

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "D" BENCH : MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER

ITA No. 5757/Mum/2025
Assessment Year : 2018-19

Mark Engineers (India) Private Limited, CI/1302, Hyde Park, Plot 8-10, Sector 35/G, Kharghar, Navi Mumbai-410210. PAN : AAACM4258R	vs.	Deputy Commissioner of Income Tax, Circle-14(1)(1), Aayakar Bhavan, M.K. Road, Mumbai-400020.
(Appellant)		(Respondent)
For Assessee :	Shri B. Shankar	
For Revenue :	Shri Annavaran Kosuri	
Date of Hearing :	27-01-2026	
Date of Pronouncement :	03-02-2026	

ORDER

PER VIKRAM SINGH YADAV, A.M :

This is an appeal filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’], dated 18-07-2025, pertaining to Assessment Year (AY) 2018-19, sustaining the levy of penalty u/s.270A of the Income Tax Act, 1961 (‘the Act’).

2. Briefly the facts of the case are that the assessment in this case was completed u/s. 143(3) r.w.s. 143(3A) & 143(3B) of the Act, vide order dt. 02-04-2021, wherein the assessed loss was determined at Rs. (-)2,11,69,909/- against the returned loss of Rs. (-)5,29,56,581/- by making an addition of Rs. 3,11,14,506/- towards undisclosed business receipts, being the difference between the receipts reflected in Form-26AS

and the amount reported by the assessee in its return of income, disallowance of Rs. 1,34,370/- u/s. 40(a)(i) of the Act and disallowance of Rs. 5,37,796/- u/s. 36(1)(va) of the Act. Separately penalty proceedings u/s. 270A of the Act were also initiated for under reporting in consequence of mis-reporting thereof and by issuing penalty notice on 02-04-2021, which was followed by subsequent notices. In response, the assessee submitted that it shall be filing an appeal before the Ld.CIT(A), however, the AO noted that the assessee has not filed any appeal before the Ld.CIT(A) and thereafter, he proceeded to pass the penalty order u/s. 270A of the Act, holding that the assessee has under reported its income to the tune of Rs. 3,12,48,876/- and penalty u/s. 270A of the Act @50% of tax on the under reported income was levied amounting to Rs. 46,87,331/-.

3. The assessee thereafter carried the matter in appeal before the Ld.CIT(A) and it was submitted that that the assessment proceedings were carried out by the AO during Covid pandemic period and it was practically impossible for the assessee to fetch necessary records in order to identify the mismatch between Form-26AS and the amount reported in the financials as well as in the return of income. It was further submitted that even during the penalty proceedings, the assessee could not respond to the show cause notice as the company was in the process of winding up and all the accounts staff left the job during Covid period and it was practically not feasible for the Directors to attend the tax matters and made the necessary submissions. At the same time, it was submitted before the Ld.CIT(A) that the mismatch in the revenue reported in the financials and Form-26AS has since been reconciled and it was submitted that as per Note 12 to the financial statements, the Sundry Debtors balance as on 31-03-2017 was Rs. 8,80,31,492/- and balance as on 31-03-2018 was Rs. 3,11,81,080/- and it was accordingly submitted that the amount reflected in Form-26AS is towards recovery of previous year outstanding debtors in

respect of which the clients have deducted TDS and in the Books of Accounts, the same has been adjusted against the Sundry Debtors and in respect of which the revenue had already been reported in the previous financial years on accrual basis and in support, the assessee furnished copy of the financial statements along with summary of the Sundry Debtors.

4. The submissions so filed by the assessee were considered, however, the same were not found acceptable to the Ld.CIT(A). As per the Ld.CIT(A), the assessee has nothing to explain regarding under reporting of income as the appellant has not filed any appeal against the quantum order. Further, the appellant has not been furnished any other explanation in support of its claim during the appellate proceedings and merely giving a statement without corroborative evidences/documents is not sufficient to explain the non-levy of penalty u/s. 270A of the Act and the order of the AO, levying penalty was accordingly confirmed. Against the said order, the assessee is in appeal before us.

5. During the course of hearing, the Ld.AR submitted that assessment and penalty proceedings are independent proceedings and even though the assessee has not filed appeal against the quantum addition on account of carry forward losses, the assessee deserve an opportunity to put forward its explanation/documentation against levy of penalty u/s 270A of the Act. Further, the submissions made before the Ld.CIT(A) were reiterated by the Ld.AR and it was submitted that from the perusal of the impugned order, it can be observed that the assessee has furnished necessary explanation as well as the documentation explaining the reasons for the mis-match between Form-26AS and the revenues reported in the financial statements as well as in the return of income. It was reiterated that difference is on account of recovery of previous year's debtors and the revenues in respect

of which have already been offered in the earlier financial years on accrual basis and there is thus no under-reporting of income which call for levy of penalty u/s 270A of the Act. It was submitted that the Ld.CIT(A) has acknowledged the said submissions as evident from para 4.1 and 4.5 of the impugned order and at the same time, in para 4.7 of the impugned order, he has stated that the assessee has not furnished any explanation/documentation. It was accordingly submitted that this is a factually inaccurate finding so recorded by the Ld.CIT(A) and necessary relief be provided to the assessee and the penalty so levied and sustained by the Ld.CIT(A) be directed to be deleted.

6. Per contra, the Ld.DR is heard, who has relied on the findings of the lower authorities. It was submitted that as far as quantum proceedings are concerned, the assessee has not filed any appeal and the matter has since attained finality. As far as the explanation of the assessee in terms of mismatch in Form-26AS and the revenues reported in the financials, which was claimed by the Ld.AR as on account of recovery of the previous years debtors, it was fairly submitted that the same involves reconciliation and verification and where the Bench so decide, the matter may be remanded to the file of the AO for necessary examination and verification.

7. We have heard the rival contentions and perused the material available on record. It is a settled legal proposition that the quantum and penalty proceedings are separate and independent proceedings and even though the assessee has not filed any appeal against the addition in the quantum proceedings, the assessee can still come forward with the necessary explanation in support of its claim for non-levy of penalty which can be examined during the course of penalty proceedings. In the instant case, the assessee did not file any explanation during the penalty proceedings. However, at the same time, the assessee has furnished its

explanation during the appellate proceedings before the Ld.CIT(A), explaining that the difference in Form-26AS and revenues as reported in the return of income is on account of recovery of previous year's debtors and the revenues in respect of which have already been offered in the earlier years and it is only on account of the fact that the debtors have made the payment during the year and while making the said payment, the TDS has been deducted thereon, which has resulted in reflection of those transactions in Form-26AS for the year under consideration. We, however, find that the Ld.CIT(A) has not recorded any specific finding, examining the said explanation which involves reconciliation and verification of figures reported in Form 26AS, return for the earlier assessment years as well as for the year under consideration. We, therefore, deem it appropriate to set aside the matter to the file of the Assessing officer to examine the explanation so furnished by the assessee along with the supporting documentation and decide the matter relating to levy of penalty u/s 270A afresh as per law, after providing reasonable opportunity to the assessee.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 03-02-2026

Sd/-

[MS. KAVITHA RAJAGOPAL]
JUDICIAL MEMBER

Sd/-

[VIKRAM SINGH YADAV]
ACCOUNTANT MEMBER

Mumbai,
Dated: 03-02-2026

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai