

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI A.D JAIN, VICE PRESIDENT AND  
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.547/LKW/2018  
Assessment Year 2015-16

M/s Kan Constructions & Colonizers Pvt. Ltd., 612-613, Mega Mall, The Mall, Kanpur 208001 PAN AABCK8163C	Vs.	The DCIT-VI, Kanpur 208001
(Appellant)		(Respondent)

Appellant by	Shri Rakesh Garg, Advocate
Respondent by	Shri C.K. Singh, DR
Date of hearing	30/04/2019
Date of pronouncement	03/05/2019

**ORDER**

**PER: T.S. KAPOOR, A.M.:**

This is assessee's appeal for the Assessment Year 2015-16, taking the following grounds:-

- "1. Because the CIT(A) has erred on facts and in law in summarily dismissing the appeal ex-parte without giving adequate and reasonable opportunity of being heard.*
- 2. Because the CIT(A) has failed to appreciate that the assessee appellant was prevented by sufficient and reasonable cause in as much as the notice fixing date for 23.05.2018 could not be made available to the assessee; the order passed the next day i.e. 24.05.2018, the order passed ex-parte on the next day itself on 24.05.2018 is bad in law and be quashed.*
- 3. Because the CIT(A) has failed to appreciate the facts and circumstances of the case and has erred in not passing a speaking order based on Statement of Facts and Grounds of*

*Appeal as mentioned in the Memorandum of Appeal, the appeal order is bad in law and be quashed.*

4. *Because on a proper consideration of facts and circumstances of the case, the order passed by the CIT(A) dismissing the appeal in default is bad in law, unjustified and be quashed.*
5. *Because without prejudice to the above the CIT(A) has failed to give any finding with respect to the following grounds of appeal:*
  - (i) *Because the AO has erred on facts and in law in arbitrarily disallowing a sum of Rs.34,46,511/- by applying the provisions of Sec.14A read with Rule 8D, which disallowance is contrary to facts, bad in law and be deleted.*
  - (ii) *Because there being no tax exempt income, the AO has erred on facts and in law in disallowing a sum of Rs.34,46,511/- under sec.14A read with Rule 8D.*
  - (iii) *Because the AO has failed to appreciate that no new investments has been made during the year and the investments made in the shares have all being made in the earlier years, that too out of the own capital and internal accruals, there being no nexus between the amount borrowed and invested, no expenditure having been incurred, no disallowance ought have been made. The disallowance be deleted.”*

2. By virtue of the impugned order, the Id. CIT(A) has dismissed the assessee's appeal for non prosecution, observing that notices dated 15.02.2018, 13.03.2018 and 14.05.2018 for compliance on 09.03.2018, 20.03.2018 and 23.05.2018 were served on the e-mail address submitted by the assessee while e-filing the appeal; that however, no written submission or paper book had been filed in support of any of the grounds of appeal taken.

3. We have heard the rival parties and have gone through the material placed on record. We noted that the Id. CIT(A) has passed the ex-parte order as according to him, nobody has appeared on the date when the

appeal was fixed for hearing before him. The order of the CIT(A) talks of the notice/s having been 'issued' or 'sent' to the assessee and mentions nothing with regard to service thereof on the assessee. We also noticed from the order of the CIT(A) that he has summarily decided the appeal of the assessee without giving any cogent reason and his order is non speaking order. Under these circumstances, we feel that one more opportunity should be given to the assessee as Id. CIT(A) has not decided the appeal on merits. The provision of section 250 which deals with the procedure in appeal before the Id. CIT(A), allows a right to an assessee to be heard at the time of hearing of appeal. Even the natural justice demands that no appeal should be disposed of without being heard the party or without giving him the proper and sufficient opportunity. We, therefore, in the interest of justice and fair play to both the parties, set aside the order of CIT(A) and restore the appeal to the file of the CIT(A) with the direction that the CIT(A) shall refix the said appeal and decide the appeal afresh after giving proper and sufficient opportunity of being heard to the assessee. The assessee is also directed to be present on the date of hearing fixed by Id. CIT(A) and not to seek undue adjournment and co-operate with Id. CIT(A) in disposing of the appeal.

4. In the result, the appeal of the assessee stands allowed for statistical purposes.

**Order pronounced in the open court on 03/05/2019.**

**Sd/-  
(A.D. Jain)  
Vice President**

**Sd/-  
(T.S. Kapoor)  
Accountant Member**

Aks –  
Dtd. 03/05/2019

*Copy of order forwarded to:*

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|--|---------------------------|
| <i>(1) The appellant</i>               | <i>(2) The respondent</i> |
| <i>(3) Commissioner</i>                | <i>(4) CIT(A)</i>         |
| <i>(5) Departmental Representative</i> | <i>(6) Guard File</i>     |

By order

Assistant Registrar