

DRP gets flak from ITAT for confirming additions made by TPO without considering submissions made by assessee

Summary – The Hyderabad ITAT in a recent case of Shri Pharmaceuticals Ltd., (the Assessee) held that where DRP confirmed addition made to assessee's ALP by TPO without considering submissions raised by assessee on merits, order so passed deserved to be set aside

Facts

- The assessee an Indian company was engaged in the business of manufacture and sale of various pharmaceutical products.
- During relevant year, the assessee entered into various international transactions relating to purchase of raw material and sale of finished goods with its AE.
- In transfer pricing study, the assessee adopted (TNMM) as the most appropriate method with operating profit to sales as the profit level indicator (PLI).
- The TPO did not accept assessee's transfer pricing study. He having adopted operating profit to cost ratio as PLI, made certain addition to assessee's ALP.
- The DRP set aside objections raised by assessee.
- The assessee filed instant appeal mainly raising a plea that DRP had passed impugned order without considering assessee's submissions on merits.

Held

- On a perusal of the material on record, it is found that though the DRP has considered part of the written submissions filed by assessee, which has been incorporated in the order of DRP, but, the submissions made by assessee on merits which were claimed to have been filed before DRP have not at all been considered.
- Furthermore, assessee's grievance that the TPO without giving assessee opportunity of hearing has changed PLI from operating profit to sales to operating profit to cost also needs to be addressed by DRP. Further, at the time of hearing, assessee pointed out that even while computing arm's length margin by adopting OP to cost ratio, TPO has made a mistake as the actual average OP to OC ratio of the comparable companies selected by TPO works out to 16.22 per cent as against 22.44 per cent calculated by TPO. This fact also requires examination. In the aforesaid factual background, the matter is remanded back to the file of DRP for deciding afresh.