

(1990) 11 CAL CK 0008

Calcutta High Court

Case No: IT Reference No. 233 of 1987

National Insurance Co. Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Nov. 5, 1990

Acts Referred:

- Income Tax Act, 1961 - Section 144B, 256(1), 28, 28, 29

Citation: (1994) 73 TAXMAN 527

Hon'ble Judges: Bhagaboti Prasad Banerjee, J; Ajit K. Sengupta, J

Bench: Division Bench

Judgement

Ajit K. Sengupta, J.

In this reference u/s 256(1) of the income tax Act, 1961 ("the Act") for the assessment year 1977-78 following question of law has been referred to this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee was not entitled to the weighted deduction u/s 35B of the income tax Act, 1961?

Shortly stated, the facts are that the assessee-company carried on the business of general insurance. The assessment year involved is 1977-78. The assessee claimed weighted deduction u/s 35B of the Act in respect of 50 per cent management expenses incurred by its overseas branches. This claim was, however, not considered by the ITO. At the stage of hearing u/s 144B of the Act, this claim was pressed before the IAC who, however, rejected the claim on the ground that the relief u/s 35B is not applicable to insurance company.

2. The assessee appealed to the Commissioner (Appeals) who noted that section 44 of the Act under which the income of the assessee was to be computed clearly provides that the profits and gains of the insurance business shall be computed in accordance with the rules contained in the First Schedule and that the provisions of

sections 38 to 43A of the Act were not applicable. He pointed out that the First Schedule does not contain any provision for making adjustment than what was specified by rule 5. The Commissioner (Appeals) relied on the decision of the Madras High Court in the case of [United India Fire and General Insurance Co. Ltd. Vs. Commissioner of Income Tax, Madras](#), and rejected the contention of the assessee.

3. The assessee then came up in second appeal before the Tribunal. It was urged that although the income of the assessee was computed u/s 44 read with the rules contained in the First Schedule, the claim of the assessee for relief u/s 35B was wrongly rejected. It was submitted that the relief may be allowed now. The learned departmental representative supported the order of the Commissioner (Appeals). The Tribunal following the decision of the Madras High Court in the case of United India Fire & General Insurance Co. Ltd. (supra) held that this claim of the assessee was rightly rejected by the Commissioner (Appeals). The order of the Commissioner (Appeals) on the point was upheld.

Before us the contentions raised before the Tribunal have been reiterated.

4. Special provisions have been made for assessment of the insurance business u/s 44 which provides that notwithstanding anything to the contrary contained in the provisions of the Act relating to the computation of the income chargeable under the head, inter alia, in sections 28 to 43A, the profits and gains of any business of insurance shall be computed in accordance with the rules contained in the First Schedule. The First Schedule provides the manner of computation of profits and gains from insurance business. Part B covers insurance business other than life insurance. Rules 2 and 5 of the First Schedule lay down the method of computation of profits. Therefore, the assessment of the profits of the general insurance business of the assessee will be governed by special provisions contained in section 44, read with rules 2 & 5, of the First Schedule. Under the aforesaid provisions all the income profits and gains from whatsoever sources derived are only to be assessed as profits and gains of the business. In view of the specific provision made for computation of the income u/s 44 read with the rules in the First Schedule, the question of giving allowances or reliefs as contained in sections 28 and 43A which include section 35B does not arise. The assessee cannot claim that the income from general insurance be computed after allowing business deduction as provided u/s 35B. The reason is that the claim of the insurance company for all deductions is allowed under rules 2 and 5 of the First Schedule. The view we have taken is supported by the decision of the Madras High Court in United India Fire & General Insurance Co. Ltd.'s case (supra). In that view of the matter, we answer the question in this reference in the affirmative and in favour of the revenue and against the assessee. There will be no order as to costs.

Banerjee, J.

I agree.