

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT  
&  
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No-4296/Del/2015  
(Assessment Year: 2010-11)**

Northend Housing & Constructions Pvt. Ltd. Sita Villa, 8-B, North Drive, DLF Farm, Chattarpur New Delhi -110074 <b>PAN AACCN2265R</b>	vs	ITO Ward – 18 (4) New Delhi
<b>Assessee by</b>	<b>None</b>	
<b>Revenue by</b>	<b>Sh. Kumar Pranav, Sr DR</b>	

<b>Date of Hearing</b>	<b>17.09.2018</b>
<b>Date of Pronouncement</b>	<b>17.09.2018</b>

**ORDER**

**PER K. NARSIMHA CHARY, J.M.**

This is an appeal filed by the assessee against the order dated 06.06.2013 passed by the Commissioner of Income Tax (Appeals)-6, Delhi for A.Y. 2010-11.

2. When this matter is called today, nobody is present on behalf of the assessee. Record reveals that the notice was issued twice to the assessee to the address given in Form No.36 by registered post. When the notice was sent by registered mail with postage prepaid to proper address, presumption is that the official acts of the postal department are done properly and regularly, and there is no reason for non service of the same if the assessee is to be found in such address. If for any reason the assessee is

not available in such address, it is for them to make arrangement with the postal department either to re-direct the mail to any new address, or to detain the same till the assessee comes back and claims, or to deliver it to any authorized person on behalf of the assessee. In the circumstances, the non service of notice, if any, is solely attributable to the conduct of the assessee. We understand absence of the assessee, either in person or through authorized representative, only shows that the assessee is not interested in prosecuting appeal to be disposed of on merits.

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 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."*

5. 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.

6. 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.

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

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

Order pronounced in the open court on 17.09.2018

**Sd/-**  
**(G.D. AGRAWAL)**  
**PRESIDENT**

Dated: 17.09.2018

Neha

Copy forwarded to:

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

**Sd/-**  
**(K. NARSIMHA CHARY)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	17.09.2018
Date on which the typed draft is placed before the dictating Member	17.09.2018
Date on which the typed draft is placed before the Other Member	17.09.2018
Date on which the approved draft comes to the Sr. PS/PS	17.09.2018
Date on which the fair order is placed before the Dictating Member for pronouncement	17.09.2018
Date on which the fair order comes back to the Sr. PS/PS	17.09.2018
Date on which the final order is uploaded on the website of ITAT	17.09.2018
Date on which the file goes to the Bench Clerk	18.09.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	