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IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 660/2015

PR. COMMISSIONER OF INCOME TAX -5 Appellant
Through: Mr. Shikhar Garg, Advocate for Mr.
Kamal Sawhney, Senior Standing counsel.

versus

KAY KAY ROYAL APARTMENTS PVT. LTD Respondent
Through: Ms. Kavita Jha, Advocate.

WITH

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ITA 661/2015

PR. COMMISSIONER OF INCOME TAX -5 Appellant
Through: Mr. Shikhar Garg, Advocate for Mr.
Kamal Sawhney, Senior Standing counsel.

versus

KAY KAY BUILDWORTH PVT. LTD Respondent
Through: Ms. Kavita Jha, Advocate.

WITH

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ITA 662/2015

PR. COMMISSIONER OF INCOME TAX -5 Appellant
Through: Mr. Shikhar Garg, Advocate for Mr.
Kamal Sawhney, Senior Standing counsel.

versus

KAY KAY APARTMENTS PVT. LTD Respondent
Through: Ms. Kavita Jha, Advocate.



AND

+ **ITA 663/2015**

PR. COMMISSIONER OF INCOME TAX -5 Appellant
Through: Mr. Shikhar Garg, Advocate for Mr.
Kamal Sawhney, Senior Standing counsel.

versus

KAY KAY EXECUTIVE APARTMENTS PVT. LTDRespondent
Through: Ms. Kavita Jha, Advocate.

CORAM:
HON'BLE DR. JUSTICE S.MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
15.09.2015

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CM APPL 17252,17253 and17254/2015 (for exemption

1. Exemption allowed subject to all just exceptions.
2. The application is disposed of.

ITA Nos. 660, 661, 662 and 663/2015

3. These are four appeals by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') directed against the common impugned order dated 16th January 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 3079 to 3082/Del/2009, all pertaining to the Assessment Year ('AY') 2006-07.
4. The common question involved in these appeals is whether the ITAT was



correct in upholding the order of the Commissioner of Income Tax (Appeals) ['CIT-(A)'] deleting the addition made by the Assessing Officer ('AO') under Section 2 (22) (e) of the Act by treating the amount given as loan to the Assessee as deemed dividend.

5. Since the facts in these appeals are more or less similar, and the same questions arise for consideration, the facts in ITA 660/2015 are set out illustratively. The Respondent-Assessee filed its return of income declaring a loss of Rs. 59,213. On scrutiny of the case, a notice under Section 143 (2) of the Act was issued to the Respondent-Assessee. The Assessing Officer ('AO') observed that the Respondent had received an unsecured loan in the sum of Rs. 1.25 crores from Kohli Housing & Development Private Limited ('KHDPL'). It was further noticed that KHDPL had given loans likewise to other sister concerns of the Kohli Group (the Assesseees in the other appeals). Since both the Assessee company and KHDPL were having Mr. Sudershan Kohli and Mrs. Kum Kum Kohli as common shareholders having 50% share each, it was concluded by the AO that the loan amount was deemed dividend under Section 2 (22) (e) of the Act. A similar view was taken by the AO in the other cases of the sister concerns.

6. The contention of the Assessee that at the time of advancement of loan by



KHDPL, the Assessee or the sister concerns were not shareholders in any of the Kohli Group of companies and that there were no common shareholders, including Sudharshan Kohli and Kum Kum Kohli, was accepted by the CIT (A) who examined the facts in great detail. The finding of the CIT (A) that in each of the four cases, the primary condition for attracting Section 2 (22) (e) of the Act stands unfulfilled has been concurred with by the ITAT. The above findings which have turned on facts have not been shown to be perverse.

7. The Court finds that no substantial question of law arises for determination in the present appeals.

8. The appeals are accordingly dismissed.

A handwritten signature in black ink, appearing to be 'S. Muralidhar'.

S.MURALIDHAR, J

A handwritten signature in black ink, appearing to be 'Vibhu Bakhru'.

VIBHU BAKHRU, J

SEPTEMBER 15, 2015

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