

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.85/Del./2017
(ASSESSMENT YEAR : 2012-13)**

M/s. Creative Infrapower Pvt. Ltd., vs. ITO, Ward 6 (4),
G – 45, 3rd Floor, Lajpat Nagar – 1, New Delhi.
New Delhi – 110 024.

(PAN : AADCC1772B)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri T.R. Talwar, Advocate
REVENUE BY : Ms. Ashima Neb, Senior DR

Date of Hearing : 08.07.2019

Date of Order : 11.07.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. Creative Infrapower Pvt. Ltd. (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 23.06.2016 passed by the Commissioner of Income-tax (Appeals)-2, New Delhi qua the assessment year 2012-13 on the grounds inter alia that :-

“1. That the action on the part of CIT (A)-2 to confirm ex-parte order passed u/s 144 of I.T. Act by AO is quite illegal, arbitrary and unjust in view of the facts and circumstances of the case.

2. *That in the absence of non service of any notice, the appellant could not comply because of location of the company located at No. G-45, III Floor, Lajpat Nagar where no postman or service personnel like to reach due to non availability of lift, in addition to Managing Director was engaged in the business of civil construction /work done in Lucknow for a long period of more than two years.*

"The Ld. AO has also not given any comment whether or not service of notices have been done or not. Therefore, ex-parte assessment is quite illegal, unjustified and arbitrary. "

3. *That the finding of the Ld. CIT(A)-2 that the genuineness of the transactions in respect of share application of Rs. 5,15,000/- could have been established only if the appellant had provided copy of banks statements of two share applicants showing sufficient balances and withdrawal by cheque are contrary to the admission in the Remand Report that details in respect of share application money with documentary proof inspite of the fact that confirmation, Banks statements and ITR's have been duly submitted. The transactions of share application money were held through Bank channel. Both the Share Holders are duly assessed to Income Tax at their respective PAN.*

4. *That the Ld. AO in his Remand Report dated 15.10.2015 has not even a single word commented in respect of evidences filed before him in respect of copies of bills for expenditure debited to P & L A/c, Balance Sheet and Audit Report over adhoc addition of Rs.1.00 crore, alleging un-explained and unverified expenses to cover up the possible leakage of revenue except necessary evidence to substantiate its claim. The AO has failed to comment of the details of all such expenditure and duly audited balance sheet filed before him.*

5. *That Ld. CIT(A) has further failed to Honour the judgments by Hon'ble Supreme Court of India in the cases of CIT vs. Kanpur Coal Syndicate 53 ITR 225 and Jute Corporation of India Vs. CIT ITR 688 to use power as held good in the case of necessary evidence not produced before AO, however, all such evidences / details filed by way of copy of ledger account of gross receipts job work, labour charges sundry creditors, current liabilities, short term provision, diesel & lubricants, opening & closing stock , short term advance and consumable goods duly audited, before CIT(A) as well as AO who did not admit."*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessing Officer noticed from the

balance sheet that the assessee company has received share application money to the tune of Rs.5,15,000/-. AO also noticed from the profit & loss account that the assessee has claimed expenses of Rs.11,99,71,014/- against the total sales of Rs.12,40,05,972/-. On failure of the assessee to furnish the requisite detail by putting in appearance despite several opportunities, AO proceeded to make addition of Rs.5,15,000/- to the income of the assessee under section 68 of the Income-tax Act, 1961 (for short 'the Act') on account of unexplained cash credit. AO also made addition of Rs.1,00,00,000/- on failure of the assessee to furnish details of expenditure claimed, bills & vouchers and evidence of TDS deducted, if any, and thereby assessed the total income of the assessee at Rs.1,42,20,680/-.

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has confirmed the addition by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. At the very outset, it is brought to our notice by the ld. AR for the assessee that during appellate proceedings before the ld. CIT (A), assessee had moved application under Rule 46A of the Income-tax Rules, 1962 (for short 'the Rules') for bringing on record additional evidence, which was dismissed by the ld. CIT (A) on the sole ground that ample opportunities have been given to the assessee to bring on record the relevant evidence.

6. However, ld. DR for the Revenue has vehemently opposed the argument addressed by the ld. AR for the assessee that he was not given adequate opportunity of being heard on the ground that numerous opportunities have already been given to the assessee but he has intentionally not preferred to bring on record the relevant evidence, if any, and prayed for dismissal of the appeal.

7. No doubt in para 3.4.1 of the impugned order, ld. CIT (A) has recorded the chronology of assessment proceedings which took place before the AO granting numerous opportunities to the assessee to put-forth his defence but the assessee has not preferred to put an appearance and consequently, he was proceeded ex-parte. However, we are of the considered view that when the assessee has come up with detailed application under Rule 46A of the Rules to bring on record the relevant evidence, the same cannot be rejected

by the Id. CIT (A) merely by relying upon the facts put forth by the AO that the assessee has intentionally not put an appearance rather Id. CIT (A) being a quasi-judicial authority was required to take a holistic view by providing opportunity of being heard to the assessee. Even otherwise, to decide the controversy once for all and also to stop the multiplicity of the litigation, the evidence sought to be led by the assessee during appellate proceedings is required to be entertained. So, we accept the additional evidence sought to be brought on record by the assessee by way of application under Rule 46A of the Rules and remand the case back to the AO to be decided afresh after providing adequate opportunity of being heard to the assessee. Consequently, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in open court on this 11th day of July, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 11th day of July, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-2, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**