IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

IT(**TP**)A No.154/Bang/2022
Assessment year : 2017-18

Practo Technologies Pvt. Ltd., Weworks, Salarpuria Symbiosis, Arekere Village, Begur Hobli, Bannerghatta Road, Bangalore – 560 076. **PAN: AACCN 8042Q**	Vs.	The Deputy Commissioner of Income Tax, Central Circle 1(3), Bangalore.
16APPELLANT		RESPONDENT

Appellant by	:	S/Shri Dhanesh Bafna & Ali Asgar Rampurawala, CA
Respondent by	:	Shri Sunil Kumar Singh, CIT-2(DR)(ITAT), Bengaluru.

Date of hearing	:	18.05.2023
Date of Pronouncement	:	16.06.2023

O R D E R

Per Laxmi Prasad Sahu, Accountant Member

This appeal of assessee is against the final assessment DIN & order No.ITBA/AST/S/143(3)/2021-22/1039177855(1) dated 28.01.2022 passed u/s. 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 [the Act] by the DCIT, Central Circle 3(1), Bangalore for the assessment year 2017-18.

2. The assessee is engaged in software development agencies, Information Technology enabled Services (ITES) and BPO service provider. It filed return of income on 30.11.2017 declaring total loss of Rs.81,97,22,588 after setting off of income and book profits admitted by the assessee was Rs.191.40 crores. Subsequently the case was selected for scrutiny and statutory notices were issued to the assessee. The case was referred to the TPO vide order dated 25.1.2021 proposed a transfer pricing (TP) adjustment of Rs.2,70,90,67,556 in respect of the international transactions, which was incorporated in the draft assessment order along with other corporate tax additions made by the AO. On objections filed by the assessee, the ld. DRP issued its directions on 30.12.2021. Consequently final assessment order was passed by the AO on 28.1.2022 against which the assessee is in appeal before the Tribunal on the following grounds:-

"**General Grounds:**

1. On the facts and in the circumstances of the case and in law, the assessment order framed under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 ('the Act') passed by the Learned Assessing officer ('Learned AO') dated 28 January 2022 incorporating directions of the Hon'ble Dispute Resolution Panel – 2 ('Hon'ble DRP') dated 30 December 2021 to the extent prejudicial to the Appellant, is bad in law, contrary to the facts and circumstances of the case and is liable to be quashed.

2. On facts and in the circumstances of the case and in law, the Hon'ble DRP/ Learned AO/ Learned TPO erred in making an upward adjustment / addition on account of:
   2.1 Transfer Pricing adjustment on account of provision of software development and support services to its Associated Enterprises ('AEs') amounting to Rs. 267,20,51,914
   2.2 Transfer Pricing adjustment on account of Advertisement, marketing and promotion ('AMP') expenses amounting to Rs. INR 22,03,14,960

2.3 Direct tax addition on account of waiver of Royalty income on intellectual property licensed by the Appellant to Practo Pte Ltd (Singapore) amounting to Rs. INR 25,00,157

a) <u>Grounds relating to Transfer pricing matters:</u>

i) Provision of software development and support services

3. On the facts and in the circumstances of the case and in law, the Hon'ble DRP/ Learned AO/ Learned TPO erred in making an upward adjustment of Rs 267,20,51,914/- in respect of international transaction of provision of software development and support services provided by the Appellant to its Associated Enterprises.

4. On the facts and in the circumstances of the case and in law the Hon'ble DRP/ Learned AO/ Learned TPO erred in rejecting the segmental provided by the Appellant in the TP documentation on the reasoning that the expenses in the non-AE segment is disproportionately high, which remains unsubstantiated, without appreciating that the Appellant has explained in detail during the course of both TP as well as DRP proceedings, reasoning for such difference.

5. On the facts and in the circumstances of the case and in law the Hon'ble DRP/ Learned AO/ Learned TPO erred in not providing specific adjudication on the audited segmental financial filed by the Appellant vide additional evidence petition on 17 November 2021 with the Hon'ble DRP.

6. On the facts and in the circumstances of the case and in law the Hon'ble DRP/ Learned AO/ Learned TPO further erred in:

6.1. Rejecting the transfer pricing ('TP') documentation maintained by the Appellant under Section 92D of the Act, in good faith and with due diligence;

6.2. Rejecting the filters selected by the Appellant as captured in the TP documentation and adopting certain addition filters which are not in accordance with the jurisprudence laid down by various appellate forums;

6.3. Application of related party transaction ('RPT') filter by applying an inappropriate interpretation of computing the filter and thereby accepting Persistent Systems Ltd as comparable

companies to the SWD services segment of the Appellant, though they fail the RPT filter.

6.4. Conducting a fresh comparability analysis by applying additional/modified filters and including additional comparables which are not functionally comparable to the Appellant;

6.5. Including the following companies even though such companies are not fulfilling the filters applied by Learned TPO:

- OFS Technologies Ltd.
- Aptus Software Labs Pvt Ltd

6.6. Including the following companies even though such companies are functionally different from the Appellant:

- Larsen and Toubro Infotech Ltd
- Nihilent Ltd
- OFS Technologies Ltd.
- Aptus Software Labs Pvt Ltd
- Infosys Ltd
- Infobeans Technologies Ltd
- Persistent Systems Ltd
- Cygnet Infotech Pvt Ltd
- Cybage Software Pvt Ltd
- Consilient Technologies Pvt Ltd
- Mindtree Ltd
- Tata Elxsi Ltd
- Threesixty Logica Testing Services Pvt Ltd

6.7. Excluding the following company even though the same is functionally comparable to the Appellant:

- Evoke Technologies Pvt. Ltd.

6.8. Erred in treating foreign exchange loss or gain as operating in nature for the purpose of computing OP/TC of the Appellant and the OP/TC of the comparable companies remaining in the final set;

6.9. Erred in not providing appropriate adjustments to account for differences in working capital employed by the Appellant vis-a-vis the comparable companies.

6.10 Erred in not providing suitable adjustment to account for differences in the risk profile of the Appellant vis-a-vis the comparable companies.

7. On the facts and in the circumstances of the case and in law, the Hon'ble DRP erred in inadvertently disallowing ESOP expenses under section 37(1) of the Act, which was never proposed by the Ld. AO in his Draft Order passed u/s 144C(1) of the Act and further erred in not adjudicating the actual grievance of the Appellant of reducing of ESOP expenses of Rs. 88,45,30,276 while computing OP/TC of the Appellant, since the same was disallowed by the Appellant suo moto in its return of income

8. ***Without prejudice to Ground No. 4 & 5,*** the Learned DRP/AO/TPO erred in not granting proportionate adjustment and thereby not restricting the TP adjustment only to the value of international transactions undertaken by the Appellant with its Associated Enterprises.

9. On the facts and in the circumstance of the case, the Hon'ble DRP erred in inadvertently not adjudicating Additional Objection No. 15 taken vide petition filed before the Hon'ble DRP on 17 November 2021, for re-calculation of operating cost and revenue based on the disallowances/ addition made by Learned AO.

10. On the facts and in the circumstance of the case, the Ld. AO erred in not complying with the directions of the Learned DRP, in re-computing the mark-up on operating cost of certain comparable companies wherever necessary

The Appellant prays that the entire adjustment pertaining to the international transaction of provision of software development and support services to its AEs amounting to INR 267,20,51,914 be deleted in the interest of justice.

ii. Adjustment on account of Advertisement, Marketing and Promotion ('AMP') expense

11. On the facts and in the circumstances of the case and in law, the Learned AO erred in enhancing the assessment by Rs. 22,03,14,960 on the basis of directions of the Hon'ble DRP, which was not a variation proposed in the draft order passed by the Learned AO under section 144C(1) of the Act.

12. On the facts and in the circumstances of the case and in law, the Hon'ble DRP erred in setting aside the issue of AMP for further benchmarking and making an adjustment, which is in violation of the provisions of section 144C(8) of the Act.

13. ***Without Prejudice to Ground no. 11 & 12,*** on facts and in the circumstances of the case and in law, the Hon'ble DRP failed to give any show cause notice to the Appellant before directing the Learned AO to benchmark the AMP expenses separately which is in violation of provisions of section 144C(11) of the Act.

14. ***Without Prejudice to Ground no. 11 & 12,*** on facts and in the circumstances of the case and in law, the Learned AO erred in benchmarking the AMP expenses on its own without referring it to the Learned TPO which is in complete violation of CBDT Instruction No. 3/2016 dt. 10 March 2016.

15. ***Without prejudice to the Ground No. 11 - 14,*** on the facts and in the circumstances of the case and in law; the Hon'ble DRP erred in directing the Learned AO to treat the AMP expenses incurred by the Appellant in India as an international transaction as per Section 92B of the Act.

16. ***Without prejudice to the Ground No. 11 – 14,*** *o*n the facts and in the circumstances of the case and in law the Hon'ble DRP further erred in:

16.1 Presuming that there existed an agreement, understanding or action in concert, between the Appellant and its AEs, for incurring the AMP expenses to enhance the marketing intangibles owned by the AE and thereby erred in contending that the AE ought to compensate the Appellant towards the alleged excessive AMP spend;

16.2 making an adjustment towards AMP expenses of Rs. 22,03,14,960 to the income of the Appellant by treating it as a provision of service by the Appellant to the AEs without providing any cogent evidence of a direct benefit to the AE;

16.3 not appreciating that the Appellant in its Non-AE segment operates as an entrepreneur in India and is solely responsible for its business operations / results;

16.4 not appreciating that the Appellant is solely entitled to the residual profits / losses arising in the Non-AE segment;

16.5 disregarding the fact that the AMP expenses were incurred 'wholly and exclusively' for purpose of business of the Appellant in India and no benefit was passed on to the AE and hence, there should not be any reimbursement of such expenses to the Appellant; and

16.6 erred applying bright line method in the garb of 'Other Method' to determine the alleged excessive AMP spend without appreciating that no such methodology has been prescribed under the Act and the Rules.

17. ***Without prejudice to the Ground No 16.6,*** on the facts and in the circumstances of the case and in law, while applying bright line test, the Learned AO erred in:

17.1 comparing the AMP expense ratio of the Appellant with AMP expense ratio of the companies engaged in marketing support services and in the process not taking cognizance of the functionally comparable companies for benchmarking analysis; and

17.2 considering the arithmetical mean of the AMP spend ratio of the companies without appreciating that the determination of routine vs. non-routine AMP spend is a qualitative exercise and not a numerical one, and accordingly, the general rule of arithmetic mean / averaging should not apply to bright line test.

18. ***Without prejudice to the Ground No. 11 - 14,*** on the facts and in the circumstances of the case and in law, the Learned AO erred in:

18.1 erroneously holding that the Appellant should have earned a mark-up on the AMP expenses incurred by alleging that the Appellant has provided market support services to AEs; and

18.2 arbitrarily selecting comparable engaged in marketing support services without following a structured search process for computation of the aforementioned mark-up.

The Appellant therefore prays that entire AMP adjustment of Rs. 22,03,14,960 be deleted in the interest of justice.

b) <u>Grounds relating to Direct Tax matters</u>

19. On the facts and in the circumstances of the case and in law, the Hon'ble DRP erred in upholding the addition made by Learned AO of INR

25,00,157/- on account of waiver of Royalty receivable on intellectual property licensed to Practo Pte Ltd (Singapore).

20. On the facts and in the circumstances of the case and in law, the learned AO has erred in not granting the set-off of the brought forward business losses and unabsorbed depreciation of prior years against the income assessed.

21. On the facts and in the circumstances of the case and in law, the learned AO erred in granting credit of the tax deducted at source amounting to INR 51,91,605 instead of INR 83,11,493 as claimed by the Applicant in its return of income.

22. On the facts and in the circumstances of the case and in law, the learned AO erred in levying interest of INR 41,35,25,094 under section 234B of the Act.

23. On the facts and in the circumstances, the Learned AO erred in initiating penalty proceedings under section 270A of the Act.

That the Appellant craves leave to add to and/or to alter, amend, rescind, modify the grounds herein or produce further documents before or at the time of hearing of this Appeal."

3. The assessee has filed petition dated 20.2.2023 for admission of additional grounds of appeal which are as follows:-

"24. On the facts and in the circumstances of the case and in law, the Ld. Panel of the DRP erred in not quoting a valid computer-generated DIN on the body of DRP directions dated 30.12.2021 under section 144C (5) of the Act, in contravention to the Circular No. 19 of 2019 by the CBDT, thus rendering such an order/direction to be invalid and never to have been issued as per para 4 to the said Circular.

25. On the facts and in the circumstances of the case and in law, the final assessment order dated 28 January 2022 under section 143(3) read with section 144C (13) of the Income Tax Act, 1961 passed by the Deputy Commissioner of Income Tax, Central Circle 1(3), BLR pursuant to invalid and non-est directions passed by

Hon'ble DRP, is bad in law, null and void and liable to be quashed.

26. On the facts and in the circumstances of the case and in law, the learned AO/TPO erred in not adopting the upper turnover filter of Rs.200 crores while doing the comparability analysis for the Appellant's international transaction pertaining to provision of software development and services."

4. The ld. AR stated that the facts relating to the above additional grounds are already before the lower authorities and does not require any fresh enquiry. He relied on the following decisions and prayed for admission of additional grounds:-

- CIT v. S Nelliappan, 66 ITR 722 (SC)
- CIT v. Kanpur Coal Syndicate, 53 ITR 225 (SC)
- Jute Corporation of India Ltd., 187 ITR 688 (SC)
- Ahmedabad Electricity Co. Ltd. and Godavari Sugar Mills Ltd. v. CIT, 199 ITR 351 (Bom)
- New India Industries Ltd., 207 ITR 1010 (Guj)
- National Thermal Power Co. Ltd. v. CIT, 229 ITR 383 (SC)
- Ashok Vardhan Birla v. CWT, 208 ITR 958 (Bom)
- Controller of Estate Duty v. R. Brahadeeswaran, 163 ITR 680 (Mad)
- Inaroo Ltd. v. CIT, 204 ITR 312 (Bom)
- CIT v. Govindram Bros. P. Ltd., 141 ITR 622 (Bom)

5. We have heard both the parties on the admission of additional grounds. These additional grounds are already available on the record of lower authorities and do not require fresh investigation into facts. Therefore, following the *Hon'ble Supreme Court judgment in the case of M/s National Thermal Power Co. Ltd. Vs. CIT, 229 ITR 383 (SC)*, the additional grounds are admitted for adjudication.

6. At the outset, the ld. AR first contended the legal issue raised vide additional grounds No.24 & 25. He submitted that the Ld. DRP issued its directions under section 144C(5) of the Act on 30.12.2021. However, the said directions, when served upon the Appellant's Authorised Representative vide email on 31.12.2021, did not bear "Document Identification Number" ('DIN'), which has been mandated by the Central Board of Direct Taxes ('CBDT') vide Circular No. 19/2019 dated 14.08.2019. Subsequently, on 06.01.2022, the Appellant received a copy of the DRP directions dated 30.12.2021 vide post, along with the intimation letter dated 31.12.2021. In the said copy of the DRP directions, a wrong DIN was handwritten. In this regard, the sequence of events furnished by the assessee are reproduced below:-

Sr. No.	**Date**	**Particulars**	**DIN**
1.	30.12.2021	Directions issued by the Ld. DRP under section 144C(5) of the Act	NO DIN
2.	31.12.2021	A copy of the DRP directions dated **30.12.2021** served vide email to the AR	NO DIN
3.	06.01.2022	A copy of intimation letter dated **31.12.2021** received by the Appellant vide post; along with	ITBA/DRP/S/91/2021-22/1038293464(1) (DIN **of** the intimation letter)
		A copy of the DRP directions dated **30.12.2021** received by the Appellant vide post, along with the intimation letter dated 31.12.2021.	**WRONG DIN** (i.e., DIN of the intimation letter) handwritten on the copy of the DRP directions dated 30.12.2021.

7. The ld. AR submitted that the aforesaid Circular No. 19/2019 issued by the CBDT deals with "Generation/Allotment/Quoting of Document Identification Number in Notice/Order/Summons/ letter/correspondence issued by the Income-tax Department". In the said Circular, the CBDT has strictly and unequivocally, laid down as under:

a) Para 1 of the Circular states that the Income-tax Department has moved towards total computerization of its work which has, inter-alia, brought greater transparency in functioning of the tax administration. Despite the same, there were **instances** in which communications were found to have been issued manually without maintaining a proper audit trail of such communication.

   In order to prevent such instances and **to maintain proper audit trail of all communications**, the CBDT introduced the concept of mandatory quoting of DIN on all communications issued by any income-tax authority to the assessee or any other person.

b) **Para-2** of the Circular states 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.**

c) **Para-3** of the said Circular states that in five specific **exceptional circumstances** as mentioned therein, 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 ('CCIT'/'DGIT').**

   Further, whenever any such manual communication would be issued, it would be necessarily required to specify reason of issuing such a communication without DIN along with the date of obtaining written approval of the Chief Commissioner/Director General of Income Tax in a particular format, **which shall be mentioned in the body of the communication itself.**

d) **Para-4** of the Circular states that any communication which is "**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.**

8. The ld. AR submitted that from the CBDT Circular as explained above, in cases where there is neither DIN on the body of the communication nor does the communication state the reasons for manual issuance along with details regarding approval obtained from CCIT/DGIT, the communication shall straight away become a nullity in the eyes of the law, being treated as invalid and shall be deemed to have never been issued. It is submitted that the seriousness with which the DIN system has been implemented is evident from the fact that any communication issued without a DIN is to be held as invalid and deemed to have never been issued, that is, a nullity in the eyes of law as per the Circular. Further, attention is also invited to the press release dated 01.10.2019 issued by the Ministry of Finance, which categorically states that every communication from the income tax department must contain a DIN. The ld. AR further submitted that the DRP directions does not also specify any of the exceptions specified in para 3 of the Circular nor written approval of Chief Commissioner/ Director General of Income Tax. The ld. AR submitted that in the present case, since the DRP directions are not in conformity with Para 2 and Para 3 of the Circular, the same are invalid and deemed to have never been issued.

9. Further, the ld. AR submitted that the second copy of the DRP directions which the assessee received subsequently vide post on

06.01.2022 is also in violation of Para 2 and Para 3 of the Circular. It was submitted that while the Ld. DRP had made an attempt to regularise the manual issuance of DRP directions dated 30.12.2021 by generating DIN subsequently vide intimation letter dated 31.03.2021, the Ld. DRP has failed to appreciate that the regularisation of a manual order is possible only if such a manual order is passed owing to any of the exceptional circumstances mentioned in the Circular and the following paragraph is quoted in the body of such communication.

10. Without prejudice to the above, while a DIN has been handwritten on the copy of the DRP directions received vide post on 06.01.2022, the said DIN ITBA/DRP/8/91/2021-22/1038293464(1) handwritten is wrong, as the said handwritten DIN is the DIN of the intimation letter dated 31.12.2021 and not the DIN ITBA/DRP/M/144C(5)/2021-22/1038293314(1) which has been sought to be allotted to DRP directions. The said fact has been fairly accepted by the Ld. AO in para 1.3 of the remand report dated 01.03.2023 filed by the Ld. DR during the course of hearing on 16.05.2023.

11. He submitted that in any case, as stated above, once the manual communication is not in conformity with Para 3 and Para 4 of the Circular, the said communication shall be rendered invalid and deemed to have never been issued. Once the document is deemed to have never been issued, subsequently endorsing of a DIN, that too a wrong DIN by hand would not be relevant.

12. In this regard, attention is invited to the decision in the case of *Dilip Kothari v. PCIT: ITA Nos.403 to 405/Bang/2022*. In this case, an order under section 263 of the Act was passed without quoting DIN and on the same day, DIN was generated vide a separate intimation. The Tribunal held that the same was not in accordance with the Circular and therefore, the order under section 263 of the Act was quashed, even though the DIN was generated on the same day separately, since neither the DIN, nor the specified para of exceptions was quoted in the body of the order. He submitted it was held similarly in H.K. Suresh v. PCIT: ITA No. 625/Bang/2021. The ld. AR also placed reliance on the following decisions where the orders of the revenue authorities were quashed on the basis that the said orders were not in conformity with the CBDT's Circular No. 19 of 2019:-

a) CIT v. Brandix Mauritius Holdings Ltd.: ITA 163/2023 (Delhi HC)
b) Dilip Kothari v. PCIT, ITA Nos. 403 to 405/Bang/2022.
c) Intrado EC India Private Ltd. v. DCIT: IT(TP)A No.239/Bang/2021 (Bangalore ITAT)
d) Tata Medical Centre Trust v. CIT: ITA No.238/Kol/2021 (Kolkata ITAT)
e) Gerah Enterprises P. ltd. v. PCIT: ITA No. 740/Mum/2021 (Mumbai ITAT)
f) Mahesh Kumar Sureka v. PCIT: ITA. No. 106/Kol/2021 (Kolkata ITAT)
g) RCC Institute of Technology v. CIT: ITA. No. 108/Kol/2022 (Kolkata ITAT)
h) Sunita Agarwal v. ITO: ITA No. 432/Kol/2020 (Kolkata ITAT)
i) Sanjay Punamchand Kothari v. ACIT: ITA Nos.47 and 59/PUN/2021 (Pune ITAT)

13. In view of the above, the ld. AR submitted that the DRP directions dated 30.12.2021 are invalid and deemed to have never been issued, being in violation of the Circular No. 19 of 2019. Once the DRP directions are deemed to have never been issued, the Ld. AO could not have passed the final assessment order under section 144C(13) of the Act in pursuance to such non-est directions. Accordingly, it is submitted that the final assessment order dated 28.01.2022 passed under section 143 read with section 144C(13) of the Act in pursuance to invalid and non-est DRP directions is bad in law and void-ab-initio.

14. The ld. DR relied on the orders of lower authorities and submitted that non-quoting of DIN in the DRP order was a procedural mistake. In this regard, he has filed a report from the Assessing Officer dated 01.03.2023 enclosing the intimation letter dated 31.12.2021 containing DIN ITBA/DRP/S/91/2021-22/1038293464(1) and first page of the DRP order wherein the DIN is handwritten as ITBA/DRP/S/91/2021-22/1038293464(1). He submitted that the intimation dated 31.12.2021 states as follows:-

> "Order u/s 144C(5) dtd.30/12/2021 is having Document No. (DIN) ITBA/DRP/144C(5)/2021-22/1038293314(1)."

15. The ld. DR submitted it can therefore be concluded that a valid DIN was generated at the time of issuing the directions, however, inadvertently DIN of the intimation letter i.e., ITBA/DRP/S/91/2021-22/1038293464(1) was written on the order instead of DIN ITBA/DRP/144C(5)/2021-22/1038293314(1). He further submitted

that the intention behind introducing DIN was to enable assessee to check the authenticity of the communications from the revenue. In this case, it is evident that the DIN of the directions pertains to an intimation which in turn contains the DIN relevant for the DRP directions, therefore it cannot be said that the entire is non-est in the eyes of law and section 292B will apply here.

16. After hearing both the sides, perusing the entire material on record and the orders of the lower authorities, we find substance in the submissions of the ld. AR. The DRP passed order dated 30.12.2021 without quoting DIN and sent it by email to the assessee, copy of which produced by the assessee is given below:-

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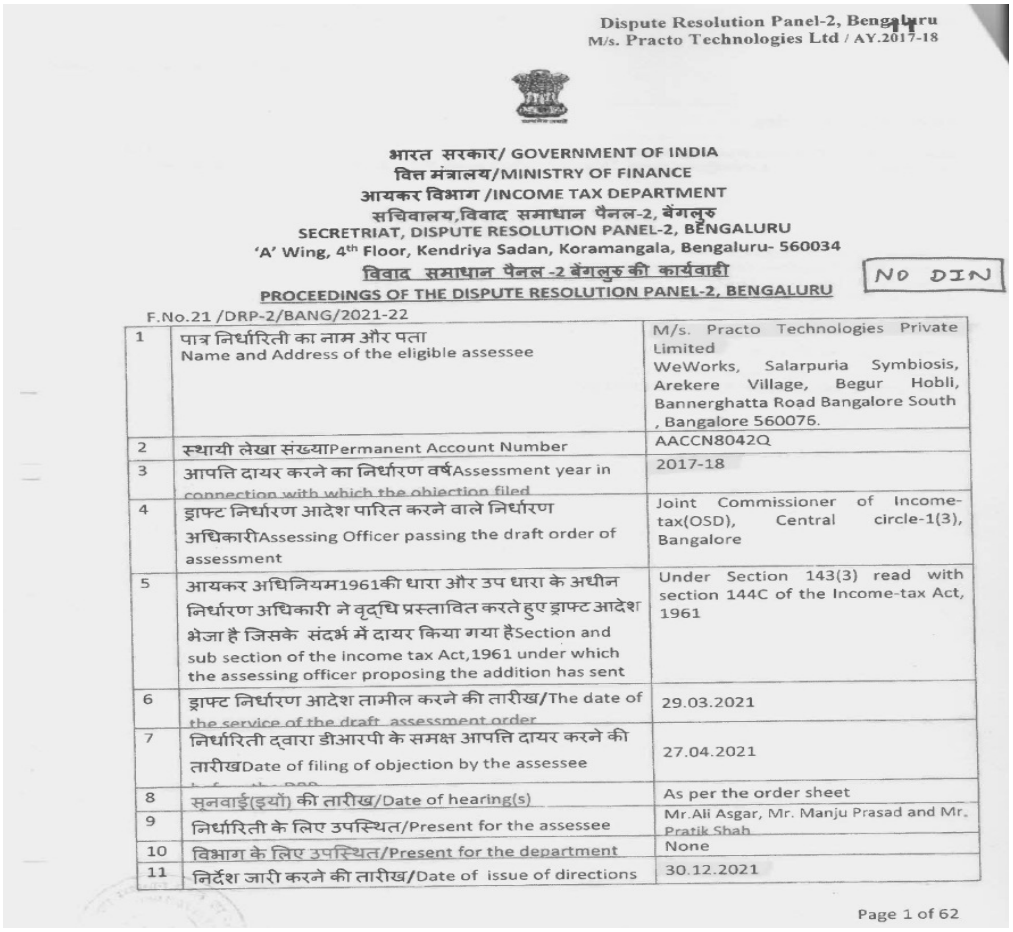

Dispute Resolution Panel-2, Bengaluru
M/s. Practo Technologies Ltd / AY.2017-18

भारत सरकार/ GOVERNMENT OF INDIA
वित्त मंत्रालय/MINISTRY OF FINANCE
आयकर विभाग /INCOME TAX DEPARTMENT
सचिवालय,विवाद समाधान पैनल-2, बेंगलुरु
SECRETRIAT, DISPUTE RESOLUTION PANEL-2, BENGALURU
'A' Wing, 4th Floor, Kendriya Sadan, Koramangala, Bengaluru- 560034

विवाद समाधान पैनल -2 बेंगलुरु की कार्यवाही

NO DIN

PROCEEDINGS OF THE DISPUTE RESOLUTION PANEL-2, BENGALURU

F.No.21 /DRP-2/BANG/2021-22

1	पात्र निर्धारिती का नाम और पता Name and Address of the eligible assessee	M/s. Practo Technologies Private Limited WeWorks, Salarpuria Symbiosis, Arekere Village, Begur Hobli, Bannerghatta Road Bangalore South , Bangalore 560076.
2	स्थायी लेखा संख्याPermanent Account Number	AACCN8042Q
3	आपत्ति दायर करने का निर्धारण वर्षAssessment year in connection with which the objection filed	2017-18
4	ड्राफ्ट निर्धारण आदेश पारित करने वाले निर्धारण अधिकारीAssessing Officer passing the draft order of assessment	Joint Commissioner of Income-tax(OSD), Central circle-1(3), Bangalore
5	आयकर अधिनियम1961की धारा और उप धारा के अधीन निर्धारण अधिकारी ने वृद्धि प्रस्तावित करते हुए ड्राफ्ट आदेश भेजा है जिसके संदर्भ में दायर किया गया हैSection and sub section of the income tax Act,1961 under which the assessing officer proposing the addition has sent	Under Section 143(3) read with section 144C of the Income-tax Act, 1961
6	ड्राफ्ट निर्धारण आदेश तामील करने की तारीख/The date of the service of the draft assessment order	29.03.2021
7	निर्धारिती द्वारा डीआरपी के समक्ष आपत्ति दायर करने की तारीखDate of filing of objection by the assessee	27.04.2021
8	सुनवाई(इयाँ) की तारीख/Date of hearing(s)	As per the order sheet
9	निर्धारिती के लिए उपस्थित/Present for the assessee	Mr.Ali Asgar, Mr. Manju Prasad and Mr. Pratik Shah
10	विभाग के लिए उपस्थित/Present for the department	None
11	निर्देश जारी करने की तारीख/Date of issue of directions	30.12.2021

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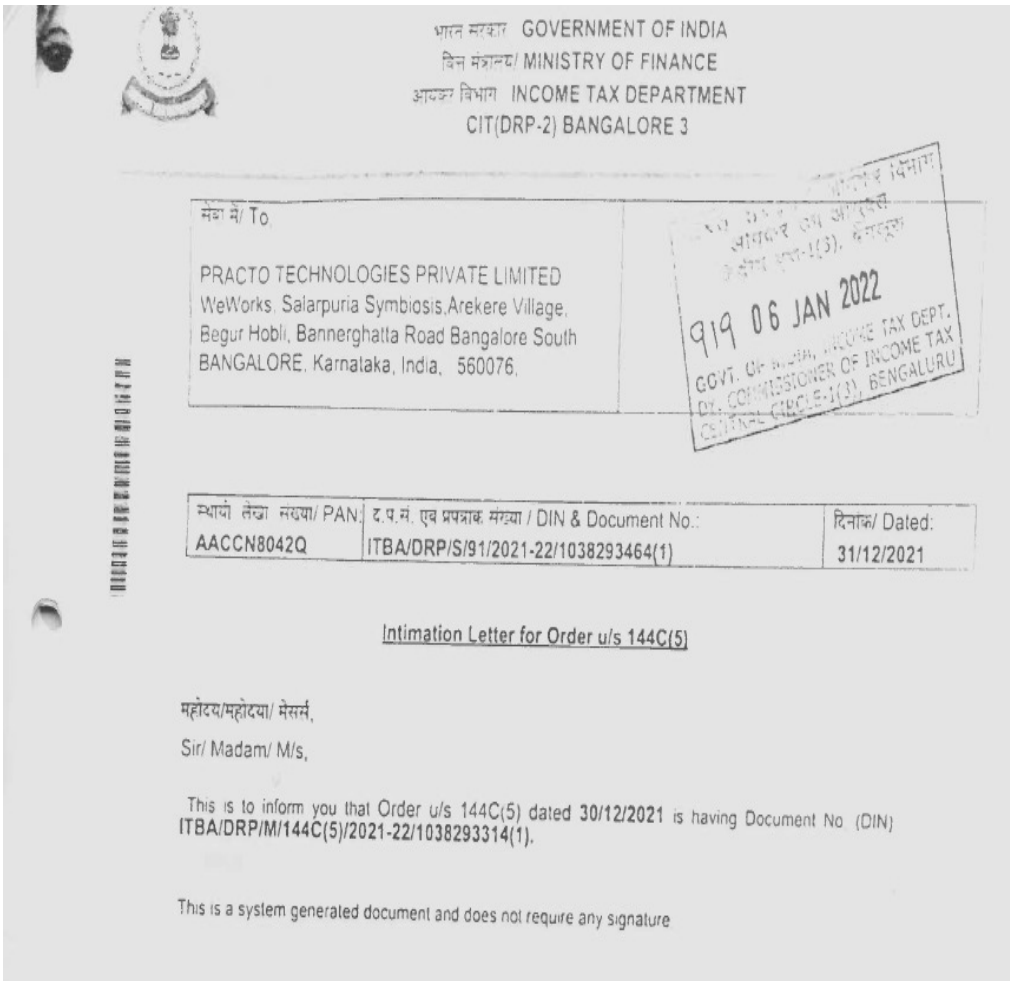
17. From the above, it is clear that there was no mention of DIN in the DRP order dated 30.12.2021.

18. Later on, the assessee received Intimation letter dated 31.12.2021 for order u/s. 144C(5) allotting DIN ITBA/DRP/M/144C(5)/2021-22/1038293314(1) as follows:-



भारत सरकार GOVERNMENT OF INDIA
वित्त मंत्रालय/ MINISTRY OF FINANCE
आयकर विभाग INCOME TAX DEPARTMENT
CIT(DRP-2) BANGALORE 3

सेवा में/ To,

PRACTO TECHNOLOGIES PRIVATE LIMITED
WeWorks, Salarpuria Symbiosis,Arekere Village,
Begur Hobli, Bannerghatta Road Bangalore South
BANGALORE, Karnataka, India, 560076.

919 06 JAN 2022
GOVT. OF INDIA, INCOME TAX DEPT.
DY. COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE-1(1), BENGALURU

स्थायी लेखा संख्या/ PAN:	द.प.सं. एवं प्रपत्राक संख्या / DIN & Document No.:	दिनांक/ Dated:
AACCN8042Q	ITBA/DRP/S/91/2021-22/1038293464(1)	31/12/2021

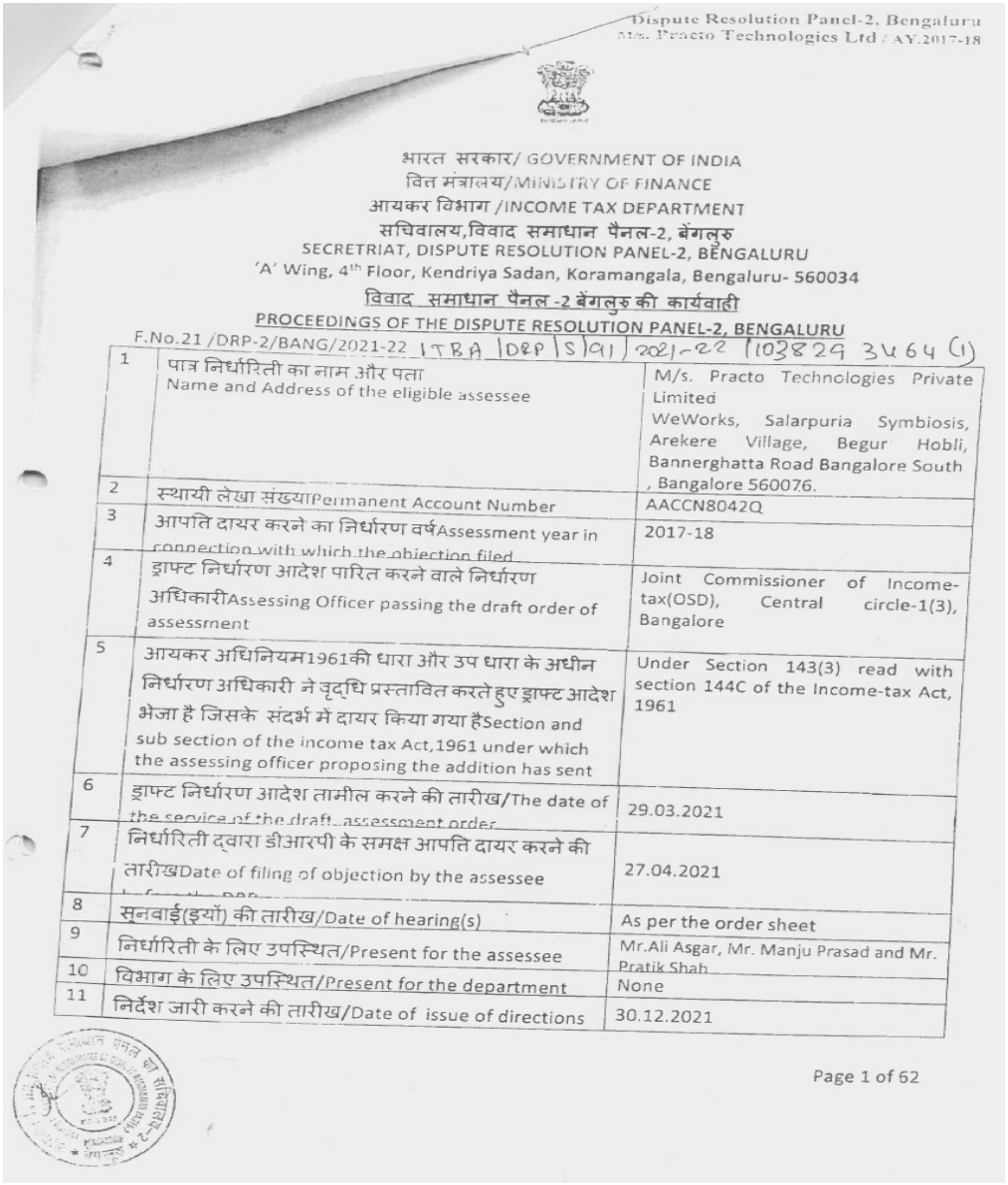
Intimation Letter for Order u/s 144C(5)

महोदय/महोदया/ मेसर्स,
Sir/ Madam/ M/s,

This is to inform you that Order u/s 144C(5) dated **30/12/2021** is having Document No (DIN) **ITBA/DRP/M/144C(5)/2021-22/1038293314(1).**

This is a system generated document and does not require any signature

19. Along with above intimation letter, the DRP Order bearing handwritten DIN ITBA/DRP/M/144C(5)/2021-22/1038293314(1) was received by the assessee, wherein DRP order dated 30.12.2021 bears the DIN of the intimation letter i.e., DIN ITBA/DRP/S/91/2021-22/1038293464(1) and not the allotted DIN bearing ITBA/DRP/144C(5)/2021-22/1038293314(1) to the DRP order. Copy of DRP order dated 30.12.2021 with handwritten DIN is produced below:-



Dispute Resolution Panel-2, Bengaluru
M/s. Practo Technologies Ltd / AY.2017-18

भारत सरकार/ GOVERNMENT OF INDIA
वित्त मंत्रालय/MINISTRY OF FINANCE
आयकर विभाग /INCOME TAX DEPARTMENT
सचिवालय,विवाद समाधान पैनल-2, बेंगलुरु
SECRETRIAT, DISPUTE RESOLUTION PANEL-2, BENGALURU
'A' Wing, 4th Floor, Kendriya Sadan, Koramangala, Bengaluru- 560034

विवाद समाधान पैनल -2 बेंगलुरु की कार्यवाही
PROCEEDINGS OF THE DISPUTE RESOLUTION PANEL-2, BENGALURU

F.No.21 /DRP-2/BANG/2021-22 ITBA|DRP|S|91|2021-22|1038294364(1)

1	पात्र निर्धारिती का नाम और पता Name and Address of the eligible assessee	M/s. Practo Technologies Private Limited WeWorks, Salarpuria Symbiosis, Arekere Village, Begur Hobli, Bannerghatta Road Bangalore South , Bangalore 560076.
2	स्थायी लेखा संख्याPermanent Account Number	AACCN8042Q
3	आपत्ति दायर करने का निर्धारण वर्षAssessment year in connection with which the objection filed	2017-18
4	ड्राफ्ट निर्धारण आदेश पारित करने वाले निर्धारण अधिकारीAssessing Officer passing the draft order of assessment	Joint Commissioner of Income-tax(OSD), Central circle-1(3), Bangalore
5	आयकर अधिनियम1961की धारा और उप धारा के अधीन निर्धारण अधिकारी ने वृद्धि प्रस्तावित करते हुए ड्राफ्ट आदेश भेजा है जिसके संदर्भ मे दायर किया गया हैSection and sub section of the income tax Act,1961 under which the assessing officer proposing the addition has sent	Under Section 143(3) read with section 144C of the Income-tax Act, 1961
6	ड्राफ्ट निर्धारण आदेश तामील करने की तारीख/The date of the service of the draft assessment order	29.03.2021
7	निर्धारिती द्वारा डीआरपी के समक्ष आपत्ति दायर करने की तारीखDate of filing of objection by the assessee	27.04.2021
8	सुनवाई(इयों) की तारीख/Date of hearing(s)	As per the order sheet
9	निर्धारिती के लिए उपस्थित/Present for the assessee	Mr.Ali Asgar, Mr. Manju Prasad and Mr. Pratik Shah
10	विभाग के लिए उपस्थित/Present for the department	None
11	निर्देश जारी करने की तारीख/Date of issue of directions	30.12.2021

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20. From the above facts, it is clear at the time of passing the DRP order dated 30.12.2021 DIN was not quoted in the order, which is mandatory as per the CBDT Circular No.19 noted supra. Similar issue has been decided by the coordinate Bench of the Tribunal in the case of *Intrado EC India Private Ltd. v. DCIT: IT(TP)A No.239/Bang/2021*

[2023] 147 taxmann.com 380 (Bangalore - Trib.)[09-11-2022] where it was held as under:-

> "7. We have heard the rival submissions and perused the material on record. Before proceeding further we will look at the contents of the CBDT circular No. 19/2019 dated 14-8-2019 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 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 31th October, 2019."

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

8. From the plain reading of the circular 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.

9. We also notice that the Calcutta Bench of the ITAT in the case of Tata Medical Centre Trust (supra) has considered a similar issue and held that -

'13. From the above submissions and arguments, we note that it is an undisputed fact that the impugned order u/s. 263 of the Act has been issued manually which does not bear the signature of the authority passing the order. Further, from the perusal of the entire order, in its body, there is no reference to the fact of this order issued manually without a DIN for which the written approval of Chief Commissioner/Director General of Income-tax was required to be obtained in the prescribed format in terms of the CBDT circular. We also note that in terms of para 4 of the CBDT circular, such a lapse renders this impugned order as invalid and deemed to have never been issued.

13.1 It is also important to note about the binding nature of CBDT circular on the Income-tax Authorities for which gainful guidance is taken from the decision of Hon'ble Supreme Court in the case of CIT v. Hero Cycles (P.) Ltd. [1997] 94 Taxman 271/228 ITR 463 wherein it was held that circulars bind the ITO but will not bind the appellate authority or the Tribunal or the Court or even the assessee.

13.2 In the case of UCO Bank v. CIT [1999] 104 Taxman 547/237 ITR 889 (SC), Hon'ble Supreme Court while dealing with the legal status of such circulars, observed thus (page 896):

"Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board thus has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under section 119 of the Income-tax Act, which are binding on the authorities in the administration of the Act. Under section 119(2)(a) , however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the

authority which wields the power for its own advantage under the Act is given the right to forgo the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorized as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities."

13.3 In the matter of CIT v. Smt. Nayana P. Dedhia [2004] 141 Taxman 603/270 ITR 572 (AP), the Hon'ble Andhra Pradesh High Court held that the guidelines issued by the Board in exercise of powers in terms of section 119 of the Act relaxing the rigours of law are binding on all the officers responsible for implementation of the Act and, therefore, bound to follow and observe any such orders, instructions and directions of the Board.

13.4 In the decision of Dy. CIT v. Sunita Finlease Ltd. [2011] 11 taxmann.com 241/330 ITR 491 (Chattisgarh) it was held by the Hon'ble High Court of Chhattisgarh in para 16 that the administrative Instruction No. 9/2004 issued by the Central Board of Direct Taxes is binding on administrative officer in view of the statutory provision contained in section 143(2), which provides for limitation of 12 months for issuance of notice under section 143(2).

While giving its finding, the Hon'ble High Court of Chhattisgarh placed reliance on the decisions in the case of UCO Bank (supra) and Nayana P. Dedhia (supra).

13.5 Hon'ble jurisdictional High Court of Calcutta in the case of Amal Kumar Ghosh v. Asstt. CIT [2014] 45 taxmann.com 482/225 Taxman 229 (Mag.)/361 ITR 458 dealt with the issue relating to CBDT circular which according to the Department cannot defeat the provisions of law. While giving its observations and finding on the issue, the Hon'ble Court referred to the decision of Hon'ble Chhattisgarh High Court in the case of Sunita Finlease Ltd. (supra), which are as under:

7. We have considered the rival submissions advanced by the learned Advocates. Even assuming that the intention of CBDT was to restrict the time for selection of the cases for scrutiny within a period of three months, it cannot be said that the selection in this case was made within the aforesaid period. Admittedly, the return was filed on 29th October, 2004 and the case was selected for scrutiny on 6th July, 2005. It may be pointed out that Mrs. Gutgutia was, in fact, reiterating the views taken by the learned Tribunal which we also quoted above. By any process of reasoning, it was not open for the learned Tribunal to come to a finding that the department acted within the four corners of Circulars No. 9 and 10 issued by CBDT. The circulars were evidently violated. The circulars are binding upon the department under section 119 of the I.T. Act.

8. Mrs. Gutgutia, learned Advocate submitted that the circulars are not meant for the purpose of permitting the unscrupulous assessees from evading tax. Even assuming, that to be so, it cannot be said that the department, which is State, can be permitted to selectively apply the standards set by themselves for their own conduct. If this type of deviation is permitted, the consequences will be that floodgate of corruption will be opened which it is not desirable to encourage. When the department has set down a standard for itself, the department is bound by that standard and cannot act with discrimination. In case, it does that, the act of the department is bound to be struck down under article 14 of the Constitution. In the facts of the case, it is not necessary for us to decide whether the intention of CBDT was to restrict the period of issuance of notice from the date of filing the return laid down under section 143(2) of the I.T. Act.

[Emphasis Supplied by us by underline]

14. Considering the facts on record, perusal of the impugned order, submissions made by the Ld. Counsel and the department, CBDT circular and the judicial precedents including that of Hon'ble Supreme Court and the jurisdictional High Court of Calcutta, we are inclined to adjudicate on the additional ground in favour of the assessee by holding that the order passed by the Ld. CIT(E) is invalid and deemed to have never been issued as it fails to mention DIN in its body by adhering to the CBDT circular no. 19 of 2019. Accordingly, additional ground taken by the assessee

is allowed. Having so held on the legal issue raised by the assessee in the additional ground, the grounds relating to the merits of the case requires no adjudication. Accordingly, the appeal of the assessee is allowed in terms of above observations and findings.'

10. We further notice that a similar view is being taken by the Delhi Bench of the ITAT in the case Brandix Mauritius Holdings Ltd., v. Dy. CIT [IT Appeal No. 1542/Delhi/2020, dated 19-9-2022].

11. In assessee's case there is no dispute about the fact that the order dated 31-10-2019 has been issued manually. The circular is very clear that 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. 92CA, 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 order dated 31-10-2019 is not in conformity with Para 2 and Para 3 of the CBDT circular. In view of these discussions and respectfully following the decision of the Kolkata and Delhi Benches of the Tribunal, we hold that the orders passed u/s. 92CA dated 31-10-2019 is 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. Accordingly the TP adjustment made through an invalid order is also rendered invalid and deleted.

12. We notice that the DRP has held that the order dated 31-10-2019 which was issued without DIN is made good by the order dated 1-11-2019 which is issued without DIN since the contents of both the orders are same. We are unable to appreciate this decision of the DRP, since there is no provision in the Act to issue two order u/s. 92CA and the order issued subsequent cannot be taken to substitute the earlier order. If the order dated 1-11-2019 is taken as the valid order for subsequent proceedings since it is issued with a DIN, then the issue of the order being barred by limitation should be considered. In this regard we notice that the coordinate bench of the Tribunal in the case of Sap Lab's India

> (P.) Ltd. (supra) has considered the issue of time limit for passing the order u/s.92CA and held that the order should be passed before sixty days prior to the date on which the period of limitation referred to in section 153 and in this regard the Hon'ble Tribunal had relied on the decision of the coordinate bench in the case of Swiss Re Global Business Solution India (P.) Ltd. v. Dy. CIT [2022] 138 taxmann.com 418 (Bang. - Trib.)."

21. Respectfully following the above order of the Tribunal, since the DIN was not mentioned in DRP order dated 30.12.2021 which was mandatory as per CBDT Circular No.19 (supra) & in view of the facts noted above in regard to communications done with the assessee, we hold that the DRP directions dated 30.12.2021 is invalid in the eyes of law 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. Accordingly the DRP order dated 30.12.2021 is held to be null and void ab initio and quashed. Thus, the additional grounds No. 24 & 25 raised by the assessee on the legal issue are allowed.

22. Since the legal issue No. 24 & 25 raised by the assessee is allowed, the other grounds of appeal on merits are left open.

23. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 16th day of June, 2023.

Sd/-	Sd/-
(GEORGE GEORGE K)	(LAXMI PRASAD SAHU)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Bangalore,
Dated, the 16th June, 2023.
/*Desai S Murthy /*

Copy to:

1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.