IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

BEFORE SHRI. OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI. SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no. 254/Mum./2024
(Assessment Year :2017–2018)

Just Dial Limited
Palm Court Building M, 501/B, 5th Floor,
New Link Road, Besides Goregaon Sports Club,
Malad (West), Mumbai – 400064.
PAN-AAACA8049G ……. Appellant

v/s

Deputy Commissioner of Income Tax Circle 4(3)(1), Mumbai
Room No. 649, 6th Floor, Aayakar Bhavan,
Maharishi Karve Road, Mumbai – 400020. ……. Respondent

ITA no. 486/Mum./2024
(Assessment Year :2017–2018)

ITA no. 485/Mum./2024
(Assessment Year :2018–2019)

ITA no. 484/Mum./2024
(Assessment Year :2020–2021)

ITA no. 483/Mum./2024
(Assessment Year :2021–2022)

ACIT Circle 4.3.1
Aayakar Bhavan, M.K. Road, Churchgate
Mumbai – 400020. ……. Appellant

v/s

Just Dial Ltd
501/B, Palm Court Building M, New Link Road,
Malad (West), Mumbai – 400064.
PAN-AAACA8049G ……. Respondent

Assessee by : Shri Madhur Agarwal, Ms. Moksha Mehta
Revenue by : Shri Ankush Kapoor, CIT DR

Date of Hearing – 26/06/2024	Date of Order – 23/09/2024

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee and the Revenue against separate impugned orders of even date 05/12/2023 passed under section 250 of the Income Tax Act, 1961 ("the Act"), by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, ["learned CIT(A)"], for the assessment years 2017-18, 2018-19, 2020-21, and 2021-22.

2. Since these appeals pertain to the same assessee and involve similar issues arising out of a similar factual matrix, these appeals were heard together and are being decided by way of this consolidated order. With the consent of the parties, the cross-appeal for the assessment year 2017-18 is taken up as a lead case and the decision rendered therein shall apply *mutatis mutandis* to other appeals in the present batch.

ITA no.254/Mum./2024 (Assessee's appeal)
Assessment Year 2017–18

3. In its appeal for the assessment year 2017-18, the assessee has raised the following grounds: –

> *"Just Dial Limited ('Appellant') respectfully craves leave to prefer an appeal against the order dated 5 Dec 2023 passed by the Hon'ble Commissioner of Income-tax (Appeals) [CIT(A)]. National Faceless Center ('NFAC'), under Section 250 of the income-tax Act, 1961 ('Act'), on the following ground:*
>
> *On the facts and in the circumstances of the case, and in law, the learned CIT(A);*
>
> *DISALLOWANCE OF DEFERRED TAX ASSET CREDITED TO OTHER COMPREHENSIVE INCOME AND CLAIMED AS DEDUCTION FOR COMPUTATION OF BOOK PROFIT U/S 115JB of Rs. 25,88,00,000/-*

1) Erred in confirming the disallowance of deferred tax asset of Rs.25.88 crores recognised on demerger, credited to other comprehensive income and claimed as deduction by the appellant company for computing book profit u/s 115JB of the Act.

2) Failed to appreciate that pursuant to demerger, the difference between fair value of consideration paid and fair value of net assets taken over is recorded in other comprehensive income and accumulated in equity as capital reserve totalling to Rs.27.03 crores are in the nature of capital receipts and such capital receipts are not taxable u/s 115JB of the Act.

3) Failed to appreciate that credit to other comprehensive income due to provisions of Ind-AS are in the nature of notional income of Rs. 27.03 crores and hence not taxable u/s 115/8 of the Act.

4) Without prejudice to the above, erred in denying deduction of deferred tax asset of Rs 25.88 crores, relying on clause(h) to Section 115JB(2) of the Act without appreciating that as per said clause deferred tax and provisions thereof when debited to the profit and loss account, shall be added back to book profits u/s 115JB of the Act.

5) Without prejudice to the above, failed to appreciate that difference between fair value of property and liabilities recorded in the books of the appellant being resulting company and its value in the books of demerged company shall be ignored for computation of book profits of resulting company as per section 115JB(28) of the Act.

The appellant craves leave to add, to amend, vary or alter including by substitution any of the grounds of appeal as they or their representatives may think fit at any time before or during the hearing of the above appeal and further craves leave to consider each of the grounds of appeal as without prejudice to each other."

4. The sole dispute raised by the assessee in its appeal pertains to the addition made while computing the book profit of the assessee under section 115 JB of the Act.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is one of India's leading local search service providers. For the year under consideration, the assessee filed its return of income on 26/03/2018 declaring a total income of ₹ 9,93,67,740. The assessee filed the revised return of income on 27/02/2019 declaring a total

income of ₹ 9,93,21,750. The return filed by the assessee was selected for complete scrutiny through CASS and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. During the year under consideration, the assessee entered into a Scheme of Arrangement involving the demerger of Data and Information undertaking of Just Dial Global Private Limited. The Scheme was approved by the National Company Law Tribunal vide its order dated 22/03/2017 and the acquisition date of the undertaking was 22/03/2017. Pursuant to the Scheme, all the assets, liabilities, rights, business operations, activities, etc. of the demerger undertaking were transferred to the assessee company. During the assessment proceedings, it was observed that while calculating the book profit as per the provisions of Minimum Alternate Tax, the assessee made the adjustment under section 115 JB(2B) of the Act of ₹ 2588 lakhs in respect of the difference in value of property and liabilities in the books of the resulting company and the value of the same in the demerged company's books before the demerger. It was further observed that the sum of ₹ 2588 lakhs reduced from the book profit is the Deferred Tax Assets ("*DTA*") on brought forward losses of the demerged entity. Since the DTA on brought forward losses was neither "*property*" as specified in the relevant section nor was it an asset that was recorded in the books of the demerged entity, accordingly the assessee was asked to show cause as to why the said sum of ₹ 2588 lakhs, being the adjustment made to the book profits under section 115 JB(2B) of the Act should not be disallowed and added to the total income of the assessee.

6. In response to the show cause notice, the assessee submitted that as per the provisions of section 115 JB(2B) of the Act, the difference between the value of the property and the liabilities of the undertaking recorded in the books of account (i.e. fair value of the assets) of the resulting company (i.e. the assessee company) and the value of property in the books of accounts in the demerged company (i.e. Just Dial Global Private Ltd) shall be ignored for the purpose of computation of book profit of the assessee company. The assessee further submitted that the term "*property*" in section 115 JB(2B) of the Act has wide connotations and includes all assets/property of every description including DTA on brought forward losses. By referring to the provisions of section 2(19AA) and section 72A of the Act, the assessee submitted that the intention of the legislature was that the property should include all assets pertaining to the undertaking.

7. The Assessing Officer ("*AO*") vide order dated 29/12/2019 passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that section 115 JB(2B) of the Act emphasises the words "*property and liabilities of the undertaking*" to allow adjustment on account of such properties and liabilities having been recorded at different values in the entity before being demerged and in the resulting entity. The AO further held that the definition of "*property*" is not given in section 2 of the Income Tax Act and thus if the term is defined in any other provision of the Act, then the same may be considered for interpretation. By referring to the definition of the term property in section 56(2), the AO held that DTA is not covered in the list of items enumerated in section 56(2) of the Act. Accordingly, the AO held that

the very purpose of specifically mentioning "*property*" in section 115 JB(2B) of the Act is to restrict the benefit to only certain types of capital assets and not to any asset in general as claimed by the assessee. By invoking the provisions of section 115 JB(2)(h) of the Act, the AO held that the balance pertaining to deferred tax and the provision thereof needs to be added to the book profit of the company, and thus the claim of the assessee is bad in law. Accordingly, the AO disallowed the adjustment of ₹ 2588 lakhs made by the assessee under section 115 JB(2B) of the Act while computing the book profit and added the same to the assessed book profit of the assessee.

8. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and upheld the addition made by the AO, by observing as follows: –

> *"6.3.2 The submission of the appellant is examined. Section 115JB of the Act is perused. The section provides for the levy of the minimum alternate tax based on "book profit", and the same Accounting Standards and Accounting Policies to be followed which are followed to prepare financial statements under the Companies Act. The appellant had entered into a scheme of demerger with Just Dial Global Private Ltd., (being the demerged entity) and the assessee company i.e., Just Dial Ltd. (being the resulting company). The scheme has been approved by the NCLT. The appellant had claimed that Rs. 2588 lacs reduced from the book profit is the 'Deferred Tax Assets' (the DTA). The appellant in the appellate proceedings stressed that the sum of Rs. 2703 lacs arerepresenting Other Comprehensive Income (the OCI) and is a notional income which has to be recognised in the books because of the Indian Accounting Standards and is not the actual income, the whole focus of the appellant is to demonstrate that the OCI is a notional income and as such does not constitute real/ actual income and hence cannot be added u/s 115JB of the Act. The AO had analyzed the demerger accounting entries and noted that of it Rs. 2588 lacs represent the 'Deferred Tax Assets'. Section 115JB(2B) of the Act stated that (2B) "In the case of a resulting company, where the property and the liabilities of the undertaking or undertakings being received by it are recorded at values different from values appearing in the books of account of the demerged company immediately before the demerger, any change in such value shall be ignored for the purpose of computation of book profit of the resulting company under this section*

6.3.3 With to the appellant's submission and contention on this ground of appeal section 115JB(2)(h) specifically provides for adding and contention on this sets and the provision for computing the book profit. Having perused the assessment order, the submission and the case laws. The action of the AO is upheld, and the Ground of Appeal No. IV (9-15) is dismissed."

Being aggrieved, the assessee is in appeal before us.

9. We have considered the submissions of both sides and perused the material available on record. During the financial year 2016-17, the assessee entered into a Scheme of Arrangement involving the demerger of Data and Information undertaking of Just Dial Global Private Ltd and vesting of the same in the assessee under section 230 to section 232 of the Companies Act, 2013. Vide its order dated 22/03/2017, the National Company Law Tribunal approved the Scheme of Arrangement with 22/03/2017 as the effective date of acquisition. Pursuant to the Scheme, all assets, liabilities, rights, business operations and activities forming part of the demerged undertaking were transferred to the assessee at their respective fair values as follows: -

(Rs. In lacs unless otherwise stated)

Particulars	*Rs. In lacs*	*Rs. In lacs*
Assets		
Property, plant and equipment's (net)	*3*	
Intangible assets	*0*	
Cash and cash equivalents	*71*	
Deferred tax assets on brought forward losses	*2,588*	
Other current assets	*59*	
		2,721
Less: Liabilities		
Trade Payable	*4*	*-*
Other Current Liabilities	*2*	
Provisions	*1*	*-*
		(7)
Net assets transferred		*2,714*

10. From Note 32 of the Financial Statement of the assessee, forming part of the paper book on page 8, it is evident that the difference between the fair value of the consideration paid amounting to ₹ 11 lakh and the fair value of net assets taken over of ₹ 2714 lakh, i.e. amounting to ₹ 2703 lakh was recognised by the assessee as Other Comprehensive Income and accumulated in equity as capital reserves in its statement of profit and loss account. As per the assessee, the sum of ₹ 2703 lakh, which is recognised as Other Comprehensive Income is only notional income of the assessee and recognised in the books of account due to the provisions of Indian Accounting Standards. It is further the plea of the assessee that the difference between the net assets transferred and fair value of consideration has been recognised as Other Comprehensive Income in the profit and loss account due to the provisions of Ind-AS and such income would not be credited to the profit and loss account as per the provisions of the Indian Generally Accepted Accounting Standards ("*I-GAAP*" / "*AS*"). Thus, it was submitted that such income is credited as Other Comprehensive Income to the profit and loss account due to the statutory provisions of Ind-AS and as such is not income of the assessee. Accordingly, the assessee claims that such notional income should not be added to the book profit for the levy of Minimum Alternate Tax as per the provisions of section 115 JB(2A) of the Act.

11. The provisions of section 115 JB(2A) of the Act reads as follows: –

> *"(2A) For a company whose financial statements are drawn up in compliance to the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015, the book profit as computed in accordance with Explanation 1 to sub-section (2) shall be further—*

> *(a) increased by all amounts credited to other comprehensive income in the statement of profit and loss under the head "Items that will not be re-classified to profit or loss";*
>
> *(b) decreased by all amounts debited to other comprehensive income in the statement of profit and loss under the head "Items that will not be re-classified to profit or loss";*
>
> *(c) increased by amounts or aggregate of the amounts debited to the statement of profit and loss on distribution of non-cash assets to shareholders in a demerger in accordance with Appendix A of the Indian Accounting Standards 10;*
>
> *(d) decreased by all amounts or aggregate of the amounts credited to the statement of profit and loss on distribution of non-cash assets to shareholders in a demerger in accordance with Appendix A of the Indian Accounting Standards 10:"*

12. From a bare perusal of the provisions of section 115 JB(2A), it is evident that the book profit as computed in accordance with Explanation 1 to section 115 JB(2) of the Act is to be further increased by all amounts credited to Other Comprehensive Income in the statement of profit and loss under the head "*Items that will not be re-classified to profit or loss*". In the present case, from the perusal of the statement of profit and loss account and Note 32 of the Financial Statement of the assessee, it is evident that the difference between the fair value of the consideration paid and the fair value of net assets taken over, i.e. amounting to ₹ 2703 lakh was recognised by the assessee as Other Comprehensive Income not to be reclassified to profit and loss and accumulated in equity as capital reserves. Therefore, we are of the considered view that in compliance with provisions of section 115 JB(2A) of the Act, the assessee correctly added the sum of ₹ 2703 lakh while computing its book profit for the levy of Minimum Alternate Tax for the year ended 31/03/2017. Further, it is pertinent to note that section 115 JB(2A) of the Act is applicable

to a company whose financial statements are drawn up in compliance with the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standard) Rules, 2015.

13. In the present case, while calculating the book profit as per the provisions of Minimum Alternate Tax, the assessee made the adjustment under section 115 JB(2B) of the Act of ₹ 2588 lakhs in respect of the difference in the value of property and liabilities in the books of the resulting company and the value of the same in the demerged company's books before the demerger. As per the assessee, the sum of ₹ 2588 lakhs reduced from the book profit is the DTA on brought forward losses of the demerged entity. However, as is evident from the record, the lower authorities did not agree with the claim of the assessee and held that the term "*property*" as defined in section 56(2) of the Act does not include DTA. Further, by applying the provisions of Explanation-1 clause (h) to section 115 JB(2) of the Act, the amount of deferred tax was added to the book profit of the assessee. Before proceeding further, it is relevant to note the provisions of the section 115 JB(2B) of the Act, which reads as follows: –

> *"(2B) In the case of a resulting company, where the property and the liabilities of the undertaking or undertakings being received by it are recorded at values different from values appearing in the books of account of the demerged company immediately before the demerger, any change in such value shall be ignored for the purpose of computation of book profit of the resulting company under this section."*

14. As per the assessee, the DTA was not recognised in the books of the demerged company, i.e. Just Dial Global Private Limited, for the reason that it had brought forward losses of ₹ 74,89,50,532. Therefore, since it did not

have any foreseeable profits, it could not recognise the DTA in view of the Accounting Standard-22, issued by The Institute of Chartered Accountants of India. However, subsequent to the acquisition of Data and Information undertaking from Just Dial Global Private Limited, the assessee being a profit-making entity envisaged set off of business losses of Just Dial Global Private Ltd, which was apportioned to the assessee. Accordingly, on the acquisition, it recognised all the assets at their fair values including the DTA amounting to ₹ 2588 lakh. As per the assessee, the computation of DTA arising on brought forward losses from undertaking acquired under the Scheme of Arrangement with Just Dial Global Private Ltd is as follows: –

Amount in Rs.

Assessment Year	*Business Loss*	*Long Term Capital Loss*	*DTA on Business Loss @ 34.608%*	*DTA on Long Term Capital Loss @ 23.07%*	*Total DTA*
AY 2011-12	*14,09,53,611*	*-*	*4,87,81,226*	*-*	*4,87,81,226*
AY 2012-13	*28,11,42,995*	*-*	*9,72,97,968*	*-*	*9,72,97,968*
AY 2013-14	*15,96,82,582*	*-*	*5,52,62,948*	*-*	*5,52,62,948*
AY 2014-15	*11,21,31,142*	*33,68,794*	*3,88,06,346*	*7,77,181*	*3,95,83,526*
AY 2015-16	*4,55,30,479*	*21,322*	*1,57,57,188*	*4,919*	*1,57,62,107*
AY 2016-17	*61,19,607*	*-*	*21,17,874*	*-*	*21,17,874*
Total					*25,88,05,649*

15. To make the impugned adjustment, the AO relied upon the definition of the term "*property*" as provided under section 56(2) of the Act. From the perusal of section 56, we find that the term property has been defined in Explanation to section 56(2)(vii) of the Act as under: –

"Explanation.—For the purposes of this clause,—

(a) ……;

(b) ……..;

(c) ……..;

(d) "property" means the following capital asset of the assessee, namely:—

(i) immovable property being land or building or both;

(ii) shares and securities;

(iii) jewellery;

(iv) archaeological collections;

(v) drawings;

(vi) paintings;

(vii) sculptures;

(viii) any work of art; or

(ix) bullion;

16. At the outset, it is evident that the aforesaid definition is restricted for the purpose of section 56(2)(vii) of the Act. We find that in JCIT v/s Saheli Leasing & Industries Ltd., reported in [2010] 324 ITR 170, the Hon'ble Supreme Court observed as follows: –

> *"(vi) A particular word occurring in one section of the Act, having a particular object cannot carry the same meaning when used in different section of the same Act, which is enacted for different object. In other words, one word occurring in different sections of the Act can have different meaning, if the object of the two sections are different and when both operate in different fields."*

17. It cannot be disputed that section 56(2)(vii) of the Act is a deeming provision and deals with taxation under the head "*income from other sources*" in case immovable property or any property other than immovable property is received without consideration or for a consideration which is less than stamp duty value. However, on the other hand, section 115 JB of the Act deals with the levy of Minimum Alternate Tax on certain companies. Further, section

115 JB(2B) of the Act deals with adjustment to the book profit where the property and the liabilities of an undertaking are received pursuant to a demerger. Therefore, both the provisions, i.e. section 56(2)(vii) and section 115 JB of the Act, deal with different subject matter for the purpose of taxation. Even though the term property is not defined in section 115 JB of the Act, however in the Act, the terms "*property*" and "*asset*" have been used interchangeably. Even the definition of the term "*capital asset*" in section 2(14) of the Act provides that "*capital asset*" means property of any kind. If the contention of the AO is accepted, then only the assets as referred to in section 56(2) of the Act would be considered as "*capital assets*" and consequently only the transfer of those assets would be chargeable to tax under section 45 of the Act. Therefore, we are of the considered view that the term "*property*" has a wider connotation as compared to the term "*assets*". Further, it is pertinent to note that the provisions of Explanation-1 clause (h) to section 115 JB(2) of the Act recognise the deferred tax and the provisions thereof, for making the adjustment to the book profit. However, the said provision is only applicable if the amount is debited to the statement of profit and loss account. However, in the present case, from the perusal of the profit and loss account, it is evident that the Deferred Tax Asset was not debited by the assessee. Therefore, the adjustment made by the AO to the book profit in the instant case doesn't find any place in the provisions of section 115 JB of the Act. Thus, we are of the considered view that following the provisions of section 115 JB(2B) of the Act, the assessee rightly made the adjustment and reduced the book profit by the amount of Deferred Tax Assets amounting to

₹ 2588 lakh on brought forward losses. Accordingly, the impugned adjustment made by the AO to the book profit of the assessee amounting to ₹ 2588 lakh is directed to be deleted. Therefore, relief is granted to the assessee on the alternative grounds raised in its appeal.

18. In the result, the appeal by the assessee for the assessment year 2017-18 is allowed.

ITA no.486/Mum./2024 (Revenue's appeal)
Assessment Year 2017–18

19. In its appeal, the Revenue has raised the following grounds: –

"1) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting disallowance of ESOP expenses of Rs.12,90,00,000/-?

2) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred not treating cash sales of the appellant Company of Rs. 27,87,558 as unexplained cash credit u/s 68 of the Act and charging tax on the same as per provisions of section 115BBE of the Act.

3) The appellant craves leave to amend or alter any ground or add new ground which may be necessary."

20. The issue arising in ground no. 1, raised in Revenue's appeal, pertains to the deletion of disallowance made on account of Employee Stock Option Plan ("*ESOP*") expenses.

21. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, from the computation of income, it was observed that the assessee has claimed expenditure towards stock options amounting to ₹ 1290 lakh which appears to be capital in nature.

Accordingly, the assessee was asked to show cause as to why the expenditure claimed towards stock options should not be disallowed on account of the same being capital in nature. In response to the show cause notice, the assessee relied upon the decision of the Special Bench of the Tribunal in M/s Biocon Ltd, reported in 25 ITR(T) 602, wherein the Special Bench dealt with the issue whether ESOP expenses are capital in nature and whether allowable under section 37(1) of the Act. The AO vide assessment order did not agree with the submissions of the assessee and held that ESOP is nothing but an expenditure related to the issue of shares, which is capital in nature. It was further held that the ESOP discounts are incurred in relation to the issue of shares to the employees and they are not relatable to the profits and gains arising or accruing from a business/trade. It was also held that the ESOP discount does not diminish the trading/business receipts of the issuing company. As regards the reliance placed by the assessee upon the decision of the Special Bench of the Tribunal in Biocon Ltd (supra), the AO held that the Department has not accepted the decision and an appeal has been filed before the Hon'ble Karnataka High Court, which has admitted the question of law in the said case. Accordingly, the AO disallowed the expenditure claimed towards stock options amounting to ₹ 1290 lakh on account of being capital in nature and added the same to the total income of the assessee.

22. The learned CIT(A), vide impugned order, allowed the ground raised by the assessee on this issue by following the decision of the Hon'ble Karnataka High Court in Biocon Ltd, in ITA No. 653 of 2023, wherein it was held that

ESOP expenses are allowable under section 37 of the Act. Being aggrieved, the Revenue is in appeal before us.

23. We have considered the submissions of both sides and perused the material available on record. As evident from the record, the AO disallowed the deduction primarily on the basis that the expenditure incurred is capital in nature and therefore not allowable under section 37(1) of the Act. We find that similar contentions of the Revenue were rejected by the Hon'ble Karnataka High Court in CIT v/s Biocon Ltd [2020] 121 taxmann.com 351 (Karn.), wherein the Hon'ble High Court dismissed the appeal filed by the Revenue and upheld the decision of the Special Bench of the Tribunal in Biocon Ltd (supra). The relevant findings of the Hon'ble High Court, in the aforesaid decision, are reproduced as follows: -

> *"6. We have considered the submissions made by learned counsel for the parties and have perused the record. The singular issue, which arises for consideration in this appeal is whether the tribunal is correct in holding that discount on the issue of ESOPs i.e., difference between the grant price and the market price on the shares as on the date of grant of options is allowable as a deduction under section 37 of the Act. Before proceeding further, it is apposite to take note of section 37(1) of the Act, which reads as under:*
>
> > *Section 37(1) says that any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head, "Profits and Gains of Business or Profession".*
>
> *7. Thus, from perusal of section 37(1) of the Act, it is evident that the aforesaid provision permits deduction for the expenditure laid out or expended and does not contain a requirement that there has to be a pay out. If an expenditure has been incurred, provision of section 37(1) of the Act would be attracted. It is also pertinent to note that section 37 does not envisage incurrence of expenditure in cash.*
>
> *8. Section 2(15A) of the Companies Act, 1956 defines 'employees stock option' to mean option given to the whole time directors, officers or the employees of the company, which gives such directors, officers or employees, the benefit or*

right to purchase or subscribe at a future rate the securities offered by a company at a free determined price. In an ESOP a company undertakes to issue shares to its employees at a future date at a price lower than the current market price. The employees are given stock options at discount and the same amount of discount represents the difference between market price of shares at the time of grant of option and the offer price. In order to be eligible for acquiring shares under the scheme, the employees are under an obligation to render their services to the company during the vesting period as provided in the scheme. On completion of the vesting period in the service of the company, the option vest with the employees.

9. In the instant case, the ESOPs vest in an employee over a period of four years i.e., at the rate of 25%, which means at the end of first year, the employee has a definite right to 25% of the shares and the assessee is bound to allow the vesting of 25% of the options. It is well settled in law that if a business liability has arisen in the accounting year, the same is permissible as deduction, even though, liability may have to quantify and discharged at a future date. On exercise of option by an employee, the actual amount of benefit has to be determined is only a quantification of liability, which takes place at a future date. The tribunal has therefore, rightly placed reliance on decisions of the Supreme Court in Bharat Movers supra and Rotork Controls India P. Ltd., supra and has recorded a finding that discount on issue of ESOPs is not a contingent liability but is an ascertained liability.

10. From perusal of section 37(1), which has been referred to supra, it is evident that an assessee is entitled to claim deduction under the aforesaid provision if the expenditure has been incurred. The expression 'expenditure' will also include a loss and therefore, issuance of shares at a discount where the assessee absorbs the difference between the price at which it is issued and the market value of the shares would also be expenditure incurred for the purposes of section 37(1) of the Act. The primary object of the aforesaid exercise is not to waste capital but to earn profits by securing consistent services of the employees and therefore, the same cannot be construed as short receipt of capital. The tribunal therefore, in paragraphs 9.2.7 and 9.2.8 has rightly held that incurring of the expenditure by the assessee entitles him for deduction under section 37(1) of the Act subject to fulfilment of the condition.

11. The deduction of discount on ESOP over the vesting period is in accordance with the accounting in the books of account, which has been prepared in accordance with Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999.

12. So far as reliance place by the revenue in the case of Infosys Technologies Ltd.(supra) is concerned, it is noteworthy that in the aforesaid decision, the Supreme Court was dealing with a proceeding under section 201 of the Act for non-deduction of tax at source and it was held that there was no cash inflow to the employees. The aforesaid decision is of no assistance to decide the issue of allowability of expenses in the hands of the employer. It is also pertinent to mention here that in the decision rendered by the Supreme Court in the aforesaid case, the Assessment Years in question was 1997-98 to 1999-2000 and at that time, the Act did not contain any specific provisions to tax the

benefits on ESOPs. Section 17(2)(iiia) was inserted by Finance Act, 1999 with effect from 1-4-2000. Therefore, it is evident that law recognizes a real benefit in the hands of the employees. For the aforementioned reasons, the decision rendered in the case of Infosys Technologies is of no assistance to the revenue. The decisions relied upon by the revenue in A. Gajapathy Naidu,Morvi Industries Ltd. and Keshav Mills Ltd.(supra) support the case of assessee as the assessee has incurred a definite legal liability and on following the mercantile system of accounting, the discount on ESOPs has rightly been debited as expenditure in the books of account. We are in respectful agreement with the view taken in PVP Ventures Ltd. And Lemon Tree Hotels Ltd.'case (supra).

13. It is also pertinent to mention here that for Assessment Year 2009-10 onwards the Assessing Officer has permitted the deduction of ESOP expenses and in view of law laid down by Supreme Court in Radhasoami Satsang v. CIT, [1992] 60 Taxman 248/193 ITR 321, the revenue cannot be permitted to take a different stand with regard to the Assessment Year in question.

In view of preceding analysis, the substantial questions of law framed by a bench of this court are answered against the revenue and in favour of the assessee. In the result, we do not find any merit in this appeal, the same fails and is hereby dismissed."

24. Therefore, in view of the aforesaid findings of the Hon'ble Karnataka High Court, we find no infirmity in the impugned order passed by the learned CIT(A) in allowing the claim of deduction of ESOP expenses under section 37(1) of the Act. Accordingly, ground no. 1 raised in Revenue's appeal is dismissed.

25. The issue arising in ground no. 2, raised in Revenue's appeal, pertains to the deletion of addition on account of cash sales under section 68 of the Act.

26. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, it was observed that during the demonetisation period, the assessee deposited a large value of cash amounting to ₹ 3.93 crore. It was further observed that during November

2016, the total cash sales of the assessee were ₹ 3,50,07,388 out of which cash sales of ₹ 3,27,87,858 were recorded on 08/11/2016 alone, i.e. the date on which the demonetisation policy was announced, which is equivalent to the monthly cash sales of October 2016 and September 2016 of the assessee. Accordingly, the assessee was asked to show cause as to why the total cash sales of ₹ 3.93 crore deposited in the bank account during the demonetisation period should not be treated as unexplained cash credit under section 68 of the Act and added to the total income of the assessee. In response to the show cause notice, the assessee submitted that during November 2016, the total cash sales were ₹ 3.5 crore out of which cash sales of ₹ 2.85 crores were recorded on 08/11/2016 alone. It was further submitted that many shops/business establishments were open till midnight on 08/11/2016 to accept the notes of denomination ₹ 500 and ₹ 1000 to increase their sales. It was submitted that the assessee's sales representatives accepted Specified Bank Notes from its customers on 08/11/2016, who are in small and medium businesses and significantly dealing in cash during the pre-demonetisation era. The AO vide assessment order did not agree with the submissions of the assessee and held that out of the total cash deposit of the ₹ 3,93,07,726 in the bank account of the assessee, cash of ₹ 3,27,87,858 is a sale component on the date of announcement of demonetisation, i.e. 08/11/2016. It was further held that the substantial figure of the sale in the block of 3 to 4 hours never happened in the assessee's case before and after the announcement of demonetisation. The AO held that the receipt of cash of ₹ 3,27,87,858 against the claimed sales was received on the night of 08/11/2018, however, the

same was not deposited in the aforesaid bank account in a single day. Further, the AO held that the cash sales were shown on 08/11/2016, however, the invoices were issued 17 days after the receipt of cash in certain cases. Accordingly, the AO concluded that the assessee has its own unaccounted cash of Specified Bank Notes which have been introduced in its books by way of cash shown on 08/11/2016 for which the assessee has no proper justification. Accordingly, the cash deposit amounting to ₹ 3,27,87,588 appearing in the bank account of the assessee during the demonetisation period was treated as unexplained cash credit under section 68 of the Act and added to the total income of the assessee.

27. The learned CIT(A), vide impugned order, held that the AO on one hand accepted the books of accounts of the assessee and thus accepted the cash sales, however on the other hand made the addition on account of deposit of cash which was duly accounted by the assessee in its books. Accordingly, the learned CIT(A) held that once the books of accounts for the year under consideration were accepted by the AO and the sales recorded therein were considered in arriving at the assessed income of the assessee, the cash deposited in the bank against such sales could not be treated as undisclosed income of the assessee. As a result, the learned CIT(A) deleted the addition made by the AO under section 68 of the Act. Being aggrieved, the Revenue is in appeal before us.

28. We have considered the submissions of both sides and perused the material available on record. As per the assessee, it has a Pan-India presence

and had an employee base of around 11,334 employees as on 31/03/2017 comprising 4350 tele-sales executives and 3529 feet-on-street sales employees spread in around 250 cities across India. It is further the claim of the assessee that during November 2016, the assessee had around 3216 feet-on-street sales employees. Thus, on 08/11/2016 when the demonetisation policy was announced many of its sales representatives informed the customers and their respective areas that Specified Bank Notes are acceptable till midnight in conformity with the Government guidelines. It is further the submission of the assessee that approximately 70% of its revenue comes from service-oriented categories, which are not dependent on the physical presence of shops and establishments and the remaining approximately 30% of the revenue comes from product-oriented categories which have shops/establishments. The assessee further submitted that its total sales for November 2016 was ₹ 62.26 crores and the cash sales were ₹ 3.5 crores which is just 5.62% of the total sales. The assessee further submitted that from April 2016 to June 2016, its cash sales ratio to total sales was 6.38%, 5.05% and 5.25% respectively. Further, in September and October 2016, its cash sales were 3.20% and 3.25% respectively due to the festive season during which sales were reduced due to holidays. We find that the details of monthly sales from April 2016 to November 2016 were furnished by the assessee before the AO vide its submission dated 23/12/2019, as follows: –

"Month wise sales summary (on collection basis) for FY 2016-17

FY 16-17 (AY 2017-18)	*Total Sales*	*Cash Sales*	*Non cash sale*	*% cash sale to total sales*	*% non cash sale to total sales*
Apr	*664,256,046*	*42,379,744*	*621,876,301*	*6.38*	*93.62*

May	*599,506,027*	*30,273,167*	*569,232,860*	*5.05*	*94.95*
Jun	*566,717,376*	*29,759,082*	*536,958,294*	*5.25*	*94.75*
Jul	*589,583,881*	*27,387,004*	*562,196,877*	*4.65*	*95.35*
Aug	*611,285,713*	*25,658,011*	*585,627,702*	*4.20*	*95.80*
Sep	*642,786,523*	*20,568,924*	*622,217,598*	*3.20*	*96.80*
Oct	*565,786,523*	*18,383,398*	*547,403,124*	*3.25*	*96.75*
Nov	*622,583,773*	*35,007,388*	*587,576,385*	*5.62*	*94.38*
Dec	*722,116,954*	*3,318,353*	*718,798,600*	*0.46*	*99.54*
Jan	*570,330,837*	*6,772,853*	*563,557,984*	*1.19*	*98.81*
Feb	*601,866,572*	*9,537,850*	*592,328,723*	*1.58*	*98.42*
Mar	*827,994,566*	*12,369,806*	*815,624,760*	*1.49*	*98.51*
Grand Total	*7,584,814,791*	*261,415,582*	*7,323,399,208*		

29. From the aforesaid month-wise sales summary, it is evident that the total sales of the assessee during the year under consideration were ₹ 758,48,14,791, which includes cash sales of ₹ 26,14,15,582 and non-cash sales of ₹ 732,33,99,208. The assessee further submitted that the sales include a service tax @15%. From the perusal of the profit and loss account of the assessee, we find that the assessee disclosed a total revenue from operations of ₹ 71,861 lakh during the year under consideration. Thus, it is evident that the sales, i.e. cash sales and non-cash sales, were disclosed by the assessee in its financial statement and its income was assessed accordingly. It is evident from the record that the assessee also furnished the party-wise details of cash sales, which forms part of the paper book from pages 86-244, before the AO vide its letter dated 06/12/2019. However, it is evident from the record that the AO did not conduct any enquiry from any of these parties despite the fact that in some of the cases PAN no. was also provided by the assessee. Be that as it may, once the sales, i.e. cash sales and non-cash sales, recorded in the books of account have been accepted by the AO for arriving at the assessed income of the assessee, we find no basis in the findings of the AO in treating the cash sales deposited in the bank

account of the assessee, during the demonetisation period, as undisclosed income of the assessee. Accordingly, the findings of the learned CIT(A) are upheld and ground no. 2 raised in Revenue's appeal is dismissed.

30. In the result, the appeal by the Revenue for the assessment year 2017-18 is dismissed.

ITA no.485/Mum./2024 (Revenue's appeal)
Assessment Year 2018–19

31. In its appeal, the Revenue has raised the following grounds: –

"1) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) was erred in deleting disallowance of ESOP expenses of Rs.14,08,00,000/-?

2) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) was erred in treating the issue of disallowance of "Rs. 47,79,989/- expense claimed towards straight line of expense" as a question of law instead of question of fact?

3) The appellant craves leave to amend or alter any ground or add new ground which may be necessary."

32. The issue arising in ground no. 1, raised in Revenue's appeal, pertains to the deletion of disallowance made on account of ESOP expenses. Since a similar issue has already been decided in Revenue's appeal for the assessment year 2017-18, therefore the findings/conclusions rendered therein shall apply *mutatis mutandis*. Accordingly, the impugned order passed by the learned CIT(A) on this issue is upheld and the ground no. 1 raised in Revenue's appeal is dismissed.

33. The issue arising in ground no. 2, raised in Revenue's appeal, pertains to the deletion of disallowance of deduction claimed on the straight line of lease.

34. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, it was observed that the assessee has claimed an expenditure towards the straight line of leases amounting to ₹ 47,79,989. Accordingly, the assessee was asked to submit the details of the straight line of leases, its detailed working and justify its allowability. In response thereto, the assessee submitted that as per Indian Accounting Standard-17, operating lease payments are recognised as an expense in the statement of profit and loss account on a straight-line basis. The assessee further submitted that in its books, lease payments are booked on a straight-line basis and the difference between the actual rent and lease payment booked on a straight-line basis are either added back or claimed as a deduction from the net profit. The assessee submitted that the calculation of straight-line rent mostly results in a monthly rent expense that differs from the actual amount billed by the owner and the same is usually because the rent payment increases every year. As such, the straight-line amount charged to expense is higher than the actual amount billed during the initial period of the contract and lower than the actual amount billed during its final months. The assessee submitted that for the assessment years 2011-12 till 2017-18, the assessee added back the amount to the net profit and offered the same for taxation. However, for the assessment year 2018-19, the assessee has claimed the deduction for ₹ 47,79,989 for the straight-lining of leases. The

AO vide assessment order dated 23/04/2021 passed under section 143(3) read with section 144B of the Act did not agree with the submissions of the assessee and held that the assessee has not provided the supporting documents in support of his claim. The AO further held that the assessee has failed to submit rent agreements which would have proved the claim of deduction of the assessee and thus the assessee failed to discharge the onus cast on it. Accordingly, the amount of ₹ 47,79,989 claimed as a deduction for straight line of leases was disallowed and added to the total income of the assessee.

35. The learned CIT(A), vide impugned order, allowed the ground raised by the assessee on this issue and held that the assessee has followed consistently the same method of recognising the lease rent as per the accounting standard, which has been accepted by the Department. Accordingly, the learned CIT(A) directed the AO to delete the disallowance of the deduction of ₹ 47,79,989 on account of the straight-line lease. Being aggrieved, the Revenue is in appeal before us.

36. We have considered the submissions of both sides and perused the material available on record. In the present case, during the year under consideration, the assessee claimed a deduction for straight line of leases of ₹ 47,79,989 in its return of income. As per the assessee, the said deduction was claimed on the basis of the guidance provided under the Indian Accounting Standards-17. Further, the difference between the actual lease rent and lease rental as per the straight-line basis is calculated every year

and provision for straight-lining of the lease is made and the difference between the closing and opening balance is either added or reduced from the net profit in order to claim a deduction for the actual rent only for the purpose of tax. The assessee claimed that after the end of the term of the lease contract, the expenses booked on a straight-line basis as per the profit and loss account will be the same as the actual rent payment. As per the assessee, for the assessment year 2011-12 to the assessment year 2017-18, it added back the amount to the net profit and offered the same for taxation. However, for the year under consideration, the assessee has claimed the deduction of ₹ 47,79,989 for the straight-lining of leases. The details of the amount adjusted from the profit and loss account on account of the straight line of leases while computing the business income are as follows: –

Assessment year	*Added/ (Reduced) (in Rs.)*
2011-12	*62,09,917*
2012-13	*85,03,980*
2013-14	*97,51,616*
2014-15	*31,77,303*
2015-16	*81,24,617*
2016-17	*68,14,684*
2017-18	*1,98,47,640*
2018-19	*(47,79,989)*

37. It is evident from the record that the AO on the basis that in earlier years the assessee has added back the amount to the net profit, however in the year under consideration claimed a deduction for the straight-lining of leases, decided the issue against the assessee. Further, as per the AO, there is an anomaly compared to the earlier years, as in assessment year 2017-18 the amount added from the state lining of leases was ₹ 1,98,47,640 which

was much higher than the amount of ₹ 68,14,684 added in the assessment year 2016-17. However, it is pertinent to note that there is no dispute regarding the methodology adopted by the assessee for the straight-lining of leases as per Indian Accounting Standard-17. Further, we find that the coordinate bench of the Tribunal in Bata India v/s DCIT, reported in [2019] 111 taxmann.com 453 (Kol. - Trib.) held that where in consonance with Accounting Standards, lease rent expenditure was recognized on a straight-lining basis, which led to the creation of additional lease rental liability in the relevant assessment year, it would be deductible while computing profits of the business. Therefore, in light of the consistent method of recognising the lease rent adopted by the assessee and in view of the decision of the coordinate bench cited supra, we find no infirmity in the impugned order in deleting the disallowance of the deduction of ₹ 47,79,989 made by the AO on account of the straight-line lease. As a result, ground no. 2 raised in Revenue's appeal is dismissed.

38. In the result, the appeal by the Revenue for the assessment year 2018-19 is dismissed.

ITA no.484/Mum./2024 (Revenue's appeal)
Assessment Year 2020–21

39. The only grievance raised by the Revenue, in the present appeal, is pertaining to the deletion of disallowance made on account of ESOP expenses. Since a similar issue has already been decided in Revenue's appeal for the assessment year 2017-18, therefore the findings/conclusions rendered therein shall apply *mutatis mutandis*. Accordingly, the impugned order passed

by the learned CIT(A) on this issue is upheld and the grounds raised by the Revenue, in the present appeal, are dismissed.

40. In the result, the appeal by the Revenue for the assessment year 2020-21 is dismissed.

ITA no.483/Mum./2024 (Revenue's appeal)
Assessment Year 2021–22

41. The only grievance raised by the Revenue, in the present appeal, is pertaining to the deletion of disallowance made on account of ESOP expenses. Since a similar issue has already been decided in Revenue's appeal for the assessment year 2017-18, therefore the findings/conclusions rendered therein shall apply *mutatis mutandis*. Accordingly, the impugned order passed by the learned CIT(A) on this issue is upheld and the grounds raised by the Revenue, in the present appeal, are dismissed.

42. In the result, the appeal by the Revenue for the assessment year 2021-22 is dismissed.

43. To sum up, all the appeals by the Revenue are dismissed, while the appeal by the assessee for the assessment year 2017-18 is allowed.

Order pronounced in the open Court on 23/09/2024

Sd/-	**Sd/-**
OM PRAKASH KANT	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 23/09/2024

Poonam Mirashi, (Stenographer)

Copy of the order forwarded to:

(1) The Assessee;

(2) The Revenue;

(3) The PCIT / CIT (Judicial);

(4) The DR, ITAT, Mumbai; and

(5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai