

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 1890/Del/2022 : Asstt. Year : 2016-17

Smt. Shafali Gupta, House No. 510, Sector-31, Gurgaon, Haryana-122002 (APPELLANT)	Vs	DCIT, Central Circle-7, New Delhi (RESPONDENT)
PAN No. AEUPG4620G		

ITA No. 1891/Del/2022 : Asstt. Year : 2015-16

ITA No. 1892/Del/2022 : Asstt. Year : 2016-17

Smt. Sunanda Sharma, 1202, Tower-3, Malibu Town, Sohna Road, Gurgaon, Haryana-122018 (APPELLANT)	Vs	DCIT, Central Circle-7, New Delhi (RESPONDENT)
PAN No. AAJPS6063L		

ITA No. 1895/Del/2022 : Asstt. Year : 2015-16

ITA No. 1896/Del/2022 : Asstt. Year : 2016-17

Smt. Saudamini Sharma, 1202, Tower-3, Malibu Town, Sohna Road, Gurgaon, Haryana-122018 (APPELLANT)	Vs	DCIT, Central Circle-7, New Delhi (RESPONDENT)
PAN No. FBEPS8547G		

ITA No. 1906/Del/2022 : Asstt. Year : 2015-16

Sh. Sumer Singh Yadav, 46, Sector-14, DLF QE S.O., Gurgaon, Haryana-122002 (APPELLANT)	Vs	DCIT, Central Circle-7, New Delhi (RESPONDENT)
PAN No. AEUPG4620G		

Assessee by : Sh. Ved Jain, Adv. &

Sh. Aman Garg, Adv.

Revenue by : Sh. H. K. Choudhary, CIT DR

Date of Hearing: 03.08.2023

Date of Pronouncement: 27.10.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assesseees against the orders of Id. CIT(A)-24, New Delhi dated 21.06.2022.

2. Since, the issue involved in all these appeals are similar, they were heard together and being adjudicated by a common order.

3. In ITA No. 1890/Del/2022, the additional grounds filed by the assessee are as under:

"1. The applicant has filed the above said appeal No. 1890/Del/2022 on 18th August, 2022 against the order dated 21.06.2022 passed by the learned Commissioner of Income Tax (Appeals)-24, New Delhi under Section 250 of the Income Tax Act.

2. That while filing the appeal, the applicant has raised 11 grounds of appeal.

3. However, while filing the appeal the appellant inadvertently has left out the ground of appeal relating to order passed by Ld. AO being null and void as the same is in violation of CBDT Circular No. 19/2019 dated 14th August, 2019.

4. That accordingly, the applicant is filing additional ground of appeal.

5. That it is submitted that the following additional ground may kindly be taken as the same goes to the root of the issue and all the facts are already on record:

"12. On the facts and circumstances of the case, the assessment order is null and void as the same is in violation of CBDT Circular No. 19/2019 requiring mandatory DIN."

6. That the ground revised in this application is legal ground going to the root of the matter, and all the facts relating to the same are already part of record."

4. Admission of the additional ground has been opposed in principle by the Id. DR. Keeping in view, the judgment of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. Vs CIT (1998) 229 ITR 383, the additional ground filed by the assessee is accepted. The relevant portion of the judgment is as under:

5. Under Section 254 of the Income-tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under Section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.

6. In the case of Jute Corporation of India Ltd. v. C.I.T., this Court, while dealing with the powers of the Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the

restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income-tax Officer. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.

7. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal [vide, e.g., C.I.T, v. Anand Prasad (Delhi), C.I.T. v. KaramchandPremchand P. Ltd. and C.I.T. v. Cellulose Products of India Ltd. . Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

8. The reframed question, therefore, is answered in the affirmative, i.e., the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee. We remand the proceedings to the Tribunal for consideration of the new grounds raised by the assessee on the merits.”

5. Respectfully following the above judgment of the Hon'ble Apex Court, the additional grounds taken up by the assessee are hereby admitted.

6. This issue of quashing of the order owing to absence of quoting of mandatory DIN by the Officers in their orders stands adjudicated by the Co-ordinate Bench of ITAT in the case of Sh. Rajesh Chaudhary in ITA No. 1615 & 1616/Del/2021 and CO Nos. 151 & 152/Del/2022 vide order dated 18.10.2023. For the sake of ready reference, the said order is reproduced as under:

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

BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT

AND

DR. B.R.R KUMAR, ACCOUNTANT MEMBER

ITA Nos.1615 & 1616/Del/2021

Assessment Years: 2013-14 & 2014-15

<i>DCIT, CC-31, New Delhi</i>	Vs.	<i>Sh. Rajesh Chaudhary, SCF-24, Sector-12, Faridabad, Haryana</i>
PAN :AFSPC1241A		
(Appellant)		(Respondent)

And

C.O. Nos.151 & 152/Del/2022

[In ITA Nos.1615 & 1616/Del/2021

Assessment Years: 2013-14 & 2014-15

Sh. Rajesh Chauchary, SCF-24, Sector-12, Faridabad, Haryana	Vs.	DCIT, CC-31, New Delhi
PAN :AFSPC1241A		
(Appellant)		(Respondent)

Date of hearing	10.10.2023
Date of pronouncement	18.10.2023

ORDER

2. The grounds raised in the cross-objections are as under:

"1. On the facts and circumstances of the case, the assessment order is null and void as the same is in violation of CBDT Circular No.19/2019 requiring mandatory DIN.

2. On the facts and circumstances of the case, the assessment framed u/s 153A, is bad in law in the absence of any incriminating material being found during the course of search."

3. As could be seen from ground no. 1 in the cross objections, the issue raised is a purely legal and jurisdictional going to the root of the matter. Therefore, we propose to deal with the issue at the very outset.

4. We have heard Sh. Ved Jain, learned counsel appearing for the assessee and learned Departmental Representative.

5. It is the case of the assessee that the impugned assessment orders have been communicated to the assessee without mentioning the Document Identification Number (DIN). Thus, he submitted that

the assessment orders without DIN are invalid and have to be quashed. In this regard, he relied upon Circular No.19 of 2019, dated 14th August, 2019 issued by the Central Board of Direct Taxes (CBDT). He also relied upon a number of judicial precedents submitted in the legal compilation.

6. Defending the assessment orders, learned Departmental Representative drew our attention to a report dated 09.10.2023 received from the Assessing Officer, wherein, it is stated that, though, the DINs were generated on 30.12.2019, however, manual orders without DIN was uploaded because ITBA Portal was not allowing to generate DIN through ITBA system.

7. Having considered rival submissions, as a matter of fact, we find that the impugned assessment orders do not contain any DIN. To bring more transparency in the functioning of the department and creating audit trail, the CBDT has issued Circular No. 19 of 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, date 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 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 para 3(0)/3(11)/3610/30v)/36) 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-(1). (ii) or (iii) above shall have to be regularized 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."

8. A reading of the aforesaid circular reveals that it has been issued by CBDT in exercise of powers conferred under section 119 of

the Act, hence, has statutory effect. It mandates that on or after 1st day of October, 2019, no communication will be issued without a computer generated DIN, which has to be quoted in the body of the communication. Though, paragraph 3 of the aforesaid Circular provides that in certain exceptional circumstances, the communication may be issued manually without DIN, however, it has to be after recording reasons in writing in the file with prior written approval of the competent authority and such reasons must be recorded in the body of the communication along with the approval number and date of the approval of the competent authority.

9. *In the facts of the present appeal, admittedly, though, the assessment orders have been issued without mentioning the DIN, however, in the body of the assessment orders, the Assessing Officer has neither provided reasons for issuing the assessment orders without DIN, nor he has mentioned the number and date of approval of the competent authority. Paragraph 4 of the extant circular states that any 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.*

10. *Thus, keeping in view the clear language of the aforesaid Circular, the assessment orders have to be declared as non-est and deemed to have never been issued. While coming to such conclusion, we find support from various judicial precedents cited before us by learned counsel for the assessee, including the decision of Hon'ble Jurisdictional High Court in case of CIT Vs. Brandix Mauritius Holdings Ltd., 2023 (4) TMI 579, dated 20.03.2023. No contrary decision was brought to our notice by learned Departmental Representative. Further, learned Departmental Representative could not offer any convincing reasons, why the CBDT Circular No. 19/2019 should not be applicable in letter and spirit.*

11. *In view of the aforesaid, we are inclined to quash the impugned assessment orders. As a natural corollary, the impugned orders of learned first appellant authority would have no leg to stand. Accordingly, they are set aside.*

12. *Since, we have quashed the assessment orders, the issues arising in Revenue's appeal, which are on merits, have become academic. Hence, there is no need for adjudicating them.*

13. *Resultantly, Revenue's appeals are dismissed and assessee's cross-objections are allowed, as indicated above.*

Order pronounced in the open court on 18th October, 2023

Sd/-

(DR. B.R.R. KUMAR)
VICE-PRESIDENT

Dated: 18th October, 2023.

Sd/-

(SAKTIJIT DEY)
ACCOUNTANT MEMBER

7. In the absence of any material change in the factual matrix and legal proposition, we hereby hold that the Assessment Orders have to be declared as non-est and deemed to have never been issued.

8. In the result, all the appeals of the assesseees are allowed.
Order Pronounced in the Open Court on 27/10/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Dated: 27/10/2023

Subodh Kumar, Sr. PS

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member