

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

**Before Shri P.M. Jagtap, Accountant Member  
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 716/KOL/ 2012  
Assessment Year: 2004-2005**

***Ellenbarrie Exim Limited,.....Appellant***  
***6C, Elgin Road,***  
***Kolkata-700 020***  
***[PAN : AAACE 5768 L]***

***-Vs.-***

***Assistant Commissioner of Income Tax,.....Respondent***  
***Circle-7, Kolkata,***  
***Aayakar Bhawan,***  
***P-7, Chowringhee Square,***  
***Kolkata-700 069***

**Appearances by:**

*N o n e, for the assessee*

*Shri A.K. Pande, JCIT, for the Department*

Date of concluding the hearing : April 27, 2016

Date of pronouncing the order : April 29, 2016

**O R D E R**

**Per Shri P.M. Jagtap :-**

This appeal filed by the assessee is directed against the order of the  
ld. Commissioner of Income Tax-(Appeals)-VIII, Kolkata dated  
12.03.2012.

2. In this case, the appeal filed by the assessee was initially fixed for  
hearing on 03.10.2012. However, the assessee sought adjournment on the  
said date and accordingly the hearing was adjourned to 20.12.2012. On  
20.12.2012 the assessee again sought adjournment and accordingly the  
hearing was adjourned to 08.03.2013. On 08.03.2013 as well as on the  
couple of occasions thereafter, the Bench did not function and  
accordingly the appeal of the assessee was fixed for hearing thereafter on

23.04.2014. The assessee, however, again sought adjournment on 23.04.2014 as well as on 09.09.2014 when its appeal was fixed for hearing before the Tribunal. Thereafter the Bench again did not function on some occasions and the appeal of the assessee thereafter was fixed for hearing on 30.12.2015. None, however, appeared on behalf of the assessee at the time of hearing fixed on 30.12.2015 as well as thereafter on 22.02.2016. The hearing, therefore, was adjourned to 27.04.2016 with a direction to the Registry to send the notice of the said hearing to the assessee by Registered Post with A/D. On 27.04.2016, i.e. today, again nobody has appeared on behalf of the assessee nor any application seeking adjournment has been filed. Even the notice sent to the assessee by Registered Post with A/D has come back undelivered from the Postal Authorities with a remark "not known". The assessee thus has not bothered to inform the change of address, if any, in order to facilitate the Registry to serve the notice of hearing. Keeping in view all these facts of the case, it appears that the assessee is not seriously interested in prosecuting this appeal filed before the Tribunal.

3. It is also observed that the main issue involved in this appeal of the assessee relating to the disallowance of Rs.62,64,29,732/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of commission paid to two parties is squarely covered against the assessee by the decision of the Coordinate Bench of this Tribunal in assessee's own case for A.Y. 2005-06 rendered vide its order dated 21.07.2011 passed in ITA No. 1871/KOL/2008, wherein a similar disallowance made by the Assessing Officer on account of commission paid to the same two parties was confirmed by the Tribunal. As a matter of fact, the Id. CIT(Appeals) in his impugned order has relied on the said decision of the Tribunal to confirm the similar disallowance made by the Assessing Officer on account of commission paid to the two parties.

4. 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 dormientibus, jura subvenient". Considering the facts and keeping in mind the provisions of Rule 19(2) of the ITAT Rules as was considered in the case of CIT -vs.- Multiplan India Pvt. Ltd. 38 ITD 320 (Del.) and the judgment of the Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukoji Rao Holkar -vs.- C.W.T. reported in 223 ITR 480, we treat this appeal as unadmitted and dismiss the same for non-prosecution.

5. **In the result, the appeal of the assessee is dismissed.**

Order pronounced in the open Court on April 29, 2016.

Sd/-

Sd/-

**(S.S. Viswanethra Ravi)**  
**Judicial Member**

**(P.M. Jagtap)**  
**Accountant Member**

*Kolkata, the 29<sup>th</sup> day of April, 2016*

- Copies to :
- (1) *Ellenbarrie Exim Limited,  
6C, Elgin Road,  
Kolkata-700 020*
  - (2) *Assistant Commissioner of Income Tax,  
Circle-7, Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700 069*
  - (3) *Commissioner of Income-tax, Kolkata;*
  - (4) *CIT(Appeals)-VIII, Kolkata;*
  - (4) *The Departmental Representative*
  - (5) *Guard File*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*