

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'B' : NEW DELHI)
BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 1229/Del/2023, A.Y. 2015-16

Sh. Harish Gupta C/o. Kapil Goel Adv. F-26/124 Sector 7 Rohini Delhi 110085 PAN : AFZPG0134P (APPELLANT)	Vs.	DCIT Central Circle-7, New Delhi (RESPONDENT)
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Appellant by	Sh. Kapil Goel, Adv and Sh. Sandeep Goel, Adv.
Respondent by	Sh. Vivek Kumar Upadhyay, Sr. DR

Date of hearing:	21.09.2023
Date of Pronouncement:	27.09.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal is preferred by the Assessee against the order dated 24.03.2023 of CIT(A)-24, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') arising out of an appeal before it against the assessment order dated 28.12.2021 passed u/s 153C/143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the DCIT, CC-7, Delhi (hereinafter referred as the Ld. AO).

2. Heard and perused the record.

3. At the time of hearing it came up that amongst other grounds the assessee had raised grounds 1.2 and 4 as follows :-

“1.2 That Ld. CIT(A) seriously erred in not quashing the impugned proceedings u/s 153C which is multiple jurisdictional shining/glaring defects illustratively underlying so called satisfaction note (dated 04.02.2021) is totally mechanical as there is no whisper in two satisfaction note(s) as supplied to assessee about any statement u/s 132(4) etc of searched person qua stated documents ; further said satisfaction note(S0 are not containing any mandatory DIN as per CBDT circular no. 19/2019; further said satisfaction note lack live nexus and rational connection and is based on pretense only etc, it no where considers the return filed by assessee on 27.10.2015 in regular course; This invalidates the impugned proceedings.

4. That both the impugned assessment order passed u/s 153C and subsequent first appeal order dismissing appeal of assessee are invalid as there is lack of Valid document identification number (DIN) as per CBDT Circular no. 19/2019 dated 14.08.2019 in impugned asstt order dated 24.12.2021 as pleaded before Ld. CIT(A) which is arbitrarily rejected by Ld. CIT(A) on totally irrational and unlawful basis.”

4. Ld. AR has submitted that the assessment order does not bear DIN and in the light of the Board Circular dated 14.08.2019 the assessment order is void ab initio. It is also submitted that the satisfaction note also falls in the definition of communication for the purpose of this CBDT Circular and as it also does not have a DIN the whole proceedings were vitiated.

5. Ld. DR has however, defended the same pointing out that Ld. CIT(A) has dealt meticulously with the issue and he draw attention to relevant para **4.1.28, 4.1.29, 4.1.30 and 4.1.31**. It will be appropriate to reproduce here the relevant paras pointed out by Ld. DR as follows :-

“4.1.28 The relevant extracts of the comments of the Assessing Officer in response to the ground of appeal and written submission of the appellant are as under:

The assessment order was passed on 28.12.2021 within the time limit governed under the income tax Act and

DIN was also generated i.e. ITBA/AST/M/15 3 C/2021-22/1038299680(1) dated 28.12.2021. The same was served to the assessee through electronic service. However, the assessee has requested to provide the copy of same, which was provided to the assessee through an online communication generated vide DIN No. ITB.A/COM/F/17/2021-22/1039793122(1) dated 16.02.2022. The said letter was also received by the assessee on the same date. The assessee has suppressed the true facts and has submitted part details in appeal proceeding. Therefore, grounds raised by assessee has no merit and are liable to be rejected...

4.1.29 The appellant has challenged the validity of the assessment order as in his opinion DIN mentioned in the assessment order is beyond the date of limitation. This issue was referred to the Assessing Officer and the relevant points mentioned by him are as trader;

“The assessment order was passed on 28.12.2021 within the time limit governed under the income tax Act and DIN was also generated i.e. ITBA/AST/M/153C/2021-22/1038299680(1) dated 28.12.2021. The same was served to the assessee through electronic service. However, the assessee has requested to provide the copy of same, which was provided, to the assessee through an online communication generated vide DIN No. ITB A/GOAd/F/17/2021-22/1039793122(1) dated 16.02.2022. The said letter was also received by the assessee on the same date. The assessee has suppressed the true facts and has submitted part details in appeal proceeding. Therefore, grounds raised by assessee has no merit and are liable to be rejected.”

4.1.30 In view of the above the issue of DIN is analysed as under:

- 1. The order was sent / intimated to the assessee through ITS A bearing DIN No. ITB A/A SIM/15 3 C/2021 -22/ i 038299680(1) dated 28.12.2021.*
- 2. The communication was consisting of assessment order, computation and the demand notice and was issued with a valid DIN on dated 28.12.2021. The purpose of DIN is to authenticate the communication and to ensure that no unauthorized communication is*

made to the assessee. In my opinion a valid DIN has been used for the assessment order and no adverse inference is being drawn.

3. *On the basis of facts mentioned above, it can be clearly observed, that the DIN for the assessment order is dated 28.12.2021. This means that the order was passed and was uploaded on ITBA portal and was intimated to the appellant by the Assessing Officer on 28.12.2021. Therefore, the assessment order was passed on 28.12.2021 and was beyond the control of Assessing Officer after 28.12.2021 i.e. before the limitation date.*

4.1.31 *In view of the above, it is clear that the communication was issued with a valid DIN and the order was beyond the control of the Assessing Officer before the limitation date. Accordingly, in my opinion a valid DIN has been used for the assessment order and therefore no adverse inference is being drawn.”*

6. After giving thoughtful consideration to the matter on record the bench is of considered view that admittedly the impugned assessment order does not bear the DIN number on its body. The issue that a simultaneous DIN number was generated and communicated have been considered by Co-ordinate Bench, in case **Case ITA No. 2486, 2487, 2488/DEL/2022, Abhimanyu Chaturvedi Vs Deputy Commissioner of Income Tax, Decided on 03-08-2023**, on which one of us, was on the bench and it is relevant to reproduce the findings therein below;

“15.1 In this context from the aforesaid Circular no. 19/2019 it can be noted that it mandates that if the ‘communication’ is issued under aforesaid three exceptions the ‘communication’ 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 numberdated ”

15.2 To make it crystal clear here the words 'Communication' is not used to define merely the mode of transmission of the information but the circular No 19 of 2019 makes it clear by defining it in following words "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"). So the assessment order itself is a communication and all compliances expected have to be specific to the assessment order.

15.3 Coming back to the assessment orders, in fact as para no. 1 to 3.1 of the assessment order dated 09.08.2021 are considered they mention that notice u/s 153A of the Act was issued through ITBA portal. Subsequent notice u/s 143(2) of the Act was also issued through ITBA Portal. Thus, the notices for the purpose of assessment were issued through ITBA Portal and if thereafter the assessment was carried out manually the assessment order should have mentioned the aforesaid fact to comply with the mandate of Circular with regard to communications issued manually.

16. Further, the Bench takes note of the instructions dated 25.10.19, which lay down that when a document is prepared outside ITBA system and uploaded manually, a DIN is required to be generated prior to uploading the document in ITBA. The instructions make it imperative that the DIN so generated has to be used for reference and quoting a document number in a physical copy. The instructions specifically provide that the user (assessing officer) should physically sign the document after quoting DIN, before uploading. Meaning thereby that generation of DIN is condition precedent for making an assessment manually or otherwise on the ITBA and then before it is uploaded on ITBA, first it should have DIN bearing on its face and then only it should be signed. Thus for the purpose of section 153A/143(3) of the Act, the assessment can be said to be 'made' only when the DIN is quoted on the order before it is signed. If without first generating the DIN and before it is quoted on the order, the order is signed, the order is non-est.

17. The Bench is of considered view that forwarding of the intimation of generation of the DIN in ITBA is only a subsequent action and that is not part of assessment order. The manner in which the word 'communication' is defined shows every notice, order, summons, letter and any correspondence from Tax authorities

should have a DIN quoted and it is for this reason that the Intimation issued about the DIN of assessment order itself has a DIN quoted on it.

18. In the case in hand the facts coming from the assessment order when considered establish that DIN was not generated prior to uploading the document in ITBA. It is also established that the DIN was not quoted before it was physically signed by the Ld. AO. The generation of DIN subsequently and generation of intimation to be sent to assessee are of no consequence for the purpose of assessment and raising the demand.”

7. In the light of aforesaid, this bench is of considered view that simultaneous issue of the DIN number is insignificant and superfluous exercise, in the absence of mentioning the DIN number on the body of the communication. Ld. CIT(A) has made the issue look irrelevant without appreciating the seriousness attached to the issue by the Board, by declaring fatal consequences to the non mention of DIN in the body of communication itself. Thus the grounds taken up for discussion are decided in favour of the assessee. Remaining grounds become superfluous. **The appeal is allowed.** The assessment order is set aside being null and void.

Order pronounced in the open court on 27th September, 2023.

Sd/-

(SHAMIM YAHYA)

ACCOUNTANT MEMBER

Date:-27.09.2023

Binita, SR.P.S

Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI