

AO couldn't bypass directions of DRP to tax receipts for services rendered abroad in his own way

Summary – The Mumbai ITAT in a recent case of Diamond Management & Technology Consultants Ltd., (the Assessee) held that where DRP directed Assessing Officer to tax receipt in hands of assessee as fees for technical services, but Assessing Officer brought it to tax in other way, Assessing Officer should pass fresh assessment order.

Facts

- The assessee-company was engaged in the business of consultancy services. It rendered said services to a foreign company and received certain sum.
- The Assessing Officer brought to tax receipt for services rendered outside India as attributable to Indian Permanent Establishment.
- The Dispute Resolution Panel held that since assessee made technology available to the Indian entity, that such services were in nature of fees for technical services, and same were taxable in India and directed the Assessing Officer accordingly.
- However while passing the final assessment order, the Assessing Officer determined total income of the assessee in other way.

Held

- The Dispute Resolution Panel had issued directions to the Assessing Officer and had specifically mentioned that amount received by the assessee had to be taxed as fees for technical services. Directions of the Dispute Resolution Panel are binding on the Assessing Officer. Section 144C(13) uses word 'shall' with regard to instructions to be followed by the Assessing Officer.
- From the plain reading of the provisions of the section, it is clear that the Assessing Officer has no choice, but to pass an order as per the directions of the Dispute Resolution Panel. The Panel consisting of three (3) senior Commissioners of Income tax Department, has been given powers to decide the issues raised in the draft orders submitted by the Assessing Officers. Naturally the Assessing Officers, being the junior members of the Departmental hierarchy, are supposed to follow the orders of the collegiums of the Commissioners. The reason behind it is not difficult to comprehend collective wisdom of the senior officers has to prevail over the understanding of an individual officer. Secondly, the Panel has benefit of the submissions of the assessee also before it decides the issues.
- In spite of the clear and unambiguous mandate of section 144C(13) the Assessing Officer did not carry out the instructions of the Dispute Resolution Panel and assessed the income in the manner he wanted. The assessee-company had filed an application under section 154 for rectification of mistakes before the Assessing Officer. In the said application, the assessee-company had brought to

the notice of the Assessing Officer, 'inadvertent non-compliance' of the instruction of the Dispute Resolution Panel. Till the date of hearing the assessee had not received the order of the Assessing Officer disposing of the application filed by it under section 154.

- Open defiance of the directions of the Dispute Resolution Panel by an adamant Assessing Officer, non-disposal of application of the assessee filed under section 154 and request of the assessee to direct the Assessing Officer to follow the orders of the Dispute Resolution Panel unmistakably prove one thing that the assessee has been compelled to approach the Tribunal because of the disobedience and inaction of the Assessing Officer. Helplessness of the assessee is evident from the fact that it is ready not to press other grounds of appeal, if the Assessing Officer is directed to act as per law. If even for its rightful claim an assessee has to approach a judicial forum, then it has to be held that the Assessing Officer had miserably failed in performing his duties. As a representative of the State, he is duty bound to collect only 'due' taxes and not only taxes. On two counts behaviour of the Assessing Officer can be held to be perverse - first he did not obey the instructions of the Panel and second he did not take any action with regard to the rectification application filed by the assessee.
- The Assessing Officer is directed to pass a fresh assessment order as per the directions of the Dispute Resolution Panel within 30 days of receipt of this order.