

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G': NEW DELHI
BEFORE JUSTICE C.V. BHADANG, PRESIDENT
AND
SHRI G. S. PANNU, HON'BLE VICE PRESIDENT

ITA No.2903/DEL/2022
[Assessment Year: 2015-16]

M/s Shubh Aryaman Ispat, 1 st Floor 267, Loha Mandi , B.S. Road, Ghaziabad, Uttar Pradesh-201003	Vs	Dy. Commissioner of Income Tax, Central Circle, Ghaziabad
PAN-ACMFS0873K		
Appellant		Respondent

Assessee by	Sh. Somil Aggarwal, Adv. & Sh. Deepesh Garg, Adv.
Revenue by	Sh. H.K. Choudhary, CIT-DR

Date of Hearing	07.11.2023
Date of Pronouncement	01.12.2023

ORDER

PER G.S. PANNU, VP

This appeal by the Assessee is directed against the order of the CIT(A), Kanpur-4 dated 27.10.2022 which in turn has arisen from an order passed by the Dy. Commissioner of Income Tax, Central Circle, Ghaziabad u/s. 143(3)/153A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 01.09.2021 pertaining to assessment year 2015-16.

2. In brief, the relevant facts are that a search and seizure action u/s. 132 of the Act was conducted on 30.7.2018 on the assessee along with M/s PS Enterprises Group of Cases. A notice u/s. 153A of the Act was issued on 06.05.2020 calling for the return of income and in compliance thereof the assessee filed its return of income on 23.01.2021 for the assessment year 2015-16 declaring income at Rs. 53,420/-. Subsequently, assessment has been completed on 01.09.2021 at a total income of Rs. 22,15,045/-, thereby making addition of Rs. 21,61,625/- to the returned income by estimating the Gross Profit (GP) @ 4% of turnover.

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) allowed partial relief by scaling down the addition on account of G.P. from Rs. 21,61,525/- to Rs. 13,60,649/-, by applying the rate of 3% as against 4% adopted by the AO.

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 Ground of Appeal No. 3 raised before us, which reads as under:-

"3. That having regard to the facts and circumstances of the case, the action of Ld. AO in passing the impugned assessment order u/s 143(3)/153A dated 01.09.2021 is illegal, bad in law, inter alia for the reason that the said assessment 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."

5. It was the 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. heard on even date; and, therefore decision in the aforesaid case would be squarely applicable qua the afore-stated Additional Ground also.

6. In order to impart completeness, we may hereinafter, refer to the relevant discussion in our order in the case of Smt. Sharda Devi Bajaj &Anr. in ITA No. 3006/Del/2022 (AY 2015-16) &Ors. dated 15.11.2023 (Supra), which is 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/2022 (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."

7. Following the aforesaid, the impugned assessment order dated 01.09.2021 (supra) is held to be invalid and set aside, since it is not in conformity with the CBDT Circular dated 14.8.2019 (Supra) *albeit* without DIN.

8. 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.

9. In the result, appeal is allowed, as above.

The above decision was pronounced through Video Conferencing on 01.12.2023.

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

Sd/-
(JUSTICE C.V. BHADANG)
PRESIDENT

"SRBhatnagar"

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi