

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: "E", NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.1780/Del/2016
Assessment Year: 2011-12

M/s. Religare Wealth Management Ltd., D3, P3B, District Centre, Saket, New Delhi	Vs.	DCIT, Circle-21(1), C.R. Building, New Delhi
PAN :AADCR5677C		
(Appellant)		(Respondent)

Appellant by	S/shri Rohit Jain, Adv. & Tejasvi Jain, CA
Respondent by	Ms. Rinku Singh, Sr.DR

Date of hearing	27.03.2019
Date of pronouncement	28.03.2019

ORDER

PER O.P. KANT, A.M.:

This appeal by the assessee is directed against the order dated 27.01.2016 passed by Ld. CIT(A)-7, New Delhi [in short 'the CIT(A)'] for assessment year 2011-12 raising the following grounds of appeal:

1. *That the Commissioner of Income tax (Appeals) erred on facts and in law in sustaining disallowance of Rs. 223,761 made by the assessing officer on account of the difference between purchase price of Stock Appreciation Right ("SAR") and the sale price of such SAR at the time of its exercise by the employees of the appellant holding the same to be capital loss not allowable business deduction.*
- 1.1 *That the Commissioner of Income tax (Appeals) erred on facts and in law in not appreciating that the above differential amount actually represents the loan granted by the appellant to Religare Enterprises Ltd. Employees SAR Trust ('the Trust') for the purpose of*

administering Employee Stock Appreciation Right Scheme ('SAR scheme'), which was not meant to be and, in fact, not recovered from the latter in accordance with the SAR scheme.

- 1.2 That the Commissioner of Income tax (Appeals) erred on facts and in law in not appreciating that the above SAR scheme was implemented to motivate, reward and retain key employees whereby each SAR granted to the employees of the appellant stood equivalent to one share of Religare Enterprises Ltd. ('REL') and the aforesaid differential amount was, thus, in the nature of employee benefit allowable under section 37(1) of the Income Tax Act, 1961 ('the Act').*
- 1.3 Without prejudice, the Commissioner of Income tax (Appeals) erred on facts and in law in not allowing deduction of the aforesaid amount of loan written off as loss incidental to business under section 28 of the Act.*
- 1.4 That the Commissioner of Income Tax (Appeals) erred on facts and in law in following decision of the co-ordinate Bench of Delhi Tribunal in the case of Ranbaxy Laboratories Ltd. v. AC1T: 124 TTJ 771, and thereby not following the principle/ ratio laid down by the Special Bench of the Tribunal in the case of Biocon Ltd. v. DCIT: 155 TTJ 649, holding that the law laid down by Special Bench does not have any precedential value.*
- 2. That the Commissioner of Income tax (Appeals) erred on facts and in law in sustaining the above disallowance by following the order passed by his predecessor for AY 2008-09 and not appreciating the factual and legal contentions submitted by the appellant before him during the appellate proceedings.*

2. Briefly stated facts of the case are that the assessee-company is a 50:50 joint venture of Macquarie Equities Ltd., Australia and Religare Enterprises Ltd. and was engaged in providing wealth management services to high net worth individuals (HNI). The company provided a wide range of investment products like, mutual funds, structured products, venture capital funds etc. and as referral agents for products like, insurance direct equity and commodities. For the year under consideration, the assessee filed return of income, declaring loss of Rs.39,93,83,079/- on 29.11.2011. The case was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (for short 'the Act') were issued and complied with. The assessment was completed under Section 143(3) of the Act on

26.03.2014 after making certain additions/disallowances, including the disallowance of Stock Appreciation Right (SAR) expenses, amounting to Rs.2,23,761/-. Aggrieved, the assessee filed appeal before the learned CIT(A), who partly allowed the appeal of the assessee. Aggrieved with the finding of the learned CIT(A), the assessee is before the Tribunal raising the grounds as reproduced above.

3. In the grounds raised, the assessee is aggrieved only on the issue of SAR expenses. Before us, the learned counsel for the assessee, at the outset, submitted that the learned CIT(A) while sustaining the disallowance has followed the order of his predecessor in assessment year 2008-09. Learned counsel further submitted that in the said assessment year, the Tribunal has decided the issue in dispute in favour of the assessee and has also been upheld by the Hon'ble High Court. In view of above, he submitted that as the issue in dispute is covered in favour of the assessee, the appeal of the assessee may be allowed.

4. On the contrary, the learned DR could not controvert the fact that the appeal in assessment year 2008-09 on the issue in dispute has been allowed in favour of the assessee.

5. We have heard the rival submissions and perused the relevant material on record. We find from para 5.2 of the impugned order, the Ld. CIT(A) has followed the findings of his predecessor in assessment year 2008-09 while adjudicating the issue in dispute. We further find that the Tribunal in ITA No. 2396/Del/2013 for assessment year 2008-09, in the case of the assessee itself has adjudicated the issue in dispute in favour of the assessee, observing as under:

“18. The 1st and 2nd ground of appeal of the assessee is with respect to the disallowance of expenditure on stock appreciation right being the difference between the purchase price of stock appreciation right and the sale price of stock appreciation right at the time of the exercise by the employees holding the same to be capital loss and not allowable as business deduction. With respect to the enhancement made by the CIT - A of Rs. 15,99,306/- on account of difference between the sale price of stock appreciation right and the exercise price of stock appreciation right holding the same to be capital expenditure incurred in relation to the issue of share issued to the employees. The assessee has submitted that Religare enterprise Ltd has introduced Employee stock appreciation rights scheme 2007 for Religare group of entities to reward and retained the employees for higher-level of individual performance and to attract the best talent and provide motivation for better performance of the employees. According to that non assignable shares equivalent were granted to the employees. Pursuant to clause No. 7 of the scheme which entitles them to receive stock appreciation rights compensation under the scheme provided the participant satisfy the requirement of that particular scheme, the compensation is paid by the company to the participant in respect of this surrendered vested stock appreciation rights according to the scheme. According to the particular scheme the grant price was paid by the Granti who is an employee eligible to participate under the scheme. According to that scheme the 10 employees of the assessee company opted for the scheme and all of them exercised their stock appreciation rights. According to that Rs. 2505946 was sale proceeds of the stocks of the company, resulting into the loss of Rs. 1599362 which was claimed by the assessee as an employee compensation. Further, the company has purchased the shares of Religare enterprise Ltd, through a trust under that particular scheme at an average price of Rs. 503/- per share whereas the grant price of shared to the employees was Rs. 140/- per share. Therefore, the difference between the sale price of the share and the purchase price of the share was claimed by the assessee as deduction as employee compensation. In the identical circumstances. With respect to one of the group companies, Religare commodities Ltd for assessment year 2008 - 09 identical issue arose before the coordinate bench, which decided this issue in ITA No. 2283/Del/2013 by order dated 04/01/2017 wherein relying upon the decision of the special bench in 144 ITD 21 claim of the assessee with respect to both the above items were allowed vide para No. 7 of that order. The coordinate bench in para No. 8 also held that the issue is also squarely covered by the decision of the Hon'ble Madras High Court in 211 Taxmann 554 wherein it has been held that the above expenditure on account of employee stock option scheme is an ascertained liability for deduction and further the Hon'ble Delhi High Court in CIT versus Lemon tree hotels Ltd in ITA No. 107/2015 has also held that the expenses debited is cost of employee stock option plan in departmental representative also could not point out any other

judicial precedent against the above judicial precedents cited by the Ld. authorised representative. In view of this ground No. 1 and 2 of the appeal of the assessee is allowed reversing the decision of the Ld. CIT - A and directing the assessing officer to allow the sum of Rs.669626/- on account of the difference between the purchase price of stock appreciation right in the sale price of such stock appreciation right on exercise by the employees of the appellant as these are revenue expenditure in nature. Further the Ld. CIT (A) has also erred in making the disallowance by enhancing the assessment of Rs.1599306/- on account of difference between the sale price of the stock appreciation right and the exercise price of stock appreciation right paid to the employees of the appellant as it has already been held to be the revenue expenditure in relation to the stock appreciation rights scheme of the assessee to appreciate the performance of the employees holding the same as revenue expenditure. Therefore ground no 1 & 2 of the appeal of the assessee is allowed.”

6. Further, the Hon’ble High Court has also upheld the finding of the Tribunal in ITA No. 438/2018 vide order dated 13.04.2018.

The relevant portion of the decision is reproduced as under:

“The Revenue urges four questions of law in this appeal; the first relates to the disallowance on account of the difference between purchase price of the Stock Appreciation Rights (SAR) and the sale price of such shares at the time of the exercise by the employees, which was disallowed in the hands of the Revenue. The Scheme is analogous to the Employee stock appreciation rights scheme 2007 and is covered in the favour of the assessee by the ruling of this Court in the case of ‘Commissioner of Income Tax vs. New Delhi Television Limited’, 2017 398 ITR 452 which had in turn relied on a previous judgment of Madras High Court in the case of ‘Commissioner of Income Tax-III, Chennai vs. M/s PVP Ventures Limited, T. Nagar, Chennai, TC(A)No.1023 of 2005. Consequently, no question of law arises on this aspect.

The next question urged is with respect to the disallowance under Section 14-A of the Income Tax Act. The ITAT here ruled that since no exempt income was earned during the year, disallowance was impermissible, relying upon the judgment of this Court in the case of ‘Cheminvest Ltd. Vs CIT-V1’, (2015) 378 ITR 33. For this reason, this question of law too does not arise.

The third question urged is with respect to the disallowance under Section 40 (a) (ia) of the Act. Here the Revenue authorities, including the CIT (A), disallowed certain amounts contending that the failure to deduct tax at source from the amount paid to other entities authorized the disallowance. The ITAT noted that the amounts were

paid by way of reimbursement and that there was no finding to the effect that the reimbursement contained any income element. On account of these findings the court is of the opinion that no question of law arises on this aspect.

The fourth question, in the opinion of the Court, respecting pre-operative expenses requires consideration.

Admit.

The following question of law arises for consideration:-

“Did the ITAT fall into error in permitting the assessee expenditure claimed by it for the period April-2007 to June-2007 (Rs.93,89,552/-) having regard to the circumstance that it commences business from July-2007?”

Issue notice to the appellant/assessee limited to the above question, returnable on 28th August, 2018. Dasti in addition.”

7. Respectfully following the above decision of the Hon’ble High Court of Delhi on the issue in dispute, the grounds of appeal are allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 28th March, 2019.

Sd/-
[BHAVNESH SAINI]
JUDICIAL MEMBER

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Dated: 28th March, 2019.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi