

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

**ITA No.1048/Kol/2015
(A.Y: 2008-2009)**

Prodyut Kr. Mondal Mondal Para, Kusthia, Sonarpur, South 24 Pargansas, W.B.	Vs.	I.T.O, Ward-26(2), Kolkata
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AOIPM 0043 B		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Appellant by

:None

Respondent by

:Shri Sallong Yaden, ACIT

सुनवाई की तारीख / **Date of Hearing** : **20/09/2017**

घोषणा की तारीख/**Date of Pronouncement**: **20/09/2017**

आदेश / ORDER

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the assessee, pertaining to assessment year 2008-2009, is directed against the order passed by Id. Commissioner of Income Tax (Appeals)-7, Kolkata dated 28.05.2015.

2. This appeal came for hearing today i.e. on 20.09.2017 but none was present on behalf of the assessee nor any adjournment petition was filed. However, notice was sent by ITAT in past i.e. on 07.08.17, but none was present on behalf of the assessee on the date of hearings. It means that the assessee is not interested to prosecute the appeal. Hence, the 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.Bhattacharjee 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 Tukojirao 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.

3. The law assists those who are vigilant and not those who sleep over their rights, that is, Vigilantibus Et Non Dormientibus Jura Subveniunt.

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 20/09/2017.

Sd/-

(A. T. Varkey)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(DR. A. L. Saini)

लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक

Dated: **20/09/2017**

RS, SPS

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

1. अपीलार्थी / The Appellant-Prodyut Kr. Mondal
2. प्रत्यर्थी / The Respondent.- I.T.O, Ward-26(2), Kolkata
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.

//True Copy//

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.