

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,  
NEW DELHI

BEFORE MS. SUSHMA CHOWLA, JUDICIAL MEMBER, AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 3712/DEL/2015 [A.Y 2010-11]

M/s Creative Infrapower P Ltd                      Vs.                      The Income tax Officer  
[Earlier known as Creative Earthmovers                      Ward 6(1)  
And Construction Pvt Ltd    New Delhi  
G- 45, 3<sup>rd</sup> Floor, Lajpat Nagar - 1  
New Delhi

PAN: AADCC 1772 B

(Applicant)

(Respondent)

Assessee By                      :     Shri T.R. Talwar, Adv

Department By                :     Shri S.N. Meena, Sr. DR

Date of Hearing                      :     11.12.2019

Date of Pronouncement        :     11.12.2019

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

With this appeal, the assessee has challenged the correctness of the order of the Commissioner of Income Tax [Appeals] - 2, New Delhi dated 09.03.2015 pertaining to assessment year 2010-11.

2. The grievances of the assessee read as under:

1. That the action on the part of CIT(A) to pass ex-parte order is unjustified and improper, in view of facts and circumstances of the case.

2. That CIT(A) has erred in making addition of Rs. 1,68,62,523/- alleging low profit operated as compared to last year ignoring the facts and circumstances of the case in the light of duly audited books and expenses fully vouched.

3. That the Learned CIT(A) has confirmed the addition of Rs. 95,00,000/- on account of unexplained "Share Application Money" is contrary to the facts and circumstances on record.

4. That CIT(A) has further erred in confirming the disallowances of depreciation to the extent of Rs. 15,80,250/-.

T5. hat the Ld. CIT(A) has also erred in disallowing and adding back the claim of interest of Rs. 13,41,386/-."

3. Briefly stated, the facts of the case are that the appellant company is engaged in the business of construction and earthmover work. Return of income was filed on 17.10.2010 electronically declaring income of Rs.

34.76 lakhs. The return was selected for scrutiny assessment and accordingly, statutory notices were issued and served upon the assessee. A comprehensive show cause notice was issued to the assessee on 11.03.2013 requiring the assessee to furnish information/documents.

4. On receiving no plausible reply, the Assessing Officer again issued a notice informing the assessee that it is a final opportunity and required the assessee to furnish details alongwith books of account on 18.03.2013.

5. Part details were filed and thereafter, assessment proceedings remained unattended. The Assessing Officer completed the assessment on the basis of part details available on record and assessed the returned income at Rs. 3,27,59,519/-.

6. The assessee carried the matter before the Id. CIT(A) but because of the non-appearance, the Id. CIT(A) dismissed the appeal ex parte.

7. Before us, the ld. counsel for the assessee stated that due to non attendance of the proceedings by the erstwhile counsel, the assessee could not defend its case properly and therefore, pleaded for one more opportunity to furnish necessary documents.

8. Per contra, the ld. DR strongly objected to the submissions of the ld. counsel for the assessee. It is the say of the ld. DR that sufficient opportunities were given by the lower authorities and yet the assessee chose not to respond to the queries.

9. We have given thoughtful consideration to the orders of the authorities below. It is true that the Assessing Officer raised queries and issued notices on two occasions. It is equally true that the assessee filed part details but did not comply with the queries raised by the Assessing Officer and neither filed complete details nor produced books of account for verification.

10. We also find that the ld. CIT(A) was forced to frame an ex parte order by upholding the assessment. In our considered opinion, the impugned issues deserve to be examined afresh and, therefore, in the

interest of justice and fair play, we restore the issues to the file of the ld. CIT(A). The assessee is directed to furnish all the details/documents called for by the Assessing Officer during the assessment proceedings and the ld. CIT(A) is directed to call for remand report from the Assessing Officer and decide the issues afresh after affording reasonable and sufficient opportunity of being heard to the assessee as per law.

11. In the result, the appeal of the assessee in ITA No. 3712/DEL/2015 is treated as allowed for statistical proceedings.

**The order is pronounced in the open court on 11.12.2019.**

Sd/-

Sd/-

**[SUSHMA CHOWLA]  
JUDICIAL MEMBER**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 11<sup>th</sup> December, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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Date on which the file goes to the Head Clerk	
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