

DRP has no power to condone assessee's delay in filing of objection raised on draft assessment order: HC

Summary – The High Court of Madras in a recent case of Inno Estates (P.) Ltd., (the Assessee) held that DRP has no power and authority and jurisdiction to condone delay in filing objection beyond stipulated period of thirty days from date of receipt of draft assessment order

Facts

- The assessee had entered into an international transaction for Compulsory Convertible Debentures (CCDs) in the relevant assessment year and it had received loan/advance in US Dollars from an associated enterprise.
- The Transfer Pricing Officer (TPO) observed that the CCD was an instrument mandatorily and automatically convertible into equity within a specified time and, hence, could not be called debt, as debt implied an obligation to pay. The TPO was, thus, of the view that the interest rate on CCDs in transfer pricing could not be determined only by adopting the Prime Lending Rate (PLR) of the Indian Banks.
- The TPO adopted the relevant LIBOR rates with risk premium of 2 per cent relevant to the year under consideration to benchmark said transaction.
- Accordingly, Assessing Officer issued a draft order.
- The assessee objected to the draft assessment order by filing objection before the Dispute Resolution Panel after expiry of the thirty days time limit.
- The Dispute Resolution Panel, refused to condone the delay of one day.
- The Assessing Officer passed a final assessment order making adjustments.
- The assessee petition filed writ petition.
- The revenue took an objection to the writ petition on the ground of existence of an alternative remedy of appeal. The Single Bench had dismissed the writ petition and relegated the assessee to its alternative remedy of appeal before the Commissioner (Appeals).
- On appeal:

Held

- It is well settled that the High Court exercising jurisdiction under article 226 of the Constitution of India does not adjudicate the correctness of an order of assessment. Though the order of the Single Judge dismissing the writ petition has been challenged in entirety, the assessee contends that an appeal would not lie to the First Appellate Authority under section 246(1)(a), but to the Tribunal under the provisions of section 253(1)(d).
- An appeal from an assessment order under section 143(2) lies before Commissioner (Appeals), whereas an appeal from an order passed by an Assessing Officer under section 143(3) or section 147 or section 153A or section 153C in pursuance of the directions of the DRP lies before the Tribunal.

- In a case where objection is received, the DRP might issue such directions as it might think for the guidance of the Assessing Officer to enable him to complete the assessment [section 144C(5)]. The directions referred to in section 144C(5) are to be issued after considering (i) the draft order; (ii) objections filed by the assessee; (iii) evidence furnished by the assessee; (iv) report of the TPO or any other authority; (v) records relating to the draft order; (vi) evidence collected by or caused to be collected by the DRP; (vii) result of any enquiry made by or caused to be made by the DRP.
- The DRP may also make such further enquiry as it thinks fit or cause any further enquiry to be made by any Income Tax Authority and report the result of it to the DRP before issuing any direction referred to in section 144C(5).
- After considering the aforesaid materials, the DRP might confirm, reduce or enhance the variations proposed in the draft order.
- Section 144C(10) mandates that every direction issued by the DRP shall be binding on the Assessing Officer. The direction is obviously a direction under section 144C(5) which is given after taking into consideration the materials stipulated in section 144C(6) and going through the exercise contemplated, *inter alia*, under section 144C(7).
- An objection is to be filed by an aggrieved assessee within thirty days from the date of receipt of the draft assessment order. DRP has no power and/or authority and/or jurisdiction to condone the delay in filing the objection.
- When an objection is filed before the DRP beyond the stipulated time of thirty days from the date of receipt of the order, there is no objection before the Dispute Resolution Panel in the eye of law.
- An order of rejection of an objection on the ground of the same being barred by limitation is not a direction under sub-section 5 read with sub-section (6) to section 144C. Though the impugned order dated 10-11-2016 rejecting the objection on the ground of the bar of limitation is captioned as a direction under section 144C(5), it is not in fact a direction under section 144C(5). The quoting of a wrong provision in an order is a mistake apparent on the face of the record and, therefore, inconsequential. The impugned assessment order though stated as an order under section 143(3) read with section 144C(13), is not an order in pursuance of the directions of the DRP, but an order of assessment simplicitor under section 143(3) from which an appeal would lie to the Commissioner (Appeals). The Single Judge rightly dismissed the writ petition and remitted the assessee to his remedy of appeal before the first appellate authority.