

IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH KOLKATA  
BEFORE SHRI A.T.VARKEY, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.2227/KoI/2013

(निर्धारण वर्ष / Assessment Year :2008-2009)

Sri Prafulla Kumar Najir, Vill.&P.O. Narayandari, P.S.Bhagwanpur, Dist.Purba Medinipur	Vs.	ITO, Ward-4, Haldia, Basudebpur, P.O.Khanjanachak, Dist.Purba Medinipur
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AEDPN 4603 H</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : None

राजस्व की ओर से /Revenue by : Sh. Sallong Yaden, Addl.CIT

सुनवाई की तारीख / **Date of Hearing** : **21/03/2017**

घोषणा की तारीख/**Date of Pronouncement** **21/03/2017**

**आदेश / O R D E R**

**Per Dr. Arjun Lal Saini, AM:**

The captioned appeal filed by the assessee, pertaining to the assessment year 2008-09, is directed against the order passed by the Id. Commissioner of Income Tax (Appeals)-XXXIII, Kolkata, in Appeal No.167/CIT(A)-XXXIII/ITO, Wd-4, Hal/10-11, dated 28.03.2013, which in turn arises out of an order passed by the AO u/s.144 of the Income Tax Act 1961, (hereinafter referred to as the 'Act'), dated 29.12.2010.

2. The captioned appeal is barred by 24 days. We have gone through the application filed by assessee for condonation of delay and found that there is a reasonable cause for condonation of delay. Therefore, we condone the delay of 24 days in filing the appeal.

3. This appeal came for hearing today i.e. on 21.03.2017. The notice in this appeal sent to the assessee for hearing by registered post with AD on 31.01.2017 to the address given by the assessee in column no.10 of Form No.36. However no one was present on behalf of the assessee on the date of hearing. Neither an adjournment petition was filed in respect of the above assessee, it means that assessee is not interested to prosecute the appeal. Hence, appeal filed by the assessee is liable to be

dismissed for non prosecution. For this view, we find support from the following decisions :-

“1. In the case of CIT vs B.N.Bhattachrgee and another, reported in 118 ITR 461 [relevant pages 477 & 478] wherein their Lordships have held that:

*“The appeal does not mean merely filing of the appeal but effectively pursuing it.”*

2. In the case of Estate of late Tukoji Rao Holkar vs CWT; 223 ITR 480 (MP) while dismissing the reference made at the instance of the assessee in default made following observation in their order :

*“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.”*

3. In the case of Commissioner of Income-tax vs Multiplan India (P) Ltd.: 38 ITD 320(Del), the appeal filed by the revenue before the Tribunal, which was fixed for hearing. But on the date of hearing nobody represented the revenue/appellant nor any communication for adjournment was received. There was no communication or information as to why the revenue chose to remain absent on that date. The Tribunal on the basis of inherent powers, treated the appeal filed by the revenue as unadmitted in view of the provisions of Rule 19 of the Appellate Tribunal Rules, 1963.

4. The assessee, if so desired, shall be free to move this Tribunal praying for recalling this order and explaining reasons for non-compliance etc. then this order may be recalled.

5. In the result, the appeal of the assessee is dismissed for non-prosecution.

Order pronounced in the open court on this 21/03/2017.

**Sd/-**

**(A.T.VARKEY)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**

**(DR. A.L.SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 21/03/2017

प्रकाश मिश्रा/Prakash Mishra,Sr.PS.

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant- *Sri Prafulla Kumar Najir*
2. प्रत्यर्थी / The Respondent.-ITO, Ward-4, Haldia
3. आयकर आयुक्त(अपील) / The CIT(A), Kolkata.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, कोलकाता / ITAT, Kolkata