आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ "ए" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA NO. 130/Chd/2023
निर्धारण वर्ष / Assessment Year : 2012-13

M/s SPS Structures Ltd. Flat No. 22, Pocket-10, Sector-7 Rohini, New Delhi	बनाम	The DCIT Central Circle-1, Chandigarh
स्थायी लेखा सं./PAN NO: AAKCS6545B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Ashwani Kumar, C.A
Shri Aditya Kumar and Ms. Muskan Garg, C.A's
राजस्व की ओर से/ Revenue by : Shri Sarabjeet Singh, CIT DR

सुनवाई की तारीख/Date of Hearing : 18/12/2023
उदघोषणा की तारीख/Date of Pronouncement : 22/12/2023

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)-3, Gurgaon dt. 27/02/2023 pertaining to Assessment Year 2012-13.

2. Briefly the facts of the case are that the assessee company filed its return of income on 30/09/2012 declaring taxable income of Rs. 8,59,050/-. The assessment proceedings under section 143(3) were thereafter completed on 25/03/2015 assessing the income at Rs. 12,13,510/-. Subsequently, a search action under section 132 of the Act was conducted on SP Singla Group on 09/08/2018 wherein statements of certain persons were recorded during the course of search proceedings and certain documents of persons were found and seized. Thereafter in the post search proceedings, it was revealed that the assessee has created a web of sub-contractor firms having its registered address either at the residential / office premises of the then Chartered Accountant of the Company or at the residential address of the company's main accountant.

The alleged sub contractors firms have been used by the assessee company to book bogus expenses to bring down its overall profits. Thereafter basis this information in his possession, the AO issued notice under section 148 dt. 20/03/2019 stating that on analysis of the report of the Investigation Wing and the returned income, it is clear that the bogus expenses of Rs. 10,30,66,089/- has been booked by the assessee company during the year under consideration and therefore, he has reason to believe that the amount of Rs. 10,30,66,089/- has escaped assessment within the meaning of Section 147 of the Act read with Clause (c) of Explanation 2 to Section 147. In the reasons so recorded, it has been stated by the AO that the escapement of income has happened due to failure on the part of the assessee company to disclose truly & fully the materials facts regarding accommodation entries as source of them remained unverified / unexplained in the course of assessment proceedings and are unexplained on the basis of returned income as well.

3. In response to notice under section 148, the assessee e-filed its return of income declaring total income of Rs. 9,91,640/- on 23/04/2019, thereafter the assessee sought copy of reasons recorded under section 148(2) vide its letter dt. 27/04/2019 which were supplied to the assessee vide AO's letter dt. 30/10/2019, in response to which the assessee raised its objection vide letter dt. 15/11/2019 which were disposed off by the AO vide order dt. 27/11/2019. Thereafter notice under section 143(2) was issued to the assessee on 28/11/2019 for necessary compliance on 05/12/2019. Thereafter notice under section 142(1) was issued on 29/11/2019 alongwith detailed questionnaire and the matter was fixed for hearing on 09/12/2019. In response to the said notice, the assessee furnished its reply on 16/12/2019 and thereafter considering the submissions so filed by the assessee but not accepting the same, the assessment order was passed on 17/12/2019 under section 143(3) read with section 147 of the Act wherein the AO has held that the sub contractor firms are bogus parties which are not

involved in any actual activities and they were merely created to book bogus expenses and merely filing of confirmation is not adequate to discharge the heavy onus cast on the assessee and since assessee has failed to produce the sub contractors for examination to prove identity and genuineness of the transactions, the onus cast on the assessee has not been discharged, therefore the amount of Rs. 10,30,66,089/- was brought to tax under section 69C of the Act.

4. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) wherein the order of the AO was challenged taking various legal grounds of appeal as well as on merits of the case. The appeal and various grounds raised therein were however dismissed by the ld CIT(A) and the addition so made by the AO was sustained. Against the said findings and the direction of the Ld. CIT(A), the assessee is in appeal before us.

5. In its present appeal, the Assessee has taken the following grounds of appeal:

> *"1. That order passed u/s 250(6) of the Income Tax Act, 1961 by the Learned Commissioner of Income Tax (Appeals)-3, Gurgaon is against law and facts on the file in as much he was not justified to uphold the action of the Learned Assessing Officer in making an addition of Rs. 10,30,66,089/- on account of payments made to the sub- contractor firms by holding that the same are allegedly bogus.*
>
> *2. That the Learned CIT(A) further gravely erred in upholding the action of the Learned Assessing Officer in resorting to initiation of proceedings u/s 148.*
>
> *3. That the Learned CIT(A) further gravely erred in upholding the action of the Learned Assessing Officer in proceeding with the re-assessment u/s 148 despite the fact that the entire reliance has been made by the Learned Assessing Officer on some alleged documents found during the course of search u/s 132 at the premises of the third party, and if at all any action was warranted, should have been by resort to Section 153-C.*
>
> *4. That the Learned CIT(A) further gravely erred in upholding the impugned addition of Rs. 10,30,66,089/- despite the fact that no opportunity was provided to cross examine the person on whose statement the reliance has been placed by the Learned Assessing Officer.*

5. That the Learned CIT(A) further gravely erred in upholding the validity of the assessment order despite the fact that the proceedings had not been conducted in the manner prescribed by the department instructions from time to time which were mandatory for compliance by the Learned Assessing Officer since the impugned order was not uploaded on the e-filing portal of the appellant company and was served only through courier and also the same was passed without mentioning DIN on the assessment order."

6. Though the assessee has raised various grounds of appeal, we firstly deal with Ground No. 5 of the assessee's appeal which goes to the root of the matter and in respect of which, both the parties have advanced arguments during the course of hearing.

7. During the course of hearing, it has been contended by the Ld. AR that the Ld. CIT(A) has gravely erred in upholding the validity of the assessment order despite the fact that the proceedings had not been conducted in the manner prescribed by the Department instructions issued from time to time which were mandatory for compliance by the AO, as the assessment order was not uploaded on the e-filing portal of the assessee company and was served only through courier and also the same was passed without mentioning DIN on the assessment order.

7.1 In this regard, it was submitted that the proceedings were required to be conducted digitally as mandated by Circular No. 27/2019 dated 26.09.2019 wherein if the AO were to conduct proceedings manually, approval of the higher authorities was to be taken. Since there is no such circumstances where the proceedings were required to be carried out on conventional mode and there is no such approval from the higher authorities, it is submitted the order so passed is void and therefore to be stuck down. In fact, it is prudent to note that the requirements put down in the said circular were subsequently enacted in the statute through Section 144B of the Income Tax Act. Thus, the circular was binding on the department and the fact that this was later incorporated into the

statue goes to suggest the intent of the Government. Therefore on this ground alone that the order was passed manually, the order should be struck down.

7.2 With respect to the e-proceeding vs manual proceeding, it was submitted that during the course of the assessment proceedings, the appellant was never allowed to file manual documents even though they were voluminous in nature. For one of the proceedings, the date had expired and the appellant approached the Ld. AO to take the documents in manual mode, which was declined. However, the appellant was given another opportunity to file its reply online, which was duly done. Thus, it is the submission of the appellant that the same principal should apply to both sides and therefore in the absence of an order being passed in digital mode, the assessment order should be treated as null and void.

7.3 It was further submitted that CBDT circular No. 19/2019 dated 14.08.2019 also mandated very officer issuing any communication, order, etc to anyone to mention DIN in the body of the order. In the case of the appellant's order, there is no DIN mentioned on the assessment order passed u/s 148 of the Act. In fact, there is a DIN mentioned on the demand notice, but not on the assessment order. The DIN that is mentioned on the demand notice is also written manually and does not appear to meet the requirements of the statute.

7.4 It was submitted that both the assessment order and the notice of demand were issued under separate sections and therefore require a different DIN. The appellant has filed a set of assessment order, demand Notice and computation sheet, issued by the same Assessing Officer in the case of one of its group companies wherein it is clear that the DIN is generated separately for Assessment Order, Demand Notice and the Computation Sheet. However, in the instant case, the Ld. AO has chosen not to mention the DIN on the order,

rendering the order to have never been issued in accordance with the CBDT Circular.

7.5 It was submitted that the issue has come up before the Kolkata Benches of the Tribunal, Delhi Benches of the Tribunal (affirmed by the Hon'ble Delhi High Court), Mumbai Benches and various other Benches of the Tribunal in the following cases wherein it has been consistently held that non-mentioning of DIN on the body of the order is not a defect curable u/s 292B and in the absence of a DIN on the body of the order, the said order is deemed to never have been issued:

- *M/s Tata Medical Centre Trust vs. C1T (Exemption), Kolkata ITA No. 238/Kol/2021 reported in 196 ITD 302*
- *M/s Brandix Mauritius Holdings Ltd. Vs. DCIT in ITA No. 1542/DEL/2020 (Delhi ITAT)*
- *C1T, International Taxation vs Brandix Mauritius Holdings Ltd in ITA No. 163/2023 (Delhi High Court)*
- *Teleperformance Global Services Private Limited vs ACIT, Mumbai in ITA No. 2814 and 2815/Mum/2022 (Mumbai ITAT)*
- *Dilip Kothari v Principal Commissioner of Income Tax (Central) 146 taxmann.com 442 (Bangalore Trib)*
- *Sidda Venkata Surya Prakasa Rao vs ACIT , Circle -1, Ongole - Hyderabad ITAT (ITA No. 423/Hyd/2020)*
- *Pratap Singh Yadav vs DCIT, Central Circle - 7, Delhi - Delhi ITAT (ITA No 1898/Del/2022)*

7.6 It was submitted that all the above cases have stood to the fact that in the absence of the DIN being quoted in the body of the order, the said communication is deemed to have never been issued. In the instant case, it is not in dispute that the order does not bear a DIN and therefore, on this ground alone, the order deserved to be struck down.

7.7 It was further submitted that the assessment order has not been uploaded on the portal till date as the assessee cannot access the said order on the portal. This further goes to prove that the DIN for the order was not generated in the appropriate manner as prescribed. Infact, the said assessment order was

served on the appellant through postal mode and through email. It is not clear as to why the order was not uploaded on the portal and it is not there till date and the said fact was also established before the Ld. CIT (A).

7.8 It was submitted that a table capturing various communications is detailed at page 9 of the paper book and also in written submissions before Ld. CIT(A) which reveals that the Ld. AO has conducted the entire proceedings electronically, but the orders have been generated and passed manually without mentioning the DIN.

7.9 In this regard, our reference was further drawn to the written submissions filed before the Ld. CIT(A) and the contents thereof read as under:

> *"The above ground challenges the Assessment Order as being non-est and bad in law in as much as the same has been passed in violation of the provisions of the Act and by-passing the procedures laid down in various circulars issued by the Central Board of Direct Taxes (CBDT) relating to the conduct of assessment proceedings through 'e-proceeding facility' during the Financial Year 2019-20 which were mandatory for compliance by the Ld. AO.*
>
> *The Income Tax Department, as a part of its initiative towards digital transformation of business processes and encouraging transparency and convenience has gradually been working towards introducing applications/procedures/facilities which provide integrated platforms to conduct various income tax proceedings, in particular, for the purpose of this appeal – re-assessment proceedings, electronically. As an initial step in this direction, the Act was amended by the Finance Act, 2016 (w.e.f. 1.6.2016) to provide that "hearing includes communication of data and documents through electronic media."*
>
> *Subsequently, with a view to provide further clarity and statutory backing for conduct of assessment in electronic mode, the Act was further amended by the Finance Act, 2018 with the introduction of sub-section (3A) to Section 143 of the Act (w.e.f. 1.4.2018) which reads as follows: -*
>
> *143. (3A)The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of making assessment of total income or loss of the assessee under sub-section (3A) so as to impart greater efficiency, transparency and accountability by –*
> *(a)eliminating the interface between the Assessing Officer and assessee in course of proceedings to the extent technologically feasible;*
> *(b)optimizing utilization of the resources through economies of scale and functional specialization;*

(c)introducing a team-based assessment with dynamic jurisdiction.

The above series of legislative changes represents an effort by the Income Tax Department to shift, gradually, the conduct of assessment proceedings to the electronic mode. The said changes were motivated by a desire to improve tax-payer services, impart enhanced efficiency, transparency and accountability in a paperless environment. The manner in which proceedings were to be conducted electronically has been laid out in circulars issued by the CBDT from time to time. In this regard, the CBDT has issued Circular No. 27/2019 dated 26.09.2019 with regard to the conduct of assessment proceedings through 'e-proceedings' facility during Financial Year 2019-20 i.e. the period relevant for the year under appeal (copy of the circular enclosed at pages 187-188 of the paperbook). The relevant excerpt has been reproduced hereunder:

"In all cases (other than the cases covered under the e-Assessment scheme, 2019' notified by the Board), where assessment is to be framed under section 143(3) of the Act during the Financial Year 2019-20, it is hereby directed that such assessment proceedings shall be conducted electronically subject to exceptions in para below. Consequently, assessees are required to produce/ cause to produce their response/ evidence to any notice/ communication/ show-cause issued by the Assessing Officer electronically (unless specified otherwise) through their 'E-filing' account on the 'E-filing' portal. For smooth conduct of assessment proceedings through 'E-Proceeding', it is further directed that requisition of information in cases under ' E-Proceeding' should be sought after a careful scrutiny of case records.

In following cases, where assessment is to be framed during the financial year 2019- 20, 'E-Proceeding' shall not be mandatory:
a. Where assessment is to be framed under section(s) 153A, 153C and 144 of the Act. In respect of assessments to be framed under section 147 of the Act, any relaxation from e-proceeding due to the difficulties in migration of data from ITO to ITBA etc. shall be dealt as per clause (f) below;
b. In set-aside assessments;
c. Assessments being framed in non-PAN cases;
d. Cases where Income-tax return was filed in paper mode and the assessee concerned does not yet have an 'E-filing' account;
e. In all cases at stations connected through the VSAT or with limited capacity of bandwidth (list of such stations shall be specified by the Pr. DGIT (System));
f. In cases covered under para 1 (i) above, the jurisdictional Pr. CIT/CIT, in extraordinary circumstances such as complexities of the case or administrative difficulties in conduct of assessment through 'E-Proceeding', can permit conduct of assessment proceedings through the conventional mode. It is hereby further directed that Pr. CIT/ CIT is required to provide such relaxation only in extraordinary circumstances after examining the necessity for such relaxation and recording the reasons for providing such relaxations."

A review of the contents of the said circular make it clear that all assessment proceedings, subject to the exceptions provided therein, during Financial Year 2019-20 shall be conducted electronically. In all fairness, the said circular provides that the jurisdictional Pr. CIT/CIT, "in extraordinary circumstances" such as complexities of the case or administrative difficulties in the conduct of assessment

through 'e-proceedings' can permit conduct of assessment proceedings through the conventional mode. It is also provided in the said circular that for assessment to be framed u/s 147, relaxation from e-proceedings can be provided only after prior permission from the jurisdictional Pr CIT/CIT.

In the instant case as well, since the assessment proceedings were to be framed u/s 147, they were normally to be conducted under the "e-proceedings" mode unless an approval of the jurisdictional Pr. CIT/CIT was obtained. It is humbly submitted that, in the given case, as per the information available with the Appellant, no approval has been obtained from the jurisdictional Pr. CIT to deviate from the proceedings prescribed in Circular No. 27/2019 issued by the CBDT and no such fact has been brought to the attention of the Appellant vide the assessment order.The conduct and culmination of the proceedings, including passing of the order, within the statutorily prescribed time was ideally required to be done in the "e-proceedings" mode. Even otherwise, it is humbly submitted that it was incumbent on the Ld. AO per the principles of natural justice that in case there was to be any deviation from the prescribed mode of conducting e-proceedings, to intimate either electronically or otherwise of his decision after obtaining requisite approval, to dispense with the e-proceedings mode. It is humbly submitted that a review of the record of the entire proceedings, in any mode, makes it clear that there is no whisper about intimation of his intention to do so thereby laying bare her decision to stick to the e-proceedings mode for conduct and culmination of the assessment proceedings.

In this connection, before proceeding ahead, Your Honour's kind attention is invited to the provisions of Section 153(2) of the Act which provides that no order for assessment, re-assessment and re-computation shall be made u/s 147 of the Act after the expiry of nine months from the end of the Financial Year in which the notice u/s 148 of the Act was served. In the instant case, the notice u/s 148 of the Act was served on the Appellant on 20.03.2019 and accordingly it was mandatory on the part of the Ld. AO to pass the order on or before December 31, 2019.

Taking forward the above discussion, in the earlier scenario wherein manual conduct of assessment proceedings was done,order passed on or before December 31, 2019 would be said to be passed within the limitation period. However, in an e-proceedings scenario, it was incumbent on the Ld. AO to digitally verify it, generate a Document Identification Number (DIN)and upload it on the e-filing portal of the Appellant on or before 31.12.2019. All the three ingredients viz digital verification, generation of DIN and uploading on the e-filing portal are to be completed on or before 31.12.2019so as to ensure that the order passed complies with the period of limitation prescribed in Section 153 of the Act.

The Appellant here wishes to draw attention towards CBDT's Circular No. 19/ 2019 (copy of the circular enclosed at pages 189-190 of the paperbook) which mandates that all communications issued by income tax authorities on or after 01.10.2019 shall mandatorily have a computer-generated DIN which should be duly quoted in the body of such communication.

Relevant excerpt from the CBDT Circular is reproduced hereunder:

"With the launch of various e-governance initiatives, Income-tax Department is moving towards 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, 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 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 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."

Thus, the above circular mandates a computer-generated DIN which should be duly quoted in the body of such communication. In exceptional situations for example when there are technical difficulties in generating/ allotting/ quoting the DIN and issuance of communication electronically, the communication may be issued manually but only after recording reasons in writing and with the prior written approval of CCIT/ DGIT. Further, the communication issued manually shall have to be regularised within 15 working days of its issuance by following the procedure prescribed.

Further, the circular also states that in an event there is non-compliance with the above, it will be deemed that the order/ document has never been issued. Also, an intimation of issuance of manual communication for reasons recorded is also required to be sent to the Principal Director General of Income Tax (Systems) within seven days from the date of its issuance.

In the instant case it may be noted the Assessment order bears no DIN. The circular reproduced above clearly states that in the event notice is not issued in accordance with the procedures prescribed which involve generation of DIN, any sort of communication shall be invalid and shall be deemed to have never been issued. Accordingly, this makes the Assessment order without any DIN invalid and bad and will deemed to have never been issued. It may however be noted that DIN has only been manually written on the demand notice u/s 156, which again is not in compliance with the guidelines in the circular. Further, as per the information available with the Appellant, no approval has been obtained from the CCIT/ DGIT neither any intimation has been given to the Principal DGIT to deviate from the procedure prescribed in Circular No. 19/2019 issued by the CBDT. Moreover, the notice was not served on the Appellant on the 'e-filing' portal, rather it was sent through courier which is again in contravention to the CBDT circular 27/ 2019 as was discussed supra. The order was not uploaded on the ITBA portal even till the time barring date of Dec 31, 2019 and even till date.We have enclosed a screenshot of the e-proceedings module on the ITBA portal dated Sep 08, 2020 which clearly shows that no communication has been uploaded by the department on the portal even till date. Therefore, even after approximately 8 months post the time barring date, no communication has been uploaded on the portal and accordingly, the assessment is therefore invalid and bad in law and therefore deserves to be quashed. Infact, the income tax portal shows no proceeding closure date even after approximately 8 months post the time barring date. Also, nothing has been communicated to the Appellant

regarding any approvals being taken from the respective authorities for such contraventions. Thus, the order passed by the Ld. AO suffers from various procedural infirmities.

In this connection reference may also be made to provisions of Section 13 of the Information Technology Act, 2000, sub-section (1) of which provides that, save as otherwise agreed to between the originator and the addressee, the dispatch of an "electronic record" (assessment order in the case under consideration) occurs when it enters in a computer, resources outside the control of the originator (the Assessing Officer in the instant case). It is implicit in the said provisions that for an assessment order to be validly passed, the same should be uploaded on the "e-filing" portal which is a computer resource outside the control of the Ld. AO.

With a view to further amplifying and clarifying the issue, it may be noted that the purpose behind the introduction of the facility of conducting proceedings electronically, among other, was to embed the entire process with a complete degree of transparency and fair-play. Accordingly, it was in the spirit of the said intention that in order for a logical culmination of the proceedings, the requisite order should be uploaded on the "e-filing" portal within the requisite time-frame in order to comply with both the spirit and letter of the law behind the reformatory process.

The Appellant would here also like to quote the instance that during the finalisation of the assessment proceedings, the Appellant was required to submit certain information however due to paucity of time, while the Appellant was just collating the information, the portal was closed for the Appellant and it was not able to file the response in time. It was only when the Authorised Representative of the Appellant made a specific request by personally visiting the Ld. AO, the window was re-enabled to allow the Appellant to file submissions. The Appellant wishes to humbly submit that while the department expected the Appellant to be extremely cautious of the e-proceedings procedure and wanted it to upload submissions in time, when it was department's turn as regards following the e-proceedings procedure by uploading the order on the portal, it not only failed to do so but by-passed all prescribed guidelines to create an arbitrary demand on the Appellant. It is important to highlight the fact that when all the communications from the Department (right from issue of notice u/s 148 to supply of reasons to disposal of objections to other notices issued during the conduct of assessment)came with a valid communication reference, then why the assessment order was passed without issuing a valid computer-generated DIN. The table below captures a summary of the communications from department from time to time in the instant case for Your Honour's ready reference:

S.No.	Particulars		Manner	Communication Reference
1.	Notice u/s 148 of the Act	20.03.2019	Electronic	ITBA/AST/S/148/2018-19/1015373181(1)
2.	Notice requiring to furnish details and return of income pursuant to above notice	22.08.2019	Electronic	ITBA/AST/F/17/2019-20/1017522374(1)
3.	Supply of reasons for initiating proceedings u/s 148	30.10.2019	Electronic	ITBA/AST/F/17/2019-20/1019587965(1)
4.	Order disposing preliminary objections	27.11.2019	Electronic	ITBA/AST/F/17/2019-20/1021166550(1)
5.	Notice u/s 143(2) of the Act	28.11.2019	Electronic	ITBA/AST/S/143(2)_3/2019-

				20/1021217573(1)
6.	Notice u/s 142(1) of the Act	02.12.2019	Electronic	ITBA/AST/F/142(1)/2019-20/1021482893(1)
7.	Notice u/s 142(1) of the Act	10.12.2019	Electronic	ITBA/AST/F/142(1)/2019-20/1022077703(1)
8.	Assessment Order u/s 143(3) r.w.s. 147 of the Act	17.12.2019	*<<Missing>>*	
9.	Demand Notice u/s 156 of the Act	17.12.2019	Manual	ITBA/AST/M/147/2019-20/1022605522(1)

In view of the above it is humbly submitted that the order passed is non-est and bad in law being violative of the applicable legal provisions relating to the manner in which assessment proceedings have to be conducted and completed."

7.10 Further our reference was drawn to the remand report called for by Ld. CIT(A) and submitted by the AO during the course of appellate proceedings and the contents thereof read as under:

"Point 1: It has been alleged in the written submission (Page 3-7) that the assessment order dated 17/12/2019 is bad in law as the same has not been uploaded on the E-filing portal of the appellant, in contravention of provision of section 143(3A) of the Act and Departmental circular/instruction in this respect.

Reply to Point 1: Appellant has wrongly challenged that assessment order dated 17/12/2019 has not been uploaded on the E-filing portal of the appellant. In this regard, it is submitted that the assessment order was duly uploaded on E-filing portal on 18/12/2019. Screen shot of income tax portal showing date of dispatch is attached herewith for reference as Annexure-1. Therefore, submissions of assessee on this issue is factually incorrect and deserves to be rejected.

Point 2:

It has been alleged (page 8) by the appellant that assessment order in this case hs been passed without DIN.

Reply to Point 2:

In this regard, on perusal of the available case records, it is seen that the DIN in this case has been generated on system bearing no. ITBA/AST/M/147/2019-20/1022605522(1). In fact, the assessee has himself provided the said DIN while filing appeal in Form No. 35. If assessment order had been passed without DIN then how come the assessee quoted DIN no. while filing appeal before your goodself in Form No. 35.

Without prejudice to above, a copy of screenshot of system showing DIN no. of the said order is attached herewith as Annexure-2 for reference. Thus, submissions of assessee are factually incorrect, hence denied."

7.11 Further, our reference was drawn to the submission filed by the assessee in response to the remand report and the contents thereof read as under:

> *"The Ld. Assessing Officer has shared screen shot showing the fact that the order was dispatched by mail on 18th December2021. However, the Ld. Assessing Officer has not controverted the fact that the order was not uploaded on the income tax portal as the appellant has already filed the screenshot of its portal. Further, the Ld. Assessing Officer has only shared the screen shot of dispatch of the order and has not controverted the fact that the order was signed manually and was also served manually on the appellant Moreover, the DIN is also hand written on the order.*
>
> *The assessee's ground relates to non-adherence to the circular issued by the CBDT and therefore making the order non-est In fact the Ld Assessing Officer has nowhere controverted the appellant stand that the order was dispatched manually and therefore required the Ld. Assessing Officer to follow the guidelines which required prior approval of the Pr. CIT / CIT and a generation of the DIN within 15 days of the passing of the order.*
>
> *The Ld. Assessing Officer has also stated that there is a DIN that has been generated, which the appellant has quoted in the appeal and therefore the ground of the assessee is not maintainable.*
>
> *However, it is pertinent to mention that the appellants ground and submissions of the appellant nowhere state that no DIN was generated. Infact, the ground of the appellant is that the procedure and the law laid down for issuance of orders has not been followed and the said order of the Board clearly encapsulates that if the said procedure is not followed the communication/notice/order would be bad in law and non-est Moreover, even if DIN was generated subsequently, still this fact should have been mentioned in the assessment order and a copy of the permission of the concerned authority should also have been found mentioned in the body of the assessment order. Relevant Extract of the Circular which provides for this exception is as follows:*
>
> 3. In exceptional circumstance 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 die Act (other than verification under section 131 or section 133 of die Act) is sought to be initiated; or
> (v) When the functionality to issue communication is not available in the system,
>
> the communication may he 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 stale 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-fax 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.

8. Hindi version to follow.

(F.IYo. 225/95/20i9-1TA.II)

Thus, the fact that the order was served manually, and that DIN was generated subsequently is not disputed by the Ld. Assessing Officer and therefore the submissions of the appellant made vide its submissions dated 17.02.2021 are reiterated and therefore it is submitted that the order of the Ld. Assessing Officer is non-est."

7.12 In light of the above, it was submitted that it is a case where the assessment order has been passed without mentioning the DIN number which is fatal to the assessment proceedings and is not a curable defect under section 292B of the Act and in this regard our reference was drawn to the decision of

Hon'ble Delhi High Court in case of CIT(International Taxation)-1 Vs. Brandix Mauritius Holding Ltd. (supra) wherein it was held by the Hon'ble High Court that the Circular issued by CBDT is binding on the AO and non mentioning of DIN on the body of the order is not a curable defect covered u/s 292B of the Act.

8. Per contra the Ld. CIT/DR strongly contested the submissions so made by the Ld. AR. It was submitted that the matter has been extensively discussed by the Ld. CIT(A) in para 8.1 to 8.5 of the impugned order and our reference was drawn to the findings of the Ld. CIT(A) and the contents thereof read as under:

> *"8.1 In this ground of appeal the appellant has stated that the assessment order was passed by the AO dated 17.12.2019 is non-est and bad in law as the assessment proceeding have not been conducted in the manner prescribed by the Department from time to time; which are mandatory for compliance by the AO. It was stated that the assessment order has not been uploaded on the e-filing portal of the appellant but has been served manually on it through the courier. It has been further stated that in accordance with the provision of section 143[3A) of the Act read with circular no. 27/2019 dated 26.09.2019 of the CBDT, the assessment proceedings were to be conducted electronically. Further as per circular no. 19/2019 of the CBDT all communication by the Income Tax Authorities after 01.10.2019 shall mandatorily are to be sent through the computer generated DIN no. which should be duly quoted in the body of such communication except where due to technical difficulties in generating the DIN no., the communication may be issued manually but only after recording reasons in writing and with prior approval of the Chief Commissioner of Income Tax of the Director General of Income Tax; whereas in the present case the assessment order bears no DIN and therefore such assessment order was invalid, bad and deemed to have been never issued. It was stated that DIN no. has been manually written on the demand notice u/s 156 of the Act which was not in compliance with the above circular. Further the demand notice and assessment order were not uploaded on the e-filing portal of the appellant; rather it was sent through the courier. Even till date no such communication has been uploaded on the ITBA portal of the appellant. Therefore the assessment order was invalid and bad in law.*
>
> *8.2 Facts and discussion of the case and material on record in this case have been gone through. The order u/s 147/ 143(3) and demand notice u/s 156 in this case have been passed and signed by the AO on 17.12.2019. It is further noted from the record that the AO has generated the DIN no(1022605522(I) for the purpose of the communication of the assessment order/ demand notice on 17.12.2019; (as evident from page no. 100 of the paper book) which has been duly mentioned by the AO on demand notice. It is relevant to mention here that demand notice and the assessment order cannot be seen in isolation. Further the assessment order alongwith demand notice have been duly communicated by the AO through speed post on 19.12.2019 vide speed post no. 565484916.*

Limitation period in this case for passing assessment order u/s 143(3) r.w.s. 147 of the Act was 31.12.2019. It has been communicated by the AO vide letter dated 17.12.2021 that the assessment order was duly uploaded on the AST module of the ITBA (electronic portal of the Department) on 17.12.2019 within the limitation period, screen shot of the same is reproduced as under:-

Therefore from the above facts and discussion, it is evident that the AO has signed the assessment order alongwith demand notice on 17.12.2019 within the limitation period, uploaded the same on portal and has also communicated the same to the appellant on 19.12.2019 through speed post [alternate mode of service] in accordance with section 282 of the Act whereas the DIN No. has been generated on 17.12.2021 and duly mentioned in the demand notice. Thus the DIN no. has been generated prior to communication of the order to the appellant on 17.12.2019/19.12.2019. Merely because separate DIN no has not been generated for the assessment order would not make the assessment order invalid. As discussed above the demand notice and the assessment order cannot be seen in isolation.

8.3 Further there is no merit in the argument of the Ld. AR that as the DIN no. has been generated on 18.12.2019 whereas assessment order has been passed on 17.12.2019, the assessment order was bad in law. The objective behind mandatory requirement of generation and quoting of computer generated no. DIN no. in various notices, orders or correspondence issued by the Income Tax Department is to maintain proper audit trail of all such communications. It is clearly mentioned in para no. 2 of circular no. 19/2019 that no communication shall be issued by the Income Tax Authorities on or after 01.10.2019 unless a computer generated DIN has been allotted and is duly quoted in the body of such communication. Therefore the AO was to generate such DIN no. before issuing/ communicating such assessment order along with demand notice to the appellant. It is observed that the AO has complied with the requirement of circular no. 19/2019 by generating the DIN no. through the ITBA portal on 17.12.2019 and quoting the same in the body of demand notice before uploading the same for communication to the appellant on 17.12.2019 electronically. The AO has uploaded the said reassessment order on the assessment module of the ITBA portal on 17.12.2019 after incorporating DIN no. which is also appearing in the screen shot of the portal of the AO, reproduced as above. Merely because the DIN no has been mentioned manually in the demand notice would not make it invalid. Though the AO has not mentioned the DIN no in the body of the assessment order, however such omission on the part of the AO is covered by the provision of section 292B of the Act as such assessment order was in substance and effect in conformity with or according to the intent and purpose of this Act.

8.4 Moreover from the assessment record it is observed that the AO in this case has carried out the entire assessment proceedings electronically by issuing various notices through the assessment module of the ITBA portal (electronic portal of the Department) and the re-assessment order has been duly uploaded on such portal on 17.12.2019 which has been dispatched on 18.12.2019 electronically to the registered email account of the appellant with the Department within the limitation period. Without prejudice to above, for the sake

of argument, even if same is not appearing on the e-mail account of the appellant due to certain technical glitches, the fact remains that the AO has uploaded the said re-assessment order on the assessment module of the ITBA on 17.12.2019 after generating DIN no. which is also appearing in the screen shot of the portal of the AO reflecting issue and despatch of the order electronically, reproduced as above. The AO has served the order along with demand notice through alternate mode of speed post on 19.12.2019.

8.5 Therefore keeping in view the above facts and discussion it is found that there is no merit in such ground of appeal no 2 taken by the appellant and the same is hereby dismissed. Ground of appeal no 1 is general in nature."

8.1 It was submitted that the AO has passed the assessment order alongwith demand notice on 17/12/2019 within the limitation period, uploaded the same on portal and has also communicated the same to the assessee on 19/12/2019 through speed post in accordance with the Section 282 of the Act.

8.2 It was submitted that the DIN number has been duly generated on 17/12/2019 and duly mentioned in the demand notice. It was submitted that both the assessment order and the demand notice have to be read together and cannot be seen in isolation and merely because no separate DIN number has been mentioned on the body of the assessment order, the same would not make the assessment order invalid.

8.3 It was further submitted that even if it is held that the AO was required to mention the DIN on the body of the assessment order, such omission on the part of the AO is covered by the provisions of Section 292B of the Act, as such assessment order was in substance and effect in conformity or according to the intent and purpose of the Act.

8.4 It was further submitted that there is no merit in the contention of the Ld. AR that the assessment proceedings have not been conducted electronically as the various notices have been issued through the assessment module of the ITBA portal and reassessment order has also been duly uploaded on such portal on 17/12/2019 and which has been dispatched to the assessee on 18/12/2019

electronically to the registered email account of the assessee within the limitation period. It was accordingly submitted that there is no merit in the contentions advanced by the Ld. AR and therefore the same deserves to be dismissed.

9. We have heard the rival contentions and purused the material available on record. The sum and substance of the contentions advanced by the ld AR relates to non-compliance by the Assessing officer, with the Circular no. 19/2019 dated 14/08/2019 as well as Circular no. 27/2019 dated 26/09/2019 issued by the Central Board of Direct Taxes, while passing the reassessment order u/s 147 r/w 143(3) dated 17/12/2019 for the impugned assessment year 2012-13. It is not in dispute that these CBDT Circulars were subsisting and applicable at the relevant point of time i.e, at the passing of the reassessment order by the Assessing officer and are currently in force and have not been withdrawn by any subsequent Circular(s) issued by the CBDT.

10. The Circular no. 19/2019 dated 14/08/2019 has been issued by the Central Board of Direct Taxes in exercise of its powers u/s 119 of the Act on the subject of generation/allotment/quoting of Document Identification Number in Notices/Order/letter/correspondence issued by the Income Tax Department and the contents thereof read as under:

> *"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 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, 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 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 coml11unicati 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(il)/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."

11. In paragraph 2 of the aforesaid circular, the CBDT has provided that no communication shall be issued by any income tax authority relating to assessment, appeals, orders, statutory or otherwise to the assessee on or after 1/10/2019 unless computer generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication. Therefore, before any communication is issued, there are certain laid down steps and procedure which has been prescribed by the CBDT, in terms of generating the DIN through the computerization process and specifying the DIN so generated on the body of the communication, which has to be necessarily followed by the income tax authority and no relaxation therein has been envisaged and thus, has to be strictly followed by the income tax authority as part of standard operating standards and procedures.

12. In paragraph 3 of the aforesaid circular, the CBDT has envisaged and provided for certain exceptional circumstances where the communication may be issued manually by the income tax authority. For the purposes of issuing the manual communication, it has been further provided that such manual communication can be issued only after recording reasons in writing in the file and with prior written approval of the Chief Commissioner / Director General of income tax. It has been further provided that the communication issued under aforesaid exceptional 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 specified format as so provided in

the aforesaid circular. Therefore, there is no bar on manual communication, however only in a scenario of exceptional circumstances so envisaged in the circular, the manual communication can be issued. However, before such manual communication is issued, there are certain laid down steps and procedure which has been prescribed by the CBDT and which has to be necessarily followed by the income tax authority and no relaxation therein has been envisaged and thus, has to be strictly followed by the income tax authority as part of standard operating standards and procedures. It has been provided that firstly, the reasons in writing have to be recorded by the income tax authority in the file stating the exact exceptional circumstances in a particular case (out of circumstances so envisaged in the circular, thereafter, the approval has to be sought from CCIT/DGIT for issue of manual communication and thereafter, finally, in the body of the manual communication being issued, it has to be stated that the communication is issued manually without DIN and the date of obtaining the approval from CCIT/DGIT. Each of these steps and procedure so envisaged needs to be followed by the income tax authority before issue of manual communication.

13. In paragraph 4 of the aforesaid circular, the CBDT has stated that any communication which is not in conformity with paragraph 2 i.e, communication with computer generated DIN mentioned in the body of the communication or paragraph 3 i.e manual communication without DIN but the fact of manual communication without DIN after following the due process as so provided, shall be treated as invalid and shall be deemed to have never been issued. The CBDT has thus gone ahead and stated what the consequence of non-compliance with laid down steps and procedure as part of standard operating standards by the income tax authority will be and has stated that any such communication which is issued in violation of paragraph 2 and 3 will be treated as invalid and shall be deemed to never been issued.

14. In paragraph 5 of the aforesaid circular, the CBDT has talked about the steps to be taken by the income tax authority to regularize the manual communication within a period of 15 days by way of uploading the manual communication on the system, generating the DIN on the system and communicating the DIN so generated to the assessee.

15. In the instant case, on perusal of the reassessment order passed u/s 143(3) r/w 147 of the Act by the Deputy Commissioner of Income Tax, Central Circle 1, Chandigarh dated 17/12/2019, it is noted that there is no mention of any computer generated DIN which is allotted for the said communication and no DIN has thus been quoted in the body of reassessment order so issued. The communication so issued is thus not in compliance with paragraph 2 of the aforesaid circular issued by the CBDT.

16. Further, the reassessment order passed u/s 143(3) r/w 147 of the Act by the Deputy Commissioner of Income Tax, Central Circle 1, Chandigarh dated 17/12/2019 nowhere state in the body of the order/communication that it is issued manually without a DIN, what are the exceptional circumstances, and the fact of obtaining any written approval of the Chief Commissioner / Director General of Income-Tax in this regard for issue of manual communication in the specified format as so provided in the aforesaid circular. The communication so issued is thus not in compliance with paragraph 3 of the aforesaid circular issued by the CBDT as well.

17. We therefore find that there is non-compliance by the Deputy Commissioner of Income Tax, Central Circle 1, Chandigarh, with both paragraph 2 and paragraph 3 of the aforesaid CBDT Circular in terms of laid down steps and procedure as part of standard operating standards which have been prescribed, vide issuing the reassessment order passed u/s 143(3) r/w 147 of the Act dated 17/12/2019. Therefore, as so provided by CBDT in paragraph 4

of the aforesaid circular, the consequence of any such communication which is issued in violation of and non-compliance with paragraph 2 and 3 is that the same has to be treated as invalid and shall be deemed to never been issued.

18. Before we proceed further, we refer to the contentions advanced by the Ld. CIT/DR and the findings of the ld CIT(A) in paragraph 8.2 of the impugned order wherein he has stated that from perusal of the record, he finds that the AO has generated the DIN no. 1022605522(I) for the purpose of the communication of the assessment order/ demand notice on 17.12.2019 which has been duly mentioned by the AO on demand notice. It has been stated by the ld CIT(A) that the demand notice and the assessment order cannot be seen in isolation and merely because separate DIN number has not been generated would not make the assessment order invalid.

19. During the course of hearing, the ld AR has contested the said findings stating that the reassessment order and notice of demand have been issued under separate sections and therefore, they are independent communications requiring separate DIN numbers and to buttress his arguments, he has placed on record copy of the assessment order passed u/s 143(3), notice of demand u/s 156 and tax computation sheet in case of one of the assessee's group company M/s SPS Realtors Private Limited issued by Assistant Commissioner of Income Tax, Central Circle-1, Chandigarh and each of these communications it has been stated by Ld. AR that they have been issued simultaneously and on the same date i.e, 23/06/2021 pertaining to Assessment Year 2019-20.

20. We have carefully given a thought to the aforesaid findings of the ld CIT(A) and the contentions advanced by Ld. CIT/DR and the ld AR as well as gone through the documentation so brought to our notice which are available at pages 954- 962 of the APB. In our considered view that the determination of tax demand and consequent interest liability is no doubt a result of assessment

proceedings and the findings given in the assessment order and thus are closely connected and cannot be read in isolation. The same is the case with any reassessment proceedings. The demand is the outcome of the additions or disallowance so made by the Assessing officer to the returned income and determination of assessed income during the course of assessment proceedings and is thus dependent on the assessment proceedings. At the same time, assessment order quantifies the assessed income and the basis thereof and passed under relevant provisions, in the instant case u/s 143(3) r/w 147 and the notice of demand quantifies the tax demand passed u/s 156 of the Act. The notice of demand has to follow the assessment order and only in a scenario, the assessment order has been passed, the notice of demand can be issued. There are thus close connection between the two and one cannot be read in absence of the other. If one has to challenge the findings of the AO in the assessment order, effectively, the person is challenging the assessment order and the consequent tax liability in terms of notice of demand. These are matters on the judicial side of the case and there cannot be any dispute in this regard.

21. At the same time, on the administrative side, if we look at the Circular no. 19/2019 dated 14/08/2019, in paragraph 2 of the said Circular, it has been provided that the CBDT in exercise of its powers under section 119 of the Income-tax Act, 1961 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, 20 19 unless a computer-generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication. The emphasis is clearly on each and every communication issued by the income tax authority to the assessee which should

carry a DIN and duly quoted on the body of such communication. No exception has been provided whatsoever in respect of one or more communications issued on the same date, simultaneous issue of communications or for that matter, the communications issued to the same assessee on the same date by the same Assessing officer pertaining to same assessment year. The exception which have been envisaged are contained in paragraph 3 (read with paragraph 5) of the said circular and there also, it talks about manual issue of communication without DIN, subsequent generation of DIN and regularization of the said communication within the specified period. Where the CBDT in its wisdom and in exercise of its powers u/s 119 of the Act has decided the same and has laid down the standards for issue of any communication which has to be followed by the income tax authority under its jurisdiction, the latter has to necessarily abide by the it and cannot seek any immunity by way of not following the same. Therefore, in the instant case, we find that assessment order and notice of demand are two separate communications *qua* the assessee and carry separate physical existence and identity, even though issued on the same date by the same Assessing officer pertaining to same assessment year and therefore, necessarily have to carry separate DIN on the body of the said communications. In view of the admitted position that there is no DIN on body of the assessment order (even though there is DIN on body of the notice of demand), the same will continue to be non-compliant with paragraph 2 of the CBDT Circular no. 19/2019 and carry the same consequences in terms of paragraph 4 of the CBDT Circular and will be held as invalid and never been issued.

22. Now, coming to Circular no. 27/2019 dated 26/09/2019 which has been issued by the Central Board of Direct Taxes in exercise of its powers u/s 119 and in accordance with provisions of section 2(23C) of the Act on the subject of conduct of assessment proceedings through "E-proceeding" facility during the

financial year 2019-20, which is relevant to impugned assessment year 2012-13 as the reassessment proceedings have been conducted and completed during the financial year 2019-20 with passing of the reassessment order dated 17/122019. The contents thereof read as under:

> *"The Central Board of Direct Taxes ('Board'), in exercise of its powers under section 119 of the Income-tax Act,1961 ('Act') and in accordance with provision of section 2(23C) of the Act, hereby directs as under:*
>
> *(i) In all cases (other than the cases covered under the 'e-Assessment scheme, 2019' notified by the Board), where assessment is to be framed under section 143(3) of the Act during the financial year 2019-20, it is hereby directed that such assessment proceedings shall be conducted electronically subject to exceptions in para below. Consequently, assessees are required to produce/ cause to produce their response/ evidence to any notice/ communication/ show-cause issued by the Assessing Officer electronically (unless specified otherwise) through their 'E-filing' account on the 'E-filing' portal. For smooth conduct of assessment proceedings through 'E-Proceeding', it is further directed that requisition of information in cases under 'E-Proceeding' should be sought after a careful scrutiny of case records.*
>
> *(ii) In following cases, where assessment is to be framed during the financial year 2019-20, `E-Proceeding' shall not be mandatory:*
>
> *a. Where assessment is to be framed under section(s) 153A, 153C and 144 of the Act. In respect of assessments to be framed under section 147 of the Act, any relaxation from e-proceeding due to the difficulties in migration of data from ITD to ITBA etc. shall be dealt as per clause (f) below;*
>
> *b. In set-aside assessments;*
>
> *c. Assessments being framed in non-PAN cases;*
>
> *d. Cases where Income-tax return was filed in paper mode and the assessee concerned does not yet have an 'E-filing' account;*
>
> *e. In all cases at stations connected through the VSAT or with limited capacity of bandwidth (list of such stations shall be specified by the Pr. DGIT (System));*
>
> *f. In cases covered under para 1(i) above, the jurisdictional Pr. CIT/ CIT, in extraordinary circumstances such as complexities of the case or administrative difficulties in conduct of assessment through 'E-Proceeding', can permit conduct of assessment proceedings through the conventional mode. It is hereby further directed that Pr.CIT/ CIT is required to provide such relaxation only in extraordinary circumstances after examining the necessity for such relaxation and recording the reasons for providing such relaxations.*
>
> *(iii) However, it is clarified that issue of notices and departmental communications in such cases shall be strictly governed by the guidelines issued*

by CBDT vide its Circular No. 19/2019 dated 14.08.2019 regarding generation/ allotment/ quoting of Document Identification Number (DIN).

(iv) In cases where assessment proceedings are being carried out through the 'E-Proceeding' as per para 1 (i) above, personal hearing/ attendance may take place in following situation(s):

a. Where books of accounts have to be examined;

b. Where Assessing Officer invokes provisions of section 131 of the Act;

c. Where examination of witness is required to be made by the assessee or the Department;

d. Where a show-cause notice contemplating any adverse view is issued by the Assessing Officer and assessee requests through their 'E-filing' account for personal hearing to explain the matter.

However, the details pertaining to above shall be uploaded on ITBA subsequently.

2. This may be brought to the notice of all concerned for immediate compliance."

23. In paragraph (i) of the aforesaid circular, the CBDT has directed that in all cases (other than the cases covered under the 'e-Assessment scheme, 2019' as so notified), where assessment is to be framed under section 143(3) of the Act during the financial year 2019-20, such assessment proceedings shall be conducted electronically. It has been provided that the assessees are required to produce their response/ evidence to any notice/ communication/ show-cause issued by the Assessing Officer electronically (unless specified otherwise) through their 'E-filing' account on the 'E-filing' portal. Then, in paragraph (iii), it has been stated by the CBDT that issue of notices and departmental communications in such cases shall be strictly governed by the guidelines issued by CBDT vide its Circular No. 19/2019 dated 14.08.2019 regarding generation/ allotment/ quoting of Document Identification Number (DIN). We therefore find that the CBDT through the aforesaid Circular has reiterated the earlier guidelines in terms of Circular No. 19/2019 and has stated that the same has to be strictly followed while issuing notices and communication as part of conduct of proceedings electronically.

24. In the instant case, we find that notice u/s 148 dated 20/03/2019, supply of reasons for initiating proceedings u/s 148 to the assessee vide communication dated 22/08/2019, order disposing off objections dated 27/11/2019, notice u/s 143(2) dated 28/11/2019, subsequent notices u/s 142(1) dated 2/12/2019 and 10/12/2019 have been issued electronically due mentioning DIN Number generated through ITBA portal on each of such communication, however, as far as the reassessment order issued u/s 147(3) r/w 143(3) dated 17/12/2019 is concerned, the same has been issued without mentioning DIN on body of the said communication. There is thus partial non-compliance to this extent of CBDT Circular no 27/2019 by the Assessing officer while conduct of the reassessment proceedings electronically and the same is clearly a deviation from the standard operating procedure as laid down by the CBDT and the necessary consequences as so provided shall necessarily follow.

25. Both the aforesaid Circulars have been issued by the CBDT in exercise of its powers u/s 119 of the Act which read as under:

> *"119. (1) The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:*
>
> *Provided that no such orders, instructions or directions shall be issued—*
>
> *(a) so as to require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or*
>
> *(b) so as to interfere with the discretion of [the Joint Commissioner (Appeals) or] the Commissioner (Appeals) in the exercise of his appellate functions.*
>
> *(2) Without prejudice to the generality of the foregoing power,*
>
> *(a) the Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time (whether by way of relaxation of any of the provisions of sections 3 [115P, 115S, 115WD, 115WE, 115WF, 115WG, 115WH, 115WJ, 115WK,] 4 [139,] 143, 144, 147, 148, 154, 155 5 [, 158BFA], 6 [sub-section (1A) of section 201, sections 210, 211, 234A, 234B, 234C 7 [, 234E]], 8 [270A,] 271 9 [, 271C, 271CA] and 273 or otherwise), general or*

special orders in respect of 10[any class of incomes or fringe benefits] or class of cases, setting forth directions or instructions (not being prejudicial to assessees) as to the guidelines, principles or procedures to be followed by other income tax authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order may, if the Board is of opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information.

(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise 11[any income-tax authority, not being [a Joint Commissioner (Appeals) or] a Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law;

(c) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order for reasons to be specified therein, relax any requirement contained in any of the provisions of Chapter IV or Chapter VI-A, where the assessee has failed to comply with any requirement specified in such provision for claiming deduction thereunder, subject to the following conditions, namely:

(i) the default in complying with such requirement was due to circumstances beyond the control of the assessee; and

(ii) the assessee has complied with such requirement before the completion of assessment in relation to the previous year in which such deduction is claimed:

Provided that the Central Government shall cause every order issued under this clause to be laid before each House of Parliament."

26. The statue therefore empowers the CBDT to issue the orders, instructions and directions for the proper administration of the Act to the subordinate income tax authorities and the sub-ordinate authorities who have been employed in the execution of the Act shall be required to observe and follow such orders, instructions and directions so issued by CBDT. It has been further provided that for proper and efficient management of the work of assessment and collection of taxes, the CBDT whether by way of relaxation of any the provisions so specified or otherwise, by general or special orders, can issue directions or instructions as to the guidelines, principles, or procedure to be followed by other income tax authorities in work relating to assessment or collection of taxes, etc. It

has been provided that the CBDT can issue such instructions and directions where in its opinion, it is necessary in public interest and such instructions and directions are published and circulated for general information. It has also been provided that such instructions and directions cannot require any income tax authority to make a particular assessment or dispose off a particular case in a particular manner and thus, cannot interfere in the judicial discharge of functions by any of the sub-ordinate authorities. It has also been provided that such instructions and directions shall not be prejudicial to the interest of the assessee. We therefore find that the doctrine of prejudice has been duly considered by the legislation while enshrining the powers to the CBDT to issue instructions and directions u/s 119 of the Act. Therefore, at the very threshold, the powers to the CBDT to issue instructions and directions u/s 119 of the Act are to be tested as to whether the same cause any prejudice to the assessee. Once the said threshold is satisfied as not in dispute in the instant case, the sub-ordinate authorities to whom the directions and instructions are issued by CBDT have to strictly observe and follow such directions and instructions as the same have become part of standards laid down by CBDT which have to be followed as part of standing operating procedure. The sub-ordinate authorities cannot therefore decide to apply the same standard in one case and not apply the same in another case stating that where the standards are not followed and applied, no prejudice is caused to the assessee. Therefore, in the instant case, as we have noted above, there is non-compliance to the CBDT circulars by the Assessing officer, it will remain non-compliant and the said non-compliance cannot be made good by holding that reassessment order so issued without DIN has been issued within the limitation period so prescribed under the statue and that the same has been sent through speed post and received by the assessee, thus no prejudice is caused to the assessee in terms of non-receipt of the said reassessment order and its right to appeal is not effected by any manner.

27. The matter relating to binding nature of the CBDT Circulars on the income tax authorities has been subject matter of judicial scrutiny and the matter has travelled right up to the Constitutional Courts from time to time and in this regard, useful reference can be drawn to decision of the **Hon'ble Supreme Court** in case of **ACIT vs Ahmedabad Urban Development Authority** dt. 19/10/2022 reported in 143 taxmann.com 278 wherein it was held as under:

> *"113. Learned counsel for the assessees relied upon Circular No. 1/2009 dated 27.03.2009 and Circular No. 11/2008 dated 19.12.2008 issued by the Central Board of Direct Taxes. The relevant part of Circular No. 11/2008 reads as follows:*
>
> *"3. The newly inserted proviso to section 2(15) will apply only to entities whose purpose is 'advancement of any other object of general public utility' i.e. the fourth limb of the definition of 'charitable purpose' contained in section 2(15). Hence, such entities will not be eligible for exemption under section 11 or under section 10(23C) of the Act if they carry on commercial activities. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity.*
>
> *3.1. There are industry and trade associations who claim exemption from tax u/s 11 on the ground that their objects are for charitable purpose as these are covered under 'any other object of general public utility'. Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants.*
>
> *Therefore, where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to section 2(15) owing to the principle of mutuality. However, if such organizations have dealings with non-members, their claim to be charitable organizations would now be governed by the additional conditions stipulated in the proviso to section 2 (15)."*
>
> *114. Circular No. 1/2009 dated 27.03.2009 contains explanatory notes to provisions of the Finance Act, 2008. It inter alia reads as follows:*
>
> *"5. Streamlining the definition of "charitable purpose"*
>
> *5.1 Sub-section (15) of section 2 of the Act defines "charitable purpose" to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility. It has been noticed that a number of entities operating on commercial lines are claiming exemption on their income either under sub-section (23C) of section 10 or section 11 of the Act on the ground that*

they are charitable institutions. This is based on the argument that they are engaged in the "advancement of an object of general public utility" as is included in the fourth limb of the current definition of "charitable purpose". Such a claim, when made in respect of an activity carried out on commercial lines, is contrary to the intention of the provision.

5.2 With a view to limiting the scope of the phrase "advancement of any other object of general public utility", sub-section (15) of section 2 has been amended to provide that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity. Scope of this amendment has further been explained by the CBDT vide its circular no.11/2008 dated 19th Dec 2008."

115. Senior counsel appearing for the assessees relied on Section 119 of the IT Act as well as decisions of this court, reported as Navnit Lal Jhaveri (supra) and UCO Bank Calcutta (supra) and argued that departmental circulars are binding upon tax administrators, and should be legitimately considered as aids of construction. This was in support of their reliance on the circulars in the present case (No.11/2008 and No. 1/2009). 116. This court in Navnit Lal Jhaveri (supra) considered Sections 2(6A)(e) and 12(1B) of the IT Act which were introduced by the Finance Act, 15, 1955 (w.e.f. 01.04.1955). As a result of these amendments, the combined effect of the two provisions was that three kinds of payments made to shareholders companies to which those applied, were treated as taxable dividend to the extent of the accumulated profits held by the company. The provision was challenged. It was noticed that while introducing the amendment, the Finance Minister assured that outstanding loans and advances – otherwise liable to taxation as dividends in AY 1955-56, would not be subjected to tax if it were shown that they had been genuinely refunded to the respective companies before 30.06.1955. The government felt that unless such a step was taken, the operation of Section 12(1B) would lead to extreme hardship, as it would cover the aggregate of all outstanding loans of past years and could have led to unreasonably high liability on shareholders to whom the loans might have been advanced. A circular [No. 20(XXI-6) /55] was issued by the Central Board of Revenue on 10.05.1955. The court, in that context, observed that:

"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 s. 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 the effect such transactions and not to bring them within the mischief of the new provision.

The officers were, therefore, asked to intimate to all the companies that if the loans were repaid before the 30th June, 1955, in a genuine manner, they would not be taken into account in determining the tax liability of the shareholders to whom they may have been advanced. In other words, past transactions which would normally have attracted the stringent provisions of s. 12(1B) 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 s. 12(1B). Section 12(1B) would, therefore, normally apply to loans granted by the companies, to their respective shareholders with full notice of the provisions prescribed by it."

117. This court ultimately upheld the amendments. As is evident, the judgment noticed that the circular sought to soften the rigors of the otherwise harsh consequence of immediate application of the amendment. There was nothing in the circular to make it applicable for all times to come. It was more in the nature of the government issuing a temporary suspension of operation of the substantive provision, introduced by the amendment.

118. In UCO Bank, Calcutta (supra), this court had to deal with circulars issued under Section 145 regarding the method of accounting to be followed, in the context of bank loans to be written off, when an assessee was following the mercantile system (of accounting). The court inter alia, held that under Section 119 (2) of the IT Act, the Central Board of Direct Taxes is empowered, for proper and efficient management of assessment and collection of revenue to issue general or special orders in respect of any class of incomes or class of cases setting forth directions or instructions, not being prejudicial to assessees, as the guidelines, principles or procedures to be followed in the work relating to assessment. The court held that the "

9. […] 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 forego 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."

119. The view expressed in Navnit Lal Jhaveri (supra), and later elaborated in UCO Bank (supra) appears to have found resonance in other decisions 111 of this court. A recent instance where this court took aid of explanatory circulars is in CIT v. Vatika Township112 when after holding that the amendment in question applied prospectively, the court also supported that holding by citing the revenue's understanding about such prospective application, in a circular. What is of note in that judgment, is that the question of whether circulars or explanatory notes issued by the executive are binding aids of construction was not discussed; more importantly, the court first interpreted the statute, in its own terms, and then cited the circular.

120. That circulars are per se not binding upon courts, in regard to interpretation of a statutory provision and, at best are guides or aid to interpretation for departmental authorities, who are bound to take them into account, was pithily stated in Keshavji Ravji & Co. and Ors. v. Commissioner of Income Tax113 where the court observed as follows:

"This contention and the proposition on which it rests, namely, that all circulars issued by the Board have a binding legal quality incurs, quite obviously, the criticism of being too broadly stated. The Board cannot preempt a judicial interpretation of the scope and ambit of a provision of the 'Act' by issuing circulars on the subject. This is too obvious a proposition to require any argument for it. A circular cannot even impose on the tax payer a burden higher than what the Act itself on a true interpretation envisages. The task of interpretation of the laws is the exclusive domain of the courts. However, this is what Sri Ramachandran really has in mind - circulars beneficial to the assessees and which tone down the rigour of the law issued in exercise of the statutory power under Section 119 of the Act or under corresponding provisions of the predecessor Act are binding on the authorities in the administration of the Act. The Tribunal, much less the High Court, is an authority under the Act. The circulars do not bind them. But the benefits of such circulars to the assessees have been held to be permissible even though the circulars might have departed from the strict tenor of the statutory provision and mitigated the rigour of the law. But that is not the same thing as saying that such circulars would either have a binding effect in the interpretation of the provision itself or that the Tribunal and the High Court are supposed to interpret the law in the light of the circular. There is, however, support of certain judicial observations for the view that such circulars constitute external aids to construction."

121. This view was accepted in Commissioner of Customs v. Indian Oil Corporation114 , which articulated the position with some degree of clarity. Commenting on Navnit Lal Jhaveri (supra) and other decisions, it was observed that:

"30. No proposition was laid down in that case that even if the circular was clearly contrary to the provisions of the Act it should prevail, On the other hand, the learned Judges were inclined to view the circular as granting the benefit of exemption from the operation of the impugned provisions subject to fulfilment of certain conditions. Navnit Lal's case was referred to and construed in two cases decided by Benches of two learned Judges. The first one was the case of Ellerman Lines Ltd. v. Commissioner of Income Tax, West Bengal [1971]82ITR913(SC) and the other is K.P. Varghese v. I.T. Officer, Ernakulam [1981]131ITR597(SC) . In both these cases it was assumed that Navnit Lal's case was an authority for the proposition that even if the directions given in the circular clearly deviate from the provisions of the Act, yet, the Revenue is bound by it. These three decisions were repeatedly referred to and relied on in the subsequent decisions in which the issue arose as regards the binding nature of the circulars either under the Income Tax Act or under the Central Excise Act. In between, there was the three Judge Bench decision in Sirpur Paper Mills Ltd. v. Commissioner of Wealth Tax [1970]77ITR6(SC) in which Section 13 of the Wealth Tax Act corresponding to Section 5(8) of the Income Tax Act, 1922 fell for consideration. This Court took the view that the instructions issued by the Board may control the exercise of the power of the departmental officials in matters administrative but not quasi-judicial. There is yet another decision of a three Judge Bench which seems to make a dent on the weight of the proposition that the circulars of the Board, even if they are plainly contrary to the provisions of the Act, should be given effect to and binding on the authorities concerned in the administration of the Act. That is the case of Keshavji Ravji & Co. v. I.T. Commissioner [1990] 183 ITR 1(SC)"

122. In view of a conflict between decisions, on the binding nature of circulars issued by the Board (in the context of decisions of authorities dealing with indirect taxation issues) this court, by a five-judge decision, in Ratan Melting and Wire Industries (supra) held that

"6. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law."

123. In the opinion of this court, the views expressed in Keshavji Ravji, Indian Oil Corporation and Ratan Melting and Wire Industries (though the last decision does not cite Navnit Lal Jhaveri), reflect the correct position, i.e., that circulars are binding upon departmental authorities, if they advance a proposition within the framework of the statutory provision. However, if they are contrary to the plain words of a statute, they are not binding. Furthermore, they cannot bind the courts, which have to independently interpret the statute, in their own terms. At best, in such a task, they may be considered as departmental understanding on the subject and have limited persuasive value. At the highest, they are binding on tax administrators and authorities, if they accord with and are not at odds with the statute; at the worst, if they cut down the plain meaning of a statute, or fly on the face of their express terms, they are to be ignored."

28. In the instant case, we find that the concept of DIN was introduced in the statue by the Finance (No. 2) Act of 2009 whereby Section 282B was inserted with effect from 1/10/2010 and the same has been explained in CBDT Circular no. 5/20210 dated 3/06/2010. Thereafter, by the Finance Act of 2011, Section 282B got omitted with effect from 1/04/2011 and the reasons for such omission can be seen from the CBDT Circular no. 2/2012 dated 22/05/2012. Thereafter, the CBDT came out with the Circular no. 19/2019 dated 14/08/2019 which is under consideration before us. We therefore find that at the time of issue of the aforesaid Circular, there was certain vacuum in the statutory provisions, which can be seen from the omission of section 282B, which have been felt by the authorities concerned and can also be seen from the contents of the said

Circular where it has been stated that "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". In order to fill the said statutory vacuum and other stated objectives, the CBDT came out with the aforesaid circular in exercise of its powers u/s 119 of the Act. One can debate as to why Section 282B when was initially introduced, subsequently omitted, cannot be re-introduced in the statue by the legislature, however, the fact of the matter is that instead of legislature exercising its powers on its own by bringing suitable amendment, it choose to invoke the delegated powers to the executive, who in turn by way of delegated powers to CBDT, and thereafter, the CBDT in exercise of its powers u/s 119 has issued the aforesaid circular and as on the date of issue of the said circular, as such.

29. We have looked at the provisions of Section 282 of the Act as well where the Statute talks about the service of a notice, summon, requisition or order or any other communication under the Act by delivering or transmitting a copy thereof to the person stated therein and prescribes various mode of service by post or in such manner as provided under Code of Civil Procedure or in form of any electronic record as provided in Information Technology Act or by another means of transmission of documents as provided by the rules made by the CBDT in this behalf. We therefore find that there is nothing contrary in the said

provisions, infact, the Circular can only be read in supplementing the said provisions and furthering the objective as so stated in terms of strengthening the transparency in the tax administration by way of establishing the digital foot prints which are difficult to erase and can be verified where so challenged, should the need for the same arise in future. We find that it is even not the case of the Revenue as set out before us that said Circular is contrary to any express provisions in the statue and thus, not binding on the Assessing Officer. Therefore, we have no hesitation to hold that the said CBDT Circular binds the Assessing officer by all intents and purposes it seek to achieve and where the Assessing officer fails in his duty to adhere and comply with the same, the said action cannot be ignored and the necessary consequences have to follow.

30. Now, coming to the contention advanced by the Ld. CIT/ DR that non-mentioning of DIN in the body of the assessment order is merely a mistake or at best a defect and/or omission which ought not to invalidate the assessment proceedings and substantive order and reference was drawn to Section 292B of the Act. We find that similar contentions were raised by the Ld Standing Counsel for the Revenue before the **Hon'ble Delhi High Court** in case of **CIT(International Taxation)-1 Vs. Brandix Mauritius Holding Ltd.** *(supra)* where the Hon'ble High Court vide its order dated 20/03/2023 has held that Circular issued by CBDT is binding on the Assessing officer and recourse to section 292B is untenable having regard to phraseology used in paragraph 4 of 2019 circular and the details findings read as under:

> *"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 well established 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.

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

23. Needless to state, that if the AO is in a position to take next steps in law, it would embark upon the same only in accordance with the law."

31. In the aforesaid case, the facts of the matter were that the final assessment order passed by the Assessing officer u/s 147/144C(13)/143(3) was without quoting DIN on the body of the order and the Coordinate Delhi Benches held that the order so issued is hit by mandate of the Board and is invalid and deemed to have never been issued as it fails to mention DIN in the body adhering to CBDT Circular no. 19/2009 dated 14/08/2019. The matter was thereafter carried in appeal by the Revenue before the Hon'ble Delhi High Court and it was contended on behalf of the Revenue that failure to allocate

and mention DIN was a mere mistake and such a mistake can be corrected by taking recourse to section 292B of the Act which was however not found acceptable to the Hon'ble High Court. The Hon'ble High Court referred to the CBDT Circular and held that there is nothing on record that there were any exceptional circumstances as referred in paragraph 3 of 2019 circular which would sustain the communication issued manually without DIN. The Hon'ble High Court held that circulars issued by the CBDT in exercise of its powers under section 119 are binding on the Revenue and referred to the Hon'ble Supreme Court decision in case of K.P Varghese vs ITO and Delhi High Court decision in case of And Back office IT Solutions Pvt ltd. vs UOI and held that recourse to Section 292B is untenable having regard to phraseology used in paragraph 4 of 2019 circular. It was held that any communication relating to assessment, appeals, orders, etc albeit without DIN can have no standing in law having regard to paragraph 4 of 2019 circular. No contrary authority has been brought to our notice. The legal proposition so laid down in the said case therefore squarely applies in the instant case wherein the Assessing officer has issued the reassessment order without mention of DIN on body of the order and therefore, the communication so issued can have no standing in eyes of law and is invalid and deemed never to have been issued and recourse to section 292B cannot be taken. The contention advanced by the Ld. CIT DR thereafter stand duly addressed and cannot be accepted.

32. Again, in the context of CBDT Circular no. 19/2019 dated 14/08/2019, we find that the matter came up for consideration before the **Hon'ble Bombay High Court** in case of **Ashok Commercial Enterprises vs Assistant Commissioner of Income tax** *(Writ petition no 2595 and others)* wherein the Hon'ble High Court vide its order dated 04/09/2023 has held as under:

> *"18 Whether the impugned assessment order dated 28th September 2021 is invalid on account of it being issued without a DIN?*

(a) The CBDT, in exercise of powers under Section 119(1) of the Act, has issued a Circular No.19/2019 dated 14th August 2019 providing that no communication shall be issued by any Income Tax Authority inter alia relating to assessment orders, statutory or otherwise, inquiries, approvals, etc. to an assessee or any other person on or after 1st October 2019 unless a computer generated DIN has been allotted and is quoted in the body of such communication. The Circular reads as under :

CIRCULAR NO.19/2019 (F. NO.225/95/2019-ITA.II],
DATED 14-8-2019

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(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.

Paragraph 3 of the Circular sets out five exceptional circumstances where the aforementioned mandatory requirement may not be adhered to, but requires that if an order/communication is to be issued without a DIN, it can be done only after recording reasons in writing in the file and with the prior written approval of the Chief Commissioner/Director General of Income Tax. Further, paragraph 3 requires that if such exceptional circumstances are claimed, the orders/communication issued without a DIN must state this fact in a specific format set out in paragraph 3 of the Circular.

Paragraph 4 of the Circular provides that any order/ communication which is not in conformity with paragraphs 2 and 3 of the Circular shall be treated as invalid and shall be deemed to have never been issued.

The contents of the Circular have been re-iterated in a Press Release dated 14th August 2019;

(b) It is indisputable that the impugned assessment order dated 28th September 2021 does not bear a DIN and further that the said order issued without a DIN

does not bear the required format set out in paragraph 3 of the Circular and, therefore, the impugned assessment orders for Assessment Year 2011-2012 to 2019-2020 ought to be treated as invalid and deemed never to have been issued. We find support for this view in Brandix Mauritius Holdings Ltd. (Supra) where the Hon'ble Delhi High Court has held that an order passed in contravention of the said Circular is void, bad in law and of no legal effect. Paragraphs 16 to 17.1, 18 and 19 read as under:

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.

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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.

(c) During the course of hearing, Mr. Suresh Kumar produced an intimation letter dated 13th October 2021 stating that the order dated 28th September 2021 under Section 153C of the Act has a DIN, which is set out therein. Even if this is held to be in compliance with paragraph 5 of the Circular, which deals with regularization of communications without DIN, this can only seek to regularize the failure to generate a DIN, but yet the requirements of paragraph 3 of the Circular will still remain contravened and consequently, the order dated 28th September 2021 ought to be treated as invalid and never issued;

(d) The said Circular also applies to the satisfaction note dated 13th July 2021 issued by respondent no.1. The satisfaction note will fall within the scope of paragraph 2 of the Circular as a communication of the specified type issued to

any person. In the case of the satisfaction note no regularization dated 13th October 2021 has been issued;

(e) In view of the binding nature of Circular issued under Section 119 of the Act, and the peculiar facts and circumstances of the case, the consequences of contravention of the Circular set out above, therefore, ought to be given full effect to. The object of the said Circular is clear and laudatory and intended to ensure that proper trail of all assessment and other orders are maintained and further that any deviation therefrom can only be undertaken after prior written approval of the higher authorities under the Act. Therefore, the satisfaction note dated 13th July 2021 and the impugned order of assessment dated 28th September 2021 ought to be treated as invalid and deemed never to have been issued;"

33. In the aforesaid case, the facts of the matter were that among various contentions challenging the assessment order passed u/s 153C r/w 144, one of the contentions raised before the Hon'ble High Court was that the assessment order doesn't bear a DIN and reference was drawn to the CBDT Circular no 19/2019 as well as the Hon'ble Delhi High Court decision referred supra. The Revenue in its submissions stated that the assessment order dated 28/09/2021 and notice of demand dated 28/09/2021 was communicated to the assessee vide letter dated 30/09/2021 having computer generated DIN and thus, the communication of assessment order and notice of demand is done only after creation of DIN number and the same is in compliance with the CBDT Circular no. 19/2019. Negating the submissions on behalf of the Revenue, the Hon'ble High Court held that it is indisputable that the assessment order dated 28th September 2021 does not bear a DIN and further that the said order issued without a DIN does not bear the required format set out in paragraph 3 of the Circular and, it was held that the assessment order ought to be treated as invalid and deemed never to have been issued and in support, reliance on placed on Hon'ble Delhi High Court decision in case of Brandix Mauritius Holdings Ltd. (Supra). We therefore find that the Hon'ble High Court has laid emphasis on each of the communication issued by the Assessing officer and in the process, has laid down the proposition that the quoting of DIN has to be *qua* each communication and just because there is simultaneous communication of

assessment order and notice of demand, the same wouldn't satisfy the requirement as so laid down in the CBDT Circular. In the instant case, as well, we find that where there is simultaneous communication of assessment order and notice of demand and the assessment order doesn't carry DIN on body of the assessment order though the notice of demand carries the DIN, the assessment order has is to be treated as invalid and never be deemed to be issued. We therefore find that the said decision support our view, as we have discussed in paragraph 18-20 *supra*, that assessment order and notice of demand are two separate communications *qua* the assessee and carry separate physical existence and identity, even though issued on the same date by the same Assessing officer pertaining to same assessment year and therefore, necessarily have to carry separate DIN on the body of the said communications.

34. Again, in the context of CBDT Circular no. 19/2019 dated 14/08/2019, we find that the matter came up for consideration before the **Hon'ble Calcutta High Court** in case of **Principal Commissioner of Income tax, Exemption vs M/s Tata Medical Centre Trust, Kolkata** *(ITAT/2023/2023, IA No. GA/1/2023)* wherein the Hon'ble High Court vide its order dated 26/09/2023 has held as under:

> *"This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 18th July, 2022 and 5th April, 2023, passed by the Income Tax Appellate Tribunal, 'B' Bench, Kolkata, in I.T.A. No. 238/Kol/2021 and M.A. No. 38/Kol/2022, for the assessment year 2016-17.*
>
> *The revenue has raised the following substantial questions of law for consideration :-*
>
> *a) Whether in the facts and in the circumstances of the case the Tribunal was justified in law to quash the order passed under Section 263 of the said Act on the ground of not mentioning any DIN despite the fact that the DIN for the said order was duly generated and communicated to the assessee through intimation letter along with the said order ?*
>
> *b) Whether in the facts and in the circumstances of the case the Tribunal was justified in law in not appreciating the fact that the intimation letter enclosing the order passed under Section 263 specifically mentioned that "Order u/s 263 Dt. 31.03.2021 is having Document No. (DIN) ITBA/REV/M/REV5/2020-21/1032079241(1)", which forms an integral part of the order passed under Section 263?*

c) Whether in the facts and in the circumstances of the case the Tribunal was justified in law in not appreciating the fact that the DIN which was duly generated and communicated along with the order passed under Section 263 to the assessee was in compliance of the Circular No. 19/2019 dated 14.08.2019 issued by CBDT ?

d) Whether the Tribunal was justified in law to dismiss the miscellaneous application without considering the issue of generation of the DIN Number being a ground for rectification of a mistake apparent from record as per section 254(2) of the said Act ?

We have heard Ms. Smita Das De, learned standing Counsel appearing for the appellant/revenue and Mr. Abhratosh Majumder, learned senior Advocate, assisted by Mrs. Akshara Shukla, learned Advocate, for the respondent/assessee.
The short issue which falls for consideration is whether the DIN was mentioned in the order passed under Section 263 of the Act. The learned Tribunal upon examining the facts held that the order does not incorporate the DIN number and it is in violation of the Circular No. 19 of 2019, dated 14th August, 2019. In the said Circular, in paragraph 4 it has been stated that any communication which is not in conformity with Para 2 and Para 3 of the said Circular shall be treated as invalid and shall be deemed to have never been issued. The Tribunal on examination of the facts held that the requirement as mentioned in the Circular namely, quoting of the Document Identification Number, has not been followed and therefore allowed the assessee's appeal.

The learned counsel for the appellant submitted that the intimation letter should be treated as part and parcel of the substantive order. However, in the intimation letter there is nothing mentioned as to why in the substantive order the Document Identification Number was not mentioned as mandated in the Circular.

The revenue filed miscellaneous application seeking for rectification of the said order. Once again the Tribunal has undertaken a factual exercise and in fact, raised a specific query to the revenue to point out how a DIN intimation 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.

The stay application IA No.GA/1 /2023 is also dismissed"

35. In the aforesaid case, briefly the facts of the case are that the assessment was originally completed under section 143(3) of the Act. Subsequently, the Ld.

CIT(E), Kolkata issued a show cause and thereafter, an order under section 263 was passed against which the assessee moved in appeal before the Coordinate Kolkata Bench and by way of additional grounds of appeal, it was contended that the order passed by the Ld. CIT(E) was null and void as it fails to mention any DIN number on its body or adhering to Circular number 19/2019 issued by CBDT. The Coordinate Kolkata Bench gave a finding that the order under section 263 has been issued manually which doesn't bear the signature of the authority passing the order. Further, it was held that from the perusal of the order passed under section 263 of the Act in its entire body of the order, there is no reference to the fact of the order being issued manually without a DIN for which the written approval of Chief Commissioner / DGIT was required to be obtained in the prescribed format in terms of para 4 of the CBDT Circular and such a lapse in the case renders the impugned order as invalid and deemed to have never been issued.

36. It was further held by the Kolkata Bench that the CBDT Circulars are binding on the Income Tax Authorities and among various authorities being cited in support thereof, reliance was placed on the decision of Hon'ble Chattisgarh High Court in case of DCIT Vs. Sunita Finlease Ltd. [2011] 330 ITR 491 wherein it was held that the administrative Instruction No. 9/2004 issued by the CBDT 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) of the Act. Further reliance was also placed on the Hon'ble Calcutta High Court decision in case of Amal Kumar Ghosh [2014] 361 ITR 458 (Cal) wherein the Hon'ble High Court, rebutting the contention advanced by the Ld. Advocate on behalf of the Revenue that the Circulars are not meant for purpose of permitting the unscrupulous assessee's from evading tax, held that 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. It was held by the Hon'ble High Court that where this type of deviation is permitted, the consequences will be that, floodgate of corruption will be opened which is not desirable to encourage. It was held by the Hon'ble High Court that 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. We therefore find resonance of our thought process as we have discussed *supra* in paragraph 25 supra that the sub-ordinate authorities to whom the directions and instructions are issued by CBDT have to strictly observe and follow such directions and instructions as the same have become part of standards laid down by CBDT which have to be followed as part of standing operating procedure, which is so profoundly articulated by the Hon'ble Calcutta High Court and therefore we are clearly guided by the said proposition so laid down by the Hon'ble Calcutta High Court that where the department has set down a standard for itself, the department is bound by that standard and cannot act with discrimination and apply the same selectively in some cases and ignore in other cases.

37. The Coordinate Kolkata Bench thereafter held the order passed by the Ld. CIT(E) as invalid and never been issued as it fails to mention DIN number in its body by adhering to CBDT Circular No. 19/2019. Thereafter the matter was carried in appeal before the Hon'ble Calcutta High Court. During the course of hearing, the Ld. Counsel for the Revenue submitted that the Tribunal was not justified in not appreciating the fact that intimation letter enclosing the order passed under section 263 was having a DIN number and which forms the integral part of the order passed under section 263 of the Act. The Hon'ble High Court didn't accept the said submissions and held that in the intimation letter, there is nothing mentioned as to why in the substantive order, the DIN number

was not mentioned as mandated in the CBDT Circular more particularly in paragraph 2 of the said Circular. The Hon'ble High Court held that the body of the communication must contain the fact that the communication is issued without DIN number and reasons thereof and accordingly the Hon'ble High Court upheld the findings of the Tribunal referring to the para 4 of the CBDT Circular wherein it was stated that any communication which is not in conformity with para 2 and 3 of the said Circular shall be treated as invalid and shall be deemed to have never been issued. The said decision again supports the facts in the instant case where there is no mention of DIN on body of the assessment order and even there is no mention of any exception so carved for non-mentioning the DIN in the body of the order, thus not in conformity with para 2 and 3 of the said Circular.

38. We therefore find that there is consistent view taken by the Hon'ble Delhi High Court, Hon'ble Bombay High Court and Hon'ble Calcutta High Court that given the binding nature of the CBDT Circular on the income tax authorities, the consequences of the contravention thereof ought to be given full effect to and any communication so issued in contravention of the CBDT Circular ought to be treated as invalid and deemed never to have been issued.

39. At the same time, we will be failing in our duty in not referring to the decisions rendered by the Hon'ble Allahabad High Court, the Hon'ble Kerela High Court and Hon'ble Jharkhand High Court which have come to our notice and brought to the notice of both the parties during the course of hearing.

40. The **Hon'ble Allahabad High Court** in case of **Chandra Bhan vs Union of India** *(Writ petition no. 829 of 2023 dated 18/07/2023*) reported in 2023:AHC:142867 has held as under:

> *"Heard learned counsel for the petitioner and Mr. Gopal Verma, learned counsel appearing for Union of India.*

This petition is directed against the order of re-assessment passed against the petitioner. A preliminary objection is taken to maintainability of the writ petition on the ground that petitioner has remedy of filing statutory appeal where all questions of fact and law can be adjudicated.

Learned counsel for the petitioner states that proper opportunity was not given and that the notice U/s 148 of the Income Tax Act was issued manually instead of it being issued by applying the document identification number (DIN). Such notice is said to be in violation of the circular issued by the department.

Learned counsel appearing for the revenue/ department states that petitioner has participated in the proceedings and only after consideration of his reply the reassessment proceedings have been concluded.

In the facts of the present case, we are not inclined to entertain the writ petition in view of the availability of statutory alternative remedy. The petitioner has otherwise participated in the proceedings. All questions of fact and law are otherwise left open for appropriate examination by the appellate authority.

The main argument is that the order is without jurisdiction since notices were not issued on DIN. This argument is noticed only to be rejected since no prejudice is shown to have been caused to the petitioner on account of issuance of manual notices. Admittedly, the petitioner has acknowledged receipt of such notice and has also submitted his objections, which have been duly adverted to. Non-issuance of notice on DIN would thus not be a ground to entertain the writ petition, notwithstanding the availability of alternative remedy.

Subject to the observations made above, this petition is consigned to records."

41. In the aforesaid case, a writ petition was moved by the petitioner before the Hon'ble High Court assailing the assessment order passed u/s 147 of the Act and it was contended that the notice u/s 148 of the Income Tax Act was issued manually instead of it being issued by applying the document identification number (DIN) which is in violation of the Circular issued by the department. The Hon'ble High Court has however refused to entertain the writ petition primarily in view of alternate statutory remedy available to the assessee and all questions of law and facts were kept open. While disposing off the writ petition, the Hon'ble High Court has also held that the argument of the appellant that the order so passed is without jurisdiction deserve to be rejected since no prejudice is shown to have been caused to the petitioner as the petitioner has acknowledged receipt of such notice and has also submitted his objections, which have been duly adverted to and non-issuance of notice on DIN would thus not be a ground

to entertain the writ petition, notwithstanding the availability of alternative remedy. We therefore find that the writ petition so filed was dismissed by the Hon'ble High Court primarily in view of availability of alternate remedy and secondly, following the doctrine of no prejudice being caused to the assessee. At the same time, it is noted that there is no reference to the contents of the CBDT Circular apparently not brought to the notice of the Hon'ble High Court and consequently, no reference to the intent and context of issuance of such circular and the fact that the said circular has been issued by the CBDT in exercise of its powers u/s 119 of the Act which at the very threshold debars issuance of any circular which is prejudicial to the assessee and at the same time, binding on the authorities entrusted with the task of execution of the Act as we have discussed in paragraph 25 (*supra)* that the doctrine of prejudice has been duly considered by the legislation while enshrining the powers to the CBDT to issue instructions and directions u/s 119 of the Act and at the very threshold, where such powers have been satisfied as not in dispute in the instant case, the sub-ordinate authorities to whom the directions and instructions are issued by CBDT have to strictly observe and follow such directions and instructions as the same have become part of standing operating procedure laid down by CBDT which have to be necessarily followed. The sub-ordinate authorities cannot decide to apply the same standard in one case and not apply the same in another case stating that where the standards are not followed and applied, no prejudice is caused to the assessee.

42. Further, the **Hon'ble Kerela High Court** in case of **South Coast Spices Pvt Ltd vs Principal Commissioner of Income tax** *(Writ petition no. 33771 of 2023 dated 16/10/2023)* reported in 2023:Kerela:63576 has held as under:

> *"4. The satisfaction notes recorded by the Assessing Authority, which have been placed on record in Exts.P19 to P24, would suggest that the Assessing Authority has examined the documents and recorded satisfaction for issuing notices under Section 153C of the IT Act. The petitioner has demanded the satisfaction note, and the letter issued by the Assistant Commissioner of Income Tax in Ext.P18,*

whereby the satisfaction notes have been provided to the petitioner on his demand, would disclose that the letter bears the DIN number. The satisfaction note need not bear the DIN number, and this Court does not find any substance in the submission of the learned Counsel for the petitioner that since the satisfaction notes do not bear the DIN number, whole proceedings are invalid.

4.1 The judgment cited by the learned Counsel for the petitioner in the of Ashok Commercial Enterprises (supra) is of no help to the petitioner as the facts of the said case are distinguishable. In that case, the Bombay High Court has taken note of Circular No.19/2019 issued by the CBDT in the exercise of power under Section 119(1) of the IT Act dated 14.08.2019 providing that no communication shall be issued by any Income Tax Authority inter alia relating to assessment orders, statutory or otherwise, inquiries, approvals to an assessee or any other person on or after 1st October 2019 unless a computer generated DIN has been allotted. The said Circular is extracted hereunder:

"CIRCULAR NO.19/2019 (F. NO.225/95/2019-ITA.II],
DATED 14-8-2019

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(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 31st October 2019."

4.2 The satisfaction note is a document prepared by the Assessing Authority which is kept in the file, and unless an assessee demands the satisfaction note, it is not required to be provided to the assessee. Therefore, there is no requirement to have a DIN number in the satisfaction note recorded by the Assessing Authority. When the satisfaction notes have been provided to the petitioner, the communication in Ext.P18 bears DIN, and therefore, I find that the judgment cited by the learned Counsel for the petitioner has no application to the facts of the present case.

5. Considering the facts and circumstances of the case, it cannot be said that the impugned notices and assessment orders are without jurisdiction as submitted by the learned Counsel for the petitioner. Therefore, this Court would not like to entertain the writ petition in the exercise of the writ jurisdiction. The petitioner may avail the remedy of appeal against the impugned assessment orders if so advised.

Thus, the writ petition, with the aforesaid observation, is hereby dismissed.

43. In the aforesaid case, a writ petition was moved by the petitioner before the Hon'ble High Court assailing the assessment order passed u/s 153C of the Act and it was contended that the satisfaction note recorded prior to issue of notice u/s 153C of the Income Tax Act doesn't contain the document identification number (DIN) which is in violation of the Circular issued by the department and therefore, the whole proceedings are invalid. The Hon'ble High Court has however refused to entertain the writ petition and held that the satisfaction note is a document prepared by the Assessing officer which is kept in the file, and unless an assessee demands the satisfaction note, it is not required to be provided to the assessee and there was thus, no requirement to have a DIN number in the satisfaction note recorded by the Assessing Authority. At the same time, when the satisfaction note was provided to the petitioner, the communication bears DIN. The Hon'ble High Court has thus laid emphasis on internal documentation to be maintained by the AO and the documentation to be shared with the assessee and further, the relevant point of time when the internal documentation is shared/communicated with the same, the same should bears the DIN number. In the instant case, the facts are clearly distinguishable as the assessment order so passed by the AO and communicated to the assessee at the same point in time doesn't bear the DIN number.

44. Further, the **Hon'ble Jharkhand High Court** in case of **Prakash Lal Khandelwal vs. The CIT, Ranchi** *(in W.P. (T) No. 1901 of 2022 dated 19/21-02-2023)* has held as under:

"7. Having heard learned counsel for the parties and after going through the documents annexed with the respective affidavits and the averments made therein it appears that the petitioner in the present writ petition has challenged the assessment order, dated 31.03.2022, passed in the case of the petitioner for AY 2014-15. The said assessment order was passed pursuant to the order dated 02.03.2020 passed by the ITAT which had directed the assessing officer to examine the entire issue afresh. The order of the learned ITAT was received by the office of the Principal Commissioner of Income Tax on or around 24.06.2020.

According to the petitioner, as per Section 153 (3) of the Income Tax Act, 1961, the limitation period for passing and communicating the said assessment has expired on 31.03.2022. The main thrust of the argument of the petitioner is that the said assessment order, dated 31.03.2022, passed in the case of the petitioner was not communicated to the assessee and also not uploaded on the web portal on or before 31.03.2022. Therefore, it has been argued by the petitioner that the said assessment order is barred by the limitation period prescribed under Section 153(3) of the Income Tax Act, 1961. It has also been contended that the DIN (Document Identification Number) for communication of the said assessment order was generated on 01.04.2022 and the said assessment order was uploaded on the web portal on 01.04.2022. Further, the said assessment order was communicated to the Petitioner on 03.04.2022. The Petitioner has relied on the CBDT circular, bearing no. 19/2019 and dated 14.08.2019, to argue that no communication in relation of the assessment order could have been made in the absence of DIN. As in the present case, the DIN was generated after 31.03.2022 i.e., on 01.04.2022, therefore the assessment order could not have been communicated to the petitioner prior to 31.03.2022. Accordingly, the assessment order is barred by limitation as the same was communicated after 31.03.2022. The Petitioner contended that DIN is mandatory for uploading of any manual order.

8. The case of the Revenue is that the assessment order dated 31.03.2022 passed in the case of the petitioner for AY 2014-15 is not barred by the limitation period provided under Section 153(3). It is submitted that Section 153 (3) provides the time line only for making of an assessment order and not for communicating or issuing the assessment order. Accordingly, what is required under Section 153(3) is that the assessment order may be made by the given date and the same is clear from Section 153 (3) of the Act.

9. To decide the rival contentions of the parties' section 153 of the Act is quoted hereunder:

153. (1) No order of assessment shall be made under section 143 or section 144 at any time after the expiry of twenty-one months from the end of the assessment year in which the income was first assessable:

Provided that in respect of an order of assessment relating to the assessment year commencing on the 1st day of April, 2018, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:

Provided further that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2019, the provisions

of this sub-section shall have effect, as if for the words "twenty one months", the words "twelve months" had been substituted:

Provided also that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2021, the provisions of this sub-section shall have effect, as if for the words "twenty one months", the words "nine months" had been substituted.

(2) No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served:

Provided that where the notice under section 148 is served on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.

(3) Notwithstanding anything contained in sub sections (1) and (2), an order of fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of nine months from the end of the financial year in which the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner:

Provided that where the order under section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted. "

10. At this stage itself it is relevant to mention that 'making of order', 'issue of order', 'uploading of order on web portal' or 'communication of order' are all different acts or things. It is to be considered that section 153 (3) regulates only making of order. There is no restriction or limitation period prescribed under Section 153 (3) for 'issue of order', 'uploading of order on web portal' or 'communication of order'. The Hon'ble Supreme Court in the case of CIT v. Mohd. Meeran Shahul Hameed, (2022) 1 SCC 12, while interpreting Section 263 of the Income Tax Act, 1961, which uses similar expression like Section 153 (3), has held the following:

"4.2. While deciding the aforesaid issues and question of law, Section 263(2) of the Income Tax Act, which is relevant for our consideration is required to be referred to, which reads as under:

"263. (2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed."

4.3. On a fair reading of sub-section (2) of Section 263 it can be seen that as mandated by sub-section (2) of Section 263 no order under Section 263 of the Act shall be "made" after the expiry of two years from the end of the financial

year in which the order sought to be revised was passed. Therefore the word used is "made" and not the order "received" by the assessee. Even the word "dispatch" is not mentioned in Section 263(2). Therefore, once it is established that the order under Section 263 was made/passed within the period of two years from the end of the financial year in which the order sought to be revised was passed, such an order cannot be said to be beyond the period of limitation prescribed under Section 263(2) of the Act. Receipt of the order passed under Section 263 by the assessee has no relevance for the purpose of counting the period of limitation provided under Section 263 of the Income Tax Act.

5. In the present case, the order was made/passed by the learned Commissioner on 26-3-2012 and according to the department it was dispatched on 28-3-2012. The relevant last date for the purpose of passing the order under Section 263 considering the fact that the assessment was for the Financial Year 2008-09 would be 31-3-2012 and the order might have been received as per the case of the assessee respondent herein on 29-11-2012. However as observed hereinabove, the date on which the order under Section 263 has been received by the assessee is not relevant for the purpose of calculating/considering the period of limitation provided under Section 263(2) of the Act. Therefore the High Court as such has misconstrued and has misinterpreted the provision of sub-section (2) of Section 263 of the Act. If the interpretation made by the High Court and the learned ITAT is accepted in that case it will be violating the provision of Section 263(2) of the Act and to add something which is not there in the section. As observed hereinabove, the word used is "made" and not the "receipt of the order". As per the cardinal principle of law the provision of the statute/Act is to be read as it is and nothing is to be added or taken away from the provision of the statute. Therefore, the High Court has erred in holding that the order under Section 263 of the Act passed by the learned Commissioner was barred by period of limitation, as provided under sub-section (2) of Section 263 of the Act.

6. In view of the above and for the reasons stated above the question of law framed is answered in favour of the Revenue appellant and against the assessee respondent herein and it is held that the order passed by the learned Commissioner under Section 263 of the Income Tax Act was within the period of limitation prescribed under sub section (2) of Section 263 of the Act. The present appeal is allowed accordingly. No costs."

11. In the case at hand, the order sheet at Annexure–B to the supplementary affidavit of the revenue dated 07.12.2022, shows that the assessment order was made/generated on 31.03.2022 and the intimation letter was issued on 03.04.2022. Therefore, the contention of the petitioner, that the said assessment order, dated 31.03.2022 which was uploaded on the web portal on 01.04.2022 and communicated to the petitioner on 03.04.2022 is barred by limitation, is misconceived and not sustainable in law, inasmuch as, section 153 (3) controls only making of order. There is no restriction or limitation period prescribed under Section 153 (3) for 'issue of order', 'uploading of order on web portal' or 'communication of order.

12. Further, in the present case the assessment order, dated 31.03.2022, was uploaded on web portal on 01.04.2022, which is just the next day after 31.03.2022, and even the DIN was generated on 01.04.2022. Accordingly, the delay, if any, in uploading or DIN was just of one day.

In this factual background, it is also to be considered that specific expressions used in Section 153 (3) of the Income Tax Act, 1961 cannot be interpreted and applied as strictly as Section 153 (1) and (2), inasmuch as, the language and the expressions of Section 153 (1) and Section 153 (2) on one hand and Section 153 (3) on the other hand are substantially different. While Section 153 (1) and Section 153 (2) starts with a negative and strict expression being "No order of assessment …. shall be made", Section 153 (3) starts with a non obstante clause being "Notwithstanding anything contained in sub-sections (1) and (2)". The non-obstante clause gives Section 153 (3) an over-riding effect over the provision of Section 153 (1) and Section 153 (2).

It further appears that, both under Section 153 (1) and Section 153 (2) the language is "no order of assessment ……. shall be made" and the language in Section 153 (3) is "….order of fresh assessment …. may be made …..". The legislature, in the same Section 153, has used the word "shall" for assessment orders in cases falling under Section 153 (1) and Section 153 (2) and has used the word "may" for assessment orders in cases falling under Section 153 (3). Accordingly, the legislature itself has given stricter time line for Section 153 (1) and Section 153 (2) and has given a liberal time line for Section 153 (3). Thus, it may not be correct to apply the time line provided under Section 153 (3) strictly or as mandatory as compared to the timeline provided under Section 153 (1) and Section 153 (2).

It is further to be taken note of that both Section 153 (1) and Section 153 (2) provide for the consequence that after the expiry of time line "no assessment order shall be passed". However, Section 153 (3) does not provide for any such consequence.

Accordingly, in the present case, the delay, if any, of just one day in uploading the assessment order or generating the DIN cannot make the assessment order unsustainable in law.

13. The Petitioner has also contended that the assessment order, dated 31.03.2022, was uploaded on the next day i.e. 01.04.2022 but the same was required in law to be uploaded on the same date and not later. However, the Petitioner has not shown any provision of law which provides that an assessment order has to be uploaded on the web portal on the same day when it is made and the assessment order will become invalid if the same is uploaded on the next day. In the absence of such legal provision, it cannot be held that the assessment order, dated 31.03.2022, which was uploaded on 01.04.2022, is invalid in law.

At the cost of repetition, the different expression used by the legislature at different places has certainly a different objective. Making of the order and communication of the order are two different things. Even the circular stipulates communication of the order and not making of the order as it says every communication relating to assessment, appeal, order etc. shall have a DIN on the body of the order.

14. The Petitioner has contended that impugned order is antedated. It is a purely factual issue also disputed by the revenue. As such, the petitioner has a statutory alternate remedy to challenge the assessment order before the Commissioner of Income Tax (Appeals) where he may raise such plea.

> *15. Consequently, the instant writ application is dismissed. Petitioner has failed to satisfy any of grounds to invoke the writ jurisdiction of this Court by passing the statutory alternative remedy.*
>
> *The petitioner is at liberty to avail the alternate remedy to challenge the impugned assessment order. He would be at liberty to raise all those points before the appellate authority. It is made clear that we have not made any comments on the merits of case of the parties.*

45. In the aforesaid case briefly the facts of matter were that the assessment was originally completed under section 143(3). Thereafter the matter was carried in appeal before the Ld. CIT(A) and thereafter before the Tribunal wherein the Tribunal vide its order dt. 02/03/2020 remanded the matter back to the AO for fresh consideration. Thereafter the assessee pursued the matter with the AO however no final order was passed stating that after the introduction of the Faceless Assessment Scheme, the entire proceedings shall be carried out in terms of the said scheme. Aggrieved with the said action, the assessee preferred a Writ Petition before the Hon'ble High Court which was however subsequently withdrawn and the reasons for the withdrawal which were allowed by the Hon'ble High Court vide order dt. 19/04/2022 was that a fresh assessment order has been passed and uploaded on the Web Portal and in terms of Section 153(3), the time period to commence and conclude the proceeding after remand would be governed from the end of the financial year in which the order was received which would be 31/03/2022. During the pendency of the Writ Petition, the order of the assessment (pursuant to remand) was passed by the AO on 31/03/2022 which was uploaded on the Web Portal on 01/04/2022 and communicated to the assessee on 03/04/2022 which was again challenged by way of writ petition before the Hon'ble High Court.

46. In the aforesaid factual background, it was contended before the Hon'ble High Court that the order dt 31/03/2022 did not contain a DIN number and also does not state as to under what circumstances, the order is issued

manually and it does not state whether any approval received from the Chief Commissioner on the DG and therefore, the said order should be treated as invalid and non-est in eyes of law in terms of the specific mandate of the CBDT in terms of Circular No. 19/2019 dt. 14/08/2019 and reference was drawn to the Coordinate Kolkata Bench decision in case of M/s Tata Medical Centre Trust as well as various other authorities stating that the circular issued by the CBDT is binding on the Assessing officer. It was further contended that the uploading of the order on web portal is directly in conflict with Section 282 of the Act read with Rule 127 of the Income Tax Rules and what is relevant is the date of communication which in the instant case is 03/04/2022 will after the cutoff date of 31/03/2022 and it was contended that what is relevant is issue as well as services of any communication within the prescribed limit so prescribed by the statute. It was further contended that the assessment proceedings have become time barred as only on 03/04/2022, the order dt. 31/03/2022 was uploaded on the web portal of the assessee and communicated to the email address of the assessee only on 01/04/2022 indicating the DIN number of the impugned order and a corrigendum was also issued on 11/04/2022 in order to cover up the anomalies and defect in the order and it was contended that the order and the communication dt. 01/04/2022 shows that the order was antedated. In response, the Ld. Counsel for the Revenue submitted that Section 153(1) and 153(2) used the expression "shall" for prescribing the time limit for making the relevant assessment order and Section 153(3) uses the expression "may" for prescribing the time limit for making the relevant assessment order. It was submitted that unlikely Section 153(1) and 153(2) which are stringent and mandatory, Section 153(3) is only directory and only provided the timeline for making the assessment order pursuant to remand and does not provide the time limit for communicating the assessment order. It was also contended that the Circular Number 19/2019 regulates merely issuance of any communication

by the Income Tax Authority and not passing of the assessment order which has been clearly passed within the limitation period.

47. The submissions so made by both the parties were considered by the Hon'ble High Court and referring to the provisions of Section 153, it was held that Section 153(3) regulates only making the order and there is no restriction or limitation period prescribed under section 153(3) for issuance of order, uploading of order on web portal or communication of order. It was held in the said case, the assessment order was made / generated on 31/03/2022 and intimation letter was issued on 01/04/2022 therefore the contention advanced by the assessee that the assessment order dt. 31/03/2022 which was uploaded on the web portal on 01/04/2022 and communicated to the assessee on 03/04/2022 is barred by limitation was found misconceived and not accepted. It was further held by the Hon'ble High Court that the assessment order was uploaded on web portal on 01/04/2022 and even the DIN was generated on 01/04/2022 and therefore there is only one day delay in uploading or generation of DIN. It was held that the legislature itself has given stricter time line for Section 153(1) and Section 153(2) and has given a liberal time line for section 153(3) gone by expression "shall" and "may" used in the respective provisions and further both sections 153(1) and 153(2) provide for the consequence that after the expiry of time line, no assessment order shall be passed. However Section 153(3) does not provide for any such consequence. Therefore it was held that the delay if any of just one day in uploading the assessment order or generating the DIN cannot make the assessment unsustainable in law. It was further held by the Hon'ble High Court that making of the order and communication of the order are two different things. Even the 2019 Circular stipulates communication of the order and not making of the order as it says every communication relating to assessment etc shall have a DIN on the body of the order. Accordingly, the writ petition was dismissed and at the same time assessee was

granted liberty to avail the alternate remedy to challenge the assessment order on merits of the case.

48. We therefore find that even though the contentions have been raised by the assessee regarding the binding nature of the CBDT Circular and non mentioning of DIN on the body of the assessment order as well as the fact that the order is barred by the limitation in terms of Section 153(3) of the Act, the Hon'ble High Court has mainly examined the provision of Section 153(1), 153(2) and 153(3) and held that the provisions of Section 153(3) only provides for making of the assessment order and not for communicating or issuing the assessment order and has held that the expression used in Section 153(3) cannot be interpreted and applied in a stricter sense and the order so issued by not barred by limitation. We therefore find that the said decision cannot comes to the aid of the Revenue in as much as there is no specific finding which has been recorded by the Hon'ble High Court discussing the contention raised by the assessee regarding the binding nature of the CBDT Circular and non mentioning of the DIN on the body of the assessment order and the consequences that will follow as stated in the CBDT Circular.

49. We therefore find that there are certain factual and legal distinguishing features in case of matters before Hon'ble Allahabad High Court, Hon'ble Kerela High Court and Hon'ble Jharkhand High Court and therefore, these decisions stand distinguishable and cannot come to the aid of the Revenue or be held against the assessee unlike the decisions rendered by the Hon'ble Delhi High Court, Hon'ble Bombay High Court and Hon'ble Calcutta High Court which have a clear bearing on the matter under consideration and supports the case of the assessee. Having said that, we have a situation where contrary views have been expressed by the non-jurisdictional High Courts and there is no jurisdictional Punjab and Haryana High Court decision where necessary guidance can be drawn from. In such a scenario, we are guided by the

decision of the Hon'ble Supreme Court in case of Commissioner of Income tax vs M/s Vegetables Products Ltd reported in 88 ITR 192 where it was held that where the provision is capable of more than one reasonable interpretation and different High Courts have taken different view matter, the view which is favourable to the assessee should be adopted. In view of the same, we are inclined to follow the views expressed by Hon'ble Delhi High Court, Hon'ble Bombay High Court and Hon'ble Calcutta High Court.

50. Further, we find that there is consistent view taken across various Benches of the Tribunal starting from the Calcutta Bench in case of Tata Medical Centre Trust (supra), Delhi Benches in series of decisions starting from Brandix Mauritius Holding Ltd.*(supra),* to Pratap Singh Yadav *(supra),* to Abhimanyu Chaturvedi *(ITA No. 2486 & others dated 3/08/2023)* to Sharda Devi Bajaj *(ITA no. 3006/Del/2022 dated 15/11/2023),* Mumbai Benches in case of Teleperformance Global Services Private Limited *(supra),* Bangalore Benches in case of Dilip Kothari *(supra),* Hyderabad Benches in case of Sidda Venkata Surya Prakasa Rao, Indore Benches in case of Shri Ishak Kasturbagram (*ITA No. 13/Ind/2023 dated 24/08/2023),* Nagpur Benches in case of Gupta Domestic Fuels and others (ITA no. 61/Nag/2022 and others dated 31/10/2023) that the communication issued by the Income tax authorities by way of notices and assessment orders which are not in compliance with the aforesaid CBDT Circular no 19/2019 are non-est in eyes of law. As we have seen and discussed above, some of these matters have reached the respective Hon'ble High Courts and the findings of the Tribunal have been upheld in case of Brandix Mauritius Holding Ltd. and Tata Medical Centre Trust. On this account as well, we respectfully follow the collective wisdom as expounded in various decisions rendered by the Coordinate Benches across the Country and donot see any justifiable basis to deviate from the same.

51. In light of the aforesaid discussion and in the entirety of facts and circumstances of the case, we are of the considered view that the impugned order passed u/s 147 r/w 143(3) cannot be upheld and deserve to be set-aside as the same has been passed in violation of CBDT Circular no 19/2019 r/w CBDT Circular No 27/2019 and the same is hereby treated as non-est in eyes of law. In the result, the ground no. 5 of the assessee's appeal is allowed.

52. In view of the aforesaid discussions where we have set-aside the reassessment order, other grounds of appeal on merits of the case, etc have become academic in nature and we don't deem it necessary to adjudicate the same. These grounds of appeal are thus left open, to be decided at appropriate time should the need for the same arise in future and for the present, dismissed as infructious.

53. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 22/12/2023

Sd/-	Sd/-
आकाश दीप जैन	**विक्रम सिंह यादव**
(AAKASH DEEP JAIN)	**(VIKRAM SINGH YADAV)**
उपाध्यक्ष / VICE PRESIDENT	**लेखा सदस्य/ ACCOUNTANT MEMBER**

AG
Date: 22/12/2023

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar

FIT FOR PUBLICATION

Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER