

आयकर अपीलिय अधिकरण
मुंबई पीठ “आय—२” मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एम बालगणेश, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “I-2” BENCH
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI M BALAGANESH, ACCOUNTANT MEMBER
आ.आ.सं. २४२९/मुंबई/२०१९ (नि.वं. २००९—१०)
ITA No.2429/MUM/2019 (A.Y.2009-10)

Deputy Commissioner of Income Tax
5th Floor, Room No.525,
Aayakar Bhavan,
M. K. Road,
Mumbai-400 020

..... अपीलार्थी/Appellant

बनाम Vs.

M/s Vodafone Idea Limited
10th Floor, Birla Centurion,
Pandurang Budhakar Marg, Worli
Mumbai-400 030
PAN No. AAACH5332B

..... प्रतिवादी/Respondent

प्रत्याक्षेप.सं. ३२/मुंबई/२०२० (नि.वं. २००९—१०)
CO No.32/MUM/2020 (A.Y.2009-10)

M/s Vodafone Idea Limited
10th Floor, Birla Centurion,
Pandurang Budhakar Marg, Worli
Mumbai-400 030
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..... अपीलार्थी/Appellant

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..... प्रतिवादी/Respondent



अपीलार्थी द्वारा / Appellant by : S/Shri P. J. Pardiwala, Sr. Advocate with
Ketan Ved

प्रतिवादी द्वारा / Respondent by : Shri Anand Mohan, CIT-DR

सुनवाई की तिथि / Date of hearing : 27/03/2023

घोषणा की तिथि / Date of pronouncement : 26/05/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

The Revenue has filed appeal against the order of Commissioner of Income Tax (Appeals)-10, Mumbai (hereinafter referred to as "the CIT(A)") dated 28.03.2019, for the assessment year 2009-10. The assessee has filed Cross Objection in an appeal filed by the Department.

2. This appeal germinates from the order passed u/s 154 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by the Assessing Officer (AO).

3. The facts in brief relevant to the present appeal are: The assessee filed its original return of income for the impugned assessment year on 30.09.2009 declaring taxable income of Rs.5,09,100/-. Thereafter, the assessee filed revised return of income on 31.09.2011 declaring taxable income of Rs.8,44,31,495/-. The final assessment order was passed for AY 2009-10 on 21.01.2014 u/s 144C(3) r.w.s. 143(3) of the Act determining total income of Rs.749,96,15,830/-. Thereafter, the AO issued notice u/s 154 of the Act on 02.11.2015 indicating a mistake that in Schedule 2 to the Balance Sheet, Reserve and Surplus of Rs.5.49 crores was charged to Profit and Loss Account, whereas, in the Tax Audit Report in Form 3CD, the Tax Auditor has certified that an amount of Rs.5,41,73,264/- is a contingent liability. The AO vide order dated 30.03.2016 passed u/s 154 of the Act added back the



aforesaid amount to the total income assessed u/s 143(3) r.w.s. 144C(3) of the Act dated 21.01.2014. Thus, revising the taxable income to Rs.755,37,89,094/-.

Aggrieved by the order dated 30.03.2016 passed u/s 154 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) after examining the facts deleted the addition made vide impugned order. Hence, the present appeal by the Revenue.

4. The Department in appeal has raised single effective ground, the same reads as under:

“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.5,41,73,264/- on account of employees share based payment amounting to Rs.5,41,73,264/- which was contingent liability by stating that the same cannot be rectified u/s 154 of the I. T. Act, 1961.”

5. Shri Anand Mohan representing the Department submitted that the only issue in appeal is whether the AO could disallow deduction of employee share based payment in proceedings u/s 154 of the Act. The CIT(A) held that since the issue is debatable, therefore, could not have been disallowed in proceedings u/s 154 of the Act. The Id. Departmental Representative (DR) supporting the order passed u/s 154 of the Act by the AO, prayed for reversing the findings of CIT(A).

6. Per contra, Shri P. J. Pardiwala appearing on behalf of the assessee vehemently defended the impugned order. The Id. Counsel for the assessee submits that the issue relevant to disallowance of deduction of employee share based payment is debatable. The Special Bench of the Tribunal in the case of Biocon Limited vs. DCIT, 144 ITD 21 (Bangalore Trib.) (SB) has held that expenditure on account of ESOP is revenue expenditure. The aforesaid decision by Special Bench was upheld by the Hon'ble Karnataka High Court in the case of CIT vs. Biocon Limited 430 ITR 151. The Id. Counsel asserted that it is a settled legal position that



wherever the issue is debatable, it is not a mistake apparent from record and hence, not amenable to proceedings u/s 154 of the Act.

The Id. Counsel for the assessee stated at Bar that the assessee has filed Cross Objection in support of the order of CIT(A). In case appeal of the Revenue is dismissed, the Cross Objection would become infructuous.

7. We have read the submissions made by rival sides and have examined the orders of authorities below. The AO in proceedings u/s 154 of the Act has disallowed assessee's claim of deduction of employee share based payment reserve amounting to Rs.5,41,71,264/- by treating it as contingent liability. The case of assessee is, the amount represents cost in relation to the award of shares under Vodafone Global Incentive Plan. The Employees covered under the said plan were granted an award which entitles them to receive shares of Vodafone Group Plc (the ultimate holding company of the assessee). Since, the expenditure is in the nature of additional compensation/reward given to the employees, it qualifies as compensation cost in the nature of revenue expenditure incurred wholly and exclusively for the purpose of business. The expenditure is not contingent as the shares granted under the plan are in the nature of additional deferred compensation which arose over the vesting period. As and when the services period rendered by the employees and the benefit of said expenses is available to the employer over the vesting period in the form of continued services of such employees. As per the contention of the assessee, the cost accrued over the period of rendition of services by the employee was deductible in the year of its accrual that is over the vesting period.

The CIT(A) after considering submissions of the assessee placed reliance on the decisions of Special Bench in the case of Biocon Limited (supra), the decision of Madras High Court in the case of CIT vs. PVP Ventures Limited, 211 Taxmann 554



and the decision of Hon'ble Delhi High Court in the case of PCIT vs. NDTV in ITA No.107 of 2017 decided on 27.02.2019 before the CIT(A) and held that such cost cannot be considered as contingent in nature. The assessee before the CIT(A) brought on record that for AY 2011-12, the AO has allowed the claim of such expenses. The CIT(A) in these facts held that disallowance of employee share based payment was not permissible u/s 154 of the Act and deleted the addition. We find no infirmity in the impugned order, hence, the same is upheld and appeal of the Revenue is dismissed being devoid of any merit.

8. Since, we have dismissed the appeal of Revenue, Cross Objection filed by the assessee have become infructuous, hence, the same are dismissed as having become infructuous.

9. **To sum up, appeal of the Revenue and Cross Objection of the assessee are dismissed.**

Order pronounced in the open court on Friday the 26th day of May 2023.

Sd/-

(M BALAGANESH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai,

दिनांक/Dated: 26/05/2023

Mahesh R. Sonavane

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER



प्रतिलिपी अग्रेषित Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/The Respondent.
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधी, आय. अपी. अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाईल/Guard file.

BY ORDER,

//True Copy//

(Dy. /Asst. Registrar)/
Sr. Private Secretary
ITAT, Mumbai