



2026:KER:71035

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MR. JUSTICE BASANT BALAJI

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2026 / 25TH BHADRA, 1948

ITA NO. 21 OF 2025

ITA NO.418 OF 2023, I.T.A.TRIBUNAL, COCHIN BENCH

APPELLANT/APPELLANT/RESPONDENT:

THE PRINCIPAL COMMISSIONER OF INCOME TAX
KOCHI-I, KOCHI, INCOME TAX OFFICE,
CENTRAL REVENUE BUILDING,
I. S. PRESS ROAD,
KOCHI, PIN - 682018.

BY ADVS.
SHRI.JOSE JOSEPH
SRI.CYRIAC TOM

RESPONDENT/RESPONDENT/APPELLANT:

M/S. GEOJIT FINANCIAL SERVICES LTD
34/659-P, PADIVATTOM, KOCHI,
PIN - 682024.

BY ADVS.
SHRI.ABRAHAM JOSEPH MARKOS
SRI.V.ABRAHAM MARKOS
SRI.ISAAC THOMAS
SRI.P.G.CHANDAPILLAI ABRAHAM

CNR : KLHC010309852025



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SHRI.ALEXANDER JOSEPH MARKOS
SHRI.JOHN VITHAYATHIL

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION
ON 16.09.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



'C.R.'

JUDGMENT

Devan Ramachandran, J.

The respondent - Company, which is stated to be a Limited Company under the provisions of the Companies Act, 1956 ('Act' for short), allotted shares to its employees under the Employees Stock Option Plan ('ESOP'); and this led to a controversy as to whether this should be construed as a revenue expenditure, within the ambit of Section 37(1) of the Income Tax Act, 1961, ('IT Act', for short).

2. The Assessing Officer disallowed the claim of the Company; while, the First Appellate Authority, in Appeal filed by the Company, found to the contrary. The Revenue went in Appeal



before the learned Income Tax Appellate Tribunal, Cochin Bench (the 'Tribunal', for short), which issued the impugned order, finding in favour of the Company and dismissing the Appeal filed by the Revenue. Consequently, the latter is in Appeal before us.

3. This matter was admitted on 08.04.2025, on the following questions of law:

(i) Whether the discount allowed on shares allotted under the ESOP (Employees Stock Option Plan) is a revenue expenditure allowable under section 37(1) of the Income Tax Act ?

(ii) Whether in the facts and circumstances of the case, the Tribunal is correct in affirming the order of CIT(Appeals) allowing the claim of the assessee for deduction of the discount allowed under the ESOP under section 37(1) of the I T Act ?

4. Sri.Joseph Markos, learned Senior



Counsel, instructed by Sri.Abraham Joseph Markos - learned counsel for the respondent, asserted that the questions framed by this Court have been answered in favour of his client by the Hon'ble High Court of Delhi, as also the Hon'ble High Court of Karnataka, in *Commissioner of Income Tax Delhi-2 v. Lemon Tree Hotels (P) Ltd.* [2018 SCC OnLine Del 13684] and *Commissioner of Income Tax (LTU) and Another v. Biocon Ltd.* [(2021)430 ITR 151], respectively. He, however, conceded that the matter is now pending before the Hon'ble Supreme Court for final resolution.

5. The learned Senior Counsel argued that, nevertheless, when two High Courts have found concurrently in favour of his client, they are justified in requesting this Court also to find so.



6. Sri.Jose Joseph - learned Senior Standing Counsel for the appellant, however, argued that the views recorded by the aforesaid two High Courts are contrary to law; and that it is, therefore, that his client has taken up the matter before the Hon'ble Supreme Court. He requested that this Court take a different view, advertng to the specific contention of his client, that the deduction claimed on account of the 'ESOP' can only be construed to be revenue expenditure; and, in ascertaining the liability, is allowable only as a deduction under Section 37(1) of the 'IT Act'. He argued that the order of the ITAT, Bangalore - relied upon by the learned Tribunal in its order - namely, *Biocon Ltd. v. Deputy Commissioner of Income Tax*, [(2013) 25 ITR (T) 602 (Bang-Trib) (SB)] cannot



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apply because, factually, the situation is different, as the assessee in this case has not adopted the straight-line method of recognizing 'ESOP' expenses. He, therefore, prayed that this Appeal be allowed.

7. We have given anxious consideration to the rival contentions; but must record that we are in full affirmation with the views of the Hon'ble High Court Delhi and the Hon'ble High Court of Karnataka.

8. The holdings and declarations of the Hon'ble High Court of Delhi are available in the first two paragraphs of the order in *Lemon Tree Hotels (P) Ltd.* (supra), which, for ease of reading, is extracted below:

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 v. Lemon Tree Hotel Ltd.), the Court held that since the ITAT followed the previous judgments in *Commissioner of Income Tax v. 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 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.

9. The Hon'ble High Court of Karnataka has taken a similar view in *Biocon Ltd.* (supra), as evident from paragraphs 9 to 12 thereof, which are as under:

9. In the instant case, the employees stock option plans vest in an employee over a period of four years, i.e., at the rate of 25 per cent., which means at the end of first year, the employee has a definite right to 25 per cent. of the shares and the assessee is bound to allow the vesting of 25 per



cent. of the options. It is well settled in law that if a business liability has arisen in the accounting year, the same is permissible as deduction, even though, liability may have to quantify and discharged at a future date. On exercise of option by an employee, the actual amount of benefit has to be determined is only a quantification of liability, which takes place at a future date. The Tribunal has therefore, rightly placed reliance on the decisions of the Supreme Court in Bharat Movers (supra) and Rotork Controls India P. Ltd. (supra) and has recorded a finding that discount on issue of employees stock option plans is not a contingent liability but is an ascertained liability.

10. From a perusal of section 37(1), which has been referred to supra, it is evident that an assessee is entitled to claim deduction under the aforesaid provision if the expenditure has been incurred. The expression "expenditure" will also include a loss



and therefore, issuance of shares at a discount where the assessee absorbs the difference between the price at which it is issued and the market value of the shares would also be expenditure incurred for the purposes of section 37(1) of the Act. The primary object of the aforesaid exercise is not to waste capital but to earn profits by securing consistent services of the employees and therefore, the same cannot be construed as short receipt of capital. The Tribunal therefore, in paragraph 9.2.7 and 9.2.8 has rightly held that incurring of the expenditure by the assessee entitles him for deduction under section 37(1) of the Act subject to fulfilment of the condition.

11. The deduction of discount on employees stock option plan over the vesting period is in accordance with the accounting in the books of account, which has been prepared in accordance with Securities and Exchange Board of India (Employee Stock Option Scheme and



Employee Stock Purchase Scheme)
Guidelines, 1999.

12. So far as reliance placed by the Revenue in the case of CIT v. Infosys Technologies Ltd. [2008] 297 ITR 167 (SC) is concerned, it is noteworthy that in the aforesaid decision, the Supreme Court was dealing with a proceeding under section 201 of the Act for non-deduction of tax at source and it was held that there was no cash inflow to the employees. The aforesaid decision is of no assistance to decide the issue of allowability of expenses in the hands of the employer. It is also pertinent to mention here that in the decision rendered by the Supreme Court in the aforesaid case, the assessment year in question was 1997-98 to 1999-2000 and at that time, the Act did not contain any specific provisions to tax the benefits on employees stock option plans. Section 17(2)(iiia) was inserted by Finance Act, 1999 with effect from April 1, 2000. Therefore, it is evident that law



recognizes a real benefit in the hands of the employees. For the aforementioned reasons, the decision rendered in the case of Infosys Technologies is of no assistance to the Revenue. The decisions relied upon by the Revenue in Gajapathy Naidu, Morvi Industries and Keshav Mills Ltd. (supra) support the case of the assessee as the assessee has incurred a definite legal liability and on following the mercantile system of accounting, the discount on employees stock option plans has rightly been debited as expenditure in the books of account. We are in respectful agreement with the view taken in PVP Ventures Ltd. and Lemon Tree Hotels Ltd. (supra).

10. As rightly found by the two Hon'ble High Courts, as per Section 37(1) of the 'IT Act', an assessee becomes fully entitled to claim deduction, if an expenditure has been incurred. This expression includes loss.



Therefore, the allotment of shares under the 'ESOP' at a discounted price, can only construe a situation where the assessee absorbs the difference; hence, amounting to expenditure, for the purposes of Section 37(1) of the 'IT Act'. As also concluded by the Hon'ble High Court of Karnataka, this does not result in any wastage of capital, but in the earning of profits, by ensuring the services of employees and providing them with incentives, thereby taking it outside the concept of short receipt of capital.

11. Suffice to say, since we are in respectful agreement with the views in the afore two judgments, we are persuaded to answer the questions framed in this case also in favour of the assessee.

In such circumstances, we dismiss this



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Appeal; and confirm the impugned order of the learned Tribunal, answering both the questions framed, in favour of the assessee.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

Sd/-

BASANT BALAJI

JUDGE

akv

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APPENDIX OF ITA NO. 21 OF 2025

PETITIONER ANNEXURES

ANNEXURE-A	A TRUE COPY OF THE ASSESSMENT ORDER U/S. 143(3) DATED 01-09-2021
ANNEXURE-B	A TRUE COPY OF THE ORDER OF THE CIT(A), NFAC_ W/S. 250 OF THE I T ACT DATED 15-03-2023
ANNEXURE-C	CERTIFIED COPY OF THE ORDER OF THE ITA 418/COCH/2023, COCHIN BENCH DATED 25- 09-2024