

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER**

ITA No. 4871/Mum/2017

(A.Y. 2012-13)

Kaizen Engineering Pvt. Ltd. 67, Shanta Prasad, Hindu Colony, Lane 01, Dadar, Mumbai-400 014	Vs.	The Dy. Commissioner of Income Tax- 6(3)(2), having office at Room No. 522, 5 th Floor, Aayakar Bhavan, M.K. Marg, Mumbai-400 020
Appellant	..	Respondent
PAN No. AADCK1418N		

Assessee by : Neha Paranjape, AR

Revenue by : N Hemalatha, DR

Date of hearing: 15-02-2018 **Date of pronouncement :** 23-02-2018

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-12, Mumbai, [in short CIT(A)] in appeal No. CIT(A)-12/DCIT-6(3)(2)/281/14-15 dated 20-04-2017. The Assessment was framed by the Dy. Commissioner of Income Tax, ward 6(3)(2), Mumbai (in short DCIT) for the assessment year 2012-13 vide order dated 23-02-2015 under section 143(3) of the Income Tax Act, 1961(hereinafter 'the Act').

2. The two inter-connected issues raised by assessee in this appeal is against the order of CIT(A) confirming the action of the AO in rejection of books of accounts under section 145(3) of the Act and thereby



estimating the profit at the rate of 39%. For this assessee has raised the following two grounds: -

“Rejection of Books of Account under section 145L3) is unjustified

i) The Ld. Commissioner of Income Tax (Appeals) – 12, Mumbai [hereinafter referred to as the “Ld. CIT(A)”] erred in confirming the action of the Ld. A.O. in rejecting books of accounts under section 145(3) of the Act without pointing out any discrepancies in the same. Thus, rejection of books of accounts under section 145(3) is unjustified and the same may be deleted.

ii) The Ld. CIT (A) failed to appreciate that non maintenance of stock register is not a valid ground for rejection of books results. Thus, the rejection of books of accounts under section 145(3) is unjustified.

Addition by estimating of Gross - Profit is unjustified - Rs.36,66,975/-

i. The Id. CIT(A) erred in confirming the addition of Rs.36,66,975/- by estimating gross profit at the rate of 39% (i.e. 27.49% + 11.5 1%) as against 27.49% declared by the Appellant without appreciating that the gross profit declared by the Appellant is comparable with the earlier years. Thus, the addition of Rs.36,66,975/- by estimating gross profit is unjustified and the same may be deleted.



2. *The Ld. CIT(A) failed to appreciate that the Ld. A.O. has not found any defect in the books of accounts of the Appellant. Thus, addition of Rs.36,66,975/- on account of estimation of gross profit is unjustified and the same may be deleted.”*

3. Briefly stated facts are that the assessee is a IT Software Company which is engaged integrated transport Management system which covers several areas namely Smart card based automatic ticketing/ fair collection system, point of sales Terminals, GPS based bus tacking system and control room consisting system of settlement server, MIS reporting for their BRTS corridor to be set up in Ahmedabad. The assessee obtained contract of Ahmedabad Municipal Corporation (AMC) floated a tender for their 100 per cent owned subsidiary Ahmedabad Janmarg Ltd. (AJL). The AO noticed from the Gross Profit ratio and NP ratio of the past three years and simply rejecting the books of accounts under section 145(3) of the Act only on the basis that the assessee did not furnish any stock register for verification and there is fall in Gross Profit (in short GP). Accordingly, he applied GP ratio of 39% which is average of two previous years. Aggrieved, assessee preferred the appeal before CIT(A) who also confirmed the action of the AO by observing as under : -

“8. It is seen that the AO has not erred in making this addition. However, the AO had not considered the fact that the GP ratio for entire year as per the return filed by the appellant is 27.49%, while the GP ratio during the period of operations i.e. April 2011 to August 2011 is 28.78%. Ignoring this, the A.O. has made an addition of entire 39% instead of differential GP - 11.51% (39%-27.49%). This has effectively shown the GP of 66.49% (27.49% as per



P & L account +39% addition made by the A.O). In terms of the amount, it has resulted into GP of Rs. 215.34 lac (GP of Rs. 90.94 lac as per the working enclosed +124.41 lac i.e. addition made by the A.O). Thus, I am of the view that even though addition is upheld, it should be restricted to differential GP of 11.51% i.e. Rs. 36,66,975 (11.51% of Rs. 3,18,59,034/- and not entire 39%). Hence, A.O. is directed to restrict the additions on account of GP to Rs. 36,66,973/-. The balance amount is deleted.”

Aggrieved, now assessee is in appeal before Tribunal.

4. I have heard the rival contentions and gone through the facts and circumstances of the case. I find from the facts of the case that the AO during the course of assessment proceeding asked the assessee to furnish the details of G.P. and N.P ratios for the past three years which is as follows: -

Particulars	F.Y.2011-12	2010-11	2009-10
Gross Profit	Rs.9,094	Rs.69,011	Rs.78,528
Gross Profit Ratio	27.49%	40.54%	36.89%
Net Profit(Loss)	(Rs.7,107)	(Rs.1,15,891)	Rs.3,230
Net Profit Ratio	NIL	NIL	1.52%

I find that the AO noted that the assessee belongs to I.T. Industry and there is no scope of downfall in such a growing Industry made addition of Rs.1,24,40,510/- @39% of Gross Profit by taking average of previous two years and CIT(A) simply confirmed the addition. I have gone through the facts and noted that the assessee company discontinued its operations after five months. During these five months the operating cost which was 59.46% of the total sales in last year increased to 72.51% and as a result, the assessee company started making losses. The AO by merely relying on the assumption that stock register is not maintained rejected the



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books of accounts and proceeded to make addition of Rs.1,24,40,510/-. I am of the view that stock register can't be considered as an indicative of whether proper books of accounts are maintained or not, and for this assessee placed reliance on the Judgment of Hon'ble Delhi High Court in the case of Pandit Brothers vs. CIT [1954] (26 ITR 159) (Del), in which it was held that there must be material before the ITO to lead him to the conclusion that the method employed is defective or that the case requires reconsideration and a new computation must be made. The mere fact that the profits are low is not material upon which finding under section 13 (Corresponding to section 145 of the Indian Income-tax Act, 1961) can be based, because the assessee may be incompetent or his method of business may be uneconomic. Also merely because there is no stock register the account books cannot be said to be false. Even otherwise in the present case before me, the Revenue could not point out any defect in the books of accounts except that assessee has not produced the stock register. Respectfully, following the Hon'ble Delhi High Court in the case of Pandit Brothers (supra), I allow the issue of rejection of books of accounts in favour of assessee for the reason that there is no mistake or no defects in the books of accounts. Accordingly, this issue of the assessee's appeal is allowed. Once the issue of rejection of books is allowed in favour of assessee, the estimation of profit rate will not survive. The appeal of the assessee is allowed.

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

Order pronounced in the open court on 23-02-2018

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated:23-02-2018
Sudip Sarkar /Sr.PS



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Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI