

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.673/PUN/2017

निर्धारण वर्ष / Assessment Year : 2011-12

M/s. Honest Marketing Pvt. Ltd.,
HN-689, Near Raj Palse,
Nashik Road, Nashik – 422101

PAN : NSKHO0907E

.....अपीलार्थी / Appellant

बनाम / V/s.

Jt. Commissioner of Income Tax,
TDS Range, Nashik

.....प्रत्यर्थी / Respondent

Assessee by : N O N E
Revenue by : Shri Rajesh Gawali

सुनवाई की तारीख / Date of Hearing : 04-03-2020
घोषणा की तारीख / Date of Pronouncement : 06-03-2020

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 10-01-2017
passed by the Commissioner of Income Tax (Appeals)-3, Nashik [‘CIT(A)']

for assessment year 2011-12, wherein, he confirmed the penalty imposed by the AO u/s. 272A(2)(k) of the Act.

2. The sole ground raised by the assessee challenging the action of CIT(A) in confirming the action of AO in imposing the penalty u/s. 272A(2)(k) of the Act in the facts and circumstances of the case.

3. We find no representation on behalf of the assessee nor any application filed seeking adjournment. The assessee called absent and set ex-parte. Therefore, we proceed to hear ld. DR and decide the issue on hand on merits basing on the material available on record.

4. During the course of penalty proceedings, the AO found that the prescribed person responsible for deduction of tax under the Act did not prepare and deliver or cause to be delivered to the prescribed Income Tax Authority, a quarterly statement u/s. 200(3) within prescribed time. A notice u/s. 272(2)(k) r.w.s. 274 of the Act was issued to the deductor on 24-09-2012 for periodicity Q1, Q2, Q3, Q4 in Form No. 26Q and Q1, Q2, Q3, Q4, Q5 in Form No. 27EQ. We find there was no compliance to the above said notices before the AO by the assessee. In the absence of any evidence or not preparing and delivering quarterly statement as required u/s. 200(3) of the Act, the AO imposed penalty of Rs.1,23,400/- against default for not preparing and delivering statement in its order at para 5.

5. As aggrieved by the order of JCIT, TDS Range, Nashik the assessee preferred an appeal before the CIT(A) wherein we find that the CIT(A)

issued five notices and there was no compliance on behalf of the assessee in the first appellate proceedings. Having no recourse the CIT(A) decided the issue raised before him on the basis of merits taking into consideration ground of appeal and statement of facts filed before him. Therefore, it is clear in both the authorities below the assessee failed to appear and furnish any reasons for not preparing and delivering the statement to the prescribing authority as required u/s. 200(3) of the Act.

6. Before us, the assessee filed this appeal on 21-03-2017 and this Tribunal issued three notices dated 07-02-2019, 19-03-2019 and 05-09-2019 intimating the assessee the dates of fixing of hearing of appeal on 07-03-2019, 25-04-2019 and 22-10-2019, respectively through RPAD on the address mentioned in Form No. 36 but however, on perusal of the docket file we find the assessee remained absent on all the above dates before this Tribunal in spite of having knowledge the fixing of hearing of the appeal. We find the CIT(A) discussed the merits of appeal in para 5 of his order and placing reliance on the order of Mumbai Tribunal in the case of M/s. Porwal Creative Vision Pvt. Ltd. in ITA Nos. 5556 & 5557/Mum/2009 for A.Ys. 2006-07 and 2007-08 vide order dated 18-03-2011 held that the penalty u/s. 272A(2)(k) should be levied only for the delay from the date of payment of taxes till the date of filing of return. In order to avoid repetition of mentioning of the facts and case laws relied by the CIT(A) thereon for the sake of brevity. We fully agree with the reasoning given by the CIT(A) in paras 5, 6, 7 and 8 in confirming the order of AO in imposing penalty u/s. 272A(2)(k) of the Act. Thus, only ground raised by the assessee is dismissed.

7. In the result, the appeal of assessee is dismissed.

Order pronounced in the open court on 06th March, 2020.

Sd/-
(D. Karunakara Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 06th March, 2020
RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A) – 3, Nashik
4. The CIT (TDS), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” बेंच,
पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune