

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'A': NEW DELHI  
BEFORE SHRI G. S. PANNU, HON'BLE VICE PRESIDENT

AND

SHRI CHALLAN NAGENDRA PRASAD, HON'BLE JUDICIAL MEMBER

ITA No.437/DEL/2021  
[Assessment Year: 2017-18]

M/s Bilasa & Sons Private Limited, 1165/1103/1112, Shop No. 26, Kucha Mahajani, Chandni Chowk, Delhi – 110 006	Vs	ACIT, Central Circle-14, Room No. 266, E-2, ARA Centre, Jhandewalan Extension, New Delhi – 110 055
PAN-(AAF9323F)		
Appellant		Respondent

AND

ITA No.2007/DEL/2021  
[Assessment Year: 2017-18]

ACIT, Central Circle-14, Room No. 266, E-2, ARA Centre, Jhandewalan Extension, New Delhi – 110 055	Vs	M/s Bilasa & Sons Private Limited, 1165/1103/1112, Shop No. 26, Kucha Mahajani, Chandni Chowk, Delhi – 110 006
		PAN- (AAF9323F)
Appellant		Respondent

Assessee by	Sh. Kapil Goel, Adv.
Revenue by	Ms. Sapna Bhatia, CIT(DR)

Date of Hearing	22.11.2023
Date of Pronouncement	30.11.2023

## **ORDER**

### **PER G.S. PANNU, VP**

These are cross appeals by the Assessee as well as Revenue against the order of the CIT(A)-26, New Delhi dated 17.03.2021 passed in Appeal No. 10254/19-20 which in turn has arisen from an order passed by the Asstt. Commissioner of Income Tax, Central Circle-14, New Delhi under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.12.2019 pertaining to assessment year 2017-18.

2. In brief, the relevant facts are that assessee filed its return of income of Rs. 1,44,27,610/- on 26.10.2017. The case of the assessee was selected for scrutiny and accordingly, notice u/s. 143(2) of the Act was issued on 25.09.2018 and notices u/s. 142(1) of the Act were issued from time to time calling for details required to complete the assessment. Subsequently, assessment has been completed on 31.12.2019 at a total income of Rs. 14,78,43,610/-, thereby making additions of Rs. 13,28,01,500/- and Rs. 6,14,500/- on account of unexplained money u/s. 69A of the Act.

3. The assessee firm carried the matter in appeal before the CIT(A) assailing the order of assessment both on points of law and facts. The CIT(A) partly allowed the appeal of the assessee.

4. Not being satisfied with the order of the CIT(A), assessee is in further appeal before us on various Grounds. However, at the time of hearing, Ld. Representative has adverted to a short point, which is manifested in the Additional Legal Ground of Appeal No. III raised before us, which reads as under:-

*"3. That impugned assessment framed u/s. 143(3) on 31.12.2019 and subsequent order of Ld. CIT-A are invalid and void ab initio being in apparent and patent "fatal" "violation" of mandatory / binding CBDT Circular No. 19/2019 dated 14.08.2019 (relating to document identification number) and impugned reasoning of Ld. CIT(A) in para 5.3 of impugned order is untenable and therefore impugned assessment order as framed u/s. 143(3) and first appeal order both deserve to be quashed."*

5. Ld. Representative for the assessee has submitted that the impugned assessment order passed u/s. 143(3) dated 31.12.2019 does not quote/state any Document Identification Number (DIN) as per mandate of CBDT Circular 19/2019 dated 14.08.2019. He further submitted that there is no exceptional "statement" made in the body of impugned assessment order as per format prescribed in the stated CBDT Circular.

5.1 Ld. DR relied upon the orders of the authorities below.

6. In the course of hearing, it was a common point between the parties that the facts and circumstances with respect to the maintainability and merits of the afore-stated Additional Ground is similar to that considered by us in the case of Smt. Sharda Devi Bajaj & Anr. in ITA No. 3006/Del/2022 (AY 2015-16) & Ors. passed in order dated 15.11.2023; and, therefore the said Ground is liable to be decided accordingly, as the matter is no longer res integra.

7. In order to impart completeness, we may hereinafter, refer to the relevant discussion in the case of Smt. Sharda Devi Bajaj & Anr. (Supra), which reads as under:-

"7. In so far as the introduction of additional ground based on CBDT Circular dated 14.8.2019 is concerned, we find that it is a question of law which is based on the material which is already on record and, therefore, the introduction of the additional ground deserves to be allowed. A useful reference in this regard can be made to the decision of the Hon'ble Supreme Court in NTPC vs. CIT (1998) 229 ITR 383 (SC) in which the Hon'ble Supreme Court has inter alia held that the view that the Tribunal is confined only to issues arising out of the appeal before the CIT(A) is too narrow a view of the powers of the Appellate Tribunal. It has been held that Tribunal will have a discretion to allow or not to allow new ground to be raised. However, where the Tribunal is only required to consider a 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. Considering the circumstances and the law laid down by the Hon'ble Supreme Court in NTPC vs. CIT (Supra), we allow the introduction of additional ground as prayed.

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.*

*17. In the result, the Appeals of the Assessee being ITA No. 3006/Del/20222 (Sharda Devi Bajaj AY 2015-16)); ITA No. 3008/Del/2022 (Sunder Lal Bajaj AY 2015-16) and ITA No. 3009/Del/2022 (Sunder Lal Bajaj, HUF AY 2015-16) are allowed and the assessment orders are set aside."*

8. Before parting, we may refer to the discussion made by the CIT(A) in paras 5.2 and 5.3 of the impugned order dated 17.03.2021 whereby the plea of the assessee that the assessment order is not in conformity with the CBDT Circular dated 14.08.2019 (supra) has been dealt with. As per the CIT(A), the assessment order was issued manually on 31.12.2019 after taking approval of the CCIT(C) Delhi and the DIN has also been generated on 21.01.2020 i.e. within 15 working days and therefore, the same was compliant with the requirements of Circular dated 14.8.2019 (Supra) read with paras 3 & 5 thereof. The relevant discussion by the CIT(A) is as follows:-

*"5.2 It is observed that the CBDT in the circular no. 19/2019 dated 14.08.2019 had directed:*

- That all the communication to the assessee should have DIN generated from ITBA to maintain proper audit trail of all the communications.*
- In para 3 of this circular, the it had provided that in exceptional circumstances, wherein communication is to be issued manually, the reasons have to be recorded in the file and prior written approval of the CCIT/DGIT may be obtained in such cases.*
- As per para 5, such communication shall have to be regularized within 15 working days by uploading the manual communication on system, compulsory generating the DIN on system and communicating to the assessee.*

*5.3 As per the report of the AO, there were issues in generating of DIN in some cases in last 2-3 days of time barring period. Accordingly, the AO had taken approval of the CCIT(C) Delhi on 31.12.2019, which is as per para-3 of the circular. Further the AO had generated the DIN on 21.01.2020, which is again within 15 working days (there fall 3 weekends = 6 holidays within this period) as per the para 5 of the above circular. Thus the AO had followed the circular 19/2019 procedurally and there is no default on this account. Further the AO had posted the order through ordinary speed post on 31.12.2019 as per the certificate of the Asstt. Director (Admin) GPO, New Delhi dated 31.12.2019, which mentions that 23 articles as per annexure have been dispatched by the AO on 31.12.2019 and at Sr. No. 14 of the Annexure, name/address of the appellant is appearing. Further the AO had dispatched the assessment order vide speed post no. ED989140641IN also. The approval had been obtained from the CCIT(C), Delhi to pass this order manually itself shows that the assessment order was passed by the AO on 31.12.2019 and it was dispatched on 31.12.2019 itself through ordinary post and later through speed post also. The DIN had been generated within 15 working days and*

*communicated to the appellant. In these facts and circumstances of the case, it is held that the AO had passed the assessment order on 31.12.2019 and the communication of this assessment order to the appellant is also procedurally valid. Therefore, these grounds of appeal of the appellant are dismissed."*

9. We have considered the aforesaid stand of the CIT(A) and find that the same is quite at variance with the requirements of the CBDT Circular (supra). Firstly, the reference made by the CIT(A) to the approval of CCIT(C), Delhi is vague, and its particulars, etc. have not been brought out. Be that as it may, Paragraph 3 of the Circular, which reads as under:

*"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 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 .... "*

specifically mandates that the communication issued manually without a DIN shall bear the required format containing the particulars about the date of obtaining written approval of the CCIT, etc.

10. Ostensibly, the assessment order (i.e. the communication in question) is conspicuous by its absence of the statement required to be made as per Paragraph 3 of the Circular (supra) as the same is issued manually. Under these circumstances, paragraph 4 of the Circular, which reads as under: -

*"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."*

is quite lucid and eloquent to the effect that any communication which is not in conformity with Para 2 and Para 3 of

the Circular (supra) shall be treated as invalid and shall be deemed to have never been issued. Ostensibly, the assessment order in question does not comply with the requirements of Para-3 of the Circular (supra) and thus, we find no reason to uphold the decision of the CIT(A) on this aspect. We may note here that this facet of the controversy has been specifically dealt with by the Hon'ble Bombay High Court in the case of Ashok Commercial Enterprise vs. ACIT in WP Nos. 2595 of 2021 & Ors. vide Judgement dated 04.09.2023, wherein it has been held that the subsequent generation of DIN can only regularize the failure to generate the DIN, but yet the requirements of Paragraph-3 remaining un-complied, would result in the communication being treated as invalid and never to have been issued. The aforesaid judgment completely dispels the stand of the CIT(A) in the present case.

11. Therefore, we deem it fit and proper to treat the assessment order dated 31.12.2019 as invalid and is deemed to have never been issued and is accordingly set-aside. We hold so.

12 Since, we have allowed assessee's appeal on the aforesaid preliminary legal issue, the rest of the Grounds, having been rendered academic, do not require adjudication.

13. As regards the Revenue's appeal is concerned, since we have decided the legal issue in favour of the assessee in assessee's appeal as aforesaid, by holding the assessment order dated 31.12.2019 as invalid, not being in conformity with the CBDT Circular dated 14.8.2019 (Supra) *albeit* without DIN, hence, the

appeal of the Revenue becomes infructuous, and the same is dismissed as such.

14. Resultantly, whereas the appeal of the Revenue is dismissed that of Assessee is allowed, as above.

The above decision was pronounced on 30.11.2023.

**Sd/-**  
**(CHALLA NAGENDRA PRASAD)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(G.S. PANNU)**  
**VICE PRESIDENT**

“SRBhatnagar”

**Copy forwarded to:**

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

Asstt. Registrar, ITAT, New Delhi