

आयकर अपीलिय अधिकरण
दिल्ली पीठ "ई", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री नवीन चंद्र, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

आअसं. 8461/दिल्ली/2019 (नि. व. 2016-17)
ITA NO.8461/DEL/2019 (A.Y.2016-17)

Additional Commissioner of Income-Tax,
Special Range-7, Room No. 211, C.R Building,
New Delhi 110002

..... अपीलार्थी / Appellant

बनाम Vs.

M/s Oxigen Services India Pvt. Ltd.,
G-4, C-Block, Community Centre, Naraina Vihar,
New Delhi 110028
PAN: AABCI-1405-K

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा / Appellant by : Shri Bhopal Singh, Sr. DR
प्रतिवादीद्वारा / Respondent by : Shri Praveen Kumar, CA
Shri V.K Garg, Advocate

सुनवाई की तिथि / Date of hearing : 10/06/2024
घोषणा की तिथि / Date of pronouncement : 13/06/2024

आदेश / ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-22, New Delhi (hereinafter referred to as 'the CIT(A)'), dated 30.07.2019, for assessment year 2016-17.

2. The Revenue in appeal has assailed the order of CIT(A) on following counts:-

- i. Deleting disallowance of higher rate of depreciation i.e. @60% on POS Terminals;
- ii. Deleting disallowance of ESOP expenses; and
- iii. Deleting disallowance on account of Bad Debts Written Off.

3. Shri Praveen Kumar, appearing on behalf of the assessee submits that the assessee had claimed depreciation @60% on Point of Sale (POS) Terminals treating it as part of block of computers; hence, the assessee claimed higher rate of depreciation @60% on POS Terminals. He submitted that in preceding assessment years the assessee has been claiming depreciation on POS Terminals @60%, the AO disallowed the same. The issue traveled to the Tribunal, the Tribunal held that the assessee is eligible to claim depreciation @60% on POS Terminals. The Department carried the issue further in appeal before the Hon'ble Delhi High Court in ITA No. 600/2019 for AY 2009-10. The Hon'ble High Court vide order dated 09.07.2019 upheld the Tribunal order and dismissed the appeal of Revenue.

3.1. In respect of ground no. 2 to 4 of appeal relating to disallowance of Employee Stock Option Plan Scheme (ESOP) expenses, the Id. AR submitted that the assessee has claimed expenditure of Rs. 28,03,917/- on account of ESOP. It is now well settled that expenditure towards ESOP is allowable u/s. 37 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The issue is squarely covered by the decision of Special Bench of Tribunal in the case of *Biocon Ltd. vs. DCIT 144 ITD 21*. The Hon'ble Karnataka High Court in *CIT vs. Biocon Ltd. 430 ITR 151* has affirmed the decision of Special Bench. Further, the Tribunal in assessee's

own case in ITA No. 3318 to 3320/Del/2016 for AY 2008-09 to 2010-11 has allowed ESOP expenses to the assessee.

3.2 In respect of ground no. 5 of appeal, the Id. AR submits that the assessee has Written Off Bad Debts amounting to Rs. 13,03,404/-. The AO in para 6 of the assessment order has recorded the fact that the assessee in its books of accounts has Written Off Bad Debts. He submitted that the Hon'ble Supreme Court of India in the case of *TRF Ltd. vs. CIT 190 Taxmann 391 (SC)* has held that it is not necessary for the assessee to establish that debt in fact has become recoverable. It is enough, if, bad debt is written off as irrecoverable in books of account. The Id. AR further placed reliance on CBDT Circular No. 12/2016, wherein the Department has accepted the law settled by the Hon'ble Apex Court in the case of *TRF Ltd. (supra)* and has directed the officers not to contest the issue.

4. Per contra, Shri Bhopal Singh representing the Department vehemently defended the assessment order. However, the Id. DR fairly stated that issues relating to depreciation claim @60% on POS Terminals and ESOP Expenses have been considered by the Tribunal in assessee's own case in preceding assessment years. In so far as, write off of bad debts the Id. DR reiterating the findings of the AO contended that the assessee has failed to substantiate that the debts have indeed become bad and the assessee had taken necessary steps for the recovery of such debts.

5. We have heard the submissions made by rival sides and have examined the order of authorities below.

6. The first issue in appeal by the revenue is with regard to assessee's claim of depreciation @60% on POS Terminals. We find that this is a perennial issue, the assessee claimed higher rate of depreciation @60% on POS Terminals in the assessment year 2009-10. The issue traveled to the Tribunal in ITA No. 3812/Del/2015. The Tribunal vide order dated 07.01.2019 allowed assessee's claim of higher rate of depreciation on POS Terminals. Against the said order, the Department filed appeal before the Hon'ble Delhi High Court in ITA No. 600/2019. The Hon'ble High Court vide order dated 09.07.2019 upheld the decision of Tribunal and dismissed the appeal of Revenue. Thereafter, in subsequent assessment years, the Tribunal has been consistently allowing assessee's claim of higher rate of depreciation on POS Terminals. No contrary material is placed before us to take a different view. The CIT(A) in impugned order has allowed the claim of assessee following the order of Tribunal in preceding assessment years. We find no infirmity in the findings of the CIT(A). Hence, ground no. 1 of appeal is dismissed.

7. In ground no. 2 to 4 of appeal, the Department has assailed the findings of First Appellate Authority deleting disallowance of ESOP expenses amounting to Rs. 28,03,917/-. It is no more *res integra* that ESOP expenses are allowable expenditure u/s. 37(1) of the Act. We find that this issue is recurring in assessee's case since AY 2008-09. The Coordinate Bench in ITA No. 3318/Del/2016 (*supra*) placing reliance on the decision of Special Bench in *Biocon Ltd. vs. DCIT* (*supra*) and various other decisions including the decision of Hon'ble Jurisdictional High Court in the case of *PCIT vs. Lemon Tree Hotels (P.) Ltd.*, 104 *taxmann.com* 26 decided this issue in favour of the assessee. The CIT(A) has allowed ESOP

expenses claimed by the assessee by following the decision of Hon'ble Jurisdictional High Court and the decision of Tribunal in assessee's own in preceding assessment years. No new facts have been brought on record by the Department. Hence, we see no reason to interfere with the order of CIT(A) on this issue. Ergo, ground no. 2 to 4 of appeal are dismissed being devoid of any merit.

8. In ground no. 5 of appeal, the Revenue has assailed deleting of disallowance on account of Bad Debts Written Off. The assessee has written off Rs. 13,50,404/- as bad debts irrecoverable. The AO while disallowing assessee's claim of Bad Debts Written Off has remarked in the assessment order *"Just by merely providing the ledgers wherein the said amount is written off does not substantiate the claim of the assessee that the said amount was actually not recoverable. The assessee has relied on various judicial pronouncements to support its claim but not produced any proof of measure(s) taken to recover the said amount"*. The Hon'ble Apex Court in the case of TRF Ltd. vs. CIT (supra) has in an explicit manner has explained the position in law after 01.04.1989. The Hon'ble Apex Court held that it is not necessary for the assessee to establish that debt in fact is irrecoverable. Write off of bad debts as irrecoverable in the accounts of assessee is enough. The CBDT vide Circular No. 12/2016 (supra) has accepted the position of law explained by the Hon'ble Apex Court and has even directed the Department not to file appeal henceforth on this issue. In view of the above, we find no merit in ground no. 5 of appeal. Hence, the same is dismissed.

9. In the result, appeal by the revenue is dismissed.

Order pronounced in the open court on Thursday the 13th day of June, 2024.

Sd/-

(NAVEEN CHANDRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 13/06/2024

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

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(Dy./Asstt. Registrar) ITAT, DELHI