

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI**

**BEFORE SHRI B.R. MITTAL, J.M.
AND SHRI RAJENDRA SINGH, A.M.**

ITA No. : 2589/Mum/2011

Assessment Year : 2005-06

Ms. Pramila H. Sanghvi 1403/1404, Salsa Apartments 254, R.R. Thakker Marg Mumbai-400 006. PAN NO: AAPPS 5835 C (Appellant)	Vs.	Income tax Officer 16-(1)(3) Matrumandir, Tardeo Road Mumbai. (Respondent)
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Appellant by : Shri Vijay Kumar S. Biyani
Respondent by : Shri Aarsi Prasad

Date of hearing	:	29.2.2012
Date of Pronouncement	:	29.02.2012

ORDER

Per RAJENDRA SINGH (AM)

This appeal by the assessee is directed against the order dated 3.2.2011 of CIT(A) for the assessment year 2005-06. The only dispute raised is regarding annual value of second house property which was self occupied by the assessee.

2. Facts in brief are that the assessee owned two house properties one at Ahmedabad and the other at Mumbai and both were self occupied. Income from Mumbai property had been claimed exempt as self occupied property (SOP) and in respect of Ahmedabad property assessee had shown annual value at Rs.2,500/-. The AO observed

that the annual value of the second SOP has to be determined as if the same were let out. He, therefore, estimated annual value at 6% of the investment made in the property which came to Rs.5,08,488/- and after allowing statutory deduction, he determined house property income at Rs.3,53,442/-. In appeal CIT(A) agreed with the AO that annual value of the second self occupied property had to be determined under section 23(1)(a) as if the same were let out. He accordingly confirmed the order of AO aggrieved by which the assessee is in appeal before the Tribunal.

3. Before us, the Id. Authorised Representative for the assessee submitted that the annual value of second SOP should be determined on the basis of Municipal Rateable Value (MRV). The Id. AR also pointed out that the property was covered by Rent Control Act, and therefore, ALV could not exceed the standard rent determined under the Rent Control Act. The Id. DR on the other hand supported the orders of authorities below.

4. We have perused the records and considered the rival contentions carefully. The dispute is regarding determination of ALV of second house property at Ahmedabad which was self occupied by the assessee. Income from one SOP is exempt under the provisions of section 23 but the income from the second SOP is taxable and for this purpose ALV has to be determined under section 23(1)(a) as if the property was let out in view of the provisions of section 23(4)(b). Therefore, the revenue authorities are justified in taxing the second house property on the basis of fair rental value. However, the assessee has made a claim that the second SOP was covered under Rent Control Act. In case rent of the property is covered under Rent

Control Act, ALV can not exceed the standard rent determined/determinable under the said Act in view of the judgment of Hon'ble Supreme Court in the case of Mrs. Sheila Kaushik (131 ITR 435). This aspect has not been examined by the authorities below. We, therefore, set aside the order of CIT(A) and restore the matter back to the file of AO for passing a fresh order after necessary examination in the light of the observations made above and after providing an opportunity of hearing to the assessee.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29.2.2012.

Sd/-
(B.R. MITTAL)
JUDICIAL MEMBER

Sd/-
(RAJENDRA SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 29.2.2012.
Jv.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT(A) Concerned, Mumbai
The DR " " Bench

True Copy

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.

	Details	Date	Initials	Designation
1	Draft dictated on	29.2.2012		Sr.PS/PS
2	Draft Placed before author	29.2.2012		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on	29.2.12		Sr.PS/PS
7.	File sent to the Bench Clerk	2.3.12		Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			