



॥ आयकर अपीलीय न्यायाधिकरण, पणजी न्यायपीठ, पणजीमें ॥



**IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
AND
SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER**

(Through Virtual Hearing from Pune)

Sr No	ITA No.	A.Y.	Appellant		Respondent
1	51/PAN/2020	2009-10	The Deputy Commissioner of Income Tax, Circle- 1(1), Panaji	Vs.	M/s. Dempo Industries Pvt. Ltd., 2 nd Floor, Dempo House, D. B. Bandodkar Marg, Panaji- Goa – 403001. PAN: AAACD6530H
2	52/PAN/2020	2010-11			
3	72/PAN/2020	2012-13			
4	67/PAN/2020	2008-09	M/s. Dempo Industries Pvt. Ltd., 2 nd Floor, Dempo House, D. B. Bandodkar Marg, Panaji-Goa – 403001. PAN: AAACD6530H		Addl CIT, Range-1, Panaji
5	68/PAN/2020	2009-10			JCIT, Range-1, Panaji
6	69/PAN/2020	2010-11			DCIT, Circle-1, Panaji
7	70/PAN/2020	2012-13			JCIT, Range-1, Panaji

द्वारा / Represented

Assessee by : Ms Rucha Vaidya [‘Ld. AR’]

Revenue by : Mr B. Y. Chavan [‘Ld. DR’]

सुनवाई की तारीख / Date of conclusive Hearing : 14/08/2023

घोषणा की तारीख / Date of Pronouncement : 21/08/2023

आदेश / ORDER

PER G. D. PADMAHSHALI;

Present bunch of seven cross appeals comparing first three instituted by Revenue u/s 253(2) of the Income-tax Act, 1961 [‘the Act’ hereinafter] and next four instituted by the Assessee u/s 253(1) of the Act are directed against separate orders of first appellate authority [‘CIT(A)’ hereinafter] passed u/s 250 of the Act involving four assessment years [‘AY’ hereinafter]

2. During the course of hearing, a common threadbare issue in all these appeals came to the attention of the bench, for the reason, these are taken up together for the sake of brevity and for a common & consolidated order.



3. At the outset of virtual hearing, learned counsel for the assessee Ms Vaidya [‘AR’ hereinafter], without going into merits, have raised an oral legal ground challenging very validity of the impugned orders in the light of Circular No.19/2019 dt. 14/08/2019 issued by the Central Board of Direct Taxes [‘CBDT’ hereinafter]. *Per contra*, Ld. Departmental Representatives Mr. Chavan [‘DR’ hereinafter] objecting the admission submitted that, the impugned orders indeed bears a manual Appeal Register Number alongwith ITA Nos. allotted thereto, therefore corresponding Document Identification Number [‘DIN’ hereinafter] in compliance with the CBDT Circular (supra) must have been generated, which however remained to be quoted in the body thereof while communicating to the respective assessee. The Ld. DR also capitulated that, aforestated circular (supra) came into force w.e.f. 01/10/2019 whereas the impugned appellate orders were passed in initial transition period wherefore department was instructed for maintaining parallel manual records in addition to DIN records. Therefore the Ld. CIT(A) as an abundant precaution has invariably quoted these control numbers which can be vouched with corresponding DIN (if any) and compliance of CBDT Circular (supra).

4. Heard rival contentions; and subject to rule 18 of Income Tax Appellate Tribunal, Rules 1963, perused material placed on record, and we note that, similar legal issue came for consideration before Co-ordinate bench in ‘*JCIT Vs Zuari Agro Chemicals Ltd*’ vide ITA No 13/PAN/2020 and in ‘*JCIT Vs Chowgule Steamships Limited*’ vide ITA No 28/PAN/2020, whereby appeals of the Revenue were dismissed for outstepping the CBDT Circular (supra).



5. We 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 orders assailed against. In this context, it shall suffice to quote that, the legal ground raised by the assessee is ascended out of the impugned order and goes to challenge validity thereof. Admittedly no new facts are required to be investigated or verified for the purpose, therefore such being a bald 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 assessee's plea and submission, we are satisfied that, omission to raise legal ground while filing present appeal was neither wilful nor unreasonable, for the reason we deem it fit to admit in the light of judicial precedents laid in '*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 observed 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 mandated the income tax authorities 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 five exceptional circumstances wherefore manual communication is permitted without initially complying with DIN requirement. However such issuance of manual communication requires recording of reasons therefore and prior approval from CCIT/DGIT. In terms of para-5 it is also subjected for regularisation of DIN compliance 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 & 5 thereof, 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, 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. In light of aforesaid legal position, in the present case we note that, the impugned appellate order was subject matter of DIN compliance; however same remained to be complied by generating & quoting the DIN in the body thereof, thus impugned order was communicated in violation of Para-2 of CBDT Circular (supra). Further, the Revenue failed to place on record any evidence showcasing that case of the assessee fell within any of the five exceptional circumstances as listed in Para-3 and accompanying evidentiary documents in terms Para-5 thereof in establishing regularisation thereof. As the impugned order suffered from compliance has rendered invalid as if it has never been issued, therefore ceases to have any effect in the eyes of law as *non-est*. In view of this categorical finding, delving deeper into merits is unwarranted.

9. In result, this bunch of three appeals of the Revenue are DISMISSED and Four appeals of the Assessee are ALLOWED

U/r 34 of ITAT Rules, these orders are pronounced in the open court on this Monday 21st day of August, 2023.

-S/d-

PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / PUNE ; दिनांक / Dated : 21st day of August, 2023.

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1.अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

4. The Pr.CIT, Panaji

5. DR, ITAT, Bench, Panaji

*SGR(Allotment 0:7)

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

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

6.गार्डफाइल / Guard File.

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