



# ॥आयकर अपीलीय न्यायाधिकरण, पणजी न्यायपीठ, पणजी में॥



## IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI

BEFORE HON'BLE SHRI S. S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

(Through Virtual Hearing from Pune)

Sr	ITA No(s).	Appellant	Respondent	Asst. Yr.
1	13/PAN/2020	The Joint Commissioner of Income Tax, Special Range, Panaji – Goa.	M/s. Zuari Agro Chemicals Ltd., Jai Kisan Bhavan, Zuari Nagar, Vasco-Goa - 403001 PAN: AAACZ3924H	2012-13
2	14/PAN/2020	The Joint Commissioner of Income Tax, Special Range, Panaji – Goa.	M/s. Zuari Agro Chemicals Ltd., Jai Kisan Bhavan, Zuari Nagar, Vasco-Goa - 403001 PAN: AAACZ3924H	2013-14
3	15/PUN/2020	The Joint Commissioner of Income Tax, Special Range, Panaji – Goa.	M/s. Zuari Agro Chemicals Ltd., Jai Kisan Bhavan, Zuari Nagar, Vasco-Goa - 403001 PAN: AAACZ3924H	2014-15
4	30/PAN/2020	The Deputy Commissioner of Income Tax, Circle-2(1), Panaji-Goa.	Sri Miguel Jose Rodrigues, H.No.1170, Mazilwaddo, Benaulim, Salcete, Goa – 403716. ABTPR1388N	2013-14
5	31/PAN/2020	The Deputy Commissioner of Income Tax, Circle-2(1), Panaji-Goa.	Socorriana Minguel Rodrigues, H.No.1170, Mazilwaddo, Benauli, Salcete, Goa – 403716 PAN: ADIPR6841H	2013-14
6	39/PAN/2020	The Deputy Commissioner of Income Tax, Circle-2(1), Panaji-Goa.	Shri Vijaynath Rama Talauliker, 1 <sup>st</sup> Floor, Aaykar Bhavan, EDC Complex, Patto Panaji, Goa – 403001. PAN: ABGPT9695R	2014-15
7	40/PAN/2020	The Deputy Commissioner of Income Tax, Circle-2(1), Panaji-Goa.	Smt. Ritha Vijaynath Talauliker, 1 <sup>st</sup> Floor, Aaykar Bhavan, EDC Complex, Patto Panaji, Goa – 403001. PAN: ABGPT9694Q	2014-15

### द्वारा / Appearances

Assessee by : Shri Kalpesh Unadkat for S.No.1, 2 & 3 and  
Shri Shriniwas Nayak for S.No.4 & 5 and  
None for S.No.6 & 7.

Revenue by : Shri N. Shrikanth

सुनवाई की तारीख / Date of conclusive Hearing : 09/08/2023

घोषणा की तारीख / Date of Pronouncement : 10/08/2023



## आदेश / ORDER

### PER BENCH ;

The present bunch of seven appeals instituted by the Revenue u/s 253(2) of the Income-tax Act, 1961 [‘the Act’ hereinafter] are directed against separate orders of Commissioner of Income Tax (Appeals)Panaji-1, Panaji [‘CIT(A)’ hereinafter] passed u/s 250 of the Act, which in turn ascended out of respective orders of assessment passed u/s 143(3) for various assessment years [‘AY’ hereinafter]

2. Since identical facts and similar issue is involved in this bunch of seven appeals, at the convenience and request of both the parties hereto, we have heard these matters together for a common and consolidated order taking ITA No. 13/PAN/2020 as lead case. Resultantly our adjudication laid in succeeding paragraphs hereinafter shall *mutatis-mutandis* apply to the ITA No. 14 & 15/PAN/2020, ITA No. 30 & 31/PAN/2020, and ITA No. 39 & 40/PAN/2020.

3. During the course of physical hearing, the Ld. Counsel for the assessee Mr Kalpesh Unadkat [‘AR’ hereinafter], without going into merits of the case, at the outset has raised an oral legal ground challenging the very validity of the impugned order of Ld. CIT(A) in the light of Circular No.19/2019 dt. 14/08/2019 issued by the Central Board of Direct Taxes [‘DBDT’ hereinafter]. *Per contra*, the Ld. Departmental Representative Mr N. Shrikanth [‘DR’ hereinafter] objecting the admission of oral legal ground, has vehemently submitted that, the order of first appellate authority indeed bears the Manual Appeal Register Number ‘CIT(A), PNJ-1/74/2015-16 alongwith the ITA No. CIT(A), PNJ-1/10329/2015-16 allotted to lead case. Therefore corresponding Document



Identification Number [‘DIN’ hereinafter] must have been generated in compliance with the CBDT Circular (supra), which however remained to be quoted in the body of the impugned order while communicating to the assessee. Nevertheless DIN in this case must have been communicate to the respondent vide separate communication in this regard. The Ld. DR further capitulated that, aforestated CBDT circular came into force w.e.f. 01/10/2019 whereas the impugned appellate order was passed on 06/11/2019 and as such in the initial transition period the department was instructed to maintain parallel manual records in addition to computerised records, therefore the Ld. CIT(A) as an abundant precaution quoted both the control numbers in his order which can be vouched with that of the corresponding DIN and compliance of CBDT 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 till the conclusive hearing, 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 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 is arisen out of the impugned order goes



to challenge the validity thereof and admittedly no new facts are required to be investigated or verified for the purpose of its adjudication, therefore such being a 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 aforesated 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 save otherwise provided in 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 aforesated legal position & our discussion, in the present appeal we note that, the impugned order bears no DIN in the body thereof, thus



the order of adjudication 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 impugned order suffered from compliance and rendered itself invalid as if it has never been issued to the assessee, therefore in our considered view, the order of first appellate authority is to be treated as never been issued, and 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.

10. In result, this bunch of seven appeals of the Revenue stands **DISMISSED** as not maintainable.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this 10<sup>th</sup> of August, 2023.

-S/d-

**S. S. GODARA**  
**JUDICIAL MEMBER**

पुणे/ PUNE ; दिनांक / Dated : 10<sup>th</sup> day of August, 2023.

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1.अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

3. The CIT-(A) Panaji-1, Goa

4. The Pr.CIT, Panaji

5. DR, ITAT, Panaji Bench, Panaji

6.गार्ड फ़ाइल / Guard File.

\*SGR(Allotment 3 : 4)

आदेशानुसार / By Order

-S/d-

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

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