



।आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE SATBEER SINGH GODARA, JUDICIAL
MEMBER, AND
DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.833/PUN/2024

निर्धारण वर्ष / Assessment Year: 2016-17

The Assistant Commissioner of Income Tax, Kolhapur.	V s	RBL Bank Ltd., Mahaveer, 179 E, Shri Shahu Market Yard SO Karvir – 416005. PAN: AABCT3335M
Appellant / Revenue		Respondent / Assessee

Assessee by	Shri S. Sriram & Shri Samyak Lohade
Revenue by	Shri Ajay Kumar Keshri - CIT
Date of hearing	17/09/2024
Date of pronouncement	20/09/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Revenue is against the order of
ld.Commissioner of Income Tax(Appeal)[NFAC], under section
250 of the Income Tax Act, 1961 dated 20.02.2024 for the
Assessment Year 2016-17. The Revenue has raised the following
grounds of appeal :



“1) On facts and circumstances of the case and in law the ld.CJT(A) erred in allowing the deduction of Rs.20,47,33,366/- by holding that ESOP is an allowable expense u/s 37(1) of the Act.

2) On facts and circumstances of the case and in law the ld.CIT(A) erred in allowing the deduction of Rs.93,46,419/- which was disallowed by AO on account of broken period interest expenses u/s 28 of the Act.

3) On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding the claim in respect of discount on equity shares issued under ESOP as allowable deduction under the head “Profit & Gains from Business or profession ” and disregarding the fact that the claimed expenditure is notional and hence not allowable in terms of the provisions of section 37(1) of the Income-tax Act, 1961.

4) On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding the broken period interest paid on 'Held to Maturity (HMT) Securities as allowable deduction without considering the Circular No. 665/1993 issued by the CBDT which clearly states that broken period interest is not allowable on investments as the same constitutes capital expenditure.

5) The appellant craves leave to add, alter, amend and modify any of the above or all grounds raised at time of proceedings before the Hon’ble Tribunal which may please be granted.”

Submission of ld.DR:

2. The ld.Departmental Representative(ld.DR) for the Revenue submitted that ESOP Expenditure is not an allowable expenditure u/sec.37 of the Act, as it is not Revenue Expenditure at all. It is a Capital Account Entry. The ld.DR also placed reliance on the decision of the Hon’ble Supreme Court in the case of EIMCO K.C.P. Ltd., vs. CIT [2000] 109 Taxman 151 (SC) in Civil Appeal No.45058-59 of 1994, dated 25.02.2000. The ld.DR read out the relevant paragraph 5.1 of the Assessment Order. Ld.DR submitted



that Interest on Broken Period is not an allowable expenditure. Ld.DR vehemently relied on the order of the Assessing Officer(AO).

Submission of Id.AR:

3. The Id.Authorised Representative(Id.AR) for the Assessee filed two paper books, i.e. one containing submission filed by the assessee before the AO and Id.CIT(A) and another containing Case Laws. Ld.AR submitted that payment of ESOP Expenditure is a covered issue settled by the Hon'ble Karnataka High Court in CIT Vs. Biocon Ltd., [2020] 430 ITR 151(Kar). Ld.AR also submitted that for A.Y.2017-18 in assessee's own case, ITAT in ITA No.509/PUN/2023 had allowed the ESOP Expenditure.

3.1 Ld.AR also explained that the issue related to Interest on Broken Period was also allowed by ITAT in assessee's own case in ITA No.509/PUN/2023. Ld.AR took us through the relevant paragraphs of the ITAT Order.

Findings & Analysis :

4. We have heard both the parties and perused the records.

**ESOP :**

4.1 It is observed that during the A.Y.2016-17 Assessee Bank had issued equity shares to its employees under ESOP Scheme at a discounting amount. Assessee claimed the said expenditure u/sec.37(1) of the Income Tax Act. Before the Assessing Officer, the assessee relied on ITAT's Special Bench decision in the case of Biocon Ltd., Vs. DCIT. It is observed that the Hon'ble Karnataka High Court in the case of Biocon Ltd.,(supra) had upheld the ITAT's Special Bench Decision. In assessee's own case for A.Y.2017-18 in ITA No.509/PUN/2023, ITAT had held as under:

“10. We note that the AO discussed the issue in para No. 7 of the assessment order dated 31-12-2019. We note that the assessee bank issued equity shares to its employees under ESOP Scheme at discount amounting to Rs.147,63,91,803/-. The assessee explained the said discount as business expenditure. The assessee claimed the said discount is nothing but employee stock option compensation expenses allowable u/s. 37(1) of the Act. According to the AO, no sufficient documentary evidences furnished by the assessee in support of the claim as business expenditure. Further, he observed the disallowances were made on the same issue in earlier years and attained no finality as were pending before the Hon'ble High Court of Bombay. By following the assessment order of earlier years he denied the deduction in respect of discount on equity shares under ESOP and added the same to the total income of the assessee vide para Nos. 7 to 7.8 of the assessment order. The assessee placed reliance on the order of Special Bench of Bangalore, ITAT in the case of Biocon Ltd.



and the decision of Hon'ble High Court of Madras in the case of SSI Capital Ltd. Vs. DCIT reported in 85 TTJ 104 before the CIT(A). The CIT(A) considering the said decisions and also many other decisions which are reproduced in para Nos. 11 and 12 of the impugned order, held the issue of employees stock option is an allowable deduction in computing the income under the head profits and gains of business and profession. The ld. DR did not bring on record any contrary to the finding of the CIT(A) in placing reliance on the order of Special Bench of Bangalore, ITAT in the case of Biocon Ltd. and the decision of Hon'ble High Court of Madras in the case of SSI Capital Ltd. (supra). Therefore, we find no infirmity in the order of CIT(A) and it is justified. Thus, ground Nos. A and B raised by the Revenue are dismissed.”

5. Ld.DR has not brought to our record any contrary decision of the Hon'ble Jurisdictional High Court on this issue. The case law relied by ld.DR is distinguishable on facts and not applicable to the facts under consideration. Therefore, respectfully following the Hon'ble Karnataka High Court(supra) and ITAT Pune's Decision in assessee's own case in ITA No.509/PUN/2023, the Ground No.1 and 3 raised by the Revenue are dismissed.

Interest on Broken Period:

6. In assessee's own in ITA No.509/PUN/2023, ITAT in Para 12 has held as under :



“12. We note that the AO discussed the issue in para No. 8 of the assessment order. On perusal of the same, the AO opined that the interest levied between the time gap of actual disbursement of the first installment of the loan and the time of the commencement of EMIs is broken period interest, is not allowable as expenditure. The AO disallowed an amount of Rs.7,54,88,125/- on account of broken period interest levied by the assessee and added the same to the total income of the assessee. The CIT(A) by placing reliance in the case of Prathamik Shikshan Sahara Bank Ltd. in ITA No. 491/PUN/2015 of ITAT Pune Benches held that the assessee is entitled to claim same as business expenditure. We note that on perusal of the impugned order that Pune ITAT Benches in order to come to such conclusion in the case of Prathamik Shikshan Sahara Bank Ltd. (supra) placed reliance in the case of HDFC Bank Ltd. reported in 366 ITR 505 (Bom.) and American Express International Banking Corporation reported in 258 ITR 601 (Bom.). The ld. AR placed the decision of Hon'ble High Court of Bombay in the case of HDFC Bank Ltd. and American Express International Banking Corporation (supra) at pages 52 to 71 of the paper book and careful consideration of the same, we find no infirmity in the order of CIT(A) in following the order of Pune Benches of ITAT in the case of Prathamik Shikshan Sahara Bank Ltd. (supra) in holding the assessee is entitled to claim broken period interest as deduction. Thus, ground Nos. C and D raised by the Revenue are dismissed. “

6.1 The facts are identical to A.Y.2016-17. Ld.DR has not brought to our notice any distinguishing feature. Therefore, respectfully following ITAT Pune's Decision in assessee's own



case in ITA No.509/PUN/2023, the Ground No.2 and 4 raised by the Revenue are dismissed.

6.2 Ground No.5 is general in nature, hence needs no adjudication. Accordingly, Ground no.5 is dismissed.

7. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 20th September, 2024.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 20th Sep, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.