

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : F : NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.230/Del/2017
Assessment Year: 2011-12

Religare Securities Ltd., 6 th Floor, Prius Global, A-3, 4, 5, Plot No.11, Sector-125, Noida. PAN: AAACF1952D	Vs	DCIT, Circle-21(1), CR Building, New Delhi.
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ITA No.574/Del/2017
Assessment Year: 2011-12

DCIT, Circle-21(1), CR Building, New Delhi.	Vs	Religare Securities Ltd., D-3, P-3B, District Centre, Saket, New Delhi. PAN: AAACF1952D
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(Appellant)

(Respondent)

Assessee by	:	Shri Rohit Jain, Advocate & Ms Tejasvi Jain, Advocate
Revenue by	:	Shri Saras Kumar, Sr. DR
Date of Hearing	:	08.06.2020
Date of Pronouncement	:	31.07.2020

ORDER

PER R.K. PANDA, AM:

These are cross appeals. The first one is filed by the assessee and the second one is filed by the Revenue and are directed against the order dated 11.11.2016 of the CIT(A)-7, New Delhi, for A.Y. 2011-12.

2. Facts of the case, in brief, are that the assessee company is member of the Bombay stock exchange and National Stock Exchange and is engaged in providing broking and depository services to retail clients. It filed its return of income on 27.09.2011 declaring taxable income of Rs.37,87,10,248/-. The AO, during the course of assessment proceedings, noted that the assessee has declared dividend income of Rs.3 crores which has been claimed as exempt. He noted that the assessee company has offered disallowance u/s 14A of Rs.2,75,99,362/- in the revised return of income. From the various details furnished by the assessee, the AO noted that the assessee company has invested in equity preference shares as well as in trading, investments and mutual funds. The income from trading, investments and mutual funds has been offered as business income and taxed under the head $\text{PGBP.}\emptyset$ Therefore, the same has not been considered for the purpose of calculation of disallowance u/s 14A. He noted that the total investments as on 31.03.2011 related to the exempt income is Rs.211,05,88,093/- out of which the assessee company claimed Rs.72 crore (Rs.12 crore invested on December, 1, 2008, Rs.25 Cr. Invested in December, 24, 2008 and Rs.35 crore invested on July 13, 2009) were met out of own funds.

3. However, the AO rejected the submissions made by the assessee justifying the suo motu disallowance made u/s 14A of Rs.2,75,99,362/-. Applying the provisions of section 14A r.w. Rule 8D, the AO computed such disallowance at

Rs.5,80,61,219/-. After giving credit of Rs.2,75,99,362/- offered by the assessee as suo motu disallowance, the AO made an addition of Rs.3,04,61,857/- to the total income of the assessee.

4. Similarly, the AO allowed depreciation @ 15% as against 60% claimed by the assessee on UPS. The AO also disallowed the deduction on account of SAR expenses of Rs.1,64,73,853/- as not an allowable expenses u/s 37(1) of the Act. There is also another addition of Rs.81,66,260/- made by the AO being disallowance of reversal of earlier year expenses not claimed in the revised return of income for which the assessee is not in appeal before us. Therefore, we are not concerned with the same. The AO determined the total income at Rs.39,37,05,670.

5. In appeal, the Id.CIT(A) restricted the disallowance u/s 14A of the Act to the extent of exempt income of Rs.3 crore. Similarly, he also directed the AO to allow depreciation @ 60% by considering the UPS as an essential part of computer system. He, however, sustained the other additions made by the AO.

6. Aggrieved with such order of the CIT(A), the assessee as well as the Revenue are in appeal before us by raising the following grounds:-

Grounds of appeal by the Assessee

õ1. That the Commissioner of Income Tax (Appeals) (õCIT(A)ö) erred on facts and in law in confirming the disallowances to the extent of Rs. 1,88,74,491 made by the assessing officer (õthe AOö) viz. (a) additional disallowance under section 14A of the Income Tax Act, 1961, (õthe Act) of Rs. 24,00,638 (b) disallowance of SAR expenditure of Rs. 1,64,73,853.

2. That the CIT (A) erred on facts and in law in upholding the additional disallowance made by the assessing officer under section 14A of the Act to the tune of Rs. 24,00,638, which was over and above the suo-moto disallowance made by appellant of Rs. 2,75,99,362, without assigning any cogent reasons as to how the suo-moto disallowance made by appellant was incorrect.

2.1 That the CIT(A) erred on facts and in law in confirming the total disallowance i.e. sum total of suo-moto disallowance made by appellant and additional disallowance made by Assessing officer to the extent of dividend earned by appellant of Rs. 3,00,00,000 during the year under consideration, even after principally agreeing with all the contentions raised by the appellant and not restricting the total disallowance to suo-moto disallowance made by appellant.

3. That the CIT(A) erred on facts and in law in confirming the action of the assessing officer in not allowing the claim of the appellant for deduction of write back of SAR expenditure of Rs. 1,17,63,296/- being the amounts disallowed in earlier years treating it as a capital expenditure.

4. That the CIT(A) erred on facts and in law in sustaining the disallowance of Rs. 47,10,557 made by assessing officer holding the same to be as capital loss not allowable as business deduction.

4.1 That the CIT(A) erred on facts and in law in not appreciating that the aforesaid amount is a loan granted by the appellant to Religare Enterprise Ltd. Employee SAR Trust (the Trust) for the purpose of administering Employee Stock appreciation Right Scheme (SAR scheme) not recovered from the latter.

4.2 That the CIT(A) 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 Enterprise Ltd. and the aforesaid amount was, thus in nature of employee related cost allowable under section 37(1) of the Act.

4.3 Without Prejudice, the CIT(A) 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.

The appellant craves leave to add, alter, amend or vary the above grounds of appeal at or before the time of hearing.

Grounds of appeal by the Revenue

1. That on facts and circumstances of the case and in law the Ld. CIT(A) erred in restricting the disallowance u/s 14A of the IT Act to the extent of exempt income of Rs. 3,00,00,000/- and giving relief of Rs. 2,80,61,219/- to the assessee in the light of CBDT Circular No. 5 of 2014 dated 11.02.2014 issuing a clarification that provision of 14A read with Rule 8D shall be applicable even in the cases where the assessee does not have any dividend income.

2. That on fact and circumstances of the case and in law the Ld. CIT(A) erred in allowing the depreciation @ 60% considering the UPS essentially part of computer system and giving relief of Rs. 19,16,829/- whereas the UPS is not an integral part of computer system and eligible depreciation on it is @ of 15%.

3. The appellant craves to leave, add, alter, modify and amend or any of the grounds before or at the time of hearing.

6.1 The assessee has also raised the following additional grounds:-

5. That on the facts and circumstances of the case, disallowance under section 14A of the Income Tax Act, 1961 (the Act) should, in any case, be directed to be restricted to Rs.93,750, being ½% of average investment resulting in earning of dividend income.

6. That on the facts and circumstances of the case, no part of interest expenditure could be considered for the purpose of disallowance under section 14A of the Act, particularly considering that: (a) no part of interest on borrowed funds was incurred in relation to exempt income; and (b) interest income, in any case, far exceeded interest expenditure,

7. That on the facts and circumstances of the case, the lower authorities, in any case, erred in not considering only investments actually resulting in exempt income for the purpose of computing disallowance under section 14A of the Act

7. Referring to the decision of the Honøble Supreme Court in the case of NTPC Ltd. vs. CIT, 229 ITR 383 and various other decisions, the Id. Counsel for the assessee submitted that the additional grounds being purely legal in nature and no

fresh facts are required to be investigated, the same should be admitted for adjudication.

8. After hearing both the sides and considering that no new facts are required to be investigated and the additional grounds being legal in nature, therefore, following the decision of the Honøble Supreme Court in the case of NTPC Ltd. vs. CIT, reported in 229 ITR 383, the additional grounds are admitted for adjudication.

9. Grounds of appeal No.1 and 1(a) by the Revenue and grounds No.2 and 2.1 by the assessee relate to the part relief granted by the CIT(A) out of the disallowance made by the AO u/s 14A r.w. Rule D of Rs.3,04,61,857/-.

10. The Id. Counsel for the assessee submitted that the assessee during the impugned assessment year has earned dividend income of Rs.3 crores from investment in shares of Religare Commodities Ltd., which was claimed as exempt. The assessee, in the revised return of income on the basis of erroneous understanding of the provisions has suo motu disallowed Rs. 2,75,99,362/- by considering interest u/s 2,41,81,922/- and $\frac{1}{2}$ of average value of investment at Rs.34,80,440/- both totaling to Rs.275,99,362/-. He submitted that while erroneously computing the disallowance, the assessee has even considered investments not yielding dividend income during the year while computing disallowance in terms of Rule 8D(2)(ii)(iii) of the IT Act which has been highlighted in the additional ground of appeal. He submitted that the AO

computed the disallowance u/s 14A r.w. Rule 8D at Rs.5,80,61,219/- and after deducting the suo motu disallowance made by the assessee, made disallowance of Rs.3,04,61,857/-. He submitted that the Id.CIT(A) restricted such disallowance to Rs.3 crore being the actual dividend income received during the year for which the Revenue is in appeal and for the addition sustained by the CIT(A), the assessee is in appeal before the Tribunal.

11. The Id. Counsel for the assessee submitted that the assessee has earned dividend income of Rs.3 crore from investment in shares of Religare Commodities Ltd., wherein investment made was only of Rs.3,75,00,000/- out of the total closing investment of Rs.2,11,05,88,093/- as on 31.03.2011. Referring to various decisions, he submitted that although the assessee has suo mou calculated higher disallowance u/s 14A of the Act r.w. Rule 8D in terms of income, the said position was taken under misconception in law. Referring to the following decisions, he submitted that there is no estoppel against the law and it was always open to the assessee to resile from the decision taken under misconception of law:-

- i) NTPC Ltd. vs. CIT, 229, ITR 383 (SC);
- ii) CIT vs. Bharat General Reinsurance Co. Ltd., 81 ITR 303 (Del);
- iii) SAIL DSP VR Employees Association 1998 V. UOI, 262 ITR 638 (Cal);
- iv) Pt. Sheo Nath Prasad Sharma vs. CIT, 66 ITR 647 (All); and
- v) Indo Java & Co. vs. ITO, 30 ITD 161 (Del, SB).

12. He accordingly, submitted that the assessee can notwithstanding suo motu disallowance at a higher amount, raise ground seeking correct computation of disallowance u/s 14A of the Act. Referring to the decision of the Honøble Delhi High Court in the case of ACB India Ltd., 374 ITR 108, he submitted that the Honøble High Court in the said decision has held that only such investments which yielded exempt dividend income during the year are required to be considered for the purpose of disallowance. Referring to the decision of the coordinate Bench of the Tribunal in the case of Religare Enterprises Ltd. vs. DCIT, ITA No.1549/Del/2014 for A.Y. 2009-10 and various other decisions including the decision of the Special Bench of the Tribunal in the case of ACIT vs. Vireet Investments Pvt. Ltd., 165 ITD 27, he submitted that only investments that have yielded dividend income are to be considered for the purpose of computing average investments and for computing disallowance u/s 14A of the Act. He submitted that the Tribunal in assessee's own case for A.Y. 2008-09 has directed the AO to compute disallowance u/s 14A only qua investments which have yielded exempt income in the year under consideration.

13. The Id. Counsel for the assessee, in his next plank of argument, submitted that there is no warrant to consider interest expenditure for the purpose of disallowance u/s 14A since the assessee had net interest income and there was no interest expenditure. Referring to various decisions, he submitted that for the purpose of computing disallowance u/s rule 8D, only net interest expenses has to

be considered. He submitted that in the instant case, the assessee had incurred interest expenditure of Rs.73,57,40,035 whereas the interest income is Rs.182,27,00,961/-. Therefore, the interest income earned by the assessee far exceeded the interest expenditure and, therefore, no interest expenditure can be considered for disallowance under Rule 8D(2)(ii).

14. Without prejudice to the above, he submitted that the AO/CIT(A) has incorrectly included interest on bank overdraft, inter-corporate loan, commercial paper, client margin, interest on TDS, interest on service tax, interest on professional tax, interest paid to clients on advance brokerage received and bank guarantee commission, etc. which is not in accordance with the law. He, however, submitted that the investment of Rs.3,75,00,000/- in shares of RCL which yielded commercial income can only be considered for disallowance u/s 14A of the Act. He submitted that the above investment of Rs.3,75,00,000/- far exceeds shareholders funds of Rs.433 crores as on 31.03.2011 and Rs.425 crores as on 31.03.2010. Referring to various decisions including the decision of the Honøble Supreme Court in the case of CIT vs. Reliance Industries Ltd., 410 ITR 466 and the decision of the Honøble Delhi High Court in the case of HT Media vs. PCIT, 399 ITR 576 and CIT vs. Taikisha Engineering India Ltd., 370 ITR 338, he submitted that since own funds with the assessee far exceeds the investments which yielded dividend income there is no warrant to make any disallowance out of any interest

expenditure. He accordingly submitted that the disallowance made u/s 14A of the Act r.w. Rule 8D of the IT Rules cannot exceed in the worst scenario Rs.7,09,994/.

15. The ld. DR, on the other hand, submitted that the decision of the Honøble Supreme Court in the case of Maxopp Investments Ltd., was not available at the time of deciding the issue by the CIT(A). In any case, he submitted that, the action of the AO is fully justified under the facts and circumstances of the case. He accordingly submitted that the order of the AO be upheld.

16. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, made disallowance of Rs.3,04,61,857/- u/s 14A r.w. Rule 8D, after deducting the amount of Rs.2,75,99,362/- suo motu disallowed by the assessee. We find, the ld.CIT(A) restricted the disallowance u/s 14A r.w. Rule 8D to Rs.3 crores being the actual dividend received by the assessee. It is the submission of the ld. Counsel that due to erroneous understanding of the provisions of section 14A the assessee had computed such suo motu disallowance at Rs.2,75,99,362/-. However, in view of the various decisions, only the investments which yielded dividend income should be considered for computation of the average investment. It is also his submission that no interest expenditure has been incurred by the assessee in the instant case since the interest expenditure is much less than the interest income. It is also his submission that the total investments

which has yielded dividend income is much less than the own capital and free reserves of the assessee company. It is also his submission that there is no estoppel against law and it is always open to the assessee to resile from the decision taken under mis-conception of law. Accordingly, it is his submission that the assessee can suo motu raise grounds seeking correct computation u/s 14A of the Act. It is the submission of the ld. DR that once the assessee has suo motu made disallowance of Rs.2,75,99,362/-, the disallowance u/s 14A, under no circumstances can be less than the said amount. Otherwise, the final computation will be less than the returned income.

17. The Honøble Supreme Court in the case of Maxopp Investments Ltd. vs. CIT, 402 ITR 640, has held that the disallowance u/s 14A cannot exceed the actual exempt income received. Therefore, the ground raised by the Revenue on this issue has to be dismissed. Accordingly, the ground by the Revenue on this issue is dismissed.

18. So far as the grounds raised by the assessee including the additional grounds are concerned, the Honøble High Court in the case of ACB India Ltd. vs. ACIT, 374 ITR 108 has held that for the purpose of computing disallowance u/s 14A of the Act instead of taking into account total investment, only such investments which yielded exempt dividend income during the year are required to be considered for the purpose of disallowance. Further, the Tribunal in assessee's own case for A.Y. 2008-09 has directed the AO to compute the disallowance u/s

14A only qua investments which have yielded exempt income from the year under consideration. Under these circumstances, we deem it proper to restore the issue to the file of the AO with a direction to find out the investments which have yielded dividend income and to take into the same for considering the average value of investment. So far as the interest expenditure for the purpose of disallowance u/s 14A is concerned, we find merit in the argument of the Id. Counsel that bank guarantee commission, interest on TDS, interest on service tax, interest on professional tax, interest paid to clients on advance brokerage, interest on clients' margins money, etc. cannot be considered for the purpose of disallowance u/s 14A r.w. Rule 8D. We, therefore, deem it proper to restore the issue to the file of the AO with a direction to recompute the disallowance u/s 14A r.w. Rule 8D after taking into account the investments that have yielded dividend income and recompute interest expenditure on investments as per fact and law. The AO, while doing so, shall keep in mind the total investment of the assessee, vis-à-vis the own funds and free reserves for making any disallowance out of any interest expenditure. He shall keep in mind the decision of the Honøble Supreme Court in the case of CIT vs. Reliance Industries Ltd. (supra) and the decision of the Honøble Delhi High Court in the case of HT Media (supra) and Taikisha Engineering India Ltd. (supra). Needless to say, the AO shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. The grounds raised by the assessee including the additional grounds on this issue are accordingly allowed for statistical purposes.

19. Ground No.3 to 4.3 of the assessee's appeal relates to the order of the CIT(A) in sustaining the disallowance of Rs.47,10,557/- out of the disallowance on account of SAR expenses written off.

20. After hearing both the sides, we find, the AO made disallowance of Rs.1,64,73,853/- on account of SAR expenses written off and advance of sale of shares written off. We find, the Id. CIT(A) sustained the disallowance by observing as under:-

ø8.2. The AO disallowed the deduction claimed by the appellant in respect of Stock Appreciation Right (SAR) expenditure of Rs.1,17,63,296/- and Rs.47,10,557/- aggregating to Rs.1,64,73,853/- as not being eligible as an allowable expense u/s 37(1) of the Act. The AR has submitted that the said transaction pertained to write off of the loan given to the trust and was deductible as a business expenditure u/s 37(1) of the Act. It is noted that this issue was adjudicated in appeal for the A. Y. 2008-09 and the Ld. CIT(Appeals)-XVIII vide her order dated 28.02.2013 in A. No. 229/10-11 had held that the expenditure claimed was clearly a capital expense and hence not allowable. The finding of the Ld. CIT(Appeals)-XVIII is as under:

"5.5 Why SAR discount is capital in nature (not allowable)?

Claim of SAR discount as a deduction is to be examined under the head "Profits and gains of business or profession". This head of income is housed in sections 28 to 44DB. Under section 28(i) the profits and gains of any business or profession carried on by the assessee at any time during the previous; year is chargeable to tax. As per section 29, the income referred to in section 28 should be computed in accordance with the provisions contained in section 30 to 430. Section 36 to 36 confer specific deductions. Section 37 deals with expenditure which is general in nature and not covered within section 36 to 36. The remaining sections enlist various categories of nondeductible expenditure.

Sections 30 to 36 dealing with specific deductions do not deal with ESOP discount. The allowability of SAR discount would have to be examined under section 37 - the residuary section. To examine eligibility of SAR discount u/s 37, the character of discount needs

to be examined. If the discount is regarded as capital in nature, section 37 would prohibit its deduction. If it is expenditure on revenue account that qualifies for deduction. From an accounting perspective SAR discount may be revenue item but from an income-tax view point, whether such discount is capital or revenue in nature is the issue for consideration and of importance.

In the absence of an express definition of capital or revenue expenditure in the Act, one may have to rely on the various judicial precedents on this matter; the rationale adopted and the interpretation adjudged therein.

In the treatise 'The Law and Practice of Income Tax' by Kanga and Palkiwala, (9th edition -page 225) the learned authors observe -

"The problem of discriminating between capital receipts and income receipts, and between capital disbursements and income disbursements, has very frequently engaged the attention of the courts. In general, the distinction is well recognized and easily applied, but from time to time cases arise where the item lies on the border line and the task of assigning it to income or capital becomes much of refinement. As the Act does not define income except by way of adding artificial categories, it is to be decided cases that one must go in search of light." (Emphasis supplied)

In the context of SAP discount, the Jurisdictional Tribunal - in the case of Ranbaxy Laboratories Limited (2009) 124 TTJ 771 (Del) held ESOP discount to be capital and not a allowable/ deductible business expenditure. The Delhi Tribunal placed its reliance on the decision of the House of Lords in the case of Lowry v Consolidated African Selection Trust Ltd. (1940) 8 ITR 88 (Supp) and held it to be capital. This decision was upheld by the Mumbai Tribunal.

Thus the arguments, as fortified by the above decisions, wherein it has been held that SAR discount is NOT an allowable expenditure (largely for the reason that it is a capital expenditure), in favour of SAR discount being capital, are:-

É SAR discount are incurred in relation to issue of shares to employees. They are not relatable to profits and gains arising or accruing from a business/trade. The Apex Court decision in the case of Punjab State Industrial Dev Corporation Ltd. (1997) 225 ITR 792 (SC) and Brooke Bond India Ltd. (1997) 225 ITR 798 (SC) have held that expenditure resulting in 'increase in capital' is not an allowable deduction even if such expenditure may incidentally help in business of the company.

É SAR discount does not diminish trading/ business receipts of the issuing company. The company does not suffer any pecuniary detriment. To claim a charge against income, it should inflict a detriment to the financial position. ESOP is a voluntary scheme launched by the employers to issue shares to employees. The intention is to only give a 'stake' to the employees in the organization.

É This discount is not incurred towards satisfaction of any trade liability as the employees have not given up anything to procure such ESOP.

É The discount was not a payment of sum contractually due to the employees and cannot be said to have been laid out for the purpose of business.

- Share premiums obtained on issue of shares are items of capital receipt. When such premium is foregone, it cannot be claimed as an 'expenditure wholly and exclusively laid out or expended for the purposes of the trade'.

Thus on the above basis the entire expense claimed by the appellant company i.e. the difference between the purchase price of SAR-Rs.503/ and SAR value i.e. Rs.140 is clearly a capital expense."

8.3. Since the facts in the present appeal are similar, following the order of the Ld. CIT(Appeals)-XVIII, the disallowance of Rs. 1,64,73,853/- made by the AO by holding the expenditure as capital in nature is confirmed. These grounds of appeal are ruled against the appellant.ö

21. We find, identical issue had come up before the Tribunal in assessee's own case in the immediately preceding assessment year and the Tribunal, vide ITA No.4644/Del/2015, order dated 9th October, 2017, allowed the claim of the assessee by observing as under:-

ö10. You carefully considered the rival contention and also perused the orders of the lower authorities. We have also perused the scheme of stock appreciation Right of REL group companies. 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 the above disallowance 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 Taxman 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 the profit and loss account is an allowable expenditure. The Ld. departmental representative also could not point out any other judicial precedent against the above judicial precedents cited by the Ld. authorized 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. 2096 3780/- 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 appellants as these are revenue expenditure in nature. Therefore ground no 1 & 2 of the appeal of the assessee is allowed.ö

22. We find, the Revenue filed appeal against the Tribunal and the Honøble High Court, vide ITA No.311/2018, order dated 19th March, 2018, dismissed the appeal filed by the Revenue by observing as under:-

ö The Revenue’s appeal under Section 260A of the Income Tax Act alleges that the Income Tax Appellate Tribunal (ITAT) erred in allowing 22,09,63,780/- as a capital expense. That amount was the quantum of discount given in respect of the SAR (Stock Appreciation Rights) - similar to Employee Stock Option (ESO) offered by the employer to the work force. The IT AT followed its previous decision and also cited a judgment of this Court in Commissioner of Income Tax vs. Lemon Tree Hotels Ltd, (ITA 107/2015 decided on 18.08.2015). The ITAT also relied upon the judgment of Madras High Court in Commissioner of Income Tax-III, Chennai vs. PVP Ventures Ltd., TC(A) 1023 of 2005.

In PVP Ventures Ltd. (supra), Madras High Court discussed the relevant issues in the following manner :

"7. On the issue of Staff Welfare expenditure, the Commissioner pointed out that the assessee had debited a sum of Rs.66.82 lakhs under the head of Staff Welfare expenditure. The said sum was incurred by the assessee in respect of Employees Staff Option Plan and Employees Staff Purchase Scheme Guidelines. As per SEBI

guidelines, the difference between the market value of the shares and the value at which the shares were allotted to the employee is allowable as an expenditure. The Commissioner of Income Tax revised this claim accepted by the Officer and held that the accounting treatment prescribed by SEBI, nowhere suggests that it was a revenue expenditure to be debited to the Profit and Loss Account as it was only a notional and contingent expenditure. In the circumstances, the Commissioner of Income Tax held that the shares allotted under Employees Staff Option Plan and Employee Staff Purchase Scheme Guidelines, 1999, having not stated anything about the manner of treatment to this expenditure, the difference in the value at which the shares were allotted and the market value of the shares did not warrant any allowance as expenditure. Ultimately, the Commissioner of Income Tax passed an order directing the Assessing Officer to revise the assessment. Thus, holding that the revision proceedings were validly initiated, the income received on account of exchange fluctuation was held as a revenue receipt and be taxed as such and the Staff Welfare expenditure was to be disallowed.

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11. As regards the second issue which is now canvassed before this Court viz., on the issue of expenditure of 66.82 lakhs towards the issue of shares to the Employees Stock Option is concerned, the Tribunal pointed out that the shares were issued to the employees only for the interest of the business of the assessee to induce employees to work in the best interest of the assessee. The allotment of shares was done by the assessee in strict compliance of SEBI regulations, which mandate that the difference between the market prices and the price at which the option is exercised by the employees is to be debited to the Profit and Loss Account as an expenditure. The Tribunal pointed out that what had been adopted was not notional or contingent as had been submitted by the Revenue. Pointing out to the Employees Stock Option Plan, the Tribunal in its order stated that it was a benefit conferred on the employee. So far as the company is concerned, once the option was given and exercised by the employee, the liability in this behalf got ascertained. This was recognised by SEBI and the entire Employees Stock Option Plan was governed by guidelines issued by SEBI. On the facts thus found, the Tribunal held that it was not a case of contingent liability depending on the various factors on which the assessee had no control. The expenditure in this behalf was an ascertained liability, thus the expenditure incurred being on lines of the SEBI guidelines, there could be no interference in the relief granted by the Assessing Authority for the expenditure arising on

account of Employees Stock Option Plan. This expenditure incurred as per SEBI guidelines and granted by the Officer could not be considered as erroneous one calling for exercise of jurisdiction under Section 263 of the Act. ö

In view of the above reasoning, the Court is of the opinion that there is no infirmity with the approach or order of the Tribunal. No question of law arises. The appeal is consequently dismissed.ö

23. Respectfully following the decision of the Honøble High Court in assessee's own case we set aside the order of the CIT(A) and direct the AO to delete the addition.

24. Ground No.2 by the Revenue relates to the order of the CIT(A) in directing the AO to allow higher depreciation on UPS.

25. After hearing both the sides, we find the assessee claimed depreciation on UPS @ 60% treating the same to be part of computer and peripherals. We find, the AO held that UPS is not a part of computer and peripherals and it is eligible for depreciation @ 15% being plant & machinery. We find, the Id. CIT(A) allowed depreciation @ 60%. We do not find any infirmity in the order of the CIT(A) on this issue. The Honøble Delhi High Court in the case of CIT vs. BSES Yamuna Powers Ltd. vide ITA No.1267/2010 and in the case of BSES Rajdhani Powers Ltd. vide ITA No.1266/2010 has held that UPS is an essential part of computer system and is eligible for depreciation @ 60%. The various other decisions relied on by the Id. Counsel in the paper book also supports its case that UPS is eligible for higher rate of depreciation. In view of the above, we do not find any infirmity

in the order of the CIT(A) in directing the AO to allow depreciation @ 60% on UPS. Accordingly, the order of the CIT(A) is upheld and the ground raised by the Revenue is dismissed.

26. In the result, the appeal filed by the Revenue is dismissed and the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 31.07.2020.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated:31st July, 2020

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi