

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.230 to 234/Del/2023

Assessment Year: 2013-14 to 2017-18

Dragon Foods Pvt. Ltd. B-42, Ground Floor, Shanker Garden, Vikas Puri, New Delhi-110018 PAN No.AADCD7568C	Vs.	ACIT Central Circle – 14 New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Dr. Rakesh Gupta, Advocate Sh. Somil Aggarwal, Advocate
Respondent by	Sh. T. James Singson, CIT DR

Date of hearing:	05/12/2023
Date of Pronouncement:	05/12/2023

ORDER

PER N. K. BILLAIYA, AM:

ITA No.230 to 234/Del/2023 are five separate appeals by the assessee preferred against five separate orders of the CIT(A)-28, New Delhi dated 14.12.2022 pertaining to A.Y. 2013-14 to 2017-18.

2. All these appeals were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. Vide letter dated 04.10.2023 the assessee sought permission to raise the following additional ground :-

*“1. That having regard to the facts and circumstances of the case, the assumption of jurisdiction u/s 153C and passing of the impugned assessment order u/s 153C/143(3) dated 23-12-2021 is illegal, bad in law, inter alia for the reason that the assessment order, satisfaction note u/s 153C and the approval u/s 153D have been issued/passed without DIN number as is must as held in the judgment of Ashok Commercial Enterprises vs ACIT date of order 04-09-2023 (**Bombay High Court**) and **Tata Medical Centre Trust TS-561-HC-2023(Calcutta)] and CBDT Circular No.19/2019 dated 14-08- 2019.***

2. That in any case and in any view of the matter, assumption of jurisdiction u/s 153C and passing of the impugned assessment order u/s 153C/143(3) dated 23-12-2021 is illegal, bad in law and the same is not sustainable on various legal and factual grounds.”

4. Since the above additional grounds of appeal are purely legal and do not require fresh facts to be investigated and go to the root of the matter they are admitted and adjudicated first.

5. We have carefully perused the impugned assessment order. Undoubtedly the assessment orders are devoid of DIN. Though

the DR vehemently stated that each assessment order is accompanied by a covering letter in which DIN is mentioned and the covering letter is of the same date on which the assessment order is framed.

6. In so far as the issue contended in the additional ground is concerned the same is no more resintegra as the issue is covered by several decisions of the coordinate Benches as well as the Hon'ble High Court. The contention of the DR that every assessment order is supported by a covering letter bearing DIN will not be of any help to the revenue as the intimation of generation of DIN in ITBA is only a subsequent action and is not part of the assessment order whereas the circular of the CBDT is very specific in mentioning that the DIN should be on the body of the assessment order. The CBDT circular reads as under :-

Circular No. 19/ 2019

***Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes***

New Delhi, dated the 14th August, 2019

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 ward al computerization of its work. This

has led is 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 (TBA) 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 1st day of October, 2019 unless 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 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. 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 with a DIN on account of reason/reasons given in para 3(i)/ 3(ii)/ 3(iii)/ 3(iv)/ 3(v) of the Circular Nodated (strike off those which are not applicable) and with the approval of the Chief Commissioner/Director General of Income Tax vide numberdated....

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.

(emphasis supplied by us)

5. The communication issued manually in the three situations specified in para 3-(1). (i) or (ii) 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.*

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

7. The Hon'ble Jurisdictional High Court of Delhi had the occasion to consider this circular while deciding the appeal of the revenue preferred against the order of the coordinate Bench in the case of Brandix Mauritius Holdings Limited in ITA No.1542/Del/2020 affirming the view taken by the coordinate bench the Hon'ble High Court in ITA 163/2023 held as under :-

“12. We have heard the learned counsel for the parties. The present appeal is preferred under Section 260A of the Act. The Court’s mandate, thus, is to consider whether or not a substantial question of law arises for consideration.

12.1 As noted above, the impugned order has not been passed on merits.

13. *The Tribunal has applied the plain provisions of the 2019 Circular based on which, it has allowed the appeal preferred by respondent / assessee.*

14. *The broad contours of the 2019 Circular have been adverted to by us hereinabove.*

14.1 *Insofar as the instant case is concerned, admittedly, the draft Assessment order was passed on 30.12.2018.*

15 *The respondent/assessee had filed its objections que the same, which were disposed of by the Dispute Resolution Panel (DRP) via order dated 20.09.2019.*

16. *The final assessment order was passed by the Assessing Officer (AO) 15.10.2019, under Section 147/144(C)(13)/143(3) of the Act. Concededly, the final assessment order does not bear a DIN. There is nothing on record to show that the appellant/revenue took steps to demonstrate before the Tribunal that there were exceptional circumstances, as referred to in paragraph 3 of the 2019 Circular, which would sustain the communication of the final assessment order manually, albeit, without DIN.*

16.1 *Given this situation, clearly paragraph 4 of the 2019 Circular would apply.*

17. Paragraph 4 of the 2019 Circular, as extracted hereinabove, decidedly provides that any communication which is not in conformity with paragraph 2 and 3 shall be treated as invalid and shall be deemed to have never been issued. The phraseology of paragraph 4 of the 2019 Circular fairly puts such communication, which includes communication of assessment order, in the category of communication which are non-est in law.

17.1 It is also well established that circulars issued by the CBDT in exercise of its powers under Section 119 of the Act are binding on the revenue.

17.2 The aforementioned principle stands enunciated in a long line of judgements, including the Supreme Court's judgment rendered in **K.P Varghese v. Income Tax Officer, Ernakulam and Anr.**, (1981) 4 SCC 173. The relevant extracts are set forth hereafter:

"12. But the construction which is commending itself to us does not rest merely on the principle of contemporanea expositio. The two circulars of the Central Board of Direct Taxes to which we have just referred are legally binding on the Revenue and this binding character attaches to the two circulars even if they be found not in accordance with the correct interpretation of sub-section (2) and they depart or deviate from such construction. It is now well settled as a result of two decisions of this Court, one in Navnitlal C.

Javeri v. K.K. Sen [AIR 1965 SC-1375: (1965) 1 SCR 909: 56 ITR 198] and the other in *Ellerman Lines Ltd. v. CIT* (1979) 4 SCC 565] that circulars issued by the Central Board of Direct Taxes under Section 119 of the Act are binding on all officers and persons employed in the execution of the Act even if they deviate from the provisions of the Act. The question which arose in *Navnitlal C. Javeri* case [AIR 1965 SC 1375 (1965) 1 SCR 909: 56 ITR 198] was in regard to the constitutional validity of Sections 2(6-A)(e) and 12(1-B) which were introduced in the Indian Income Tax Act, 1922 by the Finance Act, 1955 with effect from April 1, 1955. These two sections provided that any payment made by a closely held company to its shareholders by way of advance or loan to the extent to which the company possesses accumulated profits shall be treated as dividend taxable under the Act and this would include any loan or advance made in any previous year relevant to any assessment year prior to Assessment Year 1955-56, if such loan or advance remained outstanding on the first day of the previous year relevant to Assessment Year 1955-56. The constitutional validity of these two sections was assailed on the ground that they imposed unreasonable restrictions on the fundamental right of the assessee under Article 19(1)(f) and (g) of the Constitution by taxing outstanding loans or advances of past years as dividend. The Revenue

however relied on a circular issued by the Central Board of Revenue under Section 5(8) of the Indian Income Tax Act, 1922 which corresponded to Section 119 of the present Act and this circular provided that if any such outstanding loans or advances of past years were repaid on or before June 30, 1955, they would not be taken into account in determining the tax liability of the shareholders to whom such loans or advances were given. This circular was clearly contrary to the plain language of Section 2(6-A)(e) and Section 12(1-B), but even so this Court held that it was binding on the Revenue and since:

"past transactions which would normally have attracted the stringent provisions of Section 12(1-B) as it was introduced in 1955, were substantially granted exemption from the operation of the said provisions by making it clear to all the companies and their shareholders that if the past loans were genuinely refunded to the companies they would not be taken into account under Section 12(1-8),"

Sections 2(6-4)(e) and 12(1-B) did not suffer from the vice of unconstitutionality. This decision was followed in Ellerman Lines case ((1972) 4 SCC 474 1974 SCC (Tax) 304 82 ITR 913] where referring to another circular issued by the Central Board of Revenue under Section 5(8) of the Indian Income Tax Act, 1922 on which reliance was placed on behalf of the assessee, this Court observed:

"Now, coming to the question as to the effect of instructions issued under Section 5(8) of the Act, this Court observed in Navnitlal C Javeri v. K.K Sen, Appellate Assistant Commissioner, Bombay [AIR 1965 SC 1375 (1965) 1 SCR 909 56 ITR 198)

'It is clear that a circular of the kind which was issued by the Board would be binding on all officers and persons employed in the execution of the Act under Section 5(8) of the Act. This circular pointed out to all the officers that it was likely that some of the companies might have advanced loans to their shareholders as a result of genuine transactions of loans, and the idea was not to affect such transactions and not to bring them within the mischief of the new provision.'

The directions given in that circular clearly deviated from the provisions of the Act, yet this Court held that the circular was binding on the Income Tax Officer."

The two circulars of the Central Board of Direct Taxes referred to above must therefore be held to be binding on the Revenue in the administration or implementation of sub-section (2) and this sub-section must be read as applicable only to cases where there is understatement of the consideration in respect of the transfer."

[Emphasis is ours]

17.3 Also see the following observations of a coordinate bench in *Back Office IT Solutions Pvt. Ltd. v. Union of India*, 2021 SCC OnLine Del 2742, in the context of the impact of circulars issued by the revenue:

"24....In this context, tax administrators have to bear in mind the well- established dicta that circulars issued by the statutory authorities are binding on them, although, they cannot dictate the manner in which assessment has to be carried out in a particular case. A Circular cannot be side-stepped causing prejudice to the assessee by bringing to naught the object for which it is issued. [See: *K.P.Varghese vs. Income-tax Officer*, (1981) 7 Taxman 13 (SC); Also see *UCO Bank, Calcutta v Commissioner of Income Tax, W.B.* (1999) 4 SCC 599],"

18. The argument advanced on behalf the appellant/revenue, that recourse can be taken to Section 292B 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 fi 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 at conclusion in favour of the respondent/assessee.

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

23. Needless to state, that if the AO is in a position to take next steps in law, it would embark upon the same only in accordance with the law.”

8. Respectfully following the binding decision of the Hon'ble Jurisdictional High Court of Delhi (supra) we have no hesitation in holding that the impugned assessment orders are non-est and deserve to be quashed.

9. Before closing, the contention of the DR that as per the information available on the record the assessment order was communicated to the assessee bearing DIN and as such communication was vide intimation letter dated 23.12.2021 so it cannot be said that the order was issued / passed without DIN number, cannot be accepted as in clause 2 of the circular the mandate of the board is clear when it says “**No communication shall be issued by any income tax authority relevant 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 1st day of October 2019 unless computer-generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication**”.

10. *“The twin condition i.e. DIN has been allotted and is duly quoted in the body of such communication”* must both be satisfied which means that any allotment of DIN would not suffice unless it is quoted in the body of such communication.

11. Reliance on the decision of the Hon’ble Allahabad High Court in WT No.829/2023 and Hon’ble Jharkhand High Court WPT No.1901/2022 are not relevant in the light of the decision of the Hon’ble Jurisdictional High Court of Delhi (supra).

12. In the result, all the appeals are allowed.

13. Decision announced in the open court on 05.12.2023.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

NEHA

Date:- .12.2023

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI