

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

BEFORE Dr. O.K.NARAYANAN, VICE-PRESIDENT  
AND SHRI CHALLA NAGENDRA PRASAD, JUDICIAL  
MEMBER

ITA Nos.1622 to 1630(Mds)/2011

A.Ys : 2002-03, 2003-04, 2003-04, 2004-05, 2005-06, 2005-06,  
2006-07, 2007-08 & 2008-09

M/s.Royal Sundaram  
Alliance Insurance Company  
Ltd., "Sundaram Towers",  
45 & 46, Whites Road,  
Chennai-600 002.  
PAN AABCR7106G.  
(Appellant)

Vs. The Assistant  
Commissioner/Deputy  
Commissioner of Income-  
tax, Large Tax Payer Unit,  
Chennai.

(Respondent)

ITA Nos.1662 to 1670(Mds)/2011

A.Ys.: 2002-03, 2003-04, 2003-04, 2004-05, 2005-06, 2005-06,  
2006-07, 2007-08 & 2008-09

The Deputy Commissioner  
of Income-tax,  
Large Tax Payer Unit,  
Chennai.  
(Appellant)

Vs. M/s.Royal Sundaram  
Alliance Insurance Co. Ltd.,  
45 & 46, Whites Road,  
Chennai.

(Respondent)

ITA Nos.1618, 1619,1620 & 1621(Mds)/2011 & 2146(Mds)/2008  
A.Ys.: 2003-04, 2004-05, 2006-07, 2007-08 & 2005-06

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| M/s.Cholamandalam MS<br>General Insurance Co. Ltd.,<br>"Dare House" (II Floor),<br>2-NSC Bose Road,<br>Chennai-600 001.<br>PAN AABCC6633K.<br>(Appellant) | Vs. | The Asst./Dy. Commissioner<br>of Income-tax,<br>Large Tax Payer Unit,<br>Chennai.<br><br>(Respondent) |
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ITA Nos.1674, 1675, 1759 & 1676(Mds)/2011 & 40(Mds)/2009  
A.Ys.: 2003-04, 2004-05, 2006-07, 2007-08 & 2005-06

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| The Asst./Dy.Commissioner<br>of Income-tax,<br>Large Tax Payer Unit,<br>Chennai.<br>(Appellant) | Vs. | M/s.Cholamandalam MS<br>General Insurance Co. Ltd.,<br>2-NSC Bose Road,<br>Chennai.<br>(Respondent) |
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Assessee by : Shri R.Vijayaraghavan, Advocate  
Department by : Shri Shaji P Jacob, IRS, CIT.

ITA Nos. 1603 to 1610 & 1753(Mds)/2011  
A.Ys.: 2001-02 to 2008-09 & 2003-04

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| M/s.United India Insurance<br>Co. Ltd., 24-Whites Road,<br>Chennai-600 014.<br>PAN AAACU5552C.<br>(Appellant) | Vs. | The Addl./Jt./Dy.Commissioner<br>of Income-tax,<br>Large Tax Payer Unit/<br>Co.Range III, Chennai.<br>(Respondent) |
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AND

ITA Nos.1671 to 1673, 1688 to 1693, 1798 to 1802, 1989, 905 & 906(Mds)/2011, 892(Mds)/2007 & 217(Mds)/2009 & C.O. No.150(Mds)/2011 in ITA No.905(Mds)/2011

A.Ys. : 2001-02, 2002-03, 2003-04, 2004-05, 2005-06, 2005-06, 2006-07, 2007-08, 2008-09, 2007-08, 2008-09, 2009-10, 2010-11, 2002-03, 2003-04, 2004-05, 2003-04, 2003-04 & 2004-05.

|   |  |
|---|--|
| The Income-tax Officer(TDS)/<br>Asst.Commr., Co.Cle.III(3)/<br>Dy.Commr., LTU, Chennai.<br>(Appellants) | M/s.United India Insurance<br>Co. Ltd., 24-Whites Road,<br>Chennai-600 014.<br>(Respondent/Cross Objector) |
|---|--|

Assessee by : S/Shri G.Sitaraman & S.Sundararaman, CAs.  
Department by: Shri Shaji P Jacob, IRS, CIT.

Date of Hearing : 9<sup>th</sup> May, 2012  
Date of Pronouncement : 9<sup>th</sup> May, 2012

## **ORDER**

### **PER BENCH:**

This is a bunch of 56 appeals and one cross objection. Both the Revenue and the assessees have filed appeals. The assessees are general insurance companies, namely, M/s.Royal Sundaram Alliance Insurance Company Limited; M/s. Cholamandalam MS General Insurance Company Limited and M/s.United India Insurance Company Limited.

2. In the case of M/s.Royal Sundaram Alliance Insurance Company Limited, the assessee as well as the Revenue have filed nine appeals each, totaling to eighteen appeals. The relevant assessment years are 2002-03 to 2008-09.

3. In the case of M/s.Cholamandalam MS Insurance Company Limited, the assessee has filed five appeals; so also the Revenue has filed five appeals, totalling to ten appeals. The assessment years involved are 2003-04 to 2007-08.

4. In the case of M/s.United India Insurance Company Limited, the assessee has filed nine appeals alongwith one cross objection, totalling in all to ten. The Revenue has filed nineteen appeals; altogether 29. The relevant assessment years are 2001-02 to 2010-11.

5. It is thus, in total this bunch is having 56 appeals and one cross objection.

6. We heard Shri Shaji P Jacob, the learned Commissioner of Income-tax, appearing for the Revenue in all these 57 cases.

7. We heard Shri R.Vijayaraghavan, the learned counsel appearing for M/s.Royal Sundaram Alliance Insurance Company Limited and M/s.Cholamandalam MS General Insurance Company Limited.

8. Shri G.Sitharaman, the learned chartered accountant, alongwith Shri S.Sundararaman, appeared for M/s.United India Insurance Company Limited and argued the case.

9. The main issue involved in all these appeals is the disallowance of reinsurance premium paid by the assessee companies to non-resident reinsurance companies. This issue is common in all the appeals filed by the assessees. Another common issue raised is that of treating the unexpired premium reserve as income. In the case of M/s.Cholamandalam MS Insurance Company Limited the above two issues are involved.

10. In the case of M/s.Royal Sundaram Alliance Insurance Company Limited, in addition to the above stated common grounds, issues like disallowance of depreciation, unexplained expenditure, unexplained investment, profit on sale of investment, etc. are also involved.

11. In the case of United India Insurance Company Limited, in addition to the common issues, there are also grounds relating to disallowance made under section 40(a)(i) and other grounds, etc.

12. In short, all the three assesseees have raised common grounds relating to reinsurance premium and also other multiple grounds for different assessment years.

13. One of the important Supreme Court decisions relied on by the counsels appearing for the assesseees is the decision rendered in the case of GE India Technology Centre Private Limited vs. Commissioner of Income-tax, in Civil Appeal Nos.7541 – 7542 of 2010, dated 9-9-2010, wherein the Hon'ble apex court has considered the question whether merely on account of such remittance to the non-resident abroad by an Indian company per se, could it be said that income chargeable

to tax under the Income-tax Act, 1961 arises in India. This decision is highly relied on by the assesseees to substantiate their arguments on the question of reinsurance premium paid to non-resident reinsurance companies.

14. The assesseees have also relied on the order passed by the Commissioner of Income-tax(Appeals) for the assessment year 2005-06, wherein he has held that chargeability to tax in India of the reinsurance premium paid to non-resident reinsurance companies must be established in every case. He has held therein that reinsurance premium paid to non-resident reinsurance companies directly, where DTAA exists, and they having no place of permanent establishment in India, cannot be disallowed in the hands of the assesseee under section 40(a)(i), as they are not liable to tax in India. The main issue raised in these appeals with reference to reinsurance premium is that the payments claimed by the assesseees have been disallowed by the assessing authority on the ground that no TDS was made. As TDS was not made, disallowance was made under section 40(a)(i) of the Act. The Commissioner of Income-tax(Appeals) also held that even the brokers, through whom

payments were made, do not have any permanent establishment in India, such payments are not taxable in the hands of the non-resident companies.

15. Detailed paper-books have been filed in the cases of M/s.Royal Sundaram Alliance Insurance Company Limited and M/s.Cholamandalam MS General Insurance Company Limited. Details of reinsurance premium ceded to non-resident insurance companies, profit margin of the assessee companies, explanation on the concept of unexpired risk reserve, etc. have been furnished. They have also placed on record the Double Tax Avoidance Agreements entered into between India and Switzerland and India and Japan.

16. In addition to that, they have relied on a number of judgments also to show that the reinsurance premium paid to non-resident reinsurance companies are not taxable in their hands and, therefore, the question of deducting tax at source does not arise.

17. But, we find that many of the fine details now placed by the assesseees before us, were not available before the lower

authorities. It is also to be seen that the recent judicial pronouncements are also very much relevant in considering the issues involved in these appeals.

18. In the facts and circumstances of the case, we find that it is appropriate to remit back all these files to the concerned assessing authorities to reframe the assessments in the light of the new materials and the latest judicial pronouncements. This is also necessary for reflecting a consistent view of the Revenue on the disputed issues so that a uniform approach is taken by the department on all these issues.

19. Therefore, we set aside the orders of the lower authorities in all these cases and remit back the files to the assessing authorities for de novo disposal in accordance with law after giving the assesseees reasonable opportunity of being heard.

20. In result, the appeals and the cross objection filed by the assesseees and the appeals filed by the Revenue are treated as allowed for statistical purposes.

Orders pronounced in the open court at the time of hearing on Wednesday, the 9<sup>th</sup> of May, 2012 at Chennai.

Sd/-

(Challa Nagendra Prasad)  
Judicial Member

Sd/-

(Dr. O.K.Narayanan)  
Vice-President

Chennai,  
Dated, the 9<sup>th</sup> May, 2012.  
V.A.P.

Copy to: 1. Assesseees  
2. Department  
3. CIT  
4. CIT(A)  
5. DR  
6. GF.