

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

**Before Sh. N. K. Saini, Accountant Member**

**ITA No. 395/Del/2017 : Asstt. Year : 2012-13**

Sh. Sudershan Kumar, S/o Sh. Jaswant Singh, R/o J-127, First Floor, Front Side, Gali No. 9, Mohan Garden, Uttam Nagar, New Delhi-110059	Vs	Income Tax Officer, Ward-44(3), New Delhi-110002
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. ADSPK2136N</b>		

**Assessee by : None**

**Revenue by : Ms. Ashima Neb, Sr. DR**

<b>Date of Hearing : 11.12.2017</b>	<b>Date of Pronouncement : 11.12.2017</b>
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**ORDER**

This is an appeal by the assessee against the order dated 27.10.2016 of Id. CIT(A)-15, Delhi.

2. Earlier this case was fixed for hearing on 07.11.2017 and on the written request of the department, the appeal was adjourned for today i.e. 11.12.2017. The date of hearing was pronounced in the Open Court and noted by both the parties. However, during the course 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, we 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 11/12/2017)

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

**Dated: 11/12/2017**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**