

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" NEW DELHI
BEFORE SHRI C.L. SETHI, JUDICIAL MEMBER
AND
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
I.T.A. No. 4073/Del/2010
A.Y. : 2006-07

GAP International Sourcing India
Pvt. Ltd.,
B-1/I-2, Mohan Cooperative
Industrial Estate,
Mathura Road,
New Delhi – 110 044
(PAN/GIR NO. : AACCG3437E)
(Appellant)

vs. Deputy Commissioner of Income
Tax,
Circle 12(1),
New Delhi

(Respondent)

Assessee by : Sh. Rahul K. Mitra, CA
Department by : Shri RIS Gill, C.I.T. (D.R.)

ORDER

PER SHAMIM YAHYA: AM

This appeal by the assessee is directed against the order of the Ld. Assessing Officer dated 29.07.2010 pertaining to assessment year 2006-07.

2. Draft Order of the Assessing Officer was passed on 24.11.2009. Disputes Resolution Panel (DRP) passed direction u/s 144C on 31.5.2010.

3. At the outset of hearing Id. counsel of the assessee assailed that the Disputes Resolution Panel has not at all considered the assessee's submissions and passed a very laconic and non-speaking direction. The same reads as under:-

“The assessee has filed objections to the draft assessment order on 5.1.2010 and the case was fixed by DRP for hearing on 14th May, 2010. The case was represented by CA Rahul Mehta, Ram Sharma and Deepak Kapoor and Sri Anant Sardana. A further written submission was filed on 26th May, 2010. The DRP, having considered their arguments and written submissions by the assessee and material on record, decides the matter as under:-

2. Arm's Length Price (ALP) u/s 92CA(3)

As noticed from the order of the Transfer Pricing Office (TPO), the issues involved are flowing from the orders of the TPO in earlier years. The matter is under litigation for the earlier years.

The assessee has used Berry Ratios as a Profit Level Indicator (PLI) which is rejected by the TPO. It is seen from the relevant provisions of the law that the PLI should have an element of profit in the nominator and therefore, the TPO is right in rejecting the PLI of the assessee.

The TPO has passed the order after giving sufficient opportunity to the assessee and the points raised by the assessee are well answered in the TPO order. The

Assessee has not raised any new issues. The risk undertaken by the assessee is sufficiently higher, requiring higher compensation to its efforts. The supply chain intangible developed by the assessee alongwith human capital employed deserves higher margin. Therefore, we uphold the method employed by the TPO alongwith the PLI used in the order. We do not see any merit in the submissions of the assessee and therefore, there is no need to interfere in the order of the TPO.”

4. We have heard both the counsel and perused the records. We find that section 144C envisages following on the part of the DRP:-

“(5) The Disputes Resolution Panel shall, in case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

(6) The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely :-

- (a) draft order;
- (b) objections filed by the assessee;
- (c) evidence furnished by the assessee;
- (d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;

- (e) records relating to the draft order;
 - (f) evidence collected by, or caused to be collected by, it; and
 - (g) result of any enquiry made by, or caused to be made by, it.
- (7) The Dispute Resolution panel may, before issuing any directions referred to in sub-section (5), -
- (a) make such further enquiry, as it thinks fit; or
 - (b) cause any further enquiry to be made by any income tax authority and report the result of the same to it.
- (8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.
- (9) If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.
- (10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.
- (11) No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions

which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.

(12) No direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.

(13) Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153, the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received.”

5. As against the above provisions of the Act here the DRP has passed a very laconic order. Ld. counsel of the assessee contended that voluminous submissions have been made before the DRP against the draft assessment order. But the DRP has brushed aside everything without even a whisper of the assessee's objections and the submissions of the assessee. Under the circumstances, in our opinion, the directions of the DRP are too laconic to be left uncommented. The directions given by the DRP almost tantamounts to supervising the Assessing Officer's draft order and in that sense it can be equated that appellate jurisdiction being exercised. We find that Hon'ble Apex Court in the case M/s Sahara India (Farms) Vs. CIT & Anr. in [2008] 300 ITR 403 has held that even “an administrative order has to be consistent with the rules of natural justice”.

6. Under the circumstances, we find that considerable cogency in the assessee's counsel submission that the assessee's submission has been brushed aside without giving proper consideration by the DRP.

7. Ld. Departmental Representative could not controvert this proposition.

8. Under the circumstances, in our considered opinion, the issue is remitted to the files of the DRP to consider the issue once again and pass a proper and speaking direction u/s 144C of the IT Act. Since we are remitting the matter to the files of the DRP for passing a fresh direction, merits of the case are not being adjudicated. Needless to add that the assessee should be given adequate opportunity of being heard.

9. In the result, the appeal filed by the assessee stands allowed statistical purposes.

Order pronounced in the open court on 10/12/2010.

Sd/-

[C.L. SETHI]
JUDICIAL MEMBER

Date 10/12/2010

SRB

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|--------------|---------------|--------|------------|
| 1. Appellant | 2. Respondent | 3. CIT | 4. CIT (A) |
| 5. DR, ITAT | | | |

TRUE COPY

Sd/-

[SHAMIM YAHYA]
ACCOUNTANT MEMBER

By Order,

Deputy Registrar, ITAT, Delhi Benches