

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA
BEFORE SHRI A.T. VARKEY, JM & DR. A.L.SAINI, AM**

**ITA No.1709/Kol/2018
(A.Y: 2012-13)**

Sonu Kumar Bhagat	Vs.	ITO, Ward-63(2), Kolkata
Flat No. 3A, Block 5, Raghunathpur, Techaria, Kolkata-59.		
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ALXPB 3479 N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Appellant by : None
Revenue by : Shri Radhey Shyam, CIT DR

सुनवाई की तारीख / Date of Hearing : 12/03/2019

घोषणा की तारीख/Date of Pronouncement: 15/03/2019

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the assessee, pertaining to assessment year 2012-13, is directed against the order passed by Id. Commissioner of Income Tax (Appeals)- 19, Kolkata .

2. This appeal fixed for hearing on 12/03/2019 i.e. today. When the case was called for hearing none appeared on behalf of the assessee nor any request for adjournment was made. It means that assessee is not interested 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.”

(2). In the case of Estate of late Tukojirao 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.”

(3). 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 revenue chose to remain absent on that date. The Tribunal on the basis of inherent powers, treated the appeal filed by the revenue as unadmitted in view of the provisions of Rule 19 of the Appellate Tribunal Rules, 1963.

3. The law assists those who are vigilant and not those who sleep over their rights; i.e. *“vigilantibus non dormientibus, jura subveniunt”*.

4. The assessee, if so desired, shall be free to move this Tribunal praying for recalling this order and explaining reasons for non-compliance etc. then this order may be recalled.

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

Order pronounced in the Court on 15.03.2019

Sd/-
(A.T. VARKEY)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

दिनांक/ Date: 15/03/2019
(SB, Sr.PS)

Copy of the order forwarded to:

1. Sonu Kumar Bhagat
2. ITO, Ward-63(2), Kolkata
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

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By Order

Assistant Registrar
ITAT, Kolkata Benches