

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'D' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 7227/Mum/2019 (A.Y. 2015-16)

ACIT, Circle-2(1)(1) Room No. 561 5 th Floor, Aayakar Bhavan, M.K.Road Mumbai-400 020.	Vs.	M/s. Deutsche Asset Management (India) Pvt. Ltd. 14 th Floor, The Capital C-70, G-Block, Bandra Kurla Complex, Bandra East Mumbai-400 051.
(Appellant)		(Respondent)

C.O. No. 95/Mum/2021 (A.Y. 2015-16)

M/s. Deutsche Asset Management (India) Pvt. Ltd. 14 th Floor, The Capital C-70, G-Block, Bandra Kurla Complex, Bandra East Mumbai-400 051.	Vs.	ACIT, Circle-2(1)(1) Room No. 561 5 th Floor, Aayakar Bhavan, M.K.Road Mumbai-400 020.
(Appellant)		(Respondent)

PAN : AABCD5226D

Assessee by	Shri Percy Pardiwala & Shri Niraj D. Sheth
Department by	Ms. Riddhi Mishra
Date of Hearing	20.04.2023
Date of Pronouncement	30.05.2023

O R D E R

Per B.R.Baskaran (AM) :-

The appeal filed by the revenue and the cross objection filed by the assessee are directed against the order dated 30-09-2019 passed by Ld CIT(A)-4, Mumbai and they relate to the assessment years 2015-16. The revenue is aggrieved by the decision rendered by Ld CIT(A) in

- (a) granting deduction of unamortized brokerage expenses of Rs.18.05 crores.
- (b) granting deduction of ESOP expenses of Rs.19,48,373/-.

In the cross objection, the assessee has raised certain alternative contentions with regard to the above said additions.

2. The assessee company is an Asset management company of Deutsche Mutual Fund (DMF) and various other Deutsche Group Entities.

3. The first issue urged by the revenue relates to disallowance of unamortized brokerage expenses. During the year under consideration, the assessee filed original return of income on 4.11.2015 declaring a total income of Rs.23.03 crores. Subsequently, the assessee filed a revised return of income on 31.3.2017 declaring a total income of Rs.4.98 crores, wherein it claimed deduction of brokerage expenses of Rs.18,05,27,064/-. The facts relating to this expenditure are that the assessee usually incurs brokerage expenses during the course of its business. As per the method of accounting followed by it, the upfront brokerage paid by the assessee for any scheme was amortised during the tenure of scheme in the books of accounts. The assessee has been following the above said method of accounting. It so happened that the assessee had to discontinue its business in the succeeding financial year 2015-16. Accordingly, the unamortized brokerage expense outstanding as on 31.3.2016 was claimed as deduction in this current year, since the said expense was incurred during this year. The details of brokerage expenses were furnished by the Ld A.R as under:-

Aggregate upfront brokerage expenses paid during financial year 2014-15 (AY 2015-16)	-	33,58,19,829
Less:- Amount amortised in AY 2015-16	-	(5,10,10,582)
Amount amortised in AY 2016-17	-	(10,42,82,184)

Balance unamortized amount		18,05,27,066
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4. The AO took the view that the assessee has been following a particular method for accounting brokerage expenses in the books of account and has been claiming deduction of the same for income tax purposes also, as per the above said method. Hence he held that the assessee could not have claimed this deduction in the revised return of income filed u/s 139(5) of the Act, since, as per sec.139(5) of the Act, a revised return of income can be filed only if the assessee discovers any omission or any wrong statement. He held that the assessee has not shown that the original return of income suffers from any omission or wrong statement. Accordingly, the AO held that it is an afterthought of the assessee to claim unamortized brokerage expenses as deduction and it is claimed as a result of discontinuation of business. Accordingly, the AO disallowed claim for deduction of Rs.18.05 crores, referred above.

5. The Ld CIT(A), however, held that the income was revised by the assessee on bonafide reason. Accordingly, following the decision rendered by Hon'ble Supreme Court in the case of Goetze (India) P Ltd (2006)(157 Taxman 1) and the Hon'ble Allahabad High Court in the case of CIT vs. Dharmpur Sugar Ltd (1973)(90 ITR 236), the Ld CIT(A) held that the revised return of income filed by the assessee within the time limit prescribed u/s 139(5) of the Act is a valid return. He also accepted the claim for deduction of unamortized brokerage expenses, since the business has been discontinued. Aggrieved, the revenue has filed this appeal.

6. We heard the parties on this issue and perused the record. As per the decision rendered by Hon'ble Supreme Court in the case of Goetze (India) P Ltd (supra), the assessee can make fresh claim by filing revised return of income. Even if the revised return of income is not filed, the Tribunal can admit any fresh claim. In the instant case, the assessee has claimed the deduction of unamortized brokerage expenses through revised return of

income. Hence, we are of the view that the said claim was rightly made by the assessee.

7. Now, the question is whether the assessee can make a claim, which is against the accounting policy followed by the assessee in the books of account. The upfront brokerage expenses incurred by the assessee were amortized in the books of account over the tenure of the scheme. During the year under consideration, the assessee has incurred upfront brokerage expenses of Rs.33.58 crores. The amount amortised during the year under consideration was Rs.5.10 crores and in the succeeding year was Rs.10.42 crores. Thus, the balance amount of Rs.18.05 crores was to be amortised in financial years 2016-17 and subsequent years. Since the business of the assessee was discontinued on 4th March, 2016, the unamortized brokerage expenses of Rs.18.05 crores cannot be claimed in any of the subsequent years. Hence, the assessee has chosen to claim the same deduction during the year under consideration, since it was incurred during this year.

8. The assessee has taken support of the decision rendered by Hon'ble Supreme Court in the case of Taparia Tools Ltd vs. JCIT (2015)(55 taxmann.com 361), wherein it was held that merely because a different treatment was given in the books of accounts, the same could not be a reason for reject the claim of entire expenditure as deduction. In the above said case also, the assessee therein treated the upfront discounted interest as deferred revenue expense in the books of accounts and claimed entire expenditure as deduction in the return of income. The Hon'ble Supreme Court allowed the claim of the assessee. In the instant case, there is no dispute that the upfront brokerage expenses were incurred during the year under consideration and it was revenue expenditure. Hence, the assessee could claim entire expenditure as deduction in the current year itself. Since the assessee was following a particular method of accounting in the books of accounts with regard to the above said expenditure, it has been claiming

deduction in that method in the return of income also. However, as per the decision rendered by Hon'ble Supreme Court in the case of Taparia Tools Ltd (supra), the same would not preclude the assessee from claiming entire expenditure in the current year itself. Accordingly, we are of the view that the Ld CIT(A) was correct in law in deleting this disallowance and accordingly, we uphold the decision rendered by Ld CIT(A) on this issue.

9. The next issue contested by the revenue relates to the disallowance of ESOP expenses. The employees of the assessee are entitled to subscribe to the shares of its parent company, viz., M/s Deutsche Bank AG, which is a listed company. When the employees get vesting right over the shares, the assessee booked the same as expenditure in the books of account and claimed it as deduction. The AO noticed that the employees have not exercised the option to subscribe the shares during the year under consideration. Accordingly, the AO took the view that the expense claimed by the assessee is a notional expenditure and accordingly disallowed the same. The Ld CIT(A), however, allowed the claim and hence the revenue is challenging the said decision.

10. We heard the parties and perused the record. We notice that the assessee has explained before Ld CIT(A) the nature of scheme and also addressed the various contentions of the assessing officer. The relevant submissions are extracted below:-

“3.1 The AO at para 5 to 8 of the order under appeal, has held that the claim of expenses relating to Employees Stock Award Plan was not an allowable expense since.

- No options were exercised during the year under appeal, the expenses were contingent in nature.
- ESOP expenses were notional in nature.
- The stock award of the appellants were issued to the employees and the appellant was an unlisted company. Issue of shares below market price results in short receipt of premium.
- The AO placed reliance on the decision of the Delhi ITAT in the case of Tanbaxy Laboratories Ltd. v. ACIT124 TTJ 771.

3.2 In this connection, the Appellants submit as under:

- 1) The employees of the Appellants have been awarded stock options of Deutsche Bank A. G. (the ultimate holding company of the Appellants).
- 2) It is not shares of the appellants that will be issued under the stock option plans.
- 3) The Appellants have incurred actual expenditure on the purchase of the shares of Deutsche Bank AG which is a listed Company
- 4) During the year under appeal, an amount of Rs.19,48,373 has been recognized under "Employee Cost" on account of "Employee share based payments".
- 5) Vide submission dated 15 December 2017 (Copy of the letter enclosed at pages 222 to 226 of the paperbook), following details were submitted

Sr. No	Particulars	Amount Amortised (Rs.)
1	DB Equity Plan	2,81,607
2	Global Share Purchase Plan (GSPP)	1,16,564
3	Retention-share-based, equity settled	1,62,141
4	Stock Retention	13,88,061
	Employee cost	19,48,373

- 6) The GSPP is the employee participation plan available to all employees of the appellants. Under REA, certain employees are awarded shares of DB as part of the annual variable Compensation/retention award (bonus). This scheme works as a deferred compensation and is offered only to certain key senior employees.

The grant value (conversion of cash in OB Shares) is determined by dividing the Euro equivalent of the Award Value by the average Closing Price of DB Share on the Frankfurt Stock (Xetra) for the last ten trading days of the month, prior to the month in which the Award is made. REA expressed in DB Shares vest in the employees over tranches, generally 1/3* in three vesting dates falling in each subsequent year.

- 7) At the time of grant of stock awards, or DB Equity Plan, 10-day average closing price of a DB share on Xetra for the 10 business

days preceding the grant date is used to determine the grant price and for Restrictive Incentive Plan, the 10-day average closing price of a DB share on Xetra for the 10 business days upto the end of the calendar month preceding the grant date is considered.

8) The amount debited to the profit and loss account represents the amortisation of the grant value of the shares on the basis of the vesting dates pre-agreed over the period of 3 to 5 years

9) The shares of Deutsche Bank AG are listed on stock exchange in Frankfurt. The appellant make actual payment to its ultimate holding company towards the shares issued of the ultimate holding company.

10) The employee share based expenses have been incurred by the company to retain, motivate and award its employees for their hard work and hence are akin to salary costs of the company,

11) The amount debited is the amortized price of shares of ultimate holding company vested in appellant's eligible employees under various schemes, which is spread in a graded manner over the period from the date of grant to date of vesting. These equity awards vest in tranches over a period of typically 3 to 5 years. On vesting date, shares are delivered to the Employee Copies of the schemes are enclosed at pages 227 to 252AD of the paperbook

12) The shares were vested twice during the financial year 2014-15. In November 2014, vesting amount was of Rs. 1,29,629.16 (equivalent to EURO 1,690.10) and in February 2015 vesting amount was of Rs. 20,00,099.73. Further, the copies of invoices raised by DB Group (UK) Ltd. relating to vesting of shares, during the year under appeal, are enclosed at pages 254 to 2f: of the paperbook. On vesting, requisite tax has been paid on the value of perquisite considered in the hands of employees. In the year under appeal, TDS of Rs.5,47,719 has deposited, on account of vesting of shares. Details of vesting of shares to employees (copy enclosed at pages 253 of the paperbook along with the copy of TDS challan (ct enclosed at pages 256 of the paperbook) for the amount deducted and paid in respect of shares vested by the employees during the financial year 2014-15. Further, copy of sample Form 16 and copy of challan for payment of tax on value of perquisite, is enclosed (pages 256A to 256F of the paperback)."

11. A perusal of the above said explanations given by the assessee would show that the assessee is actually incurring expenses in purchasing shares of M/s Deutsche Bank AG. This is purchased as per the employee welfare scheme as per the agreement entered with the concerned employee. The

deduction is claimed when the right is vested upon the employee. It is held by the Bangalore Special bench of ITAT in the case of Biocon Ltd (35 taxmann.com 335) that deduction can be claimed in the year of vesting. It can be noticed that it is a staff welfare expenditure incurred by the assessee and further, it is stated that the assessee has deducted TDS also thereon. Hence, we find no impediment in allowing this expenditure as deduction. Accordingly, we uphold the decision rendered by Ld CIT(A) on this issue.

12. In the cross objections, the assessee has only raised alternative contentions. Since the appeal of the revenue is dismissed, there is no necessity to address alternative contentions.

13. In the result, the appeal of the revenue and the cross objection of the assessee are dismissed.

Pronounced in the open court on 30.5.2023.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(B.R. BASKARAN)
Accountant Member

Mumbai; Dated : 30/05/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS