

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

**BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1396/Del/2020
(ASSESSMENT YEAR 2016-17)**

Fortune Park Hotels Limited ITC Green Centre-10 Institutional Area Sector-32, Gurugram Haryana PAN-AAACF 6741Q (Appellant)	Vs.	ACIT Circle-9 (2), Delhi (Respondent)
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Assessee by	Sh. Rohit Jain, Adv. and Sh. Deepesh Jain, CA
Department by	Sh Vivek Kumar Upadhyay, Sr. DR
Date of Hearing	21/12/2023
Date of Pronouncement	12/01/2024

ORDER

PER M. BALAGANESH AM:

This appeal of the Assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals), Delhi-13, [hereinafter referred to as 'Ld. CIT(A)'] in DIN & Order No: ITBA/APL/S/250/2019-20/1026098552(1) dated 04/03/2020 against the order passed by Assistant Commissioner of Income

Tax, Circle -9(2), New Delhi (hereinafter referred to as the 'Ld. AO') u/s 143(3) of the Income Tax Act (hereinafter referred to as 'the Act') on 30/12/2018 for the Assessment Year 2016-17.

2. The only issue to be decided in this appeal as to whether the Ld. CIT(A) was justified in upholding the action of the Ld. AO in rejecting the claim made by the assessee for deduction of Employees Stock Option Plan (ESOP) cost amounting to Rs.4,27,27,652/-.

3. We have heard the rival submissions and perused the materials available on record. For the year under consideration, the assessee filed original return of income declaring total income of Rs.9,42,13,670/- on 29/09/2016. The said return was later revised under section 139(5) of the Act on 31/03/2018 declaring an income of Rs.5,14,86,020/- after claiming deduction of expenses relating to Employee Stock Options aggregating to Rs.4,27,27,652/- (ESOP Expense). The assessee is a subsidiary of ITC Ltd holding all of 100% of the shares of the company directly and through nominee share holder. The employees working for the assessee are covered

under the ITC Employee Stock Option Scheme, whereby, the said employees are granted an option to purchase shares of ITC Ltd in accordance with the terms and conditions of the scheme. The ESOPs are granted as per erstwhile Securities and Exchange Board of India (Employees Stock Option Scheme and Employees Stock Purchase Scheme) Guidelines, 1999 and (Security and Exchange Board of India Share Based Employee Benefit) Regulations, 2014. The discount/ fair value of the ESOPs granted is determined using the well accepted Black Scholes model at the grant date. In respect of the employees working with the assessee, ITC Ltd seeks reimbursement of the value of stock options from the assessee company. Accordingly, ITC Ltd raises invoice/ debit note seeking to recover the value of the said ESOPs from the assessee. For the relevant year, i.e., for financial year 2015-16 an amount of Rs. 4,27,27,652/ was invoiced by ITC Ltd., which was duly paid by the assessee company, albeit in immediately subsequent assessment year. The assessee claimed deduction of the actual amount reimbursed to ITC Ltd in respect of the ESOP expenditure.

4. It is undisputed that the aforesaid amount of Rs. 4.27 crores was initially not debited to the Profit and Loss Account as the invoice was received by the assessee in the immediately succeeding year. Due to receipt of invoice in the immediately succeeding year, the assessee had made a claim of deduction of the said ESOP expenses in the revised return as per law and re-casted the financial statements of financial year 2015-16 (year under consideration) for the purposes of comparative representation with financial statements of financial year 2016-17 (immediately succeeding years).

5. The Ld. AO, however, disallowed the claim of deduction of his expenses on the following grounds:-

“1. AO erred in disallowing ESOP expenditure for that the learned AO was not justified in disallowing the said expenditure although the same is fully allowable as per the provisions of the Income Tax Act Relief Prayed Disallowance of ESOP cost of Rs. 4,27,27,652/- should be deleted.

2. AO erred in not granting the deduction of Education Cess and Secondary and Higher Education Cess of Rs. 12,84,872/- Relief prayed Deduction for education Cess and Secondary and Higher Education Cess of Rs. 12,84,872/- should be allowed.

3. For that learned AO erred in calculating the interest under section 244A, Relief Prayed The AO should be directed to correct the computation of interest under section 244A.

4. To crave leave to add, modify or abrogate any grounds as may be considered appropriate during the course of hearing.”

6. As per para 4.7 and 4.7(v) of the assessment order, the Ld. AO observed that - (a) the details furnished by the assessee did not include information of number of employees, the price at which shares were offered, the amount of discount ;

(b) as per para 4.7 (ii) and (iii) of the assessment order, since the first vesting happened in financial year 2016-17, liability is not incurred during the relevant year and, hence, deduction if any, could be claimed in AY 2017-18 only and not during the year under consideration ;

(c) the assessee has furnished list of 12 employees. Letters u/s 133(6) of the Act were issued to these employees and few of them denied receipt of ESOP from the company and thereafter, a list of 7 employees were submitted by the assessee;

(d) as per para 4.7(iv) of the assessment order, the grant dates and vesting dates pertain to different financial year not exclusively following within the relevant year;

(e) ESOP expenditure was claimed only by revising the computation/return of income and the same was neither recognized

as expenditure in the audited profit and loss account for the relevant year.

7. The Ld. CIT(A) upheld the disallowance made by the Ld. AO. It is not in dispute that all the relevant documents for the purpose of adjudication of the issue of allowability of deduction on account of ESOP expenditure were duly furnished by the assessee before the lower authorities. The assessee further furnished the Copy of invoice raised by ITC Ltd. towards ESOP expenses and period wise breakup thereof; Copy of relevant extracts of bank statement and RTGS details of the assessee company showing the payment made to ITC Ltd.; Relevant extract of audited financial statements of the assessee company for the year under 31/03/2017 i.e., immediately succeeding year to the year under consideration with comparative financial statements for financial year 2015-16 and Copy of “ITC Employees Stock Option Scheme-2010” policy. We further find that as per the ESOP Scheme, such expenses had been duly taxed in the hands of the employees as perquisites and included in Form-16 of the employees and due deduction of tax at source were indeed made by the assessee treating them as salary. We find that the Ld. CIT(A)

had confirmed the disallowance of the Ld. AO on the ground that assessee had not rebutted the findings of the Ld. AO. This is factually incorrect as the Ld. CIT(A) himself has reproduced the various rebuttal made by the assessee on the findings of the Ld. AO and the same are duly reproduced in pages 12-13 of the order of the Ld. CIT(A). The Ld. CIT(A) having recorded the rebuttal of the assessee on the findings of the Ld. AO in his appellate order ought to have at least given a preliminary finding as to how the rebuttal given by the assessee does not advance the case of the assessee. Without doing the preliminary work, and by ignoring the various judicial precedents available on the impugned issue, where it had been categorically held that ESOP expenditure is allowable expenditure in the hands of the company, the Ld. CIT(A) grossly erred in confirming the disallowance. The issue in dispute is squarely covered in favour of the assessee by the decision of Hon'ble Jurisdictional High Court in the case of *PCIT vs. New Delhi Television Ltd. reported in 398 ITR 57*; decision of Hon'ble Karnataka High Court in the case of *CIT vs. Biocon Ltd. vs. DCIT reported in 430 ITR 151*; decision of Hon'ble Jurisdictional High Court in the

case of *CIT vs. Lemon Tree Hotels Ltd. in ITA No.107/2015*; the decision of Hon'ble Jurisdictional High Court in the case of *PVR Ltd. vs. CIT in ITA No.564/2012 dated 23/08/2022* and decision of Hon'ble Madras High Court in the case of *CIT vs. PVP Ventures Ltd. reported in 211 Taxman 554*.

9. It is also the fact that the claim of deduction of ESOP expenditure was made by the assessee in the revised return filed on 31/03/2019 which is well within the time limit prescribed u/s 139(5) of the Act. Hence, we have no hesitation to hold that assessee's claim of deduction is squarely allowable as deduction. Accordingly, the grounds raised by the assessee are allowed.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 12th January, 2024.

Sd/-
(YOGESH KUMAR U.S)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 12/01/2024
Pk/sps

Copy forwarded to:
1. Appellant

2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI