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| | | <p data-bbox="491 248 829 286">% 29.04.2005</p> <p data-bbox="491 342 1222 380">Present : Mr. J.R. Goel, Adv. for the Petitioner</p> <p data-bbox="491 434 794 472">*<u>ITA No. 296/2005</u></p> <p data-bbox="491 495 512 521">+</p> <p data-bbox="491 577 1592 887">Challenge in this appeal under Section 260-A of the Income Tax Act is to the order dated 30th September, 2004 passed by the Income Tax Appellate Tribunal, New Delhi No. 1349 of 2001 relating to the assessment year 1997-98.</p> <p data-bbox="491 936 1592 1151">The Appellate Tribunal while dismissing the Appeal of the Assessee and accepting the findings recorded by the CIT (Appeal) held as under :-</p> <p data-bbox="644 1207 1484 2027">“ On consideration of the matter, we are of the view that the assessee in these appeals has omitted to support the return of income filed by him by any material that may inspire confidence. The assessee has only made a self-serving statement that commission earned by him was rupee 1 on every 100 tickets worth Rs. 1,100/-. During the course of hearing before us, the Ld. AR of the assessee sought one more opportunity to explain his case. In our considered opinion, to restore the matter all over again to the A.O. would not be justified on the facts and in the circumstances of the case. However, having regard to repeated submissions of the assess before us that the assessee has been highly over-assessed, we are of the view that it would be in the fitness of things if the assessee is granted one more opportunity by the Ld. CIT(A). We, therefore, restore this issue to the file of the Ld. CIT(A) with the directions that he may allow the assessee one more opportunity to explain and</p> |



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| | | <p>substantiate his case. Therefore, the Ld. CIT(A) may decide the question of estimation of assessee's income after taking into consideration the material furnished by the assessee and after such inquiries into the matter as may be called for."</p> <p>The learned counsel appearing for the appellant contends that the direction issued to the CIT (Appeals) to reconsider the matter after taking into consideration the matter furnished by the Assessee and after making such inquiry into the matter as may be called for, is causing serious prejudice to the interest of the Revenue. He also contend that the findings which are recorded in the body of the order clearly show that the Assessee has failed to produce any cogent material to support the contentions raised.</p> <p>This is primarily a finding of fact and no question of law much less a substantial question of law arises in the present Appeal.</p> <p>CIT (Appeal) is an Appellate Authority prescribed under the Statute itself and has to examine the Appeal before it in regard to all questions of facts as well as law arising in the Appeal. The Assessee had failed to produce any cogent and proper evidence in support of its return before the Assessing Officer. The liberty has been granted to the Assessee to place material before the First Appellate Authority to whom the case has been remanded. What would be the admissibility, effect</p> |



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| | | <p>and merit thereof upon the order of the Assessing Officer, is to be examined by the First Appellate Authority in accordance with law. This Court in exercise of its power under Section 260-A of the Act is not called upon to go into this controversy particularly keeping in view the order of remand passed by the Income Tax Appellate Tribunal. This order cannot be stated to be without jurisdiction or prejudicial to the interest of the Revenue as such.</p> <p>For the reasons above-stated, the Appeal is dismissed.</p> <p style="text-align: right;"> SWATANTER KUMAR, J.</p> <p style="text-align: right;"> C.K. MAHAJAN, J.</p> <p>APRIL 29, 2005 dk'</p> <p>ITA No. 296/2005 Pg. 3 of 3</p> |