

**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. 748/Del/2020
Assessment Year: 2009-10**

Jitender Kumar, VPO Sondapur, Jattal Road, Panipat. PAN: BJHPK6991H (Appellant)	Versus	Income-tax Officer, Ward 2, Panipat. (Respondent)
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Appellant by : None
Respondent by : ShriAnujGarg, Ld. Sr. DR

Date of hearing : 12.07.2022
Date of order : 12.07.2022

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the assessee against the order dated 31.10.2018, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-Karnal (in short "Ld. Commissioner"), u/s. 250(6) of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2009-10.

2. None is present on behalf of the assessee before us despite notice for hearing was issued to the assessee at the address given in Form No. 36. From the impugned order it also reflects that though the Ld. CIT(A) afforded various opportunities of hearing to the Assessee however, the Assessee neither appeared nor provided any document(s) or explanation(s) before the Ld. Commissioner, therefore, the Ld. Commissioner dismissed the appeal in limine while

relying upon the decision of Gujrat High Court in the case of Pr. CIT vs. Ashok Ji Chanduji Thakur in Appeal No. 710 to 714 of 2018 and 717 of 2018 { order dated 27.06.2018} , wherein it has been held that in the case of non-cooperative attitude of the assessee despite various opportunities being granted at the A.O. as well as the level of CIT(A), the additions made by the A.O. was justified.

3. 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 even after affording opportunity of being heard. The assessee is absent before us as well. 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 for want of prosecution on behalf of the assessee**, we deem it appropriate to remand back the instant case to the file of the Ld.

CIT(A) for decision afresh on merits, suffice to say while affording proper and reasonable opportunity of being heard to the Assessee.

4. We also deem it appropriated to direct the Assessee 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.

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

Order pronounced in the open court on 12/07/2022.

Sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

*aks/-