Assessment order set aside as AO made final assessment without forwarding copy of draft assessment order

Summary – The Mumbai ITAT in a recent case of Lionbridge Technologies (P.) Ltd., (the Assessee) held that where assessment was restored back by Tribunal to stage of passing of draft assessment order and fresh assessment order was passed without forwarding draft order to assessee within time-limit prescribed under section 153(2A), mandate of section 144C was not fulfilled and, accordingly, assessment order was unenforceable

Facts

- The assessee-company was engaged in the business of design, development and export of computer software, software solutions and providing information technology enabled services and related services.
- The assessment of the year under consideration was originally completed by making various additions.
- When the assessee challenged the assessment order by filing appeal before the Tribunal, the Tribunal set aside all the matters to the file of the Assessing Officer with the observations that DRP had not given any reason and/or commented upon the objections of assessee in the said order while agreeing with the adjustments proposed by TPO.
- The Assessing Officer proceeded to frame fresh assessment order, in order to give effect to the order passed by the Tribunal. The Assessing Officer should have forwarded the copy of the draft order to the assessee in terms of section 144C(1) as assessment was restored back by the Tribunal to the stage of the passing of 'Draft assessment order'. Apparently, the Assessing Officer did not do so, but instead passed the final assessment on 12-3-2014 by raising demand upon the assessee. Further, the Assessing Officer also issued the notice of demand and also the penalty notice under section 271(1)(c). These two notices clearly bring out the fact that the Assessing Officer has passed the final assessment order only on 12-3-2014.
- Later on Assessing Officer issued corrigendum dated 16-4-2014 to the effect that the assessment order dated 12-3-2014 should be read as 'Draft assessment order' would make good the mistake committed by the Assessing Officer. The assessee, after receipt of corrigendum had filed objections before the DRP and the Assessing Officer has passed the final assessment order on 9-1-2015 after the receipt of order passed by DRP.
- On appeal to the Tribunal.

Held

- The sequence of events would show that the Assessing Officer has failed to follow the directions given by the Tribunal in its order. The Tribunal has made a specific observation that the DRP has not

passed a reasoned order and hence, the matter was restored to the file of the Assessing Officer at the stage of 'Draft assessment order'. Hence, the Assessing Officer was required to forward a copy of the draft order in terms of section 144C(1) and thereafter the procedure prescribed for filing objections, if any, before the DRP by the assessee might have been followed. Apparently, the Assessing Officer has failed to follow the mandate of the provisions of section 144C(1).

- It is not the case of the department that the demand raised in the assessment order dated 12-3-2014 was withdrawn by the Assessing Officer at the time of issuing corrigendum dated 16-4-2015. Further, the corrigendum itself was issued by the Assessing Officer after the expiry of time-limit prescribed under third proviso to section 153(2A). The said defect cannot be cured by the corrigendum issued subsequently after the expiry of limitation period. Hence, the assessment order dated 12-3-2014 passed by the Assessing Officer should be construed as final assessment order passed in violation of the statutory provisions of the Act. Since the Assessing Officer has failed to comply with the time-limit prescribed by section 153(2A) and further failed to follow the mandate of the provisions of section 144C, the impugned order is the one without jurisdiction, null and void, and unenforceable. Accordingly, the impugned assessment order is set aside.