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

आयकर अपील सं./ITA No.850/SRT/2023

(निर्धारणवर्ष / Assessment Year: (2013-14)

(Physical Hearing)

Mahavir Dyeing & Printing Mills Pvt. Ltd., Block No.300-301-303, Tatathaiya Tal. Palsana, Surat-395003	**Vs.**	Assistant Commissioner of Income-tax, Circle-1(1)(2), Surat, Aayakar Bhawan, Majura Gate, Surat-395003
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AABCM 9240 J**		
(अपीलार्थी /Appellant)		**(प्रत्यर्थी / Respondent)**

निर्धारिती की ओर से /Assessee by : Ms. Chaitali Shah, CA
राजस्व की ओर से /Respondent by: Shri Vinod Kumar, Sr-D.R

सुनवाई की तारीख/ **Date of Hearing : 06/03/2024**
घोषणा की तारीख/**Date of Pronouncement: 01/04/2024**

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to assessment year 2013-14, is directed against the order passed by the National Faceless Appeal Centre, Delhi (in short "NFAC/Ld CIT(A)") dated 10.10.2023, 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 30.03.2016.

2. Grounds of appeal raised by the assesse are as follows:

"1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in rejecting books of accounts u/s 145(3) of the I.T. Act.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in partly confirming the action of Assessing Officer by sustaining the addition of Rs.9,36,000/- out of total addition of Rs.45,29,948/- by *computing the additional income @ 8% of additional turnover of Rs.1,17,00,000/- as calculated by CIT(A).*

3. It is therefore prayed that the above addition made by the Assessing Officer and confirmed by CIT(A) may please be deleted.

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal."

3. The relevant material facts, as culled out from the material on record, are as follows. The assessee before us is a Private Limited Company and filed its return of income in respect of assessment year 2013-14, declaring income of Rs.8,57,850/-, on 27.09.2013. The same was processed by accepting the returned income. Consequent to the selection of the case for scrutiny, through CASS, statutory notice u/s 143(2) of the Act, dated 02.09.2014 was issued. A notice u/s 142(1) of the Act, dated 07.05.2015 was issued calling for basic documents and details to facilitate preparation of a questionnaire. A detailed specific questionnaire, vide Notice u/s 142(1) dated 23.10.2015 was subsequently issued calling for various details, documents & explanations relevant to the case. The assessee-company is engaged in the business of processing of art silk cloth on job work basis during the year under consideration. On perusal of records, it was noted by Assessing Officer that power/fuel cost is very high as compared to turnover as well as when compared to other dyeing and printing units. The assessee's power/fuel cost is Rs.2,35,66,432/- (*including coal/diesel and electricity*). The turnover of the assessee is Rs.5.25 crores. Thus, the power cost as percentage of turnover is 44.8%. Being the power/fuel cost is highly unrealistic, so the assessee was asked to explain that why its books shall not be rejected and turnover and net profit shall not be estimated.

4. The assessee, vide its submission dated 21.01.2016 submitted that assessee-company runs 20 years old unit machinery used in the factory which consumes more power per unit because efficiency of depreciated

machinery has been considerably reduced leading to more fuel consumption per unit of production. The assessee engaged in doing job-work of dyeing only whereas other units are doing both dyeing and printing job and therefore, consumption of fuel as percentage of turnover is higher of assessee's case as compared to units engaged in dyeing and printing job.

5. Therefore, the Assessing Officer issued further show cause notice dated 01.03.2016, which is reproduced below:

> *"On verification of details filed during the course of assessment proceedings, it is noticed that you have claimed total consumption of power/fuel cost of Rs.2,35,66,432/- including coal/diesel & electricity which is 44.9% of total turnover of the company. When we compare this with the other units engaged in the same business, the cost of fuel is disproportionately high. Due to this high figure of power consumption expenses, there is a possibility of suppressing of job charges done by you. The comparative chart of the companies based in Surat, essentially engaged in similar line of business is reproduced here comparison:*

Sr.No.	*Name of the company*	*Turnover*	*Total consumption of fuel charges*	*Percentage*
1	*Dadu Processors P.Ltd.*	*23,45,31,994*	*2,46,58,386*	*10.51%*
2	*Ashoka Dyeing & Printing Mills P.Ltd.*	*20,51,14,751*	*2,40,33,645*	*11.71%*
3	*Jay Bharat Dyg & Ptg. Mills Ltd.*	*50,05,25,887*	*10,34,32,695*	*20.66%*
4	*Aaishwarya Dyg. & Ptg. Mills. Pvt. Ltd.*	*1,41,11,68,061*	*36,07,67,786*	*25%*
5	*Heritage Processors Pvt. Ltd*	*9,98,8,998*	*2,50,36,628*	*25.08%*
6	*Glamour Dyg. & Ptg. Mills (Surat) Pvt. Ltd.*	*14,85,59,757*	*40,66,30,115*	*27%*
7	*Krishna Dyeing & Ptg. Pvtd. Ltd*	*9,09,45,888*	*2,57,71,340*	*28.33%*
8	*Khatushyam Processors Pvt. Ltd.*	*28,35,4,239*	*8,05,07,095*	*28.03%*
	Average			*33.07%*

> *Considering the above facts and circumstances show cause as to why the power and fuel expenses should not be taken @ 22.91% of turnover and accordingly the total turnover should not be increased in corresponding year. Considering this percentage this percentage as the percentage of your fuel cost vis-à-vis, the following proposition is made.*

Power and fuel cost	*2,35,66,432*	*22.91%*
Corresponding turnover	*10,28,56,264*	*100%*

> *This show cause notice is the final opportunity for you to present your case before this office. In case nothing is heard or received in writing from assessee's side within 5 days from the receipt of this letter, it shall be taken that the*

assessee-company has nothings to defend its case and this office shall proceed as per the proposed course of action under the Act.

You should be aware that the data of different companies that are reproduced here for comparison are real life data and you are barred from using it in any manner except for giving reply to this office. All communications relating to this data shall be strictly confidential."

6. In response to the above notice, the assessee, vide its letter dated 08.03.2016, furnished written submission before the Assessing Officer, which are reproduced below:

1) *As already pointed out to you vide our letter dated 21.01.2016, we state that, ours is almost two decades old unit machinery used in factory which consume more power per unit because efficiency of depreciated machinery has become considerably reduced leading to more fuel consumption per unit of production. Our power consumption of 4.90% is based on actual consumption and there is no suppression of facts.*
2) *In your notice, you have given the names of various units and their power consumption as a percentage of turnovers. In this connection, we may say that these units are printing units only. Whereas we are engaged only in dyeing. It is but natural that those units which are engaged in printing, their realization as a percentage of turnover will be much more as compared to those units engaged only in dyeing. Thus, there is no comparison between our power consumption and the power consumption of other units as percentages of turnover mentioned by you in your SCN.*
3) *You have averaged out power consumption of various units and have presumed our power consumption as 22.91% and on that analogy you have calculated that our turnover should be Rs.10,28,56,264/- which is erroneous completely and without any base in view of our submission made in point no. 1 & 2 above. Further, please note that because of very old machinery, our power consumption during the corresponding previous year i.e. A.Y 2012-13 was also high at 42.97% as a percentage of turnover. We once again reiterate that there was no suppression of fact in our power consumption which is based as per actual. Thus, by no stretch of imagination it can be established that there was suppression of job.*
   Further, please note that our average job work charges for dyeing was Rs.2.21 per meter whereas we learn from Begani Dyeing Mills Pvt. Ltd. that their average job rate for printing was Rs.5.50 per meter. Thus, you will please observe that there can be no comparison of consumption of power & fuel as percentage of turnover with our company with our company with other companies. We therefore, request you to please refrain from assuming arbitrary figure in our income from dyeing business by employing imaginary figures. We request you that in view of our above explanation, you will not assume any additional turnover as mentioned in your above referred show cause notice."

7. However, the Assessing Officer rejected the contention of the assessee and asked the assessee to submit month-wise details of stock and production. However, it was stated by assessee that it is not possible for them to maintain day-to-day tock register. No stock register was submitted. Therefore, Assessing Officer noted that, in absence of stock register, the books of accounts are not complete and liable to be rejected. In response, the assessee appeared on 18.03.2016 before Assessing Officer and submitted a paper giving information about the production details month-wise. However, the Assessing Officer noted that production details of each item in a separate register is missing.

8. Therefore, the Assessing Officer issued further notice to the assessee. In reply this show cause notice, the assessee submitted before the Assessing Officer as follows:

> *"As per order sheet entry dated 14.03.2016, you had asked me to submit moth-wise production detail and stock register for the relevant assessment year. Our advocate appeared before you and gave you a chart of month-wise production in terms of quantity and value both as required by you. There are two activities carried by us. One is dyeing of cloth in which we use colours and chemicals both for finishing the grey cloth and the other activity is dried in which only grey cloth is washed by using chemicals and dried with the help of stenter machine. Our unit is a process unit and we are engaged in only job work of dyeing only and not printing.*
>
> *In the order sheet dated 14.03.2016, you have not asked for a separate register showing production details. We are enclosing herewith* ***date-wise production register showing dyed pieces, dyed meters, dyed amount, dried pieces, dried meters, dried amount, total pieces, total meter and total amount. This register is computer generated register.*** *We deny that the sheet which was given to you is a product of afterthought and post facto manipulation. The sheet which was given to you was a summary of this register only.*
>
> *Regarding stock register, we have to state that it is not possible to maintain day-to-day stock register of colours and chemicals in a process house like ours. At the end of the accounting year, we take inventory of stock and value the same, which is certified by our statutory auditors.*
>
> *By not having a stock register, you cannot say that our accounts are incomplete. Since the auditors verify all the bills vouchers etc., and also verify inventory of stock and receipts of job charges and expenses. Moreover, vide our letter dated 08.03.2016 we have explained reason of consumption of more fuel and power as*

> *compared to other units. There was no suppression of facts. Thus, by no stretch of imagination, it can be established that there was suppression of job."*

9. However, the Assessing Officer rejected the contention of the assessee and noted that the books result as reproduced by the assessee-company cannot be accepted on the irregularities/discrepancies narrated above hence, naturally compel to invoke the provisions of Section 145(3) of the Act and to reject the book results. Therefore, the provisions of Section 145(3) were invoked by the Assessing Officer and the book results of the assessee-company for the year under scrutiny were rejected by the Assessing Officer. As due to the various discrepancies found in the case of the assessee-company, the provisions of Section 145(3) are invoked and the book result being rejected, it is required arrive at the turnover of the assessee-company based on the average fuel cost as discussed. Taking the fuel cost of the assessee-company @ 22.91% the corresponding turnover that can be achieved with the fuel cost of Rs.2,35,66,432/- is Rs.10,28,56,264/-. Further, the assessee has shown net profit of Rs.47,25,801/- at the turnover of Rs.5,25,16,360/-. Considering the same ratio of net profit to the turnover in case of the projected turnover the revised net profit of the assessee comes to Rs.92,55,749/-. The assessee's net profit ratio, as per actual turnover is 8.998% (47,95,801/- 5,25,16,360 x 100). The same ratio was applied by the Assessing Officer on deemed turnover of Rs.10,28,56,264/- to arrive the estimated profit of Rs.92,55,749/-.

10. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before NFAC/Ld.CIT(A), who has partly confirmed the action of the Assessing Officer observing as follows:

> *"**5.2 Ground No. 2** challenges the rejection of books of accounts by the Assessing Officer. For rejecting books of accounts under section 145(3) of the Act, tangible material should be available for invoking this provision. In the present case, the basis for rejection of books of accounts, as discernible from assessment order, supra, is twofold.*

5.2.2 First is the abnormal expenditure on power and fuel which is around 44.8 percent of the turnover while in other industries similarly placed, the said percentage was found by Assessing Officer at around 22.91 percent. Appellant countered the said allegation by stating that its plant and machinery is relatively aged which is an important factor leading to higher expenditure. Appellant has also furnished the details of expenditure incurred on consumption of power and fuel for a period of 4-5 years yis-a-vis the turnover from job work to claim that there is hardly any difference in figures in all the years. Hence, appellant has submitted that stand being taken for this year specifically by the Assessing Officer in deviation with other years has no factual basis and hence cannot be sustained. Lastly, appellant has stated that data used by the Assessing Officer for comparison purpose pertains to units involved in dyeing as well as printing business while he is solely engaged in dyeing business and since printing units do not consume that much of electricity and power, there expenditure under this head is bound to be lesser than the appellant as a percentage of the turnover.

5.2.3 I have considered the arguments and counter arguments of both sides. Once Assessing Officer has challenged the comparatively higher expenditure on power and fuel vis-a-vis the job work turnover, the onus was upon the appellant to counter it by producing water tight evidence. However, appellant merely stated that the age of the machinery may be the contributory factor. Appellant also stated that he was not doing printing but only dyeing activity, hence, the fuel cost would be higher in comparison to the comparables used by the Assessing Officer. Further, as far as requirement to maintain consistency in income tax assessments is concerned, I am of the view that each year is different and principle of Res-Judicata cannot be applied when this aspect of appellant's account was either not looked into in earlier 143(1) order's or not considered in 143(3) order for earlier year.

***5.2.4** The circumstantial finding of the Assessing Officer that turnover was not commensurate with the power and fuel expenditure indicates that appellant was not correctly maintaining his accounts. In this context, I would like to rely upon decision of **Hon'ble ITAT Delhi in the case of Hersh Win Chadha in I.T.A.Nos.3088 to 3098 & 3107/Del/2005** where the Hon'ble ITAT has held that circumstantial evidence can be used for purpose of making assessment under the Income-tax Act. The Hon'ble Tribunal has observed as under:*

> *"6. 13. it would, at this stage, be relevant to consider the admissibility and use of circumstantial evidence in income tax proceedings. Circumstantial evidence is evidence of the circumstances, as opposed to direct evidence. It may consist of evidence afforded by the bearing on the fact to be proved, of other and subsidiary facts, which are relied on as inconsistent with any result other than the truth of the principal fact. It is evidence of various facts, other than the fact in issue which are so associated with the fact in issue, that taken together, they form a chain of circumstances leading to an inference or presumption of the existence of the principal fact. In the appreciation of circumstantial evidence, the relevant aspects, as laid down from time to time are —*
>
> *1 . the circumstances alleged must be established by such evidence, as in the case of other evidence; 2. the circumstances proved must be of a*

conclusive nature and not totally inconsistent with the circumstances or contradictory to other evidence.

(3) although there should be no missing links in the case, yet it is not essential that every one of the links must appear on the surface of the evidence adduced; some of these links may have to be inferred from the proved facts;

(4) in drawing those inferences or presumptions, the Authorities must have regard to the common course of natural events, to human conduct and their relation to the facts of the particular case.

(5) The circumstantial evidence can, with equal facility, be resorted to in proof of a fact in issue which arises in proceedings for the assessment of taxes both direct and indirect, circumstantial evidence can be made use of in order to prove or disprove a fact alleged or in issue. In fact, in whatever proceedings or context inferences are required to be drawn from the evidence or materials available or lacking, circumstantial evidence has its place to assist the process of arriving at the truth."

5.2.5 *The objections raised by the appellant can explain only part of the differential between his power consumption vis-a-vis the other units at Surat but cannot explain the entire difference in a satisfactory manner. Hence, I hold that the data collected for comparison purpose was sufficient for arriving at the conclusion that power and fuel expenditure in case of the appellant was not commensurate with the turnover shown in the books of accounts.*

5.2.6 The second *reason for rejection of the accounts is failure to furnish the stock register. When Show-caused, the appellant has stated that the said register is not being maintained owing to the impracticality of maintaining it considering the nature and variety of stock of chemicals and consumables. I find it a specious argument. The stock register has to be necessarily maintained by all assessees' exceeding the specified turnover as it is one of the core books of account, otherwise the figure of profit/income shown by the appellant cannot be properly verified during audit under section 4AB of the Act or in assessment under the Income-tax Act.*

5.2.7. Thus, appellant failed to dispel doubts existing in the mind of the Assessing Officer regarding the lack of genuinity of some of his business transactions. Even in this proceeding, appellant has not provided any further evidence which can contradict the stand of the Assessing Officer. As per sub-section (3) of section 145 of the Act, Assessing Officer, on being satisfied of the incorrectness of the accounts, can reject them. The incorrect/incompleteness of books of accounts render them liable to rejection, provided the charge of incorrectness can be reasonably satisfied on the basis of available proof. On basis of above findings, I hold that as appellant failed to satisfactorily explain the shortcomings pointed out by the Assessing Officer in accounts regularly maintained by him, thereby, rejection of books of accounts of appellant under section 145(3) of the Act is upheld. Hence, the ground no. 2 is rejected.

5.3 The ground no. *3 challenges the quantification of income from job work activity in textiles unit of the appellant. It is also pertinent to mention that NP rate shown by the appellant in the, tax return is only 1.05% which is abysmally low for a dyeing unit. In assessment, Assessing Officer has estimated the turnover from job work of dyeing by applying the power consumption expenditure of other dyeing units in and around Surat. In ground no. 2, I have also held that data of expenditure on power and fuel by other units at Surat can reasonably be used as there is a wide deviation between them and appellant which was not satisfactorily explained by the appellant. However, considering the arguments of the appellant, I am of the view that deviation will not be in vicinity of 22.91 percent as alleged by the Assessing Officer but in vicinity of around 10 percent.*

5.3.2 Further, while adjudicating on ground no. 2, I have upheld the action of the Assessing Officer in rejecting the books of accounts under section 145(3) of the Act. Once the books are rejected, the income has to be estimated to the best of judgment. I have gone through the computation made by the Assessing Officer in assessment order. While the basis for addition is correct i.e. the gap between the electricity expenditure and turnover merits addition, its quantification by the Assessing Officer is incorrect and requires revision as Assessing Officer has not excluded the deduction under section 80IA of the Act. Applying this, the additional turnover of the appellant from activity of job work in dyeing unit is computed as under:

$$\frac{\textbf{5.25 cr.} \times 10}{44.8} = \text{Rs. } \textbf{1.17 cr.} \text{ (approx.)}$$

*"**5.3.3** Rs.5.25 cr. is the turnover in the regular books, 44.8% is the percentage of power and fuel expenditure as percentage of this turnover and 10 percent is the additional turnover likely on the basis of power and fuel expense of 44.8 percent visa-vis the turnover in the regular books. Applying 8 percent rate as prescribed in section 44AD of the Act to compute the income on presumptive basis, further addition to income from job work would be Rs.9,36,000/-, This income is in addition to the income from job work activity disclosed by the appellant in the return of income. It is to be borne in consideration that major expenses such as power and fuel, salary, administrative exp. etc. have already been claimed in the regular books of accounts and therefore, major expense for this additional income would be constituted by chemicals and consumable stores. Hence, application of 8 percent rate for computation of additional income is reasonable. As the addition disputed in ground nos. 2 & 3 has been reduced from Rs.47,25,801/- to Rs.9,36,000/-, appellant gets part relief of the differential amount."*

Thus, Ld.CIT(A) made addition of Rs.9,36,000/- in addition to income shown by assessee. The Ld. CIT(A) computed 8% on additional turnover of Rs.1,17,00,000/-, which comes to Rs.9,36,000/-

11. Aggrieved by the order of NFAC/Ld.CIT(A), the assessee is in further appeal before us.

12. Ms. Chaitali Shah, Ld. Counsel for the assessee, argued that during assessment stage, assessee has submitted documents showing the summary of stock of colour & chemicals for FY 2012-13, vide paper book pages 77 to 83 of paper book and month-wise summary of quantitative details of production in quantity as well as page 84 of paper book. The assessee also submitted returned income along with computation of total income (pages 55 to 57 of paper book).

13. The Ld. Counsel for the assessee stated that books of account should not be rejected and the profit shown by the assessee should be accepted and for this, the assessee submitted a chart before the Bench, showing gross profit as well as net profit, which is reproduced below:

Mahavir Dyeing and Printing Mills Pvt. Ltd. – Dyeing business				
A./Y 2013-14 ITA No.850/SRT/2023				
For A.Y 2013-14			*For A.Y. 2012-13*	
Particulars	*Total*	*Dyeing business*	*Total*	*Dyeing business*
Turnover	*5,25,16,360*	*5,25,16,360*	*4,99,93,905*	*4,99,93,905*
Gross profit	*96,48,121*	*96,48,121*	*90,95,236*	*90,95,236*
Gross profit %	*18.37*	*18.37*	*18.19*	*18.19*
Net profit	*47,25,801*	*5,49,221*	*27,97,177*	*2,33,323*
Net profit %	*9.00*	*1.05*	*5.60*	*0.47*

14. The Ld. Counsel for the assessee further contended that Assessing Officer by doing the estimation enhanced the turnover to the tune of Rs.10,28,56,264/-, which is an imaginary figure and hence it should not be allowed. The Assessing Officer in arbitrary figure of Rs.10,28,56,264/- applied 8.99% net profit which is beyond the imagination and beyond the audited results of the assessee. Therefore, this is high pitch assessment and hence addition should be deleted. The Ld. Counsel also submitted that the assessee's books of account are audited and in the previous year, the Assessing Officer has accepted the books of account of assessee. The assessee's facts and circumstances have not changed and therefore

Assessing Officer should not have rejected the books of accounts and the criteria to reject the books of accounts, have not been followed by the Assessing Officer, as mentioned in Section 145(3) of the Act. This way, ld Counsel contended that addition sustained by ld CIT(A) may be deleted.

15. On the other hand, ld DR for the Revenue, relied on the findings of Assessing Officer and stated that assessee's books of accounts were irregular, defective and assessee has not submitted day-to-day quantity details of colour and chemicals. The Ld. Sr-DR also submitted that assessee's printing and dyeing are more or less similar in nature and therefore no any much difference arises on account of expenses. The Ld. Sr-DR also pointed out that certain turnover of the assessee is unaccounted turnover. Therefore, the Assessing Officer has rightly estimated the turnover which should be relied on by the Bench and addition made by the Assessing Office should be sustained.

16. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. We note that the assessee-cmpany had fully maintained its books of accounts along with day-to-day quantitative details in respect of job work carried out. The books of accounts were audited under the Companies Act as well as u/s 44AB of the Act. In the course of assessment proceedings, assessee submitted various details including sales register, purchase register, month-wise summary of quantitative details of production in quantity as well as value, stock details of colour and chemicals duly disclosed in tax audit report and date-wise production register showing dyed pieces, dyed meters, dyed amount, dried pieces, dried meters and dried amount separately and complete books of accounts before the Assessing Officer. It is to be noted that the auditors have not passed out any adverse remarks related to closing stock valuation of raw materials, colours and

chemicals etc., it is further submitted by ld Counsel that the Assessing Officer could not point out a single transaction of sale or purchases which was not accounted for or outside the books of accounts. Further, it is submitted that the assesse had started their business of dyeing with second hand machineries and the unit was almost two decades old unit and therefore, obviously, the machineries being used were almost obsolete. The assessee had submitted all the details related to power and fuel consumption and no defects have been pointed out by the Assessing Officer. It is to be noted that the consumption of power and fuel was high even in earlier year. Following is the chart showing consumption of power in earlier years.

F.Y	*Job work (Rs)*	*Total fuel expenses (Rs)*	*(%) of fuel against job work*
07-08		*1,57,13,815*	*45.79*
08-09	*3,71,61,034*	*1,81,24,481*	*48.77*
09-10	*4,17,01,703*	*1,97,16,786*	*47.28*
10-11	*4,71,54,949*	*2,00,02,008*	*42.41*
11-12	*4,99,93,905*	*2,14,84,312*	*42.97*
12-13	*5,25,16,360*	*2,35,66,432*	*44.87*

It is to be noted that in the immediately preceding year, the consumption ratio was 42.97% (i.e. 43%) which was accepted by the Department in scrutiny assessment for assessment year 2012-13 u/s 143(3) of the Act, vide order dated 23.03.2015.

17. In the assessment year under consideration, the gross profit margin was 18.37% against 18.19% in assessment year 2012-13. Similarly, the net profit margin in the year under consideration was 9% (combined of dyeing unit and power generation unit) as compared to 5.60% (combined of dyeing unit and power generation unit) in assessment year 2012-13. Accordingly, the overall margin of profit in the case of the assesse-company has increased substantially in the year under consideration as compared to the earlier year and the consumption of power and fuel has also remained consistent. In the course of assessment proceedings, Assessing Office

provided the comparative chart of consumption of fuel charges of nine companies based in Surat. The Assessing Office mentioned the names of nine other units in respect of which assessee only mentioned the amount of turnover and the total consumption of fuel charges. However, AO, never provided other details of nature of business and gross and net profit disclosed by the said units. Further the Assessing Officer has also not mentioned that how old the said units are and the kind of machineries they are using. However, as per the below chart, it can be observed that many of the units quoted by the Assessing Officer were dyeing and printing units both and therefore, the same were not comparable at all with the assessee-company.

Name of the company	*Nature of activity*
Dadu Processors Pvt.Ltd.	*Dyeing & Printing Mills*
Ashoka Dyeing & Printing Mills Pvt. Ltd.	*Dyeing & Printing Mills*
Jay Bharat Dyg. & Ptg. Mills Ltd.	*Printing Mills*
Aaishwarya Dyg. & Ptg., Mills Pvt.Ltd.	*Printing Mills*
Heritage Processors Pvt. Ltd.	*Dyeing & Printing Mills*
Glamour Dyg. & Ptg. Mills (Surat) Pvt. Ltd.	*Dyeing & Printing Mills*
Krishna Dyeing & Ptg. Pvt. Ltd.	*Dyeing & Printing Mills*
Khatushyam Dyeing & Ptg. Pvt. Ltd.	*Dyeing*
Begani Dyeing Mills Pvt. Ltd.	*Dyeing & Printing Mills*

18. Accordingly, the power cost of assessee-company cannot be compared with the companies using high tech machineries. Moreover, due to old aged machineries, the efficiency of these machineries had also gone down substantially in case of assessee-company. The old machineries were consuming more power and fuel as compared to the new automated units having power and fuel efficiency. Therefore, the power consumption of the assessee's unit of 44.9% was not at all comparable with other units. However, the Assessing Officer passed assessment order on 30.03.2016 rejecting the explanation of the assesse and invoked section 145(3) of the Act. Further, the Assessing Officer estimated the corresponding turnover of

Rs.10,28,56,264/- after taking the fuel cost of assessee @ 22.91% based on the average fuel cost of above mentioned units and proportionately worked out the net profit at Rs.92,95,749/- as against actual profit of Rs.47,25,801/- shown by the assessee. We note that the Assessing Officer ignored the fact that the assesse-company derives its business income from two activities *viz*., dyeing unit and power generation unit. The net profit shown by the assessee of Rs.47,25,801/- comprises net profit earned from the power generation unit of Rs.41,76,580/- and the net profit earned from dyeing unit of Rs.5,49,221/-. Therefore, the profit taken by the Assessing Officer @ 9% of projected turnover for making the addition is combined profit of dyeing unit and were generation unit. However, net profit of dyeing unit is 1.05% only. The comparative chart of gross profit and net profit of dyeing unit and power generation unit is submitted before the Bench, which is reproduced below:

	For A.Y. 2013-14			*For A.Y. 2012-13*		
Particulars	*Total*	*Dyeing business*	*Power generation unit*	*Total*	*Dyeing business*	*Power generation unit*
Turnover	*5,25,16,360*	*5,25,16,360*	*--*	*4,99,93,905*	*4,99,93,905*	*--*
Gross profit	*96,48,121*	*96,48,121*	*--*	*990,95,236*	*90,95,236*	*--*
Gross profit %	*18.37*	*18.37*	*--*	*18.19*	*18.19*	*--*
Other income	*73,48,576*	*--*	*73,48,576*	*65,37,857*	*--*	*65,37,857*
Net profit	*47,25,801 (Ref: pg. 40 of paper book index)*	*5,49,221*	*41,76,580 (Ref: note 17 of audit report, pg. 51 of paper book)*	*27,97,177 (Ref: pg. 40 of paper book index)*	*2,33,323*	*25,63,854 (Ref: Note 17 of audit report, Pg. 51 of paper book index)*
Net profit %	*9.00*	*1.05*	*7.95*	*5.60*	*0.47*	*5.13*

19. We note that ld CIT(A) while passing the appellate order partly confirmed the addition made by the Assessing Officer by pointing out that the deviation will not be in vicinity of 22.91% as alleged by Assessing Officer but in vicinity of around 10%. Accordingly, the Ld. CIT(A) recomputed the additional turnover of assessee-company at Rs.1.17crores and computed the income of the assessee on presumptive basis and partly

confirmed the addition made by the Assessing Officer at Rs.9,36,000/- (Rs.1.17 crores * 8%)after applying the profit rate @ 8% as per Section 44AD of the Act. But the deviation of 22.91% is not the deviation of turnover but the assumption of Assessing Officer that the expenses of power and fuel should be 22.91% of turnover on the basis of comparative cases quoted by Assessing Officer, which is wrong. We are of the view that based on these facts, the books of accounts of assessee should not be rejected and the turnover cannot be enhanced on illogical basis by ld CIT(A). Hence, we delete the addition sustained by ld CIT(A) at Rs.9,36,000/-.

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

Order is pronounced on 01/04/2023 in the open court.

Sd/-	**Sd/-**
(PAWAN SINGH)	**(Dr. A.L. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

सूरत /Surat

दिनांक/ Date: 01/04/2024

Dkp Outsourcing Sr.P.S

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

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat