

ESOP relating only to service rendered in India taxable in India

Summary – The Delhi ITAT in a recent case of Robert Arthur Keltz, (the Assessee) held that where assessee was in India only for a short period and had not rendered service in India for whole grant period of ESOP, only such proportion of ESOP perquisite was taxable in India which related to service rendered by assessee in India.

Facts

- The assessee was an employee of 'M' USA. He exercised employees stock option plan granted to him while on his assignment in India. He therefore, offered to tax the amount of proportionate ESOP perquisites earned in India, i.e. proportionate to the number of days of his assignment in India.
- However, the Assessing Officer while framing the assessment brought to tax the entire amount of perquisite on account of stock options.
- On first appeal, the Commissioner (Appeals) allowed the assessee's appeal and held that only proportionate amount of stock option benefit was taxable in India.
- On revenue's appeal.

Held

- On the issue of addition on account of ESOPs the revenue relied on the decision of the Special Bench of the Tribunal in the case of *Sumit Bhattacharya v. Asstt. CIT [2008] 112 ITD 1 (Mum.)*. In this decision the Special Bench brought out the distinction between the stock options and stock appreciation rights. In the case of stock options the assessee is granted some shares either at market value or at a concessional rate and such a grant may be subject to certain conditions. The assessee would become the owner of the shares on exercise of the option to purchase the shares. In such circumstances, the Special Bench had held that the benefit or advantage that the employee would get on the date of exercising the option to purchase the shares would be taxable as a perquisite and the value of the perquisite would be the difference between market price of the shares as on the date of grant and the price for which the assessee has purchased the shares. If the shares are granted free of cost, then the entire value of shares would be a perquisite, on the date the employee becomes the owner of the shares.
- In the present case, the issue of taxability of stock option is not in dispute as the assessee himself has offered the same to tax while filing his return of income. The only issue is the amount that can be brought to tax in India.
- The principle laid down by the Delhi Bench in the case of *Asstt. CIT v. Ellin 'D' Rozario [IT Appeal No. 2918 (Delhi) of 2005, dated 5-12-2008]* is that only proportionate salary would be taxable in India, if a part of activity done by the assessee has no relation to any India specific job or activity.

- In the present case, it is not in dispute that the assessee was in India only for a short period and that prior to it, he has not done any service connected with any activity in India. Thus applying the same propositions to the facts of the case on hand, as the assessee has not rendered service in India for the whole grant period.
- In view thereof the ITAT held that only such proportion of the ESOP perquisite is taxable in India as is relatable to the service rendered by the assessee in India. Therefore, the order of the Commissioner (Appeals) was upheld by the ITAT.