

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

BEFORE SHRI B.R. BASKARAN (ACCOUNTANT MEMBER)
AND
SHRI.NARENDRA KUMAR CHOUDHRY (JUDICIAL MEMBER)

I.T.A. No.2551/Mum/2023
(Assessment year : 2005-06)

Sohan Lal Motilal Jain
A-501, Borivali (West),
Mumbai—400092
Maharashtra
PAN :AHRPJ4078M

Vs Assistant Commissioner of
Income Tax,
Circle-2, Thane

APPELLANT**RESPONDENT**

Present for the Assessee : None
Present for the Department : Sh. Ram Prakash Rastogi. Ld.
Sr. DR

Date of hearing : 31/10/2023
Date of pronouncement : 31/10/2023

O R D E R**Per N.K. Choudhry (JM):**

This appeal has been preferred by the Assessee against the order dated 22/05/21023 impugned herein passed by the National Faceless Appeal Centre (NFAC) Delhi / Ld. Commissioner of Income Tax (Appeals) [in short, Ld. Commissioner] under section 250 of the Income-tax Act, 1961 {in short, the Act)} for the A.Y. 2005-06.

2. Brief facts relevant for adjudication of the relevant appeal are that the Assessee has declared total income at Rs.2,35,638/- by filing its return of income on 25/10/2005, which was processed and finalized on 08/03/2007 whereby total income of the Assessee was computed at Rs.2,71,470/-. Subsequently, vide order dated 24/12/2009 passed by the under section 143(3) read with section 263 of the Act the total income of the Assessee was determined at R.47,35,550/-. The Assessing Officer also estimated the gross profit rate @40% of the advance of Rs. 1,11,85,163/- being shown as on 31/03/2005 on non furnishing of the area-wise detail of the project on year to year basis and also not producing the books of account and added the estimated GP rate @40% of advances , in the income of the Assessee, against which, the Assessee went in appeal before the Ld. Commissioner (Appeals)-II, Thane, who partly allowed the appeal of the Assessee and directed the Assessing Officer to apply a net profit of 12.68% on closing work-in-progress.

3. Consequently, the penalty proceedings under section 271(1)(c) of the Act were initiated which culminated into levy of penalty of Rs.7,04,535/- vide order dated 11/03/2015 u/s 271(1)(c) of the Act passed by the AO. The Assessee being aggrieved, preferred first appeal before the Ld. Commissioner challenging the penalty order. As it appears from the impugned order (para 1.1) that the Ld. Commissioner (Appeals) though afforded various opportunities of being heard to the Assessee by sending various notices for the dates of hearing/compliances, however, the Assessee neither appeared nor made any compliance and therefore, in the constrained circumstances, the Ld. Commissioner decided the appeal filed by the Assessee as ex-parte and affirmed the penalty levied by the AO by dismissing the

appeal, while following the decision of the Hon'ble MP High Court in the case of Estate of Late Tukaojirato Holkar vs CWT 233 ITR 480 (MP) and "Latin Maxim" that the law assist only those who are vigilant with their rights and not those who sleep over their rights as embedded in the dictum 'vigilantibus non dormientibus, jura subveniunt'.

4. We have given thoughtful consideration to the impugned order and the conduct of the Assessee as the Assessee before the authorities below remained non-compliant and even inspite of sending 8 notices by the Ld. Commissioner, made no compliance. Even otherwise, before the tribunal as well the Assessee filed the inappropriate Form-36 and inspite of sending defect notice with regard to non-filing of the penalty order and assessment order passed by the AO along-with the appeal, the Assessee made no compliance. Even inspite of sending notice for the date of hearing of this appeal on 31-10-2023, the Assessee made no-compliance, hence in the constrained circumstances, are we inclined to decide this appeal ex-parte. We are in concurrence with the findings of the Ld. Commissioner that though more than adequate opportunity was provided to the Assessee, however, the Assessee was not desirous of pursuing the grounds of appeal. The law assists only those who are vigilant with their rights and not those who sleep over their rights, therefore considering the peculiar facts and circumstances in totality as the Assessee's appeal in not in right format and not accompanied by the Assessment Order and penalty Order passed by the AO and the Assessee has also not cured the defect and the conduct of the Assessee seems to non-compliant and non-vigilant, we are inclined to dismiss this appeal in limine being non-maintainable, hence dismissed accordingly.

5. In the result, appeal filed by the Assessee stands dismissed.

Order pronounced in the open court on 31/10/2023

Sd/-

**(B.R. BASKARAN)
ACCOUNTANT MEMBER**

sd/-

**(N K CHOUDHRY)
JUDICIAL MEMBER**

Pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar / Senior Private
Secretary

ITAT, Mumbai

