, 1608, 1609 & 1610/Chny/2011 dated 28/08/2018 had decided this issue against the assessee holding that merely because the incident happened during the year which is the basis for making a claim that cannot be the reason for allowing compensation payable by the assessee for relevant assessment year & that such payment has to be allowed in the year in which compensation was determined.*

*I have gone through the submissions of the appellant carefully and I find that the AO had provided sufficient opportunities of hearing to the appellant but it is not apparent from record in appeal whether any specific query had been raised by the AO, during the assessment proceedings, regarding the details furnished during these appeal proceedings.*

*In view of the above and also considering that the additional evidences submitted by the appellant are crucial to decide the issues in appeal as well as to compute the actual income of the appellant, relying upon the decisions of Hon'ble Courts in Alcon Resort Holding Ltd [2023] 151 taxmann.com 98 (Bombay), Daljit Singh Sra [2017] 80 taxmann.com 271 (Punjab & Haryana), Suretech Hospital & Research Centre Ltd. [2007] 164 TAXMAN 168 (BOM.) and Rankin Infrastructure (P.) Ltd. [2022] 142 taxmann.com 37 (Mumbai - Trib.), the additional evidences submitted by the appellant are hereby admitted in terms of Rule 46A of I.T Rules 1962.*

*It is noted that in its rejoinder dated 12/01/2024, to remand report, the appellant reiterated its earlier submissions on merits of the issue.*

*6.3.5 On merits of the issue, I have perused facts of the case along-with the case laws cited by the AO and the appellant. It is seen that one has to first establish the chargeability of the sum in India under section 5 rws 9 of the I.T. Act as well as under the relevant DTAA and application of section 195 and 40(a)(i) of the I.T. Act is secondary.*

*To establish the chargeability of income of NRs in India, AO has relied upon, among other reasons, on the fact of amendments in Insurance Act and IRDA regulations to point out that due to such amendments, the NRs compulsorily had to have a 'branch' in India which would create a 'business connection' or a 'permanent establishment' in India and which, in turn, would lead to income of NRs taxable in India.*

*However, in my considered opinion, AO has perhaps been led only by a presumption that any business connection or permanent establishment existed in India on account of such amendment in Insurance Acts and IRDA Act.*

*It is seen that the legislative intention behind the amendments in Insurance Acts and IRDA Act can be found from explanatory notes as in Press Information Bureau release dated 13/03/2015 (available at <https://pib.gov.in/newsite/printrelease.aspx?relid=117043>):*

*"The amendment Act will remove archaic and redundant provisions in the legislations and incorporates certain provisions to provide Insurance Regulatory and Development Authority of India (IRDAI) with the flexibility to discharge its functions more effectively and efficiently. It also provides for enhancement of the foreign investment cap in an Indian Insurance Company from 26% to an explicitly composite limit of 49% with the safeguard of Indian ownership and control.*

.....

*6. Promoting Reinsurance Business in India: The amended law enables foreign Page 19 of 37 AAACN4165C- THE NEW INDIA ASSURANCE CO LIMITED A.Y. 2012-13 ITBA/NFAC/S/250/2023-24/1063027857(1) reinsurers to set up branches in India and defines 're-insurance' to mean "the insurance of part of one insurer's risk by another insurer who accepts the risk for a mutually acceptable premium", and thereby excludes the possibility of 100% ceding of risk to a re-insurer, which could lead to companies acting as front companies for other insurers. Further, it enables Lloyds and its members to operate in India through setting up of branches for the purpose of reinsurance business or as investors in an Indian Insurance Company within the 49% cap."*

*This explanatory note read with Insurance Regulatory and Development Authority of India (Registration and Operations of Branch Offices of Foreign Reinsurers other than Lloyd's) Regulations, 2015 and Insurance Regulatory and Development Authority of India (General Insurance-Reinsurance) Regulations, 2016 brings out that this Act & regulations enables the NRs, if they want, to open branch offices in India but these laws do not make it mandatory for them to do so. Thus, the foreign reinsurers did not have to open any branch office in India and it was just a choice given to them by these amendments in regulations. Hence, the presumption of the AO that by virtue of these amendments it could be assumed that foreign re-insurers had branches in India was incorrect.*

*6.3.6 In the present case, the appellant has provided the details of NRs and submissions on taxability of their receipts based upon DTAA's. It is noted that the appellant ceded reinsurance to the following NRs in FY 2011-12:*

- 1. Asian Re, Thailand*
- 2. Best Re, Malaysia*
- 3. Malayan Re, Philipines*
- 4. Malayasian National, Malaysia*
- 5. Munich Re, Germany*
- 6. National indemnity, USA*

7. SCORE Re, Singapore

8. Sompo Japan, Malaysia

It is seen from the submissions of the appellant that Double Taxation Avoidance Agreements (DTAA) existed with the countries of residence of these entities with India in cases of all the entities (except in case of Best Re, Malaysian Re & Malaysian National, all three entities having Malaysia as the foreign jurisdiction with whom India did not have DTAA in FY 2011-12).

It is also noted that the appellant has also obtained the details of Tax Residency Certificates (in Form F) of these entities. The appellant had taken a certificate from these entities regarding 'no PE' in India.

Even otherwise, as to whether any branch of these 8 entities existed in India pursuant to Insurance Act 2000 or amendments in IRDA & Insurance Act in 2015 & 2016, IRDA website, <https://irdai.gov.in/frbs>, shows that none of the above entities had branch in India in FY 2011-12. In fact, the first branches of foreign reinsurers were registered by IRDA in December 2016.

Thus, based upon the details furnished by the appellant and the details available at IRDA website, the issue of taxation of such amount in India arises in none of the above cases and taxability of payments made to all entities has to be decided in the background of facts of this case.

It is seen that reasons (viz. existence of a PE/business connection and taxability in India of such premium ceded to foreign reinsurers by Indian Insurers) set out by the AO, while disallowing these payments made by the appellant, have been elaborately dealt by Hon'ble ITAT, Chennai in decision for AY 2006-07 to 2009-10 in case of Royal Sundaram Alliance Insurance Co. Ltd [2023] 154 taxmann.com 19 (Chennai - Trib.) wherein the issue was decided in favour of the assessee placing reliance upon Tribunal's own order in case of the same assessee in ITA Nos.1356/Chny/2013, 1626/Chny/2011 & 2310/Chny/2014 and ITA Nos.1628, 1629 & 1630/Chny/2011 and ITA No. 1666/Chny/2011 order dated 26-8-2022 for AY 2005- 06 to 2010-11, holding

that reinsurance premium paid to NRRs cannot be disallowed u/s 40(a)(i) of the Act, for failure to deduct TDS u/s 195 of the Act, because, reinsurance ceded to non-resident reinsurers is not taxable in India under Income-tax Act, 1961 or under DTAA between India, and respective countries.

To better understand the decisions of Hon'ble Tribunal, the relevant paras of decision in case of Cholamandalam MS General Insurance Co. Ltd. [2022] 142 taxmann.com 3 (Chennai-Trib.)[26-08-2022] are reproduced below:

.....

XX XX

**The important aspect of these decisions is that they were pertaining to the periods prior to FY 2016-17 when the foreign reinsurers did not have any branches in India even under IRDA Act/regulation and hence, the said decisions can be taken as applicable for those NRs who did not have any branch in India prior to FY 2016-17. Thus, relying upon aforementioned decisions of Hon'ble Tribunals, specifically in cases of Tata AIG General Insurance Company Ltd (supra) and Cholamandalam MS General Insurance Co. Ltd. (supra), it is hereby held that for as none of the entities had any branches in India in FY 2011-12 as has been brought out in preceding paras of this order, no disallowance u/s 40a(i) was called for in the present case of the appellant.**

Also, in the case of the present appellant, three reinsurers were residents of Malayasia with which India did not have DTAA in FY 2011-12 but in cases of these three entities also, no PE has been established by the AO in India nor was any branch found registered by IRDA in FY 2011-12 as mentioned in a preceding para of this order. Thus, the aforementioned cases of Tata AIG General Insurance Company Ltd (supra) and Cholamandalam MS General Insurance Co. Ltd. (supra) are equally applicable in case of payments made by the appellant to these three entities too.

Further, as has been discussed in preceding paras of this order and as has been held by Hon'ble Courts/Tribunals, **such payments were made for the business of the appellant and the same cannot be held as disallowable u/s 37(1) of the Act as the same was neither prohibited nor was a capital**

**or personal expenditure.**

**The disallowances made by the AO in all these cases is hereby deleted.** Since various sub-grounds of ground no. 3 of present appeal are interlinked with the main issue decided above, these sub-grounds do not require separate adjudication. In effect ground no. 3 of the appeal is allowed." (Emphasis Supplied)

82. Being aggrieved by the Order of the CIT(A) deleting the disallowance of INR.17,30,60,501/- made by the Assessing Officer in respect of reinsurance premium of INR.17,30,60,501/- paid by the Assessee to non-resident parties during the relevant previous year, the Revenue has carried the issue in appeal before the Tribunal
83. On perusal of record it is clear that the Assessing Officer had supported the disallowance by invoking the provisions contained in Section 40(a)(ia) of the Act holding that the Assessee had failed to deduct tax from such payments under Section 195 of the Act in respect of reinsurance premium paid to non-resident parties. Before the CIT(A) the case set up by the Assessee was that in absence of business connection (in terms of the Act) or permanent establishment (in terms of applicable double taxation avoidance agreement) of non-resident payees in India, the remittances were not chargeable to tax in India. Therefore, the provisions of Section 195 and 40(a)(ia) of the Act were not attracted. The CIT(A) has returned a finding that for the Assessment Year 2012-2013 none of the non-resident payees had either a business connection in terms of the provisions of the Act nor a permanent establishment in India in terms of the applicable double taxation avoidance agreement. The CIT(A) noted that the foreign general insurance companies were not permitted to set up branch in India prior to financial year 2016-17. The CIT(A) relied upon the financial statements and

disclosures made by the non-resident payees with IRDA in supported the findings that the none of the non-resident payees had presence in India during the previous year relevant to the Assessment Year 2012-2013. Having given thoughtful consideration to the rival submissions and on perusal of record, we are of the considered view that there is no infirmity in the above findings returned by the Learned CIT(A). The Revenue has not been able to place on record any material to dislodge the findings returned by the Learned CIT(A). No material has been placed before us to take a different view of the matter. We do not find any infirmity findings returned by the CIT(A) and therefore, we decline to interfere with the order passed by the Learned CIT(A) in this regard. Accordingly, Ground No.2 raised by the Revenue is dismissed.

### **Ground No.3**

84. Ground No.3 raised by the Revenue is as under:

3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in deleting the disallowance of Rs.1006.66 crore on account of reserve for unexpired risk without appreciating the fact the said reserved was created by the assessee on adhoc basis by considering the total premium earned from various segments during the relevant financial year."*

85. The Ground No. 3 raised by the Revenue pertains to Computation of Book Profit under Section 115JB of the Act. The Assessing Officer increased the profits as reflected in the Profit & Loss Account of the Assessee by the amount of Unexpired Risk Reserve ('URR'). According to the Assessing Officer URR represented an ad-hoc reserved created by way of appropriation of profits and therefore, deduction for the same could not be allowed to the Assessee. Assessing Officer further observed that

URR represented a contingent liability and therefore, provisions created for the same could not be allowed as deduction.

86. In appeal preferred by the Assessee on this issue, the Ld. CIT(A) reversed the decision of the Assessing Officer.
87. Being aggrieved, the Revenue has carried the issue in appeal before this Tribunal.
88. We have heard both the sides and have perused the material on record.
89. It emerges that identical issue had come up for consideration before Co-ordinate Benches of the Tribunal in the following cases:
- M/s. Munchener Ruckversicherungs-Gesellschaft Aktiengesellschaft in Munchen Vs. Commissioner of Income Tax – International Tax Circle 3(2)(2) [ITA Nos.937/Mum/2021, Assessment Year 2017-2018,dated 13/05/2022]
  - Deputy Commissioner of Income Tax Vs. National Insurance Co. Ltd. [ITA No.674,982&983/Kol/2012, Assessment Year 2005-2006, 2007-2008 and 2008-2009, dated 05/08/2016]
  - Cholamandalam MS General Insurance Co. Ltd. vs. Deputy/Assistant Commissioner of Income-tax, (LTU) [2022] 142 taxmann.com 3 (Chennai - Trib.)(26-08-2022)
  - M/s. Agriculture Insurance Company of India Ltd. Vs. Deputy Commissioner of Income Tax Circle 1(1), New Delhi. [ITA No.2620/Del/2007, Assessment Year 2004-2005, dated 22/01/2009]
  - Deputy Commissioner of Income Tax, Circle 6(2), Kolkata Vs. National Insurance Company Limited [ITA No.1030/Kol/2018, Assessment Year 2015-2016, dated 11/12/2019]
90. We have perused the above judicial precedents and find that the

identical issue has been decided in favour of the Assessee the Tribunal. The relevant observations/findings of the Tribunal are as under:

- (a) Unexpired Risk Reserve (URR) represents portion of net premium attributable to future risk period;
- (b) URR is not an ad-hoc or discretionary reserve and is computed scientifically based on actuarial methods and regulatory requirements as mandated by Insurance Act, 1938 and IRDA guidelines;
- (c) Rule 5 of the First Schedule to the Act specifically allows deduction for the URR while computing taxable income for general insurance business. Rule 6E of the Income Tax Rules, 1962 prescribed limits (e.g., 50% for fire and miscellaneous insurance, 100% for marine) for deduction of URR
- (d) URR does not fall under the reserves to be added back as specified under Explanation 1 to Section 115JB(2), as it is not a reserve created out of book profits voluntarily but under statutory compulsion for accounting for unearned premium.

91. The relevant extract of the decisions of Mumbai Bench of the Tribunal in the case of the case of **Munchener Ruckversicherungs Gesellschaft Aktiengesellschaftin Munchen** (*supra*), reads as under:

- "6. We find that the Id. 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 account while preparing financial statements for the year under consideration.*

7. *We find that the aforesaid facts and submissions made by the Id. 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 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 Id. 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 clauses (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. xx xx

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. ....*
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. xx xx

13. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we direct the Id. 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." (Emphasis Supplied)

92. The Revenue has failed to distinguish the above decisions of the Co-ordinate Benches of the Tribunal either on the facts or law. Therefore, respectfully following the same, we hold that in the facts and circumstances of the present case the URR created in case of the Assessee, being a company engaged in general insurance business, cannot be added back for the purpose of computation of Book Profits under Section 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. Accordingly, Ground No.3 raised by the Revenue is dismissed.

93. Thus, the present appeal preferred by the Revenue is dismissed.

**Cross-Objections[CO. 97/Mum/2024]**

94. Since we have dismissed the appeal preferred by the Revenue the Cross Objections preferred by the Assessee challenging the validity of the reassessment proceedings are dismissed as having been rendered infructuous.
95. In result, the present appeal preferred by the Assessee [ITA No.2616/Mum/2024] is Partly Allowed and appeal preferred by the Revenue [ITA No.2845/Mum/2025] as well as the Cross Objections [CO 97/Mum/2024] are dismissed.

**ASSESSMENT YEAR 2013-2014**

**ITA No.2618/Mum/2024 [Assessee's Appeal]**

96. Now we would take up appeal preferred by the Assessee for the Assessment Year 2013-2014 which is directed against the Order, dated 20/03/2024, passed by the CIT(A) whereby the appeal preferred by the Assessee against the Assessment Order, dated 29/12/2017, passed under Section 143(3) read with Section 147 of the Act was disposed off as dismissed.

**Ground No.2 to 4:**

97. We would first take up Ground No. 2 to 4 dealing with the merits of the disallowance of payments made by the Assessing Officer in respect of payments made by the Assessee to auto dealers which was confirmed by the Learned CIT(A). The said grounds of appeal read as under:

"2. *The CIT(A) was not justified in confirming the action of the AO of disallowing the payment of Rs.85,65,42,069 by the Appellant to the Auto Dealers.*

3. *The CIT(A) was wrong in observing that it has not been*

*brought out as to when the appellant had asked for the cross-examination of the auto dealers, as to how the appellant was prejudiced if the AO did not provide it an opportunity to cross-examine the auto dealers, and whether the auto dealers, if any had retracted their statements.*

4. *The CIT(A) further erred in confirming the action of the AO without providing an opportunity to the appellant to cross-examine the auto dealers.”*

98. During the course of hearing both the sides had agreed that our finding/adjudication on the Ground No.3 to 6 raised in appeal preferred by the Assessee for the Assessment Year 2012-2013 [ITA No.2616/Mum/2024] shall apply mutatis mutandis to Ground No.2 to 4 raised in the present appeal for the Assessment Year 2013-2014. Thus, keeping in view the parity in the relevant facts and circumstances, and adopting the reasoning given while adjudicating identical grounds raised in appeal preferred by the Assessee for the Assessment Year 2012-2013 [ITA No.2616/Mum/2024] hereinabove, we delete the disallowance of INR.85,65,42,069/-made by the under Section 37(1) of the Act read with Explanation 1 thereto by following the decision of the Co-ordinate Bench of the Tribunal in the case of **HDFC ERGO General Insurance Company Ltd. Vs. Assistant Commissioner of Income Tax**[ITA No.2836 to 2841/Mum/2025 & ITA No.3277 to 3281/Mum/2025 for the Assessment Year 2010-2011, 2011-2012, 2013-2014, 2015-2016 & 2016-2017]. Accordingly, Ground No.2 to 4 raised by the Assessee are allowed.

### **Ground No. 1**

99. Since we have allowed Ground No. 2 to 4 and have deleted the disallowances, Ground No. 1 raised by the Assessee challenging the validity of the reassessment proceedings is dismissed as having been rendered infructuous.

100. In result, the present appeal preferred by the Assessee [ITA No.2618/Mum/2024] is partly allowed.

**ASSESSMENT YEAR 2014-2015**

101. Now we would take up appeal preferred by the Revenue for the Assessment Year 2014-2015 which is directed against the Order, dated 20/03/2024, passed by the CIT(A) whereby the appeal preferred by the Assessee against the Assessment Order, dated 26/12/2019, passed under Section 143(3) read with Section 147 of the Act was partly allowed. The Revenue has also filed Cross Objections (CO 96/Mum/2024) challenging the validity of the reassessment proceedings.

**ITA No.2841/Mum/2024 (Revenue Appeal)**

102. We would first take up grounds raised by the Revenue in its appeal.

**Ground No.1 & 3**

103. Ground No.1 & 3 raised by the Revenue is as under:

- "1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the claim of the appellant for IBNR and IBNER without appreciating the fact the assessee company has created the provisions in anticipation of settlement of claims that were not ascertained and ignoring the fact the assessee company is yet to assess the loss and determined the amount of compensation thereby making this liability as unascertained liability.*
  
3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in deleting the disallowance of Rs.846,55,00,000/- on account of reserve for unexpired risk without appreciating the fact the said reserved was created by the assessee on adhoc basis by considering the*

*total premium earned from various segments during the relevant financial year.”*

104. During the course of hearing both the sides had agreed that our finding/adjudication on the Ground No.1&3 raised in appeal preferred by the Revenue for the Assessment Year 2012-2013 shall apply mutatis mutandis to Ground No.1&3 raised in by the Revenue in the present appeal for the Assessment Year 2014-2015. Thus, keeping in view the parity in the relevant facts and circumstances, and adopting the reasoning given while adjudicating Ground No. 1 & 3 of Revenue’s appeal for the Assessment Year 2012-2013 [ITA No.2845/Mum/2024] hereinabove, we dismiss Ground No.1&3 raised by the Revenue.

**Ground No.2**

105. Ground No.2 raised by the Revenue are as under:

"2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on account of reinsurance premium paid outside India of Rs.44,87,29,401/- without appreciating the fact that the deduction of TDS was not made on these payment u/s.195 of the Act, and it was neither approached the department u/s.195(2) before remitting the payment to non-resident nor filed the prescribed undertaking alongwith the certificate from an accountant while making remittance reinsurance. Further the Ld. CIT(A) has also not appreciated the fact that the payment of reinsurance premium is in violation of section 2(9) of the Insurance Act, 1938 and accordingly the said payment is contravention of the existing law and also not allowable expenses u/s.37(1) of the Act.*

106. Ground No. 2 raised by the Revenue challenges the order passed by the Learned CIT(A) deleting the disallowance to the extent of INR.44,87,29,401/- made by the Assessing Officer in respect reinsurance premium paid to the non-resident parties.

107. We have dealt with identical issue in appeal preferred by the Revenue for the Assessment Year 2012-2013 [ITA No.2845/Mum/2024]. For the Assessment Year 2012-2013, after considering the identical submission made by the both the sides and taking into consideration the material on record, we declined to interfere with the order passed by the Leaned CIT(A) on this issue.

108. For the Assessment Year 2014-2015, the learned CIT(A) has disposed of the ground raised by the Assessee challenging the disallowance made by the Assessing Officer in respect of re-insurance premium paid to the non-resident parties in the following manner:

*"6.3 Ground no. 3: It pertains to addition on account of reinsurance premium of Rs. 44,87,29,401/- ceded outside India.*

*6.3.1 The AO noted that appellant had collected premium from clients in India and ceded a portion of the premium to foreign insurers depending upon quantum of business, risk-sharing and negotiations. Such premium had been deducted from total premium declared in P/L account. When asked as to whether TDS had been deducted/withholding tax made on these amounts, appellant's submissions on this issue before AO are summarized below:*

*(i) As per IRDA guidelines/regulations, appellant can undertake such reinsurance business outside India with such cross-border re-insurers who do not have any branch in India.*

*(ii) No withholding tax obligations arises to appellant on such remittances as the cross-border insurers (except Swiss Reinsurance Company Ltd.) did not have any presence/permanent establishment in India.*

(iii) *Appellant also relied upon Hon'ble ITAT Mumbai in case of Aon Global insurance Services Ltd (ITA No. 5184 to 5186/Mum/2009), Swiss Reinsurance Co. Ltd ITA No. 1667/Mum/2014 (AY 2010-11) and M/s Bharti AXA Life Insurance Co. Ltd (ITA no.4805-4808) to support its claim.*

6.3.2 *The AO did not accept contentions of appellant and his reasons for doing so are summarized below:*

- (a) *The event of selling the insurance policy by the appellant takes place in India, any liability/loss claim on such reinsurance transactions arise in India through the brokers (most of whom are situated in India), most of the time reinsurance premium is received from Indian Insurer (II) by the broker in India who also settle the claim (if any) and after deducting their commission remit the net amount to the non-resident insurer (NR). These events establish that reinsurance income of NR accrues and arises in India and is also received in India wherever the broker is located in India. Thus, section 5(2) of Income Tax Act is applicable in such cases of reinsurance remitted to NRs by appellant. Once chargeability of income in India is so established, provisions of withholding tax u/s 195 of Income Tax Act 1961 kick in which appellant has not adhered to.*
- (b) *The NRs and appellant are not doing one-off transaction but are involved in continuous transactions over the period of treaty/agreement between NRs and appellant while such treaties keep on getting over for some cases and get created for some other cases. NRs depend fully upon appellant with respect to any risk analysis and NRs reimburse any claims made by appellant.*
- (c) *Due to amendment in as per Insurance Law (Amendment) Act 2015 and IRDA (General insurance-reinsurance) Regulations 2016, a foreign company engaged in reinsurance business can do so only through a branch established in India and hence presence of a PE is prerequisite for NR to carry out any such business in India. Also, rule 6 of First schedule to income Tax Act becomes applicable in*

*such cases.*

- (d) In cases where brokers remit the reinsurance premium to NRs, said brokers act as agent of NR and liabilities of appellant stands discharged as per IRDA guidelines. Thus, principal & agent relationship exists between reinsurance agent and NRs.*
- (e) AO also cited case laws in favour of the Department:
  - (i) R.D. Aggarwal & Company 56 ITR 20, 128 ITR 27 (Mad)-w.r.t. business connection*
  - (ii) Kanchan ganga Sea Foods Ltd AIT 2010 264 SC, Van Oordac Jet India P Ltd 112 ITD 79, Transmission Corporation of Andhra Pradesh 239 ITR 587, Poompuhar Shipping Corporation Ltd 109 ITD 226, Frontier Offshore Exploration India Ltd ITA No. 2037/Mads/06, West Asia Maritime Ltd (ITAT Chennai), AAR in Rajiv Malhotra (in Re)- w.r.t. withholding tax (f) AO also held, without prejudice to the above reasons, that such payments were allowable u/s 37(1) of the Act also in view of decision in case of United India Insurance Co. Ltd (ITA No. 2107/Chny/2014 dated 28/08/2018)**

*6.3.3 During the present appeal proceedings, appellant made similar submissions as made before the AO. Appellant also relied upon more decisions, as below, in its favour:*

- (a) Cholamandalam MS General Insurance Co Ltd 102 Taxmann.com 292 (Mad HC)*
- (b) Cholamandalam MS General Insurance Co Ltd 142 Taxmann.com 3 (ITAT Chennai)*
- (c) Tata AIG General Insurance Co. Ltd 141 taxmann.com 70 (Mumbai ITAT)*

*6.3.4 Admissibility of additional evidences: Vide notice dated 30/08/2023, this office had specifically asked the appellant to produce the copies of agreement between appellant and Non Resident Insurers (NRs), details of premium ceded in this assessment year, details of TDS deducted and paid along with explanation if no TDS deducted/less deducted, evidences that all NRs were*

*registered/certified in their home country and if it were not so, then copy of approval of IRDA and copy of reinsurance program approved by IRDA.*

*Vide submissions dated 14/09/2023, the appellant filed the details in support of its claim which were sent to the AO by this office on 13/10/2023. It is noted here that even though the AO had made additions of Rs. 44,87,29,401/- in the impugned order, as per details of such payments furnished by the appellant vide submissions dated 14/09/2023, the actual amount of payment on this account was Rs. 46,79,01,277/-.*

*Vide report dated 09/01/2024, the AO stated that the Hon'ble ITAT Chennai in case of United India Insurance vs DCIT(LTU) ITA No. 1753, 1605, 1606,1607, 1608, 1609 & 1610/Chny/2011 dated 28/08/2018 had decided this issue against the assessee holding that merely because the incident happened during the year which is the basis for making a claim that cannot be the reasons for allowing compensation payable by the assessee for relevant assessment year & that such payment has to be allowed in the year in which compensation was determined.*

*I have gone through the submissions of the appellant carefully and I find that the AO had provided sufficient opportunities of hearing to the appellant but it is not apparent from record in appeal whether any specific query had been raised by the AO, during the assessment proceedings, regarding the details furnished during these appeal proceedings.*

*In view of the above and also considering that the additional evidences submitted by the appellant are crucial to decide the issues in appeal as well as to compute the actual income of the appellant, relying upon the decisions of Hon'ble Courts in Alcon Resort Holding Ltd [2023] 151 taxmann.com 98 (Bombay), Daljit Singh Sra [2017] 80 taxmann.com 271 (Punjab & Haryana), Suretech Hospital & Research Centre Ltd. [2007] 164 TAXMAN 168 (BOM.) and Rankin Infrastructure (P.) Ltd. [2022] 142 taxmann.com 37 (Mumbai - Trib.), the additional evidences submitted by the appellant are hereby admitted in terms of Rule 46A of I.T Rules 1962.*

*It is noted that in its rejoinder dated 12/01/2024, to remand report, the appellant reiterated its earlier submissions on merits of the issue.*

6.3.5 *On merits of the issue, I have perused facts of the case along-with the case laws cited by the AO and the appellant. It is seen that one has to first establish the chargeability of the sum in India under section 5 rws 9 of the I.T. Act as well as under the relevant DTAA and application of section 195 and 40(a)(i) of the I.T. Act is secondary.*

*To establish the chargeability of income of NRs in India, AO has relied upon, among other reasons, on the fact of amendments in Insurance Act and IRDA regulations to point out that due to such amendments, the NRs compulsorily had to have a 'branch' in India which would create a 'business connection' or a 'permanent establishment' in India and which, in turn, would lead to income of NRs taxable in India.*

*However, in my considered opinion, AO has perhaps been led only by a presumption that any business connection or permanent establishment existed in India on account of such amendment in insurance Acts and IRDA Act.*

xx xx

6.3.6 *In the present case, the appellant has provided the details of NRs and submissions on taxability of their receipts based upon DTAAs. It is noted that the appellant ceded reinsurance to the following NRs in FY 2013-14:*

1. *ARIG Re, Bahrain*
2. *Asian Re, Thailand*
3. *Fair Pool, Turkey*
4. *Malayan Re, Philippines*
5. *Mitsui Sumitomo, Singapore*
6. *National Indemnity, USA*
7. *SCR Morocco, Morocco*
8. *SCORE Re, Singapore*
9. *Tokio Marine, Malayasia*
10. *Trust International, Bahrain*

*It is noted here that as mentioned in a preceding para also, even*

though the AO had made additions of Rs. 44,87,29,401/- in the impugned order, as per details of such payments furnished by the appellant vide submissions dated 14/09/2023, the actual amount of payment on this account was Rs. 46,79,01,277/-.

It is seen from the submissions of the appellant that Double Taxation Avoidance Agreements existed with the countries of residence of these entities with India in cases of all the entities.

It is also noted that the appellant had also obtained the details of Tax Residency Certificates (in Form F) & 'no PE' declaration of these entities.

Even otherwise, as to whether any branch of these entities existed in India pursuant to amendments in IRDA & Insurance Act in 2015 & 2016, IRDA website, <https://irdai.gov.in/frbs>, shows that none of the above entities had branch in India in FY 2013-14. In fact, the first branches of foreign reinsurers were registered by IRDA in December 2016.

Thus, based upon the details furnished by the appellant and the details available at IRDA website, the issue of taxation of such amount in India arises in none of the above cases and taxability of payments made to all entities has to be decided in the background of facts of this case.

It is seen that reasons (viz. existence of a PE/business connection and taxability in India of such premium ceded to foreign reinsurers by Indian Insurers) set out by the AO, while disallowing these payments made by the appellant, have been elaborately dealt by Hon'ble ITAT, Chennai in decision for AY 2006-07 to 2009-10 in case of Royal Sundaram Alliance Insurance Co. Ltd [2023] 154 taxmann.com 19 (Chennai - Trib.) wherein the issue was decided in favour of the assessee placing reliance upon Tribunal's own order in case of the same assessee in ITA Nos.1356/Chny/2013, 1626/Chny/2011 & 2310/Chny/2014 and ITA Nos.1628, 1629 & 1630/Chny/2011 and ITA No. 1666/Chny/2011 order dated 26-8-2022 for AY 2005- 06 to 2010-11, holding that reinsurance premium paid to NRRs cannot be disallowed u/s 40(a)(i) of the Act, for failure to deduct TDS u/s 195 of the Act, because, reinsurance ceded to non-resident reinsurers is not taxable in India under Income-tax Act, 1961 or under DTAA between India, and respective countries.

To better understand the decisions of Hon'ble Tribunal, the

*relevant paras of decision in case of Cholamandalam MS General Insurance Co. Ltd. [2022] 142 taxmann.com 3 (Chennai-Trib.)[26-08-2022] are reproduced below:*

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The important aspect of these decisions is that they were pertaining to the periods prior to FY 2016-17 when the foreign reinsurers did not have any branches in India even under IRDA Act/regulation and hence, the said decisions can be taken as applicable for those NRs who did not have any branch in India prior to FY 2016-17. Thus, relying upon aforementioned decisions of Hon'ble Tribunals, specifically in cases of Tata AIG General Insurance Company Ltd (supra) and Cholamandalam MS General Insurance Co. Ltd. (supra), it is hereby held that for as none of the entities had any branches in India in FY 2013-14 as has been brought out in preceding paras of this order, no disallowance u/s 40(a)(i) was called for in the present case of the appellant. Further, as has been discussed in preceding paras of this order and as has been held by Hon'ble Courts/Tribunals, such payments were made for the business of the appellant and the same cannot be held as disallowable u/s 37(1) of the Act as the same was neither prohibited nor was a capital or personal expenditure. The disallowance made by the AO in all these cases is hereby deleted. Since various sub-grounds of ground no. 3 of present appeal are interlinked with the main issue decided above, these sub-grounds do not require separate adjudication. In effect, ground no. 3 of appeal is allowed.”(Emphasis Supplied)

109. On perusal of above, we note that for the Assessment Year 2014-2015, applying reasoning identical to that applied for the Assessment Year 2012-2013, the CIT(A) has deleted the disallowance made by the Assessing Officer in respect of payment of reinsurance premium paid to non-resident parties did not have any business connection or permanent establishment in India during the relevant previous year. We do not find any infirmity either in the approach or the reasoning adopted by the Learned CIT(A) while returning the factual finding for the assessment year before us. Thus, keeping in view the parity in the relevant facts and circumstances, and adopting the reasoning given while adjudicating identical issue in Revenue's appeal for the Assessment Year 2012-2013 [ITA

No.2845/Mum/2024] hereinabove, we dismiss Ground No.2 raised by the Revenue.

110. Thus, the appeal preferred by the Revenue is dismissed.

**C.O.No.96/Mum/2024 (Assessee's Cross Objection)**

111. Since we have dismissed the appeal preferred by the Revenue(ITA No.2841/Mum/2024) for the Assessment Year 2014-2015., the Cross Objections raised by the Assessee challenging the validity of the reassessment proceedings are dismissed as having been rendered infructuous.

112. In result, appeal preferred by the Revenue [ITA No.2841/Mum/2024] as well as Cross Objections [CO No.96/Mum/2024] preferred by the Assessee for the Assessment Year 2014-2015 are dismissed.

**ASSESSMENT YEAR 2015-2016**

**ITA No.2836/Mum/2024 [(Revenue Appeal)**

113. We would next take up appeal preferred by the Revenue for the Assessment Year 2015-2016 which is directed against the Order, dated 20/03/2024, passed by the CIT(A) whereby the appeal preferred by the Assessee against the Assessment Order, dated 01/03/2018, passed under Section 143(3) read with Section 147 of the Act was partly allowed.

**Ground No.1 & 2:**

114. Ground No. 1 and 2 raised by the Revenue reads as under:

"1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in holding that the profit on sale of investments has to be taxed as income from*

*capital gain and not income from business.*

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that income of Rs.14,59,55,79,315/- is exempt under Section.10(38) of the I.T.Act, 1961."*

115. Ground No. 1 & 2 raised by the Revenue relate to the exemption claimed by the Assessee under Section 10(38) of the Act in respect of profit on sale of investment.
116. When the above claim for exemption came up for scrutiny during the assessment proceedings, the Assessee relied upon letter issued by the Ministry of Finance [F. NO. 153/24/2006-TPL, dated 21/02/2006] to the Insurance Regulatory and Development Authority (IRDA) wherein it was mentioned that general insurance companies are to be treated at par with other assessees who are entitled for exemption under Section 10 of the Act for long term capital gains and that non-life insurers are eligible for claiming such exemptions [including u/s 10(38) of the Act] subject to fulfillment of conditions mentioned in the particular clause of Section 10 under which exemption is sought. The Assessee contended that in case the legislature had intended to deny the non-life insurers the benefit of exemption, it would have amended Section 10(38) of the Act also w.e.f. 01/04/2011 but it did not do so and the above clarification, dated 21/02/2006, continued to hold good and was applicable for the relevant assessment year. The Assessee also placed reliance upon the Circular No. 6 of 2016 issued by the Central Board of Direct Taxes and judicial precedents. However, the Assessing Officer was not convinced. According to the Assessing Officer the income of Assessee was to be assessed under Section 44 of the Act read with Rule 5 of First Schedule of Act [for short 'Rule 5']. Rule 5 provided method of computation of income for insurance

businesses other than life insurance business. Assessing Officer was of the view that Section 44 of the Act starts from non-obstante clause, and therefore, the benefit of Section 10(38) of the Act cannot be granted to the Assessee. Assessing Officer held that the investments made in shares and securities were part of business of the Assessee and the profits on sale of such investments could not be held to be capital gains by virtue of Rule 5 (as amended w.e.f. 01/04/2011) read with Section 44 of the Act. The purpose of the Assessee was not to 'invest' and Section 10(38) of the Act allowed benefit of exemption only to activity of 'investment'. Therefore, exemption claimed by the Assessee under Section 10(38) of the Act in respect of profit from sale in investment could not be allowed to the Assessee.

117. In appeal preferred by the Assessee on this issue, the CIT(A) granted relief and allowed exemption claimed by the Assessee under Section 10(38) of the Act in respect of profits on sale of investment.
118. Being aggrieved, the Revenue has carried the issue in appeal before this Tribunal.
119. We have heard both the sides and have perused the material on record including the judicial precedents cited during the course of hearing.
120. In our view, for the purpose of dealing with the issue raised for consideration it would be appropriate to refer to the relevant factual/legal background as emanating from material on record.
121. We note that Clause (b) of Rule 5 as in force prior to 01/04/1989 read as under:

*"Computation of profits and gains of other insurance business*

5. *The profits and gains of any business of insurance other than life insurance shall be taken to be the profit before tax and appropriations as disclosed in the profit and loss account prepared in accordance with the provisions of the Insurance Act, 1938 (4) of 1938) or the rules made thereunder or the provisions of the Insurance Regulatory and Development Authority Act, 1999 (4 of 1999) or the regulations made thereunder subject to the following adjustments:*
- (a) subject to the other provisions of this rule, 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 43B in computing the profits and gains of a business shall be added back;*
  - (b) Any amount either written off or reserved in the accounts to meet depreciation of or loss on the realization of investments shall be allowed as a deduction and any sum taken credit for in the accounts on account of appreciation of or gain on the realization of investment shall be treated as part of the profits and gains.*
  - (c) such amount carried over to a reserve for unexpired risks as may be prescribed in this behalf shall be allowed as a deduction."*

122. By virtue of Finance Act, 1988, Clause (b) of Rule 5 was deleted. The Finance Act amended sub-rule (b) of Rule 5 to provide for exemption of the profits earned by them on the sale of investment. As a corollary, it also provided that the losses incurred by the General Insurance Corporation on the realization of the investment shall not be allowed as a deduction in computing the profits chargeable to tax. Circular 528 of 1988, dated 16/12/1988 issued by the Central Board of Direct Taxes explained the amendment was made to enable the General Insurance Corporation and its subsidiaries to play a more active role in capital markets for the benefit of policy-holders.

123. Based upon Malhotra Committee's recommendations, Insurance Regulatory and Development Authority (IRDA) was created to regulate insurance sector. In Financial Year 2001-2002, IRDA introduced regulations for preparation of accounts by the general insurance companies.
124. Thereafter, Section 10(38) of the Act was introduced by the Finance (No. 2) Act, 2004 (w.e.f. April 1, 2005), to provide for exemption from taxation of capital gains arising on sale of equity shares in company or units of equity-oriented fund upon fulfillment of certain conditions. On 21/02/2006, vide F. No. 153/24/2006-TPL, the CBDT clarified to IRDA that general insurers would be treated at par with any other assessee and would be eligible for claiming exemption under Section 10(38) of the Act subject to fulfillment of conditions mentioned in that clause for exemption.
125. Later, the Finance (No. 2) Act 2009 re-inserted Clause (b) of Rule 5 w.e.f. 01/04/2011 and the same read as under:
- "(b)(i) *deduction in respect of any amount either written off or provided in the accounts to meet diminution in or loss on realization of investments in accordance with the regulations made by Insurance Regulatory and Development Authority:*
- (ii) *increase in respect of any amount taken credit for in the accounts on account of appreciation of or gains on realization of investments in accordance with the regulations made by Insurance Regulatory and Development Authority"*
126. Circular No. 5/2010, dated 03/05/2010, issued by the CBDT explained that the purpose of re-insertion of Clause (b) in Rule 5 was to provide that any increase in respect of any amount

credited in the books of accounts by reason of appreciation or gain on realization of investments in accordance with the regulations prescribed by IRDA shall be treated as income and shall be included in the computation of the total income. Similarly, it was provided that deduction shall be allowed in respect of any amount either written off or provided in the accounts to meet diminution in or loss on realization of investments in accordance with the regulations prescribed by IRDA.

127. Finance (No. 2) Act 2010 amended the above clause (b) of Rule 5 with effect from 01/04/2011 to read as under:

*"(b) (i) any gain or loss on realization of investments shall be added or deducted, as the case may be, if such gain or loss is not credited or debited to the profit and loss account*

*(ii) any provision for diminution in the value of investment debited to the profit and loss account, shall be added back"*

128. Circular No. 1 of 2011, dated 06/04/2011, issued by the CBDT explaining that as per the amended Clause (b) Rule 5 the unrealized gains due to appreciation in the value of investments was not be included in the total income. Similarly, deduction was not to be allowed for provision for losses due to diminution in the value of investments (as this was not a realized loss).

129. Thus, between 01/04/1989 and 31/03/2011, the specific addition/deduction of loss/gains on/from sale of investments were not available to the general insurers but they could still claim exemption u/s 10(38) on securities specified in that section. However, the amendment was brought w.e.f. 01/04/2011 in the form of re-insertion of clause (b) to Rule 5

and hence, from Assessment Year 2011-12 onwards, the profits or loss on sale/realization of investments by general insurers became specifically liable for addition/deduction. However, Section 10(38) was not amended to exclude the exemption granted to general insurers and clarification dated 21/02/2006 (supra) issued by the CBDT to IRDA also remained in force.

130. The above legal background supports the contention of the Assessee that the profits on sale of those investments which qualified the conditions mentioned in Section 10(38) of the Act would be eligible for exemption under Section 10(38) of the Act even after Clause (b) of Rule 5 was amended by the Finance (No. 2) Act 2010 with effect from 01/04/2011 and therefore, the Assessee correctly claimed exemption under Section 10(38) of the Act for the Assessment Year 2011-12 and onwards.
131. In relation of non-obstante clause contained in Section 44 of the Act it was submitted on behalf of the Assessee that Section 44 of the Act provides for computation of income of an insurance company as per the provisions contained in First Schedule to the Act. It was vehemently contended that once any clause of Section 10 is triggered, the income falling under the ambit of said clause does not enter computation mechanism and therefore, non-obstante clause contained in Section 44 of the Act does not get attracted. On perusal of the various clauses of Section 10 of the Act, we are of the view that the aforesaid contention advanced on behalf of the Assessee may not apply to all clauses of Section 10 of the Act. We note that Clause (37)/37A of Section 10 provide for exemption in respect of income chargeable under the head 'Capital Gains'. However, on perusal of Clause (38) of Section 10 we find that the expression used is 'any income'. Therefore, in our view, the contention

advanced on behalf of the Assessee holds good in case of Clause (38) of Section 10 of the Act. We note that identical issue had come up for consideration before the Co-ordinate Benches of this Tribunal in the case of the Assessee for the assessment years falling after the amendment to Clause (b) Rule 5 which came into effect from 01/04/2011 and the same has been decided in favour of the Assessee for the Assessment Years 2011-2012 [ITA No.5116/Mum/2016, dated 06/11/2019, @ Page 5 para 6], and 2012-2013 & 2013-2014 [ITA No.3151&3149/Mum/2018, dated 11/08/2020 @ Page 6 Para 10]. Further, the Delhi Bench of the Tribunal has, in case of Oriental Insurance Co. Ltd. vs. Deputy Commissioner of Income-tax [2023] 146 taxmann.com 297 (Delhi - Trib.)/[2023] 102 ITR(T) 122 (Delhi - Trib.) held that an assessee-company engaged in business of general insurance would be entitled to claim exemption under Section 10(38) of the Act in respect of the profits derived from sale of investment during the previous year relevant to Assessment Year 2011-2012. It is not the case of the Revenue that in present case the conditions specified in Section 10(38) of Act are not fulfilled.

132. Therefore, in view of the above, we concur with view taken by the Ld. CIT(A) and hold that there is no infirmity in the order passed by the Ld. CIT(A) in allowing exemption under Section 10(38) of the Act as claimed by the Assessee respect of profits arising from sale of investments. Accordingly, we decline to interfere with the order passed by the Ld. CIT(A) on this issue. Ground No.1 & 2 raised by the Revenue are dismissed.

**Ground No.3**

133. Ground No. 3 raised by the Revenue reads as under:

"3. *whether on the facts and circumstances of the case and in*

*law, the Ld. CIT(A) has erred in not appreciating the fact that the amount of disallowance under Section.14A of the I.T. Act, 1961 has to be computed as per rule 8D of I.T.Rules, 1962 when the computation of the assessee was not found to be correct and as held in the order of the Hon'ble High Court in the case of M/s. Godrej & Boyce Manufacturing Co. Ltd."*

134. The Ground No. 3 raised by the Revenue pertains to disallowance under Section 14A on income computed as per normal provisions of the Act.
135. Having considered the rival submissions and on perusal of the record we find that identical issue had been decided in favour of the Assessee by the Co-ordinate Benches of the Tribunal in the case of the Assessee for the Assessment Years 2000-2001 to Assessment Year 2013-2014. The relevant extract of the decision of the Tribunal in the case of the Assessee for the Assessment Year 2012-2013 and 2013-2014 [ITA Nos.3151 & 3149/Mum/2018, dated 11/08/2020] reads as under:

"8. *We shall now advert to the grievance of the revenue that the CIT(A) had erred in not appreciating that the amount of disallowance u/s 14A of the I.T Act, 1961 has to be computed as per Rule 8D of I.T Rules, 1962. Briefly stated, the assessee had claimed the following income as exempt u/s 10(38) of the Act:*

Sr. No.	Particulars of Income	Amount (in INR.)
1.	Interest on tax free bonds	2,58,46,321/-
2.	Interest on tAx Free Securities/Bonds under Section.10(15)(iv)(h)	94,17,163/-
3.	Dividend u/s.10(34)	3,39,26,96,410/-
4.	Profit on Sale of Investments u/s.10(37)	6,39,06,24,962/-
	<i>Total</i>	<i>9,81,85,84,856/-</i>

*In the course of the assessment proceedings, the assessee was called upon to explain as to why disallowance of expenditure incurred for earning of the exempt income may not be worked out as per Sec.14A r.w. Rule 8D. In reply, it*

was submitted by the assessee that as it was a wholly owned Government of India undertaking into general insurance business, whose income was computed as per the provisions of Sec. 44 of the Act r.w Rule 5 of the 'First Schedule', therefore, the provisions of Sec. 14A were not applicable in its case. Alternatively, without prejudice to its aforesaid claim, the assessee on a proportionate basis attributed an amount of Rs. 2,10,53,225/- i.e part of the expenses incurred by the Investment Department towards earning of the exempt income. However, the A.O rejected the aforesaid claim of the assessee and worked out the disallowance u/s 14A r.w Rule 8D at Rs. 13,05,70,512/-. On appeal, the CIT(A) relying on the orders passed by the Tribunal and also that of his predecessor in the assessee's own case for the preceding years concluded, that the provisions of Sec. 14A were not applicable in the case of the assessee company, as the same being a General Insurance Company was governed by the provisions of Sec. 44 of the Act. As such, the CIT(A) vacated the disallowance of Rs. 13,05,70,512/- worked out by the A.O u/s 14A r.w Rule 8D.

9. The revenue being aggrieved with the deletion of the disallowance u/s 14A r.w Rule 8D of Rs. 13,05,70,512/-, has carried the matter in appeal before us. It was submitted by the Id. A.R that the issue was squarely covered by the order of the Tribunal in the assessee's own case for A.Y 2011-12 in ITA No. ITA 5116/Mum/2016, dated 06.11.2019. Also, it was submitted by the Id. A.R that the issue that the provisions of Sec. 14A were not applicable in the case of the assessee was decided by the Tribunal in the assessee's own case for A.Y 2000-01 to 2010-11 (copies placed on record). We have perused the order passed by the Tribunal while disposing off the appeal of the assessee for A.Y 2011-12 in ITA No. 5116/Mum/2016, dated 06.11.2019, and find the aforesaid claim of the Id. A.R in order. The Tribunal while disposing off the appeal of the assessee for the immediately preceding year i.e A.Y 2011-12 in ITA No. 5116/Mum/2016, dated 06.11.2019, had after relying on the view taken by a coordinate bench while disposing off the assessee's appeal for A.Y 2010-11, had observed, that the provisions of Sec. 14A has no applicability in the cases of General Insurance Companies, which are governed by the special provisions laid down in Sec. 44 of the Act. It was observed by the Tribunal in context of the issue under consideration, as under:

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As the facts and the issue in context of the aforesaid issue under consideration had not witnessed any change during the year before us, we thus respectfully follow the aforesaid view taken by the Tribunal in the assessee's own case for A.Y 2010-11 in ITA No. 5116/Mum/2016, dated 06.11.2019. Accordingly, finding no infirmity in the order of the CIT(A), who in our considered view had rightly vacated the disallowance of Rs. 13,05,70,512/- made by the A.O u/s 14A r.w Rule 8D, uphold his order to the said extent. The Ground of appeal No. 3 is dismissed.

136. In view of the above, we hold that provisions of Section 14A of the Act are not applicable in the cases of a general insurance company governed by the special provisions laid down in Section 44 of the Act. Accordingly, we decline to interfere with the order passed by the Ld. CIT(A) on this issue. Ground No.3 raised by the Revenue is dismissed.

**GROUND NO.4 & 5**

137. Ground No. 4 and 5 raised by the Revenue reads as under:

- "4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the premium paid by the assessee on purchase of Government Securities, on Amortisation, was allowable as Revenue Expenditure without appreciating the fact that there is no provision for amortization of such premium in the I.T.Act, 1961.
5. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the premium paid by the assessee on purchase of Government Securities, on Amortisation, was allowable as Revenue Expenditure without appreciating the fact that such premium paid is capital in nature and hence no allowable u/s.37 of I.T.Act, 1961."

138. The Ground No. 4 & 5 raised by the Revenue pertains deduction

claimed by the Assessee in respect of amortized securities premium.

139. The relevant facts in brief are that the Assessee in the course of carrying on insurance business is required to invest fund in accordance with the Insurance Act, 1938 and IRDA regulations in specific securities. The Assessee followed the policy of amortizing the premium paid of purchase of the security over the residual life/period of maturity of security. The deduction claimed by the Assessee in respect of the aforesaid amortized amount was disallowed by the Assessing Officer holding as under:

- (a) Similar additions have been made in assessment orders of previous years viz. Assessment Year 2005-2006 to 2011-2012
- (b) Premium paid on purchase of securities is part of cost of acquisition of such assets and deduction is allowable only at the time of sale/maturity.
- (c) The treatment of such premium ought to be similar to diminution in value of investments which are added back by appellant suo motu.
- (d) IRDA regulations may be appropriate for determination of net wealth of appellant but such guidelines cannot override the other accounting norms and Assessing Officer can make adjustment for expenses not allowable under Section 30 to 43B of the Act.
- (e) Such expenses are capital in nature & disallowance under Section 37(1) of the Act.

140. In appeal preferred by the Assessee, the CIT(A) allowed the ground raised by the Assessee challenging the above disallowance by following the judgment of the Hon'ble Delhi High Court in the case Sahara India Life Insurance Co. Ltd. [2023] 150 taxmann.com 23 (Delhi) and the decision of Mumbai Bench

of the Tribunal in the case of New India Assurance Co. Ltd. [ITA Nos.3151&3149/Mum/2018,dated 11/08/2020 for the Assessment Year 2012-2013 and 2013-2014

141. Being aggrieved, the Revenue has preferred appeal before the Tribunal.
142. We have heard the rival submissions and have perused the material on record.
143. We note that while allowing the ground raised by the Assessee in appeal, the Ld. CIT(A) had placed reliance upon the Tribunal in ITA No.3562/Mum/2007, and 3180/Mum/2009 in the case of the Assessee. We have perused the aforesaid decision of the Tribunal, dated 27/02/2017 pertaining to Assessment Year 2006-2007 and 2007-2008. We note that the Co-ordinate Bench of the Tribunal had accepted Assessee's claim for deduction for amortized securities premium expenses.
144. To the same effect is the recent decision of the Tribunal in the case of the Assessee for the Assessment Year 2014-2015 [**ITA Nos.2594&3150/Mum/2018, dated 11/03/2025**]on which reliance was placed during the course of hearing. In that case the Co-ordinate Bench of the Tribunal had dismissed identical ground raised by the Assessee and allowed deduction for amortized securities premium amount for the Assessment Year 2014-2015 holding as under:

"22. *We heard the parties and perused material on record. We notice that the coordinate bench while considering identical issue in the case of TATA AIG General Insurance Co. Ltd. vs. ITO (ITA No. 2597/M/2009), wherein the issue of Amortization of Premium on Securities has been explained by way of example. The relevant extracts of the*

*same is reproduced hereunder –*

"2. *We may first take up the assessee's appeal in ITA No: 2597/Mum/2009. The first ground relates to the disallowance of the assessee's claim for amortization of the premium paid on the purchase of investments amounting to Rs. 1,91,33,945/-. The brief facts in this connection may be noticed. In the course of carrying on the business the assessee is required to invest its funds in specific debt securities of Government or PSU Bands or other securities in accordance with the Insurance Act, 1938 and IRDA (Investment Regulations, 2000). During the relevant previous year the assessee purchased certain debt securities at a price which was slightly higher than the face value of the security because of accumulated interest. According to the terms of the issue of the securities, the assessee was entitled to get only the face value at the time of redemption on maturity. For example, if a security of the face value of 1,000/- was purchased by the assessee at '1,003/-, the difference of 3/- representing interest, the historical cost to the assessee would be '1,003/-. However, at the time of maturity, the assessee would get only 1,000/-. According to Schedule A to the IRDA (Auditor's Report) Regulations, 2002, which prescribes the accounting principles for preparation of financial statements in Part I thereof, the assessee was required to prepare the financial statements in the manner laid down in the said Schedule. We are concerned only with the manner in which the debt securities purchased by the assessee was to be disclosed in the Balance Sheet. Rule 6 of the Schedule prescribes the procedure to determine the value of investments. Clause (b) of Rule 6 provided that "Debt securities, including Government securities and redeemable preference shares, shall be considered as "held to maturity" securities and shall be measured at historical cost subject to amortization". Following this Rule, and taking the example given above further, the assessee 20 ITA No.2594 & 3150/Mum/2018 The New India Assurance Company Ltd. was required*

*to show the value of the security in its Balance Sheet at 1,003/- which was the historical cost and the difference between the face value of 1,000/- and the historical cost of `1,003/-, namely, 3/- was to be amortized. The amortization naturally was to be for a period from the date of purchase of the security and the date of maturity. For example, if the debt security was to mature in five years and the assessee had acquired it after two years from the date of issue, there will still be three years remaining for its maturity. In the example given above, the excess of '3/- paid by the assessee was to be amortized over the remaining period of three years. The basis behind this Rule, in our humble understanding, is to value the investment only at its face value which is what the assessee would get at the end of the period and any excess paid over the face value while acquiring the security though will have to be shown as part of the cost, but still would have to be amortized over the remaining period till the maturity of the security so that the excess paid is properly accounted for and also the true picture is shown in the Balance Sheet. This appears to be the rationale behind the requirement.*

*(Emphasis supplied)*

23. *We further notice that the coordinate bench in assessee's own case for AY 2006-07 has followed the above decision and decided the issue favour of the assessee by holding that –*

*"16. We have heard the rival submissions and also perused the relevant finding given in the impugned orders. The assessee in the course of carrying of its insurance business, is required to invest its fund in specific debts securities of government or PSU bonds or other securities in accordance with the Insurance Act, 1938 and IRDA regulations. The assessee has purchased securities at a price which was slightly higher than the face value of the security because of accumulated interest on such securities According to the terms of issue of the securities, the assessee was to get only the face value at the*

*time of redemption or maturity. IRDA regulation prescribes, the accounting principle for preparation of financial statement, whereby the assessee is required to prepare the financial statements in the manner provided in the said regulation. The said regulation read with relevant rules given in the schedules therein, provides that debts securities including, Government securities shall be considered as "held to maturity" and shall be measured at historical cost subject to amortization. This IRDA regulation are binding on the insurance companies. The Tribunal in the case of Tata AIG General Insurance Company Ltd. has dealt this precise issue in detail after analyzing the relevant provision and the decision of the Hon'ble Supreme Court and observed and held as under:-*

- "7. *On a careful consideration of the facts and the rival contentions, we are of the view that the amortization claim cannot be considered as 'an expenditure or allowance within the meaning of rule 5(a) of the First Schedule. As held by the Supreme Court in the case 01 Indian Molasses Co. (Private) Ltd. vs. CIT, West Bengal (1959)'37 ITR 66:(SC}, spending In the sense paying out or away of money is the primary meaning of expenditure. Expenditure is what is paid out or away and is something which is gone irretrievably Expenditure, which is deductible for income tax, is one which is towards a liability actually existing at the time, but the putting aside of money which may become expenditure on the happening of an event is not expenditure. If this meaning is to be given to the word "expenditure" occurring in rule 5(a)- the amortization claim cannot be considered as expenditure and, therefore, cannot be added back to the balance of the profits. In General Insurance Corporation (of India vs. CIT (1999) 240 ITR 139 (SC). the Supreme Court held that even if an item of debit is considered as an expenditure, it should further be such an expenditure*

*contemplated in sections 30 to 43A and, therefore, unless there was a specific prohibition for such an allowance, the departmental authorities would not be justified in adding back the amount under rule 5(a). Therefore, even if the debit for amortization is considered as an expenditure, there is no specific prohibition against allowing such an expenditure under the provisions of sections 30 to 43B. The words "expenditure or allowance..... Which is not admissible under the provisions of sections 30 to 43B" appearing in the sub-rule has been explained by the Supreme Court to mean that there should be a specific prohibition against the expenditure or allowance in which case alone the Assessing Officer can add back the same to the balance of profits. It is common ground that there is no such specific prohibition against, the allowance of the expenditure in the above sections-of the Act. It may be noted that though rule 5(a) of the First Schedule considered by the Supreme Court in the above judgment was slightly different, but the words "any expenditure or allowance which is not admissible under the provisions of section 30 to 43A" were present and the same words being present in the amended sub-rule, they have to be given the same meaning as was given by the Supreme Court. Therefore, even if the debit for amortization is considered as an expenditure or allowance, there being so specific prohibition against the expenditure or allowance in section 30 to 43B, the departmental authorities were not justified in adding back the amount of the balance of the profits. The judgment of the Supreme Court in the case of General Insurance Corporation of India (supra) takes care of all the arguments advanced on behalf of the Revenue. We, therefore, delete the addition of Rs.1,91,33,945/-*

*and allow the first ground.” 22 ITA No.2594 & 3150/Mum/2018 The New India Assurance Company Ltd.*

*Since, no contrary decision have been brought to our notice, therefore, respectfully following the same, we hold that such an amortization claimed by the assessee as revenue expenditure is allowable. Accordingly, assessee’s ground no. 5 is treated as allowed.”*

24. *The facts for the year being identical, respectfully following above decision we dismiss the ground raised by the revenue.” (Emphasis Supplied)*

145. We find that there is no change in the facts and circumstances as prevailing during the relevant previous year. Therefore, respectfully following the above decision of the Tribunal in the case of the Assessee we decline to interfere with the order passed by the CIT(A) allowing deduction for amortized securities premium expenses. Thus, Ground No. 4&5 raised by the Revenue are dismissed.

### **Ground No.6**

146. Ground No. 6 raised by the Revenue reads as under:

6. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the provisions of Section 115JB of the I.T.Act, 1961 are no applicable in the case of the assessee.”*

147. The Ground No.6 raised by the Revenue pertains to Computation of Book Profit under Section 115JB.

148. The Revenue is aggrieved by the fact that the CIT(A) has overturned the decision of the Assessing Officer to enhance the Profits computed by the amount of (a) Unexpired Risk Reserve created during the relevant previous year and (b) by the amount of disallowance made under Section 14A of the Act.

149. We have confirmed the order passed by the Learned CIT(A) to the extent the Learned CIT(A) had deleted the addition by the Assessing Officer in respect of Unexpired Risk Reserve and the disallowance made under Section 14A of the Act. Therefore, we do not find any infirmity in the order passed by the CIT(A) holding that for the computing 'Book Profits' under Section 115JB of the Act the profits are not to be enhanced by the amount of Unexpired Risk Reserve and the disallowance made under Section 14A of the Act. Accordingly, Ground No.6 raised by the Revenue is dismissed.
150. Thus, the present appeal preferred by the Revenue for the Assessment Year 2015-2016 is dismissed.

**ITA No.2619/Mum/2024 [Assessee's Appeal]**

151. We would next take up appeal preferred by the Assessee for the Assessment Year 2015-2016 which is directed against the Order, dated 20/03/2024, passed by the CIT(A) whereby the appeal preferred by the Assessee against the Assessment Order, dated 01/03/2018, passed under Section 143(3) read with Section 147 of the Act was partly allowed.
152. The Assessee has raised 4 grounds of appeal. We would first take up Ground No. 2 to 4 raised by the Assessee dealing with the merits of the disallowance/additions made by the Assessing Officer

**Ground No.2 to 4:**

153. Ground No.2 to 4 pertaining to disallowance made in respect of payments made to auto dealers read as under:

"2. *The CIT(A) was not justified in confirming the action of*

*the AO of disallowing the payment of Rs.3,24,37,24,329 by the Appellant to the Auto Dealers.*

3. *The CIT(A) was wrong in observing that it has not been brought out as to when the appellant had asked for the cross-examination of the auto dealers, as to how the appellant was prejudiced if the AO did not provide it an opportunity to cross-examine the auto dealers, and whether the auto dealers, if any had retracted their statements.*
4. *The CIT(A) further erred in confirming the action of the AO without providing an opportunity to the appellant to cross-examine the auto dealers.”*

154. During the course of hearing both the sides had agreed that our finding/adjudication on the Ground No.3 to 6 raised in appeal preferred by the Assessee for the Assessment Year 2012-2013 shall apply mutatis mutandis to Ground No.2 to 4 raised by the Assessee in the present appeal for the Assessment Year 2015-2016. Thus, keeping in view the parity in the facts and circumstances, and adopting the reasoning given while adjudicating identical grounds raised in appeal preferred by the Assessee for the Assessment Year 2012-2013 [ITA No.2616/Mum/2024] hereinabove, we delete the disallowance of auto dealer expenses of INR.3,24,37,24,329/-made by the under Section 37(1) of the Act read with Explanation 1 by following the decision of the Co-ordinate Bench of the Tribunal in the case of **HDFC ERGO General Insurance Company Ltd. Vs. Assistant Commissioner of Income Tax**[ITA No.2836 to 2841/Mum/2025 & ITA No.3277 to 3281/Mum/2025 for the Assessment Year 2010-2011, 2011-2012, 2013-2014, 2015-2016 & 2016-2017]. Accordingly, Ground No.2 to 4 raised by the Assessee are allowed.

**Ground No. 1**

155. Since we have allowed Ground No. 2 to 4 raised by the Assessee and have also dismissed the appeal preferred by the Revenue, Ground No. 1 raised by the Assessee challenging the validity of the reassessment proceedings is dismissed as having been rendered infructuous.
156. Thus, the present appeal preferred by the Assessee is partly allowed.
157. In result, the appeal preferred by the Revenue [ITA No.2836/Mum/2024] is dismissed and appeal preferred by the Assessee [ITA No.2619/Mum/2024] is partly allowed.

### **ASSESSMENT YEAR - 2016-2017**

#### **ITA No.2834/Mum/2024(Revenue's Appeal)**

158. We would next take up appeal preferred by the Revenue for the Assessment Year 2016-2017 which is directed against the Order, dated 20/03/2024, passed by the CIT(A) whereby the appeal preferred by the Assessee against the Assessment Order, dated 29/12/2018, passed under Section 143(3) of the Act was partly allowed. The grounds raised in the aforesaid appeal are taken up hereinafter in seriatim.

#### **GROUND NO.1 to 6**

159. Ground No. 1 & 6 raised by the Revenue reads as under:

- "1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in holding that the profit on sale of investments has to be taxed as income from capital gain and not income from business.*
2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that income of Rs.14,06,54,30,731/- is exempt u/s.10(38) of the I.T.Act,*

1961.

- "3. *whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the amount of disallowance under Section.14A of the I.T. Act, 1961 has to be computed as per rule 8D of I.T.Rules, 1962 when the computation of the assessee was not found to be correct and as held in the order of the Hon'ble High Court in the case of M/s. Godrej & Boyce Manufacturing Co. Ltd.*
  4. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the premium paid by the assessee on purchase of Government Securities, on Amortisation, was allowable as Revenue Expenditure without appreciating the fact that there is no provision for amortization of such premium in the I.T.Act, 1961.*
  5. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the premium paid by the assessee on purchase of Government Securities, on Amortisation, was allowable as Revenue Expenditure without appreciating the fact that such premium paid is capital in nature and hence no allowable u/s.37 of I.T.Act, 1961.*
  6. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the provisions of Section 115JB of the I.T.Act, 1961 are no applicable in the case of the assessee."*
160. During the course of hearing both the sides had agreed that our finding/adjudication on the Ground No.1 to 6 raised in appeal preferred by the Revenue for the Assessment Year 2015-2016 shall apply mutatis mutandis to corresponding Ground No.1 to 6 raised by the Revenue in the present appeal for the Assessment Year 2016-2017. Thus, keeping in view the parity in the prevailing facts and circumstances, and adopting the reasoning given while adjudicating identical issue in Revenue's appeal for the Assessment Year 2015-2016 [ITA No.2836/Mum/2024]

hereinabove, we dismiss Ground No.1 to 6 raised by the Revenue.

161. Thus, the appeal preferred by the Revenue is dismissed.

**ITA No.2620/Mum/2024 [Assessee's Appeal]**

162. Now we would take up appeal preferred by the Assessee for the Assessment Year 2016-2017 which is directed against the Order, dated 20/03/2024, passed by the CIT(A) whereby the appeal preferred by the Assessee against the Assessment Order, dated 29/12/2018, passed under Section 143(3) of the Act was partly allowed.

**Ground No.1 to 4:**

163. Ground No. 1 to 4 raised by the Assessee pertains to disallowance of payments made to auto dealers read as under:

- "1. *The CIT(A) was not justified in confirming the action of the AO of disallowing the payment of Rs.3,61,14,71,484 by the Appellant to the Auto Dealers.*
2. *The CIT(A) erred in confirming the action of the AO, without appreciating the fact that the year under consideration was not the year for which order was passed by the Service Tax Department.*
3. *The CIT(A) was wrong in observing that it has not been brought out as to when the appellant had asked for the cross-examination of the auto dealers, as to how the appellant was prejudiced if the AO did not provide it an opportunity to cross-examine the auto dealers, and whether the auto dealers, if any had retracted their statements.*
4. *The CIT(A) further erred in confirming the action of the AO without providing an opportunity to the appellant to cross-examine the auto dealers."*

164. During the course of hearing both the sides had agreed that our finding/adjudication on the Ground No.3 to 6 raised in appeal preferred by the Assessee for the Assessment Year 2012-2013 shall apply mutatis mutandis to Ground No.1 to 4 raised in the present appeal for the Assessment Year 2016-2017. Thus, keeping in view the parity in the facts and circumstances, and adopting the reasoning given while adjudicating identical grounds raised in appeal preferred by the Assessee for the Assessment Year 2012-2013 [ITA No.2616/Mum/2024] hereinabove, we delete the disallowance of INR.3,61,14,71,484/- made in respect of payments made to auto dealers the under Section 37(1) of the Act read with Explanation 1 thereto by following the decision of the Co-ordinate Bench of the Tribunal in the case of **HDFC ERGO General Insurance Company Ltd. Vs. Assistant Commissioner of Income Tax**[ITA No.2836 to 2841/Mum/2025 & ITA No.3277 to 3281/Mum/2025 for the Assessment Year 2010-2011, 2011-2012, 2013-2014, 2015-2016 & 2016-2017]. Accordingly, Ground No.1 to 4 raised by the Assessee are allowed.Thus appeal preferred by the Assessee is allowed.
165. In result,the appeal preferred by the Revenue [2834/Mum/2024] is dismissed while the appeal preferred by the Assessee [ITA No.2620/Mum/2024] is allowed.

### **ASSESSMENT YEAR 2017-2018**

#### **ITA No.2827/Mum/2024 (Revenue Appeal)**

166. We would take up appeal preferred by the Revenue for the Assessment Year 2017-2018 which is directed against the first as the Order, dated 20/03/2024, passed by the CIT(A) whereby the appeal preferred by the Assessee against the Assessment Order, dated 16/03/2019, passed under Section 143(3) of the Act was

partly allowed.

**Ground No.1 to 6, 8 and 9**

14.1. Ground No. 1 to 6, 8 and 9 raised by the Revenue in appeal for the Assessment Year 2017-0218 read as under:

- "1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in holding that the profit on sale of investments has to be taxed as income from capital gain and not income from business.*
2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that income of Rs.18,85,37,43,805/- is exempt under Section.10(38) of the I.T.Act, 1961.*
3. *whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the amount of disallowance under Section.14A of the I.T. Act, 1961 has to be computed as per rule 8D of I.T.Rules, 1962 when the computation of the assessee was not found to be correct and as held in the order of the Hon'ble High Court in the case of M/s. Godrej & Boyce Manufacturing Co. Ltd.*
4. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the premium paid by the assessee on purchase of Government Securities, on Amortisation, was allowable as Revenue Expenditure without appreciating the fact that there is no provision for amortization of such premium in the I.T.Act, 1961.*
5. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the premium paid by the assessee on purchase of Government Securities, on Amortisation, was allowable as Revenue Expenditure without appreciating the fact that such premium paid is capital in nature and hence no allowable u/s.37 of I.T.Act, 1961.*
6. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the claim of*

*appellant for IBNR and IBNER without appreciating the fact that the assessee company has created the provisions in anticipation of settlement of claims that were not ascertained and ignoring the fact the assessee company is yet to assess the loss and determined the amount of compensation thereby making this liability as unascertained liability.*

8. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the provisions of Section 115JB of the I.T.Act, 1961 are not applicable in the case of the assessee.*
9. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in deleting the disallowance of Rs.776,13,61,000/- on account of reserve for unexpired risk without appreciating the fact the said reserved was created by the assessee on adhoc basis by considering the total premium earned from various segments during the relevant financial year even if premium received by the assessee from Marine Hull and Miscellaneous insurance without the component of terrorism pool has been provided @50% of total receipt as reserve for URR.”*

168. During the course of hearing both the sides had agreed that our finding/adjudication on the Ground No.1 to 6 raised in appeal preferred by the Revenue for the Assessment Year 2015-2016 shall apply mutatis mutandis to corresponding grounds [Ground No.1 to 5 and Ground No.8] raised by the Revenue in the present appeal for the Assessment Year 2017-2018. Thus, keeping in view the parity in the prevailing facts and circumstances, and adopting the reasoning given while adjudicating the corresponding grounds raised in Revenue's appeal for the Assessment Year 2015-2016 [ITA No.2836/Mum/2024] hereinabove, we dismiss Ground No.1 to 5 and Ground No.8 raised by the Revenue.

169. Further, during the course of hearing both the sides had also agreed that our finding/adjudication on the Ground No.1 & 3

raised in appeal preferred by the Revenue for the Assessment Year 2012-2013 shall apply mutatis mutandis to Ground No.6& 9 raised in appeal preferred by the Revenue for the Assessment Year 2017-2018, respectively. Thus, keeping in view the parity in the prevailing facts and circumstances, and adopting the reasoning given while adjudicating corresponding grounds raised in Revenue's appeal for the Assessment Year 2012-2013 [ITA No.2845/Mum/2024] hereinabove, we dismiss Ground No.6 &9 raised by the Revenue.

**Ground No.7**

170. Ground No.7 raised by the Revenue reads as under

"7. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on account of reinsurance premium paid outside India of Rs.80,66,10,860/- without appreciating the fact that the deduction of TDS was not made on these payment u/s.195 of the Act, and it was neither approached the department u/s.195(2) before remitting the payment to non-resident nor filed the prescribed undertaking alongwith the certificate from an accountant while making remittance reinsurance. Further the Ld. CIT(A) has also not appreciated the fact that the payment of reinsurance premium is in violation of section 2(9) of the Insurance Act, 1938 and accordingly the said payment is contravention of the existing law and also not allowable expenses u/s.37(1) of the Act."*

171. Ground No. 7 raised by the Revenue challenges the order passed by the Learned CIT(A) deleting the disallowance to the extent of INR.80,66,10,860/- that was made by the Assessing Officer in respect reinsurance premium paid to the non-resident parties. We have dealt with identical issue in appeal preferred by the Revenue for the Assessment Year 2015-2016 [ITA No.2845/Mum/2024] and Assessment Year 2012-2013.After considering the contentions raised by both the sides and taking

into consideration the material on record, we declined to interfere with the order passed by the Leaned CIT(A) on this issue in appeals for the Assessment Year 2012-2013 and 2015-2016.

172. For the Assessment Year 2017-2018, the learned CIT(A) has disposed of the ground raised by the Assessee challenging the disallowance made by the Assessing Officer in respect of re-insurance premium paid to the non-resident parties in the following manner:

*"6.9 Ground no. 9: It pertains to addition on account of reinsurance premium of Re 80,66,10,860/- ceded outside India.*

*6.9.1 The AO noted that appellant had collected premium from clients in India and ceded a portion of the premium to foreign insurers depending upon quantum of business, risk-sharing and negotiations. Such premium had been deducted from total premium declared in P/L account. When asked as to whether TDS had been, deducted/withholding tax made on these amounts, appellant's submissions on this issue before AO are summarized below:*

- (i) As per IRDA guidelines/regulations, appellant can undertake such reinsurance business outside India with such cross-border re-insurers who do not have any branch in India.*
- (ii) No withholding tax obligations arises to appellant on such remittances as the cross-border insurers (except Swiss Reinsurance Company Ltd.) did not have any presence/permanent establishment in India.*
- (iii) Appellant also relied upon Hon'ble ITAT Mumbai in case of M/s Bharti AXA Life Insurance Co. Ltd (ITA no.4805-4806) to support its claim.*

**6.9.2 The AO did not accept contentions of appellant and his reasons for doing so are summarized below:**

- (a) *The event of selling the insurance policy by the appellant takes place in India, any liability/loss claim on such reinsurance transactions arise in India through the brokers (most of whom are situated in India), most of the time reinsurance premium is received from Indian Insurer (II) by the broker in India who also settle the claim (if any) and after deducting their commission remit the net amount to the non-resident insurer (NR). These events establish that reinsurance income of NR accrues and arises in India and is also received in India wherever the broker is located in India. Thus, section 5(2) of Income Tax Act is applicable in such cases of reinsurance remitted to NRs by appellant. Once chargeability of income in India is so established, provisions of withholding tax u/s 195 of Income Tax Act, 1961 kick in which appellant has not adhered to.*
- (b) *The NRs and appellant are not doing one-off transaction but are involved in continuous transactions over the period of treaty/agreement between NRs and appellant while such treaties keep on getting over for some cases and get created for some other cases. NRs depend fully upon appellant with respect to any risk analysis and NRs reimburse any claims made by appellant.*
- (c) *Due to amendment in as per Insurance Law (Amendment) Act 2015 and IRDA (General insurance-reinsurance) Regulations 2016, a foreign company engaged in reinsurance business can do so only through a branch established in India and hence presence of a PE is prerequisite for NR to carry out any such business in India. Also, rule 6 of First schedule to income Tax Act becomes applicable in such cases.*
- (d) *In cases where brokers remit the reinsurance premium to NRs, said brokers act as agent of NR and liabilities of appellant stands discharged as per*

*IRDA guidelines. Thus, principal & agent relationship exists between reinsurance agent and NRs.*

- (e) *AO also cited case laws in favour of the Department:*
- (i) *R.D. Aggarwal & Company 56 ITR 20, 128 ITR 27 (Mad)-w.r.t. business connection*
  - (ii) *Kanchan ganga Sea Foods Ltd AIT 2010 264 SC, Van Oordac Jet India P Ltd ITD 79, Transmission Corporation of Andhra Pradesh 239 ITR 587, Poompuhar Shipping Corporation Ltd 109 ITD 226, Frontier Offshore Exploration India Ltd ITA No. 2037/Mads/06, West Asia Maritime Ltd (ITAT Chennai), AAR in Rajiv Malhotra (in Re)- w.r.t. withholding tax*

6.9.3 *During the present appeal proceedings, appellant made similar submissions as made before the AO. Appellant also relied upon more decisions, as below, in its favour*

- (a) *Cholamandalam MS General Insurance Co Ltd 102 Taxmann.com 292 (Mad HC)*
- (b) *Aon Global Insurance Service Ltd ITA no. 5184 to 5186/Mum/2009 -ITAT Mumbai*
- (c) *Swiss Reinsurance Company Ltd (ITA No. 1667/Mum/2014)- ITAT Mumbai*

6.9.4 **Admissibility of additional evidences:** *Vide notice dated 30/08/2023, this office had specifically asked the appellant to produce the copies of agreement between appellant and Non Resident Insurers (NRs), details of premium ceded in this assessment year, details of TDS deducted and paid along with explanation if no TDS deducted/less deducted, evidences that all NRs were registered/certified in their home country and if it were not so, then copy of approval of IRDA and copy of reinsurance program approved by IRDA.*

*Vide submissions dated 14/09/2023, the appellant filed the details in support of its claim which were sent to the AO by this office on 13/10/2023.*

*Vide **report dated 09/01/2024**, the AO stated that the Hon'ble ITAT Chennai in case of United India Insurance vs DCIT(LTU) ITA No. 1753, 1605, 1606,1607, 1608, 1609 & 1610/Chny/2011 dated 28/08/2018 had decided this issue against the assessee holding that merely because the incident happened during the year which is the basis for making a claim that cannot be the reasons for allowing compensation payable by the assessee for relevant assessment year & that such payment has to be allowed in the year in which compensation was determined.*

*I have gone through the submissions of the appellant carefully and I find that the AO had provided sufficient opportunities of hearing to the appellant but it is not apparent from record in appeal whether any specific query had been raised by the AO, during the assessment proceedings, regarding the details furnished during these appeal proceedings.*

*In view of the above and also considering that the additional evidences submitted by the appellant are crucial to decide the issues in appeal as well as to compute the actual income of the appellant, relying upon the decisions of Hon'ble Courts in Alcon Resort Holding Ltd [2023] 151 taxmann.com 98 (Bombay), Daljit Singh Sra [2017] 80 taxmann.com 271 (Punjab & Haryana), Suretech Hospital & Research Centre Ltd. [2007] 164 TAXMAN 168 (BOM.) and Rankin Infrastructure (P.) Ltd. [2022] 142 taxmann.com 37 (Mumbai Trib.), the **additional evidences** submitted by the appellant are hereby **admitted** in terms of Rule 46A of I.T Rules 1962.*

*It is noted that in its **rejoinder dated 12/01/2024**, to remand report, the appellant reiterated its earlier submissions on merits of the issue.*

*To establish the chargeability of income of NRs in India, AO has relied upon, among other reasons, on the fact of amendments in Insurance Act and IRDA regulations to point out that due to such amendments, the NRs compulsorily had to have a "branch in India from FY 2016-17 onwards which would create a business connection or a permanent establishment in India and which, in turn, would lead to income of NRs taxable in India.*

*However, in my considered opinion, AO has perhaps been led only by a presumption that any business connection or*

permanent establishment existed in India on account of such amendment in Insurance Acts and IRDA Act.

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6.9.6 In the present case, the appellant has provided the details of NRs and/submissions on taxability of their receipts based upon DTAAs. It is noted that the appellant ceded reinsurance to the following NRs in FY 2016-17:

1. Attradius, Netherlands
2. Emirates Re. Dubal
3. Hannover Re, Germany
4. Triglav Re. Ljubljana, Slovenia
5. Tokio Millenium, London Branch
6. Qatar GIC, Qatar
7. Saudi Re, Saudi Arabia
8. Swiss Re. Singapore
9. Asia Capital, Singapore
10. Korean Re, Singapore Branch
11. Berkshire Hathway, Singapore Branch
12. Santam Re, South Africa
13. Echo Re, Switzerland
14. Milli Re. Turkey
15. National Indemnity, USA

It is seen from the submissions of the appellant that Double Taxation Avoidance Agreements (DTAAs) existed with the countries of residence of these entities with India in cases of all the entities It is further noted that the remittances were sent by the appellant to the bank accounts of these entities and such bank accounts were situated in foreign jurisdictions.

it is also noted that the appellant has produced the details of Tax Residency Certificates (in Form F), Form No.15CA & 15CB (for foreign remittance compliances) of these entities

Now, regarding the details whether any branch of these 15 entities existed in India pursuant to amendments in IRDA & Insurance Act in 2015 & 2016, IRDA website. <https://frdai.gov.in/frbs>, shows that except Swiss Re and Hannover Re, none of the above entities had branch in India in FY 2016-17

***Thus, based upon the details furnished by the appellant and the details available at IRDA website, the issue of taxation of such amount in India remains only regarding two entities, Swiss Re & Hannover Re***

Regarding the **Swiss Re**, appellant also admitted that the PE declaration was not taken from Swiss RE, Singapore as this entity was having a PE in India and the appellant had deducted TDS 2.163% on payments made to this entity as the entity had produced a lower TDS certificate u/s 195, copy of which was also produced by the appellant and was also sent by this office to the AO. The AO did not send any adverse comment regarding this lower TDS certificate in this case.

Regarding **Hannover Re**, it is seen from the IRDA website that this entity had been granted a branch certificate on 21/12/2016 vide certificate/registration no. FRB/004. The website of Hannover Re. <https://www.hannover-re.com/1201530/form-ni-28-statement-of-assets-3b.pdf>, also brings out this fact and that this entity had branch in India in FY 2016-17 w.e.f. 21/12/2016 and had also filed the returns and disclosure to this effect in India from quarter 4 of FY 2016-17 onwards as available on its above-referred website. Disclosures in form NL-31 for QE 31/03/2017 shows that this branch acted as an agent of Hannover Ruck SE, Germany, for the flow of insurance premiums including receipts/payments. **Thus, these facts bring out that payments made by the appellant to Hannover Re, Germany in FY 2016-17 were liable for TDS u/s 195 of the Act as an agent of this entity existed in India and such payments were liable for taxation in India u/s 9 of the Act.**

In its defence, the appellant submitted a copy of five of its agreement with Hannover Re, Germany wherein General Insurance Corporation (GIC) was lead re-insurer and these agreements have been accepted by Hannover Re outside India, as per appellant's submissions.

Thus, taxability of payments made to all entities (other than Swiss Re) has to be decided in the background of facts of this case.

It is seen that reasons (viz. existence of a PE/business connection and taxability in India of such premium ceded to foreign reinsurers by Indian Insurers) set out by the AO, while disallowing these payments made by the appellant, have been

*elaborately dealt by Hon'ble ITAT, Chennai in decision for AY 2006-07 to 2009-10 in case of Royal Sundaram Alliance Insurance Co. Ltd [2023] 154 taxmann.com 19 (Chennai Trib.) wherein the issue was decided in favour of the assessee placing reliance upon Tribunal's own order in case of the same assessee in ITA Nos. 1356/Chny/2013, 1626/Chny/2011 & 2310/Chny/2014 and ITA Nos. 1628, 1629 & 1630/Chny/2011 and ITA No. 1666/Chny/2011 order dated 26-8-2022 for AY 2005-06 to 2010-11, holding that reinsurance premium paid to NRRs cannot be disallowed u/s 40(a)(i) of the Act, for failure to deduct TDS u/s 195 of the Act, because, reinsurance ceded to non-resident reinsurers is not taxable in India under Income-tax Act, 1961 or under DTAA between india, and respective countries.*

*To better understand the decisions of Hon'ble Tribunal, the relevant paras of decision in case of Cholamandalam MS General Insurance Co. Ltd. [2022] 142 taxmann.com 3 (Chennai-Trib.) [26-08-2022] are reproduced below:*

xx xx

*The important aspect of these decisions is that they were pertaining to the periods prior to FY 2016-17 when the foreign reinsurers did not have any branches in India even under IRDA Act/regulation and hence, the said decisions can be taken as applicable for those NRs who did not have any branch in India prior to FY 2016-17. Even for FY 2016-17 onwards, the judicial reasoning on this issue remains same save for the fact whether any of the NRs had any branches in India. Thus, relying upon aforementioned decisions of Hon'ble Tribunals, specifically in cases of Tata AIG General Insurance Company Ltd (supra) and Cholamandalam MS General Insurance Co. Ltd. (supra), it is hereby held that for the 13 entities (except Swiss Re & Hannover Re) who did not have any branches in India in FY 2016-17 also as has been brought out in preceding paras of this order, no disallowance u/s 40a(i) was called for in the present case of the appellant. The disallowances made by the AO in these 13 cases is hereby deleted.*

*Regarding remaining two NRs. Swiss Re & Hannover Re, as has been brought out in preceding paras of this order, these two entities had branches in India in 2016-17 who acted as their agents. However, in case of Swiss Re, since the appellant had deducted TDS @2.163% in view of lower TDS certificate no. 0216DL612A dated 08/07/2016 (effective from 01/04/2016 to 31/03/2017) issued by DCIT (IT)-4(2)(2), Mumbai u/s 195 of the Act, **disallowance made by the AO u/s 40(a)(i) in case of Swiss Re is hereby deleted.***

Regarding **Hannover Re, Germany** as per the declaration filed in India (as available at IRDA website as referred above) by the agent of this entity, the existence of a PE in India has been established. The copies of five agreements furnished by the appellant or the DTAA does not bring out that the payments made to Hannover Re, Germany were not taxable in India after existence of such PE in India from 21/12/2016 onwards. The existence of such agent/branch of this entity in India made it liable for tax in India on payments made by the appellant u/s 9 of the Act. **No lower TDS certificate u/s 195 of the Act has been produced by the appellant on account of this entity & hence disallowance was called for u/s 40(a)(i) of the Act.**

Considering the above, it is held that disallowance of payment of Rs. 24,69,42,000/-made by the appellant to Hannover Re, Germany is hereby upheld.

To sum up, disallowance made by the AO on account of reinsurance premium ceded outside India to Non-Resident Insurers is upheld to the extent of Rs. 24,69,42,000/-while balance disallowance of Rs. 55,96,68,860/- is hereby deleted.

*Since various sub-grounds of ground 9 of present appeal are interlinked with the main issue decided above, these sub-grounds do not require separate adjudication. In effect, ground no. 9 of appeal is partly allowed."*

173. On perusal of the above order passed by the Learned CIT(A) it becomes clear that the disallowance made by the Assessing Officer on account of reinsurance premium ceded outside India to Non-Resident Insurers was upheld to the extent of INR.24,69,42,000/- paid to Hannover Re while balance disallowance of INR.55,96,68,860/- paid to the other parties was deleted. Both, the Assessee as well as the Revenue are in appeal before the Tribunal challenging the above order of the CIT(A). By way of Ground No.7 raised in the present appeal the Revenue has challenged the deletion of disallowance of INR.55,96,68,860/- while the Assessee has challenged the confirmation of disallowance of INR.24,69,42,000/- by way of Ground No.5 raised in Assessee's cross-appeal [ITA No.2621/Mum/2024]. Since both the grounds are connected the

same are being taken up together.

174. On perusal record it emerges that during the relevant previous year, the Assessee had paid reinsurance premium to 15 non-resident parties. The Assessing Officer made disallowance of INR.80,66,12,860/- invoking the provisions of Section 40(a)(ia) of the Act. On perusal of record it is clear that the Assessing Officer had supported the disallowance by invoking the provisions contained in Section 40(a)(ia) of the Act holding that the Assessee had failed to deduct tax from such payments under Section 195 of the Act in respect of reinsurance premium paid to non-resident parties. Before the CIT(A) the case set up by the Assessee was that in absence of business connection (in terms of the Act) or permanent establishment (in terms of applicable double taxation avoidance agreement) of non-resident payees in India, the remittances were not chargeable to tax in India. Therefore, the provisions of Section 195 and 40(a)(ia) of the Act were not attracted.

We note that the Learned CIT(A) had called for and admitted the additional evidence furnished by the Assessee. After taking into consideration the remand report submitted by the Assessing Officer as per Rule 46A of the Income Tax Rules, 1962, the CIT(A) had disposed off the ground raised by the Assessee challenging the disallowance of reinsurance premium paid to foreign parties. Therefore, we reject the contention of the parties that sufficient opportunity was not granted by the CIT(A) to lead evidence or to make submission. We note that for the preceding assessment years the Learned CIT(A) has followed identical approach and adopted reasoning while deleting the entire disallowance.

We note that for the Assessment Year 2016-2017, the Learned CIT(A) has returned following factual finding in respect of 15 non-resident parties to which reinsurance premium was paid by the Assessee during the relevant previous year:

- (a) 13 parties did not have presence in India either in the form of business connection or permanent establishment. Income of the aforesaid non-resident parties was not chargeable to tax in India; tax withholding provisions contained in Section 195 of the Act were not applicable and therefore, no disallowance under Section 40(a)(ia) of the Act was warranted,
- (b) the Assessee had deducted tax as per lower tax withholding certificate issued in the case of Swiss Re and therefore, tax withholding provisions were complied with and as a result, provisions of Section 40(a)(ia) of the Act were not attracted,
- (c) Hannover Re had a branch in India which constituted business connection and permanent establishment of such non-resident in India. Therefore, it cannot be said with certainty that reinsurance premium paid to such non-resident was not liable to tax in India. The Assessee had failed to discharge the tax withholding obligations under Section 195 of the Act which triggered the provisions of Section 40(a)(ia) of the Act.

175. Having given thoughtful consideration to the rival submissions and on perusal of record, we are of the considered view that there is no infirmity in the above findings returned by the Learned CIT(A). Neither the Assessee nor the Revenue have

been able to place on record any material to dislodge the above findings returned by the Learned CIT(A). While the Assessee had refuted the findings of the Learned CIT(A) in relation to Hannover Re, no material has been placed before us to take a different view of the matter. The CIT(A) has returned a finding that Hannover Re had a business connection and Permanent Establishment in India for the previous year relevant to the Assessment Year 2017-2018 since it had a branch in India. The CIT(A) had relied upon the financial statements and disclosures made by the non-resident payees with IRDA in supported the findings. It is admitted position that the Assessee had not obtained 'nil' tax withholding certificate under Section 195 of the Act in respect of payments made to Hannover Re. On the other hand, we find that the Revenue has also failed to show that the other non-resident payees had a business connection or permanent establishment in India during the relevant previous year. Therefore, we do not find any infirmity in the aforesaid findings returned by the CIT(A) and therefore, we decline to interfere with the order passed by the Learned CIT(A) in this regard. Accordingly, Ground No.7 raised by the Revenue as well as Ground No.5 raised by the Assessee are dismissed.

176. Thus, the appeal preferred by the Revenue is dismissed.

**ITA No.2621/Mum/2024 [Assessee's Appeal]**

177. Now we would take up appeal preferred by the Assessee for the Assessment Year 2017-2018 which is directed against the Order, dated 20/03/2024, passed by the CIT(A) whereby the appeal preferred by the Assessee against the Assessment Order, dated 16/03/2019, passed under Section 143(3) of the Act was partly allowed.

**Ground No.1 to 4:**

178. The Assessee has raised the following grounds of appeal:

- "1. *The CIT(A) was not justified in confirming the action of the AO of disallowing the payment of Rs.4,12,93,89,338 by the Appellant to the Auto Dealers.*
2. *The CIT(A) erred in confirming the action of the AO, without appreciating the fact that the year under consideration was not the year for which order was passed by the Service Tax Department.*
3. *The CIT(A) was wrong in observing that it has not been brought out as to when the appellant had asked for the cross-examination of the auto dealers, as to how the appellant was prejudiced if the AO did not provide it an opportunity to cross-examine the auto dealers, and whether the auto dealers, if any had retracted their statements.*
4. *The CIT(A) further erred in confirming the action of the AO without providing an opportunity to the appellant to cross-examine the auto dealers."*

179. During the course of hearing both the sides had agreed that our finding/adjudication on the Ground No.3 to 6 raised in appeal preferred by the Assessee for the Assessment Year 2012-2013 shall apply mutatis mutandis to the corresponding grounds (Ground No.1 to 4) raised in the present appeal for the Assessment Year 2017-2018. Thus, keeping in view the parity in the facts and circumstances, and adopting the reasoning given while adjudicating identical grounds raised in appeal preferred by the Assessee for the Assessment Year 2012-2013 [ITA No.2616/Mum/2024] hereinabove, we delete the disallowance of INR.4,12,93,89,338/- made in respect of payments to auto dealers under Section 37(1) of the Act read with Explanation 1

thereto by following the decision of the Co-ordinate Bench of the Tribunal in the case of **HDFC ERGO General Insurance Company Ltd. Vs. Assistant Commissioner of Income Tax**[ITA No.2836 to 2841/Mum/2025 & ITA No.3277 to 3281/Mum/2025 for the Assessment Year 2010-2011, 2011-2012, 2013-2014, 2015-2016 & 2016-2017]. Accordingly, Ground No.1 to 4 raised by the Assessee are allowed.

**Ground No.5:**

14.2. The Assessee has raised the following grounds of appeal:

"5. *The CIT(A) was not justified in confirming the order of the AO in disallowing deduction of reinsurance premium paid outside India to Hannover Ruck SE amounting to Rs.24,69,42,000"*

We have already dismissed Ground No.5 raised by the Assessee while adjudicating Ground No.7 raised by Revenue in its appeal.

In result appeal preferred by the Assessee is partly allowed.

181. In result, for the Assessment Year 2017-2018 the appeal preferred by the Revenue [ITA No.2827/Mum/2024] is dismissed while the appeal preferred by the Assessee [ITA No.2621/Mum/2024] is partly allowed.

**Assessment Year 2018-2019**

**ITA No.2830/Mum/2024 (Revenue Appeal)**

182. Now we would take up appeal preferred by the Revenue for the Assessment Year 2018-2019 which is directed against the Order, dated 20/03/2024, passed by the CIT(A) whereby the appeal preferred by the Assessee against the Assessment Order, dated 05/04/2021, passed under Section 143(3) read with Section

143(3A) and 143(3B) of the Act was partly allowed.

**GROUND NO.1 to 6, 8 & 9**

183. Ground No. 1 to 6, 8 & 9 raised by the Revenue reads as under:

- "1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in holding that the profit on sale of investments has to be taxed as income from capital gain and not income from business.*
2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that income of Rs.23,02,96,38,259/- is exempt under Section.10(38) of the I.T.Act, 1961.*
3. *whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the amount of disallowance under Section.14A of the I.T. Act, 1961 has to be computed as per rule 8D of I.T.Rules, 1962 when the computation of the assessee was not found to be correct and as held in the order of the Hon'ble High Court in the case of M/s. Godrej & Boyce Manufacturing Co. Ltd.*
- "4. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the premium paid by the assessee on purchase of Government Securities, on Amortisation, was allowable as Revenue Expenditure without appreciating the fact that there is no provision for amortization of such premium in the I.T.Act, 1961.*
5. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the premium paid by the assessee on purchase of Government Securities, on Amortisation, was allowable as Revenue Expenditure without appreciating the fact that such premium paid is capital in nature and hence no allowable u/s.37 of I.T.Act, 1961.*
6. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the claim of appellant for IBNR and IBNER without appreciating the*

*fact that the assessee company has created the provisions in anticipation of settlement of claims that were not ascertained and ignoring the fact the assessee company is yet to assess the loss and determined the amount of compensation thereby making this liability as unascertained liability.*

8. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the provisions of Section 115JB of the I.T.Act, 1961 are not applicable in the case of the assessee."*
9. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in deleting the disallowance of Rs.12,31,75,61,000/- on account of reserve for unexpired risk without appreciating the fact the said reserved was created by the assessee on adhoc basis by considering the total premium earned from various segments during the relevant financial year even if premium received by the assessee from Marine Hull and Miscellaneous insurance without the component of terrorism pool has been provided @50% of total receipt as reserve for URR."*

184. During the course of hearing both the sides had agreed that our finding/adjudication on the Ground No.1 to 6 raised in appeal preferred by the Revenue for the Assessment Year 2015-2016 shall apply mutatis mutandis to the corresponding grounds (Ground No.1 to 5 and Ground No.8) raised in by the Revenue in the present appeal for the Assessment Year 2017-2018. Thus, keeping in view the parity in the prevailing facts and circumstances, and adopting the reasoning given while adjudicating Revenue's appeal for the Assessment Year 2015-2016 [ITA No.2836/Mum/2024] hereinabove, we dismiss Ground No.1 to 5 and Ground No.8 raised by the Revenue.

14.3. Further, during the course of hearing both the sides had also agreed that our finding/adjudication on the corresponding grounds (Ground No.1 & 3) raised in appeal preferred by the

Revenue for the Assessment Year 2012-2013 shall apply mutatis mutandis to Ground No.6 & 9 raised in appeal preferred by the Revenue for the Assessment Year 2017-2018. Thus, keeping in view the parity in the prevailing facts and circumstances, and adopting the reasoning given while adjudicating Revenue's appeal for the Assessment Year 2012-2013 [ITA No.2845/Mum/2024] hereinabove, we dismiss Ground No.6 &9 raised by the Revenue.

### **Ground No.7**

185. Revenue has raised the following ground which reads as under:

7. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on account of reinsurance premium paid outside India of Rs.80,66,10,860/- without appreciating the fact that the deduction of TDS was not made on these payment u/s.195 of the Act, and it was neither approached the department u/s.195(2) before remitting the payment to non-resident nor filed the prescribed undertaking alongwith the certificate from an accountant while making remittance reinsurance. Further the Ld. CIT(A) has also not appreciated the fact that the payment of reinsurance premium is in violation of section 2(9) of the Insurance Act, 1938 and accordingly the said payment is contravention of the existing law and also not allowable expenses u/s.37(1) of the Act.*

186. Ground No. 7 raised by the Revenue challenges the order passed by the Learned CIT(A) deleting the disallowance to the extent of INR.80,66,10,860/- made by the Assessing Officer in respect reinsurance premium paid to the non-resident parties. We have dealt with identical issue in appeal preferred by the Revenue for the Assessment Year 2012-2013 [ITA No.2845/Mum/2024]. For the Assessment Year 2012-2013, after considering the made by the both the sides and taking into consideration the material on

record, we declined to interfere with the order passed by the Learned CIT(A) on this issue.

187. For the Assessment Year 2018-2019, the learned CIT(A) has disposed of the ground raised by the Assessee challenging the disallowance made by the Assessing Officer in respect of re-insurance premium paid to the non-resident parties in the following manner:

*"6.9 Ground no. 9: It pertains to addition on account of reinsurance premium of Rs.67,03,78,460/- ceded outside India.*

*6.9.1 The AO noted that appellant had collected premium from clients in India and ceded a portion of the premium to foreign insurers depending upon quantum of business, risk-sharing and negotiations. Such premium had been deducted from total premium declared in P/L account. When asked as to whether TDS had been deducted/withholding tax made on these amounts, appellant's submissions on this issue before AO are summarized below:*

- (i) As per IRDA guidelines/regulations, appellant can undertake such reinsurance business outside India with such cross-border re-insurers who do not have any branch in India.*
- (ii) No withholding tax obligations arises to appellant on such remittances as the cross-border insurers (except Swiss Reinsurance Company Ltd.) did not have any presence/permanent establishment in India.*
- (iii) Appellant also relied upon Hon'ble ITAT Mumbai in case of Aon Global insurance Services Ltd. (ITA No.5184 to 5186/Mum/2009) and M/s Bharti AXA Life Insurance Co. Ltd (ITA no.4805-4808) to support its claim.*

*6.9.2 The AO did not accept contentions of appellant and his reasons for doing so are summarized below.*

- (a) The event of selling the insurance policy by the*

*appellant takes place in India, any liability/loss claim on such reinsurance transactions arise in India through the brokers (most of whom are situated in india), most of the time reinsurance premium is received from Indian Insurer (II) by the broker in India who also settle the claim (if any) and after deducting their commission remit the net amount to the non-resident insurer (NR). These events establish that reinsurance income of NR accrues and arises in India and is also received in India wherever the broker is located in India. Thus, section 5(2) of Income Tax Act is applicable in such cases of reinsurance remitted to NRs by appellant. Once chargeability of income in India is so established, provisions of withholding tax u/s 195 of Income Tax Act 1961 kick in which appellant has not adhered to.*

- (b) The NRs and appellant are not doing one-off transaction but are involved in continuous transactions over the period of treaty/agreement between NRs and appellant while such treaties keep on getting over for some cases and get created for some other cases. NRs depend fully upon appellant with respect to any risk analysis and NRs reimburse any claims made by appellant.*
- (c) Due to amendment in as per Insurance Law (Amendment) Act 2015 and IRDA (General insurance-reinsurance) Regulations 2016, a foreign company engaged in reinsurance business can do so only through a branch established in India and hence presence of a PE is prerequisite for NR to carry out any such business in India. Also, rule 6 of First schedule to income Tax Act becomes applicable in such cases.*
- (d) In cases where brokers remit the reinsurance premium to NRs, said brokers act as agent of NR and liabilities of appellant stands discharged as per IRDA guidelines. Thus, principal & agent relationship exists between reinsurance agent and NRs.*
- (e) AO also cited case laws in favour of the Department*
  - (i) R.D. Aggarwal & Company 56 ITR 20, 128 ITR 27*

*(Mad)-w.r.t. business connection*

*(ii) Kanchan ganga Sea Foods Ltd AIT 2010 264 SC, Van Oordac Jet India P Ltd ITD 79, Transmission Corporation of Andhra Pradesh 239 ITR 587, Poompuhar Shipping Corporation Ltd 109 ITD 226, Frontier Offshore Exploration India Ltd ITA No. 2037/Mads/06, West Asia Maritime Ltd (ITAT Chennai), AAR in Rajiv Malhotra (in Re), United India Insurance (ITAT Cehnnai in ITA No.1753, 1606 to 1610/Chny/2011 dated 28.08.2018-w.r.t. withholding tax*

6.9.3 *During the present appeal proceedings, appellant made similar submissions as made before the AO. Appellant also relied upon more decisions, as below, in its favour:*

*(a) Cholamandalam MS General Insurance Co Ltd 102 Taxmann.com 292 (Mad HC)*

*(b) Swiss Reinsurance Company Ltd (ITA No. 1667/Mum/2014)- ITAT Mumbai*

*(c) Tata AIG General Insurance Co. Ltd.*

6.9.4 *Admissibility of additional evidences: Vide notice dated 30/08/2023, this office had specifically asked the appellant to produce the copies of agreement between appellant and Non Resident Insurers (NRs), details of premium ceded in this assessment year, details of TDS deducted and paid along with explanation if no TDS deducted/less deducted, evidences that all NRs were registered/certified in their home country and if it were not so, then copy of approval of IRDA and copy of re-insurance program approved by IRDA.*

*Vide submissions dated 14/09/2023, the appellant filed the details in support of its claim which were sent to the AO by this office on 13/10/2023.*

*Vide report dated 09/01/2024, the AO stated that the Hon'ble ITAT Chennai in case of United India Insurance vs DCIT(LTU) ITA No. 1753, 1605, 1606,1607, 1608, 1609 & 1610/Chny/2011 dated 28/08/2018 had decided this issue against the assesseees holding that merely because the incident happened during the year which is the basis for making a claim that cannot be the reasons for allowing*

*compensation payable by the assessee for relevant assessment year & that such payment has to be allowed in the year in which compensation was determined.*

*I have gone through the submissions of the appellant carefully and I find that the AO had provided sufficient opportunities of hearing to the appellant but it is not apparent from record in appeal whether any specific query had been raised by the AO, during the assessment proceedings, regarding the details furnished during these appeal proceedings.*

*In view of the above and also considering that the additional evidences submitted by the appellant are crucial to decide the issues in appeal as well as to compute the actual income of the appellant, relying upon the decisions of Hon'ble Courts in Alcon Resort Holding Ltd [2023] 151 taxmann.com 98 (Bombay), Daljit Singh Sra [2017] 80 taxmann.com 271 (Punjab & Haryana), Suretech Hospital & Research Centre Ltd. [2007] 164 TAXMAN 168 (BOM.) and Rankin Infrastructure (P.) Ltd. [2022] 142 taxmann.com 37 (Mumbai Trib.), the additional evidences submitted by the appellant are hereby admitted in terms of Rule 46A of I.T Rules 1962.*

*It is noted that in its rejoinder dated 12/01/2024, to remand report, the appellant reiterated its earlier submissions on merits of the issue.*

- 6.9.5 *On merits of the issue. I have perused facts of the case along-with the case laws cited by the AO and the appellant. It is seen that one has to first establish the chargeability of the sum in India under section 5 rws 9 of the I.T. Act as well as under the relevant DTAA and application of section 195 and 40(a)(i) of the I.T. Act is secondary.*

*To establish the chargeability of income of NRs in India. AO has relied upon, among other reasons, on the fact of amendments in Insurance Act and IRDA regulations to point out that due to such amendments, the NRs compulsorily had to have a branch in India from FY 2016-17 onwards which would create a business connection' or a 'permanent establishment in India and which, in turn, would lead to income of NRs taxable in India.*

*However, in my considered opinion. AO has perhaps been led only by a presumption that any business connection or permanent establishment existed in India on account of such amendment in Insurance Acts and IRDA Act.*

*It is seen that the legislative intention behind the amendments in Insurance Acts and IRDA Act can be found from explanatory notes as in Press Information Bureau release dated 13/03/2015 (available at <https://pib.gov.in/newsite/printrelease.aspx?relid=117043>)*

*"The amendment Act will remove archaic and redundant provisions in the legislations and incorporates certain provisions to provide Insurance Regulatory and Development Authority of India (IRDAI) with the flexibility to discharge its functions more effectively and efficiently. It also provides for enhancement of the foreign investment cap in an Indian Insurance Company from 26% to an explicitly composite limit of 49% with the safeguard of Indian ownership and control.*

.....

*6. Promoting Reinsurance Business in India: The amended law enables foreign reinsurers to set up branches in India and defines re-insurance to mean "the insurance of part of one insurer's risk by another insurer who accepts the risk for a mutually acceptable premium", and thereby excludes the possibility of 100% ceding of risk to a re-insurer, which could lead to companies acting as front companies for other insurers. Further, it enables Lloyds and its members to operate in India through setting up of branches for the purpose of reinsurance business or as investors in an Indian Insurance Company within the 49% cap."*

*This explanatory note read with Insurance Regulatory and Development Authority of India (Registration and Operations of Branch Offices of Foreign Reinsurers other than Lloyd's) Regulations, 2015 and Insurance Regulatory*

*and Development Authority of India (General Insurance-Reinsurance) Regulations, 2016 brings out that this Act & regulations enables the NRs, if they want, to open branch offices in India but these laws do not make it mandatory for them to do so. Thus, the foreign re-insurers did not have to open any branch office in India and it was just a choice given to them by these amendments in regulations. Hence, the presumption of the AO that by virtue of these amendments it could be assumed that foreign re-insurers had branches in India was incorrect.*

6.9.6 *In the present case, the appellant has provided the details of NRs and submissions on taxability of their receipts based upon DTAAS. It is noted that the appellant ceded reinsurance to the following NRs in FY 2016-17.*

1. *Asia Capital, Singapore*
2. *Asia Re, Thailand*
3. *TOA Re, Japan,*
4. *SCOR Re, Singapore,*
5. *Fair Pool, Turkey*
6. *ECHO Re, Switzerland*
7. *Korean Re, Singapore*
8. *Attradius, Netherlands*
9. *Qatar GIC, Qatar*
10. *Triglav Re, Slovenia*
11. *Milli Re, Turkey*
12. *Berkshire Hathway, Singapore*

*It is seen from the submissions of the appellant that Double Taxation Avoidance Agreements (DTAAS) existed with the countries of residence of these entities with India in cases of all the entities. It is further noted that the remittances were sent by the appellant to the bank accounts of these entities and such bank accounts were situated in foreign jurisdictions.*

*It is also noted that the appellant has produced the details of Tax Residency Certificates (in Form F), Form no. 15CA & 15CB (for foreign remittance compliances) of these entities.*

*Now, regarding the details whether any branch of these 12 entities existed in India pursuant to amendments in IRDA & Insurance Act in 2015 & 2016, IRDA website, <https://irdal.gov.in/frbs>, shows that except Swiss Re and Hannover Re, none of the above entities had branch in India in FY*

2017-2018.

Thus, based upon the details furnished by the appellant and the details available at IRDA website, the issue of taxation of such amount in India remains only regarding two entities, SCORE Re.

Regarding the **SCORE Re**, it is seen from the IRDA website that this entity had been granted a branch certificate on 21/12/2016 vide certificate/registration no. FRB/003. The website of SCORE Re, <https://www.scor.com/en/scor-se-india-branch>, also brings out this fact and that this entity had branch in India in FY 2016-17 w.e.f. 21/12/2016 onwards. Thus, these facts bring out that payments made by the appellant to SCORE Re, Singapore in FY 2017-18 were liable for TDS u/s.195 of the Act as an agent of this entity existed in India and such payments were liable for taxation in India u/s.9 of the Act.

In its defence, the appellant submitted a copy of five of its agreement with Hannover, Re. Germany wherein General Insurance Corporation (GIC) was lead re-insurer and these agreements have been accepted by Hannover Re outside India, as per appellant's submissions dated 25/09/2023. However, it is noted here that as per details filed by the appellant for this AY 2018-19, **no payments were made to Hanover Re during FY 2017-18** & hence such agreements do not have any evidentiary value in this AY 2018-19.

Even otherwise, it is noted that it is seen from the IRDA website that this entity had been granted a branch certificate on 21/12/2016 vide certificate/registration no. FRB/003. The website of Hannover Re, <https://www.hannover-re.com/1201530/form-nl-28-statement-of-assets-3b.pdf>, also brings out this fact and that this entity had branch in India in FY 2016-17 w.e.f. 21/12/2016 and had also filed the returns and disclosure to this effect in India from quarter 4 of FY 2016-17 onwards as available on its above-referred website. Disclosures in form NL-31 for QE 31/03/2017 shows that this branch acted as an agent of Hannover Ruck SE, Germany, for the flow of insurance premiums including receipts/payments. Thus, these facts bring out that payments made by the appellant to Hannover Re, Germany in FY 2016-17 onwards were liable for TDS u/s.195 of the Act as an agent of this entity existed in India and such payments were liable for taxation in India u/s.9 of the Act.

Thus, taxability of payments made to all entities (other than

*Swiss Re) has to be decided in the background of facts of this case.*

*It is seen that reasons (viz. existence of a PE/business connection and taxability in India of such premium ceded to foreign reinsurers by Indian Insurers) set out by the AO, while disallowing these payments made by the appellant, have been elaborately dealt by Hon'ble ITAT, Chennai in decision for AY 2006-07 to 2009-10 in case of Royal Sundaram Alliance Insurance Co. Ltd [2023] 154 taxmann.com 19 (Chennai - Trib.) wherein the issue was decided in favour of the assessee placing reliance upon Tribunal's own order in case of the same assessee in ITA Nos. 1356/Chny/2013, 1626/Chny/2011 & 2310/Chny/2014 and ITA Nos. 1628, 1629 & 1630/Chny/2011 and ITA No. 1666/Chny/2011 order dated 26-8-2022 for AY 2005-06 to 2010-11, holding that reinsurance premium paid to NRRs cannot be disallowed u/s 40(a)(i) of the Act, for failure to deduct TDS u/s 195 of the Act, because, reinsurance ceded to non-resident reinsurers is not taxable in India under Income-tax Act, 1961 or under DTAA between India, and respective countries.*

*To better understand the decisions of Hon'ble Tribunal, the relevant paras of decision in case of Cholamandalam MS General Insurance Co. Ltd. [2022] 142 taxmann.com 3 (Chennai-Trib.) [26-08-2022) are reproduced below:*

xx xx

*The important aspect of these decisions is that they were pertaining to the periods prior to FY 2016-17 when the foreign reinsurers did not have any branches in India even under IRDA Act/regulation and hence, the said decisions can be taken as applicable for those NRs who did not have any branch in India prior to FY 2016-17. Even for FY 2016-17 onwards, the judicial reasoning on this issue remains same save for the fact whether any of the NRs had any branches in India.*

*Thus, relying upon aforementioned decisions of Hon'ble Tribunals, specifically in cases of Tata AIG General Insurance Company Ltd (supra) and Cholamandalam MS General Insurance Co. Ltd. (supra), it is hereby held that for the 11 entities (except Swiss Re & Hannover Re) who did not have any branches in India in FY 2017-18 also as has been brought out in preceding paras of this order, no disallowance u/s 40a(i) was called for in the present*

*case of the appellant. The disallowances made by the AO in these 11 cases is hereby deleted.*

**Regarding SCORE Re, Singapore as per the details filed in India (as available at IRDA website as referred above in a preceding para of this order) by the agent of this entity, the existence of a PE in India from FY 2016-17 onwards has been established. The existence of such agent/branch of this entity in India made it liable for tax in India on payments made by the appellant u/s 9 of the Act. No lower TDS certificate u/s 195 of the Act has been produced by the appellant on account of this entity & hence disallowance was called for u/s 40(a)(i) of the Act.**

***Considering the above, it is held that disallowance of payment of Rs.4,00,050/-made by the appellant to SCORE Re, Singapore is hereby upheld.***

*To sum up, disallowance made by the AO on account of reinsurance premium ceded outside India to Non-Resident Insurers is upheld to the extent of Rs. 4,00,050/-while balance disallowance of Rs. 66,99,78,410/- is hereby deleted.*

*Since various sub-grounds of ground 9 of present appeal are interlinked with the main issue decided above, these sub-grounds do not require separate adjudication. In effect, ground no. 9 of appeal is partly allowed."*

188. On perusal of the above, order passed by the Learned CIT(A) it becomes clear that the disallowance made by the Assessing Officer on account of reinsurance premium ceded outside India to Non-Resident Insurers was upheld to the extent of INR.4,00,050/- paid to SCORE Re while balance disallowance of INR.66,99,78,410/- paid to the other parties was deleted. Both, the Assessee as well as the Revenue are in appeal before the Tribunal challenging the above order of the CIT(A). By way of Ground No.7 raised in the present appeal the Revenue has challenged the deletion of disallowance of INR.66,99,78,410/- while the Assessee has challenged the confirmation of disallowance of INR.4,00,050/- by way of Ground No.5 raised in

Assessee's cross-appeal [ITA No.2622/Mum/2024]. Since both the grounds are connected the same are being taken up together.

On perusal record it emerges that during the relevant previous year, the Assessee had paid reinsurance premium to non-resident parties. The Assessing Officer made disallowance of invoking the provisions of Section 40(a)(ia) of the Act. On perusal of record it is clear that the Assessing Officer had supported the disallowance by invoking the provisions contained in Section 40(a)(ia) of the Act holding that the Assessee had failed to deduct tax from such payments under Section 195 of the Act in respect of reinsurance premium paid to non-resident parties. Before the CIT(A) the case set up by the Assessee was that in absence of business connection (in terms of the Act) or permanent establishment (in terms of applicable double taxation avoidance agreement) of non-resident payees in India, the remittances were not chargeable to tax in India. Therefore, the provisions of Section 195 and 40(a)(ia) of the Act were not attracted.

We note that the Learned CIT(A) had called for and admitted the additional evidence furnished by the Assessee. After taking into consideration the remand report submitted by the Assessing Officer as per Rule 46A of the Income Tax Rules, 1962, the CIT(A) disposed off the ground raised by the Assessee in appeal before the CIT(A). Therefore, we reject the contention of the parties that sufficient opportunity was not granted by the CIT(A) to lead evidence or to make submission.

Having given thoughtful consideration to the rival submissions and on perusal of record, we are of the considered view that there is no infirmity in the above findings returned by the Learned CIT(A). Neither the Assessee nor the Revenue have been able to place on record any material to dislodge the above

findings returned by the Learned CIT(A). While the Assessee had refuted the findings of the Learned CIT(A) in relation to Hannover Re, no material has been placed before us to take a different view of the matter. The CIT(A) has returned a finding that SCORE Re had a business connection and Permanent Establishment in India for the previous year relevant to the Assessment Year 2018-2019 since it had a branch in India. The CIT(A) had relied upon the financial statements and disclosures made with IRDA in supported the findings. It is admitted position that the Assessee had not obtained 'nil' tax withholding certificate under Section 195 of the Act in respect of payments made to SCORE Re. On the other hand, we find that the Revenue has also failed to show that the other non-resident payees had a business connection or permanent establishment in India during the relevant previous year. Therefore, we do not find any infirmity in the aforesaid findings returned by the CIT(A) and therefore, we decline to interfere with the order passed by the Learned CIT(A) in this regard. Accordingly, Ground No.7 raised by the Revenue as well as Ground No.5 raised by the Assessee are dismissed.

While concluding as above, we have adopted the reasoning given while concluding identical issues raised by the Assessee [Ground No.5] and Revenue [Ground No.7] in appeal pertaining to Assessment Year 2017-2018 hereinabove.

189. In the result appeal preferred by the Revenue is dismissed.

**ITA No.2622/Mum/2024[Assessee's Appeal]**

190. Now we would take up cross-appeal preferred by the Assessee for the Assessment Year 2018-2019. The Assessee has raised the following grounds of appeal:

**Ground No.1 to 4**

- "1. *The CIT(A) was not justified in confirming the action of the AO of disallowing the payment of Rs.3,09,93,03,301 by the Appellant to the Auto Dealers.*
2. *The CIT(A) erred in confirming the action of the AO, without appreciating the fact that the year under consideration was not the year for which order was passed by the Service Tax Department.*
3. *The CIT(A) was wrong in observing that it has not been brought out as to when the appellant had asked for the cross-examination of the auto dealers, as to how the appellant was prejudiced if the AO did not provide it an opportunity to cross-examine the auto dealers, and whether the auto dealers, if any had retracted their statements.*
4. *The CIT(A) further erred in confirming the action of the AO without providing an opportunity to the appellant to cross-examine the auto dealers."*

191. During the course of hearing both the sides had agreed that our finding/adjudication on the Ground No.3 to 6 raised in appeal preferred by the Assessee for the Assessment Year 2012-2013 shall apply mutatis mutandis to Ground No.1 to 4 raised in the present appeal for the Assessment Year 2018-2019. Thus, keeping in view the parity in the facts and circumstances, and adopting the reasoning given while adjudicating identical grounds raised in appeal preferred by the Assessee for the Assessment Year 2012-2013 [ITA No.2616/Mum/2024] hereinabove, we delete the disallowance of INR.3,09,93,03,301/- made in respect of payments to auto dealers under Section 37(1) of the Act read with Explanation 1 thereto by following the decision of the Co-ordinate Bench of the Tribunal in the case of **HDFC ERGO General Insurance Company Ltd. Vs. Assistant**

**Commissioner of Income Tax**[ITA No.2836 to 2841/Mum/2025 & ITA No.3277 to 3281/Mum/2025 for the Assessment Year 2010-2011, 2011-2012, 2013-2014, 2015-2016 & 2016-2017]. Accordingly, Ground No.1 to 4 raised by the Assessee are allowed.

**Ground No.5**

192. Ground No. 5 raised by the Assessee reads as under:

"5. *The CIT(A) was not justified in confirming the order of the AO in disallowing deduction of reinsurance premium paid outside India to Hannover Ruck SE amounting to Rs.4,00,050"*

193. We have already dismissed Ground No.5 raised by the Assessee while adjudicating Ground No.7 raised by Revenue in its appeal.

194. Thus, appeal preferred by the Assessee is partly allowed.

195. In result, for the Assessment Year 2018-2019, the appeal preferred by the Revenue [ITA No.2830/Mum/2024] is dismissed while appeal preferred by the Assessee [ITA No.2622/Mum/2024] is partly allowed.

**ASSESSMENT YEAR 2019-2020**

**ITA No.2823/Mum/2024 (Revenue's Appeal)**

196. Next, we would take up appeal preferred by the Revenue for the Assessment Year 2019-2020 which is directed against the Order, dated 20/03/2024, passed by the CIT(A) whereby the appeal preferred by the Assessee against the Assessment Order, dated 28/02/2022, passed under Section 143(3) read with Section 144B of the Act was partly allowed.

197. The Revenue has raised the following grounds of appeal:

**Ground No.1 to 6, 8 & 9**

1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in holding that the profit on sale of investments has to be taxed as income from capital gain and not income from business.*
2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that income of Rs.25,97,29,78,262/- is exempt under Section.10(38) of the I.T.Act, 1961.*
3. *whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the amount of disallowance under Section.14A of the I.T. Act, 1961 has to be computed as per rule 8D of I.T.Rules, 1962 when the computation of the assessee was not found to be correct and as held in the order of the Hon'ble High Court in the case of M/s. Godrej & Boyce Manufacturing Co. Ltd.*
4. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the premium paid by the assessee on purchase of Government Securities, on Amortisation, was allowable as Revenue Expenditure without appreciating the fact that there is no provision for amortization of such premium in the I.T.Act, 1961.*
5. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the premium paid by the assessee on purchase of Government Securities, on Amortisation, was allowable as Revenue Expenditure without appreciating the fact that such premium paid is capital in nature and hence no allowable u/s.37 of I.T.Act, 1961.*
6. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the claim of appellant for IBNR and IBNER without appreciating the fact that the assessee company has created the provisions in anticipation of settlement of claims that were not ascertained and ignoring the fact the assessee company is yet to assess the loss and determined the amount of compensation thereby making this liability as*

*unascertained liability.*

8. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the provisions of Section 115JB of the I.T.Act, 1961 are not applicable in the case of the assessee.*
  9. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in deleting the disallowance of Rs.6,33,26,35,480/- on account of reserve for unexpired risk without appreciating the fact the said reserved was created by the assessee on adhoc basis by considering the total premium earned from various segments during the relevant financial year even if premium received by the assessee from Marine Hull and Miscellaneous insurance without the component of terrorism pool has been provided @50% of total receipt as reserve for URR."*
198. During the course of hearing both the sides had agreed that our finding/adjudication on the Ground No.1 to 6 raised in appeal preferred by the Revenue for the Assessment Year 2015-2016 shall apply mutatis mutandis to the corresponding grounds (Ground No.1 to 5 and Ground No.8 raised) in by the Revenue in the present appeal for the Assessment Year 2017-2018. Thus, keeping in view the parity in the prevailing facts and circumstances, and adopting the reasoning given while adjudicating Revenue's appeal for the Assessment Year 2015-2016 [ITA No.2836/Mum/2024] hereinabove, we dismiss Ground No.1 to 5 and Ground No.8 raised by the Revenue.
199. Further, during the course of hearing both the sides had agreed that our finding/adjudication on the Ground No.1 & 3 raised in appeal preferred by the Revenue for the Assessment Year 2012-2013 shall apply mutatis mutandis to Ground No.6 & 9 raised in appeal preferred by the Revenue for the Assessment Year 2017-2018, respectively. Thus, keeping in view the parity in the

prevailing facts and circumstances, and adopting the reasoning given while adjudicating Revenue's appeal for the Assessment Year 2012-2013 [ITA No.2845/Mum/2024] hereinabove, we dismiss Ground No.6 &9 raised by the Revenue.

**Ground No.7:**

200. Ground No.7 raised by the Revenue is as under:

"7. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on account of reinsurance premium paid outside India of Rs.56,32,97,673/- without appreciating the fact that the deduction of TDS was not made on these payment u/s.195 of the Act, and it was neither approached the department u/s.195(2) before remitting the payment to non-resident nor filed the prescribed undertaking alongwith the certificate from an accountant while making remittance reinsurance. Further the Ld. CIT(A) has also not appreciated the fact that the payment of reinsurance premium is in violation of section 2(9) of the Insurance Act, 1938 and accordingly the said payment is contravention of the existing law and also not allowable expenses u/s.37(1) of the Act."*

201. For the Assessment Year 2019-2020, the learned CIT(A) has disposed of the ground raised by the Assessee challenging the disallowance made by the Assessing Officer in respect of re-insurance premium paid to the non-resident parties in the following manner:

"6.8 *Ground no. 8: It pertains to addition on account of reinsurance premium of Rs.56,32,97,673/- ceded outside India.*

6.8.1 *The AO noted that appellant had collected premium from clients in India and ceded a portion of the premium to foreign insurers depending upon quantum of business, risk-sharing and negotiations. Such premium had been deducted from total premium declared in P/L account.*

*When asked as to whether TDS had been deducted/withholding tax made on these amounts, appellant's submissions on this issue before AO are summarized below:*

- (i) As per IRDA guidelines/regulations, appellant can undertake such reinsurance business outside India with such cross-border re-insurers who do not have any branch in India.*
- (ii) No withholding tax obligations arises to appellant on such remittances as the cross-border insurers (except Swiss Reinsurance Company Ltd.) did not have any presence/permanent establishment in India.*
- (iii) Appellant also relied upon Hon'ble ITAT Mumbai in case of Aon Global insurance Services Ltd. (ITA No.5184 to 5186/Mum/2009) and M/s Bharti AXA Life Insurance Co. Ltd (ITA no.4805-4808) to support its claim.*

*6.8.2 The AO did not accept contentions of appellant and his reasons for doing so are summarized below.*

- (a) The event of selling the insurance policy by the appellant takes place in India, any liability/loss claim on such reinsurance transactions arise in India through the brokers (most of whom are situated in india), most of the time reinsurance premium is received from Indian Insurer (II) by the broker in India who also settle the claim (if any) and after deducting their commission remit the net amount to the non-resident insurer (NR). These events establish that reinsurance income of NR accrues and arises in India and is also received in India wherever the broker is located in India. Thus, section 5(2) of Income Tax Act is applicable in such cases of reinsurance remitted to NRs by appellant. Once chargeability of income in India is so established, provisions of withholding tax u/s 195 of Income Tax Act 1961 kick in which appellant has not adhered to.*
- (b) The NRs and appellant are not doing one-off transaction but are involved in continuous transactions over the period of treaty/agreement between NRs and appellant while such treaties keep*

*on getting over for some cases and get created for some other cases. NRs depend fully upon appellant with respect to any risk analysis and NRs reimburse any claims made by appellant.*

*(c) Due to amendment in as per Insurance Law (Amendment) Act 2015 and IRDA (General insurance-reinsurance) Regulations 2016, a foreign company engaged in reinsurance business can do so only through a branch established in India and hence presence of a PE is prerequisite for NR to carry out any such business in India. Also, rule 6 of First schedule to income Tax Act becomes applicable in such cases.*

*(d) In cases where brokers remit the reinsurance premium to NRs, said brokers act as agent of NR and liabilities of appellant stands discharged as per IRDA guidelines. Thus, principal & agent relationship exists between reinsurance agent and NRs.*

*(e) AO also cited case laws in favour of the Department*

*(i) R.D. Aggarwal & Company 56 ITR 20, 128 ITR 27 (Mad)-w.r.t. business connection*

*(ii) Kanchan ganga Sea Foods Ltd AIT 2010 264 SC, Van Oordac Jet India P Ltd ITD 79, Transmission Corporation of Andhra Pradesh 239 ITR 587, Poompuhar Shipping Corporation Ltd 109 ITD 226, Frontier Offshore Exploration India Ltd ITA No. 2037/Mads/06, West Asia Maritime Ltd (ITAT Chennai), AAR in Rajiv Malhotra (in Re), United India Insurance (ITAT Cehnnai in ITA No.1753, 1606 to 1610/Chny/2011 dated 28.08.2018-w.r.t. withholding tax*

*6.8.3 During the present appeal proceedings, appellant made similar submissions as made before the AO. Appellant also relied upon more decisions, as below, in its favour:*

*(a) Cholamandalam MS General Insurance Co Ltd 102 Taxmann.com 292 (Mad HC)*

*(b) Swiss Reinsurance Company Ltd (ITA No. 1667/Mum/2014)- ITAT Mumbai*

(c) *Tata AIG General Insurance Co. Ltd.*

6.8.4 *Admissibility of additional evidences: Vide notice dated 30/08/2023, this office had specifically asked the appellant to produce the copies of agreement between appellant and Non Resident Insurers (NRs), details of premium ceded in this assessment year, details of TDS deducted and paid along with explanation if no TDS deducted/less deducted, evidences that all NRs were registered/certified in their home country and if it were not so, then copy of approval of IRDA and copy of re-insurance program approved by IRDA.*

*Vide submissions dated 14/09/2023, the appellant filed the details in support of its claim which were sent to the AO by this office on 13/10/2023.*

*Vide report dated 09/01/2024, the AO stated that the Hon'ble ITAT Chennai in case of United India Insurance vs DCIT(LTU) ITA No. 1753, 1605, 1606,1607, 1608, 1609 & 1610/Chny/2011 dated 28/08/2018 had decided this issue against the assessee holding that merely because the incident happened during the year which is the basis for making a claim that cannot be the reasons for allowing compensation payable by the assessee for relevant assessment year & that such payment has to be allowed in the year in which compensation was determined.*

*I have gone through the submissions of the appellant carefully and I find that the AO had provided sufficient opportunities of hearing to the appellant but it is not apparent from record in appeal whether any specific query had been raised by the AO, during the assessment proceedings, regarding the details furnished during these appeal proceedings.*

*In view of the above and also considering that the additional evidences submitted by the appellant are crucial to decide the issues in appeal as well as to compute the actual income of the appellant, relying upon the decisions of Hon'ble Courts in Alcon Resort Holding Ltd [2023] 151 taxmann.com 98 (Bombay), Daljit Singh Sra [2017] 80 taxmann.com 271 (Punjab & Haryana), Suretech Hospital & Research Centre Ltd. [2007] 164 TAXMAN 168 (BOM.) and Rankin Infrastructure (P.) Ltd.*

*[2022] 142 taxmann.com 37 (Mumbai Trib.), the additional evidences submitted by the appellant are hereby admitted in terms of Rule 46A of I.T Rules 1962.*

*It is noted that in its rejoinder dated 12/01/2024, to remand report, the appellant reiterated its earlier submissions on merits of the issue.*

6.8.5 *On merits of the issue. I have perused facts of the case along-with the case laws cited by the AO and the appellant. It is seen that one has to first establish the chargeability of the sum in India under section 5 rws 9 of the I.T. Act as well as under the relevant DTAA and application of section 195 and 40(a)(i) of the I.T. Act is secondary.*

*To establish the chargeability of income of NRs in India. AO has relied upon, among other reasons, on the fact of amendments in Insurance Act and IRDA regulations to point out that due to such amendments, the NRs compulsorily had to have a branch in India from FY 2016-17 onwards which would create a business connection' or a 'permanent establishment in India and which, in turn, would lead to income of NRs taxable in India.*

*However, in my considered opinion. AO has perhaps been led only by a presumption that any business connection or permanent establishment existed in India on account of such amendment in Insurance Acts and IRDA Act.*

*It is seen that the legislative intention behind the amendments in Insurance Acts and IRDA Act can be found from explanatory notes as in Press Information Bureau release dated 13/03/2015 (available at <https://pib.gov.in/newsite/printrelease.aspx?relid=117043>)*

*"The amendment Act will remove archaic and redundant provisions in the legislations and incorporates certain provisions to provide Insurance Regulatory and Development Authority of India (IRDAI) with the flexibility to discharge its functions more effectively and efficiently. It also provides for enhancement of the foreign investment cap in an Indian Insurance Company from 26% to an explicitly*

*composite limit of 49% with the safeguard of Indian ownership and control.*

.....

*6. Promoting Reinsurance Business in India: The amended law enables foreign reinsurers to set up branches in India and defines re-insurance to mean "the insurance of part of one insurer's risk by another insurer who accepts the risk for a mutually acceptable premium", and thereby excludes the possibility of 100% ceding of risk to a re-insurer, which could lead to companies acting as front companies for other insurers. Further, it enables Lloyds and its members to operate in India through setting up of branches for the purpose of reinsurance business or as investors in an Indian Insurance Company within the 49% cap."*

*This explanatory note read with Insurance Regulatory and Development Authority of India (Registration and Operations of Branch Offices of Foreign Reinsurers other than Lloyd's) Regulations, 2015 and Insurance Regulatory and Development Authority of India (General Insurance-Reinsurance) Regulations, 2016 brings out that this Act & regulations enables the NRs, if they want, to open branch offices in India but these laws do not make it mandatory for them to do so. Thus, the foreign re-insurers did not have to open any branch office in India and it was just a choice given to them by these amendments in regulations. Hence, the presumption of the AO that by virtue of these amendments it could be assumed that foreign re-insurers had branches in India was incorrect.*

*6.9.6 In the present case, the appellant has provided the details of NRs and submissions on taxability of their receipts based upon DTAAS. It is noted that the appellant ceded reinsurance to the following NRs in FY 2016-17.*

- 1. Asia Capital, Singapore*
- 2. Tokio Millenium, Switzerland*
- 3. Emiartes Re, Dubai*
- 4. Fair Pool, Turkey*
- 5. Sompo, Japan*
- 6. Berkshire Hthway, USA*

7. *Asia Re, Thailand*
8. *Attradius, Netherlands*
9. *Milli Re, Turkey*

*It is seen from the submissions of the appellant that Double Taxation Avoidance Agreements (DTAAS) existed with the countries of residence of these entities with India in cases of all the entities. It is further noted that the remittances were sent by the appellant to the bank accounts of these entities and such bank accounts were situated in foreign jurisdictions. It is also noted that the appellant has produced the details of Tax Residency Certificates (in Form F), Form no. 15CA & 15CB (for foreign remittance compliances) of these entities.*

*Now, regarding the details whether any branch of these 12 entities existed in India pursuant to amendments in IRDA & Insurance Act in 2015 & 2016, IRDA website, <https://irdal.gov.in/frbs>, shows that except Swiss Re and Hannover Re, none of the above entities had branch in India in FY 2018-19.*

*Thus, based upon the details furnished by the appellant and the details available at IRDA website, the issue of taxation of such amount in India arises in none of the above cases and taxability of payments made to all entities has to be decided in the background of facts of this case.*

*It is seen that reasons (viz. existence of a PE/business connection and taxability in India of such premium ceded to foreign reinsurers by Indian Insurers) set out by the AO, while disallowing these payments made by the appellant, have been elaborately dealt by Hon'ble ITAT, Chennai in decision for AY 2006-07 to 2009-10 in case of Royal Sundaram Alliance Insurance Co. Ltd [2023] 154 taxmann.com 19 (Chennai - Trib.) wherein the issue was decided in favour of the assessee placing reliance upon Tribunal's own order in case of the same assessee in ITA Nos. 1356/Chny/2013, 1626/Chny/2011 & 2310/Chny/2014 and ITA Nos. 1628, 1629 & 1630/Chny/2011 and ITA No. 1666/Chny/2011 order dated 26-8-2022 for AY 2005-06 to 2010-11, holding that reinsurance premium paid to NRRs cannot be disallowed u/s 40(a)(i) of the Act, for failure to deduct TDS u/s 195 of the Act, because, reinsurance ceded to non-resident reinsurers is not taxable in India under Income-tax Act, 1961 or under DTAA between India, and respective countries.*

*To better understand the decisions of Hon'ble Tribunal, the relevant paras of decision in case of Cholamandalam MS General Insurance Co. Ltd. [2022] 142 taxmann.com 3 (Chennai-Trib.) [26-08-2022) are reproduced below:*

xx xx

*The important aspect of these decisions is that they were pertaining to the periods prior to FY 2016-17 when the foreign reinsurers did not have any branches in India even under IRDA Act/regulation and hence, the said decisions can be taken as applicable for those NRs who did not have any branch in India prior to FY 2016-17.*

*Even for FY 2016-17 onwards, the judicial reasoning on this issue remains same save for the fact whether any of the NRs had any branches in India. Thus, relying upon aforementioned decisions of Hon'ble Tribunals, specifically in cases of Tata AIG General Insurance Company Ltd (supra) and Cholamandalam MS General Insurance Co. Ltd. (supra), it is hereby held that for the **9 entities (except Swiss Re & Hannover Re) who did not have any branches in India in FY 2018-19 also as has been brought out in preceding paras of this order, no disallowance u/s 40a(i) was called for in the present case of the appellant.** The disallowances made by the AO in these all cases is hereby deleted.*

*Since various sub-grounds of ground 8 of present appeal are interlinked with the main issue decided above, these sub-grounds do not require separate adjudication. In effect, ground no. 9 of appeal is allowed."*

202. We note that for the Assessment Year 2019-2020, applying reasoning identical to that applied in the assessment year 2017-2018, the CIT(A) has deleted disallowance made by the Assessing Officer in respect of payment of reinsurance premium non-resident parties which did not have any business connection or permanent establishment in India during the relevant previous year. We have already rejected the challenge to approach/reasoning adopted by the Learned CIT(A) in appeals

for the preceding assessment years. We do not find any infirmity either in the approach or the reasoning adopted by the Learned CIT(A) while returning the factual finding for the assessment year before us. Thus, keeping in view the parity in the prevailing facts and circumstances, and adopting the reasoning given while adjudicating Ground No.7 raised in Revenue's appeal for the Assessment Year 2017-2018 [ITA No.2827/Mum/2024] hereinabove, we decline to interfere with the order passed by the Learned CIT(A) on this issue. The Revenue has failed to bring on record any material to dislodge the factual findings returned by the Learned CIT(A).Therefore, we dismiss Ground No.2 raised by the Revenue.

203. Thus appeal preferred by the Revenue is dismissed

**ITA No.2623/Mum/2024 [Assessee's Appeal]**

204. Now we would take up cross-appeal preferred by the Assessee for the Assessment Year 2019-2020.

**Ground No.1 to 4:**

205. Ground No. 1 to 4 raised by the Assessee pertains to disallowance of payments made to auto dealers read as under:

- "1. *The CIT(A) was not justified in confirming the action of the AO of disallowing the payment of Rs.6,72,95,652 by the Appellant to the Auto Dealers.*
2. *The CIT(A) erred in confirming the action of the AO, without appreciating the fact that the year under consideration was not the year for which order was passed by the Service Tax Department.*
3. *The CIT(A) was wrong in observing that it has not been brought out as to when the appellant had asked for the cross-examination of the auto dealers, as to how the appellant was prejudiced if the AO did not provide it an*

*opportunity to cross-examine the auto dealers, and whether the auto dealers, if any had retracted their statements.*

4. *The CIT(A) further erred in confirming the action of the AO without providing an opportunity to the appellant to cross-examine the auto dealers.”*

206. During the course of hearing both the sides had agreed that our finding/adjudication on the Ground No.3 to 6 raised in appeal preferred by the Assessee for the Assessment Year 2012-2013 shall apply mutatis mutandis to corresponding grounds (Ground No.1 to 4) raised in the present appeal for the Assessment Year 2019-2020. Thus, keeping in view the parity in the facts and circumstances, and adopting the reasoning given while adjudicating identical grounds raised in appeal preferred by the Assessee for the Assessment Year 2012-2013 [ITA No.2616/Mum/2024] hereinabove, we delete the disallowance of INR.6,72,95,652/- made in respect of payments made to auto dealers the under Section 37(1) of the Act read with Explanation 1 thereto by following the decision of the Co-ordinate Bench of the Tribunal in the case of **HDFC ERGO General Insurance Company Ltd. Vs. Assistant Commissioner of Income Tax**[ITA No.2836 to 2841/Mum/2025 & ITA No.3277 to 3281/Mum/2025 for the Assessment Year 2010-2011, 2011-2012, 2013-2014, 2015-2016 & 2016-2017]. Accordingly, Ground No.1 to 4 raised by the Assessee are allowed. Thus, Appeal preferred by the Assessee is allowed.

207. In result, for the Assessment Year 2019-2020 the appeal preferred by the Revenue [ITA No.2823/Mum/2024] is dismissed, while appeal preferred by the Assessee [ITA No.2623/Mum/2024] is allowed.

## **Conclusion**

208. In conclusion, the appeals and cross objections are disposed off as under:

<b>Assessment Year</b>	<b>Appeal No. / Cross Objection No.</b>	<b>Result</b>
2010-2011	2617/Mum/2024 [A]	Allowed
2012-2013	2616/Mum/2024[A]	Partly Allowed
	2845/Mum/2024[D]	Dismissed
	C.O.97/Mum/2024 [A]	Dismissed
2013-2014	2618/Mum/2024[A]	Partly Allowed
2014-2015	2841/Mum/2024[D]	Dismissed
	C.O.96/Mum/2024[D]	Dismissed
2015-2016	2619/Mum/2024[A]	Partly Allowed
	2836/Mum/2024[D]	Dismissed
2016-2017	2620/Mum/2024[A]	Allowed
	2834/Mum/2024[D]	Dismissed
2017-2018	2621/Mum/2024[A]	Partly Allowed
	2827/Mum/2024[D]	Dismissed
2018-2019	2622/Mum/2024[A]	Partly Allowed
	2830/Mum/2024[D]	Dismissed
2019-2020	2623/Mum/2024[A]	Allowed
	2823/Mum/2024[D]	Dismissed

Order pronounced on 21.11.2025.

*Sd/-*  
**(Vikram Singh Yadav)**  
**Accountant Member**

*Sd/-*  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 21.11.2025  
Milan, LDC