

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.5067/Del/2018
(ASSESSMENT YEAR 2013-14)**

M/s Centum Learning Limited 127, Neelagagan, Mandi Road Sultanpur, Mehrauli, New Delhi-110 030. PAN-AADCB 3842R	Vs.	Dy. Commissioner of Income Tax, Circle-5(2), New Delhi.
(Appellant)		(Respondent)

Appellant By	Sh. Sh. Anil Bhalla, CA
Respondent by	Ms. Yagya Saini Kakkar, CIT- DR

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-13, New Delhi, [Ld. CIT(A)", for short], dated 07.05.2018 for Assessment Year 2013-14. Grounds taken in this appeal of Assessee are as under:

“1. That on the facts and in the circumstances of the appellant company and in law, the learned Commissioner of Income Tax (Appeals) has erred in upholding the action of the learned Assessing Officer in disallowing Employees Stock Option Expenses (ESOP) amounting to Rs.4,99,46,617/-.

1.1 That on the facts and in the circumstances of the appellant company and in law, the learned Commissioner of Income Tax (Appeals) has erred in holding that ESOP expenses did not represent expenditure incurred, by alleging that the same was not spent, that is to say, paid out or away, and erred by not considering the fact that the appellant company was following mercantile system of accounting as prescribed by Section 145 of the Act according to which the expenses which have accrued/ crystallised in the relevant assessment year were fully allowable u/s 37(1) of the Act. The learned Commissioner of Income Tax (Appeals) has erred in not following the law of the land as laid down in Woodward Governer India Pvt Ltd. 312 ITR 254 (SC) in regard to allowability of expenditure u/s 37(1) of the Act.

1.2 That on the facts and in the circumstances of the appellant company and in law, the learned Commissioner of Income Tax (Appeals) has erred in upholding the learned Assessing Officer's action in holding that deduction of ESOP expenses is not allowable u/s 37(1) of the Act allegedly on the ground that the same is a notional loss and capital expenditure.

1.3 The learned Commissioner of Income tax (Appeals) has erred in disregarding the decision of the Special Bench of ITAT, Bangalore in the case of Biocon Limited 144 ITD 21 (SB) and in not appreciating the law of land as laid down by the Hon'ble Supreme Court in the case of Bharat Earthmovers 245 ITR 428 (SC) and Rotork Controls India Pvt Ltd. 314 ITR 62 (SC) in respect of allowability of accrued liability upto the end of financial year even though such amount of liability is finally quantified and payable in future.

2. That on the facts and in the circumstances of the appellant company and in law, the learned Commissioner of Income Tax (Appeals) has erred in partly upholding the action of tire learned Assessing Officer in disallowing expenses amounting to Rs.14,823/- u/s 14A read with Rule 8D.

3. The appellant craves leave to add, alter or amend the ground of appeals at a later stage.”

(B) The assessee filed return of income on 30.11.2013 declaring an income of Rs.48,25,80,200/-. Vide assessment order dated 24.02.2016 passed by the Assessing Officer u/s 143(3) of Income Tax Act, the assessee's total income was assessed at Rs.53,27,90,724/- (rounded off to Rs.53,27,90,720/-). In the aforesaid assessment order dated 24.02.2016 an addition of Rs.4,99,46,617/- was made by the Assessing Officer by disallowing ESOP expenditure. This amount of Rs.4,99,46,617/- represented difference between Fair Market Value of stock options granted by the assessee's company to the employees, and amount paid by the concerned employees on account of exercising the option. The assessee claimed this expenditure as a business expenditure u/s 37(1) of Income Tax Act. The Assessing Officer rejected this claim and made the addition of aforesaid amount of Rs.4,99,46,617/-.

(B.1) The Assessing Officer further made an addition of Rs.2,63,907/- u/s 14A of Income Tax Act read with Rule 8D of Income Tax Rules, in the aforesaid assessment order dated 24.02.2016, holding that this amount represented expenditure incurred by the assessee to earn exempt income by way of dividend.

(B.1.1) The Assessee contested both the aforesaid additions of Rs.4,99,46,617/- and Rs.2,63,907/- in the appeal filed before the Ld. CIT(A). Vide impugned appellate order dated 07.05.2018, the Ld. CIT(A) upheld the aforesaid addition of Rs.4,99,46,617/-. Regarding the aforesaid addition of Rs.2,63,907/-, the Ld. CIT(A) confirmed the amount of Rs.14,823/- and directed the Assessing Officer to verify the remaining amount of Rs.2,49,084/-.

(C) Aggrieved, the assessee has filed this present appeal in Income Tax Appellate Tribunal. In the present appeal, the assessee has appealed against the impugned appellate order dated 07.05.2018 of the Ld. CIT(A) wherein the Ld. CIT(A) upheld the aforesaid additions of Rs.4,99,46,617/- and 14,823/-. In the course of appellate proceedings in Income Tax Appellate Tribunal, the following documents were filed from the assessee's side.

S. No.	Particulars
1.	Copy of submissions filed before CIT(A) regarding disallowance of the ESOP expenses
2.	Copy of submissions filed before CIT(A) regarding disallowance u/s 14A
3.	Copy of Key Management Stock Option Plan
4.	Copy of Summary of ESOP cost accounted in the books

5. Copy of the decision of Delhi Tribunal in the case of Bharti Airtel Ltd. [2014] 43 taxmann.com 50 (Delhi - Trib)
6. Copy of the decision of High Court of Madras in the case of PVP Ventures Ltd. [2012] 23 taxmann.com 286 (Mad)
7. Copy of the decision of Bangalore Tribunal in the case of Biocon Ltd. [2013] 35 taxmann.com 335 (Bang - Trib)
8. Copy of the decision of Chennai Tribunal in the case of Caterpillar India (P) Ltd. [2017] 80 taxmann.com 325 (Chennai - Trib.)
9. Copy of the decision of Chennai Tribunal in the case of S.S.I. Limited [2004] 85 TTJ Chennai 1049
10. Copy of Income Tax Return for A.Y. 2013-14
11. Copy of audited Annual Accounts for tire year ended 31st March 2013
12. Copy of Tax Audit Report for A.Y. 2013-14
13. Copy of the decision of High Court of Delhi in the case of Lemon Tree Hotels Ltd. - ITA No.107/2015 - 104 taxmann.com 26 (Del)
14. Copy of the decision of High Court of Delhi in the case of New Delhi Television Ltd. [2018] 99 taxmann.com 401 (Delhi)
15. Copy of the decision of Ahmedabad Tribunal in the case of Cera Sanitaryware Ltd. [2016] 68 taxmann.com 433 (Ahmedabad - Trib.)
16. Copy of the decision of the Hon'ble Delhi Tribunal in the case of New Delhi Television Limited [2020] 117 taxmann.com 212 (Delhi-Trib)
17. Copy of letter dated Januarry 04, 2016 filed before Dy. Commissioner of Income Tax Circle 5(2), New Delhi in reply to notice u/s 142(1) of the Income Tax Act, 1961.
Copy of the order dated 07.05.2018 of Commissioner of Income Tax (Appeals)-13 for AY 2013-14
18. Copy of consolidated order in the case of Indiabulls Real Estate Limited in ITA No.6602/Del/2016 and 6603/Del/2016 for AY 2012-13.
19. Copy of oreder in 'Aricent Technologies (Holdings) Limited [TS-17-ITAT-2022 (Del)
20. Copy of order in the case of Oxygen Services India (P) Ltd. in ITA No.3831/Del/2016 for AY 2011-12
21. Copy of order in People Strong HR Services (P) Ltd. [2022]134 taxmann.com351 (Delhi-Trib.)
- 22.

(C.1) In connection with the aforesaid addition of Rs.4,49,46,617/-; a synopsis was also filed from the assessee's side which is reproduced as under:

"GROUND NO. 1 TO 1.3: DISALLOWANCE OF ESOP EXPENSES - RS.4.99,46.617/-.

FACTS OF THE CASE

AO P 1-2 1.
CIT(A) P1-12

1. Centum Learning Limited ("assessee company") is a company domiciled in India and incorporated under the provisions of Companies Act, 1956. The company is engaged in the business of rendering services in respect of personnel development and delivery of training and learning solutions.

FACTS

- 1.1 The assessee company had floated Key Management Stock Option Plan (Scheme) with a vesting period of 4 years. **PB 14 to 17.**
- 1.2 The said schemes were framed and accounted in the books in accordance with the mandatory guidelines issued by Securities and Exchange Board of India ("SEBI").
- 1.3 Copy of the guidelines attached with order of CIT(A).
- 1.4 The amount was debited in the audited Profit & Loss Account. **PB 159.**
- 1.5 Disclosure given in the audited Balance Sheet. **PB 148 - note (m), Summary of Significant Accounting Policies (This confirms that the accounting is done in accordance with SEBI Guidelines) - Also P151 note 3(e).**
- 1.6 ESOP scheme alongwith basis of valuation explained in the Notes to Accounts in the audited Financial Statements. **PB 162 note 28.**

Purpose of the Scheme

- 1.7 Under the Scheme, as part of company's intention to attract and retain employees, an option to exercise/purchase shares of the assessee company was granted to the employees of the company at a discounted price compared to tire fair market value of the share.
- 1.8 In accordance with the recommended guidelines issued by SEBI and the Guidance note on Accounting for Employee share-based payments, issued by the Institute of Chartered Accountants of India, the difference between the fair market value of the shares at the time of the grant of option and die offer price represented employee's compensation in the form of discount on stock options which has been accounted as such in the books of account and charged to Profit & Loss Account by spreading it over the vesting period of 4 years. **PB15.**

1.8.1 The accounting entries passed in the year ended 31.03.2013:

1	ESOP Cost Dr	5,37,00,784	
	To Deferred ESOP Cost (ESOP Cost recorded during the year)		5,37,00,784
2	Deferred ESOP Cost Dr	37,54,167	
	To ESOP Cost Ac (Reversal of ESOP as Employees left Co. and grant cancelled)		37,54,167
3	Net ESOP expenses recorded in Books (Rs.5,37,00,784 - Rs.37,54,167)	4,99,46,617	

1.9 The company claimed Rs.4,99,46,617/- as employee compensation under ESOP plan as expenditure in its Profit & Loss Account of the relevant previous year ended 31.03.2013. **PB 159 note 22.**

1.10 Detailed analysis of the ESOP expense claimed Rs.4,99,46,617/-. **PB 18-23.**

1.11 During the assessment proceedings the assessee company was asked to justify its claim of deduction of ESOP expenses in the computation of income for AY 2013-14. **PB 231.**

1.11.1 The assessee company had submitted its reply vide letter dated 4.1.2016. **PB 228.** The assessee company explained ESOP cost was claimed by debiting Profit & Loss Account as expense accrued and crystallized in the year. Decision of Special Bench of Bangalore Tribunal in the case of Biocon Ltd 144 ITD 21 was relied upon.

1.11.2 Since then this decision of the Special Bench has been affirmed by Karnataka High Court in Biocon Ltd 121 taxmann.com 351 (Kar) **attached to this Synopsis at page 9,**

1.11.2.1 and decisions of Delhi High Court wherein this matter has been decided in favour of the assessee - NDTV 99 taxmann.com 401 (Del) **PB 192-194,**

1.11.2.2 and Lemon Tree Hotels 104 taxmann.com 26 (Del) **PB 190-191.**

1.13.1 The learned AO vide order dated 27.12.2016 under section 143(3) of the Act disallowed the deduction of ESOP expenses amounting to Rs.4,99,46,617/ - on the ground that the impugned cost is a notional and is a capital expense, that the cost did not relate to the assessment year under consideration. Relied upon the decision of Ranbaxy Laboratories by IT AT Delhi Benches. [39 SOT 17 (Del)]

Commissioner of Income Tax (Appeals)

2. The learned CIT(A) confirmed the disallowance of Rs.4,99,46,617/- on account of ESOP cost claimed by the company.

2.1 **CIT(A) stated** that the expenditure/loss was not allowable as deduction because the amount was a notional loss and a capital expenditure and therefore not

covered by tire provisions of Section 37(1) of the Act (para 5.14 page 9 of CIT(A1 order 1

2.2 CIT(A) chose to disregard the decision of the Special Bench of Bangalore Tribunal in the matter of Biocon 35 taxmann.com (PB 58-81) wherein it was held that it was not a notional loss and was revenue expenditure, as according to him facts were different (para 5.21 page 11 of CIT(A) order.

2.3 However the facts were identical. The difference between grant price and fair market value has been claimed as employee cost.

CIT(A) was also of the view that accounting in the books of the liability as envisaged in the SEBI guidelines could not override the allowability as per provisions of Income Tax Act (para 5.17 page 10 and para 5.22 page 11 of CIT(A) order).

2.3.1 Learned CIT(A) disregarded the detailed decision of the Special Bench in Biocon 35 taxmann.com (Bang.) (PB 58-81) wherein all the revenue's arguments were explained and the decision of the Ranbaxy Laboratories 39 SOT 17 (Del) was considered, and not found to be correct.

2.3.2 **The various reasons put forth by CIT(A) in his order** while confirming the addition on account of ESOP claim stood already answered and covered by the Special Bench decision in Biocon 35 taxmann.com (Bang.) (PB 58-81) which has been approved by subsequently by the Karnataka High Court in 121 taxmann.com 351 (Karnataka) (refer para 6 to 12) **attached to this Synopsis at page 9.**

2.4 CIT(A) referred to the SEBI guidelines and was of the misunderstanding that appellant has not brought out that tire treatment in the books was in accordance with SEBI Guidelines.

2.4.1 He was unable to understand that tire assessee company's claim was merely that the treatment given by the assessee company in the books of accounts was in accordance with the SEBI guidelines (para 5.22 and 5.23 of CIT(A) order).

2.4.2 It may be mentioned that this so was categorically stated before CIT(A) - para 1.1. of written submission before CIT(A) **PB 1.**

2.4.2.1 Reference is also drawn to note (n) on PB 148 - which confirms that SEBI Guidelines was followed while accounting.

2.4.3 CIT(A) misunderstood and presumed that the company was attempting to overrule the provisions of Income Tax Act, by referring to the guidelines issued by SEBI.

This is not so because the appellate claim is as the provisions of Section 37(1) of the Income Tax Act and not as per SEBI.

2.5 CIT(A) observed that there were fundamental differences between the ESOP scheme of the company and the SEBI scheme and therefore disregarded the decision of the Special Bench in Biocon 35 taxmann.com (Bang.) (**PB 58-81**).

2.5.1 CITCAVs observation was that SEBI has not specified an IPO whereas the scheme mentioned IPO, so the claim of the company is fallacious. The fact that IPO happens or does not happen is of no significance, (para 5.2.3(i) of CIT(A) order)

2.5.2 IPO is corollary of ESOP scheme, however, if the IPO does not happen it does not matter.

2.5.3 There is no bar in the SEBI guidelines in regard to an IPO and the fact that SEBI guidelines do not speak about IPO does not jeopardise the claim of ESOP cost.

2.6 CIT(A) observes that the criteria for eligibility of employees was not given in the ESOP scheme of the company, (para 5.2.3(ii) of CIT(A) order)."

(C.1.1) The first issue before us in this appeal is regarding aforesaid addition of Rs.4,99,46,617/-. On this issue, the Ld. Counsel for the assessee relied on the aforesaid synopsis already reproduced in this order in foregoing paragraph (C.1). The Ld. Counsel for the assessee supported his submissions with the help of relevant documents from the documents referred to in foregoing paragraph (C) of this order. He also drew our attention to orders of Hon'ble Delhi High Court in the case of Pr. CIT vs. New Delhi Television Ltd. [2017] 398 ITR 57 (Delhi) and in the case of CIT vs. Lemon Tree Hotels Ltd. (order dated 18.08.2015 of Hon'ble Delhi High Court in ITA No.107/2015). Further, the Ld. Counsel for the assessee also drew our attention to Special Bench order of Income Tax Appellate Tribunal in the case of Biocon Ltd. vs. DCIT (LTU), Bangalore [2013] 35 taxmann.com335 (Bang-Trib) (SB) and decision

of Karnataka High Court in the case of CIT vs. Biocon Ltd. [2020] 121 taxmann.com 351 (Karnataka) wherein the aforesaid Special Bench decision of Income Tax Appellate Tribunal in the case of Biocon Ltd. vs. DCIT (supra) was upheld. Further, the Ld. Counsel for the assessee also drew our attention to decision of Co-ordinate Bench of ITAT Delhi in the case of ACIT vs. People Strong HR Services (P.) Ltd. [2022] 134 taxamann.com 351 (Delhi Trib.). The Ld. Counsel for the assessee strongly contended that the issue in dispute is squarely covered in favour of the assessee by the aforesaid decisions and submitted that the aforesaid amount of Rs.4,99,46,617/- should accordingly be deleted.

(C.1.2) The Ld. CIT-DR relied on the impugned appellate order dated 07.05.2018 of the Ld. CIT(A) and the aforesaid assessment order dated 24.02.2018 of the Assessing Officer.

(C.2) We have heard both sides. We have perused materials on record. We find that Co-ordinate Bench of ITAT Delhi has already taken view in favour of the assessee in the case of ACIT vs. People Strong HR Services (P.) Ltd. (supra). Neither side, in the

present appeal before us, has brought any relevant facts or circumstances for our consideration to distinguish the present case before us from the facts and circumstances of ACIT vs. People Strong HR Services (P.) Ltd. (supra). The relevant portion of the order in the case of ACIT vs. People Strong HR Services (P.) Ltd. (supra) is reproduced as under:

“6. After considering the rival submissions and going through the material placed on record, we find that it is now well settled proposition that the issue of allowability of ESOP discount being the difference between the market value of shares and the value at which employees had been given the shares is covered, not only by the decision of Hon'ble jurisdictional High Court in Lemon Tree Hotels Ltd. (supra), but also by the judgement of the Special Bench in the case of Biocon Ltd. (supra). This judgment of special bench has now been approved by the Hon'ble Karnataka High Court vide order dated 11-11-2020 and held that employees' discount represents consideration for services rendered by employees and hence it is a deductible business expenditure and it cannot be equated with share premium and it is to be intended towards profit by securing employees' consistent services. Apart from that, it was further held that it is an ascertain liability since employees' incurred obligation over the distinct period, notwithstanding the fact that exact amount as quantified at the time of exercising options. The Hon'ble Karnataka High Court has also concurred with the view of Hon'ble Delhi High Court in the case of Lemon Tree Hotels Ltd. (supra). Accordingly, we do not find any infirmity in the order of the ld. CIT(Appeals) following the judgment of Hon'ble jurisdictional High Court and also the Special Bench which has been

confirmed by the Hon'ble Karnataka High Court. The appeal of the Revenue is thus dismissed.

(C.2.1) Further, the issue has been decided in favour of the assessee in the aforesaid precedents in the cases of Pr. CIT vs. New Delhi Television Ltd. (supra); CIT vs. Lemon Tree Hotels Ltd. (supra); Biocon Ltd. vs. DCIT (LTU), Bangalore (SB) (supra) and decision of Karnataka High Court in the case of CIT vs. Biocon Ltd. (supra). Neither side has brought any facts and circumstances for our consideration to distinguish the present case from the facts and circumstances of the aforesaid circumstances. As neither side has brought any facts and circumstances to persuade us to take a view different from the precedents earlier referred to in their paragraphs, and in foregoing paragraph (C.2) of this order, we are inclined to follow the aforesaid precedents in which the issue has been decided against Revenue and in favour of assessee. Accordingly, we decide the issue regarding aforesaid addition of Rs.4,99,46,617/- in the present appeal before us, in favour of the assessee and against Revenue; and we direct the Assessing Officer to delete the aforesaid addition of Rs.4,99,46,617/- .

(D.1) The second issue in the present case is regarding the addition of Rs.14,823/- made u/s 14A read with Rule 8D of Income Tax Rules. At the time of hearing before us, the Ld. Counsel for the assessee submitted that the assessee was not interested in pressing this ground. The Ld. Counsel for the assessee submitted that the assessee was withdrawing ground no.2 of appeal. Accordingly, the ground no.2 of appeal in the present appeal before us is dismissed as being not pressed and being withdrawn by the assessee.

(E) In the result, for the statistical purposes, this appeal is partly allowed.

Order pronounced in the open Court on 24.03.2022

Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 24.03.2022

Pk

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI