



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

% Judgment delivered on: 18.05.2010

+ **ITA 589/2009**

COMMISSIONER OF INCOME TAX Appellant

versus

SANJAY JAIN Respondent

Advocates who appeared in this case:-

For the Appellant : Ms Prem Lata Bansal

For the Respondent : Mr Amit Dayal

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)

1. This appeal is directed against the order of the Income-tax Appellate Tribunal dated 05.09.2008 passed in ITA No.3881/Del/2004 relating to the assessment year 2001-02.

2. The assessee is a share-holder in Jyoti Theatres Pvt. Ltd. The assessee holds 35% of shareholding in that company. In the year in question, the assessee obtained a loan of Rs 15 lakhs from Jyoti Theatres Pvt. Ltd. The Assessing Officer treated the said amount as deemed dividend to the extent of accumulated profit of Rs 13,33,493.85 shown in the balance sheet of the



3. The Commissioner of Income-tax (Appeals) deleted the said addition after taking note of the fact that Jyoti Theatres Pvt. Ltd had a liability of Rs 57,81,997/- towards house tax payable by the said company to the Municipal Corporation of Delhi (MCD). Consequently, if the said sum of Rs 57,81,997/- is deducted from the accumulated profit of Rs 13,33,493.85 as shown in the balance sheet by the said Jyoti Theatres Pvt. Ltd, then the company would have accumulated losses rather than profit. As a result, the said loan of Rs 15 lakhs or any part thereof could not be treated as deemed dividend within the meaning of Section 2(22)(e) of the Income-tax Act, 1961 (hereinafter referred to as 'the said Act').

4. The tribunal also confirmed the findings returned by the Commissioner of Income-tax (Appeals) and concluded that the liability towards house tax was an ascertained liability, although the same had not been accounted for in the balance sheet of Jyoti Theatres Pvt. Ltd. The tribunal arrived at the conclusion that the said ascertained liability had to be deducted from the profit shown by Jyoti Theatres Pvt. Ltd in its balance sheet for the purposes of working out the accumulated profit of the company in order to compute the deemed dividend under Section 2(22)(e) of the said Act. If that were to be done, Jyoti Theatres Pvt. Ltd would not have accumulated profits but would have accumulated losses. Consequently, based on the finding of fact that the liability towards house tax was an ascertained liability, the Tribunal concluded that no deemed dividend arose



5. The learned counsel for the appellant/revenue contended that Jyoti Theatres Pvt. Ltd itself had not shown the said liability towards house tax as an ascertained liability and had not made any provision for the same in their profit and loss account. She questioned the role of the Assessing Officer in the case of the present assessee with regard to consideration of accumulated profits different from what Jyoti Theatres Pvt. Ltd had themselves prepared and presented. The answer to this argument is that the books of accounts as prepared by any assessee are not decisive. The provisions of the Income-tax Act, 1961 would have to be gone into and the liability has to be determined on the basis of the provisions of the said Act. Furthermore, the treatment given by Jyoti Theatres Pvt. Ltd would not bind the present assessee where the present assessee is able to show that he is not otherwise liable to pay any tax on a particular item as per the provisions of the said Act. In fact, the present assessee cannot be precluded from showing that the said amount of house tax payable was an ascertained liability irrespective of the fact that Jyoti Theatres Pvt. Ltd had treated the same as a contingent liability.

6. We see no reason to interfere with the findings and conclusions arrived at by the Tribunal. In any event, no substantial question of law arises for our consideration. The appeal is dismissed.

BADAR DURREZ AHMED, J

V.K. JAIN, J

MAY 18 2010