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

+ ITA 311/2018

PRINCIPAL COMMISSIONER OF INCOME TAX - 7

..... Appellant

Through Mr. Rahul Chaudhary, Adv.

versus

M/S RELIGARE SECURITIES LTD.

..... Respondent

Through Ms. Kavita Jha and Ms. Devika Jain,  
Adv.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE A. K. CHAWLA**

**ORDER**

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**19.03.2018**

The Revenue's appeal under Section 260A of the Income Tax Act alleges that the Income Tax Appellate Tribunal (ITAT) erred in allowing ₹2,09,63,780/- as a capital expense. That amount was the quantum of discount given in respect of the SAR (Stock Appreciation Rights) – similar to Employee Stock Option (ESO) offered by the employer to the work force. The ITAT followed its previous decision and also cited a judgment of this Court in *Commissioner of Income Tax vs. Lemon Tree Hotels Ltd*, (ITA 107/2015 decided on 18.08.2015). The ITAT also relied upon the judgment of Madras High Court in *Commissioner of Income Tax-III, Chennai vs. PVP Ventures Ltd.*, TC(A) 1023 of 2005.

In *PVP Ventures Ltd. (supra)*, Madras High Court discussed the relevant issues in the following manner :

*“7. On the issue of Staff Welfare expenditure, the Commissioner pointed out that the assessee had debited a sum of Rs.66.82 lakhs under the head of Staff Welfare expenditure. The said sum was incurred by the assessee in respect of Employees Staff Option Plan and Employees Staff Purchase Scheme Guidelines. As per SEBI guidelines, the difference between the market value of the shares and the value at which the shares were allotted to the employee is allowable as an expenditure. The Commissioner of Income Tax revised this claim accepted by the Officer and held that the accounting treatment prescribed by SEBI, nowhere suggests that it was a revenue expenditure to be debited to the Profit and Loss Account as it was only a notional and contingent expenditure. In the circumstances, the Commissioner of Income Tax held that the shares allotted under Employees Staff Option Plan and Employee Staff Purchase Scheme Guidelines, 1999, having not stated anything about the manner of treatment to this expenditure, the difference in the value at which the shares were allotted and the market value of the shares did not warrant any allowance as expenditure. Ultimately, the Commissioner of Income Tax passed an order directing the Assessing Officer to revise the assessment. Thus, holding that the revision proceedings were validly initiated, the income received on account of exchange fluctuation was held as a revenue receipt and be taxed as such and the Staff Welfare expenditure was to be disallowed.*

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*11. As regards the second issue which is now canvassed before this Court viz., on the issue of expenditure of 66.82 lakhs towards the issue of shares to the Employees Stock Option is concerned, the Tribunal pointed out that the shares were issued to the employees only for the interest of the business of the assessee to induce employees to work in the best interest of the assessee. The allotment of shares was done by the assessee in strict compliance of SEBI regulations, which mandate that the difference between the market prices and the price at which the*

*option is exercised by the employees is to be debited to the Profit and Loss Account as an expenditure. The Tribunal pointed out that what had been adopted was not notional or contingent as had been submitted by the Revenue. Pointing out to the Employees Stock Option Plan, the Tribunal in its order stated that it was a benefit conferred on the employee. So far as the company is concerned, once the option was given and exercised by the employee, the liability in this behalf got ascertained. This was recognised by SEBI and the entire Employees Stock Option Plan was governed by guidelines issued by SEBI. On the facts thus found, the Tribunal held that it was not a case of contingent liability depending on the various factors on which the assessee had no control. The expenditure in this behalf was an ascertained liability, thus the expenditure incurred being on lines of the SEBI guidelines, there could be no interference in the relief granted by the Assessing Authority for the expenditure arising on account of Employees Stock Option Plan. This expenditure incurred as per SEBI guidelines and granted by the Officer could not be considered as erroneous one calling for exercise of jurisdiction under Section 263 of the Act.”*

In view of the above reasoning, the Court is of the opinion that there is no infirmity with the approach or order of the Tribunal. No question of law arises. The appeal is consequently dismissed.

**S. RAVINDRA BHAT, J**

**A. K. CHAWLA, J**

**MARCH 19, 2018**

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