

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
MS PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.2559/Mum/2024
(Assessment Year :2018-19)**

Nuvama Wealth Management Limited 801 to 804 Wing A Building No.3 Inspire BKC, G Block BKC, Bandra East Mumbai – 400 051	Vs.	DCIT, Pratishtha Bhavan, Mumbai
PAN/GIR No.AAACK3792N		
(Appellant)	..	(Respondent)

Assessee by	Shri Madhur Agarwal & Shri Ravikant S Pathak
Revenue by	Shri Kishor Dhule-CIT DR
Date of Hearing	09/10/2025
Date of Pronouncement	31/10/2025

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

This appeal by the assessee is directed against the revisional order dated 26 March 2024 passed under section 263 of the Income-tax Act, 1961 by the learned Principal Commissioner of Income Tax (Central)-1, Mumbai, whereby the assessment framed under section 143(3) read with section 144B on 30 September 2021 was set aside for de novo assessment on the question of allowability of deduction towards Employee Stock Option Plan (ESOP) expenditure. The

assessee, now known as Nuvama Wealth Management Limited (formerly Edelweiss Securities Limited), has assailed the assumption of jurisdiction as well as the conclusions drawn by the learned Principal Commissioner on both facts and law.

2. The background of the case lies in the assessee's claim of deduction of ESOP cost amounting to Rs. 73,30,24,968 under section 37(1) of the Act, being the expenditure incurred in respect of ESOPs issued by its holding company Edelweiss Financial Services Limited (EFSL) to the employees of the assessee as part of a group-wide incentive plan. The learned Principal Commissioner, upon examination of the record, proceeded on the assumption that out of the total claim of Rs. 73.30 crores, the assessee had "recovered" a sum of Rs. 58.02 crores from EFSL, and therefore, only the residual sum of Rs. 15.27 crores could be legitimately allowed as deduction. On this basis, he opined that the Assessing Officer had failed to make requisite verification and, consequently, the assessment order was erroneous and prejudicial to the interests of the Revenue within the meaning of Explanation 2 to section 263. He accordingly set aside the assessment with a direction to the Assessing Officer to examine the issue afresh.

3. However, a meticulous reading of the assessment records and the chain of correspondence between the Assessing Officer and the assessee reveals a contrary position. The assessee had filed its return of income for the relevant year declaring loss under the normal provisions along with computation of book profits under section 115JB. The case

was selected for scrutiny, inter alia, for verification of “claim of any other amount allowable as deduction in Schedule BP”, a fact explicitly recorded on the first page of the assessment order itself. In the course of assessment, the Assessing Officer issued notice under section 143(2) dated 22 September 2019 calling upon the assessee to justify the said claim. This was followed by a detailed questionnaire under section 142(1) dated 17 November 2019, wherein, at Question No. 3(h), the assessee was specifically required to justify the deduction claimed on account of ESOP, furnish supporting computations, and provide evidentiary proof of the expenditure and tax deduction at source on the perquisite value. In compliance, the assessee furnished a comprehensive note dated 13 March 2021 along with voluminous supporting documents, including a detailed explanation of the ESOP scheme framed by EFSL, computation of the discount, employee-wise details, tax deduction certificates, treatment in books, and relevant extracts of the financial statements.

4. Not only this, the Assessing Officer, upon examination of these documents, issued a further show-cause notice dated 9 September 2021 proposing disallowance of the claim. The assessee again responded on 13 September 2021 reiterating its legal and factual submissions and enclosing relevant ledgers, reconciliations, and financial extracts. Having carefully considered these explanations and documents, and after being satisfied that the claim was in accordance with law and supported by established jurisprudence, the Assessing Officer accepted the same and concluded the assessment

accordingly. In fact, on page six of the assessment order, the Assessing Officer categorically records that he has examined the claim and found it in order.

5. It is thus abundantly clear that after considering all the facts, evidences, explanations, and legal precedents cited by the assessee, the Assessing Officer not only conducted a detailed and pointed enquiry but also applied his mind consciously and in accordance with law. The process was neither perfunctory nor mechanical but reflective of a judicious and well-informed decision-making process. The inference of “lack of enquiry” drawn by the learned Principal Commissioner is therefore diametrically opposed to the record.

6. The factual substratum of the case further demolishes the edifice upon which the revision has been built. The assessee’s audited financial statements contain explicit disclosures in the notes to accounts regarding TDS deducted on ESOPs and the related transactions with the holding company. The ledger accounts placed both before the Assessing Officer and before the learned Principal Commissioner unmistakably demonstrate that the amounts received from EFSL represented merely the TDS component collected centrally by the holding company on behalf of group entities for subsequent remittance to the credit of the Central Government. It was categorically explained that EFSL, being the listed entity and the issuer of shares, collected the TDS amounts on behalf of all participating subsidiaries and subsequently transferred such amounts to the respective

entities so that they could discharge their statutory liability to deposit tax. The total such TDS funding for the year was Rs. 25.70 crores, and not Rs. 58.02 crores as erroneously presumed by the learned Principal Commissioner. This factual explanation, supported by audited accounts, ledger extracts, and correspondence, unequivocally shows that there was no reimbursement of ESOP cost whatsoever.

7. The assessee's detailed note on ESOP expenditure, furnished during the assessment proceedings, leaves no room for doubt as to the legal sustainability of the claim. It explained that the ESOP plan was framed by EFSL in accordance with SEBI (ESOP and ESPS) Guidelines, 1999 and was implemented on behalf of subsidiary companies, including the assessee. The employees of the assessee were granted options to subscribe to shares of EFSL at a price below the prevailing market value, the difference representing an incentive for continued service and commitment. The discount between the market price on the date of exercise and the grant price was treated as employee remuneration and claimed as deduction under section 37(1). The note further recorded that such benefit was taxed as a perquisite in the employees' hands, that TDS had been duly deducted and deposited by the employer, and that the expenditure represented nothing but a substitute for cash incentive. The assessee supported its claim with a formidable array of judicial authorities foremost among them the Special Bench decision in *Biocon Limited v. DCIT* [(2013) 25 ITR(T) 602 (Bang.)], affirmed by the Hon'ble Karnataka High Court in CIT

v. Biocon Limited [(2020) 121 taxmann.com 351], and followed by a consistent line of High Court and Tribunal decisions in Lemon Tree Hotels, HDFC Bank Ltd., Goldman Sachs (India) Securities, Cera Sanitaryware Ltd., Dr. Reddy's Laboratories, Mylan Laboratories Ltd., Bharti Airtel Ltd., and Apollo Health Street Ltd. all of which have uniformly held that ESOP discount is a deductible business expenditure being a form of employee compensation.

8. In light of the foregoing, it becomes evident that the Assessing Officer, after due examination of the assessee's responses, documents, and the applicable legal position, had arrived at a reasoned and plausible conclusion that the claim was allowable in law. Such an order cannot be termed as erroneous merely because the learned Principal Commissioner entertains a different subjective interpretation of facts. The jurisdiction under section 263 is confined to correcting patent errors causing prejudice to the Revenue; it does not confer upon the Principal Commissioner an appellate authority to reappraise evidence or to substitute his view for that of the Assessing Officer. Explanation 2 to section 263 empowers the revisional authority only where there is an absence of enquiry or verification. It does not authorise the reopening of assessments on grounds of alleged inadequacy of enquiry. In the present case, the exhaustive and documented enquiries made by the Assessing Officer leave no scope for such inference.

9. Even the foundation of “prejudice to the Revenue” constructed by the learned Principal Commissioner crumbles upon scrutiny. His entire premise that the assessee recovered Rs. 58.02 crores as reimbursement of ESOP cost is founded on factual misconception. The ledger accounts, financial statements, and TDS reconciliation demonstrate that what was received from EFSL was only the TDS funding—a statutory pass-through for administrative convenience—and not reimbursement of ESOP expenditure. TDS on perquisites is a tax on the employee’s income and its collection or remittance does not extinguish or dilute the employer’s expenditure incurred for compensating the employee. The alleged recovery being illusory, the Revenue’s supposed prejudice is non-existent.

10. Even on merits, the allowability of ESOP expenditure is well settled in law. The ESOP discount represents the monetary value of the obligation incurred by the employer towards its employees in consideration of their services during the vesting period. It is a substitute for direct cash incentive and forms an integral component of the overall remuneration structure. The issuance of shares at a discount involves a real and definite expenditure in the form of an obligation, even if not discharged in cash. The Special Bench in Biocon Limited lucidly held that the difference between the market price on the exercise date and the grant price of shares constitutes allowable business expenditure under section 37(1), and that actual cash outflow is not a precondition for deductibility. The Hon’ble Karnataka High

Court affirmed this principle, observing that ESOP discount represents consideration for services rendered by employees and is therefore deductible as business expenditure. This ratio has since attained finality, being consistently followed across judicial fora. The Assessing Officer's acceptance of the claim was, therefore, not merely a possible view but a legally correct and tenable view in conformity with binding precedent.

11. Viewed from every angle jurisdictional, factual, and legal the invocation of section 263 in the present case stands on untenable footing. The assessment order was the product of due enquiry and proper application of mind; it reflects a considered acceptance of the claim after examining the facts and the law. The revisional assumption based on a mistaken characterization of TDS pass-through as reimbursement of ESOP expenditure is erroneous in fact and in law. The allegation of prejudice is illusory, and even on merits, the ESOP expenditure is an allowable deduction under section 37(1), being employee compensation incurred wholly and exclusively for the purpose of business.

12. In view of the above detailed analysis and findings, we hold that the order passed by the learned Principal Commissioner of Income Tax (Central)-1, Mumbai, dated 26 March 2024 under section 263 of the Act, is unsustainable in law and deserves to be quashed. The assessment order passed under section 143(3) read with section 144B dated 30 September 2021 is hereby restored.

13. In the result, the appeal of the assessee stands allowed.

Order pronounced on 31st October, 2025.

**Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER**

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Mumbai; Dated 31/10/2025
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai