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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/286/2023
IA NO: GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME
TAX 2 KOLKATA
VS
BANDHAN BANK LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
DATE : 7TH February, 2024.

Appearance :
Ms. Smita Das De, Adv.
Mr. Prithu Dudhoria, Adv.
..for appellant
Ms. Swapna Das, Adv.
Mr. Siddhertha Das, Adv.
...for respondent.

The Court :- We have heard learned Counsel on either side.

It appears that there is a delay of 117 days in filing the appeal.

We have perused the affidavit filed in support of the application for condonation of delay and we are satisfied with the explanation offered for not preferring the appeal within the period of limitation and, therefore, the delay in filing the appeal is condoned. The application is allowed.

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated March 27, 2023 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata (the Tribunal) in I.T.A. No. 370/Kol/2022 for the assessment year 2017-2018. The revenue has raised the following substantial question of law for consideration :

"(a) WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was erred in law in sustaining the order of CIT(A) wherein addition made on account of the disallowance of expenses incurred in relation to ESOP cost was deleted without appreciating the fact that ESOP expense is notional and that too of capital nature ?"

We have elaborately heard the learned Advocates for the parties and carefully perused the materials on record.

The legal issue involved in this appeal is squarely covered by the decision of three High Courts in favour of the assessee. The first of which is in the case of *CIT* v.*PVP Ventures Ltd. [2012] 23 taxmann.com 286* and followed by the decision in *CIT-v.-Lemon Tree Hotels Ltd., [2019] ITA No. 107 of 2015 dated 18.08.2015, High Court of Delhi* which was followed in *CIT LTU-v.-Biocon Ltd., [2020] 121 taxmann.com 351(Karnataka).*

In all the decisions it has been held that ESOPs was allowable as a deduction under Section 37(1) of the Act as primary object was not to waste capital but to earn profits by securing consistent service to the employees. The three decisions which were relied on by the assessee were taken note of by the learned Tribunal and the appeal filed by the revenue was dismissed. All the three decisions which were referred above have attained finality as it appears that the revenue has not preferred any appeal against those decisions. Thus we find that Tribunal was well justified in dismissing the appeal filed by the revenue and we find no ground to interfere with the order passed by the learned Tribunal.

Accordingly, the appeal is dismissed and substantial question of law is answered against the revenue.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA,J.)

pkd/GH.