

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री इंदूरी रामा राव, लेखा सदस्य के समक्ष
BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 1858/CHNY/2019
निर्धारण वर्ष /Assessment year : 2016-2017.

M/s. Salzer Electronics Ltd,
No.1, Samichettipalayam Post,
Jothipuram Via,
Coimbatore 641 047.

Vs. The Income Tax Officer,
Corporate Ward 4,
Coimbatore

[PAN AAECs 3411L]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. S.Sridhar, Advocate
प्रत्यर्थी की ओर से /Respondent by : Shri. D. Manoj Kumar, CIT.

सुनवाई की तारीख/Date of Hearing : 24-02-2020
घोषणा की तारीख /Date of Pronouncement : 26-02-2020

आदेश / ORDER

PER INTURI RAMA RAO, ACCOUNTANT MEMBER:

This is an appeal filed by the Assessee directed against
the order of the Commissioner of Income Tax (Appeals)-1, Coimbatore

('CIT(A)' for short) dated 06.05.2019 for the Assessment Year (AY) 2016-2017.

2. The Assessee raised the following grounds of appeal:

'1) The order of the Ld. Commissioner of Income Tax (Appeals) is bad in law and erroneous due to the fact that he did fail to notice the defect in the order of the Ld. A.O.

2) (a) The Ld. CIT (A) grossly erred in not taking into account the fact that the SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 were expressly repealed by the SEBI (Share Based Employee Benefits) Regulations, 2014 and simply endorsed/re-emphasised what was earlier held by the Ld. A.O.

(b) Having regard/consideration to the previous ground, the learned CIT(A) erred in affirming the order of the Assessing Officer, who assessed the company by disallowing the claim of ESOP expenses, keeping in view, only the 1999 Guidelines, which is a prima facie mistake, since repealed, by Regulations, 2014.

(c) The learned CIT (A) erred in relying on the decisions, rendered in the context of Guidelines, 1999, which were repealed by Regulations, 2014.

And for other reasons that may be adduced at the time of hearing, your appellant prays that the appeal be admitted, considered and justice be rendered".

3. The brief facts of the case are as under:

The appellant namely M/s. Salzer Electronics Limited is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacturing of electrical switches and accessories. The return of income for the AY 2016-17 was filed on 30.11.2016 disclosing total income of Rs.14,30,47,270/-

and the same was revised on 27.02.2017 at same total income. Against the said return of income, the assessment was completed by the Income Tax Officer, Corporate Ward 4, Coimbatore vide order dated 28.12.2018 passed u/s. 143(3) of the Income Tax Act, 1961 (in short 'the Act') at total income of Rs. 18,55,88,610/-. While doing so, the AO disallowed ESOP expenditure of Rs.4,12,72,335/- on the ground that it is capital expenditure and expenditure was not debited to Profit and Loss account and also by giving the following reasons.

'1.11 conclude, the assessee company is not eligible to claim the expenses on discount of ESOP in the computation statement for the reasons stated under:

1. The assessee company has chosen not to debit the expenditure in its books of account for its own convenience to show higher profit to its share holders

2 It has not abided by the guidelines issued by SEBI and computed its EPS SEBI has framed these guidelines to project the actual financial position of the company to the shareholding public.

3. SEBI guidelines mandate the discount on ESOP should be debited to P&L account as expenditure which has been upheld in the case law of CIT-III vs PVP Ventures Limited — Madras High Court. It is also been stated in the case law of SSI Limited vs DCIT-ITAT Chennai which is discussed in the case law of Biocon Ltd The company Biocon had claimed the expenditure in its P&L account

4 The judicial interpretation on the issue of claim of expenses ESOP discount with regard to Revenues expenditure / Capital expenditure has not reached finality".

The Assessing Officer also made disallowance u/s.14A of the Act with which we are not concerned.

4. Being aggrieved by the above addition, an appeal was preferred before Id. CIT(A), contending that entries in the books of accounts does not determine as to allowability or otherwise the expenditure. Further, it is submitted that the provisions of Companies Act, 2013 or the SEBI Guidelines and Regulations were not violated and regarding allowability of expenditure, he placed reliance on the decision of Special Bench of the Tribunal in the case of Biocon Ltd vs. DCIT, (2013) 35 taxmann.com 335 and the decision of Hon'ble Jurisdictional High Court in the case of *CIT vs. PVP Ventures* 211 Taxman 554. However, the Id. Commissioner of Income Tax (Appeals) rejected the contention of the assessee, dismissed the appeal of the assessee.

5. Being aggrieved, the appellant is in appeal before us in the present appeal. Ld. Counsel for the assessee reiterated the same contentions as advanced before the Id. Commissioner of Income Tax (Appeals).

6. On the other hand, the Id. Sr. Departmental Representative placed reliance on the orders of lower authorities.

7. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to allowability of ESOP expenditure. The view of the Assessing Officer that it is capital and notional expenditure had been overturned by the decision of Special Bench of the Tribunal in the case of Biocon Ltd (supra). The ratio of the decision of Special Bench of the Tribunal in the case of Biocon Ltd (supra) was followed by the Hon'ble Jurisdictional High Court in the case of PVP Ventures Ltd (supra) and Hon'ble Delhi High Court in the case of CIT vs. Lemon Tree Hotels in ITA No.107/2015, dated 18.08.2015. Following these decisions, the Co-Ordinate Bench of the Tribunal, to which one of us i.e. the Accountant Member is the author of the order, in the case of Deputy Commissioner of Income Tax vs. Shriram EPC Ltd, in ITA No.2011/CHNY/2016 for assessment year 2009-10 held as follows.

'10.Grounds 2 to 2.2 challenges the decision of Id. CIT(A) in allowing ESOP expenditure as revenue expenditure. The issue in the present appeal is squarely covered in favour of the assessee by the order of Hon'ble Delhi High Court in the case of Lemon Tree Hotel (supra) and by the decision of Hon'ble Jurisdictional High Court in the case of PVP Ventures Ltd (supra), wherein it was held as follows.

‘29. As far as the Employees Stock Option Plan is concerned, as rightly pointed out by the Tribunal, the assessee had to follow SEBI direction and by following such direction, the assessee claimed the ascertained amount as liability for deduction. We do not find that there exists any error to disturb the order of the Tribunal and in turn the Assessing Authority. In the circumstances, we agree with the submission of learned senior counsel appearing for the assessee in this regard by upholding the order of the Tribunal’.

Against the above decision of the Hon’ble Jurisdictional High Court, the SLP filed by the Department was dismissed by the Hon’ble Supreme Court vide order dated 28.03.2014 (2512/2014) and hence, the law laid down by the Hon’ble Madras High Court has become final. Thus, in view of the above judicial pronouncement, we find no infirmity in the order of the Id. CIT(A) on this issue and accordingly, the ground raised by the Revenue stands dismissed. Hence, grounds of appeal No.2 to 2.2 stand dismissed.

Thus, in the light of the above settled legal positions that ESOP expenditure is allowable, the reasoning of the Id. Commissioner of Income Tax (Appeals) as well as Assessing Officer is hereby overruled. As regards to other contention of the lower authorities that expenditure was not debited to Profit and Loss Account, it is well settled position of law that absence and presence of entry in the books of accounts does not decide the allowability or otherwise of an item of expenditure, reliance in this regard can be placed on the judgment of Hon’ble Supreme Court in the case of *Kedamath Jute Mills*

Co. Ltd (1971) 82 ITR 363. It is further worth to note that SEBI had repealed the ESOP expenditure, once provision is repealed it should be deemed that it was never part of guideline note. Accordingly, the orders of the Assessing Officer and Id. Commissioner of Income Tax (Appeals) are set aside and we direct the Assessing Officer to allow the claim of deduction of ESOP expenditure.

8. In the result, the appeal filed by the assessee in ITA No.1858/CHNY/2019 for assessment year 2016-2017 stands allowed.

Order pronounced on 26th day of February, 2020, at Chennai.

Sd/-
(जॉर्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(इंटूरी रामा राव)
(INTURI RAMA RAO)
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated:26th February, 2020.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |