

## **DRP to assign reasons before adjudicating claim of assessee; ITAT sets aside non-speaking order of DRP**

**Summary – The Delhi ITAT in a recent case of Starwood Asia Pacific Hotel and Resorts (P.) Ltd., (the Assessee) held that where DRP dismissed appeal of assessee by way of a non-speaking order, matter was to be remitted back to DRP for proper adjudication.**

### **Facts**

- The assessee company was incorporated in Singapore and had set up a branch in India for providing management services to hotels in India. It incurred certain expenditure for taking an office on rent and also appointed two expatriates. Accordingly, assessee claimed that such expenditure was revenue expense.
- The Assessing Officer disallowed the claim on ground that the business of the assessee had not commenced during the relevant assessment year since the hotels with which it had entered into agreement to provide services were not constructed. Accordingly, he prepared a draft assessment order which was confirmed by the Dispute Resolution Panel.
- The assessee filed appeal before the Tribunal and contended that the DRP had dismissed its claim by way of a non-speaking order.

### **Held**

- The ITAT held that the impugned order of the DRP deserves to be set aside and it cannot be over emphasized that a judicial or a quasi-judicial authority is necessarily required to set out the point for determination and after duly recording the objections of the parties before it, the authority is required to ascribe reasons on facts and law for agreeing or disagreeing with the objections posed. The DRP under section 144C discharges the functions of a quasi-judicial authority.
- Therefore, it is obligatory, for the DRP on its part to ascribe cogent and germane reasons for arriving at a conclusion.
- Recording proper reasons facilitate appreciation when the order is called in question before a Superior forum or an appellate forum. Since the detailed findings supported by the reasons of the DRP are not available it would not be appropriate to consider the grounds raised by the assessee and it is necessary to hold that the matter deserves to be remitted back to the DRP for proper adjudication on all the objections in the grounds raised by the assessee.

- The DRP was also directed to afford reasonable opportunity of being heard to both the parties and deliver a speaking order as per the requirements of law and procedure accepted by the Courts.

**Comments**

This is a welcome judgment for all assessee's who have faced summary dismissals of their cases before the Revenue Authorities since it has been becoming more of a habit that the DRP has been passing non-speaking orders. It would also be interesting to see in the present case as to how the DRP handles and concludes with regard to the present issue of the assessee i.e. setting up of its business.