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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 17th September, 2026

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\# **CNR No. DLHC010577692024**

\+ ITA 479/2024

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2 .....Appellant

Through: Mr. Siddhartha Sinha, SSC with Mr. Lakshya, Advocate.

versus

M/S DELHIVERYPVT. LTD. .....Respondent

Through: Mr. Sachit Jolly, Sr. Advocate with Mrs. Mansha Anand, Mr. Abhyudaya S. Bajpai, Mr. Sohum Dua, Ms.Saloni Ray, Mr. Ghunaim Siddiqui, Ms. Yahavi Sharma and Ms. Manvi,Advocates.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

J U D G M E N T

***Per* DINESH MEHTA, J. (*Oral*)**

1. The present appeal was admitted for the following questions *vide* orders dated 17.03.2025 and 16.12.2025:

> *"(i) Whether in the given facts and circumstances, the learned Income Tax Appellate Tribunal (ITAT) was correct in not sustaining the disallowance of deduction claimed on*

account of Employee Stock Option Scheme (ESOP) amounting to Rs. 51,48,28,498/-; and.

(ii) Whether in the given facts and circumstances, the addition of Rs.62,72,719/- is required to be made on account of undisclosed income under the provisions of Section 56(2) (viib) of the Income Tax Act, 1961?"

2. Mr. Sachit Jolly, learned Senior Counsel for the respondent/assessee, at the outset, submitted that question (i) has been set at rest by Delhi High Court *vide* judgment dated 18.08.2015 rendered in ***ITA No. 107/2015, Commissioner of Income Tax v. Lemon Tree Hotels Ltd.***, and the same has been followed in various other judgments.

3. In the case of ***Lemon Tree Hotels Ltd. (supra)***, this Court has held as under:

"2. The question sought to be projected by the Revenue is whether the ITAT erred in deleting the addition of Rs. 1,28,19,169/- made by the Assesssing Officer ('AO') by way of disallowance of the expenses debited as cost of Employees Stock Option ('ESOP') in profit and loss account?

3. The Court has been shown a copy of the decision dated 19th June 2012 passed by the Division Bench of Madras High Court in CIT-III Chennai v. PVP Ventures Ltd. (TC(A) No. 1023 of 2005) where a similar question was answered in favour of the Assessee by holding that the cost of ESOP could be debited to the profit and loss account of the

Assessee. This Court has also in its decision dated 4th August 2015 in ITA No.2 of 2002 (CIT v. Oswal Agro Mills Ltd.) held that the expenditure incurred in connection with issue of debentures or obtaining loan should be considered as revenue expenditure.

4. In the circumstances, the impugned order of the ITAT answering the question in favour of the Assessee is affirmed."

4. Mr. Siddhartha Sinha, learned Senior Standing Counsel for the appellant is not in a position to dispute the aforesaid position of facts and law. Following the judgment of this Court, question (i) is answered in affirmative and in favour of the assessee.

5. So far as the question (ii) is concerned, the Assessing Officer (AO) had made the addition on the ground that the valuation which the respondent/assessee had got done, was by a Chartered Accountant (CA), whereas it ought to have been done by a Merchant Banker. While holding so, the AO had observed that the Central Board of Direct Taxes (*'hereinafter referred to as CBDT'*) had done away with certification by a CA and only Merchant Banker was eligible to give the valuation report in light of the notification No. 23/2018 issued on 24.05.2018.

6. It is to be noted that the Assessment Year in question is 2018-19, i.e., Financial Year 2017-18, whereas the CBDT has done away with the certification by a CA from the Financial Year subsequent thereto, by way of issuing order on 24.05.2018. Therefore, the AO was not justified in discarding the valuation report given by or the valuation done by the CA.

7. The Commissioner, Income Tax (Appeals,) as also the Tribunal, have rightly set aside the disallowance or addition made by the AO on this count.

8. We, therefore, do not find any infirmity in the orders so passed by the appellate authorities. The above-referred question is also answered against the Revenue and in favour of the assessee.

9. The present appeal is thus rejected in toto.

DINESH MEHTA
(JUDGE)

RAJNEESH KUMAR GUPTA
(JUDGE)

SEPTEMBER 17, 2026/*MR*