

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

**SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.5399/Del/2018  
Assessment Year: 2015-16

Indus Education Society, Lakhanpur, 6, Awadhपुरi Road, Lakhanpur, Kanpur	<b>Vs.</b>	Addl. CIT (Exemption), Range-Ghaziabad
<b>PAN :AAATI6219B</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Tarun Rohtagi, CA
Department by	Sh. Vivek Vardhan, Sr. DR

Date of hearing	12.02.2024
Date of pronouncement	14.02.2024

**ORDER**

**PER AMIT SHUKLA, JM**

The present appeal has been filed by the assessee against order dated 13.06.2018 passed by learned CIT(A)-I, Kanpur, for the quantum of assessment passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2015-16.

2. In the grounds of appeal, the assessee has raised following grounds:

1. *That the impugned assessment order is wholly without jurisdiction as notice u/s 143(2) was served beyond a period of six month from the end of the financial year in which return was furnished therefore the same is liable to be set aside as null & void.*
2. *That the authorities below have has erred in law and on facts in disallowing the repayment of secured loans of Rs.87,42,407 to Bank of Baroda as application of income.*
3. *That the authorities below have has erred in law and on facts in not appreciating that repayment of the same secured loans obtained for setting up the college have been consistently allowed as application of income in preceding assessments u/s 143(3) of the Income Tax Act, 1961.*
4. *That the authorities below have erred in law and on facts in disallowing the repayment of unsecured loans of Rs. 1,41,10,000/-as application of income.*
5. *That the AO has erred in law and on facts in disallowing both, repayment of secured and unsecured loans without assigning any reasons and without considering detailed submissions and averments filed before the AO.*
6. *That the authorities below have erred in law and on facts in restricting the claim of depreciation of the assessee to Rs.98,07,782 as against claim of depreciation of Rs. 1,05,68,862/-7. That the impugned orders of the authorities below is contrary to law, facts and principles of natural justice.*

3. Before us, learned counsel has submitted that in this case notice under section 143(2) of the Act has been served beyond the period of six months from the end of the financial year, for which, the return of income was furnished. It is stated that notice under

section 143(2) was issued on 29.09.2016, which was served to the appellant-assessee on 3<sup>rd</sup> October, 2016 vide speed post. In support, affidavit of one Mr. Sudhir Tyagi has been filed. We find that in support of the affidavit, the assessee has not furnished any evidence of receiving of notice by speed post on 3<sup>rd</sup> October, 2016. Here, in this case, the learned CIT(A) has dismissed the appeal ex-parte without deciding the issue on merits after observing as under:

*“In reply to the notice issued dated 31.03.2018 & 13.04.2018 for compliance on 13.04.2018 & 25.04.2018 not even a single compliance has been made till date. Fixing the date for compliance on 25.04.2018 was/were issued through official Income Tax Business Application (ITBA net work) fixing the date for compliance on 25.04.2018. This notice was/were served on the e-mail address iitm.kanpur@gmail.com in submitted by the applicant while e-filing the appeal. Counsel of the assessee or the Appellant sought adjournments for written submission on 26.04.2018 the appeal adjourned for 07.05.2018. No written submission or any paper books has been filed in support of any of the grounds of appeal in this office. It appears that assessee is not interested in pursuing his own appeal. The case is being decided in absence of any submission or attendance by the assessee or his A.R. On each of these days when the case was fixed for hearing, it is seen that the assessee has remained absent, despite the fact that notice for the specific dates of hearing have consistently been sent to the address provided by the assessee in its memo of appeals. In these circumstances, it can be safely presumed that the assessee is not serious in pursuing the present appeal. Accordingly, I hereby decide this appeal filed by the*

*appellant assessee on the basis of material available on record. There may be various reasons with the appellant to remain absent at the time of hearing. One of the reasons may also be a desire or absence of need to prosecute the appeal or inability to assist the Commissioner of Income Tax(A) in a proper manner.*

*The contents of the AOS order have been perused and I have no reasons to interfere with the stand taken by the AO. During the appeal proceeding also, the details and evidences in support of the claims made in the grounds of appeal are not filed. Therefore, the assessment order is not interfered with.*

In the result, appeal is dismissed.”

4. Neither the grounds have been adjudicated, nor appeal has been decided on merits. Accordingly, all the issues raised before us in the grounds of appeal are remanded back to the file of the CIT(A) to be decided afresh and in accordance with law and after verifying the records about the service of notice under section 143(2) of the Act. Needless to mention, learned CIT(A) shall provide due and reasonable opportunity of being heard to the assessee.

5. In the result, the appeal is allowed for statistical purposes.

***Order pronounced in the open court on 14<sup>th</sup> February, 2024***

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

***Sd/-***  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Dated: 14<sup>th</sup> February, 2024.

RK/-

Copy forwarded to:

1. Appellant

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

Asst. Registrar, ITAT, New Delhi