

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "FRIDAY-A" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**
MA No.561/Del/2017
(Arising out of ITA No.2041/Del/2011)
Assessment Year 2003-04

Raghvi Finance Ltd. 10 Community Centre-II, Ashok Vihar Phase II, New Delhi	vs.	The Income Tax Officer, Ward15(1), New Delhi
TAN/PAN: AAACR5979F		
(Appellant)		(Respondent)

ITA No.2041/Del/2011)
Assessment Year 2003-04

The Income Tax Officer, Ward15(1), New Delhi	vs.	Raghvi Finance Ltd. 10 Community Centre-II, Ashok Vihar Phase II, New Delhi
		TAN/PAN: AAACR5979F
(Appellant)		(Respondent)

Appellant by:	Ms. Rano Jain, Advocate & Ms. Mansi Jain, Advocate		
Respondent by:	Sh. N.K. Bansal, Sr.D.R.		
Date of hearing:	04	12	2020
Date of pronouncement:	04	12	2020

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid Miscellaneous Application has been filed by the assessee in relation to order passed by the Tribunal dated 02.05.2017 in ITA No.2041/Del/2011 on the ground that the same has been decided ex-parte, qua the assessee.

2. In the application, following reasons have given for non appearance on the date of hearing:-

“2. The reason for non-appearance on that day of hearing i.e. 24.04.2017 by the Respondent assessee was that an employee Shri Aman Aggarwal of the assessee(unfamiliar with the Tribunal, its location or working) had been posted to the Tribunal for seeking an adjournment. Unfortunately the employee could not reach the Tribunal in time due to traffic congestion and indeed by 12 noon when he did so after a vigorous search of the Tribunal premises, the Hon’ble Bench had risen for the day. Being unaware of the practice and procedure of the Hon’ble Tribunal, the Company’s employee left the Hon’ble Tribunal abruptly to report back to the Company on the lapse.

3. As to the Company it could not make proper arrangement for the hearing of the appeal on that day because Shri K. K. Agrawal, Director of the company had lost his father on 17.04.2017 and was thus busy in the obsequies related to the death of his father.

4. There were, thus, reasonable and sufficient causes for not putting appearance due to factors beyond the control of the Company and further since despite Company taking essential

steps to obtain a proper adjournment of the hearing, it failed to do so due to the complex circumstances as stated above.

5. It is, therefore, respectfully prayed that the order passed on 02.05.2017 be kindly recalled for de novo adjudication and orders. Needless to solemnly assure that the Respondent will earnestly and sincerely co-operate in all future hearings if only given a chance.”

3. The Ld. Counsel for the assessee submitted that since it is an *ex-parte order*, and there was reasonable and sufficient cause as affirmed above for not appearing on the date of hearing, therefore, in interest of justice, matter should be recalled in terms of **Rule 25 of the ITAT Rules 1962** read with Section 254(2) of the Income Tax Act, 1961.

4. Ld. Counsel further pointed out that in any case, the tax effect in the Revenue's appeal is far below of the prescribed limit of Rs.50 Lakhs as per CBDT Circular No.17/2019 dated 08.08.2019 and therefore, the appeal of revenue is itself not maintainable.

5. On the other hand, the Ld. DR submitted that the issue in the Tribunal order has been decided on merits, therefore, the same may not be recalled.

6. After considering the impugned application as well as captioned ITAT order, we find that the order has been passed *ex-parte*, qua the assessee for the reasons stated in the miscellaneous application as incorporated above. Once, the

assessee could not represent its case and put forth its arguments and material on record, therefore, such an ex-parte order needs to be recalled in terms of Rule 25 of ITAT Rules. From the contents affirmed in the application, we are convinced that there was sufficient and reasonable cause for non-appearance on the date of hearing and therefore, we are recalling the order of the Tribunal dated 02.05.2017 to decide afresh.

7. As pointed out by the Ld. Counsel for the assessee that the only dispute is with regard to addition of Rs.35 Lakhs made by the Assessing Officer u/s 68 of the Act. The tax effect on such disputed amount admittedly is much below than prescribed monetary limit of Rs.50 Lakhs; hence in view of CBDT Circular No.17 /2019 dated 08.08.2019, which is applicable to all the pending appeals, the appeal of the Department, is treated as not maintainable. Accordingly, the appeal of the Revenue is dismissed *in-limine*.

8. In the result, miscellaneous application is allowed and appeal of the Revenue is dismissed.

Order pronounced in the open Court on 4th December, 2020.

Sd/-

**[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER**

Sd/-

**[AMIT SHUKLA]
JUDICIAL MEMBER**

DATED: 4th December, 2020

Shekhar