

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.678 & 679/PUN/2017  
निर्धारण वर्ष / Assessment Years : 2006-07 & 2008-09

Thermax Limited,  
14, Mumbai Pune Road,  
Wakdewadi,  
Pune – 411 003  
PAN : AA ACT3910D

Vs. ACIT, Circle-10,  
Pune

Appellant

Respondent

Assessee by

Shri Sanjay Bhave

Revenue by

Shri S.B. Prasad

Date of hearing

26-09-2019

Date of pronouncement

27-09-2019

आदेश / ORDER

PER R.S.SYAL, VP :

These two appeals by the assessee arise out of the orders passed by the Commissioner of Income-tax (Appeals) relating to the assessment years 2006-07 & 2008-09 confirming penalty u/s.271(1)(c) of the Income-tax Act, 1961 (hereinafter also called the Act') in respect of disallowance of commission of Rs.45,18,200/- for the A.Y. 2006-07 and Rs.1,15,00,653/- for the A.Y. 2008-09.

2. We have heard the rival submissions and perused the relevant material on record. The Tribunal in its orders passed in quantum proceedings for the years under consideration on 13-09-2019 (ITA Nos. 509 and 511/PUN/2017) has remitted the matter of confirmation of disallowance of commission to the file of Assessing Officer with a direction to decide it afresh in the light of certain directions. Since the matter in quantum proceedings has been restored to the file of the Assessing Officer, we are of the considered opinion that it would be in the fitness of things if the matter concerning the penalty on such amounts is also sent back to be decided in conformity with the view taken by the Assessing Officer in the proceedings pursuant to the directions given by the Tribunal. We order accordingly. Needless to say, the assessee will be allowed a reasonable opportunity of hearing in this regard. Our view in restoring the penalty to the AO is fortified by the judgment of the Hon'ble Supreme Court in the case of *Mohd. Mohatram Farooqui vs. CIT (SC) 2010-TIOL-23-SC-IT* in which it has been held that if addition is restored to the AO, then penalty should also be restored. The Hon'ble Delhi High Court in *Sanjay Gupta vs. CIT (2014) 366 ITR 18 (Del)* has also held that where the quantum has been remanded to the AO, the question of penalty on account of the

said amount being treated as undisclosed income, should also be remanded to the AO.

3. In the result, both the appeals are allowed for statistical purposes.

Order pronounced in the Open Court on 27<sup>th</sup> September, 2019.

Sd/-  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.S.SYAL)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 27<sup>th</sup> September, 2019  
सतीश

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-6, Pune
4. The Pr.CIT-V, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे  
“ए” / DR ‘A’, ITAT, Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	26-09-2019	Sr.PS
2.	Draft placed before author	27-09-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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