

Draft order not required to be issued for rectifying mistakes which happened while giving effect to DRP's directions

Summary – The Ahmedabad ITAT in a recent case of Talent Anywhere Services (P.) Ltd., (the Assessee) held that Draft order was not required to be issued for rectifying mistakes which happened while giving effect to DRP's directions.

Facts

- In the original order, the TPO made certain ALP adjustments and DRP gave certain directions for recomputation of the ALP adjustment after which the TPO held that no adjustment was required. Accordingly, a final assessment order was passed by the Assessing Officer without any ALP adjustment.
- Thereafter, the TPO issued a notice under section 154 pointing out that certain mistakes had crept in while giving effect to the DRP's order and proposed an ALP adjustment of Rs. 1 crore to be made in the hands of the assessee.
- Accordingly, the Assessing Officer passed an order making the aforesaid ALP adjustment.
- In the instant appeal, the assessee contended that the Assessing Officer ought to have issued a draft rectification order under section 154 and thus, the assessee had been deprived of opportunity to approach the DRP in respect of the action at the assessment stage.

Held

- The ITAT held that once the DRP has given its directions, the order passed in pursuance of such directions, or rectification order in respect thereof, can only be appealed before the Tribunal.
- Applying the above principle the arguments of the assessee are rejected. It is not possible to hold that an order under section 154 in respect of order passed by the Assessing Officer under section 143(3), as a result of the directions of the Dispute Resolution Panel, must be treated as an 'order of assessment' and that the Assessing Officer is required to share with the assessee the draft or proposed rectification order so as to enable the assessee to approach, if so advised, the DRP. Such order can only be appealed in the Income Tax Appellate Tribunal. The assessee has duly availed this remedy. In view of these discussions, and bearing in mind entirety of the case, it is to be held that the Assessing Officer was not required to issue a draft order for rectifying the mistake apparent on record under section 154.