**IN THE INCOME TAX APPELLATE TRIBUNAL GAUHATI BENCH**
**VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT**
**AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.211/GTY/2014**
**Assessment Year: 2010-11**
**&**
**ITA No.08/GTY/2016**
**Assessment Year: 2011-12**

| | | |
|---|---|---|
| Bimal Paul,<br>Prop. M/s. Lokenath Enterprise Rice Market, Fatak Bazar, Silchar-788001, Assam<br>(PAN: AJMPP9568K) | Vs. | Income Tax Officer, Ward-1, Silchar, Assam |
| **(Appellant)** | | **(Respondent)** |

**Present for:**

Appellant by : N o n e
Respondent by : Shri Arun Bhowmick, JCIT

Date of Hearing : 17.07.2023
Date of Pronouncement : 06.10.2023

**O R D E R**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

Both the captioned appeals filed by the assessee are against the separate orders of Ld. CIT(A), Shillong dated 15.05.2014 and 09.11.2015 against the separate assessment orders of ITO, ward-1, Silchar u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 12.03.2013 and 14.03.2014 for AYs 2010-11 and 2011-12.

2. Since there are certain common issues in both the appeals filed by the assessee, therefore, we find it proper to deal with

both of them together by passing a consolidated order for the sake of brevity and convenience. The grounds of appeal taken by the assessee in both the appeals are reproduced as under:

Grounds of appeal for AY 2010-11:

*"1. That on the facts of the case and in law Ld. CIT(A) has erred in holding that the assessment order u/s.143(3) dated 12-03-2013 which was passed on 01-04-2013 and served on 03-04-2013 was a valid order in spite of the same had not been signed by the Ld. AO and failure of the Ld. AO to serve the assessment order within a fortnight of the date of assessment.*

*2. That the Ld. CIT(A) has erred in law and on facts in justifying passing of the assessment order by the Ld. AO after fourteen working days after the date of last hearing.*

*3. That on the facts and in law the Ld. CIT(A) has erred in holding that the assessment order passed by the Ld. AO was not barred by limitation when the assessment order u/s 143(3) dated 12-03-2013 was passed on 01-04-2013 and served on the appellant on 03-04-2013 ignoring the fact that the amendment in section 153(1) by the Finance Act, 2012 was brought in the statute book before 31-12-2012.*

*4. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in holding that the Ld. AO had not suppressed disclosure made by the appellant vide his letter dated 04-12-2012 and that there was no bias approach by the Ld. AO.*

*5. That in law and on the facts the Ld. CIT(A) has erred in holding the Notice of Demand which was not in the prescribed form and was a self prepared distorted form and also in spite of failure of the Ld. AO to serve the notice of demand within a fortnight of the date of assessment to be valid at the same time advising the Ld. AO to issue a fresh Demand Notice in the prescribed form and challan.*

*6. That the Ld. CIT(A) has disregarded CBDT Instruction No. 20/2003 dated 23-12-2003 as there has been failure to issue the appellate order within 15 days of the last hearing.*

*7. That the Ld. CIT(A) has disregarded the direction of the Hon'ble Gauhati High Court in Case No: WP(C) 937/2014 vide order dated 03-03-2014."*

Grounds of appeal for AY 2011-12:

*"l. That on the facts of the case and law Ld. CIT(A) has erred in dismissing the pleas of the appellant that, the Ld. AO has failed to initiate the assessment proceeding by issue and serving upon the assessee a notice u/s 143(2) of the Income Tax Act, 1961, as per the CBDT Instruction, and that the notice u/s 143(2) issued and served is an invalid notice, and that time to time notices u/s 142 issued and served are illegal notices, and also that the Income Tax Law does not permit the Ld. AO to serve more than one notice u/s 142 for the same and similar requirements, in spite of justifying all the grounds with necessary documents.*

*2. That the Ld. CIT(A) has erred in law and on the facts in justifying the assessment order u/s 143(3) passed by the Ld. AO in total violation of the guidelines issued by the CSDT vide F. No. 225/26/2006-ITA.II (Pt.), dated 08-09-2010.*

*3. That the Ld. CIT(A) has issued the appellate order after expiry of the limitation period prescribed by the CBDT vide Instruction No. 20/2003 dated 23-12-2003, as there has been failure to issue the appellate order within 15 days of the last hearing. The date of hearing of the case before the Ld. CIT(A) was on 28-10-2015 and the appellate order was issued on 19-11-2015 vide Speed Post acknowledgement No: EE437339668IN.*

*4. That the Ld. CIT(A) has passed the appellate order after expiry of the limitation period prescribed by the CBDT vide Instruction No. 1489 dated 03-11-1982. In this case, as per the CBDT Instruction, the Ld. CIT(A) was required to pass the appellate order within 20 days after the final hearing. The date of hearing of the case before the Ld. CIT(A) was on 28-10-2015 and the appellate order dated 09-11-2015 was passed on 19-11-2015 vide Speed Post acknowledgement No: EE437339668IN."*

3. From the above grounds of appeals, it is important to note that there are no grounds of appeal raised in respect of findings of the Ld. AO towards undeclared bank accounts for the quantification of undisclosed income. The conclusion reached and the resultant additions made to the returned income by the Ld. AO in the impugned assessment orders have become final since they are uncontroverted, however, subject to adjudication of technical challenges mounted by the

assessee in these two appeals vide above stated grounds of appeal. Accordingly, additions made by the Ld. AO in the impugned assessment orders per se are not required to be considered or decided in the appeals before us. Therefore, reference to additions made is only to set a background to the grounds of appeal which are technical challenges and taken up for adjudication.

4. From the entries in the order sheets, it is noted that on several dates of hearing in the past, none appeared on behalf of the assessee though notices sent have not been returned unserved. However, there is a written submission of two pages which is placed on record with acknowledged stamp of 17.05.2022. Assessee has also furnished a paper book containing 97 pages, index of which is dated 23.07.2017. Documents furnished in the paper book are, however, not certified in terms of Rule 18 of the Income Tax (Appellate Tribunal) Rules, 1963 (ITAT Rules), more particularly as to mentioning of the authority before whom each of these papers were filed. Assessee has also furnished a letter dated 06.08.2022 filed with the Registry on 08.08.2022 wherein it is stated that assessee has nothing more to say and submit other than what has already been placed on record for the purpose of disposal of his appeals.

5. Before us, none has appeared to represent the assessee. However, we are inclined to adjudicate on the matter by taking into consideration observations and findings of the authorities below, written submission and paper book placed on record by

the assessee as noted above along with able assistance from the Ld. Sr. DR.

6. We first take up appeal for AY 2010-11 in ITA No. 211/GTY/2014, findings of which on the common issues will apply *mutatis mutandis* to the other appeal for AY 2011-12 in ITA No. 08/GTY/2016.

7. We have carefully gone through the assessment order dated 12.03.2013 as well as the first appellate order dated 15.05.2014. From the perusal of both the orders, it is worth appreciating the approach adopted by both the authorities below for the investigation and examination of the affairs of the assessee and adjudicating thereupon in a very systematic and structured method by dealing with every aspect of the issues raised by the assessee which are predominantly technical in nature.

7.1. Assessee has taken five grounds of appeal before the Ld. CIT(A), all of which are technical in nature which he has repeated before the Tribunal also. Ld. CIT(A), while dealing with all the five technical issues raised by the assessee has demonstrated high level of patience and dealt with them in a comprehensive manner along with distinguishing the long list of judicial precedents relied upon by the assessee. It is worth appreciating the efforts of Ld. CIT(A) in dealing with each of the technical issues to put them at rest by giving lucid and well reasoned explanations. Ld. CIT(A) has also taken into

account the submissions of the assessee on each of the technical issues and passed a speaking order.

7.2. After going through the entire first appellate order, we unhesitantly find that we have nothing more to add on the observations and findings given by the Ld. CIT(A). In order to appreciate his well reasoned and speaking order, it is worth reproducing the same in toto for justifiable appreciation of the efforts put in by him.

> *"1.1 Before adverting to the merits of the appeal, it would be necessary to mention that the collection of demand arising from the impugned order of assessment was the subject-matter of extensive correspondence and litigation initiated by the appellant. Consequent upon the completion of assessment proceedings, the appellant approached the jurisdictional Assessing Officer seeking stay of collection of demand through his various letters including letter dated 29.04.2013, 16.05.2013 and 27.05.2013. The Assessing Officer declined to do so vide his letters dated 10.05.2013, 20.05.2013 and 04.06.2013. Thereafter, the appellant moved an application for stay of demand in this office which was considered and disposed vide order dated 26.07.2013, granting a scheme of instalments. This was followed by a review petition filed in this office vide his letter dated August 14, 2013 which was also disposed on August 22, 2013.*
>
> *1.2 The appellant then invoked the writ jurisdiction of the Hon'ble Gauhati High Court. Briefly stated, the Hon'ble High Court declined to interfere in the matter of stay of demand vide its order dated September 11, 2013, in WP(C) 3936/2013 and Misc Case No. 2610 of 2013. Next, the appellant approached the Hon'ble Gauhati High Court again and in the ensuing order in WP(C)/937/2014 dated March 03, 2014, Their Lordships were pleased to direct the disposal of the instant pending appeal within a period of three months from the date of production their order. Pursuant to the above and in respectful compliance thereto, the appeal was fixed for hearing. These are the encapsulated sequence of events in the interregnum between the passing of the assessment order and the present appeal.*
>
> *1.3 In response to notice, Sri N.C Talukdar, Advocate and Authorized Representative, appeared. He filed a written submission and explained the case. The relevant documents have been perused.*

*2.0 THE BACKGROUND*

*2.1 The background facts that are required to be taken note of is that during the financial year under consideration, the appellant-individual was the proprietor of a concern styled as "M/s Lokenath Enterprises", Silchar, dealing in items such as rice, pulses, sugar, edible oil, etc. In addition to this, the appellant had income from plying of mini-trucks and interest income. The return of income filed for the assessment year declared a total income of Rs. 3,71,300/-. During the course of the ensuing scrutiny proceedings, it was found that the appellant had maintained three bank accounts which were undisputedly not disclosed in the return of income. The particulars of these accounts are:*

*Undisclosed Bank Accounts*

| *Sl.* | *Bank Account* | *Account Number* | *Deposits during the FY* |
|---|---|---|---|
| *(i)* | *Axis Bank Ltd., Silchar* | *271010100132633* | *Rs. 1,43,06,300/-* |
| *(ii)* | *-do-* | *271010100055648* | *Rs. 3,60,27,809/-* |
| *(iii)* | *HDFC Ltd., Silchar* | *10631000001479* | *Rs.44,34,917/-* |

*2.2 The aggregate deposits in the aforesaid bank accounts stood at Rs.5,47,69,026/-. When confronted by the Assessing Officer, the appellant admitted vide his letter dated 04-12-2012, that all the three bank accounts were undisclosed, though he claimed that he was running a commission business and the transactions were routed through these accounts. However, no documentary evidences in support of the claim of the so-called commission business were produced before the Assessing Officer. No valid explanation was furnished by the appellant in respect of the source of deposits appearing in the aforementioned undisclosed bank accounts. On test verification, the Assessing Officer found discrepancies in purchases claimed to have been made from some of the parties, which was conceded to and explained as a 'mistake' by the appellant. These facts have been mentioned in the assessment order. In the Statement of Facts filed, the appellant iterated that the aforesaid three banks accounts were 'mistakenly' not disclosed in the return of income.*

*2.3 On a consideration of these and other facts delineated in the assessment order, the Assessing Officer rejected the contention of the appellant that the transactions in the undisclosed bank accounts were attributable to a commission business. The aggregate of deposits in the three bank accounts at Rs.5,47,69,026/- was taken*

*as the suppressed sale. To this figure, the Assessing Officer applied the gross profit rate of 4.11 percent (borrowed from the profit rate reflected by the appellant himself in his accounts) for determining the undisclosed profit. Secondly, the investment made by the appellant from undisclosed sources was determined at Rs,13,95,000/- by working out the peak credit. Thirdly, the undeclared interest income in the bank accounts amounting to Rs.939/- was also added to the total income. The modalities of the computation of undisclosed income are at paras (12) to (17) of the assessment order. In a nutshell, the additions made in the order of assessment arising from undeclared bank transactions in the three undisclosed accounts are summarized as under:*

| | | | |
|---|---|---|---|
| *(i)* | *Profit on suppressed sale* | *::* | *Rs. 22,57,001/-* |
| *(ii)* | *Unexplained investment in purchases* | *:* | *Rs.13,95,000/-* |
| *(iii)* | *Interest accrued in the undisclosed bank accounts* | | *Rs. 939/-* |

*2.4 In this manner, the income was assessed at Rs.40,24,240/- raising a net tax and interest demand of Rs.15,16,830/-.*

*2.5 There is no ground of appeal raised in respect of the findings of the Assessing Officer vis-a-vis the undeclared bank accounts or the quantification of undisclosed income. Being uncontroverted, the conclusions reached and the resultant additions made to the returned income as per the assessment order have become final, subject to the adjudication of the technical challenges mounted by the appellant in this appeal. Thus, the additions per se are not required to be considered or decided in this appeal and find reference here only as a background to the grounds of appeal, which are taken up for discussion in the succeeding paragraphs of this order.*

*3.0 GROUND NUMBER (1)*

*3.1 The first ground of appeal seeks to declare the impugned assessment order dated 12.03.2012 as invalid on the ground that the same does not bear the signature of the Assessing Officer. The appellant relied upon the decisions of the Hon'ble Supreme Court rendered in the case of Kalyankumar Ray vs. CIT [1991] reported in 191 ITR 634 and that given in the case of Smt. Kilasho Deoi Burman vs. CIT [1996] reported in 85 Taxman 346. Drawing attention to the decision of the Hon'ble Supreme Court in Shenoy & Co. vs ITO [1985] (155 ITR 178), it was submitted that the aforesaid decisions were binding on all, including those not parties before the Court. Reliance was also placed on the decision of the Ld. Appellate Tribunal, Mumbai in Vijay Corporation vs. ITO in ITA No. 1511/Mum/2010. The appellant asserted that disregarding the decision of the Hon'ble*

*Supreme Court amounted to violation of Article 141, Article 51-A and Article 265 of the Constitution of India. On the strength of these arguments, the cancellation of the impugned order of assessment was urged.*

*3.2 The matter has been considered. The decision in the case of Kalyankumar Ray (supra) relied upon by the appellant, is first taken up. In the said case, the issue that had fallen for consideration was whether under the assessment order itself should contain the calculation of tax, interest, etc., and of the net sum payable by/refundable to the assessee or whether these could be mentioned in the demand notice. The Hon'ble Supreme Court held that "assessment" is one integrated process involving not only the assessment of the total income, but also the determination of the tax, with the latter being as crucial for the assessee as the former. It was declared that the statute does not require the service of the assessment order on the assessee and contemplates only the service of a notice of demand. The Hon'ble Apex Court held that all that is needed is that there should be some order in writing initialled or signed by the Assessing Officer before the period of limitation prescribed for completion of assessment has expired in which the tax payable is determined.*

*3.3 The facts of the matter are that the copy of the assessment order passed under section 143(3) of the Act has "sd/-" written above the name and designation of the Assessing Officer. The Demand Notice, however, duly bears the signature and seal of the Assessing Officer. The determination of total income at Rs.40,24,240/- and the computation of tax have been made in the body of the assessment order itself. Thereafter, the computation of Education Cess, statutory interest under sections 234B/234C of the Act, credit for prepaid taxes, adjustment for amount refunded earlier and interest under section 234D of the Act, are recorded in the body of the assessment order leading to the eventual quantification of the amount payable at Rs.15,16,830/-. This is the same amount that has been recorded in the corresponding Notice of Demand dated March 12, 2013, issued to the appellant by the Assessing Officer vide his office Memo No. AJMPP9568K/W-1/Sil/1879. Hence, the signed Demand Notice is based on the itemized computation of tax and interest in the order of assessment. Thus, as per the decision of the Hon'ble Supreme Court in the Kalyankumar Ray case (supra), the validity of the assessment order and that of the resultant Demand Notice do not stand vitiated.*

*3.4 The matter would have been different had the Demand Notice been bereft of the signature of the Assessing Officer. However, this is not the case. The Demand Notice, filed by the appellant himself along with the appeal documents, shows that it has been signed by the Assessing Officer. The Hon'ble Supreme Court has observed and held that the Act does not even envisage the service of the assessment order and the service of the Demand Notice is sufficient*

*compliance to the statutory provisions. The Demand Notice has been duly drawn up in consequence to the order of assessment, the net amount payable has been specified therein, it has been signed by the Assessing signed/stamped by the Assessing Officer and served on the appellant. Hence, the aforesaid decision does not further the arguments of the appellant.*

*3.7 The third case relied upon is that of the Ld. Appellate Tribunal, Mumbai, in Vijay Corporation vs. ITO [I.T.A No. 1511/Mum/2010 dated 20-01-2012] reported in 50 SOT 33 (URO), is that of a non-jurisdictional Appellate Tribunal and, therefore, is not a binding precedent. Moreover and with utmost respect, the observation made therein that the Hon'ble Supreme Court in the case of Smt. Kilasho Devi Burman (supra), did not give 'any importance' to the service of notice of demand requires careful consideration after taking into account the full text of the decision, particularly, the portion extracted at para (3.6) supra. On the other hand, the Hon'ble Kerala High Court in CIT vs K.H. Parameswara Bhat [1974] reported in 97 ITR 190, laid down the well-understood distinction between the making or the passing of an assessment from the communication of a copy of the assessment order to the assessee. After taking notice of the decision in V. S. Sivalingam Chettiar v. Commissioner of Income-tax [1966] 62 I.T.R. 678 (Mad), the Hon'ble High Court held that there was no specific provision in the Act enjoining that an assessment order must be communicated to the assessee. Nor is there any provision in the relevant Rules that assessment orders must be communicated. All that section 30 of the Act required was that a notice of demand in the prescribed form specifying the sum payable should be served on the assessee when a tax or penalty is due in consequence of an order passed under the Act. Reverting to the issue under consideration, it has to be held that where the relevant order of assessment was lawfully passed and the signed demand notice specifying the amount payable was served on the appellant, along with a copy of the assessment order, the mere fact that the appellant's copy was marked "sd/-", would not constitute a fatal debility. The Hon'ble Calcutta High Court in Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. v. CIT [1994] 208 ITR 882, held that there can be no invalidation of the assessment order when the amount of tax is mentioned in the demand notice, which is an undisputed fact in this appeal.*

*3.8 In view of the discussion as aforesaid, the ground of appeal is not meritorious. The same fails and is, accordingly, dismissed.*

*4.0 GROUND NUMBER (2)*

*4.1 The appellant has taken the ground that the Assessing Officer failed to pass the impugned assessment order dated 12.03.2013, within 14 working day after the date of last hearing taken on*

*28.01.2013, thereby, afflicting it with a fatal defect. In his written submission, the appellant has further claimed in a similar vein, that the assessment order along with Demand Notice dated 12-03-2013, was served on 03-04- 2013, i.e., after the expiry of 21 days, though it ought to have been served within a fortnight. Thus, it was submitted that the action of the Assessing Officer was in breach of the stipulations made in the "Manual of Office Procedure" (Vol. II, 2003) issued by the CBDT, New Delhi, the CBDT Circular issued through letter No. 241/23/70 dated 23-10-1970, Circular No 29 dated 08-08-1978 of the Directorate of Organization and Management Services, CBDT, New Delhi (DOMS) and the Do's and Don't's Manual, 2011 of the CBDT. These were claimed to be binding on the Assessing Officer. A number of judicial authorities have been cited. The appellant urged, that as per a 'true application and spirit of law', the assessment order was invalid and deserved to be cancelled.*

*4.2 The matter has been considered. The date of last hearing as conveyed by the Assessing Officer vide his letter dated 13.05.2014, does not appear to be 28.01.2013 as claimed, but was 05.02.2103 on which date the appellant along with his representative had appeared before the Assessing Officer. However, this marginal aspect doesn't materially alter the position taken by the appellant. On merits, the argument of the appellant is palpably untenable. The Departmental Manual of Office Procedure, heavily relied upon by the appellant, is in the nature of advisory guidelines to be normally followed in ideal conditions. At page (37) of the said Manual, [which is identical to the DOMS Circular 29 dated 08.08.1978] it is, inter alia, stated that the assessment order, demand notice and challan/refund voucher should be served expeditiously and within a fortnight of the date of assessment. It also goes on to suggest that the date of service of the demand notice should be noted in the D&CR and that the Assessing Officer should inspect the said register by the fourth of the succeeding month with a view to ensure that the date of service of demand is entered and wherever demand notices are not served, to find out the reasons of non-service and take necessary steps to serve the remaining demand notices.*

*4.3 It is noteworthy that the said Manual explicitly declares that it is for Departmental use only. The recommendations made in the said document do not have the force of law and a deviation therefrom cannot conceivably lead to the annulment of the assessment order. The guidelines are not statutory provisions and at best, can be regarded as executive guidelines. If an order of assessment has been validly passed within the limitation prescribed in the Act, then an assessee will not be entitled to cite the advisory guidelines mentioned in an internal Departmental publication to demand that the assessment order itself should be cancelled. This would be an erroneous view to hold. The assessment order passed within the legal limitation period, would not lose its validity merely because it*

*was passed on the, say, 15th day of the final hearing rather than the 14th day, or that it were served on the 22nd day from the date of the order rather than within 21 days. Accordingly, there is no tenable basis for seeking an annulment of the order admittedly passed within the time prescribed by the statute. In other words, it cannot be anyone's case that an internal Departmental Manual can or does override the express provisions of the Act itself.*

*4.4 In any event, the advisory recommendations made in the Manual of Office Procedure cannot, under any stretch of imagination, be equated to a binding Circular or Instruction issued by the Board in exercise of its powers under section 119 of the Act. The administrative guidelines ought to be followed by the subordinate officers, but a deviation therefrom cannot possibly be taken advantage of by the appellant to seek an annulment of the assessment order. There are no interpretational issues or complexities involved in appreciating this rather fundamental legal proposition. As a general rule, the administrative instructions such as these, lack statutory force and do not create or vest any legal right. These have been issued for streamlining the internal working of the Department or achieving some administrative objectives or seek to define desirable 'housekeeping' goals. A deviation or a misconstruction cannot be said to constitute a fatal error of law, if otherwise not in breach of the provisions of the Act.*

*4.5 If this be the position, then the reliance placed by the appellant on various decisions in this regard is misconceived. In the case of Navnitlal C. Jhaveri vs. K.K Sen, AAC [1965] reported in 56 ITR 198, the Hon'ble Supreme Court considered the effect of Circular No. 2(XXl-6/55) dated 10-05-1955 issued by the then Central Board of Revenue. Not only there was no dispute that it was a formal Circular, the Hon'ble Supreme Court itself observed that" Circular of the kind which was issued by the Board would be binding on all the officers ..... " (emphasis supplied). Thus, the aforesaid decision was based on a Circular which the Hon'ble Supreme Court declared as belonging to a category that was binding on the subordinate officers. In other words, not all missives issued by the Board are binding of the subordinate officials, even though the word 'Circular/ Instruction' may have been used. The second case cited by the appellant, i.e., the decision rendered in Ellerman Lines Ltd. vs. CIT [1971] reported in 82 ITR 913, is an iteration of the Navnit Lal C. Javeri decision (supra). In this case, the Hon'ble Apex Court was considering the effect of Notification dated 10-02-1942 issued by the then Board of Revenue under which instructions had been issued to the assessing authorities laying down the principles to be applied in assessing the foreign shipping companies and permitting them to elect to be assessed on the basis of the "ratio certificates" granted by the U.K, authorities and enabling them to get investment allowance. It cannot be anyone's case that the contents of the three volumes of the Manual of Office Procedure can be characterized as a*

*binding Notification. Moreover, it is useful to take note the observations of the Hon'ble Madras High Court in A.L.A. Firm vs CIT [1976] reported in 102 ITR 622, [affirmed in (1991) 55 Taxman 497 (SC) ], which is as under:*

> *"The decisions of the Supreme Court in Navnit Lal C. Javeri v. KK Sen, Appellate Assistant Commissioner of Income-tax [1965] 56 ITR 198 (SC) and Ellerman Lines Ltd. v. Commissioner of Income-tax [1971] 82 ITR 913 (SC) must be considered to be the exceptional ones".*

*4.6 In the case of KP Varghese vs. ITO [1981] reported in 131 ITR 597, which has been relied upon the appellant, the Hon'ble Supreme Court took cognizance of Circular dated 07-07-1964 of the Board that was issued under section 119 of the Act. Thus, the said Circular stood on a different statutory footing. In another case relied upon, i.e., Keshavji Ravji & Co. Vs. CIT [1990] reported in 183 ITR I, the Hon'ble Supreme Court made a reference to Circular No. 33-D (XXV-24) of 1965 of the CBDT which was declared to be 'statutory in character' and, therefore, binding on the authorities. In stark contrast, the appellant has relied upon a recommendatory guideline in an internally circulated publication that Demand Notices should be served in a fortnight's time of the date mentioned therein. This cannot be treated as being at par to a formal Circular or an Instruction issued under the powers conferred to the Board under the Act. Thus, while the proposition cited by the appellant that judgments of the Hon'ble Supreme Court is binding on all including those not parties before it, is absolutely unassailable and capable of no derogation, there is no decision that states that the Manual of Office Procedure or letters of the Board are binding on the Assessing Officer de hors the provisions of the statute.*

*4.7 The appellant has also apparently relied on the decision of the Ld. Appellate Tribunal in ITO vs. Bir Engineering Works [2005] reported in 94 ITD 164 (SB). However, a perusal of the decision shows that the finding given was that Instructions/Circulars issued under section 119 of the Act are binding on Department offices and was delivered in the context of Instruction No. 1979 dated 27-03-2000 of the CBDT in respect of not filing appeals below a benchmark tax effect for reducing litigation as well benevolently benefiting the small taxpayers. On the contrary, the documents cited by the appellant have not been issued under section 119 of the Act and neither do they even purport to supply an interpretation of the limitation clauses of the Act, nor do they relax the rigours of a provision of the statute.*

*4.8 The appellant has also filed a copy of Dos & Don'ts Manual, 2011, of the CBDT which advises officials to comply with Circulars, Notifications, Instructions issued by the CBDT and that the decisions*

*of the Hon'ble Supreme Court/ jurisdictional High Court should not be disregarded. The appellant has also referred to letter from F. No. 241/23/70-IT (Audit) dated 23-10-1970 which states that order of assessment should be passed within 14 working days after the date of last hearing. In para-(2) of the letter (issued approximately 44 years ago), it has been mentioned that the Board will look with 'disfavour' to any deviation, without adequate justification, from the prescribed time-limit. This in itself shows that the consequence of a deviation cannot be the annulment of the assessment order which has, as in this case, marginally overshot the recommended lag between hearing and passing/service of the order. However, this letter cannot be regarded as a statutory or a binding Circular/Instruction of the Board under section 119 of the Act. It may have administrative implications, but the same cannot go to annul the said order. Obviously, such letters, guidelines, manuals, Action Plan, etc., which are issued from time to time cannot incorporate a provision to the effect that a deviation from their suggestions would render the assessment order itself as non est. It may be gainfully mentioned that as per the legend appearing on its cover page of the Do's and Don't's document also, the same is exclusively for Departmental use only. Thus, even at the risk of repetition, it needs to be stressed that the Departmental Manual of Office Procedure or the DOMS letter has no legal consequences on the operation of the assessment order or the Demand Notice. The Manual cannot be classified as a set of binding instructions issued under section 119 of the Act. Thus, it can be concluded that prescriptions in the internal Manuals, Do's & Don'ts, letters of Audit or advisories of DOMS are to be noted, but do not have a binding compulsion on the Assessing Officer. Administrative instructions, rules or manuals, which have no statutory force, are normally not enforceable in a court of law. In the context of different facts, but with an applicable ratio decidendi, the Hon'ble Delhi High Court in Delhi Stock Exchange Association Ltd vs CIT [1980] reported in 126 ITR 532, held that such letters are merely advisory in nature and contain an administrative suggestion, having 'no compulsive or legal overtones".*

*4.9 The appellant has cited the case of decided by the ld. Appellate Tribunal, Indore, in Sanjay Kr. Agarwal vs. ACIT 5(1), Indore (LT.A No. 490/Ind./2008 dated 27-11- 2008. which was on Instruction No. 10/2004 dated 20-09-2004 of the CBDT. However, in Himachal Pradesh State Forest Corporation Ltd vs DCIT [1998] reported in 231 ITR 556, the Hon'ble Himachal Pradesh High Court has taken a contrary view. Similar is the position of the Hon'ble Madras High Court as adumbrated in ITO vs D. Manoharlal Kothary [1990] (236 ITR 357). In the case of Commissioner of Wealth-tax vs V. T. Ramalingam [1993], 201 ITR 839, the Hon'ble Madras High Court held that Circulars, being purely administrative in nature, cannot bind the appellate authorities in the matter of interpretation of the provisions of the Act.*

*4.10 Without prejudice, the matter can be considered from a different perspective also. The same paragraph of the Manual of Office Procedure which speaks of the service of the Demand Notice within a fortnight of the date of assessment, also speaks of entry of demand in other office registers, inspection by the fourth of the succeeding month by the Assessing Officer and his taking corrective action to serve any un-served demand notices. Thus, the Manual as well as the identical DOMS guidelines dated 08-08-1978, itself contemplate of a scenario where a Demand Notice may not have been served within a fortnight for whatever reasons. Thus, non-service of Demand Notice within 14 days is not declared to be a statutory infirmity so as to render the accompanying order of assessment as null and void. In deciding whether an assessment order is a nullity, a reference has to be made to the Act, Rules and binding decisions of the superior judicial authorities. There is not even a shred of material to suggest that the impugned assessment order dated 12.03.2013 and properly served on the appellant on 03.04.2013, was not passed within the limitation date.*

*4.11 In light of the discussion made above, the contention of the appellant that the order of assessment was a nullity for its failure to adhere to the guidelines and advisories comprised in office manuals, booklets and letters cannot possibly be upheld. No prejudice has been shown to be caused to the appellant by the fact that the assessment order was passed a few days after the date of hearing or that the demand notice was served on April 03, 2013. Obviously, no such prejudice can arise. The assessment order cannot be characterized as infirm, or forcibly choked into a nullity by the non-binding administrative prescriptions. Nothing has been pleaded or shown that it was in any manner at odds with a statutory provision of the Act or at a variance with a binding judicial decision.*

*4.12 Accordingly, the ground of appeal taken fails and is, therefore, dismissed.*

*5.0 GROUND NUMBER (3)*

*5.1 The appellant has raised a ground that the impugned assessment order ought to have been passed within 21 months from the end of the relevant assessment year. It is the appellant's case that despite the amendment made in section 153 of the Act vide the Finance Act, 2012, with effect from 01-07-2012, the time limit for passing an order under section 143(3) of the Act would still continue to be 21 months and not 24 months for the assessment year under consideration, on the ground that law applied ought to be the law in force during the financial year 2009-2010.*

*5.2 The matter has been examined. The relevant extract of the Explanatory Memorandum to the Finance Bill, 2012, reads as under: (emphasis supplied)*

*Extension of time for completion of assessments and reassessments*

*The existing provisions of section 153 and 153B, inter alia, provides the time limit for completion of assessment and reassessment of income by the Assessing Officer. Time limits have been provided for completion of assessment or reassessment under section 143(3), 147, 153A, 153C, etc. Further, these time limits get extended if a reference is made under section 92CA to the Transfer Pricing Officer during the course of assessment/reassessment proceedings. These time limits are either from the end of the financial year in which the notice for initiation of the proceedings was served or from the end of the assessment year to which the proceedings relate. It is proposed to amend the aforesaid sections, i.e., 153 and 153B so as to provide that the time limits for completion of assessments and reassessments shall respectively be increased by three months. The existing period and the new extended period for completion of pending proceedings and subsequent proceedings under these provisions is given below:*

*Limitation of time*

| *Proceedings under section* | *Current time allowed* | *Proposed Period* |
|---|---|---|
| *143 (others, omitted)* | *21 months from the end of the A. Y.* | *24 months* |

*These amendments will take effect from 1st July, 2012.*

*5.3 As is noted from the aforesaid, it has been specifically mentioned therein that the amendment will take effect from July 01, 2012 and will apply to all pending proceedings as on that date. Thus, all otherwise valid assessment proceedings pending on July 01, 2012, could be legitimately passed, not within 21 months from the end of the assessment year, but from the end of 24 months thereof. The aforesaid amendment is procedural in nature as distinct from a substantive amendment as it concerns the process of passing an assessment order within the specified time. It is well-understood that substantive laws determine the rights and liabilities of the parties concerned, whereas, procedural laws govern the manner in which such right or obligations are to be enforced or realized. Procedural amendments come into effect from the date specified in the relevant Finance Act, which in this case, was July 01, 2012.*

*5.4 The appellant has relied on a number of judicial authorities in support of the contentions canvassed by him. In the case of Addl. CIT vs Joginder Singh [1985] reported in 151 ITR 92, the Hon'ble Delhi High Court was considering substantive penal provisions in*

*respect of concealment and omission of taxable income. In the case of Reliance Jute and Industries Ltd. vs CIT [1979] reported in 120 ITR 921, the Hon'ble Supreme Court was seized of a matter involving set off of brought forward business loss with the business income of the current year. Matters involving computation of assessable total income are substantive in nature. Additionally, in this case, the Hon'ble Apex Court held that it is a cardinal principle of tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication. In this case, the aforesaid amendment of section 153 of the Act has been explicitly made applicable from July 01, 2012, to all pending assessment orders. In the relied upon case of Karimtharuvi Tea Estate Limited vs State of Kerala [1966] reported in 60 ITR 262, the Hon'ble Supreme Court deliberated on the levy of additional tax by way of a surcharge on the agricultural income-tax as well' as levy of super-tax. The amendment related to computation of total income and, consequently, was clearly substantive in nature. The case of Commissioner of Wealth-tax vs Smt. Hasmatunnisa Begum [1989] reported in 176 ITR 98 (S.C.), dealt with the proper construction of the proviso to section 4(1)(a) of the Wealth-tax Act, 1957, which provides for exemption respecting transferred assets which would otherwise be includable in the taxable wealth of the assessee under section 4(1)(a) of the Act. Thus, there would be no manner of doubt that the same dealt with a substantive provision impacting upon the determination of taxable net wealth of an assessee. In the cited case of CIT vs Scindia Steam Navigation Co. Ltd. [1961] reported in 42 ITR 589, the Hon'ble Supreme Court considered an issue relating to charge of tax with reference to section 10(2)(vii) of the Act of 1922. This would be a substantive amendment, without an iota of doubt. Thus, the case laws cited by the appellant concern themselves with amendments that are substantive in nature, while the issue at hand relates to a change in limitation period only leaving the computation of total income untouched and is, therefore, manifestly procedural in nature.*

*5.5 The date from which the aforementioned amendment to section 153 of the Act came into force and applied to all pending proceedings is unambiguously and textually apparent from the Finance Bill, 2012. It extends the date of passing of assessment orders under section 143(3) of the Act by three months. It has absolutely no impact on the substantial rights of an assessee relating to the determination of total income. In this view of the matter, it is apparent that the Assessing Officer was fully justified in passing the order of assessment under section 143(3) of the Act for the assessment year 2010-2011 on any date anterior to 31st of March, 2013. The said assessment order was pending as on July 01, 2012. It was not required statutorily to be passed prior to this date but could have been passed at any time prior to December 31, 2013, even if the amendment to section 153 of the Act was not brought in the statute book. Hence, the extended time limit till March 31, 2014,*

*for passing the said assessment order by virtue of the amendment made was available to the Assessing Officer.*

*5.6 Consequently, it has to be held that the impugned order of assessment was passed within the applicable limitation date. Thus, the arguments of the appellant that the said order itself was barred due to limitation as it was passed beyond December 31,2012, fail to find any merit whatsoever. In light of the discussion made as foregoing, the ground of appeal fails and is, accordingly, dismissed.*

*6.0 GROUND NUMBER (4)*

*6.1 Here, the appellate has raised a grievance that while passing the assessment order, the Assessing Officer has suppressed material facts of the case. In its written submission, the appellate averred that he had 'voluntarily' offered undisclosed income of Rs. 6,10,000/- vide his letter dated 04.12.2012 addressed to the Assessing Officer. A copy of the said letter has been filed. It was claimed that in the submission dated 04.12.2012, a disclosure of Rs. 6,10,000/- was not rejected by the Assessing Officer as nothing about the said disclosure finds mention in the assessment order. Thus, the appellant concluded, "it was 'clear' that the Assessing Officer failed to give his finding and conclusion 'in the manner which the law requires'. All this clearly to a biased approach and thus vitiates the quasi- proceedings. Therefore the assessment is invalid."*

*6.2 The matter has been considered. From a perusal of the letter dated 04.12.2012 as enclosed by the appellant, it is noted that, when confronted, the appellant himself admitted before the Assessing Officer that he had business transactions through all the three undisclosed bank accounts and that they had transactions were to the quantitative extent mentioned by him. In the said letter, a claim was made that during the relevant financial year, he had carried out rice/bhusi business on a commission basis and the deposits/withdrawals found reflection in these three concealed bank accounts. The appellant claimed that advances were received from different parties and payments were made to them. Moreover, the appellant submitted before the Assessing Officer that he had been unable collect a single confirmation evidencing receipt of advances. The appellant in the said letter, thereafter, proceeded to convey to the Assessing Officer that he was offering a sum of Rs. 6,10,100/- as a 'reasonable amount of undisclosed income'. He concluded by assuring the Assessing Officer that 'this thing will not happen in the future' and that no further action should be initiated.*

*6.3 Turning to the assessment order, it is to be noted that the Assessing Officer has made an explicit reference to the aforesaid letter of the appellant at paragraph (7) thereof, where he has mentioned that assessee had admitted to the existence of business transaction through all the three undisclosed bank accounts. The Assessing Officer has also noted that in the said letter dated*

*04.12.2012, the assessee had claimed that he was running a commission business during the relevant period, though, this was not support by any documentary evidence. The Assessing Officer has further discussed the contents of the 'disclosure' made by the appellant in the succeeding paragraphs of his order. From the same, there is not even a modicum of doubt that the Assessing Officer found the claim made by the appellant through the letter dated 04.12.2012, as unsubstantiated, contradictory and unacceptable. In this factual matrix, there is no merit in the contention of the appellant that the Assessing Officer has completely glossed over and ignored his letter dated 04.12.2012. While it may be true that the "offer" made to treat a sum of Rs. 6,10,100/- as undisclosed income has not been mentioned by the Assessing Officer in the body of the assessment order, this per se cannot be treated as an omission fatal to the validity of the assessment order. In fact, it is perfectly possible to hold the view that it is not an omission at all. The letter of the appellant has been referred to repeatedly in the assessment order. Its contents have been discussed and for reasons mentioned, the explanation/submissions/disclosure of the appellant has been discarded by the Assessing Officer. It is noteworthy that the Assessing Officer gave a further opportunity to substantiate his claims of commission business made through the letter dated 04.12.2102 by recording the statement of the appellant under section 131 of the Act, which has been further discussed in para (10) of the assessment order. The Assessing Officer has stated that even on that occasion, the appellant was unable to produce any documentary evidence in support of this claim of running a commission business. Thus, the position that obtains is that the contents of letter dated 04.12.2012 have been discussed in four paragraphs of the impugned assessment order. Accordingly, there cannot be a valid reason for the appellant to raise a grievance that the same was ignored. Moreover, since the underlying submission leading the 'disclosure' was itself rejected, there was no necessity, compelling or otherwise, for the Assessing Officer to mention the amount that the appellant felt was his undisclosed income arising from the undisclosed three bank accounts. In view of the discussion on the contents of letter dated 04.12.2012 and the rejection of its submissions by the Assessing Officer, nothing turns on the fact that the figure of Rs. 6,10,100/- was not mentioned. There is no requirement for the Assessing Officer to verbatim reproduce each word of submissions made by the assessee during the course of scrutiny assessment proceedings. From the sequence of events discussed above, there is nothing to even remotely indicate an element of bias as alleged by the appellant.*

*6.4 The reliance placed on the decision of the Hon'ble Supreme Court in the case of Indore Malwa United Mills Ltd. vs State of Madhya Pradesh [1996] reported in 60 ITR 41, is misconceived. The decision there was based on its own peculiar set of facts and has no application to the facts of the appeal under consideration. For this*

*proposition, it would be adequate to reproduce the following from the aforesaid decision:*

> *"The Assessing Officer, the Appellate Authority and the High Court only relied upon the entries in the Sale Contract Register and the Daily Yarn Production Register for the purpose of ascertaining the unexplained shortage of yarn, though they differed in the matter of giving allowances for the count deviation, etc. The Assessing Officer, in his order relating to the assessment year 1940, gives reasons for discarding the books and records of the assessee in regard to quantitative particulars. But the Appellate Authority and the High Court did not expressly reject the said documents, and indeed they relied upon the entries in the Sale Contract Register as well as those in the Daily Yarn Production Register. For the subsequent years, even the Assessing Officer did not reject the registers ....."*

*6.5 In the case of the appellant, it is ex-facie apparent that the version of the appellant through the letter dated 04.12.2012 has been taken on record, considered, discussed and then discarded by the Assessing Officer. It would be essential to iterate that no grounds have been taken by the appellant on the nature and merits of the additions made by the Assessing Officer. This being so, it is not necessary to dwell upon any further on the I disclosure' made in the letter as to whether it was appropriate or arbitrary. The contents thereof do not impinge on the various grounds pressed in the instant appeal. Under the circumstances, the ground of appeal taken fails and is, therefore, dismissed.*

*7.0 GROUND NUMBER (5)*

*7.1 In the last ground of appeal, the appellant has stated that the Demand Notice served by the Assessing Officer is inconsistent with Form No.7 prescribed by the Income-tax Rules, 1962 (hereinafter, 'the Rules'). It was submitted that the Demand Notice was in an obsolete Form and that the inapplicable portions were not deleted. On the basis, the appellant urged that the Notice of Demand be quashed as the issue of a valid notice enforceable in law is a pre-condition in respect of assessment proceedings.*

*7.2 As per rule 15 of the Rules, the Notice of Demand is required to be sent in Form No.7. On a comparison of the proforma specified and the Demand Notice actually issued by the Assessing Officer, there are a few differences between them that are discernible. In other words, the Demand Notice is not exactly in the same format as prescribed by the Rules. There are some' copy and paste' errors leading to jumping of serial numbers and a few extra sentences do appear in the Demand Notice issued by the Assessing Officer. However, a substantial portion of the impugned Demand Notice is identical to the one that has been prescribed. More importantly, the*

*Demand Notice served on the appellant, clearly states that it is issued under section 156 of the Act and is as per rule 15 of the Rules. The status of the appellant and his P.A.N has been specified along with the assessment year for which the demand has been raised. The net amount payable has been mentioned. The said Demand Notice duly bears the signature and seal of the Assessing Officer along with the date and place of issue.*

*7.3 It is well-settled that if a notice is in substance and effect in conformity with or according to the intent and purposes of the Act, any defect, mistake or omission will not invalidate it. In the case of CIT vs Jagat Novel Exhibitors (P) Ltd [2012] reported in 248 CTR 217, the Hon'ble Delhi High Court has observed as under (H.N.):*

> *"Section 292B has been enacted to curtail and negate technical pleas due to any defect, mistake or omission in a notice/summons/return..... It has a salutary purpose and ensures that technical objections, without substance and when there is effective compliance or compliance with intent and purpose, do not come in the way or affect the validity of the assessment proceedings Object and purpose behind section 292B is to ensure that technical pleas on the ground of mistake, defect or omission in summons/notice should not invalidate the assessment proceedings, when no confusion or prejudice is caused due to non-observance of technical formalities. The object and purpose of this section is to ensure that procedural irregularity(ies) do not vitiate assessments. Notice/summons may be defective or there may be omissions but this would not make the notice/summons a nullity. Validity of a summons/notice has to be examined from the stand point whether in substance or in effect it is in conformity and in accordance with the intent and purpose of the Act. This is the purport of section 292B."*

*7.4 Taking into account the facts mentioned above, there cannot be two views that the Demand Notice served on the appellant answers quite satisfactorily to the aforementioned legal proposition. The objections raised by the appellant are, therefore, hyper-technical. In the case of CIT vs Karnani Industrial Bank Ltd [1978] reported in 113 ITR 380, the Hon'ble Calcutta High Court has held that the purpose of Demand Notice is to bring to the attention of and demand from the assessee, the amount of tax including interest and other items due. The Hon'ble High Court observed that it is the duty of the Assessing Officer concerned to give this notice and there is no bar to the issue of such a notice, if a proper or correct notice was not issued earlier.*

*7.5 In the case of P.N. Sasikumar vs. CIT [1987] reported in 35 Taxmann 131 (Ker.), cited by the appellant, the matter related to the issue of notice under section 148 and not to a Demand Notice under section 156 of the Act. Further, an important aspect was that there*

*was no material to show that the re-assessment notice was served upon the assessee or his representative, leading to the conclusion arrived at by the Hon'ble Kerala High Court that the notice under section 148 of the Act was not served according to law and that the said assessee was not called upon to file the returns. In this background, it is apparent that the case law is distinguishable on essential facts and operates in a different sphere. The case of Ganesh Sugar Mills vs. State of U.P and Ors. [AIR 1986 SC 743 dated 20-12-1985] cited by the appellant, was in the context of the U.P Sugarcane (Purchase Tax) Act, 1961. There, the Hon'ble Supreme Court noticed that in the impugned notice the period for which tax was paid late or the period for which the tax was due had not been indicated. Even then, the Hon'ble Supreme Court declined to quash the notice and restored the matter to the competent authority. It is, therefore, evident that this decision is entirely different from the facts of the present appeal. Similarly, in the case of N.N Subramania Iyer vs. UOI and Anr [1974] reported in 97 ITR 228 (Ker.) and also relied upon by the appellant, the matter which has some resemblance to the issue at hand has been discussed in para (5) of the aforesaid order which is reproduced below for ready reference:*

> *"5. The penalty notice, exhibit P-2, is illegal on the face of it. It is in a printed form, which comprehends all possible grounds on which a penalty can be imposed under Section 18(1) of the Wealth-tax Act. The notice has not struck off anyone of those grounds; and there is no indication for what contravention the petitioner was called upon to show cause why a penalty should not be imposed."*

*It is apparent that the very ground on which penalty was imposed was not indicated therein. These are not the facts related to the Demand Notice in the instant appeal which contains all material information. In this light, this particular decision does not come to his assistance. In another case relied upon, i.e., in Income Tax Officer, Kolar Circle and Another vs. Seghu Buchiah Setty [1964] reported in 52 ITR 538, the gravamen of the dispute was that the Assessing Officer did not issue fresh notice of demand pursuant to the modification in the order of assessment made by the Appellate Assistant Commissioner, but by a letter informed the respondent that he had to pay tax as reduced by the appellate order. Premised on this, the Hon'ble Supreme Court (majority view) upheld the decision of the Hon'ble High Court that the Income-tax Officer could not, without issuing fresh notices of demand, after the Appellate Assistant Commissioner of Income-tax had reduced the taxable income, treat the respondent as a defaulter and that the proceedings of the Collector based on the certificates issued by the Income-tax Officer were illegal. As is evident, these are not the facts obtaining in the instant appeal where a signed Demand Notice has been duly issued by the Assessing Officer pursuant to this own order of assessment. There are no appellate proceedings involved here*

*leading to variation of the demand originally raised which ought to have been re-computed and communicated to the appellant. Resultantly, the aforesaid decision does not lend itself to holding that the corresponding assessment order itself has to be quashed.*

*7.6 In the case of Rasiklal Amritlal Doshi vs A. Nundy Addl. ITO [1961] 42 ITR 35 (Born.) cited by the appellant, the issue was that no notice of demand can be issued in the absence of an order of assessment passed under the Act. There, the petitioner had alleged that no such order existed. The Hon'ble High Court found merit in the allegation since within a short time of his having received the notice of demand the petitioner had applied for a copy of the order and although, thereafter, he had repeated his demand from time to time, he was not supplied with a copy of the order and three years later he was informed that the order was not traceable. In this appeal, there is no dispute regarding the assessment order received by the appellant along with the Demand Notice. Copies of both have been filed by the appellant along with the other appeal documents.*

*7.7 The appellant has also mentioned that the tax, payment challan was not received by him. Be that as it may, the same does not operate to diminish the validity of the assessment order. A challan can (and often is) obtained by an assessee from the office of the Assessing Officer even subsequent to the passing of the order. The taxpayers now have the option of making online e-payments directly on the basis of procedures that are available in the public domain through websites. In the final analysis, it is apparent that there was no ambiguity in the matter of its payable tax dues which faced the appellant. He was aware of the precise demand that was required to be paid pursuant to the order of assessment passed by the Assessing Officer. Had this not been so, he would not have mounted a protracted exercise for seeking its stay before various authorities, including the Hon'ble Gauhati High Court as described in the preceding paragraphs of this order. The minor infirmities in the Demand Notice served upon him is not such that would lend themselves for declaring it as null and void. As mentioned, it is substantially in conformity with the prescribed Form and conveys all the particulars and facts that are essential to the appellant. The said Demand Notice is, therefore, held to be valid insofar as the liability of the appellant to make payment of INCO demand is concerned. However, the Assessing Officer is advised to issue a fresh Demand Notice in the prescribed Form and challan to the appellant at the earliest. For the reasons mentioned above, the ground of appeal fails and is, therefore, dismissed.*

*8.0 Before parting, it would perhaps be appropriate to make a mention that the crux of the matter is the detection of three undisclosed bank accounts owned by the appellant. The addition to the returned income is not conjectural or an estimate but arises from the unreported transactions in them. An assessee has a statutory obligation to file a truthful return of income. The appellant has not*

*disputed the characterization or the quantification of undisclosed income as determined by the Assessing Officer. The appellant ought to have himself disclosed the existence of the bank accounts and taken into account the resultant profit element while filing his return of income. The challenge to the assessment order has been mounted on multiple hyper-technical aspects as has been elaborately discussed. These are sans merit and, consequently, do not defeat the liability of tax legitimately due to the Exchequer. The scrutiny assessment proceedings were initiated, notices were duly served, the appellant participated in the proceedings, the assessment was completed on merits after considering various pleas raised by the appellant. The jurisdiction to assess of the Assessing Officer and the liability to pay the tax on the part of the appellant are free from doubt. The latter is founded on section 4 of the Act, which is the charging section. There is no dispute that the income assessed by the Assessing Officer belonged to the appellant. It is equally well-settled that matters relating to financial laws have to be viewed with greater latitude than laws touching civil rights. Even if it is presumed for arguments sake that the appellate objections raised here fall in the realm of procedural law, one is to take note of the observations of the Hon'ble Apex Court in the case of Saiyad Mohammad Bakar El-Edros- (Dead) by LRs Versus Abdulhabib Hasan Arab & Ors. reported in (1998) 4 SCC 343, as under:*

> *A procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved. A procedural law is always subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away be the procedural law what is given by the substantive law.*

*9.0 In sum, there is no tenable basis to hold that the impugned assessment order passed by the Assessing Officer is infirm and stricken with such infirmities so as to be declared as null and void. The validity of the same is, therefore, upheld, unhesitatingly.*

*10. In the result, the appeal, with all its grounds raised, is dismissed. Order passed under section 250 read with section 251 of the Act."*

8. In addition to the above, we would like to make a specific mention in reference to ground no. 4 dealt by Ld. CIT(A) in his order in para 6 wherein a reference is made to a letter dated 04.12.2012 addressed to the Ld. AO in which assessee has averred that he had voluntarily offered undisclosed income of

Rs.6,10,000/-. Copy of the said letter is placed in paper book at page 73 and 74. From the 2nd paragraph of this letter, we note that assessee has stated "*I may kindly be excused for the fault committed by me and inconvenience caused.*" He has further stated that "*I assure that this thing will not happen in future and lastly, I would also request you for not initiating any further action.*" In the above context, we take note of the assessment order passed u/s. 143(3) for the immediately next assessment year i.e. AY 2011-12 dated 14.03.2014, which is placed in the paper book at pages 81 to 84. In this assessment order also, there are total deposits of Rs.4,03,20,540/- in the two undisclosed bank accounts for which Ld. AO has given the same treatment as in AY 2010-11. The reason for making this reference is that in the letter dated 04.12.2012 submitted before the Ld. AO, assessee has very categorically stated that such a thing as committed by him will not happen in future. However, in the very next year, similar fault has been committed by the assessee, for which he must be aware of having committed such a fault but stated otherwise in the aforesaid letter. The conduct and intent of the assessee does not reflect what is stated by him in his letter to the Ld. AO.

9. Thus, considering the above elaborate and well reasoned observations and findings of the Ld. CIT(A) as well as taking into account the paper book placed before us, we do not find any reason to interfere with the same in respect of first five grounds of appeal raised by the assessee. Here, it is import to note that the two page written submission placed by the assessee before the Tribunal contains the same line of

arguments and reference to judicial precedence which were made before the Ld. CIT(A). This has already been elaborately dealt with and does not need any further discussion in addition to what has already been made by Ld. CIT(A). Accordingly, ground nos. 1 to 5 of the assessee are dismissed.

10. Before us, assessee has taken two further grounds vide ground nos. 6 and 7. Ground no. 6 is again on a similar technical issue of failure on the part of Ld. CIT(A) to issue the appellate order within fifteen days of the last hearing. To our mind, similar technical issue has already been elaborately dealt with by the Ld. CIT(A) in the context of passing an assessment order by the Ld. AO and, therefore, does not need any further specific adjudication. Accordingly, this ground is also dismissed in terms of observations made by the Ld. CIT(A) while disposing ground nos. 1 and 2.

11. In ground no. 7, assessee has raised a technical issue of not following the directions of Hon'ble High Court of Gauhati in assessee's Writ Petition WP(C) 937/2014 vide order dated 03.03.2014. In this respect, we have perused the order of the Hon'ble High Court placed at pages 89 to 91 of the paper book. To understand the direction given by the Hon'ble High Court, we note that the direction is for expeditious disposal of the appeal by the Ld. CIT(A), preferably within a period of three months as an outer limit, from the date of production of the order of Hon'ble High Court. On this issue, we note that the date of order of Hon'ble High Court giving this direction is 03.03.2014. The impugned order of Ld. CIT(A) disposing of the

appeal of the assessee is dated 15.05.2014 which is evidently within the period of three months as directed by the Hon'ble High Court. Thus, there is no disregard by the Ld. CIT(A) to the direction given by the Hon'ble High court in expeditiously disposing the appeal of the assessee. Accordingly, ground no. 7 of the assessee is dismissed.

12. In appeal for AY 2011-12 in ITA No. 08/GTY/2016, assessee has raised technical issues only for which again, Ld. CIT(A) has dealt with each of the issue elaborately, by passing a speaking order for this year also. It is worth reproducing the observations and findings given by the Ld. CIT(A) which comprehensively dealt the technical challenges raised by the assessee.

> *"4.1 GROUNDS NO.1, 2, 3 & 4*
> *In these grounds, the appellant challenged the validity of notices issued u/s 143(2) and 142. Notices are said to be invalid on the following reasons:-*
>
> > *(i) Per CBDT's instruction dated 8/9/2010 on the topic" Selection of cases for scrutiny on the basis of AIR returns and subsequent assessment proceedings" it was stated in para number 3 that in all cases which are picked up for scrutiny only on the basis of AIR information, the notice u/s 143(2) of the Income-tax Act, 1961 should be clearly stamped with " AIR Case". This was not done by the A.O. in his notice u/s 143(2) dated 01/08/2012.*
> >
> > *(ii) Notices issued u/s 142 dated 21.06.2013 and 24.01.2014 were not in the prescribed form. In those notices issued, the AO mentioned the requirements as (a) (b) and (c) instead of (i), (ii) and (iii) as laid down in sub-section 1 of section 142. Besides, the A.O. issued notices u/s 142 twice whereas the Act says that a notice may be served.*
>
> *4.2.1 Submissions made by the appellant have been examined. As far as notice u/s 143(2) dt. 01.08.2012 which the appellant claimed should have been clearly stamped with" AIR Case" is concerned, it is*

*seen that the notice bears the term II AIR only" before the main body of the letter. From the notice itself, it can easily be inferred that the case was selected based on AIR information. Stamping the notice with" AIR Case" or printing" AIR only" does not have material difference based on which the notice can be invalidated. I am not inclined to treat the notice u/s 143(2) as invalid and quash the assessment order merely because the notice was not stamped with "AIR case," since the term, 'AIR only' was already mentioned in the notice.*

*4.2.2 As far as issuing two notices u/s 142(1) and mentioning the requirements of the notices in alphabetical form of a, b & c rather than Roman numbers of (i), (ii) (iii) are concerned, it is a fact that A.O. issued notices u/s 142(1) on 21.06.2013 and 24.01.2014 and requirements of the notice were numbered a, b & c instead of (i), (ii) and (iii).*

*4.2.3 Submissions made by the appellant have been carefully considered. The AIR was unable to give any cogent reason as to why the assessment order became invalid merely because contents of notices u/s 143(2) were numbered alphabetically and not by roman numerals. He failed to give any precedent where Higher judicial authorities held notices to be invalid in similar circumstances. The stand taken by the appellant is therefore rejected. Similarly, on issue of notice u/s 142(1) being issued twice, the argument made by the appellant is misplaced. Though section 142(1) says that for making an assessment the Assessing Officer may issue a notice, this does not mean that the A.O. can issue only one notice and stop there. There is no specific provision in the Act which debars AO from issuing more than one notices u/s 142(1) of the Act to make an assessment. AO may issue notice u/s 142(1) consequent to materials obtained from earlier notices issued under the same section. The AIR also failed to point out any statutory bar on Assessing Officer from issuing notice u/s 142(1) more than once in the course of an assessment proceeding*

*4.2.4 In view of the above discussion, ground number 1, 2 3 & 4 raised by the appellant are dismissed.*

*4.3 GROUND NO.5 & 7:*
*In these two grounds, the appellant challenges the validity of assessment order for the reasons that the A.O. had violated CBDT instruction regarding selection of cases for scrutiny and also examining each and every item of assessee's business transaction. During the course of appellate proceeding, the AIR stated that since the case came under scrutiny due to AIR information, the A.O. should restrict himself to the content of AIR information. In the written submission as well as verbal explanation, AIR stated that AO thoroughly examined the books of accounts of the assessee. Copy of Annexure to notice u/s 142(1) was enclosed wherein AO had*

*asked the assessee to produce books of accounts, details of investment, bank a/c. evidence in support of return of income etc.*

*4.3.2 From the assessment order, it can be seen that there was AIR information regarding existence of two bank accounts viz. A/c No. 271010100132633 with Axis Bank Ltd, Silchar and A/c No. 10631000001479 with HDFC Bank Ltd. Silchar in the name of the assessee. The AO noted that the accounts were seen to be undisclosed after examination of return of income, audited balance sheet, P&L A/c and books of accounts produced during the course of assessment. A perusal of the assessment order shows that the AO had dwelt only upon the undisclosed bank accounts and estimation of income from transactions done through the two undisclosed bank accounts.*

*4.3.3 In para No.2 of CBDT Instruction dated 30.06.2011 it was stated that scrutiny of AIR based cases should be limited only to aspect of information received through AIR. Cases can be taken up for wider scrutiny only with approval of the administrative Commissioner and where potential escapement of income apart from AIR information is more than Rs. 10 lakhs. In the present case, the A.O. had received information through AIR that there existed two bank accounts in the name of assessee. To verify whether the transactions in the accounts were reflected in the books of accounts, the AO had called for information from assessee. Information called for vide Annexure to notice u/s 142(1) dated 21.06.2013 is reproduced below:*

*ANNEXURE-A*

*1. A brief note on nature of business activities and address of all the places including the godowns where business activities are carried on by you, Sales Tax registration number & TAN (if any)*
*2. Bank statements of all bank accounts maintained by you during the relevant period.*
*3. Details of investment made and details of source of investment.*
*4. All books of accounts maintained for financial year 2010-11.*
*5. Details and evidences in support of your return.*

*4.3.4 The nature of information called by AO and his act of checking the accounts as to whether entries in two bank accounts were reflected in regular books of accounts cannot be said to be digression from Board's Instruction mentioned earlier. Rather, it was the duty of the AO to thoroughly check whether the entries in the two accounts are reflected anywhere in the regular books of accounts maintained by the assessee. I do not think the AO had exceeded his brief. It is also seen that in the assessment order, the AO had restricted himself to the two bank accounts information of which was received through AIR. Addition made by AO is solely based on entries in the two bank accounts. Considering the facts on records, the assessment order cannot be treated as invalid for being*

*against CBDT's Instruction. Ground Nos. 5 and 7 are decided against the appellant.*

*4.4 GROUND NO.6*

*4.4.1 Appellant contended that the last date of hearing was 21.2.2014 and the date for compliance to summons was 12.3.2014 while the assessment order was signed on 14.3.2014, the same was passed to the appellant only on 27.03.2014. Appellant prayed that since the order was passed after fourteen days of last hearing, it was against CBDT Circular [Letter No. 241/23/70 dated 23rd October, 1970], and as such, the assessment order should be treated as invalid.*

*4.4.2 In the statement of facts filed, the appellant, stated that the assessee complied with summon on 12.3.2014. If the assessee complied with summon on that date that particular date has to be taken as last date of hearing. The order was signed on 14.03.2014, therefore there is no violation of Circular of Board referred to by the appellant. The circular referred to by the appellant is an extract from manual of Office Procedure Chapter XIV which contains part of CBDT's letter No. 241/23/70 dated 23rd October, 1970. It says that AO should pass assessment orders immediately after hearing is over and even in complicated cases involving voluminous materials orders should be passed within fourteen days after the date of last hearing. The Instruction of the Board was not violated by the AO as the date of compliance to summon was 13.3.2014 and the date of assessment order is 14.3.2014. The ground is therefore decided against the appellant.*

*4.5 GROUND NO.8*

*4.5.1 Appellant challenged validity of assessment order because the AO gave false and unlawful conclusion in Para-11 of the order.*

*4.5.2 In para 11, AO states: " On the basis of discussions made above, the total income of the assessee for assessment year 2011-12 is computed as under." In the written submission, the appellant states" one single man cannot discuss with him. Facts of the case and his opinion without applying judicial mind in the foregoing paragraphs cannot be the learned A/O's discussion. Therefore, the assessment order is invalid".*

*4.5.3 I find that the AO had detailed discussion regarding two undisclosed bank accounts and he had judiciously made addition of undisclosed income. I find no reason to treat the assessment order as unlawful or invalid. The ground is decided against the appellant.*

*4.6 GROUND NO.9*

*4.6.1 In this ground, the appellant challenged the validity of assessment order because challan given to assessee was unsigned. In this regard, it is seen that the AO had signed in the*

*assessment order, computation of income and the notice of demand. Merely not signing in the challan cannot make a duly signed assessment order invalid. This ground is also decided against the appellant.*

*The grounds preferred in this appeal are decided against the appellant. Order of the AO is , upheld.*

*5.0 Order passed under section 250 read with section 251 of the Act. "*

13. Before us, for this appeal also, assessee has furnished a two page written submission and a paper book containing 33 pages with index dated 06.11.2017. This paper book also does not have certification as to which documents were before which authorities below, as required under Rule 18 of ITAT Rules. Assessee has also made ground wise submission in two pages vide his submission dated 06.11.2017. We would broadly summarise the technical challenges put-forth by the assessee without controverting on the additions made by the Ld. AO in respect of transactions made by him in the two undisclosed bank accounts.

13.1. The foremost technical issue raised is that notice issued u/s. 143(2) placed at page 3 of the paper book is invalid as it is not stamped with "AIR Case". From the perusal of it, we note that "AIR-only" is mentioned explicitly on the said notice. To this effect, Ld. CIT(A) has very lucidly addressed this technical issue raised by the assessee which can be referred in the order extracted above. We find that mentioning of "AIR-only" instead of "AIR-case" does not have any material effect on the outcome of the assessment for the compliance made by the Ld. AO for which the assessee has agitated. In respect of notices issued u/s. 142(1), the technicalities raised by the

assessee is in respect of mentioning of particulars of the issues listed therein, which according to the assessee, should have been in roman numbers instead of alphabetical form. Assessee has also raised technical issue that only one notice u/s. 142(1) is permissible to be issued by the Ld. AO. These technical challenges have also been succinctly dealt with by the Ld. CIT(A) in his order quoted above. We do not find any reason to interfere with the findings given by him. Other technical grounds raised by the assessee including restricting the assessment only to the content of AIR information, passing of the assessment order within 14 days of last hearing, unsigned challan given to the assessee and that the Ld. AO has given false and unlawful conclusion in the impugned assessment order.

13.2. From the elaborate discussion made by the Ld. CIT(A) in his order on all these technical issues raised by the assessee, we unhesitatingly hold that such procedural technicalities do not have any material bearing to alter the outcome of the assessment completed by the Ld. AO, more particularly when all the due procedural compliances have been made as noted by the Ld. CIT(A) while giving his finding, extracted above. We do not find any reason to interfere with the well reasoned observations and findings given by the Ld. CIT(A). Thus, grounds taken by the assessee in this appeal are dismissed.

14. Before parting, from the perusal of written submission made by the assessee to the Tribunal, it is noted that the pleadings are in the nature of mercy petition by stating that

assessee is an illiterate person, unfit to travel due to health problem, financially very weak not having capacity to engage a representative for attending the hearings before the Tribunal. Such pleadings by the assessee are found to be in stark contradiction while looking at all the timely filing of replies and appeal forms at all the stages, including before us. All the filings and submissions are in English language which must have been prepared by the appropriate professionals and assessee must have been made to understand them before their filing and submission.

14.1. There is no equity or intendment in tax laws. Equity and taxation laws are strangers. On the sympathy sought by the assessee, it is worth quoting from the decision of Hon'ble Supreme Court in the case of Murarilal Mahavir Prasad Vs. B R. Vad [1974] 37 STC 77 (SC), in that famous passage marked "*by a happy turn of the phrase, Rowlatt J. : said 'there is no equity about a tax. There is no presumption as to tax'. There is no equity about a tax in the sense that a provision by which a tax is imposed has to be construed strictly regardless of the hardship that such a construction may cause either to the treasury or to the taxpayer. If the subject falls squarely within the letter of law, he must be taxed, howsoever inequitable the consequences may appear to the judicial mind. If the revenue seeking to tax cannot bring the subject within the letter of the law, the subject is free no matter that such a construction may cause serious prejudice to the revenue. In other words, though what is called equitable construction may be admissible in relation to other statutes or other provisions of a taxing statute,*

*such construction is not admissible in the interpretation of charging or taxing provision of a taxing statute."*

15. In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open Court on 6th October, 2023.

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **(Rajpal Yadav)** | **(Girish Agrawal)** |
| **Vice President** | **Accountant Member** |

***Dated: 6th October, 2023***

JD, Sr. P.S.
Copy to:

1. The Appellant:
2. The Respondent
3. CIT(A), Shillong
4. CIT
5. DR, ITAT, Guwahati Bench, Guwahati
6. Guard file

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata