

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD
[CONDUCTED THROUGH VIRTUAL AT AHMEDABAD]**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 2296/Ahd/2017
(Assessment Year: 2010-11)

M/s. Sheth Ship Breaking Corporation, Ata Mill Compound, Nirmal Nagar Main Road, Bhavnagar	Vs.	Jt. CIT, Range-1, Bhavnagar
[PAN No. AAHFS6648B]		
(Appellant)	..	(Respondent)

I.T.A. No. 2843/Ahd/2017
(Assessment Year: 2010-11)

M/s. Seth Ship Breaking Corporation, Ata Mill Compound, Nirmal Nagar Main Road, Bhavnagar	Vs.	Jt. CIT, Range-1, Bhavnagar
[PAN No. AAHFS6648B]		
(Appellant)	..	(Respondent)

Assessee by	:	Shri Tushar Hemani, Sr. Adv., with Shri P. B. Parmar, Adv.
Revenue by	:	Shri V. K. Singh, Sr. DR

Date of Hearing	25.01.2022
Date of Pronouncement	21.02.2022

ORDER

PER Ms. MADHUMITA ROY - JM:

The appeal filed by the assessee is directed against the order dated 06.01.2015 passed by the Ld. CIT(A)-6, Ahmedabad arising out of the order dated 15.03.2013 passed by the JCIT, Bhavnagar Range-1, Bhavnagar under Section 143(3) of the Income Tax Act, 1961 in ITA No. 2296/Ahd/2017. The other appeal filed by the assessee in ITA No. 2843/Ahd/2017 is directed

against the order dated 16.10.2017 passed by the Ld. CIT(A)-6, Ahmedabad arising out of the penalty order dated 21.03.2016 passed by the ACIT, Circle-1, Bhavnagar under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred as to “the Act”) for A.Y. 2010-11 respectively.

ITA No. 2296/Ahd/2017 (A.Y. 2010-11):-

Ground No. 1:-

2. There is a delay of 915 days in filing the instant appeal before us.
3. We have heard the rival submissions made by the respective parties, and we have also perused the relevant materials available on record.
4. The appellate order upholding the addition in respect of undervaluation of closing stock and deleting other additions were received by the appellant on 13.02.2015 upon perusal of which the assessee was of the opinion that closing stock of the year in question would become the opening stock of the immediately succeeding year and, therefore, the addition was revenue neutral and no appeal before us was, therefore, filed.
5. On the other hand, the penalty imposed to the tune of Rs. 42,31,789/- under Section 271(1)(c) of the Act on the basis of the addition made in respect of undervaluation of the closing stock was challenged before the First Appellate Authority.
6. During the appellate proceeding in regard to the penalty matter the assessee felt some indication of confirmation of penalty on the basis of the addition made in the quantum proceeding. At that juncture on the basis of the advice given by the Ld. Advocate, quantum appeal has been preferred before

us against the order passed by the Ld. CIT(A). Hence, the delay of 915 days in preferring such appeal before us.

7. The reason so narrated by the appellant that too by way of an affidavit affirmed on 26.01.2021 seems to be justified. Hence, we condone the delay.

8. The brief fact leading to the case is this that the assessee engaged in the business of ship breaking and trading of mill scale and iron ore, following mercantile system of accounting, filed its return of income on 15.10.2010 declaring total income at Rs. 1,70,09,130/-. The value of closing stock of mill scale as per assessee was of Rs. 1,91,52,750/- which was discarded and revalued by the Ld. AO at Rs. 3,28,47,859/- and the amount of Rs. 1,36,95,109/- in respect of the difference in valuation of closing stock of mill scale was added to the total income of the assessee which was further been confirmed by the First Appellate Authority. Hence, the instant appeal before us.

9. So far as the stock of Mumbai office is concerned the assessee purchased 17,377.395 MT in the range of Rs. 300/- to Rs. 1300/- per MT. Average price per MT worked out to Rs. 739 per MT by the assessee which was not accepted by the Ld. AO and the average purchase of the year under consideration has been accepted.

10. The case made out by the assessee is this that 12946.706 MT was purchased in F.Y. 2008-09. However, the stock was found to be inferior quality and thus the assessee could not find any buyer in the next Financial Year i.e. the year under consideration. For that reason the assessee valued the said stock at 50% of average purchase price which comes to Rs. 739/- per MT.

However, without any basis the Ld. AO revalued the stock at Rs. 1,052/- per MT without disclosing any rational basis for adopting such price as the case made out by the assessee.

11. On the other hand, 617.137 MT stock was purchased at Rs. 2,450/- per MT in the Bhavnagar office. 3.195.315 MT stock was out of purchases at NIL. Such purchase price has not been doubted by the Ld. AO. The assessee valued the average price at Rs. 397/- per MT but the Ld. AO revalued such stock at Rs. 1462/- per MT. As per the assessee no reason has been assigned for valuing the stock at Rs. 1462/- per MT by the Ld. AO and thus the same is not justified in the eye of law. The same is, therefore, deserves to be deleted as submitted by the assessee.

12. Before the First Appellate Authority the appellant submitted the following:

“5.1 **"Grounds # 3-4** challenges the action of ld. AO in making an addition of Rs.1,36,95,109/- on account of under valuation of closing stock.

6.1 The ld. AO, during the course of assessment proceedings, further observed that there was an opening stock of paper mill scale of Rs. 8,09,400/- at the beginning of the year although no sales were made during the year, no closing stock was shown by the appellant. It was further noticed that the closing stock of loose mill scale was shown at a rate lower than the cost price. The appellant was asked to explain the reasons for the same. In response, the Appellant furnished the details regarding stock purchased at Mumbai and Bhavnagar. The appellant further submitted that the stock lying at Mumbai remained unsold as it was of inferior quantity and thus the same was valued at 50% of the average purchase price of goods purchased during the year. However, the ld. AO did not appreciate the facts submitted by the Appellant and was of the view that there had been undervaluation of the closing stock by the appellant. Accordingly, the Ld. AO made an addition of Rs.1,36,95,109/- on account of alleged under valuation of closing stock.

- 6.2 *In this connection, the Appellant most respectfully submits that the detail explanation was given regarding the closing stock, which is reproduced in the assessment order. It was submitted that at Mumbai Office, the stock of Mill scale was shown at 12946.706 MT, which was carried forward from the immediate preceding financial year 2009-10. It was submitted and explained to the Id. AO that in Mumbai such goods are purchased in range of Rs.300 and Rs. 380 per MT to Rs.1030 to Rs.1300 per MT depending upon the demand and supply rule. The underlying stock was purchased in the last year, and the appellant was not getting any customer to buy the same, as the said stock was of inferior quality and accordingly, the Appellant has rightly valued it at Rs.370/- per MT. In respect of stock 3,195.315 MT lying at Bhavnagar, it is submitted that the Appellant had not to incur any expenditure / cost to acquire the said stock, and therefore, the same was valued at Nil, which is the right treatment as per the accepted accounting policy / standard. Insofar as stock of 17,377.395 MT at Mumbai and stock of 617.137 MT at Bhavnagar, the valuation was rightly made at Rs.739/- per MT and Rs2,450/- per MT respectively as per the accepted accounting policy / standard. Therefore, it is submitted that the valuation as done by the Appellant is correct and accurate and the same should be accepted, and accordingly, the addition made by the Id. AO is required to be deleted.*
- 6.3 *Alternatively and without prejudice to above, it is most respectfully submitted that if the action of the Id. AO in making addition on account of undervaluation of stock is accepted, then direction should be given to the Id. AO to increase the value of opening stock to that extent in the succeeding assessment year. ""*

We have further considered the following order passed by the Ld.

CIT(A):

"5.2 This issue was discussed by the AO at para-6 of the assessment order. He observed that there was opening stock of paper mill scale of Rs. 8,09,400/- at Bhavnagar at the beginning of the year; at the end of the year there was no closing stock; further, no sales were recorded during the year; it was further seen that the closing stock of the loose mill scale was taken at the rate lower than the cost price; as per auditor's report the closing stock should have been valued at cost price and therefore closing stock at Mumbai was being valued at cost price; the value of the stock at Bhavnagar and at Mumbai totals to Rs. 3,28,47,859/-, as against which appellant had taken closing stock at Rs. 1,91,52,750/- only and therefore the difference amount was being added. The contentions of the Ld. A.R. are that the stock at Mumbai was of „ inferior quality and therefore it was valued at 50% of the average purchase price and hence the addition was unwarranted.

5.3 *Having considered the facts of the matter, I am not inclined to accept the contentions of the A.R.. For the detailed reasoning given in the assessment order A.O. came to the finding that the closing stock was under valued by the appellant. The contentions of the A.R. are general and vague. They do not controvert the specific findings given by the A.O regarding the closing stock at Bhavnagar and Mumbai. Impugned addition of Rs. 1,36,95,109/- is upheld. Ground no.3 is dismissed.*

4.4 *In view of finding at para-3.3, ground no.4 has become infructuous and is dismissed as such. Further A.O. made adopt the value of the closing stock assessed in the year under consideration as the opening stock in the succeeding year, provided that the appellant valued the closing stock of the succeeding year correctly."*

13. It appears that at the Bhavnagar office the opening stock of paper mill scale was shown at Rs. 8,09,400/- whereas no closing stock was shown in the end of the year neither any sales were recorded. Closing stock of the loose mill scale was taken at rate lower than the cost price whereas as per the auditor's report the closing stock should have been valued at cost price and, therefore, the closing stock of Mumbai was valued at cost price. The value of the stock of both Bhavnagar and Mumbai totaling Rs. 3,28,47,859/- as per the cost price whereas the appellant has shown the closing stock at Rs. 1,91,52,750/- and thus the difference amount was added. It further appears that the appellant has not controverted the specific findings given by the Ld. AO as regards the closing stock at Bhavnagar and Mumbai and, therefore, the addition was further upheld by the Ld. CIT(A) which in our considered opinion is without any ambiguity so as to warrant interference. Thus this ground of appeal filed by the assessee found to be devoid of any merit and hence dismissed.

14. We have further considered the alternative plea taken by the assessee to this effect that in the event the addition is confirmed and the closing stock is valued on higher side then addition so confirmed may be added to opening stock of succeeding year i.e. A.Y. 2011-12 as per the settled amounting

principle being closing stock of A.Y. 2010-11 would be the opening stock of A.Y. 2011-12.

15. The Ld. DR has not been able to controvert such submissions made by the Ld. Senior Counsel appearing before us for the assessee.

16. We also do not find such prayer as unjustified and hence we direct the Ld. AO to pass orders of addition to the opening stock of the succeeding year i.e. for A.Y. 2011-12.

ITA No. 2843/Ahd/2017 (A.Y. 2010-11):-

Ground Nos. 1-5:-

17. Levy of penalty of Rs. 42,31,789/- on addition of Rs. 1,36,95,109/- in respect to undervaluation of closing stock has been challenged before us. Such penalty has been imposed for furnishing of inaccurate particulars of the assessee to the tune of Rs. 1,36,95,109/-.

18. We have heard the rival submissions made by the respective parties, and we have also perused the relevant materials available on record.

19. The assessee submitted the following before the First Appellate Authority:

“Further, to the Grounds of appeal filed, your Appellant begs to submit as under Your Appellant is dealing in Mills scales which is a flaky surface or, hot rotted steel. Mittal scale is formed on the outer surfaces of plates, sheets of profiles when they are being produced by rolling red hot iron or steel billets in rolling mills. Mill scale is bluish black in color. Mill scale is a nuisance when the steel is to be processed Any paint applied over it is wasted, since it will come off with the scale as moisture-laden air gets under it. Mill scale generated in rolling mills are collected and sent to a sinter plant for recycling.

There are no Sinters plants for recycling; of Mills scale or other technology in India but your Appellant was successful in finding buyer is from foreign countries and had

been exporting it past few years. Majority the mills scale was exported to China since there was huge demand of steel and they had technology to produce steel from the Mills scale.

Mills scale was procured from various Steel plants across the country, it was purchased from price ranging Nil to Rs.2,450 per MT depending upon the quality, the urgency to the mill owner to discard it and the distance from our godowns at Mumbai and Bhavnagar, Most of the Steel plant owners consider it as nuisance and sell it away at a token price.

Many a times, it happens that, the quality of mills scale is not good and hence your appellant returns the goods. During the year, your Appellant had purchase return of Rs.4.70 Crores. During the year, your Appellant had opening stock of mills scale at Mumbai godown and had further procured, mills scale from nearby region at Mumbai. Bhavnagar office had opening stock, had further purchased mills scale and could also manage to sell a major part of their stock. Even after tremendous efforts, mills scale lying at Mumbai could not be sold off. Prices offered by the potential buyers were far below cost price and the appellant decided not to sell it.

Since the stock was lying in open for more than 12 months, it had caught lot of humidity and also dusts panicles which had deteriorated the quality of the goods. For export to China, there were stringent quality controls. Each & every lot we had exported in past year went through quality control inspection by internationally reputed agencies like SGS. Due to inferior quality, your Appellant was getting offers at less than 50% of the cost price. Hence your Appellant had considered rate of Rs.370 per MT for valuation of the stock. Your honor will appreciate the fact that, only goods lying at Mumbai, which could not be sold off during the year whole, was valued at lower than the cost price. Goods lying at Bhavnagar godown were valued at Cost price.

Your Appellant has neither filed inaccurate particulars of income nor concealed our income. Simply valuing old stock at depreciated price will not amount to concealment of income. All the facts were completely disclosed in the return of income & audit report filed. The Learned Assessing Officer may not have accepted our claim for valuation of stock at lower price but that does not lead to allegation on us for concealment of income or furnishing inaccurate particulars of income.

We humbly your kind attention to the latest judgment of the Hon'ble Supreme court in the case of CIT Reliance Petro Products (P) Ltd. reported at 322 ITR 0158, which squarely covers the present case also. The apex Court in this judgment has clearly held that the word 'inaccurate' as used in the Act would mean something which is not accurate, not exact or not correct. Something which is untrue is inaccurate. The same facts can be given two interpretations. If the interpretation given is plausible though not accepted by the assessing authority it cannot be said that the statement of particulars is as inaccurate or erroneous as to invite imposition of penalty. Merely because a wrong interpretation to the same set of facts is given would not, mean that the assessee reliable to pay penalty also. Penalty is by its very nature penal and somebody is being punished for an act is unjustified. The apex Court in Reliance

Petro Products' case (supra) has clearly laid down that merely because the assessee makes a claim which is not sustainable in law, will not amount to furnishing inaccurate particulars regarding the income of the assessee.

Your Appellant had valued the closing at lower of the cost price on account of deterioration of old stock. This was being done on estimation on the basis of the offers received from various importers. The Learned Assessing Officer has not accepted mainly on the ground that since we have been valuing the closing AT COST method, the same should have been adopted. We beg to submit that, your Appellant has not furnished any inaccurate particulars of income. Your Appellant has not fudged the amounts, the books of accounts or tried to create false evidence.

Further rely on judgment of ITAT Chandigarh in case of Durga Traders Vs income Tax officer, reported at 90 TTJ 0767 whereby it was held that "Notwithstanding addition to Assessee's income on account of undervaluation of closing stock, at the absence of any circumstances justifying the interference that the assessee has consciously concealed its income, penalty under 271(1)(c) was not warranted".

We also draw your kind attention to the Hon'ble HP High court order in the case of CIT vs H P State forest Corporation Limited 340 ITR 0204 whereby the court had held that, claim of depreciation for the stock of goods held does not amount to concealment of income.

Your Appellant has preferred an appeal against the order of the Learned CIT(A). Copy of acknowledgement, Form no. 36 and Ground of Appeal are filed here with.

Accordingly, we request you to delete the penalty of Rs. 42,31,789 u/s 271(1)(c) of the Income Tax Act 1961 and oblige."

20. We have further considered the following observation made by the Ld. CIT(A) while confirming the penalty:

"4.3 After considering findings of the AO and submissions of the appellant, this ground is adjudicated as under.

It is seen that during the assessment proceedings, the AO observed that the appellant has not valued its stock of Mill Scale lying at Mumbai of Rs. 1,36,95,109/- at cost but valued it at Rs. 370/- MT. When asked to explain, the appellant could not explain satisfactorily as to why it has not valued stock of Mill Scale lying at Mumbai at cost. The AO observed that while the stock lying at Bhavnagar was valued at cost, the stock lying at Mumbai was valued at Rs. 370/- per MT. Since the AO did not find explanation given by the appellant satisfactory, the AO added the amount of Rs. 1,36,95,109/- to the income of the appellant on account of under valuation of stock. The appellant filed appeal against this action of the AO. During the appellate proceedings, this issue was held against the appellant. While adjudicating this issue,

the CIT(A)-6, Ahmedabad vide order dated 6-1-2015 in Appeal no. CIT(A)-686/13-14 observed as follows :

"5.2 This issue was discussed by the AO at psra-6 of the assessment order. He observed that there was opening stock of paper mill scale of Rs. 8,09,400/- at Bhavnagar at the beginning of the year; at the end of the year there was no dosing stock; further, no sales were re-corded during the year, it was further seen that the dosing stock of the loose mill scale was taken at the rate lower than the cost price, as per auditor's report the dosing stock should have been valued at cost price and therefore closing stock at Mumbai was being valued at cost price; the value of the stock at Bhavnagar and at Mumbai totals to Rs. 3,28,47,859/-, as against which appellant had taken closing stock, at Rs. 1,91,52,750/- only and therefore the difference amount was being added. The contentions of the Ld. A.R. are that the stock at Mumbai was of inferior quality and therefore it was valued at 50% of the average purchase price and hence the addition was unwarranted.

5.3 Having considered the facts of the matter, I am not inclined to accept the contentions of the A.R. For the detailed reasoning given in the assessment, order A.O. came to the finding that the closing stock was under-valued by the appellant. The contentions of the A.R. are general and vague. They do not controvert the specific findings given by the A.O regarding the closing stock at Bhavnagar and Mumbai. Impugned addition of Rs. 1,36,95,109/- is upheld. Ground no.3 is dismissed."

Holding thus, the CIT(A) confirmed the addition of Rs.1,36,95,109/-.

While passing the assessment order, the AO had also initiated penalty proceeding u/s 271(1)(c) of the Act for filing inaccurate particulars and concealment of income. After the above addition was confirmed by the CIT(A)-6, Ahmedabad as detailed above, the AO issued snow cause notice u/s 271(1)(c) of the Act asking the appellant to show cause why penalty should not be levied u/s 271(1)(c) of the Act on the amount of Rs. 1,36,95,109/- for filing inaccurate particulars of income and for concealment of income. During the penalty proceedings, the appellant reiterated the submission made during the assessment proceedings. The main contention of the appellant was that the stock of 'Mill Scale' lying at Mumbai had deteriorated, therefore, the stock was valued at Rs. 370 per MT instead of valuing it at cost. The AO did not find the explanation filed by the appellant satisfactory. Therefore, the AO levied the penalty of Rs. 42,31,789/- u/s 271(1)(c) of the Act for filing inaccurate particulars and for concealment of income. The appellant is in appeal against above penalty order.

During the appellate proceedings, again the appellant reiterated what it had submitted during the assessment proceedings and penalty proceedings. The submission of the appellant is twofold as follows:

(i) On the reason why it valued the stock lying at Mumbai at Rs. 370 per MT instead at cost.

(ii) Why penalty should not be levied u/s 271(1)(c) of the Act on the addition made by the AO on under valuation of stock.

The submissions of the appellant have been considered. As mentioned above also it is observed that regarding the reason why it under valued the stock, the appellant has repeated what it had submitted during the assessment proceedings and penalty proceedings. The main contention of the appellant is that the stock of Mill Scale lying at Mumbai could not be sold since the appellant did not find good buyers. Earlier, the appellant was exporting this material to China. However, during the year under consideration prices offered by the potential buyers were much below cost price and therefore, the appellant decided not to sell it. Since stock was lying in open for more than 12 months, it had caught lot of humidity and also dust particles. Due to this, quality of these goods deteriorated. Since for export to China, there was stringent quality control this stock could not be sold at the normal price and the appellant was getting offers for export at, less than 50% of the cost price. Hence, the appellant considered rate of Rs. 370 per MT for valuation of the stock.

As said above, the appellant has repeated its contention regarding reason for under valuation of stock during assessment proceedings, penalty proceedings and appellate proceedings for penalty. After thoroughly considering explanation filed by the appellant for under valuation of stock, it is felt that it lacks of substance. There is also an inherent contradiction in the submissions of the appellant. On one side it says that since price offered by the potential buyers were far below the cost price therefore it decided not the sell stock. On the other side, it says that since stock was lying in open for long period because of not selling, quality of the stock deteriorated. And therefore, it was getting price offers at only 50% of the cost. This is a catch 22 situation. First the appellant decides not to sell the stock, then stock deteriorates and then the appellant says it was not getting good offers. This is the reasons why the appellant decided to value the stock at Rs. 370 per MT. A plain reading of the submission shows that it lacks substance. There is no logical reason why the stock was valued at less than at cost. Therefore, this part of the submission of the appellant cannot be accepted as a genuine explanation.

The second submission of the appellant is regarding as to why penalty for filing of inaccurate particulars and concealment of income is not leviable on under valuation of stock of Rs. 1,36,95,109/-. On this aspect, the contention of the appellant is that the appellant neither filed inaccurate particulars of income nor concealed its income. Valuing old stock at depreciated price does not amount to concealment of income. The appellant further submitted that all the facts were completely disclosed in the return of income and Audit Report filed. As per the appellant, it is a case of difference of opinion. The appellant has submitted that the AO may not accept its claim for valuation of stock at lower price but this does not lead to allegation for concealment of income for inaccurate particulars of income. In support of this contention, the appellant has relied on the judgment of hon'ble Supreme Court in the case of CIT vs. Reliance Retro-products Pvt. Ltd. 322 ITR 158. The appellant has also relied on some other judgments in support of his contention which have been considered.

This contention of the appellant has been considered and it is felt that it is not a case of difference of opinion or a case where the appellant made some claim which was not accepted by the AO and hence the applicability of ratio of judgment in CIT vs. Reliance Retro-products Pvt. Ltd. (supra). It is a case where the appellant deliberately undervalued its stock without any strong basis for doing the same. Even if for a moment, it is believed that the appellant had a bonafide reason for undervaluing stock and had a bonafide belief that what it was doing was right, it would have been possible to consider the explanation of the appellant. However, in this case, after the appellant had valued its stock at the reduced cost, the auditor while auditing the account had clearly brought it to the notice of the appellant that "the stock should have been valued at cost". This is mentioned in the Audit Report. This fact is not denied by the appellant. Once this was pointed by the auditor, the appellant should have realized that what it was doing was not legally correct and it could have and should have rectified the mistake. However, it did not do so. Therefore, the malafide of the appellant in undervaluation of stock is clearly established. Further, it is on record that the appellant did not file appeal before the hon'ble ITAT, Ahmedabad against the above order of CIT(A) confirming the addition on account of undervaluation of stock. It is only during the present appeal proceedings when the appellant was asked whether it has filed appeal against order of CIT(A) or not, during hearing on 16-10-2017, the appellant submitted that on 16-10-2017 it has filed an appeal before hon'ble ITAT, Ahmedabad against order of CIT(A)'s order. It also filed copy of Form 36 filed before the hon'ble ITAT, Ahmedabad. However, Form 36 does not bear any stamp of ITAT, Ahmedabad except that it is mentioned on Form 36 as follows:-

*"Recd. One appeal
Sd/-
16.10.2017"*

This clearly establishes malafide intention of the appellant in undervaluing the stock and shows that after the order of CIT(A), it did not find it a fit case for filing appeal against the said order of CIT (A).

In view of discussion above, it is clear that the appellant has not filed a satisfactory explanation for undervaluation of stock and further that it has not been substantiated its explanation with cogent reasoning and evidence. Therefore, the case of the appellant is squarely covered by the Explanation 1 to section 271(1)(c) of the Act. By including the figures of stock which was undervalued in the return of income and filling the same before the Income Tax Department, the appellant definitely furnished inaccurate particulars of income and thereby concealed the particulars of his income. Therefore, it is a fit case for levy of penalty u/s 271(1)(c) of the Act.

In view of the discussion above, I hold that the AO was justified in levying penalty of Rs. 42,31,789/- u/s. 271(1)(c) of the Act for furnishing of inaccurate particulars of income and concealment of income. Accordingly, penalty of Rs. 42,31,789/- is hereby confirmed. This ground of appeal is rejected.

5. *In the result, the appeal is dismissed.”*

21. There is no doubt that this is a case of difference of valuation of closing stock. It is also a settled principle of law that penalty cannot be levied on addition made by the Ld. AO consequent to adopting higher valuation of closing stock. Further that penalty does not follow as a natural corollary to the quantum proceeding.

22. After considering the entire aspect of the matter we do not find any case of conscious concealment of any income by the assessee nor furnishing any inaccurate particulars of income by the assessee. It is also apparent from the records that the appellant had valued the closing at lower of the cost price on account of deterioration of old stock. The Ld. AO has not accepted such valuation made by the assessee mainly on the ground that since the assessee valuing the closing at cost method the same should have been adopted. We have further considered the order passed by the Hon'ble Apex Court in the case of CIT vs. Reliance Petro Products (P) Ltd., reported in 322 ITR 0158 where it has been clearly laid down that merely because the assessee makes a claim which is not sustainable in law will not amount to furnishing of inaccurate particulars of income of the assessee. The case of furnishing of any inaccurate particulars of income is not apparent from the record itself neither the books of account has been rejected, nor any case of creating false evidence has been made by the Revenue. On this aspect we have considered the judgment passed by the Hon'ble ITAT Chandigarh Bench in the case of Durga Traders vs. Income Tax Officer, reported in 90 TTJ 0767 where it has been held that notwithstanding addition of assessee's income on account of undervaluation of closing stock in the absence of any circumstances justifying

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the interference that assessee has consciously concealed its income, penalty under Section 271(1)(c) was not warranted.

In that view of the matter respectfully relying upon the same we do not find the order passed by the Ld. AO confirmed by the Ld. CIT(A) in imposing penalty for furnishing inaccurate particulars of income and thereby concealment of particulars of income of the assessee is justified. Hence, we quash the impugned order of penalty.

23. **Ground No.6:-** This ground is general in nature and needs no separate adjudication.

24. In the combined results, the appeal preferred by the assessee in ITA No. 2296/Ahd/2017 is dismissed and the appeal preferred by the assessee in ITA No. 2843/Ahd/2017 is allowed.

This Order pronounced in Open Court on	21/02/2022
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad; Dated 21/02/2022
TANMAY, Sr. PS **TRUE COPY**

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

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