



Sr. No.	Date	<p style="text-align: center;">Orders</p> <p style="text-align: center;"><del>IN THE HIGH COURT OF DELHI AT NEW DELHI</del></p>
		<p>+ ITA 522/2006</p> <p>THE COMMISSIONER OF INCOME TAX ..... Appellant Through: Mr.R.D. Jolly, Adv.</p> <p style="text-align: center;">versus</p> <p>KAMALA CHAUDHARY ..... Respondent Through: Mr.Bikas Kar Gupta, Adv.</p> <p><b>CORAM:</b> <b>HON'BLE MR. JUSTICE T.S.THAKUR</b> <b>HON'BLE MR. JUSTICE SHIV NARAYAN DHINGRA</b></p> <p style="text-align: center;"><b><u>ORDER</u></b> <b>19.04.2006</b></p> <p>%</p> <p><b><u>CM No.4214/2006</u></b></p> <p>Heard. Allowed subject to just exceptions.</p> <p><b><u>ITA 522/2006</u></b></p> <p>The Income Tax Appellate Tribunal had while disposing of the Revenue's appeal for the block assessment year 1.4.1988 to 18.8.1988 remitted the matter back to the Assessing Officer with a direction that he shall make an estimate of the expenses to be disallowed in the light of the documents seized from the assessee's premises. The Tribunal had observed:</p> <p>"Since the A.O. did not make an estimate of the sum to be disallowed, in the light of the documents seized, we deem it proper and appropriate to restore this issue to the A.O. with a direction that he shall consider the quantum of amount to be disallowed in the light of the seized material. Needless to say that the quantum to be</p>



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		<p>disallowed will depend upon the outcome of the enquiry to be made by the A.O. The A.O. should afford the assessee an opportunity of being heard in this regard and thereafter make an estimate of the amount to be disallowed or added as undisclosed income. The grounds of appeal of the Revenue is treated as allowed."</p> <p>An application under Section 254(2) was thereafter filed by the respondent-assessee for rectification of the above direction which has been disposed of by the Tribunal in terms of the order impugned in this appeal with the following observations:</p> <p>"It is therefore, up to the A.O. to justify the quantum of sum to be disallowed and correlate them the material found as a result of search. This is the reason why the Tribunal had expressed it's view that the quantum to be disallowed will depend on the outcome of the enquiry to be made by the A.O. It is implicit in the directions given to the A.O. that the A.O. will decide the issue in accordance with law keeping in mind that he had originally thought it fit to disallow only 35%."</p> <p>The present appeal filed by the Revenue assails the above observations.</p> <p>We have heard Mr.Jolly, learned counsel for the appellant and Mr.Bikas Kar Gupta, learned counsel for the respondent. As is evident from a plain reading of the passage extracted above, the Tribunal has not decided the question of the extent of disallowance finally. It has instead left the matter to be determined by the Assessing Officer on the basis of the material found in the course of the search and any enquiry.</p>



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		<p>that the Assessing Officer may make. All that the Tribunal has in the process stated is that the Assessing Officer will decide the issue regarding disallowance, keeping in mind, that he had originally disallowed 35% of the expenses claimed by the assessee. That observation cannot be found fault with especially when the question as to what should be the extent of disallowance is left to the Assessing Officer who is in terms of the direction of the Tribunal required to determine the extent of such disallowance in accordance with law. There is no infirmity in the order under challenge nor does any substantial question of law arise for our consideration in the present appeal, which fails and is hereby dismissed.</p> <p style="text-align: right;">T.S. THAKUR, J</p> <p style="text-align: right;">SHIV NARAYAN DHINGRA, J</p> <p>APRIL 19, 2006 ga</p>