आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI
श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष ।
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri Jagadish, Accountant Member

आयकर अपील सं./**I.T.A. Nos.1759/Chny/2019, 182 & 183/Chny/2021, 430/Chny/2022 and 683/Chny/2023**
निर्धारण वर्ष/**Assessment Years: 2014-15, 2015-16, 2016-17 & 2017-18**

United India Insurance Co. Ltd., O/o The Chief Manager, CFAC Department, Head Office, United India Nalanda, Door No. 19, Ground Floor, 4th Lane, Utamar Gandhi Salai, Chennai 600 034. **[PAN:AAACU5552C]**	Vs.	The Principal Commissioner of Income Tax – 3, Chennai 600 034.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri S. Sundararaman, CA
प्रत्यर्थी की ओर से/Respondent by	:	Ms. V. Pushpa, Sr. Standing Counsel (virtual)
सुनवाई की तारीख/ Date of hearing	:	07.10.2025
घोषणा की तारीख /Date of Pronouncement	:	05.01.2026

आदेश /O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

The appeal in ITA No. 1759/Chny/2019 filed by the assessee is directed against the order dated 29.03.2019 passed by the ld. Principal Commissioner of Income Tax-3, Chennai for the assessment year 2014-15. The appeals in ITA No. 182 & 183/Chny/2021 are filed by the assessee against different orders both dated 28.03.2021 passed by the ld. PCIT-3, Chennai for the assessment 2015-16 and 2016-17. The

appeal in ITA No. 430/Chny/2022 is filed by the assessee against the order of the ld. PCIT-3, Chennai dated 31.03.2022 for the assessment year 2017-18. The appeal in ITA No. 683/Chny/2023 is filed by the assessee against the corrigendum order of the ld. PCIT-3, Chennai dated 29.03.2023 for the assessment year 2017-18.

2. Since, the issues raised in these appeals are similar based on the same identical facts, with the consent of both the parties, we proceed to hear all the appeals together and pass consolidated order for the sake of convenience.

3. First, we shall take appeal in ITA No. 1759/Chny/2019 - AY 2014-15 for adjudication.

4. Ground No. 1 is general in nature and requires no adjudication.

5. Ground No. 2 to 5 raised by the assessee in challenging the action of the ld. PCIT in passing revision order under section 263 of the Income Tax Act, 1961 [“Act” in short] by holding that the assessee is not entitled to claim deduction under section 10(38) of the Act towards profit on sale of investments.

6. Brief facts as emanating from the record, it is noted that the appellant assessee claimed the profit on sale of investments to an extent

of ₹.377,22,70,740/- as exempt under section 10(38) of the Act. According to PCIT, the profit on sale of investments shall not be excluded for the purpose of computation of profits and gains of business as per Rule 5(b)(i) of First Schedule and since the assessee had excluded such profit on sale of investments while computing the taxable income, which was allowed as exempt under section 10(38) of the Act by the Assessing Officer in the scrutiny proceedings, the PCIT held that the assessment order dated 29.12.2016 passed under section 143(3) of the Act by the Assessing Officer is erroneous and prejudicial to the interest of Revenue. Accordingly, the ld. PCIT invoked the provisions of section 263 of the Act and issued show-cause notice dated 08.02.2019 to the assessee.

7. In response to the show-cause notice, the assessee filed written submissions on 18.02.2019 & 05.03.2019, which are reproduced in page 4 to 7 of the impugned order. After considering the submissions of the assessee, the ld. PCIT observed that the Assessing Officer has not specifically examined and failed to apply the amended provisions to First Schedule of Rule 5 of the IT Rules read with section 44 of the Act.

8. Further, he observed, the assessee claimed an amount of ₹.377,22,70,740/- out of its profits as exempt under section 10(38) of the Act, however, an amount of ₹.133,11,54,362/- was offered for taxation on

account of profit on sale of investments, thus, he held bifurcation of a single source of income is not permissible under statute classifying it under two different heads of income “LTCG” and “business income”. Further, with regard to the claim of provision for diminution in the value of equities other than actively traded, he held, no specific submissions were offered towards diminution in value of investments debited to the P&L account. Accordingly, for the reasons stated above, the ld. PCIT held that the assessment order dated 29.12.2016 passed under section 143(3) of the Act is erroneous and prejudicial to the interest of revenue and directed the Assessing Officer to pass a fresh assessment order by affording fresh opportunity to the assessee.

9. Aggrieved by the revision order passed under section 263 of the Act, the assessee preferred present appeal before this Tribunal.

10. The ld. AR Shri S. Sundararaman, CA submits that there is no prohibition either in section 44 of the Act or in Rule 5 of the First Schedule to deny deduction under section 10(38) of the Act to insurance companies. The intention behind insertion of Rule 5(b) of the First Schedule from AY 2011-12 is to tax debt instruments and short-term capital gains which were exempt till AY 2010-11. He submits that the assessee started to claim deduction under section 10(38) of the Act from

AY 2005-06 and has been allowed in the assessee's own case both pre and post amendment of Rule 5(b) of the First Schedule and no appeal has been filed by the Revenue in any of the aforementioned assessment years.

11. The ld. AR drew our attention to the memo of income for the assessment years 2010-11, 2011-12, 2012-13 and 2013-14 placed at pages 81 to 84, wherein, the claim of deduction towards profit on sale of investments under section 10(38) of the Act has been accepted by the Department. He drew our attention to page 26 of the paper book and submits that ld. CIT(A) accepted the deduction under section 10(38) of the Act in the appellate order for the AY 2012-13 in assessee's case and the ld. PCIT also accepted the deduction under section 10(38) of the Act considering remand report of the Assessing Officer. He also drew our attention to the assessment order for AY 2013-14, at pages 88 to 97 of the paper book and submits, the Assessing Officer elaborately discussed and allowed the deduction under section 10(38) of the Act.

12. Besides, allowance of deduction, post amendment to Rule 5(b) of First Schedule of IT Rules, under section 10(38) of the Act in assessee's own case for earlier assessment years, the ld. AR drew our attention to orders of Coordinate Benches of the Tribunal in the cases

of M/s. The oriental Insurance Co. Ltd. V. DCIT in ITA No. 200/Del/2016, M/s. General Insurance Corporation v. ACIT in ITA No. 1080/Mum/2019 and M/s. ECGC Ltd. V. ACIT in ITA No. 3551/M/2023 and argued that similar deduction under section 10(38) of the Act has been allowed.

13. The ld. AR further relied on the decision of the Hon'ble High Court of Bombay in the case of Kohinoor Foods reported in 14 ITR 249 placed at pages 60 to 70 of paper book and the decision of the Hon'ble High Court of Delhi in the case of Escorts reported in 338 ITR 435 placed at pages 71 to 84 of paper book for the proposition that if similar claims have been allowed in the earlier assessment years, revisionary proceedings cannot be initiated.

14. The ld. AR vehemently argued against Revenue's point that there is bifurcation of income from a single source is not correct. He submits that the bifurcation of a single source of income happens in cases where one portion of income from the same asset is treated as exempt and another portion is treated as taxable, as the income from non-equity-based investments is offered to tax and only the equity-based investments if it fulfils the condition specified under section 10(38) of the Act is treated as exempt. He vehemently argued the differential tax treatment (allowed in

law) for classes of asset (completely difference in character) cannot be treated as bifurcation of a single source of income.

15. He submits that the next contention of the Revenue that as per section 44 of the Act read with Rule 5 of the First Schedule prohibits deduction under section 10 of the Act, the ld. AR submits that the said contention is not correct for the very fact that deduction of dividends under sections 10(34) of the Act and deduction of interest under section 10(15) of the Act have been allowed for all assessment years without any dispute, and argued, it is amply clear that deduction under section 10 of the Act is allowable to insurance companies, prayed for quashing the revision order passed under section 263 of the Act.

16. The ld. Senior Standing Counsel Ms. V. Pushpa for Respondent-Revenue submits that the ld. PCIT invoked the provisions of section 263 of the Act for the reason that the assessment order passed by the Assessing Officer under section 143(3) of the Act dated 29.12.2016 has been found erroneous and prejudicial to the interest of Revenue as the assessment was made without making enquiry and allowed relief to the assessee. She submits that section 44 of the Act deals with the computation of income for insurance business, both life insurance and general insurance and argued vehemently the said section provides

special provisions for the assessment of profits and gains from the business of insurance, overriding the general provisions applicable to the computation of income under the heads “Profits and gains of business or profession” i.e., provisions of section 28 to section 43D of the Act are not applicable for the computation of income of insurance companies. She submits that in respect of general insurance companies, profits are computed as per the annual accounts maintained in accordance with Insurance Act, 1938 or the Rules there under or the provisions of Insurance Regulatory and Development Authority Act, 1999 [IRDAA] or the regulations made thereunder subject to certain adjustments and Rule 5 of the First Schedule of the Income Tax Act. She further submits that Rule 5(b) was re-introduced by enactment of Finance Act, 2010 and as per Rule 5(b)(i) of the First Schedule, the profit on sale of investments shall not be excluded for the purpose of computation of profits and gains of business.

17. The ld. Senior Standing Counsel, further submits that exemption under section 10(38) of the Act is available to taxpayers to claim exemption from gain on sale of long term capital gains, arising from the transfer of equity shares in a company, units of an equity-oriented mutual fund, or units of a business trust, subject to the condition that Securities Transaction Tax (STT) is paid at the time of sale. As per Finance Act,

2011, from the AY 2011-12, the taxpayers' needs to maintain proper records of the STT paid at the time of acquisition and at the time of sale to claim the exemption. She argued that it is clear the exemption claimed under section 10(38) of the Act pertains to capital gains and not to claim exemption on business income.

18. The ld. Senior Standing Counsel vehemently argued that the assessee cannot claim exemption under section 10(38) of the Act on the profits from sale/investments as the allowance of exemption in the case of other public sector undertakings engaged in the business of insurance, other than life insurance has not attained its finality and is still pending decision before various appellate fora. She further argued that Rule 5 of the First Schedule mandates the profits and gains of any business of insurance, other than life insurance, shall be taken to be the profits before tax and appropriations as disclosed in the profits and loss account prepared in accordance with the provisions of the Insurance Act, 1938 or IRDA Act, 1999. Relying upon the judgement of the Hon'ble Supreme Court in the case of GIC v. CIT reported in 240 ITR 739, she argued that the amount of profit as per the profits and loss account of the assessee carrying on insurance business should satisfy the requirements of the

Insurance Act and the same is final, cannot be altered by the Assessing Officer.

19. Further, the ld. Senior Standing Counsel submits that the amount credited to the profit and loss account cannot be subject to tax either because of exemption under the normal provisions of the Act or for any other reason whatsoever, deduction in respect of such amount cannot be claimed in the computation of total income. She argued that the assessee has credited profit on sale of investment to the P& L account prepared as per the IRDA Act/Insurance Act and thereafter claimed an amount of ₹5,34,45,92,750/- out of these profits as exempt under section 10(38) of the Act. However, an amount of ₹.32,21,37,914/- also shown as on account of profit on sale of investment has been offered for taxation, as the conditions prescribed in section 10(38) of the Act are stated to be not satisfied in the case of such investments, argued, it is apparent that the assessee has bifurcated a single source of income namely profits from sale of investments and classifying it under two different heads of income from LTCG and business income and supported the order of the ld. PCIT.

20. She drew our attention to the clarification issued by the CBDT vide letter dated 21.02.2006 as well as decision in the case of PCIT-3 v. New India Assurance Co. Ltd. [2018(3) TMI 589], the ld. Senior Standing

Counsel argued that the above precedent as well as clarification of the CBDT are prior to the amendment in Rule 5 of the First Schedule. Prior to its reintroduction by the Finance Act, 2010 w.e.f. 01.04.2011, Rule 5(b) did not find a place in the statute. It had been deleted and was re-introduced only w.e.f. 01.04.2011 by the Finance Act, 2010. Prior to introduction of Rule 5(b) the profits from sale of investments are not specifically covered by the Rule and the assessee was held to be eligible for the exemption under section 10(38) of the Act. She argued that with the re-introduction of Rule 5(b), the profits on sale of investments are to be treated as business profit of the assessee on which the assessee is not eligible to claim exemption under section 10(38) of the Act.

21. The ld. Senior Standing Counsel further submits that an exemption under section 10(38) of the Act in any case cannot be allowed to the assessee for the reason that it cannot be considered as an “investor” of shares for the purpose of long term capital gains. This is evident from the conduct of the assessee, as it has traded in and purchased and sold shares in hundreds of companies. The volume and turnover of shares transactions entered into by the assessee clearly indicates that the intention of assessee was to earn “profit” and the profit earned from the trading of shares constitutes “Business Profits” earned during the course

of regular business activities and cannot be construed as “Capital Gain”. She argued strongly that the provisions of section 10(38) of the Act cannot be applied to such business profit and no benefit under section 10(38) of the Act can be granted to the assessee. She prayed to dismiss the grounds raised in this regard and to affirm the PCIT’s order.

22. We have heard both the parties and perused the material available on record. We find the case of the ld. PCIT is that the assessee excluded the profit on sale of investments to an extent of Rs.377,22,70,740/- while computing the total income on the ground such profit is exempt under section 10(38) of the Act. Further, according to the ld. PCIT, the profits and gains of insurance business shall be computed in terms of provisions of section 44 of the Act r.w. Rule 5(b) of First Schedule of the Income Tax Act. We find that there is no dispute with regard to exclusion of profit on sale of investments by the assessee while computing profits and gains of the assessee, further, the assessee offered an amount of ₹.133,11,54,362/- out of above said profit for taxation, which is also not disputed by the ld. AR.

23. We find that the ld. AR placed on record two orders of Mumbai Tribunal and one order of Delhi Tribunal. On an examination of the order dated 30.03.2021 passed by the ITAT Mumbai Benches in ITA No.

1080/Mum/2019 for AY 2011-12, we find the fact of that case relating to the issue on hand is discussed in para 3.1 of the said order. It is noted the assessee therein is engaged in the business of general insurance, wherein, the 100% of the share capital was held by the Central Government. The assessee claimed exemption under section 10 of the Act relating to income from LTCG on transfer of shares exempt under section 10(38) of the Act. Further, income from VCF as tax is paid by fund, interest on tax free bonds under section 10(15)(i) of the Act, dividend income received from VCF under section 10(34) of the Act and dividend income under section 10(34) of the Act. The details of which are reproduced hereunder:

Income from LTCG on transfer of shares exempt u/s 10(38)	₹.	588,85,02,720/-
Income from VCF as tax is paid by Fund	₹.	22,52,211/-
Interest on Tax Free Bonds u/s 10(15)(i)	₹.	1,76,12,403/-
Dividend income received from VCF u/s 10(34)	₹.	4,40,105/-
Dividend income u/s 10(34)	₹.	388,58,24,247/-

24. On perusal of the above, it is noted that the Tribunal observed that the Assessing Officer granted exemption in respect of all above except on LTCG on transfer of shares under section 10(38) of the Act to an extent of Rs.588,85,02,720/-. Therefore, it is clear from that the only issue before the Mumbai ITAT Benches regarding the taxability of profits on sale of investment is exempt under section 10(38) of the Act with reference to provisions under section 44 of the Act r.w. Rule 5 of the first schedule to

the Act. The Tribunal discussed the same from para 3.3 onwards. The ld. Senior Standing Counsel therein argued that the provisions under section 44 of the Act and Rule 5 of First Schedule disentitle the exemption under section 10(38) of the Act. Allowing such exemption would nullify the amendment to Rule 5(b) (ii) of the First Schedule w.e.f. 01.04.2011 [AY 2011-12]. The Tribunal held the same submissions are not acceptable as to how the claim of exemption under section 10(38) of the Act alone would be different from the aforesaid four other claims under section 10 of the Act and held once the transaction on sale of shares are carried out on a recognized stock exchange, which had been duly subjected to STT, then the long term capital gains arising therefrom are exempt under specific provisions of section 10(38) of the Act. The Tribunal further placing reliance on the decision of Hon'ble High Court of Bombay in the case of New India assurance company Limited reported in 254 taxman 238 [Bombay] and letter dated 21.02.2006 issued by the CBDT to IRDA, further, taking into account, the same practice followed by the consistently for all the assessment years held that the amendment w.e.f. AY 2011-12 to Rule 5(b) of first schedule has no way nullified/ rendered in defective/ rendered nugatory, held that the assessee is entitled to claim exemption under section 10(38) of the Act. Therefore, it is clear that the Tribunal was conscious enough to the amendment to Rule 5(b) of First Schedule and

by taking into consideration various aspects which were discussed by us above, held the action of the assessee in claiming exemption under section 10(38) of the Act with reference to profit on sale of investment, is justified. The subsequent orders in the case of M/s. General Insurance Corporation in ITA No. 1080/Mum/2019 and ECGC Ltd. in ITA No. 3551/M/2023 followed vide orders dated 02.02.2023 and 27.02.2024 respectively.

25. Now let us see the facts on hand with reference to the above orders of Mumbai ITAT Benches. Admittedly, the facts in the present case and that of the Mumbai Tribunal are identical and the issue dealt therein are also similar. In the present case, the main contention of the assessee is that if an amount has been credited in profit & loss account so prepared as per IRDAI Act/Insurance Act and it cannot be subjected to tax either because of exemption under the normal provisions of the Income Tax Act. The ld. PCIT did not agree with the said contention of the assessee, we find the assessee credited the profit on sale of investments to the profit and loss account prepared as per IRDAI/Insurance Act and claimed exemption under section 10(38) of the Act. In this regard, let us examine the Rule 5(b) to the First Schedule of the Act, which is reproduced herein under:

B.—Other insurance business

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:—

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;
(i) any gain or loss on realisation of investments shall be added or deducted, as the case may be, if such gain or loss is not credited or debited to the profit and loss account;
(ii) any provision for diminution in the value of investment debited to the profit and loss account, shall be added back;
such amount carried over to a reserve for unexpired risks as may be prescribed in this behalf shall be allowed as a deduction:

Provided that any sum payable by the assessee under section 43B, which is added back in accordance with clause (a) of this rule, shall be allowed as deduction in computing the income under the said rule in the previous year in which such sum is actually paid.

26. On perusal of the above, it is noted that the section 44 of the Act explains the profit and gains of any business of insurance shall be computed in accordance with Rules contained in First Schedule. Under the head B – other insurance business is relevant to computation of profits & gains of other insurance business, admittedly since the issue of computation of profit & sale of investments falls under the Other Insurance business, Rule 5 of First Schedule to the Income Tax Act reads as the profits & gains of any business of insurance other than life insurance shall be taken to be profit before the tax and appropriations as disclosed in the profit & loss account prepared in accordance with the

provisions of the Insurance Act, 1938 and Insurance Regulatory & Development Authority Act, 1999. Clause (b)(i) of Rule 5(b) explains 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 profit & loss account as per Insurance Act, 1938 and Insurance Regulatory & Development Authority Act, 1999. Therefore, it is clear that adjustment under the Income Tax Act cannot be made if any gain or loss on realization of investment not credited or debited to the profit & loss account under Insurance Act, 1938 and Insurance Regulatory & Development Authority Act, 1999. In the present case, the ld. PCIT clearly held that the assessee credited gain on sale of investments to the profit & loss account under Insurance Act, 1938 and Insurance Regulatory & Development Authority Act, 1999 vide para 14.9 of the impugned order. Therefore, the findings of the ld. PCIT in holding that the profit on sale of investment shall not be excluded for the purpose of computation of profit and gains of business as per Rule 5(b)(i) of First Schedule to the Income Tax Act and consequently holding the assessment dated 29.12.2016 is erroneous and prejudicial to the interest of Revenue is not justified. Further, it is evident from computation of memo of income for AY 2014-15 the assessee has included the profit on sale of investments in the total income, therefore, the findings of the ld. PCIT that the profit on sale of

investments to an extent of ₹.377,22,70,740/- excluded from the total income is incorrect. Be that as it may, there is no dispute with regard to issuance of notice dated 31.08.2015 under section 143(2), notice dated 06.05.2016 under section 142(1) and another notice dated 05.12.2016 under section 142(1) of the Act, wherein, the Assessing Officer sought explanations with regard to exemption claimed under section 10(38) of the Act and dealt the issue extensively. Thus, the question of no enquiry by the Assessing Officer does not arise at all. Therefore, the order of the ld. PCIT in directing the Assessing Officer to pass fresh assessment order by affording fresh opportunity, is not justified.

27. Ground No. 6 raised in the appeal of the assessee for AY 2014-15 is with regard to the provisions made by the assessee towards diminution in the value of investments.

28. The ld. AR submits that the provisions for diminution in the value of equities other than actively traded, made towards diminution in the value of investments as per regulations issued by the IRDAI from time to time, is only in respect of those investments whose realizable value has been diminished on the relevant balance sheet date and the assessee will not be able to recover the loss. He argued that the above said provision amount debited to the profit and loss account by the assessee are based

on actual position and is not at par with the provisions referred to in the Rule 5 of first schedule, where, the provision amounts are made on notional basis.

29. In so far as the issue pertaining to the provision increased for diminution for investments for actively traded, the ld. Senior Standing Counsel submits that the assessee ought to have applied Rule 5(b)(ii) of the IT Rules. Since the Assessing Officer failed to apply Rule 5(b)(ii) in so far as the issue of provision for diminution in the value of investment is concerned, the same is prejudicial to the interest of the Revenue. Thus, the ld. PCIT is well within his jurisdiction and rightly invoked the provisions of section 263 of the Act and prayed to confirm the revision order passed by the ld. PCIT and dismiss the appeal filed by the assessee.

30. Heard both the parties and perused the material available on record. The ld. PCIT was of the opinion that the amount to an extent of Rs.1,27,86,000/- claimed as provisions for diminution in the value of equities other than actively traded on account of fire insurance account, marine insurance account, miscellaneous insurance account and debit in the profit & loss account. Further, according to the ld. PCIT, no explanation offered by the assessee in respect of applicability of

provisions under Rule 5(b)(ii) of First Schedule, which reads as "*(ii) any provision for diminution in the value of investment debited to the profit & loss account, shall be added back."* The ld. AR's contention is that the provision amount debited to the profit & loss account by the assessee are based on actual position and is not at par with provisions referred to in Rule 5 of First Schedule. In this regard, we find that the assessee provided separate accounts in its financials which are page 60 to 63 of the Annual Report for FY 2013-14 relevant to AY 2014-15, wherein, the provision for diminution in the value of other than actively traded equities for fire insurance account debited at ₹.8,18,000/-. Likewise, for marine insurance account for an amount of Rs.3,89,000/-, for miscellaneous insurance account for an amount of ₹.77,94,000/- and for profit & loss account ₹.37,85,000/- were debited, but, however, not added back as per Rule 5(b)(ii) of First Schedule, is clear from computation of income from business under normal provisions at page 42 of the assessment order. Therefore, it is clear that the assessee itself admitted that the provisions debited to with reference to the above four accounts were not on par with Rule 5(b)(ii) of the First Schedule. On perusal of the assessment order, we find no such examination whatsoever made by the Assessing Officer in this regard. Therefore, the ld. PCIT rightly invoked the provisions under section 263 of the Act in holding that the assessment order is erroneous

and prejudicial to the interest of Revenue with reference to provision for diminution in the value of actively traded equities in respect of fire insurance account, marine insurance account, miscellaneous insurance account and profit & loss account. Thus, ground No. 6 raised by the assessee is dismissed.

31. In the result, the appeal filed by the assessee is partly allowed.

ITA No. 182/Chny/2021 – AY: 2015-16

32. The assessee raised 8 grounds amongst which the only issue emanates for our consideration as to whether the ld. PCIT is justified in invoking jurisdiction under section 263 of the Act with reference to allowing exemption under section 10(38) of the Act on account of profit on sale of investments.

33. Similar issue has been raised in the AY 2014-15, wherein, we have held that the findings of the ld. PCIT in holding the assessment order is erroneous and prejudicial to the interest of revenue is not justified as the assessee considered the profit on sale of investments to the profit & loss account prepared as per the IRDA Act/ Insurance Act and no adjustment is required to be made under Rule 5(b)(i) of First Schedule of the Act. In the present AY 2015-16, the ld. PCIT clearly recorded consideration of profit on sale of investments to the profit & loss account as per

IRDA/Insurance Act vide para 8.8 of the impugned order, therefore, no adjustment is required as per Rule 5(b)(i) of First Schedule of the Act. Be that as it may, there is no dispute with regard to issuance of notice dated 26.04.2016 under section 143(2), notice dated 12.07.2016 under section 143(2) and another notice dated 20.11.2016 under section 143(2) of the Act, wherein, the Assessing Officer sought explanations with regard to exemption claimed under section 10(38) of the Act vide question No. 4 and dealt the issue extensively. Thus, the question of no enquiry by the Assessing Officer does not arise at all. Thus, the grounds 1 to 8 raised by the assessee are allowed.

34. In the result, the appeal filed by the assessee is allowed.

ITA No. 183/Chny/2021- AY: 2016-17

35. Ground No. 1, 8 & 9 raised by the assessee are general in nature and requires no adjudication.

36. Ground Nos. 2 to 6 raised by the assessee as to whether the ld. PCIT is justified in invoking jurisdiction under section 263 of the Act with reference to allowing exemption under section 10(38) of the Act on account of profit on sale of investments. Similar issue has been raised in the AY 2014-15, wherein, we have held that the findings of the ld. PCIT in

holding the assessment order is erroneous and prejudicial to the interest of revenue is not justified as the assessee considered the profit on sale of investments to the profit & loss account prepared as per the IRDA Act/ Insurance Act and no adjustment is required to be made under Rule 5(b)(i) of First Schedule of the Act. In the present AY 2016-17, the ld. PCIT clearly recorded consideration of profit on sale of investments to the profit & loss account as per IRDA/Insurance Act vide para 8.8 of the impugned order, therefore, no adjustment is required as per Rule 5(b)(i) of First Schedule of the Act. Be that as it may, there is no dispute with regard to issuance of notice dated 24.08.2017 under section 143(2), notice dated 24.01.2018 under section 143(2) and another notice dated 22.11.2018 under section 143(2) of the Act, further, notice dated 22.11.2018 under section 142(1) of the Act and show cause notice dated 26.12.2018 wherein, the Assessing Officer sought explanations with regard to exemption claimed under section 10(38) of the Act and dealt the issue extensively. Thus, the question of no enquiry by the Assessing Officer does not arise at all. Thus, the grounds 2 to 6 raised by the assessee are allowed.

37. Ground No. 7 raised by the assessee for AY 2016-17 is with regard to the provisions made by the assessee towards diminution in the value of

investments. We note that the provision for diminution in the value of other than actively traded equities for fire insurance account, marine insurance account, miscellaneous insurance account, and profit & loss account were debited, but, however, not added back as per Rule 5(b)(ii) of First Schedule, is clear from computation of income from business under normal provisions at page 45 of the assessment order. Therefore, it is clear that the assessee itself admitted that the provisions debited to with reference to the above four accounts were not on par with Rule 5(b)(ii) of the First Schedule. On perusal of the assessment order, we find no such examination whatsoever made by the Assessing Officer in this regard. Therefore, the ld. PCIT rightly invoked the provisions under section 263 of the Act in holding that the assessment order is erroneous and prejudicial to the interest of Revenue with reference to provision for diminution in the value of actively traded equities in respect of fire insurance account, marine insurance account, miscellaneous insurance account and profit & loss account. Thus, ground No. 7 raised by the assessee is dismissed.

38. In the result, the appeal filed by the assessee is partly allowed.

ITA No. 430/Chny/2022- AY: 2017-18

39. Ground No. 1 raised by the assessee is general in nature and requires no adjudication.

40. Ground Nos. 2 (a) along with 3 to 7 are relating to issue in claiming exemption under section 10(38) of the Act on account of profit on sale of investments.

41. We find similar issue in ITA No. 1759/Chny/2019 for AY 2014-15, wherein, we held that the assessee is entitled to claim deduction under section 10(38) of the Act in respect of profit on sale of investments as exempt by holding invocation of jurisdiction under section 263 of the Act by the ld. PCIT, is not justified. In the present case, notice dated 21.08.2018 under section 143(2), dated 26.08.2019 under section 142(1) and notice dated 19.12.2019 under section 142(1) of the Act, wherein, the Assessing Officer specifically sought information about the claim of exemption under section 10(38) of the Act as well as section 14A of the Act vide question No. 12(1) and dealt the issue extensively. The reasons recorded by us in the aforementioned paragraphs are equally applicable to the present issue for AY 2017-18. Thus, ground Nos. 2 (a) along with 3 to 7 are allowed.

42. Ground Nos. 2(b) along with 8 are relating to disallowance under section 14A of the Act r.w. Rule 8D.

43. Vide para 3 of the impugned order, the ld. PCIT is of the opinion that for the AY 2016-17, the Assessing Officer made disallowance under section 14A r.w.s. Rule 8D, but, however, no disallowance made for AY 2017-18. However, the assessee disallowed an amount of ₹.74,02,307/- under section 14A r.w. Rule 8D for the purpose of computation under section 115JB of the Act. Accordingly, the ld. PCIT determined the disallowance under section 14A r.w. Rule 8D at ₹.238,24,03,746/- and held that the assessment order is erroneous and prejudicial to the interest of Revenue.

44. We note that by following the decision of the Hon'ble High Court of Delhi in the case of Birla Sun Life Insurance Co. Pvt. Ltd. v. DCIT reported in (2010-TIOL-535-ITAT-MUM), the Coordinate Benches of this Tribunal in assessee's own case for AY 2016-17 held that disallowance under section 14A r.w. Rule 8D is not applicable to insurance companies due to the special provisions of section 44 of the Act. Similarly, in the case of Cholamandalam MS General Insurance Co. Ltd. v. DCIT [2025] 174 taxmann.com 603 (Madras), the Hon'ble High Court of Madras was pleased to hold that the provisions of section 14A of the Act do not apply to insurance companies, because in framing of assessments in case of insurance companies, it is purely section 44 of the Act r.w. Rule 5 of First Schedule that would apply. We find vide notice dated 26.08.2019 under

section 142(1) of the Act, the Assessing Officer specifically sought for explanation vide question No. 12(1) of the notice and dealt the issue extensively. Thus, the question of no enquiry by the Assessing Office does not arise at all. In view of the above, we find that the ld. PCIT is not correct in invoking the provisions of section 263 of the Act to hold that the assessment order was erroneous and prejudicial to the interest of the Revenue on this issue. Thus, ground Nos. 2(b) along with 8 raised by the assessee are allowed.

45. Ground Nos. 2(c) along with 9 are relating to income from unclaimed amount relating to policy holders.

46. We note that vide para 8 of the impugned order, the ld. PCIT was of the opinion that the income earned out of the unclaimed amount is required to be assessed as income of the assessee for the reason that the income from the unclaimed policy holder's funds would never be paid to the policy holder and the TDS on the interest income is also claimed by the assessee and the Assessing Officer failed to verify the same. Thus, the ld. PCIT held that this income is necessarily to be added as income of the assessee.

47. The ld. AR submits that IRDAI Master Circular dated 17.11.2020 deals with unclaimed policy holder's funds due for a period of more than six months, according to which, no insurer shall appropriate or write-back any part of unclaimed amounts belonging to the policy holders under any circumstances, the unclaimed policy holder's funds are kept separately and invested in fixed deposits. Further, he submits that the income earned from investments out of unclaimed amounts belonging to the policy holder are part of policy holder's fund and if the said amounts were not claimed, would be transferred to Senior Citizen Welfare Fund.

48. The ld. Senior Standing counsel submits that the assessee received ₹.3,04,67,000/- as income from deposit of ₹.162,20,08,000/-. She vehemently argued that the claim of as the said interest income belongs to policy holders is not acceptable as these amounts are never going to be paid to the policy holders. Further, she submits that the assessee claiming TDS on interest income, which supports the contention of the Revenue as the assessee itself admitting that the said amounts are never going to be paid to the policy holders.

49. Having heard both the parties, it is noted that the main contention of the assessee is that the unclaimed policy holder's funds are kept separately and invested in fixed deposits, income earned thereon on such

fixed deposits belongs to the policy holders. On perusal of the financials of the assessee, it is nowhere shown that the amount in fixed deposits and interest thereon kept in separate account. On examination of the balance sheet at page 64 of the financials under “advances and other assets” are placed at Schedule XII, which is at page 71 of the Annual Report. It is noted that no separate account is shown in respect of separate account reflecting the deposits of unclaimed policy amount and interest earned thereon. On perusal of the assessment order, we do not find any discussion whatsoever made in this regard. Further, the ld. AR did not bring on record anything to show that the Assessing Officer considered this issue by seeking information and reply thereon by the assessee, therefore, we find no infirmity in the order of the ld. PCIT in holding that no enquiry was conducted by the Assessing Officer regarding this issue. Thus, the ground raised by the assessee in ground Nos. 2(c) along with 9 are dismissed.

50. Under ground No. 2 “additions to the book profits computed under section 115JB of the Act along with ground No. 10, the issue in (a) is relating to the provisions for IBNR and IBNER added back to book profit.

51. Vide para 5 of the impugned order, from the computation of statement of total income, the ld. PCIT observed that the issue of

disallowance of provisions on account of IBNR and IBNER claims charged to P & L account was held to be unascertained liability and not allowable under section 37(1) of the Act and liable to be added back to the total income under the normal provisions. The ld. PCIT noted that though the disallowances and additions proposed under the normal provisions were made, whereas, the Assessing Officer omitted to add the same in the computation of the book profits under section 115JB of the Act.

52. The ld. AR drew our attention to the detailed explanations offered before the ld. PCIT, vide paras 1 to 12 of the written submissions under "Provision towards IBNR/IBNER claims", which are reproduced at pages 25 to 28 of the impugned order and reiterated the submissions as made before the ld. PCIT. The ld. AR vehemently argued that the provisions of IBNR and IBNER created in accordance with regulatory requirements of IRDAI, are ascertained contingent liabilities and are allowable deduction under section 37(1) of the Act. He further argued that the Assessing Officer erroneously made addition in the assessment order by observing that the liability is unascertained liabilities. He strongly relied on the decision in the case of Cholamandalam MS General Insurance Co. Ltd.

V. DCIT [2025] 174 taxmann.com 603 (Madras) placed at page 5 of the paper book.

53. The ld. Senior Standing Counsel submits that the Assessing Officer failed to add the said disallowance for the computation of MAT income is erroneous as it is prejudicial to the interest of the Revenue and the Assessing Officer should have taken only the amount debited in the accounts of this year for the addition on this account, which was not done and the ld. PCIT is well within his jurisdiction to exercise his revisional powers under section 263 of the Act in so far as this issue is concerned.

54. Heard both the parties and perused the material available on record. On perusal of the assessment order, we note that the Assessing Officer made disallowance of provisions on account of IBNR and IBNER claims charged to P & L account by holding it to be unascertained liability and not allowable under section 37(1) of the Act and added back to the total income under the normal provisions. It is noted that the ld. PCIT under section 263 of the Act, having found the same as unascertained liability, held liable to be added back under section 115JB of the Act. It is noted that for AY 2020-21, the Tribunal in assessee's own case held the same as ascertained liability by following the decision of the Coordinate Bench of this Tribunal in the case of DCIT v. Royal Sundaram General

Insurance Co. Ltd. In ITA Nos. 493 to 496/Chny/2018 dated 08.01.2025 as per page 19 to 40 of the paper book. We find the Hon'ble High Court of Madras in the case of Cholamandalam MS General Insurance Co. Ltd. V. DCIT (supra), held the provisions made for IBNR/IBNER are ascertained liability. Therefore, the finding of the ld. PCIT for making adding back for the purpose of computation under section 115JB of the Act, is not justified since the provisions are held to be ascertained liability in assessee's own case and the Assessing Officer also examined the same during assessment proceedings. Therefore, the order of the ld. PCIT on this issue is not warranted and thus, ground No. 2 along with ground No. 10 raised by the assessee are allowed.

55. Under ground No. 2 "additions to the book profits computed under section 115JB of the Act", the issue in (b) along with ground Nos. 11 to 13, is relating reserve of Unexpired Risk to be added back to book profit.

56. Vide para 6 of the impugned order, from Schedule 14 - provisions (page 95) of the Annual Report 2016-17, the ld. PCIT observed that the Reserve for Unexpired Risk was ₹.6726,74,22,000/- & ₹.5412,57,36,000/- for the current year and the previous year respectively, i.e., there has been an accretion of ₹.1314,16,86,000/- during the period ended on

31.03.2017, which has to be added back to the computation of income under section 115 JB of the Act.

57. The ld. AR relied on the submissions made by the assessee before the ld. PCIT during the course of 263 proceedings, which are reproduced from page 28 to 32 of the impugned order. The ld. Senior Standing Counsel for Revenue vehemently argued that there was no discussion by the Assessing Officer in the assessment order which clearly supports the order of the ld. PCIT in holding the assessment is erroneous and prejudicial to the interest of Revenue.

58. Heard both the parties and perused the material available on record. On perusal of the written submissions filed during 263 proceedings, which are reproduced in the impugned order, we note that the assessee mainly referred to accounting methods, IRDA compliances and placed reliance on the order of the Kolkata Tribunal in the case of National Insurance Co. Ltd. In ITA No. 982 & 983/Kol/2012. On perusal of the assessment order, we note that the Assessing Officer issued notice dated 26.08.2019 under section 142(1) of the Act, wherein, it was specifically sought for explanation vide question No. (f) of the notice seeking auditor's report in Form No. 29B in respect of computation of book profit under section 115JB of the Act along with computation of book

profit and also issued notice dated 19.12.2019 under section 142(1) of the Act and dealt the issue extensively. Thus, the question of no enquiry by the Assessing Office does not arise at all. In view of the above, we find that the ld. PCIT is not correct in invoking the provisions of section 263 of the Act to hold that the assessment order was erroneous and prejudicial to the interest of the Revenue on this issue. Thus, the ground No. 2 (b) along with ground Nos. 11 to 13 raised by the assessee are allowed.

ITA No. 683/Chny/2023 – AY 2017-18

59. The assessee raised 5 grounds of appeal challenging the action of the ld. PCIT in issuing corrigendum on 29.03.2023 to his order dated 31.03.2022 passed under section 263 of the Act.

60. The ld. AR submits that the ld. PCIT erred in both in law and in facts in issuing corrigendum beyond the limitation period prescribed under 263(2) of the Act. He argued that the sub-section (2) to section 263 of the Act explains no order shall be made under section 263(1) of the Act after expiry of 2 years from the end of the financial year in which the order sought to be revised was passed. The ld. PCIT erred in applying his revisional powers under section 263 of the Act for adding an additional issue to the said order under section 263 of the Act amending said order retrospectively and setting aside the said issue to the Assessing Officer to

examine the same along with the issues already set aside in the order under section 263 of the Act. Further, he argues that the ld. PCIT failed to consider that there is no provision under the Act to issue a corrigendum to the order under section 263 of the Act giving fresh directions. He submits that the ld. PCIT failed to provide an opportunity of being heard before passing the corrigendum order. He further submits that the ld. PCIT erred in directing and setting aside the issue of disallowance of prior period expenditure and other disallowances in Form 3CD, which he had failed to discuss in the order under section 263 of the Act.

61. The ld. Senior Standing Counsel submits that the Assessing Officer has failed to make additions pertaining to prior period expenditure. It is apparent that the claim allowed in the assessment is prior period expenditure, which was not allowable in respect of the claim of crystallization, the assessee did not furnish any evidence and no enquiry in this regard was conducted by the Assessing Officer. She argued that it is not the case of the assessee that the expenditure was crystalized during the financial year 2016-17 relevant AY 2017-18. At the time of issuance of order under section 263 of the Act, the ld. PCIT, had erroneously overlooked the above issue. She argued vehemently a corrigendum to the order passed under section 263 of the Act were

issued to the assessee as the issue pertaining to prior period expenditure is erroneous in so far as it is prejudicial to the interest of the Revenue. Further she argued that the corrigendum issued by the ld. PCIT is not to add a fresh issue, but, it is merely a modification to rectify the oversight made by the ld. PCIT while issuing order section 263 of the Act. The issue pertaining to prior period expenditure is discussed in detail in the order passed by the ld. PCIT. She submits that by way of modification the issue was added to be adjudicated upon by issuance of a corrigendum to the order passed under section 263 of the Act. She prayed to dismiss the ground raised by the assessee.

62. Heard both the parties and perused the material available on record. On perusal of the impugned order dated 29.03.2023 passed by the ld. PCIT by way of a corrigendum, it is noted that the issue of prior period expenditure was raised in the show-cause notice dated 12.03.2022 vide paras 9 & 10 of the said show cause notice. Further, it is also noted that the assessee filed written submissions in response to the show-cause notice relevant to the prior period expenditure. However, there was no finding by the ld. PCIT in respect of issue of prior period expenditure in the order dated 31.03.2022 passed under section 263 of the Act, however, the said issue was stated to be answered in the corrigendum

dated 29.03.2023. According to the ld. AR, the said corrigendum passed beyond the limitation provided in sub-section (2) of section 263 of the Act. On an examination of the sub-section (2) of section 263 of the Act, which reads no order shall be made under sub-section 1 of section 263 of the Act after the expiry of 2 years from the end of financial year in which the order sought to be revised was passed. Admittedly, the order sought to be revised under section 263 of the Act is assessment order dated 31.12.2019 for AY 2017-18, therefore, the ld. PCIT can pass order under section 263 of the Act revising the same on or before 31.03.2022, we find the ld. PCIT correctly passed order under section 263 of the Act on 31.03.2022, whereas, the corrigendum was passed on 29.03.2023, admittedly, no within the limitation as provided under sub-section (2) of section 263 of the Act. Be that as it may, the settled principle, a corrigendum could be passed rectifying minor typographic errors in main order, but, in the present case, an order passed with reference to an issue which is not part of the original order passed under section 263 of the Act. Therefore, by no stretch of imagination, the corrigendum with reference to the new issue cannot be considered as rectifying the mistake apparent in the main order. Thus, we find force in the argument of the ld. AR in holding that the corrigendum passed with reference to a new issue

is not justified and accordingly, the corrigendum passed by the ld. PCIT is quashed. Therefore, the grounds raised by the assessee are allowed.

63. In the result, the appeals for AY 2014-15, 2016-17 & 2017-18 are partly allowed and appeals for AY 2015-16 & 2017-18 (in ITA No. 683/Chny/2023) filed by the assessee are allowed.

Order pronounced on 05th January, 2026 at Chennai.

Sd/-	Sd/-
(JAGADISH)	(S.S. VISWANETHRA RAVI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, 05.01.2026

Vm/-
आदेश की प्रतिलिपि अग्रेषित/Copy to:
1. अपीलार्थी/Appellant,
2.प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.