

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

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL
MEMBER & SHRI M. BALAGANESH, ACCOUNTANT
MEMBER**

**ITA No.2402/Del/2022 Assessment Year: 2019-20
ITA No. 369/Del/2023 Assessment Year: 2020-21**

Keller Asia Pacific Limited, 6A, Centennial Square, Ambedkar Road, Kodambakkam, Chennai, Tamilnadu, 600024	Vs.	ACIT, Central International Taxation 2(1)(2), Delhi
PAN :AAGCK5505R		
(Appellant)		(Respondent)

Department by	Shri Vijay Vasanta, CIT - DR
Assessee by	Shri Ashik Shah, CA

Date of hearing	28.08.2023
Date of pronouncement	22.11.2023

ORDER

PER CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

These two appeals are filed by the assessee against the final assessment orders passed by the Assessing Officer under Section 143(3) read with section 144C(13) pursuant to the directions of the

DRP's directions/order passed under Section 144C(5) of the Income-Tax Act, 1961 for assessment years 2019-20 and 2020-21.

2. The assessee in these appeals challenged the orders of the Assessing Officer and the directions of the DRP on the taxability of management fee received and levy of sur-charge and cess on FTS for the assessment year 2019-20 and for the assessment year 2020-21, assessee challenged taxability of management fee received. In these two assessment years, the assessee also filed additional grounds challenging the validity of the orders passed by the learned DRP on the ground that the orders passed by the DRP did not contain the mandatory documentation identification numbers (DIN) on the body of the directions in contravention of CBDT Circular No. 19/2019 dated 14.08.2019. The additional grounds in these two appeals read as under:

Additional grounds in ITA No.2402/Del/2022: A.Y. 2019-20

- 1) on the facts and circumstances of the case and in law, the Ld. DRP erred in issuing the directions under Section 144C(5) of the Act dated June 16, 2022, without quoting the mandatory Documentation Identification Number ("DIN") on the body of the said directions, in contravention of the CBDT Circular No. 19/2019 dated

August 14,2019 and is therefore, invalid and shall be deemed to have never been issued.

- 2) on the facts and circumstances of the case and in law, the final assessment order dated July 30,2022 under Section 143(3) read with section 144C(13) of the Act passed by the Ld. A.O, pursuant to the invalid directions passed by the Ld. DRP under Section 144C(5) of the Act, is illegal, thus, making the final assessment order bad in law, null and void and thus, liable to be quashed.

Additional grounds in ITA No.369/Del/2023: A.Y. 2020-21

- 1) on the facts and circumstances of the case and in law, the Ld. DRP erred in issuing the directions under Section 144C(5) of the Act dated November 10, 2022, without quoting the mandatory Documentation Identification Number (“DIN”) on the body of the said directions, in contravention of the CBDT Circular No. 19/2019 dated August 14, 2019 and is therefore, invalid and shall be deemed to have never been issued.
- 2) on the facts and circumstances of the case and in law, the final assessment order dated December 21, 2022 under Section 143(3) read with section 144C(13) of the Act passed by the Ld. A.O, pursuant to the invalid directions passed by the Ld. DRP under Section 144C(5) of the Act, is illegal, thus, making the final assessment order bad in law, null and void and thus, liable to be quashed.
3. The learned counsel for the assessee submits that since these additional grounds are purely legal grounds and no verification of fresh facts are required, the same may be admitted and disposed of on

merits. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of NTPC Ltd. Vs. CIT – 229 ITR 383.

4. On hearing both the parties and perusing the additional grounds, we are of the view that the additional grounds raised are purely legal grounds and following the decision of Hon'ble Supreme Court in the case of NTPC Ltd. Vs. CIT (supra), we admit the additional grounds.

5. Learned counsel for the assessee on the additional grounds, submits that DRP passed the orders without mentioning the DIN on the directions/orders and such orders are bad in law. Placing reliance on the decision of Hon'ble jurisdictional High Court in the case of Brandix Mauritius Holdings Ltd. vs. DCIT (149 taxmann.com 238) submits that the directions of the DRP are invalid as the said orders/directions failed to mention DIN in the body of the directions. The learned counsel also placed reliance on the decision of the co-ordinate Bench in the case of Abhimanyu Chaturvedi vs. DCIT in ITA No.248/Del/2022 dated 03.08.2023 wherein the co-ordinate Bench held that orders passed by the Assessing Officer without quoting the DIN on the body of the order are non est.

6. Learned Departmental Representative on the other hand submits that as intimated by the DCIT and Secretary(DR-II), New Delhi, the directions/orders under Section 144C(5) of the Act dated 16.06.2022 was uploaded on the ITBA System on 22.06.2022 for which a DIN was generated by the system. Learned DRP further submits that to communicate the DIN's directions/orders, an intimation letter was generated on 22.06.2022 having a separate DIN, therefore, it is submitted that in this way, there were two DINs generated, one for uploading the manual order on system and another for communicating the DIN of the manual order.

7. Heard rival contentions. On perusal of the directions of the DRP passed under Section 144C(5) for assessment years 2019-20 and 2020-21, we notice that these directions were passed without mentioning the DIN in the body of the directions. However, we find that separate communications dated 22.06.2022 and 15.11.2022 were issued intimating that orders passed under Section 144C(5) dated 16.06.2022 and 20.11.2022 for the assessment years 2019-20 and 2020-21 contain DIN numbers, meaning thereby, the DIN was generated subsequent to passing of the orders/directions of the DRP.

8. The issue as to whether the orders/intimation passed without quoting the DIN numbers on the body of the order has been considered by the Hon'ble Delhi High Court in the case of Brandix Mauritius Holdings Ltd. vs. DCIT (supra). After analyzing the clauses of the CBDT Circular No. 19/2019 dated 14.08.2019, the Hon'ble Delhi High Court held that the orders/communications issued without quoting the DIN on the body of the order are not valid orders. Similar issue has been considered by the Tribunal recently in the case of Smt. Sharda Devi Bajaj & Ors. dated 15.11.2023 (ITA No.3006/Del/2022) wherein the co-ordinate Bench held as under:

“8. Coming to the merits, of the ground as introduced, the issue is no longer res integra, as it is covered by several decisions of the coordinate Bench and in particular the decision dated 19.9.2022 in the case of M/s Brandix Mauritius Holdings Ltd. Vs. DCIT 2022 (11) TMI 34, which has been confirmed by the Hon’ble Delhi Court in the case of CIT (International Taxation-1), New Delhi vs. M/s Brandix Mauritius Holdings Ltd. 2023 (4) TMI 579.

9. The CBDT vide aforesaid Circular dated 14.8.2019 has mandated, Generation/ Allotment/ Quoting of computer generated Document Identification Number (DIN) in the body of all communications, in the nature of notices/summons/ letters/ correspondences as well as the orders passed. Para 3 of the Circular sets out, exceptional circumstances, in which such communications may be issued manually, with the rider that this shall be done only after recording reasons in writing in the file and with the prior written approval of the Chief Commissioner/Director of Income Tax. Para 4 of the Circular provides that any communication which is not in conformity with the requirement of Para 2 and Para 3 shall be treated as invalid and shall be deemed to have never been issued.

10. In the present case, it is not in dispute and otherwise, it is a matter of record that the order of the Assessing Officer does not bear any DIN.

11. It is not necessary to multiply authorities on the point. However, to the similar effect is the decision of the Hon’ble Bombay High Court in Ashok Commercial

Enterprise vs. ACIT in WP Nos. 2595 of 2021 & Ors. Judgement dated 04.09.2023 and the Hon'ble Kolkata High Court in PCIT vs. M/s Tata Medical Centre Trust in ITAT/202/2023 Judgement dated 26.9.2023.

12. The Hon'ble Bombay High Court has inter alia held that subsequent generation of the DIN will not be sufficient as the requirement of the CBDT Circular, is quoting of the DIN, in the body of such communication and / or order.

13. On behalf of the Revenue reliance is placed on the communication dated 17.9.2019 which pertains to the roll out of facility for System generated Document (i.e. Intimation Letter) containing Document Identification number (DIN) for documents issued outside the system but uploaded manually in Income Tax Business Application (ITBA).

14. We are unable to see as to how the said communication can come to the aid of the Revenue. All that the communication states is about the provision of facility for generation of Intimation Letter containing Document Identification Number / Document Number (DIN/DN) for documents issued outside ITBA system but uploaded manually in Income Tax Business Application (ITBA).

15. From para 4 of the communication, it is clear that it pertains to the functionality to capture and uphold the letters, notices and orders issued manually and served on taxpayers by users due to any exceptional circumstances under Para 3 (i), (ii) and (iii) of the aforesaid Circular dated 14.8.2019. It is not the case made out that there are any exceptional reasons recorded in these appeals as required by the Circular dated 14.8.2019. Thus, in our opinion, the said communication cannot come to the aid of the Revenue in the present Appeals.

16. In that view of the matter, the additional ground as raised has to succeed. In the face of this it is not necessary to go into the merits of other Grounds, as raised”.

9. The ratio of the above decisions applies to the facts of the assessee's case. Thus, respectfully following the above decision, we hold that the directions/orders passed by the DRP for the assessment years 2019-20 and 2020-21 under Section 144C(5) of the Act are bad in law. Consequently, the final assessment orders passed by the Assessing Officer under Section 143(3) read with section 144C(13) pursuant to such directions/orders of the DRP are also bad in law.

Thus, we quash the final assessment orders passed by the Assessing Officer for the assessment years 2019-20 and 2020-21 allowing the additional grounds of appeals of the assessee.

10. Since, we have quashed the final assessment orders on the jurisdictional issue, we are not going into the merits of the additions made in the assessment orders as it is only academic.

11. In the result, the appeals of the assessee are partly allowed, as indicated above.

Order pronounced in the open court on 22.11.2023.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Dated: 22nd November, 2023
Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi