

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "K" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 4276/MUM/2025
Assessment Year: 2013-14**

DCIT-7(1)(1),
Room No. 144A, 1st floor,
Aayakar Bhawan,
Mumbai-400020.

Appellant

Goldman Sachs (India) Securities
Pvt. Ltd.,
Vs. 951 A, Rational House,
Appasaheb Marathe Marge,
Prabhadevi,
Mumbai-400025.
PAN NO. AAFCA 6819 F
Respondent

Assessee by : Mr. Fenil Bhatt
Revenue by : Ms. Neena Jeph, CIT-DR

Date of Hearing : 14/08/2025
Date of pronouncement : 09/09/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 14.04.2025 passed by the Ld. Commissioner of Income-tax (Appeals) – 56, Mumbai [in short ‘the Ld. CIT(A)’] for assessment year 2013-14, raising following grounds:

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in holding that the discount on issue of ESOP is allowable as deduction in*



computing the income under the head profits and gains of the business.

- 2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in holding that difference between market price of the shares at the time of grant of option and offer price amounts to discount and same has to be treated as remuneration to Employees for their service.*
- 3. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) committed error in not examining the scheme of ESOP from which it is clear that the employees will not get any right in the shares till completion of the period prescribed and the expenditure claimed is contingent and recorded perverse finding.*
- 4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in holding that the penalty was on account of irregularities committed by the assessee's clients without appreciating the fact that non-compliance to clearing house trades and client code modification are defaults attributable to the assessee company majorly and not to its clients.*

2. Briefly stated, the facts of the case are that the assessee, a Private Limited Company incorporated under the laws of India, is a wholly owned subsidiary of Goldman Sachs (Mauritius) LLC. The assessee is duly registered with the Securities and Exchange Board of India (SEBI) as a Merchant Banker and is also registered with the National Stock Exchange as a Stock Broker. During the year under consideration, the assessee was engaged in the business of providing merchant banking services and carrying on securities transactions in India.

2.1 The assessee filed a revised return of income for the year under consideration on 31.03.2015, declaring a total income of Rs. 4,183,593,840/-. The said return was selected for scrutiny assessment, consequent to which a notice under section 143(2) of



the Income-tax Act, 1961 (hereinafter referred to as 'the Act') was issued by the Learned Assistant Commissioner of Income Tax-7(1)(1), Mumbai (hereinafter referred to as 'the Ld. Assessing Officer'). Having regard to the international transactions undertaken by the assessee with its Associated Enterprises (AEs), the Ld. Assessing Officer made a reference to the Learned Transfer Pricing Officer (Ld. TPO) for determination of the arm's length price of such transactions. The Ld. TPO, vide order passed under section 92CA(3) of the Act dated 28.10.2016, accepted the arm's length price declared by the assessee and proposed no adjustment. Thereafter, the Ld. Assessing Officer completed the assessment under section 143(3) read with section 144C(1) of the Act on 28.12.2016, assessing the total income at Rs. 5,75,17,34,105/-. While doing so, he made the following disallowances: (i) Employee Stock Option Plan (ESOP) cost of Rs. 56,44,29,191/-, holding the same to be notional and contingent in nature; and (ii) charges of Rs. 37,11,074/- paid to the stock exchanges, treating them as penal in nature and hence not allowable under section 37(1) of the Act.

2.2 Aggrieved, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) deleted both the additions following the finding of the ITAT in the case of the assessee in earlier years. Aggrieved with the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal by way of raising grounds as reproduced as above.



3. The ground Nos. 1 to 3 of the appeal relate to discount cost on ESOP , which has been allowed by the Ld. CIT(A) as deduction while computing the income under the head 'profit and gains of the business'.

4.1 Briefly stated, the facts relevant to the issue in dispute are that Goldman Sachs Group Inc. (hereinafter 'GSGI') had formulated a global stock award plan, the benefits whereof were extended to the employees of its subsidiaries and associated entities, including the assessee-company. Under the said scheme, the assessee granted ESOPs of GSGI to its employees. The ESOPs entitled the employees, upon fulfillment of stipulated conditions, to receive shares of GSGI. Upon completion of the vesting period, the shares of GSGI would be delivered to the employees, for which the assessee was required to make payment to GSGI. The quantum payable by the assessee to GSGI was determined with reference to the market value of the shares of GSGI on the date of such delivery.

4.2 As per the consistently followed global accounting policy of the group, the grant price of ESOPs, as on the date of grant, was amortized in the books of the assessee over the vesting period of the award. At the close of each financial year, the outstanding shares were marked to market with reference to the fluctuation in the stock price vis-à-vis the grant price, and the differential, if any, was duly adjusted to the Profit and Loss Account. This method of accounting was in consonance with the applicable accounting



standards in India. The payment so required to be made to GSGI on account of ESOPs granted to employees was considered by the assessee as part of 'salary cost' in the year of incurrence, and accordingly claimed as revenue expenditure wholly and exclusively laid out for the purpose of its business.

4.3 During the financial year ended 31.03.2013, the assessee debited an amount of Rs.564,429,191/- (inclusive of mark-to-market fluctuation of Rs.135,125,414/-) as ESOP cost in its Profit and Loss Account and claimed deduction thereof in computation of its taxable income. Out of this amount, Rs.153,747,734/- represented bonus paid to employees during the year, which had inadvertently been clubbed under the head 'ESOP cost'. It is claimed by the assessee that vide submission dated 21.12.2016, the assessee requested that such bonus amount be excluded from the ESOP disallowance, if any, since the same was independently allowable under section 43B of the Act, however, the Ld. Assessing Officer, in his assessment order, did not separately adjudicate this plea and proceeded to disallow the entire ESOP cost.

4.2 Before us, the Ld. Counsel for the assessee submitted that the issue is no longer res integra, as it stands covered in favour of the assessee by the orders of the Tribunal in its own cases for several assessment years, namely AYs 2009-10 (ITA No.222/Mum/2014), 2010-11 (ITA No.1546/Mum/2015), 2011-12 (ITA No.927/Mum/2016), 2012-13 (ITA No.1428/Mum/2017), 2014-15



(ITA No.6475/Mum/2018), 2015–16 (ITA No.7207/Mum/2019), and more recently for AY 2017–18 (ITA No.763/Mum/2022, order dated 09.12.2024) as well as AY 2018–19 (ITA No.2436/Mum/2022, order dated 03.06.2025).

5. We have heard rival submissions and perused the material on record. The Ld. CIT(A), having examined the assessee's submissions and relying upon the binding precedent of the Tribunal in assessee's own case for AY 2017–18, deleted the disallowance by observing as under:—

“6.4. Decision: The issue has been decided by the Hon'ble ITAT, Mumbai in the assessee's own case for A.Y 2017-18 on 09.12.2024 relying on the earlier assessment year ie. AY 2009-10. The relevant extract of the Hon'ble ITAT's order for A.Y.2009-10 is reproduced as under:

“....

12.3. Before us, the Ld. Senior Counsel drew our attention to the decision of the Special Bench of the Bangalore Tribunal in the case of Blocon Ltd 144 ITD 21 (Bang) wherein on similar facts the discount on issue of ESOP was allowed as deduction.

12.4. The Ld. DR could not bring any distinguishing decision in favour of the Revenue. Respectfully following the decision of the Special Bench (supra), we hold that discount on issue of employees stock options is allowable as deduction in computing the income under the head profits and gains of business of profession. Ground No. 5 & 6 are accordingly allowed”

5.1 Before us, the Ld. Counsel has also placed reliance upon the decision of the Co-ordinate Bench in assessee's own case for AY 2018–19 (ITA No.2436/Mum/2020), wherein following the findings of earlier years including AY 2010–11, the Tribunal deleted the



disallowance. Having considered the totality of facts, we are of the considered view that the Ld. CIT(A) has passed a reasoned order, duly supported by binding precedent. However, it is noted that the assessee has brought to our notice, for the first time, that the disallowance of Rs.564,429,191/- includes an amount of Rs.153,747,734/- towards bonus paid to employees, which was inadvertently included in the ESOP cost. Since this factual aspect requires verification at the end of the Assessing Officer, we deem it appropriate to restore this limited issue to his file for necessary verification. Subject to such verification, the ESOP cost is to be allowed as deduction, in terms of the consistent view already taken by the Tribunal in assessee's own case. The ground Nos. 1 to 3 of the appeal are accordingly allowed for statistical purposes.

6. Ground No. 4 of the Revenue's appeal pertains to the disallowance of Rs.37,11,074/-, being charges paid by the assessee to the Stock Exchange, which were treated by the Assessing Officer as penal in nature. The details of such charges, as placed in the Paper Book at pages 390 to 433, reveal that these pertain to non-allocation/non-confirmation of CP/OTR trades and to client code modifications. The Assessing Officer, taking note of Clause 17(e) of Form No. 3CD wherein the said amount had been reflected as fine/penalty for non-compliance in confirmation of house trades and client code modification, held the same to be in the nature of



penalty and consequently disallowed the claim by making addition to the total income of the assessee.

6.1 We have heard rival submissions and carefully perused the record. The Learned CIT(A), upon appreciation of facts and following the decision of the Co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2009-10, deleted the disallowance with the following finding:—

“7.4. Decision: This issue has been decided by the Hon'ble ITAT in favour of the appellant in appellant's own case for A.Y 2009-10. Following the aforesaid decision, the disallowance in respect of amount paid to the stock exchanges for non-confirmation of clearing house trades, client code modification, etc. by the Appellant, is directed to be deleted. Accordingly, this Ground of Appeal is allowed.”

6.2 Before us, Learned Counsel for the assessee has further drawn attention to the judgment of the Hon'ble Bombay High Court in Income Tax Appeal No. 30 of 2017, wherein identical charges paid to the Stock Exchange were categorically held not to partake the character of penalty. The Hon'ble High Court, while so holding, followed its earlier ruling in *CIT v. Angel Capital & Debit Market Ltd.*. The relevant observations of the High Court in paragraphs 11 and 12 of its order make it abundantly clear that such payments are compensatory in nature, arising out of the exigencies of business operations, and not penal so as to attract disallowance under section 37(1) of the Act. The relevant finding of the Hon'ble High Court is reproduced as under:



11. The question No.vii pertains to disallowing an expenditure which the revenue argues was in the nature of penalty. We notice that similar issue was considered by this Court in case of *The Income Tax Commissioner Mumbai City-4 Vs. Angel Capital & Debit Market Ltd. (Income Tax Appeal (L) No.475 of 2011)* in the order dated 28th July, 2011, following question was examined:-

"Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in deleting the disallowance made by the Assessing Officer of claim of the Assessing Company for a deduction of payment of Rs.6,51,240/- towards penalty paid to Stock Exchange even though the penalty payment disallowable under Explanation to Section 37(1) of the Income Tax Act? was clearly

12. The question raised by the revenue was rejected making following observations:-

"3. As regards question (C) is concerned the finding of fact recorded by the ITAT is that the amount paid as penalty was on account of irregularities committed by the assessee's clients. Such payments were not on account of any infraction of law and hence allowable as business expenditure. In such a case the explanation to section 37 would not apply. Accordingly question (C) raised by Revenue cannot be entertained." the

In that view of the matter, this question is also not entertained."

6.3 In view of the pronouncement of the jurisdictional High Court and respectfully following the same, we find no infirmity in the order of the Learned CIT(A) in deleting the disallowance. The issue being squarely covered in favour of the assessee, we see no reason to interfere. The ground No. 4 of the appeal of the Revenue is accordingly dismissed.

Order pronounced in the open Court on 09/09/2025.

**Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 09/09/2025



Rahul Sharma, Sr. P.S.

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,
(Assistant Registrar)
ITAT, Mumbai