

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

**ITA No.1187/Kol/2017
(A.Y: 2012-13)**

Highview Retail Pvt. Ltd. Bangeshwar Apartment, 89/2, Salkia School Road, Salkia, Howrah-711106.	Vs.	ITO, Ward-15(1), Kolkata. 110, ShantiPally, Opposite Ruby Hospital, E.M ByePass, Kolkata – 700 107.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCH 1338 L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Appellant by : None
Revenue by : Shri A. K. Tiwari, Addl. CIT

सुनवाई की तारीख / **Date of Hearing :** 12/07/2018
घोषणा की तारीख/**Date of Pronouncement:** 12/07/2018

आदेश / O R D E R

Per Dr. A. L. Saini, AM:

The captioned appeal filed by the assessee, pertaining to assessment year 2012-13, is directed against the order passed by Id. Commissioner of Income Tax (Appeals)-12, Kolkata dated 01.11.2016.

2. Notice of hearing of this appeal was sent to the assessee at the address given by the assessee in Form No.36. This appeal was listed for hearing before the Tribunal on 12.07.2018. Today i.e. on 12.07.2018 when the case was called for hearing, none appeared on behalf of the assessee nor any request for adjournment was made. It means that assessee is not interested in prosecuting this 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 un admitted 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; i.e. “*vigilantibus 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 12/07/2018.

Sd/-
(S.S. Godara)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

Dated:12/07/2018

RS, SPS

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

1. अपीलार्थी / The Appellant- Highview Retail Pvt. Ltd.
2. प्रत्यर्थी / The Respondent.- ITO, Ward-15(1), Kolkata.
3. आयकर आयुक्त(अपील) / The CIT(A),
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.

Sd/-
(DR. A. L. Saini)

लेखा सदस्य / ACCOUNTANT MEMBER