

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'C + SMC' NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
&  
SHRI P. MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.2439/Del/2018  
Assessment Year: 2009-10**

Hemant Kumar F-82A, Mohan Garden, Peepal Road, Uttam Nagar, New Delhi. <b>ANJPK7489B</b>	vs	ITO Ward 42(5) New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Assessee by</b>	<b>None</b>
<b>Revenue by</b>	<b>Sh. Vijay Kumar Jiwani, Sr. DR</b>

<b>Date of Hearing</b>	<b>08.08.2018</b>
<b>Date of Pronouncement</b>	<b>08.08.2018</b>

**ORDER**

**PER SHRI PRASHANT MAHARISHI, A.M.**

Challenging the order dated 05.02.2018 in appeal no. 115/16-17/IT/DEL/2017-18 passed by the Commissioner of Income Tax (Appeals)-14, New Delhi ("Ld. CIT(A)") for A.Y. 2009-10.

2. When the matter is called today, there is no representation for the assessee. On an earlier occasion, none appeared on behalf of the assessee. Notice is issued in this matter to the assessee to the address furnished in Form No 36. When the notice is sent to proper address of the assessee as provided by them in Form No. 36

through Registered mail with postage prepaid, if the assessee was to be found therein, the notice would have been served. If for any reason the assessee is absent temporarily, it is for the assessee to make arrangement with the Postal Department either to deliver it to some other person, or to re-direct it to an address where the assessee could be found or to detain the mail till the assessee comes back and claims the same. Even if the assessee shifts from that place, it is for the assessee to notify the new address either to the Revenue or to the Tribunal or to the Postal Department. Obviously the assessee had not taken any of these steps and the non-service of notice in this matter is solely attributable to the conduct of the assessee. In the circumstances, the absence of the assessee only indicates that the assessee is not interested in pursuant the appeal with diligence.

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.

5. Similar view has been taken by the Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukojirao 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.”*

6. 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.

7. 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.

8. Respectfully following the view taken in the cases cited supra, we dismiss the appeal for non-prosecution.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 08.08.2018

Sd/-  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

Dated: 08.08.2018

\*Kavita

Sd/-  
**(P. MAHARISHI)**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

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