

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'C': NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 1625/Del/2016
(Assessment Year: 2007-08)**

Ellel Hotels & Investments Ltd. Hotel Sea Rock, Band Stand, BJ Road, Bandra West Mumbai Mumbai	Vs.	ACIT, Central Circle- 3, New Delhi.
PAN No: AAACE2846D		
APPELLANT		RESPONDENT

Assessee by : None
Revenue by : Smt. Aparna Karan, CIT(DR)

ORDER

PER: ANADEE NATH MISSHRA, AM

This appeal by the Assessee is filed against the order of Ld. CIT(A)-23, New Delhi, dated 04.02.2016 for Assessment Year 2007-08. At the time of hearing before us no one was present on behalf of the assessee. As the assessee has chosen to be neither present nor represented, it can be concluded that the assessee is not serious in pursuing the appeal filed. Therefore, in our view, the appeal filed by the assessee is liable to be dismissed in limine for non-prosecution in view of the following legal position and judicial precedents:-

A. Rule 19 of the ITAT Rules, 1963 prescribes the conditions about

admissibility of appeal for hearing in following terms;

*"19(1) The Tribunal shall notify to the parties specifying the date and place of hearing of the appeal and send a copy of the memorandum of appeal to the respondent either before or with such notice,
(2) The issue of the notice referred to in sub-rule (1) shall not by itself be deemed to mean that the appeal has been admitted."*

B. The ITAT in the-case of CIT Vs. Multiplan (India) Pvt. Ltd. 38 ITD 320 (Del.) had occasion to consider the aspect of-admissibility of appeal for hearing by observing as under:

"4. A judicial body has certain inherent powers. Decisions are taken for the purpose of proper and expeditious disposal of the appeals in present climate-of mounting arrears partly due to appeals being filed without proper application of mind to facts and law and also at times for altogether extraneous considerations. Therefore, on the basis of inherent powers the Tribunal treated the appeal as unadmitted. The provisions of Rule 19 of the Appellate Tribunal Rules support such action by stating that mere issue of notice could not by itself mean that appeal had been admitted. This rule only clarified the position. There is justification for rule 19(2). When the appeal is presented the same is accepted. Thereafter the concerned Clerk in registry verifies whether accompanying documents are received or not and if not a memo is issued calling for the papers which are also required to be attached to appeal memo. But at no stage usually the scrutiny is made on points whether the appeal memo and contents really conform to various Appellate Tribunal Rules or is it a legally valid appeal under section 253 of the Act. Those points if arising can be considered only at a time of hearing.

And that is why the rule prescribes that mere issue of notice does not mean appeal is admitted. This according to us, is the Significance of rule 19(2).

5. It was submitted at the time of hearing of the Reference Application that the language of Rule 24 of the Appellate Tribunal Rules required the Tribunal to dispose of the appeal on merits after hearing the respondent. It may be stated here that the Tribunal has not passed any order on the basis of Rule 24 of the Tribunal Rides which presupposes admission of appeal under section 253 of the Act besides there was no question of hearing the respondent since none could be notified because of incorrect address given by the appellant and proper particulars not furnished so far."

Thus, the ITAT in the case Multiplan (India) Pvt. Ltd. (supra) has held that issuance of notice under Rule 19 itself does not make the appeal admissible. Non-attendance makes the appeal defective and the assessee has to correct the same by giving proper address. Therefore, the appeal was held as inadmissible in terms mentioned above.

5. Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. CWT (223 ITR 480) held as under:

"if the party, at whose instance the reference is made, fails to appear at the hearing, or foils 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."

C. 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.

D. Their Lordships of Hon'ble Supreme Court in the case of CIT vs.B. Bhattachargee and 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.

(2) Respectfully following the order of ITAT in the case of Multiplan (India) Pvt. Ltd, (supra) and in view of the legal position and judicial precedents as mentioned earlier, we dismiss the appeal of the assessee in limine for non-prosecution. However, we wish to clarify that the assessee will be at liberty to approach ITAT for recall of this order and for restoration of this appeal under relevant provisions of law if the assessee is able to show that there was reasonable cause for non representation on the part of the assessee on the date of hearing.

(3) In the result, the appeal filed by the Assessee is dismissed in limine.

Order pronounced in the open court on 20.02.2019.

Sd-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 20.02.2019
Bidhan

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	19.02.19
Date on which the typed draft is placed before the dictating Member	19.02.19
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	