

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'C': NEW DELHI)**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 1926/Mum/2009
(Assessment Year: 2003-04)**

The Dy. Commissioner of Income tax-10(2), Mumbai.	Vs.	M/s Intertek Testing Services India Pvt. Ltd., Mumbai.
PAN No: AAAC6890F		
APPELLANT		RESPONDENT

Revenue By : None
Assessee By : Shri Pradeep Dinodiya, Adv. and
Shri R.K. Kapoor, Adv.
Date of Hearing : 11/09/2019

**ITA No:- 3214/Del/2011
(Assessment Year: 2005-06)**

Dy. Commissioner of Income tax, Circle 11(1), New Delhi.	Vs.	M/s Intertek Testing Services India Pvt. Ltd., Godrej Industries Complex, Pirojshanagear, Mumbai.
PAN No: AAACI6890F		
APPELLANT		RESPONDENT

Revenue By : None
Assessee By : Shri Pradeep Dinodiya, Adv. and
Shri R.K. Kapoor, Adv.
Date of Hearing : 11/09/2019

ITA No:- 3213/Del/2011
(Assessment Year: 2004-05)

Dy. Commissioner of Income tax, Circle 11(1), New Delhi.	Vs.	M/s Intertek Testing Services India Pvt. Ltd., Godrej Industries Complex, Pirojshanagear, Mumbai.
PAN No: AAACI6890F		
APPELLANT		RESPONDENT

Revenue By : Income Tax Officer
Assessee By : Shri Pradeep Dinodiya, Adv. and
Shri R.K. Kapoor, Adv.

Date of Hearing : 11/09/2019

CONSOLIDATED ORDER

PER BENCH

(A) The above captioned appeals by Revenue are taken up together for the sake of convenience and brevity and these appeals are hereby disposed off through this Consolidated Order; because, in these appeals the tax effect is less than the monetary limit of Rs. 50,00,000/- fixed by the Central Board of Direct Taxes ("CBDT", for short) in its Circular No. 17/2019 dated 08.08.2019. Grounds taken in these appeals of Revenue are as under:

ITA No. – 1926/Mum/2009

"1. On the facts and in the circumstances of the case as well as in law, the learned CIT(A) has erred in holding that depreciation will be allowed on the revalued cost on account of exchange rate fluctuation notwithstanding the fact

that assets were not purchased by the assessee from a country outside India and provisions of section 43A is not applicable to the facts of the case”.

"2. On the facts and in the circumstances of the case as well as in law, the learned CIT(A) has erred in holding that marketing expenses of Rs. 70,54,460/- was genuine inspite of the fact that assessee failed to establish that any service has been rendered by the payees”.

"3. On the facts and in the circumstances of the case as well as in law, the learned CIT(A) has erred in holding that marketing expenses of Rs. 70,54,460/- was not covered under the provisions of section 195 of the I.T. Act and no tax was deductible by the assessee”.

"4. On the facts and in the circumstances of the case as well as in law, the learned CIT(A) has erred in holding that the amount of Rs. 43,60,448/- paid on account of Testing & Inspection charges are not covered under the provisions of section 195 of the I.T. Act hence no tax was deductible thereon”.

"5. On the facts and in the circumstances of the case as well as in law, the learned CIT(A) has erred in not appreciating that holding that Testing & Inspection charges are basically technical in nature and covered under the provisions of section 195 of the I.T. Act and liable for TDS”.

6. On the facts and in the circumstances of the case as well as in law, the learned CIT(A) has erred in deleting the addition of Rs. 77,648/- made on account of belated payment of employee's contribution to ESIC as there is no provision to consider grace period in the I.T. Act. Explanation to Section 36(1)(va) speaks of due date and not of the grace period.

7. The appellant prays that the order of CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.

8. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”

ITA No.- 3214/Del/2011

"1. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs. 69,25,920/- made on account of excess claim of service charges.

2. The appellant craves leave to add, alter or amend any ground of appeal raised above at the time of hearing.

ITA No. 3213/Del/2011

1. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs. 67,89,315/- made on account of disproportionate service.

2. The appellant craves leave to add, alter or amend any ground of appeal raised above at the time of hearing."

(B) At the outset, at the time of hearing before us, Learned Counsel for the Assessee referred to the recent CBDT Circular No. 17/2019 dated 08.08.2019 in F.No. 279/Misc. 142/2007-ITJ (Pt.) wherein minimum threshold limit of tax effect for filing of appeals by Revenue in Income Tax Appellate Tribunal ("ITAT", for short) has been enhanced to Rs. 50,00,000/- by revising the earlier CBDT Circular No. 3 of 2018, dated 11.07.2018. He further submitted that in each of these three appeals filed by Revenue, the tax effect is below Rs. 50,00,000/-. In view of the aforesaid CBDT Circular No. 17/2019 dated 08.08.2019; these appeals filed by Revenue are required to withdrawn / not pressed filed by Revenue in which tax effect is below Rs. 50,00,000, the learned Counsel for Assessee submitted. In a communication issued by CBDT vide F.No. 279/Misc/M-93/2018-ITJ, dated 20/08/2019, it has been clarified by CBDT that the aforesaid revised

monetary limit of Rs. 50,00,000/- as minimum threshold limit of tax effect is also applicable to all pending appeals filed by Revenue in ITAT. The learned Counsel for Assessee submitted that the appeals were not maintainable in view of the aforesaid CBDT Circulars dated 08.08.2019 and 11.07.2018; and the aforesaid clarification dated 20.08.2019 issued by CBDT. Therefore, these appeals of Revenue are hereby dismissed being not maintainable, having regard to aforesaid CBDT Circular No. 17/2019 dated 08.08.2019 read with aforesaid CBDT Circular No. 3 of 2018 in the light of aforesaid clarification dated 20/08/2019.

(C) Before leaving, we clarify that Revenue will be at liberty to approach Income Tax Appellate Tribunal U/s 254(2) of Income Tax Act, 1961; seeking recall of this order and, for restoration of the appeal(s) if it is found that any of these appeal(s) of Revenue are/ is not covered by aforesaid CBDT Circulars dated 08.08.2019 and 11.07.2018.

(D) In the result, these three appeals filed by Revenue are dismissed. Our decision was orally pronounced in the Open Court after conclusion of hearing on the date of hearing. Now, this written order is pronounced in Open Court on 12/9/2019.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 12.09.2019
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	