

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-2', NEW DELHI**

Before Sh. N. K. Saini, Accountant Member

ITA No. 3629/Del/2014 : Asstt. Year : 2004-05

Deepak Kumar, 69, DDA Flats, 1 st Floor, Jwala Heri, Pashim Vihar, New Delhi-110063	Vs	Income Tax Officer, Ward-26(1), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AHOPK9250H		

Assessee by : None

Revenue by : Sh. Amrit Lal, Sr. DR

Date of Hearing : 24.08.2016	Date of Pronouncement : 29.08.2016
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ORDER

This is an appeal by the assessee against the order dated 12.03.2014 of Id. CIT(A)-XXIV, New Delhi.

2. Earlier this case was fixed for hearing on 30.06.2016 and on the request of the Id. DR hearing was adjourned for today i.e. 24.08.2016. The notice of hearing was sent to the assessee through RPAD on 11.07.2016 which has not yet been returned back by the Postal Authority. However, at the time of hearing nobody was present on behalf of the assessee neither any adjournment was sought. 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 SUBVENIUNT”*. 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 Honøble Madhya Pradesh High Court in the case of Estate of Late Tukoji Rao 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, Honøble 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 Honøble 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, respectfully by following the view taken in the cases cited supra, I dismiss the appeal for non-prosecution. The assessee is at liberty to request for setting aside this order by moving an application as per the proviso to Rule 24 of the Income Tax (Appellate Tribunal) Rules, 1963 and explaining the reasons for its non-appearance.

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

(Order Pronounced in the Court on 29/08/2016)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 29/08/2016

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR