

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

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

**ITA No:- 2208/Del/2017  
(Assessment Year: 2007-08)**

Income Tax Officer, Ward-76(2), New Delhi	Vs	M/s Oriental Trimex Limited, 26-25, IInd Floor, Bazar Marg, Old Rajender Nagar, New Delhi  PAN-AAACO1556G
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Ms. Rakhi Vimal, Sr. DR	
<b>Respondent by</b>	Smt. Sweety Kothari, C.A.	

**ORDER**

**PER ANADEE NATH MISSHRA, AM**

[A]. This appeal has been filed by Revenue against the order dated 27.01.2017 passed by Learned Commissioner of Income Tax(Appeals)-41, New Delhi [in short, "Ld.CIT(A)"] pertaining to assessment year 2007-08. In this appeal, the tax effect is less than the monetary limit fixed by the Central Board of Direct Taxes (in short "CBDT") in its Circular No.17/2009 dated 08.08.2019. The Revenue has raised following grounds of appeal:-

- (1) *Whether on the facts and in the circumstances of the case and in law, the CIT(A) was justified in holding that the penalty under section 271C of the Income Tax Act for non-deduction of tax was not imposable as there was no contumacious conduct on the part of the assessee particularly when such tax was deducted and paid by the assessee when the same was pointed out and insisted upon during the course of survey u/s 133A of the Income Tax Act carried out on 07.03.2007 ?*

- (2) *Whether on the facts and in the circumstances of the case and in law, the CIT(A) was justified in holding that the penalty under section 271C of the Income Tax Act for non-deduction of tax was not imposable on the reasoning that there was no adverse finding in this regard in the order passed u/s 201(1 )/201(1 A) of the I. T. Act on 16.03.2011 particularly when the assessee had no justification for non-deduction of such tax and started deducting such tax thereafter admitting its default and paid such tax with interest before 16.03.2011 ?*
- (3) *Whether on the facts and in the circumstances of the case and in law', the CIT(A) was justified in holding that the penalty under section 271C of the Income Tax Act for non-deduction of tax was not imposable on the reasoning that the assessee had deposited TDS within the relevant Financial Year particularly when the same was deposited after intrusive action u/s 133A of the Income Tax Act carried out on 07.03.2007 and insistence of the Assessing Officer/ Department ?*
- (4) *Whether on the facts and in the circumstances of the case and in law, the CIT(A) was justified in holding that the penalty under section 271C of the Income Tax Act for non deduction of tax was not imposable on the reasoning that the TDS deposited within the relevant Financial Year could be termed as one of the reasonable causes u/s 273B of the Income Tax Act particularly when the same was deposited after intrusive action u/s 133A of the Income Tax Act carried out on 07.03.2007 and insistence of the Assessing Officer/ Department ?*
- (5) *That the order of the CIT(A) being erroneous in law and on facts needs to be vacated and the order of the JCIT be restored.”*

[B]. At the outset, it was brought to the notice by learned counsel for the Assessee, at the time of hearing that tax effect in this appeal is below Rs. 50,00,000./-. Vide recent CBDT Circular No.17/2019 dated 08.08.2019 read with earlier CBDT Circular No. 3 of 2018, dated 11.07.2018, minimum threshold limit of tax effect of filing of appeals by Revenue in Income Tax Appellate Tribunal ("ITAT", for short) has been enhanced to Rs. 50,00,000/-. In a subsequent clarification 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 is also applicable to all pending appeals in ITAT. Therefore, in view of the foregoing, we are of the view that this appeal filed by Revenue is not maintainable. The learned Departmental Representative also did not press the appeal. Accordingly, this appeal is dismissed being not pressed, and also 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 if it is found that this appeal of Revenue is not covered by aforesaid CBDT Circulars dated 08.08.2019 and 11.07.2018.**

[D]. In the result, the appeal by Revenue is 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 01.10.2019.

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**  
Dated: 01.10.2019  
SH

**Sd/-**  
**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**