

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

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

I.T.A. No. 2986/Del/2017
Assessment Year: 2012-13

M/S CHOUDHARY EARTH MOVERS PVT. LTD., vs. DCIT, CIRCLE-6(1),
104, MUNISH PLAZA, NEW DELHI
20, ANSARI ROAD,
DARYA GANJ,
NEW DELHI - 110 002
(PAN: AAACC5148E)
(ASSESSEE) **(RESPONDENT)**

Assessee by: Sh. Rakesh Gupta, Adv.
Revenue by : Ms. Ashima Neb, Sr. DR.

ORDER

PER H.S. SIDHU, JM

This appeal is filed by the assessee against the Order dated 28.2.2017 passed by the Ld. CIT(A)-2, New Delhi relating to Assessment Year 2012-13 on the following grounds:-

1. That the impugned order of the Ld. CIT(A) dated 28.2.2017 is bad in law and on facts.
2. That the order of the Ld. CIT(A) deserves to be set aside as the assessee was not allowed adequate opportunity of being heard.
3. That the Ld. CIT(A) has erred in law in sustaining the addition of Rs. 1,00,000/- made by the AO.
 - 3.1 That the above said addition has been made by the AO at the time of assessment by treating the share applications money amounting to Rs. 50 lacs each received from M/s Amarlaxmi Dealtrafe Pvt. Ltd. And M/s Smart Finvestors Pvt. Ltd. as unexplained money of the appellant company.
 - 3.2 That the addition has been sustained despite the fact that the appellant was able to discharge the onus casted upon him u/s. 68 of the Act to prove identify, genuineness and creditworthiness, by furnishing confirmations, bank statements, copy of ITRs etc. Of share subscribers.

3.3 That the Ld. CIT(A) has erred in law in enhancing the income by Rs. 30,00,000/- on account of share application money received from M/s Dhanwan Merchants Pvt. Ltd. despite the fact apparent from the records that actual amount of share capital was Rs. 5,00,000/- and all the relevant details had been furnished by the appellant at the time of assessment.

4.1 That the Ld. CIT(A) has erred in law in making the above said addition without issuing show cause notice to the appellant company which is against the principles of natural justice.

5. That the Ld. CIT(A) has erred in law in giving directions to the AO for reopening the case for AY 2011-12 wherein the appellant company had received share application money.

6. That the appellant prays the Hon'ble Tribunal to award suitable cost of appeal under sub-section 2B of section 254 of the Income Tax Act, 1961.

7. That the appellant craves leave to add, alter, amend, substitute, delete and modify any or all the grounds of appeal, which are without prejudice to one another, before or at the time of hearing of the appeal.

2. At the time of hearing, Sh. Rakesh Gupta, Advocate/ Ld. Counsel for the Assessee stated that Ld. CIT(A) has passed the exparte impugned order without giving sufficient opportunity to the assessee and to support this contention, he draw our attention towards page no. 3 of the impugned order. He requested that the assessee is having all the sufficient evidences and he has also filed the Paper Book Page no. 1-211 in which he has attached various documentary evidences for substantiating its claim and requested that the issues in dispute may be set aside to the file of the Ld. CIT(A) with the directions to decide the same afresh, after giving adequate opportunity of being heard to the assessee.

3. On the contrary, Ld. DR opposed the request of the Id. Counsel for the assessee and relied upon the order passed by the Ld. CIT(A).

4. We have heard both the parties and perused the records especially the impugned order alongwith the documentary evidences filed by the assessee in the shape of paper book containing pages 1-211 and certified that Item No. 1-32 were before the AO and Item No. 33-35 were filed

before the Ld. CIT(A). We have also perused these documentary evidences filed by the assessee in the shape of Paper Book and we are of the view that Ld. CIT(A) has decided the issues in dispute against the assessee without giving sufficient opportunity to the assessee. Therefore, in the interest of justice, we are setting aside the issues in dispute to the file of the Ld. CIT(A) with the directions to decide the same afresh, as per law, after giving adequate opportunity of hearing and assessee is directed to produce the documentary evidences for substantiating its claim. Keeping in view of the non-appearance of the assessee on some dates and sought adjournment, we are of the view that no doubt that the assessee remained non-cooperative before the Ld. CIT(A), therefore, we are directing the assessee through his counsel to appear before the Ld. CIT(A) on **30.01.2020 at 10.00 AM**. Since there is no need to issue the notice for 30.01.2020, because this order has been pronounced in the Open Court in the presence of both the parties.

5. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced on 12/12/2019.

Sd/-
[DR. B.R.R. KUMAR]
ACCOUNTANT MEMBER

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date: 12/12/2019

"SRB"

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches

