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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 22.02.2023*

+ **ITA 285/2022**

SAHARA INDIA LIFE INSURANCE CO LTD Appellant

Through: Ms Kavita Jha with Mr Aditya Vohra
and Mr Abhishek Singhvi, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX..... Respondent

Through: Mr Puneet Rai, Sr Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (Oral):

1. This appeal is directed against the order dated 30.06.2021 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"] in ITA No.224/Del/2017, concerning Assessment Year (AY) 2014-15.

2. Counsel for the appellant says that the appellant is aggrieved by one part of the impugned order.

2.1 In this context, our attention has been drawn to the fact that the Assessing Officer (AO) had made four additions, the details of which are set forth hereafter:

- (i) Disallowance of amortization of investment: Rs.1,43,46,219.44
- (ii) Disallowance on account of interest on Tax Deducted at Source (TDS):Rs.960/-
- (iii) Disallowance on account of Bonus Unpaid:Rs.6,62,612/-

(iv) Disallowance on account of Leave Encashment Unpaid:
Rs.31,63,861/-.

3. Concededly, the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”] deleted all four disallowances made by the AO.

4. The matter was carried in an appeal by the respondent/revenue, which resulted in the impugned order being passed.

5. The Tribunal agreed with the deletion of disallowances made by the CIT(A) *vis-à-vis* investment amortization.

6. Insofar as the remaining three disallowances were concerned, to which we have made a reference hereinabove, the Tribunal agreed with the AO and to that extent, reversed the order of the CIT(A).

7. Having heard the learned counsel for the parties, according to us, the following broadly needs to be ascertained i.e., as to how the profits and gains of the assessee which is in the business of carrying out life insurance, is to be computed?

8. Accordingly, the appeal is admitted. The following question of law is framed for our consideration.

(i) Whether the Tribunal misdirected itself in law and on facts in not appreciating that the profits and gains of the appellant/assessee were to be computed in accordance with the provisions of Section 44 read with First Schedule of the Income Tax Act, 1961 [in short, “Act”]?

9. We have heard counsel for the parties at some length.

10. Ms Kavita Jha, who appears on behalf of the appellant/assessee, says that the Tribunal has committed an egregious error in law in sustaining the disallowance made by the AO concerning interest on TDS, bonus unpaid

and leave encashment which remains unpaid.

10.1 In sum, Ms Jha contends that since Section 44 of the Act is a specific provision, which is put in place by the legislature for computation of income, inter alia, chargeable under the head “Interest on securities” *qua* an assessee which carries on life insurance business; the other provisions contained in the Act for ascertaining income under the head “Profits and Gains” will not be applicable.

10.2 Ms Jha says that Section 44 has to be read along with First Schedule of the Act.

10.3 In support of her submissions, Ms Jha relies on the following judgments:

- (i) ***General Insurance Corpn. of India vs. Commissioner of Income Tax***, (1999) 106 taxmann.com 389 (SC)
- (ii) ***Principal Commissioner of Income Tax vs. Oriental Insurance Company Limited***, (2020) 118 taxmann.com 48 (Delhi).

11. On the other hand, Mr Puneet Rai, learned Senior Standing Counsel, who appears on behalf of the respondent/revenue, contends to the contrary.

11.1 In support of his submission, he relies on the impugned order.

12. We have heard the counsel for the parties and perused the record.

13. In our view, the rationale and logic that the Tribunal applied *vis.-a-vis* investment amortization would apply to the other aspects as well i.e., the disallowance on account of interest on TDS, disallowance on account of bonus unpaid and disallowance on account of leave encashment which remains unpaid.

14. A plain reading of Section 44 makes that amply clear. For the sake of

convenience, Section 44 is extracted hereafter:

*“Section 44. Insurance business.-
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.”*

15. What emerges upon perusal of Section 44 of the Act is that it contains a non-obstante clause, which excludes the application of all provisions contained in the Act which relate to computation of income chargeable under the heads referred to therein, by providing that computation of income under the said heads will be made in accordance with rules contained in the First Schedule. Therefore, in the event of any dissonance, the provisions of the rules contained in the First Schedule will prevail over the provisions of the Act. Section 44 provides for a statutory mechanism for computing profits and gains of an insurance business and includes, in this context, business carried on by a mutual insurance company or even by a cooperative society. In that sense it moves away from the usual and general method of computing income chargeable to tax by bearing in mind the heads of income of income referred to in Section 14 of the Act.

15.1 This is plainly evident, since there is a specific reference to Section 199, [which broadly deals with granting credit to the person from whose income tax has been deducted at source] and the Sections spanning between 28 to 43B.

16. Therefore, Ms Jha's submission that in the computation of profits and gains of the appellant/assessee insofar as its insurance business is concerned, only the provisions of Section 44 of the Act would apply, has weight and hence will have to be accepted.

16.1 The Tribunal, however, has in Ms. Jha's opinion, veered off course by advertng to other provisions of the Act, which stand specifically excluded.

16.2 Insofar as the interest on TDS is concerned, the Tribunal has indicated that the same is inadmissible and for this purpose, reliance has been placed on Section 40(a) of the Act.

16.2 Likewise, insofar as unpaid bonus and unpaid leave encashment are concerned, the Tribunal has brought to the fore Section 43B of the Act.

17. As indicated above, there is, inter alia, a specific referencetothe provisions of the Act which will not apply to an assessee which is carrying on an insurance business, andthese include provisions spanning between Sections 28 and 43B of the Act. The rules contained in the First Schedule appended to the Act will determine the manner in which the profits and gains of insurance business are to be ascertained

18. Thus, according to us, the Tribunal has committed an error in law, which needs to be corrected.

19. Therefore, for the foregoing reasons, we allow the appeal and set aside the impugned order. Consequently, the question of law as framed is answered in favour of the appellant/assessee and against the respondent/revenue.

20. We may note that for AYs 2005-16, 2008-19 and 2010-11, a coordinate bench of this court in the matter of ***Principal Commissioner of Income Tax vs Sahara India Lifse Insurance Co Ltd.***, (2021) 432 ITR 84

(Delhi) has taken a similar view.

21. The above-captioned appeal is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

SUDHIR KUMAR JAIN, J

FEBRUARY 22, 2023/pmc

