

**INCOME-TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A No.5394 /Mum/2025
(Assessment Year: 2013-14)**

DCIT, CC-6(2), Mumbai BKC, Mumbai-400 051	vs	TATA AIG GENERAL INSURANCE COMPANY LIMITED, 15 th Floor, Tower A Peninsula Business Park, G.K. Marg, Lower Parel, Mumbai-400 013 PAN : AABCT3518Q
APPELLANT		RESPONDENT

Present for Assessee	Shri Mittul Jasolia
Present for Revenue	Shri Ritesh Misra, CIT DR

Date of hearing	18/12/2025
Date of pronouncement	23/12/2025

ORDER

Per: Shri Anikesh Banerjee, JM:

The instant appeal of the revenue was filed against the order of the Learned Commissioner of Income-tax(Appeal)-54, Mumbai [in short, 'Ld.CIT(A)] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for Assessment year 2013-14, date of order 28/01/2025. The impugned order was emanated from the order of the Learned Assistant Commissioner of Income-tax-8(3)(1), Mumbai (in short, 'Ld.AO') passed u/s 143(3) of the Act, date of order 21/12/2016.

2. The revenue has raised the following grounds of appeal:-

"i. "Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in allowing the co-insurance administration fees amounting to Rs.79,22,532/-, which is an eligible amount for deducting TDS as per the provisions of section 40(a)(ia) of the Act, as the Act.

ii. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in allowing the amount of Rs.13,14,782/- towards purchase of pen drives, laptop adapters, cables, batteries, hard disks, etc., which are capital in nature.

iii. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) has justified in allowing the bonus offered to tax in earlier year and paid during the year amounting to Rs.1,50,81,991/- as per the provisions of section 30 to 43B of the Act.

iv. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was justified in allowing write back of excess provision for expenses disallowed in earlier year amounting to Rs. 5,78,07,194/- as per the provisions of section 30 to 43B of the Act.

v. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was justified in allowing expenses disallowed in earlier year amounting to Rs.35,28,707/ as per the provisions of section 30 to 43B of the Act.

vi. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was justified in allowing dividend income claimed as exempt u/s. 10(34) of the Act amounting to Rs.86,91,042/- and has failed to appreciate the fact that the provisions of section 44 of the Act read with Rule 5(a) of the First Schedule is a disabling provision and not an enabling provision?

vii. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was justified in deleting the subsequent effect after allowing exempt income u/s. 10(34) of the Act amounting to Rs.86,91,042/-, by the Appellate

Authorities, warrants disallowance need to be worked out by invoking the provisions of section 14A read with rule 8D of the Act.

viii. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was justified in allowing dividend income claimed as exempt u/s. 10(15)(iv)(h) of the Act amounting to Rs.15, 15,24,995/- and has failed to appreciate the fact that the provisions of section 44 of the Act read with Rule 5(a) of the First Schedule is a disabling provision and not an enabling provision.

ix. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was justified in allowing depreciation u/s.32 of the Act amounting to Rs. 13,29,65,208/-.

x. The appellant craves leave, to add, amend and/ or alter any of the ground of appeal.”

3. The brief facts of the case is that the assessee has filed the return declaring total income at Rs. 131,25,67,420/-. Further, the assessee revised the returned & income was declared amount to Rs. 54,48,10,470/-. The assessment was completed u/s 143(3) of the Act and the total income was determined at Rs.112,76,56,356/-, after making some additions / disallowances. Aggrieved on the impugned assessment order, the assessee filed an appeal before the Ld. CIT(A). The Ld.CIT(A), relying on the order of the co-ordinate bench of the ITAT, Mumbai Bench in assessee's own case, deleted the additions / disallowances and allowed the appeal of the assessee. Being aggrieved, the revenue filed an appeal before us.

4. We have heard the rival submissions and carefully considered the material available on record. The appeal has been duly adjudicated ground-wise.

Ground (i):

5. On this issue, the assessee had made a payment of Rs.79,22,532/- towards co-insurance administration fees. The Ld. AO treated the said payment as commission or brokerage liable for deduction of tax at source under section 194H of the Act and, for alleged non-compliance with section 40(a)(ia) of the Act, disallowed the entire amount of Rs.79,22,532/-. During the appellate proceedings, the Ld. CIT(A) examined the issue and observed that the disallowance of co-insurance administration fees by the Ld. AO is a recurring issue in the assessee's own case. The co-ordinate Bench of the ITAT, Mumbai, had adjudicated the identical issue for A.Ys. 2006-07, 2007-08, 2008-09 and A.Y. 2013-14 in **ITA Nos. 3535 & 1702/Mum/2011** and **ITA No. 4167/Mum/2012**, vide order dated **20.11.2015**, wherein the issue was decided in favour of the assessee and the addition was deleted. Respectfully following the said decision of the co-ordinate Bench in the assessee's own case, the Ld. CIT(A) deleted the entire addition.

6. The Ld. DR argued & relied upon the order of the Ld. AO but was unable to bring on record any contrary judicial precedent to rebut the findings recorded by the Ld. CIT(A).

7. We have considered the rival submissions and perused the material available on record. We find that the issue relating to co-insurance administration fees is squarely covered by the decision of the co-ordinate Bench of the ITAT, Mumbai, in the assessee's own case for A.Ys. 2006-07 to 2008-09, which has been duly followed by the Ld. CIT(A). Therefore, we find no infirmity in the order of the Ld. CIT(A) on this issue. Accordingly, the same is upheld, and **Ground No. (i)** raised by the revenue is dismissed.

Ground (ii):

8. This ground is related to the disallowance amount to Rs.13,14,782/- in respect of purchase of 'pendrive', 'laptop', 'adapters', 'cables', 'batteries', 'hard disks', etc. The assessee debited the alleged expenses in relation to purchase of the said items in the P&L Account. But the Ld.AO has treated the alleged expenses as capital expenditure. Accordingly, the disallowance was made by considering the alleged expenditure as capital expenditure and allowed depreciation @60% on alleged capital asset. Finally the addition of Rs.5,25,193/- is made with the total income of the assessee after allowing deduction of depreciation. The co-ordinate Bench of the ITAT, Mumbai, had adjudicated the identical issue for A.Ys. 2006-07, 2007-08, 2008-09 in **ITA Nos. 3535 & 1702/Mum/2011** and **ITA No. 4167/Mum/2012**, vide order dated **20.11.2015**, wherein the issue was decided in favour of the assessee where the purchase of 'pendrive', 'laptop', 'adapters', 'cables', 'batteries', 'hard disks', etc is considered as a revenue expenditure. The Ld.CIT(A) duly followed the order of the co-ordinate bench of ITAT, Mumbai Bench and deleted the addition.

9. The Ld. DR argued & relied on the order of the Ld. AO.

10. We find that the issue relating to the purchase of 'pendrive', 'laptop', 'adapters', 'cables', 'batteries', 'hard disks', etc is considered as revenue expenditure by the coordinate bench, ITAT-Mumbai which is squarely covered by the decision of the co-ordinate Bench, in the assessee's own case for A.Ys. 2006-07 to 2008-09, which has been duly followed by the Ld. CIT(A). Therefore, we do not find any infirmity in the order of the Ld.CIT(A), especially when the facts and circumstances are identical. We uphold impugned appellate order in this issue and dismissed revenue's **Ground no. (ii)**.

Ground (iii).

11. The present ground raised by the revenue pertains to the bonus, amounting to Rs.1,50,81,991/-, which had been offered to tax in an earlier year and was paid during the year under consideration. During the course of assessment proceedings, the Ld. AO observed that the assessee was engaged in the business of general insurance and that its income was assessable under section 44 read with Rule 5 of the First Schedule to the Act. Accordingly, the taxable income was required to be computed on the basis of the profits disclosed in the Profit and Loss Account prepared in accordance with the provisions of the Insurance Act, after excluding amounts disallowable under sections 30 to 43B of the Act. The Ld. AO further noted that, while computing the total income, the assessee had added back certain items, including excess provision for expenses made during the current year, excess provision for employee bonus made during the current year, provision for bad and doubtful debts, loss on sale of fixed assets, prior period expenses debited to the Profit and Loss Account, and other similar items. Simultaneously, the assessee had reduced certain amounts such as reversal of performance bonus offered to tax in earlier years, reversal of provision for expenses offered to tax in the preceding year, expenses on which tax was not deducted at source in the earlier year but allowed in the current year on payment basis, dividend income exempt under section 10(34), tax-free income under section 10(15)(iv)(h), and depreciation. The Ld. AO called upon the assessee to explain as to why amounts are not allowable under sections 30 to 43B of the Act should not be added back. In response, the assessee submitted that the deductions claimed were allowable. However, the Ld. AO was not satisfied with the explanation furnished and, relying on the decision of the Mumbai Bench of the ITAT in New

India Assurance Co. Ltd. v. Addl. CIT [12 taxmann.com 465 (Mum)], recomputed the income of the assessee by disallowing inadmissible amounts under sections 37 to 43B of the Act, such as excess provisions for expenses made during the current year, excess provision for employee bonus, provision for bad and doubtful debts, loss on sale of fixed assets, prior period expenses debited to the Profit and Loss Account, etc.

12. It was contended that the issue stands squarely covered by the decision of the co-ordinate Bench of the ITAT, Mumbai, in the assessee's own case in **ITA No. 1718/Mum/2020** for A.Y. 2015-16, date of pronouncement **25.04.2022**, wherein the disallowance was deleted. The Ld. CIT(A), following the said decision of the ITAT, Mumbai Bench, granted relief to the assessee.

13. We find that the facts of the present case are identical to those considered by the co-ordinate Bench in the aforesaid decision. The Ld. DR relied upon the impugned assessment order but could not point out any distinguishing facts or contrary judicial precedent. Accordingly, we find no infirmity in the order of the Ld. CIT(A) on this issue. **Ground No. (iii)** is raised by the revenue is dismissed.

Ground (iv).

14. The issue raised in this ground relates to the disallowance of Rs.5,78,07,194/- on account of the write-back of excess provision for expenses which had been disallowed in earlier years, as discussed in paragraph 11 of this order. The Ld. AO added back the said amount to the total income of the assessee. During the appellate proceedings, the Ld. CIT(A) observed that the issue is a recurring one in the assessee's own case and that it has already been adjudicated by the co-ordinate Bench of the ITAT, Mumbai, in the assessee's

own case in **ITA No. 1718/Mum/2020** for A.Y. 2015-16, date of pronouncement **25.04.2022**. Respectfully following the said decision, the Ld. CIT(A) deleted the impugned addition.

15. The Ld. DR relied upon and supported the impugned assessment order.

16. However, in view of the binding decision of the co-ordinate Bench on identical facts, we find no infirmity in the order of the Ld. CIT(A). Accordingly, the order of the Ld. CIT(A) on this issue is upheld, and **Ground No. (iv)** raised by the revenue is dismissed.

Ground v.

17. The disallowance was made amount to Rs.35,28,707/- u/s 40(a)(ia) of the Act, for which the disallowance was made in earlier years and TDS was deducted in current year. The issue pertains to the disallowance of write back of excess provision for expenses disallowed in earlier years. The Ld.AR stated that the disallowance u/s 40(a)(ia) has been made in earlier year and TDS is deducted in current year, is a recurring issue and the said issue decided by the co-ordinate bench of ITAT, Mumbai Bench in assessee's own case in **ITA No.1718/Mum/2020 for A.Y. 2015-16** date of pronouncement **25.04.2022**. The Ld.CIT(A) followed this order of the co-ordinate bench while deleting the addition.

18. The Ld. DR argued & relied upon the order of the Ld. AO but was unable to bring on record any contrary judicial precedent to rebut the findings recorded by the Ld. CIT(A).

19. However, in view of the binding decision of the co-ordinate Bench on identical facts, we find no infirmity in the order of the Ld. CIT(A). Accordingly,

the order of the Ld. CIT(A) on this issue is upheld, and **Ground No. (v)** raised by the revenue is dismissed.

Ground (vi).

20. In this ground the revenue is aggrieved for deletion of disallowance of Rs. 86,91,042/- in respect of dividend income exempt u/s 10(34) of the Act. The Ld.AR stated that the said issue is a recurring issue and without considering the order of the co-ordinate bench of the ITAT-Mumbai, the Ld. AO had disallowed the same.

21. The Ld. DR argued & relied upon the order of the Ld. AO but was unable to bring on record any contrary judicial precedent to rebut the findings recorded by the Ld. CIT(A).

22. We find that the co-ordinate bench of the ITAT-Mumbai has decided the issue in favour of the assessee, in assessee's own case for A.Ys 2006-07 to 2008-09 in **ITA Nos. 3535 & 1702/Mum/2011** and **ITA No. 4167/Mum/2012**, vide order dated **20.11.2015**. The coordinate bench has decided the issue in favour of the assessee & the relevant paragraph is reproduced as below:-

"9. This issue is also covered by the order of the Hon'ble Bombay High Court in the case of General Insurance Corporation of India, 342 ITR 27. The precise observation of the Hon'ble High Court are as under :-

"12. In General Insurance Corp. of India v. CIT [1999] 240 ITR 1391 106 Taxman 389 (SC) the Supreme Court considered in an appeal arising out of a judgment of the High Court the issue as to whether a sum of Rs. 3 crores, being a provision for redemption of preference shares, was not liable to be added back in the total income of the assessee for Assessment Year 1977-78? The Supreme Court held that a plain reading of rule 5(a) of the First Schedule made it clear that in order to attract the applicability of the provision the amount should firstly be an expenditure or allowance and secondly it should be one not admissible under the provisions of section 30 to 43A. The Supreme Court held that the sum of Rs. 3 crores in that case which was set apart as a provision for redemption of preference shares could not have been treated as an expenditure and hence could not have been added back under rule

5(a). In that context, the Supreme Court held as follows:

"There is another approach to the same issue. Section 44 of the Income-tax Act 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 Income-tax Act and satisfying the requirements of the Insurance Act are binding on the Assessing Officer under the Income-tax Act and he has no general power to correct the, errors in the accounts of an insurance business and undo the entries made therein."

The question whether an assessee who carries on general insurance business would be entitled to avail of an exemption under Section 10 did not arise. The issue as to whether the assessee which carries on the business of general insurance would be entitled to the benefit of an exemption under clauses (15), (23G) and (33) of Section 10 is directly governed by the decision rendered by the Division Bench in Life Insurance Corporation v. Commissioner of Income-tax (supra) following the earlier decision in Commissioner of Income-tax v. New India Assurance Co. Ltd. (supra). The Assessing Officer could not have ignored the binding precedent contained in the two Division Bench decisions of this Court. Moreover, the Assessing Officer in allowing the benefit of the exemption in the order of assessment under Section 143(3) specifically relied upon the, view taken by the CBDT in its communication dated 21 February 2006 to the Chairman of IRDA. The communication clarifies that the exemption available to any other assessee under any clauses of Section 10 is also available to a person carrying on non-life insurance business subject to the fulfillment of the conditions, if any, under a particular clause of Section 10 under which exemption is sought. It needs to be emphasised that it is not the case of the Assessing Officer that the assessee had failed to fulfill the condition which attached to the provisions of the relevant clauses of Section 10 in respect of which the exemption was allowed. This of course is apart from clause (38) of Section 10 where the Assessing Officer had rejected the claim for exemption in the original order of assessment under Section 143(3). The Assessing Officer above all was bound by the communication of the CBDT. Having followed that in the order under Section 143(3) he could not have taken a different view while purporting to reopen the assessment. Having applied his mind specifically to the issue and having taken a view on the basis of the communication noted earlier, the act of reopening the assessment would have to be regarded as a mere change of opinion which has also not been based on any tangible material. Consequently, we hold that the reopening of the assessment is contrary to law. The Petition would have, therefore, to be allowed.

13. Rule is, therefore, made absolute by quashing and setting aside the notice dated 17 March, 2011 reopening the assessment under Section 148 of the Income Tax Act, 1961. In the circumstances of the case, there shall be no order as to costs."

23. In our considered view the facts and circumstances in this ground are *pari materia*, respectfully following the order of the Tribunal in assessee's own case, we confirm the action of the Ld. CIT(A). In the circumstances, we do not find any infirmity in the order of the Ld.CIT(A). Accordingly, the **Ground (vi)** raised by the revenue is dismissed.

Ground (vii).

24. The issue in this ground relate to Ld.AO disallowing the exempt income u/s 10(34) of the Act and also, that related to this exempt income, the expenses related to this exempt income should be disallowed u/s 14A of the Act. We find that the fact remains that the disallowance u/s 14A is recurring issue in assessee's case. The co-ordinate bench of ITAT, Mumbai has, in assessee's own case for A.Ys 2006-07 to 2008-09, held that provisions of section 14A are not applicable to the case of the assessee. the co-ordinate bench of the ITAT-Mumbai has decided the issue in favour of the assessee, in assessee's own case for A.Ys 2006-07 to 2008-09 in **ITA Nos. 3535 & 1702/Mum/2011** and **ITA No. 4167/Mum/2012**, vide order dated **20.11.2015**. The coordinate bench has decided the issue in favour of the assessee & the relevant paragraph is reproduced as below:-

"17. Similar view was also taken by the coordinate bench in the case of Reliance General Insurance Co.Ltd. Vs. DCIT, 2010-TIOL-ITAT-MUM.

18. Respectfully following the above judicial pronouncements, we do not find any merit in the action of lower authorities for disallowance made u/s.14A, which is not applicable to the Insurance Company."

25. We find that there is no material change in facts of the case and that in the order of the co-ordinate bench of the Tribunal. The Ld. DR argued and stood in favour of the impugned assessment order. Accordingly, we find no

infirmity in the order of the Ld.CIT(A). We uphold the action of the Ld. CIT(A) and dismiss the **Ground (vii)** raised by the revenue.

Ground (viii) & (ix)

26. In these grounds, the revenue is aggrieved by the allowance of exemption under section 10(15)(iv)(h) of the Act amounting to Rs.15,15,24,995/- and by the allowance of depreciation amounting to Rs.13,29,65,208/- under section 32 of the Act. From the order of the Ld. CIT(A), it is evident that the issue relating to exemption under section 10(15)(iv)(h) is squarely covered by the decision of the co-ordinate Bench of the ITAT, Mumbai, in the assessee's own case for A.Y. 2016-17 in **ITA No. 1718/Mum/2020**, vide order dated **25.04.2022**, wherein it was held that no disallowance of exemption under section 10(15)(iv)(h) of the Act was warranted. We find no infirmity in the order of the Ld. CIT(A) on this issue. Accordingly, **Ground No. (viii)** raised by the revenue is dismissed.

27. With regard to Ground No. (ix) concerning the disallowance of depreciation amounting to Rs.13,29,65,208/- under section 32 of the Act, the issue arises from the write-back of excess provision for expenses which had been disallowed in earlier years. This issue has already been adjudicated by the co-ordinate Bench of the ITAT, Mumbai, in the assessee's own case in **ITA No. 1718/Mum/2020** for A.Y. 2015-16 (supra).

28. The Ld. DR argued and supported the impugned assessment order.

29. However, respectfully following the decision of the co-ordinate Bench, we decide the issue in favour of the assessee. Consequently, the order of the Ld. CIT(A) on this issue is upheld, and **Ground No. (ix)** raised by the revenue is dismissed.

30. In the result, the appeal of the revenue bearing **ITA No. 5394/mum/2025** is dismissed.

Order pronounced in the open court on 23/12/2025

Sd/-

sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER
Mumbai, Dt : 23/12/2025
Pk/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलाथ/The Appellant ,
2. ितवादी/ The Respondent.
3. आयकरआयु CIT
4. िवभागीयितिनिध, आय.अपी.अिध., मुंबई/DR, ITAT, MUMBAI
5. गाडफाइल/Guard file.

BY ORDER,

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(Asstt. Registrar), ITAT, MUMBAI