

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

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

**ITA No. 6591/Del/2019
Assessment Year: 2007-08**

Metal India, 4953,
Sadar Bazar, Delhi.
PAN: AAFFM6863Q
(Appellant)

Versus Income-tax Officer,
Ward 63(2), New Delhi

(Respondent)

Appellant by : Sh. Aman Garg, Ld. C.A.
Respondent by: Sh. Jeetender Chand, Ld. Sr. DR

Date of hearing : 15.12.2022
Date of order : 04.01.2023

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Assessee against the order dated 22.07.2019, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-36, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2007-08.

2. In this case, the Assessee by filing return of income on 28.10.2007, declared income of Rs.19,69,883/-, which was processed u/s. 143(1) of the Act. Subsequently, based on the information received from CIT, Central Circle-II, New Delhi that the Assessee had received accommodation entries of Rs.2,57,52,421/- from entry providers Sh. Rakesh Gupta, Sh. Vishesh Gupta, Sh. Naneet Jain and Sh. Vaibhav Jain, the case of the Assessee was

reopened after recording the reasons u/s. 147 of the Act and issuing notice u/s. 148 of the Act.

2.1 The Assessee claimed that the aforesaid amounts represented the purchase amounts made from four parties as mentioned in the assessment order, for which purchase invoices were also furnished on behalf of the Assessee before the AO.

2.2 The Id. Assessing Officer after considering the contentions of the Assessee, found the same as not satisfactory and purchase invoices as bogus on the basis of the statement on oath given by Sh. Vishesh Gupta and Sh. Rakesh Gupta, during the course of search u/s. 132 on 26.04.2014 and in their affidavit dated 23.01.2010, they never admitted to have made any actual sales and therefore, the contention of the Assessee regarding purchase and sale was an afterthought. The AO ultimately, added a sum of Rs. 2,57,52,421/- as bogus purchases in the income of the Assessee.

3. The Assessee being aggrieved preferred first appeal before the Id. Commissioner, who vide impugned order dismissed the appeal of the Assessee in limine for want of prosecution on the part of Assessee after relying on the decision of Hon'ble Supreme Court in the case of B.N. Bhattacharjee and Another, 118 ITR 461(SC) and of Bombay High Court in the case of M/s. Chemipol vs. Union of India in Excise Appeal No. 62 of 2009. Ultimately, the Id. Commissioner determined that since the Assessee has chosen not to appear during the appellate proceedings, the addition made by the Assessing Officer is sustained.

4. Aggrieved by the impugned order, the Assessee is in appeal before us.

5. 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 the Ld. Commissioner, even after availing various opportunities of being heard, as mentioned at page 5 to 7 of the impugned order and the Assessee only sought adjournments. 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 consider 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 reasonable opportunity of being heard to the Assessee.

6. We also deem it appropriate 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.

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

Order pronounced in the open court on 04/01/2023.

Sd/-

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

*aks/-