

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.5907/Del/2016
(Assessment Year : 2012-13)

M/s. Chhaya Packers & Printers (P.) Ltd., A-1/15, Block-A, Pocket-1, Sector – 8, Rohini, New Delhi - 110085 PAN : AABCC 5265 B (APPELLANT)	Vs.	DCIT Circle – 6(1), New Delhi (RESPONDENT)
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Assessee by	Dr. Rakesh Gupta, Adv. Shri Somil Agarwal, Adv.
Revenue by	Shri Mahesh Thakur, Sr. D.R.

Date of hearing:	23.06.2021
Date of Pronouncement:	23.06.2021

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-2, New Delhi dated 31.08.2016 for Assessment Years 2012-13.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a Pvt. Ltd. Company who electronically filed its return of income for A.Y. 2012-13 on 28.09.2012 declaring total loss of Rs.49,51,806/-. The case was selected for scrutiny and notice u/s 143(2) and 142(1) of the I. T. Act was issued and served upon the assessee. AO thereafter passed order u/s 143(3) of the Act on 31.03.2015 determining the taxable income at Rs.1,03,63,194/-.

4. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 31.08.2016 in Appeal No.145/15-16 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal before us and has raised the following grounds of appeal:

- “1. That having regard to the facts and circumstances of the case, Ld CIT(A) has erred in law and on facts in passing the impugned ex parte order and that too without providing adequate opportunity of being heard and without observing the principles of natural justice.*
- 2. That in any case and any view of the matter, action of Ld. CIT(A) in passing the impugned ex parte order is bad in law and against the facts circumstances of the case.*
- 3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld AO in making aggregate addition of Rs.85,40,000/- on account of unsecured loan u/s 68 of the Income Tax Act, 1961 and that too without providing adequate opportunity of hearing and without observing the principles of natural justice.*
- 4. That in any case and in any view of the matter, action of Ld CIT(A) in confirming the action of Ld AO in making aggregate addition of Rs.85,40,000/- on account of unsecured loan u/s*

68 is bad in law and against the facts and circumstances of the case.

5. *That having regard to the facts and circumstances of the case, Ld CIT(A) has erred in law and on facts in confirming the action of Ld AO in making aggregate addition of Rs.67,75,000/- on account of share application money loan u/s 68 of the Income Tax Act, 1961 and that too without providing adequate opportunity of hearing and without observing the principles of natural justice.*
6. *That in any case and in any view of the matter, action of Ld CIT(A) in confirming the action of Ld AO in making aggregate addition of Rs.67,75,000/- on account of share application money u/s 68 is bad in law and against the facts and circumstances of the case.*
7. *That having regard to the facts and circumstances of the case, Ld CIT(A) has erred in law and on facts in confirming the action of Ld AO in charging interest u/s 234B and 234C of the Income Tax Act, 1961.*
8. *That the appellant craves the leave to add, modify amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

5. Before us, Learned AR submitted that CIT(A) has passed an *ex parte* order and has not decided the issue on merits. He submitted that assessee if given a chance, assessee undertakes to appear before the lower authorities and furnish all the required details to substantiate its case. He therefore, submitted that in the interest of justice, assessee be granted one more opportunity to explain its case.

6. Learned DR on the other hand supported the order of the lower authorities and further submitted that assessee has not

appeared before the lower authorities and therefore the casual approach of the assessee does not deserve a second innings.

7. We have heard the rival submissions and perused the material on record. The perusal of CIT(A) order reveals that CIT(A) has passed an *ex parte* order without deciding the issue on merits. Sub Section (6) of Section 250 of I. T. Act mandate the CIT(A) to state the points in dispute and thereafter assign the reasons in support of his conclusion. We are of the view that by dismissing the appeal without considering the issue on merits, Learned CIT(A) has failed to follow the mandate required in Sub Section (6) of Section 250 of the Act. Further it is also a well settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and no parties should be condemned unheard. Further before us, Learned AR has given an undertaking that given a chance, assessee will appear before the lower authorities and file the required details called for by them. In view of these facts, we are of the view that in the interest of justice, the assessee be granted one more opportunity. We therefore set aside the impugned order of CIT(A) dated 31.08.2016 and restore the issue to the file of CIT(A) for re-adjudication of the issues after granting sufficient opportunity of hearing to both the parties. Assessee is also directed to promptly furnish the details called for by the lower authorities. In view of our decision to restore the issue back to CIT(A), we are not adjudicating on merits, the grounds raised by the assessee. **Thus the grounds of assessee are allowed for statistical purposes.**

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 23.06.2021, immediately after conclusion of the hearing of the matter in virtual mode.

Sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Date:- 23.06.2021
PY*

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI