

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 109/Ahd/2022
Assessment Year 2017-18**

M/s. Nova Properties Private Limited, 51, Sadbhav Complex, Near Drive-in-Cinema, Ahmedabad-380054 PAN: AABCN4138N (Appellant)	Vs	The Pr.CIT-3, Ahmedabad (Respondent)
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**Assessee Represented: Shri Vartik Chokshi, A.R.
Revenue Represented: Shri Sudhendu Das, CIT-DR**

Date of hearing : 31-10-2023
Date of pronouncement : 08-11-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the Revision order dated 30.03.2022 passed by the Principal Commissioner of Income Tax (Appeals)-3, Ahmedabad arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2017-18.

2. The brief facts of the case is that the assessee is Private Limited Company engaged in Real Estate Business and Development of Commercial Project called "Titanium-1". For the Assessment Year 2017-18, the assessee filed its Return of Income declaring total income of Rs. 5,50,49,400/- and book profit of Rs. 8,68,04,958/- under Minimum Alternative Tax (MAT). The Return of Income was taken up for scrutiny assessment, to verify the sales turnover since higher turnover reported in Service Tax Return as compared to Income Tax Return and also to verify the earning of exempt income. The Assessing Officer issued show cause notices u/s. 142(1) on 18.06.2019, 30.08.2019, 18.10.2019 and considered the submissions of the assessee and accepted the income returned by the assessee by passing regular assessment order u/s. 143(3) of the Act dated 22.11.2019.

2.2. On perusal of the above assessment order by the Ld. PCIT, the same is found to be erroneous in so far as it is prejudicial to the interest of Revenue on the wrong disallowance u/s. 14A and consequently normal provision of Income Tax could be applicable and not that of MAT. Therefore a show cause notice dated 02.03.2022 was issued to the assessee calling for his explanation, by fixing the case for hearing on 08.03.2022. It is stated in the show cause notice that the above Revision proceedings is getting time bar on 31.03.2022, hence the assessee was required to comply with the SCN by the given date and time, failing which Revision proceedings shall be finalized on the basis of the material available on record and merits of the case and no adjournment will be granted to the assessee.

2.3. The assessee vide its detail reply submitted its objection on the Revision proceedings. After considering the same, Ld. PCIT set aside the assessment with a direction to the Assessing Officer to recompute the disallowance u/s. 14A r.w. Rule 8D after giving opportunity to the assessee.

3. Aggrieved against this Revision order, the assessee is in appeal before us. Ld. Counsel Mr. Vartik Chokshi appearing for the assessee raised preliminary objection before us that both the show cause notice dated 02.03.2020 and Revision order dated 30.03.2022 passed by the Ld. PCIT does not carry Documents Identification Number (hereafter referred to as 'DIN'). Therefore as per CBDT Circular No. 19/2019 dated 14.08.2019, the above Revision proceedings itself is invalid in law and the entire Revision proceedings are liable to be quashed.

4. Per contra, ld. CIT-DR Shri Sudhendu Das appearing for the Revenue sought time to get necessary instructions on the non-issuance of DIN No. Hence the above appeal is adjourned to 30.10.2023. The Ld. CIT-DR received instructions from the Office of the PCIT-3, Ahmedabad vide letter dated 26.10.2023. Relevant portion of the letter is produced herein below:

".....3. The main issue raised by the assessee i.e. M/s Nova Properties Private Limited is that the notice issued u/s 263 and order passed u/s 263 of the Income-tax Act, 1961 does not bear DINS on the face of notice/order. In this case, notice u/s 263 of the Income-tax Act, 1961 was issued on ITBA (Income-tax Business Application). A DIN (Document Identification Number) bearing no. ITBA/REV/M/REV1/2021-22/1040270718(1) was generated on 02.03.2022. The generated DIN alongwith notice u/s 263 of the Income-tax Act, 1961 as Annexure was communicated to the assessee. The same was visible to the assessee on its E-filing portal. The DIN generated intimation letter alongwith notice was also duly issued to the assessee through speed post bearing no.

EG223084503IN on 03.03.2022. It is worthwhile to mention here that the assessee has submitted its reply through E-filing portal giving reference to notice dated 02.03.2022 having DIN no. ITBA/REV/M/REV1/2021-22/1040270718(1). Hence, it is evident that the assessee has received notice through ITBA. Copy of the E-proceedings Response Acknowledgement is enclosed herewith for ready reference.

4. Similarly, the order u/s 263 of the Income-tax Act, 1961 was also passed and uploaded on ITBA (Income-tax Business Application). A DIN (Document Identification Number) bearing no. ITBA/REV/M/REV5/2021-22/1042203098(1) was generated. The generated DIN alongwith order u/s 263 of the Income-tax Act, 1961 as Annexure was communicated to the assessee. The same was visible to the assessee on its E- filing portal. The DIN generated intimation letter alongwith order was also duly issued to the assessee through speed post bearing no. EG390393920IN on 31.03.2022.

5. In this connection, I am directed to enclose herewith copy of intimation letter for hearing notice, copy of intimation letter for order, copy of speed post register vide which notice and order were dispatched to the assessee.”

4.1. Thus Ld. CIT-DR submitted that though the show cause notice was not carrying the DIN, it was generated on 02.03.2022 itself and communicated to the assessee physically by Speed Post on 03.03.222. Further the assessee in reply to the show cause uploaded in the Income Tax Business Application (ITBA) has clearly mentioned the above DIN. Similarly, the assessee was communicated on 31.03.2022, the DIN relating to the Revision order u/s. 263 dated 30.03.2022. Thus pleaded DIN No. though were not being generated in the show cause notice and the Revision order, the same were being generated later and communicated to the assessee. Therefore the SCN and Revision orders are valid in law.

5. Per contra, the Ld. Counsel appearing for the Assessee drawn our attention to the CBDT Circular No. 19/2019 wherein clause (4)

makes it very clear that any notice or order without DIN number shall be treated as invalid and shall be deemed to have never been issued. The assessee's case does not fall under the five exemption circumstances in which DIN could not be provided as mentioned in Para 3 of the above Circular. Further other conditions mentioned in the above circular or not followed by the Office of the PCIT. Thus the entire proceedings is invalid in law and the same deemed to have never been issued to the assessee and hence the entire Revision proceedings is liable to be quashed.

5.1. In support of his arguments, the Ld. Counsel placed before us unreported judgments of the Calcutta High Court in the case of PCIT Vs. Tata Medical Centre Trust in ITA No. 202 of 2023 dated 26.09.2023 and Delhi High Court judgment in the case of CIT (International Taxation) Vs. Brandix Mauritius Holdings Ltd. in ITA No. 163 of 2023 dated 20.03.2023.

6. We have given our thoughtful consideration and perused the materials available on record including the documents filed by the Ld. CIT-DR. For better understanding of the Documents Identification No., the Circular No. 19/2019 issued by CBDT is reproduced as follows:

Circular No. 19/2019 [F.No. 225/95/2019-ITA.II] Dated 14-08-2019

"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 para3(1)/3(1)/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.

6.1. Para 1 of this Circular deals with instances that in which notices, orders, letters were found to have been issued manually without maintaining proper audit trail of such communication. Therefore invoking powers available u/s. 119 of the Act, the CBDT instructed the Assessing Authorities to generate Document Identification Number in every communication and duly quoted in the body of such communication with effect from 01.10.2019. In Para 3 of this Circular, few exceptional circumstances wherein DIN could not be generated, in such cases manual communication may be issued after prior written approval of the Chief Commissioner/Director General of Income-tax. For this purpose a specific format is also given in Para 3 of this circular. It is

thereafter in Para 4 of the Circular makes it very clear any communication which is not in conformity with Para 2 & 3 above, shall be treated as invalid and the same shall be deemed to have never been issued. Further the Circular also given guidelines that manual communication shall have to be regularized within 15 working days of its issuance and the same shall be sent to the Principal Director General of Income-tax (Systems) within seven days from the date of its issuance. Thus the above CBDT Circular is self-contained Code by itself and incorporation of DIN, in case of issuance of notice, order, summon, letter or any correspondence its mandatory for the Income Tax Authorities.

6.2. In the present case, the show cause notice dated 02.03.2022 issued by office of the PCIT does not carry the DIN. This SCN is uploaded in ITBA, fixing the case for hearing on 08.03.2022 at 12:30 PM with a rider that the Revision proceedings is time barring on 31.03.2022 and if the assessee failed to comply with the notice, then the proceedings shall be finalized on the basis of materials available on record and also informed that no adjournment will be granted in any circumstances to the assessee.

6.3. The Office of the PCIT in its letter dated 26.10.2023 states DIN bearing no. ITB/REV/M/REVI/2021-22/1040270718(1) was generated on 02.03.2022 and duly communicated to the assessee by Speed Post bearing no. EG223084503IN on 03.03.2022 and the assessee has quoted this DIN in its reply uploaded in the ITBA.

6.4. The Office of the PCIT further stated that the Revision order dated 30.03.2022 passed u/s. 263 was without DIN, however DIN

No. ITB/REV/M/REVI/2021-22/1040270718(1) was subsequently communicated to the assessee on 31.03.2022. From the above submissions of the Office of the PCIT, we do not find that none of the exceptional circumstances as mentioned in Para 3 (i) to (v) of this Circular No. 19/2019 has arisen for non-quoting of DIN both in the SCN as well as Revision order passed by Ld. PCIT.

6.5. As per Paragraphs 3 & 5 of the Circular, in case of manual communication to be issued, prior written approval from the Chief Commissioner/Director General of Income-tax was to be obtained by the PCIT, since DIN was generated and communicated to the assessee to the very next date of issuance of the show cause notice and Revision order. Thus in our considered view, the Office of the PCIT has literally not followed CBDT Circular No. 19/2019. Further the office of the PCIT has not justified in not quoting of DIN even in the Revision order, where the same mistake was committed by it while issuing SCN to the assessee. Therefore Communication namely SCN dated 02.03.2022 and Revision order dated 30.03.2022 are not in conformity with Paragraphs 2 & 3 of this Circular No. 19/2019 issued by CBDT. Therefore the entire Revision proceedings is to be treated as invalid and shall be deemed to have never been initiated.

7. It is appropriate to quote herein the well settled law that Circular issued by CBDT in exercise of its power u/s. 119 of the Act are binding on the Revenue as held by the Hon'ble Supreme Court Judgment in the case of K.P. Varghese Vs. ITO reported in [1981] 4 SCC 173 wherein it is held as follows:

*“...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.”*

7.1. The Hon'ble Calcutta High Court on identical issue quashed the Revision order passed without DIN as follows:

“...The revenue filed said order. Once again the Tribunal has undertaken a factual exercise and in query to the revenue to point out how a DIN intimation explained by the Commissioner of Income miscellaneous application seeking for rectification of the fact, raised a specific letter along with the manual order as explained by the Commissioner of Income Tax (Exemption) in his reply fulfils the categorical requirement mandated by the CBDT Circular, more particularly, in paragraph 2 of the said Circular, that the body of the communication, the order under Section 263 of the Act, must contain the fact and that the communication issued referred to the DIN without justifying as to how the non-compliance of the CBDT Circular dated 14th August, 2019, which was noted by the Tribunal when it passed the main order. The Tribunal notes that this specific query was unable to be answered by the revenue and therefore the learned Tribunal came to the conclusion that the order passed under Section 263 does not satisfy the requirement mandated by the CBDT Circular.

Thus, we find no substantial question of law arises for consideration in this appeal. Accordingly, the appeal is dismissed.”

7.2. The Hon'ble Delhi High Court in the case of CIT Vs. Brandix Mauritius Holdings Ltd. (cited supra) held as follows:

“.....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 nor 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.

22. Accordingly, the appeal filed by the appellant/revenue is closed.”

8 Therefore in our considered opinion, the initiation of Revision proceedings by issuing Show Cause Notice without DIN and passing Revision order dated 30.03.2022 without DIN are invalid in law.

9. In the result, the appeal filed by the Assesse is hereby allowed.

Order pronounced in the open court on 08-11-2023

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 08/11/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद