

AO couldn't make adjustments other than those which were proposed in draft assessment order: HC

Summary – The High Court of Gujarat in a recent case of Woco Motherson Advanced Rubber Technologies Ltd., (the Assessee) held that Assessing Officer cannot make any addition and/or disallowance than what is proposed in draft assessment order

Facts

- The assessee was engaged in manufacturing of high quality rubber parts, rubber plastic parts, rubber metal parts and liquid silicon rubber parts.
- It availed technical services from its AE and made payment.
- The T.P. Officer proposed upward T.P. adjustment in respect of said payment.
- Said draft assessment order was carried before Dispute Resolution Panel and proposed adjustment was contested by the assessee by filing detailed objections, but the assessee did not succeed before DRP.
- However, while passing the final assessment order, the Assessing Officer not only made T.P. addition but he also made disallowance under section 10AA.
- On appeal: the Tribunal had directed to delete disallowance made by the Assessing Officer under section 10AA on the ground that in the draft assessment order, said disallowance was not proposed, and therefore, it was not open to the Assessing Officer to make said disallowance.
- On further appeal:

Held

- There is complete machinery provided under section 144C. In the entire scheme of section 144C, it refers to the draft assessment order *ie.*, variation in the income or loss returned proposed in the draft assessment order. Even the objections are required to be submitted by the assessee with respect to the variation proposed in the draft assessment order. Even, the DRP is also required to consider the objections raised by the assessee with respect to the variation proposed in the draft assessment order. The DRP is also required to issue directions with respect to the variation proposed in the draft assessment order and even considering the records relating to the draft order. Considering the entire scheme of section 144C, it appears that in conformity with the principles of natural justice, the assessee is required to be given an opportunity to submit objections with respect to the variation proposed in the income or loss returned. Therefore, while passing the final assessment order, the Assessing Officer cannot go beyond what is proposed in the draft assessment order. If the submissions made on behalf of the revenue are accepted that the Assessing Officer, while passing the final assessment order can also go beyond the variation proposed in the draft assessment order, then in that case, it can be said that the assessee shall not be given any

opportunity to raise objections against such additions or disallowances which were not even proposed in the draft assessment order. Therefore, the same can be considered to be in breach of the principles of natural justice.

- At this stage, it is required to be noted that even while passing the regular assessment order, if the officer proposes to make any further addition and/or disallowances, in that case also, the Assessing Officer is required to issue required notice under section 142 and the assessee is required to be given an opportunity to raise objection against such addition and/or disallowance. Under the circumstances, considering the entire scheme of section 144C, the Assessing Officer cannot make any addition and/or disallowance other than that is proposed in the draft assessment order.
- The contention raised on behalf of the revenue that the aforesaid lapse can be said to be a procedural lapse, has also no substance. Such additions/disallowances other than those proposed in the draft assessment order cannot be said to be a mere procedural lapse.
- Under the circumstances, the Tribunal has not committed any error in deleting the disallowance made by the Assessing Officer with respect to the claim of the assessee under section 10AA, as the same was not proposed by the Assessing Officer in the draft assessment order and for which, no opportunity was given to the assessee to submit the objections against such disallowance.