

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE SH. VIKRAM SINGH YADAV, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA Nos.558 & 559(Asr)/2017

Assessment Year:2012-13

Nirbhay Trehan,
31 D/C, Gandhi Nagar,
Jammu.

Vs.

Dy. CIT,
Central Circle,
Jammu.

[PAN:AAKPT-9193K]

(Appellant)

(Respondent)

Appellant by : None

Respondent by : Sh. Charan Dass (Ld. DR)

Date of hearing : 12.06.2019

Date of pronouncement: 12.06.2019

ORDER

PER N.K.CHOUDHRY, JM:

These appeals have been preferred by the Assessee against the orders dated 04/01/2017 passed by the Ld. CIT(A)-5, Ludhiana u/s. 250 (6) of the Income Tax Act, 1961 (hereinafter called as the 'Act) for Asst. Year:2012-13 whereby the Ld. CIT(A) affirmed the Assessment order and Penalty order made by the Assessing Officer.

2. From the order it reflects that though the Ld. CIT(A) fixed the cases for hearing on 5-10-2016, 17/11/2016 30-11-2016 and 07-12-2016, however the Assessee neither attended the appellate proceedings nor filed any adjournment application and in that eventuality 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.

3. 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 the said 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. Though, the Ld. CIT(A) also touched upon the merit of the case, however considering the peculiar facts and circumstances as observed by the Ld. CIT(A) that **notice of hearing returned with remarks of postal authority 'refused' and notice through assessing Officer could not be served despite making efforts**, 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 , suffice to say 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.

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

Order pronounced in the open Court on 12.06.2019.

Sd/-
(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

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

Dated:12.06.2019

/PK/ Ps.

Copy of the order forwarded to:

- (1) Shafiq Ahmad Qasba, Residency Srinagar, Kashmir
- (2) The ITO, Ward-(3), 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