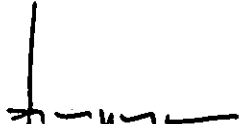





Sr. No.	Date	Orders
		<p>* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ ITA 466/2004</p> <p>JOSOKA INDIA LTD. Petitioner Through : Mr. P.C. Jain, Adv.</p> <p>versus</p> <p>COMMISSIONER OF INCOME TAX Respondent Through : Mr. R.D. Jolly, Adv.</p> <p>CORAM: HON'BLE MR. JUSTICE T.S. THAKUR HON'BLE MR. JUSTICE B.N.CHATURVEDI</p> <p style="text-align: center;"><u>ORDER</u> 18.11.2005</p> <p>%</p> <p>Heard learned counsel for the parties at some length and perused the record including the order under appeal. It is a common ground that the appellant was not heard by the Tribunal before passing the order under appeal. All that the Tribunal has in this regard stated is that since the assessee has not appeared despite a notice under Registered AD the appeal was being decided on merits ex parte. Mr. P.C. Jain, learned counsel for the appellant did not dispute the proposition that the Tribunal was competent to dispose of the appeal on merits even in the absence of the appellant but submitted that having regard to the peculiar facts and circumstances of this case and particularly the fact that promoters of the appellant company had been affected by Hindu Sikh riots of the year 1984 and the company itself was under a scheme of reconstruction before the BIFR, the matter could be remitted back to the Tribunal to afford an opportunity to the appellant of being heard on the matter before passing a fresh order.</p>



Sr. No.	Date	Orders
		<p>The Tribunal appears to have sent a notice to the appellant by registered post in response to which the appellant did not admittedly appear to argue the appeal. According to the appellant the office of the company was closed with the result that the notice even if sent was never actually received by any one responsible in the company to respond to the same. No notice of a second address which was according to Mr. Jain available on the record was ever sent to the appellant company. Be that as it may, the fact remains that the order under appeal has been passed without hearing the appellant. Such a hearing would in our opinion promote the ends of justice if the matter is remitted back to the Tribunal for that purpose.</p> <p>We accordingly allow this appeal, set aside the order passed by the Tribunal and remit the matter back to it for affording to the appellant a hearing in support of the appeal before passing a fresh order. To avoid any delay in the disposal of the appeal and any complication arising out of non-service of a fresh notice, we direct the appellant to appear before the Tribunal on 13th February, 2006. No costs.</p> <p style="text-align: right;">  T.S. THAKUR, J  B.N. CHATURVEDI, J </p> <p>NOVEMBER 18, 2005 sa</p> <p style="text-align: center;">ITA 466/2004</p> <p style="text-align: right;">page 2 of 2</p>