

## **Stock appreciation rights are taxable when employee is resident at the time of exercise of such rights**

**Summary – The Chennai ITAT in a recent case of Soundarrajan Parthasarathy, (the Assessee) held that where an incentive plan was promoted by holding company of Indian employer company and assessee-employees were residents in India at time of exercise of Stock Appreciation Rights, they were liable to tax in India on same irrespective of fact that they were non-residents during vesting period**

### **Facts**

- The assesseees were employees of Cognizant Technologies India, which was a subsidiary of CTS Corporation, a Delaware Corporation, USA (parent company of Cognizant USA). The Cognizant USA promoted an incentive plan to the employees of Cognizant India known as '1999 Incentive Compensation Plan'. As per this plan, an option was given to the employees of Cognizant Technologies India for providing Stock Appreciation Rights (SARs). The eligibility for participation for the SARs was that recipients should be employees of the company or non-employee directors and independent contractors. The assesseees were given a right for appreciating the value of a certain specified number of securities and were not offered any security or sweat equity shares.
- During the year, Cognizant India deducted tax at source by treating the SARs as a perquisite in the hands of the assesseees. SARs were also subjected to tax in USA since Cognizant USA also deducted tax on the same.
- The department, following section 17(2)(vi), observed 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. The benefit was conferred on the assesseees being employees of Indian company which was subsidiary to the USA company. Therefore, a benefit was conferred on the assesseees indirectly; hence, it was a perquisite in the hands of the assesseees, the value of SAR was liable for taxation in India.
- The assessee contended that SARs offered to them was a capital asset, therefore, the realization of the value of the SARs was nothing but capital gain . They further contended that since no security was offered or allotted to them, the SARs could not be construed as a perquisite. Also contended that during the vesting period, they were non-resident and as services were rendered outside India, the same was not taxable in India. Further, the amount realised on SARs was subjected to tax in the USA; therefore, taxing the same amount in India would amount to double taxation.

### **Held**

- If the assesseees were not employees of the Cognizant Technologies India Pvt. Ltd., a subsidiary company of 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 assesseees that the Stock Appreciation Rights was given to all the persons who are not connected with 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 Cognizant Technologies India Pvt. Ltd. would be benefited and indirectly Cognizant Technology Solutions Corporation, a Delaware Corporation, USA is also benefited. Therefore, the contention of the assesseees the incentive was not provided by the employer of the assesseees is not correct. The parent company, who is interested in the business of the Cognizant Technologies India Pvt. Ltd., in order to promote their business and for commercial expediency, the scheme was promoted and offered to the assesseees an option. The assesseees being employees of 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 Cognizant Technologies India Pvt. Ltd. Therefore, 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 assesseees.

- As for the contention of the 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, there is no merit in this contention of the counsel. The incentive was given to the assesseees as a compensation for the services rendered to 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 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, what was received by the assesseees is not capital asset. Hence, the same is liable for taxation as revenue receipt.
- 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, 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.

- The assessee also contended 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 Departmental representative, there is no material available on record to suggest that the value of Stock Appreciation Rights was suffered tax in USA. The assessee has 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 assessee's claim that the value of Stock Appreciation Rights was subjected to taxation in USA, 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 assessee 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.
- In the result, appeals of the assessee are partly allowed for statistical purposes.