

**Non-mentioning of DIN will invalidate the revision order for violation of procedure as per CBDT's Circular**

The Income Tax Appellate Tribunal, Bangalore (“**the ITAT**”) in the case of *Shri H K Suresh v. Principal Commissioner of Income Tax [ITA No.625/Bang/2021 dated December 06, 2022]* held that non- mentioning of Document Identification Number (“**DIN**”) as per the instruction of the Central Board of Direct Taxes (“**CBDT**”) in Circular no. 19/2019 (“**Circular**”) dated August 14, 2019 invalidates the revision order for violation of procedure.

**Facts:**

Shri H K Suresh (“**the Appellant**”), was a contractor earning business income from contract receipts apart from rental income and interest income. He filed the return of income for Assessment Year (“**A.Y.**”) 2011-12 on September 30, 2011 declaring an income of Rs.2,58,15,614/-. The case was selected for Computer Aided Scrutiny Selection (“**CASS**”) and the assessment was completed under Section 143(3) of the Income Tax Act, 1961 (“**the IT Act**”) by making disallowance of agricultural income of Rs.5,00,000 and disallowance of expenses with respect to machinery maintenance of Rs.4,50,000. The case was reopened based on the information received from Income Tax Officer (Inv) Unit 3(1) with regard to the search conducted and the undisclosed income offered by the Appellant during the course of search.

The Assessing Officer (“**AO**”) made an addition of Rs.2,70,00,000 in the hands of the Appellant towards deposits made by the Appellant into the account of Shri Shivaramu, an employee of Appellant’s and his brother and completed the assessment under Section 147 read with Section 144 of the IT Act. Subsequently, the Principal Commissioner of Income Tax (“**the Respondent**”) issued a Show Cause Notice (“**SCN**”) for the reason that in the statements recorded Shri Shivaramu had stated about the cash withdrawals to the tune of Rs.17 crores in a span of 15 days by the Appellant and the AO while completing the assessment did not make any inquiries in this regard.

The Appellant submitted the reasons for the withdrawal and sated that the AO has applied his mind, however, Respondent did not accept the submissions of the Appellant and proceeded to set aside the Order passed by the AO and passed the Revision Order under Section 147 read with Section 144 of the IT Act for doing fresh assessment on the point of payments of Rs.17 crores. The Appellant filed an appeal before the ITAT challenging the Revision Order passed by the Respondent on the additional legal grounds that the order issued was a manual order and did not contain DIN which was not in accordance with the instruction of CBDT issued vide Circular dated August 14, 2019. Hence, challenging the order under Section 263 of the IT Act.

**Issue:**

1. Whether the order passed by the Respondent is without a valid DIN, consequently making the revision order invalid?
2. Whether the order passed by the Respondent is contrary to the Circular dated August 14, 2019 issued by the CBDT, consequently making the revision order invalid?

**Held:**

The ITAT held as under:

- The revision order did not contain DIN. Further, the Order u/s 263 neither contains the DIN in the body of the order, nor contains the fact in the specific format as stated in Para 3 of the Circular dated August 14, 2019 and thus the communication is issued manually without a DIN after obtaining the necessary approvals.
- Hence, the order passed under Section 263 is invalid and deemed to have never been issued as per Para 4 of the CBDT's Circular dated August 14, 2019 as it is not in conformity with Para 2 and Para 3.

Hence, the Appeal filed by the Appellant was allowed.

**Relevant Provisions:**

Income Tax Act, 1961:

***Section 143: Assessment***

*(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:-*

*(a) the total income or loss shall be computed after making the following adjustments, namely:-*

*(i) any arithmetical error in the return;*

*(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;*

*(iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;*

*(iv) disallowance of expenditure or increase in income indicated in the audit report but not taken into account in computing the total income in the return;*

*(v) disallowance of deduction claimed under section 10AA or under any of the provisions of Chapter VI-A under the heading "C.-Deductions in respect of certain incomes", if the return is furnished beyond the due date specified under sub-section (1) of section 139; or*

*(vi) addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:*

*Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:*

*Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made;*

*Provided also that no adjustment shall be made under sub-clause (vi) in relation to a return furnished for the assessment year commencing on or after the 1st day of April, 2018;*

*(b) the tax , interest and fee, if any, shall be computed on the basis of the total income computed under clause (a);*

*(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax , interest and fee, if any, computed under clause (b) by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under section 89, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax , interest or fee;*

*(d) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and*

*(e) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:*

*Provided that an intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax interest or fee is payable by, or no refund is due to, him:*

*Provided further that no intimation under this sub-section shall be sent after the expiry of nine months from the end of the financial year in which the return is made.*

*Explanation.-For the purposes of this sub-section,-*

*(a) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,-*

*(i) of an item, which is inconsistent with another entry of the same or some other item in such return;*

*(ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or*

*(iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;*

*(b) the acknowledgment of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c), and where no adjustment has been made under clause (a).*

*(1A) For the purposes of processing of returns under sub-section (1), the Board may make a scheme for centralised processing of returns with a view to expeditiously determining the tax payable by, or the refund due to, the assessee as required under the said sub-section.*

*(1B) Save as otherwise expressly provided, for the purpose of giving effect to the scheme made under sub-section (1A), the Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification; so, however, that no direction shall be issued after the after the 31st day of March, 202012.*

*(1C) Every notification issued under sub-section (1B), along with the scheme made under sub-section (1A), shall, as soon as may be after the notification is issued, be laid before each House of Parliament.*

*(1D) Notwithstanding anything contained in sub-section (1), the processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2):*

*Provided that the provisions of this sub-section shall not apply to any return furnished for the assessment year commencing on or after the 1st day of April, 2017.*

*(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return:*

*Provided that no notice under this sub-section shall be served on the assessee after the expiry of three months from the end of the financial year in which the return is furnished.*

*(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment:*

*Provided that in the case of a-*

*(a) research association referred to in clause (21) of section 10;*

*(b) news agency referred to in clause (22B) of section 10;*

*(c) association or institution referred to in clause (23A) of section 10;*

*(d) institution referred to in clause (23B) of section 10,*

*which is required to furnish the return of income under sub-section (4C) of section 139, no order making an assessment of the total income or loss of such research association, news agency, association or institution, shall be made by the Assessing Officer, without giving effect to the provisions of section 10, unless-*

*(i) the Assessing Officer has intimated the Central Government or the prescribed authority the contravention of the provisions of clause (21) or clause (22B) or clause (23A) or clause (23B), as the case may be, by such research association, news agency, association or institution, where in his view such contravention has taken place; and*

*(ii) the approval granted to such research association or other association or institution has been withdrawn or notification issued in respect of such news agency or association or institution has been rescinded:*

*Provided further that where the Assessing Officer is satisfied that any fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), of clause (23C) of section 10, or any trust or institution referred to in section 11, has committed any specified violation as defined in Explanation 2 to the fifteenth proviso to clause (23C) of section 10 or the Explanation to sub-section (4) of section 12AB, as the case may be, he shall-*

*(a) send a reference to the Principal Commissioner or Commissioner to withdraw the approval or registration, as the case may be; and*

*(b) no order making an assessment of the total income or loss of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution shall be made by him without giving effect to the order passed by the Principal Commissioner or Commissioner under clause (ii) or clause (iii) of the fifteenth proviso to clause (23C) of section 10 or clause (ii) or clause (iii) of sub-section (4) of section 12AB:*

*Provided also that where the Assessing Officer is satisfied that the activities of the university, college or other institution referred to in clause (ii) and clause (iii) of sub-section (1) of section 35 are not being carried out in accordance with all or any of the conditions subject to which such university, college or other institution was approved, he may, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned university, college or other institution, recommend to the Central Government to withdraw the approval and that Government may by order, withdraw the approval and forward a copy of the order to the concerned university, college or other institution and the Assessing Officer.*

*(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 (3) or section 144 so as to impart greater efficiency, transparency and accountability by—*

*(a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;*

*(b) optimising utilisation of the resources through economies of scale and functional specialisation;*

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

*(3B) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (3A), by notification in the Official Gazette, direct that any of the provisions of this Act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:*

*Provided that no direction shall be issued after the 31st day of March, 382021.*

*(3C) Every notification issued under sub-section (3A) and sub-section (3B) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.*



*(3D) Nothing contained in sub-section (3A) and sub-section (3B) shall apply to the assessment made under sub-section (3) or under section 144, as the case may be, on or after the 1st day of April, 2021.*

*(4) Where a regular assessment under sub-section (3) of this section or section 144 is made,-*

*(a) any tax or interest paid by the assessee under sub-section (1) shall be deemed to have been paid towards such regular assessment ;*

*(b) if no refund is due on regular assessment or the amount refunded under sub-section (1) exceeds the amount refundable on regular assessment, the whole or the excess amount so refunded shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly.*

**Section 144: Best judgment assessment.**

*(1) If any person-*

*(a) fails to make the return required under sub-section (1) of section 139 and has not made a return or a revised return under sub-section (4) or sub-section (5) 10or an updated return under sub-section (8A) of that section, or*

*(b) fails to comply with all the terms of a notice issued under sub-section (1) of section 142 or fails to comply with a direction issued under sub-section (2A) of that section, or*

*(c) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143,*

*the Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, shall, after giving the assessee an opportunity of being heard, make the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment :*

*Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment :*

*Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub-section (1) of section 142 has been issued prior to the making of an assessment under this section.*

*(2) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.*

**Section 147: Income escaping assessment.**

*If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).*

*Explanation.-For the purposes of assessment or reassessment or re-computation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.*

**Section 263: Revision of orders prejudicial to revenue.**

*(1) The Principal Commissioner Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer or the Transfer Pricing Officer, as the case may be, is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including,-*

*(i) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or*

*(ii) an order modifying the order under section 92CA; or*

*(iii) an order cancelling the order under section 92CA and directing a fresh order under the said section..*

*Explanation 131.-For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,-*

*(a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer or the Transfer Pricing Officer, as the case may be, shall include-*

*(i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;*

*(ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer or the Transfer Pricing Officer, as the case may be, conferred on, or assigned to, him under the orders or directions issued by the Board or by the*

*Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under section 120;*

*(iii) an order under section 92CA by the Transfer Pricing Officer;*

*(b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner;*

*(c) where any order referred to in this sub-section and passed by the Assessing Officer or the Transfer Pricing Officer, as the case may be, had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.*

*Explanation 2.-For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer or the Transfer Pricing Officer, as the case may be, shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,-*

*(a) the order is passed without making inquiries or verification which should have been made;*

*(b) the order is passed allowing any relief without inquiring into the claim;*

*(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or*

*(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.*

*Explanation 3.-For the purposes of this section, "Transfer Pricing Officer" shall have the same meaning as assigned to it in the Explanation to section 92CA.*

*(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.*

*(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court.*

*Explanation.-In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.*

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