

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “D”: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 1875/DEL/2022  
Assessment Year: 2019-20**

Tableau International, Unlimited Company The Oval, Shelbourne Road, Ballsbridge, Dublin, Ireland Do4E7K5 PAN- AAECT8018J	<u>Vs</u>	DCIT Circle 3(1)(1), International Taxation, Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	Shri Ravi Sharma Adv. & Ms. Saloni Shital, Adv.	
<b>Department represented by</b>	Shri Vizay B. Vasanta, CIT(DR)	
<b>Date of hearing</b>	07.12.2023	
<b>Date of pronouncement</b>	29.12.2023	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the assessment order dated 19.07.2022 pertaining to the assessment year 2019-20, passed by the AO u/s 143(3) read with section 144C(13) of the Income-tax Act, 1961, hereinafter referred to as the “Act), pursuant to the directions of learned DRP dated 15.06.2022 u/s 144C(5) of the Act.

2. The assessee has raised following grounds of appeal:

*“1. On the facts and circumstances of the case and in law, the final assessment order passed by the Ld. AO pursuant to the directions of the Learned Dispute Resolution Panel ('Ld. Panel') u/s 143(3) r.w.s. 144C(13) of the Act is bad in law and barred by limitation in view of the provisions of Section 153 of the Act.*

*2. On the facts and circumstances of the case and in law, the final assessment order passed by the Ld. AO pursuant to the directions of the Ld. Panel u/s 143(3) r.w.s. 144C(13) of the Act is erroneous and bad in law being passed on:*

*2.1 An incorrect appreciation of facts,*

*2.2 Reference/conclusions that are contrary to the documentation/material on record,*

*2.3 Non-consideration of the documentation/material placed on record,*

*2.4 Reference/conclusions based on material available in public domain that is not relevant to the facts of the case,*

*2.5 Moreso, the Ld. AO has erred in erroneously concluding that the Appellant is economically not taxed in its country of residence (i.e., Ireland).*

*3. On the facts and circumstances of the case and in law, the Ld. AO/Ld. Panel grossly erred in observing that the consideration received by the Appellant amounting to INR 78,90,23,425 from its customers is in the nature of 'Fees for Technical Services' ('FTS') as per the provisions of the Act and under Article 12 of the Double Taxation Avoidance Agreement ('DTAA') entered between India and Ireland without appreciating that same is in the nature of business income and thus, not taxable in India in the absence of Permanent Establishment ('PE'). In doing so:*

*3.1 the Ld. AO/Ld. Panel grossly erred in not appreciating that the substantial consideration received by the Appellant amounting to INR 74.38.03.923 (out of total receipts of INR 78.90.23.425) from its customers pertains to sale of non-customized, standard off the shelf/shrink wrapped software, software upgrades and support and*

*maintenance services incidental to supply of software which is not taxable in India being sale of 'copyrighted article.*

*3.2 The Ld. AO/Ld. Panel grossly erred in taxing the consideration received by the Appellant amounting to INR 4,15,51,996 (out of total receipts of INR 78,90,23,425) from the provision of Software as a Service ('SaaS') (including support and maintenance services) and training services without appreciating that the same is a standard facility and not taxable as FTS both under the Act and the DTAA.*

*3.3 the Ld. AO/Ld. Panel grossly erred in taxing the consideration received by the Appellant amounting to INR 36,67.506 (out of total receipts of INR 78,90,23,425) from its customers as FTS without appreciating that the same pertains to partner(s) fee, participation fees etc., which being in the nature of business income is not taxable in India in the absence of PE.*

*4. On the facts and circumstances of the case and in law, the Ld. AO erred in not granting the withholding tax credit of INR 8,14,775 as claimed by the Appellant during the course of scrutiny assessment proceedings (basis Form 26AS), which the Ld. AO was duty bound to allow.*

*5. On the facts and in the circumstances of the case and in law, the Ld. AO has erred in levying interest u / s 234B of the Act.*

*6. On the facts and circumstances of the case and in law, the Ld. AO has erred in withdrawing the refund along with interest u/s 244A of the Act granted to the Appellant pursuant to the processing of the ROI filed and erred in levying consequential interest u/s 234D of the Act.*

*7. That on the facts and in the circumstances of the case and in law, the Ld. AO has erred in initiating penalty proceedings u / s 270A of the Act on account of under-reporting of income due to misreporting thereof.*

2.1 The assessee has also filed additional grounds of appeal, which are as under:

*“1. Additional Grounds of appeal:*

*1.1 With regard to the captioned matter, it is most respectfully submitted that the Appellant had raised additional grounds of appeal before the Hon'ble Tribunal vide petition dated July 17, 2023. The additional grounds*

of appeal nos. 8 & 9 are reproduced hereunder for Your Honours' ready reference:

*"8. On the facts and in the circumstances of the case and in law, the Ld. DRP erred in not quoting a valid computer-generated DIN on the body of DRP directions dated June 15, 2022 under section 144C (5) of the Act, in contravention to the Circular No. 19 of 2019 by the CBDT, thus rendering such an order/direction to be invalid and never to have been issued as per para 4 to the said Circular.*

*9. On the facts and in the circumstances of the case and in law, the final assessment order dated July 19, 2022 under section 143(3) read with section 144C (13) of the Income Tax Act, 1961 passed by the Deputy Commissioner of Income Tax, Circle 3(1)(1), International Taxation, Civic Centre, Delhi pursuant to invalid and non-est directions passed by Hon'ble DRP, is bad in law, null and void and liable to be quashed."*

2.2 Along with additional grounds, the assessee has also filed written submissions, which read as under:

*"1.2 The written submissions in support of the aforesaid additional grounds of appeal is detailed below:*

**2. Background in brief:**

*2.1 It is submitted that for the AY 2019-20, the Appellant filed its e-return of income on November 26, 2019. The Appellant's case was selected for scrutiny assessment the assessment proceedings were concluded by passing a draft assessment order dated September 29, 2021.*

*2.2 Against the draft assessment order, the Appellant filed its objections before the Ld. Dispute Resolution Panel ('Ld. DRP') on October 26, 2021. Subsequently, the Appellant received a copy of the DRP directions dated June 15, 2022 along with the intimation letter dated June 17, 2022. (copy enclosed an Annexure A)*

*2.3 It is respectfully submitted that the DRP Directions issued did not bear a "Document Identification Number" ('DIN'), which has been mandated*

by the Central Board of Direct Taxes ('CBDT) vide Circular No. 19/2019 dated 14.08.2019 ('the Circular').

### **3. Appellant's submissions:**

3.1 It is respectfully submitted that the aforesaid directions issued by the Ld. DRP are in violation of the Circular No. 19/2019 issued by the CBDT and therefore, the said directions are invalid and deemed to have never been issued. The Appellant's submissions in detail regarding the said Circular and the applicability of the same in the present case are stated hereunder in detail.

3.2 It is submitted that the aforesaid Circular No. 19/2019 issued by the CBDT deals with "Generation/Allotment/Quoting of Document Identification Number in Notice/Order/Summons/ letter/correspondence issued by the Income-tax Department".

3.3 In the said Circular, the Hon'ble CBDT has strictly and unequivocally, laid down as under:

a) Para 1 of the Circular states that the Income-tax Department has moved towards total computerization of its work which has, inter-alia, brought greater transparency in functioning of the tax administration. Despite the same, there were instances in which communications were found to have been issued manually without maintaining a proper audit trail of such communication.

In order to prevent such instances and to maintain proper audit trail of all communications, the CBDT introduced the concept of mandatory quoting of DIN on all communications issued by any income-tax authority to the assessee or any other person.

b) Para-2 of the Circular states 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 DIN has been allotted and is duly quoted in the body of such communication.*

*c) Para-3 of the said Circular states that in five specific exceptional circumstances as mentioned therein, 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 ('CCIT'/DGIT').*

*Further, whenever any such manual communication would be issued, it would be necessarily required to specify reason of issuing such a communication without DIN along with the date of obtaining written approval of the Chief Commissioner/Director General of Income Tax in a particular format, which shall be mentioned in the body of the communication itself.*

*d) Para-4 of the Circular states that any communication which is "not in conformity" with para-2 and para-3 of the Circular, shall be treated as invalid and shall be deemed to have never been issued.*

*3.4 As can be seen from the Circular as explained above, in cases where there is neither DIN on the body of the communication nor does the communication state the reasons for manual issuance along with details regarding approval obtained from CCIT/DGIT, the communication shall be regarded a nullity in the eyes of the law, being treated as invalid and shall be deemed to have never been issued.*

*3-5 It is respectfully submitted that the seriousness with which the DIN system has been implemented is evident from the fact that any communication issued without a DIN is to be held as invalid and deemed to have never been issued, that is, a nullity in the eyes of law as per the Circular.*

*3.6 Further, attention is also invited to the press release dated October 1, 2019 issued by the Ministry of Finance, which categorically states that every communication from the income tax department must contain a DIN.*

*3.7 Your Honours' kind attention is also invited to the decision of Hon'ble Delhi High Court in the case of CIT v. Brandix Mauritius Holdings Ltd.: ITA 163/2023, wherein the Hon'ble Delhi High Court has held as under:*

*"8.2 Therefore, whenever communications are issued in the circumstances alluded to in paragraph 3(i) to (v), i.e., are issued manually without a DIN, they require to be backed by the approval of the Chief Commissioner/Director General. The manual communication is required to furnish the reference number and the date when the approval was granted by the concerned officer. The formatted endorsement which is required to be engrossed on such a manual communication, should read as follows: "... This communication issues manually without a DIN on account of reason/reasons given in para 3(1)/3(il)/3(ii)/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....."*

....

*9. In the instant case, there is nothing on record to show that, according to the appellant/revenue, failure to allocate DIN arose out of the "exceptional circumstances" which are set forth in paragraph 3 of the 2019 Circular. It is, however, the case of the appellant/revenue, both before this court and before the Tribunal, that failure to allocate DIN was a mere mistake....*

*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.*

*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.*

*20. The logical sequitur of the aforesaid reasoning can only be that the Tribunal's decision to not sustain the final assessment order dated 15.10.2019, is a view that cannot call for our interference.*

*21. As noted above, in the instant appeal all that we are required to consider is whether any substantial question of law arises for consideration, which, inter alia, would require the Court to examine whether the issue is debatable or if there is an alternate view possible. Given the language employed in the 2019 Circular, there is neither any scope for debate nor is there any leeway for an alternate view."*

*(emphasis supplied)*

*3.8 Further, the Appellant would also like to draw Your Honours attention to the decision of the Hon'ble Supreme Court in a Public Interest Litigation filed in the case of Pradeep Goyal v. UOI: [2022] 141 taxmann.com 64 (SC) wherein the Hon'ble Apex Court has issued directions to the Union Government & GST Council to issue advisory/instructions/recommendations to the state governments regarding implementation of DIN system in the indirect tax administration of the states as well.*

*3.9 In the said decision, even the Hon'ble Supreme Court has echoed that the implementation of DIN system is in the larger public interest, enhances good governance and brings in transparency and accountability in the tax administration. Further, it is pertinent to consider the following submission of the Ld. ASG on behalf of the Union Government as noted by the Hon'ble Supreme Court:*

*"3. On the copy of the writ petition being served pursuant to the order passed by this Court dated 11-7-2022, Shri Balbir Singh, learned ASG has appeared on behalf of Union of India. He has submitted that Union of India does not dispute that by implementing a system for electronic (digital) generation of a DIN, it will bring in transparency and accountability in the indirect tax administration. He has submitted that even as desired by Hon'ble the Prime Minister of India, the Central Government had taken a decision to implement the DIN system of Central Board of Direct Taxes and on and from 1-10-2019,*

*every CBDT communication will have to have a Document Identification Number (DIN)."*

*(emphasis supplied)*

*3.10 In view of the above, it is humbly submitted that the implementation of DIN system is a crucial national level policy decision taken by the Government & the CBDT towards a larger macro-economic goal of ensuring that a proper audit trail is maintained in the tax administration for all the communications issued by the income-tax department. Any failure to abide by the said Circular shall render the communication issued by income-tax department as invalid and non-est.*

***4. Applicability of the aforesaid Circular No. 19 of 2019 in the Appellant's case:***

*As stated supra, it is respectfully submitted that the directions dated June 15, 2022 issued by the Ld. DRP are in violations of the Circular No. 19/2019 and therefore, the said directions are invalid and deemed to have never been issued.*

*4.1 It is reiterated that the DRP directions issued on June 15, 2022 and served upon the Appellant vide e-mail dated June 19, 2022 do not contain the mandatory DIN as required under Para 2 of the Circular. Further, the said directions also do not quote the paragraph as specified in Para 3 of the Circular (stating that the directions have been issued manually owing to any of the exceptional circumstance and written approval of the Chief Commissioner/Director General of Income-tax has been obtained).*

*4.2 It is submitted that Para 4 of the Circular lays down that any communication which is not in conformity with Para-2 and Para-3 of the Circular shall be treated as invalid and shall be deemed to have never been issued.*

*4.3 In the present case, since the DRP directions are not in conformity with Para 2 and Para 3 of the Circular, the same are invalid and deemed to have never been issued.*

*4.4 In this regard, attention is invited to the decision of Hon'ble Bangalore Bench of the Tribunal in the case of Dilip Kothari v. PCIT: ITA Nos.403 to 405/Bang/2022. In this case, an order under section*

*263 of the Act was passed without quoting DIN and on the same day, DIN was generated vide a separate intimation. The Hon'ble Tribunal held that the same was not in accordance with the Circular and therefore, the order under section 263 of the Act was quashed. Relevant extract from the decision is reproduced hereunder:*

*“17. In assessee's case there is no dispute about the fact that the impugned order u/s. 263 of the Act has been issued manually. It is also noticed that the DIN for the order is generated through two separate intimations one bearing the same date as the date of the order u/s.263 and the other is dated 25.03.2022. The argument of the ld DR that the intimation dated 24.03.2022 is part of the order and that there is no violation cannot be accepted as generating the DIN by separate intimation is allowed to be done to regularise the manual order (Para 5 of the circular) provided the manual order is issued in accordance with the procedure as contained in Para 3. On perusal of the order u/s.263, it is noted that the order neither contains the DIN in the body of the order, nor contains the fact in the specific format as stated in Para 3 that the communication is issued manually without a DIN after obtaining the necessary approvals. Therefore, we are of considered view that the impugned order is not in conformity with Para 2 and Para 3 of the CBDT circular.*

*18. In view of these discussions and respectfully following the decision of the Kolkata and Delhi Benches of the Hon'ble Tribunal we hold that the orders passed u/s.263 for the assessment years 2014-15 to 2016-17 are invalid and shall be deemed to have never been issued as per Para 4 of the CBDT circular as the order is not conformity with Para 2 and Para 3. It is ordered accordingly.*

*19. Since we have decided the issue on legal grounds, the other issues on merits have become academic and dismissed as such.”*

*(emphasis supplied)*

*(kindly refer to para 17 to 19 of the Case Law Compilation (CLC))*

*4:4.1 While the LA. DRP had made an attempt to regularise the manual issuance of DRP directions dated June 15, 2022 by*

*generating DIN subsequently vide intimation letter dated June 19, 2022, the Id. DRP has failed to appreciate that the regularisation of a manual order is possible only if such a manual order is passed owing to any of the exceptional circumstances mentioned in the Circular and the following paragraph is quoted in the body of such communication:*

*“...This communication issues manually without a DIN on account of reason/reasons given in ara \* 3(i) / 3 \* (iii) / 3 (ii)/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.....*

*4.4.2 In this regard, attention is invited to the decision in the case of Dilip Kothari (supra) wherein the impugned order was quashed even though the DIN was generated on the same day separately, since neither the DIN, nor the specified para was quoted in the body of the order.*

*4.4.3 In the present case, as stated above, the DRP directions issued on June 15, 2022 and served 17 upon the Appellant's authorised representative vide email dated June 2, 2022 do not contain the aforesaid para in the body of the directions as mandated by Para 3 of the Circular and therefore, the same cannot be regularised by subsequent generation of DIN vide a separate intimation letter.*

*4.4.4 In any case, as stated above, once the manual communication is not in conformity with Para 3 and Para 4 of the Circular, the said communication shall be rendered invalid and deemed to have never been issued.*

*4.5 Even otherwise, it is respectfully submitted that the D ^ N which has been sought to be allotted to the DRP directions vide the intimation letter dated June 5, 2022 [i.e., Gamma\*Gamma\*BA / D \* RP / M / 144 \* C(5) / 2022 - 23/1043554875 \* (1) ] is also invalid. It is submitted that when the said DIN is put on the document authentication utility of the website of the income-tax department, the said utility displays a message "No record found for the given document number". The screenshot of the said utility is attached below for your reference:*

*4.6 The Appellant further wishes to place reliance on the following cases as well, wherein the respective orders impugned therein have been quashed on*

*the basis that the said orders were not in conformity with the CBDT's Circular No. 19 of 2019:*

- a) CIT v. Brandix Mauritius Holdings Ltd.: ITA 163/2023 (Delhi HC)*
- b) Intrado EC India Private Ltd. v. DCIT: IT(TP)A No.239/Bang/2021 (Bangalore ITAT)*
- c) Tata Medical Centre Trust v. CIT: ITA No.238/Kol/2021 (Kolkata ITAT) - affirmed by the Hon'ble Calcutta HC in ITAT/202/2023 & IA NO.GA/1/2023*
- d) Gerah Enterprises P. ltd. v. PCIT: ITA No. 740/Mum/2021 (Mumbai ITAT)*
- e) Mahesh Kumar Sureka v. PCIT: ITA. No. 106/Kol/2021 (Kolkata ITAT)*
- f) RCC Institute of Technology v. CIT: ITA. No. 108/Kol/2022 (Kolkata ITAT)*
- g) Sunita Agarwal v. ITO: ITA No. 432/Kol/2020 (Kolkata ITAT)*
- h) Sanjay Punamchand Kothari v. ACIT: ITA Nos.47 and 59/PUN/2021 (Pune ITAT)*

*4.7 In view of the aforesaid submissions, it is most respectfully submitted that the DRP directions dated June 15, 2022 issued in the present case are in violation of the CBDT's Circular No. 19 of 2019 and therefore, the same are invalid and deemed to have never been issued.*

***5. Final assessment order dated passed in pursuance to invalid and non-est DRP directions is also bad in law and is liable to be quashed:***

*5.1 It is humbly submitted that as per section 144C(13) of the Act, the assessing officer has to pass the final assessment order in conformity with the direction issued by the DRP, within one month from the end of the month in which such direction is received.*

*5.2 In the present case, the DRP directions dated June 15, 2022, are invalid and deemed to have never been issued, being in violation of the Circular No. 19 of 2019. Once the DRP directions are deemed to have never been issued, the Ld. AO could not have passed the final assessment order under section 144C(13) of the Act in pursuance to such non-est directions.*

5.3 *It is respectfully submitted that the judiciary has been consistently holding that infirmities in issuance of statutory notices, draft assessment order, transfer pricing order or any other order in the course of assessment prior to passing of the final assessment order would invalidate the entire assessment, as the case may be.*

5.4 *The said legal position is also supported by the maxim "sublato fundamento cadit opus" which means that a foundation being removed, the superstructure falls.*

5.5 *Accordingly, it is most humbly submitted that the final assessment order dated July 18, 2022 passed under section 144C(13) read with section 143(3) of the Act in pursuance to invalid and non-est DRP directions is bad in law and void-ab-initio.*

## **6. CBDT Circulars are binding on the Revenue:**

6.1 *The Appellant humbly submits that Circulars issued by the CBDT are binding on all the officers and persons employed in the execution of the Act in terms of Section 119 of the Act.*

6.2 *The Circular in question in the present case has been issued by the CBDT in exercise of powers under section 119 of the Act as specified in para 2 of the Circular. Section 119 provides that such a Circular shall be binding upon the revenue. Relevant extract from the section is reproduced hereunder:*

*"Instructions to subordinate authorities.*

*119. (1) The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:"*

6.3 *The Hon'ble Supreme Court in the case of UOI v. Azadi Bachao Andolan: [2003] 263 [TR 706 has held that Circulars would fall within the purview of section 119 of the Act.*

6.4 *Further, it is respectfully submitted that CBDT Circulars have been held to be binding upon the Revenue even if they deviate from the provisions of the Act. In this regard, attention is invited to the landmark decision of the*

*Hon'ble Supreme Court in the case of K.P. Varghese v. ITO: [1981] 7 Taxman 13 (SC), wherein it has been held as under:*

*"12... The two circulars of the CBDT to which we have just referred are legally binding on the revenue and this binding character attaches to the two circulars even if they be found not in accordance with the correct interpretation of sub-section (2) and they depart or deviate from such construction. It is now well-settled as a result of two decisions of this Court, one in Navnit Lal C. Jhaveri v. K.K. Sen, AAC [1965] 56 ITR 198 and the other in Ellerman Lines Ltd. v. CIT [1971] 82 ITR 913, that circulars issued by the CBDT under section 119 of the Act are binding on all officers and persons employed in the execution of the Act even if they deviate from the provisions of the Act."*

*6.5 The Appellant further submits that the Hon'ble Apex Court in the case of UCO Bank vs. CIT: [1999] 237 ITR 889 (SC) has held that the section 119 provides a right to the CBDT, the authority which wields the power for its own advantage under the Act, to forego the advantage when required to wield it in the manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest for proper administration of fiscal laws. The Circulars issued in exercise of such power are binding upon the revenue authorities. Relevant extract from the decision is reproduced hereunder:*

*"The Board, thus, has powers, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under section 119 which are binding on the authorities in the administration of the Act. Under section 119(2)(a), however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage under the Act is given the right to forego the advantage when required to wield it in the manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorised as belonging*

*to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities."*

6.6 *It is further submitted that the violation of a Circular has been held to be fatal by the Hon'ble Supreme Court in the case of Paper Products Ltd. v. Commissioner of Central Excise: [2001] 247 ITR 128, wherein the Hon'ble Supreme Court quashed the show cause and demand notices which were in contravention to the Circulars issued by the Central Board of Excise and Customs.*

6.7 *In light of the above submissions, it is most humbly submitted that the Circular No. 19/2019 issued by the CBDT is binding upon the Revenue and the Revenue authorities cannot tone down the rigors of the Circular to which they themselves are subject to. It is prayed that the said Circular has to be strictly construed and any violation thereof cannot be justified. Accordingly, where the Circular itself provides that non-quoting of DIN on communications shall be held to be invalid and deemed to have been issued, the Appellant prays that the Hon'ble Tribunal quash the impugned communications in the present case as being invalid and deem them to have never been issued by the income tax department.*

***7. If the law prescribes something to be done in a particular manner, the same has to be done in that manner only:***

7.1 *The Appellant would also like to submit that it is a well settled position in law that when the law prescribes something to be done in a particular manner, the same has to be done in that manner only and not in any other manner. In this regard, attention is invited to the following decisions:*

*Dr. Shashi Kant Garg v. CIT: [2006] 285 ITR 158 (Allahabad HC)*

*"40. Having analysed the various provisions of the Act defining jurisdiction of the various authorities and the powers, procedure to be adopted and the limitations imposed upon such authorities for making assessment or reassessment, we are of the further opinion that if under the provisions of the Act an authority is required to exercise powers or to do an act in a particular manner, then that power has to be exercised and the act has to be performed in that manner alone and not in any other manner."*

*CIT v. Anjum M.H. Ghaswala: [2001] 252 ITR 1 (SC):*

*"It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner, then the said authority has to exercise it only in the manner provided in the statute itself."*

*7.2 In view of the above, the Appellant submits that once the Circular has prescribed a particular manner for issuance of communications, the same ought to be issued by the income tax department in that manner only. Any communication issued by any income tax authority in violation of the said Circular shall be invalid and shall be deemed to have never been issued as laid down in the said Circular itself.*

*8. Prayer:*

*In view of the aforesaid submissions and the position of law, it is the humbly prayed as under:*

- a) The DRP's directions dated June 15, 2022 may kindly be held to be invalid, non-est, void-ab-initio and deemed to have never been issued, as the same are in violation of the CBDT's Circular No. 19 of 2019, and resultantly, may kindly be ordered to be quashed; and*
- b) Consequently, the final assessment order dated July 18, 2022 passed in pursuance to such invalid and void DRP directions may kindly be held to be bad in law and void-ab-initio and accordingly, may kindly be ordered to be quashed."*

3. Learned counsel for the assessee submitted that the additional ground is against the validity of the impugned order as the CBDT Circular no. 19 of 2019 dated 14.08.2019 has been violated by the lower authorities.

4. On the other hand, learned DR opposed the submissions and submitted that the grievance of the assessee is that impugned order has been passed on the basis of invalid directions passed by the learned DRP. However, he pointed out that the

basis is well founded as the DRP's direction was sent along with the covering letter, which had mentioned DIN number.

5. We have heard rival submissions and perused the material available on record. There is no dispute that CBDT has passed Circular No. 19 of 2019 dated 14.08.2019. Paragraphs 2 & 3 of the said Circular read as under:

*"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(il)/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..... ."*

5.1 The requirement of law about generation of document identification number is stipulated in CBDT Circular and the same is required to be mentioned in the body of the order. However, admittedly in this case the DIN number has not been mentioned in the body of the order. Under the identical facts the Coordinate Bench of this Tribunal have taken a view against the Revenue.

5.2 The Hon'ble Delhi High Court in the case of CIT v. Brandix Mauritius Holdings Ltd. (supra), has decided the issue against the Revenue and affirmed the decision of the Tribunal by observing that Circular issued by the CBDT in exercise of its powers u/s 119 of the Act are binding on the Revenue Authorities. The argument advanced on behalf of the Revenue that recourse can be taken to Section 292B of the Act, is untenable having regard to terminology used in para 4 of the 2019 Circular. The object and purpose of issuance of 2019 Circular as indicated above, inter alia, was to create an audit trail. Therefore, the communication relating to assessments, appeals, orders etc., 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. Therefore, in the light of the binding precedent, the order of learned DRP is not sustainable in law as the directions issued by the learned DRP dated 15.06.2022 and intimation letter is dated 17.06.2022. We hold accordingly. The impugned assessment order passed in pursuance of the impugned directions of the learned DRP would also not sustainable in law. The additional ground raised by the assessee is allowed. Since we have set aside the assessment order on the issue of legality on the ground that the direction of the learned DRP is in contravention of CBDT Circular of 2019, the other issues raised in the appeal are not being adjudicated and are kept open. The Revenue would be at liberty, if law so permits, to make assessment afresh.

6. Assessee's appeal stands allowed in terms as indicated above.

Order pronounced in open court on 29<sup>th</sup> December, 2023.

**Sd/-**  
**(DR. B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**  
**ITAT, NEW DELHI**