

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**(DELHI BENCH 'H' : NEW DELHI)**

**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.35/Del/2021  
(Assessment Year : 2016-17)

Reliable Finance Corp. New Delhi	Vs.	ITO Ward-21(2) New Delhi
Appellant		Respondent
<b>PAN: AAACR0282Q</b>		

Assessee by	None.
Revenue by	Ms. Richa Khoda CIT( DR)

Date of hearing:	20.10.2022
Date of pronouncement:	07.11.2022

**ORDER**

**Per Anubhav Sharma, JM :**

The appeal has been filed by the assessee against order dated 27/9/19 in appeal no. 10434/429/CIT(A)-7/DEL/2018-19 for assessment year 2016-17 passed by Commissioner of Income Tax (Appeal)-7, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.')

in regard to the appeal before it arising out of assessment order dated 27/12/2018 u/s 143(3) of the Income Tax Act, 1961 passed by ITO Ward-21(2) New Delhi (hereinafter referred to as the Assessing Officer or 'AO').

Heard and perused the record.

None appeared for the Appellant. Appeal is filed along with application for condoning of delay of 419 days in filing of appeal. An affidavit of Director of the assessee company is filed stating that delay was due to lapse of the counsel and Covid-19 pandemic. The record shows Ld. CIT(A) had dismissed the appeal ex parte and without going on the merits of the case.

The ends of justice require allowing the delay in filing of the present appeal.

Further, once the Assessee files an appeal U/s 246A of I.T. Act, the Assessee sets in motion the machinery designed for disposal of the appeal under Sections 250 and 251 of I.T. Act. If the appeal filed by the assessee fulfils the requirements of maintainability and admissibility prescribed under Sections 246, 246A, 248 and 249 of I.T. Act; neither the Assessee can stop the further working of that machinery as a matter of right by withdrawing the appeal, or by not pressing the appeal, or by non-prosecution of the appeal; nor the first appellate authority, the Ld. CIT(A) in this case, can halt this machinery by ignoring the procedure in appeal prescribed U/s 250 of I.T. Act and powers of Commissioner (Appeals) prescribed U/s 251 of I.T Act. CIT(A). The first appellate authority cannot dismiss assessee's appeal in limine for non-prosecution without deciding the appeal on merits through an order in writing, stating the points of determination in the appeal, the decision thereon and the reason for the decision. It is well-settled that powers of Ld. CIT(A) are co-terminus with powers of the Assessing Officer. Useful reference may be made to order of Apex Court decision in CIT vs. Kanpur Coal Syndicate 53 ITR 225 (SC) in which it was held that the first appellate authority has plenary powers in disposing off an appeal; that the scope of power is co-terminus with that of the ITO, that CIT(A) can do what the ITO can do and also direct him to do what he failed to do. In this context, useful reference may also be made to Hon'ble Apex Court's decisions in the cases of CIT vs. Rai Bahadur Hardutroy Motilal

Chamaria 66 ITR 443 (SC) and CIT vs. B.N. Bhattachargee 118 ITR 461 (SC) for the proposition that an assessee having once filed an appeal, cannot withdraw it and even if the assessee refuses to appear at the hearing, the first appellate authority can proceed with the enquiry and if he finds that there has been an underassessment, he can enhance the assessment. Just as, once the assessment proceedings are set in motion, it is not open to the Assessing Officer to not complete the Assessment Proceedings by allowing the Assessee to withdraw Return of Income; it is similarly, not open for Ld. CIT(A) to not pass order on merits by dismissing the appeal in limine, whether on account of non-prosecution of appeal by the Assessee or due to the Assessee seeking to withdraw the appeal or if the assessee does not press the appeal. When the Commissioner (Appeals) dismisses the appeal of assessee in limine for non-prosecution of appeal by the assessee; in effect, indirectly it leads to same results as withdrawal of appeal by assessee. When the assessee is not permitted to withdraw the appeal filed before the first appellate authority, the first appellate authority is duty bound to not allow a situation to arise, through dismissal of appeal in limine for non-prosecution of appeal before the first appellate authority; in which, in effect, indirectly the same results are obtained as arise from withdrawal of appeal by the assessee. What cannot be permitted in law to be done directly, cannot be permitted to be done indirectly either, as is well settled.

Therefore, **the appeal is allowed for statistical purposes** and setting aside the impugned order the issues are restored to the files of Ld. CIT(A) to decide afresh after giving opportunity of hearing to the assessee/appellant.

**Order pronounced in the open court on 07<sup>th</sup> November, 2022.**

**-Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**-Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

*Date:07.11.2022*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI