

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

**ITA NO.3636/MUM/2017 (A.Y: 2012-13)**

D.C.I.T Circle – 14(2)(1) Room No. 432, 4 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. L&T Infrastructure Finance Co. Ltd 3B Laxmi Towers, "G" Block, Plot No. C-25, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051  <b>PAN: AABCL 2283 L</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**Assessee by : None**  
**Department by : Shri S.C. Tiwari**  
  
**Date of Hearing : 11.10.2018**  
**Date of Pronouncement : 30.10.2018**

**ORDER**

**PER C.N. PRASAD (JM)**

1. This appeal is filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-22, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 23.02.2017 for the Assessment Year 2012-13.
2. The first ground in the grounds of appeal is in respect of deleting the disallowance u/s. 14A r.w.s. Rule 8D of the Act by the Ld.CIT(A) and the second ground raised by the Revenue is in respect of deleting the Employee Stock Option Scheme [ESOP] expenses.

3. In spite of issue of notice none appeared on behalf of the assessee and therefore we proceed to dispose of this appeal on hearing the Ld.DR.

4. In respect of disallowance u/s. 14A r.w. Rule 8D(2)(ii) of the Act is concerned, the Ld. DR submitted that disallowance was deleted by the Ld.CIT(A) on perusal of the balance sheet of the assessee and noticing that assessee has its own funds in excess of investments. Ld. DR submitted that Ld.CIT(A) following the decision of the Hon'ble Jurisdictional High Court in the case of CIT v. Reliance Utilities & Power Ltd., [313 ITR 340] deleted the interest disallowed under Rule 8D(2)(ii). Ld. DR strongly placed reliance on the order of the Assessing Officer.

5. On hearing the Ld. DR and on a perusal of the order of the Ld.CIT(A), we find that the disallowance was deleted for the reason that the assessee has its own funds far exceeding the investments. The Ld.CIT(A) followed the decision of the Hon'ble Jurisdictional High Court in the case of CIT v. Reliance Utilities & Power Ltd., (supra), CIT v. HDFC Bank Ltd [49 taxmann.com 335] and HDFC Bank Ltd v. DCIT [383 ITR 529]. Thus, we do not find any infirmity in the order passed by the Ld.CIT(A). This ground is rejected.

6. Coming to the disallowance of ESOP expenses, Ld. DR submitted that the Assessing Officer disallowed the ESOP expenses treating them

as capital expenditure. However, the Ld.CIT(A) following the decision of the Hon'ble Jurisdictional Tribunal in the case of DCIT v. Accenture Services (P.) Ltd., and the decision of the Bangalore Bench of the Tribunal in the case of M/s. Novo Nordisk India (P.) Ltd. v. DCIT in ITA.No.1275/Bang/2011 held that the ESOP expenses are allowable as Revenue expenses u/s. 37 of the Act. Ld. DR strongly placed reliance on the order of the Assessing Officer.

7. On hearing the Ld. DR and perusing the order of the Ld.CIT(A), we find that the Assessing Officer disallowed the expenses treating them as capital expenditure. Ld.CIT(A) deleted the disallowance observing as under: -

*"7.3. I have considered the facts of the case and the appellant's submissions. The appellant company is a subsidiary of M/s L&T Finance Holdings Limited. As per the Employee Stock Options Scheme established by the Holding Company, stock options were granted to the employees of the appellant. The actual cost incurred by the holding company in the form of monetary payments, in respect of options granted to employees of the Appellant was charged to the statement of profit and loss during the period and recovered by the holding company. The cost incurred on the ESOP amounting to Rs.80,86,000/- was debited to the Expenses on Employee Stock Option Plans account under the head "Employee benefit expenses" and the amount to be reimbursed to the holding company was credited to L&T Finance Holdings account. The Assessing Officer had disallowed the ESOP expenses on the ground that it was capital expenditure as it led to a change in share capital and also that the expenses were contingent in nature. On the issue of allowability of ESOP expenses, the Special Bench of the Bangalore Tribunal in the case of Biocon Ltd. Vs Deputy Commissioner of Income-tax (LTU), Bangalore [2013] 25 ITR(T) 602 (Bangalore - Trib.) has held that discount on issue of shares to the employee stock option is allowable deduction in computing the income in the profit and loss account of business or profession and the same was on account of ascertained liability and not contingent liability. It was also held that by issuing shares at discounted price under the scheme ESOP is simply one of the motive to compensate the employees for their services and is part of the remuneration. It is also seen that on identical facts with that of the appellant's, the Hon'ble jurisdictional Tribunal in the case of DCIT vs Accenture Services Pvt. Ltd.(2010) TIOL-ITAT-Mumbai and the Hon'ble ITAT, Bangalore in the case of Novo Nordisk*

*India Pvt. Ltd. vs DCIT in ITA No. 1275/Bang/2011 had held that ESOP expenses were allowable as the conditions required u/s 37 of the Act were duly satisfied. In these two cases also, the shares of the parent/holding company were issued to the employees of the subsidiary companies and the subsidiary companies had paid the difference in the market price and the exercise price of such shares by their employees to the parent/holding company and claimed the same as ESOP expenses. It was held that the expenses incurred by the assessee to motivate and award its employees for their hard work amounted to salary cost of the assessee and that the expenditure incurred by the assessee for the purpose of business on employees was allowable expenses. I also find that the Hon'ble Delhi High Court in the case of CIT vs Lemon Trees Hotel Pvt. Ltd. in ITA No. 107/2015 vide order dated 18.08.2015 endorsed the view that ESOP charges is allowable as revenue expenses. In view of the legal position on the issue as held by the various Courts, the disallowance of Reimbursement of ESOP Expenses of Rs. 80,86,000/- is deleted. The appellant's ground of appeal is allowed."*

8. As could be seen from the above, the Ld.CIT(A) following the decision of the Hon'ble Jurisdictional Tribunal in the case of DCIT v. Accenture Services (P.) Ltd (supra) and the Bangalore Bench of the Tribunal in the case of M/s. Novo Nordisk India (P.) Ltd. v. DCIT (supra) and also the decision of the Hon'ble Delhi High Court in the case of CIT v. Lemon Trees Hotel Pvt. Ltd held that the ESOP expenses are Revenue expenses and therefore reimbursement of ESOP expenses by the assessee was deleted . We do not find any infirmity in the order passed by the Ld.CIT(A), hence the same is sustained.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on the 30<sup>th</sup> October, 2018

Sd/-  
**(RAJESH KUMAR)**  
**ACCOUNTANT MEMBER**

Mumbai / Dated 30/10/2018  
Giridhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**