

Order passed by AO without following DRP directions held null and void and hence was to be quashed

Summary – The Delhi ITAT in a recent case of Global One India (P.) Ltd., (the Assessee) held that Order passed by AO without following DRP directions held null and void and hence was to be quashed

Facts

- The assessee-company case was selected for scrutiny proceedings.
- During scrutiny proceedings, the matter was referred by the Assessing Officer to the Transfer Pricing Officer (TPO) and TPO passed an order making addition on account of adjustment to Arm's Length Price. Thereafter, the Assessing Officer passed the draft Assessment Order.
- On objections before the Dispute Resolution Panel (DRP), the DRP granted full relief in respect of addition.
- The Assessing Officer passed final assessment order without following the directions given by the DRP on TP adjustment.
- The assessee submitted that the final assessment order passed by the Assessing Officer is not in conformity with the DRP direction and is thus, null and void. Therefore, the assessment order be quashed.

Held

- The ITAT held that the Assessing Officer has followed the statutory provisions of section 143(3) thereby passing assessment order. But as per the binding section *i.e.* section 144C(10), the mandatory provision was not followed by the Assessing Officer, thereby it is binding on the Assessing Officer to follow the directions of the DRP. Therefore, the assessment becomes null and void. When the Assessing Officer has deliberately chosen not to follow a binding provision under section 144C while passing the final assessment order, the assessment order, itself becomes *null and void*. The submissions of the revenue that after passing assessment order, the Transfer Pricing Officer has given final effect to the DRP direction and thereafter the Assessing Officer under section 154 has rectified the original assessment order well within time thereby deleting the entire Transfer Pricing adjustment, does not hold the test of legal sanctity as per the provisions of section 144C(10). Thus, assessment order itself is quashed. Therefore, grounds of assessee's appeal are allowed.