

(2005) 11 DEL CK 0076

In the Delhi High Court

Case No : Income Tax Appeal No. 1142 of 2005 30 November 2005

Commissioner of Income Tax

APPELLANT

Vs

Focus Estates (P.) Ltd.

RESPONDENT

Date of Decision : 30-11-2005

Acts Referred:

Citation : (2006) 203 CTR 152 : (2006) 286 ITR 410 : (2006) 152 TAXMAN 471

Hon'ble Judges : T.S. Thakur, J;B.N. Chaturvedi, J

Bench : Full Bench

Advocate : R.D. Jolly and Ms. Sonia Mathur for the assessee V.P. Gupta and Basant Kr. for the Revenue, for the Appellant;

Final Decision : Dismissed

Judgement

1. The revenue's appeal was heard and disposed of ex parte by the Tribunal by its order dated 19-7-2003 on the assumption that the notice issued to the respondent-assessed has been duly served. The assessed then applied for recall of the said order in terms of rule 25 of the Appellate Tribunal Rules, 1963, inter alias on the ground that the summons issued to the assessed had not been duly served. The Tribunal has by the order impugned in this appeal, recalled the earlier order disposing of the appeal and restored the appeal for a fresh hearing and disposal in accordance with law.

2. We have heard learned counsel for the parties and perused the record. It is true that rule 25 of the Appellate Tribunal Rules, 1963 empowers the Tribunal to dispose of an appeal on merits after hearing the appellant, if on the date on which the matter is called for hearing, the respondent does not appear in person or through an authorised representative. Proviso to the said rule, however, makes it abundantly clear that any such order of disposal of the appeal can be set aside by the Tribunal upon an application made by the respondent upon sufficient cause being shown to the Tribunal for the respondent's non-appearance. The respondent-assessed had, in the instant case, precisely done that. It had made an application seeking setting aside of the ex parte order and

shown to the satisfaction of the Tribunal that its non-appearance on the date was fixed for a sufficient cause, namely, non-service of any notice issued by the Tribunal. In that view, Therefore, no question of law much less any substantial question of law arises for our consideration. This appeal, accordingly fails and is hereby dismissed.