

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'D' BENCH, KOLKATA**

[Before Sri P.M. Jagtap, Vice-President & Sri S.S. Viswanethra Ravi, Judicial Member]

I.T.A. No. 1390/Kol/2018
Assessment Year: 2012-13

Max Cot Merchants Pvt. Ltd.....Appellant
C/o P.K. Himmatsinghka & Co.
41,B.B. Ganguly Street
2nd Floor
Central Plaza
Kolkata - 700 012
[PAN : AABCM 8954 B]

Income Tax Officer, Wd-1(4), Kolkata..... Respondent

Appearances by:

None, appeared on behalf of the assessee.

Shri Shankar Halder, JCIT, Sr. DR appearing on behalf of the Revenue.

Date of concluding the hearing : March 2nd, 2019

Date of pronouncing the order : March 29th, 2019

ORDER

Per S.S. Viswanethra Ravi, JM :-

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-1, Kolkata, (hereinafter the 'Id. CIT (A)'), dt. 24/05/2018, passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), relating to the Assessment Year 2012-13, wherein he confirmed the order of the Assessing Officer imposing penalty u/s 271(1)(b) of the Act, *ex-parte* of the assessee.

2. We find no representation on behalf of the assessee nor any application seeking adjournment. The assessee called absent. Therefore we proceed to hear the Id. D/R.

3. Heard the Id. D/R and perused the material available on record. The assessee filed this appeal on 27/06/2018 and the Registry, ITAT Kolkata Benches, had issued notice dt. 15/01/2019 intimating fixation of date of hearing on 12/02/2019, through RPAD. On such date on request of the Id. A/R the case was adjourned to today i.e. 07/03/2019. On perusal of the record, the date of hearing

i.e., today is in the knowledge of the A/R representing the assessee and when the case was called, there was no representation. It is also noted that there was such non-compliance before the Id. CIT(A) as well. 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."

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 un admitted in view of the provisions of Rule 19 of the Appellate Tribunal Rules, 1963."

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

Kolkata, the 29th day of March, 2019.

Sd/-

[P.M. Jagtap]
Vice President

Dated : 29.03.2019
{SC SPS}

Sd/-

[S.S. Viswanethra Ravi]
Judicial Member

Copy of the order forwarded to:

1. Max Cot Merchants Pvt. Ltd
C/o P.K. Himmatsinghka & Co.
41,B.B. Ganguly Street
2nd Floor
Central Plaza
Kolkata – 700 012

2. Income Tax Officer, Wd-1(4), Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

Assistant Registrar
ITAT, Kolkata Benches