

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” BENCH, MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JM &  
MS PADMAVATHY S, AM**

**I.T.A. No.3831/Mum/2024**  
(Assessment Year: 2015-16)

**I.T.A. No.3449/Mum/2024**  
(Assessment Year: 2016-17)

**I.T.A. No.4414/Mum/2024**  
(Assessment Year: 2017-18)

**I.T.A. No.3448/Mum/2024**  
(Assessment Year: 2018-19)

<b>Syngenta India Private Ltd.</b> (Erstwhile known as Syngenta India Ltd.), 1 <sup>st</sup> Floor, Amar Paradigm, S. No. 110/11/3 Baner Road, Pune-411045. <b>PAN : AA ECS9424P</b>	Vs.	<b>ACIT, Circle-1(3)(1),</b> 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant / Assessee by** : Shri Rajan Vora & Shri Pranay Gandhi, AR

**Revenue / Respondent by** : Shri Nagnath Bhimrao Pasale, Sr. DR

**Date of Hearing** : 12.11.2024  
**Date of Pronouncement** : 21.11.2024

ORDER

**Per Bench:**

These appeals by the assessee are against the separate orders of Commissioner of Income Tax (Appeals)/ National Faceless Appeal Centre (NFAC) Delhi [in short 'the CIT(A)'] dated 04.06.2024 for Assessment Year (AY) 2015-16, dated 07.05.2024 for AY 2016-17 & 2018-19 & dated 03.07.2024 for AY 2017-18.

2. The assessee is a private limited company engaged in crop protection business and seed business. The crop protection business involves manufacturing and formulating crop protection chemicals which are categorized as insecticides, fungicides and herbicides. The seed business involves breeding, multiplying and distribution of hybrid seeds. The details of returns filed by the assessee and the additions made by the AO are tabulated as below:

<b>Particulars</b>	<b>AY 2015-16</b>	<b>AY 2016-17</b>	<b>AY 2017-18</b>	<b>AY 2018-19</b>
Income returned	Rs. 374,81,72,960	Rs. 516,32,77,666	Rs. 485,44,34,450	Rs. 427,71,44,180
Date of filing of return	30.11.2015	30.11.2016	30.11.2017	30.11.2018
Disallowance towards additional depreciation	Rs.11,17,286			
Loss not allowed to be set-off	Rs. 2,41,49,870			
Disallowance of deduction under section 35(1)(iv)	Rs.1,04,50,113			
Denial of deduction with respect to education cess		Rs. 5,20,45,839	Rs. 4,98,54,423	Rs. 4,29,03,132
Disallowance of ESOP Expenses			Rs. 4,01,60,882	

3. Aggrieved the assessee filed further appeals before the CIT(A). For AY 2015-16 the assessee contended the issues of not allowing the set-off of carry forward loss and disallowance of deduction under section 35(1)(iv). The assessee

also raised the additional ground of claiming refund of excess DDT. The CIT(A) gave partial relief to the assessee by deleting disallowance of deduction under section 35(1)(iv). For AY 2017-18 the assessee contended the issue of disallowance of ESOP expenses before the CIT(A) along with the issue of denied the deduction with respect to education cess and secondary in higher education cess which were dismissed by the CIT(A). The CIT(A) also dismissed the grounds raised by the assessee with respect to education cess for AY 2016-17 & 2018-19. The assessee is in appeal against the orders of the CIT(A) before the Tribunal. The common issue contended in all these appeals pertain to refund of Dividend Distribution Tax (DDT) paid in excess of DTAA rates. For AY 2017-18 the assessee has also raised grounds pertaining to disallowance of ESOP Expenses under section 37(1) of the Income Act, 1961 (the Act). The assessee for all the AYs raised additional ground which reads as under:

*“Based on the facts and circumstances of the case and in law, the learned CIT(A) and learned AO ought to have considered income from the seeds business as income from agricultural activities exempt under section 10(1) of the Act”*

4. With regard to the grounds raised with respect to refund of DDT paid in excess of DTAA rates, the ld AR fairly conceded that the issue is covered against the assessee by the decision of Special Bench of the Mumbai Tribunal in the case of DCIT vs Total Oil India (P.) Ltd ([2023] 149 taxmann.com 332 (Mumbai - Trib.) (SB)) where it has been held that DTAA does not get triggered at all when a domestic company pays DDT under section 115-O. Accordingly we dismiss the ground raised by the assessee in this regard for all the AYs under consideration.

5. On the issue of disallowance of ESOP expenses, we notice that the the issue is covered by the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Biocon Ltd. (2020) 430 IR 151 (Kar. HC) where it has been held that –

*“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 fulfillment 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).”*

6. Respectfully following the above judicial precedence, we hold that the ESOP expenses claimed by the assessee an allowable expenditure under section 37(1) of the Act. Accordingly, we direct the AO to allow the claim of the assessee. This ground raised by the assessee for AY 2017-18 in this regard is allowed.

7. We will now consider the issue of admission additional ground raised by the assessee in all the AYs under consideration. The ld. AR at the outset submitted that the additional ground raised by the assessee with respect to the lower authorities not granting exemption under section 10(1) of the Act towards the income derived by the assessee from sale of seed. The ld. AR submitted that the facts pertaining to the impugned issue are already part of records. In this regard took the bench through the financial statements wherein the income derived by the assessee from seed business is separately reported and the various details furnished in the annual report of the company with regard to the seeds business (page 9, 19, 25, 40, 63, 68 & 69 of PB of AY 2015-16). Therefore, the ld. AR submitted that the admission of the additional ground will not warrant examination of any new facts. The ld. AR in this regard relied on various decisions including the decision of the Hon'ble Supreme Court in the case of Wipro Finance Ltd. 287 taxman 155 (SC) and the decision of Jurisdictional High Court in the case of Pruthvi Brokers and Shareholders (2008) taxman 498 (Bom. HC). On merits of the issue the ld. AR also drew our attention to the supplementary evidence containing the order under GST Act wherein it is submitted that the assessee is engaged in seed business for showing purposes (page 159 & 160 of PB for AY 2015-16). The ld. AR therefore, submitted that the assessee is considered as agriculturist with respect to the seed business and therefore, the income earned by the assessee from seed business

which constitutes approximately 25% of the total revenue of the assessee should be exempt under section 10(1) of the Act.

8. The Id. DR on the other hand vehemently opposed the admission of additional ground stating that it is a fresh claim made by the assessee for the first time before the Tribunal. On the merits the Id. DR submitted that the assessee is not carrying on any agricultural activity and is supplying only seeds to growers who are actually engaged in agricultural activity. Therefore, the Id. DR argued that the assessee cannot claim exemption under section 10(1) towards seed business.

9. We heard the parties and perused the material on record. As per the Annual report the assessee is engaged in the business of Crop Protection which consists of licensed manufacturing / contract manufacturing business, Seeds business and Business support services. In Seeds business it is submitted that the assessee is dealing with two varieties of seeds namely vegetable seeds and field crop seeds and that the income from seeds business is approximately 25% of its revenue. Through additional ground the assessee is claiming the income derived from Seed business as exempt under section 10(1) of the Act as agricultural income. For the purpose of adjudication we will restrict our findings only to the extent of admission of additional ground and we will not go into the merits as to whether the income from Seeds business in assessee's case is eligible for deduction under section 10(1) of the Act.

10. The contention of the assessee is that all the facts pertaining to seeds business are already part of record and therefore admitting the additional ground will not result in examining any new facts. On the other hand, the revenue is contending that the claim of exemption under section 10(1) is made for the first

time before the Tribunal and therefore, cannot be entertained. From the perusal of financial statements submitted, it is clear that the assessee has reported the income from Seeds business separately and that as part of Annual Report, the assessee has reported various facts pertaining to the Seeds. Accordingly in our view, there is merit in the submission that the issue contended through additional ground does not warrant examination of new facts. With regard to the issue of whether we a fresh claim can made for the first time before the Tribunal we notice the Hon'ble Supreme Court in the case of Wipro Finance Ltd. (supra) has considered a similar issue and held that –

*"3. In the appeal before the ITAT, the appellant not only claimed deduction in respect of loss of Rs. 1,10,53,909/- arising on account of exchange fluctuation, but also set up a fresh claim in respect of revenue expenses to the tune of Rs. 2,46,04,418/-, erroneously capitalised in the returns. The ITAT entertained this fresh claim set forth by the appellant and recorded in its judgment that the department's representative had no objection in that regard. Additionally, the ITAT adverted to the decision of this Court in National Thermal Power Co. Ltd. v. CIT [1998] 97 Taxman 358/229 ITR383 in support, for entertaining fresh claim of the appellant in exercise of powers under section 254 of the 1961 Act.*

.....

*10. The learned ASG appearing for the department had faintly argued that since the appellant in its return had taken a conscious explicit plea with regard to the part of the claim being ascribable to capital expenditure and partly to revenue expenditure, it was not open for the appellant to plead for the first time before the ITAT that the entire claim must be treated as revenue expenditure Further, it was not open to the ITAT to entertain such fresh claim for the first time. This submission needs to be stated to be rejected. In the first place, the ITAT was conscious about the fact that this claim was set up by the appellant for the first time before it, and was clearly inconsistent and contrary to the stand taken in the return filed by the appellant for the concerned assessment year including the notings made by the officials of the appellant. Yet, the ITAT entertained the claim as permissible, even though for the first time before the ITAT, in appeal*

*under section 254 of the 1961 Act, by relying on the dictum of this Court in National Thermal Power Co. Ltd. (supra). Further, the ITAT has also expressly recorded the no objection given by the representative of the department, allowing the appellant to set up the fresh claim to treat the amount declared as capital expenditure in the returns (as originally filed), as revenue expenditure. As a result, the objection now taken by the department cannot be countenanced.*

*11. Learned ASG had placed reliance on the decision of this Court in Goetze (India) Ltd. v. CIT [2006] 157 Taxman 1/284 ITR 323 in support of the objection pressed before us that it is not open to entertain fresh claim before the ITAT. According to him, the decision in National Thermal Power Co. Ltd. (supra) merely permits raising of a new ground concerning the claim already mentioned in the returns and not an inconsistent or contrary plea or a new claim. We are not impressed by this argument. For, the observations in the decision in Goetze (India) Ltd. (supra) itself make it amply clear that such limitation would apply to the "assessing authority", but not impinge upon the plenary powers of the ITAT bestowed under section 254 of the Act. In other words, this decision is of no avail to the department."*

11. Similar view has been held by the Jurisdictional High Court in the case of Pruthvi Brokers and Shareholders (supra). The relevant observations of the Jurisdictional High Court is extracted below –

*"22. It was then submitted by Mr. Gupta that the Supreme Court had taken a different view in Goetze (india) Ltd (supra). We are unable to agree. The decision was rendered by a Bench of two learned judges and expressly refers to the judgment of the Bench of three learned judges in National Thermal Power Comp Ltd. (supra). The question before the Court was whether the appellant-assessee could make a claim for deduction, other than by filing a revised return. After the return was filed, the appellant sought to claim a deduction by way of a letter before the Assessing Officer. The claim, therefore, was not before the appellate authorities. The deduction was disallowed by the Assessing Officer on the ground that there was no provision under the Act to make an amendment in the return of income by modifying an application at the assessment stage without revising the return. The Commissioner of Income-tax*

*(Appeals) allowed the assessee's appeal. The Tribunal, however, allowed the department's appeal. In the Supreme Court, the assessee relied upon the judgment in National Thermal Power Co. Ltd. (supra) contending that it was open to the assessee to raise the points of law even before the Tribunal. The Supreme Court held:-*

*"4. The decision in question is that the power of the Tribunal under section 254 of the Income- tax Act, 1961, is to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised before the Tribunal. The decision does not in any way relate to the power of the Assessing Officer to entertain a claim for deduction otherwise than by filing a revised return. In the circumstances of the case, we dismiss the civil appeal. However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the income-tax Appellate Tribunal under section 254 of the Income-tax Act, 1961. There shall be no order as to costs." [Emphasis supplied]*

*23. It is clear to us that the Supreme Court did not hold anything contrary to what was held in the previous judgments to the effect that even if a claim is not made before the assessing officer, it can be made before the appellate authorities. The jurisdiction of the appellate authorities to entertain such a claim has not been negated by the Supreme Court in this judgment. In fact, the Supreme Court made it clear that the issue in the case was limited to the power of the assessing authority and that the judgment does not impinge on the power of the Tribunal under section 254."*

12. Applying the ratio laid down by the Hon'ble Supreme Court and Jurisdictional High Court and considering the fact that the details pertaining to seeds business are already part of record, we are inclined to admit the additional ground raised by the assessee.

13. The Id AR made written submissions praying that the impugned issue may be remitted back to the Jurisdictional Assessing Officer (JAO) instead of faceless assessment centre and in this regard placed reliance on the decision of the Bombay

High Court in the case of Ashok Chaganlal Thakkar vs NFAC [2024] 159 taxmann.com559 (Bombay)

14. On merits of the impugned issue, the assessee has made the claim for the first time before the Tribunal and that the eligibility of the assessee to claim exemption towards seed business under section 10(1) of the Act needs factual verification. Further, the issue of whether the income from Seeds Business will fall within the purview of exemption under section 10(1) as agricultural income may involve making enquiries regarding matters unique to the impugned issue which in our view would be easier for the JAO to carry out instead of NFAC. We in this regard are placing reliance on the decision of the jurisdictional High Court in the case of Ashok Chaganlal Thakkar (supra) and the decision of the coordinate bench in the case of Rapport Outdoor Advertising Pvt Ltd (ITA No.922/Mum2024 dated 28.08.2024). Therefore we are remitting the impugned issue to the file of the JAO with a direction to examine the claim of the assessee based on facts and evidences and decide the allowability in accordance with law. Needless to say that the assessee be given a proper opportunity of being heard.

15. In the result, the appeals of the assessee for AY 2015-16 to 2018-19 are partly allowed.

*Order pronounced in the open court on 21-11-2024.*

*Sd/-*  
**(SANDEEP GOSAIN)**  
**Judicial Member**

*Sd/-*  
**(PADMAVATHY S)**  
**Accountant Member**

*\*SK, Sr. PS*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai

4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**