

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "SMC" KOLKATA*

Before **Shri S.S, Godara, Judicial Member**

ITA No.1352-1353/Kol/2018
Assessment Year:2014-15

Behani Brothers Narayanpur, Malda, Pin. No.732141 [PAN No.AAKFM 0553 C] Behan Brothers Rabindra Avenue, Malda, Pin-732101 [PAN No.AAFFB 3686 E]	<u>बनाम /</u> V/s.	Income Tax Officer, Ward-3(1), Malda Circle, Malda
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	None
प्रत्यर्थी की ओर से/By Respondent	Shri Radheshyam, CIT-DR
सुनवाई की तारीख/Date of Hearing	31-12-2018
घोषणा की तारीख/Date of Pronouncement	31-12-2018

आदेश /O R D E R

All these two cases pertain to different assessees' appeals for assessment year 2014-15 challenges correctness of Commissioner of Income Tax Jalpaiguri's separate orders of even dated 03.05.2018, passed in case No.150-151/CIT(A)/JAL/2016-17, in proceedings u/s. 143(3) of the Income Tax Act, 1961.

2. Today when the cases were called for hearing nobody had put in appearance in assessee's behest last time i.e. on 24.09.2018 nor was any application for an adjournment filed by the assessee in spite of issue of notice by RPAD. It appears that the assessee is not serious 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."

3. In the case of Estate of late Tukojiro 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."

4. 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 assessee 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.

5. We observe that if the Assessee is advised to file appropriate application for recalling the order on just cause it will be decided in accordance with law.

6. In the result, both the appeals of the assessee are dismissed for non-prosecution.

Order pronounced in the court of the hearing on 31st day of Monday, December, 2018

Sd/-
(S.S. Godara)
Judicial Member

Kolkata,
*Dkp/Sr.PS

दिनांक:- 31/12/2018 कोलकाता

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Behani Brothers, Narayanpur, Malda-732141/ Rabindra Avnue, Malda-732101
2. प्रत्यर्थी/Respondent-ITO Ward-3(1), Malda Circle, Malda
3. संबंधित आयकर आयुक्त / Concerned CIT 4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, कोलकाता ।