

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR
BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA Nos.632 & 633(Asr)/2017
Assessment Years:2013-14 & 2014-15

Executive Officer (DDO/PR) Vs. Income Tax Officer,
Municipal Committee, Kashmir Ward (TDS), Srinagar

PAN:AMRM11687E

(Appellant)

(Respondent)

Appellant by: Sh. Bashir Ahmad Lone (Ld. CA)
Respondent by: Sh. Rahul Dhawan (Ld. DR)

Date of hearing: 18.04.2018
Date of pronouncement: 22.05.2018

ORDER

PER BENCH:

The assessee has preferred the aforesaid appeals, on feeling aggrieved against the separate orders dated 30.03.2017 relevant to Asst. Year:2013-14 and 30.03.2017 relevant to Asst. Year:2014-15.

2. At the outset, it appears that both the appeals are time barred by 96 days and the assessee has filed application for condonation of delay for filing of the instant appeals u/s 253(1) of the Income Tax Act, 1961 (hereinafter called as the 'Act') by submitting that the Executive Officer/PR Municipal Committee

Ganderbal has received the appeal order passed u/s 250(6) of the Income Tax Act 1961 on 01/05/2017. The Executive Officer/PR was required to file appeal u/s 253(1) of the Income Tax Act 1961 before your Hon'ble Bench within 60 days from the date of receipt of order and the date stands expired on 30/06/2017. The Executive Officer/ PR could not file the appeal within a period of 60 days due to the reason, that the said official was assigned the job of stores verification of various municipal committees of District Budgam by his Head of the Department, which affected the normal functioning of his office and the officer could not attend the office daily, which resulted in delay in submitting of appeal before your Hon'ble Bench. The delay in submitting appeal is not to willful default of PR, but due to state Govt. engagements. In the interest of natural justice, the delay in submitting the appeal may please be condoned.

3. On the other hand, the Ld. DR submitted that the assessee has failed to demonstrate the delay of each and every day, therefore, the same cannot be allowed.

4. We have heard the parties and while considering the submissions of the assessee, it reflects that the concerned officer i.e., Executive Officer/PR of the assessee was assigned the duties for filing the appeals, however, the said Official was assigned the job of stores verification of various municipal committees of District Budgam by his Head of the Department, which affected the normal functioning of his office and the

officer could not attend the office daily, which resulted into delay. As it was also submitted that delay in submitting appeal is not a willful default of the said official but due to State Govt. engagements.

In our considered opinion, the explanation given by the assessee seems to be plausible and logical, hence, in the interest of justice and considering the facts that the Ld. CIT(A) did not pass the order under challenge on merit, however, dismissed the appeal on non-prosecution, the delay deserves to be condoned and hence, the same is condoned.

5. Now coming to the merit of the impugned order. From the order, it reflects that seven 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 appeals. Therefore, he was pleased to dismiss the appeals in limine.

We have given our thoughtful consideration to the order impugned herein. The Appellant did not bother himself to appear and cooperate in the appellate proceedings even after affording seven opportunities. Although, the instant appeals of the assessee are 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 cases 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.

6. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 22.05.2018.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

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

Dated:22.05.2018

/PK/ Ps.

Copy of the order forwarded to:

- (1) Executive Officer(DDO/PR) Municipal Committee, Kashmir
- (2) The ITO, Ward (TDS), Srinagar
- (3) The CIT(A)-J&K, Jammu
- (4) The CIT concerned
- (5) The SR DR, I.T.A.T., Amritsar

True copy

By order

