

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DLEHI**

**BEFORE SHRI G.S. PANNU, PRESIDENT
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

**ITA No. 1456/Del/2021
Assessment Year: 2017-18**

Rama Pashu Aahar (P) Ltd.,
C/o RRA Taxindia, D-28, South
Extension, Part-1, New Delhi
PAN: AACCR1144B
(Appellant)

Versus ACIT, Central Circle 14,
New Delhi.

(Respondent)

**ITA No. 1862/Del/2021
Assessment Year: 2017-18**

ACIT, Central Circle 14,
New Delhi.

(Appellant)

Versus Rama Pashu Aahar (P) Ltd.,
C/o RRA Taxindia, D-28, South
Extension, Part-1, New Delhi.
(Respondent)

Assessee by: Dr. Rakesh Gupta, Advocate &
Sh. Somil Agarwal, Advocate
Revenue by: Sh. Pramod Kumar, Sr. DR

Date of hearing : 18.05.2023
Date of pronouncement : 30.05.2023

ORDER

PER SAKTIJIT DEY, J.M.:

Captioned cross appeals arise out of order dated 23.09.2021 of
learned Commissioner of Income-tax (Appeals)-26, New Delhi
pertaining to assessment year 2017-18.

2. In assessee's appeal, being ITA No. 1456/Del/2021, an additional ground has been raised challenging the validity of the assessment order, as it does not contain a Document Identification Number (DIN). Since, the issue raised in the additional ground is a purely legal and jurisdictional issue going to the root of the matter and it can be decided without making fresh investigation into the facts, we are inclined to admit the additional ground.

3. Before us, learned Counsel appearing for the assessee drew our attention to the assessment order dated 31.12.2019 passed u/s. 143(3) of the Act and submitted that the assessment order does not contain a DIN. Drawing our attention to Circular No. 19/2019 dated 14.08.2019 issued by the Central Board of Direct Taxes(CBDT), he submitted, it has been mandated that after 1st day of October, 2019, no communication shall be issued by any Income-tax authority unless a computer generated DIN has been communicated and is quoted in such communication. He submitted, though, the aforesaid circular provides that under certain exceptional circumstances, the concerned Income-tax authority is permitted to issue the communication manually, but he has to record reasons in writing and obtain prior written approval of Chief Commissioner/Director General of Income-tax for issuing the

communication manually without DIN. He submitted, such reason not only has to be recorded in the body of the communication, but it must also contain the date and number of approval of Chief Commissioner/Director General of Income-tax. Further, he submitted, the CBDT circular further makes it clear that any communication not in conformity with the conditions specified in the circular, shall be treated as invalid and shall be deemed to have never been issued. He submitted, in the manually communicated assessment order without containing DIN, the Assessing Officer has not recorded the reasons nor has mentioned the approval number and date of Chief Commissioner/Director General of Income-tax. Thus, he submitted, in terms with the CBDT circular, assessment order has to be declared as invalid and should be deemed to have never been issued. In support of such contention, learned Counsel relied upon a decision of Hon'ble jurisdictional High Court in the case of CIT vs. Brandix Mauritius Holdings Ltd. in ITA No. 163/2023 vide judgment dated 20.03.2023. Additionally, he relied upon a number of judicial precedents submitted in the legal compilation.

4. Drawing our attention to paragraph No. 7.4 of the impugned order of learned Commissioner (Appeals), learned departmental

representative submitted that due to certain technical issues at the time of communicating the assessment order, DIN could not be generated. However, he submitted, after obtaining approval of Chief Commissioner of Income-tax on 31.12.2019, the Assessing Officer has generated the DIN on 19.01.2020 which is within 15 working days as per paragraph No. 5 of CBDT circular No. 19/2019 dated 14.08.2019. Thus, he submitted, the Assessing Officer has fully complied with the CBDT circular. Therefore, the assessment order cannot be treated as invalid.

5. We have considered rival submissions in the light of decisions relied upon and perused the materials on record. On a careful scrutiny of the impugned assessment order communicated to the assessee manually, it is transparent that it does not contain any computer generated DIN. It is the case of the assessee that in absence of DIN, the Assessing Officer could have manually communicated the assessment order only after recording reasons in writing in the body of the order and also mentioning the number and date of approval granted by Chief Commissioner/Director General of Income-tax permitting the Assessing Officer for manually communicating the order without DIN. Whereas, it is the case of the Revenue that the Assessing Officer has not only obtained proper approval of the Chief Commissioner of Income-tax for

manually communicating the assessment order but has also generated the DIN within the specified time limit of 15 days as per circular No. 19/2019 dated 14.08.2019. To have a better understanding of the issue, it is necessary to look into the contents of Circular No. 19/2019 dated 14.08.2019 issued by the CBDT :

“Circular No. 19 /2019

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

New Delhi, dated the 14th of 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, tor discharging, his Official duties: or
- (iii) when due to delay in PAN migration, PAN is lying with nor.-jurisdictional Assessing Officer; or
- (iv) when PAN of assesses 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 net 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 para 3(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 31st October, 2019.

8. Hindi version to follow.

Sd/-
(Sarita Kumari)
Director (ITA, II) CBDT

(F.No. 225/95/2019-1TA.H)

Copy lo:-

- i. PS to FM/OSD to FM/PS to MoS(F)/OSD to MoS(F)
- ii. PS to Secretary (Revenue)
- iii. Chairman, CBDT & All Members. CBDT
- iv. All Pr.CCsIT/Pr.DsGIT
- v. All Joint Secretaries/CsIT, CBDT
- vi. C&AG
- vii. CIT (M&TP), Official Spokesperson of CBDT
- viii. O/o Pr. DGIT(Systems) for uploading on official website
- ix. Addl.CIT (Database Cell) for uploading on the departmental website

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

6. A reading of the aforesaid circular makes it clear that the object behind bringing the circular is for creating an audit trail. In paragraph 2, it has been very clearly mentioned 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 DIN has been allotted and is duly quoted in the body of such communication. Paragraph 3 of the circular carves out certain exceptions to paragraph 2 by providing that under certain exceptional circumstances, enumerated in clause (i) to (v) of paragraph 3, the communication may be issued manually but only after recording reasons in writing not only in the file and with prior written approval of the Chief Commissioner/Director General of Income-tax, but the communication issued manually in such circumstances must also state the reasons why communication is issued manually without a DIN and must also mention the date and number of written approval of the Chief Commissioner/Director General of Income-tax for issuing manual communication. In fact, in paragraph 3 of the aforesaid circular, the format for recording such reasons has been specified. Paragraph 4 of the circular makes it clear that any communication issued, which is not in

conformity with paragraph 2 and paragraph 3 of the circular, shall be treated as invalid and shall be deemed to have never been issued.

7. It is fairly well settled, a circular issued u/s. 119 of the Act has statutory force and is binding on subordinate authorities working under the CBDT. A perusal of the impugned assessment order makes it clear that in the body of the assessment order, the Assessing Officer has neither recorded the reasons for issuing the assessment order manually without DIN nor the date and number of approval of the Chief Commissioner/Director General of Income-tax. Therefore, even assuming that the Assessing Officer might have generated the DIN or had obtained approval of the concerned authority, however, since he has not incorporated the reasons of issuing the assessment order manually without DIN and date and number of approval in the body of assessment order, it does not comply with the conditions of paragraph 3 of the extant circular. Thus, in such a situation, as per paragraph 4 of the said circular, the assessment order has to be treated as invalid and shall be deemed to have never been issued.

8. Pertinently, while dealing with an identical issue in case of CIT vs. Brandix Mauritius Holdings Ltd. (supra), Hon'ble jurisdictional High Court has held as under :

"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 and Anr.**, (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 1, 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 observed:

“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 Officer 1, [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.

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 nor 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."

9. Thus, keeping in view the aforesaid observations of the Hon'ble Delhi High Court and in terms of paragraph 4 of the circular No. 19/2019

dated 14.08.2019, we have no hesitation in holding that the impugned assessment order is invalid and shall be deemed to have never been issued. Accordingly, we quash the impugned assessment order. As a natural corollary, the order of Id. Commissioner (Appeals) is set aside.

10. In view of our decision on the additional ground, rest of the grounds raised by the assessee have become academic. Hence, there is no need to adjudicate them. For the same reason, Revenue's appeal in ITA No. 1862/Del/2021 has become infructuous and is dismissed.

11. In the result, assessee's appeal is allowed as indicated above and Revenue's appeal is dismissed.

Order pronounced in the open court on 30/05/2023.

Sd/-

(G.S. PANNU)
PRESIDENT

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 30.05.2023

*aks/-