

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'B', KOLKATA
(Before Shri P. M. Jagtap, A.M. & Shri S.S.Viswanethra Ravi, J.M.)**

ITA Nos. 1474 & 1475/Kol/2011 : Asstt. Years : 2005-06 & 2007-08

M/s. Ares & Sons PAN: AAIFA 1221D (APPELLANT)	Vs	ACIT, Circle-49, Kolkata (RESPONDENT)
---	----	---

**Appellant by : None
Respondent by : None**

Date of Hearing : 03.12.2015	Date of Pronouncement :03.12.2015
-------------------------------------	--

ORDER

Shri S.S.Viswanethra Ravi, J.M.

These two appeals are preferred by the assessee against the orders both dated 20.10.2010 passed by the CIT(Appeals)-XXXII, Kolkata in Appeal Nos.202 & 203/CIT(A)-XXXII/09-10/Cir-49/Kol for the assessment years 2005-06 and 2007-08 respectively passed under section 143(3) read with section 147 of the I.T.Act.

2. At the time of hearing, nobody appeared on behalf of the assessee today i.e., on 03.12.2015, despite the fact that notice of the said hearing was sent to the assessee by RPAD. It is, therefore, presumed that in spite of notice of hearing being received by the assessee, the assessee did not appear before the Bench on the date of hearing. On earlier several occasions, the appeal was fixed for hearing but the assessee either did not turn up at the time of hearing or sought for adjournment. This time also, the assessee did not appear at the time of hearing nor even he sought for

adjournment. It, therefore, appears that the assessee is not interested to prosecute the matter.

3. 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.

4. 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.”

5. 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.

6. 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.

7. So by respectfully following the view taken in the cases cited *supra*, we dismiss the appeals of the assessee for non-prosecution.

8. In the result, the appeals filed by the assessee are dismissed.

Order Pronounced in the Open Court on 3rd December, 2015.

Sd/-
(P.M.Jagtap)
ACCOUNTANT MEMBER

Sd/-
(S.S.Viswanethra Ravi)
JUDICIAL MEMBER

Dated: 03/12/2015

Talukdar/Sr.PS

Copy of order forwarded to:

- 1 M/s. Ares & Sons, P. Murali & Co., Chartered Accountants, 6-3-655/2/3, 1st floor, Somajiguda, Hyderabad – 82.
- 2 ACIT, Circle-49, Kolkata
- 3 The CIT(A),
- 4 CIT,
- 5 D.R.

True Copy,

By order,

Asstt. Registrar, ITAT, Kolkata