

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 527/DEL/2019
Assessment Year: 2014-15**

Jitender Sharma,
Prop. Sharma Chemicals &
Adhesives,
51, Ranhola Village,
Najafgarh Road,
Nangloi, New Delhi.
PAN- ALEPS1767M

APPELLANT

Vs ACIT, Circle-41(1),
New Delhi.

RESPONDENT

**Assessee represented by
Department represented
by**

Sh. Anil Kumar Gupta, Ld. CA
Mohd. Gaysuddin Ansari,
Ld. CIT (DR)

Date of hearing

09.03.2023

Date of pronouncement

29.03.2023

ORDER

PER N.K. CHOUDHRY, JM:

The instant appeal has been preferred by the Assessee against the order dated 7.12.2018 impugned herein, passed by the Ld. Commissioner of Income tax (Appeals)- 14, New Delhi (in short "Ld. Commissioner") u/s 250 of the Income Tax Act, 1961 (in short "the Act"), pertaining to the assessment year 2014-15.

2. During the course of survey u/s 133A conducted on the premises of Assessee on 22.8.2013, stock summary for the period 1.4.2013 to 28.8.2013 was obtained from the computers of the Assessee, which showed closing stock balance of Rs. 7,38,38,926/-. Further on physical verification the stock was found and valued at Rs. 12,99,56,303/- as per the inventory drawn during the course of survey on 22.8.2013 at the godown situated at 51, Ranhola village, Najafgarh Road, New Delhi.

2.1 Subsequently, statement of Shri Jitender Kumar, proprietor of Sharma Chemicals & Adhesives, was recorded on 22.8.2013 and vide question no. 46, it was specifically asked to the Assessee that *"As per books of a/c, the value for stock as on date was Rs. 738,38,926/- whereas the value of stock on physical verification is at Rs. 12,99,56,303/-, thereby a difference of Rs. 5,61,17,377/- between the two. There are vouchers/bills found from your premises amounting to Rs. 28,00,000/- of payment made to different parties of building, construction etc. What you want to say about the difference and bills/vouchers found in connection with building material etc."*

2.2 The Assessee answering the said question voluntarily offered the difference in stock amounting to Rs. 5,61,17,377/- and Rs. 28,00,000/- incurred by him on renovation of his residential house for taxation. The post dated cheques worth Rs. 2,00,00,000/- were also issued by the Assessee as guarantee for payment of tax.

2.3 Again by putting question no. 47, the Assessee was asked *"Do you want to say anything about the additional income of Rs. 5,89,17,377/- declared by you for taxation over and above your normal income during the year?"* In answer the Assessee again confirmed his declaration of additional income of Rs. 5,89,17,377/-.

3. On the basis of admission of the Assessee, ultimately the addition of Rs. 5,89,17,377/- was made by the AO by holding that in this case statement u/s 131 of the Act has also been recorded on oath in which the Assessee again has admitted the difference in stock amounting to Rs. 5,61,17,377/- and expenditure of Rs. 28,00,000/- made on renovation of residential property and offered the same for taxation. It is settled law that an admission is an extremely important piece of evidence and in this case the Assessee has admitted again and again and confirmed the difference in stock found during the course of

survey, more so he himself has deposited Rs. 25,00,000/- towards his income tax demand on 3.9.2013. Thus the amount of Rs. 5,89,17,377/- is being added to the income of the Assessee.

4. The Assessee later on retracted his statement made during the course of survey and challenged the said addition before the learned Commissioner. However, inspite of getting opportunity for more than ten times, except seeking adjournments on some occasions, failed to attend the hearings. Therefore, in the constrained circumstances, the learned Commissioner decided the appeal of the Assessee as ex-parte but on the basis of facts available on record, written submissions and the statement of the Assessee dated 22.8.2013 and 27.8.2013 wherein the Assessee surrendered the undisclosed income of Rs. 5,61,17,377/- besides further declaration of Rs. 28,00,000/- spent on renovation of building. Hence considering the peculiar facts and circumstances, though the appeal of the Assessee is liable to be dismissed as the Assessee did not act carefully and remained negligent and neither controverted the findings of the AO before the learned CIT(Appeals) nor substantiated its case by appearing and

producing the relevant material, hence 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 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. The Ld. AR specifically claimed that by putting any condition including, impugned order may be set aside and a reasonable opportunity may be given to the Assessee to plead its

case before the learned Commissioner. On the contrary the Learned DR refuted the claim of the Assessee. Considering the rival claims and the peculiar fact that addition in the instant case based on Assessee's admission and financial year (2013-2014) involved is old, we for the ends of justice and for just decision of the case, deem it appropriate to remand the instant case to the file of the Id. Commissioner for decision afresh, but subject to cost of Rs. twenty five thousand to be deposited in the a/c of National Relief fund within 30 days of this order. Consequently in the aforesaid terms, the case is remanded to the file of Ld. Commissioner for decision afresh, subject to production of such receipt.

We also direct the Assessee to appear and file the relevant documents, before the learned Commissioner as and when would be required and in case of further default, the learned Commissioner would be at liberty to decide the case afresh in accordance with law and without showing any leniency.

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

Order pronounced in open court on 29.03.2023.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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| Draft dictated | 09.03.2023 |
| Draft placed before author | 10.03.2023 |
| Approved Draft comes to the Sr. PS/PS | |
| Order signed and pronounced on | |
| File comes to P.S. | |
| File sent to the Bench Clerk | |
| Date on which file goes to the AR | |
| Date on which file goes to the Head Clerk | |
| Date of dispatch of Order | |
| Date of uploading on the website | |