आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / **ITA No. 198/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2014-15)

Deputy Commissioner of Income Tax, Circle-1, Kurnool	Vs.	M/s. Ragova Developers & Auto Services Private Limited, Yemmiganur, Kurnool (Dist) [PAN No. AACCR6699H]
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri K.A. Sai Prasad, AR
राजस्व द्वारा/Revenue by: Shri K. Madhusudan, CIT-DR

सुनवाई की तारीख/Date of hearing: 12/10/2023
घोषणा की तारीख/Pronouncement on: 13/10/2023

आदेश / **ORDER**

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 03/02/2023 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Ragova Developers & Auto Services Private Limited ("the assessee") for the assessment year 2014-15, Revenue preferred this appeal.

2. Legal existence of the order dated 20/12/2019 passed under section 143(3) read with section 263 of the Income Tax Act, 1961 (for short

"the Act"), passed by the learned Assessing Officer without the Document Identification Number (DIN) is challenged by the assessee in this appeal filed by the Revenue, basing on the Circular No. 19/2019, dated 14/08/2019 issued by the Central Board of Direct Taxes (CBDT) and the decision of Hon'ble Delhi High Court in the case of CIT vs. Brandix Mauritius Holdings Ltd., [2023] 149 taxmann.com 238 (Delhi).

3. Brief facts of the case are that the assessment order for the assessment year 2014-15 in the case of the assessee was passed on 09/12/2016 under section 143(3) of the Act. Subsequently, on a perusal of such order and the assessment record, learned PCIT by way of order dated 25/03/2019 recorded a finding that such an order is erroneous insofar as it is prejudicial to the interest of Revenue and while cancelling the assessment made, gave a direction to the learned Assessing Officer to re-do the assessment after examining the issue relating to the purchase of immoveable property. Pursuant to such an order, learned Assessing Officer conducted enquiry and passed the impugned assessment order, but without any DIN.

4. When the assessee appealed against the order dated 20/12/2019, learned CIT(A) by way of order dated 03/02/2023 allowed the appeal in part, against which the department filed the present appeal. In this appeal of the Revenue, the assessee raised an additional ground stating that the impugned assessment order without DIN is invalid and nonest in the eye of law.

5. Learned DR vehemently opposed this attempt by the assessee stating that assessee could have filed an appeal or cross objection basing on the grounds decided against him or could have maintained a petition under Rule 27 Income Tax Appellate Tribunal Rules, 1963 (ITAT Rules) supporting the order of the learned CIT(A) basing on any grounds decided against him. Without doing so, it is not open for the assessee to file an additional ground for the first time before the Tribunal in an appeal filed

by the Revenue so as to affect the Revenue adversely and such a course is against the law.

6. Per contra, learned AR submitted that such a course is permissible and as a matter of fact, no longer *res integra*. He placed reliance on the decision of the Hon'ble Bombay High Court in the case of CIT vs. Hazarimal Nagji & Co. 46 ITR 1168 (Bom) for this principle. As stated above, Insofar as the impact of non mentioning of DIN on the face of the assessment order, the assessee placed reliance on the Circular No. 19/2019, dated 14/08/2019 issued by the Central Board of Direct Taxes (CBDT) and the decision of Hon'ble Delhi High Court in the case of CIT vs. Brandix Mauritius Holdings Ltd. (supra).

7. Coming to the propriety of the assessee to maintain an additional ground in the appeal filed by the Revenue without resorting to cross appeal/objections or a petition under Rule 27 of ITAT Rules, the question that arises for consideration is whether the assessee could be permitted to worse of the Revenue in their own appeal. This question was dealt with in detail by the Hon'ble Bombay High Court in the case of Hazarimal Nagji (supra). Hon'ble Bombay High Court made a fine distinction between the plea to maintain the lower court's decree as it is and the plea, if succeeded puts the appellant in a position worse than that he was under the decree of the lower court.

8. In this context, Hon'ble court referred to the right of the assessee in his appeal to challenge the lower court's order on the new grounds not agitated in the court below, with the leave of the court. Then it was held that when such a course is permissible to the assessee, then there is no reason as to why such an assessee could not be permitted to take such additional ground which was not taken up before the lower court in the appeal preferred by the Revenue in a situation where the assessee could not have appealed against the order of the lower court. It is the specific observation of the Hon'ble court is that *"(I)f the view is taken that a*

respondent, who could not have appealed or filed cross-objections because that decree was wholly in his favour, cannot be permitted to raise a new ground available to him in support of the decree, although the same ground would have been available to him if he was in the position of an appellant, it would amount to putting him in a worse position as a respondent than as an appellant. In our opinion, therefore, the Tribunal had jurisdiction to allow the assessee-respondent to urge a fresh ground which it sought to raise in the present appeal before it."

9. On the analogy of Rule 11 of ITAT Rules permitting the assessee to take a new plea not set forth in the memorandum of appeal by the Tribunal and also the power of the Tribunal not to confine to the grounds set forth in the memorandum of appeal, Hon'ble Punjab & Haryana High Court in the case of CIT vs. Dehati Cooperative Marketing-cum-Processing Society, 130 ITR 504 (P&H), held that if the appellant can be allowed a concession of the nature contained in such rule, there is no justification for denying the respondent in an appeal a similar concession and, therefore, the Tribunal can allow an assessee to raise a ground which was not taken before or adjudicated upon by the lower authority so long as that does not require a further investigation into the facts. Only rider is that the party who would be affected thereby has to have sufficient opportunity of being heard on that ground.

10. In view of this settled position of law, we are of the considered opinion that it is legitimate for the assessee to raise an additional ground which does not require any further investigation into facts, in the appeal filed by the Revenue and so long as the Revenue has got an opportunity of being heard on that ground, there is no legal impediment to permit such a ground and consider the same in furtherance of justice.

11. Having reached such a conclusion and hearing the parties on either side, we find that the impugned assessment order that was passed on 20/12/2019 under section 143(3) read with section 263 of the Act, does

not bear the DIN. Assessee assails the same on the ground that the said order has to be treated as 'nonest' in the eye of law for violation of the procedure prescribed by the CBDT vide Circular No. 19/2019, dated 14/08/2019 and submitted that to prevent the instances of not maintaining a proper audit trail of communication like notice, order, summons, letter and any correspondence issued, it IS mandated to maintain proper audit trail of all communication to the assessee without quoting a computer generated DIN on or after 01/10/2019. He also placed reliance on the decision of Hon'ble Delhi High Court in the case of Brandix Mauritius Holdings Ltd (supra).

12. Per contra, learned DR submitted that it could be seen from the impugned order that it was passed on 20/12/2019 well within limitation to pass the same; so also, the intimation letter stating that such an order was having DIN was passed on 30/12/2019 again which is also within the period of limitation. According to him, the requirement of DIN cannot be appreciated in isolation and has to be looked into from the angle of the purpose for which it is so required, purpose being to prevent the antedating or postdating of the communications. In this case, such a possibility is ruled out, because the passing of the order and the generation of the DIN both well within the period of limitation and, therefore, the purposive interpretation of the circular vitiates the plea taken by the assessee. On this premise, he submitted that when the order is otherwise legal and valid, merely because of the discrepancy in respect of the DIN, a meritorious case cannot be thrown out without delving into the merits of the same.

13. We have gone through the record in the light of the submissions made on either side. There is no denial of the fact that nowhere in the order dated 20/12/2019 under section 143(3) read with section 263 of the Act there is any whisper about the generation or non generation of DIN nor is there any reference to the reasons for not generating any computer

based DIN at the time of passing of such order. It is only by way of subsequent communication dated 30/12/2019 it was communicated to the assessee that the order dated 30/12/2019 (sic 20/12/2019) passed under section 143(3) read with section 263 of the Act was having DIN No. However, the question is, for want of generating the computer based DIN in respect of the order under section 143(3) read with section 263 of the Act or not quoting the same in the order, whether such an order is valid.

14. A reading of the CBDT Circular No. 19/2019, dated 14/08/2019 clearly shows that with effect from 01/10/2019, all the communication shall contain the computer generated DIN, without which, vide paragraph No.4 thereof, such a communication shall be deemed to have never been issued. Paragraph 3, however, refers to five exceptional circumstances. It is stated therein that in such exceptional circumstances, the communication may be issued manually, but shall contain a statement referring to the exceptional circumstances and also the fact that it was so issued without DIN with the approval of the Chief Commissioner/Director General of Income Tax. Vide paragraph 5, it is contemplated that when the communication is issued without the DIN, under exceptional circumstances mentioned in paragraph 3(i) to paragraph 3(iii), it has to be regularised within fifteen days, and in case of paragraph 3(v), manual communication for the reason thereof to be sent to Principal Director General of Income Tax (Systems) within seven days of such issuance of the communication. Paragraph 4, in unequivocal terms, mentions 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.

15. In the case of CIT vs. Brandix Mauritius Holdings Ltd., (supra), the Hon'ble Delhi High Court held that the communication in relation to assessments, appeals, orders etc., which finds 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. It is further

observed by the Hon'ble High Court that in view of the decision of Hon'ble Supreme Court in the case of K.P. Varghese vs. ITO, Ernakulam (1981) 4 SCC 173 and in the case of Back Office IT Solutions Pvt. Ltd. vs. Union of India (2021) SCC OnLine Del 2742, the circulars issued by the CBDT binds the Revenue in their administration or implementation, and such circulars cannot be side-stepped causing prejudice to the assessee by bringing to naught the object for which such circulars are issued. Hon'ble High Court held that on the face of the circular, given the language employed therein there is neither any scope for debate nor is there any leeway for an alternative view.

16. Neither the order under section 143(2) of the Act nor the communication dated 30/12/2019 spell out the reasons for not either generating the DIN or quoting the same in the order dated 20/12/2019. Circular categorically mentions that subsequent to 01/10/2019, the computer generated DIN not only be allotted but be duly quoted in the body of the communication itself. In the communication dated 23/03/2020 any reference to DIN is conspicuously absent. To meet the events where the computer generated DIN could not be generated on the date of issuance of communication, five exceptions are provided by paragraph 3 of the circular. It is also specifically stated that if the case of the Revenue falls in any of these exceptions, the said fact has to be recorded in the communication itself in the prescribed format.

17. Neither the reasons nor the statement in the prescribed format is to be found in the order passed under section 143(3) read with section 263 of the Act, spelling out the particular category of exception that prevented allotting the DIN on that day. It is yet another violation. In the case of CIT vs. Brandix Mauritius Holdings Ltd. (supra), Hon'ble Delhi High Court addressed this issue where the Revenue pleaded that is only a mistake, and held that to such case also paragraph 4 of the 2019 circular would apply. As referred to by us, paragraph 4 of the circular clearly reads

that any communication which is not in conformity with paragraph 2 and paragraph 3 shall be treated as invalid and shall be deemed to have never been issued. It is, therefore, clear that any reason what-so-ever other than the exceptions mentioned in paragraph 3 would save the communication issued without DIN.

18. In these circumstances, we are of the considered opinion that for want of generation/quoting the DIN in the order dated 20/12/2019, such an order shall be treated to have never been issued and, therefore, shall not take any affect. In view of this finding, we deem it not necessary to delve deeper into the merits of the case.

19. In the result, appeal of Revenue is dismissed.

Order pronounced in the open court on this the 13th day of October, 2023.

Sd/-	Sd/-
(RAMA KANTA PANDA)	**(K. NARASIMHA CHARY)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Hyderabad,
Dated: 13/10/2023

TNMM

Copy forwarded to:

1. Deputy Commissioner of Income Tax, Circle-1, Kurnool.
2. M/s. Ragova Developers & Auto Services Private Limited, 1/683, Co-Op HSG Colony, Yemmiganur, Kurnool (Dist.)
3. PCIT,
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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