

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “E”, MUMBAI  
BEFORE SHRI B.R. BASKARAN, ACCOUNTNAT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA No. 1304/Mum/2013 (Assessment Year-2008-09)**

Mr. Shah Rukh Khan 44, Mannat, B.J. Road, Bandra(W), Mumbai-400050. <b>PAN: AAHPK3293L</b>	<b>Vs.</b>	ACI, Central Circle-29, Room No. 411, 4 <sup>th</sup> Floor, Aayakar Bhavan, Mumbai-400020.
(Appellant)		(Respondent)

Assessee by : Shri Hiro Rai (AR)

Revenue by : Shri V. Justin (Sr. DR)

Date of hearing : 02.11.2017

Date of Pronouncement : 02 .11.2017

**Order Under Section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee u/s 253 of the Income-Tax Act (“The Act”) is directed against the order of Id. CIT(A)-40, Mumbai dated 05.12.2012 for Assessment Year (AY) 2008-09. The only ground of appeal raised by assessee is that Id. CIT(A) erred in confirming the penalty levied under section 271(1)(c) of the Act.
2. At the outset of the hearing, the Id. Authorized Representative (AR) of the assessee submits that the grounds of appeal raised in the appeal are covered in favour of assessee. It was argued that the addition on the basis of which penalty was levied by the Assessing Officer (AO) has been deleted by the Co-ordinate Bench of the Tribunal in ITA No. 80/Mum/2012 dated

18.08.2017. On going through the order of Tribunal, the Id. Departmental Representative (DR) for the Revenue fairly conceded that the addition on the basis of which penalty was levied is deleted by the Tribunal.

3. We have considered the rival submission of both the parties and perused the record of the case. The assessment for the year under consideration was completed under section 143(3) on 27.12.2010. The assessing officer made addition of Rs. 17,84,95,000/- being value of Gift of Signature Villa Palm Jeremiah in Dubai. The AO levied the penalty on account of disallowance of gift of Signature Villa, Pam Jeremiah in Dubai. We have seen that the Co-ordinate Bench of Tribunal in assessee's appeal on quantum assessment passed the following order:

“7.2 We find that the whole genesis of the gift is Sultan's letter dated 16/12/2004 which has been reproduced in assessment order at Page No.14. The same is executed on the letterhead of *Nakheel* by *HE Sultan Ahmed Bin Sulayem* and the gift is accepted by the assessee. A perusal of the same shows that the *Villa* has been given ‘*as a token of our appreciation.....*’. It further states that ‘*.....we will discuss the location of the villa and further details of the gift in due consideration with you.*’ Pursuant to the same, the assessee, through *Chartered Accountant R.M.Ajgaonkar*, sought permission of RBI vide letter dated 20/12/2004 as placed on Page No. 12 of the *paper book*. Thereafter, after a series of correspondence between assessee / assessee's representatives and RBI, the permission has finally been given to the assessee vide RBI letter dated 20/04/2007 which is placed on Page No. 23 of the *paper book*. Thereafter, deed of gift has been executed in assessee's favor on 16/09/2007 which is reproduced on Page Nos. 2 to 4 of the assessment order. Clause (e) of the said gift deed states that ‘*the donor is desirous of transferring by way of gift to donee who is celebrity from India and also a celebrity in Dubai U.A.E., in order to honor the*

*donee and without any monetary consideration the said property being.....*’. Similarly, as per clause (f), ‘*the donor is desirous of transferring the said property to the donee by way of gift.*’ The assessee has accepted the said gift and the deed also bears a reference to RBI permission dated 20/04/2007. We find that all these events are interlinked and *in tandem* with each other. These events are, *prima facie*, part and parcel of the same transaction solely aimed at fulfilling *Sultan’s* wish to gift a Villa in assessee’s favor.

7.3 The whole material relied upon by the revenue is *news items* concerning assessee and few photographs of assessee at *Nakheel’s* Annual Day in the year 2007 which was placed on the website of the company. This material has been referred by Ld. AO at various places in the assessment order to reach a conclusion that the assessee undertook brand endorsement for the donor in exchange of gift. However, a perusal of the photograph as placed on Page Nos. 8 & 9 of the assessment order reveals that the assessee figures in *Event Gallery 7 & 9*. However, the same in no way suggest stage performance by the assessee, in any manner rather the assessee is shown with a *mike* in *Event Gallery 7* which, *in fact*, corroborates the arguments of the Ld. AR that the assessee merely addressed the employees of the company at the said gathering.

7.4 The Ld. AO has placed reliance on another photograph depicting the event of assessee’s visit at Donor’s Sales Office in the year 2004 with a *news-item* which gave brief account of assessee’s visit to the *Nakheel Sales Centre*. However, it is important to note the positioning of the news-item on the website of the company as enumerated by the Ld. AR and which is reproduced on Page No 4 of Ld. CIT(A)’s appellate order. A perusal of the same reveals that the website of the donor company contained number of *Tabs* one of which was ‘*news*’ which contained calendar wise ‘*news items*’. The information of assessee’s visit to the sales center was one amongst the many *news items* and the list also contained information about visit of several famous personalities worldwide over several years to *Nakheel* and its various projects. Therefore, after perusal of the same, it is difficult to accept the fact that the said news item tantamount to any kind of advertisement or brand endorsement for the donor in exchange of gift.

7.5 The above conclusions are further supported by the fact that the gift was offered to the assessee in the year 2004, whereas, the Annual Day took place in the year 2007 and therefore the assessee was under no obligation to attend the same and undertake any sort of brand endorsements for donor company. This is further fortified by the letter of *Nakheel* dated 17/12/2010 where *Nakheel* has stated that:

*“This is to further state that we have invited Mr. Shah Rukh Khan as one of the guest of honors at the occasion of Nakheel Day held on [2<sup>nd</sup> September, 2007] in Dubai. Nakheel Day is a non-commercial internal staff event of the company. He graced the occasion as a gesture of goodwill and friendship with HE Sultan Ahmed bin Sulayem where his presence at this function was gratis.”*

The said letter gives strength to contention that presence of the assessee at the Annual Day was mere goodwill gesture and the event was internal staff event of the company.

7.6 So far as the capacity of the corporate entity to make a gift and execution of gift deed is concerned, we find that the argument that the corporate has separate legal entity as distinct from its members / directors, may be true in Indian Context but may not be true as per customs prevailing in *Dubai*. The Ld. AR has contended that *Sultan* had the ultimate control over the affairs of the donor company and the company was under exclusive domain of the *Sultan* which has nowhere been controverted by the revenue. Even in Indian context, Mumbai Tribunal in the case of *DCIT Vs. KDA Enterprises Private Limited* [57 *Taxmann.com* 284] has held that the companies are competent to make gift and there is no requirement of any natural love or affection for making or receiving gifts by companies. Upon perusal of chain of events leading to execution of gift as enumerated in Para 7.2, we have already reached an inevitable conclusion that all events /actions were interlinked and part and parcel of the same gift transaction and therefore, gift deed was executed by the *Nakheel* at the behest of *Sultan* only in view of the fact that ownership was vested with the company.

7.7 Finally, it is well settled law that no addition could be made merely on the basis of mere suspicion, conjectures or surmises. The assessee has therefore, in our opinion, discharged the onus of proving the gift transaction

being unilateral gratuitous act of the donor company and the onus was on revenue to establish the contrary, which, in our opinion, has remained undischarged.

7.8 Lastly, so far as taxability of gift in kind is concerned, we find that the gift of immovable property on or after 01/10/2009 has been brought to tax by Finance Act, 2009 vide amendment to Section 56(2)(vii)(b). Before this amendment, any *sum of money* exceeding Rs.50,000/- received by an individual / HUF without consideration could be brought to tax vide Section 56(2)(vii)(a). Since we are dealing with AY 2008-09 about taxability of an immovable property, the said amendment does not apply to the case of the assessee and therefore could not help the revenue in any manner.

7.9 In view of the above facts / circumstances and our observations, we find that the contention / conduct of the assessee outweigh the revenue's contention. Therefore, we are inclined to hold that the said *Villa* was received in gift by the assessee and not out of exercise of profession and therefore, not taxable in assessee's hands. Resultantly, Ground No. 1 & 2 of assessee's appeal ITA No. 80/Mum/2012 stands allowed."

4. Considering the fact that the addition/disallowance of gift on the basis of which the penalty was levied by AO has been deleted by Co-ordinate Bench of this Tribunal vide order dated 18.08.2017. In our view after deleting the addition in quantum assessment the penalty order will not survive. Hence, the order of penalty is also set-aside. In the result the ground of appeal raised by assessee is allowed.

5. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 2<sup>nd</sup> day of November 2017.

Sd/-

**(B.R. BASKARAN)**  
**ACCOUNTNAT MEMBER**

Sd/-

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Mumbai; Dated 02/11/2017  
S.K.PS

**Copy of the Order forwarded to :**

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

BY ORDER,

(Asstt.Registrar)  
**ITAT, Mumbai**