

आयकर अपीलीय अधिकरण, कोलकाता पीठ "ए", कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. Nos. 2381 to 2383/Kol/2024

Assessment Years: 2015-16, 2016-17 & 2013-14

ITO, Ward-36(1), Kolkata	Vs.	Sujata Kayan (PAN: AKSPK 3598 D)
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	16.07.2025
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	24.07.2025
For the assessee / निर्धारिती की ओर से	Shri Sunil Surana, FCA
For the revenue / राजस्व की ओर से	Shri Manoj Kumar Pati, Addl. CIT Sr. D.R

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

These are the appeals preferred by the assessee against the separate orders of Commissioner of Income Tax (Appeals), -NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)] dated 29.08.2024 for AY 2015-16, 2016-17 & 2013-14 respectively. Issues

are common in both the appeals hence taken up together for disposal by taking in ITA No. 2381/Kol/2024 for AY 2015-16 as a lead case.

2. It appears from the report of the registry that the appeals have been filed after a delay of 12 days. At the time of hearing the counsel of the assessee explained the reason for delay in filing the appeals. The Ld. A.R did not raise any objection in condoning the delay. Keeping in view, the submission made by the A.R. and the judicial pronouncement that a case should be decided on merit not on technical issue, the delay is hereby condoned.

3. Brief facts of the case of the assessee are that the assessee filed its return of income declaring total income of Rs. 6,51,420/-. A notice u/s 148 of the Act was issued and assessment was completed at an assessed income of Rs. 32,33,850/- as it is observed in the assessment order that the addition was made on account of under head income from business and profession amounting to Rs. 25,80,219/-. Accordingly, the AO added the sum of Rs. 25,80,291/-.

4. Aggrieved by the said order, the assessee preferred an appeal before the Ld. CIT(A) wherein the appeal of the assessee has been allowed on legal grounds.

Being aggrieved and dissatisfied the revenue has preferred an appeal before us.

5. The Ld. D.R challenging the very impugned order of Ld. CIT(A) thereby submitting that the Ld. CIT(A) has erred in law and on facts in considering the notice u/s 148 of the Act as invalid ignoring the fact that notice u/s 148 was digitally signed by the AO on 31.03.2021 and it was issued within time. The Ld. D.R has further submits that the Ld. CIT(A) has erred in law and facts on holding that notice u/s 148 dated 31.03.2021 was time barred as it has served by the assessee on e-mail on 01.04.2021 ignoring the judgment of Hon'ble High court of Mumbai wherein it has been held that once notice was digitally signed and settled or being dispatched whether through post or through e-mail, it was deemed to have been issued for purpose of Section 149 of the Act. The Ld. D.R submits that the order passed by the Ld. CIT(A) is erroneous and liable to be set aside.

6. Contrary to that the Ld. A.R supports the impugned order thereby submitting that the Ld. CIT(A) has discussed the case law and judicial pronouncement and thereby holding that notice issued was in fact not on 31.03.2021 rather it was issued on 01.04.2021 and it was time barred. He has cited decision of Hon'ble Calcutta High Court and several judicial pronouncements of ITAT.

7. Upon hearing the submission of the counsel of the respective parties, we have perused the order of Ld. CIT(A) and find that the Ld. CIT(A) has discussed the law and decision of Hon'ble Supreme Court thereafter it has been held that notices issued was in fact on 01.04.2021 not on 31.03.2021 in the instant case assessment order was AY 2015-16 and as per the screen shot as mentioned in the order of the Ld. CIT(A) it was issued and served on 01.04.2021. We have gone through the order passed by the Hon'ble Calcutta High Court in the case of Marudhar Vintrade Pvt. Ltd. vs. Union of India & Ors. in which the Hon'ble Calcutta High Court has held as under:

“Heard learned advocates appearing for the respective parties.

Petitioner in this writ petition is aggrieved by the issuance of impugned notice under [section 148](#) of the Income Tax Act, 1961 on the grounds that the same is barred by limitation and that the respondent-income tax authority concerned, before issuing the impugned notices under [section 148](#) of the 1961 Act, has not observed the statutory formalities under [section 148A](#) of the 1961 Act as prescribed by the [Finance Act, 2021](#) which are applicable with effect from 1st April 2021 before issuance of notices under [section 148](#) of the 1961 Act on or after 1st April 2021.

Learned advocate for the respondent was asked as to whether final assessment order has already been passed or not in this case to which he submits that final assessment order has already been passed. He further submits on the basis of record that the impugned notice under [section 148](#) of the 1961 Act, though it bears date and signature of the authority showing that it was signed on March 31, 2021, but it was actually uploaded for communication on April 1, 2021 at 3 a.m. which has to be treated as date of issuance of the impugned notice.

Considering these facts, I am of the considered view that this case clearly falls under the amended Act relating to proceedings under [section 147](#) of the Act under which issuance of notice under [section 148A](#) of the Act is mandatory before issuing any notice under [section 148](#) of the amended Act which has not been complied with in this case.

Considering the above facts and circumstances of the case and in view of the order of this court in the case of [Bagaria Properties and Investment Private Limited & Anr. v. Union of India & Ors.](#) reported in (2022) 134 taxman.com 196 (Calcutta) and also in the case of [Monoj Jain v. Union of India](#) reported in (2022) 134 taxman.com 173 (Calcutta), the impugned notice under [section 148](#) of the Act and all subsequent proceedings are not sustainable in law and the same are quashed.

However, quashing of the impugned notice and proceeding will not debar the respondent-authority concerned to issue any fresh notice in future in accordance with law.

With the above observations, WPA No.4382 of 2022 stands disposed of.”

8. Going over the order passed by the Ld. CIT(A) and considering the judgment of the Hon'ble Calcutta High Court, we do not find any infirmity in the impugned order. Accordingly, the order passed by the Ld. CIT(A) are hereby affirmed. The appeal of the revenue is hereby dismissed.

9. Now we shall take in ITA No. 2382/Kol/2024 for AY 2016-17. The issue raised in the appeal is similar to one as decided by us in ITA No. 2381/Kol/2024 for AY 2016-17. Therefore, our decision in ITA No. 2381/Kol/2024 for AY 2016-17 would mutatis mutandis, apply to this appeal as well. Accordingly, the appeal of the revenue is hereby dismissed.

9. Now we shall adjudicate in **ITA No. 2383/Kol/2024 for AY 2013-14.**

10. Brief facts of the case of the assessee is that the return of income for the year under consideration has been filed by the assessee disclosed a total income of Rs. 1,07,338/-. A notice u/s 148 was issued and assessed was completed at an assessed income of Rs. 1,24,78,713/-. On perusal of the assessment order, it is observed that the addition was made on account of variation in respect of unexplained sales of shares amounting to Rs. 1,23,71,375/-. Accordingly, a sum of Rs. 1,23,71,375/- was added to the income of the assessee.

11. Aggrieved by the said order, the assessee preferred an appeal before the Ld. CIT(A) wherein the appeal of the assessee has been allowed on the legal grounds.

Being aggrieved and dissatisfied the revenue preferred an appeal before us.

12. The Ld. DR challenges the very impugned order thereby submitting that the Ld. CIT(A) has erred in law and on facts in considering the notice u/s 148 of the Act as invalid by observing that the assessment is completed without other following the statutory procedure laid down u/s 148A of the Act. The Ld. D.R submits that the Ld.

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(C) I have information that books of accounts, other documents or any assets have been requisitioned under section 132A of the Act in your case or in the case of the person in respect of which you are assessable under the Act.

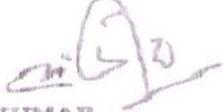
(D) I am satisfied, with the approval of Principal Commissioner or Commissioner, that money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A of the Act in case of _____ relate to you or to the person in respect of which you are assessable under the Act.

(E) I am satisfied, with the approval of Principal Commissioner or Commissioner, that books or accounts or documents, seized or requisitioned under section 132 or section 132A of the Act in case of _____ pertain or pertain to, or any information contained therein, relate to you or to the person in respect of which you are assessable under the Act.

I, therefore, propose to assess or reassess such income or recomputed the loss or depreciation allowance or any other allowance or deduction for the Assessment Year 2013-14 and I, hereby, require you to furnish, within 30 days from service of this notice, a return in the prescribed form for the Assessment Year 2013-14.

This notice is being issued after obtaining the prior approval of the Pr. CCIT, WB & Sikkim / Pr.CIT-5, Kolkata accorded on date 25.07.2022 communicated vide Reference No. Addl.CIT/R-34/Kol/148A Approval/2022-23/459, dated 26.07.2022




MITHLESH KUMAR
Income Tax Officer, Ward - 36(1), Kolkata
मिथलेश कुमार
MITHLESH KUMAR
आयकर अधिकारी, वार्ड-36(1), कोलकाता
Income Tax Officer
Ward-36(1), Kolkata

15. The Ld. CIT(A) in its order has discussed the CBDT Circular no. 19/2019 [F. No. 225/95/2019-ITA.III] dated 14.08.2019 as well as several judicial pronouncements which according to us is essential to reproduce herein below:

CIRCULAR NO. 19/ 2019 [F.NO. 225/95/2019-ITA.II], DATED 14-8-2019

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

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

3. In exceptional circumstances such as, —

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

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

" .. This communication issues manually without a DIN on account of reason/reasons given in para3(i)/3(ii)/3(iii)/3(iv)/3(v) of the CBDT Circular No ...dated (strike off those which are not applicable) and with the approval of the Chief Commissioner/Director General of Income Tax vide 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 31st October, 2019.

According to the above circular, the CBDT 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 and the exceptional cases cited therein the circular are (i) when there are technical difficulties in generating/allotting/quoting the DIN and issuance of communication electronically; (ii) when communication is required to be issued by an income-tax authority, who is outside the office, for discharging his official duties; (iii) delay in PAN migration where PAN is lying with non-jurisdictional Assessing Officer; (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; (v) When the functionality to issue communication is not available in the system, Even in these exceptions the Circular stipulates that 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. Further the circular pays down that the communication issued under aforesaid exceptional 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 In the instant case, it is undisputed fact that the Notice u/s 148 is issued manually without a DIN. It is also a fact that the said manual notice did not follow the procedure prescribed in the said circular in as much as the did neither mention the reasons for issue of manual notice nor did it quote any approval obtained from the competent authority for issue of manual notice. Evidently, the said manual notice is issued without DIN and no reason for not generating DIN is ever mentioned by the AO. The issue of manual notice without DIN is without due approval of the competent authority sanctioning its issue without DIN. Thus the said notice u/s 148 of the IT Act dated 30-07-2022 issued without a DIN is invalid and needs to be treated as non-est as per para-4 of the CBDT CIRCULAR NO. 19/ 2019 [F.NO. 225/95/2019-ITA.II], DATED 14-8- 2019,which states that any communication which is not in conformity with said circular, shall be treated as invalid and shall be deemed to have never been issued.

This position in law is judicially upheld by the decisions of Hon'ble ITAT Mumbai in the case of Teleperformance Global Services P Ltd vs ACIT in ITA no. 2814 & 2815/Mum/2022 dt. 24.04.23 as well as the Hon'ble Calcutta High Court decision in the case of PCIT vs TATA Medical Centre Trust, Kolkata in ITAT/202/2023 IA No. GA/1/2023 dated 26.09.2023 relied upon by the appellant.

As already mentioned above, the hon'ble ITAT Mumbai in the case of Teleperformance Global Services P Ltd vs ACIT in ITA no. 2814 & 2815/Mum/2022 dt. 24.04.23 held as under vide para-11 of its order:

11. In assessee's case there is no dispute about the fact that the impugned order u/s. 143(3) r.w.s.144C(13) of the Act has been issued manually. It is also noticed that the DIN for the order is generated through separate intimation. The argument of the ld DR that the intimation dated 02.09.2022 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. 143(3) r.w.s.144C(13), 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. The Hon'ble Calcutta High Court decision in the case of PCIT vs TATA Medical Centre Trust, Kolkata in ITAT/202/2023 IA No. GA/1/2023 dated 26.09.2023 held as under vide para-13 of its order:

13. From the above submissions and arguments, we note that it is an undisputed fact that the impugned order u/s. 263 of the Act has been issued manually which does not bear the signature of the authority passing the order. Further, from the perusal of the entire order, in its body, there is no reference to the fact of this order issued manually without a DIN for which the written approval of Chief Commissioner/Director General of Income-tax was required to be obtained in the prescribed format in terms of the CBDT circular. We also note that in terms of para 4 of the CBDT circular, such a lapse renders this impugned order as invalid and deemed to have never been issued.

The Hon'ble ITAT, Bangalore decision in the case of Dilip Kothari vs. PCIT in ITA/403-405/Bang/2022 dated 31.10.2022 held as under vide para-14 of its order:

14. Considering the facts on record, perusal of the impugned order, submissions made by the learned counsel and the department, CBDT circular and the judicial precedents including that of Hon'ble Supreme Court and the jurisdictional High Court of Calcutta, we are inclined to adjudicate on the additional ground in favour of the assessee by holding that the order passed by the learned Commissioner (Exemption) is invalid and deemed to have never been issued as it fails to mention DIN in its body by adhering to the CBDT Circular No. 19 of 2019. Accordingly, additional ground taken by the assessee is allowed. Having so held on the legal issue raised by the assessee in the additional ground, the grounds relating to the merits of the case requires no adjudication. Accordingly, the appeal of the assessee is allowed in terms of above observations and findings.

Respectfully following the decisions as above, it is held that the impugned notice u/s 148 of the IT Act is invalid and deemed to have never been issued as it fails to mention DIN in its body by adhering to the CBDT Circular No. 19 of 2019. Having so held on the legal issue raised by the assessee in the additional ground, the grounds relating to the merits of the case requires no adjudication. Accordingly, the appeal of the assessee is allowed in terms of above observations and findings.

4.1 For the foregoing reasons, ground-4 of appeal stands allowed.

5. In view of the above, all the other grounds would become infructuous.

6. In result, the appeal is allowed.”

16. Going over the order passed by the Ld. CIT(A), we do not find any infirmity in the order of Ld. CIT(A) has not only discussed the facts rather discussed the judicial pronouncements and thereafter passed an order in favour of the assessee. Accordingly, the appeal of the revenue is hereby dismissed.

In the result, all the appeals filed by the revenue are dismissed.

Order is pronounced in the open court on 24th July, 2025

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
Judicial Member/न्यायिक सदस्य

Dated: 24th July, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- ITO, Ward-36(1), Kolkata
2. Respondent – Sujata Kayan, 8, Lyons Range, Ground Floor, Kolkata-700001
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata