

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**  
(Through web-based video conferencing platform)

**BEFORE SHRI N.K. CHOUDHRY, HON'BLE JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. No. 77/VIZ/2019  
(Asst. Year : 2012-13)**

M/s. Ramya Constructions  
Ltd., C/o T. Chaitanya Kumar,  
Advocate, Flat No. 102, Gowri  
Apartments, URDU Lane,  
Himayathnagar, Hyderabad.

vs. ACIT, Circle-2(1),  
Vijayawada.

PAN No. AADCR 1165 K  
(Appellant)

(Respondent)

Appellant by : Shri T. Chaitanya Kumar, CA.

Department by : Shri B. Satyanarayana Raju, Sr. DR

Date of hearing : 15/04/2021.

Date of pronouncement : 27/04/2021.

**ORDER**

**PER N.K. CHOUDHRY, JUDICIAL MEMBER**

This appeal has been preferred by the assessee against the order dated 31/08/2018 impugned herein passed by the Id. Commissioner of Income Tax (Appeals) [for short, "Id. Commissioner"], Vijayawada u/sec. 250(6) of the Income Tax Act, 1961 (hereinafter referred to as "Act") for the A.Y. 2012-13.

**2.** Facts of the case in brief are that the Assessee is engaged in real estate business, filed its return of income admitting total income of Rs.1,42,26,190/-. The assessment was completed u/sec. 143(3) of the Act on 31/03/2015 and the income was assessed at Rs.1,78,69,931/-

by making certain disallowances. Aggrieved by the order of the AO, Assessee challenged the assessment order before the Id. Commissioner, who issued several notices to the Assessee, but of no avail, therefore the Ld, Commissioner passed impugned order as ex-parte by relying upon the judgments of the Hon'ble Apex Court in the case of Roshan Di Hatti Vs. CIT (107 ITR 938) and A. Govindarajulu Mudaliar Vs. CIT [(1958) 34 ITR 807 (SC)].

**3.** We have given our thoughtful consideration to the order impugned herein. The Appellant failed to give any plausible reason for non-appearance before the Ld. Commissioner therefore, although the instant appeal of the Appellant 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 behavior than an abstract philosophy, the unintentional lapse on the part of a litigant should not normally cause the doors of the judiciary 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.

Considering the peculiar facts and circumstances to the effects that the Ld. CIT(A) did not pass the impugned order on merits, therefore in the interest of justice and for the just decision of case, it would be appropriate to restore back the instant case to the file of the Ld. CIT(E) for decision afresh on merits, within 06 months of this

order, suffice to say, while affording proper and reasonable opportunity(s) of being heard to the Appellant, hence ordered accordingly.

We may clarify that in case of further failure or default by the appellant before the Ld. Commissioner then in that eventuality the appellant shall not be entitled for any leniency and the Ld. Commissioner shall be at liberty to decide the appeal of the appellant in accordance with law, while considering the peculiar facts and circumstances of the case.

**4.** In the result, appeal filed by the appellant stands allowed for statistical purposes.

Order Pronounced in open Court on this 27<sup>th</sup> day of April, 2021.

Sd/-  
**(D.S. SUNDER SINGH)**  
Accountant Member

sd/-  
**(N.K. CHOUDHRY)**  
Judicial Member

**Dated: 27<sup>th</sup> April, 2021.**

**vr/-**

Copy to:

1. *The Appellant - M/s. Ramya Constructions Ltd., C/o T. Chaitanya Kumar, Advocate, Flat No. 102, Gowri Apartments, URDU Lane, Himayathnagar, Hyderabad.*
2. *The Revenue - ACIT, Circle-2(1), Vijayawada.*
3. *The Pr.CIT, Vijayawada.*
4. *The CIT (A), Vijayawada.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Visakhapatnam.