

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA Nos.2927 & 2928/DEL/2019  
[Assessment Years: 2013-14 & 2014-15]**

Addl. Commissioner of Income tax, Special Range-1, Room No.159A, 1 <sup>st</sup> Floor, C.R. Building, New Delhi-110002	Vs	M/s Ameriprise India Pvt. Ltd. 50/9, 1 <sup>st</sup> Floor, Tolstoy Lane Janpath, New Delhi-110001
		<b>PAN-AAFCA3489B</b>
Revenue		Assessee

Revenue by	Sh. Kanv Bali, Sr. DR
Assessee by	Sh. Nikhil Agarwal, Adv.

<b>Date of Hearing</b>	<b>11.07.2023</b>
<b>Date of Pronouncement</b>	<b>14.07.2023</b>

**ORDER**

**PER SHAMIM YAHYA, AM,**

These are appeals by the Revenue against the respective orders of the Ld. CIT(A)-32, New Delhi, dated 31.01.2019 pertaining to Assessment Years 2013-14 & 2014-15.

2. Since, the issues are common and connected and the appeals were heard together, these are being consolidated and disposed of together for the sake of convenience by this common order.

3. Grounds of appeal raised by the Revenue for AY 2013-14 reads as under:-

*“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowance of*

*Rs.2,02,35,372/- made by the AO on account of Employee Stock Option Plan (ESOP) expenses.”*

3. In this case, brief facts of the case are that during the course of assessment proceedings, AO observed that assessee company had debited an amount of Rs.2,02,35,372/- in the P & L account (reported under Note 22 to the financial statements) towards cost of share awards granted under Employee Stock Option Plan (ESOP) to its employees. AO observed that there is no specific section under which ESOP expenditure is allowable under the I.T. Act, 1961. He disallowed the amount of Rs.2,02,35,372/- on account of ESOP as the same expenses cannot be considered as expenses incurred wholly and exclusively for the purposes of business of assessee company.

4. Before the ld. CIT(A), the assessee made submissions and submitted that this issue is squarely covered in favour of the assessee by the decision of the Special Bench ITAT Bangalore in the case of Biocon Ltd. vs DCIT (2014). Furthermore, the decision of Hon'ble Madras High Court in the case of PVP Ventures Ltd. 23 Taxmann.com 286 was also cited. The Ld. CIT(A) further referred to the earlier decision of the Ld. CIT(A), wherein the decision of the jurisdictional High Court in the case of CIT vs Lemon Tree Hotels Ltd. (2015) ITA No.107/2015 was also cited. Considering the above, the Ld. CIT(A) has held as under:-

*“In fact, in my opinion, while the appellant's contention is fortified by the judicial precedents relied on by it, especially by the ITAT Bangalore (SB) in the Biocon case (supra), its contention that the facts of the case apply to those in the present case squarely, is borne out from records. As regards the question of incurring 'actual expenditure' vis-a-vis 'notional expenditure' as held in the impugned order, the*

*appellant's contention appears plausible in view of the fact that 'expenditure' is nowhere defined in the Act and that if the liability to incur an expenditure is ascertained, it is sufficient to claim the expenses under the mercantile system of accounting adopted regularly by the appellant as held legally by courts. In the present case,*

*5.1e Further, it is observed that the appellant's contention regarding deductibility of the compensation in ESOP supports itself on the fact that this loss (expenditure) is actually for the employees - providing a part of the wealth to the employees in order to motivate them to harness their potential in increasing the growth and thereby profits of the appellant. It is observed that the appellant has relied on the Tribunal's decision in Biocon Ltd vs. Dy. CIT (LTU) 2013] 35 taxmann.com 335 (ITAT Bang)(SB). The Hon'ble Bangalore Special Bench has dissented with the view taken by the Hon'ble Divisional Bench of the Tribunal in the case of Ranbaxy (supra) and held that expenditure on account of ESOP is revenue expenditure and is allowed as deduction to the assessee company while computing its taxable income. The Hon'ble Special Bench held that the sole object of issuing shares to employees at a discounted premium is to compensate them for the continuity of their services to the company. It has been held by the Hon'ble Special Bench that such discount cannot be described as either a short capital receipt or a capital expenditure. Also, both the jurisdictional High Court in CIT vs. Lemon Tree Hotels Ltd. (2015) ITA No. 107/2015 and ITAT Delhi in Bharti Airtel Ltd. vs. Addl. CIT (2014) (43 taxmann.com 50) have ruled that such compensation is deductible as a revenue expenditure. In fact, the Hon'ble HC has relied on the decision of the Madras HC in PVP Ventures (supra) while the ITAT Delhi has relied on the decision of the ITAT Bangalore (SB) in Biocon (supra).*

*5.1f Accordingly, in due deference to the decisions of the jurisdictional HC and the ITAT (Bang)(SB) and ITAT Delhi following the decision of the SB of ITAT Bangalore as well as the judicial precedents relied upon by the appellant based on the facts in the present case, I am in agreement with the appellant's contention that the expenditure on ESOP is eligible for deduction u/s 37(1) of the Act, being revenue in nature on the strength of the argument that it represents "employee cost". Hence, the disallowance of the appellant's claim of expenditure (cost) of share awards granted under ESOP in the impugned order (Rs.34,93,954/-), is deleted. This ground is allowed."*

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

6. We have heard both the parties and perused the records. The Ld. Departmental Representative relied upon the orders of the AO.

7. Per Contra, the ld. Counsel for the assessee relied upon the orders of the Ld. CIT(A) and submitted that this issue is squarely covered in favour of the assessee by the decision of the jurisdictional High Court in the case of CIT vs Lemon Tree Hotels Ltd.

8. Upon careful consideration, we find ourselves in agreement with the order of the Ld. CIT(A) and the submission of the ld. Counsel in this regard. ESOP expenditure have been allowed as revenue expenditure by the decision of the Hon'ble jurisdictional High Court in the case of CIT vs Lemon Tree Hotels Ltd. in ITA No.107/2015. Since, the decision of the Hon'ble jurisdictional High Court is in favour of the assessee, we do not find any infirmity in the order of the ld. CIT(A). Hence, we affirm the same. Hence, this appeal by the Revenue stands dismissed.

**ITA No.2928/Del/2019**

9. Grounds of appeal for AY 2014-15 reads as under:-

*“1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowance of Rs.1,28,17,760/- made by the AO on account of Employee Stock Option Plan (ESOP) expenses.”*

10. We note that the tax effect in this appeal is below the monetary limit for filing of appeal before the Tribunal. Hence, this appeal is liable to be dismissed on account of low tax effect. It may not be out of context to mention here that on merit, the issues are same which we have dealt with

in the earlier part of this order. Accordingly, this appeal is also dismissed.

11. In the result, both appeals of the Revenue are dismissed.

Order pronounced in the open court on 14<sup>th</sup> July, 2023.

**Sd/-**  
**[YOGESH KUMAR US]**  
**JUDICIAL MEMBER**

**Delhi;** 14.07.2023.

*Shekhar,*

Copy forwarded to:

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

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

Asst. Registrar,  
ITAT, New Delhi