IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "L", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No.623/Mum/2013
(Assessment Year 2009-10)
ITA No.4763/Mum/2013
(Assessment Year 2010-11)

Mr. Shah Rukh Khan,
44, Mannat, B.J.Road,
Bandra(W), Mumbai 400 050
PAN: AAHPK 3293L ..... Appellant

Vs.

The ACIT, Cen. Cir.29,
Room No.411, 4th Floor,
Aaykar Bhavan,M.K.Road,
Mumbai 400 020 .... Respondent

Appellant by : Shri Hiro Rai
Respondent by : Shri Jasbir Chouhan

Date of hearing : 03/02/2017
Date of pronouncement : 17/03/2017

ORDER

PER G.S.PANNU,A.M:

The captioned are two appeals pertaining to the same assessee for assessment year 2009-10 and 2010-11 and since they involve certain common issues they have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

2. ITA No 623/Mum/2013 for assessment year 2009-10 is taken as the lead case. This appeal pertaining to assessment year 2009-10 is directed against an order passed by CIT(A)-40, Mumbai dated 02/11/2012, which in turn, arises out of an order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 30/12/2011. In this appeal assessee has raised the following Grounds of appeal:-

> *"The Grounds of Appeal raised herein are all without prejudice to one another:*
>
> *The learned CIT(Appeals) was not justified in confirming the action of the learned Asst. CIT in:*
>
> *1. disallowing an amount of Rs. 10,00,00,000/- being professiona fees returned to Star India P Ltd. The said amount had been incurred by the appellant for the purposes of his profession and on grounds of commercial expediency. The reasons given by both the learned CIT(Appeals) and the learned Asst. CIT in this regard, particularly their reading of the agreement dated 30-3 2007, are incorrect, erroneous and invalid.*
>
> *2. adding an amount of Rs. 7,00,00,000/ as alleged professional fees. The reasons given by both the learned CIT(Appeals) and the learned Asst. CIT in this regard are incorrect, erroneous and based purely on assumptions, conjectures and surmises.*
>
> *3. bringing the annual value of the Dubai Villa to tax in India.*
>
> *4. levying interests u/s 234B and 234C of the Act."*

3. In brief, the relevant facts are that the appellant is an individual who is a Film Actor by profession. For the assessment year 2009-10, he filed a return of income declaring a total income of Rs.146,15,23,852/-, which was subject to scrutiny assessment whereby the total income had been assessed at Rs.163,83,39,790/-, after making certain additions/disallowances. The assessee had carried the matter in appeal before the CIT(A), who allowed partial relief. Not being satisfied with the order of the CIT(A) assessee is in further appeal before us on the aforesaid Grounds of appeal.

3.1 In so far as the first Ground is concerned, the same arises from the action of the Assessing Officer in disallowing a claim of deduction of Rs.10

crores while computing income from profession. Brief facts in this context can be summarized as follows. During the year under consideration, assessee being an Actor by profession, had declared income from profession based on the cash method of accounting. The Assessing Officer noticed that in the Income and Expenditure Account for the year under consideration, assessee had claimed an expenditure of Rs.10 crores under the head 'Professional fees returned to Star India Private Limited'. The said amount represented payment by the assessee to Knight Riders Sports Pvt. Ltd. on behalf of Star India Private Ltd. for grant of sponsorship rights for IPL Season -2. On being asked to explain, assessee contended that in terms of an Artist Service Agreement with Star India Pvt. Ltd. dated 30/03/2007 the assessee was liable to act as anchor and host of the programme to be produced by Star India Ltd., namely 'Kaun Banega Crorepati' for a total of 104 Episodes, divided into two seasons of 52 Episodes each. The total consideration payable was Rs.72 cores, which was received by the assessee in advance and the same was offered for tax in an earlier year on receipt basis. It was explained that assessee rendered the services for the first season of 52 Episodes but for second season comprising of the balance 52 Episodes no service was rendered as the programme was discontinued by Star India Pvt. Ltd. for commercial reasons. The assessee explained that as the balance Episodes were not delivered, Star India Pvt. Ltd wanted to recover the value of the unutilized amount from the assessee for non-shooting of the 2nd Season and, therefore, in terms of a mutually agreed arrangement dated 20/03/2009, assessee agreed to get for Star India Pvt. Ltd. the following:- (a) a key sponsorship association with Kolkota Knight Riders team for calendar year 2009 (IPL Season 2); and, (b) other accompanying sponsorship rights and

deliverables detailed in the arrangement, copy of which has been placed in the Paper Book. Such accompanying deliverables, inter-alia, included certain 'Appearances and Promotions' by the assessee in press conferences in London and Dubai. Notably, the arrangement did not envisage any liability of Star India Pvt. Ltd. in respect of any fee or costs, etc. to be incurred by the assessee or Knight Rider Sports Pvt. Ltd. in relation to the deliverables mentioned and the sponsorship rights. It was explained that for procuring the sponsorship rights of Knight Rider Sports Pvt. Ltd. for IPL Season -2, assessee paid Rs.10 crores on behalf of the Star India Pvt. Ltd. to Knight Rider Sports Pvt. Ltd. This amount was claimed as a professional expenditure. The Assessing Officer did not accept the plea of the assessee for deduction of the aforesaid amount while computing the taxable income. Firstly as per the Assessing Officer the assessee was under no obligation to refund any amount to Star India Pvt. Ltd. because the non-shooting of the balance 52 Episodes was not for reasons attributable to the assessee. In this context, the Assessing Officer referred to the Artist Service Agreement dated 30/03/2007 between the assessee and Star India Pvt. Ltd to poin out that the assessee was liable to refund the amount only if breach of contract was attributable to the assessee and in the present case the reason for discontinuation was not attributable to the assessee. Secondly, the Assessing Officer also observed that during the year under consideration no income of any nature had been received by the assessee from Star India Pvt. Ltd. and, therefore, the expenditure of Rs.10 crores debited under the head ' 'Professional fees returned to Star India Pvt. Ltd.' does not have any nexus or bearing on any of the professional receipts earned during the year under consideration, and therefore, the impugned expenditure could not be allowed as deduction in the year under

consideration. Thirdly, the Assessing Officer has also referred to the response of Star India Pvt. Ltd. to certain queries whereby it was clear that the entire amount of Rs.72 crores paid to the assessee has been accounted for as an expenditure in the hands of Star India Pvt. Ltd. As per the Assessing Officer none of the amount comprised in the receipt of Rs.72 crores from Star India Pvt. Ltd. was refundable by the assessee. On the basis of the aforesaid, deduction for the expenditure debited under the head 'professional fees returned to Start India Pvt. Ltd.' was denied, which resulted in an addition of Rs.10.00 crores to the returned income.

4. In appeal before the CIT(A), assessee reiterated the submissions made before the Assessing Officer and assailed the addition on facts and in law. Before the CIT(A), assessee contended that the Assessing Officer has not appreciated an established business practice, which stresses on maintaining good relationship with customers while evaluating the deductibility of the impugned expenditure. The assessee canvassed that business practices sometimes entail grant of some concessions to customers in order to enjoy their continued patronage without souring relationships, especially for regular and important customers. It was pointed out before the CIT(A) that during the year under consideration as well as in the two earlier years assessee had received professional fees aggregating to Rs.132 crores, from Star India Pvt. Ltd. for two television series and, therefore, the gesture of securing the sponsorship of The Kolkata Knight Riders cricket team for Star India Pvt. Ltd. on payment of Rs.10 cores was a part of his business strategy of maintaining his goodwill in business. It was also brought out by the assessee that both parties had come to a mutually acceptable compromise formula in order to maintain cordial relationship with each other on account of professional/commercial

expediency. That under these circumstances the plea of the Assessing Officer that the impugned sum was not legally payable by the assessee is irrelevant. With regard to the observation of the Assessing Officer that during the year under consideration, no income of any nature has been received by the assessee from Star India Pvt. Ltd., assessee pointed out that he has received an amount of Rs.60 crores in the instant year from Star India Pvt. Ltd, which constituted almost 40% of the gross receipts of the current year. In nutshell, the claim of the assessee was that the expenditure of Rs.10 cores incurred for securing sponsorship for Star India Pvt. Ltd. was a genuine business expenditure incurred with the purpose of benefiting the assessee in maintaining his relationship with Star India Pvt. Ltd The CIT(A) has disagreed with the assessee, as according to him, the impugned payment could not be construed as 'commercially expedient' since the amount was neither payable nor enforceable in terms of the terms and conditions of the agreement with Star India Pvt. Ltd. As per the CIT(A), the payment was gratuitous in nature and, therefore, on this count also the said amount was not deductible as an expenditure. The CIT(A) noted that as the expenditure related to the income of Rs.72.00 crores which was offered to tax on receipt basis in a preceding year and, thus, such expenditure was not relatable to the incomes of the current year, and was a prior period expenditure in so far as the current year was concerned. For all the above reasons, the CIT(A) sustained the action of the Assessing Officer disallowing the expenditure of Rs.10 cores.

5. Before us, the Ld. Representative for the assessee has vehemently pointed out that both the lower authorities have not appreciated the facts in proper perspective inasmuch as assessee had a long-standing professional relationship with Star India Pvt. Ltd. and that the impugned expenditure was

incurred on account of commercial expediency. The Ld. Representative for the assessee pointed out that Star India Pvt. Ltd. was a major client of the assessee inasmuch as between assessment years 2007-08 to 2009-10 almost a sum of Rs.132 cores have been earned by the assessee from Star India Pvt. Ltd. and even for the year under consideration, out of the total gross receipts of Rs.150 crores, approximately a sum of Rs.60 cores has been earned from the said concern. For all the above reasons, the plea of the assessee is that there was sufficient commercial expediency for incurring the impugned expenditure and that it has to be examined from the point of view of a businessman and the Assessing Officer has misdirected himself. In the course of his arguments, the Ld. Representative referred to the propositions laid down in the following judgments in support of the case of the assessee :-

(i) Sassoon J. David & Co. Pvt. Ltd. vs. CIT, 118 ITR 261(SC)

(ii) S.A Builders vs. CIT, 288 ITR 1(SC)

(iii) CIT vs. Dhanrajgiri Raja Narasingiriji, 91 ITR 544 (SC)

6. On the other hand the Ld. Departmental Representative has reiterated the stand of the Assessing Officer, which we have already noted in the earlier paras. As per the Ld. Departmental Representative, there was no breach of agreement by the assessee and, therefore, he was under no obligation to either refund the fees for the non-produced Episodes or spend the amount of Rs.10 crores for grant of sponsorship of Kolkata Knight Riders Cricket Team to Star India Pvt. Ltd. It was therefore, argued that the expenditure in question was not borne out of any business necessity and was, rather, gratuitous in nature. It was also pointed out that the entire fee was received by the assessee upfront and offered for tax in earlier assessment year on receipt

basis and therefore, even if the impugned expenditure is in relation to the income from Star India Pvt. Ltd., it cannot be allowed while deducting current year's income as it is in the nature of prior period expenditure. In sum-and-substance, the Ld. Departmental Representative has defended the action of the lower authorities by placing reliance on the respective orders.

7. We have carefully considered the rival submissions. Evidently, the dispute in this Ground revolves around the import of the provisions of section 37(1) of the Act. Section 37(1) of the Act, inter-alia, relates to deduction of an expenditure laid out or extended wholly and exclusively fo the purpose of business or profession while computing the income chargeable under the head "profits and gains of business or profession". Precisely put, the controversy before us is as to whether the expenditure of Rs.10 crores incurred by the assessee by way of payment to Knight Riders Sports Pvt. Ltd. for obtaining sponsorship rights in favour of Star India Pvt. Ltd. would constitute an expenditure expended wholly and exclusively for the purpose of asessee's business or profession so a to be deductible in terms of section 37(1) of the Act. The fact-situation lies in a narrow compass and has already been noted by us in sufficient detail in the earlier part of this order. Be that as it may, it would suffice to note that assessee, who is an Actor by profession, entered into an Artist Service Agreement on 30/03/2007 with Star India Pvt. Ltd. for acting as anchor and host of a programme – "Kaun Banega Crorepati", which was to be produced by Star India Ltd. The agreement was for a total of 104 Episodes divided into two seasons of 52 Episodes each. The total consideration payable was Rs.72 crores, which was received by the assessee in advance and the same has also been offered to tax in an earlier assessment year on receipt basis. It transpires that after production of 52 Episodes in the

first season, the Star India Pvt. Ltd. decided not to produce the balance 52 Episodes for commercial reasons. It further emerges that since the balance Episodes were not produced, Star India Pvt. Ltd. wanted to recover the value of the unutilized amount from the assessee for non-shooting of the second season. In terms of a mutually agreed arrangement, assessee, inter-alia, agreed to secure for Star India Pvt. Ltd. a sponsorship association with Kolkata Knight Riders Cricket Team for IPL Season -2. For securing such sponsorship, assessee paid Rs.10 crores to Knight Riders Sports Pvt. Ltd. and in return sponsorship rights were awarded to Star India Pvt. Ltd. The said expenditure has been claimed as deductible while computing the income chargeable under the head "profits and gains of business or profession".

7.1 Factually speaking, there is no dispute that assessee and Star India Pvt. Ltd. share a business relationship, inasmuch as, the assessee has earned substantial professional receipts from Start India Pvt. Ltd. not only in this year but also in the past years. At this point, we may observe that the Assessing Officer has wrongly noted that assessee has not received any professional receipt from the said concern in the instant assessment year. On the contrary, the details on record reveal that assessee has earned a sum of Rs.60 crores from Star India Pvt. Ltd., which is a part of the total professional receipts for the year under consideration. In fact, the Ld. Representative for the assessee submitted that the amount of Rs.60 crores received from Star India Pvt. Ltd. during the year under consideration constituted almost 40% of the total receipts. Be that as it may, what we are trying to emphasize is that there is a subsisting professional relationship between assessee and Star India Pvt. Ltd.and the impugned arrangement has to be viewed from the prism of a Principal – client relationship. In terms of the Artist Service Agreement dated

30/03/2007, assessee was to shoot for 104 Episodes but no shooting took place for 52 Episodes on account of a decision of Star India Pvt. Ltd., whereas the consideration for the entire Episodes was paid to the assessee in advance. In such a situation, intention of Star India Pvt. Ltd to obtain or recover the value of the unutilized amount from assessee for non-shooting of the balance 52 Episodes is quite plausible. As per the Revenue, the Artist Service Agreement dated 30/03/2007 did not obligate the assessee to refund the unutilized amount because the non-shooting on a decision taken by Star India Pvt. Ltd. No doubt, the point made by the Revenue may be correct in the context of the terms and conditions of the Artist Service Agreement dated 30/03/2007 but the allowability of the impugned expenditure has to be examined in the context of its commercial expediency. The assessee entered into an arrangement with Star India Pvt. Ltd. on a mutually agreed basis whereby the loss suffered by Star India Pvt. Ltd. was sought to be recouped with the earnings from the sponsorship of Kolkata Knight Riders Cricket Team for which assessee incurred Rs.10 crores on behalf of Star India Pvt. Ltd. In our considered opinion, it is not the legal necessity to spent the expenditure which is determinative of its allowability; rather, it is the existence or otherwise of commercial expediency which guides the allowability of expenditure under Section 37(1) of the Act. From the point of view of commercial expediency, it is abundantly clearly that assessee had a long-standing professional relationship with Star India Pvt. Ltd. and there is a nexus between the impugned expenditure and the purpose of business. The Ld. Representative for the assessee has rightly relied upon the judgment of Dhanrajgiri Raja Narasingiriji (supra) to contend that it was not for the Revenue to prescribe what expenditure should an assessee incur and under what circumstances. In

the present case, there is no challenge to the bonafides of the expenditure incurred and, in our view, the same can be understood to have been incurred wholly and exclusively for the purposes of business within the meaning of section 37(1) of the Act. In fact, the Hon'ble Supreme Court in the case of Sassoon J. David (supra) has held that the expression "wholly and exclusively" used in section10(2)(xv) of the Income Tax Act, 1922 (which is pari-materia to section 37(1) of the Act) does not mean that expenditure has to be "necessarily" incurred. As per Hon'ble Supreme Court, an expenditure incurred voluntarily and without any necessity would be allowable so long as it has been incurred for promoting the business of the assessee. In our considered opinion, the commercial expediency canvassed by the assessee in the instant case clearly establishes that the impugned expenditure falls within the scope of the expression "wholly and exclusively for the purpose of business or profession" within the meaning of section 37(1) of the Act. Therefore, on this aspect, assessee has to succeed. Accordingly, the order of the CIT(A) is set-aside and the Assessing Officer is directed to delete the addition of Rs.10 crores. Thus, assessee succeeds on this Ground.

8. The second Ground of appeal relates to an addition of Rs. 7 crores as Professional fee. Briefly put, the relevant facts in this context can be summarized as follows. The genesis of said addition is also the mutual understanding arrived at between the assessee and M/s. Star India Pvt. Ltd. in relation to the Artist Service Agreement dated 30.3.2007. As has been noted by us earlier, in terms of the understanding with Star India Pvt. Ltd., assessee was to secure sponsorship rights of Kolkata Knight Riders Cricket team for IPL Season-II for which assessee had paid the relevant consideration to M/s. Knight Riders Sports Pvt. Ltd. on behalf of M/s. Star India Pvt. Ltd. As a part of

the understanding, assessee had agreed to attend one press conference each at London and Dubai on mutually suitable dates for promotion of M/s. Star India Pvt. Ltd. as sponsorer of Kolkata Knight Riders Cricket team. The Assessing Officer required the assessee to explain as to why the assessee had not shown any professional receipt on this count since he had agreed for 'Appearances and Promotions', which is a part of his normal professional activity. The Assessing Officer observed that assessee was earning professional receipts from films, advertisements & endorsements and stage performances. The Assessing Officer further noticed that the activity of appearing in a press conference was also in the realm of assessee's professional activity. According to the Assessing Officer, the enormous brand equity enjoyed by assessee was exploited for such an arrangement both by M/s. Star India Pvt. Ltd. and M/s. Knight Riders Sports Pvt. Ltd. and that incidentally the substantial shareholder of M/s. Knight Riders Sports Pvt. Ltd. was M/s. Red Chillies Entertainment Pvt. Ltd. in which assessee and his wife were the shareholders. The Assessing Officer also noticed that n the subsequent year, assessee had acquired substantial shares in M/s Knight Riders Sports Pvt. Ltd. and, therefore, the benefits which accrued to the said concern from endorsement by assessee had benefitted the assessee in a roundabout manner, which was reflected in the acquisition of shares of the said company by the assessee in the subsequent year. The Assessing Officer estimated the value of such arrangement at Rs. 7 crores being the average rate of endorsement fee charged by assessee and the same was brought to tax as Professional fee.

9. Before the CIT(A), assessee pointed out that though he had agreed to attend one press conference each at London and Dubai on mutually suitable dates for promotion of M/s. Star India Pvt. Ltd. as sponsorer of Kolkata Knight

Riders Cricket team, but these events never took place and they were never demanded by M/s. Star India Pvt. Ltd. The assessee also asserted before the CIT(A) that he had not received any amount in connection with such arrangement and that the same was in lieu of giving up shooting of 52 episodes of Kaun Banega Crorepati by Star India Pvt. Ltd. for which the assessee had already received proportionate consideration of Rs. 36 crores in the earlier years. Therefore, the assessee resisted the addition made by the Assessing Officer. The assessee also assailed the invoking of Sec. 2(24)(iv) of the Act by the Assessing Officer by pointing out that no benefit or perquisite has been obtained by assessee for getting sponsorship of Kolkata Knight Riders Cricket team for M/s. Star India Pvt. Ltd. and, therefore the impugned addition was untenable on this point also. In sum and substance, the claim of assessee was that the impugned addition was a notional assessment and there was no real income on this count. With regard to the observation of Assessing Officer of having acquired the shares of M/s. Knight Riders Sports Pvt. Ltd. in the subsequent year for a consideration, assessee pointed out that the consideration paid was very much above the then book value of shares and that such shares were purchased from M/s. Red Chillies Entertainment Pvt. Ltd., who was initially funded by the assessee for acquisition of such shares. In sum and substance, the assessee argued that there was no justification for such an addition. The CIT(A), however, was not impressed with the arguments of assessee and has upheld the addition made by the Assessing Officer. Against the aforesaid, assessee is in further appeal before us.

10. Before us, the learned representative for the assessee vehemently pointed out that the impugned addition reflects assessment of notional

income and is therefore completely untenable. Referring to the appearances and promotions agreed to with M/s. Star India Pvt. Ltd., the learned representative explained that the same were a part of the mutually agreed terms and conditions as a consideration for non-shooting of 52 episodes of Kaun Banega Crorepati by M/s. Star India Pvt. Ltd. for which assessee had already received proportionate consideration of Rs. 36 crores in the earlier years. Nevertheless, it was pointed out that such events in the shape of press conferences at London and Dubai never took place and, therefore, there was no justification for Assessing Officer to assume that assessee had earned any income thereof. The learned representative relied upon the following judgments in support of the proposition that only real income is required to be taxed :-

i) Shoorji Vallabhdas and Co., 46 ITR 144 (SC)

ii) Godhra Electricity Co. Ltd., 225 TR 746 (SC)

11. On the other hand, the ld. CIT-DR appearing for the Revenue has reiterated the stand of the lower authorities, which we have already noted in the earlier paras and is not being repeated for the sake of brevity.

12. We have carefully considered the rival submissions. A perusal of the assessment order reveals that the Assessing Officer issued show-cause notice dated 8.12.2011, which reads as under :-

> *"In support of 'Professional Fees' returned – Star India Ltd. vide letter dated 11.11.2011, you have submitted a tripartite agreement between you, Star India P. Ltd. & Knight Riders Sports P Ltd. In schedule 2 of this agreement, you have agreed for 'Appearances & Promotions', but you have not shown any receipts in this regard. In light of these facts, you are show caused as to*

why 'Appearances & Promotions' should not be construed as a professional activity that you are normally carrying out as an artist and accordingly, professional fees on an average basis should be charged as an income in your hands."

The aforesaid show-cause notice of Assessing Officer reveals the reason for his action of estimating an income of Rs. 7 crores as Professional fee earned by the assessee. Factually speaking, it has been consistently asserted by the assessee that the appearances and promotions being referred to by Assessing Officer never took place and, therefore, there was no occasion for earning any income thereof. Further, it has also been asserted before the lower authorities that the agreed appearances and promotions referred to were a part of the understanding arrived at with M/s. Star India Pvt. Ltd. as a consequence of non-shooting of 52 episodes for which proportionate fee was already received in the earlier years. On both the aforesaid assertions, we find no negation by the income-tax authorities, therefore it is abundantly clear that the impugned addition of Rs. 7 crores is merely an assessment of a notional income, which is neither supported by receipt or accrual of income. It cannot be over-emphasised that what is required to be assessed to income-tax is the real income and not a hypothetical or notional income. As per the Hon'ble Supreme Court in the case of *Godhra Electricity Co. Ltd. (supra)* in case of accrual of income or receipt of income, what is of relevance is to assess an income which materialises. If an income does not result at all, obviously there cannot be taxation of such an income. In the orders of the authorities below as well as before us, the Revenue has not been able to point out as to how assessee becomes entitled to earning of the impugned Professional income. Be that as it may, the discussion in the orders of the authorities below reveals that the addition has been sought to be justified also in another manner, which

we deal hereinafter. As per Revenue, the assessee, on account of his professional standing, enjoys brand equity and, therefore, the appearances and promotions has added value to the entities on behalf of which such appearances take place. In the present case, as per the Revenue, the brand equity of M/s. Knight Riders Sports Pvt. Ltd. and M/s. Star India Pvt. Ltd. was enhanced because of such appearances by the assessee. It is also noted that in the subsequent year, assessee had purchased the shares of M/s. Knight Riders Sports Pvt. Ltd. from M/s. Red Chillies Entertainment Pvt. Ltd. and in this manner the events have been so planned that the brand of M/s. Knight Riders Sports Pvt. Ltd. was promoted by the assessee in this year itself. Because of the aforesaid arrangement, the Revenue contends that there is a certain amount of income which can be attributable to such services rendered by the assessee. In our considered opinion, the aforesaid proposition made out by Revenue is entirely mis-conceived inasmuch as no such appearances and promotions have indeed been carried out. Further, as per the Revenue because of such an arrangement, assessee has earned a benefit within the meaning of Sec. 2(24)(iv) of he Act. On this aspect also, in our view, the action of lower authorities is completely misdirected and is devoid of any factual support. The Assessing Officer has not been able to establish as to what benefit has been obtained by assessee within the meaning of Sec. 2(24)(iv) of the Act in the instant year as nothing is shown to have been received by the assessee. Therefore, in a nutshell, in our opinion, the addition of Rs. 7 crores made by Assessing Officer is purely on conjectures and surmises and is untenable in law and also on facts. Therefore, on this aspect also, assessee succeeds. Accordingly, we set-aside the order of CIT(A) on this aspect and direct the Assessing Officer to delete the addition.

13. The next Ground in this appeal is with regard to the action of the Assessing Officer in bringing to tax annual value of the Dubai Villa at Rs.67,20,000/-.

13.1 In this context, brief facts are that assessee was gifted a villa in Dubai by Nakheel PJSE and possession was received by the assessee on 18/06/2008. The Assessing Officer show caused the assessee to explain as to why the deemed annual letting value within the meaning of section 23(1)(a) of the Act should not be adopted in respect to the said property Before the Assessing Officer assessee contended that in view of the provisions of Para -1 of Article -6 of the Double Taxation Avoidance Agreement between India and UAE, no income in respect of the said property was equired to be assessed. However, Assessing Officer did not accept the plea of the assessee and estimated the annual letting value at Rs.96.00 lacs and thereafter, allowing the deduction under section 24(a) of the Act amounting to Rs.28,80,000/-, the income from house property was assess d at Rs.67,20,000/-. Before the CIT(A), assessee reiterated the submissions put forth before the Assessing Officer. The CIT(A) has upheld the stand of the Assessing Officer in the light of the Notification Nos.90 & 91 of 2008 dated 28/08/2008 issued by the CBDT. As per the CIT(A), in view of the aforesaid notifications, the annual letting value of the said property was includible in the total income of the assessee. Against such decision of the CIT(A) assessee is in further appeal before the Tribunal.

13.2 Before us, the Ld. Representative for the assessee vehemently pointed out that the assessment of notional income from Dubai Villa is not as per the provisions of the Act and Double Taxation Avoidance Act (DTAA) between India and UAE and, therefore, the orders of the authorities below be set-aside.

According to the Ld. Representative, Article-6 of the Double Taxation Avoidance Agreement between India and UAE prescribes that income derived by a resident of a contracting State from immovable property situated in the other contract State may be taxed in that other State. Therefore, according to the Ld. Representative, the income from the property situated in Dubai is liable to be taxed in UAE and, therefore, the assessee did not offer the income to tax.

13.3 On the other hand, Ld. Departmental Representative appearing for the Revenue has defended the orders of the authorities below by placing reliance thereon.

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 Article-6 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/s. ACIT, ITA No.2428/Mum/2007 dated 28/08/2013 in the following words:-

> *"i) The ratio of all the judgments rendered by the Hon'ble High Courts, as discussed herein above 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 23 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. 1st 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 28th 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 28th 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 clarificatory in nature and hence interpret– tation given by govt. of India through this notification will be effective from 1st April 2004, i.e., from the date when provision of section 90(3) was brought in the statute, giving a Legal frame work 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 he 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 24 given primacy and has to be understood in that manner only. Therefore, the notification is not contrary o 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 n 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 The last Ground raised by the assessee is in respect of charging of interest under section 234B & 234C of the Act, which is consequential in nature, and therefore this ground of appeal is dismissed.

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 materia* to those considered by us in appeal for Assessment Year 2009-10, our decision therein shall apply *mutatis mutandis* to the said appeal also.

15. In the result, appeal of the assessee is partly allowed as above.

Order pronounced in the open court on 17/03/2017

Sd/-	Sd/-
(AMIT SHUKLA)	(G S. PANNU)
JUDICIAL MEMBER	ACCOCUNTANT MEMBER

Mumbai, Dated 17/03/2017
Vm, Sr. PS
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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai