



**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

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

M.A. No.19/ALLD/2018
[In ITA No.224/ALLD/2015]
Assessment Year: 2010-11

Shree Manni Lal Shikshan Samiti 121, Daud Nagar, Naini Allahabad	v.	ACIT Range II Allahabad
TAN/PAN:AACAS7824B		
(Applicant)		(Respondent)

ITA No.224/ALLD/2015
Assessment Year: 2010-11

Shree Manni Lal Shikshan Samiti 121, Daud Nagar, Naini Allahabad	v.	ACIT Range II Allahabad
TAN/PAN:AACAS7824B		
(Appellant)		(Respondent)

Assessee by:	Shri Ashish Bansal, Advocate		
Department by:	Shri S. K. Madhuk, CIT (DR)		
Date of hearing:	11	02	2020
Date of pronouncement:	12	02	2020

ORDER

PER A. D. JAIN, V.P.:

2. In this case, the assessee moved an application, dated 4/2/2020 for early hearing of the miscellaneous application, which was placed before the Bench on 10/2/2020. On considering the contents of the early hearing application, we allowed the same and fixed the miscellaneous application for hearing on 11/02/2020.

3. This Miscellaneous Application has been filed by the assessee for recalling of the ex-parte order of the Tribunal dated 12/12/2017 passed in ITA Nos.224/Alld/2015, for assessment year 2010-11.

4. The assessee has stated in the application that notice, fixing the date of hearing for 12/12/2017, has not been received by the assessee. Therefore, there was no representation on behalf of the assessee before the Tribunal. The ld. Counsel for the assessee prayed that in the interest of justice, the order of the Tribunal, dated 12/12/2017 may kindly be recalled and the case may be decided after affording an opportunity of hearing to the assessee.

5. The ld. D.R., on the other hand, has placed reliance upon the order of the Tribunal dated 12/12/2017.

6. Having considered the rival submissions vis-à-vis the Miscellaneous Application, we find that the assessee has furnished a valid reason for non-appearance on the date fixed. It is evident from the application that the assessee has sufficient cause for non-appearance before the ITAT on the date fixed for hearing. We, therefore, recall the order dated 12/12/2017 in ITA No.224/Alld/2015 and on the request of both the parties, we now proceed to dispose of the appeal on merit.

7. This is assessee's appeal against the order of the ld. CIT(A), Allahabad, dated 18/12/2014 for assessment year 2010-11, taking the following grounds:

1. Because the Ld) has passed the order without affording proper opportunity to the Appellant The Counsel of the Appellant appeared on the date fixed i.e 18-12-2014 and requested for adjournment for any other date after 02/01/2015, but the Ld Commissioner of

Income Tax (Appeals) rejected the Adjournment and chose to decide the appeal Ex-parte .

2. Because the Ld. Commissioner of Income Tax without appreciating the facts that the part of Land on which the part of school building is constructed is duly entered in the Books of Accounts of the appellant Society reflected in the Audited Balance Sheet & Profit & Loss A/C of the appellant Society though purchased in the name of the Secretary of the Society. The Ld. Commissioner of Income Tax (Appeal) has wrongly held that benefit has been passed to a person referred in Section 13(3) of the Income Tax Act, 1961 denying the exemption Under Section 11 to the appellant Educational Society and proceeded to hold Rs.13,41,071/-, Rs.13,467/- & Rs.3,926/- from Education institutions as taxable Income.

3. Because the Ld. Commissioner of Income Tax (Appeal) wrongly, arbitrarily, illegally confirmed the addition of the Capital Expenditure Rs.46,00,173/- which was made without any proper basis.

2. By virtue of the impugned order, the ld. CIT(A) has dismissed the assessee's appeal. The ld. CIT(A) had issued four notices to the assessee. The last notice, dated 28/11/2014 was issued, fixing the appeal for hearing on 18/12/2014. On this date, i.e., 18/12/2014, the ld. Counsel for the assessee moved an application seeking adjournment, which was rejected by the ld. CIT(A) and he dismissed the appeal of the assessee. Inviting our attention to ground no.1, the ld. Counsel for the assessee has submitted that on the last date of hearing, i.e., 18/12/2014, the ld. Counsel for the assessee moved an application for a short adjournment; that however, the ld. CIT(A) rejected the adjournment application and decided the appeal of the assessee

ex-parte qua the assessee; and the order of the Id. CIT(A), therefore, may be set aside and the matter may be restored to his file to decide the matter afresh after affording due opportunity of hearing to the assessee.

3. Heard. We find that the CIT(A) has dismissed the appeal without providing proper opportunity to the assessee. As contended by the Id. Counsel for the assessee, on the last date of hearing before the Id. CIT(A), i.e., 18/12/2014, the Id. Counsel for the assessee moved an application for a short adjournment. But, the Id. CIT(A), after rejecting the adjournment application, decided the appeal of the assessee ex-parte qua the assessee. In our view, the Id. CIT(A) ought to have allowed the application for short adjournment and decided the appeal on merit after affording due opportunity of hearing to the assessee. The Id. CIT(A) had decided the appeal without appreciating the facts of the case. In this view of the matter, we remit the matter to the file of the Id. CIT(A) to be decided afresh on merit, in accordance with law, on affording due and adequate opportunity of hearing to the assessee. The assessee, no doubt, shall cooperate in the fresh proceedings before the Id. CIT(A). All pleas available under the law shall remain so available to the assessee. Ordered accordingly.

4. In the result, the M.A. is allowed and for statistical purposes, the appeal is treated as allowed.

Order pronounced in the open Court on 12/02/2020.

Sd/-
[T. S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED:12/02/2020
JJ:1102

Copy forwarded to:

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

By order
Assistant Registrar