

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'एल', मुंबई ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "L", BENCH, MUMBAI**  
सर्वश्री राजेन्द्र, लेखा सदस्य, एवं , राम लाल नेगी न्यायिक सदस्य के समक्ष

**BEFORE SHRI RAJENDRA, AM AND SHRI RAM LAL NEGI, JM**

आयकर अपील सं./ITA No. **647/Mum/2015**

(निर्धारण वर्ष / Assessment Year: 2011-12)

Shri Shah Rukh Khan, 44, Mannat, B.J. Road, Bandra (West), Mumbai - 400050	Vs.	The ACIT, Central Circle-29, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AAHPK3293L</b>		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

निर्धारिती की ओर से / Assessee by : Shri Hiro Rai (AR)  
राजस्व की ओर से / Revenue by : Shri Rajguru (DR)

सुनवाई की तारीख / **Date of Hearing** : **13/09/2017**  
घोषणा की तारीख/**Date of Pronouncement**: **29/09/2017**

**आदेश / O R D E R**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against order dated 07/11/2014 passed by the Ld. CIT (A)-40, Mumbai pertaining to the Assessment Year 2011-12, whereby the Ld. CIT (A) has dismissed the appeal filed by the assessee against assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee, an actor by profession, filed its return of income for the assessment year under consideration declaring the total income of Rs. 104,34,24,830/-. The case was selected for scrutiny and accordingly notice u/s 142 (2) and 142 (1) were issued and details were called for. In response thereof the authorized representative of the assessee appeared before the AO and furnished the details including books of accounts. The

assessee had shown income from house property, profession, capital gains and other sources. After examining the details filed by the assessee, the AO made addition of Rs. 1,41,616 u/s 14A of the Act and Rs. 51,27,445/- as notional rental income from the house, Dubai Palm Signature Villa and determined the total income of the assessee at Rs. 104,35,66,450/- (rounded off u/s 288 of the Act). The assessee challenged the assessment order by preferring first appeal before the Ld. CIT (A) on the ground that the AO has erred in making addition of Rs. 51,27,445/- as deemed income from house property of the assessee in respect of the Signature Villa aforesaid. After hearing the assessee, the Ld. CIT (A) following the judgment of the Hon'ble Supreme Court passed in the case of *Goetz India Ltd. vs. CIT 284 ITR 323* rejected the contention of the assessee and dismissed the appeal. Aggrieved by the impugned order passed by the Ld. CIT (A), the assessee is appeal before the Tribunal.

3. The assessee has raised the following grounds of appeal against the impugned order passed by the Ld. CIT (A):-

1. *"The learned CIT (A) has erred in upholding the assessment of house property income of Rs. 51,27,445/- in respect of the signature Villa in UAE owned by the Appellant and kept for self use, though no house property income is assessable on account of the said property taking into consideration the double taxation avoidance agreement between Government of the Republic of India and the Government of the United Arab Emirates and the Protocol thereto.*
2. *The learned CIT (A) erred in upholding the addition of deemed house property income of Rs. 51,27,445/- in the income of the Appellant in respect of the signature villa located in UAE.*
3. *The learned CIT (A) has erred in not appreciating the position of law that the provisions of DTAA between India and UAE will take precedence over the Income Tax Act and not vice versa."*

4. Before us, the Ld. counsel for the assessee submitted that the property in question was not let out during the previous year, the appellant/assessee included Rs. 51,27,445/- as notional house property income in return of income. The said property in question is not taxable in India as per the provisions of the Double Taxation Avoidance Agreement (DTAA) between India and UAE. The Ld. counsel further submitted that the impugned order may be set aside.

5. On the other hand, the Ld. departmental representative (DR) relying on the findings of the ld CIT(A) submitted that the Mumbai Bench of the ITAT has decided the identical issue against the assessee in assessee's own appeal for the assessment years 2009-10 and 2010-11, therefore, the appeal of the assessee is liable to dismissed.

6. We have heard the rival submissions and gone through the material on record including the decision relied upon the Ld. DR. The only grievance of the assessee is that the Ld. CIT(A) has wrongly affirmed the assessment order passed by the AO. The contention of the assessee is that the Ld. CIT(A) ought to have deleted the notional income from house property in question in the light of the provisions of DTAA. Although, from the contention of the assessee two questions emerge i.e., 1<sup>st</sup>. whether the assessee can claim any deduction in respect of statement already made in his return of income without filing any revised return and 2<sup>nd</sup>. whether on merit the assessee is entitled for the deduction claimed? However, in our considered opinion the only second question requires adjudication as the first question comes into picture in case the answer to the second question goes in favour of the assessee.

7. As pointed out by the Ld. DR. the coordinate Bench has decided the identical issue against the assessee in assessee's own appeals ITA No 623 and

4763/Mum/2013, for the assessment years 2009-2010 and 2010-11 respectively. The operative part of the decision is reproduced hereunder:

*“13.4 We have carefully considered the rival submissions. On this aspect, at the outset, we may say that the action of the lower authorities deserves to be upheld in view of the Notification Nos. 90 & 91/2008, dated 28/08/2008. In fact, the entire controversy is arising from the understanding of the expression “may be taxed in that other State” as mentioned in Para-1 of the Double Taxation Avoidance Agreement between India and UAE. The meaning of the said expression has been explained by our Co-ordinate Bench in the case of Essar Oil Ltd. v. Addl. CIT [2014] 42 taxmann.com 21 (Mum.-Trib.) in the following words:-*

- (i) The ratio of all the judgments rendered by the Hon’ble High Courts , as discussed hereinabove and confirmed by the Hon’ble Supreme Court specifically in the case of Turquoise Investment, on the interpretation of the expression “may be taxed”, that once the tax is payable or Bank of Baroda paid in the country of source, then country of residence is denied of the right to levy tax on such income or the said income cannot be included in return of income filed in India, would no longer apply after the insertion of provision of sub-section (3) of section 90 w.e.f. 1<sup>st</sup> April, 2004, i.e. assessment year 2004-05. The said provision as conferred upon the Central Government a power to issue notification, assigning meaning to the terms used in the DTAA, which has neither been defined under the Act nor in the agreement provided that such a meaning should not be inconsistent with the provisions of the Act or agreement. In pursuance of such a statutory empowerment, Central Govt. has issued a notification on 28<sup>th</sup> August, 2008, clearly specifying that where the DTAA entered into by the Central Govt. with the Govt. of any other country provides that any income of a resident of India “may be taxed” in the other country, such income shall be included in his total income chargeable to tax in India in accordance with the provisions of the Income-tax Act, 1961 and relief shall be granted in accordance with the method for elimination or avoidance of double taxation provided in such agreement. This meaning assigned to the term ‘may be taxed’ has changed its complexion, (ii). The notification*

*dated 28<sup>th</sup> August 2008, reflects a particular intent and objective of the Government of India, as understood during the course of negotiations leading to formalization of treaty. Therefore, such a notification has to be reckoned as clarifactory in nature and hence interpretation given by govt. of India through this notification will be effective from 1<sup>st</sup> April, 2004 i.e. from the date when provision of section 90(3) was brought in the statute giving a Legal framework for clarifying the intent of one of the negotiating parties (iii). The phrase “may be taxed” is not appearing in the statute, but it is appearing in the agreement and therefore, the interpretation as understood and intended by the negotiating parties should be adopted. Here one of the parties i.e., Government of India has clearly specified the intent and the object of this phrase. If phrase is used in a statute, then any interpretation given by the High Court or the Supreme Court is binding on all the subordinate Courts and has to be reckoned as law of the land. However, the meaning assigned by Government of India for a phrase or term used in the agreement through notification will prevail at least from the assessment year 2004-05. Because, while interpreting the treaty, the intention of the parties to the agreement has to be Bank of Baroda given primacy and has to be understood in that manner only. Therefore, the notification is not contrary to the provisions of the Act. Consequently, the earlier judgments rendered in assessee’s case prior to assessment year 2004-05, will not have binding precedence in this year or subsequent year.”*

*13.5 In view of the aforesaid precedent, it has to be held that income from the Dubai Villa is liable to be taxed in India inasmuch as the same is includible in the return of income and whatever taxes that may have been levied in the other contracting State, the credit thereof is required to be allowed as per law. Therefore, in view thereof we hold the issue against the assessee and direct the Assessing Officer to rework the final tax liability in accordance with aforesaid direction. Thus, on this aspect assessee fails on its Ground.*

*13.6 .....*

14. *In the appeal for Assessment Year 2010-11, the only Ground raised by the assessee is with regard to bringing the annual vale of Dubai Villa to tax in India which has already been decided by us while disposing off the appeal of assessee for Assessment Year 2009-10 in the earlier paras. As the facts and circumstances in the appeal for Assessment Year 2010-11 is pari material to those considered by us in appeal for Assessment Year 2009-10, our decision therein shall apply mutatis mutandis to the said appeal also.”*

8. We notice that the Ld. CIT(A) has dismissed the appeal of the assessee holding that the assessee is not entitled for deduction in question in view of the judgment of the Hon'ble Supreme Court passed in *Goetz India Ltd. vs. CIT* (supra), without adjudicating the issue that whether under the provisions DTAA the assessee is entitled to claim as contended by the assessee or without going into the merit of the case. Now the Tribunal has decided the said issue against the assessee in assessee's own appeals for the assessment years 2009-2010 and 2010-11, discussed above. We, therefore, respectfully following the decision of the coordinate Bench passed in the assessee's own appeals, dismiss all the grounds appeal of the assessee.

In the result, appeal filed by the assessee for assessment year 2011-12 is dismissed.

Order pronounced in the open court on 29<sup>th</sup> Sept., 2017.

Sd/-  
(RAJENDRA)  
ACCOUNTANT MEMBER

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 29/9/2017

*Alindra, PS*

**आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**