

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

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.1437/Del/2023
(Assessment Year : 2018-19)

Bawa Float Glass Ltd. 84/54, G.T. Road Jarib Chowki, Kanpur, Uttar Pradesh-208 003	Vs.	DCIT Central Circle – 06 New Delhi
PAN No. AAACB 4820 A		
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Lalit Mohan, C.A.
Revenue by	Shri Zafarul Haque Tanweer, CIT-D.R.

Date of hearing:	27.12.2023
Date of Pronouncement:	02.01.2024

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed by the assessee against the first appellate order of the Ld. Commissioner of Income Tax (Appeals) – 24, New Delhi ('CIT(A)' in short) dated 21.03.2023 arising from the assessment order dated 13.05.2021 passed by the Assessing Officer (AO) under Section 153A r.w.s 143(3) of the Income Tax Act, 1961 (the Act) concerning Assessment Year 2018-19.

2. As per the grounds of appeal, the assessee has raised legal ground towards assumption of jurisdiction under section 153A of the Income Tax Act, 1961. The

assessee has also challenged the addition of Rs.25,00,000/- under section 69C r.w.s 115BBE of the Act on merits.

3. Before the Tribunal, the assessee has moved an application for admission of additional ground under Rule 11 of the Income-tax (Appellate Tribunal) Rules, 1963 vide letter dated 21.12.2023, which reads as under:

“That the approval u/s 153D of the Act is null, void and without jurisdiction as the same is in violation of CBDT Circular No.19/2019 requiring DIN therefore order of assessment dated 13.05.2021 u/s 153A of the Act read with section 143(3) of the Act deserve to be quashed as such.”

4. The prayer for admission of additional ground noted above which is not set forth in the memorandum of appeal is being admitted for adjudication in terms of Rule 11 of Income-tax (Appellate Tribunal) Rules, 1963 owing to the fact that objections raised in the additional ground is legal in nature for which relevant facts are stated to be emanating from existing records in the light of judgment rendered in the case of NTPC vs. CIT 229 ITR 33 (SC).

5. At the outset of the proceedings before the Tribunal, the Id. Counsel for the assessee adverted to additional ground raised with reference to CBDT Circular 19/2019 dated 14.08.2019 casting mandatory obligations on the revenue authorities to place Document Identification Number (DIN) on all communication by way of orders (statutory or otherwise), approval etc. and submitted that in the light of plethora of judgments delivered on the controversy, the impugned assessment order passed in violation of CBDT circular are rendered *non-est* and invalid by operation of law.

6. On facts, the learned Counsel adverted to the requisition letter moved by the AO dated 12.05.2021 to the Addl. Commissioner of Income Tax, Central Range-2,

New Delhi (F.No. DCIT/CC-06/2020-21/456) and also consequent approval of the draft assessment order in terms of section 153D of the Act from the Deputy Commissioner of Income-tax Act dated 12.05.2021 (F.No. Addl.CIT(CR)-02/2021-22/68) and pointed out that neither the communication by AO to addl. CIT nor the approval by the Addl. CIT under s. 153D in response to requisition made by the AO bears any reference to DIN number which is mandatory requirement of law in the light of sweeping landscape of CBDT circular. The revenue has also not demonstrated as to whether the draft assessment order sent by AO for approval under section 153D bears any DIN either. In the absence of DIN mentioned in the approval memo, such statutory approval under section 153D is rendered a *nonest* approval in law. It goes without saying that assessment framed on the basis of such nonest approval is a nullity in the eyes of law.

7. The learned Counsel referred to phraseology used in the CBDT Circular and referred to catena of judicial pronouncements to submit that such statutory approval under section 153D without bearing the DIN is *non-est* in the eyes of law in view of strict interpretation of CBDT Circular provided by large numbers of judgments delivered by various High Courts and Co-ordinate Bench of Tribunal.

8. The learned Counsel *inter alia* referred to the decision of the Co-ordinate Bench in *Finesse International Design Pvt. Ltd. vs. DCIT [2023] 157 taxmann.com 271 (Delhi-Trib.)* which addresses the identical issue. The learned Counsel submitted that the Co-ordinate Bench in *Finesse International* has referred to several judgments of the different High Courts and Co-ordinate Benches and held that absence of DIN while granting statutory approval under section 153D would tantamount to no approval in the eyes of law and the approval under section 153D is rendered *non-est*. The consequent assessment order passed under section 153A based on such *non-est* approval would be a nullity.

9. The learned DR however submitted that such lapse is only a procedure irregularity, if any. The learned DR thus submitted that such technical irregularity which has caused no prejudice to the assessee requires to be viewed in a benign manner and such technical lapse would not vitiate the assessment order irreversibly.

10. We have considered the rival submissions. The assessee by way of additional ground has questioned the legality of approval granted by Additional Commissioner of Income Tax under section 153D owing to absence of any Document Identification Number (DIN) generated while granting the statutory approval. We find that the issue is no longer *res integra* and has been examined in length in the case of Finesse International Design Pvt. Ltd. vs. DCIT reported in 157 taxmann.com 271 (Delhi). Other several judgments which underscores the mandatory nature of generation and mentioning of DIN in the body of communication of such order has been referred therein. In consonance with view expressed in Finesse International, we find merit in the case made out by the assessee in the additional ground. The additional ground is thus allowed and the assessment order framed under section 153A is set aside and cancelled in view of the legal infirmity of absence of DIN on the body of statutory approval granted under section 153D of the Act by the competent authority i.e. Addl. Commissioner of Income Tax.

11. Having held the assessment order passed is vitiated owing to non conformity with the CBDT Circular No.19 of 2019, we do not consider it necessary to go into other aspect of objections raised on behalf of the assessee in its main grounds of appeal.

12. In conclusion, in the light of decision rendered in Finesse International (*supra*), we see no difficulty to accept contentions on invalidity of assessment due of

infringement of CBDT circular. We thus hold in favour of the assessee and against the Revenue.

13. In the result, appeal of the assessee is allowed.

Order was pronounced in the open court on 02.01.2024

Sd/-

**(SAKTIJIT DEY)
VICE PRESIDENT**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Date:- 02.01.2024

*Priti Yadav, Sr. PS**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI