

**BEFORE IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D' NEW DELHI**

SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No. 4548/DEL/2013
Assessment Year: 2008-09

Jyoti Herbs (India) Pvt. Ltd. Mohebewala Indl. Area Dehradun- 248001 PAN AABCJ4403E (Appellant)	vs.	ACIT Circle-2 Dehradun (Respondent)
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Assessee by : None
Department by: Shri Yogesh Kumar Sharma, Sr. DR

Date of Hearing : 13.06.2016
Date of pronouncement : 08.07.2016

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER

This appeal filed by the assessee is directed against the order of the CIT(A)-II, Kanpur dated 28.3.2013 for A.Y 2008-09.

2. Today i.e. on 13.06.2016, when the case was called on board, none appeared on behalf of the assessee nor any request for

adjournment has been filed before the Tribunal. A notice of hearing sent fixing the hearing for 13.06.2016 sent to the assessee by Registered Post at the address furnished by the assessee in column no. 10 of Form No. 36 has not been returned unserved. Thus, in view of Order 5 Rule 19A of the CPC read with section 282 of the Income-tax Act, 1961, the service of notice is deemed sufficient on the assessee.

3. 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. "

4. 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 Rules 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. Similar view has been taken by the Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. CWT (223 ITR 480) wherein it has been held as under:

“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.”

6. Similarly, 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.

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

8. Respectfully following the order of ITAT in the case of Multiplan (India) Pvt. Ltd. (supra), the appeal is dismissed for non prosecution with a liberty to assessee to move appropriate application and correct

the defect whatsoever in the memo about its address to ensure a proper hearing of the appeal. In these terms, the appeal is technically dismissed.

8. In the result, the appeal of the assessee stand dismissed.

The order is pronounced in the open court on 8th July, 2016.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated 8th July, 2016
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Copy of order forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By Order

Asstt Registrar, ITAT