

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 4995/Del/2018
Assessment Year: 2006-07

M/s. K.S. Nurtition and Food Pvt. Ltd. M/s. Indica Foods Pvt. Ltd., 38, Amarpali Apartments, 56, I.P. Extension, New Delhi PAN :AAACK5217G	Vs.	DCIT, Circle-11(1), New Delhi
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri S.L. Anuragi, Sr.DR

Date of hearing	09.01.2019
Date of pronouncement	09.01.2019

ORDER

PER O.P. KANT, A.M.:

This appeal, by the assessee, is directed against order of CIT(A)-XV, New Delhi, dated 09.06.2010 for assessment year 2006-07.

2. In this case, notice was sent to the assessee by RPAD on 29.11.2018 at the address mentioned in Form No. 36, vide Column No. 10, fixing the case for hearing on 09.01.2019. In spite of this, today, i.e., on 09.01.2019, when the case was called upon, none turned up on behalf of the assessee, nor any application for adjournment has been filed. It is, thus, inferred that the assessee is not interested in prosecution of its appeal.

3. Considering the facts of the case and keeping in view the provisions of Rule 19(2) of the Income-tax (Appellate Tribunal) Rules, 1963 as were considered in the case of CIT vs. Multiplan India Ltd., (38 ITD 320)(Del), the assessee's appeal is liable to be dismissed for want of prosecution.

4. The Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. CWT (223 ITR 480) has 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. Before parting, we add that in case the assessee is serious in pursuing the appeal filed, then it would be at liberty to pray for a recall of this order by moving an appropriate petition and also by taking appropriate action to correct the defects, if any, pointed out. The Co-ordinate Bench considering the petition, if so satisfied with the explanation and the actions of curing the defects, may recall this order.

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

Order is pronounced in the open court on 9th January, 2019.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Dated: 9th January, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi