

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 789/Del/2020
Assessment Year: 2012-13**

ICRI Research P. Ltd.,
C-105, Defence Colony,
New Delhi.

PAN: AABCI7298E
(Appellant)

Versus

Income-tax Officer,
Ward 74(4), New Delhi

(Respondent)

Appellant by : None

Respondent by : ShriAnujGarg, Ld. Sr. DR

Date of hearing : 11.07.2022

Date of order : 11.07.2022

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Assessee against the order dated 11.12.2019, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-38, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2012-13.

2. Brief facts relevant to disposal of the instant appeal are that a survey operation was carried out at the premises of Assessee u/s. 133A of the Act on 30.11.2018 when from the trial balance sheet of the Assessee, certain defaults amounting to Rs.4,24,42,265/- for various years were noticed. The Assessing Officer made verification of the compliance by the deductor company with reference to the TDS provisions under chapter-XVIIIB of the Act for the year under consideration. The Assessee filed head-wise ledgers for verification. On verification, the Assessing Officer found that the Assessee had failed to deposit the tax deducted at source

amounting to Rs.68,66,496/- and accordingly treated the Assessee as an Assessee in default u/s. 201(1) of the Act. The Assessing Officer, therefore, worked out the demand payable by the assessee to the tune of Rs.1,66,37,500/- on account of TDS u/s. 201(1) along with late payment interest u/s. 201(1A) of the Act and Rs.37,66,800/- on account of late filing fee u/s. 234-E of the Act, aggregating to Rs.2,04,04,300/-.

The Assessee being aggrieved, challenged the assessment order dated 25.03.2019 passed by the Assessing Officer u/s. 201(1) r.w.s. 201(1A) of the Act before the Id. Commissioner, who vide impugned order dismissed the appeal of the Assessee in limine for want of representation on behalf of the Assessee. Aggrieved by the impugned order, the Assessee is in appeal before us.

3. None is present on behalf of the Assessee despite notice for hearing was issued to the Assessee at the address given in Form No. 36. From the impugned order also it reflects that though the Ld. CIT(A) afforded various opportunities of hearing to the Assessee however, the Assessee at most of the time remained absent therefore the Ld. CIT(A) by observing that the Assessee has chosen not appear during the appellate proceedings, dismissed the same.

4. We have given our thoughtful consideration to the order impugned herein. The Assessee did not bother itself to appear and co-ordinate with appellate proceedings before us well, even after availing opportunity of being heard. 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, jurasubveniunt* (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 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 peculiar facts that the Ld. CIT(A) did not pass the order under challenge on merit but dismissed the appeal in limine, we deem it appropriate and proper to remand back the instant case to the file of the Ld. CIT(A) for decision afresh on merits, suffice to say by affording proper and reasonable opportunity of being heard to the Assessee/Appellant.

5. We also deem 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 would be required and in case of further default, the Assessee shall not be subjected to any leniency.

6. In the result, the appeal filed by the Assessee is allowed for statistical purposes.

Order pronounced in the open court on 11/07/2022.

Sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

*aks/-