Income From House Property

Provisions related to Computation of House Property

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[For Bhatia R K & Associates]

Section 22 of the Income Tax Act states the chargeability of House Property as "The annual value of property consisting of any building or land appurtenant thereto of which the assessee is the owner shall be subject to income tax under the head income from House property after claiming the deduction u/s 24 provided such property or any portion of that property is not used by the assessee for the purposes of any business or profession carried on by him, the profits of which are chargeable to tax."

Hence for taxing an income under this section, the following are the essential conditions:-

- **The property must consist of Building or any land appurtenant thereto**:-
  But if the land appurtenant thereto yields any independent & commercial income, such income shall not be taxable under Income from house property rather would be taxable either as business income or income from other sources depending on facts of the matter.
- **Ownership of the property**: - Ownership of the property includes freehold, leasehold as well as deemed ownership.
  Deemed ownership: - section 27 lists following six categories for deemed ownership:-
  - *Transfer to spouse without any adequate consideration*: - The transferor spouse will be the deemed owner.
    Exceptions:-In following cases, transferor spouse is not the owner.
    - ✓ If the property is transferred in connection with agreement to live apart
    - ✓ Where an individual transfers cash to spouses & the spouse acquires property out of such cash (although this requires clubbing provisions).
  - *Transfer to minor child*: - The individual transferring the house property to minor child is the deemed owner.
    Exceptions:-
    - ✓ If the property is transferred to minor married daughter.
    - ✓ Where an individual transfers cash to minor child & the minor child acquires property out of such cash (although this requires clubbing provisions).
  - *Holder of an Impartible estate*: - The holder of an Impartible estate shall be deemed to be the owner of all the properties comprised in the estate.
  - *Member of a cooperative society Etc.*:-A member of cooperative society , company, or other AOP to whom a Building or part thereof is allotted/ leased under house building scheme of society/company AOP is the deemed owner of the building or part of thereof allotted to him, although the society/company/ AOP is the legal owner.
  - *Person in possession of the property*
  - *Person having rights in a property for a period of at least 12 years*.:- This mean s a person who acquires a right in a property or part thereof for a period of at least 12 years at one transaction is the deemed owner of such property.

- **Use of House property**: - The law specifies that any income from buildings & land appurtenant thereto is income from house property. The property may used for any purpose, residential or commercial. Even if it is the business of the assessee to own & let houses, still the income would constitute income from House property.

However there are certain exceptions to this rule;-

- The annual value of a property used for the purpose of business/ profession of assessee, profits of which are chargeable to tax u/s 28.
- Where property is let so as to carry the business of the assessee more efficiently (provided letting is not the main business of the assessee & is merely incidental to main business.)

Other important facts-

- Rent from putting up hoardings on top of building is income from House property.
- *Property in foreign country*:-
  - In case of resident & ordinary resident in India- Income is chargeable under head Income from House property although brought in India or not.
  - In case of Nonresident or resident bit not ordinary resident- Income is taxable as house property only if it is received in India.

When Income from house property is not charged to tax;-

- Income from any farm house forming part of agricultural income.
- Annual value of any one palace of an ex ruler.
- Income from house property to any local authority.
- Income of house property to an approved scientific association.
- Income from house property to any university or educational institution.
- Income from house property to any medical institution.
- Income from house property to any institution for development of khadi & village industries & boards.
- Income from house property of body/authority for administering religious or charitable trust/ endowments.
- Income from property of registered trade unions.
- Income from property of statutory corporation/institution/association financed by government for promoting the interest of members of SC & ST.
- Income from property of cooperative society formed for promoting the interest of the members either of ST or ST or both (Certain deductions are allowed u/s 80P after including this income in gross total income.)
- Income from house property held for charitable purposes.
- Income from property of any political party.

Determination of annual value: - There are following for categories for computation of annual value.

- Property let throughout the year
- Property let but vacant for whole or part of the year
- Property part of year let & part of year self occupied
- Propertry which is self occupied or cpuld not be self occupied due to employment at other place.

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I. **Property let throughout the year**:-
Annual value is – Maximum {(Actual/annual rent received or receivable), (maximum [municipal valuation, Fair value] subject to standard rent)} Less any municipal taxes borne & actually paid by the owner.

II. **Property let but vacant for whole or part of the year:-**
There two situations in this case:-

- Property let and was vacat for part of year & actual rent received/ receivable is more than reasonable expectyed rent of such property:-
  GAV= maximum of sum for which the property might be reasonably expected to let from year to year and Actual rent received/ receivable.
- property let & was vacant for whole or part of the year & actual rent received/ receivable owing to such vacany is less than sum for which the property can be reasonable expected ton let from year to year:-
  GAV= actual rent received/ receivable.

III. **Property part of year let & part of year self occupied**:-
GAV= Maximum of Expected rent for full year(higher of municipal value & fair value, subject to standard rent) and actual rennet received/ receivable for the period for which the property was actually let out.

IV. **Property which is self occupied or could not be self occupied due to employment at other place**.:-There are again two conditions:-

Where the annual value is Nil
- If property is in occupation of owner for own residence
- If preoperty cannot be self occupied due to employent at another place

Where Annual value is computed as per II above
- if the property is actually let during whole or part of the year
- Any other benefit is derived by owner of the house.

Where the assessee has more than one house for self occupation:-

In this case, one of the houses can be assumed as self Occupied, & hence annual value is nil. The other house will be treated as Deemed to be let out & will be taxed accordingly. This option can be changed from year to year based on asseesse's beneficial computation.

Deduction s allowed from House Property (Section 24):-

- Statutory deduction @30% of Net annual value.
- Interest on borrowed capital:-

Interest on borrowed capital

- Self Occuied property
  - Where the property is acquired with borrowed capital& such acquisition or constrauction is completed within 3 years of the end of financial year in which the capital is borowed- Actual interest subject to max. of Rs. 150000, provided certificate is produced .
  - Any other case- actual interest subject to max. Rs. 30000.
- Let out/ Deemed let out property
  - The entire interest on borrowed capital used for construction/acquisition / repairs etc. is allowed as deduction.Interst should be payavble, whether actually paid or not.

Important:- Also interest attributable to period prior to previous year in which proprty is acquired / constructed is aggregated & allowed as deduction in 5 equal annual instalments in financial years statrting from the year in which the property is acquired/constructed, in case of let out or deemed let out property. However in case of self occupied property , this annual instalment for 5 successive years is included in Maximum Rs.150000/ Rs.30000 annual deduction subject to above conditions.

Exception

(section 25)- if the interst is payable on borrowed money payable outside India, interest is not alowed as deduction. But if in case there is tax on the same has been paid or deducted at source in india & there is an agent of recipient in India , such interest is allowed.

Special provisions:-

- ***Recovery of unrealized rent (section 25AA)*** - Where any unrealized rent has been received by the assessee, it shall be deemed to be income of the previous year in which the rent has been realized, whether or not the assessee is the owner of that property in the year of receipt or not. [Section 25AA does not specifically provide for statutory deduction of 30% of NAV, hence it will not be allowed].
- ***Receiving arrears of rent (Section 25B):-*** Where any arrear of rent has been received by the assessee, it shall be deemed to be income of the previous year in which the rent has been received whether or not the assessee is the owner of that property in the year of receipt or not. [Section 25B specifically provide for deduction of 30% of amount s received, hence it will be allowed.]
- ***Property owned by Co-owners (Section 26***):- Where the shares are definite & ascertainable, the income of each co owner shall be computed as per section 22-25. If the property is self occupied, each co owner will get deduction of Rs. 30000/ Rs 150000 for interest on borrowed capital. Further, if the property or part of the property is let, it will first be computed as property of any one of the co owner & thereafter apportioned among the co owners in their respective shares.
- ***Property of the partners of the firm***: - The property is the asset of the firm & hence partners cannot seek to be assessed as an individual qua his fractional share in the firm.
- ***Can NAV be negative***? - Yes, only if the municipal taxes paid by the owner is more than GAV. (NAV= GAV- municipal taxes).
- ***Can there be loss under the head "income from house property'***?- Yes, in following cases;

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In respect of any Other Property, there is no restriction on Deductions& hence the can be Loss amounting to Municipal taxes being paid as well as deductions.

Self Occupied Property-Since Annual value is nil, Loss can be up to Rs. 30000/ Rs 150000 as interest on borrowed capital is allowed as deduction.

Please Contact for any suggestion/ improvement at ramanpreet.bhatia@rediffmail.com