

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
&
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA Nos.-568 to 572/Del/2015
(Assessment Years: 2008-09 to 2012-13)**

ACIT Central Circle 2 New Delhi.	vs	Educomp Solutions Ltd. 514, Udyog Vihar, Phase-III Gurgaon AAACE2983M
Assessee by		Sh. Deepesh Jain, CA
Revenue by		Ms. Rachna Singh, CIT DR

Date of Hearing	26.10.2017
Date of Pronouncement	09.11.2017

ORDER

PER BENCH

Aggrieved by the order dated 03.11.2014 in appeal nos. 82, and 76 to 79/14-15 relevant to the assessment years 2008-09 to 2012-13 passed by the Ld. Commissioner of Income Tax (Appeals)-1, New Delhi (hereinafter for short referred to as the "Ld. CIT(A)"), Revenue is, in these appeals, challenging the deletion of addition made by the Assessing Officer (for short

called as the “AO”) on account of amortized expenses on issue of ESOPs.

2. Briefly stated facts are that the assessee is a company engaged in the business of providing Education Service to schools, including Information Communication & Technology (ICT) service to Government Schools, online education service, and web tutorial services etc. There was a search and seizure operation u/s 132 of the Income Tax Act, 1961 (hereinafter for short called as the “Act”) on 18.08.2011 in the Educomp Group of cases in which the assessee i.e., Educomp Solution Ltd. is the flagship concern. During the course of assessment proceedings, it was seen that the assessee had amortized the expenditure under the head “Employee Stock Option Scheme” and the AO disallowed the same by treating it as not allowable as per the provisions of the Act. In appeal for the AY 2008-09 the Ld. CIT (A) remanded the matter to the AO directing him to re-compute the income starting from the income originally assessed u/s 143(3) of the Act, as modified by the appeal effects given to the orders of the Ld. CIT (A) and ITAT in ITA No.

833/Del/2013 in assessee's own case for that assessment year. However, in respect of assessment years 2009-10 to 2012-13, Ld. CIT (A) did not consider it necessary to remand the matter for re-computation of income starting from the income originally assessed u/s 143(3) in terms of the order dated 26.09.2014 in ITA No. 833/Del/2012 in assessee's own case for the AY 2008-09.

3. Challenging these orders, the Revenue is in this appeals before us stating that the order of the Ld. CIT (A) in deleting the addition in respect of the assessment years 2009-10 to 2012-13 is bad under law and the principle of *Res judicata* does not apply to tax proceedings. It is further contended by the Ld. DR that inasmuch as a coordinate bench of this Tribunal by order dated 26.09.2014 set aside the matter to the file of the AO for verification of quantum of deduction claimed by the assessee in the light of the decisions of the Spl. Bench in the case of Biocon Ltd. vs. DCIT (2013) 144 ITD 21, the Ld. CIT (A) should have followed the same in respect of all these years also.

4. Per contra, it is the submission of the Ld. AR that the Ld. CIT (A) as a matter of fact set aside the matter in respect of the AY 2008-09 for verification at the end of the AO and to re-compute the income starting from the income originally assessed u/s 143(3) of the Act as modified by the appeal effects given to orders of Ld. CIT (A) and ITAT while giving effect to his order for AY 2008-09 and this direction is in compliance with the orders of the ITAT. In respect of other years also the said direction was considered by the authorities below as is evident from the questionnaire furnished and answers obtained as is incorporated in the order of the Ld. CIT (A).

5. We have gone through the record. The order of the Ld. CIT (A) for the AY 2008-09, vide paragraph no. 3 refers to the direction given by a coordinate Bench of this Tribunal by order dated 26.09.2014 in ITA No. 833/Del/2012. He observed therein that the order of the ITAT prevails in the same matter in issue and basing on that he set aside the issue to the AO with a direction to re-compute the income starting from the income originally assessed u/s 143(3) of the Act as modified by

the appeal effects given to the orders of the Ld. CIT (A) and the Tribunal while giving effect to the order dated 03.11.2014 in appeal no. 82/14-15 for AY 2008-09. We find that this course adopted by the Ld. CIT (A) is perfectly justified in view of the decision of the Spl. Bench of this Tribunal in Biocon Ltd. vs. DCIT (supra).

6. However, in so far as the other years are concerned, instead of giving effect to the observations of this Tribunal in ITA No. 833/Del/2012, the Ld. CIT (A) held that for the AY 2008-09 the disallowance on account of expenditure on ESOP in the original assessment order passed u/s 143(3) was deleted, as such, since the order of the ITAT prevails on the matter and he proceeded to delete the addition of the disallowance. We agree with the Ld. DR on this aspect and hold that the Ld. CIT (A) should have set aside the matter to the file of the AO in respect of the AYs 2009-10 to 2012-13 also for verification of the quantum of deduction claimed by the assessee in the light of the decision of the Special Bench of ITAT in the case of Biocon Ltd (supra) and allow the deduction

for discount on shares under the ESOP as per the decision of the Special Bench of ITAT, after giving adequate opportunity to the assessee of being heard.

7. With this view of the matter, we hold that the finding of the Ld. CIT (A) in respect of the AY 2008-09 is justified and has to be upheld, whereas in respect of the AYs 2009-10 to 2012-13 the same cannot be sustained and the issue has to be set aside to the file of the AO for verification of the quantum of deduction claimed by the assessee in the light of the decision of the Special Bench of ITAT in the case of Biocon Ltd (supra) and allow the deduction for discount on shares under the ESOP as per the decision of the Special Bench of ITAT.

8. In the result, ITA No. 568/Del/2015 is dismissed and ITA Nos. 569 to 572/Del/2015 are allowed for statistical purpose.

Order pronounced in the open court on 09.11.2017

Sd/-
(G.D. AGRAWAL)
PRESIDENT

Dated: 09.11.2017

*Kavita Arora

Sd/-
(K. N. CHARRY)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

TRUE COPY

ASSISTANT REGISTRAR
ITAT NEW DELHI