

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri George George K, JM & Shri Manjunatha G, AM

ITA No.471/Coch/2016 : Asst.Year 2011-2012

M/s.Three Star Granites Private Limited P.O.Thayoor, Pazhavor Erumapetty, Thrissur - 680 584 PAN : AAAC9044Q.	Vs.	The Asst.Commissioner of Income-tax, Circle 1(1) Trichur.
(Appellant)		(Respondent)

Appellant by : Sri. Sivaramakrishnan, CA

Respondent by : Sri. A.Dhanaraj, Sr.DR

Date of Hearing : 21.12.2017	Date of Pronouncement : 21.12.2017
-------------------------------------	---

ORDER

Per Manjunatha G, AM

This appeal filed by the assessee is directed against the order of the Commissioner of Income-tax (Appeal), Thrissur, dated 11th June, 2016 and it pertains to assessment year 2011-2012.

2. The assessee has raised the following grounds of appeal:-

"The only issue is the estimation of gross profit at a higher percentage than the gross profit recorded in the accounts.

The appellant is a Private Limited Company engaged in the business of mechanized crushing of granite metals.

During the financial year ended 31.03.2011, the total turnover was Rs.4,50,10,282/- and gross profit Rs.1,25,29,960/- which works out to 27.64%.

The assessing authority while completing the assessment U/s 143(3) for the assessment year 2011-2012 estimated the gross profit @36% which was the gross profit found at the time of survey conducted on 19.01.2013. This resulted in an addition of Rs.37,87,939/-.

Aggrieved by the addition the assessee preferred appeal and the first appellate authority reduced the addition by 50% and the addition on gross profit is restricted to 50% of the addition amounting to Rs. 18,93,970/-.

The appellant is aggrieved by this addition and hence this appeal.

The assessing officer was not justified in estimating the G.P. without any substantial and material evidence. The appellant is a Private Limited Company engaged in the business of mechanized crushing of granite metals. The appellant is assessed to Income Tax for the past many years and for the assessment year 2011-12 the appellant have returned a total income of Rs.23,03,080/-

The accounts were subject to scrutiny under 143(3) and in the process of assessment the Assessing Authority have adopted Gross Profit of 36% instead of 27.64% disclosed by the assessee in the books.

There is no other addition except the estimation of Gross Profit at 36%. At the time of assessment though the assessee had explained the reasons for variation in gross profit the Assessing Authority proceeded to fix the gross profit at 36% being the gross profit offered for the survey year.

The Gross Profit is a relative term which varies for various reasons some of which are controllable from the assessee's side but most of which are beyond the

control of the assessee. In a business of this nature there are so many factors influencing gross profit. Some times the machine breaks down frequently which add to cost. Similarly the metals crushed have to be reprocessed to remove mud and other impurity which some times is more which affect the direct expenditure. The increase in transportation cost, diesel price and the difficulty in raising selling price due to industrial average also affects the gross profit.

The sale price cannot be altered frequently whereas crushing cost such as labour, electricity etc. varies considerably. Because of these reasons there will be change in Gross Profit which cannot be stagnant. In the previous year the gross profit was only 22% whereas in the year of assessment the gross profit is 27.64%. Due to internal control and cost reduction measures the gross profit for the assessment year 2012-13 was raised to 36% which shows that the management is very keen in reducing wasteful expenses and optimizing profit. Ours is a medium type industry and in order to attract business we use to give discount to customers which also affect our profit.

But on no account profit can be estimated estimating gross profit as there is no other suppression detected and difference found".

Also, the assessing authority have estimated the Gross Profit @ 36% for the reason that value of closing stock cannot be taken as NIL as quantitative production records is not maintained. Metal crusher units are not structured or standardized production process units. The demand for metal products depends upon the market conditions and construction industry.

The demand is very volatile. Normally the demand during rainy season is very low but during summer seasons the situation is better. During the last quarter of the year ie. January to March the sales will be very high and there will be no stock. This is the reason that no stock is shown as on 31.03.2011. There is no opening stock also which neutralize ; the

profit element. When there is no other material evidence, the Assessing Authority was not justified in estimating the G.P. Even in survey no material defect was found nor any suppression detected.

The sales, and cost of production worked out at the time of inspection and the G.P. found was offered. Gross profit, as stated in our submission varies from year to year and even from product to product and season to season. The survey was held in 19.01.2013 ie. A.Y.2013-14. In between the assessment year 2011-12 and 2013-14 lot of changes have taken place in our production process such as installing new machines with more capacity and better speed, change of spaces of old machines giving low production and so on. The appellant have reduced the cost and achieved higher percentage of profit on subsequent years because of the cost control measures adopted in various stages.

The fact being so, the estimation of higher GP taking the rate formed at a later year without any concrete evidence or material is quite unwarranted and being objected to law may be deleted.

On these and such other grounds that may be put forth at the time of hearing it is prayed to accept the appeal."

3. The brief facts of the case are that the assessee-company is engaged in the business of mechanized crushing of granite metal, filed its return of income for the assessment year 2011-2012 on 30.09.2011 declaring total income at Rs.23,03,080. The case was selected for scrutiny and notices u/s 143(3) and 143(1) were issued. In response to notices, the authorized representative of the assessee appeared and filed the details as called for. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has shown gross profit of 27.64% on total sales turnover of

Rs.4,53,10,282. The A.O. further noted that survey was conducted on 19.01.2013 at the business premises of the assessee. For the survey year, the assessee has offered gross profit of 36% on sales. Thus, the GP shown by the assessee for the year under consideration is apparently on lower side when compared to GP declared by the assessee for the survey year. Therefore, the A.O. asked the assessee to justify the decline in GP when compared to GP declared for the survey year with necessary evidences. In response to notice, the assessee submitted that the GP cannot be at a uniform level for all the assessment years. Gross profit depends on various factors including raw material used for production of finished goods as well as expenditure incurred which depends upon factual matters. Therefore, no addition can be made towards difference in GP by comparing earlier year or subsequent year gross profit percentage. The assessee further submitted that its GP for the assessment year 2010-2011 was at 22% and the same has been increased to 27.64% for the assessment year 2011-2012 and also 36% for the assessment year 2012-2013. There is consistent increase in GP due to factors put forth by the management in reducing the wasteful expenses and optimizing profit. The assessee further submitted that without any observation with regard to incorrectness in books of account or sales, the GP cannot be estimated based on earlier year or subsequent year GP. The A.O. after considering the relevant submission of the assessee observed that the assessee has not maintained quantitative production details and also not considered closing stock for the year under

consideration. Therefore, the assessee's book results cannot be accepted as genuine and hence rejected the gross profit declared by the assessee and estimated the gross profit at 36% on total sales turnover and made addition of Rs.37,87,939.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee reiterated its submissions made before the A.O. to contest additions made by the A.O. towards estimation of GP. The CIT(A) after considering the relevant submissions of the assessee, scaled out the additions made by the A.O. towards estimation of GP at 50% of actual additions made by the A.O. Aggrieved by the CIT(A)'s order, the assessee is in appeal before the Tribunal.

5. We have heard both parties and considered the material on record. The A.O. has estimated GP on the basis of GP declared by the assessee for the assessment year 2013-2014 on the basis of survey conducted in the business premises on 19.01.2013. The A.O. further observed that the assessee's book results cannot be considered as genuine because the assessee could not produce quantitative production details and also not taken into account closing stock to determine the net profit for the relevant financial year. It is the contention of the assessee that the gross profit depends upon various factors including the raw material used for production of finished goods and various expenditures, which cannot be uniform for all the years. The assessee further contended that

its gross profit increased consistently from assessment year 2010-2011 onwards, which is evident from the fact that it has declared gross profit at 22%, 27.64% and 36% respectively for the assessment year 2010-2011 to assessment year 2012-2013. It is not the case of the Assessing Officer that there is decline in the GP declared by the assessee for the year under consideration when compared to earlier year GP. The A.O. has considered subsequent years gross profit to estimate the gross profit for the current year, which is incorrect.

6. Having heard both the sides, we find merit in the argument of the assessee for the reason that the GP cannot be uniform for all the years. The GP depends upon various factors including raw material used for the production of finished goods and the expenses, which vary from year to year. Unless there is a finding about the incorrectness of books of account maintained by the assessee or sales made outside the books of account, the GP declared by the assessee cannot be doubted. In this case, the A.O. has taken subsequent years GP as a base year for estimating the GP for the current period. Normally when there is a decline in GP when compared to earlier period, there is a possibility of enhancing the GP if the books of account maintained by the assessee are found with inconsistency or irregularity. In this case the A.O. has not pointed out any irregularities in the books of account except stating that the assessee has not taken closing stock for the purpose of determination of net profit. The assessee has explained the reasons for not

considering the net profit. Therefore, we are of the view that there is no reason for the A.O. to estimate GP based on subsequent years GP without there being any observations with regard to incorrectness in books of account. Hence, we direct the A.O. to delete the additions made towards estimation of GP.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 21st day of December, 2017.

Sd/-
(George George K.)
JUDICIAL MEMBER

Sd/-
(Manjunatha G.)
ACCOUNTANT MEMBER

Cochin ; Dated : 21st December, 2017.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT, Thrissur
4. CIT(A)-I, Thrissur.
5. DR, ITAT, Cochin
6. Guard file.

By order
(Asstt. Registrar)
ITAT, Cochin