IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH AT KOLKATA

Before

SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER

ITA Nos.: 2803, 2804, 2805 & 2806/KOL/2025
Assessment Years: 2018-19, 2022-23 & 2023-24

National Insurance Company Limited	Vs.	DCIT, Circle-5(1), Kolkata
(Appellant)		***(Respondent)***
PAN: AAACN9967E		

Appearances:

Assessee represented by **:** S. Bhattacharya, CA.

Department represented by **:** Praveen Kishore, CIT (DR).

Date of concluding the hearing : 04-February-2026
Date of pronouncing the order : 12-February-2026

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

These four appeals filed by the Assessee are against the separate orders of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AYs 2018-19, 2022-23 & 2023-24 dated 25.09.2025. Since the issues are common or related, all the appeals were heard together and are being decided vide this common order for the sake of convenience and brevity.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

I. ITA No.: 2803/KOL/2025:

"1) That the Ld. Commissioner of Income-tax (Appeals), NFAC was wrong in sustaining the Penalty of Rs. 11,52,05,880 levied u/s 270A in respect of the disallowance made of the expenditure in excess of limit prescribed under the IRDA Regulations read with Section 40C of the Insurance Act, 1938,

without properly appreciating the explanations and evidences furnished during the proceedings, and the same ought to be deleted.

2) That without prejudice to the contention raised in Ground No. (1) above, the Ld. Commissioner of Income-tax (Appeals), NFAC failed to appreciate that there had not occurred any case of misreporting of Income which could lead to the levying of any Penalty u/s 270A and thus he erred in confirming levying of Penalty of Rs.11,52,05,880.

3) That the appellant craves leave to add, delete or modify any Ground or Grounds of Appeal before or at the time of the Hearing of the Appeal."

II. ITA No.: 2804/KOL/2025:

"1. That the Ld. Commissioner of Income-tax (Appeals), NFAC was wrong in confirming the action of the Assessing Officer in disallowing Rs.16,64,44,000/- being the Expenditure incurred in excess of the specified limit u/s 40C of the Insurance Act, 1938, read with IRDAI Regulations, debited to the Profit and Loss Account.

2. That without prejudice to the contention raised in Ground No. (1) above, the Ld. Commissioner of Income-tax (Appeals), NFAC failed to appreciate that the Expenses aggregating to Rs. 16,64,44,000/- having been incurred wholly and exclusively for the purposes of the Business of the appellant, should have been held to be allowable u/s 37(1) of the Income-tax Act, 1961 and thus he erred in confirming the disallowance of the said Expenses of Rs. 16,64,44,000/-.

3. That without prejudice to the contentions raised in Grounds Nos. (1) and (2) above, the Ld. Commissioner of Income-tax (Appeals) erred in holding that the excess management expenditure was hit by Explanation 1 to Section 37(1), failing to appreciate that the disallowance under the IRDA/Insurance Act regulations related only to the allocation of expenses and had not rendered the expenditure itself illegal or unlawful for the purpose of disallowance under the Income-tax Act.

4. That the appellant craves leave to add, delete or modify any Ground or Grounds of Appeal before or at the time of the Hearing of the Appeal.

IIII. ITA No.: 2805/KOL/2025:

"1. That the Ld. Commissioner of Income-tax (Appeals), NFAC was wrong in confirming the action of the Assessing Officer in disallowing Rs.8,74,19,000/- being the Expenditure incurred in excess of the specified limit u/s 40C of the Insurance Act, 1938, read with IRDAI Regulations, debited to the Profit and Loss Account.

2. That without prejudice to the contention raised in Ground No. (1) above, the Ld. Commissioner of Income-tax (Appeals), NFAC failed to appreciate that the Expenses aggregating to Rs.8,74,19,000/- having been incurred

wholly and exclusively for the purposes of the Business of the appellant, should have been held to be allowable u/s 37(1) of the Income-tax Act, 1961 and thus he erred in confirming the disallowance of the said Expenses of Rs.8,74,19,000/-.

3. That without prejudice to the contentions raised in Grounds Nos. (1) and (2) above, the Ld. Commissioner of Income-tax (Appeals) erred in holding that the excess management expenditure was hit by Explanation 1 to Section 37(1), failing to appreciate that the disallowance under the IRDA/Insurance Act regulations related only to the allocation of expenses and had not rendered the expenditure itself illegal or unlawful for the purpose of disallowance under the Income-tax Act.

4. That the appellant craves leave to add, delete or modify any Ground or Grounds of Appeal before or at the time of the Hearing of the Appeal."

IV. ITA No.: 2806/KOL/2025:

"1. That the Ld. Commissioner of Income-tax (Appeals), NFAC was wrong in confirming the action of the Assessing Officer in disallowing Rs.15,84,24,02,000/- being the Expenditure incurred in excess of the specified limit u/s 40C of the Insurance Act, 1938, read with IRDAI Regulations, debited to the Profit and Loss Account.

2. That without prejudice to the contention raised in Ground No. (1) above, the Ld. Commissioner of Income-tax (Appeals), NFAC failed to appreciate that the Expenses aggregating to Rs.15,84,24,02,000/- having been incurred wholly and exclusively for the purposes of the Business of the appellant, should have been held to be allowable u/s 37(1) of the Income-tax Act, 1961 and thus he erred in confirming the disallowance of the said Expenses of Rs.15,84,24,02,000/-.

3. That without prejudice to the contentions raised in Grounds Nos. (1) and (2) above, the Ld. Commissioner of Income-tax (Appeals) erred in holding that the excess management expenditure was hit by Explanation 1 to Section 37(1), failing to appreciate that the disallowance under the IRDA/Insurance Act regulations related only to the allocation of expenses and had not rendered the expenditure itself illegal or unlawful for the purpose of disallowance under the Income-tax Act.

4. That the appellant craves leave to add, delete or modify any Ground or Grounds of Appeal before or at the time of the Hearing of the Appeal."

A. We shall first take up the appeal in **ITA No. 2804/KOL/2025** for AY 2018-19.

3. Brief facts of the case are that the assessee is a company, engaged in the insurance business and had e-filed its original return of income

u/s 139(1) of the Act for the AY 2018-19 showing total loss of ₹(-) 23,88,13,38,152/-. The case was selected for scrutiny under Computer Assisted Scrutiny Selection (in short 'CASS') and accordingly, a notice u/s 143(2) of the Act was issued to the assessee. Since the assessee did not respond to the notices issued, the Assessing Officer (hereinafter referred to as Ld. 'AO') noted that the claim of the assessee amounting to ₹1,48,87,000/- was not an allowable expenditure and added the same to the total income of the assessee. Further, the Ld. AO disallowed an amount of ₹38,40,909/- u/s 14A of the Act r.w. rule 8D of the Income Tax Rules, 1962 on account of expenses related to exempt income. An amount of ₹3,20,31,000/- on account of amortisation of premium on investments, ₹16,64,44,000/- on account of expenditure in excess of the limits specified as per section 40C of the Insurance Act, 1938 and a sum of ₹2,26,67,51,810/- on account of claim of exemptions u/s 10(34) of the Act was also added to the total income of the assessee and the Ld. AO assessed the total income of the assessee at ₹2139,73,83,433/- u/s 143(3) of the Act and penalty of ₹171,66,35,574/- was also imposed u/s 270A of the Act. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A), who partly allowed the appeal of the assessee by dismissing the ground of disallowance of expenses exceeding the prescribed limit of Insurance Regulatory and Development Authority of India (IRDAI/IRDA) amounting to ₹16,64,44,000/- and has held as under:

> *"Ground No 6-Disallowance of Expenses over IRDA Limit (Rs. 16,64,44,000/-):*
>
> *Assessing Officer contended that Section 40C of the Insurance Act, 1938, read with corresponding IRDA (Expenses of Management of Insurers transacting general insurance business) Regulations, prescribes an upper limit on expenses of management. The sum of Rs. 16,64,44,000 was shown as excess over the prescribed ceiling, but still claimed as deductible in the*

P&L account. The AO held that such excess, being in clear violation of statutory and regulatory prescription, and not "related to insurance business" within the meaning of Rule 5 of the First Schedule, was not allowable.

The appellant argued that the IRDA limit merely determines what can be debited to the policyholder (revenue) accounts, and any excess, though not chargeable to policyholder, can be borne by the shareholders and is therefore claimed in the P&L as a business expense. It further submitted that there is no bar under Rule 5 to claiming genuine business expenditure, even if in excess of IRDA limit, so long as it is not penal in nature.

Upon scrutiny of the IRDAI (Expenses of Management of Insurers transacting General Insurance Business) Regulations, 2016, it is clear that Regulation 4(1), read with Section 40C(1) of the Insurance Act, 1938, mandates that "No insurer shall, in respect of insurance business transacted by him in India, spend as expenses of management in any financial year any sum in excess of the prescribed limits." The relevant limit is a statutory cap, violation of which is not a mere internal allocation or guidance it is a binding legal ceiling.

As observed by the Supreme Court in General Insurance Corporation of India v. CIT (1999) 240 ITR 139 (SC), and cited further in CIT v. Oriental Fire & General Insurance Co. Ltd. (2007) 291 ITR 371 (SC), the computation of income for non-life insurers is governed strictly by Section 44 and the First Schedule. However, Rule 5(b), First Schedule explicitly provides that "any expenditure other than expenditure which is not admissible under the provisions of sections 30 to 43B in computing the profits and gains of a business" must be considered.

Crucially, any expense incurred in infringement or contravention of law, or in breach of a regulatory cap, is hit by Explanation 1 to section 37(1) of the Act, which disallows expenses incurred for an unlawful purpose or in violation of law, even where otherwise incurred "wholly and exclusively for business. The restriction on management expenses is mandatory. The IRDA regulations do not merely allocate expense between shareholder and policyholder accounts but create a hard limit on the deductibility for tax purposes.

In United Commercial Bank Ltd. v. CIT (1969) 72 ITR 62 (SC), it was clarified that expenditures contrary to statutory rule or regulation cannot be allowed as deduction under business profits

In CIT v. Piara Singh (1980) 124 ITR 40 (SC), it was held that expenses incurred in violation of law (or to defeat the law) cannot be allowed, even if motivated by the exigencies of business

Having considered the statutory framework, regulatory prohibition, and Supreme Court principles, I am of the considered view that expenses incurred in excess of the IRDA/Insurance Act statutory ceiling are, by their very nature, not allowable as a deduction under the Act. Allowing such an excess would frustrate the legislative intent of the cap and render the regulatory limit meaningless for tax computation. Accordingly, the addition/disallowance of Rs. 16,64,44,000 sustained by the AO is confirmed.

The ground of appeal is dismissed."

4. Aggrieved with the order of the Ld. CIT(A), the Assessee has filed the appeal before the Tribunal.

5. Rival contentions were heard and the submissions made have been examined. It was submitted by the Ld. AR in the course of the appeal that the assessee is in the insurance business and the income is to be computed as per section 44 of the Act with Rule 5 of the First Schedule of the Act. It was submitted that the assessee had debited certain expenses which, according to IRDA, had to be allocated insurance sector-wise so as to get the correct picture. However, the Ld. CIT(A) granted relief in respect of other additions but upheld the disallowance on account of such expenses claimed by holding that Explanation 1 to sub-section (1) of section 37 of the Act is applicable. It was submitted that it was an accounting adjustment so as to get the correct picture as per the statutory rules and there was no infraction of any law so as to attract Explanation 1 to section 37(1) of the Act which has been incorrectly applied by the Ld. CIT(A). The assessee has also filed detailed submission as under:

"(1) The appellant is a Public Sector Company engaged in providing General Insurance Services and its Income is required to be assessed in accordance with the provisions of Section 44 read with Rule 5 of the First Schedule of the Income-tax Act, 1961. During the assessment proceedings, the National Faceless Assessment Centre, Delhi (NaFAC) had asked the appellant as to why expenditure in excess of the limit specified as per 40C of the Insurance Act,

1938, would not be disallowed. In response, the appellant submitted before the NaFAC that the appellant had incurred expenses of Management in excess of the limit prescribed under the IRDA Regulations for the Financial Year 2017-18 (relevant for the Assessment Year 2018-19) and such excess expenditure had been Rs.16,64,44,000. As per the IRDA Regulations if the expenses of Management would exceed the prescribed limit for charging to the Revenue Accounts (Policy Holders' Accounts) such concerned excess expenses would have to be charged to the Shareholders Account, i.e., Profit and Loss Account. It was clarified by the appellant that the limit of Management expenses had been prescribed by IRDA for deciding as to upto what extent the expenses could be charged to the Revenue Accounts, viz., Fire Revenue, Marine Revenue and Miscellaneous Revenue Accounts of the appellant. It was submitted by the appellant that the reason behind prescribing the limit was for having a control over the fixation of the premium for various types of General Insurance business. Accordingly, as per the IRDA Regulations the excess expenses would have to be borne by the Shareholders. Therefore, these excess expenditure had to be debited to the Profit and Loss Account instead of being charged to the Revenue Account. Copy of the "Insurance Regulatory and Development Authority of India (Expenses of Management of Insurers Transacting General or Heath Insurance Business) Regulations 2016" (hereinafter referred to as the IRDA Regulations,2016), was submitted by the appellant to the NaFAC. It was pointed out that Clauses 3,12 and I4(i) of the IRDA Regulations,2016, dealt with the expenses on Management and how to deal with the cases where the expenses on Management would exceed the limit prescribed by the IRDA. It was pointed out by the appellant to the NaFAC that Schedule 4 of the Annual Reports and Accounts gave details of Operating Expenses related to Insurance Business wherein it was shown that the total expenses on Management of Rs.2912,54,51,000, had been allocated to:

(i)	*Fire Revenue Account*	*Rs.*	*175,36,54,000*
(ii)	*Marine Revenue Account*	*Rs.*	*21,03,40,000*
(iii)	*Miscellaneous Revenue Account*	*Rs.*	*2699,50,13,000*
(iv)	*Profit and Loss Account (Excess over allowable limit)*	*Rs.*	*16,64,44,000*
	Total:	*Rs.*	*2912,54,51,000*

The appellant submitted that all the above-mentioned expenses having been incurred for the purposes of business of the appellant there should not be any disallowance of any portion of Rs.2912,54,51,000. On receipt of the Assessment Order it was found that the NaFAC stated therein that the

appellant had allegedly not given any explanation in this regard and it disallowed Rs.16,64,44,000.

(2) In the Appeal before the Ld. Commissioner of Income-tax (Appeals), NaFAC, the appellant duly submitted all the details regarding the charging of Rs.16,64,44,000 to its Profit and Loss Account. However, Ld. CIT(Appeals), NaFAC, without appreciating the actual facts and the explanations furnished by the appellant considered the above-mentioned sum of Rs.16,64,44,000 as allegedly an infringement or contravention of law and was allegedly hit by the Explanation 1 to Section 37(1) which disallowed expenses incurred for an unlawful purpose or in violation of law even where otherwise incurred "wholly and exclusively for business". According to the Ld. CIT(Appeals), NaFAC the limit prescribed by the IRDA in charging the expenses of Management to Revenue Account was allegedly a limit for the deductibility for tax purposes. On the basis of his above observations the Ld. CIT(Appeals), NaFAC dismissed the appellant's Ground of Appeal on this issue.

(3) The appellant submits for the kind consideration of your Honours that Section 40C of the Insurance Act after amendment made by the Insurance Laws (Amendment) Act, 2015 (effective from 26/12/2014) reads as under:

> *"40C. Limitation of expenses of management in general, health insurance and re-insurance business.*
>
> *Every insurer transacting insurance business in India shall furnish to the Authority, the details of expenses of management in such manner and form as may be specified by the regulations made under this Act."*

A copy of Section 40C as amended with effect from 26/12/2014 is enclosed

As already mentioned hereinabove, IRDA Regulations, 2016 prescribed the limits and also the procedure to be followed when there would occur any case of exceeding the limit prescribed by the IRDA. A copy of the IRDA Regulations, 2016 has already been submitted in the Paper Book (Pages 2 to 8). The appellant submits that Clauses 3,12, and 14(i) deal with the cases of expenses incurred in excess of the limit. It may kindly be seen that at Clause I4(i) it is stated that "any violation of the limits on overall basis or directions issued by the authority in this regard may entail one or more of the following actions:

> *(i) Excess to be charged to Shareholders Account; … … …"*

On the basis of the above facts the appellant submits that it had been wrong on the part of the Assessing Authority (NaFAC) as well as the Appellate Authority [Ld. CIT (Appeals), NaFAC] in not properly appreciating the requirements of Section 40C and the IRDA Regulations, 2016. The appellant further submits that there should not have been any case of disallowance of the excess expenses incurred over the limit prescribed by the IRDA. Accordingly,

the appellant submits that the disallowance of Rs.16,64,44,000 made by the NaFAC in the assessment and confirmed by the Ld. CIT(Appeals), NaFAC, may kindly be held to be unjustified and accordingly the said disallowance may kindly be deleted.

The appellant further submits that in the Appeals for the Assessment Years 2O22-23(ITA No. 2805/ Koi/ 2025) and 2023-24(ITA No. 2806/K0I/2025) the same issue of disallowance of excess expenses over the prescribed limit, has been appealed against. In respect of those two Appeals also the appellant prays before your Honours kindly to consider the appellant's submissions as made hereinabove to be applicable there also.

In respect of the Appeal filed against the Penalty of Rs. 11,52,05,880 imposed u/s 270A for the Assessment Year 2018-19 (ITA No. 2803/ Kol/2025), the appellant submits that this Penalty was levied by the NaFAC on the basis of several additions and disallowances including the disallowance of Rs.16,64,44,000 being related to the excess Management expenses. In the Appeal filed against the Penalty, the Ld. CIT(Appeals) confirmed the levy of Penalty in relation to the disallowance made for excess Management expenses, on the basis of his confirmation of the disallowance so made in the assessment. For this Penalty case the appellant submits that since the disallowance itself should be held to be wrong, any Penalty levied on the basis of the said disallowance may kindly be cancelled as well."

6. The Ld. DR vehemently relied upon the order of the Ld. CIT(A) and requested that the disallowance made by the Ld. AO may be confirmed.

7. We have considered the facts of the case, the submissions made and the documents filed. It is imperative to refer to the provisions of the relevant section and rules for the purpose of understanding the controversy. The profits from the insurance business are to be computed u/s 44 of the Act which overrides anything to the contrary contained in the provisions of the Act relating to the certain heads of income and is reproduced as under:

"Notwithstanding anything to the contrary contained in the provisions of this Act relating to the computation of income chargeable under the head "Interest on securities", "Income from house property", "Capital gains" or "Income from other sources", or in section 199 or in sections 28 to 43B, the profits and gains of any business of insurance, including any such business

carried on by a mutual insurance company or by a co-operative society, shall be computed in accordance with the rules contained in the First Schedule"

8. Rule 5 of the First Schedule of the Act relating to insurance business refers to insurance business other than life insurance business and is reproduced as under:

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

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

(c) such amount carried over to a reserve for unexpired risks as may be prescribed in this behalf shall be allowed as a deduction:

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."

9. Rule 5 refers to the profit and loss account prepared in accordance with the provisions of the Insurance Act, 1938 or the rules made thereunder or the provision of the Insurance Regulatory and Development Authority Act, 1999 (4 of 1999), the regulations made thereunder for the subjects specified therein. The assessee has enclosed a copy of section 40C of the Insurance Act, 1938 which is as under:

> *"40C. Limitation of expenses of management in general, health insurance and re-insurance business.—Every insurer transacting insurance business in India shall furnish to the Authority, the details of expenses of management in such manner and form as may be specified by the regulations made under this Act."*

10. At this juncture, it is also relevant to reproduce section 40B of the Insurance Act, 1938 which provides for the limitation of expenses of management in the life insurance business and is not applicable to the assessee since the assessee is not into life insurance business and therefore, Rule 40C is applicable:

> *"40B. Limitation of expenses of management in life insurance business. — No insurer shall, in respect of insurance business transacted by him in India, spend as expenses of management in any financial year any amount exceeding the amount as may be specified by the regulations made under this Act;"*

11. Thus, the assessee had prepared the accounts in accordance with Clauses 3, 12 and 14(i) of the IRDA Regulations, 2016 which deals with expenses on management and how to deal with the cases where the expenses on management exceed the limit prescribed by the IRDA. It was submitted that the above-mentioned expenses have been incurred for the purpose of business and no disallowance was called for. The Ld. AO stated that no explanation had been given while the assessee claims that the explanation had been given. Ld. CIT(A) on the other hand, stated that Explanation 1 to sub-section 1 of section 37 of the Act was hit and therefore, the disallowance was justified.

12. We have considered the facts of the case, the submissions made and the documents filed. The assessee had claimed total expenses of ₹2912,54,51,000/- which were bifurcated into the following heads depending upon the nature of insurance business of the assessee as per the regulations of IRDA:

(i)	*Fire Revenue Account*	*Rs.*	*175,36,54,000*
(ii)	*Marine Revenue Account*	*Rs.*	*21,03,40,000*
(iii)	*Miscellaneous Revenue Account*	*Rs.*	*2699,50,13,000*
(iv)	*Profit and Loss Account (Excess over allowable limit)*	*Rs.*	*16,64,44,000*
	Total:	*Rs.*	*2912,54,51,000*

13. Thus, the expenses were claimed wholly and exclusively for the purpose of business as is claimed and it has not been pointed out by the Ld. AO that they were either personal in nature or capital in nature so as to incur any disallowance. The profits and gains of the business of insurance are to be calculated as per section 44 of the Act and override anything to the contrary contained in the provision of this Act relating to the computation of income chargeable under the Act; profits and gains of any business of insurance in sections 28 to 43B or in section 199 of the Act. The disallowance u/s 37(1) of the Act is therefore, excluded in view of the specific provision of section 44 of the Act. However, as per clause (a) of Rule 5, the disallowance can be made if the expenditure or allowance debited to the profit and loss account is not admissible under the provisions of sections 30 to 43B of the Act in computing the profits and gains of a business. For the purpose of section 43B of the Act, the expenditure shall be allowed in the year in which such sum is actually paid. The Ld. CIT(A) has merely mentioned that the allocation of expenses as per IRDA was hit by the provision of Explanation 1 to sub-section 1 of section 37 of the Act and therefore, was not allowable while the facts remain that the assessee had merely made inter-head adjustments for fire revenue account, marine revenue account, miscellaneous account and the balance as per the guidelines of IRDA mentioned in the written submission, was to be allocated to the

profit and loss account so as to give the correct picture. Reallocation of any expenditure as per the guidelines is not a violation of any law or incurred in prohibition of any law as Explanation 1 states that any expenditure incurred by the assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure. It is relevant to reproduce the findings of the Hon'ble Supreme Court in the case of **General Insurance Corpn. of India vs. Commissioner of Income-tax [1999] 106 Taxman 389 (SC)**/[1999] 240 ITR 139 (SC)/[1999] 156 CTR 425 (SC)[21-09-1999] relied upon by the assessee, which is as under:

> "*Section 44 is a special provision governing computation of taxable income earned from business of insurance*. It opens with a* non obstante *clause and, thus, has an overriding effect over other provisions contained in the Act. It mandates the assessing authorities to compute the taxable income from business of insurance in accordance with the provisions of the First Schedule. A plain reading of rule 5(a) of the First Schedule makes it clear that in order to attract the applicability of the said provision, the amount should firstly be an expenditure or allowance. Secondly, it should be one not admissible under the provisions of sections 30 to 43A. If the amount is not an expenditure or allowance, the question of testing its eligibility for adjustment by reference to rule 5(a) of the First Schedule would not arise at all.*
>
> *The sum set apart as provision for redemption of preference shares could not have been treated as an expenditure. It was also not an expenditure or allowance of the nature covered by sections 30 to 43A. The question of determining its admissibility by reference to rule 5(a) of First Schedule to the Act does not arise nor could it have been added back by the assessing authority by purporting to exercise power under the said rule. Rule 2(2)(a) undoubtedly speaks of the amount set apart for redemption of preference shares being treated as an item of expenditure in the profit and loss account. However, the purpose and extent of the provision has to be kept in view. These Rules have been framed in exercise of the power conferred by clause (a) of sub-section (2) of section 39. The object of these rules is entirely different. These rules lay down the manner in which the profits, if any, and other monies received by the General Insurance Corpn. may be dealt with. The concept behind rule 2(2)(a) is to permit the Corporation to enter the amount of reserve in the profit and loss*

account on the expenditure side which would not have been permissible otherwise because the amount set apart in a reserve cannot be expenditure. The rule puts a stamp of permissibility on something not permissible otherwise. This rule itself is suggestive of the fact that the amount set apart in a reserve is not an expenditure in its commercial sense. The extent of the GIB Rules does not go beyond providing an accounting method. These Rules cannot be pressed into service for altering the basic character of the amount which is not an expenditure. Merely because rule 2(2)(a) permits the amount to be set apart for redemption of preference shares being debited to the profit and loss account, the amount so set apart does not become the amount of an expenditure to all intent and purposes so as to fall within the meaning of the term 'expenditure 'as employed in rule 5(a) of the First Schedule to the Income-tax Act, 1961. The object of rule 2(2)(a) of the GIB Rules is to reduce the amount of profit of the Corporation by the amount set apart as reserve by artificially treating the amount of reserve as an item in expenditure column. If the same amount was allowed to be added back to profits under rule 5(a) of the First Schedule, then the object sought to be achieved by rule 2(2)(a) abovesaid is defeated. The non obstante *clause with which section 44 opens and gives it an overriding effect only on the provisions of the Act, would earn an overriding effect on the provisions of another enactment also though the Parliament has not chosen to give section 44 such an effect. It is to be noted that section 44 does not say - 'notwithstanding anything to the contrary contained in the provisions of this Act or any other law for the time being in force'. Nor does rule 2(2)(a) have an overriding effect on the provisions of the Act, The two provisions contained in two enactments have, thus, different purposes to achieve. Rule of harmonious construction would, therefore, sustain neither what the ITO did nor the view of the law taken by the High Court.*

There is another approach to the same issue. Section 44 read with the rules contained in the First Schedule to the Act lays down an artificial mode of computing the profits and gains of insurance business. For the purpose of income-tax, the figures in the accounts of the assessee drawn up in accordance with the provisions of the First Schedule to the Act and satisfying the requirements of Insurance Act are binding on the Assessing Officer under the Act and he has no general power to correct the errors in the accounts of an insurance business and undo the entries made therein.

Therefore, the amount set apart by GIC for redemption of preference shares and treated as expenditure under rule 2(2)(a) of the GIB Rules is so treated for the purpose of Insurance Act, 1938. The reserve was not an expenditure in ordinary commercial sense of the term. It could not be added back for computing profits and gains of business by including it in 'expenditure not admissible under the provisions of sections 30 to 43A, by reference to rule 5(a) of the First Schedule."

14. Therefore, the deduction claimed was allowable as per the provision of the Act and the reallocation under various heads of account as per the regulation was only in order to give the correct picture of accounting under the respective schemes of insurance and was not infringement of any law. Hence, Ground Nos. 1, 2 and 3 of the appeal are allowed and the disallowance made by the Ld. AO which was upheld by the Ld. CIT(A) is hereby directed to be deleted.

14. Ground No. 4 being general in nature does not require any separate adjudication.

15. In the result, the appeal filed by the assessee in **ITA No. 2803/KOL/2025** for AY 2018-19 is allowed.

B. Now, we shall take up **ITA No. 2804/KOL/2025** for AY 2018-19 for adjudication.

16. Since the quantum addition has been directed to be deleted, therefore, penalty of ₹11,52,05,880 levied u/s 270A of the Act in respect of the disallowance made of the expenditure in excess of limit prescribed under the IRDA Regulations read with Section 40C of the Insurance Act, 1938 is hereby cancelled.

17. In the result, the appeal filed by the assessee in **ITA No. 2804/KOL/2025** for AY 2018-19 is allowed.

C. Now, we shall take up **ITA Nos. 2805** and **2806/KOL/2025** for AYs 2022-23 and 2023-24 for adjudication.

18. Since the facts in the appeals in **ITA Nos. 2805** and **2806/KOL/2025** for AYs 2022-23 and 2023-24 are identical, our findings in AY 2018-19 shall, *mutatis mutandis*, also apply in the

appeals for AYs 2022-23 and 2023-24. Therefore, the grounds taken by the assessee in these appeals are also allowed.

19. In the result, the appeals filed by the assessee in **ITA Nos. 2803 & 2804/KOL/2025** for AY 2018-19 and **ITA Nos. 2805 & 2806/KOL/2025** for AYs 2022-23 & 2023-24 are allowed.

Order pronounced in the open Court on 12th February, 2026.

Sd/-	*Sd/-*
[**George Mathan**]	[**Rakesh Mishra**]
Judicial Member	Accountant Member

Dated: 12.02.2026

Bidhan (Sr. P.S.)

Copy of the order forwarded to:

1. ***National Insurance Company Limited, 8th Floor, B Wing, Premises No. 18-0374, Plot No. CBD-81, New Town, S.O. Rajarhat, North 24 Parganas, West Bengal, 700156.***
2. ***DCIT, Circle 5(1), Kolkata.***
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata