

Assessing officer can't be part of tax appellate body deciding the appeal

An income-tax commissioner, responsible for an assessment order, cannot be a part of the body that decides the appeal against the same order, a tax tribunal has said.

The Income Tax Appellate Tribunal (ITAT), the second appellate forum that decides on tax disputes, said that involving a tax official in deciding an appeal against an assessment order would be against the principles of natural justice, especially if the official had been party to the same assessment order.

The ITAT gave this order last month on an appeal filed by Lionbridge Technologies against an order of the Dispute Resolution Panel (DRP), a body set up exclusively under the Income-tax Act for resolving transfer pricing related disputes.

The company claimed that the DRP had disposed off its objections without addressing the issues and moved the second appellate forum, ITAT. Lionbridge said that a member of the DRP was also the jurisdictional commissioner i.e. the commissioner in whose jurisdiction the company was located. This is contrary to the principles of natural justice, the company pointed out.

The company also cited an Uttarakhand High Court order in the case of Hyundai Heavy Industries, in which the high court had underlined the need to appear impartial while giving judicial orders. The ITAT held that if a jurisdictional commissioner is nominated as a member of the DRP, the order passed by the DRP is liable to be set aside.

"The functions of DRP are judicial in nature and therefore it is required to have certain autonomy and impartiality. If the jurisdictional commissioner is part of the DRP there would be a real likelihood of bias," KPMG in a note on the order said.

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