

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, MUMBAI**

**BEFORE SHRI BR BASKARAN, AM  
&  
SHRI N K CHOUDHRY, JM**

आयकरअपीलसं./ I.T.A. No.558/Mum/2023  
(निर्धारणवर्ष / Assessment Year: 2012-13)

<b>Anil Omprakash Kaushik</b> Office No. 220, Satra Plaza Premises CST, Plot No. 19 and 20, Sector 19D Palm Beach Road Mumbai- 400703	<b>बनाम/ Vs.</b>	<b>CIT (A).</b> National Faceless Appeal Centre (NFAC), New Delhi 12345
स्थायीलेखासं ./ जीआइआरसं ./ PAN No <b>AGMPK4497R</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Ms. Priyanka Shah (Priyavrat & Associates)
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri Manoj Kumar Sinha, Sr. AR.
सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	24.04.2023
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	27.04.2023

आदेश / O R D E R

**Per N K Choudhry, Judicial Member:**

This Appeal has been preferred by the Assessee against the order dated 28.12.2022 impugned herein passed by the Ld. Commissioner of Income Tax (Appeals), NFAC Delhi, (in short 'Ld. Commissioner') u/s. 250 of the Act 1961 ( in short 'the Act') for the AY: 2012-13,

2. In the Instant case the assessment order dated 27<sup>th</sup> Dec, 2019 u/s. 147 r.w.s 144 of the Act, was passed by the Id. Income Tax Officer-15(1)(2),

Mumbai (in short the AO) whereby the income of the Assessee was Assessed at Rs. 4,48,56,550/- as against the return income of Rs.14,75,040/-. The AO also made the additions of Rs. 13,90,088/- and Rs. 449940094/- respectively on account of unexplained credit under 69 of the Act and unexplained money u/s. 69A of the Act.

**3.** The Assessee being aggrieved preferred first appeal before the Ld. Commissioner, who by impugned order affirmed the said additions by dismissing the appeal of the Assessee in limine for non-appearance, against which the Assessee in an appeal before us.

**4.** We have given thoughtful consideration to the order impugned herein. We observe that though the Ld. Commissioner before deciding the appeal filed before him, issued various notices to the Assessee, however, the Assessee neither made any compliance nor filed any documents/submissions therefore finding no option in the peculiar facts and circumstances and considering that the Assessee is not interesting in pursuing its appeal, was constrained to dismiss the appeal of the Assessee in limine. It clearly appears from the order that the Assessee did not bother to appear and co-ordinate with appellate proceedings even after affording opportunities. 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 fact that the Ld. CIT(A) did not pass the order under challenge on merit, we for the just decision of the case and for the ends of justice, deem it appropriate to remand back the instant case to the file of the Ld. Commissioner for decision afresh on merits, while affording proper and reasonable opportunity of being heard to the Assessee.

We also direct the Assessee to extend its full co-operation and participation in the appellate proceedings before the Ld. Commissioner 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 appeal filed by the Assessee stands allowed for statistical purposes.

*Orders pronounced in the open court on 27-04-2023.*

*Sd/-*  
**(B R Baskaran)**  
**Accountant Member**

मुंबई Mumbai;  
*Ms.Urmila*

*Sd/-*  
**(N K Choudhry)**  
**Judicial Member**

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
  2. प्रत्यर्थी/ The Respondent
  3. आयकरआयुक्त(अपील) / The CIT(A)
  4. आयकरआयुक्त/ CIT- concerned
  5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
  6. गार्डफाईल / Guard File
- आदेशानुसार/ BY ORDER,**

**.उप/सहायकपंजीकार (Dy./Asstt.Registrar)**

**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**