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

\+ ITA 817/2018, CM APPL. 30711/2018

THE PR. COMMISSIONER OF INCOME TAX-6 ..... Appellant
Through: Mr. Ruchir Bhatia, Ms. Vibhooti Malhotra & Mr. Puneet Rai, Advs.

versus

NEW DELHI TELEVISION LTD. ..... Respondent
Through: Mr. Sachit Jolly, Mr. Siddharth Joshi, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **14.09.2018**

The Revenue seeks the direction to set aside the order of the Income Tax Appellate Tribunal (ITAT) and restore the order of the Assessing Officer. The fact that the Assessing Officer had levied penalty, on the amount of ₹22, 22,58,778/- and brought to tax under Section 37 of the Income Tax Act. These deductions were claimed as ESOP expenses for the relevant AY 2007-08. CIT(A) to whom the assessee appealed held that the question of ESOP expenditure was a debatable one and having regard to the judgment of the Supreme Court in *Commissioner of Income Tax v. Reliance Petroproducts* (2010) 189 Taxman 322, the penalty imposed was not justified. The ITAT affirmed that finding. It is urged by the Revenue that the penalty was justified having regard to the fact that ESOP claim could not be deducted under Section 37. The Assessing Officer on the other hand points out that the substantive addition made on account of ESOP deductions was upheld and that the revenue position was not approved. It is pointed out that the ITAT granted relief in this regard for A.Y. 2007-08 and that order was upheld by this Court in *Principal Commissioner of Income Tax-6 Vs. New Delhi Television Ltd.* (ITA 107/2017 decided on 27.2.2017).

The judgment of this Court in ITA No.107/2017 (New Delhi Television Ltd.) shows that the substantive addition under Section 37, was held to be not unwarranted. The Court had approved the ITAT order which had in turn relied upon the ruling of the Tribunal in *Biocon Limited v. DCIT* [2013] 144 ITD 21 (Bang) (SB). Besides, the Madras High Court had taken a similar view in *CIT Chennai v. PVP Ventures Ltd.* [TC(A) 1023/2005 decided on 19.06.2012]. Furthermore, we notice that the assessee's ESOP claim under Section 37 for the previous year 2006-07 too had been upheld by the Tribunal – which was affirmed by this Court in ITA 366/2016 decided on 12.07.2016. In these circumstances no question of law arises in this matter.

The appeal is accordingly disposed of.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

SEPTEMBER 14, 2018/akv