

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ , मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND

SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं /I.TA No. 3088/Mum/2013

(निर्धारण वर्ष / Assessment Year: 2006-07

Theory M Interactive Pvt. Ltd., 202, Steel House, 24, Mahakali Caves Road, Andheri (E), Mumbai-400 093	बनाम/ Vs.	The DCIT-9(3), Aayakar Bhavan, M.K. Road, Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAAC T 1678E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
अपीलार्थी ओर से/ Appellant by:		Ms. Keyuri Desai
प्रत्यर्थी की ओर से/ Respondent by:		Shri Sunil Kumar Agarwal

सुनवाई की तारीख / Date of Hearing :08.08.2016

घोषणा की तारीख /Date of Pronouncement :08.08.2016

आदेश / O R D E R

PER C.N. PRASAD, JM:

This appeal is filed by the assessee challenging the order of the Ld. CIT(A)-20, Mumbai dated 20.02.2013 in sustaining the penalty order passed u/s. 271(1)(c) for the assessment year 2006-07.

2. The Ld. Counsel for the assessee submits that the appeal filed by the assessee in quantum proceedings has been set aside to the file of the Assessing Officer for fresh adjudication in accordance with law,

therefore, penalty order will not survive. The Ld. Counsel for the assessee placed a copy of the order of the Tribunal in ITA No. 617 of 2011 dated 12.11.2014 on record.

3. The Ld. Departmental Representative has no serious objection in remitting the penalty proceedings.

4. On hearing both the sides and also perusing the order of the Tribunal in quantum proceedings, it is observed that the whole assessment has been set aside by the Co-ordinate Bench since assessment was completed ex-parte without proper opportunity to the assessee. We also find that additional evidences have also submitted by the assessee in respect of the additions made in the quantum assessments. In the circumstances, the Co-ordinate Bench restored the assessment to the file of the Assessing Officer for fresh adjudication. Therefore, since the entire assessment has been restored to the file of the Assessing Officer, we restore the penalty proceedings also to the file of the Assessing Officer who shall pass necessary orders after completion of the consequential assessment.

5. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 8th August, 2016.

Sd/-

(RAMIT KOCHAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 8th August, 2016

व.नि.स./ Rj , Sr. PS

Sd/-

(C.N. PRASAD)

न्यायिक सदस्य/JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,
मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai