

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD 'SMC' BENCH, ALLAHABAD**

(THROUGH VIRTUAL COURT)

BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER

**ITA No.02/ALLD/2021
Assessment Year: 2014-15**

Gulab Singh 36-B, M.G. Marg, Civil Lines, Allahabad- 211001 PAN-AIKPS9389J	v.	Income Tax Officer, Range-1(2), 38 M.G. Marg, Civil lines, Allahabad, U.P.
(Appellant)		(Respondent)

Appellant by:	Mr. S.K. Yogeshwar Adv.
Respondent by:	Mr. A.K. Singh, Sr. DR
Date of hearing:	06.09.2021
Date of pronouncement:	06.09.2021

ORDER

PER SHRI VIJAY PAL RAO, JUDICIAL MEMBER:

This appeal by the assessee is directed against the order dated 26th November, 2019 of CIT (A) for the assessment year 2014-15.

2. There is a delay of 364 days in filing the present appeal. The assessee has filed an application for condensation of delay which is also supported by the affidavit of the Ld. AR of the assessee. The assessee has explained the delay in filing the appeal due to the reason that after receiving the impugned order of the CIT (Appeals) on 16.12.2019, the complete file was misplaced in the Chamber of the counsel of the assessee as some renovation was going on. The file was traced out only on 11th Feb, 2021 and thereafter this appeal was filed without any delay in the affidavit, the Ld. Counsel has stated that the assessee's file got misplaced in a Chamber due to the renovation was going on in the office. The file was later on traced out as it was mistakenly taken by another client from Lucknow, which was returned to the counsel

of the assessee only on 11 Feb, 2021. Thus, Ld. AR of the assessee has reiterated the reasons as explained in the application for condensation of the delay as well as affidavit. He has submitted that the delay in filing appeal is neither intention nor deliberate but due to the reasons that the file of the assessee got misplaced during the renovation work of the office of the counsel of the assessee got misplaced and received by the counsel only on 11 Feb, 2021. Thus, he has prayed that the delaying file the present appeal may be condoned and the appeal of the assessee is to be decided on merits.

3. On the other hand, The Ld. DR has objected to the condensation of delay and submitted that the delay in filing is abnormal and the assessee has not explained the reasons, which can be treated as a reasonable cause for such abnormal delay of filing the appeal. He has vehemently opposed the condensation of the delay in filing the appeal.

4. I have considered the rival submissions and reasons explained in the application for condensation of appeal as well as affidavit of the counsel of the assessee for delay in filing the present appeal. The counsel of the assessee has stated on oath in the affidavit that the file of the assessee got misplaced from the Chamber at the time of renovation of the office and later on it was found that another client from Lucknow has taken this file by mistake which was returned to the counsel only on 11th Feb, 2021. There is no reason to disbelieve the facts as stated in the affidavit. Further the delay in filing appeal from the month of March, 2020 to till the filing of the present appeal on 11th Feb, 2021 is otherwise covered by the decision of Hon'ble Supreme Court, thereby the limitations for filing the suits, appeals, petitions etc. were extended by excluding the pandemic period from March, 2021 to May, 2021. Therefore, in the facts and circumstances of the case where the most of the delay period is covered by the Covid-19 pandemic period, the delay of 364 days in filing the present appeal is condoned. The assessee has raised the following grounds in this appeal;

1. Because on the facts and circumstances of the case the authority below is not justified in adding total stock difference Rs. 6,15,038/- as the income of the appellant.

2. Because the order passed by the authority below is unjust.

5. The solitary ground raised by the assessee in this appeal is regarding the addition made by the Assessing Officer on account of difference of stock found from the survey conducted under Section 133A of the Act.

6. The Ld. AR of the assessee has submitted that the assessee is a proprietor of M/s. Sisodiya Jewellers who deals in purchase and sale of Silver items, Jewellery/Ornaments Coins etc. There was a survey under Section 133A of the Income Tax Act at the business premises of the assessee on 23rd October, 2013. During the survey proceedings stock of Silver of 48 Kg 0.069 gm. was found which was short of 8 kg 0.495 gm. as the per the stock recorded in the daybook. He has further submitted that in the statement recorded during the survey proceedings the assessee explained the difference that 5 kg 0.816 gm. of Silver Coins were sent to M/s Raj Polish Centre for polishing which was not disputed by the Department and particularly by the Assessing Officer. However, the Assessing Officer while completing the assessment has made the addition of the sale value of the entire differential quantity of 8 Kg 0.495 gm. Silver. The Ld. AR has further stated that even the rate of sales price was applied by the Assessing Officer @ Rs. 72.40 per gm. which is very much high than the average rate of sales of the assessee during the year which is only Rs. 35 per gm. The Ld. AR has further pointed out that the Assessing Officer has made the addition of the total sales price whereas only the profit element in the alleged out of books sale can be added to the total income of the assessee. Thus, he has submitted that the addition made by the Assessing Officer is arbitrary and unjustified and the same is liable to be deleted.

7. On the other hand, the Ld. DR has submitted that the Assessing Officer has explained the fact that what was sent for the Polish Centre was the Silver Coins and not the Ornaments or other Silver Wares. Therefore, the Assessing Officer has made

the addition of the entire difference of 8 Kg. 0.495 gm. Silver of the rate which was prevailing in the month of August, 2013 just prior to the survey conducted under Section 133A. He has relied upon the orders of the authority is below.

8. I have considered the rival submissions as well as relevant material on records. The Assessing Officer has made an addition of Rs. 6,15,038/- on account of out of books sales of silver items. The addition is based on the discrepancy of the stock found during the survey of 8 kg 0.495 gm. in comparison to the stock recorded in the daybook. It is manifest from the record that the Assessing Officer has not disputed the facts explained by the assessee in the statement recorded during the survey that 5kg .860gm of Silver coins were sent to M/s Raj Polish Centre however, the Assessing Officer made the addition on the ground that the assessee is failed to explain the remaining quantity 2kg 0.679gm and further the said quantity has explained by the assessee is only for polishing silver coins, whereas the difference was found in the stock of Silver Ornaments and Silver Wares. Without going into controversy of the quantity of differential stock, it is pertinent to note that the addition on account of out of books sales can be made to the extent of the profit element in the sales and not the entire sale proceeds. In the case in hand the assessee has explained that the gross-profit on the sales during the year is 35% and the average sale price of the assessee during the year was Rs. 35 per gm. of Silver items. Therefore, the addition on account of out of books sale can be made only by taking the gross-profit as declared by the assessee the accounted sales, as well as the average sale-price of the Silver items as recorded in the books of accounts. The Assessing Officer has made the entire sale proceeds as addition to the income of the assessee which is not justified. Further the sale price adopted by the Assessing Officer is also not based on the actual prevailing price which ought to have been taken as an average sale price of the recorded sales of the assessee. Accordingly the Assessing Officer is directed to restrict the addition on account of out of books sales only to the extent of profit element i.e. Gross Profit that

to by considering the average sale price as ascertainable from the sales recorded by the assessee.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 06.09.2021 through video conferencing.

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

DATED: 06 /09/2021

Allahabad

Kd.

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT(A) , Allahabad
4. CIT
5. DR -

By order
Assistant Registrar

