

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: A: NEW DELHI

BEFORE SHRI G.S PANNU, HON'BLE PRESIDENT
AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA Nos.625 & 626/Del/2023
Assessment Year: 2016-17

Ankit Jain, 1163/17, Kucha Mahajani, Chandni Chowk, Delhi 110006 PAN AHCPJ 1679 F	vs.	The DCIT, Central Circle-7, New Delhi
(Appellant)		(Respondent)

For Assessee :	Shri Rajiv Jain, CA
Revenue For :	Shri Zafarul Haque Tanweer CIT(DR)

Date of Hearing :	03.10.2023
Date of Pronouncement :	06.10.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

These appeals have been filed against the order CIT(A)-24, New Delhi dated 31.01.2023 & 13.02.2023 for A.Y. 2016-17

2. The grounds of appeal in ITA No. 625/Del/2023 for A.Y. 2016-17 are as follows:-

1. *Where the Id DCIT, CC-7, New Delhi recorded his satisfaction note u/s 153C of the Act on 04.02.2021 after gap of more than thirteen months from completion of the assessment in the case of searched person which was completed in the month of December, 2019 and not immediately thereafter, as required by the judgment of the hon'ble Supreme Court in the case of CIT vs Calcutta Knitwears, [2014] 43 taxmann.com 446 (SC) and CBDT Circular No 24/2015 dated 31.12.2015, the Id CIT(A)-24, New Delhi was wrong in upholding the assumption of jurisdiction us 153C of the Act.*

2. *Where the Id DCIT, CC-7, New Delhi passed the assessment order u/s 153C/143(3) of the Act on 30.12.2021 manually, without mentioning DIN in the body of the assessment order and also not in conformity with the manner prescribed in CBDT Circular No 19/2019 dated 14.08.2019, the Id. CIT(A)-24, New Delhi was wrong in holding that a valid DIN has been issued for the assessment order.*

3. *Where in respect of order dated 30.12.2021 passed u/s 153C/143(3) of the Act for which limitation was due to expire on 31.12.2021 and the Id DCIT, CC-7, New Delhi informed the DIN vide intimation dated 14.01.2022 which is also barred by limitation, the Id. CIT(A)-24, New Delhi was wrong in holding that a valid DIN has been issued for the assessment order.*

4. *Where intimation dated 14.01.2022 informed that order u/s 153C of the Income-tax Act, 1961 dated 30/12/2021 is having Document No. (DIN) ITBA/AST/M/153C/2021-22/1038740420(1) and no separate DIN is generated for Notice of Demand dated 30-12-2021 issued u/s 156 of the Act, Id CIT (A)-24, New Delhi was wrong in holding that demand notice is part of the assessment order for which no separate DIN is required.*

5. *That on the facts and in the circumstances of the case the approval u/s 153D of the Act granted by the Addi. Commissioner of Income Tax, Central Range-2, New Delhi have been granted mechanically without application of mind.*

6. *That on the facts and in the circumstances of the case where assessment was completed without providing legible copies of the statements relied upon by the Id AO and without providing an opportunity of cross examination, the CIT(A)-24 was wrong in holding that there was no obligation to grant cross examination of the concerned person(s).*

7. *That on the facts and in the circumstances of the case the Ld. CIT(A) CIT(A)-24, New Delhi was wrong in confirming the addition of Rs. 30,00,000/- as the amount of peak of unexplained cash as unexplained money us 69A of the Act.*

8. *That on the facts and in the circumstances of the case the Ld. CIT(A)-24, New Delhi was wrong in confirming the addition of Rs. 3,85,061/- made by assuming the profit at Rs. 3,85,061/- from alleged undisclosed cash purchases of gold from JBL as unexplained money u/s. 69A of the Act.*

3. The Id. Assessee Representative (AR) drawing our attention towards copy of assessment order dated 30.12.2021 passed u/s. 153C/143(3) of the I.T Act 1961 (for short the 'Act') submitted that there is no document identification number (DIN) in the order therefore in view of recent judgement of Hon'ble High Court of Calcutta dated 26.09.2023 in ITA No. GA/1/2023 in the case of PCIT vs. Tata Medical Central Trust, Kolkata and order of ITAT Delhi dated 03.08.2023 in ITA No. 2486/Del/2022 for AY 2013-14 in the case of Abhimanyu Chaturvedi vs. DCIT and other appeals and in view of binding CBDT circular no. 19/2019 dated 14.08.2019 the assessment order not bearing DIN number is non-est in the eyes of law and thus the same may kindly be quashed.

4. Replying to the above the Id. Senior DR supported the orders of the authorities below and submitted that the Assessing Officer has generated DIN number on 14.01.2022 subsequently which is clear from the submissions of the Assessing Officer dated 28.09.2022 therefore legal contention of assessee may kindly be dismissed.

5. On careful consideration of above rival submissions, first of all, it is clear from the copy of impugned assessment order that the Assessing Officer passed assessment order manually without generating any DIN number and this fact also discernable from the submissions of the Assessing Officer dated 28.02.2022 para 2.3. Identical issue was placed for adjudication before ITAT 'A' Bench in the case of Abhimanyu Chaturvedi vs. DCIT (supra) wherein by referring to various orders and judgements including order of ITAT Kolkata Bench in the case of Tata Medical Centre Trust vs. CIT (E) reported as (2022) 140 taxmann.com 431 it was held that the CBDT circular has made it mandatory that all the orders of Department should have DIN number indicated on the face of the order and the orders passed without DIN number in violation of said circular are non-est in the eyes of law. Said order of ITAT Kolkata has been upheld by Hon'ble Jurisdictional High Court of Calcutta rendering judgment dated 26.09.2023 (supra), wherein it was held thus:-

We have heard Ms. Smita Das De, learned standing Counsel appearing for the appellant/revenue and Mr. Abhratosh Majumder, learned senior Advocate, assisted by Mrs. Akshara Shukla, learned Advocate, for the respondent/assessee.

The short issue which falls for consideration is whether the DIN was mentioned in the order passed under Section 263 of the Act. The learned Tribunal upon examining the facts held that the order does not incorporate the DIN number and it is in violation of the Circular No. 19 of 2019, dated 14th August, 2019. In the said Circular, in paragraph 4 it has been stated that any communication which is not in conformity with Para 2 and Para 3 of the said Circular shall be treated as invalid and shall be deemed to have never been issued. The Tribunal on examination of the facts held that the requirement as mentioned in the Circular namely, quoting of the Document Identification Number, has not been followed and therefore allowed the assessee's appeal.

The learned counsel for the appellant submitted that the intimation letter should be treated as part and parcel of the substantive order. However, in the intimation letter there is nothing mentioned as to why in the substantive order the Document Identification Number was not mentioned as mandated in the Circular.

The revenue filed miscellaneous application seeking for rectification of the said order. Once again the Tribunal has undertaken a factual exercise and in fact, raised a specific query to the revenue to point out how a DIN intimation letter along with the manual order as explained by the Commissioner of Income Tax (Exemption) in his reply fulfils the categorical requirement mandated by the CBDT Circular, more particularly, in paragraph 2 of the said Circular, that the body of the communication, the order under Section 263 of the Act, must contain the fact and that the communication issued referred to the DIN without justifying as to how the non compliance of the CBDT Circular dated 14 August, 2019, which was noted by the Tribunal when it passed the main order. The Tribunal notes that this specific query was unable to be answered by the revenue and therefore the learned Tribunal came to the conclusion that the order passed under Section 263 does not satisfy the requirement mandated by the CBDT Circular.*

Thus, we find no substantial question of law arises for consideration in this appeal. Accordingly, the appeal is dismissed.

6. Accordingly, in view of foregoing discussion we are inclined to hold that the assessment order without DIN number and without any mention regarding non generation of DIN number in the body of assessment order is not a curable defect which can be removed or rectified by way of subsequent generation of DIN number on 14.01.2022. Therefore respectfully following the preposition rendered by Hon'ble High Court of Calcutta in the case of PCIT vs. M/s. Tata Medical Centre Trust (supra) and ITAT Delhi in the case of Abhimanyu Chaturvedi vs. DCIT (supra) we hold that the impugned assessment order dated 30.12.2021 for AY 2016-17 is non-est in the eyes of law being passed without complying with the binding circular of CBDT dated 14.08.2019 (supra). Consequently, grounds no. 2 to 4 of assessee are allowed.

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7. The Id. Representatives of both the sides have agreed to the fact that on the legal issue of non mention of DIN number on the face of assessment order dated 14.12.2019 passed u/s. 143(3)/147 of the Act are identical and similar. Therefore our conclusion drawn in the earlier part of this order for ITA No. 625/Del/2023 would apply *mutatis mutandis* for ITA No. 626/Del/2023 and consequently said assessment order dated 14.12.2019 is also held as non-est in the eyes of law being passed without complying with the binding CBDT circular dated 14.08.2019 (supra). Accordingly, grounds no. 1 & 2 of assessee are allowed.

8. Since no arguments have been placed by the Id. Representative of both the sides on the other grounds of assessee therefore, we don't deem it proper to adjudicate other grounds of assessee in absence of arguments.

9. In the result, both the appeals of assessee are allowed in the manner as indicated above.

Order pronounced in the open court on 06.10.2023.

Sd/-
(G.S PANNU)
PRESIDENT

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 06th October, 2023

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi