

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

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 5176/MUM/2024
(A.Y. 2022-23)**

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| ACIT, CC-6(4), Mumbai Room No. 453, Kautilya Bhavan, G Block, Bandra (E), Mumbai-400051 | v/s. बनाम | Indiabulls Real Estate Limited. Office No. 01-1001, Wework, Blue One Square, Udyog Vihar Phase 4, Gurgaon, 122016, Haryana-122016 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCI5194F | | |
| Appellant/अपीलार्थी | .. | Respondent/प्रतिवादी |

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| Assessee by : | Shri K Gopal |
| Revenue by : | Shri Satya Pal Kumar |

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| Date of Hearing | 13.11.2024 |
| Date of Pronouncement | 30.12.2024 |

आदेश / O R D E R

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the revenue against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-54/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 01.07.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2022-23.

2. The assessee has raised following grounds of appeal:

“1. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the claim of ESOP expenses without appreciating that by issuing shares at below the market price, the assessee company has not incurred any revenue expenditure, rather it resulted in short receipt of share premium which the assessed was otherwise entitled to, on capital account

2 Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the claim of ESOP expenses without appreciating that as the receipt of share premium is not taxable, any short receipt of such premium will only be a notional loss and not actual loss requiring any deduction, hence, incurring of such notional loss cannot be considered as expenditure within the meaning of section 37(1) of the Income tax Act, 1961, as there was no "spending" or "paying out or away"?”

3. All the grounds essentially deal with the sole issue of claim of ESOP expenses u/s 37(1) of the Act.

4. The brief facts of the case are that the assessee, in its return of income, had claimed ESOP expenses of Rs. 13,49,01,651/-. This amount had not been deducted in the P&L but was directly claimed in the computation filed with Income tax return. During the course of assessment proceedings, Ld. AO held that this expenditure was not in the nature of revenue expenditure as the same had been incurred towards raising share capital and was, therefore, capital in nature. Accordingly, the entire claim of Rs. 13,49,01,651/- was added to the total income of the assessee.

5. Ld. CIT(A), following the orders of his predecessors as well as of the co-ordinate bench in assessee’s own case, held the ESOP expenses to be allowable expenses u/s 37(1) of the Act and allowed the appeal of the assessee with the following observations:

“5.5 Respectfully following the earlier orders of the CIT(A) and the Hon'ble Mumbai ITAT in the assessee's own case, the ESOP expenses are held to be allowable expenses u/s 37(1) of the Act. However, as also directed by the Hon'ble ITAT in AY 2012-13, the



AO is directed to carry out the arithmetic calculation of apportioning the year wise discount over the period of vesting taking into consideration the options granted to the employees and determination of the perk value and allow the same as per the provisions of the Income Tax Act 1961. This ground of appeal is thus allowed for statistical purposes.”

6. Aggrieved with the order of Ld. CIT(A), the revenue is in appeal before us.

7. Ld. AR submitted that the issue has been earlier decided in assessee's favour in his own case for AY 2012-13. It was, further, submitted that the issue is now well settled as the Special Bench of ITAT, Bangalore in the case of *M/s Viacom Ltd.* has also decided the issue in favour of the assessee. There have been numerous other decisions including that of the Delhi High court in the case of *Lemon Tree Hotels Ltd.* as well as of various co-ordinate benches of the Tribunal across the country wherein this issue has been decided in favour of the assessee.

8. Ld. AR placed a copy of the order of the co-ordinate bench for AY 2012-13 wherein after detailed discussions, the issue was decided in favour of the assessee with following observations.

“26. From the details filed in the case Indiabulls Real Estate Ltd., we find that two schemes have been issued by the assessee namely, IBREL ESOP 2006 and IBREL ESOP 2007. The spread of ESOP 2006 was from FY 2006-07 to 2013-14 whereas ESOP 2008 spread from FY 2008-09 to FY 2009-10. The assessee has also given the details of date of vesting, number of shares granted, number of shares vested, perk value, taxed in the hands of employees, period of vesting. The perk value of the share ranged from Rs.635/- to Rs.134/- and Rs.101/-. The perk value of the share on the date of vesting i.e. 01.11.2011 was Rs.6158/-. The discount given in the ESOP 2008 scheme was Rs.110.50. Further, no material was placed as to what was the value of the shares as per the market at different years of vesting (page 143 to 154 PB).....

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28. Hence, while laying down the principle that the discount offered on the shares under the ESOP of scheme is allowable deduction u/s 37(1) of the Act, we hereby remand the matter to the file of the AO for the limited purpose of arithmetic calculation of apportioning the year wise discount over the period of vesting taking into consideration, the options granted to the employees, determination of the perk value, FBT levied and allow the same as per the provisions of the Income Tax Act, 1961.”

9. Ld. DR, on the other hand, strongly relied on the orders of the lower authorities.

10. We have carefully considered the rival submissions and perused the material placed before us. Respectfully following the order of the co-ordinate bench in the assessee’s own case for AY 2012-13, we hereby uphold the order of the Ld. CIT(A) and direct the AO to carry out the arithmetical calculation of apportioning the year wise discount over the period vesting, taking into consideration, the options granted the employees, determination of the perk value etc. and allow the same as per the provisions of the Act.

11. Accordingly, the revenue’s appeal is dismissed.

Order pronounced in the open court on 30.12.2024.

Sd/-

ANIKESH BANERJEE

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 30.12.2024

अनिकेत सिंह राजपूत/ स्टेनो

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :



1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

