

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
Ms. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.625/Bang/2021
Assessment year: 2011-12

Shri H K Suresh, # 553/1, 1 st A Cross, 3 rd Stage, 4 th Block, Basaveshwaranagar, Bengaluru – 560 040. PAN: AGSPS 8913N	Vs.	The Principal Commissioner of Income Tax (Central), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Hemant Pai, CA
Respondent by	:	Smt. Vandana Ramachandan, CIT(TP1)(DR)(ITAT), Bengaluru.

Date of hearing	:	30.11.2022
Date of Pronouncement	:	06.12.2022

ORDER

Per Padmavathy S., Accountant Member

This appeal is against the order u/s. 263 of the Income-tax Act passed by the Principal Commissioner of Income Tax (Central), Bangalore [PCIT] dated 15.3.2021 for the assessment year 2011-12.

2. The assessee, an individual is a contractor earning business income from contract receipts apart from rental income and interest income. The assessee filed the return of income for AY 2011-12 on

30.09.2011 declaring an income of Rs.2,58,15,614. The case was selected for scrutiny under CASS and the assessment was completed u/s.143(3) by making disallowance of agricultural income of Rs.5,00,000 and disallowance of expenses with respect to machinery maintenance of Rs.4,50,000. The case was reopened based on the information received from ITO(Inv) Unit 3(1) with regard to the search conducted and the undisclosed income offered by the assessee during the course of search. Based on the statement recorded from the employees of the assessee, Shri Shivaramu, the AO made an addition of Rs.2,70,00,000 in the hands of the assessee towards deposits made into the account of Shri Shivaramu and his brother by the assessee and completed the assessment u/s.147 r.w.s.144 of the Act.

3. Subsequently the PCIT issued a show cause notice for the reason that in the statement recorded Shri Shivaramu had stated about the cash withdrawals to the tune of Rs.17 crores in a span of 15 days by the assessee and the AO while completing the assessment did not make any enquiries in this regard. The assessee submitted before the PCIT giving reasons for the cash withdrawals and that the AO has applied his mind while completing the assessment after taking into account the details furnished by the assessee before the AO. However the PCIT did not accept the submissions of the assessee and proceeded to set aside the order of the AO passed u/s.147 r.w.s. 144 for doing fresh assessment on the point of payments of Rs.17 crores. Aggrieved the assessee has preferred this appeal before the Tribunal.

4. The assessee raised 6 grounds pertaining to the revision order passed by the PCIT setting aside the order of the AO to make a fresh assessment on the point of payments amounting to Rs.17 crores. The assessee also made application for admission of additional grounds wherein the issue is contended on legal grounds in this appeal. The legal grounds relate to the validity of the order u/s. 263 for the reason that the order issued is a manual order and does not contain Document Identification Number [DIN] which is not in accordance with the instruction of Central Board of Direct Taxes (CBDT) issued vide circular no.19/2019 dated 14.08.2019. The relevant additional grounds are as extracted below –

1. The impugned order passed by the learned Principal Commissioner of Income Tax is without a valid Document Identification No. (DIN) and consequently, the revision order is invalid and *non-est* on the facts and circumstances of the case.
2. The impugned order passed by the learned Principal Commissioner of Income Tax is contrary to the binding CBDT Circular No.19/2019 dated 14.08.2019 and consequently, the revision order is invalid and *non-est* on the facts and circumstances of the case.
3. The appellant craves leave to add, alter, modify, delete or substitute any or all of the grounds at the time of hearing the appeal.

5. The Id AR while praying for the admission of the additional ground submitted that if the additional ground is admitted and adjudicated on the legal issue of DIN not being available on the revision order, then the issues contended through main ground will

become academic. The Id DR on other hand objected to the admission of the additional grounds.

6. We have heard both the parties on the admission of additional ground and following the Hon'ble Supreme Court judgment in the case of *M/s National Thermal Power Co. Ltd. Vs. CIT, 229 ITR 383 (SC)*, the additional grounds are admitted for adjudication.

7. Accordingly we will proceed to adjudicate the additional ground first. The Id AR submitted that the order u/s. 263 is a manual order without any DIN mentioned therein and therefore the order passed u/s. 263 is in violation of the CBDT Circular No.19 of 2019 dated 14.8.2019. The Id. AR drew our attention to paragraph 3 of the said circular wherein the CBDT has laid down certain procedures to be followed when a manual order is issued under exceptional circumstances. The Id. AR argued that the assessee is not aware for the exceptional circumstances under which the manual order is issued and whether the procedure as laid down in para 3 have been complied with since there is no mention of the same in the order issued u/s.263 which is one of the requirements as per para 3 of the circular. It is the submission of the Id. AR therefore that as per para 4 of the Circular, any communication which is not in conformity with para 2 & 3 of the said Circular shall be treated as invalid. The Id. AR prayed that the order u/s. 263 be quashed on this legal ground. In this regard, the Id AR relied on the decision of the coordinate bench in the case of *Dilip Kothari v. CCIT, ITA No.403 to 405/Bang/2022 dated 31.10.2022*.

8. The Id. DR submitted that the order u/s. 263 is dated 15.3.2021 and the intimation with the DIN number with the same date i.e.15.3.2021 was sent along with the order u/s. 263. The Id. DR therefore submitted that the DIN is very much part of the order u/s. 263 and therefore the argument of the Id. AR on the validity of the order u/s. 263 does not have merit. The Id DR also submitted that as per Circular, DIN was mandated for maintaining proper audit trail of all communications and therefore the PCIT generating DIN in a separate intimation on the same date of the order u/s. 263 is valid and need to be considered along with the order u/s. 263.

9. We have heard the rival submissions and perused the material on record. We notice that the coordinate bench in the case of *Dilip Kothari (supra)*, has examined a similar issue and it was held that –

“13. We have heard the rival submissions and perused the material on record. Before proceeding further, we will look at the contents of the CBDT circular No.19/2019 dated 14.08.2019 which is reproduced below –

“CIRCULAR NO. 19/ 2019
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

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 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 31th October, 2019.”

Sd/-

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

14. From the plain reading of the Circular, it is clear that the effective 1st October 2019, no communication shall be issued unless a DIN is allotted and is quoted in the body of the letter except under exceptional circumstances as mentioned in Para 3 which also lays down certain procedures to be followed for issue of manual order under certain circumstances. Accordingly, the manual communication should mention 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 a specific format. Para 4 of the circular states that the communication issued manually not in conformity with Para-2 and Para-3 of the circular, shall be treated as invalid and shall be deemed to have never been issued.

15. We also notice that the Kolkata Bench of the ITAT in the case of Tata Medical Centre Trust (supra) has considered a similar issue and held that –

“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.

13.1 It is also important to note about the binding nature of CBDT circular on the Income-tax Authorities for which gainful guidance is taken from the decision of Hon'ble Supreme Court in the case of CIT v. Hero Cycles (P.) Ltd. [1997] 94 Taxman 271/228 ITR 463 wherein it was held that circulars bind the ITO but will not bind the appellate authority or the Tribunal or the Court or even the assessee.

13.2 In the case of UCO Bank v. CIT [1999] 104 Taxman 547/237 ITR 889 (SC), Hon'ble Supreme Court while dealing with the legal status of such circulars, observed thus (page 896):

"Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board thus has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under section 119 of the Income-tax Act, which are binding on the authorities in the administration of the Act. Under section 119(2)(a) , however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage under the Act is given the right to forgo the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorized as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities."

13.3 In the matter of CIT v. Smt. Nayana P. Dedhia [2004] 141 Taxman 603/270 ITR 572 (AP), the Hon'ble Andhra Pradesh High Court held that the guidelines issued by the Board in exercise of powers in terms of section 119 of the Act relaxing the rigours of law are binding on all the officers responsible for

implementation of the Act and, therefore, bound to follow and observe any such orders, instructions and directions of the Board.

13.4 In the decision of Dy. CIT v. Sunita Finlease Ltd. [2011] 11 taxmann.com 241/330 ITR 491 (Chhattisgarh) it was held by the Hon'ble High Court of Chhattisgarh in para 16 that the administrative Instruction No. 9/2004 issued by the Central Board of Direct Taxes is binding on administrative officer in view of the statutory provision contained in section 143(2), which provides for limitation of 12 months for issuance of notice under section 143(2).

While giving its finding, the Hon'ble High Court of Chhattisgarh placed reliance on the decisions in the case of UCO Bank (supra) and Nayana P. Dedhia (supra).

13.5 Hon'ble jurisdictional High Court of Calcutta in the case of Amal Kumar Ghosh v. Asstt. CIT [2014] 45 taxmann.com 482/225 Taxman 229 (Mag.)/361 ITR 458 dealt with the issue relating to CBDT circular which according to the Department cannot defeat the provisions of law. While giving its observations and finding on the issue, the Hon'ble Court referred to the decision of Hon'ble Chhattisgarh High Court in the case of Sunita Finlease Ltd. (supra), which are as under:

7. We have considered the rival submissions advanced by the learned Advocates. Even assuming that the intention of CBDT was to restrict the time for selection of the cases for scrutiny within a period of three months, it cannot be said that the selection in this case was made within the aforesaid period. Admittedly, the return was filed on 29th October, 2004 and the case was selected for scrutiny on 6th July, 2005. It may be pointed out that Mrs. Gutgutia was, in fact, reiterating the views taken by the learned Tribunal which we also quoted above. By any process of reasoning, it was not open for the learned Tribunal to come to a finding that the department acted within the four corners of Circulars No. 9 and 10 issued by CBDT. The circulars were evidently violated. The circulars are binding upon the department under section 119 of the I.T. Act.

8. Mrs. Gutgutia, learned Advocate submitted that the circulars are not meant for the purpose of permitting the unscrupulous

assessee from evading tax. Even assuming, that to be so, it cannot be said that the department, which is State, can be permitted to selectively apply the standards set by themselves for their own conduct. If this type of deviation is permitted, the consequences will be that floodgate of corruption will be opened which it is not desirable to encourage. When the department has set down a standard for itself, the department is bound by that standard and cannot act with discrimination. In case, it does that, the act of the department is bound to be struck down under article 14 of the Constitution. In the facts of the case, it is not necessary for us to decide whether the intention of CBDT was to restrict the period of issuance of notice from the date of filing the return laid down under section 143(2) of the I.T. Act. [emphasis supplied by us by underline]

14. Considering the facts on record, perusal of the impugned order, submissions made by the Ld. 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 Ld. CIT(E) 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.”

16. We further notice that a similar view is being taken by the Delhi Bench of the ITAT in the case M/s.Brandix Mauritius Holdings Ltd., vs DCIT (ITA No.1542/Del/2020 dated 19.09.2022)

17. In assessee's case there is no dispute about the fact that the impugned order u/s. 263 of the Act has been issued manually. It is also noticed that the DIN for the order is generated through two separate intimations one bearing the same date as the date of the order u/s.263 and the other is dated 25.03.2022. The argument of the ld DR that the intimation dated 24.03.2022 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.263, 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.

18. In view of these discussions and respectfully following the decision of the Kolkata and Delhi Benches of the Hon'ble Tribunal we hold that the orders passed u/s.263 for the assessment years 2014-15 to 2016-17 are invalid and shall be deemed to have never been issued as per Para 4 of the CBDT circular as the order is not conformity with Para 2 and Para 3. It is ordered accordingly.”

10. In assessee's case, it is noticed as per the appeal set filed, that the revision order dated 15.3.2021 does not contain the DIN. The PCIT on the same day had issued an intimation whereby the DIN of the order u/s. 263 was communicated to the assessee. The argument of the Id DR that the intimation dated 15.03.2021 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. It is also submitted by Id DR that in the records with the revenue, the DIN is manually written in the order u/s.263 and it is only a clerical error that a wrong DIN is written instead of what is given in the intimation dated 15.03.2021. As rebuttal the Id AR submitted a true copy of the order u/s.263 duly certified by the Notary where it is noticed that the order

u/s.263 does not have any DIN mentioned therein manually. Therefore from the perusal of facts and records it is clear that the order u/s.263 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. In view of these discussions and respectfully following the decision of the coordinate bench of the Tribunal in the case of *Dilip Kothari (supra)*, we hold that the order passed u/s.263 is invalid and shall be deemed to have never been issued as per Para 4 of the CBDT circular as the order is not conformity with Para 2 and Para 3. It is ordered accordingly.

11. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 6th day of December, 2022.

Sd/-

Sd/-

(GEORGE GEORGE K.)
JUDICIAL MEMBER

(PADMAVATHY S.)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 6th December, 2022.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.