IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI

BEFORE SH. G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER

ITA Nos.1522 to 1529/Del/2021
(Assessment Years: 2011-12 to 2018-19)

DCIT Central Circle-25, New Delhi.	Vs.	Sunil Aggarwal H.No. 998, Sector-14, Faridabad, Haryana. PAN No. ABAPA4529K
(APPELLANT)		**(RESPONDENT)**

Revenue by	Ms. Sapna Bhatia, CIT-DR
Assessee by	Shri Shailesh Gupta, CA

Date of hearing:	21.12.2023
Date of Pronouncement:	29.12.2023

ORDER

PER ANUBHAV SHARMA, JM :

These are appeals preferred by the Revenue against the orders of the Commissioner of Income Tax (Appeals) (hereinafter referred to as Ld. First Appellate Authority or 'the ld. FAA' for short) in appeals filed before him against the orders of the ld. Assessing Officer (hereinafter referred to as the Ld. AO, for short). Further details of the orders of the lower authorities are as under:-

ITA No.	CIT(A) who passed the order	Appeal No. & Date of order of the CIT(A)	AO who passed the assessment order & Date of order	Section of the IT Act under which the AO passed the order
1522/Del/2021	CIT(A)-29, New Delhi	10329/2019-20 date 13.08.2021	ACIT, Central Cir.25, New	153A/143(3)

			Delhi, date Nil	
1523/Del/2021	- Do -	10333/2019-20 date 13.08.2021	ACIT, Central Cir.25, New Delhi, date 31.12.2019	- Do -
1524/Del/2021	- Do -	10336/2019-20 date 13.08.2021	ACIT, Central Cir.25, New Delhi, date 31.12.2019	- Do-
1525/Del/2021	- Do -	10338/2019-20 date 13.08.2021	ACIT, Central Cir.25, New Delhi, date 31.12.2019	- Do -
1526/Del/2021	- Do -	10343/2019-20 date 13.08.2021	- Do -	- Do -
1527/Del/2021	- Do -	10349/2019-20 date 16.08.2021	- Do -	- Do -
1528/Del/2021	- Do -	10351/2019-20 date 16.08.2021	- Do -	- Do -
1529/Del/2021	- Do -	10358/2019-20 date 16.08.2021	- Do -	143(3)

2. Heard and perused the record. At the time of hearing while relying the order of ld. AO, the ld. DR apprised of the grounds raised against the order of the ld.CIT(A). It was submitted by ld. AR raising a new ground in answer to the appeal of the Revenue that in fact the order of ld. AO does not contain DIN on the body and, therefore, being *non est* has no consequential effect.

3. Considering the fact that the law in regard to mentioning of DIN on the body of communications issued by the Department stands settled by Hon'ble Jurisdictional High Court, in the case of ***Brandix Mauritius Holdings Ltd. (149 taxmann.com 238 (Delhi) 2023)*** the ground deserves to be considered and adjudicated first.

4. The ld. DR, defending the stand of the Revenue on this contentious issue has submitted that her arguments before this Bench in other matters which this Bench has heard on 20.12.2023 be considered. We note that the ld. DR had submitted that provision for DIN is only by way of Circular issued by the CBDT u/s 119 of the Act and is not by an amendment to the Act itself. It was accordingly submitted that Circulars is covered by the delegated legislation and same does not have same force as the amendment brought into the Income-tax Act.

4.1 The ld. DR in the submissions has pointed out that the Circular No.19/2019 was issued to prevent/stop manual correspondences and to maintain proper audit trail of all communications issued by the income-tax authorities to the assessees/outside agencies. Thus, the ld. DR has submitted that the principles of purposeful or functional interpretation should be applied and, for that, the judgement of the Hon'ble Supreme Court in the case of ***Girdhari Lal & Sons vs. Balbir Nath Mathur and Ors. (1986) AIR 1499/1986 (SCC) (237) was relied***. In this context, the judgement of the Hon'ble Supreme Court in the case of ***ITO vs. Vikram Sujit Kr. Bhatia, 149 taxmann.com 123 (2023)*** was also relied.

4.2 The ld. DR has also pointed out that without pointing out any prejudice caused to the assessee except breach or violation of the procedure, the absence of DIN on the body of the order does not make the order *void ab initio*. In this context, the judgements of the Hon'ble Supreme Court in the case of ***Sham Lal Murari Lal in 1976 AIR/1177/1976 SCR (2) 82***; and ***Smt. Rani Kusum vs. Smt. Kanchan Devi and***

Other in Civil Appeal No.5066/2005 have been relied to submit that the emphasis should be on the decision of the case on merits and not on technical obstacles.

4.3 The ld. DR has then relied on the judgement of the Hon'ble Allahabad High Court in the case of ***Chanderbhan vs. UOI and Ors., in Writ Tax No.829 of 2023*** and has submitted that the Hon'ble High Court has mentioned that non-quoting of DIN has caused prejudice and, thus, without any finding of prejudice by the assessee, merely due to non-quoting of DIN on the body of the assessment order, the order cannot be *void ab initio*.

4.4 The ld. DR has also tried to distinguish between the effect of passing of an order and issuing/communicating of order. It is submitted that this aspect of distinction between the two has been taken note of by the Hon'ble Supreme Court in the case of ***CIT Chennai vs. Mohd. Meeran Shahul Hameed, 283 Taxmann 454 (2021)***.

4.5 The ld. DR has further relied on the judgement of the Hon'ble Jharkhand High Court in the case of ***Prakash Lal Khandelwal vs. CIT, 151 taxmann.com 72 (2023)*** to submit that the Hon'ble Jharkhand High Court has decided the issue in favour of the Revenue with regard to non-mentioning of DIN.

4.6 The ld. DR has further pointed out that presently there are seven decisions of the different High Courts on the issue of DIN. Out of seven, four decisions namely ***Prakash Lal Khandelwal Vs CIT (151 taxmann.com72) 2023 of Hon'ble Jharkhand HC, Chanderbhan Vs. UOI and others in Writ tax no. 829 of 2023 of***

Hon'ble Allahabad High Court, M/s South Cost Spices Export Pvt. Ltd. WP(C) NO.33771 of 2023 of Hon'ble Kerala High Court and Texmo Precision Casting UK Ltd. Vs. CIT(International Taxation) 138 taxmann.com 566 Madras (2022) are in favour of Revenue and three decisions namely ***Brandix Mauritius Holdings Ltd. (149 taxmann.com 238 (Delhi) 2023) Hon'ble Delhi High Court, Tata Medical Centre of Hon'ble Kolkata High Court and Ashok Commercial enterprises 154 taxmann 144 (Bom) 2023 Hon'ble Bombay High Court*** are in favour of the assessee. It is submitted that in one decision by the Hon'ble Bombay High Court in the case of ***Royal India Corporation Ltd. vs. DCIT, 154 taxmann.com 435 (2023)***, the Hon'ble High Court has set aside the assessment order along with the demand notices etc. because of the facts that the department/AO could not explain why the endorsement as provided in the format in Circular No. 19/2019 was not made in the assessment order. The Hon'ble High Court though, quashed and set aside the assessment order but at the same time remanded the matter to Jurisdictional Assessing Officer for de novo consideration. Ld. DR has submitted that as the decisions in favour of the assessee covers cases in which DIN was not issued/ subsequently issued, accordingly the ratio of these cases is not applicable in the instant case whereas the facts of the decisions in favour of the revenue by the four Hon'ble Courts are almost identical and their ratio is squarely applicable in the instant case.

4.7 The ld. DR has also attempted to make a distinction in the other cases in favour of the assessee on factual basis and particularly the ld. DR has distinguished the

judgement of the Hon'ble Delhi High Court in the case of ***CIT (International Taxation) vs. Brandix Mauritius Holdings Ltd., ITA No. 163/2023, dated 20.03.2023 (Del),*** submitting that:

> *"Thus from the perusal of the above decision of Hon'ble High Court, it is clearly seen that the decision was rendered with regard to assessment order which was issued without DIN. Further the Hon'ble High Court has held that this failure of the department to issue communication without DIN was in violation of circular no. 19/2019 of CBDT and this cannot be corrected u/s 292B of the IT Act. It is respectfully submitted that the facts of the Brandix case, are totally distinguishable from the instant case in the sense that order in the instant case was duly issued with DIN and the order was communicated both by ITBA/speed post by enclosing DIN Intimation letter which clearly mentioned DIN of the order."*

4.8 As for completeness, the summarized submissions of the ld. DR are reproduced herein below:-

> *"J. Lastly for the convenience of the Hon'ble Bench, the above discussion with regard to the compliance of Circular No. 19/2019 is summarized below:-*
>
> *1. It is the settled law that any legislation/ circular etc are to beinterpreted in such a way that the intention and the purpose behind the legislation get fulfilled/implemented in letter and spirit. In the instant case, both the intention and thepurpose i.e. prevention of manual communication and establishing audit trail are fully established.*
>
> *2. The Hon'ble Supreme Court in various cases has consistently held that a procedural violations have to be corrected if no serious prejudice is caused to a person. Further the Hon'ble Supreme Court has held that the Courts should focus more on doing substantial justice then deciding the cases of procedural /technical violations.*
>
> *3. The Circular no. 19/2019 talks about the issuance of communications relating to order, notice etc and which has nothing to do so with the passing of the orders like assessment order etc which is*

governed by provisions of Income Tax Act. It is also reiterated that 263 order was duly communicated electronically with DIN No. on the intimation letter (part of the order only) and as no manual communication was issued and accordingly the instant case is covered by para 2 of the Circular and this case is clearly covered as a case of issuance of electronic communication.

4. The decision of Hon'ble Delhi High Court in the case of Brandix Mauritius is not applicable as in that case there was no DIN allotted to the order and also the department could not show intimation letter issued in that case and accordingly the High Court did not deal with the issue of assessment order attached with intimation letter bearing DIN of the order.

5. The decision of Hon'ble Kolkata High Court in the case of Tata Medical Centre (cited supra) is also not applicable because in that case also the department could not demonstrate the issuance of DIN/sending of intimation letter with DIN to the assessee.

6. The decision of Hon'ble Bombay High Court in the case of Ashoka Commercial is not applicable because in that case the DIN intimation letter was sent after 15 days. Also no DIN was ever issued in the satisfaction note.

7. The decision of Hon'ble Jharkhand High Court in Prakash Lai Khandelwal (cited above) and Hon'ble Madras High Court in Texmo (cited supra) was applicable in this case because in a both these cases DIN was mentioned on the intimation letter, issued one day after the issuance of order.

8. The decision of Hon'ble Kerala High Court of both single bench and division bench in the case of South Cost Spices is squarely applicable because in that case the Hon'ble High Court clearly decided the issue of DIN on intimation letter as sufficient compliance of Circular No. 19/2019 and there is no requirement of mentioning DIN on the body of the order. Hon'ble Court also held that no prejudice is caused to assessee DIN is not quoted on body of order.

9. Being the only decision with regard to DIN on intimation letter, being the sufficient compliance of Circular No. 9/2019, it is fully binding on the Hon'ble ITAT because there is no contrary decision on this issue of

Hon'ble Jurisdiction High Court. Also the law is fairly settled, that if there is no decision of jurisdictional High Court on a particular issue, then decision of other High Court is fully binding on the Hon'ble Tribunals, even irrespective of this jurisdiction.

10. In several recent cases, the Hon'ble Supreme Court/Hon'ble Delhi High Court have held the procedural violation as technical defaults and did not quash the entire assessment proceedings and remitted the matter back to AO/DRP for fresh consideration.

11. As the issue of mention of DIN on intimation/cover letter sent along with the assessment order/notice etc. being a sufficient compliance of Circular no. 19/2019 and there is no further requirement of quoting DIN of the body of the order has been decided by the Hon'ble Kerala High Court and accordingly the various decisions of the Tribunal quoted by assessee's counsel are not being discussed separately because the decision of Hon'ble Kerala High Court is binding on the Tribunal even though some of the coordinate benches has decided the issue otherwise . because the decision of the Hon'ble Kerala High Court being very recent (i.e. 22.11.2023) of Hon'ble Bench, it has not been considered on any if the ITAT decisions submitted by assessee counsel.

5. We have taken into consideration the submissions of ld. DR. However, we find that all these submissions have been duly considered in the coordinate Bench decision in the case of ***Abhinav Chaturvedi and others, ITA No. 2486/Del/2022, A.Y. 2013-14 decided on 03.08.2023,*** to which one of us was in the quorum and the issue has been decided against the Revenue. The findings recorded in the case of ***Abhinav Chaturvedi and others, (supra)*** is reproduced hereinbelow:-

"11. The Bench has given thoughtful consideration to the matter on record and submissions. The issues to be decided first are ;

First, if there was any illegality in the impugned assessment orders for the reason that the Assessment order did not have DIN quoted on its body.

Secondly, if there was any illegality in the impugned assessment orders for the reason the same was incomplete when uploaded on ITBA and be considered passed after limitation.

12. In regard to first issue it will be appropriated to reproduce here the complete text of the Circular no. 19/2019 while making the crucial part of it in BOLD :

"New Delhi, dated the 14th August, 20 19 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 computerisation 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 2486 & Ors generated electronically on the Income Tax Business Application (ITBA) platform. However, it has been brought to the notice of the Central Boa rd 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 and it 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 (here inafter 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 15th 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 or 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 avail able 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 2486 & Ors 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."

13. It will also be appropriate to reproduce the relevant content of instructions from Directorate of Income Tax (System), dated 25.10.2019 as follows :-

"Subject: Changes in facility for generation of Document Identification Number (DIN) for manual documents in Income Tax Business Application (ITBA)/ITD - Reg.

Madam/Sir, 2486 & Ors This is in reference to the subject mentioned above. It is informed that the facility for generation of Document Identification Number (DIN) for documents prepared outside ITBA system and uploaded manually is now made available in Income Tax Business Application from 25/10/2019. Now, DIN can be generated prior to uploading the document in ITBA.

2. ITBA provides the functionality to capture and upload the letters, notices and orders issued manually and served on the assessee by users due to any exceptional reasons like technical issue in system etc. DIN was generated for every such document uploaded manually. However, there was no facility to quote the system generated DIN in the physical copy of documents.

3. Therefore, whenever user uploads a document which was issued outside ITBA system, DIN will be generated prior to uploading of such manual letter or notice or order in ITBA. User may use the same for reference and quoting as Doc. No. in physical copy.

4. Intimation letter will continue to be generated in ITBA. The same document will also be shared with e-Filing portal through e-Proceedings interface for authentication purpose. Assessee can verify the authenticity of the Letter or Notice or Order issued by Income Tax Authorities (ITA) in e-Filing portal. Such intimation along with Letter/Notice/Orders also made available in View/Download Letter/Notice/Orders screen if users wish to dispatch the same through post.Steps to be followed for DIN generation in ITBA application are as below:-

i. Navigate to Generate Letter/Notice/Orders

ii. Select Manual to System option screen.

iii. User will enter the Date of Issue and Manual File No.

iv. Click on Save and Generate DIN.

NOTE: DIN will be generated in the system and will be displayed in column 'System Doc. No.' User should physically sign the document after quoting DIN before uploading, as the assessee will be viewing the uploaded document on their e-Proceeding account on e-filing portal.

v. User will attach the file and click on Save NOTE: User will be able to upload the document with the DIN no. generated in ITBA system until the row containing that DIN is deleted by the user from the system.

vi. Click on Generate button to complete the process in ITBA system.

The system generated Intimation letter will also be generated for reference and will be available in View/Download Letter/Notice/Orders screen for user to download the same."

14. Now considering the vital piece of material before us is the letter dated 27.06.2023 in the form of report submitted by the Ld. AO which makes it 2486 & Ors admitted that the order was passed manually. It was uploaded on ITBA on 17.09.2021. The DIN no. was generated on 17.09.2021 through ITBA. Ld. AO admitted that to his understanding whenever manually is passed the assessment order is uploaded on ITBA through manual to system tab, a DIN is generated for that particular assessment order. Accordingly, the DIN was generated in the cases and intimations were sent.

15. However, from the assessment order it does not appear that Ld. AO had proceeded to pass the order manually. There is nothing in the assessment order mentioning the reasons which as exception only allow passing of the assessment order manually.

15.1 In this context from the aforesaid Circular no. 19/2019 it can be noted that it mandates that if the 'communication' is issued under aforesaid three exceptions the 'communication' 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 .. .. "

15.2 To make it crystal clear here the words 'Communication' is not used to define merely the mode of transmission of the information but the circular No 19 of 2019 makes it clear by defining it in following words "However, it has been brought to the notice of the Central Boa rd 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"). So the assessment order itself is a communication and all compliances expected have to be specific to the assessment order.

15.3 Coming back to the assessment orders, in fact as para no. 1 to 3.1 of the assessment order dated 09.08.2021 are considered they mention that notice u/s 153A of the Act was issued through ITBA portal. Subsequent notice u/s 143(2) of the Act was also issued through ITBA Portal. Thus, the

notices for the purpose of assessment were issued through ITBA Portal and if thereafter the assessment was carried out manually the assessment order should have mentioned the aforesaid fact to comply with the mandate of Circular with regard to communications issued manually.

16. Further, the Bench takes note of the instructions dated 25.10.19, which lay down that when a document is prepared outside ITBA system and uploaded manually, a DIN is required to be generated prior to uploading the document in ITBA. The instructions make it imperative that the DIN so generated has to be used for reference and quoting a document number in a physical copy. The instructions specifically provide that the user (assessing officer) should physically sign the document after quoting DIN, before uploading. Meaning thereby that generation of DIN is condition precedent for making an assessment manually or otherwise on the ITBA and then before it is uploaded on ITBA, first it should have DIN bearing on its face and then only it should be signed. Thus for the purpose of section 153A/143(3) of the Act, the assessment can be said to be 'made' only when the DIN is quoted on the order before it is signed. If without first generating the DIN and before it is quoted on the order, the order is signed, the order is non-est.

17. The Bench is of considered view that forwarding of the intimation of generation of the DIN in ITBA is only a subsequent action and that is not part of assessment order. The manner in which the word 'communication' is defined shows every notice, order, summons, letter and any correspondence from Tax authorities should have a DIN quoted and it is for this reason that the Intimation issued about the DIN of assessment order itself has a DIN quoted on it."

6. Now, dealing with submissions of Ld. DR specifically that Board's circular cannot be applied beyond the Act, we completely disagree and are constrained to observe that argument raised is against now crystallized proposition of law that as far as the Circulars of the Board are concerned, they are binding upon the officers of the Revenue Department without any exceptions whatsoever. In support of this plea of

assessee that the 2019 Circular is binding on the revenue Hon'ble Delhi High Court in ***Brandix Mauritius Holdings Ltd. (supra)*** has considered judgments of Hon'ble Supreme Court in UCO Bank v. CIT, [1999] 237 ITR 889 (SC), Ellerman Lines Ltd. v. CIT, [1971] 182 ITR 913 (SC) and held as follows;

> *"**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.*
>
> ***17.2** The aforementioned principle stands enunciated in a long line of judgements, including the Supreme Court's judgment rendered in Varghese v. Income Tax Officer, Ernakulam and Anr., (1981) 4 SCC 173. The relevant extracts are set forth hereafter: "12. But the construction which is commending itself to us does not rest merely on the principle of contemporanea expositio. The two circulars of the Central Board of Direct Taxes 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 Navnitlal C. Javeri v. K.K. Sen [AIR 1965 SC 1375 : (1965) 1 SCR 909 : 56 ITR 198] and the other in Ellerman Lines Ltd. v. CIT [(1979) 4 SCC 565] that circulars issued by the Central Board of Direct Taxes 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. The question which arose in Navnitlal C. Javeri case [AIR 1965 SC 1375 : (1965) 1 SCR 909 : 56 ITR 198] was in regard to the constitutional validity of Sections 2(6-A)(e) and 12(1-B) which were introduced in the Indian Income Tax Act, 1922 by the Finance Act, 1955 with effect from April 1, 1955. These two sections provided that any payment made by a closely held company to its shareholders by way of advance or loan to the extent to which the company possesses accumulated profits shall be treated as dividend taxable under the Act and this would include any loan or advance made in any previous year relevant to any assessment year prior to Assessment Year 1955-56, if such loan or advance remained outstanding on the first day of the previous year relevant to Assessment Year 1955-56. The constitutional validity of these two sections was assailed on the ground that they imposed unreasonable restrictions on the fundamental right of the assessee under*

Article 19(1)(f) and (g) of the Constitution by taxing outstanding loans or advances of past years as dividend. The Revenue however relied on a circular issued by the Central Board of Revenue under Section 5(8) of the Indian Income Tax Act, 1922 which corresponded to Section 119 of the present Act and this circular provided that if any such outstanding loans or advances of past years were repaid on or before June 30, 1955, they would not be taken into account in determining the tax liability of the shareholders to whom such loans or advances were given. This circular was clearly contrary to the plain language of Section 2(6-A)(e) and Section 12(1-B), but even so this Court held that it was binding on the Revenue and since: "past transactions which would normally have attracted the stringent provisions of Section 12(1-B) as it was introduced in 1955, were substantially granted exemption from the operation of the said provisions by making it clear to all the companies and their shareholders that if the past loans were genuinely refunded to the companies they would not be taken into account under Section 12(1-B)," Sections 2(6-A)(e) and 12(1-B) did not suffer from the vice of unconstitutionality. This decision was followed in Ellerman Lines case [(1972) 4 SCC 474 : 1974 SCC (Tax) 304 : 82 ITR 913] where referring to another circular issued by the Central Board of Revenue under Section 5(8) of the Indian Income Tax Act, 1922 on which reliance was placed on behalf of the assessee, this Court observed: "Now, coming to the question as to the effect of instructions issued under Section 5(8) of the Act, this Court observed in Navnitlal C. Javeri v. K.K. Sen, Appellate Assistant Commissioner, Bombay [AIR 1965 SC 1375 : (1965) 1 SCR 909 : 56 ITR 198] : „It is clear that a circular of the kind which was issued by the Board would be binding on all officers and persons employed in the execution of the Act under Section 5(8) of the Act. This circular pointed out to all the officers that it was likely that some of the companies might have advanced loans to their shareholders as a result of genuine transactions of loans, and the idea was not to affect such transactions and not to bring them within the mischief of the new provision." The directions given in that circular clearly deviated from the provisions of the Act, yet this Court held that the circular was binding on the Income Tax Officer." The two circulars of the Central Board of Direct Taxes referred to above must therefore be held to be binding on the Revenue in the administration or implementation of sub-section (2) and this sub-section must be read as applicable only to cases where there is understatement of the consideration in respect of the transfer." [Emphasis is ours]

> ***17.3** Also see the following observations of a coordinate bench in Back Office IT Solutions Pvt. Ltd. v. Union of India, 2021 SCC OnLine Del 2742, in the context of the impact of circulars issued by the revenue:*
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> *"24....In this context, tax administrators have to bear in mind the well established dicta that circulars issued by the statutory authorities are binding on them, although, they cannot dictate the manner in which assessment has to be carried out in a particular case. A Circular cannot be side-stepped causing prejudice to the assessee by bringing to naught the object for which it is issued. [See: K.P.Varghese vs. Income-tax Digitally [1981] 7 Taxman 13 (SC); Also see: UCO Bank, Calcutta v. Commissioner of Income Tax, W.B., (1999) 4 SCC 599]."*

7. Once this is the case, then, the plea that the CBDT Circulars are within the limited domain of delegated legislation, so the Tribunal should consider the interpretation of the Circulars on the principles of functional or purposeful interpretation or that the non-mentioning of DIN is a mere procedural violation have no substance left.

8 Further, once it is concluded that the Circular of the Board is binding upon the Revenue Authorities, then, its non-compliance brings the consequences which the Board Circular itself manifests and it is that the 'communication', which in the present case is 'assessment order' will be deemed to have been never issued. Thus, when Board lays down what shall be the format of any such 'communication' and also provides that if the 'communication' is not in that format the same will be considered as not issued at all, then it is not a mere technical flaw liable to be corrected but it vitiates the communication, i.e the 'assessment order' in the present form.

9. The Revenue authorities may take benefit of limitation period provided under the Act to pass assessment order and may rectify the mistake within the limitation period and issue a fresh communication bearing DIN on the body of the communication.

9.1 But, once assessee has a statuary right to be conveyed such 'communication', as far as the immediate consequences of the communication not bearing DIN is concerned, as the same is presumed to have never been issued, such communication has no legal foundation left and becomes a voidable communication at the instance of the assessee, irrespective of assessee establishing the plea of prejudice.

10. The difference pointed out in the passing of an order and issuing communication of order is very much clarified by the Circular as the word 'communication' has been primarily used in the sense of a 'Noun', specifying what all sorts of orders, notices etc. will require DIN on the body. It is not used in the form of a 'verb' indicating the mode of transmission of information or delivery or transmitting a copy thereof as 'service of the notice' refered u/s 282 of the Act. Thus to say that there is merely an improper manner of service abs such rigour is mitigated by Section 292BB is quite misconceived. Hon'ble Delhi High Court in ***Brandix Mauritius Holdings Ltd. (supra)*** has specifically dealt with applicability of Section 292BB and has held as follows;

> *"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."*

11. Then coming to the case laws relied we find that the Hon'ble Jharkhand High Court judgement in the case of ***Prakash Lal Khandelwal vs. CIT (supra)*** has been held to be inapplicable to the extant fact-situation by our coordinate Bench in the case of ***Abhinav Chaturvedi and others (supra)***.

11.1 The other judgements which the ld. DR has relied in favour of the Revenue when considered bring forth the fact that in none of them the question of assessment order not bearing a DIN on its face was directly under dispute. In case of ***Chanderbhan vs. UOI and Ors., (supra)*** the issue before the Hon'ble Allahabad High Court was considering the matter in Writ jurisdiction and had refused to entertain the plea of non-issuance of DIN in Writ jurisdiction when alternative remedy is available. Similar was the case before the Hon'ble Kerala High Court where the Hon'ble High Court was dealing with the issue in Writ jurisdiction and the Hon'ble Division bench had not interfered as the Appellate Authority under the Act could consider the plea and appellant/assessee was left with right to pursue its statutory remedies under the IT Act.

11.2 Lastly, in the case of ***Texmo Precision Castings UK Ltd. vs. CIT (International Taxation) 138 taxmann.com 566 (2022),*** the Hon'ble Madras High Court was again dealing in the writ jurisdiction where order u/s 263 of the Act was challenged not bearing the DIN. At the outset it to be observed that Hon'ble High Court specifically observed about the limited scope of powers under Article 226 to consider the plea of non-mention of DIN and thus held as follows;

> *"50. As the scope of judicial review under Article 226 of the Constitution of India is limited, I am refraining for discussing on merits of the case. Suffice to state that the proceeding initiated by the 1st respondent was not without jurisdiction."*

11.4 Even otherwise, the judgment of Hon'ble Madras High Court in ***Texmo Precision Castings UK Ltd. (supra)*** is dated 30 March, 2021 and judgment of Hon'ble Delhi High Court in ***Brandix Mauritius Holdings Ltd. (supra)*** is of 20th March 2023, and it appears the Hon'ble Madras High Court judgment was not cited by the Revenue before Hon'ble Delhi Court, so now before us the Revenue cannot take shelter of Hon'ble Madras High Court judgment as this Bench is supposed to follow the judgement of the Jurisdictional High Court in the case of ***Brandix Mauritius Holdings Ltd. (supra)*** which is squarely applicable in the facts of the case before us.

12. Thus, in view of the aforesaid discussion, the point raised by the respondent-assessee, based on the CBDT Circular dated 14/08/2019 (supra), is allowed in defence of the relief granted by the CIT(A) following the ratio of the judgement of the Hon'ble Bombay High Court in the case of ***B.R. Ramasi vs. CIT, 83 ITR 223 (Bom),*** where in the following discussion is relevant;

> *"The judgment of the Tribunal in our case clearly shows that, although the assessee wanted to raise a new point as a ground of defence in the appeal, he specifically stated that he wanted to rely upon it only for the purpose of having the appeal by the department for enhancement in income-tax dismissed. But even if the assessee had not made such a statement, the above judgment shows that the assessee would be entitled to raise a new ground, provided it is a ground of law and does not necessitate any other evidence to be recorded, the nature of which*

would not only be a defence to the appeal itself, but may also affect the validity of the entire assessment proceedings. If the ground succeeds, the only result would be that the appeal would fail. The acceptance of the ground would show that the entire assessment proceedings were invalid, but yet the Tribunal which hears that appeal would have no power to disturb or to set aside the order in favour of the appellant against which the appeal has been filed. The ground would serve only as a weapon of defence against the appeal. If the respondent has not himself taken any proceedings to challenge the order in appeal, the Tribunal cannot set aside the order appealed against. That order would stand and would have full effect in so far as it is against the respondent. The Tribunal refused to allow the assessee to take up allowed to be urged and succeeded, the Tribunal would have not only to dismiss the appeal, but also to set aside the entire assessment. The point would have served as a weapon of defence against the appeal, but it could not be made into a weapon of attack against the order in so far as it was against the assessee." **[underlined for emphasis by us]**

14. Consequently, the appeals of Revenue are dismissed.

Order pronounced in the open court on 29.12.2023.

Sd/- Sd/-

(G.S. PANNU)
VICE PRESIDENT

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 29th December, 2023.
dk

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi