

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "E" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Amit Shukala (JM)

I.T.A. No. 1599/Mum/2022 (A.Y. 2012-13)  
I.T.A. No. 1600/Mum/2022 (A.Y. 2013-14)  
I.T.A. No. 1601/Mum/2022 (A.Y. 2014-15)  
I.T.A. No. 1602/Mum/2022 (A.Y. 2015-16)  
I.T.A. No. 1603/Mum/2022 (A.Y. 2016-17)  
I.T.A. No. 1604/Mum/2022 (A.Y. 2017-18)  
I.T.A. No. 1605/Mum/2022 (A.Y. 2018-19)

DCIT, Central Circle-7(2) Room No. 637 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road Mumbai-400 020. (Appellant)	Vs.	M/s. Shubhkanchi Trading Pvt. Ltd. 301, Golden Road Perry Cross Road Bandra West Mumbai-401209. (Respondent)
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I.T.A. No. 1231/Mum/2022 (A.Y. 2012-13)  
I.T.A. No. 1232/Mum/2022 (A.Y. 2013-14)  
I.T.A. No. 1230/Mum/2022 (A.Y. 2014-15)  
I.T.A. No. 1229/Mum/2022 (A.Y. 2015-16)  
I.T.A. No. 1228/Mum/2022 (A.Y. 2016-17)  
I.T.A. No. 1227/Mum/2022 (A.Y. 2017-18)  
I.T.A. No. 1233/Mum/2022 (A.Y. 2018-19)

M/s. Shubhkanchi Trading Pvt. Ltd. 301, Golden Road Perry Cross Road Bandra West Mumbai-401209. (Appellant)	Vs.	DCIT, Central Circle-7(2) Room No. 637 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road Mumbai-400 020. (Respondent)
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PAN : AAQCS6168L

Assessee by	Shri Vijay Mehta
Department by	Shri H.M. Bhatt
Date of Hearing	15.09.2023
Date of Pronouncement	09.10.2023

ORDER

Per Bench:-

These cross appeals are directed against the orders passed by the learned CIT(A)-54, Mumbai and they relate to A.Ys. 2012-13 to 2018-19. All these appeals have been posted for hearing on 25.10.2023. Since the Revenue has moved a petition seeking early hearing of these cases, this bench was constituted by the Hon'ble President to hear the request of the revenue.

2. At the time of hearing, the learned AR submitted that the Assessing Officer has passed the orders in these years without generating document verification number (DIN) and the same is in violation of the Circular No. 19 of 2019 dated 14.8.2019 issued by the CBDT. Accordingly, he submitted that the impugned assessment orders should be considered as invalid and deemed to have been not issued, as observed by the CBDT in the above said circular. He submitted that Hon'ble Bombay High Court has rendered its decision on an identical issue in the case of Ashok Commercial Enterprises Vs. ACIT (W.P. No. 2595 of 2021 and others dated 4.9.2023).

3. The Learned AR further submitted that the Coordinate Bench of the Mumbai ITAT has held in the case of Teleperformance Global Services Pvt. Ltd. Vs. ACIT (ITA No. 2814 & 2815/Mum/2022 dated 24.4.2023) that the assessment order issued manually without DIN, which is not in conformity with the CBDT circular, is invalid and shall be deemed to have never been issued. He submitted that the identical view has been expressed by the Bangalore Bench of the Tribunal in the case of Dilip Kothari (2023) 146 taxman.com 442.

4. The Learned AR further submitted that the Assessing Officer has issued a separate order intimating DIN of the assessment orders. However, Hon'ble Bombay High Court has held in the case of Ashok Commercial

Enterprises (supra) that issuing a separate letter would not satisfy the requirement of the Circular issued by the CBDT (referred supra). Accordingly learned AR submitted that all the impugned assessment orders shall be deemed to be not existing in the eyes of law. He further submitted that the approval issued by the Additional CIT also does not have DIN and his approval should also be considered not existing in the eyes of law. Accordingly he prayed for quashing of all the impugned assessment orders.

5. In view of the legal contentions raised by the Ld A.R, with the concurrence of both the parties, all the appeals were taken up for hearing.

6. We have heard learned DR and perused the record. The undisputed facts in these cases are that the Assessing Officer has issued assessment orders manually without generating DIN. As per Circular No. 19 of 2019 issued by the CBDT, any communication sought to be issued by the Income Tax authority on or after 1<sup>st</sup> Day of 2019 shall not be issued unless computer generated document identification number (DIN) has been allotted and duly quoted in the body of such communication. It has been further notified by the CBDT in paragraph 4 of the Circular that any communication which is not in conformity with paragraph 2 & 3 of the Circular shall be treated as **“invalid and shall be deemed to have never been issued”**. The paragraph no.3 of the circular lists out exceptional circumstances under which communication can be issued without DIN, but strict procedures have been prescribed to issuing so. It is mandatory to follow the said procedures. In the instant case, it is not the case of the Revenue that the impugned assessment orders fall under the category of exceptional circumstances.

7. We noticed earlier that the Assessing Officer has issued assessment orders manually without quoting DIN. In fact, he has generated DIN separately and has communicated the same to the assessee by way of a separate letter. The Hon'ble Bombay High Court has held in the case of

Ashok Commercial Enterprises (supra) such generation of DIN separately would not meet the requirement of paragraph 3 of the Circular. Hence the impugned assessment orders are liable to be quashed. For the sake of convenience, we extract below the decision rendered by Hon'ble Bombay High Court :

*“18 Whether the impugned assessment order dated 28th September 2021 is invalid on account of it being issued without a DIN?”*

(a) The CBDT, in exercise of powers under Section 119(1) of the Act, has issued a Circular No.19/2019 dated 14th August 2019 providing that no communication shall be issued by any Income Tax Authority inter alia relating to assessment orders, statutory or otherwise, inquiries, approvals, etc. to an assessee or any other person on or after 1st October 2019 unless a computer generated DIN has been allotted and is quoted in the body of such communication. The Circular reads as under :

CIRCULAR NO.19/2019 (F. NO.225/95/2019-ITA.II],  
DATED 14-8-2019

With the launch of various e-governance Initiatives, Income tax Department is moving toward total computerization of its work. This has led to a significant improvement in delivery of services and has also brought greater transparency in the functioning of the tax-administration Presently, almost all notices and orders are being generated electronically on the Income Tax Business Application (ITBA) platform. However, it has been brought to the notice of the Central Board of Direct Taxes (the Board) that there have been some instances in which the notice, order, summons, letter and any correspondence (hereinafter referred to as "communication" were found to have been issued manually, without maintaining a proper audit trail of such communication.

2. In order to prevent such instances and to maintain proper audit trail of all communication, the Board in exercise of power under section 119 of the income-tax Act, 1961 (hereinafter referred to as "the Act"), has decided that no communication shall be issued by any income-tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry. investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the 1st day of October, 2019 unless a computer-generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication.

3. In exceptional circumstances such as,-

(i) when there are technical difficulties in generating/allotting/ quoting the DIN and issuance of communication electronically; or

(ii) when communication regarding enquiry, verification etc. is required to be issued by an income-tax authority, who is outside the office, for discharging his official duties: or

(iii) when due to delay in PAN migration. PAN is lying with non-jurisdictional Assessing Officer; or

(iv) when PAN of assessee is not available and where a proceeding under the Act (other than verification under section 131 or section 133 of the Act) is sought to be initiated; or

(v) when the functionality to issue communication is not available in the system, the communication may be issued manually but only after recording reasons in writing in the file and with prior written approval of the Chief Commissioner/ Director General of income-tax. In cases where manual communication is required to be issued due to delay in PAN migration, the proposal seeking approval for issuance of manual communication shall include the reason for delay in PAN migration. The communication issued under aforesaid circumstances shall state the fact that the communication is issued manually without a DIN and the date of obtaining of the written approval of the Chief Commissioner/ Director General of Income-tax for issue of manual communication in the following format-

“..... This communication issues manually without a DIN on account of reason/reasons given in para3(i)/3(ii)/3(iii)/3(iv)/ 3(v) of the CBDT Circular No .... dated (strike off those which are not applicable) and with the approval of the Chief Commissioner/Director General of Income Tax vide number .... dated ....

4. Any communication which is not in conformity with Para-2 and Para-3 above, shall be treated as invalid and shall be deemed to have never been issued.

5. The communication issued manually in the three situations specified in para 3- (i), (ii) or (iii) above shall have to be regularised within 15 working days of its issuance, byi. uploading the manual communication on the System.

ii. compulsorily generating the DIN on the System;

iii. communicating the DIN so generated to the assessee/any other person as per electronically generated pro-forma available on the System.

6. An intimation of issuance of manual communication for the reasons mentioned in para 3(v) shall be sent to the Principal Director General of Income-tax (Systems) within seven days from the date of its issuance.

7. Further, in all pending assessment proceedings, where notices were issued manually, prior to issuance of this Circular, the Income-tax authorities shall identify such cases and shall upload the notices in these cases on the Systems by 31th October, 2019.

*Paragraph 3 of the Circular sets out five exceptional circumstances where the aforementioned mandatory requirement may not be adhered to, but requires that if an order/communication is to be issued without a DIN, it can be done only after recording reasons in writing in the file and with the prior written approval of the Chief Commissioner/Director General of Income Tax. Further, paragraph 3 requires that if such exceptional circumstances are claimed, the orders/communication issued without a DIN must state this fact in a specific format set out in paragraph 3 of the Circular.*

*Paragraph 4 of the Circular provides that any order/ communication which is not in conformity with paragraphs 2 and 3 of the Circular shall be treated as invalid and shall be deemed to have never been issued.*

*The contents of the Circular have been re-iterated in a Press Release dated 14th August 2019;*

*(b) It is indisputable that the impugned assessment order dated 28th September 2021 does not bear a DIN and further that the said order issued without a DIN does not bear the required format set out in paragraph 3 of the Circular and, therefore, the impugned assessment orders for Assessment Year 2011-2012 to 2019-2020 ought to be treated as invalid and deemed never to have been issued. We find support for this view in *Brandix Mauritius Holdings Ltd. (Supra)* where the Hon'ble Delhi High Court has held that an order passed in contravention of the said Circular is void, bad in law and of no legal effect. Paragraphs 16 to 17.1, 18 and 19 read as under :*

16. The final assessment order was passed by the Assessing Officer (AO) on 15.10.2019, under Section 147/144(C) (13/143(3) of the Act. Concededly, the final assessment order does not bear a DIN. There is nothing on record to show that the appellant/revenue took steps to demonstrate before the Tribunal that there were exceptional circumstances, as referred to in paragraph 3 of the 2019 Circular, which would sustain the communication of the final assessment order manually, albeit, without DIN. 16.1. Given this situation, clearly paragraph 4 of the 2019 Circular would apply.

17. Paragraph 4 of the 2019 Circular, as extracted hereinabove, decidedly provides that any communication which is not in conformity with paragraph 2 and 3 shall be treated as invalid and shall be deemed to have never been issued. The phraseology of paragraph 4 of the 2019 Circular fairly puts such communication, which includes communication of assessment order, in the category of communication which are non-est in law.

17.1. It is also well established that circulars issued by the CBDT in exercise of its powers under Section 119 of the Act are binding on the revenue. xxxxxxxxxxxx

18. The argument advanced on behalf the appellant/revenue, that recourse can be taken to Section 292B of the Act, is untenable, having regard to the phraseology used in paragraph 4 of the 2019 Circular.

19. The object and purpose of the issuance of the 2019 Circular, as indicated hereinabove, inter alia, was to create an audit trail. Therefore, the communication relating to assessments, appeals, orders, etcetera which find mention in paragraph 2 of the 2019 Circular, albeit without DIN, can have no standing in law, having regard to the provisions of paragraph 4 of the 2019 Circular.

*(c) During the course of hearing, Mr. Suresh Kumar produced an intimation letter dated 13th October 2021 stating that the order dated 28th September 2021 under Section 153C of the Act has a DIN, which is set out therein. Even if this is held to be in compliance with paragraph 5 of the Circular, which deals with regularization of communications without DIN, this can only seek to regularize the failure to generate a DIN, but yet the requirements of paragraph 3 of the Circular will still remain contravened and consequently, the order dated 28th September 2021 ought to be treated as invalid and never issued;*

*(d) The said Circular also applies to the satisfaction note dated 13th July 2021 issued by respondent no.1. The satisfaction note will fall within the scope of paragraph 2 of the Circular as a communication of the specified type issued to any person. In the case of the satisfaction note no regularization dated 13th October 2021 has been issued;*

*(e) In view of the binding nature of Circular issued under Section 119 of the Act, and the peculiar facts and circumstances of the case, the consequences of contravention of the Circular set out above, therefore, ought to be given full effect to. The object of the said Circular is clear and laudatory and intended to ensure that proper trail of all assessment and other orders are maintained and further that any deviation therefrom can only be undertaken after prior written approval of the higher authorities under the Act. Therefore, the satisfaction note dated 13th July 2021 and the impugned order of assessment dated 28th September 2021 ought to be treated as invalid and deemed never to have been issued;”*

8. Following the binding decision of jurisdictional Hon'ble Bombay High Court referred above, we hold that the impugned assessment orders are invalid and shall be deemed to have never been issued. Accordingly, we quashed the orders passed by both the tax authorities in all the years under consideration.

9. In the result, appeals filed by the assessee are allowed and appeals filed by the Revenue are dismissed on the above said legal ground

Order pronounced in on 9.10.2023.

Sd/-  
(Amit Shukla)  
Judicial Member

Sd/-  
(B.R. Baskaran)  
Accountant Member

Mumbai.; Dated : 09/10/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai