

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

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.1298/Del/2021
(Assessment Year : 2017-18)

Finesse International Design Pvt. Ltd. D-58, Ground Floor, Defense Colony, New Delhi – 110 024	Vs.	DCIT CC-14 New Delhi
PAN No. AABCF 1335 M		
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Ashwani Kumar, C.A. and Shri Aditya Kumar, C.A.
Revenue by	Ms. Nimisha Singh, CIT-D.R.

Date of hearing:	19.09.2023
Date of Pronouncement:	13.12.2023

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed by the assessee against the first appellate order of the Ld. Commissioner of Income Tax (Appeals) – 23, New Delhi ('CIT(A)' in short) dated 28.08.2021 arising from the assessment order dated 19.02.2021 passed by the Assessing Officer (AO) under Section 153A r.w.s 143(3) of the Income Tax Act, 1961 (the Act) concerning Assessment Year 2017-18.

2. As per the grounds of appeal, the assessee has challenged the addition/disallowance on account of cash deposit in the bank account to the extent of Rs.78,69,000/- confirmed by the CIT(A) in terms of the provisions of section 68 read with section 115BBE of the Income Tax Act, 1961. The assessee has also raised grievance such as disallowances in business promotion expenses Rs. 4,32,773/- and initiation of penalty proceedings under S. 270A(2) of the Act.

3. Before the Tribunal, the assessee has moved an application for admission of additional ground under Rule 11 of the Income-tax (Appellate Tribunal) Rules, 1963 vide letter dated 26.06.2023, which reads as under:

“That the order passed under section 250(6) by the Ld. Commissioner of Income-tax (Appeals) – 23, New Delhi is against law and facts on the file since the order passed by the Ld. Assessing Office is *non-est* and bad in law in as much as:-

- the proceedings have not been conducted in the manner prescribed by the Departmental instructions, in particular those relating to e-proceedings issued from time to time, which were to be mandatorily complied with by the Ld. AO.
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- Requisite condition of Circular No.19 of 2019 for communicating/recording mandatory computer-generated Document Identification Number on the order/notice of demand under section 156 have not been fulfilled.”

4. The assessee also moved another application dated 09.02.2022 for admission of yet another additional ground under Rule 11 of the Income-tax (Appellate Tribunal) Rules, 1963 and sought leave of the Tribunal for admission of the additional ground, which reads as under:

“That the order dated 28.08.2021 passed u/s 250 of the Income-tax Act, 1961 by the Ld. Commissioner of Income-tax (Appeals) 23, New Delhi is against law and facts on the file in as much as he was not justified

to uphold the validity of assessment framed by the Ld AO since the same is bad in law in as much as the approval granted by the Ld. ACIT under section 153D of the Act before passing the impugned assessment order was mechanical in nature and thus the whole assessment is liable to be quashed.”

5. The prayer for admission of additional grounds noted above which are not set forth in the memorandum of appeal are being admitted for adjudication in terms of Rule 11 of Income-tax (Appellate Tribunal) Rules, 1963 owing to the fact that objections raised in the additional grounds are legal in nature for which relevant facts are stated to be emanating from existing records in the light of judgment rendered in the case of NTPC vs. CIT 229 ITR 33 (SC).

6. At the outset of the proceedings before the Tribunal, the Id. Counsel for the assessee adverted to additional ground with reference to CBDT Circular 19/2019 dated 14.08.2019 casting mandatory obligations on the revenue authorities to place Document Identification Number (DIN) on all communication by way of orders (statutory or otherwise), approval, and notice of demand under section 156 of the Act etc. and submitted that in the light of plethora of judgments delivered on the controversy, the impugned assessment order passed and notice of demand issued under s. 156 in violation of CBDT circular are rendered *non-est* and invalid by operation of law.

7. On facts, the learned Counsel adverted to the requisition letter moved by the AO dated 18.02.2021 to the Addl. Commissioner of Income Tax, Central Range-1, New Delhi (F.No. ACIT/CC-04/Approval u/s 153D/2020-21/246) and also consequent approval of the draft assessment order in terms of section 153D of the Act from the Addl. Commissioner of Income-tax Act dated 19.02.2021 (F.No. ACIT/CC-1/153D/2020-21/673) and pointed out that neither the communication by AO to addl. CIT nor the approval by the Addl. CIT under s. 153D in response to requisition made

by the AO bears any reference to DIN number which is mandatory requirement of law in the light of sweeping landscape of CBDT circular. The revenue has also not demonstrated as to whether the draft assessment order sent by AO for approval under s. 153D bears any DIN either. In the absence of DIN mentioned in the approval memo, such statutory approval under s. 153D thus is rendered a *nonest* approval in law. It goes without saying that assessment framed on the basis of such nonest approval is a nullity in the eyes of law.

8. The learned Counsel referred to phraseology used in the CBDT Circular and referred to catena of judicial pronouncements to submit that such statutory approval under section 153D without bearing the DIN is *non-est* in the eyes of law in view of strict interpretation of CBDT Circular provided by large numbers of judgments delivered by various High Courts and Co-ordinate Bench of Tribunal.

9. The judgments referred include:

<ul style="list-style-type: none"> • <i>CIT vs. Brandix Mauritius Holdings Ltd. 149 taxmann.com 238 (del.)/456 ITR 34 (Delhi)</i> 	<p>: <i>It is the specific requirement under Circular 2019 to quote DIN in the body of communication. Existence of Exceptional circumstances provided in para 3 of the Circular not demonstrated by revenue. Communication of order issued without conformity of Circular invalid.</i></p> <p><i>Failure to generate and allocate DIN is not a mere mistake or omission or a procedural irregularity. Recourse to Section 292B is not available for non-adherence to the Board Circular on mentioning DIN</i></p>
<ul style="list-style-type: none"> • <i>Ashok Commercial Enterprises vs. ACIT, Writ Petition No.2595 of 2021, Bombay High Court</i> 	<p>: <i>HC noted Circular 19 of 2019 to observe that the assessment order does not bear a DIN and further that the order issued without a DIN is not issued in required format as set out in paragraph 3 of the Circular and, therefore, ought to be treated</i></p>

	<p><i>as invalid and deemed never to have been issued. Relies on Delhi HC ruling in Brandix Mauritius wherein it was held that an order passed in contravention of the said Circular is void, bad in law and of no legal effect.</i></p> <p><i>Also, noted the intimation with a DIN issued to regularise such orders without DIN and remarked that requirements of paragraph 3 of the Circular will still remain contravened and thus, held the assessment order as invalid.</i></p> <p><i>Further, observed that the satisfaction note will fall within the scope of paragraph 2 of the Circular as a communication of the specified type issued to any person and thus, is also invalid as being issued without a DIN.</i></p>
<ul style="list-style-type: none"> • <i>Prakash Lal Khandelwal vs CIT, 151 Taxmann.com 72, Jharkhand High Court</i> 	<p>: <i>The Hon'ble Court has gone into the issue of limitation more than DIN. Nowhere has the court stated that DIN was not required to be mentioned on the order.</i></p> <p><i>Vide Para 15 of the order, the Hon'ble Court has only tried to point out that order was not time barred because the order which was sent had a DIN mentioned therein.</i></p> <p><i>Thus, this order is in no way against the appellant.</i></p>
<ul style="list-style-type: none"> • <i>Texmo Precision Casting UK Ltd. vs. CIT(International Taxation), 138 taxmann.com 566, Madras</i> 	<p>: <i>Herein also, the Hon'ble Court has dismissed the Writ Petition allowing the petitioner to take up the alternate remedy available.</i></p> <p><i>The Hon'ble bench has held that for want of generating and quoting the DIN in the body, the assessment order is to be treated as never been issued, therefore ceases to have any effect in the eyes of law.</i></p>

<ul style="list-style-type: none"> • Chandra Bhan vs. Union of India and another, Writ Tax No.829 of 2023, Allahabad High Court 	:	<p><i>Non-issuance of notice on DIN would thus not be a ground to entertain the writ petition, notwithstanding the availability alternative remedy.</i></p> <p><i>Accordingly, the Court has not adjudicated the matter of the applicability of the Circular and has only opined that this issue does not merit writ jurisdiction.</i></p>
<ul style="list-style-type: none"> • M/s. Tata Medical Center Trust vs. CIT (Exemption), ITA No.238/Kol/2021 Kolkata, ITAT 	:	<p><i>The order passed u/s 263 not in confirmity with CBDT Circular and consequently invalid and deemed to never have been issued.</i></p>
<ul style="list-style-type: none"> • Pratap Singh Yadav vs. DCIT, ITA No.1898/Del/2022, Delhi ITAT 	:	<p><i>Since the DIN is not mentioned in the body of the order and generated subsequently, it is in violation of the Board Circular.</i></p>
<ul style="list-style-type: none"> • Dilip Kothari vs. PCIT, ITA No.403 to 405/Bang/2022, Bangalore ITAT 	:	<p><i>Order u/s 263 is without DIN and therefore in violation of the Board Circular and therefore the order is quashed.</i></p>
<ul style="list-style-type: none"> • Intrado EC India Pvt. Ltd. vs DCIT, ITA No.239/Bang/2021, Bangalore ITAT 	:	<p><i>We are unable to appreciate this decision of the DRP, since there is no provision in the Act to issue two order u/s 92CA and the order issued subsequent cannot be taken to substitute the earlier order. If the order dated 01.11.2019 is taken as the valid order for subsequent proceedings since it is issued with a DIN, then the issue of the order being barred by limitation should be considered.</i></p>
<ul style="list-style-type: none"> • Sunita Agarwal vs. ITO, ITA No.432/Kol/2020, Kolkata ITAT 	:	<p><i>In the absence of DIN, the order passed by PCIT u/s 263 is quashed.</i></p>
<ul style="list-style-type: none"> • Mahesh Kumar Sureka vs. PCIT, ITA No.106/Kol/2021, Kolkata ITAT 	:	<p><i>In view of the discussion made above and in the light of the decisions of the Co-ordinate Kolkata Bench of the Tribunal in the cases of “Tata Medical Center Trust” (supra) and “Smt. Sunita Agarwal vs ITO” (supra), the impugned order of Ld CIT(Exemption) is, hereby, quashed.</i></p>

<ul style="list-style-type: none"> • Abhimanyu Chaturvedi vs. DCIT, Noida, ITA No.2486/Del/2022, Delhi ITAT 	<ul style="list-style-type: none"> • : <i>Distinguished the Judgement of Prakash Lal Khandelwal(Jharkhand), the fact is that in that case Hon'ble High Court was more into examination of the question of assessment order dated 31.03.2022 being barred by limitation. As it was uploaded of ITBA portal on 01.04.2022 and the DIN was generated by delay of just one day. However, the material question that DIN is required to be mandatorily quoted on the assessment order was not examined specifically has any finding given that in the absence of order not bearing DIN, the Circular will be not binding.</i>
<ul style="list-style-type: none"> • Linde India Ltd. vs. DCIT, Kolkata, ITA No.319/Kol/2023, Kolkata, ITAT 	<ul style="list-style-type: none"> • : <i>ITAT observes that Assessee has evidently demonstrated that assessment order has been passed manually and all the three documents namely, the assessment order, computation sheet and notice of demand under section 156 does not contain DIN; Observes that an intimation has been sent about DIN in respect of assessment order which is much later i.e., nine months after the date of assessment order; Accordingly, holds that the assessment order is invalid and is deemed to have never been issued</i>

10. On similar footing, the learned Counsel pointed out that the notice of demand under section 156 also does not bear DIN and consequently, the assessment order without notice of demand is yet legal infirmity which blunts the validity of assessment order and such order rendered without any formal decree of recovery.

11. The learned DR for the Revenue on the other hand vehemently objected to the aforesaid challenge raised on account of non mentioning of DIN and submitted that mere non quoting of DIN on internal communications between the Assessing Officer and Addl. Commissioner seeking approval under section 153D is not fatal in itself to render the whole assessment process as invalid proceeding. The learned DR submitted

that such approval and internal communications are part and parcel of integrated assessment process and cannot be seen in isolation. The learned DR submitted that the assessment order dated 19.12.2021 in question itself bear on DIN in compliance of Circular dated 14.08.2019 of CBDT. As pointed out, the DIN is quoted a letter dated 20.12.2021 addressed to the assessee and reads as under:

“This is to inform you that an order under section 153A of the Income-tax Act, 1961 dated 19.02.2021 is having Document No. (DIN) ITBA/AST/M/153A/2020-21/1030819568(1).”

12. The learned DR adverted to written submissions made in this regard, which is reproduced hereunder:

“Submission in response to the additional legal grounds raised by the Ld. Counsel for the assessee challenging the Assessment Order/Notice of demand u/s 156 on the alleged ground of DIN not being quoted-

The AO, DCIT, Central Circle-4, Delhi had been asked to provide the details as desired by the Hon'ble Bench on 04.07.2023 and also to produce the assessment records together with a report in the matter. However, the same is awaited, for which a reminder has been sent.

Notwithstanding the above, the following submissions in the matter are humbly made after going through the case records relating to proceedings in the case before the Hon'ble Bench -

- *The Assessment Order dated 19.12.2021 issued in the instant case does bear a DIN in compliance to the Circular dated 14.08.2019 of the CBDT. This DIN is quoted in a letter dated 20.12.2021 addressed to the assessee and reads as follows-*
- *‘This is to inform you that an Order u/s 153A of the Income-tax Act, 1961 dated 19/02/2021 is having Document No. (DIN) ITBA/AST/M/153A/2020-21/1030819568(1).’*
- *[It may be mentioned that the letter so issued it bears a DIN which is quoted at the top of the letter.]*
- *Thus, the communication was issued with the DIN, complying with the Board's Circular (Para 2). Para 5 of the Circular containing the three clauses also thus stands fully complied with.*

- *As informed telephonically by the AO, DCIT, CC-4, Delhi, there is nothing irregular in this. The Assessment Order and Notice of Demand u/s 156 of the Income-tax Act, which may have been manually signed by the AO, were generated and issued with the DIN in real time on 20.12.2021. This action takes a small lag time (in this case, a day) for the Order and computation of tax due etc. is uploaded on the System for necessary accounting and computation by the CPC (Centralized Processing Centre) of the Department.*
- *As for the Assessment Order and Notice of demand, both are part of the same proceedings as assessment is one integrated process. The Notice of Demand forms part of the Assessment order and requires no separate DIN.*
- *The Hon'ble Bench may appreciate that in the Central Circle, the Order and Notice of Demand were signed manually and DIN generated on the System a process involving technology as well as manual action. In such an interface some such minor issues in procedure are only natural which in no way violates the CBDT's Circular.*
- *As for the Ld. Counsel for the appellant's contention that the approval letter of the Addl. CIT of the concerned Range does not bear DIN and that makes it defective, it is humbly submitted that the entire assessment process in Search cases, which includes the approval of the Range Head, is one integrated process and not a separate compartment/component. The Order of the Assessing Officer (below the rank of JCIT) is rendered valid only with the approval of the Addl./JCIT concerned as per Section 153D of the Income-tax, Act. The DIN is generated for the Assessment Order.*
- *Also, such letter being referred to by the Ld. Counsel of the appellant is in the nature of internal correspondence of the Department, from Range Head to the Assessing Officer which requires no DIN. In fact, the Range Head has himself /herself directed the AO in the letter that 'no Order shall be passed without DIN...' Clearly, there was no requirement of DIN in the approval letter.*
- *The Ld. Counsel for the appellant has also referred to the judgment of the Hon'ble Delhi High Court in the case of the CIT (International Taxation)-1, New Delhi V. Brandix Mauritius Holding Ltd., wherein the Hon'ble Court has upheld the decision of the Hon'ble Tribunal ('D' Bench) in treating Assessment Order as null and void for lack of DIN.*
- *It is humbly submitted herein that the instant case of the appellant under discussion, M/s Finesse International Design, differs substantially from the facts of the case decided upon by the Hon'ble Courts in that in this case DIN has indeed been generated, albeit a day later, for procedural reasons as mentioned hereinabove.*

- *As stated by the Ld. Counsel for the appellant himself in the submission before the Hon'ble Bench, and also mentioned by the Hon'ble Courts in the Orders referred to above, the purpose of the Board's Circular dated 14.08.2019 is to maintain a proper audit trail of such communication, which purpose, in the instant case, is duly fulfilled.*
- *Notwithstanding the above submissions, reliance may also be placed herein on Section 292B of the Income-tax Act, 1961 as per which intent and purpose of the Act is important defect/mistake/omission will not make any notice or assessment etc. invalid.*
 - *'No return of income, assessment, notice, summons or other proceedings, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act. (Emphasis own)*
- *The Hon'ble Bench is therefore humbly requested to not take cognizance of the said ground/s raised by the appellant as having no merit, and decide the case on the basis of the facts on merits."*

13. The learned DR thus contended that the communication was issued with valid DIN and there is no departure to the mandate of CBDT Circular. The learned DR submitted that assessment order and the Notice of demand under section 156 of the Act which may have been manually signed by the AO, were generated and issued with the DIN in real time on 20.12.2021. The ld. DR thus essentially submits that substantial compliance of CBDT circular is apparently discernible from facts on record and no adverse inference is thus called for such procedural lapse, if any.

14. We have considered the rival submissions on the additional ground raised towards non quoting of DIN. It is desirable to prioritize adjudication of legal objection on invalidity of assessment order attributable to alleged infringement of CBDT circular since such objections are overwhelming and goes to the root of the matter.

15. The CBDT Circular no. 19/2019 casts obligations that every income tax authority shall allot a new computer generated Document Identification Number (DIN) in respect of every communication by way of notice, order, letter or any correspondence issued by him to any other income tax authority or assessee or any other person and such number should be quoted thereon. Para 2 of the Circular reads as ;

“ In order to prevent such instances and to maintain proper audit trail of all communication, the Board in exercise of powers under 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 a computer generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication.

Para 3 of the Circular enumerates for exceptional circumstances.

16. The CBDT circular also provides that any such order, notice, correspondence etc. which does not bear the DIN in the body of communication shall be treated as invalid in the eyes of law and shall be deemed to have never been received. The obligation is stated to be of substantial nature as explained by Jurisdictional High Court and other Hon'ble Court and Tribunals.

17. The issue thus raised in the additional ground is thus no longer *res integra*. The Hon'ble Delhi High Court in the case of CIT vs. Brandix Mauritius Holdings Ltd. (supra) clearly underscored the binding nature of CBDT Circular No.19/2019 dated 14.08.2019 and stated in unequivocal terms that the assessment order passed without DIN is unsustainable in law owing to failure of the Department to allocate DIN and such failure cannot be regarded as an error which can be corrected by taking recourse

of section 292B of the Act. The Hon'ble Delhi High Court explained the binding effect of CBDT Circular and held that in the light of CBDT Circular, any communication issued by any Income-tax Authority relating to assessment, appeals, orders, statutory or otherwise, explanations, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person on or after the first day of October, 2019 shall have no standing in law unless a computer generated Document Identification Number (DIN) has been allotted and is duly reflected in the body of such communication subject to exceptional circumstances referred to in para 3 of CBDT Circular.

18. The Hon'ble Calcutta High Court *in PCIT vs. Tata Medical Center Trust (2023) 154 taxmann.com 600 (Cal.)* after the closure of hearing, has also echoed the similar view in line with the judgment in the case of *Brandix*. In that case, revisional order under s. 263 of the Act was passed without DIN in the body of revision order. Tribunal upon examination of facts held that order passed under section 263 did not incorporate Document Identification Number (DIN) and was thus in violation of Circular No. 19 of 2019, dated 14-8-2019 which stated that any communication which was not in conformity with said Circular shall be treated as invalid and shall be deemed to have never been issued - On appeal to High Court, revenue submitted that intimation letter should be treated as part and parcel of substantive order, however, in the intimation letter there was nothing mentioned as to why in substantive order DIN was not mentioned as mandated in Circular - In Miscellaneous Application proceedings, revenue could not answer a specific query as to how a DIN intimation letter along with manual order fulfils categorical requirement mandated by CBDT Circular and therefore, Tribunal came to conclusion that order passed under section 263 did not satisfy requirement mandated by CBDT Circular - In such backdrop, the Hon'ble High Court held that the appeal of revenue is devoid of substantial question of law and thus liable to be dismissed.

19. The judgments, navigated above, emphasizes on the significance of strict adherence to provisions outlined the CBDT Circular. These rulings requires the income tax authorities to meticulously comply with the mandate of CBDT Circular in letter and spirit and sheds light on the significance of maintaining procedural integrity and upholding the principles of transparency and accountability in the realm of income tax assessments. The strict compliance of Circular is thus cardinal & integral to the validity of assessment.

20. It is an admitted position that the approval granted under s. 153D by the Addl. CIT to the draft assessment order is without issuance of DIN. In the backdrop of nuanced judicial view, the approval under section 153D which is the fulcrum for passing final assessment order dated 19.02.2021 in question is thus apparently *non-est* in law in the absence of DIN allocated to such communication at all. The final assessment order so passed under s. 153A in question on the basis of such invalid and non-est approval under section 153D is thus without sanction of law. The assessment order dated 19.02.2021 passed under s. 153A is thus liable to be quashed at threshold. Similarly, notice of demand under s. 156 without DIN and on the basis of non-est assessment order is also to be reckoned as a nullity.

21. Having held the assessment order passed is vitiated owing to non conformity with the CBDT Circular No.19 of 2019, we do not consider it necessary to go into other aspect of objections raised on behalf of the assessee in its main grounds of appeal and additional grounds.

22. In conclusion, in the light of judgment delivered by Jurisdictional and other Hon'ble Courts, we see no difficulty to accept contentions on invalidity of assessment

due of infringement of CBDT circular. Governed by the binding precedents, we hold in favour of the assessee and against the Revenue.

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

Order was pronounced in the open court on 13.12.2023

Sd/-

**(YOGESH KUMAR US)
JUDICIAL MEMBER**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Date:-13.12.2023

*Priiti Yadav, Sr. PS**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI