

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.496, 543 & 544/Bang/2025 S.A No.25/Bang/2025 [In ITA No.496/Bang/2025 Assessment Year: 2016-17 to 2017-18

Instakart Services Pvt. Ltd., Alyssa, Begonia and Clover, Embassy Tech Village, Outer Ring Road, Ballandur S.O, Devara Beesana Halli, Bangalore – 560 103. PAN – AADCI 8374 D	Vs.	The Asst. Commissioner of Income Tax, Central Circle – 1(4), Bengaluru. .
APPELLANT		RESPONDENT

ITA No.530 & 531/Bang/2025 Assessment Year: 2017-18 - 2018-19
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The Asst. Commissioner of Income Tax, Central Circle – 1(4), Bengaluru.	Vs.	Instakart Services Pvt. Ltd., Alyssa, Begonia and Clover, Embassy Tech Village, Outer Ring Road, Ballandur S.O, Devara Beesana Halli, Bangalore – 560 103. PAN – AADCI 8374 D
APPELLANT		RESPONDENT

Assessee by	:	Shri Ajay Vohra, Sr. Advocate and Ms. Ankita Prakash, Shri Anuj Kumar, Advocate
Revenue by	:	Shri Shivanad Kalakeri, CIT

Date of hearing	:	11.11.2025
Date of Pronouncement	:	18.12.2025

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is bunch of 5 appeals filed by the assessee and the Revenue against the order passed by the CIT(A)-11 Bengaluru for the assessment year 2016-17 to 2018-19. The assessee has also filed Stay Application.

First, we take up ITA No. 543/Bang/2025, an appeal by the assessee for A.Y. 2016-17 as lead case.

2. The only effective issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowances of the claim representing business loss for Rs. 772,75,51,806/- only.
3. The facts in brief are that the assessee, a private company, is engaged in the business of logistics, courier and allied services. For the year under consideration, the assessee declared a loss of Rs. 768,38,95,521/- after setoff of income from other sources for Rs. 10,74,193/- and capital gain of Rs. 4,25,82,091/- only. The case of the assessee was selected for complete scrutiny under CASS to verify the claim of huge loss.
4. During the assessment proceedings, the assessee company was asked to explain how it incurred such a huge loss in one year, the nature of the losses and the reason thereof.
5. The assessee company in response claimed that it got incorporated as on 8th June 2015 and the year under consideration is the

first year of its business operation. Being the first year of business operation, it was trying to be picking up business and taking time to read the market to establish itself. Further, it claimed that being in the initial stage of business it charges customers (mainly Flipkart) at discounted rate in hope of raising its business. At the time, it was not able to negotiate a good deal with third party logistics vendors to whom payments for delivery or transportation were paid. Hence the same resulted in business loss.

5.1 The assessee explained that due to various market exigencies, the company had to provide competitive rates to its customers in order to survive in the market. The costs incurred could not be directly linked to the revenue earned, as there were other factors involved in the first year of operations which were not remunerative initially. The revenue generated from its customers in the first year was not comparable to the expenditure incurred in rendering services due to the complexity of the business model in which the company was operating.

5.2 It was further submitted that various processes were involved between the pick-up and delivery of consignments, the cost of which was incurred by the assessee company and not recovered from customers. Considering that the Company was catering to fast-growing e-commerce companies in India, it was necessary to incur high costs in the initial years to provide uninterrupted services and exceptional customer support services. While the initial years may have yielded losses, such losses were attributable to high vendor costs and administrative expenses. The intention of the company was to ensure proper management of logistics and efficient services across India.

5.3 The assessee also submitted that the strategy of the company and the optimization of processes enabled it to survive in the market and to increase its customer base and revenue in later years. During the assessment, copies of agreements entered into with customers and vendors were also furnished. It was explained that rates with customers and vendors were influenced by different factors; while the assessee wanted to keep customer rates competitive, it had to accept prevailing vendor rates to ensure uninterrupted services.

6. However, the AO observed that the assessee is a part of Flipkart Group which ultimately owned by Flipkart Pte Singapore. The assessee company acquired the ongoing business of M/s WS Retail Pvt Ltd which is a group entity of Flipkart. M/s WS Retail Pvt Ltd, was effectively running logistic business in the brand name of E-Kart enjoying brand value of Rs. 9.18 crores, distribution channel growth of 12.72 crore and goodwill valued at 66.73 crores. The impugned company was doing 90% of business through Flipkart Portal and having 350 to 400 delivery hubs across India.

6.1 Therefore, the assessee company does not start its business from scratch, instead it acquired well established business having well recognized brand name from a group company. Hence, the claim of the assessee that it was first year operation and it was trying to pick up business is not acceptable.

6.2 The AO further noted that the assessee company got majority of business only from Flipkart (a group company). To complete the work order received from Flipkart the assessee company hires the services of

local vendors or third parties such as Bluedart, Delhivery, DTDC etc. The records show that the assessee was paying much higher charges to vendors like Blue Dart, while at the same time, it was charging Flipkart, its group company, at much lower rates. For example, where Flipkart was billed only ₹15 to ₹31 for certain shipments, Blue Dart charged the assessee ₹22 to ₹32 for the same weight slabs. Similarly, for cash-on-delivery, the assessee collected only ₹5 from Flipkart but paid ₹30 to Blue Dart. In addition, Blue Dart also levied fuel and other charges, which the assessee did not recover from Flipkart. Both contracts—with Flipkart and with Blue Dart—were signed on the same date, which shows that the assessee knowingly agreed to such terms and was not forced due to being new in the market. Established logistics companies like Blue Dart normally charge standard market rates with margins, but the assessee provided services to Flipkart at rates far below market levels. This clearly shows that the assessee's business model was not driven by profit, but by providing services to its group company at a loss. Therefore, the plea that losses happened because it was the first year of operations and the assessee could not negotiate better deals is not correct. The losses were the direct result of the assessee's own decisions and not due to any external market factors.

6.3 The AO also rejected the assessee contention that it charged Flipkart at discounted rate hoping to get business. The AO held that Flipkart is a group concern of the assessee company, hence there was no risk of losing business deal and the assessee was not required to compete with the market forces to get the deal. As such 96% of the logistics requirements of Flipkart Portal were catered by the assessee company only.

6.4 Based on the above observation the AO held that it is clear that the assessee has deliberately entered into contracts with its group company at rates much lower than market, while simultaneously paying higher charges to independent vendors. This shows that the business was not run with a genuine profit motive but only to benefit the Flipkart group by shifting costs and offering heavy discounts. The abnormal losses booked, despite the assessee being fully funded and supported by the group, only indicate a conscious design to erode its own capital and pass on benefits to its related party. The plea of being in the first year of operations is baseless, as the assessee controlled the logistics chain and still chose to operate at unviable rates. In comparison with other logistics players, only the assessee has reported such abnormal losses. Therefore, the entire business loss claimed is not allowable, as it arises out of the assessee's own deliberate and imprudent actions rather than genuine business circumstances. Hence, the AO disallowed the entire claim of business loss of Rs. 772,75,51,806/- and assessed the total income at Rs. 4,36,56284/- being income from other sources and capital gain.

7. The aggrieved assessee preferred an appeal before the learned CIT(A).

8. The assessee, before the learned CIT(A), submitted that the loss incurred during the year was a genuine operating loss arising in the normal course of business. It was engaged in providing logistics and allied services to enhance the efficiency of the e-commerce retail supply chain. These services included pick-up of shipments from warehouses,

forward delivery, cash-on-delivery/postpaid facility across serviceable pin codes, reverse logistics, and ERP integration with a specialized customer interface. Revenue was earned from providing these services to Flipkart, which is its group company, as well as from independent customers like Vector E-Commerce and Xerion Retail.

8.1 During AY 2016-17, the company was in its very first year of operations and at an early stage of growth. The Indian e-commerce logistics industry itself was then in its early stages and highly competitive, with several established players already present in the market. To enter and sustain in this competitive field, the assessee had no choice but to invest heavily in infrastructure, manpower, and technology, and to offer services at attractive rates. This was necessary to expand scale, cover maximum geographical areas, and ensure uninterrupted service to customers. The assessee company submitted that such business strategy was essential to establish itself in the industry, even though it resulted in losses in the initial years.

8.2 The assessee further points out that these losses are not artificial or notional but are real business losses. All expenses were wholly and exclusively incurred for business purposes, duly recorded in audited accounts, and not related to any capital transaction. The loss has actually arisen out of excess of expenditure over income and has been incurred in carrying out the operations of the company. The Assessing Officer has not disputed the genuineness of these expenses.

8.3 It is further submitted that business prudence requires looking at long-term sustainability. The financial results of subsequent years clearly demonstrate that the assessee's strategy worked. There was a

significant increase in turnover, customers, and reduction in loss percentage in the later years (2017-18 and 2018-19). As such in the A.Y. 2017-18 and 2018-19, the turnover increased by 240% and 78% respectively, the number of customers increased to 37 and 42 respectively from 27. Likewise, the percentage of loss decreased from 209% in A.Y. 2016-17 to 20% and 7 % in A.Y. 2017-18 and 2018-19. This proves that the loss in the first year was only due to initial set-up and competitive pricing pressures, and not because of any intention to shift profits or avoid tax.

8.4 In law also, under section 28 of the Act, a loss incidental to carrying on business is deductible. The Hon'ble Supreme Court in *Badridas Daga v. CIT (1958) 34 ITR 10* has held that a real and actual business loss is allowable. Similarly, in *CIT v. Indian Overseas Bank (1985) 151 ITR 446*, it was held that a loss must be allowed if it has actually arisen and is not merely anticipated. The assessee's loss fully satisfies these principles, as it is real, revenue in nature, incidental to trade, and not prohibited under the Act.

8.5 The assessee also submitted that all expenses were incurred wholly and exclusively for the purpose of its own business and are allowable. It is a settled principle that the test of business expediency must be judged from the viewpoint of the businessman, and not from the Revenue. Even if an expense does not result in immediate profit, it is deductible if incurred for promoting business or protecting future growth. The Hon'ble Supreme Court in *Walchand & Co. (65 ITR 381)* and *Sassoon J. David & Co. (118 ITR 261)* has held that "wholly and exclusively" does not mean "necessarily," and that it is for the assessee

to decide the manner in which business is carried on. Therefore, the losses incurred in the initial years, arising from the assessee's strategy to expand operations and win customers, are on account of commercial expediency and cannot be disallowed.

8.6 Further, the AO has erred in indirectly bringing notional profits to tax by disallowing genuine business losses by treating the loss as if it were a discount given to its group company. The AO has in effect created a deemed income which was never earned. Under the Income-tax Act, only real profits actually earned can be taxed, and not hypothetical income that could have been earned if contracts were structured differently. The assessee emphasizes that its contracts were entered into on commercial grounds, and the adequacy of consideration cannot be questioned by the AO. As settled by law, profits must be computed from actual income after deducting legitimate business expenditure, unless expressly disallowed by the Act. Therefore, reclassifying the assessee's business loss as notional income is beyond the scope of the Act and unsustainable in law.

8.7 It was also submitted that the disallowance of the entire business loss by the AO is arbitrary and without reference to any specific provisions of the Act. The loss incurred is wholly and exclusively related to business operations and is allowable under sections 28 to 43D of the Act. The AO has erred in treating the loss as notional and in comparing the assessee with unrelated third-party logistics companies which are well-established and not comparable to a new entrant in the e-commerce sector. Further, the AO failed to appreciate that services obtained from third-party vendors form only part of the assessee's

overall logistics operations, and that substantial expenditure was incurred on freight, delivery vans, outside contracted services, and statutory levies like Octroi and Entry Tax. Even if parity is assumed in vendor and customer rates, these additional costs would still result in genuine business losses. The assessee therefore prays that the entire disallowance, being based on incorrect assumptions and comparisons, be deleted.

8.8 The assessee submitted that the AO has wrongly applied the concept of Base Erosion and Profit Shifting (BEPS) to the present case. All the customers of the assessee are resident entities within India, and there is no shifting of profits from one tax jurisdiction to another. The profit or loss of Flipkart group is also not affected by the transactions with the assessee, and hence the BEPS framework is not applicable. Therefore, the reference made by the AO to BEPS is misplaced and unsustainable in law.

8.9 Therefore, the assessee prays that the disallowance of the business loss by the AO be deleted, as the loss was incurred in the genuine course of business which is incidental to the trade, and is supported both by commercial expediency and by settled judicial principles.

9. However, the learned CIT(A) after considering the facts in totality rejected the argument advanced by the assessee and confirmed the disallowance of business loss. The finding of the learned CIT(A) is extracted as below:

5.17 I have considered the written submissions of the appellant and perused the material available on record on this issue. It is seen that the business of logistics services from WS Retail Pvt. Ltd. was acquired by the appellant on a slump sale basis which leads to an inference that the business was already running effectively. It is also gathered that WS Retail was found by the Flipkart founders Shri Sachin Bansal & Binny Bansal and was later sold to investors. Earlier WS Retail was in house vendor of Flipkart and generated a bulk of its revenue before Flipkart turned into a market place. The parent company of Flipkart is Flipkart Singapore Pvt. Ltd. and in order to carry out direct sales to the customers an Indian company by name WS Retail was created as a logistic partner. However, around 6 years ago in 2018, WS Retail stopped selling on its former parent market place Flipkart as DIPP had introduced new FDI rules where e-commerce company cannot allow more than 25 % sales from one vendor.

5.18 WS Retail was also running a logistics business under the brand "ekart". So, it can be concluded that the logistics business under the brand "ekart" was already established before the acquisition of the business form WS Retail Pvt. Ltd. This also evidenced by the fact that the "ekart" brand was valued at Rs. 9.18 crores and had a distribution channel worth Rs. 12.72 crores and while goodwill was valued at Rs. 66.73 crores. Further, it was stated that around 352-400 hubs were already in existence when the business was acquired, hence to state that the trading losses were incurred as the appellant was in its first year of operations and incurred substantial expenditure to run its business does not appear an acceptable.

5.19 During the year under consideration, F.Y.2015-16, it is seen that the appellant gets 96 % of its orders from Flipkart, so 96% of its revenue also come from the group company. The appellant after receiving the work order from Flipkart hires the services of local vendors to supply the goods to the ultimate consumer. The AO has also analysed the contract agreement between the appellant and Flipkart and other vendor. It was observed that the rate at which the appellant is paying another logistic vendors is higher than what it is charging Flipkart for the same services. It was observed by the AO that they are paying higher rates to Blue Dart and charging less to Flipkart. For Cash on delivery services, Flipkart is charged Rs. 5 whereas the appellant is paying Rs. 30 to Blue Dart. Even for fuel charges it is observed that other third party service providers charge the appellant for fuel, whereas while charging Flipkart, the the same cost is not factored in. It was inferred by the AO that while other vendors like Blue Dart charge market rate with margins included the appellant is not charging Flipkart even the market rate. The AO observed that that the business model of the appellant is not driven by profit motive and is so arranged to incur losses so that they can be set off in the future years. The appellant's submission that they entered into contract with Flipkart on the hope that the volume of business that they get from Flipkart eventually make up for the lower rate is also not based a sound footing as it was part of the Flipkart group and 96 % of its entire Flipkart portal's requirements of logistic business was catered by the appellant. Hence, the submission that the appellant charged Flipkart at a discounted rate to gain business is not supported by any factual evidence.

5.20 Further, in a statement recorded u/s 131 on 26.12.2018, Shri Abhay Maheswari, director of the appellant company stated that Flipkart Internet accounts for 96% of its business. He also stated that the revenue inflow from Flipkart Internet cannot be co-related with the expenses outflow from their end and it is not possible to map item to item.

5.21 The appellant vide submission dated 06.01.2025 has contended that Flipkart Internet was not its sole customer as it has provided logistic services to other customers in all relevant years under consideration. The appellant also submitted that the revenue earned from Flipkart Internet vis-à-vis other customers has gradually decreased from 96.46% in AY 2016-17 to 65.33% in AY 2017-18 and 37.08% in AY 2018-19. Hence, without prejudice to the written submissions regarding the allowability of losses, the appellant contended that proportionate losses to the extent of revenue earned from Flipkart Internet can be disallowed. As requested, the appellant was provided with an opportunity of hearing on 07.01.2025 and the case was discussed. During the course of hearing the appellant submitted that the facts of the present case are similar in facts in the case of a group company, Flipkart India Pvt. Ltd. wherein similar additions were made and the Hon'ble ITAT, Bengaluru in its decision reported in 150 taxman.com 272 vide order dated 09.03.2023, relying on its own order in the case of Flipkart India in AY 2015-16 deleted the additions made. The appellant contended that since the facts of the present case are identical, the decision rendered by the jurisdictional ITAT in the case of a Group company, Flipkart India Pvt Ltd sets a binding precedent.

5.22 I have perused the order of the Hon'ble ITAT, Bangalore in the cited case. The facts of this case are that assessee, Flipkart India purchases goods from various persons and sells the same to various customers on its e-commerce platform. The AO observed that the assessee, Flipkart India sells the goods to resellers/retailers at a price less than the cost price. The AO considered this as basis for creation of marketing intangibles/brand/goodwill and made an addition towards the same. The ITAT, Bengaluru relying on own order in the appellant's own case (Flipkart India) for AY 2015-16, held that the assessee is a wholesale trader and sells the goods to the retailers at a price lesser than the purchase cost. The trading by the retailers to the end customer is through e-commerce platforms. The AO observed that the assessee has sold to the retailers and due to such sale to retailers, the assessee incurred loss. The AO was not convinced with the pleas of the appellant that by offering goods at a lesser price, the assessee in the long run captures a huge market and generates profits in the long run due to goodwill and brand value. The AO inferred those profits foregone in the earlier year by selling goods at less than cost price is to be regarded as expenditure incurred in creating intangible/brand/goodwill and the said expenditure has to be construed as capital expenditure and has to be reduced from the loss declared by the appellant in the return of income. In this case the quantification of expenditure was done by adding to the cost price, profit margin which appellants engaged in similar business would earn and reducing therefrom the actual sale value realized by the appellant.

5.23 The Hon'ble ITAT, Bengaluru in this case after elaborate discussion of relevant Sections i.e. Section 4, Section 5, Section 2(24), Section 14, Section 28 and Section 145 held that the taxing authority had no power to go beyond

the book results. The ITAT, Bengaluru relying on the decision of Hon'ble High Court of Karnataka in the case of A. Khadar Basha held that where a trader transfer his goods to another trader at a price less than the market price and the transaction is a bonafide one, the taxing authority cannot take into account the market price of those goods, ignoring the real price fetched, to ascertain profit from the transaction. The Hon'ble High Court held that only exception in such scenario was if section 40(A)(2)(a) of the Act applies i.e., parties to the transaction are related. In a result the ITAT, Bengaluru in the case of Flipkart India Pvt Ltd held that there is no provision in the Act by which AO can ignore the sale price declared by the assessee and proceed to enhance the sale price without any material evidence to show that the assessee has realized a higher sale price. The ITAT also held that one cannot proceed on the basis of presumption that profit forgone is expenditure incurred and further that expenditure so incurred was for acquisition intangible asset like brand and goodwill. While concluding the ITAT held that loss has declared by the appellant in the return of income should be accepted by the AO and the addition made was accordingly deleted.

5.24 *The Order of the Hon'ble Jurisdictional Tribunal in the case of Flipkart was perused. In the present case the facts are different in the sense that the appellant is not wholesale trader but provides logistic services to e-commerce players. On perusal of the details filed during the assessment and appellate proceedings it is noticed that the appellant's job is to pick up the items ordered online on the e-commerce platform by the customers from the vendor and deliver it to the customers. For this job the appellant uses the services of other logistic providers such as Blue Dart who is assigned the work, that delivering item to the end customer for which the appellant pays Blue Dart at a certain pre-decided rate and charges certain amount to Flipkart Internet for the same work. From the agreements filed between the other logistic providers and Flipkart Internet, it is seen that the appellant is paying higher rates to Blue Dart and charging less to Flipkart the details of the rates charged as per the weight of the parcels and the location to be delivered are available in the assessment order. It is noticed that even for cash on delivery services and delivery by Air, the appellant was paying higher rates to vendors like Blue Dart and charging less to Flipkart Internet. The fuel charges have also not been factored while charging the cost to Flipkart whereas service providers like Blue Dart charge the appellant for the fuel charges. Such being the difference in the facts of the case, the decision of ITAT, Bengaluru in the case of Flipkart India Pvt. Ltd. is distinguishable on facts and hence not relevant. As the regards, the appellants without prejudice contentions that the appellant provided logistic services to other related as well as unrelated customers the details provided by the appellant vide its submission dated 06.01.2025 were perused.*

5.25 *It is seen that the appellant's revenue from Flipkart Internet vis-à-vis the total revenue has gone down from the FY-2015-16 to 2017-18 as was observed in the preceding paragraphs. However, this fact is not so relevant. The rates charged by the appellant to Flipkart vis a vis the other unrelated parties assume significance as from the facts emerging from record point out that the appellant still charges less from Flipkart as compared to other unrelated entities despite reduction in volume of business.*

5.26 *It is pertinent to mention here that the case of the appellant for A.Y 2021-22 was picked up for scrutiny and the assessment u/s 143(3) was completed on 33/12/2022. The appeal before the undersigned was filed on 26/1/2023 and is pending for adjudication. Identical issues arise from this appeal. On perusal of the assessment order passed for the A.Y.2021-22, it is seen inspite of decrease in the revenues earned from Flipkart in this said A.Y, the appellant is still charging less to Flipkart in cases where shipments weigh more than 1000gms and 1500gms. Elaborate discussion regarding rates charged to Flipkart and rates charged by the other parties is available in paras 4.4.11 to 4.4.19 of the assessment order for the A.Y 2021-22. The inferences drawn from the discussion of such rates is as under:*

- *Rates charged by the appellant to Flipkart for shipments weighing 1000gms and 1500 gms is less than the rates charged by other parties to the appellant*
- *The other parties also charge additional rates for airway bill and surcharge for return via process. The first mile charges are also charged by other parties to the appellant*
- *The third party vendors also charge additional rates on account of fuel charges as was observed by the AO from the Agreement with Delhivery Pvt Ltd.*
- *Such additional charges charged by other third parties are not charged by the appellant to Flipkart inspite of the decreased revenues is beyond commercial prudence and comprehension. It is certainly not a case of commercial expediency on part of the appellant to charge less to Flipkart Internet than the rates charged by the unrelated third parties to provide similar kind of services.*

5.27 *In view of the above, I do not find any reason to interfere with the findings of the AO to confirm the disallowance of business losses made in the assessment order for the AYs 2016-17, 2017-18 and 2018-19. Hence the grounds raised with respect to this issue for all the 3 AYs is dismissed.*

10. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

11. The learned AR before us filed paper book running from pages 1 to 105, written submissions along with annexure thereto running from pages 1 to 141, compilation of case laws and other documents. The learned AR explained that during the relevant year, the appellant charged Flipkart Internet and other third-party customers, the same

rates for logistics services. A rate chart for AY 2016-17 clearly shows that the rates charged to Flipkart were identical to the rates charged to unrelated customers. Hence, the allegation that the appellant was charging lower rates to Flipkart as compared to unrelated parties is factually incorrect. The Id. AR further pointed out that the Id. CIT(A) wrongly relied on the assessment order for AY 2021-22, which involved different facts and rates, to sustain the disallowance in AY 2016-17. Such reliance is misplaced.

11.1 The learned AR also emphasized that the e-commerce logistics industry is highly competitive and that losses are normal in the early years of operations. Reference was made to large, well-known e-commerce and delivery companies like Zomato, Amazon India, Swiggy, and Zepto, all of which have incurred substantial business losses despite their size and brand value. Even Flipkart Internet itself has consistently reported heavy losses in successive years. Therefore, the losses incurred by the appellant should be seen as part of the natural business cycle and competitive environment rather than as a device to reduce tax liability.

11.2 The Id. AR further drew attention to the fact that all expenses of the appellant have been duly recorded in the audited financial statements, which have been accepted as correct and complete under section 145(3) of the Act. There has been no allegation of suppression of sales, inflation of expenditure, or violation of provisions such as section 40A(2) of the Act. The accounts are fully vouched and supported by proper evidence. In such circumstances, the settled law is that the Revenue cannot substitute its own view of what profits ought to have been earned or disallow real expenses merely because the business has

resulted in losses. Reliance was placed on the Hon'ble Supreme Court's judgment in *CIT v. A. Raman & Co.* [1968] 67 ITR 11, which held that only real income can be taxed, and not hypothetical or notional income that could have been earned. Similar support was drawn from decisions in *Highways Construction Co. (P) Ltd.* and *VBHC Value Homes Pvt. Ltd.*, where ad-hoc disallowance of business losses without specific defects was struck down.

11.3 It was also argued that the difference in rates between customers and vendors, as highlighted by the AO, is not the sole basis of loss. The appellant incurs multiple other costs such as operational expenses, delivery van charges, outside contracted services, octroi, and entry tax, all of which are necessary to run the logistics business. Even if parity is assumed between vendor charges and customer billing, these additional unavoidable costs would still result in a deficit. Therefore, the disallowance of loss simply on the ground of rate comparison is not sustainable.

11.4 The learned AR submitted that the Tribunal itself has already considered an identical issue in the case of *Flipkart India Pvt. Ltd. v. ACIT* [2023] 150 taxmann.com 272, and again in the subsequent Miscellaneous Petition, and held that disallowance of losses declared in the return of income without pointing out defects in accounts is not permissible. Given that the facts of the present case are substantially similar, the ratio of the Tribunal's decision should squarely apply here.

11.5 Finally, without prejudice, the Id. AR argued that even if the Revenue insists that the rates charged to Flipkart were lower, the

appellant had a substantial portion of revenue from unrelated customers as well. At the very least, the losses relating to such unrelated customers should have been allowed proportionately, which the AO and Id. CIT(A) failed to do. The complete disallowance of loss is thus unjustified.

11.6 In view of these submissions, the learned AR prayed that the disallowance of business loss sustained by the Id. CIT(A) be deleted in full, and the appellant's claim of genuine business loss, arising out of commercial decisions and recorded in its audited accounts, be accepted. On the contrary, the learned DR before us vehemently supported the order of the authorities below.

12. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding detailed discussion, we note the sole issue before us is whether the disallowance of business loss amounting to ₹772,75,51,806/- sustained by the learned CIT(A) is justified.

12.1 The facts are not in dispute. The appellant assessee is engaged in providing logistics, courier, and allied services to e-commerce players. For AY 2016-17, being the first year of operations after incorporation, the assessee reported business losses. The Assessing Officer disallowed the entire loss mainly on the grounds that

- (i) The assessee is a group concern of Flipkart,
- (ii) Services were provided to Flipkart at rates lower than market rates,
- (iii) Higher vendor costs were incurred simultaneously, and

(iv) The arrangement lacked profit motive.

12.2 The Id. CIT(A) after considering the submissions of the assessee confirmed the addition made by the AO.

12.3 On careful perusal, we find merit in the submissions of the assessee. First, the assessee has demonstrated with evidence that the rates charged to Flipkart Internet and to unrelated third-party customers were the same during the relevant year and subsequent years. A rate chart for AY 2016-17 and subsequent year clearly supports this fact. Hence, the allegation that the assessee designed its business activity in a way to provide services to its group company at a discount rate and thereby booking loss in books of account is not fully correct.

12.4 Secondly, the logistics industry in India, particularly in the e-commerce segment, at the relevant point of time, was at an early and highly competitive stage. It is an accepted business reality that new entrants have to incur heavy infrastructure and operational costs in their formative years, and often provide services at competitive rates to gain market share. We also take judicial notice of the fact that established players like Zomato, Amazon, Swiggy, and Zepto have reported heavy losses despite scale and brand value. Losses in the early years of business, therefore, cannot be regarded as abnormal or as evidence of tax avoidance.

12.5 Thirdly, all expenses of the assessee are duly recorded in the audited accounts, which have been accepted under section 145(3) of the Act. No specific defects have been pointed out in the books, nor has

there been any finding of inflation of expenses, suppression of sales, or violation of section 40A(2) of the Act. In such a situation, as laid down by the Hon'ble Supreme Court in CIT v. A. Raman & Co. (67 ITR 11) and by the jurisdictional High Courts, only real income earned can be taxed and not notional income which the Revenue assumes could have been earned. The Revenue cannot substitute its own view of business prudence in place of that of the assessee.

12.6 Fourthly, the difference between customer billing and vendor payments, as highlighted by the AO, cannot be the sole basis for disallowance. The assessee's business involves multiple unavoidable costs such as freight, delivery vans, outside contracted services, octroi, and entry tax. Even if parity in customer and vendor rates is assumed, these additional costs independently justify the losses. The AO's approach of selectively comparing rates without considering the full business model is legally untenable.

12.7 We also find that the co-ordinate Bench of the Tribunal in Flipkart India Pvt. Ltd. v. ACIT for A.Y. 2015-16 reported in 92 taxmann.com 387 has already dealt with a similar issue and held that disallowance of losses declared in audited accounts without pointing out specific defects is not permissible. The facts of the present case being substantially similar, the ratio of the decision squarely applies. The relevant finding in the said case is extracted below:

50. We have given a very careful consideration to the rival submissions. As far as the Assessee's appeal is concerned, the issue that arises for consideration is as to whether the determination of total income as done by the AO was justified in the facts and circumstances of the case. The Assessee as we have seen is a wholesale trader. He purchases goods for the purpose of trading at say Rs. 100/- from unrelated parties. He sells it to retailers at Rs. 80/-. The

retailers are also unrelated parties. The retailers sell the goods through the Assessee's web portal "flipkar.com". The trading by the retailers to the end user is through E-Commerce. The customers browse the website and see the various products and place orders electronically. The products are delivered physically to the customers at their desired place. The payment is also made electronically or by cash at the point of deliver to the customers. As far as the Assessee is concerned it deals only with retailers. On sale to the retailers the Assessee incurs loss. The case of the AO is that a wholesale trader normally sells his products at cost + his mark-up (margin) + indirect costs incurred in the business of wholesale trading. The plea of the Assessee is that E-commerce was at a nascent stage and therefore to attract customers to purchase goods through E-Commerce, the only way was to offer goods at a lesser price than what the retailers in physical market in show room offer (referred to as retailers in brick and mortar). The further plea of the Assessee was that by offering goods at a lesser price, the Assessee in the long run will capture a huge market and generate profits in the long run. According to the AO the strategy of selling goods at lower than cost price was to establish customer goodwill and brand value in the long run and reap benefits in the later years. Therefore the profits foregone in the earlier years by selling goods at less than cost price was to be regarded as expenditure incurred in creating intangibles/brand value or goodwill. Since such expenditure create asset in the form of intangible/brand or goodwill, the expenditure has to be construed as capital expenditure and would go to reduce the loss declared by the Assessee in the return of income. Therefore the loss declared by the Assessee in the return of income filed was converted into positive income by disallowing expenditure. The quantification of expenditure was done by adding to the cost price, profit margin which Assessee engaged in similar business would earn and reducing therefrom the actual sale value realised by the Assessee. The question is whether the course of action adopted by the AO was permissible under the Act.

51. The relevant statutory provisions of the Act are Section 4 of the Act which creates a charge on the total income of an Assessee and it lays down in Section 4(1) of the Act that where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of the Act in respect of the total income of the previous year of every person. Section 5 of the Act lays down the scope of total income under the Act and it lays down that total income of any previous year of a person who is a resident includes all income from whatever source derived which(a) is received or is deemed to be received in India in such year by or on behalf of such person; or(b) accrues or arises or is deemed to accrue or arise to him in India during such year; or(c) accrues or arises to him outside India during such year. Sec. 2(24) of the Act defines income by laying down that income includes and lists out several categories of receipts which can be characterised as income. The definition is inclusive definition and therefore what can be regarded by ordinary connotation of the said term as income can be regarded as income even though they do not fall within any of the categories of income set out in various sub-clauses of Sec. 2(24) of the Act. The aspect to be noted is that there should be income and its receipt or accrual because it is only

income which accrues or arises that can be subject matter of total income u/s. 5 of the Act. Sec. 14 lays down that income for the purpose of computation of total income has to be classified under the following heads of income viz., Salaries, Income from house property, Profits and gains of business or profession, Capital gains and Income from other sources. Sec. 28 of the Act lays down various categories of income that shall be chargeable to income-tax under the head "Profits and gains of business or profession". The income of the Assessee in the present case would fall within Sec. 28(i) of the Act viz., "the profits and gains of any business or profession which was carried on by the assessee at any time during the previous year". Section 145 of the Act provides how income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" has to be computed and it lays down that such income shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Sub-section (2) of section 145 provides that the Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of assesseees or in respect of any class of income. Sub-Section (3) of Section 145 provides that Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144. It is thus clear from the statutory provisions that the starting point of computing of income from business is the profit or loss as per the profit and loss account of the Assessee. The AO cannot disregard the profit or loss as disclosed in the profit and loss account, unless he invokes the provisions of Sec. 145(3) of the Act. In the present case it is not the case of the AO that the provisions of Sec. 145(3) of the Act are applicable. In such circumstances, the question is as to whether the AO had power to go beyond the book results. In our view, the AO was not empowered under the Act to do so.

52. As laid down by the Hon'ble Supreme Court in the case of Calcutta Discount Co. (supra), when one trader transfers his goods to another trader at a price less than the market price, the taxing authority cannot take into consideration the market price of those goods, ignoring the real price fetched. As laid down by the Hon'ble Supreme Court in the case of A. Raman & Co. (supra), income which has accrued or arisen can only be subject matter of total income and not income which could have been earned but not earned. The decision of the Hon'ble Karnataka High Court in the case of A. Khader Basha (supra) is squarely applicable to the facts of the present case. The facts of the Assessee's case and the facts of the case decided by the Hon'ble Karnataka High Court were identical. The Hon'ble Karnataka High Court held following Hon'ble Supreme Court decision in the case of Calcutta Discount Co. Ltd. (supra), that where a trader transfers his goods to another trader at a price less than the market price and the transaction is a bona fide one, the taxing authority cannot take into account the market price of those goods, ignoring the real price fetched to ascertain the profit from the transaction. The Hon'ble Court explained that the only exception was if Section 40(A)(2)(a) of

the Act applies viz., where the parties to the transaction are related. Following the aforesaid decisions, we hold that the AO was not right in proceeding to ignore the books results of the Assessee and resorting to a process of estimating total income of the Assessee in the manner in which he did. We find force in the submission of the learned counsel for the Assessee that what can be taxes is only income that accrues or arises as laid down in Sec. 5 of the Act. Nothing beyond Sec. 5 of the Act can be brought to tax. As contended by him there was nothing to show accrual of income so as to disregard the loss declared by the Assessee in the return of income filed. As we have already seen there is no provision in the Act by which the AO can ignore the sale price declared by an Assessee and proceed to enhance the sale price without material before him to show that the Assessee has in fact realized higher sale price. As contended by the learned counsel for the Assessee, wherever the legislature wanted to tax income not earned, it had made specific provisions in the Act by way of deeming fiction like provisions of sec. 43CA(1), Sec. 45(4) and sec. 50C(1) of the Act.

53. In view of the above conclusion, there may not be any necessity to deal further with the manner in which the AO has proceeded to compute total income of the Assessee and we can conclude by holding that the loss returned by the Assessee has to be accepted and the manner of determination of total income as done by the AO is not in accordance with law. Nevertheless, we shall also address the issue as to whether the conclusions of the AO that the Assessee incurred expenses in creating intangibles/brand or goodwill and also the question whether the conclusion of the AO that to the extent the Assessee has foregone his profit margin, he can be said to have incurred expenditure in creating intangibles/brand or goodwill.

54. Did the Assessee incur any expenditure as held by the AO in creating intangibles/brand or goodwill? To say that an expenditure has been incurred by an Assessee there should be either accrual of liability or actual outflow in the form of payment. There was no such accrual of liability or actual outflow in the present case. This fact is also acknowledged by the AO. The AO has however proceeded to draw hold that because the Assessee was purchase at Rs. 100 and selling the goods to retailers at Rs. 80/- the rationale for incurring loss by a wholesale trader at the gross level was very peculiar. Since such a pricing was done keeping in mind the long run profits of the Assessee which will grow because of the intangible/brand or goodwill which will be generated in the long run. Therefore to the extent profits are foregone by the Assessee, the Assessee can be deemed to have incurred expenditure on creating intangibles/brand or goodwill and such expenditure has to be regarded as capital expenditure and added to the total income of the Assessee.

55. We find no basis for the above conclusions of the AO. The first presumption of the AO is that the Assessee had incurred expenditure. As rightly contended by the learned counsel for the Assessee there was no accrual of any liability on account of any expenditure or actual outflow of funds towards expenditure. One cannot proceed on the basis of presumption that the profit foregone is expenditure incurred and further that expenditure so incurred was for acquiring intangible assets like brand, goodwill etc. As pointed by the Hon'ble Supreme Court and the Hon'ble Bombay High Court in the case of B.C. Srinivasa Setty (supra) and Evans Frazer (supra), for creation of intangibles like

say goodwill it is not possible to ascertain in terms of money the cost of acquisition of goodwill; it is equally impossible to ascertain in terms of money the cost of addition or alteration to the quality of goodwill which led to the increase in its value. It is therefore not possible to say that profits foregone created goodwill or any other intangibles or brand to the Assessee. The argument of the learned DR on the existence of intangibles/brands or goodwill was on the basis of purchase of Assessee's shares at a premium by investors. Despite making losses, the Assessee's shares were purchased by investors at a high premium. In this regard two instances of purchase by venture capitalists of the shares of the Assessee of Re.1/- in the previous years relevant to AY 15-16 and 14-15 at a premium of Rs. 1899/- and Rs. 595/- respectively was cited by him. According to him such high share premium was justified only because of the asset base created by the Assessee in the form of brand value. This again is an argument without bringing on record any material to substantial that valuation of shares were done only because of value being ascribed to brand or goodwill or any intangibles. The valuation of shares as per the AO was on DCF method and there is no mention in the order of assessment regarding values being ascribed to goodwill/brand or intangibles. We therefore hold that there was no expenditure incurred by the Assessee except those that are set out in the profit and loss account. The question of incurring expenditure on creating intangibles does not arise for consideration at all.

56. In view of our conclusions that the action of the AO in disregarding the books results cannot be sustained and the further conclusion that the action of the AO in presuming that the Assessee had incurred expenditure for creating intangible assets/brand or goodwill is without any basis, we do not think it necessary to deal with the arguments that even assuming that expenditure was incurred by the Assessee the expenditure for building brand or creating intangible or goodwill is revenue expenditure and allowable as deduction. It is also not necessary for us to go into the question of estimation of quantum of expenditure on creating intangibles, in view of the above conclusions.

57. For the reasons given above, we hold that the loss as declared by the Assessee in the return of income should be accepted by the AO and his action in disallowing expenses and arriving at a positive total income by assuming that there was an expenditure of a capital nature incurred by the Assessee in arriving at a loss as declared in the return of income and further disallowing such expenditure and consequently arriving at a positive total income chargeable to tax is without any basis and not in accordance with law and the said manner of determination of total income is hereby deleted."

12.8 Furthermore, in law, section 28 allows deduction of any loss incidental to carrying on business, unless expressly prohibited. The Hon'ble Supreme Court in Badridas Daga (34 ITR 10) and Sassoon J. David (118 ITR 261) has settled that losses arising in the ordinary course of business and expenses incurred wholly and exclusively for business

purposes are allowable, even if they do not result in immediate profit. The assessee's loss is real, revenue in nature, incidental to trade, and not barred under any provision.

12.9 We, therefore, hold that the disallowance of the entire business loss by the AO and sustained by the Id. CIT(A) is arbitrary, based on conjecture, and contrary to law. The assessee's claim of business loss deserves to be allowed in full. Therefore, we hereby set aside the finding of the learned CIT(A) and direct the assessee to delete the disallowances made by him. Hence, the ground of appeal of the assessee is hereby allowed.

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

Coming to ITA No. 544/Bang/2025, assessee's appeal for A.Y. 2017-18

14. The only effective issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowances of claim of business loss.

15. At the outset, we note that the issues raised by the assessee in its grounds of appeal for the AY 2017-18 is identical to the issue raised by the assessee in ITA No. 543/Bang/2025 for the assessment year 2016-15.1 Therefore, the findings given in ITA No. 543/Bang/2025 shall also be applicable for the assessment year 2017-18. The appeal of the assessee for the A.Y. 2016-17 has been decided by us vide paragraph No. 12 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever the findings are for the assessment year

2016-17 shall also be applied for the assessment year 2017-18. Hence, the ground of appeal filed by the assessee is hereby allowed.

Coming to ITA No. 530/Bang/2025, Revenue appeal for A.Y. 2017-18

16. The interconnected issue raised by the revenue is that the learned CIT(A) erred in allowing the claim of deduction on account of ESOP expenses.

17. The relevant facts are that the assessee in its profit and loss account claimed ESOP expenses of Rs. 12,95,76,277/- only. The assessee submitted that during the relevant year, it had incurred expenditure on account of cross-charge of ESOP cost relating to the Flipkart Stock Option Scheme 2012 (FSOP 2012). Under this scheme, the ultimate holding company, Flipkart Private Limited, Singapore (FKS), granted stock options to selected employees of the assessee company at the time of joining or during service, depending upon performance, promotion, and other factors at the management's discretion. These options were designed to attract, retain, and motivate employees, thereby aligning their interests with the long-term growth and success of the Group. The assessee explained that the ESOPs are treated as part of employee compensation, representing a cost of doing business.

17.1 It was further submitted that the liability towards ESOP cost was determined based on debit notes raised by FKS and recognized in the assessee's books as per IFRS/SFRS, with reference to the fair value of the options on the grant date. The assessee accounted for the expenditure as an employee benefit expense in the profit and loss

account, with a corresponding credit to the holding company. This resulted in an actual outflow of funds from the assessee to the holding company, demonstrating the genuineness of the expenditure.

17.2 On tax treatment, the assessee contended that the expenditure qualifies for deduction under section 37(1) of the Act, as it is neither capital nor personal in nature, has been incurred in the relevant year, and is wholly and exclusively for business purposes. By incentivizing employees, the scheme directly contributed to business efficiency and growth. The assessee emphasized that the ESOP expenditure met all statutory conditions for allowability and should not be disallowed merely because the shares were of the holding company.

17.3 In support of its claim, the assessee relied upon various decision of different benches of Tribunal and the judgment of the Hon'ble Delhi High Court in *Lemon Tree Hotels Ltd. v. Addl. CIT (ITA No. 4588/Del/2013, dated 23.06.2014)*.

17.4 Furthermore, the assessee on the issue of non-deduction of tax at source under section 195 of the Act, submitted that the amounts remitted to FKS towards ESOP costs are purely in the nature of reimbursement of expenses incurred on behalf of the assessee. It was explained that under section 5 of the Act, income of a non-resident is taxable in India only if it is received or deemed to be received in India, or accrues/arises or is deemed to accrue/arise in India. Since the ESOPs were granted and administered by FKS outside India and the cross-charges represented only cost-to-cost recovery without any element of

income, the sums received by FKS cannot be regarded as income chargeable to tax in India.

17.5 The assessee highlighted that as per the ESOP cost-sharing agreement, FKS initially incurs the cost of issuing options under Singapore Financial Reporting Standards, and the same is subsequently cross-charged to the assessee on an annual basis through debit notes. Therefore, the payment is nothing but a reimbursement, devoid of any profit element. Consequently, the provisions of section 195 of the Act relating to withholding tax are not applicable.

17.6 In support of this contention, the assessee placed reliance on various case laws including the decision of the Hon'ble Supreme Court in *DIT v. A.P. Moller Maersk A/S* (2017) 78 taxmann.com 287 (SC), judgments of the Hon'ble Bombay High Court in *CIT v. Siemens Aktiengesellschaft* 310 ITR 320 (Bom) and *DIT v. Wizcraft International Entertainment (P.) Ltd.* 364 ITR 227 (Bom), and the Hon'ble Delhi High Court in *Industrial Engineering Projects (P.) Ltd.* (24 taxmann.com 76). On the basis of the above submissions, the learned assessee urged that the ESOP expenditure be allowed as a deductible business expense under section 37(1) of the Act and that no disallowance be made under section 40(a)(i) of the Act for non-deduction of TDS under section 195 of the Act, as the cross-charge payments to FKS were in the nature of mere reimbursements.

18. However, the AO upon examination of the scheme, observed that what was being reimbursed by the assessee was only the difference between the fair market value of shares on the date of exercise and the grant price of the ESOPs. According to the AO, this difference was not an

actual outflow but only a notional figure representing the discounted issue of shares by FKS to employees.

18.1 The AO emphasized that if there was any real expenditure or loss on account of issue of shares at a discount, it should have been borne and recorded in the books of FKS, which granted the options, and not in the books of the assessee. The AO further held that the discount in the value of shares did not result in any crystallized or incurred expenditure in the hands of the assessee; rather, it was only a hypothetical or fictitious loss. The AO illustrated this by drawing analogy with a company offering its own products at a discount to employees – such notional discount cannot be booked as a deductible expenditure unless there is a real cash outflow.

18.2 The AO concluded that section 37 of the Act mandates that only actual expenditure, incurred wholly and exclusively for the purposes of business, can be allowed. A notional or artificial book entry cannot be treated as deductible. Since in this case the assessee had not incurred any real expenditure and the so-called cross-charge was only a device to shift profits outside India, the AO held that the claim failed the conditions under section 37 of the Act. Accordingly, the entire amount of ₹12,95,76,277/- was disallowed.

18.3 Without prejudice to the above the AO further examined the issue from the angle of tax deduction at source (TDS). It was noted that the assessee had made payment of ESOP cross-charge to its non-resident holding company FKS without deducting tax under section 195 of the Act. It was observed that the payments to FKS were linked to services of

employees rendered in India and the assessee, being an Indian entity, was the beneficiary of such services. By virtue of section 5(2) and Section 9(1)(i) of the Act, the income was deemed to accrue or arise in India because the situs of the payer was in India and the activity (employment services) was performed in India. Thus, the payments carried an income character in the hands of FKS and could not be treated as pure reimbursements.

18.4 The AO also referred to the principle of source-based taxation, noting that when a payment is made by an Indian entity to a non-resident, the situs of payer becomes the source of income, thereby attracting taxation in India. As such, the obligation under section 195 of the Act to withhold tax clearly applied. Since no TDS was deducted, the AO invoked section 40(a)(i) of the Act and held that the expenditure was liable for disallowance.

18.5 Although the expenditure was already disallowed on merits under section 37, the AO noted that the non-deduction of tax also independently triggered disallowance under section 40(a)(i) of the Act. However, no double addition was made; instead, the original disallowance of ₹12,95,76,277/- was sustained.

19. The aggrieved assessee preferred an appeal before the learned CIT(A).

20. Before the learned CIT(A) the assessee besides reiterating its argument/submission from the assessment proceeding, submitted that the ITAT in group case of the Flipkart India Pvt Ltd pertaining to A.Y.

2017-18 has allowed the claim of reimbursement of ESOP charged to parent company FKS.

21. The learned CIT(A) after considering the facts in totality allowed the ground of appeal of the assessee. the relevant finding of the learned CIT(A) reads as under:

6.6 During the appellant proceedings the appellant reiterated the submissions made before the AO. The appellant submitted that grant of ESOP is an incentive for the services rendered by the employees. The appellant entered into a cost sharing agreement with Flipkart Singapore pursuant to which the appellant is obligated to make payment of an amount of ESOP expense for the option granted to the employees during a particular year given the benefit in the form of dedicated employees' services and given that there was actual cash on account of ESOP, it is in the nature of actual expenditure and is not fictitious or notional expenditure as alleged by the AO. So, the appellant contended that the ESOP expenses is not in the nature of capital/personal expenditure, has been incurred in the previous year and has been expended wholly and exclusively for the purposes of the business and hence is deductible u/s 37 of the Act. It was submitted that the Karnataka High Court in the case of Biocon has confirmed the judgement of Hon'ble Special Bench of ITAT, Bengaluru wherein the Court allowed the deductibility of expenses incurred on ESOP in the hands of the employer company.

6.7 During the course of the hearing on 07.01.2025 the appellant submitted a copy of the order passed by the ITAT, Bengaluru in the case of a group company, Flipkart India Pvt. Ltd. for AY 2017-18 wherein the Tribunal has allowed the expenditure incurred on reimbursement of ESOP expenses made to the holding company based in Singapore. The facts of the said case are that the appellant Flipkart India incurred an expenditure towards ESOP and claimed deduction u/s 37 of the Act. Both the AO and the CIT(A) disallowed the expenditure for the reason that the expenditure is notional/contingent and is not to be incurred by the appellant company. In this case the Hon'ble ITAT, Bengaluru relying on the decision of the coordinate Bench of the Tribunal in the case of Novo Nordisk India Pvt. Ltd. Vs DCIT (2014) 42 taxmann.com 168 held that ESOP cross charge expenses are allowable u/s 37 of the Act. While coming to such conclusion the Tribunal held that the issue has already been decided by the Tribunal in favour of the appellant in the case of Biocon Ltd which has been affirmed by the Hon'ble High Court of Karnataka in CIT Vs Biocon Ltd (2020) 430 ITR 151. Although, the facts in the case of Biocon are slightly distinguishable as there the foreign parent company has a policy of offering ESOP to its employees and the shares were issued at a discounted rate, the facts of the case of Novo Nordisk and Flipkart India Pvt. Ltd. the reimbursement or cross charge made by the appellant to its parent company Flipkart Singapore was claimed as expenditure in the Profit & Loss account of the appellant as employee cost. In the case of Novo Nordisk, the jurisdictional ITAT held that the ITAT held that the difference between the Fair Market Value

of the shares of parent company and the price at which those shares were issued to employees of Indian company was an employee cost in India, there was an actual outflow of cash from the appellant to the parent foreign parent company and is allowable as a revenue expenditure for the purpose of the business of the company and is allowable u/s 37.

6.8 *Since, the facts of the present case are identical to that of Novo Nordisk India Pvt. Ltd. and Flipkart India Pvt. Ltd., the binding precedent being allowed by the jurisdictional ITAT, the cross charges paid by the appellant company is eligible for deduction u/s 37 of the Act. Grounds raised for the A.Y. 2017-18 and 2018-19 on this issue are allowed.*

22. Being aggrieved by the order of the learned CIT(A) the Revenue is in appeal before us.

23. Both the learned DR and AR before us vehemently supported the order of the authorities below as favourable to them

24. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that the identical issue of claim of ESOP cross charges expenses was also therein case of the group concern M/s Flipkart India Pvt Ltd pertaining to A.Y. 2017-18. In the said case the dispute traveled before this Tribunal in assessee's appeal bearing ITA No. 115/Bang/2022. The coordinate bench vide order dated 9th March 2023 decided the issue in favour of the assessee. The impugned order of the coordinate bench was reported in 150 taxmann.com 272. The finding of the bench in the said case is reproduced here under:

8. *We heard the rival submissions and perused the material on record. We notice that the coordinate bench of the Tribunal in the case of Novo Nordisk India (P.) Ltd. v. Dy. CIT [2014] 42 taxmann.com 168/63 SOT 242 (Bang. - Trib.) has considered the similar issue and held that -*

"18. We have considered the rival submissions. It is clear from the facts on record that there was an actual issue of shares of the parent company by the assessee to its employees. The difference, between the fair market value of the shares of the parent company on the date of issue of shares and the price at which those shares were issued by the assessee to its employees, was

reimbursed by the assessee to its parent company. This sum so reimbursed was claimed as expenditure in the profit & loss account of the assessee as an employee cost. The law by now is well settled by the decision of the Special Bench of the ITAT Bangalore in the case of Biocon Ltd. v. Dy. CIT [2013] 35 taxmann.com 335 and other connected appeals, by order dated 16-7-2013, wherein it was held that expenditure on account of ESOP is a revenue expenditure and had to be allowed as deduction while computing income. The Special Bench held that the sole object of issuing shares to employees at a discounted premium is to compensate them for the continuity of their services to the company. By no stretch of imagination, we can describe such discount as either a short capital receipt or a capital expenditure. It is nothing but the employees cost incurred by the company. The substance of this transaction is disbursing compensation to the employees for their services, for which the form of issuing shares at a discounted premium is adopted.

19. In the present case, there is no dispute that the liability has accrued to the assessee during the previous year. The only question to be decided is as to whether it is the expenditure of the assessee or that of the parent company. We are of the view that the observations of the CIT (A) in para 5.6 of his order that these expenses are the expenses of the foreign parent company is without any basis and lie in the realm of surmises. The foreign parent company has a policy of offering ESOP to its employees to attract the best talent as its work force. In pursuance of this policy of the foreign parent company, allowed its subsidiaries/affiliates across the world to issue its shares to the employees. As far as the assessee in the present case which is an affiliate of the foreign parent company is concerned, the shares were in fact acquired by the assessee from the parent company and there was an actual outflow of cash from the assessee to the foreign parent company. The price at which shares were issued to the employees was paid by the employee to the Assessee who in turn paid it to the parent company. The difference between the fair market value of the shares of the price at which shares were issued to the employees was met by the Assessee. This factual position is not disputed at any stage by the revenue. In such circumstances, we do not see any basis on which it could be said that the expenditure in question was a capital expenditure of the foreign parent company. As far as the assessee is concerned, the difference between the fair market value of the shares of the parent company and the price at which those shares were issued to its employees in India was paid to the employee and was an employee cost which is a revenue expenditure incurred for the purpose of the business of the company and had to be allowed as deduction. There is no reason why this expenditure should not be considered as expenditure wholly and exclusively incurred for the purpose of business of the assessee.

20. We fail to see any basis for the observation of the CIT (A) that the obligation to issue shares at a discounted price to the employees of the Assessee was that of the foreign parent company and not that of the Assessee. Admittedly, the shares were issued to employees of the Assessee and it is the Assessee who has to bear the difference in cost of the shares. The expenditure is necessary for the Assessee to retain a health work force. Business expediency required that the Assessee incur such costs. The parent company will be benefitted indirectly by such a motivated work force. This will be no ground to deny the deduction of a legitimate business expenditure to the

Assessee as laid down by the Hon'ble Supreme Court in the case of Sassoon J. David & Co. (P.) Ltd. (supra).

21. The reference by the CIT (A) to the provisions of sec. 40A(2)(b) of the Act is again without any basis. The price of the shares of NNAS is arrived at by applying the average market price for the period 3rd October, - 17 the October, 2005 in the Copenhagen Stock Exchange. The price so arrived at and the price at which shares are issued to the employees of the Assessee is the benefit which the employees get under the ESOP. The Assessee or its parent company can never influence the stock market prices on a particular date. There is no evidence or even a suggestion made by the CIT (A) in his order. There is no basis to apply the provisions of sec. 40A(2)(b) of the Act.

22. With regard to the decision of the ITAT in the case of Accenture Services (P.) Ltd. (supra), we find that the facts of the case of Accenture Services (P.) Ltd. (supra) are identical. In the case of Accenture Services (P.) Ltd. (supra), the facts were that the assessee company incurred certain expenses on account of payments made by it for the shares allotted to its employees in connection with the ESPP. The AO had disallowed Rs. 9,06,788/- incurred by the assessee on the ground that this expenditure is not the expenditure of assessee company but that expenditure is of parent company and the benefit of such expenditure accrues to the parent company and not assessee. The CIT (A) deleted the addition made by the AO. The CIT (A) found that the common shares of Accenture Ltd. the parent company, have been allotted to the employees of ASPL, the Indian affiliate/Assessee and not to the employees of the parent company. The CIT (A) also found that though the shares of the parent company have been allotted, the same have been given to the employees of the Assessee at the behest of the SUNIL Assessee. The CIT (A) thus held that it was an expense incurred by the assessee to retain, motivate and award its employees for their hard work and is akin to the salary costs of the assessee. The same was therefore business expenditure and should be allowable in computing the taxable income of the assessee. The tribunal upheld the view of the CIT(A). It can be seen from the decision in the case of Accenture Services (P.) Ltd. (supra) that the shares of the foreign company were allotted and given to the employees of affiliate in India at the behest of the affiliate in India. The CIT (Appeals), however, presumed that the facts in the instant case of the assessee was that the shares were allotted to the employees of the affiliate in India at the behest of the foreign company. This is not the factual position in the assessee's case, as the assessee had on its own framed the NNIPL ESOP Scheme, 2005, to benefit its employees. NNAS may have a global policy of rewarding employees of affiliates with its shares being given at a discount and that policy might be the basis for the Assessee to frame ESOP. That by itself will not mean that the ESOP was at the behest of the parent company. In any event the immediate beneficiary is the Assessee though the parent company may also be indirect beneficiary of a motivated work force of a subsidiary. We are of the view that the factual basis on which the CIT(Appeals) distinguished the decision of the Mumbai Bench of ITAT in the case of Accenture Services (P.) Ltd. (supra) is erroneous.

23. With regard to the observations of the CIT (Appeals) that the ESOP actually benefits only the parent company, we are of the view that the expenditure in question is wholly and exclusively for the purpose of the business of the

assessee and the fact that the parent company is also benefited by reason of a motivated work force would be no ground to deny the claim of the assessee for deduction, which otherwise satisfies all the conditions referred to in section 37(1) of the Act. The decision of the Hon'ble Supreme Court in the case of Sassoon J. David & Co. (P.) Ltd. (supra) and the Hon'ble Karnataka High Court decision in the case of Mysore Kirloskar Ltd. (supra) clearly support the plea of the assessee in this regard.

24. We are of the view that in the facts and circumstances of the present case, the expenditure in question was wholly and exclusively for the purpose of the business of the assessee and had to be allowed as deduction as a revenue expenditure.

25. For the reasons given above, we direct the expenditure be allowed as deduction."

9. We also notice that the issue of whether ESOP cross charge expenses are allowable u/s. 37 of the Act has already been decided by this Tribunal in favour of the assessee in the case of Biocon Ltd. (supra) which has also been affirmed by the Hon'ble Karnataka High Court in CIT, LTU v. Biocon Ltd. [\[2020\] 121 taxmann.com 351/\[2021\] 276 Taxman 1/430 ITR 151](#) by categorically holding that "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."

10. The assessee's case being identical, respectfully following the above decision of the coordinate Bench, we hold that the expenditure towards ESOP is eligible for deduction u/s. 37 of the Act.

24.1 Respectfully following decision of coordinate bench of this tribunal in group case of the assessee as mentioned above, we hereby hold that the assessee is eligible for claim of deduction on account of ESOP expenses in the given fact and circumstances.

25. Coming to the issue of deduction of withholding tax as alleged by the AO, we note that the payment made by the assessee company to the parent company is not in nature of payment for the receipt of any services. As such the payment was made by the proportion of ESOP expenditure availed by the employee of the assessee company which has been reimbursed. The assessee claimed that the reimbursement was made on a cost-to-cost basis, and this contention of the assessee has

not been found incorrect by the AO. Therefore, we are of the considered opinion that the assessee was not required to deduct tax as per section 195 of the Act on account of reimbursement of ESOP costs to the parent company. Hence, we do not find any reason to interfere in the finding of the learned CIT(A). Hence the ground of appeal raised by the revenue is hereby dismissed.

26. In the result, the appeal of the Revenue is hereby dismissed.

Coming to ITA No. 496/Bang/2025 an appeal by the assessee for A.Y. 2018-19.

27. The first effective issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowances of claim of business loss.

27.1 At the outset, we note that the issues raised by the assessee in its grounds of appeal for the AY 2018-19 is identical to the issue raised by the assessee in ITA No. 543/Bang/2025 for the assessment year 2016-17. Therefore, the findings given in ITA No. 543/Bang/2025 shall also be applicable for the assessment year 2018-19. The appeal of the assessee for the A.Y. 2016-17 has been decided by us vide paragraph No.12 to 13 of this order in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2016-17 shall also be applied for the assessment year 2018-19. Hence, the ground of appeal filed by the assessee is hereby allowed.

28. The next issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowances of manpower expenses.

29. The relevant facts are that during the course of survey at the premises of the assessee company, it was found that the assessee has received manpower supply services from various vendors for its operational requirement. The vendor included a party namely M/s Surya Team Management Pvt Ltd to whom an aggregate amount of Rs. 19.90 crore was claimed to be made during the year against manpower supply. Post to the survey, an inquiry was conducted by the department which revealed that the vendor M/s Surya Team Management Pvt Ltd was not found at its given address. Inspector was also deputed for physical verification, but the inspector reported the party was not found. Identical verification was also carried out by the GST department with respect to this party resulting same fact. The notices issued under section 133(6) of the Act through ITB portal and physical services remained unresponsive. Accordingly, the AO purposed to disallow the manpower expenses in respect impugned party by issuing a show cause notice.

30. In response to the show cause notice, it is submitted that the assessee is engaged in large scale logistics operations and, for this purpose, avails manpower services from various vendors. The manpower supplied is engaged in activities such as pick-up of goods from sellers, packing at hubs, transportation between hubs, delivery to collection centres and last-mile delivery to customers. The manpower requirement is first assessed and approved by the business finance team and thereafter coordinated by the operations and HR teams. The requirement is then communicated to vendors, who provide manpower accordingly. Each such employee is registered in the assessee's internal software with necessary KYC documents and background verification.

Attendance is monitored through biometric punch-in/punch-out, and based on validated records a draft payroll register is prepared. Salaries are released through the vendor after deduction of taxes, with the balance paid on submission of proof of disbursement. Statutory dues like PF and ESI are also deposited by the vendors. Thus, the assessee follows a structured process to source, utilize and monitor manpower for its logistics activities through vendors.

31. The assessee in support of genuineness of payment to the vendor M/s Surya Team Management Pvt Ltd claimed to have furnished documentary evidence such as copy of the agreement executed with the vendor, sample copy of invoice raised by the vendor and copy of EFP ESI return and challan by the vendor for the contract employee pertaining to the company. The assessee claimed that all the payment was made through banking channel and duly traceable. The payment was made after deduction of tax at source under section 194C of the Act. The assessee claimed that the party M/s Surya Team Management Pvt Ltd is a company and still registered with MCA. The party is also registered under the GST Act. Accordingly, the assessee argued that the genuineness of the payment cannot be doubted merely for the reason that the party was not found at their address as per the enquiry conducted by the department on later dates. As the existence of the party shall be considered on the date of availing of the services. The assessee in this regard placed reliance on the judgment of Hon'ble Calcutta High Court in the case of Diagnostic vs. CIT reported in 20 taxmann.com 692 where it was held *"if an assessee took care to purchases of material for his business by way of account payee cheques from third party and, subsequently, three years after the purchases, the*

said party did not appear before the AO or even stopped business, the claim of the assessee on that account could not be discarded as non-existent”.

32. However, the AO rejected the explanation and submission furnished by the assessee. The AO reiterated that the impugned party was not found at the given address in the inquiry conducted by the department through the inspector. The notices issued by the department through ITB portal as well as physical delivery of notices were not replied with. The independent inquiry conducted by GST department also found that the party does not exist.

32.1 The AO found that the copy of bill submitted by the assessee are merely a computer-generated bill which does not contain any sign or stamp or any other evidence to confirm the genuineness. The assessee failed to provide any working contact or address of any person related to the impugned party. The copy of agreement submitted shows that the agreement was effective from 19-07-2017, but the stamp paper was purchased on 25-07-2017. The agreement does not show when the agreement was entered and more importantly the agreement was not signed by the director of the assessee company.

32.2 The AO also found that the assessee in its submission claimed to have furnished copy of EPF/ESI challan and return but no such detail has been found.

32.3 The AO further found that neither the vendor company M/s Surya Team Management Pvt Ltd was found nor the sub-vendors to the

impugned party were found in the physical enquiry conducted by the department through the inspector. The notices issued to the sub-vendor through ITB portal were also not replied with and notices issued through post return unserved.

32.4 Therefore, the AO on view of the above finding hold that the assessee failed to substantiate the supply of manpower services by the party M/s Surya Team Management Pvt Ltd. Hence the AO disallowed the claim of the expenses on account of payment made to the impugned party for Rs. 19.9 crores and added the same to the total income of the assessee.

33. The aggrieved assessee preferred an appeal before the learned CIT(A).

34. Before the learned CIT(A), the assessee besides repeating its submission from the assessment proceedings, further contended that the AO had erred in questioning the genuineness of manpower supply expenses only on suspicion. It was submitted that agreements with the vendors were valid and that minor differences in dates of signatures and stamp papers cannot render them non-genuine, as it is a common business practice. The assessee pointed out that invoices were computer-generated as part of digitalised processes and all payments were routed through proper banking channels after due deduction of TDS. The assessee further argued that statements recorded from ground-level manpower did not establish any bogus nature of services, and therefore reliance on such statements without corroborative evidence was misplaced. It was also emphasized that all necessary legal

and documentary proofs were furnished to show that services were actually availed for business purposes. Lastly, the assessee highlighted that it has been incurring losses since incorporation and had no incentive to inflate or claim bogus expenses, as there was no tax advantage in doing so.

34.1 However, the learned CIT(A) after considering the facts in totality confirmed the disallowance made by the AO. The relevant finding of the learned CIT(A) is extracted below:

7.4 During the appellate proceedings, it was seen that the DDIT(Investigation) has sent notices under the 133(6) of the Act to this vendor and delivered them through proceedings in ITBA. However, there was no response to the above notice. No details of the working contacts or address of any person related to M/s Surya Team Management Pvt. Ltd. were provided by the appellant. Further, the bills issued on Surya Team Management Pvt. Ltd which were provided by the appellant were computer generated bills which did contain any signature to confirm the genuineness. The AO also noticed that the agreement furnished by the company did not contain the signature of the Senior director of the appellant company. The AO also noticed that the sub vendors of the main vendor, M/s Surya Team Management Pvt. Ltd, also did not exist at the registered addresses and were non-filers of income tax returns.

7.5 The appellant during the appeal proceedings submitted that the allowability of the expenditure is to be examined for the year in which the expenses are being claimed. The expenditure incurred by the company has been duly verified and audited by the auditors of the company. The company does not have any contractual relationship with the vendors and the claim of allowability of the expenditure should not be dependent on traceability of the sub vendors. After considering of the facts of the case and the written submissions of the appellant, it is observed that the appellant is not been able to establish the genuineness of the payments made to M/s Surya Team Management Pvt. Ltd. as corroborative evidence indicates otherwise. The physical inspection of the premises of the vendors and sub vendors carried out by the AO indicated that this company was not existing at the registered address submitted by the appellant. If the vendor M/s Surya Team Management Pvt. Ltd. is still actively operating in business it should have responded to the notice issued by the AO u/s 133(6) of the Act through ITBA. The sub vendors of the vendor were also not seen to be operating from the address submitted by the appellant in order to confirm the existence of the main vendor.

7.6 In view of this facts, as the appellant was not able to demonstrate that the transaction with M/s Surya Team Management Pvt. Ltd. is genuine, the AO's

action in disallowing the expenses paid to the vendor for sourcing manpower is confirmed. Hence, ground no. 31 to 37 for AY 2018-19 is dismissed.

35. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

36. The learned AR before us submitted that that the assessee had availed manpower services from M/s Surya Team Management Services Pvt. Ltd. during AY 2018-19 for an amount of ₹19.90 crores. The manpower provided by the vendor was used for logistics and warehousing operations of the assessee, which is a core part of its business. The entire process of availing manpower was systematic and documented from raising requirements, registration of employees on the company's software with Aadhaar, bank and resume details, background verification, biometric attendance, preparation and validation of payroll registers. The payment to vendor was made through banking channel and TDS u/s 194C of the Act was duly deducted. Copies of payroll registers, invoices, payment advice, and statutory compliances like PF and ESI returns of the vendor were submitted as evidence. The learned AR stressed that these records, along with audited accounts and statutory filings, prove that the expenses were genuine and incurred wholly for business. It was further argued that disallowance cannot be made merely on the ground that the vendor did not respond to the notices issued u/s 133(6) of the Act, especially when valid documentary evidence of services and payments are available. The learned AR also pointed out that the reliance by the AO and Id. CIT(A) on presumptions about the vendor's address or non-response is misplaced, as the law is clear that once payments are made through proper banking channels

with TDS deduction, the claim cannot be denied. Reliance was placed on judicial precedents such as *Wel Intertrade (P) Ltd vs. CIT (152 Taxmann.com 663, Delhi)*, *CIT vs. Fancy International (166 Taxman 183, Delhi)*, *CIT vs. Nikunj Eximpt Enterprises P. Ltd. (216 Taxman 171, Bom)*, etc, wherein it was held that genuine business expenditure cannot be disallowed on suspicion. Accordingly, the Id. AR prayed that the disallowance of manpower expenses be deleted and the appeal of the assessee be allowed.

37. On the contrary, the learned DR before us vehemently supported the order of the authorities blow.

38. We have heard the rival contentions of both the parties and perused the materials available on records. The basis for disallowance by the Assessing Officer and its confirmation by the learned CIT(A) was that the vendor company, M/s Surya Team Management Pvt. Ltd., and its sub-vendors were not found available at the given addresses during enquiries conducted by the Income Tax Department as well as the GST Department, and that the notices issued under section 133(6) of the Act remained un-responded. It is also noted that the assessee, during the relevant year, had availed manpower supply services from 28 different vendors, out of which payments to 27 vendors were accepted by the Department after verification and only the claim relating to this one vendor was doubted. In our considered view, the absence of the vendor or its sub-vendors at the registered addresses at the time of subsequent enquiry may cast some doubt, but cannot, by itself, undermine the contemporaneous evidence furnished by the assessee. The assessee has placed on record agreements, invoices, payroll registers, PF/ESI challans,

bank payment advices, and other statutory compliance documents to substantiate that services were actually rendered and payments were made through proper banking channels with deduction of TDS under section 194C of the Act. The genuineness of the expenditure must be examined with reference to the year in which it was incurred, and once the assessee has produced sufficient evidence of availing services, non-traceability of the vendor at a later stage does not automatically render the transaction non-genuine. This principle has also been recognised by the Hon'ble Calcutta High Court in *Diagnostic vs. CIT* [20 taxmann.com 692], wherein it was held that subsequent non-availability of a supplier cannot invalidate otherwise genuine purchases made earlier.

38.1 Further, the Revenue has accepted similar manpower expenses claimed by the assessee from other vendors in the same year, and no infirmity has been found in those cases. This consistent pattern of acceptance lends support to the assessee's explanation that the manpower requirement was real, large-scale, and met through multiple vendors, including the disputed vendor. In the absence of any material to show that the assessee had received back money in cash or had inflated expenses for tax evasion, the disallowance made solely on the basis of suspicion and third-party non-compliance cannot be sustained. On the contrary, the evidence produced by the assessee, duly supported by statutory records and audited accounts, demonstrates that the expenditure was wholly and exclusively incurred for the purpose of business.

38.2 We also find force in the contention of the assessee that it has been incurring huge business loss from its operation therefore no

occasion arises to book bogus expenses of manpower supply services from one vendor out of 28 vendors. It is because, the assessee is already not liable to tax because of the losses incurred in its business.

In light of these facts, and guided by the judicial precedents relied upon, we hold that the disallowance of ₹19.90 crores on account of manpower expenses is unjustified. Accordingly, we set aside the order of the learned CIT(A) and direct the Assessing Officer to delete the addition made by him. Hence, the ground of appeal raised by the assessee is hereby allowed.

39. In the result appeal of the assessee is hereby allowed.

Coming to ITA No. 531/Bang/2025 an appeal by the Revenue for A.Y. 2018-19.

40. The only effective issue raised by the revenue is that the learned CIT(A) erred in allowing the claim of ESOP Expenditure.

41. At the outset, we note that the issue raised by the Revenue in its grounds of appeal for the AY 2018-19 is identical to the issue raised by the Revenue in ITA No. 530/Bang/2025 for the assessment year 2017-18. Therefore, the findings given in ITA No. 530/Bang/2025 shall also be applicable for the assessment years 2018-19. The appeal of the Revenue for the A.Y. 2017-18 has been decided by us vide paragraph No. 24 of this order against the Revenue. The learned DR and the AR also agreed that whatever will be the findings for the assessment year 2017-18 shall also be applied for the assessment year 2018-19. Hence, the ground of appeal filed by the Revenue is hereby dismissed.

42. In the result appeal of the Revenue is hereby dismissed

Coming to SA No. 25/Bang/2025 for A.Y. 2018-19.

43. In this regard, we note that once the main appeal filed by the assessee has been disposed of, there is no reason to adjudicate the stay petition filed by the assessee. As such, the stay petition filed by the assessee in the given facts and circumstances becomes infructuous and does not require any separate adjudication. Accordingly, the stay petition filed by the assessee is hereby dismissed as infructuous.

44. In the result, the stay application dismissed as infructuous.

45. In the combined result, all three appeals of the assessee are allowed whereas both appeals of the revenue are dismissed. At the same time, the stay application filed by the assessee is dismissed as infructuous.

Order pronounced in court on 18th day of December, 2025

Sd/-

Sd/-

(KESHAV DUBEY)

(WASEEM AHMED)

Judicial Member

Accountant Member

Bangalore

Dated, 18th December, 2025

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore