

## **Property situated in USA occupied by daughter would be treated as deemed let out property & not self-occupied**

**Summary – The Mumbai ITAT in a recent case of Deepak Shashi Bhusan Roy, (the Assessee) held that where assessee filed revised return claiming his Mumbai property as self-occupied and USA property as deemed to be let out property for purpose of computation of income from house property, since Commissioner (Appeals) had already arrived at conclusion that USA property was not self-occupied as same was occupied by daughter of assessee, he should consider same as deemed to be let out property**

### **Facts**

- The assessee had two house properties, one in USA and other property at Mumbai. Both the properties were not let out during the year. The assessee being resident of India in the current year resided in Mumbai property and travel to USA from time to time. The assessee's daughter was occupying the USA house. In the return of income the assessee treated the house in USA as self occupied and offered the income from house property as a deemed flat-out in respect of Mumbai property, as he felt that offering the income from house property of Mumbai house would be more beneficial to him. Based on the Municipal rateable value the assessee offered a sum as income from house property. As there was no scrutiny assessment for assessment year 2010-11 the Assessee had revised the return of income and had shown the Mumbai property as self occupied property and at offered the property at USA as let out.
- The Assessing Officer rejected the contention of the assessee to treat U.S.A property for adopting deemed let out value and on the basis of sale consideration of Mumbai property determined the annual letting value of this property.
- On appeal, the Commissioner (Appeals) held that USA property was occupied by his daughter, therefore it could not be considered as self occupied and needed to be taxed.
- On cross appeal:

### **Held**

- The assessee submits that the assessee should have an option of choosing as deemed to be let out house property which was more beneficial to him for purpose of offering income from house property and that assessee should be allowed to changes 'self occupied property' to deemed let out property, especially where Assessing Officer change the method of computation of annual letting value. The option exercise in the course of assessment proceeding may be directed to be accepted by the Assessing Officer.
- During the assessment the assessee has declared the income from house property of Mumbai flat at certain amount as deemed let out. The assessee was asked to justify the income offered by the

assessee and the fair rental value of the similar property in the same area. The assessee furnished various details, including the cost of acquisition, rateable value of flat and the other property. The contention of the assessee was not accepted by the Assessing Officer. The Assessing Officer on the basis of purchased cost estimated the annual letting value (ALV) of Mumbai flat and allowing 30 per cent deduction determined the taxable income at certain amount. The contention of the assessee before the Assessing Officer to treat the USA property for adopting deemed let out was rejected. The Commissioner (Appeals) also held that the USA property is occupied by the daughter of the assessee and cannot be considered as self occupied property. The Commissioner (Appeals) instead of considering the substitution of property for the purpose of computing income from house property and holding the USA property is not self occupied confirmed the action of the Assessing Officer. The Commissioner (Appeals) once arrived at a conclusion that the USA property is not self occupied should have considered it for deemed value of consideration for the purpose of computing income from house property.

- Considering the factual and the legal discussions as narrated above the this ground of appeal is restored to the file of the Assessing Officer to treat the USA property as deemed let out and determine the ALV of the said property. Needless to order that the Assessing Officer shall provide opportunity of hearing to the assessee before passing the order in accordance with law.