

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.1902/Del/2022
Assessment Year: 2016-17

Hardik Rao B-550, Sushant Lok Phase-I, Galleria, DLF-4, S.O. Gurgaon PAN No.BGNPR4727F	Vs	DCIT Central Circle -7 Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Ved Jain, Advocate Sh. Aman Garg, CA
Respondent by	Sh. T. Jamesh Singson, CIT DR

Date of hearing:	18/07/2023
Date of Pronouncement:	18/07/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-24, New Delhi dated 21.06.2022 pertaining to A.Y.

2016-17.

2. The assessee has raised the following grounds of appeal :-

1. *On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eyes of law and on facts.*
2. *On the facts and circumstances of the case, the issue of notice and proceedings initiated thereto under section 153C of the Act is bad in law, being barred by limitation and hence the assessment order passed in consequence thereto is liable to be quashed.*
3. *On the facts and circumstances of the case and in law, the assessment order passed by the AO is barred by limitation.*
4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153C and the assessment order passed in consequence thereto are bad in law in the absence of any incriminating material belonging to the assessee being found during the search.*
5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in dismissing the appeal preferred by the assessee without considering the fact that the impugned assessment order has been passed without issuance of statutory notices as required under the law.*
6. *(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in making addition of Rs. 15,93,770/- treating the same unexplained money u/s 69A of the Act. (ii) That the above addition has been confirmed by arbitrarily rejecting the explanations and the evidences brought on record by the assessee.*
7. *(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming addition of Rs. 23,907/- on account of commission treating the same as unexplained money u/s 69C of the Act.*
(ii) That the said addition has been made at the rate of 1.5% on the above alleged amounts of unexplained money without there being any basis for the same.
8. *On the facts and circumstances of the case, the learned CIT(A) has grossly erred both on facts and in law in confirming the above*

additions ignoring the fact that assessee's name is not appearing anywhere in any of the statements recorded during the course of search.

9. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that assessment order has been passed by AO on the basis of surmises and conjectures, without there being any adverse material on record.*

10. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law.*

3. Vide letter dated 09.05.2023 the assessee sought permission to raise additional ground of appeal as the same goes to the root of the matter.

4. The assessee has raised the following additional ground of appeal :-

1. *The applicant has filed the above said appeal No. 1902/Del/2022 on 18th August, 2022 against the order dated 21.06.2022 passed by the learned Commissioner of Income Tax (Appeals)-24, New Delhi under Section 250 of the Income Tax Act.*

2. *That while filing the appeal, the applicant has raised 12 grounds of appeal.*

3. *However, while filing the appeal the appellant inadvertently has left out the ground of appeal relating to order passed by Ld. AO being null and void as the same is in violation of CBDT Circular No. 19/2019 dated 14th August, 2019.*

4. *That accordingly, the applicant is filing additional ground of appeal.*

5. *That it is submitted that the following additional ground may kindly be taken as the same goes to the root of the issue and all the facts are already on record:*

“13. On the facts and circumstances of the case, the assessment order is null and void as the same is in violation of CBDT Circular No. 19/2019 requiring mandatory DIN.”

6. *That the ground revised in this application is legal ground going to the root of the matter, and all the facts relating to the same are already part of record.*
7. *That in the circumstances, it is prayed that the additional grounds may be taken on record.*
5. On the facts and the circumstances of the case the assessment order is null and void as the same is in violation of CBDT circular No. 19/2019 requiring mandatory DIN.
6. Since the additional grounds goes to the root of the matter we decided to address it first.
7. The assessment order is dated 31.12.2021 and is framed u/s. 143 (3) r.w.s 153C of the Act. A perusal of the order shows that it does not have mandatory DIN.
8. It would be pertinent to refer to the CBDT Circular No.19/2019 dated 14.08.2019 which is binding on the AO and is as under :-

Circular No. 19 /2019

**Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes**

New Delhi, dated the 14th of August, 2019

Subject: Generation/Allotment/Quoting of Document Identification Number in Notice/Order/Summons/letter/correspondence issued by the Income-tax Department - reg.

With the launch of various e-governance initiatives, Income-tax Department is moving toward total computerization of its work. This has led to a significant improvement in delivery of services and has also brought greater transparency in the functioning of the tax-administration. Presently, almost all notices and orders are being generated electronically on the Income Tax Business Application (ITBA) platform. However, it has been brought to the notice of the Central Board of Direct Taxes (the Board) that there have been some instances in which the notice, order, summons, letter and any correspondence (hereinafter referred to as "communication") were found to have been issued manually, without maintaining a proper audit trail of such communication.

2. In order to prevent such instances and to maintain proper audit trail of all communication, the Board in exercise of power under section 119 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), has decided that no communication shall be issued by any income-tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the 1st day of October, 2019 unless a computer-generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication.

3. In exceptional circumstances such as, —

- (i) when there are technical difficulties in generating/allotting/quoting the DIN and issuance of communication electronically; or
- (ii) when communication regarding enquiry, verification etc. is required to be issued by an income-tax authority, who is outside the office, for discharging his official duties; or
- (iii) when due to delay in PAN migration, PAN is lying with non-jurisdictional Assessing Officer; or
- (iv) when PAN of assessee is not available and where a proceeding under the Act (other than verification under section 131 or section 133 of the Act) is sought to be initiated; or
- (v) When the functionality to issue communication is not available in the system,

the communication may be issued manually but only after recording reasons in writing in the file and with prior written approval of the Chief Commissioner / Director General of income-tax. In cases where manual communication is required to be issued due to delay in PAN migration, the proposal seeking approval for issuance of manual communication shall include the reason for delay in PAN migration. The communication issued under aforesaid circumstances shall state the fact that the communication is issued manually without a DIN and the date of obtaining of the written approval of the Chief Commissioner / Director General of Income-Tax for issue of manual communication in the following format-

“ .. This communication issues manually without a DIN on account of reason/reasons given in para 3(i)/3(ii)/3(iii)/3(iv)/3(v) of the CBDT Circular No ...dated (strike off those which are not applicable) and with the approval of the Chief Commissioner / Director General of Income Tax vide number dated ”

4. Any communication which is not in conformity with Para-2 and Para-3 above, shall be treated as invalid and shall be deemed to have never been issued.

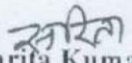
5. The communication issued manually in the three situations specified in para 3- (i), (ii) or (iii) above shall have to be regularised within 15 working days of its issuance, by –

- i. uploading the manual communication on the System.
- ii. compulsorily generating the DIN on the System;
- iii. communicating the DIN so generated to the assessee/any other person as per electronically generated pro-forma available on the System.

6. An intimation of issuance of manual communication for the reasons mentioned in para 3(v) shall be sent to the Principal Director General of Income-tax (Systems) within seven days from the date of its issuance.

7. Further, in all pending assessment proceedings, where notices were issued manually, prior to issuance of this Circular, the income-tax authorities shall identify such cases and shall upload the notices in these cases on the Systems by 31th October, 2019.

8. Hindi version to follow.


 (Sarita Kumari)
 Director (ITA.II), CBDT

9. The CBDT further clarified the need for the said Circular as under :-

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, 14th August, 2019

PRESS RELEASE

CBDT takes further steps to ensure transparency in Tax Administration by bringing in concept of DIN

With a view to bringing greater transparency in the functioning of the tax-administration and improvement in service delivery, almost all notices and orders of Income Tax Department 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 (CBDT) 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 prevent such instances and to maintain proper audit trail of all communication, the CBDT has, vide Circular No.19/2019 dated 14.08.2019 laid down parameters specifying the manner in which any communication 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 will be dealt with. All such communication issued on or after the 1st of October, 2019 shall carry a computer-generated Document Identification Number (DIN) duly quoted in the body of such communication.

CBDT has also specified exceptional circumstances where the communication may be issued manually but only after recording reasons in writing and with the prior written approval of the Chief Commissioner / Director General of Income-Tax concerned. In cases where manual communication is required to be issued, the reason for issue of manual communication without DIN has to be specified alongwith the date of obtaining written approval of the Chief Commissioner / Director General of Income-Tax in a particular format. Any communication which is not in conformity with the prescribed guidelines shall be treated as invalid and shall be deemed to have never been issued. Further, CBDT has also laid down the timelines and procedure by which such communication issued manually will have to be regularised and intimated to the Principal Director General of Income-tax (Systems).

In addition to the above, in all pending assessment proceedings, where notices were issued manually, prior to issuance of the above referred Circular, all such cases would be identified and the notices so sent would be uploaded on ITBA by 31st October, 2019.

This is another step taken by CBDT towards better delivery of taxpayer services while ensuring accountability in official dealings.

(Surabhi Ahluwalia)
Commissioner of Income Tax

DIN system of CBDT launched ; About 17500 Communications with DIN Generated on First day

Posted On: 01 OCT 2019 6:47PM by PIB Delhi

The Documentation Identification Number (DIN) system of Central Board of Direct Taxes (CBDT) has come into existence from today with the generation of about 17,500 communications with DIN on the very first day. This path breaking DIN system has been created as per the direction of Finance Minister Ms. Nirmala Sitharaman and from now onwards every CBDT communication will have to have a documentation identification number.

Revenue Secretary Dr. Ajay Bhushan Pandey said, "From today, any communication from Income Tax Department without a computer generated DIN, be it a notice, letter, order and summon or any other correspondence, would be treated as invalid and shall be non est in law or deemed to be as if it has never been issued. The DIN system would ensure greater accountability and transparency in tax administration."

"Now from today onwards, all such communications with DIN would be verifiable on the e-filing portal and no communication would be issued manually without DIN except only if it is in the specified exceptional circumstances", said Dr. Pandey.

It would be pertinent to mention here that while specifying such exceptional circumstances the CBDT Circular related to DIN dated 14.08.2019 says that whenever any such manual communication would be issued, it would be necessarily required to specify reason of issuing such a communication without DIN along with the date of obtaining written approval of the Chief Commissioner/Director General of Income Tax in a particular format. Any communication which is not in conformity of with the prescribed guidelines shall be treated as invalid and non est in law.

CBDT has specified that any communication issued manually under exceptional circumstances would have to be uploaded and regularised on the system portal within 15 days of its issuance.

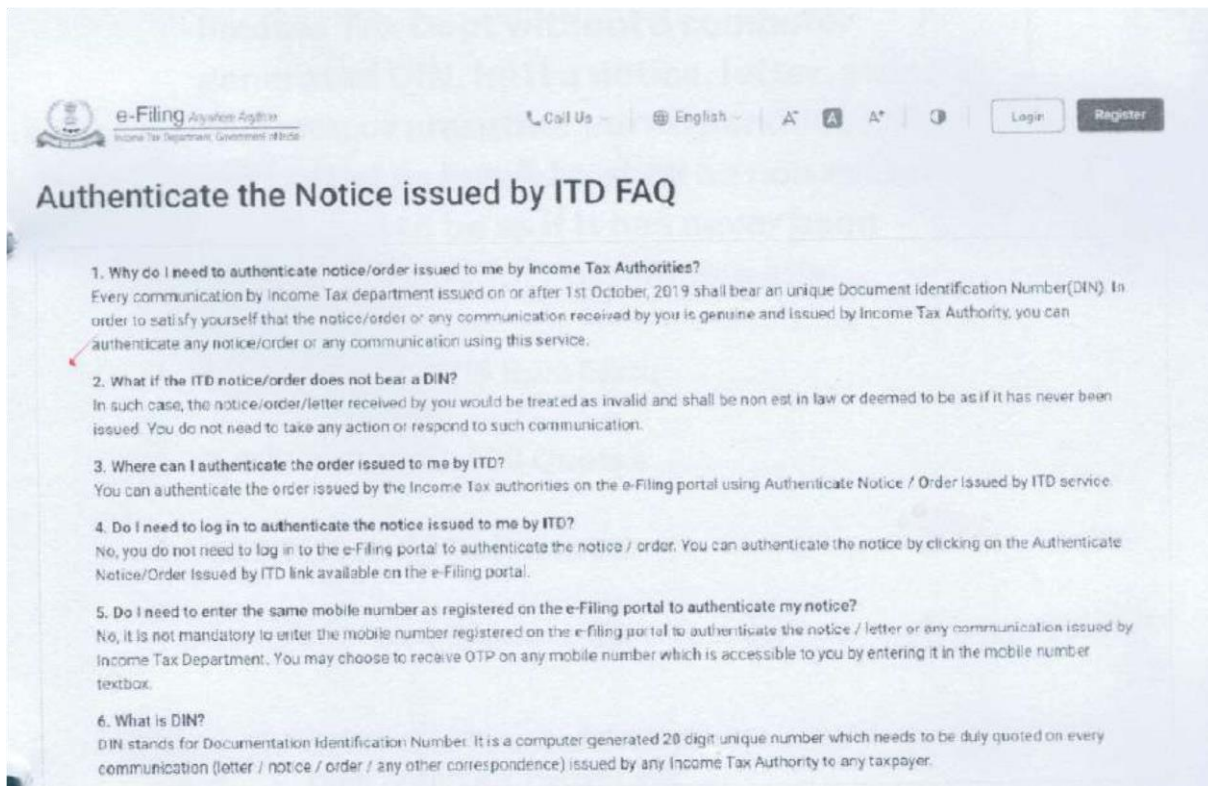
CBDT has also stated that all pending assessment proceedings, where notices were earlier issued manually, prior to the DIN related Circular dated 14.08.2019 coming into existence, all such cases would be identified and notices so sent would be uploaded on ITBA by the end of this month, i.e., by 31st Oct 2019.

This is in pursuance of the directions by the Hon'ble Prime Minister in which he has asked the Department of Revenue to come up with specific measures to ensure that the honest taxpayers are not harassed and served better. It may be noted that earlier there have been some instances where it was not possible to maintain the audit trail of the manually issued communication which in some cases caused inconvenience to taxpayers sometime. However, with the present system of attaching a DIN to every notice or communication of CBDT would result in better services to taxpayers without any possible harassment.

RM/KMN

(Release ID: 1586901)

10. Further clarifying the board issued FAQ as under :-



11. A perusal of the aforementioned circular read with the clarification and FAQ makes it clear that if the assessment order does not follow the mandate of DIN the same has to be treated as invalid non est in law as if it has never been issued.

12. This Tribunal in ITA No.1542/Del/2020 in the case of Brandix Mauritius Holdings Limited vide order dated 19.09.2022 has considered the aforementioned CBDT circular and held as under :-

4. We have carefully perused the additional grounds of appeal raised by the assessee mentioned hereinabove. The Hon'ble Supreme Court in the case of National Thermal Power Corporation 229 ITR 383 has laid down the following ratio :

"7. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate

Tribunal Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assessee the tax liability of an assessee.”

5.In light of the above ratio, we find that this Tribunal is not required to verify any news facts. Therefore, the additional grounds raised are admitted.

6.In light of the above ratio, we find that this Tribunal is not required to verify any new facts. Therefore, additional grounds raised are admitted.

“8. Ground No.8 : On facts and circumstances of the case & in law, the Learned Assessing Officer (‘Ld. AO’) erred in issuing the final assessment order under section 147/1440(13) /143(3) of the Income-tax Act, 1961 (‘the Act’) dated 15 October 2019 without quoting the mandatory document identification number (‘DIN’) in conformity with Para-2 and Para-3 of Circular No. 19/2019 dated 14 August 2019 and thus, the said final assessment order deserves to be held as invalid, bad in law and void ab initio.”

7.A perusal of the record shows that the final assessment order along with notice of demands dated 15.10.2019 and it is an undisputed fact that it has been passed/ issued without quoting Document Identification Number (DIN) which is mandatory as per the CBDT Circular No.19/2019 dated 14.08.2019.

8.The ld. DR vehemently stated that DIN was generated but due to upgradation, it was not reflected in the order. It is the say of the ld. DR that the error is not so fatal as to make the assessment order null and void. It would be pertinent to refer to CBDT Circular No.19/.2019 which reads as under :

*GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF DIRECT TAXES*

Circular No.19/2019

New Delhi dated the 14th August 2019

*Subject : Generation/ Allotment /Quoting of Document identification Number in Notice/ Order /
Summons / letter/ Correspondence issued by the Income-tax Department-reg.*

With the launch of various e-governance initiatives, Income tax Department is moving toward total computerization of its work. This' has led to a significant improvement in delivery of services and has also brought greater transparency in the functioning of the tax administration. Presently, almost all notices and orders are being generated electronically on the Income Tax Business Application (ITBA) platform. However, it has been brought to the notice of the Central Board of Direct Taxes (the Board) that there have been some instances in which the notice, order, summons, letter and any correspondence (hereinafter referred to as "communication") were found to have been issued manually, without maintaining a proper audit trail of such communication.

2. *In order to prevent such instances and to maintain proper audit trail of all communication, the Board in exercise of power under section 119 of the Incometax 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 151 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 Or communication electronically; or*
 - (ii) *when communication regarding enquiry, verification etc. is required to be issued by an income-tax authority, who is outside the office, for discharging his official duties; or*
 - (iii) *when due to delay in PAN migration, PAN is lying with non jurisdictional Assessing Officer; or*
 - (iv) *when PAN of assessee is not available and where a proceeding under the Act (other than verification under section 131 or section 133 of the Act) is sought to be initiated; or (v) When the functionality to issue communication is not available in the system, the communication may be issued manually but only after recording reasons in writing in the file and with prior written approval of the Chief Commissioner / Director General of income tax. In cases where manual communication is required to be issued due to delay in PAN migration, the proposal seeking approval for issuance of manual communication shall include the reason for delay in PAN migration. The communication issued under aforesaid circumstances shall state the fact that the communication is issued manually without a DIN and the date of obtaining of the written approval of the Chief Commissioner / Director General of Income-Tax for issue of manual communication in the following format- This communication issues manually without a DIN on account of reason/reasons given in para 3 (i)/3(ii)/3 (iii)/3 (iv)/3 (v) of the CBDT Circular No ... dated (strike off those which are not applicable) and with the approval of the Chief Commissioner / Director General of Income Tax vide number.... dated ... "*
4. *Any communication which is not in conformity with Para-2 and Para-3 above, shall be treated as invalid and shall be deemed to have never been issued.*
5. *The communication issued manually in the three situations specified in para*

- 3- (i), (ii) or (iii) above shall have to be regularised within 15 working days of its issuance, by -
- i. uploading the manual communication on the System.
 - ii. compulsorily generating the DIN on the System;
 - iii. communicating the DIN so generated to the assessee/any other person as per electronically generated pro-forma available on the System.
6. An intimation of issuance of manual communication for the reasons mentioned in para 3(v) shall be sent to the Principal Director General of Income-tax (Systems) within seven days from the date of its issuance.
7. Further, in all pending assessment proceedings, where notices were issued manually, prior to issuance of this Circular, the income tax authorities shall identify such cases and shall upload the notices in these cases on the Systems by 31st October, 2019.
8. Hindi version to follow. (F. No. 225/95/2019-ITA.II)
- Sd/-
Sarita Kumari
Director (ITA .II CBDT)
9. A perusal of the aforementioned Circular clearly shows that the CBDT has considered the exceptional circumstances as mentioned in Para 3 of the Circular and, therefore, in our considered opinion, only those circumstances which have been mentioned therein would be considered for non-mentioning of DIN.
10. In para 3 itself, the Board has made it very clear that in cases where communication is issued manually, it may be done only after obtaining necessary approval of the relevant authorities and communication so issued must indicate the exceptional circumstances provided in the Circular itself. It has been made very clear by the Board that any communication which is not in conformity with Para 2 and 3 of the Circular shall be treated as invalid and shall be deemed to have never been issued.
11. The impugned order is hit by this mandate of the Board and, therefore, we are inclined to adjudicate Ground No. 8 [supra] in favour of the assessee by holding that the order dated 15.10.2019 framed u/s 147/144C(13)/143(3) of the Act is invalid and deemed to have never been issued as it fails to mention DIN in its body by adhering to Circular No. 19/2009 dated 14.08.2019.

13. This order of the Tribunal was upheld by the Hon'ble Delhi High Court order dated 20.03.2023 in ITA No.163/2023 the relevant findings reads as under :-

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

8.1 *In a nutshell, Communications referred to in the 2019 Circular would fall in the following slots :*

i. Those which do not fall in the exceptions carved out in paragraph 3 (i) to (v) ii. Those which fall in the exceptions embedded in paragraph 3 (i) to (v), but do not adhere to the regime set forth in the 2019 Circular

8.2 *Therefore, whenever communications are issued in the circumstances alluded to in paragraph 3 (i) to (v), i.e. are issued manually without a DIN, they require to be backed by the approval of the Chief Commissioner/ Director General. The manual communication is required to furnish the reference number and the date when the approval was granted by the concerned officer. The formatted endorsement which is required to be engrossed on such a manual communication, should read as follows :*

"..... This communication issues manually without a DIN on account of reason/ reasons given in para 3 (i)/3(ii)/3(iii)/3(iv)/3(v) of the CBDT Circular No..... datedand with the approval of the Chief Commissioner / Director General of Income Tax vide number dated"

8.3 *As indicated hereinabove, insofar as communications falling in circumstances alluded to in paragraph 3 (i) to 3 (iii) are concerned, the process of regularization in the manner indicated in paragraph 5, should take place within fifteen (15) working days of its issuance. This period of regularization with regard to the circumstance referred to in paragraph 3 (v) is reduced to seven (7) days, and is required to be marked to the Principal Director General of Income-Tax (Systems) [see paragraph 6 of the 2019 Circular]*

9. *In the instant case, there is nothing on record to show that, according to the appellant/ revenue, failure to allocate DIN arose out of the "exceptional circumstances" which are set forth in paragraph 3 of the 2019 Circular. It is, however, the case of the appellant/ revenue, both before this court and before the Tribunal, that failure to allocate DIN was a mere mistake. Using this as the*

foundation, the argument put forth before us is that the mistake can be corrected by taking recourse to Section 292B of the Income Tax Act, 1961 [in short “the Act”]

XXXXXX

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 adult trail. Therefore, the communication relating to assessments, appeals, orders etcetra 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 question of law arises for consideration, which, inter alia, would require the Court issue is debatable or if there is an alternate view possible. Given the language employed in the 2019 Circular, issued is debatable or if 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 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 .

14. Respectfully following the decision of the coordinate Bench and the Hon’ble jurisdictional High Court (supra) we have no hesitation to hold that the assessment order dated 31.12.2021 framed u/s. 143 (3) r.w.s. 153C of the Act is null and void and nonest.

15. However, in the interest of justice and fair play we deem it fit to give liberty to the revenue to approach this Tribunal as per the provisions if the officer brings on record facts to show that the impugned assessment order falls within the exceptions provided in the aforementioned CBDT circular.
16. With the above directions the appeal of the assessee is allowed.
17. Decision announced in the open court on 18.07.2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: .07.2023

*Neha*1

Copy forwarded to:

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

Asst. Registrar
ITAT, New Delhi