

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

ITA Nos. 1679/Kol/2013 : Asstt. Year : 2006-07

Alex Merchants Pvt. Ltd. (since merged with Mani Square Ltd.) PAN: AABCM 8131G	Vs	I.T.O., Ward-12(1), Kolkata
(APPELLANT)		(RESPONDENT)

Appellant by : None

Respondent by : Shri Ghyas Uddin, JCIT, Sr.DR

Date of Hearing : 20.07.2016	Date of Pronouncement :20.07.2016
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ORDER

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

This appeal is preferred by the assessee against the order dated 14.01.2013 passed by the CIT(Appeals)-XII, Kolkata in Appeal No. 528/XII/12(1)/08-09 for the assessment year 2006-07 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 20.07.2016, despite the fact that the date of hearing on 20.07.2016 was informed to the assessee, when it was last fixed for hearing on 01.06.2016 and the assessee filed adjournment petition on that date. It is, therefore, presumed that in spite of date of hearing being informed, the assessee did not appear before the Bench on the date of hearing or even send any adjournment petition. On earlier several occasions also, the appeal was fixed for hearing but the assessee either did not turn up at the time of

hearing or sought for adjournment. This time also, the assessee did not appear at the time of hearing nor even he sought for adjournment. 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 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, 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 20th July, 2016.

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

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

Dated: 20/07/2016

Talukdar/Sr.PS

Copy of order forwarded to:

- 1 Alex Merchants Pvt. Ltd. (since merged with Mani Square Ltd.),
164/1, Maniktala Main Road, 9th floor, E.M.Bypass, Kolkata- 700
054.
- 2 ITO, Ward-12(1), Kolkata
- 3 The CIT(A),
- 4 CIT,
- 5 D.R.

True Copy,

By order,

Asstt. Registrar, ITAT, Kolkata