

42



COMMISSIONER OF INCOME TAX (APPEALS)-2
3RD FLOOR, AAYAKAR BHAWAN, P-7 CHOWRINGHEE SQUARE,
KOLKATA-700069

Phone - 033-2262-7450 / Fax - 033-2262-7451

1	Appeal No	10047/CIT(A)-2/17-18
2	Date of service of the order and notice of demand as per form no 35	08.04.2017
3	Date of Institution of Appeal	04.05.2017
4	Date of Appeal Order	14.01.2019
5	Name and address of Appellant	Varun Finance Pvt Ltd. C-3/3, Gillander House, 8, N.S. Road, Dalhousie, Kolkata 700001
6	PAN/TAN	AABCV0302L
7	Assessment Year	2006-07
8	Name & Designation of the Officer who made the Assessment Order	JHON KERKETTA ACIT. (OSD) Ward-5(4), Kolkata.
9	Income Assessed	Rs. NA
10	Tax/Penalty and interest demanded	Rs. 10,624/-
11	Section under which the order appealed against was made	u/s 271 1 (C) Dated : 31.03.2017
12	Date of hearing	As per record.
13	Present for the appellant	----
14	Present for the Department	----

Order u/s 250 of the Income Tax Act, 1961

The assessee being aggrieved by the above order filed an appeal with the following grounds of appeal:-

1. For that the penalty proceeding initiated vide notice dt. 5.12.2008 u/s. 271 was wrong and illegal as the notice does not indicate as to for what purpose and aspect penalty proceeding is initiated. The notice contains both aspects namely have concealed the particulars of income or furnished inaccurate particulars of such income, irrelevant portion has not been deleted. Therefore, the notice is void as per law laid down in CIT vs. SSAs Emerald Meadows by the Supreme Court.
2. For that the learned AO was wrong in not providing further opportunity of hearing after reply to show cause notice was filed on 22.08.2016. In case AO did not agreed

to contentions of assessee and intended not to follow precedence claimed to be binding by assessee by way of judgements of the Supreme Court, he should have provided further opportunity of hearing before passing order and levying penalty vide order dt. 31.03.2017.

3. For that AO was wrong in ignoring law that merely because a claim has not been allowed by the AO and his action has been confirmed by the CIT(A) does not mean that the assessee has concealed particulars of income or furnished inaccurate particulars of income.
4. For that learned AO was wrong in not applying law laid down in case of Reliance Petro Products Ltd. and Price Waterhouse Coopers P. Ltd. which are applicable in case of assessee and copy of which were also filed.
5. For that AO was wrong to ignore that disallowance u/s. 14A and counting of months for computing long-term period both are contentions issues and assessee had favourable decision regarding both issues.
6. For that AO was wrong in holding that assessee is liable to penalty u/s. 271 1.c and in imposing penalty in respect of disallowance u/s. 14A and treating some long-term capital gains as short-term capital gains instead of long-term capital gains.
7. For that the order u/s. 271 1.c and consequent demand notice both dated 31.03.2017 may be set aside.
8. For that the appellant seeks permission to raise new contentions and grounds of appeal.

During the appellate proceedings following notices were issued for hearing in the matter. The details of these notices along with remarks are as under:-

Date of Notice	Date of Hearing	Remarks
24.08.2018	11.09.2018	<ul style="list-style-type: none"> The case was fixed for hearing today, but none appeared nor was an adjournment petition filed on behalf of the assessee.
01.11.2018	28.11.2018	<ul style="list-style-type: none"> The case was fixed for hearing today, but none appeared nor was an adjournment petition filed on behalf of the assessee.
05.12.2018	11.01.2019	<ul style="list-style-type: none"> The case was fixed for hearing today, but none appeared nor was an adjournment petition filed on behalf of the assessee. As per speed post tracking system, the notice was delivered to the appellate on 13.12.2018.
<ul style="list-style-type: none"> It is also pertinent to mentioned that all the notices were also sent through email automatically by the system on the registered email id of the assessee. 		

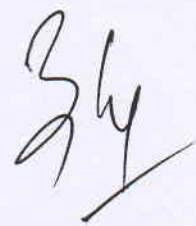
As regards to service of notice, it is apparent from the provision of section 282 of the Act, that there are various alternative modes of service specified therein and there is no mandatory requirement of following the code of civil procedure. The Hon'ble High Court of Calcutta in its order, in the case of Success Tours and Travels Private Limited reported under 394 ITR 37 Cal has observed the same, while upholding the ITAT decision in the matter of service of notice. In view of above, I am of the view that it would constitute substantial compliance of the provisions of Section 282 of the Act in the case of the assessee as mentioned above as regards to service of the notices. Hence, I have no option but to decide the matter on the basis of material available on record.

I have considered the grounds of appeal, statement of facts as well as the order of the assessing officer framed in the light of the materials available on record before the assessing officer during the assessment proceedings. The assessing officer has already discussed the issue in details with all the facts and relevant evidences available on record while passing the order. The appellate, during the course of appellate proceedings, has not submitted any written or oral arguments with evidences against the findings of the Assessing Officer.

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 subveniunt*". In view of the decisions in the case of CIT Vs. Multiplan (I) Ltd., reported in 38 ITD 320 (Del.), Hon'ble MP High Court in the case of Estate of Late Tukjirao Holkar Vs. CWT 223 ITR 480, Hon'ble Punjab and Haryana High Court in the case of New Diwan Oil Mills Vs. CIT 296 ITR 495 (P & H), Hon'ble Madhya Pradesh High Court in Jamunadas v. CST [1993] 38 MPLJ 462 and The Hon'ble Supreme Court in the case of CIT Vs. B. N. Bhattacharjee & another 296 ITR 495 (SC) laying down proposition that a litigant has not only to file an appeal but has to prosecute the same diligently and on failure to so prosecute the appeal can be dismissed for non-prosecution.

Hence, by considering the above, it appears that the assessee is not interested in prosecuting its appeal. I, therefore, **dismiss the appeal filed by the assessee for non-prosecution.**

In the result, **the appeal of the appellant is dismissed.**



Ram Bilash Meena
Commissioner of Income Tax (Appeals)-2, Kolkata.