

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT)**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No.287/Ahd/2019
(Assessment Year: 2009-10)

Devabhai Dhanabhai Desai 28/326, Hariom Apartment, Nava Wadaj, Ahmedabad- 380013	Vs.	ITO Ward-2(2)(1) Ahmedabad
PAN No.AKFPD8443D		
(Appellant)	..	(Respondent)

Appellant by :	Shri S. N. Divatia, AR
Respondent by:	Shri S. S. Shukla, Sr. DR

Date of Hearing	20.04.2021
Date of Pronouncement	27.04.2021

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 26.12.2018 passed by the Commissioner of Income Tax (Appeals) – 10, Ahmedabad arising out of the order dated 05.12.2016 passed by the ITO, Ward-2(2)(1), Ahmedabad under Section 147 r.w.s 144 of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) for Assessment Year 2009-10.

2. The matter relates to addition of Rs. 8,04,000/- on account of undisclosed income on the basis of the finding that the assessee made F.Ds. in account number – 2009 totaling to Rs. 8,04,000/- maintained with the

Bapunagar Mahila Co. Op. Bank Ltd. which was failed to be explained by the assessee.

3. We have heard the parties and perused the relevant materials available on record.

It appears that the Ld. AO made addition in the absence of any submission made by the assessee in response to the notice under Section 142(1) dated 13.07.2016 and a further show cause notice dated 21.11.2016.

4. The Ld. CIT(A) dismissed the appeal on the ground of limitation since there were 137 days delay in filing the said appeal before him. The following submission was made by the assessee before the Ld. CIT(A) is as follows:-

“The appellant is an not literate person he is not aware of the ITR assessments and proceeding also unaware about the receipt of assessment order, so he enacted as soon as he got known and found the assessment order.”

However, the above submission was not accepted and the appeal was dismissed. It further appears from the records particularly the affidavit filed by the assessee and his father as appearing at Pages 1 to 8 of Paper Book that the assessee is working as a driver in a private limited company and have only passed 8th standard.

5. It is a fact that the appeal was finally dismissed by the Ld. CIT(A) on the ground of limitation but it is also evident on record that the merit of the matter was not explained by the assessee before the Ld. AO. Hence, taking into consideration the entire aspect of the matter, particularly the status and educational qualification of the assessee, the affidavit filed by the assessee

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in support of his case, we are of the considered opinion that an opportunity is required to be given to the assessee to place his matter in appropriate manner before the Ld. AO for the ends of justice. Hence, we allow the appeal by setting aside the issue to the file of the Ld. AO to consider the same afresh upon giving an opportunity of being heard to the assessee and upon taking into consideration the evidence on record or further documents which the assessee may choose to file before the Ld. AO for proper adjudication of the matter. However, we make it clear that the assessee would also cooperate with the Revenue Officer during hearing without praying for any unnecessary adjournment. The appeal is, therefore, allowed for statistical purposes.

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

This Order pronounced in Open Court on	27/04/2021
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Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 27/04/2021
TANMAY, Sr. PS

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

TRUE COPY

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad