

IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "D" : DELHI ]

BEFORE SHRI G. S. PANNU, HON'BLE VICE-PRESIDENT  
AND  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.2345/Del/2022

निर्धारणवर्ष/Assessment Years: 2019-20

Criteo Singapore Pte Ltd., 138, Market Street, #34-01/02 Singapore - 048946.	<u>बनाम</u> Vs.	ACIT, Circle : 1(2)(1) International Taxation, New Delhi.
PAN No. AAFCC9817M		
अपीलार्थी / Appellant		प्रत्यर्थी/ Respondent

निर्धारितीकीओरसे /Assessee by :	Shri S. K. Aggarwal, Shri Bharat Tulsian, & Shri Sarthak Bhandula; C. A.;
राजस्वकीओरसे / Department by :	Shri Vizay B. Vasanta, [CIT] - D. R.

सुनवाईकीतारीख/ Date of hearing :	09/10/2023
उद्घोषणाकीतारीख/Pronouncement on :	20/12/2023

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the assessee against the assessment order passed under section 143(3) read with section 144C(13) of the Income Tax Act, 1961 (the Act) pursuant to the directions of the DRP dated 07.06.2022 under section 144C of the Act for the assessment year 2019-20.

2. The assessee in its appeal raised several grounds on additions made pursuant to the directions of the DRP. The assessee also raised the following additional grounds:-

“4.1. On the fact and in the circumstances of the case and in law, the Hon'ble DRP erred in not quoting a valid computer-generated Document Identification Number ('DIN') on the body of the DRP Directions dated 07 June 2022 passed under section 144C(5) of the Act, thus such directions are in contravention to the CBDT Circular No. 19 of 2019 and hence liable to be quashed/ annulled as invalid.

4.2. On the fact and in the circumstances of the case and in law, the final assessment order dated 29 July 2022 passed under section 143(3) read with section 144C(13) of the Act pursuant to invalid and non-est directions passed by Hon'ble DRP is bad in law, null and void and liable to be quashed. “

3. Referring to the additional ground of appeal the Id. Counsel for the assessee submits that the additional ground is purely legal ground and going to the validity of the order passed by the DRP as it was passed without quoting the DIN in the directions of the DRP disregarding the CBDT Circular No. 19 of 2019 dated 14.08.2019. Therefore, it is prayed that the additional ground be admitted for adjudication.

4. On hearing both the parties we admit the additional ground as it is purely legal ground and does not involve any verification of facts.

5. The ld. Counsel for the assessee referring to the DRP direction submitted that the direction dated 7.06.2022 mentioned no DIN number. The ld. Counsel further submits that by way of a separate communication dated 17.06.2022 an intimation letter was issued stating that the order passed under section 144C(5) by the DRP is having DIN number. The ld. Counsel submits that the requirement of the Circular of the CBDT was that a DIN number has to be mentioned on the body of the direction of the DRP and since in the absence of DIN number in the body of the direction of the DRP is invalid and shall be deemed to have been never been issued. The ld. Counsel for the assessee placed reliance on the decision of the jurisdictional High Court in the case of Brandix Mauritius Holdings Ltd. Vs. DCIT [149 taxmann.com 238] and submitted that the Hon'ble High Court categorically held that the order passed in view of Circular No. 19 of 2019 is non-est in law. Reliance was also placed on the decision of the Calcutta High Court in the case of PCIT Vs. M/s. Tata Medical Centre Trust, Kolkata in ITAT/202/2023 in IA No. GA/1/2023 dated 26.09.2023.

6. On the other hand, the ld. DR referring to DRP's letter dated 13.09.2023 submits that the directions of the DRP under section 144C(5) of the Act were up-loaded on system dated 7.06.2022 for which a DIN was generated by the system. The ld. DR further referring to the said letter it is clarified by the DRP to communicate

DIN of the directions to the assessee an intimation letter was generated on 17.06.2022. Thus, there were two DINs generated, one at the time of up-loading the directions and secondly while communicating the DIN to the assessee by separate letter for which a separate DIN was also generated.

7. Heard rival contentions perused the directions of the DRP and the reply of DRP's letter dated 13.09.2023. On perusal of the directions of the DRP it is very much clear that there is no mention of DIN generated for the said directions. In the letter dated 13.09.2023 the DRP stated that directions were up-loaded on system on 7.06.2022 for which a DIN was generated by the system but whereas no such DIN which was generated on 7.06.2022 was mentioned in the body of the directions. Generation of DIN for the directions of the DRP was separately communicated through letter dated 17.06.2022.

8. The issue of whether the subsequent generation of DIN will suffice as the requirement of the CBDT Circular which mandates quoting of DIN in the body of communication/order came up for consideration before the jurisdictional High Court in *Brandix Mauritius Holdings Ltd. Vs. DCIT (supra)* held as under:-

“12. We have heard 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 the 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 qua 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) on 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.

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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..“

9. Similar view has been taken by the Hon'ble Bombay High Court in the case of Ashok Commercial Enterprise Vs. ACIT in WP Nos. 2595 of 2021 & Ors. dated 4.09.2023. Following the decision of the Hon'ble Delhi High Court as well as Hon'ble Bombay High Court (supra) the Tribunal in the case of M/s. Bilasa & Sons Private Limited Vs. ACIT in Cross ITA. No. 437 (Del) of 2021 & Anr. dated 30.11.2023 considered a situation where a communication issued by the Revenue without DIN and without complying the directions of the CBDT Circular No. 19 of 2019 is a valid communication/order or not. The Tribunal held that communication/order passed in violation of the Circular of the CBDT without mentioning the DIN in the body of the order or without taking prior approval from the Chief Commissioner/Director General of Income Tax when there are exceptional circumstances in not quoting the DIN in the body of the order such communication/order was held to be invalid and shall be

deemed to have never been issued. While holding so the Tribunal observed as under:-

“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 5 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, 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 8 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

## I.T.A. No. 2345/Del/2022

(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 issued 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 10 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 uncomplied, 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.”

10. As the Revenue could not show us any exceptional circumstances for not quoting the DIN number in the DRP order, we hold that the DRP order is invalid and consequently the final

assessment order passed by the Assessing Officer under section 143(3) read with section 144C(13) of the Act pursuant to such invalid directions is deemed to have never been issued and thus bad in law. Thus, we set aside the assessment order passed by the Assessing Officer. As we have set aside the assessment order on the preliminary issue, we are not going into the merits of the additions. The additional grounds filed by the assessee are accordingly allowed.

11. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on : 20/12/2023.

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

Sd/-  
( C. N. PRASAD )  
JUDICIAL MEMBER

Dated : 20/12/2023.

*\*MEHTA\**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक / Assessee
2. राजस्व / Revenue
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त -अपील / CIT (Appeals)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,DELHI /  
DR, ITAT, DELHI

6. गार्ड फाइल / Guard file.

By order

ASSISTANT REGISTRAR

ITAT ,New Delhi.