

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : C : NEW DELHI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.1289/Del/2023
Assessment Year: NA

Jammat-E-Islami Hind,
D-321, Dawat Nagar,
Abul Fazal Enclave,
Jamia Nagar,
New Delhi – 110 025.

Vs CIT (Exemptions),
New Delhi.

PAN: AAATJ3324L

(Applicant)

(Respondent)

Assessee by	:	Dr. Rakesh Gupta, Adv. & Shri Somil Agarwal, Adv.
Revenue by	:	Shri Waseem Arshad, CIT, DR
Date of Hearing	:	09.11.2023
Date of Pronouncement	:	20.11.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal is preferred by the Assessee against the order dated 31.03.2023 of the Commissioner of Income Tax (Exemptions), New Delhi, (hereinafter referred to as 'Ld. CIT(E)'), in F.No.CIT(E)/12AB(4)/JEIH/2022-23/2396, passed u/s 12AB(4) of the Income Tax Act, 1961 (hereinafter referred as 'the Act').

2. Heard and perused the record. An application for admission of additional grounds of appeal have been filed raising the following additional grounds:-

“1. That having regard to the facts and circumstances of the case, the action of Ld. CIT(E) in passing the impugned order for cancellation of registration u/s 12AB(4) of the Income Tax Act, 1961, dated 31.03.2023 is illegal, bad in law, inter alia, for the reason that the said order has been passed without DIN number as is must as held in the judgements of CIT (International Taxation) vs. Brandix Mauritius Holdings Ltd., ITA No. 163/2023, dated 20.03.2023 (Del), PCIT(E) vs. M/s Tata Medical Centre Trust, ITAT/202/2023, dated 26.09.2023 (Cal) and Ashok Commercial Enterprises vs. Asstt. CIT, WP No. 2595 of 2021, dated 04.09.2023 (Bom) and CBDT Circular No. 19/2019 dated 14.08.2019.

2. That in any case and in any view of the matter, the passing of the impugned order for cancellation of registration u/s 12AB(4) dated 31.03.2023 is illegal, bad in law and the same is not sustainable on various legal and factual grounds.

Since the above grounds of appeal are purely legal, do not require fresh facts to be investigated and go to the root of the matter, it is prayed that the same may please be admitted in view of the following judgements:

- *CIT vs. Sinhgad Technical Education Society, (2017) 397 ITR 0344 (SC).*
- *NTPC Ltd. vs. CIT, (1998) 229 ITR 0383 (SC).*
- *VMT Spinning Co. Ltd. vs. CIT & Anr., (2016) 389 ITR 0326 (P&H).*
- *CIT vs. Sam Global Securities, (2014) 360 ITR 0682 (Del.).*
- *Siksha vs. CIT, (2011) 336 ITR 0112 (Orissa).*
- *Inventors Industrial Corporation Ltd. vs. CIT, (1992) 194 ITR 0548 (Bom).*

3. Considering the fact that pure question of law has been raised in the additional grounds, which can be adjudicated on the basis of facts available on record, the additional grounds are admitted.

4. The ld. AR has relied on the CBDT Circular dated 14.08.2019 and the judgement of the Hon'ble Delhi High Court in the case of **CIT (International Taxation) vs. Brandix Mauritius Holdings Ltd. (supra)**.

5. On the other hand, the ld. DR has come up with an argument that the Circular relied on is only for the internal control of the Revenue officers and the Board's Circular does not confer any vested right on the assessee. He has made reference to FAQ available on the official website of the Income-tax Department to submit that the DIN communication can be validated by a prescribed procedure. The ld. DR has relied on the observations of the Hon'ble Delhi High Court in **ITA 805 of 2005** in the case **CIT vs. Sudev Industries Ltd.** to submit that there is a distinction between inherent invalidity of an order which relates to jurisdictional defect and irregularities or mistakes in proceedings in exercise of due jurisdiction. He has relied on the following observations from this judgement:-

“15.We need not dilate and expound on the said differentiation in detail in the present case, for service of notice under Section 148 of the Act, it was held in R.K. Upadhyaya (supra) is an aspect relating to procedure and a pre-condition for passing of an order of assessment and not jurisdictional pre-condition which would make the assessment order invalid when the assessee has been duly served and had participated in the proceedings.”

5.1 The ld. DR further relied on the provisions of section 292B of the Act and the judgement of the Hon'ble Delhi High Court in the case **CIT vs. M/s Jagat Novel Exhibitors Private Ltd. (2013) 356 ITR 562** to contend that the object

and purpose behind having section 292B is to ensure that technical pleas on the ground of mistake, defect or omission should not invalidate the assessment proceedings when no prejudice is caused due to non-observance of technical formalities. He submitted that the judgement relied on by the Id. AR in the case of **Brandix Mauritius Holdings Ltd. (supra)** is distinguishable on facts. He also relied on the principle of interpretation arising out of *sub silentio* to contend that as the Hon'ble Delhi High Court was not apprised of the aforesaid arguments, the judgement of the Hon'ble Delhi High Court in the case of **Brandix Mauritius Holdings Ltd. (supra)** cannot be taken as a precedent.

6. After taking into consideration the material on record, it comes up that there is no denial of Id. DR to the fact that the impugned order for cancellation of registration u/s 12AB(4) of the Act dated 31.03.2023 does not bear the DIN number. The binding effect to Circular and subsequent act of DIN generation, to make the order not bearing DIN validated have been considered by this Bench in the case of **Abhinav Chaturvedi and others ITA No. 2486/Del/2022, A.Y. 2013-14 decided on 03.08.2023** and it will be appropriate to reproduce the findings herein below:-

“11. The Bench has given thoughtful consideration to the matter on record and submissions. The issues to be decided first are ;

First, if there was any illegality in the impugned assessment orders for the reason that the Assessment order did not have DIN quoted on its body.

Secondly, if there was any illegality in the impugned assessment orders for the reason the same was incomplete when uploaded on ITBA and be considered passed after limitation.

12. In regard to first issue it will be appropriated to reproduce here the complete text of the Circular no. 19/2019 while making the crucial part of it in BOLD :

"New Delhi, dated the 14th August, 20 19 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 computerisation 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 15th 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 or 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 (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.*

8. *Hindi version to follow."*

13. *It will also be appropriate to reproduce the relevant content of instructions from Directorate of Income Tax (System), dated 25.10.2019 as follows :-*

"Subject: Changes in facility for generation of Document Identification Number (DIN) for manual documents in Income Tax Business Application (ITBA)/ITD - Reg.

Madam/Sir, 2486 & Ors This is in reference to the subject mentioned above. It is informed that the facility for generation of Document Identification Number (DIN) for documents prepared outside ITBA system and uploaded manually is now made available in Income Tax Business Application from 25/10/2019. Now, DIN can be generated prior to uploading the document in ITBA.

2. *ITBA provides the functionality to capture and upload the letters, notices and orders issued manually and served on the assessee by users due to any exceptional reasons like technical*

issue in system etc. DIN was generated for every such document uploaded manually. However, there was no facility to quote the system generated DIN in the physical copy of documents.

3. Therefore, whenever user uploads a document which was issued outside ITBA system, DIN will be generated prior to uploading of such manual letter or notice or order in ITBA. User may use the same for reference and quoting as Doc. No. in physical copy.

4. Intimation letter will continue to be generated in ITBA. The same document will also be shared with e-Filing portal through e- Proceedings interface for authentication purpose. Assessee can verify the authenticity of the Letter or Notice or Order issued by Income Tax Authorities (ITA) in e-Filing portal. Such intimation along with Letter/Notice/Orders also made available in View/Download Letter/Notice/Orders screen if users wish to dispatch the same through post. Steps to be followed for DIN generation in ITBA application are as below:-

- i. Navigate to Generate Letter/Notice/Orders*
- ii. Select Manual to System option screen.*
- iii. User will enter the Date of Issue and Manual File No.*
- iv. Click on Save and Generate DIN.*

NOTE: DIN will be generated in the system and will be displayed in column 'System Doc. No.' User should physically sign the document after quoting DIN before uploading, as the assessee will be viewing the uploaded document on their e-Proceeding account on e-filing portal.

v. User will attach the file and click on Save NOTE: User will be able to upload the document with the DIN no. generated in ITBA system until the row containing that DIN is deleted by the user from the system.

vi. Click on Generate button to complete the process in ITBA system.

The system generated Intimation letter will also be generated for reference and will be available in View/Download Letter/Notice/Orders screen for user to download the same."

14. Now considering the vital piece of material before us is the letter dated 27.06.2023 in the form of report submitted by the Ld. AO which makes it 2486 & Ors admitted that the order was passed manually. It was uploaded on ITBA on 17.09.2021. The DIN no. was generated on 17.09.2021 through ITBA. Ld. AO admitted that to his understanding whenever manually is passed the assessment order is uploaded on ITBA through manual to system tab, a DIN is generated for that particular assessment order. Accordingly, the DIN was generated in the cases and intimations were sent.

15. However, from the assessment order it does not appear that Ld. AO had proceeded to pass the order manually. There is nothing in the assessment order mentioning the reasons which as exception only allow passing of the assessment order manually.

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 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"). 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."

7. The aforesaid discussion of the Bench in the case of **Abhinav Chaturvedi (supra)** duly rebuts the arguments of the ld. DR that the Circular dated 14.08.2019 is only for internal control purposes. Rather, we are

constrained to observe that such argument has no foundation of its own, but, is rather contrary to the settled provisions of law wherein it is held that the Circulars of the Board are binding on the Id. tax authorities. Reliance in this regard can be placed on the judgement of Hon'ble Delhi High Court in the case of **Geep Industrial Syndicate Vs. CBDT (1987) 166 ITR 88 (Del)**.

8. As with regard to the subsequent validation of the order, it comes up that although this proposition is also not sustainable and the reasons have been elaborately discussed in the case of **Abhinav Chaturvedi (supra)**, still, for sustaining this argument, there should have been some material to show that at any stage the DIN was generated and even if it was generated at all, since the DIN is not scribed on the order itself, the order cannot be considered to be a valid order.

9. Taking up the attempt of the Id. DR to distinguish the facts on the principle of *sub silentio*, we are of the considered view that the same has no application to the present facts and circumstances. The point under consideration is purely a question of law arising out of non-compliance of a mandatory Circular of the Board and judgement of the Hon'ble Delhi High Court in the case of **Brandix Mauritius Holdings Ltd. (supra)** holds the field without any exception for a distinction on facts or any other principle of

interpretation. In the light of the aforesaid, we are inclined to allow the additional ground and set aside the impugned assessment order being *non est*.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 20.11.2023.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 20th November, 2023.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi