

SECTION 22

INCOME FROM HOUSE PROPERTY

General

Levy is on income and not on property - The levy of tax under section 22 is on the income from the property and not on the property itself. A conjoint reading of sections 2(24), 14, 22 and 23 of the Act also makes it abundantly clear that what is being taxed under section 22 is the 'deemed income' of an assessee from the property owned by him. The contrary view taken by the Allahabad High Court in the case of *Wheeler Club* [1965] 49 ITR 52 is no good law - *Chelmsford Club v. CIT* [2000] 243 ITR 89 (SC).

Actual receipt or accrual of income is not a requisite - What is charged under section 22 is the annual value of the ownership of the property irrespective of the fact whether or not any income was either actually received or had accrued to the assessee - *Ram Pershad & Sons v. CIT* [1995] 81 Taxman 332 (Delhi).

Owner of structure is liable to tax even if he is not owner of land - In India, in order to come within the provisions of section 9 of the 1922 Act the person who owns the building need not also be the owner of the land upon which it stands - *CIT v. Madras Cricket Club* [1934] 2 ITR 209 (Mad.)/*Tinsukia Development Corpn. Ltd. v. CIT* [1979] 120 ITR 476 (Cal.)/*Sri Ganesh Properties Ltd. v. CIT* [1962] 44 ITR 606 (Cal.).

Purpose of use is not relevant - Sections 22 to 27 are wholly silent as to the purpose for which a building or a house property is to be used - *CIT v. Kanaiyalal Nimani* [1979] 120 ITR 892 (Cal.).

Section 22 applies not only to dwelling houses but also to buildings used for other purposes - The word 'building' is not confined in its scope only to dwelling houses. The word 'house' in association with other words also has many other meanings. But, a commercial building is not regarded as a house. That, however, would not take the income from such buildings out of the ambit of section 22. Though it is not clear from the context as to why the Act describes income from property as income from house property, the substantive provision of law which creates the charge and obligates the person who receives such income to have it assessed under that head does not confine its application only to house property, but extends it to all buildings whether such buildings are used as dwelling houses or for other purposes - *CIT v. Chennai Properties & Investments Ltd.* [2004] 136 Taxman 202 (Mad.).

Income from property under mortgage is liable to tax - Barring the circumstances covered under section 23(2), no exemption could be claimed under the Act from charging the annual value of the property to income-tax under the head 'income from house property'. This would be so even in the case of a mortgage which will be squarely covered by section 23(3)(b), because under the mortgage the assessee has received some benefit from the property even if no actual income is derived from the property. Since no sum is received as rent from the property for purposes of section 22, the annual value of the property shall be deemed to be the sum for which the property might reasonably be expected to be let from year to year - *S. Ujjannappa v. CIT* [2002] 255 ITR 455 (Kar.).

Applicability of principle of mutuality - See Section 4

Owner - meaning of

GENERAL

Owner must be that person who can exercise rights in his own right - For the purpose of section 9, the owner must be that person who can exercise the rights of the owner, not on behalf of the owner but in his own right - *R.B. Jodha Mal Kuthiala v. CIT* [1971] 82 ITR 570 (SC).

'Owner' is the person who receives income from the property in his own right - For purpose of section 22 'owner' is a person who is entitled to receive income in his own right and, as such, where a house property is handed over to a purchaser to enjoy fruits of that property by contractor/builder the purchaser is to be treated as 'owner' of that property for purpose of section 22 even though no registered documents as required under section 54 of the Transfer of Property Act or the Registration Act are executed - *CIT v. Podar Cement (P.) Ltd.* [1997] 92 Taxman 541/226 ITR 625 (SC).

Capacity to let out, or power to receive rent is not relevant - The applicability of the provisions of section 22

or 23 does not depend on the power or capacity of the owner to let out the property or on its power to receive rent or income from *bona fide* annual value; merely because the assessee has filed an ejectment suit or the assessee is not collecting rent or occupation charges, as the case may be, which are being deposited by the tenant with the Rent Controller, it cannot be said that the annual value cannot be assessed - *Swaika Oil & Produce Co. (P.) Ltd. v. CIT* [1993] 201 ITR 520 (Cal.).

Lessee as owner - To deem the lessee as the owner of the property, the lessee should not only have the right to raise new construction on the leasehold property but should also, in exercise of such right, have actually raised the new construction and should also be deriving income from such new construction - *CIT v. Supreme Credit Corporation Ltd.* [1998] 230 ITR 700 (Cal.).

On determination of lease assessee does not automatically become owner - By virtue of determination of the lease under section 111(g) of the Transfer of Property Act and exercise of the right of forfeiture, the assessee does not automatically become the owner of the building - *CIT v. Smt. Divya Devi* [1996] 85 Taxman 216/217 ITR 824 (Kar.).

REGISTRATION REQUIREMENT

Registered sale deed is necessary for ownership - Though a vendee who has entered into an agreement to purchase the property has paid the consideration and has also secured possession, still he does not become the owner of the property until and unless a registered sale deed is executed - *Ramkumar Mills (P.) Ltd. v. CIT* [1989] 47 Taxman 125/180 ITR 464 (Kar.). [See also *CIT v. Ganga Properties Ltd.* [1970] 77 ITR 637 (Cal.)/*CIT v. Trustees of H.E.H. The Nizam's Miscellaneous Trust* [1986] 160 ITR 253 (AP)/*Nawab Mir Barkath Ali Khan v. CIT* [1988] 171 ITR 541 (AP)/*D.C. Anand & Sons v. CIT* [1981] 131 ITR 77 (Delhi). *CIT v. Hari Sankar Pareek* [1992] 62 Taxman 159 (Cal.).

If assessee was in occupation as owner sale deed is not essential - If in a case it was found as a fact that the assessee was in occupation of the building as owner for all intents and purposes except a sale deed in his favour, even then he would be liable to income-tax under section 22 - *Saifuddin v. CIT* [1985] 156 ITR 127 (Raj.). *Smt. Kala Rani v. CIT* [1981] 130 ITR 321 (Punj. & Har.).

Transfer by Muslim in discharge of dower debt requires registration - Where house property had been transferred by a Muslim to his wife in discharge of the dower debt but there was no registered deed, it was held that there was no valid transfer and the income from the house property was assessable in the hands of the transferor - *CIT v. Syed Saddique Imam* [1978] 111 ITR 475 (Pat.)(FB). *CIT v. Syed Anwar Hussain* [1990] 186 ITR 749 (Pat.).

LIFE ESTATE HOLDER

Holder of life estate can be treated as owner - In given cases a life estate holder can be equated to the owner of the property so long as he or she was in a position to enjoy the property or the income therefrom. It is not necessary for the purpose of assessment under section 22 that the assessee must be the absolute owner of the properties. However, even a life estate holder must have some vestige of rights in the property before he can be treated as the owner of the property - *Mrs. M.P. Gnanambal v. CIT* [1982] 136 ITR 103 (Mad.).

RECEIVER

Receiver cannot be treated as owner - A receiver appointed by the Court to manage a property cannot be assessed as owner of such property - *Raja P.C. Lall Choudhary v. CIT* [1948] 16 ITR 123 (Pat.).

FIRM

Assessment must be on firm and not on partners - Property owned by a firm has to be treated as the property of the firm and not of its partners and its income can be assessed in the hands of the firm - *Bhai Sunder Dass & Sons v. CIT* [1972] 85 ITR 28 (Delhi)/*New Cotton & Wool Pressing Factory v. CIT* [1967] 65 ITR 662 (Raj.).

MEMBERS' CLUBS

Where club provides lodging to its members, there is no element of letting - When the club provides accommodation to its members, the members enjoy the facilities not as tenants but as members of the club. It

cannot be said that the members are paying rent and have, therefore, become tenants of the club during their stay - *CIT v. Darjeeling Club Ltd.* [1985] 153 ITR 676 (Cal.).

Rental income v. business income

Even for real estate businessman income from property is 'property income' for period of ownership - If an assessee carries on business of purchasing and selling buildings, income received from the buildings so long as they are owned by the assessee will be shown under the head 'Income from house property' and not under the head 'Profits and gains of business' - *CIT v. Chugandas & Co.* [1965] 55 ITR 17 (SC).

If letting out of premises is part of business operations income from such premises is business income - Where there is a letting out of premises and collection of rents, the assessment of income as property income may be correct, but not so where the letting or sub-letting is part of a trading operation. In latter case it would be a trading receipt. A company formed with the specific object of acquiring properties not with the view to leasing them as property but to selling them or turning them to account even by way of leasing them out as an integral part of its business, cannot be treated as landowner but has to be treated as trader. In deciding whether a company dealt with its properties as owner, one must see not to the form which it gave to the transaction but to the substance of the matter - *Karanpura Development Co. Ltd. v. CIT* [1962] 44 ITR 362 (SC).

Income from godown initially self-used but later let out, is assessable as property income - Where the assessee had constructed a godown and used it for storing its raw materials and finished products, but subsequently the assessee let out the same and derived income from rent, it was *held* that the income derived by the assessee by letting out the godown was income derived from property and not income derived from business - *Rampur Industries Ltd. v. CIT* [1971] 82 ITR 23 (All.)/*Parekh Traders v. CIT* [1984] 150 ITR 310 (Bom.)/*Maharashtra Fertilizers & Chemicals v. CIT* [1984] 150 ITR 317 (Bom.).

Income from paying guest establishment is business income - Where owner of property is running paying guest establishment, income from property is assessable as business income - *Manohar Singh v. CIT* [1965] 58 ITR 592 (Punj.).

In case of clubs - Assessee club's income from swimming pool and stadium would be assessable as business income and not as property income where there was no element of rent for use of the swimming pool and the stadium by the members and the outsiders - *CIT v. National Sports Club of India (No. 1)* [1998] 230 ITR 777 (Delhi).

Income from lease of building for limited periods is business income

Where the building constructed by the assessee out of donations was let out for limited periods for functions such as marriages, and chairs/mikes, etc., were also made available by the assessee for which separate charges were collected, this activity of earning an income from making the building available to others for a charge for limited periods is not to be equated with the letting out of a building on lease from month to month or year to year, wherein it could be said that the building was being exploited by the owner to earn a rental income. Here the expression 'letting out' is used only for a limited purpose. The building remains under the control of the owner. What is granted by the owner is only a licence for a prescribed fee for a specified period. This activity of the assessee can be described as a business carried on by the assessee with the intention of earning income from the building, and the resultant income is assessable as income from business and not as income from house property - *CIT v. Halai Nemon Association* [2000] 243 ITR 439 (Mad.).

Rental income v. Income from other sources

Income from ancillary services is assessable as income from other sources - Services rendered in providing electricity, use of lifts, supply of water, maintenance of staircase and watch-and-ward facilities, are not incidental to letting out property, and service charges, are assessable as income from other sources and not under section 22 - *CIT v. Model Mfg. Co. (P.) Ltd.* [1989] 175 ITR 374 (Cal.).

Composite letting

Where there is inseparable letting income is assessable under other sources - When a building and plant, machinery or furniture are inseparably let, the rent from the building will be taxable under section 56, i.e., residuary head of income, and not under section 22 - *Sultan Bros. (P.) Ltd. v. CIT* [1964] 51 ITR 353 (SC).

Letting of property with furniture - Where from agreement between two parties, it was clear that primary object was to let out portion of property with additional right of using furniture and fixtures and other common facilities, income derived from said property was income from property which should be assessed as such - *Shambhu Investment (P.) Ltd. v. CIT* [2003] 129 Taxman 70/263 ITR 143 (SC).

Where lease of cinema building and furniture is a composite one and inseparable, income from such lease is to be assessed as income from other sources and not as income from house property - *M.K. Dar v. CIT* [1982] 138 ITR 801 (All.)/*CIT v.D.L. Kanhere* [1973] 92 ITR 535 (Bom.).

Property used for own business

Partner cannot claim exemption when property owned by him is used by firm - Where the house property owned by a partner is used for the business of the firm, the notional income from such house property is to be included in the total income of the partner and such partner cannot claim exemption under section 22 - *CIT v.K.N. Guruswamy* [1984] 146 ITR 34 (Kar.)/*Smt. Sharda Bai v. CIT* [ITRC 145 of 1980, dated 10-11-1983]. (Contra)

Partner is eligible for exemption even if his property is used for business of firm - The assessee can be held to be carrying on business when that business is a business of a partnership firm and he is partner in that firm since the firm as a partnership firm has no legal entity and, it is a compendious expression for all the partners. Section 22 does not say that the occupation must be in the capacity of owner and in no other capacity - *CIT v. Rasiklal Balabhai* [1979] 119 ITR 303 (Guj.)/*CIT v. P.T. Mannel* [1989] 47 Taxman 108 (Ker.)/*CIT v. K.M. Jagannathan* [1989] 180 ITR 191 (Mad.).

Even where the partnership business is carried on in the premises of one of the partners, the said partner, as an individual, would be entitled to the exemption under section 22 - *CIT v. Rabindranath Bhol* [1995] 211 ITR 799/79 Taxman 170 (Ori.).

Where part of a house property owned by the assessee-HUF was used for business purposes by a firm in which the HUF was a partner, the notional income from that part of the property which was used by the firm was not assessable to tax - *CIT v. H.S. Singhal & Sons* [2002] 253 ITR 653 (Delhi).

Property used as residence of employees qualifies for exemption - The consistent view of the Courts has been that when a house property is occupied as residence by the employees or its directors, etc., if concerned with the promotions of the business of the assessee-company, whether on payment of rent or otherwise, to enable them to discharge their functions efficiently and the letting out of the property is subservient and incidental to the main business of the assessee, such an occupation amounts to an occupation and user of the property by the assessee itself for the purposes of its business, even though no business is actually in such premises. Income from such property is not assessable as income from house property - *CIT v. Modi Industries Ltd.* [1994] 73 Taxman 691/210 ITR 1 (Delhi)(FB).

Where the assessee-company owning certain buildings, allotted them for the occupation of its directors and other senior executives free of rent, it must be said that occupation by its employees was for the purpose of the assessee's business. Consequently the income from such house could not be treated as income from house property and included in the assessee's total income - *CIT v. Vazir Sultan Tobacco Co. Ltd.* [1988] 173 ITR 290 (AP).

Occupation by employees of sister concern will not be covered under the exemption - The term 'occupy' appearing in section 22 has been judicially interpreted as occupation directly by the assessee himself or through an employee or agent, but such occupation by the employees, etc., within the meaning of the exception in the said section must be subservient to and necessary for the performance of the duties in connection with the business of the assessee. The occupation of the properties by the employees of a sister concern cannot be construed as an occupation by the employees of the assessee themselves in the absence of any specific provision in the law to that effect. Therefore, income from property let out to the employees of the sister concern by the assessee cannot be assessed as income from business and depreciation allowed on such properties, but instead should be treated as income from property under section 22 - *CIT v. T.V. Sundaram Iyengar & Sons Ltd.* [2004] 271 ITR 79 (Mad.).