

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

**Before Shri Sanjay Garg, Judicial Member
and Shri Rajesh Kumar, Accountant Member**

I.T.A. No.1184/Kol/2023
Assessment Year: 2014-15

Dhanterash Sales Pvt. Ltd.....Appellant
229, AJC Bose Road,
Kolkata – 700020.
[PAN: AADCD2722L]

vs.

ITO, Ward-12(1), Kolkata.....Respondent

Appearances by:

Shri Akkal Dudhewala, AR, appeared on behalf of the appellant.

Shri Abhijit Kundu, CIT- DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 21, 2024

Date of pronouncing the order : February 26, 2024

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 01.11.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. For that on the facts and in the circumstances of the case, the impugned order dated 23.12.2019 passed by the A.O was served upon the appellant only on 15.02.2020 and therefore the same being barred by limitation deserves to be quashed.

2. (a) For that on the facts and in the circumstances of the case, the Ld. CIT(A) grossly erred in confirming the AO's action of in making addition to the tune of Rs.9,09,15,394 by way of unexplained expenditure u/s 69C of the Act and the same be directed to be deleted in full.

(b) For that on the facts and in the circumstances of the case, the authorities below failed to appreciate that the alleged difference in figures of consumption of cotton, viscose Fiber, polyester had occurred solely on account of incorrect arithmetical adjustment of the stock values in as much

as there was no discrepancy whatsoever and therefore the impugned addition deserves to be deleted.

3. For that the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before.”

3. The assessee has also taken the following additional grounds of appeal:

“We have filed an appeal against the order passed u/s 143(3) read with Section 263 by the Income Tax Officer, Ward 12(3), Kolkata dated 23.12.2019 for the A.Y. 2014-15. In the appeal filed in ITA No. 1184/Kol/2023, the company has challenged the addition of Rs.9,09,15,394/- made in the impugned assessment order passed pursuant to the order dated 30.01.2019 issued by -Ld. Pr. CIT-4, Kolkata setting aside the assessment order passed u/s 143(3) of the Act dated 13.05.2016. In this regard we wish to file additional grounds of appeal which is enclosed with this letter.

The additional grounds do not need any verification of facts and are purely jurisdictional & legal issues. We therefore, request your Honour to kindly admit the additional grounds and decide on merits. In respect of the above proposition, we rely on the following decisions:

- *National Thermal Power Co. Ltd. Vs. CIT 229 ITR 383 (SC)*
- *Jute Corporation Of India Ltd. 187 ITR 688 (SC)*
- *Ahmedabad Electricity Co. Ltd. 199 ITR 351 (Bom) (FB)*

In view of the above, we request your Honour to kindly consider our additional ground of appeal and decide on merits.”

4. A perusal of the above grounds of appeal would reveal that apart from challenging the additions made/confirmed by the lower authorities on merits, the assessee has also assailed the validity of the assessment order framed by the Assessing Officer on two legal grounds. Firstly, that the assessment order is bad in law as no DIN number has been mentioned in the body of the order in violation of the CBDT Circular No.19 of 2019; secondly that the assessment order in this case was barred by limitation as the assessment order was served upon the assessee on 15.02.2020 and that the facts and circumstances suggest that the order was passed after 31.12.2019, which was the last date

prescribed as per provisions of the Act for passing of the impugned assessment order.

5. In view of the above legal grounds and after hearing the ld. representatives of the parties, this Tribunal has passed the following order on 04.04.2024:

“The ld. Counsel for the assessee has submitted that in this case, prima facie, the impugned order was passed by the Assessing Officer after the limitation period. That the Assessing Officer was supposed to pass order by 31.12.2019, however, the order was dispatched by the Income Tax Department to the assessee on 14.02.2020. He has further pointed out that even no DIN has been mentioned on the assessment order. He therefore, has submitted that the above facts and circumstances show that the order was passed after the limitation period. The ld. Counsel has contended that, had the Assessing Officer passed the order on or before 31.12.2019, the Assessing Officer might have generated DIN number, though the same may or may not be communicated to the assessee and further that the Assessing Officer should have emailed the order to the assessee on the said date or at least uploaded the same on the Income Tax portal. The ld. DR wants to consult assessment record in this respect. The remaining arguments on merits have been heard. Case is kept part-heard for verification of the aforesaid issue raised by the ld. Counsel for the assessee. The ld. DR is to verify the aforesaid contention of the assessee from assessment record and to make a submission on the next date of hearing. Adjourned to 06.02.2024 as part-heard.”

6. In compliance of the aforesaid directions issued by this Tribunal vide order dated 04.01.2024, the ld. DR has produced on file, the copy of the letter dated 05.02.2024 of the concerned Income Tax Officer, the contents of which, for the sake of ready reference, are reproduced as under:



OFFICE OF THE INCOME TAX OFFICER WARD 12(1), KOLKATA
आयकर भवन पी. 7, चौरिंगी स्क्वायर, 7 तल्ला, कोलकाता - 700069.
Aayakar Bhawan, P-7, Chowringhee Square, 7th Floor, Kolkata - 69.

F. No. ITO,W-12(1)/Kol./Asst. Record/ 2023-24/ 542

Dated : 05.02.2024

To
The CIT(DR),
ITAT-3, B Bench,
Kolkata
225, A J C Bose Road, 6th Floor,
Kolkata-700020

Sir,

Sub: Order of the Hon'ble 'B' Bench, ITAT, Kolkata in the case of
Dhanterash Sales Pvt. Ltd for the AY 2014-15, ITA No.1184/Kol/2023
- Reg.
Ref: F. No.CIT(DR)/ITAT-3/Kol/ITA No.1184/ Kol/2023/2023-24/2114
dated 04.01.2024

Kindly refer to the above.

This is to inform you that the order u/s.143(3)/263 was passed manually on 23.12.2019 for which computation was generated through ITD System. For this reason DIN is not available in this case in the system of ITD. The respective record for the AY 2014-15 containing the assessment order u/s.143(3)/263 dated 23.12.2019 is sent to you for your kind perusal. The assessment order u/s.143(3)/263 dated 23.12.2019 was sent to the assessee through postal department vide Postal Tracking Number -EW236466055IN dated 21.01.2020 and the evidence of the same is forwarded to you along with assessment folder for your kind perusal.

Encl: Asst. Folder in one PART
for the AY 2014-15

Yours faithfully,

PRAFULLA KUMAR MALAKAR
Income Tax Officer Ward - 12(1), Kolkata

प्रफुल्ल कुमार मालाकार
PRAFULLA KUMAR MALAKAR
आयकर अधिकारी, घाट-12(1), कोलकाता
Income Tax Officer
Ward-12(1), Kolkata

7. A perusal of the above letter of the Assessing Officer/Income Tax Officer would reveal that despite expressed instruction of the CBDT, no DIN number was generated by the Assessing Officer and hence there was

no mention of the DIN number either in the body of the order or any other covering letter etc. The Coordinate Kolkata Bench of the Tribunal in the case of 'Tata Medical Centre Trust vs. CIT' reported in (2022) 140 taxmann.com 431 (Kolkata-Trib.) taking note of the CBDT Circular No.19 of 2019 has observed that where the impugned order was passed by the concerned Income Tax authorities manually without Document Identification Number (DIN) in its body, the said order would be invalid and deemed to have never been issued. The aforesaid view has been further affirmed by the Hon'ble Delhi High Court in the case of 'CIT (International Taxation) v. Brandix Mauritius Holdings Ltd.' reported in (2023) 456 ITR 34/ 293 Taxman 385 (Delhi)(HC). However, we have been apprised that the order of the Hon'ble Delhi High Court in the case of 'CIT (International Taxation) v. Brandix Mauritius Holdings Ltd.' (supra) has been stayed by the Hon'ble Supreme Court vide order dated 03.01.2024 reported in [2024] 158 taxmann.com 247 (SC). Therefore, without further deliberating on the issue of the validity of the assessment order for want of DIN number, we proceed to consider the other legal ground raised by the assessee that the assessment order otherwise is barred by limitation.

7.1 In this case, as per the averments, the order was dispatched by the Income Tax Department to the assessee on 14.02.2020. As observed above, the Assessing Officer has not generated the DIN and the order was issued manually against mandate of the CBDT Circular No.19 of 2019. As communicated by the Assessing Officer vide letter dated 05.02.2024 (supra), the order for the first time was sent to the assessee through postal department on 21.01.2020, whereas, the claim of the assessee is that the order was dispatched to the assessee on 14.02.2020 and delivered on 15.02.2020. The ld. counsel in this respect has relied upon the photocopy of the

envelope as well as 'Track Consignment' information with Consignment No.EW236466055IN available online on the postal department, which shows that the order was dispatched by the postal department for delivery to the assessee on 14.02.2020. A perusal of the letter of the Assessing Officer/ITO would reveal that the Assessing Officer has also mentioned the same consignment number, therefore, as per the record available, the postal consignment containing the impugned assessment order was bagged and booked on 14.02.2020. Even if we assume the date of dispatch as mentioned by the Assessing Officer was 21.01.2020, even then, the same was dispatched after the last date of passing of the assessment order. No doubt, for counting of limitation, the date of dispatch of the order would not be relevant if it is proved on the file that the order was passed by the Assessing Officer before the expiry of the limitation period for the same. We had directed the CIT-DR/Assessing Officer to clarify the position in this respect and circumstantial evidences which appears on record suggest that the order was passed by the Assessing Officer after the expiry of the period of limitation. The relevant factor is that the Assessing Officer did not generate any DIN number despite the mandate of the CBDT vide Circular No.19 of 2019 in this respect. Had the Assessing Officer passed the order before 31.12.2019, he would have generated the DIN Number which would also bear the date of its generation and it would have been an evidence of the fact that the order was passed on such date. Even the impugned assessment order was neither uploaded on the Income Tax Portal nor the same was sent to the assessee through online mode i.e. by email etc. It has not been clarified by the Department that what prevented the Assessing Officer from generating the DIN number or serve the order upon the assessee through email, whereas, such a recourse of

uploading the order on portal and sending the same through electronic mode is adopted generally in almost every case. The order as per the records of the postal department for the first time was dispatched/booked on 14.02.2020. All the above noted relevant factors would show that the order was not passed by the Assessing Officer within the stipulated period, therefore, he did not adopt the regular practice of generating DIN number, uploading the order on the Income Tax website or portal and sending the order through email. There is no evidence on the file either direct or indirect or even circumstantial to show that the order was passed by the Assessing Officer on or before the last date of limitation for the same i.e. on 31.12.2019. Therefore, we have no hesitation to hold that the assessment order in this case is time-barred. The assessee succeeds on this legal ground.

8. Even on merits of the case, the impugned additions have been made by the Assessing Officer on account of difference in figures of consumption of cotton, viscose, fibre, polyester as the Assessing Officer observed that there was excess claim of expenditure on account of purchase of Rs.9,09,15,394/-.

9. The ld. counsel for the assessee in this respect has explained that the difference was on account of return of the excess purchases of cotton. The ld. counsel in this respect has explained from the record that the opening stock of cotton was Rs.9.09 crores and purchases during the year were Rs.9.40 crores, out of which the purchases returned were of Rs.9.09 crores and thus the total net purchase was of Rs.9.40 crores. The ld. counsel has submitted in this respect that the auditor has made a mistake by deducting/reducing the return of excess purchase of cotton from staple fibre instead of cotton. However, the total purchases of the

assessee of all the materials duly matched and there is no difference of purchases. The ld. counsel has duly demonstrated the aforesaid contention by referring to reconciliation statement vis-à-vis accounts of the assessee which have been examined by us. In view of this, even on merits, the addition made by the Assessing Officer is not sustainable and the same is accordingly ordered to be deleted.

10. In the result, the appeal of the assessee stands allowed.

Kolkata, the 26th February, 2024.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 26.02.2024.

RS

Copy of the order forwarded to:

1. Dhanterash Sales Pvt. Ltd
2. ITO, Ward-12(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches