

IN THE INCOME TAX APPELLATE TRIBUNAL
“D” Bench, Mumbai
Before Shri B.R. Baskaran (AM) & Shri Ravish Sood(JM)

I.T.A. No. 1936/Mum/2013
(Assessment Year 2001-02)

Shri Ramesh Sumermal Shah 220, Commerce House 140, N.M. Road Fort Mumbai-400 023. (Appellant)	Vs.	DCIT CC-36 11/43 Gr. Floor Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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PAN No.AAGPS9863H

Assessee by	Ms. Kenyuri Desai
Department by	Shri Purushottam Kumar
Date of Hearing	11.1.2017
Date of Pronouncement	11.1.2017

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 17.1.2013 passed by the learned CIT(A)-41, Mumbai confirming the penalty levied by the Assessing Officer u/s. 271(1)(c) of the I.T. Act for A.Y. 2001-02.

2. Learned counsel appearing for the assessee submitted that the Assessing Officer levied penalty on the disallowance of exemption claimed u/s. 54F of the Act and also on assessment of gift of ₹ 2.25 crores received by the assessee u/s. 68 of the Act. The learned CIT(A) deleted the penalty levied on withdrawal of deduction u/s. 54F of the Act and confirmed the penalty levied on the assessment of gift received referred above. Learned Counsel submitted that the assessee has challenged the assessment of gift as unexplained cash credit u/s. 68 of the Act by filing appeal before the Tribunal. She submitted that the Tribunal has decided the issue in favour of the assessee, vide its order dated 28.11.2016 passed in ITA No. 414/Mum/2010, wherein the Tribunal deleted the addition of ₹ 2.25 crores made by the Assessing Officer u/s. 68 of

the Act on the ground that the Assessing Officer has no jurisdiction u/s. 153A of the Act to assess the gift u/s. 68 of the Act. Accordingly, learned AR submitted that the impugned penalty will not survive in the facts stated above.

3. Learned Departmental Representative did not contradict the factual aspects presented by learned AR.

4. Having heard the rival submissions, we agree with the submissions made by learned AR that the impugned penalty on the cash credit addition will not survive, since the addition on which the penalty was levied has been deleted by the Tribunal. Accordingly, we set aside the order passed by the learned CIT(A) on this issue and direct the Assessing Officer to delete the penalty levied on the cash credit referred above.

5. In the result, appeal filed by the assessee is allowed.

Order has been pronounced in the Court on 11.1.2017.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 11/1/2017

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai