

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'A', KOLKATA
(Before Shri P. M. Jagtap, A.M. & Shri S.S.Viswanethra Ravi, J.M.)**

ITA Nos. 1168/Kol/2013 : Asstt. Year : 2004-05

M/s. Thirdwave Distributors Pvt. Ltd. PAN: AABCT 4065C (APPELLANT)	Vs	I.T.O., Ward-7(2) Kolkata (RESPONDENT)
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Appellant by : None

Respondent by : Md. Ghayas Uddin, JCIT, Sr.DR

Date of Hearing : 29.02.2016	Date of Pronouncement :29.02.2016
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ORDER

Shri S.S.Viswanethra Ravi, J.M.

This appeal is preferred by the assessee against the order dated 28.02.2013 passed by the CIT(A)-XXXII, Kolkata in Appeal no.02/XXXII/11-12/R&T/7(2)/Kol for the assessment year 2004-05 passed under section 143(3) of the I.T.Act.

2. At the time of hearing, nobody appeared on behalf of the assessee today i.e., on 29.02.2016, despite the fact that the notice for the hearing on 29.02.2016 was sent to the assessee by RPAD on 25.01.2016. In this context, it is mentioned that the notice sent by RPAD has been returned back to Office by the Postal Authority. It is, therefore, presumed that either the assessee has changed its address without any intimation to this Office or has furnished incorrect address deliberately. In case of change of address, the assessee must have intimated the new address to this Office but it has not

done so. It, therefore, appears that the assessee is not interested to prosecute the matter.

3. The law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in well known dictum, “VIGILANTIBUS ET NON DORMIENTIBUS JURA SUB VENIUNT”. Considering the facts and keeping in view the provisions of rule 19(2) of the Income-tax Appellate Tribunal Rules as were considered in the case of CIT vs. Multiplan India Ltd., (38 ITD 320)(Del), we treat this appeal as unadmitted.

4. Similar view has been taken by the Hon’ble Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. CWT (223 ITR 480) wherein it has been held as under:

“if the party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference.”

5. Similarly, Hon’ble Punjab & Haryana High Court in the case of New Diwan Oil Mills vs. CIT (2008) 296 ITR 495) returned the reference unanswered since the assessee remained absent and there was not any assistance from the assessee.

6. Their Lordships of Hon’ble Supreme Court in the case of CIT vs. B. Bhattachargee & Another (118 ITR 461 at page 477-478) held that the appeal does not mean, mere filing of the memo of appeal but effectively pursuing the same.

7. So by respectfully following the view taken in the cases cited *supra*, we dismiss the appeal of the assessee for non-prosecution.

8. In the result, the appeal filed by the assessee is dismissed.

Order Pronounced in the Open Court on 29th February, 2016.

Sd/-
(P.M.Jagtap)
ACCOUNTANT MEMBER

Sd/-
(S.S.Viswanethra Ravi)
JUDICIAL MEMBER

Dated: 29/02/2016

Talukdar/Sr.PS

Copy of order forwarded to:

- 1 M/s. Thirdwave Distributors Pvt. Ltd., 36, M.D. Road, 3rd floor, 2nd Building,, Kolkata – 700 006
- 2 I.T.O., Ward-7(2), Kolkata
- 3 The CIT(A),
- 4 CIT,
- 5 D.R.

True Copy,

By order,

Asstt. Registrar, ITAT, Kolkata