

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G': NEW DELHI

BEFORE HON'BLE JUSTICE C.V. BHADANG, PRESIDENT
AND

SHRI G. S. PANNU, HON'BLE VICE PRESIDENT

ITA No.3006/DEL/2022
[Assessment Year: 2015-16]

Smt Sharda Devi Bajaj, Flat No. 83, 8 th floor, Kalpatru, Pinnacle, Goregoan Mulund Link Road, Opp. Inorbit Mall, Goregaon West, Mumbai – 400104 (PAN : ABFPB2232E)	Vs	DCIT, Central Circle-32, New Delhi
Appellant		Respondent

ITA No.3008/DEL/2022
[Assessment Year: 2015-16]

Shri Sunder Lal Bajaj, Flat No. 83, 8 th floor, Kalpatru, Pinnacle, Goregoan Mulund Link Road, Opp. Inorbit Mall, Goregaon West, Mumbai – 400104 (PAN : ABFPB2239Q)	Vs	DCIT, Central Circle-32, New Delhi
Appellant		Respondent

ITA No.3009/DEL/2022
[Assessment Year: 2015-16]

Sunderlal Bajaj HUF, Flat No. 83, 8 th floor, Kalpatru, Pinnacle, Goregoan Mulund Link Road, Opp. Inorbit Mall, Goregaon West, Mumbai – 400104 (PAN : AAAHB65663M)	Vs	DCIT, Central Circle-32, New Delhi
Appellant		Respondent

Assessee by	Sh. Ved Jain, Adv. & Sh. Aman Garg, Adv.
Revenue by	Sh. H.K. Choudhary, CIT-DR

Date of Hearing	07.11.2023
Date of Pronouncement	15.11.2023

ORDER

PER JUSTICE C.V. BHADANG, PRESIDENT:

These appeals can be conveniently disposed off by this common order as all these appeals involve the issue of non-compliance of the CBDT Circular No. 19/2019 dated 14.08.2019. The Appeals may not detain us long, as the issue is covered by several decisions of the Coordinate Benches as well as the jurisdictional High Court.

2. The brief facts are that a search and seizure operation was carried out at the various premises of Bajaj Group and its

associates, and the Directors (hereinafter referred as the Bajaj Group of Cases) on 20.4.2017. Various documents – books of accounts were found and seized and statements of various persons came to be recorded.

3. It appears that there was an order of centralization passed by the concerned Principal Commissioner of Income Tax u/s. 127 of the Income Tax Act, 1961 ('Act' in short). It further appears that the Assessing Officer (AO) of the searched persons recorded his 'satisfaction' that the documents do not belong to the searched persons, but they belong to the assesseees in these appeals. Pursuant to this, it was recorded that action u/s. 153C of the Act is required to be taken and the 'satisfaction note' and relevant documents were handed over to the jurisdictional AO of the appellants-assesseees, who are persons, other than the searched persons. Thereafter a notice u/s. 153C of the said Act was issued directing the Assesseees to file their return of income. The assesseees filed their returns and declared income of Rs. 2,99,950/- (Smt. Sharda Devi Bajaj relevant to ITA No. 3006/Del/20222); Rs.5,05,040/- (Shri Sunder Lal Bajaj relevant to ITA No. 3008/Del/2022) and Rs. 2,56,020/- (Sunder Lal Bajaj HUF relevant to ITA No. 3009/Del/2022). The AO, however, by separate assessment orders dated 07.04.2021 (relevant to ITA No.

3006/Del/20222; ITA No. 3008/Del/2022) and dated 13.04.2021 (relevant to ITA No. 3009/Del/2022) passed u/s. 153C r.w.s. 143(3) of the said Act, assessed the income to be Rs. 17,99,950/-; Rs. 15,05,040/- and Rs. 17,56,020/- respectively pertaining to the assessment year 2015-16 of all the three assessees.

4. Feeling aggrieved, the Assessee carried the matter in Appeals before the Ld. CIT(A) in Appeal No. 10620/2014-15; 10624/2014-15 and 10621/2014-15. The Ld. CIT(A) vide orders dated 24.11.2022, 10.11.2022 and 09.11.2022 respectively has dismissed the Appeals of the assessee. That is how the Assessee are before us.

5. The record disclosed that initially certain grounds have been raised on merits challenging the orders passed by the Ld. CIT(A). The appellants have now filed applications for introducing additional ground of Appeal, which is based on the CBDT Circular No. 19/2019 dated 14.8.2019 claiming therein that the Ground raised is a pure question of law for which the foundational facts are already on record.

6. We have heard the parties and perused records.

7. In so far as the introduction of additional ground based on CBDT Circular dated 14.8.2019 is concerned, we find that it is a

question of law which is based on the material which is already on record and, therefore, the introduction of the additional ground deserves to be allowed. A useful reference in this regard can be made to the decision of the Hon'ble Supreme Court in NTPC vs. CIT (1998) 229 ITR 383 (SC) in which the Hon'ble Supreme Court has *inter alia* held that the view that the Tribunal is confined only to issues arising out of the appeal before the CIT(A) is too narrow a view of the powers of the Appellate Tribunal. It has been held that Tribunal will have a discretion to allow or not to allow new ground to be raised. However, where the Tribunal is only required to consider a 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. Considering the circumstances and the law laid down by the Hon'ble Supreme Court in NTPC vs. CIT (Supra), we allow the introduction of additional ground as prayed.

8. Coming to the merits, of the ground as introduced, the issue is no longer *res integra*, as it is covered by several decisions of the coordinate Bench and in particular the decision dated 19.9.2022 in the case of M/s Brandix Mauritius Holdings Ltd. Vs. DCIT 2022 (11) TMI 34, which has been confirmed by the Hon'ble Delhi Court in the

case of CIT (International Taxation-1), New Delhi vs. M/s Brandix Mauritius Holdings Ltd. 2023 (4) TMI 579.

9. The CBDT vide aforesaid Circular dated 14.8.2019 has mandated, Generation/ Allotment/ Quoting of computer generated Document Identification Number (DIN) in the body of all communications, in the nature of notices/summons/ letters/ correspondences as well as the orders passed. Para 3 of the Circular sets out, exceptional circumstances, in which such communications may be issued manually, with the rider that this shall be done only after recording reasons in writing in the file and with the prior written approval of the Chief Commissioner/Director of Income Tax. Para 4 of the Circular provides that any communication which is not in conformity with the requirement of Para 2 and Para 3 shall be treated as invalid and shall be deemed to have never been issued.

10. In the present case, it is not in dispute and otherwise, it is a matter of record that the order of the Assessing Officer does not bear any DIN.

11. It is not necessary to multiply authorities on the point. However, to the similar effect is the decision of the Hon'ble Bombay High Court in Ashok Commercial Enterprise vs. ACIT in WP Nos. 2595 of 2021 & Ors. Judgement dated 04.09.2023 and the Hon'ble

Kolkata High Court in PCIT vs. M/s Tata Medical Centre Trust in ITAT/202/2023 Judgement dated 26.9.2023.

12. The Hon'ble Bombay High Court has *inter alia* held that subsequent generation of the DIN will not be sufficient as the requirement of the CBDT Circular, is quoting of the DIN, in the body of such communication and / or order.

13. On behalf of the Revenue reliance is placed on the communication dated 17.9.2019 which pertains to the roll out of facility for System generated Document (i.e. Intimation Letter) containing Document Identification number (DIN) for documents issued outside the system but uploaded manually in Income Tax Business Application (ITBA).

14. We are unable to see as to how the said communication can come to the aid of the Revenue. All that the communication states is about the provision of facility for generation of Intimation Letter containing Document Identification Number / Document Number (DIN/DN) for documents issued outside ITBA system but uploaded manually in Income Tax Business Application (ITBA).

15. From para 4 of the communication, it is clear that it pertains to the functionality to capture and uphold the letters, notices and orders issued manually and served on taxpayers by users due to

any exceptional circumstances under Para 3 (i), (ii) and (iii) of the aforesaid Circular dated 14.8.2019. It is not the case made out that there are any exceptional reasons recorded in these appeals as required by the Circular dated 14.8.2019. Thus, in our opinion, the said communication cannot come to the aid of the Revenue in the present Appeals.

16. In that view of the matter, the additional ground as raised has to succeed. In the face of this it is not necessary to go into the merits of other Grounds, as raised.

17. In the result, the Appeals of the Assessee being ITA No. 3006/Del/2022 (Sharda Devi Bajaj AY 2015-16); ITA No. 3008/Del/2022 (Sunder Lal Bajaj AY 2015-16) and ITA No. 3009/Del/2022 (Sunder Lal Bajaj, HUF AY 2015-16) are allowed and the assessment orders are set aside.

The order pronounced through Video Conferencing on 15-11-2023

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Sd/-
(JUSTICE C.V. BHADANG)
PRESIDENT

"SRB"

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi