

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in confirming the compensation paid to directors for termination of ESOP as capital in nature.

3. Briefly stated, the facts of the case are that during the year under consideration and on verification of the Profit and Loss Account, the Assessing Officer noticed that the assessee has claimed compensation paid to directors for termination of stock option ESOP to the extent of Rs. 2,94,62,236/- under the head "Other Operating Expenses". The Assessing Officer formed a belief that these expenses are capital in nature and treating the same as capital expenditure, disallowed the same.

4. The assessee carried the matter before the ld. CIT(A) but without any success.

5. Before us, the ld. counsel for the assessee vehemently stated that the issue is directly covered by the decision of the Hon'ble Jurisdiction High Court of Delhi in the case of Lemon Tree Hotels Ltd ITA No. 107/2015 order dated 18.08.2015.

6. The ld. counsel for the assessee further stated that the assessee company paid compensation to executives/non-executives directors/employees amounting to Rs. 8,90,32,912/- and also Rs. 2,94,62,236/- and the Assessing Officer accepted the payment of Rs. 8,90,32,912/- and took a different view for Rs. 2,94,62,236/-. The ld. counsel for the assessee further relied upon the decision of the Hon'ble Karnataka High Court in the case of Biocon Ltd 430 ITR 0151.

7. Per contra, the ld. DR strongly supported the findings of the Assessing Officer/CIT(A) but could not bring any distinguishing decision in favour of the Revenue.

8. We have carefully considered the orders of the authorities below. The Hon'ble High Court of Delhi in the case of Lemon Tree Hotels was seized with the following facts:

"2. The question sought to be projected by the Revenue is whether the ITAT erred in deleting the addition of Rs. 1,28,19,169/- made by the Assessing Officer ('AO') by way of disallowance of the expenses debited as cost of Employees Stock Option ('ESOP') in profit and loss account?"

3. The Court has been shown a copy of the decision dated 19th June 2012 passed by the Division Bench of Madras High Court in CIT-III Chennai v. PVP Ventures Ltd. (TC(A) No. 1023 of 2005) where a similar question was answered in favour of the Assessee by holding that the cost of ESOP could be debited to the profit and loss account of the Assessee. This Court has also in its decision dated 4th August 2015 in ITA No.2 of 2002 (CIT v. Oswal Agro Mills Ltd.) held that the expenditure incurred in connection with issue of debentures or obtaining loan should be considered as revenue expenditure.

4. In the circumstances, the impugned order of the ITAT answering the question in favour of the Assessee is affirmed."

9. Similar view was taken by the Hon'ble High Court of Karnataka in the case of Biocon Ltd [supra].

10. Respectfully following the decision of the Hon'ble Jurisdictional High Court [supra], we direct the Assessing Officer to delete the impugned disallowance.

11. In the result, the appeal of the assessee in ITA No. 7334/DEL/2019 is allowed.

The order is pronounced in the open court on 21.12.2023.

Sd/-

**[SAKTIJIT DEY]
VICE PRESIDENT**

Sd/-

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

Dated: 21st DECEMBER, 2023

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	