

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

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

ITA No.1512/Del/2020
Assessment Year: 2018-19

Ashok Minda 17, OLOF Flam Marg, Vasant Vihar-I, South West, Delhi, New Delhi-110006 PAN No.AOEPM1451M	Vs.	ACIT Central Circle -13 New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.1061/Del/2021
Assessment Year: 2018-19

ACIT Central Circle -13 New Delhi	Vs.	Ashok Minda 17, OLOF Flam Marg, Vasant Vihar-I, South West, Delhi, New Delhi- 110006 PAN No.AOEPM1451M
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Salil Aggarwal, Sr. Advocate Sh. Shailesh Gupta, Advocate Sh. Mahir Agarwal, Advocate
Respondent by	Sh. Zafarul Haque Tanweer, CIT DR

Date of hearing:	21/12/2023
Date of Pronouncement:	03/01/2024

ORDER**PER N. K. BILLAIYA, AM:**

ITA No.1512/Del/2020 and 1061/Del/2021 are two cross appeals by the assessee and the revenue preferred against the order of the CIT(A)-26, New Delhi dated 26.06.2020 pertaining to A.Y. 2018-19.

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

“1. That on the facts and circumstances of the case and in law the ld CIT(A) erred in confirming addition of Rs 33,00,000/- u/s 69B on account of jewellery found during the course of search ignoring the explanation and evidence and is against the facts of the case and hence liable to be deleted

2. That on the facts and circumstances of the case and in law the ld CIT(A) erred in confirming addition of Rs 36,29,500/- u/s 69B on account of cash found during the course of search, the source of which have been explained during assessment/ appellate proceeding and hence liable to be deleted

3. That on the facts and circumstances of the case and in law the ld CIT(A) erred in confirming addition of Rs 27,48,000/- u/s 69B on account of wrist watch found during search, the source of which have been explained during assessment/ appellate proceeding and hence liable to be deleted

4. *That on the facts and circumstances of the case and in law the ld. CIT (A) erred in confirming addition of Rs 3,84,324/- u/s 69C ignoring the explanation and evidence and is against the facts of the case and hence liable to be deleted*

5. *That the appellant craves the leave to add, alter or amend the grounds of appeal at any stage and all the grounds are without prejudice to each other.”*

3. **The grievance of the revenue read as under :-**

“1. The Ld. CIT(A) has erred in law and on facts in restricting the quantum of addition of Rs. 1,82,22,493/- on account of unexplained jewellery/silver articles u/s 69B of the IT Act 1961 to Rs. 33,00,000/-.

2. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 1,22,00,000/- on account of unaccounted investment in paintings.

3. The Ld. CIT(A) has erred in law and on facts in restricting the quantum of addition of Rs. 47,48,000/- on account of unexplained investment in wrist watches u/s 69B of the IT Act, 1961 to Rs. 27,48,000/-.

4. (a) The Ld. Commissioner of Income Tax (Appeals) is erroneous and not tenable in law and on facts.

(b) The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.

4. At the very outset the assessee moved an application for admission of additional ground which reads as under :-

“That on the facts and circumstances of the case the impugned assessment order so passed is null and void, and is also in complete violation of CBDT Circular No.19/2019, since no DIN is mentioned in the entire body of assessment order.”

5. Since the additional ground goes to the root of the matter we decided to adjudicate it first.

6. The assessment order is dated 30.12.2019 and runs into 27 pages. The last paragraph of the assessment order reads as under :-

“This order has been passed with the prior approval of the Additional CIT(A), Central Range-4, New Delhi vide his approval letter no. Addl. CIT/CR-4/Approval 153-D/2019-20/1227 dated 29.12.2019.”

7. The first page of the assessment order is as under:-

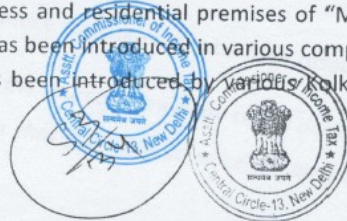
INCOME-TAX DEPARTMENT
आयकरविभाग

1		निर्धारित का नाम Name of the assessee	Shri Ashok Minda	6	निर्धारण वर्ष Assessment year	2018-19
2		पता Address	A-15 Ashok vihar phase-1 New Delhi-110052	7	क्या निवासी/निवासी किंतु मामूली तौर पर निवासी नहीं/अनिवासी Whether Resident/Resident but nor Ordinarily resident/Non-resident	Resident
3		स्था ले० सं०/स० सू० र० सं P.A.N./G.I.R. No.	AOEPM1451M			
4		जिला/वार्ड/ सर्किल District/Ward/Circle	ACIT, Central Circle-13, New Delhi	8	लेखा विधि Method of accounting	Mercantile
5		हैसियत Status	Individual	9	पूर्व वर्ष Previous year	2017-18
(क) (a)		यदि हि० अ० कु० है तो क्या कर की उच्च दर लागू होती है ? If HUF, is higher rate of tax applicable?		10	कारोबार / कारोबारों की प्रकृति Nature of Business(es)	-----
(ख) (b)		यदि कम्पनी है तो If company, whether				
	(i)	देशी/ अन्य Domestic/others	Domestic	11	सुनवाई की तारीख/तारीखें Date(s) of hearing	As per order sheet entry
	(ii)	जनताकापर्याप्त रूपसे हित्बध/ज नताकापर्याप्त रूपसे हित्बध नहीं Public substantially interested/Public not substantially interested		12	आदेशकीतारीख Date of order	30.12.2019
	(iii)	औद्योगिक/गैरऔद्योगिक Industrial/Non-industrial		13	किसधारातथाउपधाराकेअधीन निर्धारणकियागया Section and sub-section under which the assessment is made	143(3) of the I. T. Act, 1961
	(iv)	धारा 108/धारा 108सेभिन्न Section 108/other than section 108				

निर्धारणआदेश

ASSESSMENT ORDER

Pursuant to the Warrant of authorization issued by Pr. DIT (Inv)-1 Delhi, a search operation u/s 132 of the Income Tax Act, 1961 was conducted on 08.06.2017 and on subsequent dates in different business and residential premises of "Minda Group of Cases". This group is alleged that major capital has been introduced in various companies of the Minda group. It has been found that this capital has been introduced by various Kolkata based companies and is nothing but entries



Page 1 of 27

TRUE CERTIFIED COPY

Dy. Commissioner of Income Tax
Central Circle-13, Room No. 247,
2nd Floor, E-2, ARA Centre.

3/12/17

8. There is no mention of DIN in the body of the assessment order.

9. The DR has strongly objected to the submission of the assessee and filed a written submission running into 21 pages explaining the need / urgency and the origin of the DIN issue and summarises his entire discussion as follows :-

“1. It is the settled law that any legislation/ circular etc are to be interpreted 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 the purpose 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 (cite 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 Lal Khandelwal (cited above) and the Hon'ble Madras High Court in Texmo (cited supra) was applicable in this case because in 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 on the body of 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. Moreover, the decision of the Hon'ble Kerala High Court being very recent (i.e. 22.11.2023) other decisions of Hon'ble Bench, has not been considered if any of the ITAT decisions submitted by assessee counsel.”

10. The sum and substance of the entire submission of the DR is that DIN was specifically generated and also duly communicated at the time of issuance of order, both intention and the purpose behind circular was duly complied with and also no prejudice at all has been caused to the assessee.

11. We have given a thoughtful consideration to the orders of the authorities below and have carefully considered the written submissions made by the DR.

12. It would be pertinent to refer to the CBDT Circular No.19/2019 dated 14.08.2019 which is binding on the AO and is as under :-

Circular No. 19 /2019

**Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes**

New Delhi, dated the 14th of August, 2019

Subject: Generation/Allotment/Quoting of Document Identification Number in Notice/Order/Summons/letter/correspondence issued by the Income-tax Department - reg.

With the launch of various e-governance initiatives, Income-tax Department is moving toward total computerization of its work. This has led to a significant improvement in delivery of services and has also brought greater transparency in the functioning of the tax-administration. Presently, almost all notices and orders are being generated electronically on the Income Tax Business Application (ITBA) platform. However, it has been brought to the notice of the Central Board of Direct Taxes (the Board) that there have been some instances in which the notice, order, summons, letter and any correspondence (hereinafter referred to as "communication") were found to have been issued manually, without maintaining a proper audit trail of such communication.

2. In order to prevent such instances and to maintain proper audit trail of all communication, the Board in exercise of power under section 119 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), has decided that no communication shall be issued by any income-tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the 1st day of October, 2019 unless a computer-generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication.

3. In exceptional circumstances such as, —

- (i) when there are technical difficulties in generating/allotting/quoting the DIN and issuance of communication electronically; or
- (ii) when communication regarding enquiry, verification etc. is required to be issued by an income-tax authority, who is outside the office, for discharging his official duties; or
- (iii) when due to delay in PAN migration, PAN is lying with non-jurisdictional Assessing Officer; or
- (iv) when PAN of assessee is not available and where a proceeding under the Act (other than verification under section 131 or section 133 of the Act) is sought to be initiated; or
- (v) When the functionality to issue communication is not available in the system,

the communication may be issued manually but only after recording reasons in writing in the file and with prior written approval of the Chief Commissioner / Director General of income-tax. In cases where manual communication is required to be issued due to delay in PAN migration, the proposal seeking approval for issuance of manual communication shall include the reason for delay in PAN migration. The communication issued under aforesaid circumstances shall state the fact that the communication is issued manually without a DIN and the date of obtaining of the written approval of the Chief Commissioner / Director General of Income-Tax for issue of manual communication in the following format-

“ .. This communication issues manually without a DIN on account of reason/reasons given in para 3(i)/3(ii)/3(iii)/3(iv)/3(v) of the CBDT Circular No ...dated (strike off those which are not applicable) and with the approval of the Chief Commissioner / Director General of Income Tax vide number dated ”

4. Any communication which is not in conformity with Para-2 and Para-3 above, shall be treated as invalid and shall be deemed to have never been issued.

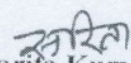
5. The communication issued manually in the three situations specified in para 3- (i), (ii) or (iii) above shall have to be regularised within 15 working days of its issuance, by –

- i. uploading the manual communication on the System.
- ii. compulsorily generating the DIN on the System;
- iii. communicating the DIN so generated to the assessee/any other person as per electronically generated pro-forma available on the System.

6. An intimation of issuance of manual communication for the reasons mentioned in para 3(v) shall be sent to the Principal Director General of Income-tax (Systems) within seven days from the date of its issuance.

7. Further, in all pending assessment proceedings, where notices were issued manually, prior to issuance of this Circular, the income-tax authorities shall identify such cases and shall upload the notices in these cases on the Systems by 31th October, 2019.

8. Hindi version to follow.


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

13. The CBDT further clarified the need for the said Circular as under :-

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, 14th August, 2019

PRESS RELEASE

CBDT takes further steps to ensure transparency in Tax Administration by bringing in concept of DIN

With a view to bringing greater transparency in the functioning of the tax-administration and improvement in service delivery, almost all notices and orders of Income Tax Department 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 (CBDT) 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.

In order to prevent such instances and to maintain proper audit trail of all communication, the CBDT has, vide Circular No.19/2019 dated 14.08.2019 laid down parameters specifying the manner in which any communication 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 will be dealt with. All such communication issued on or after the 1st of October, 2019 shall carry a computer-generated Document Identification Number (DIN) duly quoted in the body of such communication.

CBDT has also specified exceptional circumstances where the communication may be issued manually but only after recording reasons in writing and with the prior written approval of the Chief Commissioner / Director General of Income-Tax concerned. In cases where manual communication is required to be issued, the reason for issue of manual communication without DIN has to be specified alongwith the date of obtaining written approval of the Chief Commissioner / Director General of Income-Tax in a particular format. Any communication which is not in conformity with the prescribed guidelines shall be treated as invalid and shall be deemed to have never been issued. Further, CBDT has also laid down the timelines and procedure by which such communication issued manually will have to be regularised and intimated to the Principal Director General of Income-tax (Systems).

In addition to the above, in all pending assessment proceedings, where notices were issued manually, prior to issuance of the above referred Circular, all such cases would be identified and the notices so sent would be uploaded on ITBA by 31st October, 2019.

This is another step taken by CBDT towards better delivery of taxpayer services while ensuring accountability in official dealings.

(Surabhi Ahluwalia)
Commissioner of Income Tax

DIN system of CBDT launched ; About 17500 Communications with DIN Generated on First day

Posted On: 01 OCT 2019 6:47PM by PIB Delhi

The Documentation Identification Number (DIN) system of Central Board of Direct Taxes (CBDT) has come into existence from today with the generation of about 17,500 communications with DIN on the very first day. This path breaking DIN system has been created as per the direction of Finance Minister Ms. Nirmala Sitharaman and from now onwards every CBDT communication will have to have a documentation identification number.

Revenue Secretary Dr. Ajay Bhushan Pandey said, "From today, any communication from Income Tax Department without a computer generated DIN, be it a notice, letter, order and summon or any other correspondence, would be treated as invalid and shall be non est in law or deemed to be as if it has never been issued. The DIN system would ensure greater accountability and transparency in tax administration."

"Now from today onwards, all such communications with DIN would be verifiable on the e-filing portal and no communication would be issued manually without DIN except only if it is in the specified exceptional circumstances", said Dr. Pandey.

It would be pertinent to mention here that while specifying such exceptional circumstances the CBDT Circular related to DIN dated 14.08.2019 says that 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. Any communication which is not in conformity of with the prescribed guidelines shall be treated as invalid and non est in law.

CBDT has specified that any communication issued manually under exceptional circumstances would have to be uploaded and regularised on the system portal within 15 days of its issuance.

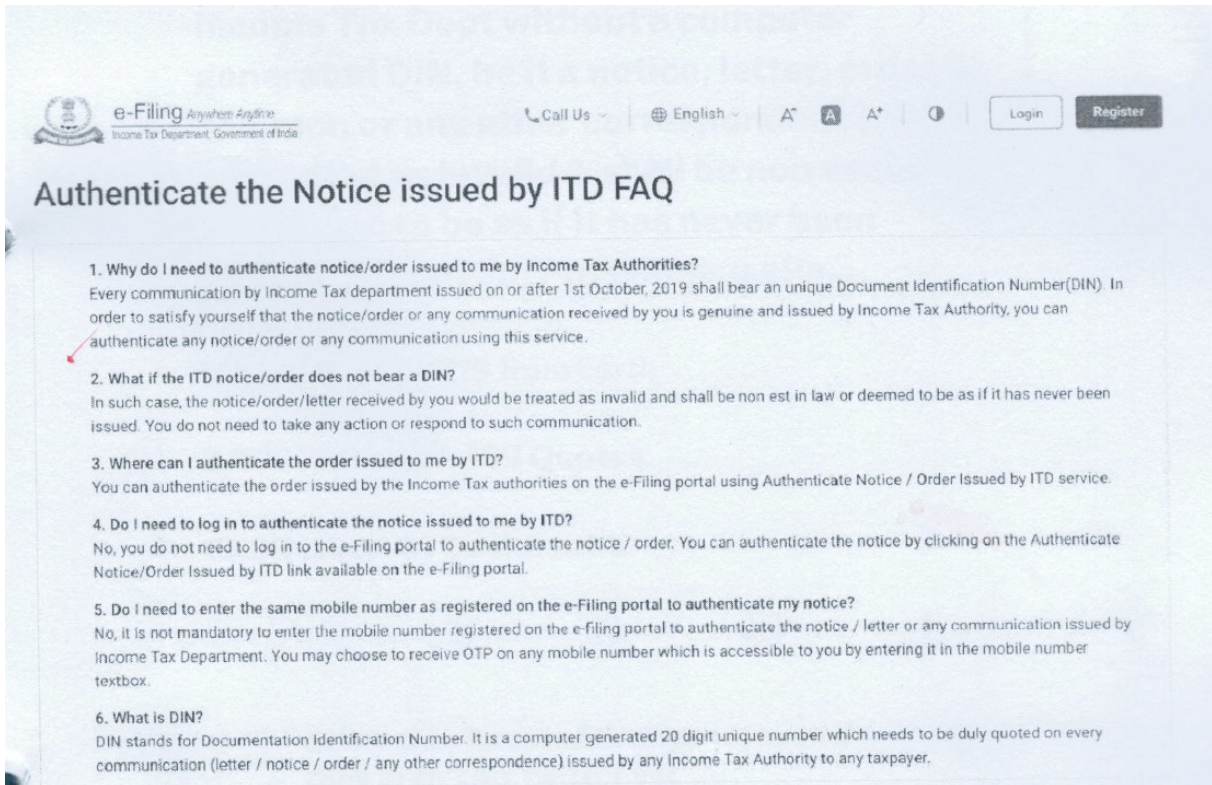
CBDT has also stated that all pending assessment proceedings, where notices were earlier issued manually, prior to the DIN related Circular dated 14.08.2019 coming into existence, all such cases would be identified and notices so sent would be uploaded on ITBA by the end of this month, i.e., by 31st Oct 2019.

This is in pursuance of the directions by the Hon'ble Prime Minister in which he has asked the Department of Revenue to come up with specific measures to ensure that the honest taxpayers are not harassed and served better. It may be noted that earlier there have been some instances where it was not possible to maintain the audit trail of the manually issued communication which in some cases caused inconvenience to taxpayers sometime. However, with the present system of attaching a DIN to every notice or communication of CBDT would result in better services to taxpayers without any possible harassment.

RM/KMN

(Release ID: 1586901)

14. Further clarifying the board issued FAQ as under :-



15. A perusal of the aforementioned circular read with the clarification and FAQ makes it clear that if the assessment order does not follow the mandate of DIN the same has to be treated as invalid non est in law as if it has never been issued.

16. This Tribunal in ITA No.1542/Del/2020 in the case of Brandix Mauritius Holdings Limited vide order dated 19.09.2022 has considered the aforementioned CBDT circular and held as under :-

4. *We have carefully perused the additional grounds of appeal raised by the assessee mentioned hereinabove. The Hon'ble Supreme Court in the case of National Thermal Power Corporation 229 ITR 383 has laid down the following ratio :*

"7. The view that the Tribunal is confined only to issues arising out of the appeal before the

Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assessee the tax liability of an assessee.”

5. *In light of the above ratio, we find that this Tribunal is not required to verify any news facts. Therefore, the additional grounds raised are admitted.*

6. *In light of the above ratio, we find that this Tribunal is not required to verify any new facts. Therefore, additional grounds raised are admitted.*

“8. Ground No.8 : *On facts and circumstances of the case & in law, the Learned Assessing Officer (‘Ld. AO’) erred in issuing the final assessment order under section 147/1440(13) /143(3) of the Income-tax Act, 1961 (‘the Act’) dated 15 October 2019 without quoting the mandatory document identification number (‘DIN’) in conformity with Para-2 and Para-3 of Circular No. 19/2019 dated 14 August 2019 and thus, the said final assessment order deserves to be held as invalid, bad in law and void ab initio.”*

7. *A perusal of the record shows that the final assessment order along with notice of demands dated 15.10.2019 and it is an undisputed fact that it has been passed/ issued without quoting Document Identification Number (DIN) which is mandatory as per the CBDT Circular No.19/2019 dated 14.08.2019.*

8. *The ld. DR vehemently stated that DIN was generated but due to upgradation, it was not reflected in the order. It is the say of the ld. DR that the error is not so fatal as to make the assessment order null and void. It would be pertinent to refer to CBDT Circular No.19/.2019 which reads as under :*

*GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF DIRECT TAXES*

Circular No.19/2019

New Delhi dated the 14th August 2019

*Subject : Generation/ Allotment / Quoting of Document identification Number in Notice/ Order /
Summons / letter/ Correspondence issued by the Income-tax Department-reg.*

With the launch of various e-governance initiatives, Income tax Department is moving toward total computerization of its work. This has led to a significant improvement in delivery of services and has also brought greater transparency in the functioning of the tax administration. Presently, almost all notices and orders are being generated electronically on the Income Tax Business Application (ITBA) platform. However, it has been brought to the notice of the Central Board of Direct Taxes (the Board) that there have been some instances in which the notice, order, summons, letter and any correspondence (hereinafter referred to as "communication") were found to have been issued manually, without maintaining a proper audit trail of such communication.

2. In order to prevent such instances and to maintain proper audit trail of all communication, the Board in exercise of power under section 119 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), has decided that no communication shall be issued by any income tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty prosecution, rectification approval etc to the assessee or any other person, on or after the 151 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 available and where a proceeding under the Act (other than verification under section 131 or section 133 of the Act) is sought to be initiated; or (v) When the functionality to issue communication is not available in the system, the communication may be issued manually but only after recording reasons in writing in the file and with prior written approval of the Chief Commissioner / Director General of income tax. In cases where manual communication is required to be issued due to delay in PAN migration, the proposal seeking approval for issuance of manual communication shall include the reason for delay in PAN migration. The communication issued under aforesaid circumstances shall state the fact that the communication is issued manually without a DIN and the date of obtaining of the written approval of the Chief Commissioner / Director General of Income-Tax for issue of manual communication in the following format- This communication issues manually without a DIN on account of reason/ reasons given in para 3 (i)/3(ii)/3 (iii)/3 (iv)/3 (v) of the CBDT Circular No ... dated (strike off those which are not applicable) and with the approval of the Chief Commissioner / Director General of Income Tax vide number.... dated ... "*

4. *Any communication which is not in conformity with Para-2 and Para-3 above, shall be treated as invalid and shall be deemed to have never been issued.*

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

shall have to be regularised within 15 working days of its issuance, by -

- i. *uploading the manual communication on the System.*
- ii. *compulsorily generating the DIN on the System;*
- iii. *communicating the DIN so generated to the assessee/ any other person as per electronically generated pro-forma available on the System.*

6. *An intimation of issuance of manual communication for the reasons mentioned in para 3(v) shall be sent to the Principal Director General of Income-tax (Systems) within seven days from the date of its issuance.*

7. *Further, in all pending assessment proceedings, where notices were issued manually, prior to issuance of this Circular, the income tax authorities shall identify such cases and shall upload the notices in these cases on the Systems by 31th October, 2019.*

8. *Hindi version to follow. (F. No. 225/95/2019-ITA.II)*

Sd/-

Sarita Kumari

Director (ITA .II CBDT)

9. *A perusal of the aforementioned Circular clearly shows that the CBDT has considered the exceptional circumstances as mentioned in Para 3 of the Circular and, therefore, in our considered opinion, only those circumstances which have been mentioned therein would be considered for non- mentioning of DIN.*

10. *In para 3 itself, the Board has made it very clear that in cases where communication is issued manually, it may be done only after obtaining necessary approval of the relevant authorities and communication so issued must indicate the exceptional circumstances provided in the Circular itself. It has been made very clear by the Board that any communication which is not in conformity with Para 2 and 3 of the Circular shall be treated as invalid and shall be deemed to have never been issued.*

11. *The impugned order is hit by this mandate of the Board and, therefore, we are inclined to adjudicate Ground No. 8 [supra] in favour of the assessee by holding that the order dated 15.10.2019 framed u/s 147/144C(13)/143(3) of the Act is invalid and deemed to have never been issued as it fails to mention DIN in its body by adhering to Circular No. 19/2009 dated 14.08.2019.*

17. This order of the Tribunal was upheld by the Hon'ble Delhi High Court order dated 20.03.2023 in ITA No.163/2023 the relevant findings reads as under :-

6. *Therefore, any communication which is not conformity with the provisions of paragraph 2 and 3 of the 2019 Circular is to be treated as invalid, as if it was never issued [See paragraph 4 of the 2019 Circular.]*

8.1 *In a nutshell, Communications referred to in the 2019 Circular would fall in the following slots :*

- i. *Those which do not fall in the exceptions carved out in paragraph 3 (i) to (v)*
- ii. *Those which fall in the exceptions embedded in paragraph 3 (i) to (v), but do not adhere to the regime set forth in the 2019 Circular*

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 (i)/ 3(ii)/ 3(iii)/ 3(iv)/ 3(v) of the CBDT Circular No..... datedand with the approval of the Chief Commissioner / Director General of Income Tax vide number dated”

8.3 *As indicated hereinabove, insofar as communications falling in circumstances alluded to in paragraph 3 (i) to 3 (iii) are concerned, the process of regularization in the manner indicated in paragraph 5, should take place within fifteen (15) working days of its issuance. This period of regularization with regard to the circumstance referred to in paragraph 3 (v) is reduced to seven (7) days, and is required to be marked to the Principal Director General of Income-Tax (Systems) [see paragraph 6 of the 2019 Circular]*

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. Using this as the foundation, the argument put forth before us is that the mistake can be corrected by taking recourse to Section 292B of the Income Tax Act, 2961 [in short “the Act”]*

XXXXXX

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 adult trail. Therefore, the communication relating to assessments, appeals, orders etcetra 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 question of law arises for consideration, which, inter alia, would require the Court issue is debatable or if there is an alternate view possible. Given the language employed in the 2019 Circular, issued is debatable or if there is neither any scope for debate not is there any leeway for an alternate view.*

21.1 *We find no error in the view adopted by the Tribunal. The Tribunal has simply the 2019 Circular and thus, reached a conclusion in favour of the respondent/assessee.*

22. *Accordingly, the appeal filed by the appellant/revenue is closed .*

18. The Hon'ble High Court of Calcutta in a very recent order dated 13.12.2023 in IA No. IA/1/2023 in the case of CIT (E) Vs. RCC Institute of Technology Kolkata has held as under :-

OD 7

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/250/2023

IA NO: GA/1/2023

COMMISSIONER OF INCOME TAX EXEMPTIONS KOLKATA

VS

M/S. RCC INSTITUTE OF TECHNOLOGY, CIT CAMPUS(OLD), CANAL SOUTH
ROAD, BELIAGHATA, KOLKATA

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 13th December, 2023

Appearance :

Ms. Smita Das De, Adv.

...for appellant

Mr. Avra Mazumder, Adv.

...for respondent.

The Court : - This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 9.6.2023 passed by the Income Tax Appellate Tribunal A Bench, Kolkata (the Tribunal) in MA No.16/Kol/2013 arising out of ITAT no. 108//Kol/2022 for the assessment year 2016-17. The revenue has raised the following substantial questions of law for consideration.

- a) Whether on the facts and in the circumstances of the case the Tribunal was justified in law to quash the order passed under Section 263 of the said Act on the ground of not mentioning any DIN despite the fact that the DIN for the said Order was duly generated and communicated to the assessee through intimation letter along with the said order.

b) Whether on the facts and in the circumstances of the case the Tribunal was justified in law is not appreciating the fact that the intimation letter enclosing the order passed under Section 263 specifically mentioned that “Order-u/s 263 Dt.31.03.2021 is having Document No. (DIN) ITBA/REV/M/REV5/2020-2021/1032078829(1)” which forms an integral part of the order passed under Section 263.

c) Whether on the facts and in the circumstances of the case the Tribunal was justified in law in not appreciating the fact that the DIN which was duly generated and communicated along with the order passed under Section 263 to the assessee was in compliance of the Circular no.19/2019 dated 14.08.2019 issued by the CBDT.

We have heard Ms. Smita Das De, learned standing Counsel for the appellant and Mr. Avra Mazumder, learned Advocate appearing for the respondent/assessee.

It is not disputed by the revenue that the substantial questions of law which have been raised in this appeal are squarely covered by the decision of this Court in the case of Principal Commissioner of Income Tax, Exemption Vs. Tata Medical Centre Trust, [2023] 154 taxmann.com 600 (Cal).

In the said decision it was held that Document Identification Number (DIN) Intimation letter along with manual order cannot satisfy categorical requirement of incorporating the DIN mandated by CBDT Circular 19 of 2019 and therefore, the order passed under Section 263 manually without DIN was invalid.

The operative portion of the Judgement reads as follows:

4. The short issue which falls for consideration is whether the DIN was mentioned in the order passed under section 263 of the Act. The

learned Tribunal upon examining the facts held that the order does not incorporate the DIN number and it is in violation of the Circular no. 19 of 2019 dated 14th August, 2019. In the said Circular, in paragraph 4 it has been stated that any communication which is not in conformity with Para 2 and Para 3 of the said Circular shall be treated as invalid and shall be deemed to have never been issued. The Tribunal on examination of the facts held that the requirement as mentioned in the Circular namely, quoting of the Document Identification Number, has not been followed and therefore allowed the assessee's appeal.

5. The learned counsel for the appellant submitted that the intimation letter should be treated as part and parcel of the substantive order. However, in the intimation letter there is nothing mentioned as to why in the substantive order the Document Identification Number was not mentioned in the Circular.
6. The revenue filed miscellaneous application seeking for rectification of the said order. Once again the Tribunal has undertaken a factual exercise and in fact, raised a specific query to the revenue to point out how a DIN intimation letter along with the manual order as explained by the Commissioner of Income Tax (Exemption) in his reply fulfils the categorical requirement mandated by the CBDT Circular, more particularly, in paragraph 2 of the said Circular, that the body of the communication, the order under section 263 of the Act, must contain the fact and that the communication issued referred to the DIN without justifying as to how the non compliance of the CBDT Circular dated 14th August, 2019, which was noted by

the Tribunal when it passed the main order. The Tribunal notes that this specific query was unable to be answered by the revenue and therefore the learned Tribunal came to the conclusion that the order passed under Section 263 does not satisfy the requirement mandated by the CBDT Circular.

7. Thus, we find no substantial question of law arises for consideration in this appeal. Accordingly, the appeal is dismissed.

Following the above decision the appeal filed by the revenue is dismissed, as we find that no substantial questions of law arising for consideration in this matter.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

Pld/GH.

19. The Hon'ble Jurisdictional High Court and Hon'ble High Courts of Bombay and Calcutta are consistent in annulling the assessment order without DIN, therefore, we are declining the submissions of the DR and respectfully following the decisions of the Hon'ble High Court the assessment order dated 30.12.2019 is held to be null and void and nonest.

20. Since we have treated the assessment order as nonest we do not find any merit in dwelling in the merits of the case. The additional ground is allowed and appeal of the assessee is allowed and that of the revenue is dismissed.

Order pronounced in the open court on 03.01.2024.

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

NEHA

Date:- .01.2024

Copy forwarded to:

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

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI