

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'SMC', KOLKATA
(Before Shri P. M. Jagtap, Accountant Member)**

ITA No. 16/Kol/2014 : Asstt. Year : 2005-2006

M/s. Saptarshi International PAN: AAOFS 3732P (APPELLANT)	Vs	ITO, Ward-51(3), Kolkata (RESPONDENT)
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Appellant by : None

Respondent by : Shri Debasish Lahiri, JCIT, Sr.DR

Date of Hearing : 15.09.2015	Date of Pronouncement : 16.09.2015
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ORDER

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income-Tax (Appeals)-XXXII, Kolkata dated 20.09.2013 for the assessment year 2005-06.

2. In this case the hearing was initially fixed before the Tribunal on 20.07.2015. None, however, appeared on behalf of the assessee at the time of hearing. The hearing was, therefore, adjourned to 30.07.2015 when again nobody appeared on behalf of the assessee, despite the fact that notice of the said hearing was sent to the assessee by RPAD. The hearing, therefore, was again adjourned to 02.09.2015 on which date the Bench did not function and accordingly the hearing was adjourned to 15.09.2015. On 15.09.2015 i.e. today, again nobody has appeared on behalf of the assessee at the time of hearing. The notice of the said hearing sent to the assessee by RPAD at the address given in the appeal memo has also come back from the postal authorities undelivered with the remark "left". It is thus clear that the assessee has not bothered to

inform the change of address, if any, in order to facilitate the service of notice.

3. All the facts narrated above show that the assessee is not seriously interested in prosecuting this appeal filed before the Tribunal.

4. The law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in well known dictum, *“VIGILANTIBUS ET NON DORMIENTIBUS JURA SUB VENIUNT”*. Considering the facts and keeping in view the provisions of rule 19(2) of the Income-tax Appellate Tribunal Rules as were considered in the case of CIT vs. Multiplan India Ltd., (38 ITD 320)(Del), we treat this appeal as unadmitted.

5. Similar view has been taken by the Honøble 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, Honøble 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 Honøble 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. So by respectfully following the view taken in the cases cited *supra*, I dismiss the appeal of the assessee for non-prosecution.

9. In the result, the appeal filed by the assessee is dismissed.

Order Pronounced in the Open Court on 16th September, 2015.

Sd/-
(P.M.Jagtap)
ACCOUNTANT MEMBER
Dated: 16/09/2015

Talukdar/Sr.PS

Copy of order forwarded to:

- 1 M/s. Saptarshi International, C/29, School Road, Sodepur, Kolkata- 700 110
- 2 ITO, Ward-51(3), Kolkata
- 3 The CIT(A),
- 4 CIT,
- 5 D.R.

True Copy,

By order,

Asstt. Registrar, ITAT, Kolkata