

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' 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.390/Mds/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Shri Soundarrajan Parthasarathy,
B2 Nahar Deshna,
337, East Mada Street,
Thiruvanmiyur,
Chennai - 600 041.

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

PAN : AAEP 4945 K
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos. 335 & 209/Mds/2016

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

Shri Kummathi Rameswar Reddy,
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 : Sh. N.V. Balaji, Advocate

प्रत्यर्थी की ओर से/Respondent by : Sh. P. Radhakrishnan, JCIT

सुनवाई की तारीख/Date of Hearing : 30.03.2016

घोषणा की तारीख/Date of Pronouncement : 05.05.2016

आदेश / O R D E R

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

These appeals filed by two different assessees are directed against the respective orders of the Commissioner of Income Tax (Appeals)-5, Chennai, dated 20.01.2016, 11.01.2016 and 20.11.2015 respectively. When the former has filed appeal for the assessment year 2011-12, the latter has filed appeals for assessment years 2011-12 and 2012-13. Since common issue arises for consideration in all these appeals, we heard these appeals together and disposing of the same by this common order.

2. Shri N.V. Balaji, the Ld.counsel for the assessees, submitted that the assessees are employees of M/s Cognizant Technologies India Pvt. Ltd. During the years under consideration, M/s Cognizant Technology Solutions Corporation, a Delaware Corporation, USA, the parent company of the assessees, promoted an incentive plan for the employees of M/s Cognizant Technologies India Pvt. Ltd. known as "1999 Incentive Compensation Plan". As per this Plan promoted by the parent company, namely, M/s Cognizant Technology Solutions Corporation, a Delaware Corporation, USA,

option was given to the employees of M/s Cognizant Technologies India Pvt. Ltd. for providing Stock Appreciation Rights. The assesseees, being employees of M/s Cognizant Technologies India Pvt. Ltd., were eligible for participation in "1999 Incentive Compensation Plan" announced by the parent company. According to the Ld. counsel, Stock Appreciation Right is nothing but a right for appreciation of the value of shares given / allotted to the assesseees by the parent company. As per the Stock Appreciation Rights, the assesseees were not offered any security or sweat equity shares. What was given to the assesseees is a right for appreciating the value of certain specified number of securities. During the year under consideration, M/s Cognizant Technologies India Pvt. Ltd. deducted tax by treating the Stock Appreciation Rights as a perquisite in the hands of the assesseees. Stock Appreciation Rights was also subjected to tax in USA since the parent company, namely, M/s Cognizant Technology Solutions Corporation, a Delaware Corporation, USA has also deducted tax. According to the Ld. counsel, the Stock Appreciation Rights availed by the assesseees suffered tax twice, once in USA and again in India.

3. Shri N.V. Balaji, the Ld.counsel for the assesseees, submitted that Stock Appreciation Rights offered to the assesseees is a capital asset, therefore, the realization of value of the Stock Appreciation Rights is nothing but capital gain. The Ld.counsel further submitted that since no security was offered or allotted to the assesseees, the Stock Appreciation Rights cannot be construed as perquisite in the hands of the assesseees. According to the Ld. counsel, Stock Appreciation Rights was granted to the assesseees under "1999 Incentive Compensation Plan" during the years 2000 and 2002. According to the Ld. counsel, Stock Appreciation Rights was given to the assesseees for the service rendered to M/s Cognizant Technologies India Pvt. Ltd. in India during the vesting period. When the right was vested on the assesseees, the assesseees were non-resident Indians rendering service outside India. Therefore, the value of Stock Appreciation Rights is not taxable in India even though when the right was exercised, the assesseees were residents of India. The Ld.counsel further submitted that the Stock Appreciation Rights was given by USA company and the assessee were not employees of USA company, therefore, it cannot be construed as perquisite in the hands of the assesseees. According to the Ld. counsel, there was no employer and employee

relationship between M/s Cognizant Technology Solutions Corporation, a Delaware Corporation, USA and the assesseees. Therefore, whatever amount received by the assesseees from M/s Cognizant Technology Solutions Corporation, a Delaware Corporation, USA by way of Stock Appreciation Rights is not taxable in India either as salary or as perquisite. The Ld.counsel further submitted that the amount realized on Stock Appreciation Rights was subjected to tax in USA, therefore, taxing the same amount in India would amount to double taxation.

4. On the contrary, Sh. P. Radhakrishnan, the Ld. Departmental Representative, submitted that the assesseees are employees of M/s Cognizant Technologies India Pvt. Ltd. The assesseees were offered employee stock option during the year under consideration and the assesseees realized the value of the specific security allotted to them. According to the Ld. D.R., the difference between the market value of shares on the date of exercising of option and the grant price of the shares was taxable as perquisite in the hands of the recipient employees. According to the Ld. D.R., what was paid to the assesseees was in lieu of salary, therefore, it is a perquisite in the hands of the assesseees. Referring to Section 17(2) of the

Income-tax Act, 1961 (in short 'the Act'), the Ld. D.R. submitted that the value of any specified security or sweat equity shares allotted or transferred directly or indirectly by the employer at free of cost or at concessional rate to its employees should be taxed as perquisite in the hands of the employees. In this case, the assessee claim that the option was given by the parent company to the employees of Indian subsidiary company.

5. Referring to Section 17(2)(vi) of the Act, the Ld. D.R. submitted that when the value of specified security or sweat equity shares was transferred directly or indirectly by the employer either free of cost or at concessional rate, the same has to be treated as perquisite in the hands of the recipient employees. In this case, the assessee were employees of Indian company, which is subsidiary of M/s Cognizant Technology Solutions Corporation, a Delaware Corporation, USA. The assessee, being employees of the subsidiary company to the parent company, namely, M/s Cognizant Technology Solutions Corporation, a Delaware Corporation, USA, were allotted Stock Appreciation Rights. Therefore, according to the Ld. D.R., the benefit was conferred on the assessee being employees of Indian company which is subsidiary to the USA

company. Therefore, according to the Ld. D.R., a benefit was conferred on the assessees indirectly, therefore, it is a perquisite in the hands of the assessees. Hence, both the authorities below have rightly found that the value of Stock Appreciation Rights is liable for taxation in India.

6. Referring to the claim of the assessee that the same amount was taxed in USA, the Ld. Departmental Representative submitted that the assessee has not filed any certificate from tax authorities of USA for payment of tax in respect of Stock Appreciation Rights which was subject matter of taxation in these appeals. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the addition made by the Assessing Officer.

7. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the assessees are employees of M/s Cognizant Technologies India Pvt. Ltd., which is a subsidiary company of M/s Cognizant Technology Solutions Corporation, a Delaware Corporation, USA. It is not in dispute that the assessees were given Stock Appreciation Rights. As per the scheme promoted by M/s Cognizant Technology Solutions Corporation, a Delaware Corporation, USA, Stock

Appreciation Rights is nothing but payment in cash to the excess of fair market value of common stock or other specified valuation of specified number of shares of common stock on the date the Stock Appreciation Rights was exercised over the fair market value of the common stock or other specified valuation. The eligibility condition for participation in the scheme is that the recipients should be employees of the company or non-employee directors and independent contractors. The assessee now claim that they are employees of M/s Cognizant Technologies India Pvt. Ltd. and not of M/s Cognizant Technology Solutions Corporation, a Delaware Corporation, USA. Therefore, the value of the Stock Appreciation Rights cannot be treated as perquisite in the hands of the assessee. This Tribunal is of the considered opinion that if the assessee were not employees of the M/s Cognizant Technologies India Pvt. Ltd., a subsidiary company of M/s Cognizant Technology Solutions Corporation, a Delaware Corporation, USA, they would not have been given option of availing Stock Appreciation Rights under the scheme. It is the case of the assessee that the Stock Appreciation Rights was given to all the persons who are not connected with M/s Cognizant Technology Solutions Corporation, a Delaware Corporation, USA. The option was given to the

employees who are in association or connected with USA company, either directly or indirectly, so as to motivate the employees to perform their best in their work. Therefore, directly the M/s Cognizant Technologies India Pvt. Ltd. would be benefited and indirectly M/s Cognizant Technology Solutions Corporation, a Delaware Corporation, USA is also benefited. Therefore, the contention of the assessee that the incentive was not provided by the employer of the assessee is not correct. The parent company, who is interested in the business of the M/s Cognizant Technologies India Pvt. Ltd., in order to promote their business and for commercial expediency, the scheme was promoted and offered to the assessee an option. The assessee being an employee of M/s Cognizant Technologies India Pvt. Ltd., accepted the offer and benefited and enriched themselves. This payment is in addition to salary for the service rendered to M/s Cognizant Technologies India Pvt. Ltd. Therefore, this Tribunal is of the considered opinion that what was received by the assessee is a perquisite in the hands of the assessee-company or benefit in lieu of salary for the services rendered. Hence, the same has to be construed as income in the hands of the assessee.

8. As for the contention of the Ld.counsel for the assesseees that what was given to the assesseees in the form of Stock Appreciation Rights is a capital asset in the hands of the assesseees, therefore, the same cannot be treated as income of the assesseees, this Tribunal do not find any merit in this contention of the Ld.counsel. The incentive was given to the assesseees as a compensation for the services rendered to M/s Cognizant Technologies India Pvt. Ltd. It was not given for transfer of capital asset or termination of any source of income. Therefore, the right conferred on the assesseees, namely, Stock Appreciation Rights under the scheme cannot be construed as capital asset. What was conferred on the assesseees is only valuation of appreciation for a specified number of stocks. The stock itself was not conferred on the assesseees. The stock was retained in the common kit and the appreciation value was given to the assesseees. This was given because the assesseees were employees of subsidiary company of M/s Cognizant Technology Solutions Corporation, a Delaware Corporation, USA. Since the right to receive the appreciation value alone was conferred on the assesseees and not right on the stock itself, this Tribunal is of the considered opinion that what was

received by the assesseees is not capital asset. Hence, the same is liable for taxation as revenue receipt.

9. Coming to the next contention of the assesseees that during the vesting period, the assesseees were non-residents and rendered service outside India, therefore, not taxable in India, this Tribunal is of the considered opinion that the benefit was conferred on the assesseees in the form of Stock Appreciation Rights for the services rendered to the subsidiary company, M/s Cognizant Technologies India Pvt. Ltd. Therefore, merely because the assesseees were non-residents and rendered service outside India during the vesting period that cannot be a reason for claiming that the same was not taxable in India. Admittedly, when the assesseees exercised option for Stock Appreciation Rights, they were residents in India. Therefore, when the Stock Appreciation Rights was vested irrespective of the residency, the same is liable for taxation in India.

10. The assesseees also contended before this Tribunal that the value of Stock Appreciation Rights on realization suffered tax in USA, therefore, it cannot be taxed again in India. As rightly submitted by the Ld. D.R., there is no material available on record to suggest that the value of Stock Appreciation Rights was suffered tax

in USA. The assesseees have not produced the certificate before the authorities below or before this Tribunal from USA tax authorities to support the claim that the same was subjected to tax in USA. Since the assesseees claim that the value of Stock Appreciation Rights was subjected to taxation in USA, this Tribunal is of the considered opinion that the same has to be examined in the light of the Double Taxation Avoidance Agreement between Government of India and Government of USA on the basis of the certificate issued by the tax authorities in USA. Therefore, while confirming that the value of Stock Appreciation Rights received by the assesseees is liable for taxation, the matter is remitted back to the file of the Assessing Officer for limited purpose of examining whether the assessee has paid tax in USA on the value of the very same Stock Appreciation Rights in the light of the Double Taxation Avoidance Agreement between Government of India and Government of USA.

11. In the result, appeals of the assesseees are partly allowed for statistical purposes.

Order pronounced on 5th May, 2016 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 5th May, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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