

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

**BEFORE SH. SAKTIJIT DEY, VICE PRESIDENT
AND
SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.1011/Del/2020
Assessment Year: 2016-17

M/s. Aggradeep Realtors Pvt. Ltd. P-26, Sector-33, Gurgaon, Haryana 122001 PAN No.AAFCA1101J	Vs.	ACIT Circle -1 (2) Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Ved Jain, Advocate Ms. Supriya Mehta, CA
Respondent by	Sh. Kanv Bali, Sr. DR

Date of hearing:	19/12/2023
Date of Pronouncement:	19/12/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-1, New Delhi dated 30.01.2020 pertaining to A.Y. 2016-17.

2. The grievance of the assessee read as under :-

1. *On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.*

2. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in passing the order ex-parte without giving the assessee an appropriate and adequate opportunity of being heard and in clear violation of the principles of natural justice.*

3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in passing the order ignoring the contention of the assessee that the assessment order passed by AO is barred by limitation as the same has been passed beyond the statutory period prescribed under the Act.*

4. (1) *On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 92.68,125/- made by the AO on account of investment in unlisted equity shares of ACCIL Auto Steel Pvt Ltd treating the same as unexplained investment invoking the provision of section 69 of the Act.*

(II) That the above addition has been confirmed at an arbitrary rate of 30% of the total investment made without there being any basis for the same.

5. (i) *On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs.10,70,035/- made by the AO invoking the provision of section 14A read with rule 8D of the Income Tax Rules.*

(ii) That the disallowance has been confirmed despite the fact that no exempt income was earned by the assessee during the year under consideration.

(iii) That the disallowance has been confirmed ignoring the judicial pronouncements in this regard.

6. On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.601,00,733/- made by AO on account of increase in long term borrowing treating the same as unexplained cash credits invoking the provisions of section 68 of the Act.

7. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the learned AO without there any direct evidences merely by indulging in gross conjecture and surmises solely on the basis of presumption and assumption.”

3. At the very outset the Counsel for the assessee made an oral request for raising an additional ground which goes to the root of the matter.

4. It is the say of the Counsel that the order of the CIT(A) is devoid of DIN, therefore, is invalid and deem to have never been issued in the light of **CBDT Circular No.19/2019 dated 14.08.2019**. The additional ground is admitted and as it goes to the root of the matter the same is adjudicated first.

5. The **CBDT Circular No.19/2019 dated 14.08.2019** is binding on the revenue and is 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 of 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 toward total computerization of its work. This has led to 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 (ITBA) 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 a 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 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 ”

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.

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

(F.No. 225/95/2019-ITA.II)

Copy to:-

- i. PS to FM/OSD to FM/PS to MoS(F)/OSD to MoS(F)
- ii. PS to Secretary (Revenue)
- iii. Chairman, CBDT & All Members, CBDT
- iv. All Pr.CCsIT/ Pr.DsGIT
- v. All Joint Secretaries/CsIT, CBDT
- vi. C&AG
- vii. CIT (M&TP), Official Spokesperson of CBDT
- viii. O/o Pr. DGIT(Systems) for uploading on official website
- ix. Addl.CIT (Database Cell) for uploading on the departmental website


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

7. Clause-4 of the aforementioned circular when read with clause-2 makes the appellate order not in conformity with the mandate of the circular and, therefore, it shall be treated as invalid and deem to have never been issued.

8. In the light of the circular the order of the first appellate authority is treated as invalid and has never been issued.

9. However, the CIT(A) is at liberty to reframe the appellate order in line with the mandate of CBDT circular (supra) after affording a reasonable and adequate opportunity of being heard to the assessee.

10. In the result, the appeal of the assessee is allowed for statistical purpose.

11. Decision announced in the open court on 19.12.2023.

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

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