

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

ITA No.02(Asr)/2015
Assessment Year:2008-09

The Amritsar District Co-op. Vs. The Dy. CIT
Milk Producers Union Ltd., Amritsar
Milk Plant Verka, Batala Road,
Amritsar

PAN:AAAAA0503F

(Appellant)

(Respondent)

Appellant by: Sh. Rajan Bajaj (Adv.)
Respondent by: Sh. Charan Dass (Ld. DR)

Date of hearing: 30.05.2018
Date of pronouncement: 30.05.2018

ORDER

PER N.K.CHOUDHRY, JM:

The instant appeal has been preferred by the Assessee/Appellant, on feeling aggrieved against the order dated 18.09.2014, impugned herein, passed by the Ld. CIT(A)-Amritsar, u/s 250(6) of the I.T. Act, 1961 (hereinafter called as 'the Act').

2. The assessee has raised the following grounds of appeal.

- “1. *That the Hon’ble CIT (Appeals) passed an unjust and non-speaking order.*
2. *That the Hon’ble CIT (Appeals) passed the order without considering the grounds of appeal and without discussing the same in his order.*
3. *That the Hon’ble CIT (Appeals) without discussion on the facts of the case agreed with the findings of the Assessing Officer without bringing on record any positive arguments or any material evidence.*
4. *That without prejudice to the above taken grounds of appeal, it is submitted that the AO has incorrectly taken the capital receipts as revenue and taxed the same. He has failed to bring on record any constructive arguments in his favour. The amount received and paid to the MILKFED which controls all the Milk Plants in Punjab is purely an advance and is to be adjusted and repaid during the course of time.*
5. *That the AO has failed to bring on record any legal argument to substantiate his claim of adding back into o*
6. *The nature of amount received is that of creditor and not income as presumed by the learned Assessing Officer.*
7. *That the appellant craves to amend, modify or add any other ground or grounds found feasible at the time of hearing.”*

3. It is apparent from the record, that there is delay of 4 days in filing of the appeal and the delay has been explained by the Ld. AR by filing an affidavit of the assessee to the effect that one employee Smt. Madhu Bala has expired on 29.12.2014, who was entrusted with the duty to deliver, the documents related to the appeal to the concerned counsel, therefore, the delay of four days has been occurred.

4. The Ld. DR has not refuted the explanation of the Ld. AR, hence, considering the explanation and in the interest of natural justice, the delay of 4 days in filing the appeal has been condoned.

5. Now coming to the merit of the case, it reflects from the order impugned herein, that four notices have been issued to the assessee, however, the same remained uncomplied. There was no response from the assessee as to why the notices remained uncomplied and unattended, therefore, in the said eventuality the Ld. CIT(A) finding no option dismissed the appeal of the assessee as ex-parte on non-prosecution, in limine.

6. The assessee has preferred the instant appeal against the said order and in support of non-appearance, it was submitted by the Ld. Counsel that the assessee was prevented to appear before the Ld. CIT(A) due to some domestic reasons, however now undertakes to appear as and when required, if the appeal be remanded to the file of the Ld. CIT(A) for decision afresh because the Ld. CIT(A) has failed to pass the order on merit.

7. We have given our thoughtful consideration to the order impugned herein. The Appellant did not bother itself to appear and co-operate with appellate proceedings even after affording four 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.

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

Order pronounced in the open Court on 30.05.2018.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

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

Dated: 30.05.2018

/PK/ Ps.

Copy of the order forwarded to:

- (1) The Asr Dist. Co-op. Milk, Producers Union Ltd. Amritsar
- (2) The Dy. CIT, Amritsar
- (3) The CIT(A)-Amritsar
- (4) The CIT concerned
- (5) The SR DR, I.T.A.T., Amritsar

True copy

By order