

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 5766/MUM/2024  
Assessment Year: 2012-13**

M/s Jasmine Computech Pvt. Ltd.,  
SH-1, Building 2A Wing, Pooja Nagar,  
Cross Cabin Road, Bhayandar East,  
Thane, Mira Road S.O., Chimane,  
Thane-401107.

**PAN NO. AACCCJ 3211 F**  
**Appellant**

DCIT Circle 4(3)(1),  
Mumbai-401107.

**Vs.**

**Respondent**

**ITA No. 5917/MUM/2024  
Assessment Year: 2012-13**

DCIT  
649, Aayakar Bhavan M.K.  
Road,  
Mumbai-400020.

**Appellant**

**Vs.**

M/s Jasmine Computech Pvt. Ltd.,  
A 13 4<sup>th</sup> floor, Silver Oak, Bhatt Lane  
Poisar Borivali West,  
Mumbai-400092.

**PAN NO. AACCCJ 3211 F**  
**Respondent**

Assessee by : Mr. Satyaprakash Singh  
Revenue by : Mr. Manish Sareen, CIT-DR

Date of Hearing : 12/02/2025  
Date of pronouncement : 14/02/2025



## **ORDER**

### **PER OM PRAKASH KANT, AM**

These cross appeals by the assessee and the Revenue are directed against order dated 18.09.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2012-13.

2. The grounds raised by the assessee are reproduced as under:

*1. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A)/ National Faceless AppealRs. 2, Centre has erred in estimating the profit at Rs 8,21,88,893/- by treating the same as 3% of total turnover (out of which the tax has already been offered on profit of Rs. 4,32,488/- in the Income Tax Return and the disputed profit is of Rs. 8,17,56,405/-) The appellant prays that the said disallowance may please be deleted.*

*2. On the facts and in the circumstances of the case and in law, the Hon' ble CIT(A)/ National Faceless Appeal Centre has erred in upholding the decision of the Ld.AO in disallowing on account of depreciation claim U/s 32 of the Act Rs.63,07,446/-. The appellant prays that the said disallowance may please be deleted*

*3. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) / National Faceless Appeal Centre has erred in upholding the decision of the Ld.AO in disallowing Rs. 7,14,90,183 / - on account of unexplained Credit U/s 68 of the Act. The appellant prays that the said disallowance may please be deleted*

*4. On the facts and circumstances of the case and law the Nil Hon'ble CIT(A)/ National Faceless Appeal Centre has erred in upholding the decision of the Ld.AO in initiating penalty proceedings u/s 271(1) (c) of the Income Tax Act, 1961.*



2.1 The grounds raised by the Revenue are reproduced as under:

*1. Whether on the facts and circumstances of the case, Ld. CIT(A) was justified in restricting the estimation of profit at 3% of turnover as against the 5% even though the assessee was not able to prove the purchase made during the year under consideration.*

*2. Whether on the facts and circumstances of the case, Ld. CIT(A) was justified in restricting the estimation of profit at 3% of turnover as against the 5% even though the business of the assessee is asset light and high margin business.*

3. Briefly stated, facts of the case are that during the year under consideration, the assessee company was engaged in the business of trading of computer software. The assessee filed return of income declaring total loss of Rs.44,87,566/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. In the course of assessment proceedings, the Assessing Officer made inquiries from the purchase parties recorded in books of account of assessee , but in view of adverse observation, he rejected the book profit of the assessee invoking section 145(3) of the Act and estimated the gross profit at 5% of the total turnover of Rs.273,96,29,755/-, which was worked out to Rs.13,69,81,487/- and after subtracting the gross profit at Rs.4,32,488/- shown by the assessee, addition of Rs.13,65,48,999/- was made. Further, the Assessing Officer disallowed depreciation on the fixed asset i.e. computer and software amounting to Rs.63,07,446/- in absence of the verification of the fixed assets by field inspector . The Assessing Officer further



made addition of Rs.7,14,90,183/- on account of unexplained credit appearing in bank statement/books of account, invoking section 68 of the Act. In this manner, the Assessing Officer assessed the total income of the assessee at Rs.20,98,59,060/- in order passed u/s 143(3) on 27.03.2015. On further appeal, the Ld. CIT(A) reduced the gross profit rate from 5% to 3% but sustained the other two additions on account of disallowance of depreciation and unexplained credit in *toto*. Aggrieved, both the assessee and the Revenue are in appeal, raising the respective grounds as reproduced above.

4. The ground No. 1 of the appeal of the assessee and the ground Nos. 1 and 2 of the appeal of the Revenue are interconnected, therefore, all these grounds are taken up together for adjudication.

4.1 Brief facts qua the issue in dispute are that the Assessing Officer observed sales turnover of Rs.273.96 crores but noticed gross profit of Rs.4,32,488/- only, which resulted in gross profit rate of 0.016%. Therefore, the Assessing Officer carried out inquiries in respect of purchases and sales parties. A list of the purchase and sale parties has been reproduced by the Assessing Officer on page 2 of the assessment order. The Assessing Officer issued notices u/s 133(6) of the Act for verification of the purchase/sales carried out by the assessee. The Assessing Officer noticed that three purchase parties and three sales parties were located on the same address i.e. 801, Balarama, Bandra Kurla



Complex, Bandra East, Mumbai. The Assessing Officer further noticed that notices issued u/s 133(6) of the Act had been returned in case of few parties and the few parties did not comply to the notices issued. Thereafter, the Assessing Officer issued summon u/s 131 of the Act to the Director of the assessee company and requested to produce books of accounts along with sales and purchase vouchers, details of assets fixed etc. but despite various opportunities books of accounts were not produced before the Assessing Officer. The Assessing Officer thereafter further asked the authorized representative of the assessee to explain whether the software was licensed or pirated or stand alone or online software. He also enquired whether who provided 'after sale' services to customers and who provided guarantee/warranty to the customers but in view of non-compliance on the part of the assessee and non-production of the books of accounts, the Assessing Officer rejected the book results of the assessee and invoking section 143(3) of the Act, estimated the profit at the rate of 5% of the total turnover, which was computed at Rs.13,69,81,487/-. On further appeal, the assessee filed certain additional evidences under Rule 46A of the Income-tax Rules, 1962 including the assessment order for subsequent assessment years and reply of the notices issued u/s 133(6) in the subsequent assessment year 2013-14. The Ld. CIT(A) called for the remand report from the Assessing Officer and after taking into consideration rejoinder of the assessee, he reduced the estimation of gross profit rate to 3% as against 5% estimated by the



Assessing Officer. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“I have perused facts of the case, assessment order of the AO, submission of the appellant, the remand report of the AO, cross reply of the appellant on the remand report and the documents available on record.*

*On perusal of the record, it is seen that the addition made is in respect of estimated profit of Rs. 13,65,48,999/- as business income. On perusal of the submissions and the documents filed during appellate proceedings, it is observed that the appellant is engaged in business of trading in software, information technology & IT enabled services. During the year under consideration the assessee has done mainly software trading. The contention of appellant is that profit margin is very low in the business of trading. The appellant has not been able to explain as to why the books of account were not produced before the AO, for verification. The AO, has in the assessment order given a categorical observation that on one specific address ie. 801 Balaram Bandra, kurla complex Bandra east, Mumbai is common for the four parties out of total 5 parties to whom sale is made and three parties to from whom purchase is made also happen to be same parties, having the same address. As regards the submission of the appellant viz-a-viz the notices u/s 133(6) having been served during the assessment proceedings in A.Y 2013-14, it is observed that each A. Y is independent A. Y and service of the notices in subsequent year does not change and effect the conclusion drawn in the A. Y under consideration. From the above, it is clear that the appellant did not produce the books of account, the purchases and sales remained unverified and also the peculiar circumstance of the case that the appellant is stated to be doing the business from a small residential flat, which is occupied by the family as well and that there can not be any place left to accommodate computers worth more than Rs 40 lakh and any employees in that place. However the AO's order is silent on the basis of estimating the profit. I am of the view that the estimation of profit at 3% would be reasonable in view of the facts and circumstance of the case. Accordingly the AO is directed to estimate the profits at 3% and reduce the addition, accordingly. Thus the ground of appeal is partly allowed.”*

4.2 We have carefully considered the rival submissions advanced by the parties and have meticulously examined the material placed



on record. The assessee contends that the trading of software has been carried out consistently, and in subsequent years, the Assessing Officer had issued notices under Section 133(6) of the Act, which were duly served upon and complied with by the relevant parties. It is further submitted that, in view of the consistency in business operations, the gross profit rate applied by the Assessing Officer in the assessment year 2013-14 ought to be applied to the year under consideration as well. On the contrary, the learned Departmental Representative (DR) has argued that neither the purchase transactions nor the sales transactions of the assessee have been verified. It has been contended that the assessee is engaged in accommodation entries with the intent to evade tax, and therefore, the entire purchase amount should be disallowed. Upon careful consideration, we find that the Assessing Officer has not disallowed the entire purchases but has instead rejected the books of accounts and estimated the gross profit from the trading activity. Furthermore, the assessee has not contested the invocation of Section 145(3) of the Act but has only challenged the gross profit rate of 3% as sustained by the Learned Commissioner of Income Tax (Appeals) [CIT(A)], while the Revenue is aggrieved by the reduction of the gross profit rate from 5% to 3%. It is our considered view that the estimation of the gross profit rate must be based on sound reasoning and comparable cases within the same or similar business. The authorities below have arrived at their respective estimations without citing any comparable instances to



justify their determination of the gross profit rate. In the absence of such a basis, it is imperative that the matter be remanded to the Assessing Officer for the limited purpose of reassessing the gross profit rate. The Assessing Officer shall take into consideration comparable cases of entities engaged in software trading during the relevant assessment year. Additionally, if deemed necessary, the Assessing Officer may also examine the gross profit rates declared by the assessee in preceding and succeeding assessment years to ensure a just and equitable determination. Accordingly, the matter stands remitted to the file of the Assessing Officer for reconsideration in the light of the observations made hereinabove. Accordingly, the ground No. 1 of the appeal of the assessee and ground Nos. 1 and 2 of the appeal of the Revenue are allowed for statistical purposes.

5. In ground No. 2 of the appeal of the assessee disallowance on account of depreciation of Rs.63,07,446/- has been challenged. Upon due consideration of the material on record, it is observed that the Learned Assessing Officer has noted that during verification conducted by the Inspector of the Department, the fixed assets of the assessee could not be duly verified. Furthermore, the Assessing Officer has expressed skepticism regarding the feasibility of the assessee's business operations being conducted from his residential premises under normal circumstances. Before us, learned counsel for the assessee has submitted that the assessee is



willing to furnish all relevant documentary evidence in support of the existence of fixed assets, including bills, vouchers, installation reports, and records of electricity consumption. In light of this submission, it has been prayed that the matter be remanded to the file of the Assessing Officer for fresh verification. Having regard to the facts and circumstances of the case, and in the interest of justice, we deem it appropriate to remit the matter to the Assessing Officer for reconsideration. The Assessing Officer shall conduct a fresh adjudication after affording the assessee an opportunity to produce documentary evidence substantiating the existence and installation of the fixed assets in question. The Assessing Officer shall verify such evidence in accordance with law and pass an order afresh on merits. The ground No. 2 of the appeal of the assessee is accordingly allowed for statistical purpose.

6. In ground No. 3, the assessee has challenged addition of Rs.7,14,90,183/- on account of unexplained credit. Upon a careful examination of the material on record, it is observed that the Learned Assessing Officer has taken note of the assessee's trade payables amounting to ₹78,72,61,334/- and trade receivables amounting to ₹73,74,24,069/-. The Assessing Officer, after verification, determined the maximum outstanding balance as on 14.11.2011 at ₹7,14,90,183/-, which was considered as the peak balance of the account and the fund requirement for running the business. Consequently, the Assessing Officer treated the peak



balance outstanding in the bank account at ₹7,40,97,183/- as the assessee's fund requirement and further classified the same as unexplained cash credit under the relevant provisions of the Act. The Learned CIT(A) also upheld this finding. Before us, the learned counsel for the assessee has submitted that the assessee is willing to furnish all necessary documentary evidence to justify the peak credit balance. Accordingly, it has been prayed that an opportunity be granted for such verification. Considering the facts and circumstances of the case, and in the interest of justice, we deem it appropriate to remit this issue to the file of the Assessing Officer for fresh adjudication. The Assessing Officer shall reconsider the matter after affording the assessee an opportunity to submit relevant documentary evidence in support of its claim. The Assessing Officer shall verify such evidence in accordance with law and render a fresh decision on the merits of the case. The ground No. 3 of the appeal of the assessee is also allowed for statistical purposes.

6. In the result, both the appeals of the assessee and the Revenue are allowed for statistical purposes.

**Order pronounced in the open Court on 14/02/2025.**

**Sd/-  
(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;



Dated: 14/02/2025  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**