

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

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

**ITA No. 2970/Del/2022
Assessment Year: 2019-20**

Arun Kumar Mittal, C-65,
Milansar Apartment, Plot No. 2,
Sector-14, Rohini, Delhi.
PAN: AADPM6382J
(Appellant)

Versus ACIT, Central Circle-31,
Delhi.

(Respondent)

Assessee by : Dr. Rakesh Gupta, Advocate
Sh. Shrey Jain, Advocate
Revenue by : Sh. Zafarul Haque Tanweer, CIT-DR

Date of hearing : 20.12.2023
Date of pronouncement: 20.12.2023

ORDER

This is an appeal by the assessee against order dated 30.11.2022 of learned Commissioner of Income-tax (Appeals)-30, New Delhi for assessment year 2019-20.

2. In addition to the main grounds, the assessee vide letter dated 05.10.2023 has raised the following additional grounds :

1. That having regard to the facts and circumstances of the case, the assumption of jurisdiction for passing of the impugned assessment order u/s 143(3) dated 08-03-2021 is illegal, bad in law, inter alia for the reason that the approval u/s 153D has 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, the assumption of jurisdiction for passing of the impugned assessment order u/s 143(3) dated 08-03-2021, is illegal, bad in law and the same is not sustainable on various legal and factual grounds.

3. That having regard to the facts and circumstances of the case, the assumption of jurisdiction for passing of the impugned assessment order u/s 143(3) dated 08-03-2021 is illegal, bad in law, inter alia for the reason that notice u/s 143(2) dated 14-10-2020 was issued by Ld. ACIT, CC-31, Delhi even before order u/s 127 dated 15-10-2020 giving jurisdiction to ACIT, CC-31, Delhi meaning thereby impugned notice u/s 143(2) was issued by the non-jurisdictional officer which is not tenable in law.”

3. Since the issues raised in the additional grounds are purely legal and jurisdictional issues and can be decided based on facts and materials available on record without requiring investigation into fresh facts, we are inclined to admit the additional grounds for adjudication.

4. The core issue arising in the additional grounds relates to validity of the assessment order, as it was passed in pursuance to an approval granted under section 153D of the Income-tax Act, 1961, which does not contain Document Identification Number (DIN). Before

we proceed to decide this issue, it is necessary to briefly deal with the facts.

5. The assessee hitherto is a resident individual. For the assessment year under dispute, the assessee filed his return of income on 08.08.2019 declaring income of Rs.6,48,180/-. A search and seizure operation was carried out in case of M/s. Faquir Chand Lockers and Vaults Pvt. Ltd. during the period 31.10.2018 to 17.12.2018. In course of search and seizure operation, lockers standing in the name of the assessee were found and search warrant was also issued in the name of the assessee. Consequent to search and seizure operation, assessment proceedings under section 153A read with section 143(3) of the Act were initiated against the assessee. Ultimately, after obtaining approval of competent authority under section 153D of the Act, the Assessing Officer completed the assessment under section 143(3) of the Act determining total income of Rs.33,59,373/- after making addition of Rs.27,11,193/- under section 69A of the Act, on account of unexplained investment in gold coins and bullion. Against the assessment order so passed, the

assessee filed appeal before learned first appellate authority and being unsuccessful, has preferred this appeal before the Tribunal.

6. Learned counsel for the assessee, drew our attention to the letter dated 22.02.2021 issued by the Dy. Commissioner of Income-tax, Central Circle-31, New Delhi seeking approval under section 153D of the Act for issuance of assessment orders relating to assessment years 2013-14 to 2019-20 and letter dated 24.02.2021 issued by the Joint Commissioner of Income-tax, Central Range-8, New Delhi granting approval under section 153D of the Act for the assessment year 2019-20. In this context, he submitted that neither of the communication contain the mandatory DIN. He further submitted that as per CBDT Circular No. 19/2019 dated 14.08.2019, no communication, order etc. can be issued without DIN. He submitted, any communication/order etc. issued without DIN has to be treated as invalid and deemed to have never been issued. Thus, he submitted, the assessment order passed in pursuance to an invalid approval granted under section 153D of the Act is also invalid. In support of such contention, learned counsel relied upon the following decisions :

- (i). BVG India Limited vs. DCIT (IT(SS)A No. 11 to 16/PUN/2023 dated 19.10.2023.
- (ii). Finesse International Design Pvt. Ltd. vs. DCIT, (ITA No. 1298/Del/2021 dated 13.12.2023.

7. Per contra, learned Departmental Representative submitted, non-mentioning of DIN on the approval issued under section 153D is a mere irregularity and cannot invalidate the assessment order. He further submitted, since the assessee has availed opportunity and participated in the assessment proceedings, no prejudice is caused.

8. We have considered rival submissions and perused materials on record. We have also applied our mind to the judicial precedents cited before us. As far as the factual aspect is concerned, there is no dispute that the assessment proceedings were initiated in case of the assessee based on the search and seizure operation. Therefore, as per the provisions of the Act, in case of search assessments, the Assessing Officer before issuance of the assessment order has to seek approval of the competent authority under section 153D of the Act. Evidently, complying to the said statutory requirement, the Assessing Officer vide letter dated 22.02.2021 has sought approval of the Joint Commissioner, Central Range-8, New Delhi for issuance of

assessment orders in case of assessee for the assessment years 2013-14 to 2019-20. Vide letter dated 24.02.2021, the Joint Commissioner of Income Tax, Central Range-8, New Delhi granted approval under section 153D of the Act in respect of assessment year 2019-20.

9. A careful scrutiny of the communication issued by the Assessing Officer seeking approval under section 153D of the Act as well as the letter issued by the Joint Commissioner of Income-tax, Central Range-8, New Delhi granting approval under section 153D of the Act clearly reveal that they do not contain any DIN. In circular No. 19/2019 dated 14.08.2019 issued by CBDT, paragraph-2 clearly provides 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. after 1st October, 2019 without quoting the computer generated DIN in the body of such communication. Though, paragraph No. 3 of the extant circular carves out certain exceptions, providing for issuance of communication, orders etc. without DIN under certain circumstances, however, they are also subject to certain

conditions such as, the communication, order etc. must be issued with prior approval of the competent authority and the Assessing Officer must record reasons, which compelled him to issue the communication, order etc. without generating DIN. It is also provided that in the body of the communication/order issued without generating DIN, the Assessing Officer must incorporate the reasons for non-mentioning the DIN and the number and date of the approval of competent authority. Paragraph 4 of the circular makes it clear that any communication/order issued without mentioning DIN has to be treated as non-est and deemed to have never been issued.

10. Keeping in perspective the CBDT Circular referred to above, if we advert to the relevant facts on record, it can be seen that the approval under section 153D granted by the JCIT, Central Range-8, New Delhi, does not contain any DIN on it. Further, neither it contains the reasons for issuance of the communication without DIN nor the number and date of approval of the competent authority. Thus, in our view, the approval granted under section 153D of the Act is not in consonance with the CBDT circular No. 19/2019 dated 14.08.2019. Therefore, the issue which arises for consideration is, what would be

the effect of approval under section 153D of the Act without DIN. As we find, while considering identical issue of issuance of approval under section 153D of the Act without generating DIN and mentioning it in the body of the communication/order, the coordinate Bench in the case of BVG India Limited vs. DCIT (supra) has held as under :

22. Heard both the parties and perused the material available on record. The Id. AR, Shri Vijay Mehta led his submissions vide ground No. 1 challenging the approval u/s. 153D of the Act is invalid for non-mentioning of DIN. Further, non-application of mind by the approving authority i.e. Addl. CIT, wherein, it is noted he divided the said challenge in two parts i.e. non-application of mind while granting approval u/s. 153D of the Act terming the same as mechanical in nature and second part is the AO passed final assessment order altering the draft assessment order without having fresh approval.

23. Let us examine the first challenge i.e. whether non-generation of DIN on approval u/s. 153D of the Act results into invalid assessment?

24. On perusal of the CBDT Circular No. 19/2019 which is placed at page 92 of the paper book-II of the assessee, we note that the said circular was issued taking into account some instances which were brought to the notice of CBDT, where, notice, order, summons, letter and any correspondence were found to have been issued manually, without maintaining a proper audit trail of such communication and in order to have greater transparency in functioning of tax administration, vide para 2 it is made mandatory on or after 01-10-2019 for all communication shall be issued by any Income Tax Authority containing DIN in order to maintain proper audit trail of such communication. Further, it has been clearly stated 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 an assessee or any other person without computer generated DIN duly quoting the same in the body of such communication.

25. In the present case, the approval dated 30-09-2021 granted by the Addl. CIT u/s. 153D of the Act is at page 85 of the paper book-II. On perusal of the same, we note that no DIN is reflecting or quoted in the body of such approval. Further, vide para 5 of such approval clearly shows that the said approval may also be taken on ITBA portal, which establishes that the said Circular No. 19/2019 is applicable to approval granted u/s. 153D of the Act. Further, para 3 of the said circular, curves out certain exceptions to para 2 by providing that under certain exceptional circumstances, which were enumerated in clause (i) to (v), the communication may be issued without a DIN but only after recording reasons in writing in the file and with the prior written approval of Chief Commissioner/Director General of Income Tax. Further, in such exceptional circumstances, the orders/communications issued without a DIN must state this fact in specific format set out there in the circular. As discussed above, in spite of direction from the Addl. CIT vide para 5 to take approval on ITBA portal, no DIN was generated in the ITBA platform. Further, no exceptional circumstances claimed nor brought to our notice in not generating the DIN in pursuance of para 3 of the said circular. The ld. DR vehemently contended that there was no requirement of law and guidance of the CBDT for generation of DIN for the approval by the Addl. CIT. We find no force in the arguments of the ld. DR as it is contrary to the guidelines contained in CBDT circular which is binding on all Income Tax Authorities. Further, para 4 of said circular provides that any communication which is not in conformity with para 2 and 3 shall be treated as invalid and shall be deemed to have never been issued, which clearly explains any communication without DIN is invalid in the eye of law. Thus, we find approval u/s. 153D of the Act is covered by para 2 of Circular No. 19/2019. Therefore, in the present case non-mentioning of DIN on approval granted u/s. 153D of the Act by the Addl. CIT renders the assessment order dated 30-09-2021 passed u/s. 153A r.w.s. 144 of the Act invalid treating the same deemed to have never been issued.

26. In order to come to such conclusion, we find support from the decision of Hon'ble High Court of Chhattisgarh in the case of Jugal Kishore Paliwal (supra), is as to whether approval u/s. 153D of the Act is covered by Circular No. 19/2019 not? The relevant part at para 12 is reproduced here-in-below for ready reference :

"12. So far as submission of learned counsel for petitioners that there was no proper sanction/approval on the date of issuance of

notice under Section 148 of the Act of 1961 is concerned, provision under Section 151 of the Act of 1961 provides for "sanction for issuance of notice". Authority prescribed for grant of sanction/approval within four years of relevant assessment year is the 'Joint Commissioner of Income Tax'. Under Section 151 (2) of the Act of 1961 the Joint Commissioner is required to record his satisfaction on the reasons recorded by Assessing Officer. Respondents along with their additional reply have placed on record copy of screen shot of ITBA web portal in which there is mention of 'print approval' against name of respective petitioner with DIN number showing status to be generated with an option to view attachments. From the screen shot placed on record by respondents along with their additional return, accord of sanction/approval with DIN number of authority showing status to be generated on 31.3.2021, prima facie it cannot be said that there was no sanction/approval for issuance of notice under Section 148 of the Act of 1961. Along with additional return respondents have further placed on record approval/sanction granted under Section 151 dated 31.3.2021 which contains similar DIN Number as is mentioned in screen shot of ITBA web portal placed on record. Petitioners have also annexed approval/sanction granted under Section 151 of the Act of 1961 as Annexure P-6 to writ petition. DIN Number is mentioned in Annexure P-6. Nothing has been brought on record by petitioners to show that any objection was raised by them to the effect that DIN number is incorrect or it was not generated on 31.3.2021, except raising objection before this Court with respect to manner in which sanction/ approval is granted, as is appearing in sanction order. In view of aforementioned facts of case, submission of learned counsel for petitioners that notice under Section 148 of the Act of 1961 is issued without there being any sanction/approval from the competent authority is not sustainable and it is hereby repelled."

27. On careful reading of the above finding of the Hon'ble High Court of Chhattisgarh, it is noted that the assessee therein agitated that there was no proper sanction/approval u/s. 151 of the Act on the date of issuance of notice u/s. 148 of the Act. The respondent-revenue therein placed on record copy of screen shot of approval on ITBA web portal with DIN number. The Hon'ble High Court was pleased to observe that the sanction/approval u/s. 151 of the Act prima facie shows the DIN number showing status to be generated on 31-03-2021, held cannot be said that there was no sanction/approval for issuance of notice u/s. 148 of the Act and rejected the contention of the assessee. It is clear from above

finding of Hon'ble High Court that the approval u/s. 151 of the Act is covered by para 2 of Circular No. 19/2019 of CBDT.

28. Further, we also find support from the decision of Hon'ble High Court of Chhattisgarh in the case of Bharat Krishi Kendra (supra). The relevant part at para 14 is reproduced here-in-below for ready reference :

“14. Third submission of learned counsel for petitioner is that approval granted under Section 151 of the Act of 1961 does not bear digital signature of authority, referring to note appended to approval (Annexure P-5), is concerned, the note appended says "if digitally signed, the date of digital signature may be taken as date of document". Submission of learned counsel for petitioner, in the opinion of this Court, is not acceptable in view of provisions of Section 282 (a) of the Act of 1961, which provides that notice or other documents to be issued for the purpose of the Act of 1961 by any income-tax authority shall be deemed to be authenticated if name and designation is provided. In approval under Section 151 of the Act of 1961, name, designation and office is printed. Hence, submission of learned counsel for petitioner that approval is not digitally signed is also not sustainable, more so when it bears DIN & Document Number.”

29. On careful reading of the above finding of the Hon'ble High Court of Chhattisgarh, it is noted that the assessee therein challenged the approval granted u/s. 151 of the Act does not bear digital signature of the authority. On an examination of the said approval as an Annexure P-5, the Hon'ble High Court was pleased to observe that the approval has DIN and it is deemed to be authenticated when it bears DIN and Document Number, name, designation and office and rejected the contention of the assessee. It is also clear from the judgment of Hon'ble High Court, when the approval has a DIN and it is authenticated meaning thereby, it is within the ambit of Circular No. 19/2019.

30. In the light of the above, we note that approval u/s. 153D of the Act is akin to the approval u/s. 151 of the Act, wherein, we find sanction/approval u/s. 151 required from prescribed authority to initiate issuance of notice u/s. 148 of the Act, likewise, in order to proceed with the assessment u/s. 153A of the Act, the Assessing Officer required to take approval u/s. 153D of the Act, which in our opinion, is a statutory requirement, falling under the ambit of Circular No. 19/2019 to generate DIN. Therefore, we hold non-mentioning of DIN on approval granted u/s. 153D of the Act vitiate the final assessment order passed u/s. 153A r.w.s. 144 of the Act.

31. The Hon'ble Jurisdictional High Court of Bombay in the case of Ashok Commercial Enterprises reported TS-506-SC-2023 (Bom.), was pleased to hold the satisfaction note will fall within the scope of para 2 of Circular No. 19/2019. The relevant part is reproduce here-in-below for ready reference :

"18 Whether the impugned assessment order dated 28th September 2021 is invalid on account of it being issued without a DIN?"

- (a) *The CBDT, in exercise of powers under Section 119(1) of the Act, has issued a Circular No.19/2019 dated 14th August 2019 providing that no communication shall be issued by any Income Tax Authority interalia relating to assessment orders, statutory or otherwise, inquiries, approvals, etc. to an assessee or any other person on or after 1st October 2019 unless a computer generated DIN has been allotted and is quoted in the body of such communication. The Circular reads as under :*

*CIRCULAR NO.19/2019 (F. NO.225/95/2019-ITA.II
DATED 14-8-2019*

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 para3(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 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.

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.*

Paragraph 3 of the Circular sets out five exceptional circumstances where the aforementioned mandatory requirement may not be adhered to, but requires that if an order/communication is to be issued without a DIN, it can be done only after recording reasons in writing in the file and with the prior written approval of the Chief Commissioner/Director General of Income Tax. Further, paragraph 3 requires that if such exceptional circumstances are claimed, the orders/communication issued without a DIN must state this fact in a specific format set out in paragraph 3 of the Circular.

Paragraph 4 of the Circular provides that any order/communication which is not in conformity with paragraphs 2 and 3 of the Circular shall be treated as invalid and shall be deemed to have never been issued.

The contents of the Circular have been re-iterated in a Press Release dated 14th August 2019;

(b) It is indisputable that the impugned assessment order dated 28th September 2021 does not bear a DIN and further that the said order issued without a DIN does not bear the required format set out in paragraph 3 of the Circular and, therefore, the impugned assessment orders for Assessment Year 2011-2012 to 2019-2020 ought to be treated as invalid and deemed never to have been issued. We find support for this view in Brandix Mauritius Holdings Ltd. (Supra) where the Hon'ble Delhi High Court has held that an

order passed in contravention of the said Circular is void, bad in law and of no legal effect. Paragraphs 16 to 17.1, 18 and 19 read as under :

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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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 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.

(c) During the course of hearing, Mr. Suresh Kumar produced an intimation letter dated 13th October 2021 stating that the order dated

28th September 2021 under Section 153C of the Act has a DIN, which is set out therein. Even if this is held to be in compliance with paragraph 5 of the Circular, which deals with regularization of communications without DIN, this can only seek to regularize the failure to generate a DIN, but yet the requirements of paragraph 3 of the Circular will still remain contravened and consequently, the order dated 28th September 2021 ought to be treated as invalid and never issued;

(d) The said Circular also applies to the satisfaction note dated 13th July 2021 issued by respondent no.1. 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. In the case of the satisfaction note no regularization dated 13th October 2021 has been issued;

(e) In view of the binding nature of Circular issued under Section 119 of the Act, and the peculiar facts and circumstances of the case, the consequences of contravention of the Circular set out above, therefore, ought to be given full effect to. The object of the said Circular is clear and laudatory and intended to ensure that proper trail of all assessment and other orders are maintained and further that any deviation there from can only be undertaken after prior written approval of the higher authorities under the Act. Therefore, the satisfaction note dated 13th July 2021 and the impugned order of assessment dated 28th September 2021 ought to be treated as invalid and deemed never to have been issued;

(f) On this ground, rule ought to be made absolute in the following petitions :

*A.Y. 2011-2012 - WP No.2593 of 2021
A.Y. 2012-2013 - WP No.2598 of 2021
A.Y. 2013-2014 - WP No.2847 of 2021 ‘
A.Y. 2014-2015 - WP No.2597 of 2021
A.Y. 2015-2016 - WP No.2594 of 2021
A.Y. 2016-2017 - WP No.2588 of 2021
A.Y. 2017-2018 - WP No.2595 of 2021
A.Y. 2018-2019 - WP No.2625 of 2021
A.Y. 2019-2020 - WP No.2696 of 2021”*

32. On careful reading of the above decision, we note that the assessee therein challenged notices issued u/s. 153 of the Act and also assessment orders passed pursuant thereto under writ

proceedings, is invalid for nonmentioning of DIN. The main challenge was that the satisfaction note dated 13-07-2021 bears no DIN and the impugned assessment order dated 28-09-2021 does not bear a DIN. Regarding non-mentioning of DIN on satisfaction note, it was contended that the covering letter along with which the satisfaction note was provided has a DIN but the copy of satisfaction note does not bear DIN and Hon'ble High Court held the circular is applicable to the satisfaction note dated 13-07-2021 issued by the respondent-revenue and the said satisfaction note will fall within the scope of para 2 of the circular as a communication. Further, the Hon'ble Court observed impugned assessment order does not bear a DIN, does not bear the required format set out in para 3 of the said circular and held assessment orders are invalid, deemed never to have been issued, by placing reliance in the case of Brandix Mauritius Holdings Ltd. reported in (2023) 149 taxmann.com 238 (Del.).

33. Thus, in the light of above ratio laid down by the Hon'ble Jurisdictional High Court of Bombay it is clear satisfaction note shall be authenticated with a DIN, in the absence of which the assessment passed thereon becomes invalid. We find the ratio laid down by the Hon'ble High Court is clearly applicable to the facts on hand, thereby, we hold the approval dated 30-09-2021 granted by the Addl. CIT u/s. 153D of the Act is invalid and the consequential final assessment order dated 30-09-2021 passed u/s. 153A r.w.s. 144 of the Act is quashed.

34. Further, the Hon'ble High Court of Allahabad in the case of Deepak Gupta (supra) held that the approval u/s. 153D of the Act is a statutory approval and cannot be considered as a mere internal communication. The relevant portion of the said judgment is reproduced here-in-below for ready reference :

“28. Before parting, we would like to deal with another issue in the interest of justice. We have already found as a matter of fact that the recital in the order dated 28.10.2019 as well as order dated 26.11.2019 that the due approval under Section 151 of the I.T. Act, 1961 was taken from the competent authority is not liable to be interfered with in light of the insufficient pleadings. However, the nature of right of the assessee to be provided a copy of the order of prior approval under Section 151 of the I.T. Act, 1961 as understood by the authority passing the order dated 28.10.2019 has to be adverted to. The authority denied a copy of the approval

granted by the competent authority under Section 151 of the I.T. Act, 1961 to the petitioner for the following reasons:

"However, the AR of the assessee has contested that the copy of approval was not provided with the reasons recorded. In this regard, it is informed that the approvals taken from higher authorities are internal matter of the department for communication hence, the same cannot be provided. Further, the assessee has cited case law of Hon'ble Delhi High Court in support of his claim. It is hereby clarified that the case law of Hon'ble Delhi High Court is not binding on the undersigned. However, if the assessee has case laws of jurisdictional High Court or Hon'ble Supreme Court, the same may be communicated accordingly. Therefore, the above ground of the assessee is not acceptable hence rejected.

" 29. The aforesaid finding of the Revenue authority is unsustainable in law. Approval under Section 151 of the I.T. Act, 1961, prior to initiation of proceedings under Section 148 of the I.T. Act, 1961 is a jurisdictional prerequisite. In the absence of such approval the proceedings would fall to the ground for want of jurisdiction. As such, the assessee is fully entitled to a copy of the order passed under section 151 of the I.T. Act, 1961 and correspondingly, the Assessing Officer is obliged to hand-over a copy of the same, as and when the assessee seeks for it."

35. On careful reading of the above, we note that the assessee therein contested, that the copy of approval u/s. 151 of the Act was not provided with the reasons recorded. The revenue contended that the approvals taken from higher authority are internal matter of the Department for communication and same cannot be provided. The Hon'ble High Court held that the approval u/s. 151 of the Act is a jurisdictional prerequisite and the assessee is fully entitled to have the same. It is established that a communication by way of approval u/s. 153D of the Act between Addl. CIT and the AO is not a internal communication, is a jurisdictional prerequisite covered by Circular No. 19/2019. In view of the same, we reject the arguments of Id. DR that the circular is not applicable for internal communication between Addl. CIT and AO."

11. In similar lines is the decision of coordinate Bench in case of Finesse International Design Pvt. Ltd. vs. DCIT (supra), wherein, it has been held as under :

“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.”

12. No contrary decision has been brought to our notice by learned Departmental Representative. Thus, respectfully following the cited decisions of the coordinate Benches, we hold that the impugned assessment order passed in pursuance to an invalid approval granted under section 153D of the Act is equally invalid, hence, unsustainable in law. Accordingly, we quash the assessment order. Order of learned first appellate authority is set aside.

13. Since, the assessee has succeeded on the additional grounds, the main grounds raised by the assessee have been rendered academic, hence, do not require adjudication.

14. In the result, appeal is allowed as indicated above.

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

Sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 20.12.2023

*aks/-

Copy forwarded to:

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

Assistant Registrar
ITAT New Delhi