Chapter 5
Income under the Head "Income from House Property"

Quick Review of the Chapter

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1. Chargeability [Section 22]

The ***annual value*** of *property* consisting of **any *buildings* or *lands appurtenant*** thereto of which the assessee is the *owner* shall be subject to Income-tax under the head 'Income from house property' after claiming ***deduction under* section *24*** provided such **property, or any portion** of such 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 Income-tax.

2. Essential conditions for taxing income under this head

The following three conditions must be satisfied before the income of the property can be taxed under the head "Income from House Property":

(*i*) The property must consist of buildings and lands appurtenant thereto,

(*ii*) The assessee must be the owner of such house property,

(*iii*) The property may be used for any purpose, but it should not be used by the owner for the purpose of any business or profession carried on him, the profit of which are chargeable to tax.

3. Deemed owner [Section 27]

As per section 27, the following persons though not the legal owners of a property are *deemed to be the owners* for the purposes of sections 22 to 26:

⇒ Transfer to a spouse without an adequate consideration or without an agreement to live apart.

⇒ Transfer to a minor child not being a minor married daughter without an adequate consideration.

⇒ Holder of an impartible estate.

⇒ Member of a Co-operative Society or house building company to whom the building has been allotted.

⇒ Person in possession of a property in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act. In this case conveyance deed has not been registered.

⇒ Person having right in a property for a period not less than 12 years except the case where any right by way of a lease is acquired from month to month basis or for a period not exceeding one year.

4. Cases of Composite Rent

In certain cases, the owner charges rent from the tenant not only on account of rent for the house property but also on account of service charges for various facilities provided with the house. Such rent is known as composite rent. The said composite rent can fall under 2 categories:

(*a*) composite rent on account of rent for the property and service charges for various facilities provided alongwith the house like lift, gas, water, electricity, watch and ward, air conditioning etc.

(*b*) composite rent on account of rent for the property and the hire charges of machinery, plant or furniture belonging to the owner.

5. When income from house property is not charged to tax

In the following cases income from property is not charged to tax:

(*a*) *Farm house owned or occupied by an agriculturalist or receiver of rent of land*

(*b*) *House property held for charitable purposes*

(*c*) *House property used by the assessee for his business/profession*

(*d*) *Self-occupied house*

(*e*) *House property of registered trade union/local authority*

(*f*) *One palace of ex-ruler*

DETERMINATION OF ANNUAL VALUE

6. Computation of annual value of a property [Section 23(1)]

As per the Act the annual value is the value after deduction of municipal taxes, if any, paid by the owner. But for sake of convenience, the annual value may be determined in the following two steps:

Step I: Determine the gross annual value.

Step II: From the gross annual value computed in step I, deduct municipal tax *paid* by the *owner* during the previous year.

The balance shall be the net annual value which, as per Income-tax Act is the annual value.

The annual value has to be determined for different categories of properties. These could be:

(A) House property which is let throughout the previous year.

(B) House property which is let and was vacant during the whole or any part of the previous year.

(C) House property which is part of the year let and part of the year self-occupied.

(D) House property which is self-occupied for residential purposes or could not actually be self occupied owing to employment at any other place.

(A) House property which is let throughout the previous year

Step 1: *Determine the gross annual value* which is higher of two

(*a*) Expected rent or

(b) where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in *excess* of the sum referred to in clause (*a*), the amount so received or receivable.

How do we compute expected rent:

It is the sum for which the property might reasonably be expected to let from year to year which is higher of the following two:

Municipal Valuation

Fair Rental value;

However the above amount cannot exceed the Standard Rent

Conclusion: First step is to calculate the Gross Annual Value which will be maximum of Municipal Value or Fair Rental Value, but restricted to the standard rent. However if the actual rent received or receivable exceeds such amount then the actual rent so received/receivable shall be the Gross Annual Value.

Step 2: *Taxes levied by any local authority in respect of the property i.e.* ***Municipal taxes*** (***including services taxes***) *to be deducted* from the gross annual value calculated as above, if the following conditions are fulfilled:

(*a*) the municipal taxes have been borne by the owner, and

(*b*) these have been actually paid during the previous year

The value arrived at after deducting the municipal taxes, if any, may be referred to as the *Net Annual Value* (Annual value as per Income-tax Act).

(B) Where the property is let and was vacant for whole or part of the year and the actual rent received or receivable owing to such vacancy is less.

The annual value of the property shall be determined under this situation if all the following 3 conditions are satisfied:

(1) The property is let;

(2) It was vacant during the whole or part of the previous year;

(3) **Owing to such vacancy**, the actual rent received or receivable is less than the value determined under section 23(1)(*a*)

The gross annual value shall be the actual rent received or receivable.

(C) House Property which is part of the year let and part of the year occupied for own residence:

The period of occupation of property for own residence shall be irrelevant.

The annual value of such house property shall be determined as if it is let and annual value is calculated as above.

7. Treatment of unrealised rent [*Explanation* to section 23(1)]

As per the *Explanation*, the actual rent received or receivable mentioned in section 23(1)(*b*) and (*c*) shall not include the amount of rent which the owner cannot realise, subject to the rules made in this behalf.

Rules for unrealised rent

The amount of rent which the owner cannot realise shall be equal to the amount of rent payable but not paid by a tenant of the assessee and so proved to be lost and irrecoverable where,—

(*a*) the tenancy is *bona fide*;

(*b*) the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property;

(*c*) the defaulting tenant is not in occupation of any other property of the assessee;

(*d*) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfies the Assessing Officer that legal proceedings would be useless.

Although as per Explanation unrealized rent is deductible from clause (b) and (c) of section 23(1) but in the Form of the **return of income** unrealized rent has been deducted from gross annual value as computed above.

8. Deductions from net annual value [Section 24]

Income chargeable under the head "Income from house property" shall be computed after making the following deductions, namely:—

(*a*) ***Statutory deduction***: From the net annual value computed, the assessee shall be allowed a statutory deduction of a sum equal to 30% of the net annual value.

(*b*) ***Interest on borrowed capital***: Where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital is allowed as a deduction. The amount of interest payable yearly should be calculated separately and claimed as a deduction every year. It is immaterial whether the interest has been actually paid or not paid during the year.

Interest attributable to the period prior to completion of construction*:* It may so happen that money is borrowed earlier and acquisition or completion of construction takes place in any subsequent year. Meanwhile interest becomes payable. In such a case interest paid/payable for the *period prior to the previous year in which the property is acquired/constructed* (as reduced by any part thereof allowed as a deduction under any other provisions of the Income-tax Act) will be aggregated and allowed in five successive financial years starting from the year in which the acquisition/construction was completed. Interest will be aggregated from the date of borrowing till the end of the previous year *prior to the previous year in which the house is completed* and not till the date of completion of construction.

1. Interest on fresh loan taken to repay the original loan shall be allowed as deduction.

2. Interest on interest (*i.e.* unpaid interest) is not deductible.

3. No deduction is allowed for any brokerage or commission for arranging the loan.

9. Computation of Income of a property which is self-occupied for residential purposes or could not actually be self occupied owing to employment [Section 23(2), (3) & (4)]

Where the property consists of a house or part of a house which—

(*a*) is in the occupation of the owner for the purposes of his own residence; or

(*b*) cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him,

the annual value of such house or part of the house shall be taken to be **nil**.

The annual value of self-occupied house shall not be nil:

(*i*) if such house or part of the house is actually let during the whole or any part of the previous year; or

(*ii*) any other benefit therefrom is derived by the owner from such house.

In the case of clause (i) or (ii) above, the annual value shall be determined as per the provisions of let out properties

Where assessee has more than one house for self occupation: If there are more than one residential houses, which are in the occupation of the owner for his residential purposes then he may exercise an option ***to treat any one of the houses to be self-occupied***. The other house(s) will be deemed to be let out and the annual value of such house(s) will be determined as calculated above *i.e.* the sum for which the property might reasonably be expected to let from year to year.

10. Deduction in respect of one self occupied house where annual value is nil

Where annual value of one self-occupied house is nil, the assessee will not be entitled to the statutory deduction of 30%, as the annual value itself is nil. However, the assessee will be allowed deduction on account of interest **(including 1/5th of the accumulated interest of pre-construction period)** as under:—

(*a*) Where the property is *acquired or constructed* with capital borrowed on or after 1-4-1999 and such acquisition or construction is completed within *3 years of the end of the financial year in which the capital was borrowed*	Actual interest payable subject to maximum Rs. 1,50,000 if certificate mentioned in point 2 in box given below is obtained
(*b*) In any other case, *i.e.*, borrowed for repairs or renewal or conditions mentioned in clause (*a*) are not satisfied	Actual interest payable subject to maximum of Rs. 30,000

11. Interest when not deductible from "Income from House Property" [Section 25]

Interest on borrowed money which is payable outside India shall not be allowed as deduction u/s 24(*b*), unless the tax on the same has been paid or deducted at source and in respect of which there is no person in India, who maybe treated as agent of the recipient for such purpose.

12. Subsequent recovery of unrealised rent

(A) Recovery of unrealised rent allowed as deduction upto assessment year 2001-02 [Section 25A]: Where a deduction has been claimed and allowed to the assessee in respect of unrealised rent *in assessment year 2001-02 or prior to that* and subsequently the assessee realises any amount in respect of such rent, the amounts so realised shall be deemed to be income chargeable under the head "Income from house property" and accordingly charged to tax as the income of that previous year, irrespective of the fact whether the assessee is the owner of the property in that year or not. *No deduction* under section 23 or section 24 whatsoever will be allowed to the assessee from such unrealised rent recovered.

(B) Recovery of unrealised rent already reduced from the annual value for assessment year 2002-03 and onwards [Section 25AA]: Where the assessee cannot realise rent from a property let to a tenant and subsequently the assessee has realised any amount in respect of such rent, the amount so realised shall be deemed to be income chargeable under the head "Income from house property" and accordingly charged to income-tax as the income of that previous year in which such rent is realised whether or not the assessee is the owner of that property in that previous year.

13. Special provisions for arrears of rent received [Section 25B]

Where the assessee:

(*a*) is the owner of any property consisting of any buildings or lands appurtenant thereto which has been let to a tenant; and

(*b*) has received any amount, by way of arrears of rent from such property, not charged to income-tax for any previous year;

the amount so received, *after deducting a sum equal to 30% of such amount*, shall be deemed to be the income chargeable under the head income from house property. Further, it will be charged to income-tax as the income of that previous year in which such rent is received, whether the assessee is the owner of that property in that year or not.

14. Property owned by Co-owners [Section 26]

Sometimes the property consisting of buildings or the buildings and lands appurtenant thereto is owned by two or more persons, who are known as co-owners. In such cases, if their respective shares are definite and ascertainable, such persons shall not be assessed as an AOP in respect of such property, but the share of each such person in the income from the property, as computed in accordance with sections 22-25, shall be included in his total income.

Where the house property owned by the co-owners is self occupied by each of the co-owner, the annual value of the property for each of such co-owner shall be nil and *each of the co-owner* shall be entitled to the deduction of Rs. 30,000/1,50,000 under section 24(*b*) on account of interest on borrowed money.

As regards, the property or part of the property which is owned by co-owners is let out, the income from such property or part thereof shall be first computed as if this property/part is owned by one owner and thereafter the income so computed shall be apportioned amongst each co-owner as per their definite share.

15. Can Annual Value (Net Annual Value) be negative?

The Annual Value (NAV) can be negative only when the municipal taxes paid by the owner are more than the gross annual value.

16. Can there be any loss under the head income from house property?

This brings us to the question as to whether there can be any loss under this head.

(*i*) In so far as income from a self-occupied property is concerned, the annual value is taken as nil. No deductions are allowed except for interest on borrowed funds up to a maximum of Rs. 30,000/1,50,000. Naturally, therefore, there may be a loss in respect of such property up to a maximum of Rs. 30,000/1,50,000, as the case may be.

(*ii*) In respect of any other type of house property, namely a house property which is fully let out or part of the year let out, etc., there are no restrictions on deductions and therefore, there can be loss under this head in respect of such properties due to municipal taxes as well as deductions. Similarly, deductions under section 24 in case of property deemed to be let out, can be more than net annual value.