IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2747 OF 2025

Siemens Limited .. Petitioner

Versus

Deputy Commissioner of Income Tax, Circle, 8(2)(1),
Mumbai & Ors. .. Respondents

Mr. P. J. Pardiwalla, Sr. Advocate, *a/w Mr. Jeet Kamdar, Mr. Atul K. Jasani, Advocates for the Petitioner.*

Ms. Dhanlakshmi S. Krishna Iyer, *Advocate for the Respondents.*

CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.
DATE: DECEMBER 2, 2025

P. C.

1. By this Petition, the Petitioner challenges the validity of an order passed by Respondent No.1 under Section 154 of the Income-tax Act, 1961 (for short "**the IT Act**"), purportedly dated 29.03.2024 ("**the impugned order**"). The impugned order does not bear a Document Identification Number (for short "**DIN"**). The Assessment Year in question is A.Y. 2005-06. The Petitioner also challenges the intimation letter dated 10.07.2024 ("**the impugned letter**") issued by Respondent No. 1, providing a DIN to

the impugned order, when the impugned order is passed contrary to the Central Board of Direct Taxes (for short "**CBDT**") Circular No. 19/2019 dated 14.08.2019.

2. In order to adjudicate on the issues that arise in the present petition, it is necessary to set out, in brief, the relevant facts:-

a) The Petitioner filed its original Return of Income on 28.10.2005, declaring a total income of Rs. 253.76 Crores and filed a revised Return of Income on 30.03.2007 declaring a total income of Rs. 246.59 Crores. Since there were international transactions involved, Respondent No. 1 (**AO**) made a reference to Respondent No. 2 [the Transfer Pricing Officer (**TPO**)] under Section 92CA(1) of the IT Act for computing the Arm's Length Price in relation to those international transactions entered into by the Petitioner. The TPO passed an order dated 20.02.2008 under Section 92CA(3) of the IT Act, recommending an addition of Rs. 47.53 Crores to the Arm's Length Price in the transactions entered into by the Petitioner in 4 out of its 9 divisions, the details of which are as under:-

- AD & PTD – Manufacturing division : Rs. 6.95 Crores
- Medical division – Manufacturing : Rs. 5.66 Crores
- Medical division – Distribution : Rs. 32.21 Crores
- Video division : Rs. 2.71 Crores

b) As there were mistakes in the recommendations/ order of the TPO, the Petitioner filed Rectification Applications dated 25.02.2008 and 28.02.2008 to rectify various errors that had crept into the TPO's order.

c) While this rectification was pending, Respondent No. 1 passed an Assessment Order dated 31.12.2008 under Section 143(3) of the IT Act, making the transfer pricing adjustment of Rs. 47.53 Crores recommended by the TPO, and in addition thereto, made other corporate tax additions aggregating Rs. 69.89 Crores, thereby assessing the total income of the Petitioner at Rs. 364.01 Crores.

d) Thereafter, the TPO passed an order dated 20.01.2009 under Section 154 of the IT Act, correcting the mistakes apparent on the record in his order dated 20.02.2008, and consequently, deleted the additions in (i) the AD & PTD Division, and (ii) the Medical Division – Manufacturing. However, the TPO did not rectify the mistake in the Medical Division – Distribution, and the Video Division.

e) On 29th January 2009, the Petitioner filed an Appeal before the Commissioner of Income Tax (Appeals) [for short "**CIT(A)**"] against the Assessment Order dated 31.12.2008, passed by Respondent No.1.

f) In the meanwhile, to implement the TPO's order dated 20.01.2009, Respondent No. 1 passed a rectification order dated 09.03.2011 under Section 154 of the IT Act revising the total income of the Petitioner to Rs. 337.52 Crores.

g) Subsequently, the CIT(A) passed an order dated 29.03.2019 under Section 250 of the Act, partly allowing the Appeal of the Petitioner, by which order he directed the TPO to recompute the adjustment made to the Arm's Length Price of the international transactions in terms of his directions.

h) Being aggrieved by the order of the CIT(A), the Petitioner filed an Appeal to the Income Tax Appellate Tribunal (for short '**Tribunal**') on 06.06.2019 challenging both, the corporate tax issues, as well as the issues relating to the transfer pricing addition made to transactions in respect of two of its divisions.

i) The TPO passed an order dated 05.03.2020 giving effect to the order of the CIT(A) and deleted the transfer pricing adjustment of Rs. 34.92 Crores (i.e. in respect of transactions in the Medical Division - Distribution of Rs.32.21 Crores, and in the Video Division of Rs. 2.71 Crores).

j) Consequently, Respondent No. 1 passed an order dated 16.03.2020 giving effect and deleted the transfer pricing adjustment of Rs. 34.92 Crores along with other reliefs granted by the CIT(A) of Rs. 24.01 Crores, and determined the revised total income of the Petitioner at Rs. 278.60 Crores.

k) Subsequently, when the appeal before the Tribunal initially came up for hearing, and the fact that the grounds relating to the transfer pricing addition had become infructuous in view of the order passed by the TPO was pointed out, the Members requested the Petitioner to file revised grounds of Appeal in Form No. 36 after excluding the grounds relating to the transfer pricing adjustment. Accordingly, the Petitioner filed a revised Form No. 36 on 20.06.2022 as directed by the Tribunal by excluding the transfer pricing grounds.

l) After all this, suddenly the TPO issued a notice dated 21.03.2024 whereby he proposed to rectify his order dated 05.03.2020 and withdraw the relief of Rs. 32.21 Crores granted in respect of the transactions in the Medical Division – Distribution. The Petitioner addressed a letter dated 26.03.2024 pointing out that there was no mistake apparent on record which could be rectified under Section 154 of the Act. However, the TPO passed a rectification order dated 27.03.2024 rectifying the order passed by him on 05.03.2020, while giving effect to the CIT(A) order, and thereby, made a revised transfer pricing adjustment of Rs. 32.21 Crores to the transactions of the Medical Division – Distribution.

m) Since the appeal before the Tribunal was still pending, the Petitioner filed another revised Form No. 36 on 12.04.2024, reinstating the transfer pricing grounds filed originally on 06.06.2019, in view of the order dated 27.03.2024 passed by the TPO.

n) Thereafter, Respondent No. 1 issued a notice dated 20.06.2024 seeking to initiate rectification proceedings under Section 154 of the IT Act and fixed the hearing on 01.07.2024. The Petitioner replied thereto by a letter dated 01.07.2024, pointing out that the proposed rectification proceedings are time-barred, as no rectification is permissible after the expiry of four years from the end of the Financial Year in which the order sought to be amended was passed, having regard to the provisions of Section 154(7). The Petitioner pointed out that Respondent No. 1 proposed to rectify his earlier order dated 16.03.2020, which could only be rectified till 31.03.2024 and that initiation of rectification proceedings under Section 154 was not permissible. Without prejudice to the above, the Petitioner also pointed out that the matter was outside the scope of Section 154 of the Act as the issue is highly debatable and cannot be termed as a mistake apparent on record and only a glaring, obvious or self evident mistakes can be subjected to rectification proceedings under Section 154 of the IT Act.

o) An employee of the Petitioner, to his utter shock and surprise, saw the impugned order purportedly dated 29.03.2024 for the first time on the income tax portal on 17.07.2024. The impugned order was not received by the Petitioner, either by email, or by physical delivery.

p) Respondent No. 1, thereafter, uploaded the impugned letter dated 10.07.2024 (which too was never received either by email or by physical delivery by the Petitioner) and an employee of the Petitioner noticed the impugned letter for the first time on 17.07.2024 while accessing the income tax portal. The intimation letter mentioned that the order under Section 154 read with Section 250 of the Act dated 29.03.2024 has DIN 'ITBA/REC/M/154/2024-25/1066567478(1).'

3. The Petitioner has raised multiple grounds in the present Writ Petition challenging the impugned order and the impugned letter issued by Respondent No. 1. The primary challenge is that:- (i) the impugned order is illegal inasmuch as it does not, on the face of it, have a DIN and is, thus, contrary to the mandate of the CBDT Circular 19/2019; and (ii) is not passed on the day it is purported to be dated, i.e., 29.03.2024 as the same officer who allegedly passed the order on 29.03.2024 issued a notice dated 20.06.2024 asking the Petitioner to Show Cause on or before 1.07.2024 as to why the rectification proceedings under Section 154 of the Act should not be initiated to rectify the order passed by him on 16.03.2020.

4. In this factual backdrop and adverting to the grounds of challenge set out above, the learned Senior Counsel for the Petitioner invited our attention to the mandate of Circular 19/2019 dated 14.08.2019 which sets out the requirement of all communications from the department to bear a DIN. The CBDT has elaborately set out the manner in which a DIN is required to be

generated, allotted and duly quoted in the body of any notice, order, summons, letter or any correspondence issued by any income tax authority on or after 1.10.2019. The only exceptions to this requirement are set out in paragraph 3 of the Circular and the said paragraph also details out as to how care is to be taken to bring the case within the exceptional circumstances. Paragraph 4 makes it amply clear that any "communication" which is not in conformity with the provisions of paragraphs 2 and 3 will be invalid and deemed to have never been issued. Accordingly, it was submitted that the order purported to be dated 29.03.2024 is to be set aside on this narrow ground. It was further submitted that the order, on the face of it, does not refer to any of the exceptional circumstances as mentioned in paragraph 3 of the said Circular being applicable and, in any event, even if such circumstances existed, the same would have to be regularised within a period of 15 working days of its issuance by compulsorily generating the DIN and communicating the DIN to the Petitioner which has not been done by Respondent No. 1. The impugned letter dated 10.07.2024 was not communicated to the Petitioner by either email or physical delivery and from page 538 of the Affidavit-in-reply it is seen that the impugned letter was sent only on 16.07.2024 by Respondent No. 1, and that too, to a wrong email ID. Further, no approval of the Chief Commissioner / Director General of Income

Tax has been obtained before passing the impugned order manually which is also in contravention to paragraph 3 of the said Circular. In this regard, reliance was placed on the judgments of this Court in ***Ashok Commercial Enterprises v. ACIT (2023) 459 ITR 100 (Bom)*** and ***Hexaware Technologies Ltd. v. ACIT (2024) 464 ITR 430 (Bom)*** where this Court has emphasised the mandatory requirement of a document to have a DIN and the effect if it does not. Reliance was also placed on the judgement of the Madras High Court in ***CIT v. Sutherland Global Services Inc (2025) 175 taxmann.com 897 (Mad)*** and ***CIT v. Laserwoods US Inc (2025) 175 taxmann.com 920 (Mad)*** where the directions passed by the Dispute Resolution Panel without a DIN were held to be invalid. Further reliance was also placed on the judgments of the Delhi High Court in ***CIT v. Brandix Mauritius Holdings Ltd. (2023) 456 ITR 34 (Del)*** as well as the Calcutta High Court in ***PCIT v. Tata Medical Centre Trust (2023) 459 ITR 155 (Cal)*** wherein also a similar view of the mandatory nature of an order to have a valid DIN was taken. The Counsel submitted that the mere fact that aforesaid judgments of the Delhi High Court, Calcutta High Court and the Madras High Court in *Sutherland Global Services Inc (supra)* were stayed by the Supreme Court, did not mean that the judgments had lost their precedential value.

5. Without prejudice to the aforesaid arguments, the Counsel for the Petitioner next pointed out that Respondent No. 1 proposed to rectify his earlier order dated 16.03.2020, which could only be rectified till 31.03.2024, because Section 154(7) of the IT Act mandated that no rectification is permissible after the expiry of four years from the end of the Financial Year in which the order sought to be amended/rectified was passed. It was further pointed out that the impugned order is back dated and could not have been passed on 29.03.2024 especially because the same individual who is purported to have passed the order dated 29.03.2024 issued a Show Cause Notice dated 20.06.2024 as to why a rectification order should not be passed, and fixed a time to respond by 1.07.2024. The Petitioner filed a detailed reply dated 1.07.2024 wherein it was, *inter alia,* pointed out that the proposed action is time barred having regard to the mandate of Section 154(7). It was urged that it was at this stage only that Respondent No. 1 realised his error and, thereafter, hastily took steps to back date the order before 31.03.2024. The back dating of the impugned order is also established by the impugned letter which provides the DIN of the impugned order as being "<u>ITBA/REC/M/154/2024-25/1066567478(1)".</u> The use of the Financial Year 2024-25 in the DIN itself demonstrates that the DIN has been generated only in the Financial Year 2024-25 and hence, the impugned order was passed

after 1.04.2024. In fact, orders / notices which indisputably are generated in the Financial Year 2023-24 have a DIN which makes a reference to the Financial Year 2023-24 [see for example, the notice dated 21.03.2024 issued by the TPO contains a DIN “ITBA/COM/ F/ 17/2023 - 24/1063093766(1)” and the rectification order dated 27.03.2024 passed by the TPO contains a DIN “ITBA/COM/F/17/2023-24/1063486651(1)”]. For all these reasons, the learned Senior Counsel submitted that the impugned order dated 29.03.2024 and the impugned letter dated 10.07.2024 be quashed.

6. The Counsel for the Respondent on the other hand relied on the fact that the Petitioner has an alternate remedy available in the form of pursuing its Appeal before the Tribunal which is pending. She also has sought to justify the impugned order and the impugned letter by submitting that the manual order was uploaded in the ITBA system and the same is reflected as generated on 29.03.2024 and the DIN was not generated due to a technical glitch. Further, she pointed out that the delay in DIN generation does not invalidate the Assessment Order by relying on the Judgment of the Jharkhand High Court in ***Prakash Lal Khandelwal v. CIT (2023) 151 taxmann.com 72 (Jha.)***. Further, she pointed out that as per Circular No. 19/2019, the DIN is required only when the order is communicated to the

Assessee and does not govern the passing of an order. The passing of an order, and communicating the said order, are two separate events. Time barring provisions apply to passing of the order, while DIN provisions apply to communication of the order. She relied upon two Affidavits-in-Reply, one affirmed on 29.05.2025 and the other affirmed on 20.11.2025 and specifically relied on the second Affidavit for pointing out that the Notice dated 20.06.2024 under Section 154 of the IT Act was inadvertently issued by the subordinates, assuming that no order was passed as the manual order was not uploaded in the system and that the aforesaid notice is merely an oversight and should be considered as a *bonafide* mistake as per Section 292B of the IT Act. She also contended that once the TPO has issued a notice to the Petitioner for rectification proceedings there is no need for Respondent No. 1 to again issue a notice before passing the rectification order. In support of this, she placed reliance on Section 92CA of the IT Act.

7. In rejoinder, the learned Senior Counsel for the Petitioner first of all objected to the fact of an alternate remedy being available and pointed out that the Appeal filed before the Tribunal is *inter alia* against the order passed by the CIT(A) on 29.03.2019. In the present Petition, the Petitioner has challenged the impugned order dated 29.03.2024 passed by Respondent No.1

(to rectify the order passed by him on 16.03.2020) as it does not have a DIN and is back dated. The Petitioner has not filed an Appeal against the impugned order and has filed this Petition to challenge the impugned order since it falls within the realm of the exceptions carved out by several Judgments of this Court and the Supreme Court where in spite of an alternate remedy being available, this Court would have jurisdiction under Article 226 of the Constitution of India to quash the impugned order.

8. Further, the learned Senior Counsel for the Petitioner has also objected to the tendering of the two Affidavits-in-Reply, one affirmed on 29.05.2025 (but not served on the Petitioner till 20.11.2025) and the other affirmed on 20.11.2025. He contended that only the first Affidavit-in-Reply affirmed on 29.05.2025 should be considered as the second Affidavit-in-Reply is an afterthought and seeks to improve upon the lacuna in the Respondents' case and should be ignored because both the Affidavits-in-Reply are affirmed by the same person, i.e., Mr. Ayush Bhaduria, Assistant Commissioner of Income Tax, Circle 5(3)(1), Mumbai. Interestingly, he also pointed out that, the first Affidavit-in-Reply at Page No. 508 refers to the deponent being Mr. Ashutosh Kumar Singh, Deputy Commissioner of Income Tax, Circle 5(3)(1), Mumbai but at Page No. 521 the Affidavit is affirmed by another person i.e.

Mr. Ayush Bhadauria, Assistant Commissioner of Income Tax, Circle 5(3)(1). He submits that the first Affidavit-in-Reply is a reproduction of facts and only at Paragraph No. 12 it refers to internal email correspondence alleging that the order is passed in time without pointing out how it could have been passed before 31.03.2024. It was only when the utter worthlessness of the first Affidavit was realised, an effort was made to improve upon the same by preparing the second one.

9. Without prejudice to the aforesaid, the learned Senior Counsel for the Petitioner dealt with the argument urged in the second Affidavit-in-Reply by submitting that what is stated in Paragraphs 10(e) and 10(h) is factually incorrect. He pointed out that the screenshots of the ITBA portal do not reflect the date of generation of the impugned order which was uploaded only in July 2024. Further, the letter dated 10.07.2024 was actually uploaded only on 16.07.2024 based on the screenshot at Page No. 538 by the Respondents. The letter dated 10.07.2024 (sent on 16.07.2024) was never served on the Petitioner as it was sent to a wrong Email ID namely *"s@siemiens.com"* and the delivery status in the screenshot at Page No. 538 also shows it as 'bounced' even though Respondent No. 1 was aware of the correct Email ID of the Petitioner as the Notice dated 10.07.2024 for the next year i.e. A.Y. 2006-

07 (at Page Nos. 563 to 565 of the Affidavit-in-Rejoinder) was sent to the correct Email ID by the same Officer i.e. Mr. Virender Singh.

10. Further, the learned Senior Counsel for the Petitioner pointed out that the delay in the DIN generation invalidates the order, and what is stated by the Respondents in the Affidavit-in-Reply at paragraph 10(e), is contrary to the Circular as it nowhere provides that the DIN is required only when the order is to be communicated to the Assessee and such an interpretation would frustrate the whole object of the Circular itself which was issued to maintain a proper audit trail. Hence, he pointed out that before passing an order a DIN has to be generated and quoted on the face of the order. Further, while dealing with the judgment of the Jharkhand High Court in *Prakash Lal Khandelwal (supra),* he pointed out that the same is distinguishable on facts as it was a case where the order was passed on 31.03.2022, uploaded on 1.04.2022 and communicated to the Assessee on 3.04.2022 which is factually very different from the present case at hand and in any event the Judgment wrongly interpreted the Circular by holding that the 'making of an order', 'issue of order', 'uploading of order on web portal' or 'Communicating of Order' are all different acts or things and thereby, upheld the Assessment Order dated 31.03.2022 which was uploaded on 1.04.2022. The High Court,

with respect, has also failed to appreciate the use of the word "communication" in the Circular covering within its ambit all notices, orders, letters, summons and correspondence.

11. Further, the learned Senior Counsel for the Petitioner invited our attention to the provisions of Section 154(3) of the IT Act which specifically requires a notice to be issued by the concerned Authority to allow the assessee an opportunity of being heard, where an amendment has the effect of enhancing an assessment or reducing a refund or otherwise, and since Respondent No. 1 proposed to rectify his order dated 16.03.2020 to increase the assessed total income, albeit consequent to an order passed by the TPO, an opportunity of being heard is mandated by Section 154(3) and the impugned order cannot be passed before such a notice is issued and which, in fact, was issued only on 20.06.2024. Further, while dealing with paragraph 10(h) of the Affidavit-in-Reply, the Petitioner pointed out that the statement made by the Respondents is incorrect as the Notice dated 20.06.2024 has not been issued by 'subordinates' but by the same Officer (Mr. Virender Singh / Respondent No. 1) who passed the impugned order. This itself shows that the impugned order is manually passed and back dated so as to save it from limitation.

12. We have heard the learned Counsel for the parties and perused the papers and proceedings. As we delve deeper into the facts it is apparent that this is a case where Respondent No.1 has, in order to protect himself, back dated and manually passed the impugned order only to get over the period of limitation which expired on 31.03.2024.

13. At the outset, it is necessary to refer to the CBDT Circular No. 19/2019 [F.No. 225/95/2019-ITA.II] dated 14.08.2019 which is extracted as under:-

> *"**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 of Direct Taxes (the Board) <u>that there have been some instances in which the notice, order, summons, letter and any correspondence (hereinafter referred to as "communication")</u> 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 Act"), has decided <u>that no communication shall be issued</u> 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 <u>unless a computer-</u>*

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<u>generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication.</u>

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: 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-

.. This communication issues manually without a DIN on account of reason/reasons given in para3(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. <u>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.</u>

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 31st October, 2019.*
>
> *8. Hindi version to follow."*
>
> *(emphasis supplied)*

14. Based on the above, we find that the object with which the Circular was issued by the CBDT was to ensure that a proper audit trail is maintained in respect of each and every notice / order / summons / letter / correspondence issued after 1.10.2019. The Supreme Court in ***Pradeep Goyal v. UOI (2023) 1 SCC 566*** also noted that the laudable object with which this requirement was introduced, albeit in the context of GST. Thus, we are of the view that a court ought to arrive at a conclusion which is in consonance with the object sought to be achieved, and it cannot be said that the failure to generate and quote a DIN on a document is a mere irregularity which can be ignored. We are of the firm belief that the present case is one that exemplifies a situation whose occurrence was sought to be prevented by the CBDT, and cannot be brushed under the carpet by invoking Section 292B of the IT Act,

or treating it as a mere procedural defect which is capable of being cured. There is no doubt that the impugned order being a rectification order under Section 154 of the IT Act would fall within paragraph 1 of the CBDT Circular which covers a notice, order, summons, letter and any correspondence (which has been defined as 'communication' in the CBDT Circular). The fact that paragraph 2 stipulates "*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*" on or after 1.10.2019 would squarely cover the impugned order, and unless a DIN is quoted on the face of the impugned order, the impugned order is to be treated as invalid and deemed to never have been issued.

15. The Circular in paragraph 3 has laid down five exceptional circumstances where the order may be issued manually after recording reasons and with the prior approval of the Chief Commissioner/ Director General of Income-Tax. Further, where the order is manually issued it should be regularised within 15 working days of its issuance by compulsorily generating a DIN on the system and communicating the DIN so generated, to the Assessee. In the present case, the impugned order does not bear a DIN on the face of the order and no exceptional circumstance is mentioned in the

impugned order while passing it manually without a DIN. Further, in spite of two Affidavits being filed, there is no approval of either the Chief Commissioner or the Director General of Income Tax which has been brought on record. Thus, it can be safely presumed that none exists. Even assuming that the present case was covered by one of the exceptional circumstances, there has been an abject failure to regularise the defect within the prescribed time frame of 15 working days by Respondent No. 1. Respondent No. 1 has issued the impugned letter dated 10.07.2024 providing a DIN for the impugned order, but the impugned letter is not communicated to the Petitioner, and in any event is beyond the time period of 15 working days provided in the Circular to regularize the impugned order. The fact that the impugned order is manually passed without a DIN on the face of the order and without referring to any exceptional circumstances on the face of the order, the impugned letter separately furnishing the DIN for passing the impugned order, cannot validate the impugned order passed without a DIN, when no reasons are mentioned in the impugned order.

16. We find that the reliance placed by the Respondents on the judgment of the Jharkhand High Court in *Prakash Lal Khandelwal (supra)* is wholly misplaced. The said facts, on the basis of which that judgment was rendered,

are distinguishable from the facts of this case, where there was a single days delay in uploading the order and generating the DIN. Even otherwise, we find that the Jharkhand High Court has not appreciated the true scope of the meaning given to the word "communication" in the Circular correctly, as it has misread the word "communication" which is defined in paragraph 1 of the Circular and held that it was mandatory to quote a DIN at the time of communication of a notice/order and not at the time of issuance thereof, overlooking that what the circular mandates is that every notice, order, summon, letter and any correspondence issued by an Income Tax Authority should have a DIN allotted and duly quoted on the body of such communication. The only exception to this, is set out in paragraph 3 of the said circular.

17. In the view that we take, we are supported by a decision of this Court in *Ashok Commercial Enterprises v. ACIT (supra),* wherein it was held that if the Assessment Order does not bear a DIN or the required format set out in paragraph 3 of the Circular is not complied with, then, the order should be treated as invalid and deemed never to have been issued. The relevant extract of paragraph 18 of the judgment is as under:-

> *"...(b) It is indisputable that the impugned assessment order dated 28th September 2021 does not bear a document identification number and*

further that the said order issued without a document identification number does not bear the required format set out in paragraph 3 of the circular and, therefore, the impugned assessment orders for Assessment years 2011-12 to 2019-20 ought to be treated as invalid and deemed never to have been issued....

...(c) During the course of hearing, Mr. Suresh Kumar produced an intimation letter dated 13th October 2021, stating that the order dated 28th September 2021, under Section 153C of the Act has a document identification number, which is set out therein. Even if this is held to be in compliance with paragraph 5 of the Circular, which deals with regularization of communications without document identification number, this can only seek to regularise the failure to generate a document identification number, but yet the requirements of paragraph 3 of the Circular will still remain contravened and consequently, the order dated 28th September 2021 ought to be treated as invalid and never issued;

(d) The said Circular also applies to the satisfaction note dated 13th July 2021 issued by respondent no. 1. The satisfaction note will fall within the scope of paragraph 2 of the circular as a communication of the specified type issued to any person. In the case of the satisfaction note no regularisation dated 13th October 2021 has been issued;

(e) In view of the binding nature of circular issued under section 119 of the Act, and the peculiar facts and circumstances of the case, the consequences of contravention of the circular set out above, therefore, ought to be given full effect to. The object of the said Circular is clear and laudatory and intended to ensure that proper trail of all assessment and other orders are maintained and further that any deviation therefrom can only be undertaken after prior written approval of the higher authorities under the Act. Therefore, the satisfaction note dated 13th July 2021 and the impugned order of assessment dated 28th September 2021 ought to be treated as invalid and deemed never to have been issued;"

18. Further, the Judgment of this Court in *Hexaware Technologies Ltd v. ACIT (supra)* dealt with a case where the Assessing Officer issued a reopening notice under Section 148 of the IT Act without a DIN and the same

was treated as invalid and bad in law. The relevant extract of paragraph 31 of the judgment is as under:-

> *"31. As regards issue No. 3, in the notice dated 27th August 2022 impugned in the petition, admittedly there is no document identification number mentioned. It is petitioner's case that the notice is invalid and bad in law in view of the Circular No. 19 of 2019 dated 14th August 2019 ([2019] 416 ITR (St.) 140) issued by the Central Board of Direct Taxes. A separate intimation letter also dated 27th August 2022 was issued and the said letter reads as under :*

निर्धारण वर्ष / AY :	द.प.सं. एवं प्रपत्राक संख्या / DIN & Document No.:	दिनांक / Dated :
2015-16	ITBA/AST/S/91/2022-23/1044985587(1)	27/08/2022

<u>*Intimation Letter for Notice u/s 148 of the Income-tax Act, 1961*</u>

महोदय/महोदया/मेसर्स,

> *"Sir/Madam/M/s,*
>
> *This is to inform you that Notice u/s 148 of the Income-tax Act, 1961 dated <u>26/08/2022</u> is having Document No. (DIN) ITBA/AST/M/148_1/ 2022-23/1044985555(1).*
>
> *This is a system generated document and does not require any signature. (emphasis supplied)*
>
> *31.1 We agree with petitioner that this letter cannot validate the notice issued under section 148 of the Act on 27th August 2022. The reason is firstly, the intimation letter refers to a document identification number with respect to some notice under section 148 of the Act dated 26th August 2022. The impugned notice issued to petitioner is dated 27th August 2022 and not 26th August 2022 for which the document identification number is generated. Secondly, the procedure prescribed in Circular No. 19 of 2019 dated 14th August 2019([2019] 416 ITR (St.) 140) for non-mention of document identification number in case letter/notice/order has not been complied with by respondent No. 1. It is settled that if document identification number is not mentioned in the letter/notice/order, the reason for not mentioning the document identification number and the approval from specified authority for issuing such letter/notice/order without document identification number has to be obtained and mentioned in such letter/notice/order. In the present case, in the impugned notice dated 27th August 2022, no such reference is there. Therefore, as held in Ashok Commercial Enterprises*

and Tata Medical Center Trust , the impugned notice is clearly invalid and bad in law…

31.2 Therefore, the impugned notice dated 27th August 2022 issued under Section 148 of the Act is invalid and bad in law as the same has been issued without a document identification number."

19. Even the Delhi High Court in *CIT v. Brandix Mauritius Holdings Ltd (supra)* held that the final Assessment Order passed manually without a DIN could not be corrected taking recourse to Section 292B of the IT Act and such an order is unsustainable. The relevant extract of paragraphs 16 to 20 of the judgment is as under:-

"16. The final assessment order was passed by the Assessing Officer (AO) on 15th October 2019, under Section 147/144(C)(13)/143(3) of the Act. Concededly, the final assessment order does not bear a document identification number. 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 document identification number.

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 paragraphs 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 Central Board of Direct Taxes in exercise of its powers under Section 119 of the Act are binding on the revenue….

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 document identification number, 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 15th October 2019, is a view that cannot call for our interference."

20. The Calcutta High Court in *PCIT (E) v. Tata Medical Centre Trust (supra)* has also held that the DIN intimation letter issued along with the manual order cannot satisfy the categorical requirement of incorporating the DIN as mandated by Circular 19/2019 and, therefore, the order passed under Section 263 of the IT Act manually without a DIN was invalid. The relevant extract of paragraphs 4 to 7 of the judgment is as under:-

*"**4.** The short issue which falls for consideration is whether the document identification number was mentioned in the order passed under section 263 of the Act. The learned Tribunal upon examining the facts held that the order does not incorporate the document identification number and it is in violation of the Circular No. 19 of 2019, dated 14th August, 2019 ([2019] 416 ITR (St.) 140). In the said Circular, in paragraph 4 it has been stated that any communication which is not in conformity with para 2 and para 3 of the said circular shall be treated as invalid and shall be deemed to have never been issued. The Tribunal on examination of the facts held that the requirement as mentioned in the circular, namely, quoting of the document identification number, has not been followed and therefore allowed the assessee's appeal.*

***5.** The learned counsel for the appellant submitted that the intimation letter should be treated as part and parcel of the substantive order. However, in the intimation letter there is nothing mentioned as to why in* *the substantive order the document identification number was not mentioned as mandated in the circular.*

6. *The Revenue filed miscellaneous application seeking for rectification of the said order. Once again the Tribunal has undertaken a factual exercise and in fact, raised a specific query to the Revenue to point out how a document identification number intimation letter along with the manual order as explained by the Commissioner of Income-tax (Exemption) in his reply fulfils the categorical requirement mandated by the Central Board of Direct Taxes circular, more particularly, in paragraph 2 of the said circular, that the body of the communication, the order under section 263 of the Act, must contain the fact and that the communication issued referred to the document identification number without justifying as to how the non compliance of the Central Board of Direct Taxes circular dated 14th August, 2019 ([2019] 416 ITR (St.) 140), which was noted by the Tribunal when it passed the main order. The Tribunal notes that this specific query was unable to be answered by the Revenue and therefore the learned Tribunal came to the conclusion that the order passed under section 263 does not satisfy the requirement mandated by the Central Board of Direct Taxes circular.*

7. *Thus, we find no substantial question of law arises for consideration in this appeal. Accordingly, the appeal is dismissed."*

21. Further, the Madras High Court in *CIT v. Sutherland Global Services Inc (supra)* and *CIT v. Laserwoods US Inc (supra)* have also held that the directions passed by the Dispute Resolution Panel without a DIN are invalid.

22. Based on the aforesaid judgments, we have observed that the judgments of this Court in *Ashok Commercial Enterprises (supra)* and *Hexaware Technologies Ltd (supra)* and the Madras High Court in *Laserwoods US Inc (supra)* have not been stayed and the mere fact that the orders of the Delhi High Court in *Brandix Mauritius Holdings Ltd (supra)*,

Calcutta High Court in *Tata Medical Centre Trust (supra)* and the Madras High Court in *Sutherland Global Services Inc (supra)* are stayed by the Supreme Court, does not mean that these judgments have lost their precedential value. In this regard, reliance is correctly placed on the judgment of the Supreme Court in ***Shree Chamundi Mopeds Ltd v. Church of South India Trust Association (1992) 3 SCC 1*** where the Three Judge Bench explained the distinction between quashing an order and staying the operation of an order. Paragraph 10 of the Judgment is extracted hereunder:

> *"10....Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence…"*

23. Thus, having regard to the facts narrated earlier, which are not disputed, it is apparent that the only inference that can be drawn is that the impugned order is back dated. It is apparent that the time limit provided for in Section 154(7), viz., a period of 4 years from the end of the relevant Financial Year expired on 31.03.2024, as the order sought to be amended was dated 16.03.2020. The impugned order was not passed till 20.06.2024 as the same Assessing Officer, viz., Mr. Virender Singh who has passed the impugned order allegedly on 29.03.2024, has issued a Show Cause Notice

seeking to commence rectification proceedings under Section 154 of the IT Act. We also agree with the submission of the Counsel for the Petitioner that a separate Notice under Section 154(3) of the IT Act would have to be issued by Respondent No. 1 granting an opportunity of being heard to the Petitioner even though the rectification order that was proposed to be passed was to give effect to an order passed by the TPO. As the effect of the order would have been to increase the total income, the mandate of Section 154(3) would have to be complied with by Respondent No. 1. The fact that the Notice was issued on 20.06.2024 itself shows that the impugned order could not have been passed before this date and by the time this Notice dated 20.06.2024 was issued, the time limit under Section 154(7) had already expired.

24. Therefore, we agree with the submission of the Petitioner that on the basis of the notice dated 20.06.2024 an inference must be drawn that the impugned order could never have been passed on 29.03.2024 and the same has been back dated to save it from being time barred.

25. In conclusion, whichever way we look at it, either from the non-compliance with the requirements of paragraphs 2, 3 and 4 of the CBDT Circular where the impugned order shall be treated as invalid and deemed to

have never been issued as it is passed without a DIN or; from the fact that the same Officer has issued the Notice under Section 154(3) on 20.06.2024 and he could not have issued the impugned order before 20.06.2024 and he has back dated the order, shows that the impugned order is not valid and should be quashed.

26. As far as the argument of alternate remedy is concerned, the present case is where the impugned order and the impugned letter are *ex-facie* bad in law and contrary to the procedure laid down in the CBDT Circular and Respondent No. 1 has sought to assume jurisdiction under Section 154 of the IT Act in a manner contrary to law. In these circumstances, the present matter squarely falls within the realm of exceptions carved out by the Supreme Court in ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1***, in other words, an alternate remedy would not operate as a bar where the impugned order is passed without jurisdiction.

27. In view of the above, it is apparent that Respondent No. 1 has acted beyond jurisdiction, and we accordingly quash and set aside the impugned order dated 29.03.2024 passed by Respondent No. 1 and the impugned letter

dated 10.07.2024 issued by Respondent No. 1. We have not made any observations on the merits of the transfer pricing addition made by the TPO and Respondent No. 1.

28. Rule is accordingly made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to Costs.

29. This order will be digitally signed by the Private Secretary / Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR , J.] **[B. P. COLABAWALLA, J.]**

Darshan Patil

Signed by: Darshan Patil
Designation: PA To Honourable Judge
Date: 09/12/2025 11:24:30