



॥ 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. PADMAHALI, ACCOUNTANT MEMBER

(Through Virtual Hearing)

आयकरअपील सं. / ITA No's. 28 & 29/PAN/2020 & Co. No 06 & 07/PAN/2020

निर्धारण वर्ष / Assessment Years : 2013-14 & 2016-17

The Jt. Commissioner of Income Tax,
Special Range, Aayakar Bhavan,
Panaji, Goa-403001

..... **Appellant**

बनाम / Vs

Chowgule Steamships Limited
Chowgule House, Mormugoa,
Harbour Goa, 403803
PAN: AAACC6041L

..... **Respondent & Cross Objector**

द्वारा / Appearances

Assessee by : Smt. Pooja Bandekar

Revenue by : Shri N. Shrikanth

सुनवाई की तारीख / Date of conclusive Hearing : 10/08/2023

घोषणा की तारीख / Date of Pronouncement : 14/08/2023

आदेश / ORDER

PER BENCH;

These twin appeals of the Revenue and cross objection by assessee thereagainst are directed against the separate orders of Commissioner of Income Tax (Appeals), Panaji-1 both dt. 06/11/2019 passed u/s 250 of The Income Tax Act, 1961 [for short 'the Act'].



2. As issue involved in these appeals being common, hence taken up together for the sake of brevity and convenience for to be disposed of by a common & consolidated order.

3. At the outset, the learned representative for assessee Smt. Bandekar submitted that, pursuant to declaration filed in Form No. 4 r.w.r 5 of Direct Tax Vivid Se Vishwas Rules, 2020 [for short 'DTVSVR'], the authority issued Form No. 5 dt. 04/09/2021 u/r 7 of DTVSVR, consequently there remains no dispute between parties; therefore cross objections filed are prayed for dismissal as withdrawn.

4. In so far as maintainability of present twin appeals of the Revenue are concerned, it is noted that, both these impugned orders of Ld. CIT(A) were passed on 06/11/2019 and communicated to the assessee does bear neither Document Identification Number [for short 'DIN'] nor find annexed therewith any documentary evidence to showcase that the Revenue has or caused any post compliance of with respect to DIN requirement in terms of CBDT Circular 19/2019 dt. 14/08/2019.



5. We note that, a similar issue came to be considered by Co-ordinate bench recently in '*JCIT Vs Zuari Agro Chemicals Ltd*' [ITA No 13/PAN/2020] and '*DCIT Vs Socorrana Minguel Rodrigues*' [ITA No. 31/PAN/2020] and '*DCIT Vs Ritha Vijaynath Talauliker*' [ITA No 40/PAN/2020] wherein the Co-ordinate bench after heedful consideration of legal position and due discussion laid at para 6-9 has dismissed the Revenue's appeal as not maintainable;

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.

*6. 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 save otherwise provided in*



Para-3, invariably renders the communication as invalid and shall be deemed to have never been issued.

7. *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.*

8. *In the light of aforestated 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.

9. *In result, this bunch of seven appeals of the Revenue stands **DISMISSED** as not maintainable.’* (Emphasis supplied)

7. Admittedly, in the present twin cases, the impugned orders without ‘DIN’ were communicated after 01/10/2019, thus suffered from compliance in terms of CBDT Circular (supra), for the reason neither any appeal against such *non-est* order is maintainable nor any adjudication can be founded on such *non-est* communication. The Ld. representative for Revenue Mr Shrikanth solidifying present factual position could hardly challenge aforesaid judicial precedents and its applicability. Faced with the situation, in the absence of any deprecative facts *vis-à-vis* material brought to our notice, we are inclined to adopt the same rationale as laid in foregoing para 6 [*reproduced para 6-10*] (supra) and see no bolstering reasons to deviate therefrom.



8. In adjudicating the Revenue's twin appeals, by maintaining the judicial precedents, we hold that, the impugned orders have suffered from compliance for the want of 'DIN, hence rendered themselves invalid as if never been issued, therefore give rise to no cause for action to either party. In these circumstances, in our considered view, the impugned orders are to be treated *non-est* and ceased to have any effect in the eyes of law, ergo these twin appeals stands dismissed.

9. In result, Revenue's twin appeals are **DISMISSED** and both the Cross Objections of the assessee are **DISMISSED** as **WITHDRAWN**

U/r 34 of ITAT Rules, the order is pronounced in open court on this Monday 14th day of August, 2023.

-S/d-

S. S. GODARA
JUDICIAL MEMBER

पुणे/ PUNE ; दिनांक / Dated : 14th day of August, 2023.

आदेशकीप्रतिलिपिअप्रेषित / Copy of the Order forwarded to :

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|------------------------------|---------------------------------|
| 1.अपीलार्थी / The Appellant. | 2. प्रत्यर्थी / The Respondent. |
| 4. The Pr. CIT, Panaji | 5. DR, ITAT, Panaji Bench |
- SGR(2:2)*

- S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

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| 3. The CIT(A), Panaji-Goa |
| 6.गार्डफ़ाइल / Guard File. |

आदेशानुसार / By Order,
वरिष्ठनिजीसचिव / Sr. Private Secretary
आयकरअपीलीयन्यायाधिकरण, पुणे / ITAT, Pune.