

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 1419/KOL/ 2016
Assessment Year: 2008-2009**

Debendra Cold Storage Private Limited,.....Appellant
Pursurah,
Hooghly-712 401
[PAN: AABCD 9003 C]

-Vs.-

Assistant Commissioner of Income Tax,.....Respondent
Circle-1, Hooghly,
Khadinamore, P.O. Chinsurah,
Hooghly-712 102

Appearances by:

Shri Swapan Mukherjee, C.A., for the assessee
Md. Ghayas Uddin , JCIT, D.R., for the Department

Date of concluding the hearing : March 29, 2017

Date of pronouncing the order : March 31, 2017

O R D E R

This appeal filed by the assessee is directed against the order of ld. Commissioner of Income Tax (Appeals)-6, Kolkata dated 04.04.2016.

2. The assessee in the present case is a Company, which is engaged in the business of running a Cold Storage. The return of income for the year under consideration was filed by it on 29.09.2008 declaring a loss of Rs.15,10,527/-. The said return filed by the assessee was taken up for scrutiny by the Assessing Officer and notices under section 143(2) and 142(1) were issued by him to the assessee. There was, however, no satisfactory compliance on the part of the assessee to the said notices as well the notices subsequently issued by the Assessing Officer under section 142(1) fixing the case of the assessee for hearing from time to time. The assessee also failed to produce the books of account as well as other supporting documentary evidence by giving the reason that the same were damaged by flood water. The Assessing Officer, therefore, was

left with no option but to complete the assessment to the best of his judgment under section 144 vide an order dated 18.11.2010. In the assessment so completed, the total income of the assessee was determined by the Assessing Officer at Rs.10,71,578/- after making the disallowance of depreciation amounting to Rs.17,748/-, disallowance of commission expenses amounting to Rs.4,91,422/- and disallowance under section 43B amounting to Rs.20,72,935/-.

3. Against the order passed by the Assessing Officer under section 144, an appeal was preferred by the assessee before the Id. CIT(Appeals) disputing the various disallowances made by the Assessing Officer. There was, however, again no compliance on the part of the assessee to the various notices issued by the Id. CIT(Appeals) fixing the appeal of the assessee for hearing from time to time. The Id. CIT(Appeals), therefore, dismissed the appeal of the assessee by his appellate order dated 04.04.2016 passed *ex-parte* after recording the following observations/findings:-

"3. The second and third grounds of appeal are against the disallowance of commission of Rs.4,91,422/- u/s. 40(a)(ia) and various other expenses aggregating to Rs.20,72,935/- u/s 43B of the Act. The appellant was granted the opportunity of being heard on 28.10.2014, 18.11.2014, 30.12.2014, 17.04.2015, 07.07.2015, 06.08.2015 and 26.08.2015. However, the appellant did not attend but Mr. Swapan Mukherjee, CA & AR (Authorised Representative) filed a letter on 26.08.2015 requesting for adjournment. The hearing was adjourned to 27.11.2015. Shri Swapan Mukherjee attended on 27.11.2015 and again sought adjournment. The matter was adjourned to 11.12.2015 but on 11.12.2015, nobody appeared. A hearing was again fixed on 02.03.2016. An adjournment was again sought on 02.03.2016 and the hearing was adjourned to 28.03.2016. On 28.03.2016, none appeared. It has been held by the Hon'ble Supreme Court in the case of CIT vs. B.N. Bhattacharjee 118 ITR 461 that preferring appeal does not mean merely filing of the appeal but effectively pursuing it. This principle has also been followed in CIT vs. Multi Plan India (P) Ltd. 38 ITD 320(Del) and Estate of Late Tukojirao Holkar vs. CWT 223 ITR 480(MP). Law assists those who are vigilant and not those who sleep over their rights.

The appellant has not availed of the several opportunities/ adjournments granted to it for being heard. Hence, I have no option but to decide the appeal ex-parte. The assessment was finalised u/ s. 144 to the best judgement of the AO as the required details and books of accounts were not furnished. For the same reasons the aforesaid disallowances were made as proof of deduction of tax at source on commission of Rs.4,91,422/- and proof of actual payment of expenses like bank interest (provision) and PF were not furnished. In the absence of any arguments/details against the reasons given for the disallowance of expenses, the disallowance of Rs.4,,91,422/- u/s. 40(a)(ia) and disallowance of Rs.20,72,935/- u/s. 43B are confirmed".
[para 3 CIT(A)]

Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. In this case, the appeal filed by the assessee was initially fixed for hearing on 18.11.2016. The assessee, however, sought adjournment on the said date on the ground that his Authorized Representative Shri Swapan Mukherjee, FCA, was out of station. The hearing thereafter was again fixed on 23.01.2017, when the assessee again sought adjournment on the ground that its store was closed for cleaning and other technical matters and there was a liquidity problem. Accordingly, the hearing was adjourned to 28.02.2017 on which date, the assessee again sought adjournment citing the same reason as given for seeking adjournment earlier on 23.01.2017. In order to give a final chance to the assessee, the hearing was adjourned and fixed on 29.03.2017. On 29.03.2017, i.e. today, the assessee, however, has moved another application seeking adjournment on the ground that its business position is not good and the agriculturists are dying for not getting price for that reason. In my opinion, this reason given by the assessee for seeking adjournment is neither relevant nor sufficient. Moreover, a perusal of the record shows that the assessee has been non-compliant and non-cooperative all through out before the authorities below as well as before the Tribunal. It

appears from this conduct of the assessee that it is not seriously interested in prosecuting this appeal filed before the Tribunal.

5. The law assists those who are vigilant and not those who sleep over their rights. This principle is embodied in the well known dictum - "vigilantibus, non dormientibus, jura subveniunt". Considering the facts and keeping in mind the provisions of Rule 19(2) of the ITAT Rules as was considered in the case of CIT -vs.- Multiplan India Pvt. Ltd. 38 ITD 320 (Del.) and the judgment of the Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar -vs.- C.W.T. reported in 223 ITR 480, I treat this appeal as unadmitted and dismiss the same for non-prosecution.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on March 31, 2017.

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 31st day of March, 2017

- Copies to :*
- (1) **Debendra Cold Storage Private Limited,
Pursurah,
Hooghly-712 401**
 - (2) **Assistant Commissioner of Income Tax,
Circle-1, Hooghly,
Khadinamore, P.O. Chinsurah,
Hooghly-712 102**
 - (3) **Commissioner of Income Tax (Appeals)-6, Kolkata;**
 - (4) **Commissioner of Income Tax- ,**
 - (5) **The Departmental Representative**
 - (6) **Guard File**

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By order

**Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata**