आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
527/Hyd/2022	2017-18	Nuvama Wealth and Investment Limited, (Formerly known as Edelweiss Broking Limited) Mumbai [PAN: AABCE9421H]	ACIT, Circle-17(1), Hyderabad
528/Hyd/2022	2017-18	DCIT, Circle-8(1), Hyderabad	Edelweiss Broking Limited, Mumbai [PAN: AABCE9421H]

निर्धारिती द्वारा/Assessee by: Shri Ravikanth S. Pathak, AR
राजस्व द्वारा/Revenue by: Shri KPRR Murthy, DR

सुनवाई की तारीख/Date of hearing: 03/04/2023
घोषणा की तारीख/Pronouncement on: 12/04/2023

आदेश / **ORDER**

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order(s) passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Edelweiss Broking Limited ("the assessee") for the assessment year 2017-18, both the assessee and the Revenue preferred

these appeals. For the sake of convenience, we dispose of these appeals by this common order.

2. Briefly stated relevant facts are that the assessee is engaged in the business of share/stock broking and trading in shares and securities as well as providing advisory services, its books of accounts are audited as per law and the assessee has been assessed to tax regularly.

3. During the course of scrutiny of the return of income for the assessment year 2017-18, the learned Assessing Officer disallowed the Employee Stock Option Plan (ESOP) cost claimed by the assessee as expenditure and also allowed the TDS credit for a lesser amount than was available.

4. Assessee preferred appeal before the learned CIT(A) and submitted that under the ESOP scheme formulated by Edelweiss Financial Services Limited (EFSL) of which the assessee is a subsidiary, the assessee claimed deduction of the difference between the market price of EFSL shares as on the date of exercise by the employees and the grant price of such shares as expenditure under section 37(1) of the Act. Assessee further referred to the detailed note on this aspect submitted on 23/12/2019 and 28/12/2019 along with the case law in support of its contention that incurrence of an obligation is also an obligation and it is not necessary for the expenditure to have been incurred in cash alone to be eligible for deduction and that expenditure does not restrict payment of expenditure in cash alone under section 43 of the Act. Assessee further contended that to be eligible to acquire the shares, the employees of EFSL and its subsidiaries are obliged to render services to their respective employees (being EFSL itself or its subsidiaries such as the assessee) and/or achieve specified benchmarks during the vesting period, the employees acquired the right to exercise options on completion of the vesting period and upon vesting of the shares, the employees could exercise options within a specified period on payment of the exercise price.

5. Assessee placed reliance on the decision of the Hon'ble Apex Court in the case of in the case of CIT vs. Woodward Governor India (P) Ltd. 312 ITR 254 and other decisions in support of the contentions that incurring an expenditure by issue of shares at a price lesser than Fair Market Value could qualify as an 'expenditure' under the provisions of the Act.

6. Assessee also referred to the provisions under section 17(2)(vi) of the Act and submitted that the discount/benefit enjoyed by the employee on receipt of shares under ESOP scheme at a concessional rate would constitute a revenue expenditure laid out or expended wholly or exclusively for the purpose of business of the assessee. According to the assessee by placing reliance on the decision of the Bangalore Bench of the Tribunal in the case of Biocon Limited (2013) 25 ITR(T) 602 Bangalore – Trib.) (SB) once it is established that a particular payment or benefit in kind is in the nature of remuneration to the employees, the same is fully deductible in the hands of the employer.

7. Assessee further submitted before the learned CIT(A) that the decision in M/s. Biocon Limited (supra) was confirmed by the Hon'ble High Court holding that the difference between the market value of shares and the value at which the employees have granted option to acquire the shares of the employer is a deductible expenditure and not a contingent or notional expenditure. According to the assessee, under the earlier provisions of Fringe Benefit Tax the legislature itself stated ESOP cost as a benefit provided by the employer to its employees during the course of services and, therefore, where the legislature itself considered such discount to the employees as a 'fringe benefit' or 'any consideration for employment' the same would still continue to qualify as an expenditure laid out or expended wholly and exclusively for the purpose of the business of the assessee.

8. The learned CIT(A), however, observed that since the assessee failed to furnish the list of employees with Name/PAN/and the amounts

added to salary on account of ESOP and the particulars of TDS deducted and paid, it indicates the failure of the assessee to deduct the TDS and, therefore, under section 40(a)(ia) of the Act, 30% of the ESOP cost had to be disallowed and be added to the income of the assessee. Learned CIT(A) did not refer to the TDS credit fallen short to be allowed by the learned Assessing Officer.

9. Assessee challenged the action of the learned CIT(A) in sustaining the disallowance to the tune of 30% of the ESOP cost and also not addressing the issue of not allowing the full TDS credit by the learned Assessing Officer, whereas Revenue challenged the finding of the learned CIT(A) that the ESOP expenditure is not capital in nature difference between the market price of the shares as on the date of exercise of ESOP option by the employee and the grant price thereof, as perquisite in the hands of the employee form in part of salary. According to the Revenue, such a finding is contrary to the decision in the case of B. Durga Prasad in ITA No. 451/Viz/2016, dated 24/10/2018. Revenue further submitted that the learned CIT(A) failed to give an opportunity to the learned Assessing Officer under section 46A of the Income Tax Rules, 1962 ('the Rules').

10. Main plank of the argument of the learned AR is that the order of the learned CIT(A) does not address any of the contentions raised by the assessee in their written submissions filed before the learned Assessing Officer and also the learned CIT(A) nor to the material submitted by the assessee. Learned AR submits that the learned CIT(A) simply extracted the grounds of appeal, statement of facts, provisions under section 17(2)(vi)(c) of the Act and the written submissions of the assessee and directly held that 30% of the ESOP cost has to be disallowed under section 40(a)(ia) of the Act. Learned AR further submitted that even before issuing the questionnaire dated 01/08/2022, learned CIT(A) formed an opinion that under section 17(2)(vi)(c) of the Act, the ESOP cost has to be taken as perquisite without referring to the catena of case law submitted by the assessee before the learned Assessing Officer and before the learned

CIT(A). He, therefore, submits that the impugned order is not at all a speaking order and cannot be sustained.

11. Learned DR though referred to the grounds of Revenue's appeal failed to bring to our notice where exactly the learned CIT(A) referred to the merits of the case vis-à-vis section 17(2)(vi)(c) of the Act to say that the decisions relied upon by the assessee of no application to the facts of the case. Learned DR submitted that before reaching such a conclusion, the learned CIT(A) should have given an opportunity to the learned Assessing Officer under Rule 46A of the Rules.

12. On a perusal of the impugned order, we are of the considered opinion that the exercise, if any, done by the learned CIT(A) in formulating the opinion that various contentions raised by the assessee to the effect that ESOP expenditure is a revenue expenditure allowable in the hands of the employer are not acceptable is not reflected on the face of the order. No reasons are forthcoming for invoking the provisions under section 17(2)(vi)(c) of the Act against the repeated contentions of the assessee that for the reasons stated in their written submissions, such an expenditure has to be allowed in the hands of the employer. Reasons are the life blood for any judicial/quasi-judicial order without which it would be difficult for the appellate authority to sustain or overrule the findings reached by the authorities.

13. In this case, as rightly pointed out by the learned AR, the reasons are conspicuous by their absence and, therefore, we find it difficult to know the mind of the first appellate authority.

14. In these circumstances, we deem it just and proper to set aside the impugned order and restore the appeal to the file of the learned CIT(A) to dispose it of by way of speaking order, after affording an opportunity to both the parties. we accordingly set aside the impugned order and restore the appeal to the file of learned CIT(A) for passing speaking order, giving

reasons for the conclusions reached after affording an opportunity to both the parties.

15. In the result, both the appeals are treated as allowed for statistical purposes.

Order pronounced in the open court on this the 12th day of April, 2023.

Sd/-	Sd/-
(RAMA KANTA PANDA)	**(K. NARASIMHA CHARY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Hyderabad,
Dated: 12/04/2023

TNMM

Copy forwarded to:

1. Nuvama Wealth and Investment Limited (formerly known as Edelweiss Broking Limited), Edelweiss House, Off CST Road, Kalina, Santacruz East, Mumbai.
2. Deputy Commissioner of Income Tax, Circle-8(1), Hyderabad.
3. Asst. Commissioner of Income Tax, Circle-17(1), Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ASSISTANT REGISTRAR
ITAT, HYDERABAD