

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.3518/Mum/2025
(Assessment Year :2015-16)**

Procter & Gamble Hygiene and Health Care Limited 495, P & G Plaza Cardinal Gracias Road Chakala, Andheri (E) Mumbai – 400 099	Vs.	Assessment Unit, National Faceless Assessment Centre, Delhi (Dy. Commissioner of Income Tax-2(3)(1), Mumbai
PAN/GIR No.AAACP6332M		
(Appellant)	..	(Respondent)

Assessee by	Shri Yogesh Thar & Shri Urvish Shah
Revenue by	Shri R.A. Dhyani, CIT DR
Date of Hearing	15/07/2025
Date of Pronouncement	31/07/2025

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 31/03/2025 passed by NFAC, Delhi for the quantum of assessment passed u/s.147 / 143(3) for the A.Y.2015-16.

2. In various grounds of appeal assessee has challenged the validity of reopening u/s.148 on various grounds and on merits has challenged disallowance of expenses paid to parent

company towards Employee Stock Option Plan (ESOP) and the International Stock Ownership Plan (ISOP) amounting to Rs.11,17,00,000/-

3. The ultimate holding company, Procter & Gamble Co., USA (“the Holding Company”), had formulated and administered globally integrated stock-based compensation schemes, namely the Employee Stock Option Plan (ESOP) and the International Stock Ownership Plan (ISOP), which were extended to the employees of the appellant company. [Refer pages 113–159 of the Financial Paper Book].

4. Under the ESOP scheme, certain eligible employees of the appellant were granted rights to receive stock-linked benefits upon fulfilment of prescribed vesting conditions. Conversely, under the ISOP, all employees could voluntarily participate and contribute a portion of their base salary (up to 15 percent) toward the purchase of the holding company’s shares listed on the New York Stock Exchange, with the appellant contributing 50 percent of such contribution, subject to a cap of 2.5 percent of the employee’s base salary.

5. The appellant claimed ₹49,00,000 as an employee benefit expense under the ISOP, duly debited to its profit and loss account, after deducting tax at source under section 192 of the Income-tax Act, 1961. [Refer Note 27; page 49 of FPB].

6. In respect of the ESOP, the appellant reimbursed the Holding Company for the stock appreciation benefits

disbursed to employees upon vesting. The appellant bore the cost proportionate to the employee's service rendered in India. During the relevant year, ₹10,68,00,000 was claimed under this head, aggregating the total claim under both schemes to ₹11,17,00,000.

7. The ld. AO disallowed the entire claim of ₹11,17,00,000 on the ground that the expenditure did not crystallise during the relevant previous year and was in the nature of contingent or notional outlay, lacking actual cash outflow or irrevocable obligation.

8. The ld. AO observed that stock-based awards under ESOP and ISOP were conditional upon employee actions such as vesting or continued employment. Therefore, the expenditure could not be said to have been incurred during the relevant year.

9. Additionally, the ld. AO opined that the cost, to the extent it relates to any shortfall in the securities premium or stock price differential, partakes the nature of capital expenditure, being intrinsically linked to share capital.

10. In support of his findings, the ld. AO placed reliance on decisions such as ACIT v. Ranbaxy Laboratories Ltd., Eimco K.C.P. Ltd. v. CIT (159 CTR 137, SC), CIT v. Reinz Talbros Pvt. Ltd. (252 ITR 637, Delhi HC), and Indian Molasses Co. Pvt. Ltd. v. CIT (37 ITR 66, SC), to emphasize that deductible

expenditure must be real, ascertained, and irrevocably incurred.

11. The Id. CIT(A) affirmed the disallowance made by the AO in toto, observing that the AO had passed a well-reasoned and detailed order based on binding precedents.

12. It was noted that similar disallowance in the assessee's own case for AY 2016-17 had already been confirmed by the Dispute Resolution Panel, and that the factual matrix and legal issues remained materially unchanged.

13. The Id. CIT(A) dismissed the assessee's reliance on the judgment of the Hon'ble Karnataka High Court in CIT v. Biocon Ltd. [2020] 121 taxmann.com 351 (Kar), observing that the said decision was under challenge before the Hon'ble Supreme Court via a pending SLP, and hence not final.

14. The learned counsel for the assessee assailed the disallowance, submitting that the impugned expense represents a legitimate business expenditure allowable under section 37(1) of the Act.

15. It was clarified that the stock compensation plans emanate from the holding company and not the assessee. The appellant merely reimburses the holding company for that portion of benefit attributable to Indian employees, based on vesting or contribution criteria, and the corresponding

payments are actually made, tax deducted, and recorded in the books.

16. In support, the assessee furnished (i) cross-charge invoices, (ii) Form 15CAs evidencing foreign remittances, and (iii) Form 12BAs establishing perquisite taxation in the hands of employees. These facts conclusively demonstrate that the expense is not contingent or notional but a real and revenue expenditure.

17. It was contended that such expenses are incurred wholly and exclusively for business purposes to incentivise, retain, and reward key personnel, and are squarely covered by the doctrine of commercial expediency.

18. Strong reliance was placed on the decision of the Hon'ble Special Bench in *Biocon Ltd. v. DCIT* (144 ITD 21) (Bang), affirmed by the Hon'ble Karnataka High Court in *CIT v. Biocon Ltd.* [2020] 121 taxmann.com 351, which categorically held that ESOP discounts form part of employee remuneration and are deductible under section 37(1) of the Act.

19. The ld. DR supported the orders of the ld. AO and the ld. CIT(A), contending that the disallowance was justified on grounds of non-crystallisation of liability and the notional nature of the expenditure.

20. The Ld. DR submitted that the impugned claim arises from contingent events such as employee vesting or continued service and does not represent an ascertained liability. The expense was thus not allowable in the relevant year under section 37(1).

21. He further argued that stock-based benefits are intrinsically linked to capital structure, and hence the associated cost bears capital character. In absence of any new facts or material to rebut the settled position adopted in earlier years, the disallowance deserved to be upheld on principles of judicial consistency.

22. We have carefully considered the rival submissions and examined the evidentiary material placed on record. We find that the disallowance of ₹11,17,00,000 made by the lower authorities does not stand the test of law or fact.

23. The ESOP and ISOP schemes originate from the foreign holding company and involve no issuance of shares or premium by the appellant. The appellant merely reimburses actual costs in relation to its own employees, which are recorded in the books and supported by actual payments and TDS deduction.

24. The evidences produced cross-charge invoices, foreign remittance documentation, and perquisite reporting clearly establish the crystallisation of liability and actual outgo in the relevant previous year.

25. The argument that the expenditure is capital in nature due to linkage with shares is misconceived. The shares are those of the holding company, not the appellant. No capital advantage accrues to the appellant, nor is there any change in its capital structure.

26. The judgment of the Hon'ble Karnataka High Court in Biocon Ltd. is directly on point. Pending appeal before the Hon'ble Supreme Court does not detract from its binding effect in the absence of a stay or contrary ruling.

27. Moreover, the principle of commercial expediency laid down in decisions such as *Sassoon J. David & Co. (P) Ltd. v. CIT* (118 ITR 261, SC) and *CIT v. Walchand & Co.* (65 ITR 381, SC) mandates allowance of any expenditure incurred to secure competent workforce and ensure organisational growth.

28. In the present case, the appellant's outlay towards ESOP and ISOP represents a conscious, business-driven compensation mechanism to reward and retain employees. The cost is real, the benefit is quantifiable, and the purpose is unambiguously business-centric.

29. In view of the foregoing analysis, we hold that the disallowance of ₹11,17,00,000 made under section 37(1) of the Act is unsustainable. The expenses are duly incurred, fully substantiated, and allowable as revenue expenditure.

30. Accordingly, the disallowance is directed to be deleted and Ground No. 3 of the appeal is allowed.

31. With regard to Ground No.3, Excess levy of interest u/s.234B of the Act amounting to Rs.14,78,16,335/- is consequential in nature and therefore, ground raised by the assessee is dismissed.

32. Ground No.4 relates to Excess levy of interest u/s.234C of the Act amounting to Rs.2,49,41,429/-. It is submitted that interest u/s. 234C of the Act is levied on the returned income and not assessed income. Therefore, the Assessee submitted that excess interest levied u/s. 234C of the Act amounting to Rs. 2,49,41,429/- ought to be deleted. In view of the above, ld. AO is directed to compute the interest as per the return income and not as per assessed income.

33. Since we have already decided the issue on merits and deleted the disallowance, therefore, the grounds raised on validity of reopening is kept open and treated as academic. Thus, the legal grounds raised are dismissed as infructuous.

34. In the result, appeal of the assessee is partly allowed.

Order pronounced on 31st July, 2025.

Sd/-

(RENU JAUHRI)

ACCOUNTANT MEMBER

Mumbai; Dated 31/07/2025
KARUNA, sr.ps

Sd/-

(AMIT SHUKLA)

JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai