आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.13/Ind/2023
(Assessment Year:2011-12)

Shri Ishak Kasturbagram S.O. Mundla Nayata, Indore	Vs.	ITO 5(4) Indore
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AKXPI 6044 D		

Assessee by	Shri Milind Wadhwani, AR
Revenue by	Shri Ashish Porwal, Sr. DR
Date of Hearing	21.08.2023
Date of Pronouncement	24.08.2023

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 22.11.2022 of Commissioner of Income Tax(Appeals), National Appeal Centre, Delhi arising from order passed by the AO u/s 154 of the Act for Assessment Year 2011-12. The assesse has raised following grounds of appeal:

> *"1.On the facts and in The circumstances of the case and in law, the Ld. CIT (A) erred in upholding, the action of the Ld. AO in making an addition to the income of assessee to the tune of Rs.1,25,00,000/-.*
>
> *2.On the facts and in The circumstances of the case and in law, the Ld. CIT (A) erred in upholding, the order passed by the Assessing Officer."*

3."On the facts and in The circumstances of the case and in law, the Ld. CIT (A) erred in upholding, the action of the Assessing Officer."

2. Ld. AR of the assesse has submitted that the assesse is an individual and senior citizen of 81 years. The assesse is a farmer and sold his agricultural land for total consideration of Rs.1.25 crore. The AO passed assessment order u/s 147 r.w.section 144 on 24.12.2018 determining the income at Rs.1.25 crore and demand of Rs.51,34,800/- was raised. The ld. AR has pointed out that the assesse was never served with the assessment order dated 24.12.2018 passed by the AO and assessee came to know about the said order only when the AO has passed rectification order u/s 154 on 10.10.2019. He has further contended that the assesse requested the AO to supply the assessment order passed on 24.11.2018 but till date the assesse have not been given the assesemnt order passed by the AO. Further he has submitted that the impugned rectification order passed u/s 154 of the Act is invalid for want of Documents Identification No. (DIN). He has referred to the order passed u/s 154 and submitted that there is no DIN mentioned on the rectification order and the AO subsequently generated the DIN on 14.10.2019 which is placed at page no.9 of the paper book. Thus, the Ld. AR has submitted when the impugned order was passed without mentioning DIN then the same is in violation of the CBDT circular No.19 of 2019 and liable to be quashed. The subsequent generation of DIN without following the procedure prescribed in CBDT circular No.19 of 2019 dated 14th August 2019 would not remove the illegality of the order. In support of his contention he has relied upon various decisions as under:

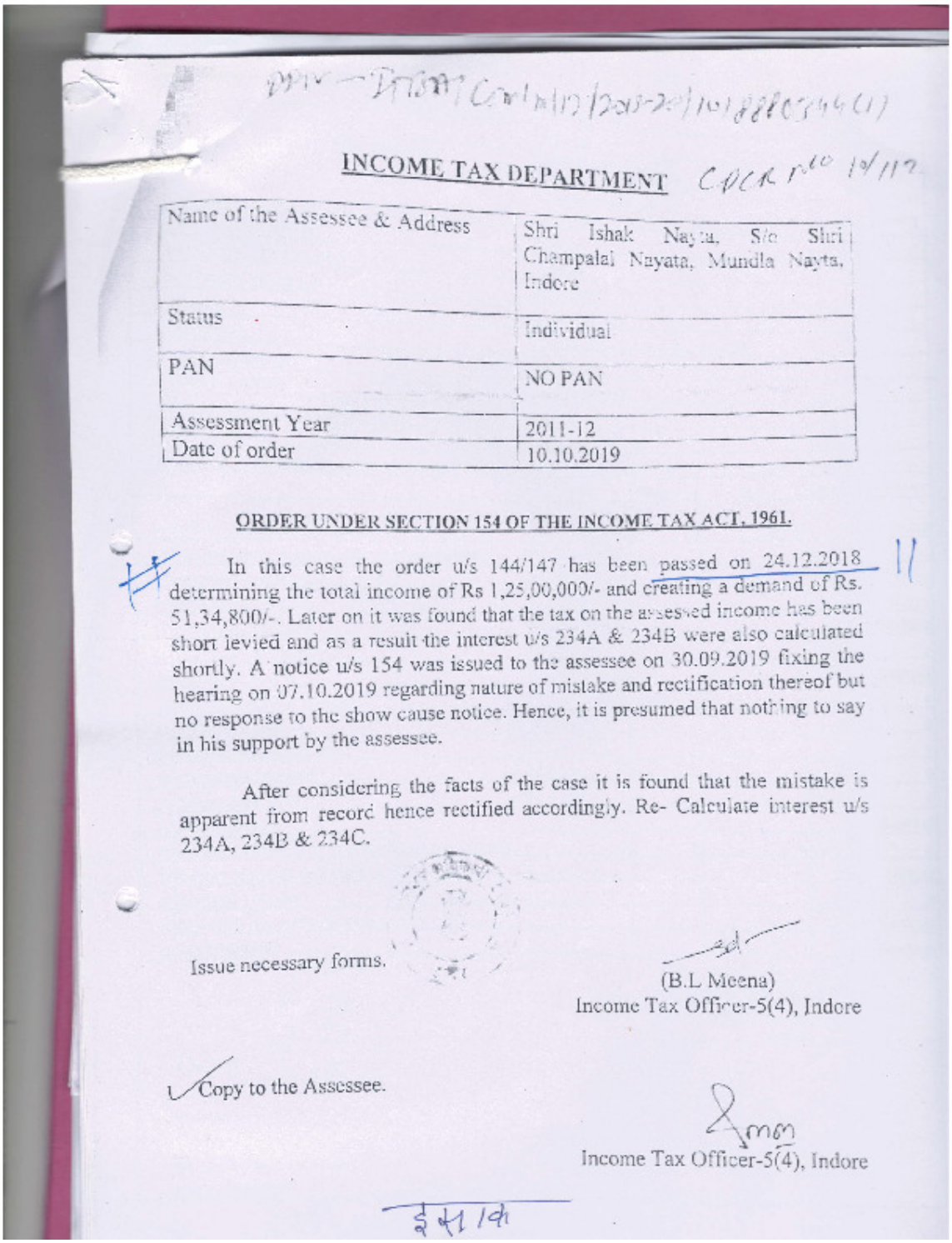
1. *Siddha Venkat Surya Prakasa Rao ITA No. 423/Hyd/2020*
2. *Gerah Enterprises P. Ltd. vs. PCIT ITA No.740/Mum/2021*
3. *Practo Technologies P. Ltd. IT(TP)A No. 154/Bang/2022*
4. *Dilip Kothari vs. PCIT ITA No.s 403-405/Bang/2022*
5. *Pratap Singh Yadav ITA No. 1898/Del/2022(ITAT-Delhi)*
6. *Tata Medical Centre Trust vs. CIT (E) 140 taxmann.com 431*
7. *Sanjay P Kothari vs. ACIT (ITAT-Pune)*
8. *Teleperformance Global Services P. Ltd (ITAT-Mumbai)*
9. *Branding Mauritius Holdings Ltd. vs. DCIT(ITAT-Delhi)*

10. CIT vs. Brandix Mauritius Holdings Ltd.(Delhi High Court) 293 taxmann 385
11. Pradeep Goyal vs. UOI (Supreme Court)

3. The ld. AR has also pleaded that the AO may be directed to supply the assessment order dated 24.12.2018.

4. On the other hand, Ld. DR has submitted that the subject matter of appeal is only the order passed by the AO u/s 154 of the Act. The AO has mentioned in the order passed u/s 154 that it is a case of no PAN and therefore, this case falls in the exceptions as provided in circular No.19 of 2019 and thereafter the AO has generated the DIN on 14th October 2019. He has further submitted that once the AO has generated the DIN and case of the assesse falls in the exception as provided in para 3(iv) of the circular then the conditions provided in the circular are satisfied. He has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as relevant material on record. The AO has passed the order u/s 154 on 10.10.2019 the scan copy of the same is as under:



INCOME TAX DEPARTMENT

Name of the Assessee & Address	Shri Ishak Nayta, S/o Shri Champalal Nayata, Mundla Nayta, Indore
Status	Individual
PAN	NO PAN
Assessment Year	2011-12
Date of order	10.10.2019

ORDER UNDER SECTION 154 OF THE INCOME TAX ACT, 1961.

In this case the order u/s 144/147 has been passed on 24.12.2018 determining the total income of Rs 1,25,00,000/- and creating a demand of Rs. 51,34,800/-. Later on it was found that the tax on the assessed income has been short levied and as a result the interest u/s 234A & 234B were also calculated shortly. A notice u/s 154 was issued to the assessee on 30.09.2019 fixing the hearing on 07.10.2019 regarding nature of mistake and rectification thereof but no response to the show cause notice. Hence, it is presumed that nothing to say in his support by the assessee.

After considering the facts of the case it is found that the mistake is apparent from record hence rectified accordingly. Re- Calculate interest u/s 234A, 234B & 234C.

Issue necessary forms.

(B.L Meena)
Income Tax Officer-5(4), Indore

Copy to the Assessee.

Income Tax Officer-5(4), Indore

6. It is clear from the order passed u/s 154 that this order does not bear DIN no. which was subsequently generated by the AO on 14.10.2019. At the time of passing the impugned order there was no DIN.

Vide circular no.19/20019 dated 14.08.2019 the CBDT decided that no communication shall be issued by any income tax authorities relating to assessment, penalty, statutory or otherwise etc. unless the computer generated documents identification no. (DIN) has been allotted and is duly quoted in the body of such communication. Any communication which is not inconformity with DIN shall be treated as invalid and shall be deemed to have never been issued. It is pertinent to note that this issue has been considered by this Tribunal in a series of decisions by the Hon'ble High Court of Delhi as well as Hon'ble Supreme Court as relied upon by the assesse. Delhi Benches of the Tribunal in case of *Brandix Mauritius Holdings Ltd., vs DCIT* (*ITA No. 1542/Del/2020* dated 19.09.2022 has considered this issue in para 7 to 11 as under:

> *"7. 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 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." Sd/- (Sarita Kumari) Director (ITA.II)CBDT." 8. 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. 9. We also notice that the Calcutta 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 (Chattisgarh) 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 assessees 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." 10. 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). 11. In assessee's case there is no dispute about the fact that the order dated 31.10.2019 has been issued manually. The circular is very clear that 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.92CA, 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 order dated 31.10.2019 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 Kolkata and Delhi Benches of the Tribunal, we hold that the orders passed u/s.92CA dated 31.10.2019 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. Accordingly the TP adjustment made through an invalid order is also rendered invalid and deleted.

7. Thus, the Delhi Tribunal while deciding this issue has considered the CBDT Circular no.19 of 2019 along with exceptions provided in para 3 of the said circular. The said decision of the Tribunal has been upheld by the Hon'ble Delhi High Court reported in 293 taxmann 385 in para 4 to 21.11 as under:

"4. The 2019 Circular also sets out certain circumstances in which exceptions can be made. These circumstances are categorically referred to in paragraph 3 of the 2019 Circular. For the sake of convenience, paragraph 3, in its entirety, is extracted hereafter:

"3. In exceptional circumstances such as, -

(i) when there are technical difficulties in generating/ allotting/ quoting the DIN and issuance 0f 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 nonjurisdictional 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 .. .. "

5. It is relevant to note that insofar as the exceptions given in paragraph 3 (i), (ii) and (iii) are concerned, the specified authority is required to take steps to regularise the failure to quote DIN within fifteen (15) working days. The manner in which regularisation is to take place is set out in paragraph 5. Once again, for the sake of convenience, the relevant part of paragraph 5 of the 2019 Circular is extracted hereafter:

"5. The communication issued manually in the three situations specified in para 3- (i), (ii) or (iii) above shall have to be regularized 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. Furthermore, the 2019 circular, in paragraph 6, states that the intimation of issuance of manual communication, for the reasons mentioned in paragraph 3(v), shall be sent to the Principal Director General of IncomeTax (Systems) within seven (7) days from the date of its issuance.

7. As a matter of fact, paragraph 7 of 2019 Circular mandates alignment of all pending assessment proceedings, where notices were issued manually, prior to the issuance of the said circular, by having them uploaded in the system by the date given therein, i.e., 31.10.2019.

8. Therefore, any communication which is not in conformity with the provisions of paragraph 2 and 3 of the 2019 Circular is to be treated as invalid, as if it was never issued [See paragraph 4 of the 2019 Circular1].

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 3(i) 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 .. .. "

8.3 As indicated hereinabove, insofar as communications falling in circumstances alluded to in paragraph 3(i) to 3(iii) are concerned, the process of regularization in the manner indicated in paragraph 5, should take place within fifteen (15) working days of its issuance.

This period of regularization with regard to the circumstance referred to in paragraph 3(v) is reduced to seven (7) days, and is required to be marked to the Principal Director General of Income-Tax (Systems) [See paragraph 6 of the 2019 Circular2].

9. In the instant case, there is nothing on record to show that, according to the appellant/revenue, failure to allocate DIN arose out of the "exceptional circumstances" which are set forth in paragraph 3 of the 2019 Circular. It is, however, the case of the appellant/revenue, both before this court and before the Tribunal, that failure to allocate DIN was a mere mistake. Using this as the foundation, the argument put forth before us is that the mistake can be corrected by taking recourse to Section 292B of the Income Tax Act, 1961 [in short, "the Act"].

10. Mr Puneet Rai, learned senior standing counsel who appears on behalf of the appellant/revenue, says that the circular only applies to the communications emanating from the revenue, and not vis-à-vis the substantive orders passed qua the assessee.

10.1 It is Mr Rai's contention that the failure to generate and allocate DIN in this case is a mistake or at best, a defect and/or an omission, which ought not to invalidate the assessment proceedings.

10.2 In support of this plea, Mr Rai has referred to the judgment of the coordinate bench in CIT v. Jagat Novel Executives Pvt. Ltd., [2013] 356 ITR 562.

11. Mr Ajay Vohra, learned senior counsel who appears on behalf of the respondent/assessee, contends to the contrary. It is his contention that the 2019 Circular is binding on the revenue.

11.1 Mr Vohra also submits that the error is jurisdictional in nature and therefore, cannot be corrected by taking recourse to Section 292B of the Act.

11.2 In support of his plea that the 2019 Circular is binding on the revenue, Mr Vohra has relied on the following judgments:

i. UCO Bank v. CIT, [1999] 237 ITR 889 (SC);

ii. Ellerman Lines Ltd. v. CIT, [1971] 182 ITR 913 (SC); and

iii. DCIT v. Sunita Finlease Ltd., [2011] 330 ITR 491

11.3 Furthermore, to back his contention that recourse cannot be taken to the provisions of Section 292B of the Act, reliance is placed on the following judgments:

i. PCIT v. Maruti Suzuki India Ltd. v. CIT, ITA No. 475 of 2011 (Del); and

ii. Spice Entertainment Ltd. v. CIT, ITA No. 475 of 2011 (Del).

12. We have heard learned counsel for the parties. The present appeal is preferred under Section 260A of the Act. The Court's mandate, thus, is to consider whether or not a substantial question of law arises for consideration.

12.1 As noted above, the impugned order has not been passed on merits.

13. The Tribunal has applied the plain provisions of the 2019 Circular, based on which, it has allowed the appeal preferred by the respondent/assessee.

14. The broad contours of the 2019 Circular have been adverted to by us hereinabove.

14.1 Insofar as the instant case is concerned, admittedly, the draft assessment order was passed on 30.12.2018.

15. The respondent/assessee had filed its objections qua the same, which were disposed of by the Dispute Resolution Panel [DRP] via order dated 20.09.2019.

16. The final assessment order was passed by the Assessing Officer (AO) on 15.10.2019, under Section 147/144(C)(13)/143(3) of the Act. Concededly, the final assessment order does not bear a DIN. There is nothing on record to show that the appellant/revenue took steps to demonstrate before the Tribunal that there were exceptional circumstances, as referred to in paragraph 3 of the 2019 Circular, which would sustain the communication of the final assessment order manually, albeit, without DIN.

16.1 Given this situation, clearly paragraph 4 of the 2019 Circular would apply.

17. Paragraph 4 of the 2019 Circular, as extracted hereinabove, decidedly provides that any communication which is not in conformity with paragraph 2 and 3 shall be treated as invalid and shall be deemed to have never been issued. The phraseology of paragraph 4 of the 2019 Circular fairly puts such communication, which includes communication of assessment order, in the category of communication which are non-est in law.

17.1 It is also well established that circulars issued by the CBDT in exercise of its powers under Section 119 of the Act are binding on the revenue.

17.2 The aforementioned principle stands enunciated in a long line of judgements, including the Supreme Court's judgment rendered in K.P. Varghese v. Income Tax Officer, Ernakulam and Anr., (1981) 4 SCC 173. The relevant extracts are set forth hereafter:

"12. But the construction which is commending itself to us does not rest merely on the principle of contemporanea expositio. The two circulars of the Central Board of Direct Taxes to which we have just referred are legally binding on the Revenue and this binding character attaches to the two circulars even if they be found not in accordance with the correct interpretation of sub-section (2) and they depart or deviate from such construction. It is now well settled as a result of two decisions of this Court, one in Navnitlal C. Javeri v. K.K. Sen [AIR 1965 SC 1375 : (1965) 1 SCR 909 : 56 ITR 198] and the other in Ellerman Lines Ltd. v. CIT [(1979) 4 SCC 565] that circulars issued by the Central Board of Direct Taxes under Section 119 of the Act are binding on all officers and persons employed in the execution of the Act even if they deviate from the provisions of the Act. The question which arose in Navnitlal C. Javeri case [AIR 1965 SC 1375 : (1965) 1 SCR 909 : 56 ITR 198] was in regard to the constitutional validity of Sections 2(6-A)(e) and 12(1-B) which were introduced in the Indian Income Tax Act, 1922 by the Finance Act, 1955 with effect from April 1, 1955. These two sections provided that any payment made by a closely held company to its shareholders by way of advance or loan to the extent to which the company possesses accumulated profits shall be treated as dividend taxable under the Act and this would include any loan or advance made in any previous year relevant to any assessment year prior to Assessment Year 1955-56, if such loan or advance remained outstanding on the first day of the previous year relevant to Assessment Year 1955-56. The constitutional validity of these two sections was assailed on the ground that they imposed unreasonable restrictions on the fundamental right of the assessee under Article 19(1)(f) and (g) of the Constitution by taxing outstanding loans or advances of past years as dividend. The Revenue however relied on a circular issued by the Central Board of Revenue under Section 5(8) of the Indian Income Tax Act, 1922 which corresponded to Section 119 of the present Act and this circular provided that if any such outstanding loans or advances of past years were repaid on or before June 30, 1955, they would not be taken into account in determining the tax liability of the shareholders to whom such loans or advances were given. This circular was clearly contrary to the plain language of Section 2(6-A)(e) and Section 12(1-B), but even so this Court held that it was binding on the Revenue and since:

"past transactions which would normally have attracted the stringent provisions of Section 12(1-B) as it was introduced in 1955, were substantially granted exemption from the operation of the said provisions by making it clear to all the companies and their shareholders that if the past loans were genuinely refunded to the companies they would not be taken into account under Section 12(1-B)," Sections 2(6-A)(e) and 12(1-B) did not suffer from the vice of unconstitutionality. This decision was followed in Ellerman Lines case [(1972) 4 SCC 474 : 1974 SCC (Tax) 304 : 82 ITR 913] where referring

to another circular issued by the Central Board of Revenue under Section 5(8) of the Indian Income Tax Act, 1922 on which reliance was placed on behalf of the assessee, this Court observed: "Now, coming to the question as to the effect of instructions issued under Section 5(8) of the Act, this Court observed in Navnitlal C. Javeri v. K.K. Sen, Appellate Assistant Commissioner, Bombay [AIR 1965 SC 1375 : (1965) 1 SCR 909 : 56 ITR 198] : „It is clear that a circular of the kind which was issued by the Board would be binding on all officers and persons employed in the execution of the Act under Section 5(8) of the Act. This circular pointed out to all the officers that it was likely that some of the companies might have advanced loans to their shareholders as a result of genuine transactions of loans, and the idea was not to affect such transactions and not to bring them within the mischief of the new provision." The directions given in that circular clearly deviated from the provisions of the Act, yet this Court held that the circular was binding on the Income Tax Officer." The two circulars of the Central Board of Direct Taxes referred to above must therefore be held to be binding on the Revenue in the administration or implementation of sub-section (2) and this sub-section must be read as applicable only to cases where there is understatement of the consideration in respect of the transfer." [Emphasis is ours]

17.3 Also see the following observations of a coordinate bench in Back Office IT Solutions Pvt. Ltd. v. Union of India, 2021 SCC OnLine Del 2742, in the context of the impact of circulars issued by the revenue:

"24....In this context, tax administrators have to bear in mind the wellestablished dicta that circulars issued by the statutory authorities are binding on them, although, they cannot dictate the manner in which assessment has to be carried out in a particular case. A Circular cannot be side-stepped causing prejudice to the assessee by bringing to naught the object for which it is issued. [See: K.P.Varghese vs. Income-tax Officer1, [1981] 7 Taxman 13 (SC); Also see: UCO Bank, Calcutta v. Commissioner of Income Tax, W.B., (1999) 4 SCC 599]."

18. The argument advanced on behalf the appellant/revenue, that recourse can be taken to Section 292B 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 alia, 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.

8. The Hon'ble High Court held that the assessment order without DIN can have no standing in law. Further an identical issue has been considered by the Hon'ble Supreme Court in case of *Pradeep Goyal vs. UOI and others (supra)* and held in para 4 to 7 as under:

"4. We have heard Ms. Charu Mathur, learned counsel appearing on behalf of the petitioner and Shri Balbir Singh, learned ASG appearing on behalf of Union of India.

5. By way of this writ petition under Article 32 of the Constitution of India, the petitioner has prayed for the following reliefs:-

"a. Issue a writ of mandamus or any other appropriate writ, order or direction to the respondents to take all necessary steps to implement a system for electronic (digital) generation of a Document Identification Number(DIN) for all communications sent by the state tax officers to taxpayers and other concerned persons;

b. Issue a writ of mandamus or any other appropriate writ, order or direction to the GST Council to consider and take a policy decision in respect of implementation of DIN system by all the states;

c. Issue a writ of mandamus or any other appropriate writ, order or direction to the Central Government/CBIC to introduce centralised DIN for the entire country;

d. pass such further order(s) as may be deemed fit and proper in facts and circumstances of the present case, in the interest of justice."

6. It cannot be disputed that implementing the system for electronic (digital) generation of a Document Identification Number (DIN) for all communications sent by the State Tax Officers to taxpayers and other concerned persons would be in the larger public interest and enhance good governance. It will bring in transparency and accountability in the indirect tax administration, which are so vital to efficient governance. Even the Central Government has also taken a decision and as such implemented the DIN system of Central Board of Direct Taxes and on and from 01.10.2019, as every CBDT communication will have to have a Document Identification Number (DIN). But, as on today, only two States, namely, the States of Karnataka and Kerala have implemented the system for electronic (digital) generation of a DIN in the indirect tax administration, which is laudable and to be appreciated.

7. In view of the implementation of the GST and as per Article 279A of the Constitution of India, the GST Council is empowered to make recommendations to the States on any matter relating to GST. The GST Council can also issue advisories to the respective States for implementation of the DIN system, which shall be in the larger public interest and which may bring in transparency and accountability in the indirect tax administration. Therefore, we dispose of the present writ petition by directing the Union of India / GST Council to issue advisory / instructions / recommendations to the respective States regarding implementation of the system of electronic (digital) generation of a DIN in the indirect tax administration, which is already being implemented by the States of Karnataka and Kerala. We impress upon the concerned States to consider to implement the system for electronic (digital) generation of a DIN for all communications sent by the State Tax Officers to taxpayers and other concerned persons so as to bring in transparency and accountability in the indirect tax administration at the earliest.

With this, the present writ petition stands disposed of. Registry is directed to send copy of this order to the Chief Secretary of all the Respondent States in the Country to take note of the present order and take further steps in the matter."

9. Accordingly when the AO has not followed the procedure as provided in the circular no.19 of 2019 in para 2 then even if the present case falls in the exceptions under para 3(v) being no PAN case the order passed by the AO u/s 154 is invalid. The subsequent generation of DIN by the AO on 14th October 2019 would not change the illegality of the order

when the procedure provided under para 2 of the circular is not followed by the AO. Hence following the earlier decision of this tribunal as well as the decision of the Hon'ble Delhi High Court in case of CIT vs. *Brandix Mauritius Holdings Ltd.*,(supra) the impugned order passed by the AO u/s 154 of the Act is invalid and the same is quashed. The assesse has stated that the order passed by the AO u/s 147 r.w. section 144 dated 24.12.2018 has not been received by the assesse and therefore, he could not avail the remedy under the law. We direct the AO to supply the assessment order dated 24.12.2018 to the assesse within the period of one months from the date of receipt of this order.

10. In the result, the appeal filed by the assesse is allowed.

Order pronounced in the open court on 24.08.2023.

Sd/- **sd/-**

(B.M. BIYANI) **(VIJAY PAL RAO)**
Accountant Member Judicial Member

Indore, 24 .08.2023

Patel/Sr. PS

Copies to: *(1)* *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore