

ITAT directs re-adjudication of case as TPO had allowed less than 4 working days to assessee to respond

Summary – The Delhi ITAT in a recent case of Bombardier Transportation India Ltd., (the Assessee) held that where sufficient opportunity was not given to assessee to furnish requisite details and documents to answer queries raised by TPO and DRP had also not gone into evidence filed before it by assessee, matter required re-adjudication

Facts

- The assessee-company is a part of Bombardier Group and is engaged in manufacturing of transportation solution ranging from regional aircrafts and business jets to rail transportation equipment, system & services.
- The assessee declared income of Rs.70.05 crores and income assessed under section 143(3)/144C was 78.75 crores.
- TPO accepted the value of all international transactions except administration and intermediary services received from Bombardier Group & Bombardier Switzerland and accordingly made transfer pricing adjustment of Rs. 8.58 crores.
- DRP upheld the TPO's order by ignoring the detailed evidence submitted by assessee, substantiating the nature of intra-group services availed by the assessee and corresponding benefits derived there from. DRP held that assessee did not provide allocation key for allocation of costs by AEs.
- On appeal, the assessee submitted that the assessment proceedings of the assessee began in November 2009. However, the TPO only issued a show cause notice to the assessee in September 2010 and provided the assessee less than 4 working days to prepare a response for the same. Thereafter, the assessee submitted that additional information before the DRP as the same could not be submitted before the TPO due to paucity of time as stated above. However, the DRP failed to consider the evidence including the cost benefit analysis submitted before the TPO and voluminous evidence submitted before it. Thus, because of non-consideration of relevant evidence by DRP and due to the lack of opportunity to produce the documents to substantiate its claim before the TPO, has resulted in failure by the said authorities to consider the significance of the services rendered by the AE; and also they made no attempt to appraise their market value or benefit derived by the assessee and therefore it was prayed that the issues may be remanded back to the file of the TPO/DRP for fresh adjudication for violation of natural justice.

Held

- Though the assessment proceedings in the instant case began in November, 2009, TPO issued show cause notice to the assessee only in September, 2010 directing it to submit details and supporting documents, which are admittedly voluminous and requires reasonable time for collecting and producing the same. However the TPO issued the said show cause notice on 20-9-2010, directing the assessee to submit the entire documents asked by him before 27-9-2010, by which the assessee

only got 4 working days to comply the same. Since it was practically impossible to submit the entire documents, the assessee submitted whatever it could before the TPO who passed orders without considering the documents which ought to have been looked into by him provided sufficient time was granted to the assessee. Thereafter, the assessee filed all the said relevant documents asked by the TPO before the DRP.

- However, on a perusal of the impugned orders it is found that the DRP has not considered the aforesaid evidences including the cost benefit analysis, the details of the service rendered by Canada HO, benefits derived, allocation keys and actual cost-allocation work wide to AE's (Pg. 438-877 Volume-II and Page 897-900/ Vol-II) and other documents relevant to adjudicate the issues before it.
- In the aforesaid facts and circumstances, it is evident that sufficient opportunity was not given to the assessee to furnish the requisite details and documents to answer the queries raised by the TPO. At any rate 4 working days is insufficient to produce the voluminous documents necessary for answering the queries raised by the TPO along with supporting documents. Thus the TPO's order was vitiated for violation of natural justice and we also find that the DRP has also not gone into the evidence filed before it by the assessee. Therefore, the impugned orders of the authorities below are set aside and the matter is remanded for fresh adjudication, with a direction to the AO/TPO to pass order afresh after taking into consideration the evidence furnished by the assessee and after giving reasonable opportunity to the assessee.
- The appeal is allowed for statistical purposes.