

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

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 4226/Del/2016  
(Assessment Year: 2011-12)**

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| DCIT,<br>Circle-17(1),<br>New Delhi. | Vs. | M/s Mussorrie Trading Co. Pvt.<br>Ltd.,<br>C-26, Westend Colony,<br>New Delhi-110021. |
| <b>PAN No:</b> AAACM4889L            |     |   |
| <b>APPELLANT</b>                     |     | <b>RESPONDENT</b>   |

**Revenue By** : Ms. Rakhi Vimal, Sr. DR  
**Assessee By** : Shri C.S. Anand, CA

**ORDER**

**Per Anadee Nath Misshra, AM**

**(A)** This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals)-19, New Delhi, ["Ld. CIT(A)", for short], dated 05/05/2016 for Assessment Year 2011-12. Grounds taken in this appeal of Revenue are as under:

"1. *Whether in facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting disallowance of capital gains of Rs. 90,77,014/- despite the fact that during the year the assessee had failed to discharge its onus by not providing separate accounts of its two portfolio i.e. 'investment' and 'stock in trade' by not disclosing of details of shares and its holding period for each portfolio separately?*

2. *Whether in facts and circumstances of the case and in law, the Ld. CIT(A) is justified in not considering a legal principle that mode of book entry cannot change the nature of a receipt?*

3. *Whether in facts and circumstances of the case and in law, the Ld. CIT(A) is justified in not considering a legal principle that mode of book entry cannot change the nature of a receipt?*

4. *Whether in facts and circumstances of the case and in law, the Ld. CIT(A) is justified in relying on the decision of the Hon'ble High Court Gujrat in the case of CIT vs Rewa Shanker A Kothari (206) 283 ITR 338 and the Hon'ble Supreme Court decision in the case of CIT Vs Excel Industries Limited (358 ITR 495) in instant case where the assessee had not even discharge its initial onus by not providing separate account of its two portfolio i.e. investment and stock in trade?*

5. *That the appellant craves leave to add, amend, alter or forgo any ground/(s) of appeal either before or at the time of hearing of the appeal."*

**(B)** At the outset, Learned Counsel for the assessee brought to our notice, at the time of hearing, that tax effect in this appeal is below Rs. 50,00,000/-. Both sides, [Representatives of Revenue and the Assessee] were in agreement, at the time of hearing before us, that the tax effect in the present 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. Having regard to the aforesaid, the Ld. Senior Departmental Representative for Revenue did not press the appeal. The learned Authorized Representative ("AR", for

short) for the assessee also submitted that the appeal was not maintainable in view of the aforesaid CBDT Circular dated 08.08.2019 and 11.07.2018; and aforesaid clarification dated 20.08.2019 issued by CBDT. Therefore, this appeal is dismissed being not pressed and also 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 this appeal if it is found that appeal of Revenue is not covered by aforesaid CBDT Circulars dated 08.08.2019 and 11.07.2018.**

**(D)** In the result, this 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 05/12/19.

Sd/-  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

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

Dated: 05/12/19

Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

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| 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   |  |