

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 569/2009

**COMMISSIONER OF INCOME TAX Appellant
Through: Ms Prem Lata Bansal with Ms Anshul Sharma**

versus

**SUNIL SETHI Respondent
Through: None**

CORAM:

**HON'BLE MR. JUSTICE BADAR DURREZ AHMED
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL**

**O R D E R
03.02.2010**

This appeal is directed against the Tribunal's order dated 12.09.2008 passed in ITA No.2131/Del/2007 pertaining to the assessment year 2004-05. The question before the Tribunal was whether the Commissioner of Income-tax (Appeals) in his order dated 26.02.2007 had erred in confirming the addition of Rs 30 lakhs made by the Assessing Officer treating the said amount as deemed dividend under Section 2(22)(e) of the Income-tax Act, 1961.

After hearing the counsel for the appellant / revenue, we are unable to agree with her submission that the Tribunal had erred in deleting the said addition. This is so because we are of the view that the finding was one which was purely of fact. The Tribunal observed that the only basis on which the provisions of Section 2(22)(e) were contested by the assessee was that the amount of Rs 30 lakhs, which had been given by the company to the assessee, who was a director in the said company, was neither a loan or an advance and nor was it for individual benefit of the said assessee. The Tribunal has accepted the factual position that the said sum of Rs 30 lakhs was given to the assessee for the purposes of making advance in respect of certain land dealings which were proposed to be entered into by the company through the assessee. The Tribunal noted that no material had been brought on record to suggest that what was explained by the assessee was incorrect. The Tribunal also noted the fact that the said amount of Rs 30 lakhs had

been given to the assessee on 27.06.2003 and as the deal did not materialize, the same was returned by the assessee shortly thereafter, i.e., on 04.07.2003. In view of the clear finding returned by the Tribunal that since the amount of Rs 30 lakhs which was given to the assessee was in the nature of imprest payment, the same could not be treated as deemed dividend under Section 2(22)(e) of the said Act, we see no reason to interfere with the impugned order.

No substantial question of law arises for our consideration. The appeal is dismissed.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J
FEBRUARY 03, 2010
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