

IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER AND  
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

**ITA No.365(Asr)/2017**  
Assessment Year:2008-09

Nazir Ahmed Tak  
S/o Ghulam Hassan Tak  
Verinag Road, Ashajipora,  
Anantnag

Vs. Income Tax Officer  
Ward-Anantnag  
Kashmir

PAN:AGEPT7100N  
**(Appellant)**

**(Respondent)**

Appellant by: None

Respondent by: Sh. Charan Dass (DR)

Date of hearing: 27.03.2018

Date of pronouncement: 27.03.2018

**ORDER**

**PER N.K.CHOUDHRY, JM:**

The instant appeal has been preferred by the Assessee/Appellant, on feeling aggrieved against the order dated 20.01.2017 passed by the Ld. CIT(A), J&K, Jammu, in appeal No.470/2015-16, by which the Ld. CIT(A) on non-prosecution dismissed the appeal of the assessee in limine. From the order it reflects that five opportunities have been given to the assessee by issuing the notices from time to time on the address given by the appellant in Form No.35, however, on none of the dates, the

assessee neither attended the appellate proceedings nor filed any adjournment application or written submissions and in that eventuality despite giving several opportunities of being heard, it was observed by the Ld. CIT(A) that the appellant is not interested in pursuing its appeal. Therefore, he was pleased to dismiss the appeal.

2. We have given our thoughtful consideration to the order impugned herein. The Appellant did not bother himself to appear and co-ordinate with appellate proceedings even after affording five opportunities. Although the instant appeal of the assessee is liable to be dismissed in order to give effect to the principle that law does not assist the person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant, without asserting them in a court of law. The principle which forms the basis of this rule is expressed in the maxim **vigilantibus, non dormientibus, jura subveniunt** (Law assists those who are vigilant and not those who sleep over their rights), but even a vigilant litigant is prone to commit mistakes. As the aphorism to err is human and is more a practical notion of human behaviour than an abstract philosophy, the unintentional lapse on the part of a litigant should not normally cause the doors of the judicature permanently closed before him. The effort of the court should not be one of finding means to pull down the shutters of adjudicatory jurisdiction before a party who seeks justice, on account of any mistake committed by him, but to see whether it is possible to entertain

his grievance if it is genuine , therefore, considering the facts that the Ld. CIT(A) has not passed the order under challenge on merit, hence we feel it appropriate and proper to remand back the instant case to the file of the Ld. CIT(A) to decide afresh on merits, while affording proper and reasonable opportunity of being heard to the assessee/appellant, in order to follow the principle of natural justice.

We also feel it appropriate to direct the Assessee/Appellant to extend its full co-operation and participation in the appellate proceedings before the Ld. CIT(A) as and when required and in case of further default, the assessee shall not be subjected to any leniency.

**3.** In the result, the appeal filed by the assessee is allowed for statistical purposes.

*Order pronounced in the open Court on 27 .03.2018.*

Sd/-  
(SANJAY ARORA)  
ACCOUNTANT MEMBER

Sd/-  
(N.K.CHOUDHRY)  
JUDICIAL MEMBER

Dated:27.03.2018

/PK/ Ps.

Copy of the order forwarded to:

- (1) Nazir Ahmed Tak, Anantnag, Kashmir
- (2) The ITO, Ward-Anantnag, Kashmir
- (3) The CIT(A), J&K, Jammu
- (4) The CIT concerned
- (5) The SR DR, I.T.A.T., Amritsar

True copy

By order