

DRP should pass a speaking order considering all objections raised by assessee

Summary – The Chennai ITAT in a recent case of Thales Software India (P.) Ltd., (the Assessee) held that where the order of Dispute Resolution Panel (DRP) did not state objections raised by assessee, the same should be set aside and DRP should pass a speaking order stating all objections and disposing them by giving cogent reasons.

Facts

- The assessee had challenged the order of the Transfer Pricing Officer /Assessing Officer before the Dispute Resolution Panel (DRP) on the following grounds/issues.
 - Rejection of adjustment for extra ordinary cost towards unutilized space.
 - Rejection of adjustment for extraordinary travel cost during start up phase
 - Rejection of adjustment for inauguration expenses incurred during start up phase
 - Determination of higher Arm's Length Price by Transfer Pricing Officer
 - Percentage adjustment; and
 - Levy of interest under section 234B.
- The Dispute Resolution Panel had dismissed the ground of appeal raised before it without stating any reasons.
- On appeal before the Tribunal, the assessee contended that the Dispute Resolution Panel had rejected the appeal without stating reasons for not accepting the submission of the assessee as well as the case law relied on by the assessee before it.

Held

- The ITAT after examining the DRP order held that a bare reading of the DRP order shows that the DRP has summarily rejected the appeal of the assessee without giving details and reasons on the submissions of the assessee as well as the case laws relied on by the assessee before it.
- The ITAT following the order of the Delhi 'H' Bench of the Tribunal in the case of *Evalueserve Com (P.) Ltd. v. ITO*, [\[2012\] 134 ITD 546/\[2011\] 16 taxmann.com 183 \(Delhi\)](#) set aside the order of the DRP and restored the matter back to its file.
- The ITAT directed the DRP to pass a speaking order stating all the objections of the assessee and disposing them by giving cogent reasons for adjudication of the objections of the assessee.

- Needless to mention that the DRP, before adjudicating the issues upon, shall allow reasonable and proper opportunity of hearing to the assessee.
- After receiving the order of the DRP, the Assessing Officer will again pass order under section 144C(13).

Comments

- This is a welcome judgement for all assessee's who have faced summary dismissals of their cases before the DRP and would also lead to a more cogent and comprehensive orders being passed at DRP level thereby leading to a higher degree of acceptability of the orders.