IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH, NEW DELHI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER, AND SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 1542/DEL/2020 [A.Y 2011-12)

M/s Brandix Mauritius Holdings Ltd C/o Plot. No. 18, Brandix Apsez Vishakhapatnam, Pudimadaka Road Achutapuram, Vishakhapatnam	Vs.	The Dy. C.I.T Circle – 1(1)(2) Inttl. Taxation New Delhi
PAN: AAHCB 1470 H		
(Applicant)		(Respondent)

Assessee By : Shri Kanchun Kaushal, FCA
Ms. Shruti Khimta

Department By : Ms. Anupama Anand, CIT- DR

Date of Hearing : 14.09.2022
Date of Pronouncement : 19.09.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order dated 15.10.2019 framed u/s 147/144C(13)/143(3) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'].

2. The grievances of the assessee read as under:

"1. GENERAL

1.1 That, on the facts and in the circumstances of the case and in law, the order of the learned AO dated October 15, 2019 passed under section 147/ 1440(13)7143(3) of the Income-tax Act, 1961 ("the Act") in respect of AY 2011-12 is arbitrary; contrary' to law, facts and circumstances; time barred and hence, liable to be quashed.

2. RE-ASSESSMENT PROCEEDINGS BAD IN LAW

2.1 That, on the facts and in the circumstances of the case and in law, the learned AO was not justified in furnishing the reasons for initiation of re-assessment proceedings to the Appellant beyond a reasonable period despite multiple requests made by the Appellant seeking reasons.

3. BUY-BACK DOES NOT RESULT INTO TAXABLE CAPITAL GAINS UNDER THE ACT

3.1 That on the facts and in the circumstances of the case and in law, the learned AO/ Hon'ble DRP erred in ignoring that there should not have been any tax liability under the Act as the transaction of buy-back does not result in any taxable income under the Act since:

a. Section 46A of the Act merely characterizes the gain on account of buy-back as 'capital gains' but neither there is a charge of tax created by section 46A of the Act nor section 2(24) of the Act covers this gain within its scope;

b. Without prejudice to the above, given the fact that Appellant is the parent company of Brandix Apparel India Private Limited ("BAIPL"), the buy-back undertaken by BAIPL would be covered by the exemption under clause (iv) of section 47 of the Act.

4. BUY-BACK DOES NOT RESULT INTO TAXABLE CAPITAL GAINS UNDER THE RELEVANT TAX TREATY

4.1. That,on the facts and in the circumstances of the case and in law, the learned AO/ Hon'ble DRP erred in holding the Appellant liable for tax on capital gains in India arising on account of transfer of shares to BAIPL pursuant to buy-back undertaken by BAIPL by disregarding the provisions of the India-Mauritius tax treaty.

4.2 That,on the facts and in the circumstances of the case and in law, the learned AO/ Hon'ble DRP grossly erred in holding that Circular No. 789 dated April 13, 2000 is applicable only to Foreign Institutional Investors investing in India through entities in Mauritius and not to any other residents of Mauritius.

4.3 Without prejudice to the above, that on the facts and in the circumstance of the case and in the law, the learned AO/ Hon'ble DRP was not justified in attempting to charge the same income in the hands of the Appellant when such income was already charged in the hands of the Appellant's subsidiary i.e., BAIPL.

(Tax effect: INR 5,61,04,244)

5. ERRONEOUS OBSERVATIONS

5.1 That, on the facts and in the circumstances of the case and in law, the learned AO/ Hon'ble DRP erred in imposing tax on capital gains in India in the hands of the Appellant when the learned AO/ Hon'ble DRP has itself admitted that the capital gains in India was taxable in the hands of the holding company i.e., Brandix International Limited ("BIL").

5.2 That, on the facts and in the circumstances of the case and in law, the learned AO/ Hon'ble DRP erred in holding that the decision to buy-back shares by BAIPL was taken on January 19,2010 being prior to the date (March 30, 2010) of gift of shares by BIL to the Appellant.

6. OTHER

6.1 That, on the facts and in the circumstances of the case and in law, the learned AO erred in levying interest under section 234A of the Act.

(Tax effect: INR 4,48,83,360)

6.2 That, on the facts and in the circumstances of the case and in law, the learned AO erred in levying interest under section 234B of the Act.

(Tax effect: INR 5,77,87,326)

6.3 That on the facts and in the circumstances of the case and in law, the learned AO has erred in initiating proceedings under section 27i(i)(c) of the Act.

The grounds of appeal mentioned above are independent and without prejudice to one another.

Further the Appellant craves leave to add, alter, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing before the Hon'ble Tribunal, so as to enable the Hon'ble Tribunal to decide on the appeal in accordance with the law.

3. Vide letter dated 19.08.2022, the assessee has raised the following additional grounds of appeal:

"7. Ground No. 7: On the facts and circumstances of the case & in law, the Learned Assessing Officer ('Ld. AO') grossly erred in not providing the copy of mandatory sanction, if any, obtained under section 151 of the Income-tax Act, 1961 ('the Act') containing necessary satisfaction and endorsement of the concerned Learned Commissioner of Income-tax, and thus, the

initiation of reassessment proceedings and reopening of assessment deserves to be held as invalid and bad in law.

8. Ground No. 8: On the facts and circumstances of the case & in law, the Learned Assessing Officer ('Ld. AO') erred in issuing the final assessment order under section 147/ 1440(13)/ 143(3) of the Income-tax Act, 1961 ('the Act') dated 15 October 2019 without quoting the mandatory document identification number ('DIN') in conformity with Para-2 and Para-3 of Circular No. 19/2019 dated 14 August 2019 and thus, the said final assessment order deserves to be held as invalid, bad in law and void-ab-initio.

9. Ground No. 9: On the facts and circumstances of the case & in law, the Ld. AO learned erred in not allowing additional credit of tax deducted at source of INR 3,42,09,905 to the appellant, deposited by the Indian deductor under Vivad se Vishwas ('VsV') proceedings which is otherwise allowable as per FAQ No. 30 of Circular no. 9/2020 dated 22 April 2020.

10. Ground No. 10: Without prejudice to the other grounds, on the facts and circumstances of the case & in law, the Ld. AO and Dispute Resolution Panel erred in holding the capital gains earned during the instant year as short-term capital gains taxable @ 40% instead of long-term capital gains taxable @20% and in further not granting the benefit of first proviso to section 48 of the Act while computing said capital gains under the provisions of the Act.

> The aforesaid grounds of appeal are without prejudice to each other, and the grounds of appeal raised along with the captioned appeal."

4. We have carefully perused the additional grounds of appeal raised by the assessee mentioned hereinabove. The Hon'ble Supreme Court in the case of National Thermal Power Corporation 229 I TR 383 has laid down the following ratio:

> "7. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see 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."

5. In light of the above ratio, we find that this Tribunal is not required to verify any new facts. Therefore, the additional grounds raised are admitted.

6. It would be pertinent to adjudicate Ground No. 8, since it goes to the root of the matter. Ground No 8 reads as under:

> "8. Ground No. 8: On the facts and circumstances of the case & in law, the Learned Assessing Officer ('Ld. AO') erred in issuing the final assessment order under section 147/ 1440(13)/ 143(3) of the Income-tax Act, 1961 ('the Act') dated 15 October 2019 without quoting the mandatory document identification number ('DIN') in conformity with Para-2 and Para-3 of Circular No. 19/2019 dated 14 August 2019 and thus, the said final assessment order deserves to be held as invalid, bad in law and void-ab-initio.:"

7. A perusal of the record shows that the final assessment order along with notice of demand is dated 15.10.2019 and it is an undisputed fact that it has been passed/issued without quoting Document Identification Number [DIN], which is mandatory as per CBDT Circular No. 19/2019 dated 14.08.2019.

8. The ld. DR vehemently stated that DIN was generated but due to upgradation, it was not reflected in the order. It is the say of the ld. DR that the error is not so fatal as to make the assessment order null and void. It would be pertinent to refer to CBDT Circular No. 19/2019 which reads as under:

Government of India

Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

Circular No. 19/2019

New Delhi, dated the 14th August, 20 19

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 Boa rd 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 aud t 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 (herinafter 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 1 51 day of October, 20 19 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 0r 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 avail able 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 comll1unicati on '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 oj 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. (F. No. 225/95/2019-ITA.II)

Sd/-

Sarita Kumari
Director [ITA.II CBDT]"

9. A perusal of the aforementioned Circular clearly shows that the CBDT has considered the exceptional circumstances as mentioned in Para 3 of the Circular and therefore, in our considered opinion, only those circumstances which have been mentioned therein would be considered for non-mentioning of DIN.

10. In Para 3 itself, the Board has made it very clear that in cases where communication is issued manually, it may be done only after obtaining necessary approval of the relevant authorities and communication so issued must indicate the exceptional circumstances provided in the Circular itself. It has been made very clear by the Board that any communication which is not in conformity with Para 2. and 3 of the Circular shall be treated as invalid and shall be deemed to have never been issued.

11. The impugned order is hit by this mandate of the Board and, therefore, we are inclined to adjudicate Ground No. 8 [supra] in favour of the assessee by holding that the order dated 15.10.2019 framed u/s 147/144C(13)/143(3) of the Act is invalid and deemed to have never been issued as it fails to mention DIN in its body by adhering to Circular No. 19/2009 dated 14.08.2019.

12. Ground No. 8 is, accordingly, allowed and without going into merits, the assessment order is treated as null and void.

13. In the result, the appeal of the assessee in ITA No. 1542/DEL/2020 is allowed.

The order is pronounced in the open court on 19.09.2022.

Sd/-	**Sd/-**
[SAKTIJIT DEY**]**	**[N.K. BILLAIYA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 19th September, 2022.

VL/

Copy forwarded to:

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

Asst. 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	
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