

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

**Before Sh. Saktijit Dey, Vice President**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 1915/Del/2020 : Asstt. Year: 2012-13**

M/s Beacon Higher Education Services Pvt. Ltd., S-40, 2 <sup>nd</sup> Floor, Vasant Square Mall, Plot-A, Sector-B, Vasant Kunj, New Delhi-110070	Vs.	CIT(A)-2, New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AAECB1283F</b>		

**Assessee by : Sh. Ajay Vohra, Sr. Adv.**

**Sh. Deepesh Jain, Adv.**

**Revenue by : Sh. P. Praveen Sidharth, CIT DR**

<b>Date of Hearing: 18.04.2023</b>
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<b>Date of Pronouncement: 17.07.2023</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of Id. CIT(A)-2, New Delhi dated 24.09.2020.

2. Following grounds have been raised by the assessee:

*"1. Under the facts and circumstances of the case, the Ld. CIT (A) has grossly erred on facts of the matter and law under applicable provisions and passed the Order u/s 154 by reversing the order of his predecessor passed against the appeal matter u/s 154, which is arbitrary and applied the fact decided in judicial order being against the principles of natural justice and the provisions of IT Act, 1961.*

*2. The Id. CIT (A) has grossly erred on facts to extend an opportunity examine to any additional evidence being against the principles of natural justice.*

3. *The Id. CIT (A) has grossly erred to upheld the disallowed depreciation of Rs.2,15,00,000/- claimed u/s 32 (1) (ii) on intangible asset i.e. non-compete fee. as per definition u/s 2 (1) without going into the merit of fact of assessee and applied the High Court judicial order arbitrary in the matter and exceeded his jurisdiction by reversing already passed order (AY 12-13) by his predecessor on the same issue u/s 154.*

4. *The Ld. CIT (A) has grossly erred to accept the order of AY 2012-13. passed by his predecessor on the same issue and upheld that referred judicial order is not applicable to the assessee and allowed depreciation on intangible asset i.e. non-compete fee and set aside the order passed by the AO u/s 154 original order passed by the AO u/s 154."*

3. The assessee has also filed additional grounds of appeal which reads as under:

*"1. That on the facts and circumstances of the case and in law, order dated 24.09.2020 passed under section 154/250 of the Income Tax Act, 1961 by the Id. CIT(A) is null and void, non-est and liable to be quashed in as much as no DIN (Document Identification Number) is quoted on the said order in violation of binding CBDT Circular No. 19/2019."*

4. Admission of the additional ground has been opposed in principle by the Id. DR. Keeping in view, the judgment of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. Vs CIT (1998) 229 ITR 383, the additional ground filed by the assessee is accepted. The relevant portion of the judgment is as under:

*"5. Under Section 254 of the Income-tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment*

*proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under Section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.*

*6. In the case of Jute Corporation of India Ltd. v. C.I.T. . this Court, while dealing with the powers of the Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income-tax Officer. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.*

*7. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal [vide, e.g., C.I.T, v. Anand Prasad (Delhi), C.I.T. v. KaramchandPremchand P. Ltd. and C.I.T. v. Cellulose Products of India Ltd. . Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.*

*8. The reframed question, therefore, is answered in the affirmative, i.e., the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee. We remand the proceedings to the Tribunal for consideration of the new grounds raised by the assessee on the merits."*

5. Respectfully following the above judgment of the Hon'ble Apex Court, the additional grounds taken up by the assessee are hereby admitted.

6. The order of the CIT (Appeals)-2 was dated 24.09.2020 is an undisputed fact on record. The said order does not bear any DIN number is another undisputed fact.

7. According to Circular No.19/2019 dated 14.08.2019 issued by CBDT, no notice/ order could be issued by an income tax authority without quoting DIN in the body of the communication, in terms of paras 2-3 of the said Circular. Further, consequence of violation has been given in para 4 of the Circular which provides that "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.

8. The Co-ordinate Bench of the Tribunal at Kolkata in the matter of Tata Medical Centre Trust vs. CIT(E) [2022] 196 ITD 302 held that order issued manually by Commissioner without Document Identification No. (DIN) in its body was invalid and deemed to have never been issued.

9. Reliance in this regard is be placed on the recent decision of the jurisdictional Delhi High Court in the case of CIT vs. Brandix Mauritius Holdings Private Limited in ITA No. 163/2013 where the Court, upholding the order passed by this Tribunal, held that order issued in violation of Circular No.19/2019 is bad in law and liable to be quashed.

10. In the facts of the present case, it is evident that the impugned order has been passed manually by the CIT(A) and no DIN is quoted therein nor any communication in respect of DIN relating to the said order has been made to the assessee till date. Being so, the said order is non-est and bad in law.

11. In the result, the appeal of the assessee is allowed.  
Order Pronounced in the Open Court on 17/07/2023.

Sd/-

**(Saktijit Dey)**  
**Vice President**

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 17/07/2023**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**