

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH : KOLKATA

[Before Sri Aby. T. Varkey, Hon. JM & Dr. Arjun Lal Sani, Hon. AM]

I.T.A No. 1559/Kol/2016

Assessment Year : 2007-08

Smt. Saryu Rajnikant Kampani
PAN: AFOPK4154Q
(Appellant)

-vs.-

I.T.O., Ward-3(4),
Kolkata
(Respondent)

For the Appellant : None

For the Respondent : Arindam Bhattacharjee, Addl. CIT, Id.DR

Date of Hearing : 21-05-2018.

Date of Pronouncement : 21-05-2018.

ORDER

Dr. Arjun Lal Sani, AM

This is an appeal by the assessee against the order dated 11.12..2015 of CIT(A)-9, Kolkata, relating to AY 2007-08.

2. It is noticed that the appeal filed by assessee is time barred by 165 days. For which the condonation petition was filed. After perusing the same and hearing the Id.DR, we condone the delay of 165 days and admit the appeal and dispose of the same on merits.

3. This appeal came for hearing today i.e. on 21-05-2018. The notice was sent to the assessee for hearing by registered post with AD 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 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.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 law assists those who are vigilant and not those who sleep over their rights. “Vigilantibus, non dormientibus. Jura subvenient.”

5. 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.

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

Order pronounced in the Court on 21-05-2018.

Sd/-

[Aby. T. Varkey]
Judicial Member

Sd/-

[Arjun Lal Saini]
Accountant Member

Dated : 21-05-2018.

**** PP, SPS**

Copy of the order forwarded to:

1. Smt. Saryu Rajnikant Kampani, 51 Paddapukur Road, Kolkata-20.
2. ITO, Ward- 31(4), Aaykar Bhawan, 5th Floor, P-7 Chowringhee Square, Kolkata-69.
3. CIT(A)-XII, Kolkata 4. CIT-IV, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

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By Order

Sr.PS, H.O.O, ITAT, Kolkata