INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI

BEFORE

SHRI M BALAGANESH, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA Nos. 2908, 2909, 2910, 2911, 2912 & 2913/Del/2022
AYs: 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 & 2018-19

Panna Lal & Co. 2, Loha Mandi, Ghaziabad, Uttar Pradesh 201002 PAN AACFP8036F	Vs.	DCIT, Central Circle, Ghaziabad.
(Appellant)		(Respondent)

ITA Nos. 19, 18, 20 & 21/Del/2023
AYs: 2014-15, 2016-17, 2017-18 & 2018-19

ACIT, Central Circle, Ghaziabad.	Vs.	Panna Lal & Co. 2, Loha Mandi, Ghaziabad, Uttar Pradesh 201002 PAN AACFP8036F
(Appellant)		(Respondent)

Assessee by:	Dr. Rakesh Gupta, Advocate Shri Shrey Jain, CA
Department by:	Shri P.N. Barnwal, CIT-DR
Date of Hearing:	20.11.2013
Date of pronouncement:	23.11.2023

O R D E R

PER BENCH

Six appeals filed by the assessee and four appeals filed by the Revenue are directed against the consolidated order dated 10.10.2022 of the Ld. Commissioner of Income Tax (Appeals), Kanpur-4 **("CIT(A)")** pertaining to Assessment Years **("AYs")** 2013-14 to 2018-19 and AYs 2014-15, 2016-17, 2017-18 and 2018-19 respectively. Since common issues are

involved, these were heard together and are being disposed of by this common order.

2. The assessee has raised the common grounds of appeal in all the six appeals (except the amount of impugned addition which varies in each of the AYs). We reproduce below the grounds raised by the assessee in AY 2013-14 for reference purposes:

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) ought to have quashed the impugned order passed by Ld. AO as the assumption of jurisdiction u/s 153A is bad in law, invalid and without complying with the mandatory conditions in accordance with law.

2. That in any case and in any view of the matter, Ld. CIT(A) ought to have quashed the impugned order passed by Ld. AO which is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the entire addition of Rs.1,62,70,046/- made by Ld. AO by estimating the gross profit @4% and has further erred in sustaining the same to the extent of Rs.13,35,726/- by reducing the gross profit rate from 4% to 3% and that too after rejecting the books of accounts by applying the provisions of section 145(3) and more particularly when no deficiency has been found in the books of accounts of the assessee and impugned addition has been made/sustained without any basis and by recording incorrect facts and findings and without appreciating the facts and circumstances of the case and in violation of principles of natural justice and without providing the entire adverse material available on record and without providing the opportunity of cross examination of the deponents and without there being any incriminating material as a result of search.

4. That in any case and in any view of the matter, action of Ld. CIT(A) in not deleting the entire addition of Rs.1,62,70,046/- made by L.d. AO by estimating the gross profit 04% and sustaining the same to the extent of Rs.13,35,726/-by reducing the gross profit rate from 4% to 3% and that too after rejecting the books of accounts by applying the provisions of section 145(3), is bad in law and against the facts and circumstances of the case.

5. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs. 17,20,050/- on account of alleged commissions income and that too without there being any incriminating material as a result of search and impugned addition has been made by recording incorrect facts and findings and in violation of principle of natural justice.*

6. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in rejecting the books of accounts of assessee by applying the provisions of section 145(3) and more particularly when no deficiency has been found in the books of accounts of the assessee.*

7. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in rejecting the books of accounts of assessee by applying the provisions of section 145(3), is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.*

8. *That in any case and in any view of the matter, addition made in the impugned assessment order are beyond jurisdiction and illegal also for the reason that these could not have been made since no incriminating material has been found as a result of search.*

9. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of 14. AO in passing the impugned assessment order without there being requisite approval in terms of section 153D and in any case approval, if any, is mechanical without application of mind and is no approval in the eyes of law.*

10. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not allowing the benefit of credit of prepaid taxes claimed by the assessee.*

11. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234B and 234C of Income Tax Act, 1961.*

12. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."*

3. The common grounds of appeal taken by the Revenue in all the four appeals (except the amount) are as under:

For ease of reference, we have reproduced the grounds raised in AY 2014-15.

"1. On facts and circumstances of the case and in law, the Ld CIT(A) has erred in deleting the addition made by Assessing Officer of Rs. 1,70,84,060/- out of total addition of Rs. 2,46,47,227/- on account of enhancement of G.P. rate without considering the facts elaborated in the assessment order as well as enquires conducted during post search investigation.

2. On facts and circumstances of the case and in law, the Ld. CIT (A) has erred in not appreciating the facts as elaborated in the assessment order that the GP rate of the assessee for first three quarters was around 4% which was reduced in the last quarter and further, on local enquiries made by the AO regarding the GP rate of the similar line of business of trading in Iron and Steel it was found that the average GP rate of the business is 4%.

*3. On facts and circumstances of the case and in law, the Ld. CIT(A) is not justified in estimating G.P. rate @3% with simple observation that estimation of G.P. 24% is excessive since in last so many years and in various other group entities whereas the Ld. CIT (A) in his order under appeal has himself accepted the action of the AO in estimating the GP rate holding that *6.21..... Since the appellant failed to produce books of accounts in the search assessment proceedings, specially when there are huge related party transaction, the decision of the Ld AO to reject the books of accounts and to estimate the GP is upheld.....*

4. That the appellant craves leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."

4. The assessee filed an application dated 16.11.2023 seeking permission to raise the following additional grounds:-

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) ought to have deleted the additions made by Ld. AO in the assessment order inter alia on the ground that there was no incriminating material found as a result of search and the assessment attained finality.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in not deleting the additions made by Ld. AO in the assessment order on the ground that there was no incriminating material found as a result of search, is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, the action of Ld. AO in passing the impugned assessment order u/s 143(3)/153A dated 01.09.2021 is illegal, bad in law, inter alia for the reason that the said assessment order has been passed without DIN number as is must as held in the judgements of CIT (International Tasation) vs. Brandis Mauritius Holdings

Ltd., ITA No. 163/2023, dated 20.03.2023 (Del), PCIT(E) vs. M/s Tata Medical Centre Trust, ITAT/202/2023, dated 26.09.2023 (Cal) and Ashok Commercial Enterprises vs. Asstt. CIT. WP No. 2595 of 2021, dated 04.09.2023 (Bom) and CBDT Circular No. 19/2019 dated 14.08.2019.

4. That in any case and in any view of the matter, the passing of impugned assessment order u/s 143(3)/153A dated 01.09.2021 is illegal, bad in law and the same is not sustainable on various legal and factual grounds."

Since the above grounds of appeal are purely legal, do not require fresh facts to be investigated and go to the root of the matter, it is prayed that the same may please be admitted ....

4.1 In support of the admittance of the above additional grounds, the assessee placed reliance on the following decisions:

i) CIT vs. Sinhgad Technical Education Society (2017) 397 ITR 344 (SC).

ii) National Thermal Power Co. Ltd. vs. CIT (1998) 229 ITR 383 (SC).

iii) VMT Spinning Co. Ltd. vs. CIT & Annr. (2016) 389 ITR 326 (P&H).

iv) CIT vs. Sam Global Securities (2014) 360 ITR 682 (Delhi).

v) Siksha vs. CIT, (2011) 336 ITR 0112 (Orissa).

vi) Inventors Industrial Corporation Ltd. vs. CIT (1992) 194 ITR 548 (Bom.).

4.2. Additional ground No. 1, 2 and 4 have not been pressed by the assessee. Hence these grounds are not being considered by us for admission thereof.

5. We have heard the Ld. Representative of the parties. The additional ground No.3 raised by the assessee is purely legal and jurisdictional issue going to the root of the matter. In National Thermal Power Co. Ltd. (supra), the Hon'ble Supreme Court observed that the Tribunal should not be prevented from considering questions of law arising in assessment proceedings. Where the Tribunal is only required to consider the question of law arising from the facts which are on record in the assessment proceedings there is no reason why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee. We, therefore following the

decision (supra) of the Hon'ble Apex Court admitted the additional ground No. 3 and proceed to consider the same.

6. The Ld. AR invited our attention to the separate orders of the Ld. AO all dated 01.09.2021 for AY 2013-14 to AY 2018-19 passed under section 143(3)/153A of the Income Tax Act, 1961 **(the "Act")** which were the subject matter of appeal before the Ld. CIT(A). He pointed out that it will be observed that there is no mention of Document Identification Number **("DIN")** in the body of the assessment order(s). He further submitted that perusal of the order(s) would also reveal that there is no mention of any reason for non-issuance of DIN. The requisite condition mentioned in para 3 of the CBDT Circular No. 19/2019 dated 14.08.2019 has also not been complied with. He contended that this is in violation of the binding CBDT Circular No. 19/2019. As a consequence, the impugned orders of the Ld. AO are invalid and 'non-est' in the eye of law and deserve to be quashed. He also relied upon a number of judicial precedents wherein the courts/authorities have decided the impugned issue in favour of the assessee. He, therefore, vehemently argued that in the light of the facts and circumstances of the assessee's case, the orders passed by the Ld. AO be held as invalid and 'non-est'.

7. The Ld. CIT-DR fairly conceded to the above submissions of the Ld. AR.

8. We have considered the submissions of the parties and perused the records. On perusal of the impugned order(s) dated 01.09.2021 of the Ld. AO on record, we observed that mention of DIN is conspicuous by its absence in the body of the order.

9. We have also gone through the CBDT Circular No. 19/2019 dated 14.08.2019, which reads 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.

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

(F.No. 225/95/2019-ITA.II)

Copy to:-

i. PS to FM/OSD to FM/PS to MoS(F)/OSD to MoS(F)
ii. PS to Secretary (Revenue)
iii. Chairman, CBDT & All Members, CBDT
iv. All Pr.CCsIT/ Pr.DsGIT
v. All Joint Secretaries/CsIT, CBDT
vi. C&AG
vii. CIT (M&TP), Official Spokesperson of CBDT
viii. O/o Pr. DGIT(Systems) for uploading on official website
ix. Addl.CIT (Database Cell) for uploading on the departmental website

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

10. In para 2 thereof it is stated that in order to prevent instances (narrated in the opening para) and to maintain audit trail of all communication, no communication shall be issued by any Income Tax Authority to the assessee or any other person on or after the 1st day of October, 2019 unless a computer generated DIN has been allotted and is duly quoted in the body of such communication. In the present case at hand, undoubtedly, the impugned assessment order(s) are one such communication which has been issued by the Ld. AO without allotting a computer generated DIN and duly quoting in the body of the impugned assessment order(s). There is thus clear violation of the specific requirement under the CBDT Circular No. 19/2019 to quote the DIN in the body of the impugned assessment order(s).

11. Para 3(i),(ii),(iii),(iv) and (v) of the Circular No. 19/2019 enumerate the exceptional circumstances in which the Income Tax Authority may issue the communication manually but only after recording reasons in writing in the file and with the prior written approval of Chief Commissioner/Director General of Income Tax. The communication issued manually in situations specified in para 3 (i), (ii) or (iii) of the Circular, the Income Tax Authority is required to take steps to regularise the failure to quote DIN within fifteen (15) working days of its issuance in the manner laid down in para 5 of the said Circular, namely 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 as per electronically generated proforma available on the system.

12. Para 4 of the Circular says in unequivocal terms that any communication which is not in conformity with para 2 and para 3 shall be treated as invalid and shall be deemed to have never been issued.

13. The case of the assessee is that the communication, namely, the assessment order(s) dated 01.09.2021 for AYs 2013-14 to 2018-19 are not only without mention of DIN in the body of the order, there is no material on the record mentioning the reason for non-issuance of DIN. There is thus violation of the mandate enshrined in para 2 and para 3 of the CBDT Circular No. 19/2019 dated 14.08.2019. Therefore, the consequence mentioned in para 4 of the said Circular, namely that the impugned assessment order(s) dated 01.09.2021 be treated as invalid and non-est in the eye of law should follow. We are in agreement with the above contentions of the assessee. In taking this view we are supported by the ratio decidendi of the decision of Hon'ble Delhi High Court in CIT (International Taxation) vs. Brandix Mauritious Holdings Ltd. dated 20.03.2023 reported in (2023) 293 Taxman 385 (Delhi) and subsequent decisions of the Hon'ble Calcutta High Court in the case of M/s. Tata Medical Centre Trust and Hon'ble Bombay High Court in the case of Ashok Commercial Enterprises (supra). No contrary decision has been brought to our notice by the Ld. CIT-DR.

14. In the case of Brandix Mauritious Holdings Ltd. (supra), the Hon'ble Delhi High Court dismissed the Revenue's appeal holding as under:-

"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 30 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... dated..... (strike off those which are not applicable) and with the approval of the Chief Commissioner/Director General of Income Tax vide number.... dated....."

18. The argument advanced on behalf the appellant/revenue that recourse can be taken to Section 2928 of the Act is untenable having regard to the phraseology used in paragraph 4 of the 2019 Circular.

19. The object and purpose of the issuance of the 2019 Circular, as indicated hereinabove, inter alia, was to create an audit trail. Therefore, the communication relating to assessments, appeals, orders, etcetera which find mention in paragraph 2 of the 2019 Circular, albeit without DIN, can have no standing in law, having regard to the provisions of paragraph 4 of the 2019 Circular.

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

21. As noted above, in the instant appeal all that we are required to consider is whether any substantial question of law arises for consideration, which, inter alls, would require the Court to examine whether the issue is debatable or if there is an alternate view possible. Given the language employed in the 2019 Circular, there is neither any scope for debate 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 applied the provisions of 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."

15. In view of the above factual matrix of the assessee's case and in the light of the various decisions (supra) of the Hon'ble High Courts as well as the binding CBDT Circular 19/2019, we are inclined to quash the assessment order(s) dated 01.09.2021 passed by the Ld. AO under section 143(3)/153A of the Act. As a natural corollary, the impugned orders of the Ld. CIT(A) which are the subject matter of appeals before the Tribunal would have no legs to stand. Accordingly, they are set aside.

16. The additional ground No. 3 taken by the assessee raising purely legal issue is allowed. We are not adjudicating the appeals on merits.

17. Since, we have quashed the assessment order(s), the issues arising in Revenue's appeals for all the four AYs involved, which are on merits, have become academic. Hence, there is no need for adjudicating the same.

18. In the result, all the six appeals of the assessee for AYs 2013-14 to 2018-19 are allowed and all the four appeals of the Revenue for AYs 2014-15, 2016-17, 2017-18 and 2018-19 are dismissed.

Order pronounced in the open court on 23rd November, 2023.

sd/-	**sd/-**
(M. BALAGANESH)	**(ASTHA CHANDRA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 23/11/2023
Veena
Copy forwarded to -
1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	