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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 443/2018

PR. COMMISSIONER OF INCOME TAX DELHI - 2

..... Appellant

Through Mr.Zoheb Hossain, Sr. Standing
Counsel for Revenue.

versus

LEMON TREE HOTELS (P) LTD.

..... Respondent

Through Mr.Ved Jain, Mr.Pranjal Srivastava
and Ms.Devina Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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13.04.2018

The question of law urged with respect to expenditure claimed towards case of Employee Stock Ownership Plan (ESOP) has been subject matter of previous orders of this Court in respect of the present assessee. For A.Y. 2008-09 in ITA 107/2017 (*Commissioner of Income Tax Vs. Lemon Tree Hotel Ltd.*), the Court held that since the ITAT followed the previous judgments in ***Commissioner of Income Tax vs. PVP Ventures Ltd.*** [TC(A) No. 1023 of 2005] the expenditure had to be allowed. Likewise, for another assessment year, this court did not frame the question of law

in ITA 862/2016.

Although the Revenue urges that in terms of Circular No.9 of 2007, the expenditure ought not to be allowed given that actual expenditure towards acquisition of shares, and not mere allotment of shares by the employer can be considered as a permissible deduction, this Court is of the opinion that such an argument is untenable; that was the rationale of disallowance in this case. What the Revenue urges essentially is that the unless the employer/assessee acquires the shares from a third party, it cannot claim any deduction and that expenditure claimed for allotment or issue of ESOP is merely notional. This Court is of the opinion that such an argument ignores the realities of functioning of commercial entities who would then be asked to purchase shares from market place or third party at prevailing rates instead of allotting them.

For above reasons, no question of law arises.

The second issue is with respect to the disallowance under Section 14(A) of the Act. The ITAT granted relief following the judgment of this Court in *Joint Investment Pvt. Ltd. vs. CIT* [2015] 372 ITR 694.

This question of law does not arise.

Appeal is consequently dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

APRIL 13, 2018

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