



॥आयकर अपीलीय न्यायाधिकरण, पुणे “सी” न्यायपीठ, पुणे में॥
IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE “C” BENCH, PUNE
BEFORE HON’BLE SHRI S. S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 1950/PUN/2019

निर्धारण वर्ष / Assessment Year : 2015-16

Kimberly Clark India Pvt. Ltd.,
(Earlier known as Kimberly Clark Lever Pvt. Ltd.)

Gat No 934-937, Village Sanaswadi

Taluka Shirur, Pune – 412208

PAN: AAACK4647E

..... अपीलार्थी / Appellant

बनाम / V/s

Dy. Commissioner of Income Tax,

Circle-14, Pune

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Shri Percy Pardiwalla & Shri Hiten Chande

Revenue by : Shri Prashant Gadekar

सुनवाई की तारीख / Date of conclusive Hearing : 12/05/2023

घोषणा की तारीख / Date of Pronouncement : 12/05/2023

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

This appeal of the assessee for the assessment year [for short ‘AY’] 2015-16 is directed against order of assessment passed by the Dy. Commissioner of Income Tax Circle-14, Pune [for short ‘AO’] dt. 09/10/2019 u/s 143(3) r.w.s. 144C(13) of the income Tax Act [for short ‘the Act’].



2. During the course of physical hearing, the Ld. Senior Counsel for the assessee [for short 'AR'], without going into the merits of the case, at the outset has raised an oral legal ground challenging the very validity of the impugned order in the light of Circular No. 19/2019 issued by the Central Board of Direct Taxes [for short 'CBDT']. *Per contra*, the Ld. DR without objecting the admission of oral legal ground so raised, has submitted that, the impugned order of assessment indeed bears the DCR Number and thus corresponding Document Identification Number [for short 'DIN'] must have been generated in compliance with the CBDT Circular (supra), which however remained to be quoted in the body of order while communicating to the assessee. The Ld. DR further submitted that, aforesaid CBDT circular came into force w.e.f. 01/10/2019 whereas the impugned order was passed on 09/10/2019 and as such in the initial transition period the department was instructed to maintained parallel manual records in addition to



computerised records, the Ld. AO as an abundant precaution quoted the control DCR Number which can be vouched with that of the corresponding DIN generated in compliance of CBDT Circular (supra).

3. We have heard the rival contentions of both the parties; and subject to the provisions of rule 18 of **"ITAT Rules"**, perused the material placed on record, case laws relied upon and duly considered the facts of the case in the light of settled legal position forewarned to either parties.

4. In proceeding to adjudicate the legal issue first, we note that, this legal ground raised by the appellant first time in the present appeal goes to the root of the matter and admittedly no new facts are required to be invoked, thus deserves the admission in the light of ratio laid down by the Hon'ble Apex Court in '*CIT Vs National Thermal Power Company Ltd.*' reported in 229 ITR 383 (SC), ergo same stands admitted.



5. We note that, in order to prevent manual practice of issuance of notice, order, summons, letter or any other correspondence [defined as 'Communication'] and to maintain proper audit trail of all communication the CBDT in exercise of power u/s 119 of the Act, vide circular No. 29/2019 dt. 14/08/2019 has mandated the income tax authority w.e.f. 01/10/2019 for **generation, allotment and communication** of computer generated DIN in relation to any assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc.

6. Albeit para 2 of aforestated circular mandates for DIN compliance, para 3 thereof provides for five exceptional circumstances wherein manual communication is permitted without initially complying with the DIN requirement, however subject to regularisation within a period of 15



working days of such manual issuance. Here it is worthy to note that, any communication made not in conformity with Para-2 and Para-3 invariably renders the communication as invalid and shall be deemed to have never been issued.

7. While vouching the effect of non-generation *vis-à-vis* non-quoting of DIN, we note that, the Hon'ble Delhi High Court while dealing with similar issue in '*CIT Vs Brandix Mauritius Holdings Ltd.*' (163/2023 dt. 20/03/2023), has 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, Ernakulum* (1981) 4 SCC 173 and in the case of '*Back Office IT Solutions Pvt. Ltd. Vs UOI* (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.

8. In the light of aforestated legal position, in the present appeal we note that, the impugned order bears no DIN in the body of assessment, thus the impugned order undisputedly was communicated in violation of Para-2 of CBDT Circular (supra). Further, the Revenue also failed to bring on record any material showcasing that the case of the assessee falls within any of the five exceptional circumstances provided in Para-3 and accompanying therewith further evidentiary documents establishing the regularisation of initial manual issuance in terms Para-5 thereof. Thus the communication of impugned assessment suffered from compliance and rendered itself invalid as if never been issued.



9. In these circumstances, in our considered view, for want of quoting the DIN in the body of assessment, the impugned order is to be treated as never been issued therefore ceases to have any effect in the eyes of law. In view of this finding, delving deeper into merits of the case is unwarranted hence dispensed with.

10. In result, the appeal stands ALLOWED.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Friday 12th day of May, 2023.

-S/d-

S. S. GODARA

JUDICIAL MEMBER

-S/d-

G. D. PADMAHSHALI

ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 01st day of June, 2023.

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

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|-------------------------------|---------------------------------|-----------------------------|
| 1. अपीलार्थी / The Appellant. | 2. प्रत्यर्थी / The Respondent. | 3. The Pr. CIT - 4, Pune |
| 4. The DRP-3, Mumbai (India) | 5. DR, ITAT, Bench 'C', Pune | 6. गार्डफ़ाइल / Guard File. |

Ashwini

वरिष्ठ निजी सचिव / Sr. Private Secretary
आदेशानुसार / By Order
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.

