IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J", MUMBAI

BEFORE AMIT SHUKLA (JUDICIAL MEMBER)
AND
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)

I.T.A. No.2814 & 2815/Mum/2022
(A.Ys 2017-18 & 2018-19)

Teleperformance Global Services Pri vate Limited, Teleperformance Towers, Plot CST No 1406, A/28, Mindspace Goregaon West, Mumbai Suburban, Maharashtra 400 064 **PAN : AABCV2572L**	vs	Asst.Commissioner of Income Tax-Circle 5(3)(1), Mumbai Room No.573, 5th Floor, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai-400 020
APPELLANT		**RESPONDENT**

Assessee represented by	Shri J.D. Mistry
Department represented by	Shri Vivek Perumpura SRAR

Date of hearing	21-04-2023
Date of pronouncement	24-04-2023

O R D E R

These appeals are against the order of the Assistant Commissioner of Income Tax Circle 5(3)(1), Mumbai passed u/s.144C r.w.s.144C(13) of the Income Tax Act (the Act) for assessment year 2017-18 and 2018-19 dated 26.07.2022. The issues are common in both the appeals and they were heard together and disposed off together by this common order.

2. The assessee is engaged in the business of providing IT enabled services (ITeS), BPO services, call centre and contract centre services, back office processing, outsourcing services, data processing and analysis including assimilation, sorting, processing and communication of data and graphs etc. The brief facts pertaining to AY 2017-18 are that the assessee filed the return of income for AY 2017-18 on 26.03.2018 declaring NIL income as per the normal provisions of the Act and book profits of Rs.1,38,16,45,117 under section 115JB of the Act. The return was originally processed u/s.143(1) where the income under the normal provisions were assessed at Rs.77,37,83,380 and the income u/s.115JB was retained at the same as in the return of income. Subsequently the return was selected for scrutiny under CASS and the statutory notices are duly served on the assessee. Since the assessee had international transactions with its Associated Enterprise (AE) a reference was made to the Transfer Pricing Officer in order to determine the arm's length price of the international transactions. The TPO made a TP adjustment of Rs.7,90,77,518. The AO passed a draft assessment order date 30.09.2021 in which the AO retained the disallowances made u/s. 143(1) Rs.6,05,18,177 and besides the TP adjustment the AO further made a disallowance of Rs.70,87,66,411 towards depreciation on goodwill and also disallowed the unabsorbed depreciation of Rs.1,45,93,19,199. The assessed income as per the draft assessment order was Rs.2,30,76,81,305. Aggrieved the assessee filed its objections before the DRP. The DRP gave partial relief towards the adjustment made in the intimation u/s.143(1) and upheld the TP adjustment and other disallowances made by the AO. The AO passed the manual final assessment order date 26.07.2022 in which the income was assessed at Rs.2,25,88,39,614 as per the directions of the DRP.

3. The assessee is contending above said order of the AO both on legal grounds and on merits. During the course of hearing the Ld AR submitted that if the legal ground which reads as under is adjudicated then the grounds on merits would become academic.

> ***"Re.: Validity of the Order:***
> *2.1 Based on the facts and in circumstances of the case and in law, the appellant company submits that the draft assessment order was passed by the National Faceless Assessment Centre ('NFAC'), however the impugned assessment order is passed by the jurisdictional Ld. AO.*
> *2.2 Based on the facts and in circumstances of the case and in law, the appellant company submits that the impugned assessment order is dated 26 July 2022, however, the DIN in respect to the same was generated on 02 September 2022 basis intimation issued along with the impugned assessment order. Further, the authorized person of the Appellant company received an intimation for the availability of impugned assessment order on the e-filing portal vide message on 07 September 2022.*
> *2.3 Based on the facts and in circumstances of the case and in law, the Ld. AO has erred in passing the impugned assessment beyond the time limit prescribed and null and void."*

4. The ld. AR submitted that the final order passed u/s.143(3) r.w.s.144C(13) is in violation of the CBDT Circular No.19 of 2019 dated 14.8.2019. The ld. AR submitted that the said order is a manual order without any DIN mentioned therein. It is also submitted the AO has given a separate intimation dated 02.09.202 stating that DIN has been generated for the said manual order. The ld. AR drew our attention to paragraph 3 of the above mentioned Circular wherein the CBDT has laid down certain procedures to be followed when a manual order is issued under exceptional circumstances. The ld. AR argued that the assessee is not aware for the exceptional circumstances under which the manual order is issued and whether the procedure as laid down in para 3 have been complied with since there is no mention of the same in the order issued u/s. 143(3) r.w.s.144C(13) which is one of the requirements as per para 3 of the circular. It is the submission of the ld. AR therefore that as per para 4 of the Circular, any communication which is not in conformity with para 2 & 3 of the said Circular shall be treated as invalid. The ld.

AR prayed that the order u/s. 143(3) r.w.s.144C(13) be quashed on this legal ground.

5. The ld. DR submitted that the AO has regularised the order u/s. 143(3) r.w.s.144C (13) issued without a DIN with a separate communication and the same should be considered as part of the order. The ld DR also submitted that as per Circular, DIN was mandated for maintaining proper audit trail of all communications and therefore the AO generating DIN in a separate intimation on is valid and need to be considered along with the order u/s. 143(3) r.w.s.144C(13). The ld DR further argued that the procedural lapse should of issuing an order without DIN cannot render the entire assessment proceedings invalid.

6. In rebuttal, the ld. AR submitted that as per para 2 of the Circular, the DIN allotted should be duly quoted in the body of such communication and not through a separate intimation. The ld AR also brought to our attention that the AO sending a separate intimation with DIN is not in conformity with the requirement mentioned in para 2 of the circular and also not in sync with the submissions of the ld DR that the intimation should be treated as part of the manual order. The ld. AR in this regard relied on the decision of the Bangalore Bench of the Tribunal in the case of Dilip Kothari vs PCIT (2023) 146 taxmann.com 442 (Bang Trib). The ld AR also brought to our attention that the Hon'ble Delhi High Court in the case of CIT vs BrandixMauritius Holdings Ltd [2023] 149 taxmann.com 238 (Delhi) has held a similar view. It is therefore argued by the ld AR that the DIN was not part of the manual order issued by the AO and the procedure laid down in the Circular has not been followed which makes the order as invalid.

7. We heard the parties and perused the material on record. We notice that the Hon'ble Delhi High Court in a recent decision on the issue of manual orders without DIN has held that –

> "12. We have heard learned counsel for the parties. The present appeal is preferred under Section 260A of the Act. The Court's mandate, thus, is to consider whether or not a substantial question of law arises for consideration.
>
> 12.1 As noted above, the impugned order has not been passed on merits.
>
> 13. The Tribunal has applied the plain provisions of the 2019 Circular, based on which, it has allowed the appeal preferred by the respondent/assessee.
>
> 14. The broad contours of the 2019 Circular have been adverted to by us hereinabove.
> 14.1 Insofar as the instant case is concerned, admittedly, the draft assessment order was passed on 30.12.2018.
> 15. The respondent/assessee had filed its objections *qua* the same, which were disposed of by the Dispute Resolution Panel [DRP] *via* order dated 20.09.2019.
> 16. The final assessment order was passed by the Assessing Officer (AO) on 15.10.2019, under Section 147/144(C)(13)/143(3) of the Act. Concededly, the final assessment order does not bear a DIN. There is nothing on record to show that the appellant/revenue took steps to demonstrate before the Tribunal that there were exceptional circumstances, as referred to in paragraph 3 of the 2019 Circular, which would sustain the communication of the final assessment order manually, *albeit*, without DIN.
> 16.1 Given this situation, clearly paragraph 4 of the 2019 Circular would apply.
> 17. Paragraph 4 of the 2019 Circular, as extracted hereinabove, decidedly provides that any communication which is not in conformity with paragraph 2 and 3 shall be treated as invalid and shall be deemed to have never been issued. The phraseology of paragraph 4 of the 2019 Circular fairly puts such communication, which includes communication of assessment order, in the category of communication which are *non-est* in law.
> 17.1 It is also well established that circulars issued by the CBDT in exercise of its powers under Section 119 of the Act are binding on the revenue.
> 17.2 The aforementioned principle stands enunciated in a long line of judgements, including the Supreme Court's judgment rendered in ***K.P. Varghese* v. *Income Tax Officer, Ernakulam andAnr.,*** (1981) 4 SCC 173. The relevant extracts are set forth hereafter:
>
> > *"12. But the construction which is commending itself to us does not rest merely on the principle of contemporanea expositio.* ***The two circulars of the Central Board of Direct Taxes to which we have just referred are legally binding on the Revenue and this binding character attaches to the two circulars even if they be found not in accordance with the correct interpretation of sub-section (2) and they depart or deviate from such construction. It is now well settled as a result of two decisions of this Court, one in Navnitlal C. Javeri v. K.K. Sen [AIR 1965 SC 1375 : (1965) 1 SCR 909 : 56 ITR 198] and the other in Ellerman Lines Ltd. v. CIT[(1979) 4 SCC 565] that circulars issued by the Central Board of Direct Taxes***

under Section 119 of the Act are binding on all officers and persons employed in the execution of the Act even if they deviate from the provisions of the Act*. The question which arose in Navnitlal C. Javeri case [AIR 1965 SC 1375 : (1965) 1 SCR 909 : 56 ITR 198] was in regard to the constitutional validity of Sections 2(6-A)(e) -and 12(1 -B) which were introduced in the Indian Income Tax Act, 1922 by the Finance Act, 1955 with effect from April I, 1955. These two sections provided that any payment made by a closely held company to its shareholders by way of advance or loan to the extent to which the company possesses accumulated profits shall be treated as dividend taxable under the Act and this would include any loan or advance made in any previous year relevant to any assessment year prior to Assessment Year 1955-56, if such loan or advance remained outstanding on the first day of the previous year relevant to Assessment Year 1955-56. The constitutional validity of these two sections was assailed on the ground that they imposed unreasonable restrictions on the fundamental right of the assessee under Article 19(1)(f) and (g) of the Constitution by taxing outstanding loans or advances of past years as dividend. The Revenue however relied on a circular issued by the Central Board of Revenue under Section 5(8) of the Indian Income Tax Act, 1922 which corresponded to Section 119 of the present Act and this circular provided that if any such outstanding loans or advances of past years were repaid on or before June 30, 1955, they would not be taken into account in determining the tax liability of the shareholders to whom such loans or advances were given. This circular was clearly contrary to the plain language of Section 2(6-A)(e) and Section 12(1-B), but even so this Court held that it was binding on the Revenue and since:*

> *"past transactions which would normally have attracted the stringent provisions of Section 12(1-B) as it was introduced in 1955, were substantially granted exemption from the operation of the said provisions by making it clear to all the companies and their shareholders that if the past loans were genuinely refunded to the companies they would not be taken into account under Section 12(1-B),"*

Sections 2(6-A)(e) and 12(1-B) did not suffer from the vice of unconstitutionality. This decision was followed in Ellerman Lines case [(1972) 4 SCC 474 : 1974 SCC (Tax) 304 : 82 ITR 913] where referring to another circular issued by the Central Board of Revenue under Section 5(8) of the Indian Income Tax Act, 1922 on which reliance was placed on behalf of the assessee, this Court absented:

> *"Now, coming to the question as to the effect of instructions issued under Section 5(8) of the Act, this Court observed in Navnitlal C. Javeri* v. *K.K. Sen, Appellate Assistant Commissioner, Bombay [AIR 1965 SC 1375 : (1965) 1 SCR 909 : 56 ITR 198] :*

'It is clear that a circular of the kind which was issued by the Board would be binding on all officers and persons employed in the execution of the Act under Section 5(8) of the Act. This circular pointed out to all the officers that

it was likely that some of the companies might have advanced loans to their shareholders as a result of genuine transactions of loans, and the idea was not to affect such transactions and not to bring them within the mischief of the new provision. '

The directions given in that circular clearly deviated from the provisions of the Act, yet this Court held that the circular was binding on the Income Tax Officer."

The two circulars of the Central Board of Direct Taxes referred to above must therefore be held to be binding on the Revenue in the administration or implementation of sub-section (2) and this sub-section must be read as applicable only to cases where there is understatement of the consideration in respect of the transfer. "

[Emphasis is ours]

17.3 Also see the following observations of a coordinate bench in ***Back Office IT Solutions Pvt. Ltd. v. Union of India,*** 2021 SCC OnLine Del 2742, in the context of the impact of circulars issued by the revenue:

"24....In this context, tax administrators have to bear in mind the well-established dicta that circulars issued by the statutory authorities are binding on them, although, they cannot dictate the manner in which assessment has to be carried out in a particular case. A Circular cannot be side-stepped causing prejudice to the assessee by bringing to naught the object for which it is issued. {See: K.P.Varghese vs. Income-tax [1981] 7 Taxman 13 (SC): Also see: UCO Bank, Calcutta v. Commissioner of Income Tax, W.B., (1999) 4 SCC 599]."

18. *The* argument advanced on behalf the appellant/revenue, that recourse can be taken to Section 292B of the Act, is untenable, having regard to the phraseology used in paragraph 4 of the 2019 Circular.

19. The object and purpose of the issuance of the 2019 Circular, as indicated hereinabove, *inter alia,* was to create an audit trail. Therefore, the communication relating to assessments, appeals, orders, etcetera which find mention in paragraph 2 of the 2019 Circular, *albeit* without DIN, can have no standing in law, having regard to the provisions of paragraph 4 of the 2019 Circular, albeit without DIN, can have no standing in law, having regard to the provisions of paragraph 4 of the 2019 circular.

20. The logical sequitur of the aforesaid reasoning can only be that the Tribunal's decision to not sustain the final assessment order dated 15.10.2019, is a view that cannot call for our interference.

21. As noted above, in the instant appeal all that we are required to consider is whether any substantial question of law arises for consideration, which, *inter alia,* would require the Court to examine whether the issue is debatable or if there is an alternate view possible. Given the language employed in the 2019 Circular, there is neither any scope for debate not is there any leeway for an alternate view.

21.1 We find no error in the view adopted by the Tribunal. The Tribunal has simply applied the provisions of the 2019 Circular and thus, reached a conclusion in favour of the respondent/assessee.

22. Accordingly, the appeal filed by the appellant/revenue is closed."

8. We also notice that a similar view has been taken by the Bangalore Bench of the Tribunal in the case of Dilip Kothari (supra) and also by the Calcutta Bench of the Tribunal in the case of Tata Medical Centre Trust v. CIT(E) [2022] 140 taxmann.com 431.

9. Before proceeding further we will look at the contents of the CBDT circular No.19/2019 dated 14.08.2019 which is reproduced below –

"CIRCULAR NO. 19/ 2019

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, dated the 14th August, 2019.

Subject: Generation/Allotment/Quoting of Document Identification Number in Notice/Order/Summons/letter/ correspondence issued by the Income Tax Department – reg.

With the launch of various e-governance initiatives, Income-tax Department is moving toward total computerization of its work. This has led to a significant improvement in delivery of services and has also brought greater transparency in the functioning of the tax-administration. Presently, almost all notices and orders are being generated electronically on the Income Tax Business Application (ITBA) platform. However, it has been brought to the notice of the Central Board of Direct Taxes (the Board) that there have been some instances in which the notice, order, summons, letter and any correspondence (hereinafter referred to as "communication") were found to have been issued manually, without maintaining a proper audit trail of such communication.

2. In order to prevent such instances and to maintain proper audit trail of all communication, the Board in exercise of power under section 119 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), has decided that no communication shall be issued by any income-tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry,

investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the 1st day of October, 2019 unless a computer-generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication.

3. In exceptional circumstances such as, —

(i) when there are technical difficulties in generating / allotting / quoting the DIN and issuance of communication electronically; or
(ii) when communication regarding enquiry, verification etc. is required to be issued by an income-tax authority, who is outside the office, for discharging his official duties: or
(iii) when due to delay in PAN migration. PAN is lying with non-jurisdictional Assessing Officer; or
(iv) when PAN of assessee is not available and where a proceeding under the Act (other than verification under section 131 or section 133 of the Act) is sought to be initiated; or
(v) When the functionality to issue communication is not available in the system,

the communication may be issued manually but only after recording reasons in writing in the file and with prior written approval of the Chief Commissioner/Director General of income-tax. In cases where manual communication is required to be issued due to delay in PAN migration, the proposal seeking approval for issuance of manual communication shall include the reason for delay in PAN migration. The communication issued under aforesaid circumstances shall state the fact that the communication is issued manually without a DIN and the date of obtaining of the written approval of the Chief Commissioner/ Director General of Income-tax for issue of manual communication in the following format-

> " .. This communication issues manually without a DIN on account of reason/reasons given in para3(i)/3(ii)/3(iii)/3(iv)/3(v) of the CBDT Circular No ...dated (strike off those which are not applicable) and with the approval of the Chief Commissioner/Director General of Income Tax vide number .... dated ....

4. Any communication which is not in conformity with Para-2 and Para-3 above, shall be treated as invalid and shall be deemed to have never been issued.

5. The communication issued manually in the three situations specified in para 3-(i), (ii) or (iii) above shall have to be regularised within 15 working days of its issuance, by —

i. uploading the manual communication on the System.

ii. compulsorily generating the DIN on the System;
iii. communicating the DIN so generated to the assessee/any other person as per electronically generated pro-forma available on the System.

6. An intimation of issuance of manual communication for the reasons mentioned in para 3(v) shall be sent to the Principal Director General of Income-tax (Systems) within seven days from the date of its issuance.

7. Further, in all pending assessment proceedings, where notices were issued manually, prior to issuance of this Circular, the Income-tax authorities shall identify such cases and shall upload the notices in these cases on the Systems by 31th October, 2019."

Sd/-
(Sarita Kumari)
Director (ITA.II)CBDT."

10. From the plain reading of the circular No.19/ 2019 dated 14th August, 2019 it is clear that the effective 1st October 2019, no communication shall be issued unless a DIN is allotted and is quoted in the body of the letter except under exceptional circumstances as mentioned in Para 3 which also lays down certain procedures to be followed for issue of manual order under certain circumstances. Accordingly the manual communication should mention the fact that the communication is issued manually without a DIN and the date of obtaining of the written approval of the Chief Commissioner/ Director General of Income-tax for issue of manual communication in a specific format. Para 4 of the circular states that the communication issued manually not in conformity with Para-2 and Para-3 of the circular, shall be treated as invalid and shall be deemed to have never been issued.

11. In assessee's case there is no dispute about the fact that the impugned order u/s. 143(3) r.w.s.144C(13) of the Act has been issued manually. It is also noticed that the DIN for the order is generated through separate intimation. The argument of the ld DR that the intimation dated 02.09.2022 is part of the order and that there

is no violation cannot be accepted as generating the DIN by separate intimation is allowed to be done to regularise the manual order (Para 5 of the circular) provided the manual order is issued in accordance with the procedure as contained in Para 3. On perusal of the order u/s. 143(3) r.w.s.144C(13), it is noted that the order neither contains the DIN in the body of the order, nor contains the fact in the specific format as stated in Para 3 that the communication is issued manually without a DIN after obtaining the necessary approvals. Therefore we are of considered view that the impugned order is not in conformity with Para 2 and Para 3 of the CBDT circular.

12. The contention of the ld DR was that the failure to generate and allocate DIN in this case is a mistake or at best, a defect and/or an omission, which ought not to invalidate the assessment proceedings. Though there is no specific provision under the Act which mandates quoting of DIN, the intention of the legislature is very clear from the stringent language used in the circular that for the purpose of audit trail DIN is mandatory and without DIN any communication is deemed to have never been issued except for the exceptions contained therein. We are therefore unable to agree with this contention of the revenue.

13. For AY 2018-19, the facts are identical except for the numbers pertaining to income declared, assessed etc. On perusal of records it is noticed that the AO for the said assessment year too has issued a manual final assessment order without DIN. Therefore the aforesaid findings is applicable to AY 2018-19 also.

14. In view of these discussions and respectfully following the decision of Hon'ble Delhi High Court and the decisions of the Calcutta and Bangalore Benches of the Hon'ble Tribunal we hold that the orders passed u/s. 143(3) r.w.s.144C(13) for the assessment years 2017-18 and 2018-19 are invalid and shall

be deemed to have never been issued as per Para 4 of the CBDT circular as the order is not conformity with Para 2 and Para 3. It is ordered accordingly

15. In result the appeal of both AY 2017-18 and AY 2018-19 is allowed.

Order pronounced in the open court on this 24/04/2023

Sd/- **sd/-**

(AMIT SHUKLA)	**(PADMAVATHY S)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dt : 24th April, 2023
Pavanan

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.

3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar / Senior Private Secretary
ITAT, Mumbai