

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**(DELHI BENCH 'A' : NEW DELHI)**  
**BEFORE SH. M. BALAGANESH, ACCOUNTANT MEMBER**  
**AND**  
**SH.ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 2486/Del/2022, A.Y. 2013-14

Abhimanyu Chaturvedi D-64, Sector 47, Gautam Buddha Nagar, Noida- 201303 PAN : ANQPC4031N	Vs.	Deputy Commissioner of Income Tax, Central Circle-I, Noida
Appellant		Respondent

ITA No. 2487/Del/2022, A.Y. 2013-14

Mallika Chaturvedi D-64, Sector 47, Gautam Buddha Nagar, Noida- 201303 PAN : ANQPC4029G	Vs.	Deputy Commissioner of Income Tax, Central Circle-I, Noida
Appellant		Respondent

ITA No. 2488/Del/2022, A.Y. 2013-14

Alka Chaturvedi D-64, Sector 47, Gautam Buddha Nagar, Noida- 201303 PAN : ANQPC4031N	Vs.	Deputy Commissioner of Income Tax, Central Circle-I, Noida
Appellant		Respondent

Assessee by	Ms. Ishita Farsaiya, Adv. & Sh. Sparsh Bhargava, Adv.
Revenue by	Sh. P. Praveen Sidharth, CIT DR

Date of hearing:	04.07.2023
Date of Pronouncement:	03.08.2023

**ORDER****Per Anubhav Sharma, JM :**

These appeals have been preferred by the Assessee against the order dated 10.08.2022 of CIT(A), Kanpur-4 (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') arising out of an appeal before it against the order dated 09.08.2021 passed u/s 153A/143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the JCIT (OSD) Central Circle-1, Noida (hereinafter referred as the Ld. AO).

2. Heard and perused the record.
3. The grounds raised in these appeals are common, except for the amounts involved and for convenience the grounds in the case of Abhimanyu Chaturvedi are reproduced below ;

1. *That the Impugned Order dated 10.08.2022 passed by the Ld. CIT (A) is bad in law and fact.*
2. *That the Impugned Order has incorrectly upheld the Assessment Order dated 09.08.2021 which is void ab initio.*
3. *That the Impugned Order has failed to appreciate the fact that the Assessment Order dated 09.08.2021 is bad in law and fact.*
4. *That the Assessment Proceedings under Section 153A and 153D of the Income Tax Act ('the Act') have been incorrectly initiated against the Appellant and the same are without any basis in law and fact.*
5. *That the Impugned Assessment proceedings are in violation of principles of natural justice and the Ld. AO has acted in a premeditated manner.*
6. *That the Ld. CIT (A) has failed to appreciate the fact that all additions made in the case of the Appellant are without any basis as the statement/s on basis which such additions were made were withdrawn.*

7. *That the addition of Rs. 2,32,86,521 under Section 69A of the Act has been erroneously upheld by the Ld. CIT (A).*
8. *That the Ld. CIT (A) has erroneously upheld the addition of Rs. 6,71,600/- (i.e. 3 percent of Rs. 2,23,86,521/-) u/s. 69C of the Act.*
9. *That having regard to the facts and circumstances of the case and in law, Ld. CIT (A) has erred in law and on facts in upholding the charging interest u/s 234A of the Act, which is bad in law, the same may kindly be deleted.*
10. *Without prejudice to all above points, the Ld. CIT (A) has erred in allowing the initiation of penalty proceedings u/s 271 (l)(c) of IT Act, 1961, which is bad in law, the same may kindly be deleted.*
11. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal before or at the time of hearing and all the above grounds are without prejudice to each other.*

4. The relevant facts as picked up from the matter on record and submissions are that the appellants are family members whose LTCG arising on sale of certain shares which were purchased simultaneously by each assessee in the same company and have been added back to the income of the each assessee vide separate assessment orders passed under Section 153A read with Section 143 (3) of the Income Tax Act. 1961 ('the Act') and which stands confirmed by Ld CIT(A).

4.1 The details of the Assessee/appellants as provided in the submission are hereunder:

<b>Name of the Assessee/Appellant</b>	<b>Details of profession</b>	<b>Return details for 2013-14</b>	<b>Returned income for AY 2022 - 2023</b>
Abhimanyu Chaturvedi S/o Prabhat Chandra Chaturvedi a retired Civil Services Officer	Currently practicing as a dental surgeon	filed his return of income on 15.07.2013 wherein-he offered Rs. 9,54,753/- to tax.	Rs. 15,04,330/- Filed on 25.07.2022
Mallika Chaturvedi D/o Prabhat Chaturvedi a retired Civil Services Officer and sister of	Running a small jewelry designing business	filed her return of income on 15.07.2013 wherein she offered Rs. 9,29,250 to tax	Rs. 2,31,410 filed on 19.07.2022

Abhimanyu			
Alka Chaturvedi wdfe of Prabhat Chandra Chaturvedi a retired Civil Services Officer and mother of Abhimanyu and Mallika	Not directly engaged in any business of profession and is presently earning passive income	filed her return offering Rs. 7,99,390 to tax	Rs 1,59,000/- Filed on 19.07.2022

5. The appellants were issued a notice under Section 153 A of the Act and the appellants filed their return of income wherein the same income which was initially offered to tax was declared in the returns. It is the case of appellants that by their replies they had specifically submitted that shares of PMC Fincorp Ltd. were purchased vide cheques issued by the Assessees. The said shares were duly credited in the D-Mat Account of the Assessees.

6. It is claimed that no incriminating material whatsoever was found at the premises of the Assessees. It is further claimed that the Assessment proceedings against the Assessees, as per the provisions of Section 153A of the Act were to become time barred on 30.09.2021. However, as the Assessees did not receive the assessment order till 30.9.2021, so the assessee sought a copy of the order vide letter dated 13.10.2021. It is submitted that they were supplied with a copy of the Assessment Order which was dated 09.08.2021. It was running into 250 pages and did not bear any DIN number and the said orders were received by the assessee only 16.10.2021. It is also pointed out that different orders were put on the ITBA Portal which were of lesser pages and a DIN purportedly generated on 17.09.2021 and 18.09.2021 was communicated separately.

6.1 Ld AR has also given a table showing the details of the two separate assessment orders in the case of the Assessees:

Name of the Assessee	Details of Assessment Order received by Post	Details of Assessment Order uploaded on the ITBA Portal	Comments
Abhimanyu	Dated 09.08.2021	Dated 09.08.2021 (4	The DIN has been

Chaturvedi	(247 pages). Received on 16.10.2021	pages). DIN generated on 17/09/2021 is having Document No. (DIN) ITB A/AST/M/153 A/2021- 22/1035679086(1). DIN Letter at p. 8 of the PB and the ITBA Assessment Order at p. 4 of the PB filed in Abhimanyu's Case	generated as an afterthought of more than a month since the order was dated. The DIN is also not mentioned in either of the two
Mallika Chaturvedi	Dated 09.08.2021 (257 pages) received on 16.10.2022	Dated 09.08.2021 (4 pages). DIN generated on 18/09/2021 is having Document No. (DIN) ITB A/AST/S/2021- 22/1035704817(1)(1). DIN Letter at p. 8 of the PB and the ITBA Assessment Order at p. 4 of the PB in Mallika's Case	The DIN has been generated as an afterthought of more than a month since the order was dated. The DIN is also not mentioned in either of the two
Alka Chaturvedi	Dated 09.08.2021 (257 pages). Received on 16.10.2021	Dated 09.08.2021 (9 pages). DIN generated on 17/09/2021 is having Document No. (DIN) ITB A/AST/M/153 A/2021- 22/1035685990 (1). DIN Letter at p. 13 of the PB and the ITBA Assessment Order at p. 4 of the PB in Alka's Case	In addition to the above it is also pointed out that in case of Alka Chaturvedi the Approval u/s 153D was not obtained from the Add CIT and the date of the same is not mentioned in both the orders as well

7. It further comes up that the Bench had called for some information from the Department regarding objections of appellants that their assessment orders were not bearing DIN and a report was filed by Ld. DR and report received from the Ld. AO is also reproduced below for convenience;

“To,  
The CIT(DR) Bench A  
ITAT, Delhi

(Through Proper Channel)

Sir,

*Sub :- Assessee appeal in the case of Shri Abhimanyu Chaturvedi, Appeal No. ITA no. 2486/Del/2022 for the A.Y. 2013-14-Reg.*

*Kindly refer to your office letter F.No CIT(DR)/A/Bench/Del/2023-24 dated 30.05.2023 received through mail.*

**2.** *Vide the above referred letter, CIT(DR) has sought comments of the assessing officer in the case of Shri Abhimanyu Chaturvedi (ITA No. 2486/Del/2022 for A.Y. 2012-14. Vide the said letter, the CIT(DR) has intimated that the Hon’ble members of the Bench have directed to get the comments of the assessing Officer on whether the Assessment Order in all these cases have been issued manually or through ITBA.*

**3.** *In the case of Sh. Abhimanyu Chaturvedi, assessment order u/s 153A of Income Tax Act, 1961 for A.Y. 2013-14 was passed manually on 09.08.2021. Further, the assessment order for A.Y. 2013-14 passed manually earlier on 09.08.2021 was uploaded on ITBA on 17.09.2021 and DIN No. ITBA/AST/M/153A/2021-22/1035679086(1) was generated for the Assessment order for A.Y. 2013-14 on 17.09.2021 through ITBA. Whenever manually passed assessment order is uploaded on ITBA (Income Tax Business Application) through manual to system tab, a DIN (Document Identification Number) is generated for that particular Assessment Order. **This generated DIN is also communicated to assessee. In this case, after generation of DIN, the assessee was sent intimation letter through ITBA for order u/s 153A of the I.T.Act, 1961 on 17.09.2021.** It is further submitted that the CIT(A) has already adjudicated the issue of DIN in para No. 13 of its order dated 10.08.2022 wherein it has been held that “ It has no bearing on the validity of the Assessment Order , which was duly uploaded on the ITBA on 17.09.2021 and intimation sent on 17.09.2021 after generating DIN ITBA/A3T/S/91/2021-22/1035690268(1) well within the time barring limitation date of 30.09.2021.*

**4.** *It is worth to mention here that the limitation date for passing of assessment order for AY-2013-14 was 30.09.2021 and assessment order was uploaded on ITBA before 30.09.2021. In view of the above*

*facts, it is clear that the assessment order was passed well within time and communicated to the assessee as well before time barring date i.e. 30.09.2021. Supporting documents i.e. intimation letter for order u/s 153A of the Income Tax Act, 1961 and case noting history on ITBA are enclosed for your kind perusal. In view of these facts, it is evident that the DIN for the said assessment order was generated through ITBA well within time limitation for passing assessment order and the also the same was communicated to the assessee well within time limitation.*

*Relevant Assessment record is submitted for kind perusal.”*

8. Ld. Counsel for the appellant has submitted that the CBDT Circular no. 19/2019 dated 14.08.2019 has made it mandatory that all the orders of Department should have DIN indicated on the face of order. It was submitted that in the cases in hand, no DIN has been quoted on the assessment orders. Relying judgment of Hon’ble Delhi High Court in the case of ***CIT vs. Brandix Mauritius Holdings Ltd. 2023: DHC : 2502*** it was submitted that Hon’ble High Court has categorically laid down that the Circular is of binding nature on the Revenue and in the light of the same the assessment orders not bearing DIN are non-est in the eyes of law. Reliance is also placed on the judgment of ***Kolkata Bench in the case of Tata Medical Centre Trust vs. CIT (Exemption) [2022] 140 taxmann.com 431*** for the same proposition.

8.1 It was also submitted that the report Ld. AO, has submitted before the Bench, itself indicates that Ld. AO has claimed that the assessment order was issued manually and thus relying letter dated 25.10.2019, from Directorate of Income Tax (System), it was submitted that generation of DIN is necessary prior to uploading the document in ITBA. It was submitted that in any case if a manual assessment order was passed then in the light of circular dated 14.08.2019, unless the case was in the exceptions created by the Circular and without there being a prior approval of the Chief Commissioner / Director General of Income Tax, the assessment order could not have been issued

without DIN. It was submitted that generation of the DIN subsequently does not validate the deficiency.

8.2 It was further submitted that the assessment orders were received by the assessee only after they had made a communication with the ld. AO and when the assessment order were dispatched on 14.10.2021, the assessment stood barred as same had to be concluded by 30.09.2021. It pointed out that appellants have filed their respective affidavits deposing that they had not received any assessment order prior to their request letter dated 13.10.2021. It was submitted that Ld. AO while submitting his report to the Tribunal has not submitted any evidence to show that the emails were sent from ITBA Portal and the affidavits of assessee in that regard are in a paper book. Reliance was placed the judgment of Hon'ble Supreme Court of India in *State of Andhra Pradesh Vs. M. Ramakishitah & co. (1994) 93 STC 406 (SC)*, *CIT vs. Rai Bahadur Kishore Chand And Sons in ITA no. 522 of 2007 dated 13.03.2008*, *CAGIT Vs. Kappumalai Estate (1998) 234 ITR 187 (Ker.)*, *Government Wood Works Vs. State of Kerala (1988) 69 STC 62 (Ker)* and *CIT & Anr. Vs. BJNI Hotels Ltd. [2016] 382 ITR 110 (Karn)*, *Kanubhai M. Patel (HUF) V Hiren Bhatt (2011) 334 ITR 25 (Guj.)* to submit that if the assessment order are not served before time barring date of assessment then they are considered to be non-est. Reliance in this regard was also placed on the Tribunal order in *ITA No. 3556 & 3557/Del/2015 order dated 08.02.2019 in the case of Pankaj Sharma vs. DCIT* and *ITA No. 415 & 421/CTK/2019 in Sujata Panda, The X-ray clinic vs. ACIT*.

8.3 It was also mentioned that notice of Tax Demand dated 09.08.2021 was also barred and not enforceable as it was received by the assessee only after 30.09.2021 and the judgment of Hon'ble Delhi High Court in the case of *Suman Jeet Agarwal vs. ITO in W.P. (C) nos. 10 and 269 of 2022* and

judgment of Hon'ble Allahabad High Court in *Daujee Abhushan Bhandar Pvt. Ltd. vs. Union of India (2022) 136 taxmann.com 246* was relied.

8.4 Ld. Counsel also submitted that there two set of order, one available ITBA Portal which has been only 4 pages or 9 pages in the respective cases with a DIN purportedly generated on 17.09.2021 and 18.09.2021 and the Second dated 09.08.2021, of over 270 pages, which was sent by post. Ld. Counsel also demonstrated before the Bench in the presence of ld. DR as to how the ITBA Portal works and she was able to demonstrate that still on the portal the assessment order available are 4 pages or 9 pages respectively in the cases.

9. On merits of ld. Counsel submitted that the Ld. AO and Ld. CIT(A) have both heavily relied the statement of Mr. Rajkumar Modi who has retracted the statements vide affidavit dated 07.10.2016 made available at page no. 391 of the paper book in the case of Mallika Chaturvedi case and inspite of repeated opportunities sought for cross examination no opportunity was given to cross examine Raj Kumar Modi.

9.1 It was submitted that there was no incriminating material establishing any *mala fide* of the appellant and the evidences like SEBI report and SEBI order were not supplied. Reliance was placed in the judgment of Hon'ble Delhi High Court in the case of *PCIT vs. Vinita Chaurasia [2017] 82 taxmann.com 153 (Delhi)* as confirmed by Hon'ble Supreme Court in *[2018] 259 taxmann.com 88 (SC)* that assessment on the basis of statements which were retracted is not justified. Reliance is placed on the judgment of Hon'ble Supreme Court of India in the case of **Abhisar Buildware Pvt. Ltd. in Civil Appeal No. 6580 of 2021, dated 24.4.2023** submitting that no incriminating material was found during the search and creating a liability on the basis of statement alone is not sustainable.

10. On the other hand, Ld. DR has supported the findings of Ld. Tax Authorities below. The stress of argument of Ld. DR was on the fact that the

very procedure of generating the DIN and communicating the same is such that as the order is uploaded the DIN is generated and communicated to the assesses. It was submitted that since a manual assessment order was prepared outside ITBA portal the assessment order is dated 09.08.2021 and thereafter it was uploaded before the date of barring of assessment and thereafter Ld. DR has heavily relied the judgement of **Jharkhand High Court in WP(P) no. 1901 of 2022 dated 21.02.2023 title Prakash Lal Khandelwal vs. CIT –Ranchi** to contend that Hon'ble High Court has held that generation of DIN and its communication subsequently, does not make the assessment order barred by limitation.

11. The Bench has given thoughtful consideration to the matter on record and submissions. The issues to be decided first are ;

**First**, if there was any illegality in the impugned assessment orders for the reason that the Assessment order did not have DIN quoted on its body.

**Secondly**, if there was any illegality in the impugned assessment orders for the reason the same was incomplete when uploaded on ITBA and be considered passed after limitation.

12. In regard to first issue it will be appropriated to reproduce here the complete text of the Circular no. 19/2019 while making the crucial part of it in

**BOLD :**

*“New Delhi, dated the 14<sup>th</sup> August, 20 19*

*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 computerisation 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 15th 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 or 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.*

*8.Hindi version to follow.”*

13. It will also be appropriate to reproduce the relevant content of instructions from Directorate of Income Tax (System), dated **25.10.2019** as follows :-

**“Subject: Changes in facility for generation of Document Identification Number (DIN) for manual documents in Income Tax Business Application (ITBA)/ITD - Reg.**

*Madam/Sir,*

*This is in reference to the subject mentioned above. It is informed that the facility for generation of Document Identification Number (DIN) for documents prepared outside ITBA system and uploaded manually is now made available in Income Tax Business Application from 25/10/2019. Now, DIN can be generated prior to uploading the document in ITBA.*

2. *ITBA provides the functionality to capture and upload the letters, notices and orders issued manually and served on the assessee by users due to any exceptional reasons like technical issue in system etc. DIN was generated for every such document uploaded manually. However, there was no facility to quote the system generated DIN in the physical copy of documents.*

3. *Therefore, whenever user uploads a document which was issued outside ITBA system, **DIN will be generated prior to uploading of such manual letter or notice or order in ITBA.** User may use the same for reference and quoting as Doc. No. in physical copy.*

4. *Intimation letter will continue to be generated in ITBA. The same document will also be shared with e-Filing portal through e-Proceedings interface for authentication purpose. Assessee can verify the authenticity of the Letter or Notice or Order issued by Income Tax Authorities (ITA) in e-Filing portal. Such intimation along with Letter/Notice/Orders also made available in View/Download Letter/Notice/Orders screen if users wish to dispatch the same through post.*

*Steps to be followed for DIN generation in ITBA application are as below:-*

- i. *Navigate to Generate Letter/Notice/Orders*
- ii. *Select Manual to System option screen.*
- iii. *User will enter the Date of Issue and Manual File No.*
- iv. *Click on Save and Generate DIN.*

*NOTE: DIN will be generated in the system and will be displayed in column 'System Doc. No.' User should physically sign the document after quoting DIN before uploading, as the assessee will be viewing the uploaded document on their e-Proceeding account on e-filing portal.*

- v. *User will attach the file and click on Save*

*NOTE: User will be able to upload the document with the DIN no. generated in ITBA system until the row containing that DIN is deleted by the user from the system.*

- vi. *Click on Generate button to complete the process in ITBA system.*

*The system generated Intimation letter will also be generated for reference and will be available in View/Download Letter/Notice/Orders screen for user to download the same."*

14. Now considering the vital piece of material before us is the letter dated 27.06.2023 in the form of report submitted by the Ld. AO which makes it

admitted that the order was passed manually. It was uploaded on ITBA on 17.09.2021. The DIN no. was generated on 17.09.2021 through ITBA. Ld. AO admitted that to his understanding whenever manually is passed the assessment order is uploaded on ITBA through manual to system tab, a DIN is generated for that particular assessment order. Accordingly, the DIN was generated in the cases and intimations were sent.

15. However, from the assessment order it does not appear that Ld. AO had proceeded to pass the order manually. There is nothing in the assessment order mentioning the reasons which as exception only allow passing of the assessment order manually.

15.1 In this context from the aforesaid Circular no. 19/2019 it can be noted that it mandates that if the 'communication' is issued under aforesaid three exceptions the 'communication' 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 .. .."*

15.2 To make it crystal clear here the words 'Communication' is not used to define merely the mode of transmission of the information but the circular No 19 of 2019 makes it clear by defining it in following words *"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")*. So the assessment order itself is a communication and all compliances expected have to be specific to the assessment order.

15.3 Coming back to the assessment orders, in fact as para no. 1 to 3.1 of the assessment order dated 09.08.2021 are considered they mention that notice u/s 153A of the Act was issued through ITBA portal. Subsequent notice u/s 143(2) of the Act was also issued through ITBA Portal. Thus, the notices for the purpose of assessment were issued through ITBA Portal and if thereafter the assessment was carried out manually the assessment order should have mentioned the aforesaid fact to comply with the mandate of Circular with regard to communications issued manually.

16. Further, the Bench takes note of the instructions dated 25.10.19, which lay down that when a document is prepared outside ITBA system and uploaded manually, a DIN is required to be generated prior to uploading the document in ITBA. The instructions make it imperative that the DIN so generated has to be used for reference and quoting a document number in a physical copy. The instructions specifically provide that the user (assessing officer) should physically sign the document after quoting DIN, before uploading. Meaning thereby that generation of DIN is condition precedent for making an assessment manually or otherwise on the ITBA and then before it is uploaded on ITBA, first it should have DIN bearing on its face and then only it should be signed. Thus for the purpose of section 153A/143(3) of the Act, the assessment can be said to be 'made' only when the DIN is quoted on the order before it is signed. If without first generating the DIN and before it is quoted on the order, the order is signed, the order is non-est.

17. The Bench is of considered view that forwarding of the intimation of generation of the DIN in ITBA is only a subsequent action and that is not part of assessment order. The manner in which the word 'communication' is defined shows every notice, order, summons, letter and any correspondence from Tax authorities should have a DIN quoted and it is for this reason that the Intimation issued about the DIN of assessment order itself has a DIN quoted on it.

18. In the case in hand the facts coming from the assessment order when considered establish that DIN was not generated prior to uploading the document in ITBA. It is also established that the DIN was not quoted before it was physically signed by the Ld. AO. The generation of DIN subsequently and generation of intimation to be sent to assessee are of no consequence for the purpose of assessment and raising the demand.

18.1 As far as the judgment of Hon'ble Jharkhand High Court in the case of **Prakash Lal Khandelwal (supra)** is concerned as relied by Ld. DR, the fact is that in that case Hon'ble High Court was more into examination of the question of assessment order dated 31.03.2022 being barred by limitation. As it was uploaded of ITBA portal on 01.04.2022 and the DIN was generated by delay of just one day. However, the material question that DIN is required to be mandatorily quoted on the assessment order was not examined specifically has any finding given that in the absence of order not bearing DIN, the Circular will be not binding.

18.2 At the same time the issue has been directly examined by Co-ordinate Bench in ITA no. 1542/Del/2022 order dated 19.09.2022 in the case of **M/s. Brandix Mauritius Holdings Ltd. vs. DCIT** in para 9 to 11 as follows :-

*“9. A perusal of the aforementioned Circular clearly shows that the CBDT has considered the exceptional circumstances as mentioned in Para 3 of the Circular and therefore, in our considered opinion, only those circumstances which have been mentioned therein would be considered for non-mentioning of DIN.*

*10. In Para 3 itself, the Board has made it very clear that in cases where communication is issued manually, it may be done only after obtaining necessary approval of the relevant authorities and communication so issued must indicate the exceptional circumstances provided in the Circular itself. It has been made very clear by the Board that any communication which is not in conformity with Para 2. and 3 of the Circular shall be treated as invalid and shall be deemed to have never been issued.*

11. *The impugned order is hit by this mandate of the Board and, therefore, we are inclined to adjudicate Ground No. 8 [supra] in favour of the assessee by holding that the order dated 15.10.2019 framed u/s 147/144C(13)/143(3) of the Act is invalid and deemed to have never been issued as it fails to mention DIN in its body by adhering to Circular No. 19/2009 dated 14.08.2019.”*

18.3 This order of co-ordinate Bench has been upheld by the Hon’ble Delhi High Court in **CIT vs. Brandix Mauritius Holdings Ltd. (supra)** with following relevant findings in para 16 and 17 as follows

*“16. The final assessment order was passed by the Assessing Officer(AO) on 15.10.2019, under Section 147Z144(C)(13)/143(3) of the Act. Concededly, the final assessment order does not hear 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.”*

18.4 The Hon’ble High Court has further specifically observed in regard to Circular no. 19 of 2019 as follows :-

*“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.”*

18.5 The view has been followed by the Benches at Mumbai in *ITA no. 3122/Mum/2022 Sh. Abhishek Doshi vs. ACIT order dated 31.05.2023, Delhi* in *ITA no. 1898/Del/2022 Pratap Singh Yadav vs. DCIT order dated 30.05.2023 and Bangalore Bench in order dated 31.10.2022 ITA No. 403 to 405/Bang/2022 title Dilip Kothari vs. PCIT and ITA No. 239/Bang/2021 title Intrado EC India Pvt. Ltd. vs. DCIT order dated 09.11.2022 and Kolkata Bench in judgment ITA no. 432/Kol/2020 title Sunita Agarwal vs. ITO order dated 22.11.2022 and ITA no. 106/Kol/2021 Mahesh Kumar Sureka vs. PCIT order dated 29.11.2022*. Thus, the judgment cited by Ld. DR does not come to the rescue of Revenue. **Thus, first issue as casted is decided in favour of the assessee.**

19. Coming to the **second issue** it comes up that there is nothing before the Bench from the side of Revenue indicating that the order uploaded on ITBA was the complete order and communicated through ITBA rather Ld. Counsel was able to demonstrate that as of now also there are 4 or 7 pages orders on the ITBA. There appears to be an error which may be attributed to system glitch wherein the ITBA Portal does not have the complete order and only 4 or 9 pages respectively were uploaded. However, the Bench is of considered view that service of incomplete order on ITBA may be worst a case of non-service of the order and as for the purpose of filing the appeal only it may be relevant. The assessment order does not become void for that reason. It is like a case where copy supplied was not legible or incomplete and only when legible or complete copy is supplied to the assessee the limitation period would start to run.

19.1 Certainly, the order of any authority cannot be said to be passed unless it is in some way pronounced or published or the party affected has the means of knowing it. It is not enough if the order is made, signed, and kept in the file, because such order may be liable to change at the hands of the authority who may modify it or even destroy it, before it is made known, based on subsequent information, thinking or change of opinion. To make the order complete and effective, it should be issued, so as to be beyond the control of the authority concerned, for any possible change or modification therein. That is best achieved with the introduction of DIN but once the order is complete in all respects and within the prescribed period, the actual service of the order may be beyond that period and that will only give rise to question of start of limitation period for challenging it but that does not invalidate the order itself.

19.2 Hon'ble Supreme Court in the case of **Raja Harish Chandra Raj Singh vs. Dy. Land Acquisition Officer (1961 AIR 1500)** while considering the provisions of section 18 of the Land Acquisition Act, 1894 under which a person aggrieved by the acquisition award was required to file his application objecting to the award within six months from the date of the award. The Appellant here had filed his application not within six months from the date of the order, but within six months from the date he came to know of the order, which application was held barred by limitation. When the issue came before the Hon'ble Supreme Court, it held "*If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired, it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party.*" It was further held that "*Thus considered, the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve*

*the communication of the said award to the party concerned either actually or constructively.”* The view taken in **Raja Harish Chandra Raj Singh’s case (supra)** by two-Judges Bench of the Hon’ble Supreme Court was affirmed by a three- Judges Bench of Hon’ble Supreme Court in **State of Punjab Vs. Mst. Qaisar Jehan Begum & Anr., (1964) 1 SCR 971**. The Apex Court, bettered its earlier decisions by taking one step further by adding that- *“the knowledge of the award does not mean a mere knowledge of the fact that an award has been made; the knowledge must relate to the essential contents of the award.”*

19.3 Therefore the orders as uploaded on the ITBA were incomplete and that would only come to aid of assessee for extending the period of the limitation for filing the appeal but order does not become void on that ground and there is no case of time barred assessment. So issue number two is decided against the assessee.

20. Since issue number one as casted at the beginning of the discussion is decided in favour of the appellants, the impugned assessment orders are non-est. The Ground no 1 to 3 are decided in favour of the appellants. As the bench has concluded that the impugned assessment orders are non-est, the determination of other grounds on merits would be superfluous. **Accordingly the appeals are allowed** and the impugned demand on the basis of non-est orders is quashed.

**Order pronounced in the open court on 3<sup>rd</sup> August, 2023.**

**Sd/-**

**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Date:-3<sup>rd</sup>.08.2023

\*Binita, SR.P.S\*

Copy forwarded to:

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

**Sd/-**

**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI