



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 9th April, 2010

+ **ITA No.214/2008**

THE COMMISSIONER OF INCOME TAX Appellant

- versus -

VIJAY SINGH Respondent

Advocates who appeared in this case:

For the Appellant : Ms Rashmi Chopra
For the Respondent : Mr Salil Kapur

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

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| 1. | Whether reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

SIDDHARTH MRIDUL, J

1. This appeal by the Revenue assails the order dated 29th June, 2007 rendered by the Income Tax Appellate Tribunal in ITA No.665/Del/2005 pertaining to the assessment year 2001-02.

2. The sole dispute raised by the Revenue in this appeal is the upholding of the order of the Commissioner of Income Tax (Appeals) by the Tribunal whereby the addition of Rs 27,28,000/- made by the



Assessing Officer as perquisite in the hands of the assessee on account of interest free security deposit provided by the employer was deleted.

3. The assessee was the Managing Director of M/s Sony Music Entertainment (India) Ltd and had been provided with accommodation at Rockdale, Napeansea Road, Mumbai. The said accommodation was owned by B.P. (India) Ltd and had been taken by the company on lease for the purpose of residence of the assessee. In terms of the lease, the rent of Rs 50,000/- per month along with interest free security deposit of Rs 3.10 crore and additional guarantee of Rs 5.50 crore was provided by the company on behalf of the employee. Thereafter the assessee purchased the said accommodation for a consideration of Rs 3.12 crore and simultaneously entered into an agreement with the employer company for providing interest free security deposit in the amount of Rs 3.10 crore for lease of the said accommodation by the assessee to the employer company. In other words, out of the cost of the accommodation of Rs 3.12 crore, Rs 3.10 crore was the security deposit from the employer company to the assessee and all other terms and conditions of the lease of the accommodation between the employer company and the assessee remained the same. However, it is noteworthy that there was no provision for additional guarantee of Rs 5.50 crore as in the case of the lease agreement by the employer company with the erstwhile owner.



4. The Assessing Officer was of the opinion that the sum of Rs 27,28,000/- as the notional interest on the said loan of Rs 3.10 crore at 10% per annum be treated as perquisite in the hands of the assessee. The assessee carried this finding in the appeal and the Commissioner of Income Tax (Appeals), on being satisfied with the explanation given by the assessee, deleted the said addition made by the Assessing Officer.

5. The case of the assessee was that the security deposit of Rs 3.10 crore was given by the employer company to the assessee as per the terms of the lease deed with the employer and, therefore, the same could not be treated as an interest free loan. Further, subsequently when the assessee resigned from the job, he refunded the entire security deposit to the employer in terms of the lease agreement between them.

6. The Tribunal, after noticing the facts and circumstances of the case, came to a conclusion that it was not a case that money had been given by the employer interest free before the flat had been taken on lease and that the interest free security deposit had been given by the employer company for taking the flat belonging to the assessee on lease and, therefore, it could not be treated as interest free loan. The Tribunal further held that the assessee had also not derived any other advantage as he had leased out the flat on the same monthly rent with the same amount



of interest free security deposit and had in fact not demanded any additional guarantee as in the case when B.P. (India) Ltd, the erstwhile owner had leased out the same flat to the employer company. The Tribunal, therefore, came to the conclusion that there was no infirmity in the order of the Commissioner of Income Tax (Appeals) whilst deleting the addition made by the Assessing Officer and upheld the same.

7. The finding of fact arrived at concurrently by the authorities below, do not warrant any interference by us in this appeal. No substantial question of law arises for the consideration of this Court. The appeal is resultantly dismissed.

SIDDHARTH MRIDUL, J

BADAR DURREZ AHMED, J

APRIL 09, 2010

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