

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, AHMEDABAD**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER  
&  
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

I.T.A. Nos.476 to 479/Ahd/2024  
(Assessment Years: 2012-13 to 2015-16)

Axis Bank Limited, “Trishul”, 3 <sup>rd</sup> Floor, Opp Samtheswar Mahadev, Near Law Garden, Ellisbridge, Ahmedabad-380006.	Vs.	Assistant Commissioner of Income-tax, Circle 1(1)(1), Ahmedabad.
[PAN No.AAACU2414K]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

And

I.T.A. Nos.385,386,387 & 342/Ahd/2024  
(Assessment Years: 2012-13, 2014-15,2015-16 & 2013-14)

Assistant Commissioner of Income- tax, Circle 1(1)(1), Ahmedabad.	Vs.	Axis Bank Limited, “Trishul”, 3 <sup>rd</sup> Floor, Opp Samtheswar Mahadev, Near Law Garden, Ellisbridge, Ahmedabad-380006.
[PAN No.AAACU2414K]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Tushar Hemani, Sr.Advocate with Shri Parimalsinh B Parmar, AR
<b>Respondent by:</b>	Shri H. Phani, CIT.DR

<b>Date of Hearing</b>	04.09.2024
<b>Date of Pronouncement</b>	10.09.2024

ORDER

**PER BENCH:**

The captioned appeals have been filed by the Assessee and the Revenue against the separate orders passed by the Ld. Commissioner of Income Tax

(Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), relevant to the Assessment Years 2012-13 to 2015-16. Since the issues involved in these appeals are common for the impugned years under consideration, the appeals are being disposed of by way of this common order.

2. First we take up appeals filed by the Department in ITA Nos.385-387/Ahd/2024 & No.342/Ahd/2024 for AYs 2012-13, 2014-15, 2015-16 & 2013-14.

(i) The Revenue has raised the following ground of appeal in ITA No.385/Ahd/2024 for AY 2012-13.

*Whether the CIT(A) has justified in law and on facts in allowing the deduction of ESOP expenses of Rs.185,50,94,909/- made by the assessee merely only on the basis of the SEBI Guidlined when the deduction is not permissible under the Income-tax Act unless a liability has either been paid or arisen during the year.*

(ii) The Revenue has raised the following ground of appeal in ITA No.386/Ahd/2024 for AY 2014-15.

*Whether the CIT(A) has justified in law and on facts in allowing the deduction of ESOP expenses of Rs.104,56,07,828/- made by the assessee merely only on the basis of the SEBI Guidlined when the deduction is not permissible under the Income-tax Act unless a liability has either been paid or arisen during the year.*

(iii) The Revenue has raised the following ground of appeal in ITA No.387/Ahd/2024 for AY 2015-16.

*Whether the CIT(A) has justified in law and on facts in allowing the deduction of ESOP expenses of Rs.466,36,71,182/- made by the assessee merely only on the basis of the SEBI Guidlined when the deduction is not permissible under the Income-tax Act unless a liability has either been paid or arisen during the year.*

(iv) The Revenue has raised the following ground of appeal in ITA No.342/Ahd/2024 for AY 2013-14.

*Whether the CIT(A) has justified in law and on facts in allowing the deduction of ESOP expenses of Rs.177,34,32,266/- made by the assessee merely only on the basis of the SEBI Guidlined when the deduction is not permissible under the Income-tax Act unless a liability has either been paid or arisen during the year.*

3. The Ld.Counsel for the assessee submitted that the issue is covered by Hon'ble ITAT's order in assessee's own case for AY 2010-11 and 2011-12 in ITA Nos. 48 & 49/Ahd/2024, wherein the similar issue has been decided in favour of the assessee.

4. In response, the Ld.DR also admitted that the issue regarding allowability of ESOP expenses has been decided in favour of the assessee by ITAT for assessment years 2010-11 and 2011-12 in assessee's own case. The Ld.DR also admitted that the issue now stands decided in favour of the assessee and accordingly, the case may be decided in the light of the order passed by the ITAT in assessee's own case for earlier year.

5. It would be useful to reproduce the relevant extracts of the order passed by the ITAT in the assessee own case in ITA Nos.48 & 49/Ahd/2024 for the AY 2010-11 & 2011-12, wherein the ITAT had made the following observation:

*20. We have heard the rival contentions and perused the material on record. On going to the facts of the instant case, we observe that the law that stand as on date on the allowability of ESOP expenses has been decided in favour of the assessee by the Tribunal Special Bench in the case of Biocon Ltd 35 Taxman.com 335 and this decision was later confirmed by the Karnataka High Court in the case of CIT v Biocon Ltd 40 ITR 151, wherein the Karnataka High Court held that on exercise of option by an employee, actual amount of benefit that had to be determined was only a quantification of liability, which would take place at a future date and hence discount on issue of ESOPs was not a contingent liability but was an ascertained liability. Further, the Karnataka High Court held that issuance of shares at a*

*discount would be an expenditure incurred for purposes of Section 37(1) as primary object of aforesaid exercise was not to waste capital but to earn profits by securing consistent services of employees and therefore, same could not be construed as short receipt of capital and thus, discount on issue of ESOP was allowable deduction under Section 37(1). The Mumbai ITAT in the case of IPCA Laboratories Ltd 161 taxmann.com 511 (Mumbai Trib.), following the decision of Karnataka High Court held that ESOP compensation expenditure incurred by assessee is an allowable deduction under Section 37(1). The ITAT Hyderabad in the case of Nagarjuna Construction Co. Ltd 159 taxmann.com 538 (Hyderabad Trib.) again decided this issue in favour of the assessee by holding that discount on issue of ESOPs i.e., difference between grant price and market price on shares as on date of grant of options was allowable deduction under Section 37(1) of the Act. In the case of Fortune Park Hotels Ltd. 159 taxmann.com 1217 (Delhi - Trib.), the Delhi ITAT held that ESOP expenses are allowable as per ESOP scheme and further such expenses had been duly taxed in hands of employees as "perquisites" and included in Form-16 of employees and due TDS was deducted by assessee treating them as salary.*

*21. The law on the subject, therefore, is unanimous as various tribunals by following the decision of Biocon Ltd, Karnataka High Court have decided the issue in favour of the assessee. Secondly, we observe that the ESOP scheme under consideration was part of the Annual Report of the assessee and further the specific details of ESOP benefit granted to its employees had been duly disclosed to the assessing officer during the course of assessment proceedings, being the difference between the market price of shares at the time of grant of option to these employees and the market price of such shares as on the date of exercise by employees of the assessee company. Therefore, even from this perspective, the expenses so claim were not contingent the nature, since the assessee had claimed the ESOP expenses at the time of actual exercise of option by its employees, during the year under consideration. It is also noteworthy that the assessee had reflected such ESOP expenses as "perquisites" in the hands of its employees and TDS at appropriate rate had also been deducted by the assessee company at the time of grant of ESOP benefits to its employees. Accordingly, in view of the judicial precedents on the subject as on date, which have consistently taken the view that ESOP expenses are allowable in the hands of assessee under Section 37 of the Act and looking into the facts of the assessee's case, as highlighted above, we are of the considered view that Ld. CIT(Appeals) has not erred in facts and in law in deciding this issue in favour of the assessee.*

*22. In the result, the appeal of the Department is dismissed.*

6. Accordingly in the light of the above observation made by the ITAT, all the appeals of the Department are dismissed for the impugned years under consideration.

7. Now we shall take up the assessee's appeal in ITA Nos.476-479/Ahd/2024 for AYs 2012-13 to 2015-16.

8. The solitary issue for consideration in response of assessee's appeals for all the years under consideration is disallowance in relation to the administrative expenses u/s.14A r.w.Rule 8D of the Income-tax Rules.

9. Before us, the Ld.Counsel for the assessee submitted in the order passed by the concerned AO giving effect to the order of the ITAT in respect of disallowance u/s.14A of the Act, the disallowance has substantially reduced and accordingly, since assessee has got substantial relief post order giving effect to ITAT order, the assessee shall not be pressing the above ground of appeal for the impugned years under consideration before us.

10. In view of the above submission made by the Ld.Counsel for the assessee before us, the appeals of the assessee are dismissed as not pressed.

11. In the combined result, the appeals filed by the Assessee as well as Revenue are dismissed.

**This Order pronounced in Open Court on 10/09/2024**

**Sd/-**  
**(MAKRAND VASANT MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 10/09/2024  
Manish, Sr. PS

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

*(True Copy)*