



1. That I am the Assessee, and as such well conversant with the facts deposed to below.

2. That the appeal filed by the Assessee- before the Assessing Officer was disposed of by order dated 29/05/2019 passed by the Commissioner of Income Tax (Appeals), Mumbai and received by us on 24/06/2019.

3. That the time for rectifying of the appeal before this Commissioner Appeal was to expire on 08/06/2019.

4. We regret the delay in rectifying the appeal as I was out of station & received the order late by 1 month. We request you to consider the delay sympathetically and condone the delay in rectifying the appeal.

I Ajit Lalvani, the above named deponent, do hereby verify that the contents of paras 1 to 4 are true to the best of my knowledge and nothing material has been concealed and no part of it is false.

Signed and verified at Mumbai on 4th Day of  
July 2019.

Date: 04/07/2019

Deponent”

3. In this case the assessee has filed appeal pursuant to the penalty order dated 28.06.2018 levying penalty of ₹3,63,543/-. There is no order of the learned CIT(A) in the appeal folder. From the facts of the case as narrated above it is amply clear that in assessee's quantum appeal ITAT had granted relief vide order dated 12.08.2016 pursuant to assessee's appeal against the CIT(A) order on the merits of the case. Now the assessee submits that Assessing Officer has levied penalty without considering the order of the ITAT wherein the addition have been deleted. Since the appeal by the assessee did not contain the order of CIT(A) on the issue of penalty, after the initial hearing this appeal was fixed several times. However none appeared for the assessee. Learned Departmental Representative also could not provide any order of CIT(A) on this issue.

4. However from the perusal of the condonation application it transpires that there is an order of the learned CIT(A) dated 29.05.2019. Though no order of learned CIT(A) on the issue of penalty is available in the appeal folder, it appears that assessee is aggrieved by the order of learned CIT(A) on this issue. Be as it may, since the ITAT has granted relief in the merits

of the case on addition and deleted the addition, in our considered opinion interest of justice will be served if the issue present here is put to the remit of the Assessing Officer. The Assessing Officer is directed to examine the learned CIT(A)'s order in this case. Thereafter the AO shall take into account the order of the ITAT on merits of the case were ITAT has deleted the addition and give due effect.

5. Accordingly this appeal stands allowed for statistical purposes.

Order pronounced under rule 34(4) of the ITAT Rules on 6<sup>th</sup> August, 2020.

Sd/-  
**(Shamim Yahya)**  
**Accountant Member**

Mumbai, Dated: 6<sup>th</sup> August, 2020

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -concerned, Mumbai*
4. *The CIT - concerned, Mumbai*
5. *The DR, "SMC" Bench, ITAT, Mumbai*

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Mumbai Benches, Mumbai*

n.p.