

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER  
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

**I. T. A. No. 762/(Asr)/2017**

Assessment Year: 2011-12

Devinder Pal S/o Sh. Gurdas mal through Legal Heir Smt. Sushma Rani H.No.33, Railway Road, Moga	vs.	Income Tax Officer, Ward-3, Moga
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[PAN: ACNPP 5664J]

**(Appellant)**

**(Respondent)**

Appellant by : None

Respondent by: Sh. Charan Dass (D.R.)

Date of Hearing: 27.02.2019

Date of Pronouncement: 27.02.2019

**ORDER**

Per Sanjay Arora, AM:

This is an Appeal by the Assessee arising out of the Order by the Commissioner of Income Tax (Appeals)-3, Ludhiana ('CIT (A)' for short) dated 30.08.2017, dismissing the assessee's appeal contesting his assessment under section 143(3) r/w section 147 of the Income Tax Act, 1961 ('the Act' hereinafter) vide order dated 28.01.2015 for Assessment Year (AY) 2011-12.

2. None appeared for and on behalf of the assessee when the appeal was called out for hearing, and neither any adjournment motion stands made. This, despite the fact of proper service of the notice of hearing in-as-much as the same, sent per registered post, has not come back un-served. There was no representation even an

earlier occasions, i.e., on 01/08/2018 and 14/11/2018, though the hearing on both occasions, again on dates for which notices stood served, were adjourned in the interest of justice, so as to comply with the principle of *audi alteram partem*. The law assists those who are vigilant and not those who sleep over their rights. This principle is embodied in the well known dictum “VIGILANTIBUS, NON DORMENTIBUS, JURA SUBVENIUNT”. The principle has been invoked in many a decision, as: *Estate of Late Tukoji Rao Holkar v. CWT* [1997] 223 ITR 480 (MP); *CIT v. Multiplan India (P.) Ltd.* [1991] 38 ITD 320 (Del), dismissing the appeals *in limine* for want of prosecution. Reference here may also be drawn to the decision in *CIT v. B.N. Bhattachargee* [1979] 118 ITR 461 (SC), wherein it stands clarified that preferring an appeal does not mean merely filing the appeal papers, but effectively pursuing it. The Apex Court as per its recent larger bench decision in *Ram Siromani Tripathi & Ors. vs. State of UP* (in Civil Appeal Nos. 9142-9144 of 2010 & CA No.6156/2012, dated 07.2.2019 (copy on record), dismissed the appeals *in limine* rejecting the application seeking adjournment on the ground that the counsel was not present in the Court but statedly out of station. The Apex Court while dismissing the appeals made it clear that it would not restore the appeals. As afore-stated, there is no adjournment application in the instant case, and which is the third such instance. Even before the Id. CIT(A), the first appellate authority, there was no representation, constraining her to dismiss the appeal *ex parte*, even she has discussed the facts of the case as well. The appeal in the instant case is also time barred by 39 days. Under the circumstances, we are constrained to dismiss the assessee’s appeal *in limine* as un-admitted and, in any case, for want of prosecution. We decide accordingly.

3. In the result, the assessee's appeal is dismissed *in limine*.

*Order pronounced in the open court on February 27, 2019*

Sd/-  
(N. K. Choudhry)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Date: 27.02.2019

/PK/ Ps.

Copy of the order forwarded to:

- (1) The Appellant: Devinder Pal S/o Sh. Gurdas mal through Legal Heir Smt. Sushma Rani H.No.33, Railway Road, Moga
- (2) The Respondent: Income Tax Officer, Ward-3, Moga
- (3) The CIT(Appeals)-3, Ludhiana
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

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By Order