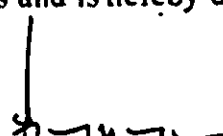





Sr. No.	Date	Orders
		<p>* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ ITA 1154/2005</p> <p>COMMISSIONER OF INCOME TAX DEL Appellant Through: Mr.R.D. Jolly with Ms.Sonia Mathur, Advs.</p> <p>versus</p> <p>M/S FOCUS ESTATES P. LTD. Respondent Through: Mr.V.P. Gupta & Mr.Basant Kr., Advs.</p> <p>CORAM: HON'BLE MR. JUSTICE T.S. THAKUR HON'BLE MR. JUSTICE B.N. CHATURVEDI</p> <p style="text-align: center;"><u>ORDER</u> 30.11.2005</p> <p>The Revenue's appeal was heard and disposed of ex-parte by the Tribunal by its order dated 15th July 2003 on the assumption that the notice issued to respondent-assessee has been duly served. The assessee then applied for recall of the said order in terms of Rule 25 of the Appellate Tribunal Rules, 1963, inter alia on the ground that the summons issued to the assessee 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.</p> <p>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</p>



Sr. No.	Date	Orders
		<p>the matter is called for hearing, the respondent does not appear in person through an authorised representative. Proviso to the said rule, however, makes abundantly clear that any such order of disposal of the appeal can be set aside 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 assessee 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 consideration. This appeal, accordingly fails and is hereby dismissed.</p> <p style="text-align: right;">  T.S. THAKUR, J </p> <p style="text-align: right;">  B.N. CHATURVEDI, J </p> <p>NOVEMBER 30, 2005 ga</p>