

आयकर अपीलिय अधिकरण
मुंबई पीठ "एफ", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
सुश्री पद्मावती. एस, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
MS. PADMAVATHY.S, ACCOUNTANT MEMBER
आअसं.3678/मुं/2023 (नि.व. 2017-18)
ITA NO.3678/MUM/2023 (A.Y.2017-18)

Fractal Analytics Private Limited
Level 7, Commerz II, International Business Park,
Oberoi Garden City, Off Western Express Highway,
Goregaon(East), Mumbai 400 063

PAN: AAACF-4502-D

..... अपीलार्थी/Appellant

बनाम Vs.

Asst. Commissioner of Income Tax, Cir. 1(3)(1),
Room No.418, 4th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai -400 020.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Sukhsagar Syal,Advocate
प्रतिवादीद्वारा/ Respondent by : Ms. Rajeshwari Menon
सुनवाई की तिथि/ Date of hearing : 27/02/2023
घोषणा की तिथि/ Date of pronouncement : 27/02/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 14/08/2023, for Assessment Year 2017-18.

2. Shri Sukhsagar Syal appearing on behalf of the assessee submits that the assessee has raised primarily two grounds in appeal i.e. :

(i) Disallowance of ESOP Expenses; and

(ii) Disallowance u/s. 14A of the Income Tax Act, 1961 [in short 'the Act']

The Id. Counsel for the assessee made a statement at Bar that he is not pressing ground No.2 of appeal on account of smallness of the amount involved.

2.1 In respect of ground No.1, the Id. Counsel for the assessee submits that the assessee had claimed ESOP compensation expenses to the tune of Rs.8,59,87,403/- u/s. 37(1) of the Act during the relevant year. The Assessing Officer disallowed the same holding it to be capital in nature. In First Appellate proceedings, the assessee pointed that the issue is squarely covered by the decision of Special Bench of Tribunal in the case of Biocon Ltd. vs. DCIT, 35 taxmann.com 335 (Bng.-SB). The said decision of Special Bench has been affirmed by the Hon'ble Karnataka High Court in CIT vs. Biocon Ltd, 121 taxmann.com 351. The CIT(A) records this fact but refused to grant relief merely for the reason that the Department's SLP against decision of Hon'ble High Court has been admitted by Hon'ble Apex Court.

3. Ms. Rejeshwari Menon representing the Department defending the impugned order reiterated the findings of CIT(A).

4. We have heard the submissions made by rival sides. The solitary issue on which submissions have been made by both sides in this appeal is with respect to disallowance of ESOP expenses. The assessee placing reliance on the decision of Special Bench in the case of Biocon Ltd.(supra) has claimed the said expenses u/s. 37(1) of the Act, whereas the Department has classified the expenditure as capital in nature. The Special Bench in the case of CIT vs. Biocon Ltd. (supra) has held that the discount on issue of ESOP is allowable as deduction u/s. 37(1) of the Act as it is a mode of compensating employees for their continued services to the company and is a part of remuneration. The Special Bench categorically rejected Departments view that ESOP expenses

can be termed as short term capital receipt or a capital expenditure. The decision of Special Bench has been affirmed by Hon'ble Karnataka High Court. Thus, in light of aforesaid decisions, we have no hesitation in allowing ground No.1 of appeal.

5. In ground No.2 of appeal, the assessee has assailed disallowance made u/s. 14A. The Id. Counsel for the assessee stated at Bar that he is not pressing this ground on account of smallness of the amount involved. In view of the statement made by Id. Counsel for the assessee, ground No.2 is dismissed as not pressed.

6. In ground No.3 of appeal, the assessee has assailed initiation of penalty proceedings u/s. 270A of the Act. Challenge to penalty proceedings at this stage is premature, hence, ground No.3 of appeal is dismissed as such.

7. In ground No.4 of appeal, the assessee has assailed charging of interest u/s. 234B of the Act. Levy of interest u/s. 234B of the Act is consequential and mandatory, hence, ground No.4 of appeal is dismissed being without any merit.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on Tuesday the 27th day of February, 2024.

Sd/-

(PADMAVATHY. S)

लेखाकार सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 27/02/2024
Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्तCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
- 5.. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai