



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

% Judgment delivered on: 15.04.2010

+ **ITA 430/2010**

**COMMISSIONER OF INCOME-TAX** ... Appellant

- versus -

**HOUSING & URBAN DEVELOPMENT  
CORPORATION LIMITED** ... Respondent

**Advocates who appeared in this case:**

For the Appellant : Mr Sanjeev Sabharwal

For the Respondent : Mr Johnson Bara

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE V.K. JAIN**

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

**BADAR DURREZ AHMED, J (ORAL)**

**CM No.3918/2010**

The delay in re-filing the appeal is condoned.

This application stands disposed of.

**ITA 430/2010**

1. The present appeal, filed by the revenue, is directed against the order dated 30.04.2008 passed by the Income-tax Appellate Tribunal in ITA No.2040/Del/2002, relating to the assessment year 1997-98. KFW Germany



housing schemes for economically weaker sections. Consequently, funds were made available to the Government of India and the same were canalised through the assessee [HUDCO]. The assessee, in turn, gave loans to suitable agencies, such as NGOs, which were to be selected by the assessee on the criteria prescribed by KFW Germany.

2. The issue in this appeal pertains to the interest received on these sub-loans. According to the revenue, the interest thereon would be taxable in the hands of the assessee. However, the tribunal held in favour of the assessee and came to the conclusion that the same would not be taxable in the hands of the assessee inasmuch as the funds were not the property of the assessee. The tribunal came to the conclusion that from the terms of the agreement entered into between KFW Germany and the Government of India as well as the project agreement entered into between KFW Germany and the assessee [HUDCO], it was clear that the funds were received by the Government of India and the assessee merely acted as a canalising agency. The assessee never became the owner of the funds given to it under the project agreement. Nor could the assessee use the funds for anything other than the specified purposes and in the specified manner. Even the interest earned on the sub-loans given out of the funds received from KFW Germany could be used only as per the stipulation contained in the project agreement, which, in turn, was governed by the laws of Germany. Consequently, the tribunal came to the conclusion that the interest earned on sub-loans granted by the assessee did not become its income. The tribunal



**tax v. Delhi State Industrial Development Corporation: [2007] 295 ITR  
419 (Delhi).**

3. We see no reason to interfere with the findings returned by the tribunal. In any event, it has followed the decision of this court. No substantial question of law arises for our consideration. The appeal is dismissed.

**BADAR DURREZ AHMED, J**

**V.K. JAIN, J**

**APRIL 15, 2010**

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