



॥ आयकर अपीलीय न्यायाधिकरण, पुणे “बी” न्यायपीठ, पुणे में ॥



IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE “B” BENCH, PUNE  
BEFORE HON’BLW SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER  
AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 401/PUN/2022

निर्धारण वर्ष / Assessment Year : 2012-13

Prabhakar Amruta Shillak,

A/P Jalgaon Malegaon,

Nashik – 423 203

PAN: DBZPS4533R

..... अपीलार्थी / *Appellant*

बनाम / V/s

Income Tax Officer,

Ward-1, Malegaon

..... प्रत्यर्थी / *Respondent*

द्वारा / *Appearances*

Assessee by : Shri Pramod Shingte

Revenue by : Shri M. G. Jasnani

सुनवाई की तारीख / Date of conclusive Hearing : 01/06/2023

घोषणा की तारीख / Date of Pronouncement : 04/07/2023

आदेश / ORDER

**PER G. D. PADMAHSHALI, AM;**

The present appeal of the assessee for the assessment year [for short ‘AY’] 2012-13 is assailed against the first appellate order of National Faceless Appeal Centre, Delhi [for short ‘NFAC’] dt. 18/04/2022 passed u/s 250 of the Income-tax Act, 1961 [for short ‘the Act’], which ascended out of assessment order dt. 30/10/2019 passed u/s 143(3) r.w.s. 147 by the Income Tax Officer, Ward-1, Malegaon, Nashik [for short ‘AO’].



2. Following grounds came up for adjudication in the appeal memo filed;

***“1. On the facts and the circumstances of the case and in law Learned CIT(A) erred in making an addition of ₹ 24,72,000, u/s 69A of the Income Tax Act, 1961 being cash deposited in bank account by rejecting Appellants contention that appellant is an agriculturist and he along with family members holds substantial land holding and besides agriculture activity he doesn't have any other activity. Appellants pray for deletion of entire addition.***

***2. On the facts and the circumstances of the case and in law Learned CIT(A) erred in making an addition of ₹ 24,72,000 u/s 69A without appreciating the scope of Sec. 69A. Your Appellant deserves complete relief as the addition u/s 69A is not as per the provisions of law.***

***Your appellant craves for to add, alter, amend, modify, delete all above or any grounds of appeal before or during the course of hearing in the interest of natural justice.***

3. During the course of physical hearing, the Ld. Counsel for the assessee Mr Shingte [for short 'AR'], without going into merits of the case, at the outset has raised an oral legal ground challenging the very validity of the assessment in the light of Circular No. 19/2019 issued by the Central Board of Direct Taxes [for short 'CBDT']. *Per contra*, the Ld. counsel for the Revenue Mr Jasnani [for short 'DR'] objecting the admission of oral legal ground, has vehemently submitted that, the order of assessment indeed bears the DCR No. 85/61 2019-20 and thus corresponding Document Identification Number [for short 'DIN'] must have been generated in compliance with the CBDT Circular (supra), which however remained to be quoted in the body of the assessment order while communicating to the assessee. The Ld. DR further capitulated



that, aforesaid CDBT circular came into force w.e.f. 01/10/2019 whereas the assessment order was passed on 30/10/2019 and as such in the initial transition period the department was instructed to maintain parallel manual records in addition to computerised records, the Ld. AO as an abundant precaution quoted the control DCR Number which can be vouched with that of the corresponding DIN generated in compliance of CDBT Circular (supra).

4. We have heard the rival contentions of both the parties; and subject to the provisions of rule 18 of Income Tax Appellate Tribunal, Rules 1963, perused the material placed on record, case laws relied upon by both the parties and duly considered the facts of the case in the light of settled legal position which also forewarned to respective rival parties.

5. Before proceeding to adjudicate this legal issue, we have to first deal with the question as to '***whether such legal ground raised first time before the Tribunal can be admitted?***' more specifically when it was not raised before the first appellate authority and not the subject matter of impugned order assailed against. In this context, it shall suffice to quote that, the legal ground raised by the appellant first time in the present appeal goes to the root of the matter and admittedly no new facts are required to be investigated or verified for the purpose of its adjudication, therefore such legal ground deserves admission in the light of ratio laid down by the Hon'ble Apex Court in '*CIT Vs National Thermal Power Company Ltd.*' reported in 229 ITR 383 (SC), and Hon'ble Delhi High Court in '*Gedore Tools Pvt Ltd. Vs CIT*' reported in 238



ITR 268. After due consideration of appellant's plea and submission, we are satisfied that, the omission to raise aforesaid legal ground while filing the memorandum of appeal in the extant case was neither wilful nor unreasonable, for the reason we are inclined to admit the same in the light of judicial precedents laid by Hon'ble Supreme Court and Hon'ble High Courts in catena of cases including '*Jaora Sugar Mills Pvt. Ltd v CIT*' reported in 124 ITR 482 (MP), and '*CIT v Western Rolling Mills Pvt. Ltd.*' reported at 156 ITR 54 (Bom) and '*Jute Corporation of India Ltd. v CIT*' find placed in 187 ITR 688(SC) and '*Ahmedabad Electricity Co. Ltd. v CIT*' reported in 199 ITR 351(Bom), *ergo* same stands admitted.

6. We note that, in order to prevent manual practice of issuance of notice, order, summons, letter or any other correspondence [defined as '**Communication**'] and to maintain proper *audit trail* of all communication the CBDT in exercise of its power u/s 119 of the Act, vide circular No. 19/2019 dt. 14/08/2019 has mandated the income tax authority w.e.f. 01/10/2019 for generation, allotment and communication of computer generated DIN in relation to any assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc.

7. *Albeit* para 2 of aforesaid circular mandates for DIN compliance, para 3 thereof provides for five exceptional circumstances wherein manual communication is permitted without initially complying with the DIN



requirement, however subject to regularisation within a period of 15 working days of such manual issuance. Here it is worthy to note that, any communication made not in conformity with or in violation of Para-2 and Para-3 invariably renders the communication as invalid and shall be deemed to have never been issued.

8. While vouching the effect of non-generation *vis-à-vis* non-quoting of DIN, we note that, the Hon'ble Delhi High Court while dealing with similar issue in '*CIT Vs Brandix Mauritius Holdings Ltd.*' (163/2023 dt. 20/03/2023), has held that the communication in relation to assessments, appeals, orders etc., which finds 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. It is further observed by the Hon'ble High Court that in view of the decision of Hon'ble Supreme Court in the case of '*K.P. Varghese Vs ITO, Ernakulum* (1981) 4 SCC 173 and in the case of '*Back Office IT Solutions Pvt. Ltd. Vs UOI*' (2021) SCC online Del 2742, the circulars issued by the CBDT binds the Revenue in their administration or implementation, and such circulars cannot be side-stepped causing prejudice to the assessee by bringing to naught the object for which such circulars are issued.

9. In the light of aforesaid legal position & our discussion, in the present appeal we note that, the assessment order bears no DIN in the body thereof, thus the assessment order undisputedly was communicated in violation of Para-2 of CBDT Circular (supra). Further, the Revenue also failed to bring on



record any evidence effectively showcasing that the case of the assessee falls within any of the five exceptional circumstances envisaged in Para-3 and accompanying therewith further evidentiary documents in establishing regularisation of earlier manual issuance of communication in terms Para-5 thereof. Thus, communication of assessment order suffered from compliance and rendered itself invalid as if it has never been issued to the assessee.

10. In these circumstances, in our considered view, for want of generating & quoting the DIN in the body, the assessment order is to be treated as never been issued, therefore ceases to have any effect in the eyes of law. In view of this categorical finding, delving deeper into merits of the case is unwarranted.

11. In result, the appeal stands **ALLOWED** for the aforestated reasons.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Tuesday 04<sup>th</sup> day of July, 2023.

-S/d-

**S. S. VISWANETHTRA RAVI**  
**JUDICIAL MEMBER**

-S/d-

**G. D. PADMAHSHALI**  
**ACCOUNTANT MEMBER**

पुणे / PUNE ; दिनांक / Dated : 04<sup>th</sup> July, 2023.

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

- |                                    |                                   |                            |
|------------------------------------|-----------------------------------|----------------------------|
| 1. अपीलार्थी / The Appellant.      | 2. प्रत्यर्थी / The Respondent.   | 3. The NFAC, Delhi (India) |
| 4. The Pr.CIT-1, Nashik (MH-India) | 5. DR, ITAT, Pune Bench 'B', Pune | 6. गार्डफाइल / Guard File. |

Ashwini

आदेशानुसार / By Order  
वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.