आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, Hon'ble JUDICIAL MEMBER
AND Dr. ARJUN LAL SAINI, Hon'ble ACCOUNTANT MEMBER

(Virtual Hearing)

आ.अ.सं./I.T.A No.2600/AHD/2014

निर्धारण वर्ष/Assessment Year: 2008-09

M/s.Glamour Dyeing & Printing Mills Pvt. Ltd., 1, Glamour House, Nr.Sosyo Circle, Udhna Magdalla Road, Surat. **[PAN: AACG 8616 P]**	Vs.	The Income Tax Officer, Ward-1(2), Surat.
अपीलार्थी / Appellant		**प्रत्यर्थी/Respondent**

निर्धारितीकीओरसे /Assessee by	Shri Mehul K. Patel –AR
राजस्वकीओरसे /Revenue by	Ms. Anupama Singla – Sr.DR

सुनवाईकीतारीख/ Date of hearing:	04.11.2020
उद्घोषणाकीतारीख/Pronouncement on:	27.11.2020

आदेश /O R D E R

PER ARJUN LAL SAINI, AM:

1. The captioned appeal filed by the assessee pertaining the A.Y. 2008-09 is directed against the order passed by the Learned Commissioner of Income Tax(Appeals)-I in Appeal N0.CAS-I/54/2013-14, order dated 10.07.2014 which in turn arises out of a penalty order passed by the assessing officer for the A.Y. 2008-09 u/s.271(1)(c) of the I.T.Act dated 26.03.2013.

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

"(1) That on facts, and in law, the learned CIT(A) has grievously erred in confirming the penalty levied u/s.271(1)(c) of the Act in respect of addition of Rs.6,47,618/- made on account of closing stock of work-in-progress.

(2) That on facts, evidence on record and in law, the entire penalty ought to have been deleted as prayed for.

(3) The appellant craves leave to add, alter, amend any ground of appeal."

3. Brief facts of the issue are that assessee before us is a company and engaged in the business of dyeing and printing of art silk cloth on job work basis. During the assessment proceedings, the Learned Assessing Officer(AO) made addition in respect of closing stock of work in progress of Rs.6,47,618/-. Assessing Officer observed that the assesse had debited expenditure in the Trading Account and the corresponding receipts were shown in the subsequent year, the proportionate amount of expenditure incurred on the processed cloth were required to be shown by the assessee in the form of work-in-progress.

The Assessing Officer noticed that the assessee has processed 1,32,06,408 metres during the year under consideration. Taking into consideration 26 days as working days per month, the total working days of the year works out to 312 days, the average of process of cloth per day works out to 42,328 meters. It is common knowledge that to complete a circle of process in textile processing unit, it takes at least five days. Therefore, a lot of grey cloth put to process on first day comes out on the 6th day duly processed. Therefore, it can be presumed that the assessee must have five days work-in-process as on 31.03.2008. This works out to 2,11,640 meters [42,328 metres, 5 days]. The average cost of processing charges per meter works out at Rs. 6.12 (Gross receipts - Gross Profit = Cost + meter processed). Considering the various stages of process, it would be reasonable to adopt 50% i.e. Rs.3.06 per meter for arriving at the value of work-in-process. Therefore, the dosing stock of work-in-process in assessee`s case was worked out at Rs.6,47,618/- (2,11,640 'meters x Rs.3.08). Since the assessee has not shown the closing stock of WIP and profit to that extent is suppressed, it is necessary to add the work-in-progress to arrive at the correct profit of the business of the assessee. Therefore, the closing stock of work- in-progress of Rs.6,47,618/- worked out as above was added to the total income of the assessee. Penalty proceedings u/s 271(1)(c) of the I.T. Act were being initiated for furnishing inaccurate particulars and concealment of income.

4. Therefore, the AO initiated penalty proceedings u/s.271(1)(c) of the Act and levied penalty u/s.271(1)(c) of the Act at Rs.6,47,618/-.

5. On appeal, Ld CIT(A) confirmed the penalty. Aggrieved by the order of ld.CIT(A), the assessee is in appeal before this Tribunal.

6. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record. At the outset, the Ld.Counsel for the assessee submitted that assessee does only job work, and he does not have its own closing stock, therefore penalty should not be imposed. To substantiate this view, the Ld.Counsel took us through the assessment order para no.2 at page 2 which reads as follows:

> *"2. The assessee company is engaged in the business of dyeing and printing of art silk cloth on job work basis. During the year under consideration, the assesse has shown gross profit of Rs.1,00,26,291/- on total turnover of Rs.10,04,38,921/- which works out to 9.98%."*

7. On merits of the case, the Ld.Counsel submitted before us that Closing Stock becomes the Opening Stock in the next year and in the quantum proceedings, the ITAT in the assessee's own case in ITA No.2288/AHD/2011 for A.Y. 2008-09 dated 10.07.2015 held as follows:

> *"2. We come to the first issue of addition of Rs.6,47,618/- in respect of closing stock of work in progress. The assessee company is engaged in the business of dyeing and printing of art silk cloth on job work basis. The Assessing Officer noticed it to have not shown any closing stock of the work in progress. The assessee pleaded the said non-inclusion of both opening and closing stock. It had worked out the same to be that of Rs.6,19,850/- and Rs.6,28,145/- respectively. The Assessing Officer declined to accept the same since the same had not been offered as closing stock in previous assessment year nor any addition in respect thereof had been made in the preceding year. He refused to allow any credit of opening stock accordingly.*
>
> *3. The case file reveals that thereafter the Assessing Officer proceeded to examine the intricacies involved in assessee's business activity. He opined that any manufacturer in carrying out such activity would use its own material as inputs for carrying out the job work. Such material would exist on material under process. He pointed out that inputs like colour chemicals dyes, water, power, fuel, labour etc. are the expenses incurred. The Assessing Officer further went on to observe that the assessee's process would take atleast 5 days to complete one rotation. He quoted an instance of such a process as on 31-3-2008 and opined that the fabric under process bears expenditure of above stated nature and the corresponding inputs would already stand debited as expenditure on the one hand and on*

the other hand no receipt of credit in relation thereto by way of closing stock of sale had been accounted. Thereafter, significance of valuation of closing stock was elaborated. All this resulted in computation of asessee's job work processing involved number of working days etc. impugned addition of work in progress of Rs.6,47,618/-. The CIT(A) has confirmed it in the lower appellate order.

4.The assessee has pleaded two grounds relevant to this issue. The first one challenges the impugned additions on merits. The latter one raises an alternative plea that in case the impugned closing stock addition has been made, it has to be allowed as opening stock of the succeeding assessment year as on 1-4-2009. The assessee presses for this alternative plea in the course of hearing. The Revenue fails to draw any exception to the settled preposition of law that an addition in closing stock has to form part of the opening stock of the succeeding assessment year. We find merit in assessee's alternative plea in these circumstances and direct the Assessing Officer to recompute opening stock accordingly. Assessee's first two grounds raised in this appeal are partly allowed for statistical purposes."

Therefore, in quantum proceedings, the Tribunal has remitted the issue back to the file of the assessee officer to recompute the opening stock. Hence assessee has not furnished any inaccurate particulars of income. Therefore, the Ld.Counsel submits that an addition in Closing Stock has to form part of the Opening Stock of the succeeding assessment year and that is why the Co-ordinate Bench has directed the Assessing Officer(AO) to re-compute Opening Stock accordingly. Therefore, the Ld.Counsel submits that it is a revenue neutral item, as the Closing Stock of the assessee become Opening Stock in the next year and there is no impact on tax, hence, there is no concealment of income in the assessee's case under consideration.

8. The Ld.Counsel also submitted that the exact issue is covered by the judgment of the Co-ordinate Bench in the case of Kohinoor dyeing & printing Mills Pvt Ltd, in ITA No.2598/Ahd/2014 for A.Y.2008-09 order dated 19.07.2019 wherein the Co-ordinate Bench on the identical facts held as follows:

"4. Being aggrieved, the assessee filed appeal before the ld.First Appellate Authority against the aforesaid addition made by the ld.Assessing Officer in the assessment order who vide order dated 30.09.2011 deleted the addition on account of Gross Profit of Rs.18,28,621/- but ***confirmed the addition of Rs.5,51,505/- on account of valuation of closing stock of work in progress.*** *The Assessing Officer initiated the penalty proceedings levied the penalty of Rs.1,87,460/- being 100% of tax sought to be evaded vide order dated 14.03.2013.*

8. In our view, the penalty in dispute is not sustainable in the eye of law because the Revenue Authority has not pointed out any material, false or bogus against the penalty on *which the assessee can be penalized. Keeping in view of the facts and circumstances of the present case, we are of the considered view that the penalty in dispute is not sustainable in the eye of law, accordingly, we delete the same by accepting the appeal filed by the assessee."*

9. Learned DR for the revenue relied on the order of ld CIT(A).

10. We note that in assessee`s case taking into account the facts narrated above, it is not a case of furnishing inaccurate particulars of income for that we rely on the judgment of the Hon'ble Supreme Court in the case of Reliance Petro Products in 322 ITR 158.

11. We note that since the issue is covered in favour of the assessee by the judgment of the Co-ordinate Bench in the case of Kohinoor Dyeing & Printing Mills Pvt. Ltd. in ITA No.2598/Ahd/2014 (supra) wherein the Co-ordinate Bench has deleted the penalty u/s.271(1)(c) of the Act, on the identical facts, therefore, respectfully following the binding precedent, we delete the penalty u/s.271(1)(c) of the Act to the tune of Rs.6,47,618/-.

12. In the result, appeal of the assessee is allowed.

13. Order pronounced in the open court on 27-11-2020.

Sd/-	**Sd/-**
(PAWAN SINGH)	**(Dr.ARJUN LAL SAINI)**
(न्यायिक सदस्य /JUDICIAL MEMBER)	**(लेखा सदस्य/ACCOUNTANT MEMBER)**

सुरत/ **Surat,** दिनांक **Dated:** 27th Dec, 2020/*S.Gangadhara Rao, Sr.PS*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / **TRUE COPY** / /

Assistant Registrar, Surat