IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA BENCH "B", KOLKATA

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.238/Kol/2021
Assessment Year: 2016-17

Tata Medical Centre Trust **Plot No. DH 7 DH 8, 14 Major Arterial Road (EW)** **Action Area I,** **West Bengal-700156** **(PAN: AABTT2222Q)**	Vs.	**Commissioner of Income-tax, (Exemption), Kolkata.**
(Appellant)		(Respondent)

Present for:
Appellant by :Shri Akshay Ringasia, CA & Tarak Nath Jaiswal, Advocate
Respondent by : Shri Deb Kr. Sonowal, CIT, DR

Date of Hearing : 30.06.2022
Date of Pronouncement : 18.07.2022

O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the assessee is arising out of the order of ld. CIT(E), Kolkata, passed u/s. 263 of the Income-tax Act, 1961 (hereinafter referred to as the 'Act') dated 31.03.2021 against the order of ACIT, Circle-1(1), Exempt, Kolkata, passed u/s 143(3) of the Act, dated 04.12.2018, for AY 2016-17.

2. There is a delay of 61 days in filing the present appeal before the Tribunal for which a petition for condonation of delay along with an affidavit is placed on record. The present appeal was filed on 30.07.2021 which was due by 30.05.2021. Ld. Counsel for the assessee submitted that the delay is on account of Pandemic of COVID-19 for which the Hon'ble Supreme Court has directed that the period from 15.03.2020 to 28.02.2022 is to be excluded for the purpose of computing the

limitation period during the COVID-19 pandemic. Further, a period of 90 days is allowed after 28.02.2022 vide same order. Considering the facts and the explanation of the assessee placed on record, we condone the delay in filing the appeal and admit it for adjudication.

3. Before us, Shri Akshay Ringasia, CA & Shri Tarak Nath Jaiswal, Advocate represented the assessee and Shri Deb Kr. Sonowal, CIT, DR represented the department.

4. The solitary ground taken by the assessee in Form 36 filed in the present appeal is on challenging the jurisdiction assumed by the ld. CIT(E) for invoking the provisions of section 263 of the Act and passing the order therein. In the course of hearing before the Tribunal, assessee took an additional ground vide its submission dated 30.06.2022 and prayed for its admission and adjudication. The additional ground taken by the assessee is reproduced as under:

> *"That the order passed by the Ld. PCIT is null and void as it fails to mention any DIN number on its body or adhere to Circular No. 19/2019 by the CBDT."*

5. Assessee states that it is filing an additional ground with the leave of this Tribunal under Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963 (hereinafter referred to as the "ITAT Rules") and by placing reliance on the ratio laid down by the Hon'ble Supreme Court in the case of NTPC reported in 229 ITR 383. Assessee also submitted that this additional ground goes to the root of the matter and permeates from the facts already on record before the lower authorities and this Tribunal and thus, prays for its admission and adjudication in the interest of justice. In this respect, for ease of reference, Rule 11 of the ITAT Rules is reproduced as under:

> *"**11.** The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal, but the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal under this rule :*
>
> ***Provided** that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground."*

6. On going through the above Rule, we note that assessee can take any ground not set forth in the Memorandum of Appeal but only with the leave of the Tribunal for which sufficient opportunity of being heard is to be granted to the party being affected thereby. To this effect, submissions of the Ld. Counsel of the assessee were confronted to the Ld. CIT, DR who did not object upon. Thus, in terms of Rule 11 and further, by respectfully following the decision of Hon'ble Supreme Court in the case of NTPC (*supra*) and also in the interest of natural justice and fair play, we find it proper to admit the additional ground raised by the assessee as reproduced above for its adjudication since it goes to the root of the matter for which facts relating thereto are already on record.

7. Brief facts of the case as culled out from the records are that assessee is a charitable trust registered u/s. 12AA of the Act with effect from 27.10.2005. The assessee trust operates under the Tata Cancer Hospital looking after the treatment of cancer patients. The objectives of the trust are to promote prevention, early diagnosis, treatment, rehabilitation and research for cancer patients. Assessee filed its return of income on 29.09.2016 reporting total income for Rs. Nil. Assessee is assessed to income-tax by the Assistant Commissioner of Income-tax, Circle-1(1) (Exempt), Kolkata. Case of assessee was selected for scrutiny

for which statutory notices were issued and were complied by the assessee. Assessment was completed for which the order was passed u/s. 143(3) of the Act dated 04.12.2018 determining total income at Rs. NIL. Subsequently, Ld. CIT(E), Kolkata initiated revisionary proceeding u/s. 263 of the Act proposing to revise the aforementioned assessment order for which a show cause notice dated 23.03.2021 was issued on the assessee, placed in the paper book at pages 55 to 57. The said show cause notice required the assessee to submit its reply within six days i.e. by 30.03.2021. Assessee filed its reply on 30.03.2021 and the Ld. CIT(E) passed the impugned order u/s. 263 of the Act on 31.03.2021 by rejecting the contentions of the assessee. Aggrieved, assessee is in appeal before this Tribunal.

8. Before delving into the grounds of appeal set forth in the Memorandum of Appeal in Form 36 filed by the assessee, Ld. Counsel for the assessee insisted and prayed to adjudicate upon the additional ground (*supra*) which goes to the root of the matter, it being a legal issue affecting the validity of the impugned order. Ld. CIT, DR had no objection on this prayer by the Ld. Counsel and, therefore, we proceed to deal with the additional ground so raised by the assessee.

9. Ld. Counsel for the assessee submitted that for initiation of proceedings u/s. 263 of the Act, a show cause notice was issued which came to the knowledge of the assessee only on 27.03.2021 and for which the reply was to be submitted by 11 AM of 30.03.2021. Ld. Counsel submitted that assessee filed its reply on 30.03.2021 and the impugned order was passed on the last date of the time barring period i.e. on 31.03.2021 with a direction to Ld. AO to make addition under different heads. In view of the additional ground taken, Ld. Counsel stated that the impugned order passed u/s. 263 of the Act did not contain any Document Identification No. (DIN) nor any reason for non-

issuance of DIN along with the impugned order. According to the ld. Counsel, impugned order is without any DIN which is in violation of the very basic object of CBDT Circular No.19/2019 dated 14.08.2019. He further stated that non-issuance of DIN has not been acknowledged in the body of the impugned order so as to clarify the reason for its non-issuance. He submitted that the whole objective of the said CBDT Circular requiring a mandatory quoting of DIN in all the communications of the department is to maintain the audit trail which otherwise gets lost. In order to tackle this ambiguity, the said circular vide para 4 renders such orders without a DIN as *"invalid or deemed to have never been issued"*. The arguments made by the Ld. Counsel in respect of the additional ground in the written submission placed on record are reproduced as under:

3.1 *For Ground No 1: The order passed is null and void as both the initiation of proceedings under section 263 as well as the final order were without DIN number.*

3.1.1 That 1. CBDT Circular No 19/2019 dated 14/08/2019 [PB Pg 68-69] laid that no communication shall be issued by any income-tax authority 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. Relevant portion of circular reproduced as under:

"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;

(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 tile 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.".

3.1.2 That in the case under consideration order u/s 263 made on 31/03/2021. Since the order framed after 01/10/2019, as per CBDT Circular No 19/2019 dated 14/08/2019, a computer-generated Document Identification Number (DIN) must be allotted to it and same must be duly quoted in the body of order itself. From the bare perusal of order u/s 263 it can be observed that neither a computer generated DIN quoted in the body of order nor it has been stated that Order has been issued manually without a DIN in exceptional situation after obtaining written approval of the Chief Commissioner of Income-Tax. Considering the factual position absence of quotation of Computer Generated DIN in the body of assessment order shall be treated as invalid and shall be deemed to have never been issued, as per binding CBDT Circular. Considering the position, it is requested to declare the assessment order as null and void ab initio.

3.1.3 That it may pertinent to mention that the circular specify five exceptional circumstances wherein order can be issued manually. But for same there is binding condition that order issued manually only after recording reasons in writing in the tile and with prior written approval of the Chief Commissioner /Director General of income-tax. The communication issued under 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 case under consideration, in manual order u/s 263 no information has been provided that order has been issued manually without a DIN, neither it**

has been provided that order has been issued manually after getting prior written permission of Chief Commissioner of Income Tax. In such circumstances the order under consideration being in contravention to CBDT circular may kindly be declared as void ab initio and be treated as never been issued.

3.1.4 That considering above facts and circumstances and binding CBDT circular the assessment order may kindly be declared as null and void and shall be treated as never been issued. The fact that the whole purpose of bringing out such circular was to maintain the Audit trail and verifiable record and in the present scenario the entire object fails. Especially considering the fact that the impugned order was passed on the last date of time barring period that too without a signature. In absence of a DIN number a check of the adherence of the time barring limitation is virtually impossible.

10. Ld. CIT, DR strongly opposed the submissions made by the Ld. Counsel and stated that this is a mere procedural irregularity which cannot render the impugned order passed u/s. 263 of the Act as *'invalid or deemed to have never been issued'* as claimed by the Ld. Counsel in terms of CBDT Circular No. 19/2019. He referred to the exceptional circumstances which are listed in the circular itself and stated that there are technological and other difficulties which are faced on certain occasions in generating/allotting/quoting the DIN which can in no way make the lawful proceeding conducted and completed by the Income-tax Authority, as invalid. Ld. CIT, DR further submitted that the case records can be referred to ascertain if the DIN was actually generated or not and it is merely an inadvertent mistake because of which it remained to be quoted in the impugned order. He thus strongly

opposed to the contentions made by the Ld. Counsel claiming to hold the impugned order as *'invalid or deemed to have never been issued'*.

11. We have heard the rival submissions and perused the material available on record and given our thoughtful consideration to the submissions made by both the parties. Before adverting on the issue in hand, the CBDT Circle No. 19/2009 dated 14.08.2019, copy of which is placed in the paper book pages 68-69, is reproduced hereunder for ready reference:

Circular No. 19 **/2019**

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

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 or 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 /\ct"), 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 I st day of October, 2019 unless a computer-generated Document Identification Number (DIN) has been allotted and is duly quoted in the body or 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 n1igration PAN is lying with non-jurisdictional Assessing Officer; or

(iv) when PAN or 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 or Income-Tax for isse uor 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 I 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

(F.No. 225/95/2019-ITA.II)

12. From the perusal of above circular, we note that CBDT came out with this circular to mitigate the issues/instances where certain notices, orders, summons, letters and other correspondences which

have been issued manually do not have proper audit trail of their communication despite various e-governance initiatives and computerization of its work. Therefore, in order to prevent such instances and to maintain proper audit trail of all the communications, CBDT directed 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 01.10.2019 unless a computer generated DIN has been allotted and is duly quoted in the body of such communication. We note that para 3 of the said circular provides for certain exceptional circumstances when the communication is issued manually, in which case such manually issued communications should contain the fact that the said 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 said manual communication in the prescribed format. Thus, it is observed from the said circular that all the communications mentioned therein have to be either generated and issued electronically with DIN or in certain exceptional circumstances the communication may be issued manually without DIN, fact of which along with its written approval has to be stated in the body of the said communication, failing which, para 4 of the said circular states that such communication shall be treated as *'invalid' and shall be deemed to have never been issued'*.

12.1 On a specific query by the bench to the Ld. CIT, DR to point out if there was any exceptional circumstance which led to the manual issue of the order u/s. 263 of the Act, he pointed out that the only possibility of exceptional circumstance as mentioned in the CBDT Circular, could be as listed in para 3(i) which mentioned that "*when there are technical*

difficulties in generating /allotting/quoting the DIN and issuance of communication electronically". For this he requested for verification of the case records.

12.2 On this aspect, Ld. Counsel for the assessee submitted that it is undisputed and verifiable fact that the impugned order is not an electronic communication but a manual order as is evident from the perusal of the order itself. It is an order which has been passed manually and page 9 of the said order does not even bare a full and proper signature of the Ld. CIT(E), Kolkata. Page 10 of the said order bears the signature of TRO(E), Kolkata, dated 31.03.2021, and therefore, the exception pointed out by the Ld. CIT, DR does not apply in the present case since it is relevant only to a communication which is issued electronically. He further pointed out that within this para 3 of the CBDT Circular, it is mentioned that when the communication is issued manually, such communication in its body must state the fact that the said communication is issued manually without a DIN and the date of obtaining of the written approval of the prescribed authority for issue of manual communication in the prescribed format has to be stated therein. In the present case, no such fact of issuing the present order manually without a DIN by obtaining an approval from prescribed authority in the prescribed format is mentioned/quoted in the body of the impugned order and, therefore, even if the case records are verified, it will not serve any purpose since the impugned order itself does not contain any such factual notation as contemplated in para 3 of the CBDT circular.

12.3 In order to demonstrate how a communication issued electronically containing a DIN would look like, the Ld. Counsel referred to one such notice u/s. 154 dated 08.10.2020 issued on the assessee, placed at paper book page 53, scanned copy of which is reproduced hereunder for ease of reference:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT
COMMISSIONER OF INCOME TAX
CIRCLE 1(1), EXEMPT, KOLKATA

To, TATA MEDICAL CENTRE TRUST 1, BISHOP LEFROY ROAD,LEFROY ROAD KOLKATA KOLKATA 700020,West Bengal India	

PAN:	Assessment Year:	Dated:	DIN & Notice No :
AABTT2222Q	**2016-17**	**08/10/2020**	**ITBA/COM/F/17/2020-21/1028167761(1)**

Sir/ Madam/ M/s,

Subject: Proceedings under section 154 - Notice

The assessment/refund order under section 143(3) for the assessment year 2016-17 requires to be amended as there is a mistake apparent form the record within the meaning of section 154/155 of the Income Tax Act, 1961. The rectification of the mistake, as per particular given below, will have the effect of enhancing the assessment /reducing the refund/ increasing your liability.

If you wish to be heard, you are requested to file your submission online on or before 09.10.2020 at 11.30 A.M. Alternatively you may send a written reply so as to reach me on or before the date mentioned above.

Particulars of mistake proposed to be rectified.

1. On verification of records, it is revealed that the assessee had earned interest income amounting to Rs 91.37 lacs on corpus funds and Rs 27.31 lacs on "Other earmarked funds". It is observed that though interest received under on 91.37 lacs had been added back to the income side as per I&E account in the assessment order, interest income received on earmarked fund (Rs 21.31 lacs) has not been taken as income. The same needs to be treated as part of Income.
2. An amount of Rs 5,18,29,615 has been deducted towards 'Apportion from patient care fund ' from 'Total Income as per I&E A/c', while computing taxable income for the AY 2015-16. Further it reveals that you had actually added the said amount as receipt under the head Revenue from operation in the I&E account. This amount has been spent towards normal course of activities of the assessee during the year. Thus deduction of Rs 5,18,29,615 as *Apportion from patient care fund* in the I&E A/c from the income of the assessee without corresponding deduction in the expenditure side has actually resulted in irregular increase in Deficit for the AY 2016-17 by the same amount.

SAVYASACHI KUMAR

Note: If digitally signed, the date of digital signature may be taken as date of document.
ROOM NO:5/7,5TH FLOOR, INCOME TAX OFFICE, 10 B, MIDDLETON ROAD, KOLKATA, KOLKATA, West Bengal, 700071
Email: KOLKATA.DCIT.EXMP1@INCOMETAX.GOV.IN, Office Phone:03322296081

* DIN- Document identification No.

12.4 From this notice, Ld. Counsel pointed out that on the top left corner it bears a Bar Code. Further, in the box on the top of right hand side it bears a DIN and Notice No. Also, in the body of the notice, it mentions about the fact that document is digitally signed. Further, in the left bottom of the said notice, there is a legend put with an asterisk (*) mark which says 'DIN'.

12.5 In contrast to this, attention of the bench was invited, both to the show cause notice issued pursuant to revisionary proceeding u/s. 263 of the Act dated 23.03.2021 placed at pages 55 to 57 of the paper book, which was issued manually and does not bear any reference to DIN in terms of CBDT circular so also the impugned order passed u/s. 263 which is also issued manually and does not bear any reference to DIN as required by the CBDT circular. The first page and the last two pages of the impugned order are reproduced hereunder for reference, in the context of quoting DIN as contemplated by CBDT circular:

OFFICE OF THE COMMISSIONER OF INCOME TAX (EXEMPTIONS), KOLKATA
6TH FLOOR, 10B, MIDDLETON ROW, KOLKATA- 700071
Ph: (033)2229-2926, FAX(033)2229-1719

1. Name of assessee : Tata Medical Centre Trust	6. Whether Resident/Resident but not ordinarily resident/non-resident: **Resident**
Address : 1, Bishop Lefroy Road, Kolkata-700020	7. Method of accounting : **Mercantile**
3. PAN/GIR No. AABTT2222Q	8. Previous year : **2015-16**
4. Status : **Trust** (a) If HUF, is higher rate of tax applicable? (b) If company, whether (i) Domestic/Others (ii) Public substantially interested/ Public not substantially interested (iii) Industrial/Non-Industrial (iv) Section 108/other than Sec.108	9. Date(s) of hearing : **As per records**
5. Assessment Year : **2016-17**	10. Date of order : 31.03.2021

ORDER U/S. 263 OF THE INCOME TAX ACT, 1961

The facts of the case are that assessment u/s. 143(3) of the Income Tax Act, 1961 for the A.Y. 2016-17 was completed on 04.12.2018, determining total income at Rs. Nil/-.

On further verification of assessment records, it has been found that the following exemptions were allowed by the Assessing Officer beyond the permissible scope as per Income Tax Act:

(i) In the instant case, the assessee claimed 'Provision for doubtful debts amounting to Rs.37.40 lakh under the head Other expenses as application of fund. As per provision of the Act, mere provision would not be allowable as a deduction and the actual writing off of the debt was a necessary pre-condition. Therefore, only the actual expenditures made during the year can be treated as application. As such, the said amount of Rs.37.40 lakh is required to be added back to the income of the assessee.

(ii) Scrutiny of the assessment order revealed that, an amount of Rs.5,18.29.615 has been deducted towards Apportion from patient care fund (SL. 461) of the table at paragraph 4 of the order from Total income as per I&E A/c', while computing taxable income of the assessee for the AY 2016-17. Further scrutiny revealed that the assessee had actually added the said amount as 'receipt" under the head

In view of the above, the Assessing Officer has erred in allowing capital expenditure of Rs. 4989.53 lakhs towards addition to fixed assets and Rs. 447.4 lakhs towards WIP, which resulted in loss of revenue and therefore, is prejudicial to the interest of revenue. The Assessing Officer is hereby directed to compute income with allowing capital expenditure and WIP.

(iv) The assessee Trust created several Trust and Corpus Fund as well as Earmarked Funds in which contributions from donors with direction for utilization for specific purposes are accumulated for future utilization in accordance to the direction of donors. These receipts are not taken to the income since considered as exempt u/s. 11(1)(d) being capital receipt in nature. Interest accrued/ earned on such fund being revenue in nature is considered as Income from Other Sources. While computing income, the assessee Trust separately included interest of Rs. 91.37 lakhs in computation of income recognising the same as revenue receipt, but interest earned on other earmarked funds to the tune of Rs. 27.31 lakhs was not included in income as well as in computation of income separately. During the course of proceedings u/s. 263, it has been contended that apportionment of the interest amount to the I/E Accounts would not change the colour of the receipt. The assessee has also relied upon several court decision to establish that the interest accrued on corpus fund would be corpus in nature. However, the treatment towards interest on corpus fund being revenue in nature in accepted accounting norms, which has been recognized by the assessee itself in other part. The Assessing Officer also has not noticed the same in assessment erroneously and, therefore, the revenue interest income remained outside the ambit for fulfillment of conditions mentioned in section 11(1) for compulsory application of income @ 85% and also outside the ambit of taxation.

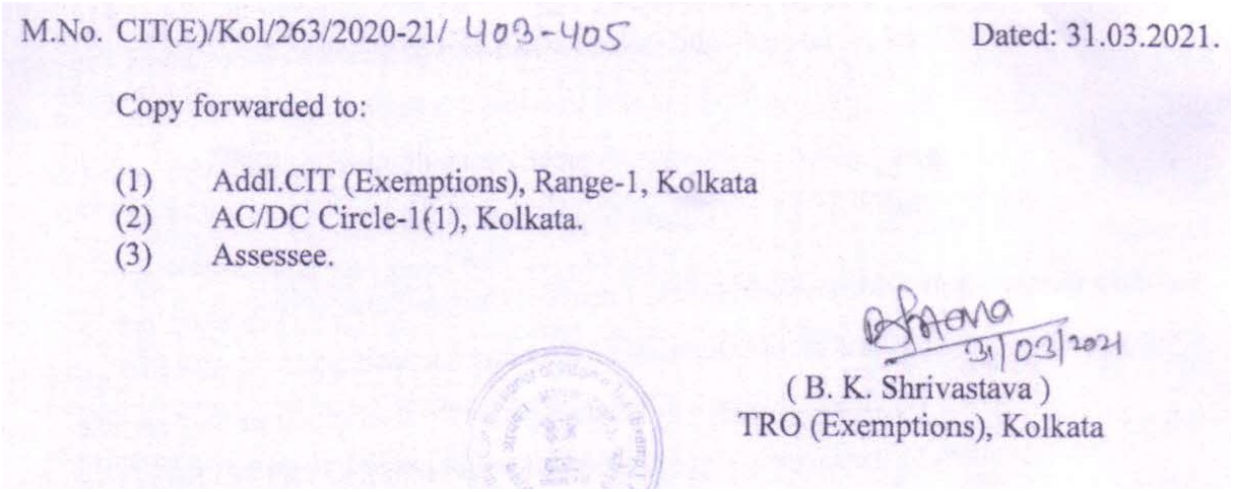
As such, the Assessing Officer is directed to compute income taking Rs. 27.31 lakhs as income.

In view of the above facts and circumstances of the case, the Assessment Order passed by the A.O. is therefore erroneous and prejudicial to the interests of the revenue. The A.O. is directed to give effect to the order as per the provision of the Act, and compute income on the basis of issue wise discussions above.

Ordered accordingly,

Sd/-

[Pankaj Kumar]
Commissioner of Income Tax (Exemptions), Kolkata



M.No. CIT(E)/Kol/263/2020-21/ 403-405 Dated: 31.03.2021.

Copy forwarded to:

(1) Addl.CIT (Exemptions), Range-1, Kolkata
(2) AC/DC Circle-1(1), Kolkata.
(3) Assessee.

31/03/2021

(B. K. Shrivastava)
TRO (Exemptions), Kolkata

13. From the above submissions and arguments, we note that it is an undisputed fact that the impugned order u/s. 263 of the Act has been issued manually which does not bear the signature of the authority passing the order. Further, from the perusal of the entire order, in its body, there is no reference to the fact of this order issued manually without a DIN for which the written approval of Chief Commissioner/Director General of Income-tax was required to be obtained in the prescribed format in terms of the CBDT circular. We also note that in terms of para 4 of the CBDT circular, such a lapse renders this impugned order as invalid and deemed to have never been issued.

13.1 It is also important to note about the binding nature of CBDT circular on the Income-tax Authorities for which gainful guidance is taken from the decision of Hon'ble Supreme Court in the case of CIT v. Hero Cycles [1997] 228 ITR 463 (SC) wherein it was held that circulars bind the ITO but will not bind the appellate authority or the Tribunal or the Court or even the assessee.

13.2 In the case of UCO Bank [1999] 237 ITR 889 (SC), Hon'ble Supreme Court while dealing with the legal status of such circulars, observed thus (page 896):

> *"Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. 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 forgo 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. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorized as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities."*

13.3 In the matter of Nayana P. Dedhia [2004] 270 ITR 572 (AP), the Hon'ble Andhra Pradesh High Court held that *the guidelines issued by the Board in exercise of powers in terms of section 119 of the Act relaxing the rigours of law are binding on all the officers responsible for implementation of the Act and, therefore, bound to follow and observe any such orders, instructions and directions of the Board.*

13.4 In the decision of DCIT v. Sunita Finlease Ltd. [2011] 330 ITR 491 (CG,) it was held by the Hon'ble High Court of Chhattisgarh in para 16 that *the administrative Instruction No. 9/2004 issued by the Central Board of Direct Taxes 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).*

While giving its finding, the Hon'ble High Court of Chhattisgarh placed reliance on the decisions in the case of UCO Bank (*supra*) and Nayana P. Dedhia (*supra*).

13.5 Hon'ble jurisdictional High Court of Calcutta in the case of Amal Kumar Ghosh [2014] 361 ITR 458 (Cal) dealt with the issue relating to CBDT circular which according to the Department cannot defeat the provisions of law. While giving its observations and finding on the issue, the Hon'ble Court referred to the decision of Hon'ble Chhattisgarh High Court in the case of Sunita Finlease Ltd (*supra*), which are as under:

> *7. We have considered the rival submissions advanced by the learned Advocates. Even assuming that the intention of CBDT was to restrict the time for selection of the cases for scrutiny within a period of three months, it cannot be said that the selection in this case was made within the aforesaid period. Admittedly, the return was filed on 29th October, 2004 and the case was selected for scrutiny on 6th July, 2005. It may be pointed out that Mrs. Gutgutia was, in fact, reiterating the views taken by the learned Tribunal which we also quoted above. By any process of reasoning, it was not open for the learned Tribunal to come to a finding that the department acted within the four corners of Circulars No.9 and 10 issued by CBDT. The circulars were evidently violated. The circulars are binding upon the department under section 119 of the I.T. Act.*
>
> *8. Mrs. Gutgutia, learned Advocate submitted that the circulars are not meant for the purpose of permitting the unscrupulous assessees from evading tax. 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. If this type of deviation is permitted, the consequences will be that floodgate of corruption will be opened which it is not desirable to encourage. 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. In the facts of the case, it is not necessary for us to decide whether the intention of CBDT was to restrict the period of issuance of notice from the date of filing the return laid down under section 143(2) of the I.T. Act.* [emphasis supplied by us by underline]

14. Considering the facts on record, perusal of the impugned order, submissions made by the Ld. Counsel and the department, CBDT circular and the judicial precedents including that of Hon'ble Supreme Court and the jurisdictional High Court of Calcutta, we are inclined to adjudicate on the additional ground in favour of the assessee by holding that the order passed by the Ld. CIT(E) is *invalid and deemed to have*

never been issued as it fails to mention DIN in its body by adhering to the CBDT circular no. 19 of 2019. Accordingly, additional ground taken by the assessee is allowed. Having so held on the legal issue raised by the assessee in the additional ground, the grounds relating to the merits of the case requires no adjudication. Accordingly, the appeal of the assessee is allowed in terms of above observations and findings.

15. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 18th July, 2022

Sd/- Sd/-

(SANJAY GARG) **(GIRISH AGRAWAL)**
JUDICIAL MEMBER **ACCOUNTANT MEMBER**

Kolkata, Dated: 18.07.2022.
JD, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The ACIT, Circle-1(1), Kolkata
4. The CIT (E) – , Kolkata
5. The DR, ITAT, Kolkata.

//True Copy//

By Order

SAG INFOTECH service begins here....

Assistant Registrar
ITAT, Kolkata Benches, Kolkata