IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'D': NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.1971/Del/2022
(Assessment Year: 2018-19)

ITA No.1972/Del/2022
(Assessment Year: 2019-20)

Zebra Technologies Asia Pacific Pte Ltd., C/o Symbol Technologies India Pvt. Ltd., Block 3B, 1st, 4th & 5th Floor, RMZ Ecospace, Sarjapur Outer Ringh Road, Devarabisanahalli, Bangaore – 560 103 (Karnataka).	vs.	DCIT, Circle, International Taxation 3(1)(1), New Delhi.

(PAN : AAIFG2692J)

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Shri Ravi Sharma, Advocate
REVENUE BY : Shri Vijay B. Vasanta, CIT DR

Date of Hearing : 02.11.2023
Date of Order : 09.11.2023

ORDER

PER BENCH :

These appeals by the assessee are directed against the respective orders of the Assessing Officer pursuant to the directions issued by the DRP for the respective assessment years.

2. Since the issues are common and the appeals were heard together, these are being disposed off by this common order.

3. Although the assessee has raised many grounds, ld. Counsel for the assessee has pressed for Ground No.4, which is similar in both the assessment years and goes to the root of the validity of jurisdiction in this case. The said ground reads as under:-

> " On the facts and circumstances of the case & in law, the Ld. DRP erred in issuing the directions under section 144C(5) of the Act dated 29 April 2022 without quoting the mandatory document identification number (DIN) in conformity with Para 2 and Para 3 of Circular No.19/2019 dated 14 August 2019 and thus, the said directions and consequential final assessment order dated 27 June 2022 deserves to be held as invalid, bad in law and be deemed to have never been issued."

4. Since Ground No.4 goes to the root of the matter, we adjudicate the same first as under.

5. The DRP order in both the cases is dated 29.04.2022. At the outset, ld. Counsel of the assessee submitted that there is no DIN mentioned in the DRP order which is contrary to the CBDT Circular No.19/2019 dated 14th August 2019. Hence, he submitted that the said DRP order is *void ab initio*. He further submitted that in such a situation, jurisdiction assumed is invalid and whole proceedings are vitiated. For this, ld. Counsel of the assessee relied upon catena of case laws.

6. Ld. DR for the Revenue relied upon the orders of the authorities below and submitted report from AO as under :-.

> " It is pertinent to mention that the process of uploading DRP directions on ITBA through "Manual to System" is as under :

- 1. After opting for Manual to System option, Date and File number of the relevant DRP direction is to be entered and subsequently, DIN number is generated by the system for the Document which in the present case is DRP direction.

- 2. After generating the DIN, the scanned copy of Direction is uploaded on ITBA and thereafter, Intimation Letter is generated in which the DIN number of the Directions uploaded u/s 144C(5) of the Income Tax Act, 1961 is duly quoted by the system itself. In that way, the Intimation Letter becomes part of the DRP direction through "Manual to System" option which contains the DIN number of the said DRP direction.

2.3 Further, the said Intimation Letter which becomes the part of DRP direction, is duly sent along with the uploaded direction to the assessee, through which the DIN of the direction uploaded through Manual to System option on ITBA is communicated.

3. In view of the above, the details of DIN (Document Identification Number) for the Directions in the captioned case for relevant Assessment Year is as under :-

A.Y.	DIN of the Direction	DIN of the Intimation Letter (copy attached	Upload on ITBA
2018-19	ITBA/DRP/M/144C(5)/ 2022-23/1042949774 (1)	ITBA/DRP/S/91/2022-23 /1042949796 (1)	05.05.2022

7. We have heard both the parties and perused the records. First, we consider the contents of CBDT Circular No.19/2019 dated 14.08.2019, which reads as under:-

"Circular No. 19 /2019

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, dated the 14th of August, 2019

Subject: Generation/Allotment/Quoting of Document Identification Number in Notice/Order/Summons/letter/correspondence issued by the Income-tax Department - reg.

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 fax 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 1SI 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, tor discharging, his Official duties: or

(iii) when due to delay in PAN migration, PAN is lying with nor.-jurisdictional Assessing Officer; or

(iv) when PAN of assesses 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 net 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 stale 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 para 3(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 31st October, 2019.

8. Hindi version to follow.

Sd/-
(Sarita Kumari)
Director (ITA, II) CBDT

(F. No. 225/95/2019-1TA.H)

Copy to:-
i. PS to FM/OSD to FM/PS to MoS(F)/OSD to MoS(F)
ii. PS to Secretary (Revenue)
iii. Chairman, CBDT & All Members. CBDT
iv. All Pr.CCsIT/Pr.DsGIT
v. All Joint Secretaries/CslT, CBDT
vi. C&AG
vii. CIT (M&TP), Official Spokesperson of CBDT
viii. O/o Pr. DGIT(Systems) for uploading on official website
ix. Addl.CIT (Database Cell) for uploading on the departmental website

Sd/-
(Sarita Kumari)
Director (ITA, II) CBDT"

7. The compliance is not in accordance with the Circular. The Circular mandates that in the body of the order / communication, it has to be stated that the communication is issued manually without a DIN and the date of obtaining of the written approval of 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 para 3(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 .... "*

8. Furthermore, a reading of the aforesaid circular makes it clear that the object behind bringing the circular is for creating an audit trail. In paragraph 2, it has been very clearly mentioned 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 DIN has been allotted and is duly quoted in the body of such communication. Paragraph 3 of the circular carves out certain exceptions to paragraph 2 by providing that under certain exceptional circumstances, enumerated in clause (i) to (v) of paragraph 3, the communication may be issued manually but only after recording reasons in writing not only in the file and with prior written approval of the Chief Commissioner/Director General of Income-tax, but, the communication

issued manually in such circumstances must also state the reasons why communication is issued manually without a DIN and must also mention the date and number of written approval of the Chief Commissioner/Director General of Income-tax for issuing manual communication. In fact, in paragraph 3 of the aforesaid circular, the format for recording such reasons has been specified. Paragraph 4 of the circular makes it clear that any communication issued which, is not in conformity with paragraph 2 and paragraph 3 of the circular, shall be treated as invalid and shall be deemed to have never been issued. It is fairly well settled, a circular issued u/s. 119 of the Act has statutory force and binding on subordinate authorities working under the Central Board of Direct Taxes.

8. A perusal of the DRP order shows that it is clear in the body of DRP order, no DIN number is mentioned nor there is any reason of not mentioning the DIN number in order of the DRP. Is such a situation, the DRP order will lose its validity. Subsequent separate communication of DIN is a superfluous exercise. In this regard, we are referring to the decision of the Hon'ble jurisdictional High Court in the case of CIT vs Brandix Mauritius Holdings Ltd. (2023)(4) TMI 579 (Delhi High Court). The Hon'ble Delhi High Court has held as under:-

> "12. We have heard learned counsel for the parties. The present appeal is preferred under Section 260A of the Act. The Court's mandate, thus, is to consider whether or not a substantial question of law arises for consideration.

12.1 As noted above, the impugned order has not been passed on merits.

13. The Tribunal has applied the plain provisions of the 2019 Circular, based on which, it has allowed the appeal preferred by the respondent/assessee.

14. The broad contours of the 2019 Circular have been adverted to by us hereinabove.

14.1 Insofar as the instant case is concerned, admittedly, the draft assessment order was passed on 30.12.2018.

15. The respondent/assessee had filed its objections qua the same, which were disposed of by the Dispute Resolution Panel [DRP] via order dated 20.09.2019.

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.

17.2 The aforementioned principle stands enunciated in a long line of judgements, including the Supreme Court's judgment rendered in **K.P. Varghese v. Income Tax Officer, Ernakulam and Anr.,** (1981) 4 SCC 173. The relevant extracts are set forth hereafter:

> *"12. But the construction which is commending itself to us does not rest merely on the principle of contemporanea expositio.* ***The two circulars of the Central Board of Direct Taxes to which we have just referred are legally binding on***

the Revenue and this binding character attaches to the two circulars even if they be found not in accordance with the correct interpretation of sub-section (2) and they depart or deviate from such construction. It is now well settled as a result of two decisions of this Court, one in Navnitlal C. Javeri v. K.K. Sen [AIR 1965 SC 1375 : (1965) 1 SCR 909 : 56 ITR 198] and the other in Ellerman Lines Ltd. v. CIT[(1979) 4 SCC 565] that circulars issued by the Central Board of Direct Taxes under Section 119 of the Act are binding on all officers and persons employed in the execution of the Act even if they deviate from the provisions of the Act. *The question which arose in Navnitlal C. Javeri case [AIR 1965 SC 1375 : (1965) 1 SCR 909 : 56 ITR 198] was in regard to the constitutional validity of Sections 2(6-A)(e) and 12(1-B) which were introduced in the Indian Income Tax Act, 1922 by the Finance Act, 1955 with effect from April 1, 1955. These two sections provided that any payment made by a closely held company to its shareholders by way of advance or loan to the extent to which the company possesses accumulated profits shall be treated as dividend taxable under the Act and this would include any loan or advance made in any previous year relevant to any assessment year prior to Assessment Year 1955-56, if such loan or advance remained outstanding on the first day of the previous year relevant to Assessment Year 1955-56. The constitutional validity of these two sections was assailed on the ground that they imposed unreasonable restrictions on the fundamental right of the assessee under Article 19(1)(f) and (g) of the Constitution by taxing outstanding loans or advances of past years as dividend. The Revenue however relied on a circular issued by the Central Board of Revenue under Section 5(8) of the Indian Income Tax Act, 1922 which corresponded to Section 119 of the present Act and this circular provided that if any such outstanding loans or advances of past years were repaid on or before June 30, 1955, they would not be taken into account in determining the tax liability of the shareholders to whom such loans or advances were given. This circular was clearly contrary to the plain language of Section 2(6-A)(e) and Section 12(1-B), but even so this Court held that it was binding on the Revenue and since:*

> *"past transactions which would normally have attracted the stringent provisions of Section 12(1-B) as it was introduced in 1955, were substantially granted exemption from the operation of the said provisions by making it clear to all the companies and their*

> *shareholders that if the past loans were genuinely refunded to the companies they would not he taken into account under Section 12(1 -B), "*

Sections 2(6-A)(e) and 12(1-B) did not suffer from the vice of unconstitutionality. This decision was followed in Ellerman Lines case [(1972) 4 SCC 474 : 1974 SCC (Tax) 304 : 82 ITR 913] where referring to another circular issued by the Central Board of Revenue under Section 5(8) of the Indian Income Tax Act, 1922 on which reliance was placed on behalf of the assessee, this Court observed:

> *"Now, coming to the question as to the effect of instructions issued under Section 5(8) of the Act, this Court observed in Navnitlal C. Javeri v. K.K. Sen, Appellate Assistant Commissioner, Bombay [AIR 1965 SC 1375 : (1965) 1 SCR 909 : 56 ITR 198] :*
>
> *'It is clear that a circular of the kind which was issued by the Board would be binding on all officers and persons employed in the execution of the Act under Section 5(8) of the Act. This circular pointed out to all the officers that it was likely that some of the companies might have advanced loans to their shareholders as a result of genuine transactions of loans, and the idea was not to affect such transactions and not to bring them within the mischief of the new provision. '*
>
> *The directions given in that circular clearly deviated from the provisions of the Act, yet this Court held that the circular was binding on the Income Tax Officer. "*

The two circulars of the Central Board of Direct Taxes referred to above must therefore be held to be binding on the Revenue in the administration or implementation of sub-section (2) and this sub-section must be read as applicable only to cases where there is understatement of the consideration in respect of the transfer. "

[Emphasis is ours]

17.3 Also see the following observations of a coordinate bench in **Back Office IT Solutions Pvt. Ltd. v. Union of India**, 2021 SCC OnLine Del 2742, in the context of the impact of circulars issued by the revenue:

> *"24....In this context, tax administrators have to bear in mind the well- established dicta that circulars issued by the*

> *statutory authorities are binding on them, although, they cannot dictate the manner in which assessment has to be carried out in a particular case. A Circular cannot be side-stepped causing prejudice to the assessee by bringing to naught the object for which it is issued. [See: K.P. Varghese vs. Income-tax Officer 1, [1981] 7 Taxman 13 (SC); Also see: UCO Bank, Calcutta v. Commissioner of Income Tax, W.B., (1999) 4 SCC 599], "*

> 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.
>
> 20. The logical sequitur of the aforesaid reasoning can only be that the Tribunal's decision to not sustain the final assessment order dated 15.10.2019, is a view that cannot call for our interference.
>
> 21. As noted above, in the instant appeal all that we are required to consider is whether any substantial question of law arises for consideration, which, inter alia, would require the Court to examine whether the issue is debatable or if there is an alternate view possible. Given the language employed in the 2019 Circular, there is neither any scope for debate not is there any leeway for an alternate view.
>
> 21.1 We find no error in the view adopted by the Tribunal. The Tribunal has simply applied the provisions of the 2019 Circular and thus, reached a conclusion in favour of the respondent/assessee."

9. Thus, keeping in view the aforesaid observations of the Hon'ble Delhi High Court and in terms of paragraph 4 of the circular No. 19/2019 dated 14.08.2019, we hold that the impugned DRP order is invalid and shall be deemed to have never been passed. Accordingly, we quash the impugned DRP/AO order. Further, the issue that a simultaneous DIN number was generated and communicated have been considered by Co-ordinate Bench of

the Tribunal in the case of Abhimanyu Chaturvedi vs DCIT in ITA Nos.2486, 2487 and 2488/Del/2022. The relevant paragraph of this order is reproduced hereunder:-

> " 15.1 In this context from the aforesaid Circular no. 19/2019 it can be noted that it mandates that if the 'communication' is issued under aforesaid three exceptions the 'communication' 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 para 3 (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 .. .. "
>
> 15.2 To make it crystal clear here the words 'Communication' is not used to define merely the mode of transmission of the information but the circular No 19 of 2019 makes it clear by defining it in following words "However, it has been brought to the notice of the Central Boa rd 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"). So the assessment order itself is a communication and all compliances expected have to be specific to the assessment order.
>
> 15.3 Coming back to the assessment orders, in fact as para no. 1 to 3.1 of the assessment order dated 09.08.2021 are considered they mention that notice u/s 153A of the Act was issued through ITBA portal. Subsequent notice u/s 143(2) of the Act was also issued through ITBA Portal. Thus, the notices for the purpose of assessment were issued through ITBA Portal and if thereafter the assessment was carried out manually the

assessment order should have mentioned the aforesaid fact to comply with the mandate of Circular with regard to communications issued manually.

16. Further, the Bench takes note of the instructions dated 25.10.19, which lay down that when a document is prepared outside ITBA system and uploaded manually, a DIN is required to be generated prior to uploading the document in ITBA. The instructions make it imperative that the DIN so generated has to be used for reference and quoting a document number in a physical copy. The instructions specifically provide that the user (assessing officer) should physically sign the document after quoting DIN, before uploading. Meaning thereby that generation of DIN is condition precedent for making an assessment manually or otherwise on the ITBA and then before it is uploaded on ITBA, first it should have DIN bearing on its face and then only it should be signed. Thus for the purpose of section 153A/143(3) of the Act, the assessment can be said to be 'made' only when the DIN is quoted on the order before it is signed. If without first generating the DIN and before it is quoted on the order, the order is signed, the order is non-est.

17. The Bench is of considered view that forwarding of the intimation of generation of the DIN in ITBA is only a subsequent action and that is not part of assessment order. The manner in which the word 'communication' is defined shows every notice, order, summons, letter and any correspondence from Tax authorities should have a DIN quoted and it is for this reason that the Intimation issued about the DIN of assessment order itself has a DIN quoted on it.

18. In the case in hand the facts coming from the assessment order when considered establish that DIN was not generated prior to uploading the document in ITBA. It is also established that the DIN was not quoted before it was physically signed by the Ld. AO. The generation of DIN subsequently and generation of intimation to be sent to assessee are of no consequence for the purpose of assessment and raising the demand."

5. In the light of the aforesaid order, we are of the opinion that simultaneous issue of the DIN number is insignificant and

superfluous exercise, in the absence of mentioning the DIN number on the body of the communication."

10. Since, we have allowed the ground no.4 raised by the assessee which relates to validity of proceedings, the rest of the grounds have been rendered academic and do not require adjudication.

11. In the result, both the appeals filed by the assessee are allowed as indicated above.

Order pronounced in the open court on this 9th day of November, 2023.

Sd/-	**sd/-**
(KUL BHARAT)	**(SHAMIM YAHYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated the 9th day of November, 2023
TS

Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.DRP.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.