

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

**AND**

**SH. C.N. PRASAD, JUDICIAL MEMBER**

**ITA No.1734& 1735/Del/2023**

**Assessment Year: 2015-16 & 2017-18**

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| <b>Jt. CIT (OSD) Central Circle –<br/>18 New Delhi</b> | <b>Vs</b> | <b>Delhivery P. Ltd.<br/>N-24-N34, Air Cargo,<br/>Logistics Centre-II,<br/>Opposite, Gte 6 Crgo,<br/>Terminal IGI, Airport,<br/>South West,<br/>New Delhi-110037<br/>PAN No. AAPCS9575E</b> |
| <b>(APPELLANT)</b>                                     |           | <b>(RESPONDENT)</b>   |

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|-------------------|--|
| <b>Appellant</b>  | <b>Sh.Vivek Kumar Upadhyay, Sr DR</b>                          |
| <b>Respondent</b> | <b>Sh. K. M. Gupta, Advocate<br/>Sh. Ashish Garg, Advocate</b> |

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|------------------------------|-------------------|
| <b>Date of Hearing</b>       | <b>16.10.2023</b> |
| <b>Date of Pronouncement</b> | <b>16.10.2023</b> |

**ORDER**

**PER N. K. BILLAIYA, AM:**

ITA No.1734/Del/2023 and 1735/Del/2023 are two separate appeals by the revenue preferred against two separate orders of the

CIT(A)-27, Delhi dated 15.03.2023 and 22.03.2023 pertaining to A.Y. 2015-16 and 2017-18.

2. Since common grievance is involved in these appeals, therefore, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The grievance which is common in both the appeals relates to the deletion of the addition on account of disallowance of deduction on account of Employee Stock Option Scheme (ESOP) though the quantum may differ.

4. Briefly stated the facts of the case are that in A.Y. 2015-16 pursuant to the order of the Pr. CIT framed u/s. 263 of the Act the AO framed the impugned order and made the impugned disallowance.

5. The order of the Pr. CIT was challenged by the assessee before this Tribunal and this Tribunal in ITA No.1036/Del/2021 vide order dated 16.03.2023 has quashed the order of the Pr. CIT. The relevant findings of the coordinate Bench read as under :-

*“8. Against this direction, the id. AR argued that the issue of allowability of the ESOP expenses is no more res-*

*integra, the Special Bench of Bangalore Tribunal in the case of Biocon Limited ([2013] 35 taxmann.com 335) held that discount on shares under the ESOP is an allowable deduction for the following words:*

*“...11.3 We, therefore, sum up the position that the discount under ESOP is in the nature of employees cost and is hence deductible during the vesting period w.r.t. the market price of shares at the time of grant of options to the employees. The amount of discount claimed as deduction during the vesting period is required to be reversed in relation to the unvesting/lapsing options at the appropriate time. However, an adjustment to the income is called for at the time of exercise of option by the amount of difference in the amount of discount calculated with reference the market price at the time of grant of option and the market price at the time of exercise of option. No accounting principle can be determinative in the matter of computation of total income under the Act. The question before the special bench is thus answered in affirmative by holding that discount on issue of Employee Stock Options is allowable as deduction in computing the income under the head 'Profits and gains of business or profession',”*

*9. The decision of the Hon'ble Special Bench has been affirmed by the Hon'ble Karnataka High Court in the case of CIT vs. Biocon Ltd.*

10. Further, it was argued that the allowance of ESOP expenses being revenue expenditure and being deductible under section 37(1) of the Act was considered in the below cases:

> *PCIT Vi Lemon Tree Hotels (P.) Ltd. - [2019] 104 taxmann.com 26 (Delhi) PCIT V. New Delhi Television Ltd. [2018] 99 taxmann.com 401 (Delhi)*

> *SSI Limited V. Deputy Commissioner of Tax [(2004) 85 TTJ10491*

> *Murugappa Management Services Ltd. [2013] 40 taxmann.com 451 (Chennai - Trib.)*

11. it was brought to our notice that the order relied by the Id, PCIT in the case of *Ranbaxy Laboratory Ltd. Vs. Addl. CIT (2009) 124 TTJ 771: (2009) 26 DTR 420* stands considered by Special Bench wherein the case of *Ranbaxy Laboratory Ltd. Vs. Addl. CIT* has been examined in the case of *Biocon Limited supra*) which has been confirmed by the Hon'ble Karnataka gh Court and hence the order relied upon by the Id. PCIT is no ore good law. Hence, we hold that the directions given in the der u/s 263 are not valid.

6. Since the very basis of the present assessment order has been removed we do not find any reason to interfere with the findings of the CIT(A). This ground in both the appeals is dismissed.

7. The second grievance in A.Y. 2015-16 relates to the deletion of the addition on account of disallowance of prior period expenses.

8. The Coordinate Bench in ITA No.1036/Del/2021 (supra) has also quashed the order of the Pr. CIT on this count also. The relevant findings read as under :-

*“20. In light of the facts submitted in the original assessment, the above expenses are crystallized during the year and no deduction of the same is claimed in the earlier year. Hence, in view of the above facts and circumstances and the position of law, the aforesaid expenses are an allowable deduction under the Act while computing the profit and gains of business and profession & that the AO has correctly appreciated the said position while passing the assessment order. Hence, we hold that the directions given in the order u/s 263 are not valid.”*

9. Once again since the basis has been removed the addition falls. No interference is called for this ground is also dismissed.

10. The last grievance in A.Y. 2015-16 relates to the deletion of the addition on account of disallowance of interest of late payment of TDS. This issue was also considered by the coordinate Bench while deciding the challenge to the exemption of jurisdiction u/s. 263 of the Act in ITA No.1036/Del/2021 (supra). The relevant findings read as under :-

*“25. In the course of revisionary proceedings, the Ld. PCIT on verification of record and Audit party objections observed that such sum related to payment of interest on*

*late payment of TDS was neither added by the assessee in the taxable income for the year nor the AO had added the same while completing the original assessment. The Ld. PCIT after considering the submission of the appellant in revisionary proceedings and held as under:*

*“Undisputedly, the assessee has claimed interest paid u/s 201(1A)/206C(7) on late payment of TDS/TCS at Rs. 6,96,533/- as business expenditure. I find that interest u/s 201(1A)/206C(7) is not a business expenditure. In this regard, it is worthwhile to mention following judicial pronouncements. (SC)”*

*- Bharat Commerce & Industries Ltd. vs. CIT (1988*

*-Aruna Mills Ltd. vs. CIT (1957) 31 ITR 153 (Bom)*

*-CIT vs. Chennai Properties and Ors. (1999) 239 ITR 435 (Mad.) ) 230 ITR 733*

*26. In view of the facts narrated above, we find that the AO has failed to disallow above mentioned interest expenditure while passing the order u/s 143(3) and hence rendering the assessment erroneous and prejudicial to the interest of revenue. The order of the Id. PCIT u/s 263 is upheld on this issue.”*

11. For similar reasons the disallowances were made during the year under consideration also. We are of the considered view that the AO has made proper disallowance and the CIT(A) erred in

deleting the same, therefore, findings of the CIT(A) are set aside and that of the AO are restored. This ground is allowed.

12. In the result, ITA No.1734/Del/2023 is partly allowed and ITA No.1735/Del/2023 is dismissed.

13. The order is pronounced in the open court on 16.10.2023.

Sd/-

**[C.N PRASAD]**  
**JUDICIAL MEMBER**

Dated: October, 2023.

Neha, Sr PS

Copy forwarded to:

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

Sd/-

**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Asst. Registrar,  
ITAT, New Delhi