

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'SMC-I' NEW DELHI**

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER**

**I.T.A .No.-6743/Del/2015  
(ASSESSMENT YEAR-2010-11)**

Society for integrated Education, C/o-Akhilesh Kumar, Adv., Chamber No.206-207, Ansal "Satyam", RDC Raj Nagar, Ghaziabad PAN: AAEAS7901B <b>(APPELLANT)</b>	vs	Addl. CIT, Range-1, Ghaziabad  <b>(RESPONDENT)</b>
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<b>Assessee by</b>	<b>Sh.Dinesh Malhotra, Adv.</b>
<b>Revenue by</b>	<b>Sh. Manoj Kumar Chopra, Sr.DR</b>

<b>Date of Hearing</b>	<b>11.02.2016</b>
<b>Date of Pronouncement</b>	<b>16.03.2016</b>

**ORDER**

The present appeal has been filed by the assessee assailing the correctness of the order dated 22.10.2015 of CIT(A), Ghaziabad pertaining to 2010-11 AY on the following grounds:-

1. *"Because, the order of learned Commissioner of Income Tax (A) is bad in law and against the facts and circumstances of the case and hence is unsustainable.*
2. *Because, the leaned Commissioner of Income Tax (A) grossly erred in upholding the activities of providing distant education program of duly recognized university as 'business' despite accepting the facts that assessee is providing 'teacher' etc. but without appreciating that deptt. Is allowing exemption in similar cases. Hence, order is perverse.*
3. *Because, the leaned commissioner of Income Tax (A) grossly erred in holding that as assessee is not regd. u/s 12AA hence it is not relevant whether it chartable u/s 2(15) of the Act and wrongly dismissed the exemption without demonstrating that institution is not existing solely for 'educational purposes' and without following the ratio of hon'ble courts on the issue. Therefore, assessee kindly be allowed exemption of Rs.9,57,407/- u/s 10(23C)(iiiad) of the Act."*

2. Both the parties were heard. The record shows that the assessee declared a NIL income by way of filing its return. The said return was subjected to scrutiny assessment. The AO in the course of the assessment proceedings took

note of the fact that as per the memorandum filed the main object of the assessee society was stated to be *to impart higher and technical education to establish and institutes of all descriptions fro diffusion of useful knowledge or any type of institutions, for welfare and benefit of society and nation.* The assessee's society was registered on 20.09.2005 by the Registrar of Societies, Uttar Pradesh under Society Registration Act, 1860. The AO required the assessee to explain vide order sheet entry dated 29.01.2013 the following facts:-

- (i) *"How the society is covered u/s 2(15).*
- (ii) *Why the payment has been made to different universities to whom salary is paid;*
- (iii) *Qualification/rent agreement/detail of classrooms and address of the premises on which classes has been conducting."*

2.1. Considering the details filed the AO issued the following show cause notice to the assessee:-

5. *"Another notice u/s 142(1) dated 08.02.2013 has been sent at the residential address of the President of the Society which is reproduced as under:-*

*"Produce or cause to be produced before me at my office Room No.210, CGO Complex-1, Hapur Road, Ghaziabad on 15.02.2013 at 2.40 PM alongwith complete details as required vide order sheet entry dated 29.01.2013 and other requirement as required vide questionnaire dated 09.05.2012. Please note that in case of non compliance of this notice the entire income of the society will be treated as income and taxed accordingly (copy of order sheet has been enclosed)"*

**Till date of 18.02.2013 neither anybody attended nor any details has been provided."**

***(emphasis provided)***

2.2. Since no appearance was made on behalf of the assessee the AO considering the material available on record made additions resulting in computing the taxable income at Rs.13,30,307/-.

3. Aggrieved by this, the assessee came in appeal before the First Appellate Authority wherein apart from various other grounds, the following ground was also raised:-

2. *“Because learned AO failed to provide any proper opportunity of being heard in as much as that the last notice dt. 08.02.2013 could not be served upon the assessee on the basis of which ex-parte assessment is made, hence additions are made in total disregard of specific provisions of natural justice.”*

4. The ground was rejected by the CIT(A) holding that sufficient opportunity has been provided to the assessee by the Assessing Officer. Considering the material available on record, I find that the Ld. CIT(A) erred in coming to the said conclusion. The record shows that that the assessment order is dated 15.02.2013. In para 5 the Assessing Officer notes that he waited for someone to put an appearance till 18.02.2013 and no one appeared. The said extract has been reproduced in the earlier part of this order. Finding the same to be in contradiction to the fact that the assessment order is passed on 15.12.2013, the lack of opportunity is clearly demonstrated. The Ld. SR.DR submitted in reply that it may be a typographical error and the date might be 08.02.2013. Examining this plea it is found that it cannot be so since the date mentioned in the afore-said reproduced para 5 records the fact that notice u/s 142(1) dated 08.02.2013 was sent to the residential address of the society. Thus the occasion to wait till 08.02.2013 when the notice is itself sent on the same day does not appear to be feasible. Accordingly in the peculiar facts and circumstances, I find that admittedly before the AO there was a lack of opportunity. The Ld.AR in the course of the proceedings made a prayer seeking time however since admittedly full facts have not been correctly placed on record giving time at this juncture would not be of much relevance. In the circumstances it is deemed appropriate to set aside the impugned order and restore the issue. After hearing the submissions of the Ld. Sr. DR thereon the issue is restored back to the file of the CIT(A). Liberty is given to the assessee to file supporting evidences in support of its claim if so deemed fit as admittedly

for want of adequate opportunity before the AO full facts may not have been placed on record. The CIT(A) shall consider the fresh evidences filed if any by the assessee before passing a speaking order in accordance with law. It is made clear that the opportunity so provided in good faith should not be abused by the assessee as failing which the Ld. CIT(A) would be at liberty to pass a speaking order on the basis of material available on record. The Ld.AR on the other hand gave his oral undertaking and assured the Court that the assessee shall make full and effective compliance before the CIT(A).

5. In the result the appeal of the assessee is allowed for statistical purposes and grounds raised are restored back to the CIT(A).

**The order is pronounced in the open court on 16<sup>th</sup> of March, 2016.**

**Sd/-  
(DIVA SINGH)  
JUDICIAL MEMBER**

Dated:16/03/2016

*\*Amit Kumar\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI