

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, AHMEDABAD**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 155/Ahd/2019  
(Assessment Year: 2009-10)

Meenaben Sureshbhai Patel                      Vs.    The Income Tax Officer  
19, Jantanagar, Chandkheda,                      Ward-2(2)(3),  
Ahmedabad- 382424                                      Ahmedabad

[PAN No. AOL PP5 815 K]

(Appellant)

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(Respondent)

**Appellant by :**                      Shri Mehul Talera, AR  
**Respondent by :**                      Shri N.K. Goyal, Sr. D.R.

**Date of Hearing**                                      21.01.2020  
**Date of Pronouncement**                                      30.01.2020

ORDER

**PER Ms. MADHUMITA ROY - JM:**

The instant appeal at the instance of the assessee is directed against the order dated 20.11.2018 passed by the Commissioner of Income Tax (Appeals) ó 6, Ahmedabad arising out of the order dated 23.06.2017 passed by the ITO, Ward-2(2)(3), Ahmedabad under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred as to the Act) for Assessment Year 2009-10.

2. Initially an assessment order under section 143(3) r.w.s. 147 of the Act dated 09.12.2016 was passed by the ITO Ward-2(2)(3), Ahmedabad upon making addition of Rs. 6,24,500/- in the hands of the assessee. Penalty proceedings under section 271(1)(c) of the Act was also initiated

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separately for concealment of income which was finalized by the said ITO on 23.06.2017 upon levying penalty Rs. 1,37,000/-.

Being aggrieved by and/or dissatisfied with the said order of penalty dated 23.06.2017 by the concerned ITO an appeal was preferred by the Ld. CIT(A)-6 before the appellant. However, the said appeal was found to be filed after expiry of 73 days from the stipulated time for filing of appeals. The delay was sought to be justified by the assessee on the ground that the order under section 271(1)(c) dated 23.06.2017 though received by the assessee on 10.07.2017 the same was misplaced by the assessee at his house and, therefore, he could not file the appeal in time. However, such plea of the assessee was not accepted by the Ld. CIT(A) on the specific ground that no affidavit explaining such delay was filed before him by the appellant. Hence, he dismissed the said appeal on the ground of delayed filing beyond the time limit prescribed under section 249(2) of the Act. Hence, the instant appeal before us.

Heard the parties, perused the records.

3. The justification for delay as sought to be given by the appellant as discussed above seems to be genuine and hence we find no reason for the Ld. CIT(A) to dismiss the appeal on the said ground of the delayed filing. In fact the Ld. CIT(A) could have given an opportunity to the assessee to file an affidavit explaining such delay in the absence of which we find no justification in dismissing the said appeal preferred by the appellant. We, therefore, in order to prevent the miscarriage of justice find it fit and proper to give a further opportunity of being heard in the appeal by the Ld. CIT(A)

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and hence, we set-aside the issue to the file of the Ld. CIT(A) with a specific direction upon him to condone the delay and to proceed with the same in accordance with law upon after giving a reasonable opportunity of being heard to the assessee and upon considering the evidence on record or any other evidence which the assessee may choose to file at the time of hearing of the appeal. The assessee's appeal is, therefore, allowed for statistical purpose.

4. In the result, assessee's appeal is allowed for statistical purpose.

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| <b>This Order pronounced in Open Court on</b> | <b>30/01/2020</b> |
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Sd/-  
(AMARJIT SINGH)  
**ACCOUNTANT MEMBER**

Sd/-  
(Ms. MADHUMITA ROY)  
**JUDICIAL MEMBER**

Ahmedabad; Dated 30/01/2020  
*manish, PS* (True Copy)