

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

./ITA No.186/SRT/2023

वर्ष /Assessment Year: (2017-18)

(Virtual Hearing)

Keshri Export, 123, Gurunagar Society, Opp. Baroda Prestige, Varachha Road, Surat – 395006.	Vs.	The ITO, Ward- 3(3)(1), Surat.
(Assessee)		(Respondent)
./PAN/GIR No.: AADFK3785D		

Assessee by	Shri Hiren Vepari, CA
Respondent by	Shri Milan Kamble, Sr. Dr
Date of Hearing	18/07/2023
Date of Pronouncement	11/09/2023

ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the ld. CIT(A)”], National Faceless Appeal Centre (In short ‘NFAC’), Delhi, dated 04.10.2022, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act’), dated 05.12.2019.

2. The grounds of appeal raised by the assessee are as follows:

“(1) The learned CIT(A) was not justified in re-estimating addition to the value of closing stock particularly when the AO had not rejected books.

- (2) On the facts and circumstances of the case, the learned CIT(A) ought to have deleted the addition altogether.
- (3) The assessee craves to add, alter or vary any of the grounds of appeal.”
3. At the outset, Ld. Counsel for the assessee, informs the Bench that assessee does not wish to press ground no.2; therefore we dismiss ground no.2 raised by assessee as not pressed.
4. We note that appeal filed by the assessee for assessment year (AY).2017-18, is barred by limitation by one hundred three (103) days. The Learned Counsel for the assessee moved a petition/affidavit, requesting the Bench to condone the delay. The contents of the affidavit filed by the assessee for condonation of delay, are reproduced below:

“AFFIDAVIT

- 1) I, Vitthalbhai Karamshibhi Gabani, aged 61 years of 13, Gurunagar Society, Opp. Baroda Prestige, Varachha Road, Surat-395006, state on solemn affirmation as under.
- 2) I say that I am one of the partners of Keshri Exports having PAN ABKPG0905D.
- 3) During the Income-tax assessment year 2017-18, Keshri Exports has filed appeal before the Income-tax Appellate Tribunal, Surat with a delay of 103 days stated as under.
- 4) Primarily, delay occurred in filing the appeal is on account of the unit of Keshri Exports totally closed down with entire manufacturing activity suspended since 2016. Keshri Exports sold its manufacturing unit in March, 2016 as it could not survive the financial crunch.
- 5) As a result, there was no administrative set up for looking after filing the appeal; the accountant Chintan Raval also left the organisation in 2017. Further, partner of Keshri Exports Shri Valjibhai Gabani, who was primarily responsible for looking after the accounts, administration and legal matters passed away on 10-12-2021.

- 6) With the other partners after taking appropriate legal advice, eventually filed the appeal before the Tribunal was filed on 16-3-2023.
 - 7) Keshri Exports confirms that in past, there has never been any delay in such filing or any compliance.
 - 8) This affidavit is done to assert the above facts.
 - 9) For this affidavit, e-stamp bearing e-certificate been used.”
5. Based on the reasons mentioned in the above affidavit, the Id Counsel contended that delay in filing the appeal may be condoned.
6. On the other hand, Id DR for the Revenue argued that reasons mentioned in the affidavit, are not sufficient reasons to condone such huge delay. The assessee needs to explain each day of delay which the assessee has failed to do so, hence delay may not be condoned.
7. We heard both the parties on this preliminary issue. We note that primarily, delay occurred in filing the appeal is on account of that the unit of Keshri Exports totally closed down with entire manufacturing activity suspended since 2016. Keshri Exports sold its manufacturing unit in March, 2016, as it could not survive the financial crunch and as a result, there was no administrative set up for looking after filing the appeal. The accountant also left the organisation in 2017. Further, partner of Keshri Exports Shri Valjibhai Gabani, who was primarily responsible for looking after the accounts, administration and legal matters passed away on 10.12.2021. The exercise of discretion in condonation of delay in matters of limitation, has to be carried out [within the meaning of “Sufficient Cause” as envisaged in Section 5 of Limitation Act. Hence, the general rule of law of limitation is that

an extension shall not be granted under Section 5 if there is no sufficient cause or cogent ground for the condonation of delay, the onus of proving which lies on the assessee as clearly laid down in the judicial pronouncements by the Highest Courts of Law.

8. In the case of *Perumon Bhagyathy Devaswom, Perinadu Village v. Bhargavi Amma (Dead) by LRs*, (2008) 8 SCC 321, the Hon'ble Supreme Court had enunciated certain principles which are applicable while considering applications for condonation of delay under Section 5 which may be summarized as follows:

(i) The words "sufficient cause", as appearing in Section 5 of Limitation Act, should receive a liberal construction when the, delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the applicant/assessee, in order to advance substantial justice. The words "sufficient cause" for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case.

(ii) The decisive factor in condonation of delay is not the length of delay but sufficiency of a satisfactory explanation.

(iii) The degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses.

(iv) Want of 'diligence' or 'inaction' can be attributed to an applicant/assessee only when something, required to be done by him, is not done. When nothing is required to be done, courts do not expect the applicant/assessee to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an assessee is not expected to visit the court regularly to ascertain the current position but await information from his counsel about the listing of the appeal.

9. We note that in assessee's case the delay is not on account of any dilatory tactics, deliberate inaction or negligence on the part of the applicant, therefore having regard to the reasons given in the petition, we condone the delay and admit the appeal for hearing.

10. Briefly stated, the relevant material facts are as follows. The assessee has filed his return of income on 30.09.2017, declaring total income of Rs.6,72,826/-. The return of income was processed u/s 143(1) of the Income Tax Act, 1961. Later on, the assessee's case was selected for scrutiny under CASS. Accordingly, notice u/s 143(2) of the Act was issued on 28.08.2018 and duly served upon to the assessee. Further, notice u/s 142(1) issued along with detailed questionnaire and notice u/s 142(1) issued online on 15.01.2019, and duly served upon to the assessee. In response to the statutory notices issued u/s 143(2) and 142(1) of the Income Tax Act, 1961, the assessee filed required details from time to time before the assessing officer. During the year under consideration, the assessee is engaged in the business of trading in polished and rough diamonds. During the course of assessment valuations of inventories have been verified by assessing officer and it was observed by the assessing officer from the Audit Report that

the assessee has shown the valuation of closing and opening stock of finished goods as under:

	Qty	Total value	Rate per ct
Opening stock	9165	10,85,53,647/-	11844/-
Closing stock	4826	5,12,39,523/-	10,617/-
		Difference	1,227/-

In this connection, vide show cause notice of assessing officer, dated 17.11.2019, the assessee was asked to explain the method of valuation of stock with documentary evidences.

11. In response, the assessee, vide its submission dated 18.11.2019, has stated that closing stock of finished goods has been valued in the same manner as the opening stock of finished goods. All that has happened during the year is sale of inventories out of opening stock of finished goods. The assessee explained with help of Schedule-7 of the audited financial statements, which would show how the inventories have been reduced from the opening inventories to absorb against sales. The audited accounts have been submitted by assessee before the assessing officer.

12. However, the assessing officer rejected the contention of the assessee and observed that assessee has shown valuation of stock of polished diamond at Rs.11,844/- per carat, whereas the closing stock was valued at Rs.10,617/- per carat. There is no purchase of finished goods during the year. The assessee should have valued the closing stock of finished diamonds at the rate of 11,844/- instead of Rs.10,617/-. Accordingly the value of closing stock was arrived at by the assessing officer by adopting the rate at which opening stock has been valued as under:

Closing stock in quantity	Total Value	Rate	Difference in rate	Total under valuation

4826	5,12,39,523/-	10,617/-	1,227/-	59,21,502/- (4826 x 1227)
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Thus, an addition of Rs.59,21,502/- was made by the Assessing Officer on account of undervaluation of closing stock.

13. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has partly deleted the addition made by the Assessing Officer. Aggrieved by the order of the Ld.

CIT(A), the assessee is in further appeal before us.

14. The Ld. Counsel for the assessee argued that assessing officer cannot make addition on account of valuation of closing stock without rejecting books of accounts, and relied on several case law, which we have gone through. Apart from this, Ld Counsel submitted written submission, which are reproduced below (to the extent relevant for our analysis):

“Ground No. (1)

- No estimate of valuation of stock can be undertaken without rejecting books of accounts.
- There is no whisper anywhere in the entire assessment order about rejection of books u/s 145.
- Ingredients of section 145 are not satisfied so as to reject the books.
- The assessee relies on the decisions being given at the time of hearing it has been held that without rejection of books, no estimation can be done (page nos. 36 to 139)
- If the books of accounts are found satisfactory as well as specifications of u/s 145(3) are not doubted with respect to o Correctness or the completeness of the accounts
 - o Method of accounting
 - o ICDS
- Then no addition can be done by tinkering with estimation or valuation of inventories.

- The only power that is vest with the officer in respect of estimation is only u/s 40A(2)(a).”

To support his submission, ld. counsel for the assessee relied on the following decisions:

- (i) CIT vs. Shakti Industries, (2013) 36 taxmann.com 16 (Guj.)
- (ii) CIT vs. Gopal Das Sarab Dayal Sons, (2013) 40 taxmann.com 401 (Allahabad)
- (iii) CIT vs. Symphony Comfort Systems Ltd., (2013) 35 taxmann.com 533 (Guj.)

15. On the other hand, the Ld. DR for the Revenue, argued that assessing officer has computed the under valuation of closing stock after taking into account, the accounting standards, Tax Audit report of assessee. The object of the scrutiny assessment under section 143(3) of the Act, is to examine the assessee`s audited books of accounts and evidences and if the assessing officer finds any mistakes and errors in the documents and evidences submitted by the assessee and mistake in the audited books, the assessing officer may make line by line addition without rejecting books of accounts of assessee. If the assessee did not compute the correct value of closing stock, the assessing officer may compute the correct value of closing stock by applying accounting standards and principles, and for that AO need not to reject the books of accounts of the assessee. Therefore, ld DR has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. Therefore, ld DR contended that relief given by the ld CIT(A) should be reversed and addition made by the assessing officer may be upheld.

16. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We also considered the various decisions relied by Id. counsel for assessee. We find some merit in the tested proposition canvassed by Id DR for the Revenue that for each mistake it is not necessary for the assessing officer to reject the books of accounts of the assessee. A heavy onus is on the assessing officer to reject the audited books of accounts, if there is any mistake in the audited books of accounts or any bills, vouchers, documents or in any evidences, the assessing officer may reject such bills, vouchers, documents, and evidences and may make line by line addition, without having rejected books of accounts. While scrutinizing the expenditure u/s 143(3) of the Act, or valuation of any item, if the expenses claimed are not having any nexus to the business of the assessee or if there is deficiency in the vouchers or there is no bills supporting the incurrence of an expenditure, at the most expenses to the extent that are not supported by the vouchers can be held to be non-genuine and can be disallowed by the assessing officer and item-wise the assessing officer could have disallowed the expenses. Hence, we find merit in the submission of Id DR that it is not necessary for the assessing officer to reject the books of accounts of the assessee, when the assessing officer thinks that if the expenses claimed by assessee are not having any nexus to the business of the assessee or if there is deficiency in the vouchers, valuation method, etc. in these circumstances, the assessing officer may make addition for that particular item without rejecting books of accounts.

17. We note that Id CIT(A) has considered the submission of the assessee in respect of rejection of books of accounts of the assessee. The Id CIT(A) observed that the assessee has not submitted the Annexure in prescribed Format as laid down in Column No. 14(b) of Tax Audit Report (3CD Report). It was further noticed from the Tax Audit Report (3CD report) that the quantitative details of principal items of goods traded are required to be given. However, in the Tax Audit Report (3CD report), it was mentioned that 'As per Annexure – Q'. However, Annexure-Q was not enclosed to the Tax Audit Report (3CD report) submitted by the assessee. In view of the above, the Assessing Officer had not estimated the addition but systematically computed the addition taking into consideration the quantum of closing stock as per books of account and the difference in rate per ct adopted by the assessee in respect of opening stock and closing stock. Therefore, we note that it was not necessary to reject the books of accounts of the assessee. Hence assessing officer was right in not rejecting the books of accounts. However, the assessing officer noticed that some details were not filed or annexed with tax audit report, as noted by Id CIT(A), therefore assessing officer made addition. On appeal by the assessee, we note that Id CIT(A) has provided enough relief to the assessee based on the audited books of accounts of the assessee. The relief provided by the Id CIT(A), by following the accounting standards and accounting principles are as follows:

“9.9 From the ratio of the above case law, it is justified to take the average rate per ct in place of the rate per ct at a particular point of time. Accordingly, I direct the Assessing Officer to adopt average rate per ct to compute the value of closing stock. The computation of closing stock by adopting average rate per ct is as under:

1	Rate per ct adopted by the Assessee to arrive value of Rs.11844 opening stock	11844 opening stock
2	Rate per ct adopted by the appellate to arrive value of Rs.10617 closing stock	10617 closing stock
3	Average rate per ct [(Rate per ct of opening stock + Rate Rs.11231 per ct of Closing stock/2) = [(11844 + 10617/2= 11231	11231 per ct of
4	Under value of Rate per ct [Average Rate per ct (-) Rate per 614 ct adopted by the appellate arrive value of closing stock]	614 ct adopted
5	Quantity of closing stock 4526	
6	Total under valuation by adopting average rate per ct Rs.29,63,164 (Under value of Rate per ct X quantity of closing stock)	Rs.29,63,164

9.10 As per above computation, the Assessing Officer is directed to restrict the addition to Rs.29,63,164/-. Accordingly, the assessee gets relief of Rs.29,58,338/-.”

18. We have gone through the above findings of the Id CIT(A) and observed that Id CIT(A) after taking into account correct valuation methodology and policy as per accounting standards, ICDS and prevailing accounting customs, has deleted almost 50% addition made by the assessing officer. We note that there is no any purchase by the assessee during the year, and the sale made by the assessee is out of opening stock only. In the closing stock, only the opening stock items were there, hence assessing officer has rightly caught the mistake of the assessee for under valuation of closing stock. We note that Id CIT(A) made the computation of closing stock by adopting average rate per carat, which is a superior approach as compared to the approach adopted by assessing officer. We accept the above approach adopted by Id CIT(A). However, we do not find any further superior approach, than the approach so adopted by Id CIT(A), because Id CIT(A), by following accounting standards, ICDS and accounting principles, granted the partial relief to the assessee. Thus, in our opinion, the assessee does not deserve further relief on the basis of the plea that assessing officer ought to have rejected books of accounts to

make addition on account of under valuation of closing stock. On a careful reading of the order of Ld.CIT(A) the findings thereon, we do not find any valid reason to interfere with the decision and findings of the Ld.CIT(A), hence we dismiss the appeal of the assessee. The ratio of decisions relied by ld. counsel for the assessee not applicable on the facts of present case. In our view, the rejection of entire books of account was not warranted, when the assessing Officer find fault in the valuation of stock only.

19. In the result, appeal filed by the assessee is dismissed.

Order pronounced on 11/09/2023 in the open court.

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Date: 11/09/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-

(Dr. A.L. SAINI)
ACCOUNTANT MEMBER lwjr /Surat □□□□□/

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat

