

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI**

**BEFORE  
SHRI M BALAGANESH, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 3007/Del/2022  
Asstt. Year: 2015-16

Rachna Bajaj, Damini Chowk, Bikaner, Rajasthan 334 001 PAN AHNPB4506A (Appellant)	Vs.	DCIT, Central Circle-32 New Delhi.  (Respondent)
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Assessee by:	Shri Aman Garg, CA
Department by:	Shri P.N. Barnwal, CIT-DR
Date of Hearing:	20.11.2013
Date of pronouncement:	29.11.2023

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order dated 24.11.2022 of the Ld. Commissioner of Income Tax (Appeals)-30, New Delhi ("**CIT(A)**") pertaining to Assessment Year ("**AY**") 2015-16.

2. The assessee has taken the following grounds of appeal:

- “1. *On the facts and circumstances of the case the order passed by the learned Commissioner of Income Tax (Appeals) (CIT (A)) is bad both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, the learned CIT (A) has erred, both on facts and in law, in rejecting the contention of the assessee that the assessment order passed under section 143(3) r.w.s. 153C is illegal and bad in law as the same has been passed without having valid jurisdiction.*
3. *On the facts and circumstances of the case, the learned CIT (A) has erred, both on facts and in law, in rejecting the contention of the assessee that the assessment order passed under section 153C r.w.s. 143(3) is bad and liable to be quashed as the same has been framed consequent to a search which itself was unlawful and invalid in the eyes of law.*

4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153C and the assessment order passed in consequence thereto are bad in law in the absence of any incriminating material belonging to the assessee being found during the search.*
5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under section 153C and assessment framed under section 153C is bad and liable to be quashed in the absence of any valid satisfaction being recorded by the AO of the searched person that the incriminating material belonging to the assessee was found during the course of search.*
6. *On the facts and circumstances of the case, the learned CIT (A) has erred, both on facts and in law, in rejecting the contention of the assessee that the proceedings initiated under section 153C against the appellant and the assessment framed under section 153C r.w.s. 143(3) are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.*
7. *On the facts and circumstances of the case, the learned CIT (A) has erred in confirming the addition of Rs. 5,00,000/- made by the AO on account of amount received from M/s. N Sarda & Associates Consultant Pvt. Ltd holding the same as unexplained invoking the on provision of section 68 of the Act.*
8. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that assessment order has been passed by AO on the basis of surmises and conjectures, without there being any adverse material on record.*
9. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the AO has erred in drawing adverse inference against the assessee despite the fact that M/s N Sarda & Associates Consultants Pvt. Ltd has confirmed the transaction in the independent enquiry conducted by the assessing officer by issue of notice under section 133(6) of the Income Tax Act.*
10. *On the facts and circumstances of the case the Ld. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the addition has been made by the AO misinterpreting the statements recorded during the course of search.*
11. *On the facts and circumstances of the case, the learned CIT (A) has erred in facts and in law in confirming the action of the AO in charging the interest u/s 234B of the Act.*
12. *That the appellant craves leave to add, amend or alter any of the grounds of appeal.”*

3. The assessee filed an application dated 11.09.2023 seeking permission to raise the following additional ground as the same is a legal ground going to the root of the matter and all the facts relating to the same are already on record:-

*“13. 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.”*

4. We have heard the Ld. Representative of the parties. The additional ground raised by the assessee is purely legal and jurisdictional issue going

to the root of the matter and all the facts are on record. In National Thermal Power Co. Ltd. vs. CIT (1998) 229 ITR 383 (SC), the Hon'ble Supreme Court observed that the Tribunal should not be prevented from considering questions of law arising in assessment proceedings. Where the Tribunal is only required to consider the question of law arising from the facts which are on record in the assessment proceedings there is no reason 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. We, therefore following the decision (supra) of the Hon'ble Apex Court admitted the additional ground and proceed to consider the same.

5. The Ld. AR invited our attention to the order of the Ld. AO dated 07.04.2021 for AY 2015-16 passed under section 153C r.w. 143(3) of the Income Tax Act, 1961 (**the "Act"**) which was the subject matter of appeal before the Ld. CIT(A). He pointed out that it will be observed that there is no mention of Document Identification Number (**"DIN"**) in the body of the assessment order which is in violation of para 2 of the CBDT Circular No. 19/2021 dated 14.08.2019. He further submitted that perusal of the order would also reveal that there is no mention of any reason for non-issuance of DIN and the date of approval of Director General / Chief Commissioner of Income Tax for issuing the order without DIN. The requisite condition mentioned in para 3 of the CBDT Circular No. 19/2019 dated 14.08.2019 has also not been complied with. He contended that this is in violation of the binding CBDT Circular No. 19/2019. As a consequence, the impugned order of the Ld. AO is invalid and 'non-est' in the eye of law and deserves to be quashed. He also relied upon a number of judicial precedents wherein the courts/authorities have decided the impugned issue in favour of the assessee. He, therefore, vehemently argued that in the light of the facts and circumstances of the assessee's case, the order passed by the Ld. AO be held as null and void.

6. The Ld. CIT-DR, on the other hand, submitted a report dated 17.11.23 received from the Ld. AO, which reads as under:



DR.

**Dy. Commissioner of Income Tax-Central Circle-32,  
Room No 359, E-2, ARA Centre, Jhandewalan Extn., New Delhi  
Phone: 011-23593407, E-mail Id: delhi.dcit.cen32@incometax.gov.in**

F. No. DCIT/CC-32/Report/2023-24/478

Date: 17.11.2023

To,

The Commissioner of Income Tax (DR)  
F Bench , ITAT  
New Delhi

(Through Proper Channel)

Sir,

**Sub: - Assessment order passed without DIN in the case of Smt. Rachna Bajaj-reg.  
Ref: ITA No. 3007/Del/2022 in the case of Smt. Rachna Bajaj for the A.Y. 2015-16**


Please refer to the above.

2. In this regard it is submitted that in the case of Smt. Rachna Bajaj order u/s 153C r.w.s. 143(3) of the I.T. Act was passed on 07.04.2021. It is further submitted that, in this case assessment order u/s 153C r.w.s. 143(3) of the I.T. Act passed on 07.04.2021. While passing the assessment order DIN No. ITBA/AST/S/91/2021-22/1032403423(1) was generated and when the accounting was closed by the CPC, the intimation letter for order u/s 153C of the I.T. Act dated 07.04.2021 was generated wherein it is informed that the order u/s 153C of the I.T. Act, 1961 dated 07.04.2021 is **having Document No. (DIN) ITBA/AST/S/91/2021-22/1032376518(1).**

3. Further, decision of Hon'ble High Court of Allahabad in the case Chandra Bhan Vs. Union of India have been relied where in on similar facts the Hon'ble High Court dismissed the appeal of the assessee. Also, the Jharkhand High Court in a recent decision accepted the revenue's contentions whilst holding that a delay of one day in generation of DIN & uploading of an order was not fatal to such assessment.

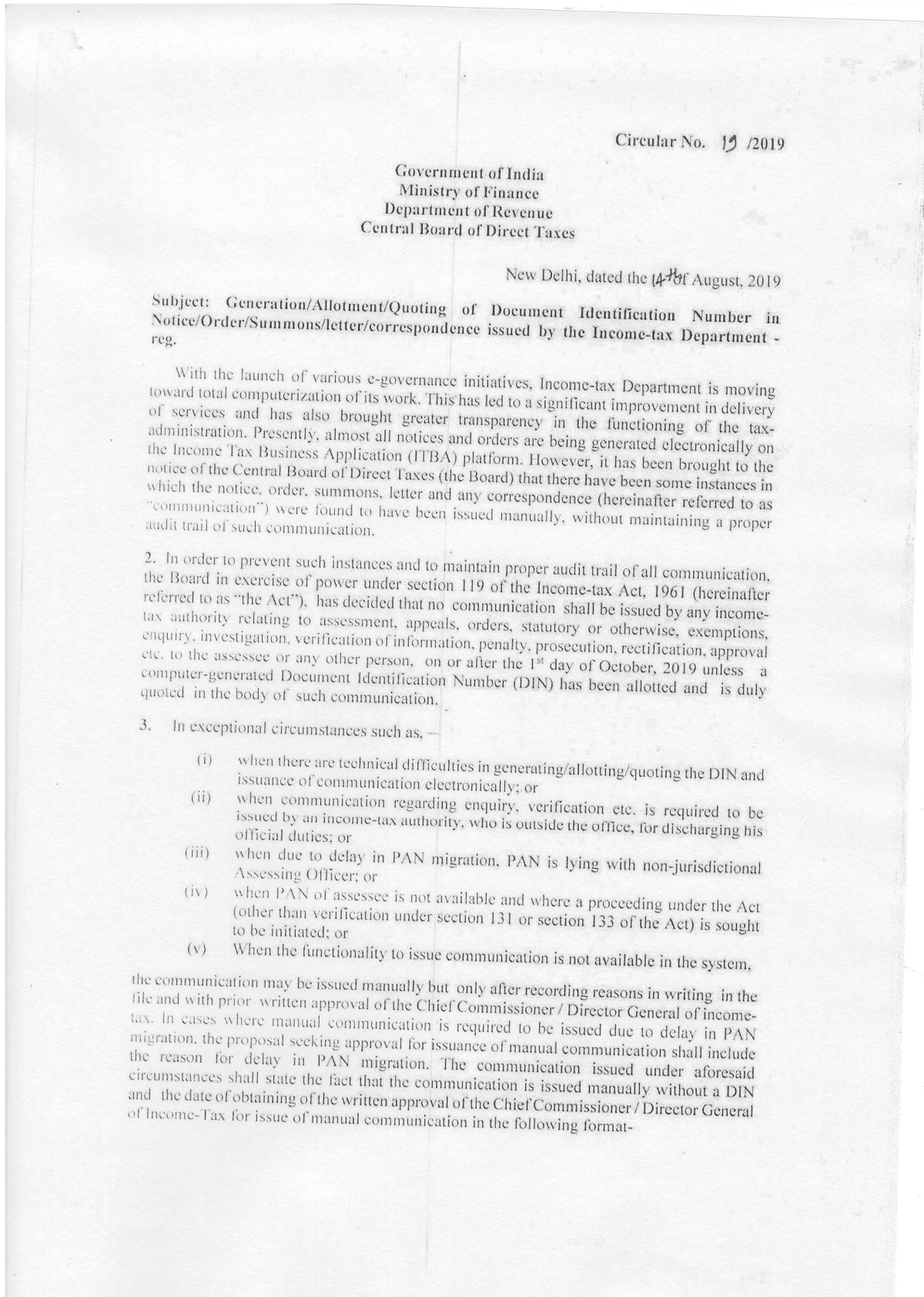
4. The document Identification Number (DIN) was introduced by CBDT to curb the instances of manual issues of notice/order/summon/letter and any correspondence & to maintain proper audit trail of such so as to bring transparency in the tax administration. In this case the intimation letter dated 12.04.2021 for order u/s 153C of the I.T. Act, is the part of communication of order u/s 153C of the Income Tax Act, 1961 dated 07.04.2021 and it cannot be read in isolation as it is a part of order. Intimation letter was issued with DIN No. ITBA/AST/S/91/2021-22/1032403423(1) dated 12.04.2021 informing that **order u/s 153C of the Income Tax Act, 1961 dated 07.04.2021 is having Document No. (DIN) ITBA/AST/S/91/2021-22/1032376518(1).** (Copy of intimation letter for order u/s 153C of the I.T. Act, 1961 is enclosed herewith.

Yours faithfully,

  
 (Dr. Manoj Kumar)  
 Dy. Commissioner of Income Tax  
 Central Circle - 32, New Delhi

7. We have considered the submissions of the parties and perused the records. As a matter of fact, we observe that mention of DIN is conspicuous by its absence in the body of the impugned assessment order.

8. We have also gone through the CBDT Circular No. 19/2019 dated 14.08.2019, which reads as under:-



"... 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 31<sup>th</sup> October, 2019.


8. Hindi version to follow.

  
(Sarita Kumari)  
Director (ITA.II), CBDT

(F.No. 225/95/2019-ITA.II)

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/CsIT, 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

  
(Sarita Kumari)  
Director (ITA.II), CBDT

9. In para 2 thereof it is stated that in order to prevent instances (narrated in the opening para) and to maintain audit trail of all communication, no communication shall be issued by any Income Tax Authority to the assessee or any other person on or after the 1<sup>st</sup> day of October, 2019 unless a computer generated DIN has been allotted and is duly quoted in the body of such communication. In the present case at hand, undoubtedly, the impugned assessment order is one such communication which has been issued by the Ld. AO without allotting a computer generated DIN and duly quoting in the body of the impugned assessment order. There is thus clear violation of the specific requirement under the CBDT Circular No. 19/2019 to quote the DIN in the body of the impugned assessment order.

10. Para 3(i),(ii),(iii),(iv) and (v) of the Circular No. 19/2019 enumerate the exceptional circumstances in which the Income Tax Authority may issue the communication manually but only after recording reasons in writing in the file and with the prior written approval of Chief Commissioner/Director General of Income Tax. The communication issued manually in situations specified in para 3 (i), (ii) or (iii) of the Circular, the Income Tax Authority is required to take steps to regularise the failure to quote DIN within fifteen (15) working days of its issuance in the manner laid down in para 5 of the said Circular, namely 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 as per electronically generated proforma available on the system.

11. Para 4 of the Circular says in unequivocal terms that any communication which is not in conformity with para 2 and para 3 shall be treated as invalid and shall be deemed to have never been issued.

12. The case of the assessee is that the communication, namely, the assessment order dated 07.04.2021 for AY 2015-16 is not only without

mention of DIN in the body of the order, there is no material on the record mentioning the reason for issuance of order without DIN and the date of approval of Director General / Commissioner of Income Tax for issuance of order without DIN. There is thus violation of the mandate enshrined in para 2 and para 3 of the CBDT Circular No. 19/2019 dated 14.08.2019. Therefore, the consequence mentioned in para 4 of the said Circular, namely that the impugned assessment order dated 07.04.2021 be treated as invalid and non-est in the eye of law should follow.

13. We do not find any substance in the reasons stated by the Ld. AO in his report dated 17.11.2023 for issuance of assessment order without DIN as it is a matter of record that the impugned assessment order neither contain any DIN and nor any reason for non-mentioning of DIN thereof. Rather, we are in complete agreement with the above contentions of the assessee. In taking this view we are supported by the ratio decidendi of the decision of Hon'ble Delhi High Court in CIT (International Taxation) vs. Brandix Mauritian Holdings Ltd. dated 20.03.2023 reported in (2023) 293 Taxman 385 (Delhi) wherein the Hon'ble Delhi High Court dismissed the Revenue's appeal holding as under:-

*"8.1 In a nutshell, communications referred to in the 2019 Circular would fall in the following slots:*

- i. Those which do not fall in the exceptions carved out in paragraph 3(i) to (v)*
- ii. Those which fall in the exceptions embedded in paragraph 30 to (v), but do not adhere to the regime set forth in the 2019 Circular.*

*8.2 Therefore, whenever communications are issued in the circumstances alluded to in paragraph 3(i) to (v), i.e., are issued manually without a DIN, they require to be backed by the approval of the Chief Commissioner/Director General. The manual communication is required to furnish the reference number and the date when the approval was granted by the concerned officer. The formatted endorsement which is required to be engrossed on such a manual communication, should read as follows:*

*"...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.....”*

18. *The argument advanced on behalf the appellant/revenue that recourse can be taken to Section 2928 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 nor 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.*

22. *Accordingly, the appeal filed by the appellant/revenue is closed.”*

14. Apart from decision of the Hon'ble jurisdictional Delhi High (supra), the case of the assessee also finds support from various judicial precedents cited before us by the Ld. AR. Though it is not necessary to multiply authorities on the point, however to the similar effect is the subsequent decision of the Hon'ble Calcutta High Court in the case of PCIT vs. M/s. Tata Medical Centre Trust (ITAT/202/2023) dated 26.09.2023 and Hon'ble Bombay High Court in the case of Ashok Commercial Enterprises vs. ACIT (WP. No. 2595 of 2021 with WP. No. 2953 of 2021, 2847, 2588, 2598, 2597, 2696, 2625, 2594 of 2021) wherein the Hon'ble Bombay High Court, 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.

15. In view of the above factual matrix of the assessee's case and in the light of the various decisions (supra) of the Hon'ble High Courts as well as the binding CBDT Circular 19/2019, we are inclined to quash the assessment order dated 07.04.2021 passed by the Ld. AO under section 153C r.w. 143(3) of the Act. As a natural corollary, the impugned order of the Ld. CIT(A) which is the subject matter of appeal before the Tribunal would have no legs to stand. Accordingly, it is set aside.

16. The additional ground No. 13 taken by the assessee raising purely legal issue is allowed. We are not adjudicating the appeal on merits.

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

**Order pronounced in the open court on 29<sup>th</sup> November, 2023.**

**Sd/-**  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

Dated: 29/11/2023

**Veena**

Copy forwarded to -

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

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	