IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL APPELLATE JURISDICTION

WRIT PETITION (L) NO. 19240 OF 2025

Sanjay Nathalal Shah .. Petitioner

Versus

Asistant Commissioner of Income Tax,
Central Circle 5(2) & Ors. .. Respondents

Adv. Dharan Gandhi and Adv. Aanchal Vyas for the Petitioner.

Adv. Swapna Gokhale for the Respondents.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: JANUARY 8, 2026

P. C.

1. By this Petition, the Petitioner challenges, inter alia, the validity of the Order dated 10.02.2025 passed by Respondent No. 1 under Section 142(2A) of the Income-tax Act, 1961 ("the Act"), directing a special audit of the Petitioner's accounts for Assessment Year 2023-24, and the consequential special audit report dated 06.06.2025.

2. Though there are various grounds of challenge, one of the primary submissions of the Petitioner is that the entire proceeding for a special audit is void ab initio as the jurisdictional pre-condition of obtaining a valid approval from the Principal Commissioner of Income Tax (Central)-3, Mumbai, has not been met. The

Petitioner contends that the copy of the approval dated 06.02.2025, annexed by the Respondents to their Affidavit-in-Reply (Page 543), does not bear a Document Identification Number (DIN). It is submitted that in the absence of a DIN, the said approval is invalid and is deemed to have never been issued as per the mandatory CBDT Circular No. 19/2019 dated 14.08.2019. In support of this submission, reliance is placed on the following decisions:

i. Ashok Commercial Enterprises v. ACIT [2023] 154 taxmann.com 144 (Bombay)

ii. Order dated 15.02.2024 in the case of Hardik Deepak Salot v. ACIT in Writ Petition No. 2944 of 2023;

iii. Siemens Limited v. DCIT [2025] 181 taxmann. com 448 (Bombay)

iv. CIT v. Sutherland Global Services Inc. [2025] 175 taxmann.com 897 (Madras)

3. The learned Counsel for the Respondents countered the above submission by relying upon the decision of the Hon'ble Gujarat High Court in the case of ***Rameshkumar Tulsidas Kaneriya vs. ACIT reported in 172 taxmann.com 814 (Guj).*** She also pointed out that an SLP against the said decision has been dismissed by the Hon'ble Supreme Court. She submitted that an approval is an internal document, and, therefore, does not fall within the ambit of "communication" as

referred to in Circular No. 19 of 2019 (supra). She further submitted that the Order directing the special audit has a valid DIN and, therefore, the same constitutes sufficient compliance with the said Circular, even though the approval preceding such order had no DIN She, therefore, submitted that there is no violation of Circular No. 19/2019 (supra).

4. We have considered the submissions on this aspect. It is an undisputed fact that the approval of the Principal Commissioner of Income Tax (Central)-3, dated 06.02.2025, as annexed at page 543 to the Affidavit-in-Reply, does not bear a DIN.

5. The CBDT, in the exercise of its powers under Section 119 of the Act, issued **Circular No. 19/2019 dated 14.08.2019** to ensure transparency and to maintain a proper audit trail of all communications issued by the Income-tax Department. Paragraph 2 of the said Circular explicitly states that no "communication," which includes an "**approval**," shall be issued by any income-tax authority on or after 01.10.2019 unless a computer-generated DIN is allotted and duly quoted in the body of such communication. Paragraph 3 provides for exceptional circumstances where a manual communication may be issued, but only after recording written reasons, obtaining prior approval from the highest authorities, and including a specific declaration in the document itself. Paragraph 4 unequivocally provides the consequence of non-compliance, stating that any communication not in conformity with paragraphs 2 and 3 "***shall be treated as***

invalid and shall be deemed to have never been issued."

6. In the present case, the approval dated 06.02.2025, which forms the very basis of the impugned Order directing a special audit, does not have a DIN quoted on its face. It also does not contain any reference to exceptional circumstances or the prior approval required for manual issuance as mandated by Paragraph 3 of the Circular. As a result, the approval is clearly in violation of Circular No. 19 of 2019 (supra).

7. The binding nature of this Circular has been repeatedly affirmed by this Court. In ***Ashok Commercial Enterprises (supra)***, this Court held that even a satisfaction note, which is an internal document, falls within the scope of the Circular and is invalid if issued without a DIN. An "approval" under Section 142(2A) is a formal jurisdictional document and stands on a much higher footing, more so when Circular No. 19/2019 itself specifies "approval" as one of the specified communications. The relevant findings are as under:

> "18. *Whether the impugned assessment order dated 28th September 2021 is invalid on account of it being issued without a DIN?*
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> *"(a) The CBDT, in exercise of powers under section 119(1) of the Act, has issued a Circular No. 19/2019 dated 14th August 2019 providing that no communication shall be issued by any Income-tax Authority inter alia relating to assessment orders, statutory or otherwise, inquiries, approvals, etc. to an assessee or any other person on or after 1st October 2019 unless a computer generated DIN has been allotted and is quoted in the body of such communication. The Circular reads as under:*
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> *(b) It is indisputable that the impugned assessment order dated 28th September*

2021 does not bear a DIN and further that the said order issued without a DIN does not bear the required format set out in paragraph 3 of the Circular and, therefore, the impugned assessment orders for Assessment Year 2011-2012 to 2019-2020 ought to be treated as invalid and deemed never to have been issued. We find support for this view in Brandix Mauritius Holdings Ltd. (supra) where the Hon'ble Delhi High Court has held that an order passed in contravention of the said Circular is void, bad in law and of no legal effect.

(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 DIN, 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 DIN, this can only seek to regularize the failure to generate a DIN, 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 regularization 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;"

8. It is an undisputed fact that this matter has not been carried by the Department to the Hon'ble Supreme Court.

9. Similarly, in ***Hardik Deepak Salot (supra)***, this Court quashed an order because the underlying sanction letter lacked a DIN, holding that if the sanction is not valid, the consequential order cannot survive. The "approval" in the present

case is analogous to a "sanction" as it is a jurisdictional prerequisite.

10. The Hon'ble Madras High Court in ***CIT v. Sutherland Global Services Inc. (supra)*** also held that directions issued by the DRP, a high-level body, without a DIN, were invalid and deemed to have never been issued. In fact, in paragraph 12, the Court dealt with the argument that though there was no DIN on the directions issued by the DRP, the final assessment order carried a valid DIN, and therefore, there is no infirmity. This argument was specifically repelled by the Madras High Court. The relevant findings in this regard are as under:

> *"12. From the third question of law raised by appellant, it could be seen that their stand is that even assuming that the proceedings of DRP did not contain a valid DIN, the subsequent assessment orders which were impugned had a valid DIN and therefore ITAT erred in setting aside the assessment orders. It is their case that the proceedings of the DRP is not an order of an income tax authority and therefore, the circular requiring the generation of DIN would not be applicable to DRP proceedings. This submission cannot hold water.*
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> *13. Firstly, on facts, it is the case of appellant that there was a DIN generated and it was written in hand in the proceedings of DRP and subsequently, communicated to assessee two days later. Therefore, appellant concedes that DIN has to be generated for DRP proceedings.*
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> *14. Secondly, the issue is no longer res integra. A Division Bench of Bombay High Court in Ashok Commercial Enterprises v. Assistant Commissioner of Income [2023] 154 taxmann.com 144/459 ITR 100 (Bombay) in which one of us [the Hon'ble Chief Justice] was a member, held as follows:*
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> ....
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> *15. Thus, even a satisfaction note according to the Division Bench would fall within the scope of paragraph No.2 of the circular and therefore, in our view, there cannot be any doubt that the directions of the DRP which consists of a collegium of three Income Tax Commissioners also would fall within the scope of paragraph No.2 of the circular."*

11. In ***Siemens Limited (supra)***, this Court reiterated that the failure to quote a DIN is not a mere procedural irregularity curable under Section 292B of the Act, but a fatal defect that renders the document invalid. Further, the Court also dealt with the argument of a stay granted by the Hon'ble Supreme Court to some of the orders of the Hon'ble High Courts. For ease of reference, paragraphs 14 and 22 are reproduced hereunder:

> *"14. Based on the above, we find that the object with which the Circular was issued by the CBDT wax 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) | 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.*
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> ....
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> *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 Lid (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 Lid v. Church of South India Trust Association (1992) 3 SCC I 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..."

12. Coming to the decision of the Gujarat High Court in the case of ***Rameshkumar Tulsidas Kaneriya (supra)*** as relied upon by the Respondent, we find that firstly, the said decision is in the context of a satisfaction note and not a case of a mandatory approval or sanction. Therefore, the same is distinguishable on this ground alone. Circular No. 19/2019 specifically includes approval as a correspondence. Secondly, it has been held by the Gujarat High Court that the satisfaction note is an internal communication which does not fall within the meaning of the word "communication" as contemplated in Circular No. 19/2019 (supra). This finding of the Court is contrary to the findings given by this Court and those of the Madras High Court. We are therefore bound by the decision of this Court in this regard, which has categorically held that internal communications are considered as "any other correspondence" to "any other person". Lastly, the Gujarat High Court has held that such a satisfaction note can be regularized by issuing the same with a DIN and the same would be a procedural aspect. We are afraid we cannot subscribe to the above findings for two reasons. Firstly, the regularization has to happen only in terms of Circular No. 19/2019 and only in a case where the

conditions of paragraph 3 are fulfilled. Secondly, we have held that not following Circular No. 19/2019 cannot be simply termed as a procedural irregularity. Therefore, the decision in the case of the Gujarat High Court would not assist the case of the Revenue. Further, it is fairly settled that dismissal of SLP in limine would not amount to merger of the order of the High Court with that of the Supreme Court. If at all any support is required for this proposition, then reference can be made to the decision of the Hon'ble Supreme Court in the case of ***Kunhayammed vs. State of Kerala reported in [2000] 245 ITR 360(SC).***

13. Applying the clear mandate of the Circular and the settled judicial position, the approval dated 06.02.2025 is invalid and non-est in law. Since, a valid prior approval is a mandatory condition for directing a special audit under Section 142(2A), the impugned Order dated 10.02.2025, which is based on this invalid approval, is without jurisdiction.

14. In view of the above, the impugned Order dated 10.02.2025 directing a special audit under Section 142(2A) of the Act, and the consequential special audit report dated 06.06.2025, are hereby quashed and set aside.

15. At this stage, the learned Counsel for the Respondent prayed for liberty to pass a fresh order. It is accordingly clarified that we have only quashed the Order dated 10.02.2025 directing a special audit under Section 142(2A) of the Act and the consequential special audit report dated 06.06.2025. Moreover, it appears

that the period from 10.02.2025 till the date this order is received by the Principal Commissioner or Commissioner, is specifically excluded in terms of clause (iv) of Explanation 1 to Section 153. Hence, there is still time available to complete the assessment. In such a scenario, the Respondents can take steps in accordance with law.

16. Rule is 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.

17. 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.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**