

।आयकर अपीलीय अधिकरण न्यायपीठ नागपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH : : NAGPUR

[VIRTUAL HEARING AT PUNE]

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No.193/NAG/2021

निर्धारण वर्ष / Assessment Year : 2015-16

Cytec India Specialty Chemicals & Materials Pvt. Ltd., Equinox Business Park, Tower-4, 9 th Floor, Unit No.903, LBS Marag, Kurla West, Mumbai – 400070. PAN: AA ECC6848D	Vs	The Principal CIT-2, Nagpur.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Anuj Kisnadwala – AR
Revenue by	Shri Kailash G. Kanojiya – CIT(DR)
Date of hearing	26/10/2023
Date of pronouncement	31/10/2023

आदेश/ ORDER

PER S.S.GODARA, AM:

This assessee's appeal for Assessment Year 2015-16 is directed against the Principal Commissioner of Income Tax-2, Nagpur's order dated 23.03.2020 in proceedings u /s 263 of the Income Tax Act, 1961, I short "the Act".

Heard both the parties at length. Case files perused.

2. The assessee has first of all raised a legal question that the Pr.CIT's impugned revision order before us does not contain any "DIN" number despite the fact that the CBDT's Circular No.19 of 2019 dated 14.08.2019 issued under section 119 of the Act has made it clear that such a failure renders the same as void. Learned CIT(DR) took us to page 17 in assessee's paper book that the Pr.CIT's impugned order duly stood allotted the corresponding DIN number on 01.05.2020. We are of the view that even if the Revenue's foregoing stand is accepted, the same hardly fails to satisfy the corresponding stipulations in para 3 & 4 wherein there is a separate procedure prescribed for allotment of "DIN" number post facto the order in question is passed. Faced with the situation, we quote hon'ble jurisdictional high court's recent decision in Ashok Commercial Enterprises Vs. ACIT [2023] 154 taxmann.com 144 (Bom) settling the issue in assessee's favour and against the department as under :

"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 nonjurisdictional 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, by.

i. 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.

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*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;

3. We adopt the foregoing detailed reasoning mutatis-mutandis quash the Ld.Pr.CIT'S impugned order in very terms. Ordered accordingly.

4. All other pleadings on merits stand rendered academic.

5. Delay of 581 days in filing of the instant appeal instituted on 24.12.2021 against PCIT's revision order dated 23.03.2020 is condoned since falling under Covid-2019 pandemic outbreak period between 15.03.2020 to 28.02.2022 as per hon'ble apex court's directions in Cognizance for Extension of Limitation, In re 438 ITR 296 (SC) read with judgment in Cognizance for Extension of Limitation, In re 432 ITR 206 (SC) dated 08-03-2021 and 421 ITR 314, excluding the covid-19 pandemic outbreak period from for all intents and purposes under the limitation law.

6. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on 31st October, 2023.

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31st October, 2023/ SGR*

आदेशकीप्रतिलिपि अग्रेषित /Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर बेंच,
नागपुर/ DR, ITAT, Bench, Nagpur.
6. गार्ड फ़ाइल / Guard File.

ITA No.193/NAG/2021
Cytec India Specialty Chemicals & Materials Pvt. Ltd., [A]

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलिय अधिकरण, पुणे/ITAT, Pune.