

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'C': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.8423/DEL/2019  
[Assessment Year: 2016-17]**

International Travel House Limited, T-2 Community Centre, Sheikh Sarai, Phase-1, New Delhi-110017	Vs	ACIT, Circle-12(2), C.R. Building, ITO, I.P. Estate, New Delhi-110002
<b>PAN-AAACIO093G</b>		
Assessee		Revenue

Assessee by	Sh. Rohit Jain, Adv. Sh. Saurya Jain, CA, and Sh. Deepsh Jain, CA
Revenue by	Sh. Anuj Garg, Sr. DR

<b>Date of Hearing</b>	<b>08.09.2022</b>
<b>Date of Pronouncement</b>	<b>21.09.2022</b>

**ORDER**

**PER SHAMIM YAHYA, AM,**

This appeal by the assessee is directed against the order of the Ld. CIT(A)-44, New Delhi, dated 30.08.2019 pertaining to Assessment Year 2016-17.

2. Grounds of appeal reads as under

**“Ground No. 1: Deduction for ESOP Expenditure Rs. 2,58,48,144/-**

*(a) That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified in upholding the action of the Assessing Officer in rejecting the claim made by the appellant for deduction of Employees Stock Option Plan (ESOP) cost amounting to Rs. 2,58,48,144/-.*

(b) That on the facts and in the circumstances of the case, the learned CIT(Appeals) erred in not considering ESOP cost to be an “expenditure”, thereby disregarding the cost incurred by the appellant by way of payment to ITC Limited (ITC).

(c) That on the facts and in the circumstances of the case, the learned CIT(Appeals) erred in ignoring the decision of Hon’ble Supreme Court in the case of Kedarnath Jute Mfg. Co.

Ltd [TS-7-SC-1971] and affirming the view of the Assessing Officer that the deduction for ESOP expenditure is not allowable since, payments made by appellant to ITC were not debited in the Profit and Loss Account for AY 2016-17 and that the invoice was raised by ITC only in the next financial year.

(d) That on the facts and in the circumstances of the case, the learned CIT(Appeals) was not justified in affirming the views of the Assessing Officer, considering the expenditure on ESOP to be of capital in nature, without appreciating the fact that the expense has been incurred to remunerate the employees for their services during their employment, which is an allowable expenditure under section 37(1) of the Act.

(e) That on the facts and in the circumstances of the case, the learned CIT(Appeals) was not justified in affirming the real cost of expense on account of ESOP as those of ITC. The ESOP cost is in fact cost of the Appellant Company as ESOP benefits were granted to the employees in the Appellant Company.

(f) That on the facts and in the circumstances of the case, the learned CIT(Appeals) was not justified in disregarding the plethora of judgements cited by the appellant on similar facts without assigning any specific reasons there-against.

**Ground No. 2: Deduction for Education Cess and Secondary and Higher Education Cess: Rs. 17,54,051/-**

a. That on the facts and in the circumstances of the case, the learned CIT (Appeals) was not justified in not allowing the claim made by the appellant for deduction of education cess and secondary and higher education cess included in the tax liability for income tax and dividend distribution tax during the subject financial year amounting to Rs. 17,54,051/- as a business expenditure under section 37(1) of the Act, not disallowable u/s 40(a)(ii) of the Act.

*b. That on the facts and in the circumstances of the case, the learned CIT (Appeals) was not justified in disregarding the ruling of the Hon'ble Rajasthan High Court dated 31st July 2018 in the case of Chambal Fertilisers and Chemicals Limited (Appeal No. 52/2018) on identical issue."*

3. Brief facts of the case are that the assessee is an associate company of ITC Ltd. The assessee claimed an expenditure of Rs.2,58,48,144/- in its revised return as expenditure incurred on share based payments to employees on account of providing an option to the employees to purchase shares of ITC Ltd. during the year under reference. The Assessing Officer pointed out that no such expenditure on account of ESOP expenses had been debited to the profit and loss account of the assessee during the year under reference. The Assessing Officer also pointed out that the invoice for the cost of stock option was raised during the next financial year i.e. FY 2016-17. The Assessing Officer also quoted extensively from the notes of account of ITC Ltd. for FY 2016-17 at paragraph 4.8 offer order and concluded that ITC had recognized that cost of incurred for share based payment was a capital contribution and not an expenditure incurred. The Assessing Officer also pointed out that the real cost of expenses on account of ESOP was that of ITC Ltd. and the only reason the assessee was debiting these expenses in its books of account was due to the reimbursement claimed by ITC Ltd. It was also pointed out that even as per the notes of account, the difference between cost of the stock and the reimbursement was considered as capital flow or investment for ITC Ltd. In view of the above the Assessing Officer concluded that the assessee had booked expenditure incurred on behalf of third parties in its books of account.

4. Upon assessee's appeal, the Ld. CIT(A) noted that a perusal of the profit & loss account shows that the assessee has not claimed any such expenditure in its profit & loss account. He further observed that in the instant case, Russel Credit Limited and Russel Investment Limited hold 58% of the shares of the appellant. Russel Credit Limited is a 100% subsidiary of ITC Limited. The assessee has stated that ESOPs have been granted to a few employees of the appellant to purchase the share of ITC Limited to provide incentive to the employees, award them for their hard work and to prevent attrition of employees. That the perusal of the notes to account of ITC Limited for FY 2016-17 shows that the employees eligible for ESOPs are employees of ITC itself or such employees of the subsidiaries companies of ITC including Managing Director / whole time Director of the subsidiary. It has also been stated in the above mentioned notes of accounts that the value of stock options, net of reimbursements, to employees on deputation and employees of wholly owned and other subsidiaries companies are considered as capital contribution / investment. That the payments by the assessee to ITC were not made in the books of accounts of the appellant and that the invoice was raised by ITC only in the next Financial Year. In the instant case, it is not the assessee which is offering ESOPs to its employees but the parent company which holds interest in the assessee through another subsidiary. The various judgments quoted by the assessee in support of its contention do not support the stand of the assessee as in the instant case ESOP has been issued by the holding company and not by the

assessee. In view of the contention of the assessee is not accepted.

Hence, the Ld. CIT(A) rejected the assessee's contention.

5. Against the above order, the assessee is in appeal before us.

6. We have heard both the parties and perused the records. The Ld. Counsel for the assessee filed a detailed submission. Brief facts narrated by the ld. counsel of the assessee are as under:-

“The Appellant is an associate company of ITC Ltd inasmuch as the latter alongwith its group entities is the ultimate holding company of the Appellant, holding more than 61% shareholding.

It is submitted that certain employees of ITC Ltd. which are working on deputation with the appellant Company are covered under the ITC Employee: Stock Options Scheme, whereby, the said employees are granted an option to purchase shares of ITC Ltd. in accordance with the terms and conditions of the scheme. The ESOPs are granted as per erstwhile Securities and Exchange Board of India (Employees Stock Option Scheme and Employees Stock Purchase Scheme) Guidelines, 1999 and (Security and Exchange Board of India Share Based Employee Benefit) Regulations, 2014. The discount/ fair value of the ESOPs granted is determined using the well accepted Black Scholes model at the grant date.

In respect of the employees working with the appellant, ITC Ltd. seeks reimbursement of the value of stock options from the appellant company. Accordingly, ITC Ltd. raises invoice/ debit note seeking to recover the value of the said ESOPs from the appellant.

For the relevant year, i.e., for financial year 2015-16 an amount of Rs.2,58,48,144 was invoiced by ITC Ltd., which was duly paid by the appellant Company, albeit in immediately subsequent assessment year. The appellant claimed deduction of the actual amount reimbursed to ITC Ltd in respect of the ESOP expenditure.

It is undisputed that the aforesaid amount of Rs.2.58 crores was initially not debited to the Profit and Loss Account as the invoice was received by the appellant in the immediately succeeding year. Due to receipt of invoice in the immediately succeeding year, the appellant - (i) made a claim of deduction of said ESOP expenses in the revised return as per law and (ii) re-casted the financial statements of financial year 2015-16 for the purposes of comparative representation with financial statements of financial year 2016-17 (immediately succeeding years).”

7. Thereafter the ld. counsel for the assessee has reiterated the findings of the Assessing Officer and the Ld. CIT(A). Thereafter following submission has been made.

“14. It is at the outset submitted that the appellant had placed on record all the necessary evidence/ documents to substantiate that the aforesaid expense incurred on account of grant of ESOPs is a real/ actual expenses incurred in respect of employees working on deputation solely with the appellant company and money in respect of such expense has actually moved out of the coffers of the appellant. The following documents in this regard are placed on record.

- Copy of the invoice raised by ITC Ltd. towards ESOP expenses, period wise detailed breakup thereof and details of employees to whom ESOP were granted- refer pages 39-41 of paperbook

Copy of relevant extracts of bank statement and RTGS details of the appellant company showing the payment made to ITC Ltd. - refer pages 42-44 of paperbook

- Relevant extract of audited financial statements of the appellant company for the financial year 2016-17 [immediately succeeding year] with comparative financial statements for financial year 2015-16 [relevant year under consideration] - refer pages 45-54 of paperbook

Copy of relevant extracts of the Significant Accounting Policies of ITC Ltd. for financial year 2016-17- refer page 55 of paperbook

15. It is by now far settled law that the expenditure incurred by an assessee for compensating employees by granting stock options to the employees is an expense allowable as deduction under section 37 of the Act. Reference in this regard may be made to the following judgments:

- ✓ SCIT vs. Lemon Tree Hotels Ltd: IT A No. 107/2015 (Del HC)
- ✓ PCIT vs . New Delhi Television Ltd: 398 ITR 57 (Del HC)
- ✓ PVR Ltd. vs. CIT: ITA 564/2012 (Del. HC) dated 23.08.2022
- ✓ CIT vs. PVP Ventures Ltd.: 211 Taxman 554 (Mad.)
- ✓ Biocon Ltd vs. DCIT: [2013] 35 taxmann.com 335 (Bang Trib) (SB)- affirmed in CIT vs. Biocon Ltd.: 430 ITR 151 (Kar. HC)
- ✓ Bharti Airtel Ltd. vs. DCIT: 161 TTJ 283 (Del)
- ✓ SSI Ltd: V. DCIT: 85 TTJ 1049 (Chennai)
- ✓ Aricent Technologies Holdings Ltd vs. ACIT: ITA No.5708/Del/2019
- ✓ Ranbaxy Laboratories Ltd vs ACIT: 68 taxmann.com 322 (Del Trib.)

16. The sole contention of the CIT(A) is that the ESOP expenditure, in the present case, is not allowable since the shares/ ESOP are granted by the ultimate parent company (ITC Ltd.) and no: the appellant.

17. In this regard, it is respectfully submitted that irrespective of the fact that the ESOP scheme provides for grant of shares of the parent company, the value/ discount thereof is reimbursed/ recouped by the appellant inasmuch as the appellant has actually reimbursed the parent company for the said expense, the same cannot be stated to be an expenditure not belonging to the appellant (but the parent company). This is more so when - (i) the employees are solely deputed to work for the appellant; (ii) actual payment in respect of the value of ESOP has been paid by the appellant to the ultimate parent, i.e. ITC Ltd.

18. The admissibility of ESOP expenditure in respect of the ESOPs granted to acquire shares of a group/ holding/ parent company has consistently been allowed in the various judicial precedents. Few decisions are cited below for ready reference:

- ✓ Goldman Sachs (I) Securities Pvt. Ltd. v. Addl. CIT: ITA No. 72 Taxmann.com 337 (Mum. Trib.)
- ✓ ACIT v. IM Financial Institutional Securities Ltd.: ITA No.6479/Mum/2016 (Mum Trib.)
- ✓ DCIT v. Accenture Services Pvt Ltd.: ITA No.4540/M/08 (Mum Trib.)
- ✓ Novo Nordisk India (P.) Ltd. v. DCIT: 63 SOT 242 ((Bang.)
- ✓ Caterpillar India (P.) Ltd. v. DCIT: 80 taxmann.com 325 (Chn Trib.)
- ✓ Religare Commodities Ltd. vs. ACIT: ITA No. 2283/Del/2013 (Delhi Trib.)
- ✓ Religare Macquarie Wealth Management Ltd. vs. ACIT: ITA No.2396/Del/2013 (Del. Trib.)- affirmed in PCIT vs. Religare Macquarie Wealth Management Ltd.: ITA 438/2018 (Del. HC)
- ✓ Aricent Technologies Holdings Ltd. vs. Addl. CIT: ITA No. 5708/Del/2019 (Del. Trib.)

19. In view of the aforesaid, the contention of the lower authorities that the expenditure is not allowable since the ESOPs are granted to acquire shares of the parent company is patently erroneous and not sustainable. Being so, the disallowance of ESOP expense of Rs.2.58 crores made by the assessing officer and sustained by the CIT(Appeals) calls for deleted.

20. For the sake of completeness, the other allegations made in the assessment order are rebutted hereunder:

- (i) As regards, the allegation that the expenditure has not been rebutted to the Profit and Loss Account for the relevant year, it is respectfully submitted that the

said allegation has been made without judicious appreciation of complete facts of the case.

In the facts of the appellant, it is undisputed that the aforesaid expenditure of Rs.2.58 crores reimbursed by the appellant to ITC Ltd. on account of ESOP expenses relates to the financial year 2015-16 (year under consideration). It is only on account of receipt of invoice/ debit note from ITC Ltd. in the immediately succeeding year that the said expense could not be recorded in the original financial statements.

It is however important to note that on receipt of the invoice, the aforesaid expenditure was duly recognized/ considered in the re-casted financial statements prepared for comparative disclosure in the financial statements for financial year 2016-17 (Refer pages 45 to 54 of the paper-book).

Be that as it may, it is settled law that the entries in the books of accounts are not determinative of the ambit of taxation. If an item of income/expense is taxable/ deductible, the same has to be taken into account as per the provisions of the Act irrespective of the book entries [Refer: Kedarnath Jute Manufacturing Company v.v. CIT: 82 ITR 363 (SC), Sutlej Cotton Mills Ltd. vs. CIT: 116ITR 1 (SC), Bharat Carbon and Ribbon Mfg. Co. P. Ltd.: 239 ITR 505 (SC), CIT vs. U. P. Electronics Corporation Limited: 282 ITR 470 (All HC), Dabur India Ltd. v. ACIT: ITA 3241 & 6525/Del/2014 (Del Trib.)]

(ii) The assessing officer has alleged that ITC Ltd recognizes the cost of ESOP as capital contribution and not an expenditure. The said observation is factually incorrect and is not borne out of the records. The accounting policy highlighted in the audited financial by ITC Ltd. (refer pages 55 of the paper-book) clearly provides that the value of options, net of reimbursement, to employees on deputation are considered as capital contribution/ investment. In the case of the appellant, since the ESOP of expenditure is fully reimbursed to ITC Ltd., the same is not treated as any capital investment/ contribution by ITC Ltd.

It is submitted that the ITC Ltd. has considered the amount receivable from the appellant towards ESOP expenses as business receivable, which is settled of payment is received from the Appellant.

(iii) The assessing officer has alleged that the real cost of expense on or accounts of ESOP are those of ITC Ltd. In this regard, it is submitted that ESOP expenditure reimbursed by the appellant to ITC Ltd. are towards employees rendering services to the appellant and hence the same cannot be treated as expenditure of ITC Ltd. The said expenditure is basically remuneration in form of ESOP paid to employees in lieu of services rendered by the employees to the appellant; thus the expenditure is completely related with the business of the appellant. Being so, the allegation made by the assessing officer has not legs to stand.

(iv) The assessing officer has alleged that the ESOP expenditure is a capital expense and is notional in nature. In this regard, it is submitted that the discount/fair value of ESOP is an expense of revenue nature, which is allowable as deduction to the employer. The said issue is no longer res-integra and is well settled in favour of the appellant vide various judgments referred supra wherein it has categorically been held that the expenditure on account of ESOP is a real expense allowable as revenue deduction.

(v) The allegation that the appellant has moved funds out of India is factually incorrect and contrafactual. The reimbursement has been made to ITC Ltd., an India a company; the employees to which ESOPs are granted are in Indian employees. Being so, the said allegations is not sustainable.

21. For the aforesaid cumulative reasons, it is respectfully submitted that the expenditure of Rs.2.58 crores towards ESOP is allowable to the appellant. The impugned addition thus calls for being deleted.”

8. Per contra, the Ld. DR relied upon the orders of authorities below.

9. Upon careful consideration, we find that the submission of the Ld. Counsel for the assessee has considerably cogency. That the ESOP expenditure allowable revenue expenditure u/s 37 has been duly upheld by the various authorities including jurisdictional High Court in CIT vs Lemon Tree Hotels Ltd.(Supra) and in ITAT special Bench in the case of Biocon Ltd. (Supra) and affirmed by the Hon'ble Karnataka High Court in the same case. Further, as regards the lower authorities contentions that ESOP expenses is not allowable since the shares/ ESOP are granted by the ultimate parent company (ITC Ltd.) and not the assessee. In this regard, the assessee's submission is that actually the assessee has reimbursed the parent company for the said expenses. The employees are solely deputed to work for the assessee by the parent company. The actual payment in respect of value of ESOP has been paid by the assessee to the parent company i.e. ITC Ltd. Further, the admissibility of ESOP expenditure in respect of the ESOPs granted to acquire shares of group/holding/parent company has been consistently allowed in the various judicial precedents. In this regard, the assessee has referred the case laws as pointed out in the submission as above.

10. As regards the plea of the revenue authorities that the expenditure has not been debited from profit & loss account for relevant year. Assessee's case is that the aforesaid expenditure of Rs.2.5 crores was reimbursed by the assessee to ITC Ltd. on account of ESOP expenses related to FY 2015-16 It is only on account of receipt of invoice/ debit note from ITC Ltd. in the immediately succeeding year that the said

expense could not be recorded in the original financial statements. However, it has been submitted that on receipt of the invoice, the aforesaid expenditure was duly recognized/ considered in the re-casted financial statements prepared for comparative disclosure in the financial statements for financial year 2016-17. Further, the Ld. Counsel for the assessee has reiterated that it has been duly claimed before the Assessing Officer and it is settled law that the entries in the books of account are not determinative of the ambit of taxation. Further, the assessee has disputed the Assessing Officer's observation that ITC Ltd. recognised as capital contribution and not expenditure for the purpose of accounting policy of audited and financial ITC Ltd have been referred and relied upon. Further, the Assessing Officer's view that real cost of ESOP of ITC Ltd. has been disputed by the submission that in lieu of services rendered by these employees to the assessee hence, expenditure relates to the assessee. Further, it has been disputed that Assessing Officer is factually wrong and submitting that that the assessee has moved funds out of India.

11. In these circumstances and in our considered opinion, the submission of the assessee has considerable cogency. Further, as regards the Ld. DRs objections that the payment was made during the next year, the Ld. Counsel for the assessee has contended that two year amount including the present year, where billed by ITC Ltd. and though the payment was made in the next year, Rs.2.58 Crores thereof belonged to present assessment year. In our considered opinion, both the

submission has considerable cogency. However, several factual aspects have been mentioned by the Ld. counsel for the assessee which need verification at the level of the Assessing Officer. Hence, the factual aspects that there were employees deputed by ITC Ltd. for working for assessee and that expenditure was actually paid during the next year but it related to current year and financials of current year were duly re-casted, are subject to examination by the Assessing Officer and hence we direct the AO factually verify this issue and thereafter pass order as per our observations hereinabove.

12. As regards the issue deduction of education cess, the ld. counsel for the assessee submitted that he shall not be pressing this ground, hence, this ground is dismissed as not pressed.

14. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 21<sup>st</sup> September, 2022.

**Sd/-**  
**[ANUBHAV SHARMA]**  
**JUDICIAL MEMBER**

**Sd/-**  
**[SHAMIM YAHYA]**  
**ACCOUNTANT MEMBER**

**Delhi;** Dated: 21.09.2022.

*Shekhar*

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi