

Section 153 not to be applied in respect of proceedings covered under ambit of sec. 144C

Summary – The Chennai ITAT in a recent case of L & T Thales Technology Services (P.) Ltd., (the Assessee) held that In respect of proceedings which come under ambit of section 144C, there can be no application of section 153

Where DRP in terms of order passed under section 144C(5) gave directions to TPO and not to Assessing Officer, it resulted in a procedural defect and not a jurisdictional error that could invalidate proceedings in toto

Facts

- In the course of appellate proceedings, the Tribunal set aside the directions of the DRP and restored the matter back to them for passing a speaking order. The directions passed by DRP, pursuant to the Tribunal's order was received in the office of the Assessing Officer in the month of March, 2014.
- The case of the assessee was that by virtue of section 144C(13), the Assessing Officer was bound to complete the assessment before the end of April, 2014. However, the order was passed by the Assessing Officer on 26-2-2015. The assessee thus submitted that the impugned order was time barred and deserved to be quashed.

Held

- In the first round of proceedings, two things are clear from the Tribunal's order, one is that Tribunal had set aside the order of the DRP and restored the matter back to its file for disposal afresh. Second is that Tribunal had directed the Assessing Officer to pass an order under section 144C(13), once he received the order of the DRP.
- The DRP had given specific directions to TPO in its order. Thus the DRP had given directions only to TPO and not to the Assessing Officer. The Tribunal had set aside the earlier order of the DRP and therefore the second proceedings before DRP was as good as a fresh one. In terms of sub-section (5) of section 144C, DRP has power to give directions to the Assessing Officer only.
- This brings one to the question how far sub-section (13) of section 144C will apply. Said section mandates the Assessing Officer to complete assessment within one month from the end of the month in which directions from DRP are received by him.
- It cannot be said that in the instant case the proceedings had reached the stage where section 144C(13) could be applied. This is because DRP had never issued any direction to Assessing Officer under sub-section (5) of section 144C. That directions issued by the DRP were to the TPO is clear from the nothings of the TPO himself in his order.

- Coming to the contention of the assessee that TPO is having all the powers of an Assessing Officer and hence directions given by DRP to TPO had to be construed as given to the Assessing Officer, it is necessary to have a look at Explanation to section 92CA.
- A reading of said explanation clearly indicates that TPO is not the same as Assessing Officer. No authorization from the Board has been placed on record which equates that the powers vested on TPO as similar to that of an Assessing Officer. Section 92CA clearly sets out the powers of TPO. He has to determine the Arms Length Price in relation to the international transactions. However, power of making the assessment remains with the Assessing Officer only.
- Now coming to the argument of the revenue that by virtue of sub-section (3) of section 153, no fetters on time can be placed on an Assessing Officer for passing a giving effect order by the Assessing Officer. The said argument cannot be accepted.
- For the purpose of a proceedings which come under the ambit section 144C, there can be no application of section 153.
- In the instant case, there is no direction given by the DRP to Assessing Officer but the directions were only given to the TPO. This has resulted in a procedural defect and not a jurisdictional error that could invalidate the proceedings *in toto*. It is only a curable defect and when the curing takes place, it puts back the proceedings to the original stage, *i.e.*, to a stage when the correct directions are issued by the DRP. Therefore the order of the DRP is set aside and the case is remitted back to it for issuing proper directions in accordance with law.
- In the result, appeal of the assessee is treated as allowed for statistical purpose.