

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.98/Del/2018
(Assessment Year : 2014-15)

Euro Advisory Services Pvt. Ltd., 13/34, W.E.A. Karol Bagh New Delhi – 110 005 PAN No. AABCE 0761 E (APPELLANT)	Vs.	ITO Ward – 8(3) New Delhi (RESPONDENT)
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Assessee by	Shri Anunav Kumar, Adv.
Revenue by	Shri Javed Akhtar, CIT-D.R.

Date of hearing:	25.05.2023
Date of Pronouncement:	02.06.2023

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 27.09.2017 passed by the Commissioner of Income Tax (Appeals) – 34, New Delhi for Assessment Year 2014-15.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a company which electronically filed its return of income for A.Y. 2014-15 on 14.11.2014 declaring total income at Rs.8,49,160/-. The case of assessee was selected for scrutiny and thereafter, assessment as framed u/s 143(3) of the Act vide order dated 28.12.2016 and the total income was determined at

Rs.23,45,49,160/- *inter alia* by making addition of Rs.23,37,00,000/- u/s 68 of the Act.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 27.09.2017 in Appeal No.262/16-17 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds of appeal:

“1. That the order passed by CIT(A) dated 27.09.2017 dismissing the appeal of the company is not reasonable, justified and accordingly same deserves to be set aside considering the facts and circumstances of the case.

2. That the notice of hearing was not duly served / received by the appellant company from the office of CIT(A) as :

(a) Office of the company was not functional;

(b) No efforts were made to send the notice through Assessing Officer in the manner a copy of the order has been sent through Assessing Officer at the address of Ex-Director of the company; and

(c) Postman had wrongly mentioned the word “Refused” while returning the notice.

3. That the CIT(A) failed to decide the appeal on merits after due consideration of facts stated in the Statement of Facts and the Grounds raised in appeal particularly, a specific ground raised to the effect that share capital had been issued by the company in A.Y. 2010-11 and prior thereto and same amount of share capital has been continuing since then and, therefore, no addition u/s 68 of the Act could be made in this year. He ought to have called for the record from the Assessing Officer and appeal should have been decided after considering the facts of the case on record.

4. CIT(A) has erred in not correctly appreciating the provisions of Section 68 of the Act and the facts of the case of the Appellant.

5. That the Appellant Company craves leave to alter, amend, vary and/or add any of the grounds of appeal at any time herein after.”

5. Before us, at the outset, Learned AR submitted that though assessee has raised various grounds but he is challenging the order of CIT(A). He submitted that CIT(A) has not passed the order on merits. He, therefore, submitted that assessee be given a chance to represent its case and assessee be given one more opportunity to the assessee to present its case before CIT(A). He further submitted that given a chance, assessee would furnish all the necessary documents before the authorities to support its case.

6. Learned DR on the other hand strongly objected to seeking of second innings by the assessee and he pointed to the findings of CIT(A) that despite various opportunities there was no appearance from the side of assessee. He therefore submitted that the assessee does not deserve second innings.

7. We have heard the rival submissions and perused the material available on record. Before us, it is the contention of the Learned AR that the notices issued by the CIT(A) were not served on the assessee and therefore assessee could not comply with the directions. 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. In view of these facts, we set aside the

impugned order of CIT(A) dated 27.09.2017 and restore the issue to the file of CIT(A) for re-adjudication of the issues after granting sufficient opportunity of hearing to the assessee. Assessee is also directed to furnish the details called for by the lower authorities. In view of our decision to restore the issue to CIT(A), we are not adjudicating on merits the grounds raised by the assessee. **Thus the ground of assessee is allowed for statistical purposes.**

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

Order pronounced in the open court on 02.06.2023

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 02.06.2023

*Priti Yadav**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI