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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 20.03.2023*

\+ **ITA 163/2023**

THE COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION)-1, NEW DELHI ..... Appellant

Through: Mr Puneet Rai, Sr. Standing Counsel with Mr Ashvini Kumar & Ms Madhavi Shukla, Jr. Standing Counsel.

versus

BRANDIX MAURITIUS HOLDINGS LTD. ..... Respondent

Through: Mr Ajay Vohra, Sr. Adv. with Mr Guruprasad, Adv.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM Appl.12810/2023

1. Allowed, subject to just exceptions.

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2. This appeal is directed against order dated 16.09.2022 passed by the Income Tax Appellate Tribunal [in short, "the Tribunal"] concerning Assessment Year (AY) 2011-12.

2. 1 The Tribunal, *via* the impugned order, has allowed the appeal filed by the respondent/assessee, by taking recourse to the Central Board of Direct Taxes [in short, "CBDT"] Circular no. 19/2019 dated 14.08.2019 [in short, "2019 Circular"], which sets out the manner in which Document

Identification Number [in short, "DIN"] is required to be generated while communicating a notice, order, summon, letter and any correspondence issued by the Income Tax Department, i.e., the Revenue.

3. *Inter alia*, the object and purpose of allocating DIN to the communications, such as notices, orders, summons, letters and/or any correspondence emanating from the revenue is to maintain a proper audit trail.

3.1 Therefore, the CBDT, in exercise of its powers, has mandated 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 etcetera, to the assessee or any other person, on or after 01.10.2019 unless it is allotted a computer-generated DIN.

3.2 Further, there is a specific requirement under the 2019 Circular to quote the DIN in the body of any such communication.

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

> *"3. In exceptional circumstances such as, -*
> *(i) when there are technical difficulties in generating/allotting/quoting the DIN and issuance 0f communication electronically; or*
> *(ii) when communication regarding enquiry, verification etc. is required to be issued by an income-tax authority, who is outside the office, for discharging his official duties; or*
> *(iii) when due to delay in PAN migration, PAN is lying with 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-*
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> > *"..This communication issues manually without a DIN on account of reason/reasons given in para 3 (i)/3(iI)/3 (iii)/3 (iv)/3 (v) of the CBDT Circular No ... dated .... . (strike off those which are not applicable) and with the approval of the Chief Commissioner / Director General of Income Tax vide number .... dated .. .. "*

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

> *"5. The communication issued manually in the three situations specified in para 3- (i), (ii) or (iii) above shall have to be regularized within 15 working days of its issuance, by –*
> *i. uploading the manual communication on the System.*
> *ii. compulsorily generating the DIN on the System;*
> *iii. communicating the DIN so generated to the assessee/any other person as per electronically generated pro-forma available on the System."*

6. Furthermore, the 2019 circular, in paragraph 6, states that the intimation of issuance of manual communication, for the reasons mentioned in paragraph 3(v), shall be sent to the Principal Director General of Income-Tax (Systems) within seven (7) days from the date of its issuance.

7. As a matter of fact, paragraph 7 of 2019 Circular mandates alignment

of all pending assessment proceedings, where notices were issued manually, prior to the issuance of the said circular, by having them uploaded in the system by the date given therein, i.e., 31.10.2019.

8. Therefore, any communication which is not in conformity with the provisions of paragraph 2 and 3 of the 2019 Circular is to be treated as invalid, as if it was never issued [See paragraph 4 of the 2019 Circular[1]].

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

i. Those which do not fall in the exceptions carved out in paragraph 3(i) to (v)

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

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

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

8.3 As indicated hereinabove, insofar as communications falling in circumstances alluded to in paragraph 3(i) to 3(iii) are concerned, the

[1] "4. Any communication which is not in conformity with Para-2 and Para-3 above, shall be treated as

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[2]].

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

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

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

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

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invalid and shall be deemed to have never been issued."

[2] "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."

ITR 562.

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

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

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

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

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

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

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

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

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

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

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

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

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

hereinabove.

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

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

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

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

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

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

17.2 The aforementioned principle stands enunciated in a long line of judgements, including the Supreme Court's judgment rendered in ***K.P.***

Varghese v. Income Tax Officer, Ernakulam and Anr., (1981) 4 SCC 173.

The relevant extracts are set forth hereafter:

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

24. Parties will act based on the digitally signed copy of the order.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

MARCH 20, 2023/r