

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI  
BEFORE Shri C.M. Garg, Judicial Member  
AND  
Shri M. Balaganesh, Accountant Member**

ITA No. 271/Del/2022  
(Assessment Year: 2009-10)

Euro Asia Mercantile Pvt. Ltd, 1014, Naurang Bhawan, 21 K. H. Marg, Cannuaght Place, New Delhi-110001 (Appellant)	Vs.	DCIT, Central Circle-23, New Delhi  (Respondent)
---	-----	--

**PAN: AABCE7522P**

Assessee by :	Sh. Anuj Jain, CA
Revenue by:	Ms. Maimum Alam, Sr. DR

Date of Hearing	27/04/2023
Date of pronouncement	27/04/2023

**ORDER**

**PER C. M. GARG, J. M.:**

1. This appeal has been preferred by the assessee against the order of the Id. CIT(A)-30, New Delhi dated 28.09.2015 for AY 2009-10.
2. The assessee has raised the following grounds of appeal:-
  - "1. The order passed by CIT (A) - 30 is bad in law and void ab-initio.
  2. That on the facts & circumstances of the case the Ld. CIT(A)-30 has erred in law and facts by confirming the addition made by the Ld. A.O. of Rs. 1,40,56,000/- u/s 68 of the Income Tax Act, 1961 & while not admitting the additional evidences submitted by the appellant.
  3. That on the facts and circumstances of the case the Ld. CIT(A)-30 did not provide sufficient reasons for non-admission of additional evidence as per letter and spirit of Rule 46A of the Rules, which were submitted without any blemish so as to advance the cause of justice for the Assessee."

3. The authorised representative (AR) of the assessee submitted that the Id CIT(A) has passed the impugned first appellate order in violation of principles of natural justice as he did not admit the additional evidence filed by the assessee under section 46A of the ITAT Rules, 1962. Therefore, the additional evidence filed by the assessee may kindly be admitted for consideration. The Id AR submitted that the assessee was not provided due opportunity of hearing by the Id AO therefore relevant documents and evidences could not be filed before him which was subsequently filed before the Id CIT(A). During the first appellant proceedings the assessee was prevented by sufficient cause for not filing the same before the AO.

4. Replying to the above the Id CIT DR strongly supported the first appellate order. However, in a fairness the Id CIT DR submitted that if it is found just and proper then the department has no objection if the matter be restored to the file of Id CIT(A) for de novo adjudication of appeal.

5. On careful consideration of the above submission and assessment order we note that in para 2 the AO noted that vide questionnaire dated 02.09.2011 and entry dated 08.11.2011 the assessee was asked to furnish copy of cash book and bank statement for AY 2008-09 and to explain the source of cash credit entries therein proving the identity and creditworthiness of the creditors as well as the genuineness of the transaction in respect of credit entries in of its books of account of the assessee u/s 68 by providing confirmed copy of account, PAN, full address, return of income and bank statement of creditor. In para 2.1 the AO noted that despite many opportunities the assessee did not give any explanation. In view of these factual position of assessment proceedings we satisfy that the AO has not provided due opportunity of hearing to the assessee without providing reasonable opportunity of hearing to the assessee and proceeded to make assessment, which is in violation of

principle of natural justice. Further, from first appellate order we noted that the Id CIT(A) has denied to admit the additional evidence of assessee without any cogent and justified reason. The Id CIT(A) was required to consider the observation of the AO made in the assessment order which clearly shows violation of principle of natural justice and there is no mentioning of any service of notice on the assessee calling the explanation and documentary evidence. Therefore, we are satisfied that the assessee was prevented of sufficient cause from filing explanation and documentary evidence before the Id AO during the assessment proceedings. Therefore, the Id CIT(A) ought to have admit the additional evidence filed by the assessee. Only on this count order of the Id CIT(A) is not sustainable and hence, we satisfy the same. The additional evidence filed by the assessee before the Id CIT(A) is admitted for consideration and matter is restored to the file of the Id CIT(A) for fresh adjudication of first appellate order after allowing due opportunity to the assessee and without being prejudice from the earlier first appellate order.

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

Order pronounced in the open court on 27/04/2023.

Sd/-  
**(M. Balaganesh)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(C. M. GARG)**  
**JUDICIAL MEMBER**

Dated: 27/04/2023  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi