

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.350/Chny/2018

निर्धारण वर्ष / Assessment Year : 2011-12

Shri Soundararajan Parthasarathy,
37, East Mada Street,
B2, Nahardeshna, Thiruvanmiyur,
Chennai - 600 041.

v. The Assistant Commissioner of
Income Tax,
Non-Corporate Circle – 17,
Chennai - 600 006.

PAN : AAEP 4945 K
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.348 & 349/Chny/2018

निर्धारण वर्ष / Assessment Years : 2011-12 & 2012-13

Shri Rameswara Reddy Kummathi,
Flat No.6, Viswaretha Apartments,
Old No.28, New No.16,
7th Cross Street, Shastri Nagar,
Adyar, Chennai - 600 020.

v. The Deputy Commissioner of
Income Tax,
Non Corporate Circle 17(1),
Chennai - 600 034.

PAN : AASPR 9595 D
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellants by : Shri Avinash Wadhvani, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri M. Mathivanan, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 27.06.2018

घोषणा की तारीख/Date of Pronouncement : 24.07.2018

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

All the appeals of the two independent assesseees are directed against the respective orders of the Commissioner of Income Tax (Appeals) -5, Chennai, confirming the penalty levied by the Assessing Officer under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act'). We heard all these appeals together and disposing of the same by this common order.

2. Shri Avinash, Wadhvani, the Ld.counsel for the assesseees, submitted that the Assessing Officer levied penalty under Section 271(1)(c) of the Act. On appeal, the CIT(Appeals) confirmed the same. According to the Ld. counsel, both the assesseees are employees of M/s Cognizant Technologies India Pvt. Ltd. The parent company of the assesseees, namely, M/s Cognizant Technology Solutions Corporation, a Delaware Corporation, USA promoted an incentive plan for the employees of M/s Cognizant Technologies India Pvt. Ltd. As per this plan, according to the Ld. counsel, the assesseees were given option for availing Stock Appreciation Rights. According to the Ld. counsel, Stock

Appreciation Right is nothing but a right for appreciation of the value of shares allotted by the parent company. According to the Ld. counsel, the assessee did not have right over the share, only the value of appreciation right was given to the assessee. The Stock Appreciation Right allotted to the assessee was also subjected to tax in USA. According to the Ld. counsel, the Stock Appreciation Rights offered to the assessee are capital asset, therefore, the value realized by the assessee on Stock Appreciation Rights is nothing but a capital gain. Accordingly, the assessee offered the same for taxation. However, according to the Ld. counsel, the Assessing Officer found that the Stock Appreciation Rights is a revenue receipt. The orders of the Assessing Officer were also confirmed by the CIT(Appeals) and this Tribunal. According to the Ld. counsel, a further appeal was made before the High Court which is pending for adjudication.

3. Shri Avinash, Wadhvani, the Ld.counsel for the assessee, further submitted that the Stock Appreciation Right was given by USA company and the assessee are not employees of USA company. According to the Ld. counsel, there was no employer and

employee relationship between the assesseees and USA company. Moreover, the assesseees have also disclosed the Stock Appreciation Rights allotted to the assesseees in their return of income and claimed the same as capital receipt. According to the Ld. counsel, the Assessing Officer has treated the same as revenue receipt which was confirmed by this Tribunal also. The question arises for consideration, according to the Ld. counsel, is whether there was concealment of income or furnishing inaccurate particulars of income? The allotment of Stock Appreciation Rights was disclosed by the assesseees. The gain arising out of Stock Appreciation Rights was also disclosed to the Revenue. According to the Ld. counsel, the difference of opinion between the assesseees and Assessing Officer is whether the gain on Stock Appreciation Rights is a revenue receipt or capital receipt. According to the Ld. counsel, it is a capital receipt but the Revenue authorities found that it is a revenue receipt. Therefore, the difference of opinion in classification of particular income cannot be construed as concealment of particulars of income or furnishing of inaccurate particulars of income. Therefore, according to the Ld. counsel, it cannot be said that the assesseees have concealed any part of

income or furnished inaccurate particulars of income, hence, the CIT(Appeals) is not justified in confirming the penalty levied by the Assessing Officer.

4. On the contrary, Shri M. Mathivanan, the Ld. Departmental Representative, submitted that the assessee claimed the gain on the value of Stock Appreciation Rights as a capital gain. According to the Ld. D.R., in fact, it is a profit in lieu of salary, therefore, it has to be assessed as revenue receipt. To that extent, the assessee has furnished inaccurate particulars of income. According to the Ld. D.R., the claim of the assessee as capital gain amounts to inaccurate particulars of income.

5. We have considered the rival submissions on either side and perused the relevant material available on record. It is not the case of the Revenue that the shares were allotted to the assessee. What was given to the assessee is a right of appreciation on the shares of the USA company. The assessee has disclosed the value of the Stock Appreciation Rights and gain thereon and claimed the same as capital gain. The Assessing Officer treated the gain as revenue receipt and levied tax. On appeal by the

assesseees before the CIT(Appeals) and this Tribunal, the view of the Assessing Officer that the gain is a revenue receipt was confirmed and now further appeal is said to be pending before the High Court.

6. The question arises for consideration is whether there was concealment of income or whether the assesseees have furnished inaccurate particulars of income? It is nobody's case that the assesseees have concealed the allotment of Stock Appreciation Rights or gain arising out of such appreciation. As rightly pointed out by the Ld.counsel for the assesseees, the difference of opinion between the assesseees and the Assessing Officer is on classification of head of income. In other words, whether the gain arising on appreciation rights is a capital gain or revenue receipt. This Tribunal is of the considered opinion that the classification of head of income is depending upon the understanding of the scheme and provisions of Income-tax Act. There may be difference of opinion among various authorities on classification of head of income. Therefore, a mere difference of opinion between the assesseees and the Assessing Officer or other Revenue authorities

on classification of income under different heads cannot be construed as furnishing of inaccurate particulars of income or concealing any part of assessee's income. In view of the above, this Tribunal is of the considered opinion that it is not a fit case for levy of penalty under Section 271(1)(c) of the Act. Accordingly, we are unable to uphold the orders of the authorities below. Accordingly, orders of both the authorities below are set aside and the penalty levied by the Assessing Officer under Section 271(1)(c) of the Act is deleted.

7. In the result, the appeals filed by both the assesseees are allowed.

Order pronounced on 24th July, 2018 at Chennai.

sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 24th July, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-5, Chennai-34
4. Principal CIT-9, Chennai.
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.