

INCOME FROM HOUSE PROPERTY

Some Key Points

To tax an income as 'income from house property' the assessee must derive income from any building or land appurtenant to the building. Land appurtenant to building means land connected with the building like garden, garage etc.

Ownership of the property does not mean a registered ownership by means of sale deed. Ownership includes deemed ownership and also both freehold and leasehold rights.

Property held as stock in trade

Annual value of house property chargeable under this head also includes (a) property held as stock in trade of a business and (b) income by way of letting out of property on rent as regular business activity.

Letting out as supplementary activity

Where the assessee is engaged in some other business but lets out a property such let out if taken as supplementary activity, the rental income shall form part of the business income and will be calculated in the same manner as profits and gains of business and not relating to house property.

Composite rent

When the property is let out for composite rent viz. rent for building and charges for different services such as lift, common area maintenance, security etc. the composite rent is to be split separately towards use of property (to be taxed under the head 'income from house property') and towards provision and use of services (which is taxable under the head 'Income from other sources').

Determination of annual value

When the property is let out, the three parameters are to be compared viz. (i) fair rent; (ii) municipal value; and (iii) standard rent.

The actual rent would also be compared for determining the annual value.

The fair rent or municipal value (but not exceeding the standard rent) will be compared with the actual rent and whichever is higher will be adopted as annual value.

Direct Tax Laws

Question 1

Vishnu has two houses, both of which are self-occupied. The particulars of the houses for the P.Y.2010-11 are as under:

Particulars	House I	House II
Municipal valuation p.a.	4,00,000	6,00,000
Fair rent p.a.	3,00,000	7,00,000
Standard rent p.a.	3,60,000	7,40,000
Date of completion	31.3.2005	31.3.2008
Municipal taxes paid during the year	10%	9%
Interest on money borrowed for construction of house	1,75,000	2,50,000

Compute Vishnu's income from house property for A.Y.2011-12 and suggest which house should be opted by Vishnu to be assessed as self-occupied so that his tax liability is minimum.

Answer

Computation of Income from house property of Vishnu for the A.Y. 2011-12

Let us first calculate the income from each house property assuming that they are deemed to be let out.

Particulars	Amount in Rs.	
	House I	House II
Gross Annual Value (GAV)		
Annual Letting Value(ALV) is the GAV of house property		
ALV = Higher of Municipal value and fair rent, but restricted to standard rent	3,60,000	7,00,000
Less: Municipal taxes (paid by the owner during the previous year)	40,000	54,000
Net Annual Value (NAV)	3,20,000	6,46,000
Less: Deductions under section 24		
(a) 30% of NAV	96,000	1,93,800
(b) Interest on borrowed capital	1,75,000	2,50,000
Income from house property	49,000	2,02,200

OPTION 1 (House I – self-occupied and House II – deemed to be let out)

If House I is opted to be self-occupied, the income from house property shall be –

Income from House Property

Particulars	Amount in Rs.
House I (Self-occupied) [Loss representing interest on borrowed capital restricted to Rs.1,50,000]	(1,50,000)
House II (Deemed to be let-out)	2,02,200
Income from house property	52,200

OPTION 2 (House I – deemed to be let out and House II – self-occupied)

If House II is opted to be self-occupied, the income from house property shall be –

Particulars	Amount in Rs.
House I (Deemed to be let-out)	49,000
House II (Self-occupied) [Loss representing interest on borrowed capital restricted to Rs.1,50,000]	(1,50,000)
Income from house property	(1,01,000)

Since Option 2 is more beneficial, Vishnu should opt to treat House II as self-occupied and House I as deemed to be let out. His loss from house property would be Rs.1,01,000 for the A.Y. 2011-12. This loss can be carried forward to the next year for set-off against income from house property of that year. It can be carried forward up to a maximum of 8 years.

Question 2

In the following cases, state the head of income under which the receipt is to be assessed-

- (a) *Anirudh let out his property to Abhinav. Abhinav sublets it. How is subletting receipt to be assessed in the hands of Abhinav.*
- (b) *Anish has built a house on a leasehold land. He has let-out the above property and has considered the rent from such property under the head "Income from other sources" and deducted expenses on repairs, security charges, insurance and collection charges in all amounting to 50% of receipts.*

Answer

- (a) Sub-letting receipt is to be assessed as "Income from Other Sources" or as "Profits and gains of business or profession" in hands of Mr. Abhinav, depending upon the facts and circumstances of each case. It is not assessable as income from house property, since one of the conditions for assessing an income under this head is that the assessee should be the owner of the property. In this case, since Abhinav is not the owner of the house property, sub-letting receipt cannot be assessed under the head "Income from house property".

Direct Tax Laws

- (b) In this case, the receipt is assessable as "Income from house property" since ownership of land is not a pre-requisite for assessment of income under this head. 30% of Net Annual Value is allowed as a deduction under section 24.

Question 3

Rajesh owns a house in Hyderabad. During the previous year 2010-11, 3/4th portion of the house was self-occupied and 1/4th portion was let out for residential purposes at a rent of Rs.12,000 p.m. The tenant vacated the property on February 28th, 2011. The property was vacant during March, 2011. Rent for the months of January 2011 and February 2011 could not be realised in spite of the owner's efforts. All the conditions prescribed under Rule 4 are satisfied.

Municipal value of the property is Rs.4,00,000 p.a., fair rent is Rs.4,40,000 p.a. and standard rent is Rs.4,80,000. He paid municipal taxes @10% of municipal value during the year. A loan of Rs.30,00,000 was taken by him during the year 2005 for acquiring the property. Interest on loan paid during the previous year 2010-11 was Rs.1,48,000. Compute Rajesh's income from house property for the A.Y. 2011-12.

Answer

There are two units of the house. Unit I with 3/4th area is used by Rajesh for self-occupation throughout the year and no benefit is derived from that unit, hence it will be treated as self-occupied and its annual value will be nil. Unit 2 with 1/4th area is let-out during the previous year and its annual value has to be determined as per section 23(1).

Computation of Income from house property of Mr. Rajesh for the A.Y. 2011-12

Particulars	Amount in rupees
Unit I (3/4th area – self-occupied)	
Annual Value	Nil
Less: Deduction u/s 24(b)	
3/4th of Rs.1,48,000	1,11,000
Income from Unit I (self-occupied)	-1,11,000

Unit II (1/4th area – let out)

Computation of GAV

Step 1 – Computation of Annual Letting Value (ALV)

ALV = Higher of municipal valuation (MV) and fair rent (FR), but restricted to standard rent (SR). However, in this case, standard rent of Rs.1,20,000 (1/4th of Rs.4,80,000) is more than the higher of MV of Rs.1,00,000 (1/4th of Rs.4,00,000) and FR of

Income from House Property

Rs.1,10,000 (1/4th of Rs.4,40,000). Hence the higher of MV and FR is the ALV. In this case, it is the fair rent. 1,10,000

Step 2 – Computation of actual rent received/ receivable

$$12,000 \times 9 = 1,08,000 \quad 1,08,000$$

[The property was let-out for 11 months. However, rent for 2 months i.e. January and February, 2011 could not be realized. As per *Explanation to section 23(1)*, actual rent should not include any amount of rent which is not capable of being realized. Therefore, actual rent has been computed for 9 months]

Step 3 – GAV is the higher of ALV and actual rent received/receivable. However, as per section 23(1)(c), where the let-out property is vacant for part of the year and owing to vacancy, the actual rent is lower than the ALV, then the actual rent received would be the GAV of the property. In this case, the actual rent is lower than the ALV owing to vacancy, since had the property not been vacant in March 2011, the actual rent would have been 1,20,000 (i.e., 1,08,000 + 12,000), which is higher than the ALV of Rs.1,10,000. Therefore, in this case, section 23(1)(c) would apply and the actual rent of Rs.1,08,000 would be the GAV, since it is lower than the ALV owing to vacancy. 1,08,000

Gross Annual Value(GAV) **1,08,000**

Less: Municipal taxes paid by the owner during the previous year relating to let-out portion

$$1/4\text{th of } (10\% \text{ of Rs.4,00,000}) = 40000/4 = 10,000 \quad 10,000$$

Net Annual Value(NAV) = (1,08,000-10,000) **98,000**

Less: Deductions under section 24

(a) 30% of NAV = 30% of Rs.98,000	29,400	
(b) Interest paid on borrowed capital (relating to let out portion) [1/4th of Rs.1,48,000]	37,000	66,400

Income from Unit II (let-out) 31,600

Loss under the head "Income from house property" = -1,11,000 + 31,600 -79,400

Question 4

During the financial year 2010-11, Mr. A received a sum of Rs.1,80,000 (Rs.60,000 p.a.) by way of enhancement for the last three years as the Government department (tenant) enhanced the rate of rent with retrospective effect. Will the sum of Rs.1,80,000 be taxable in the assessment year 2011-12 ? Can it be spread over the last three years?

Answer

As per section 25B, the arrears of rent shall be taxable in the previous year in which such arrears are received. The assessee shall be allowed deduction @ 30% of such amount received. Further, it is not necessary that the assessee should be owner of such house property in the previous year in which such arrears are received.

As the arrear rent of Rs.1,80,000 is received in the previous year 2010-11, the same is taxable in the A.Y.2011-12. Thus, the net sum of Rs.1,26,000 (i.e. Rs.1,80,000 – Rs.54,000) shall be chargeable to tax under the head “Income from house property”.

There is no provision in the Income-tax Act enabling the assessee to spread over the arrears of rent over the last three years.

Question 5

P, an individual, borrowed Rs.20,00,000 for repair and reconstruction of his self-occupied house property and paid interest of Rs.1,60,000 thereon during the financial year 2010-11. What is the amount of interest allowable as deduction under section 24 for the assessment year 2011-12?

Answer

Section 24(b) provides that where the self-occupied house property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, deduction towards interest payable thereon shall not exceed Rs.30,000. Therefore, only Rs.30,000 would be allowed as deduction on account of interest on loan borrowed for repair and reconstruction of self-occupied house property.

The higher limit of Rs.1,50,000 in respect of interest on loan borrowed on or after 1.4.99 would be available only where such loan is borrowed for acquisition or construction of self-occupied property and not for repair or reconstruction of such property.

Question 6

A Hindu undivided family owns a property which has been let out to a firm carrying on business. The family is a partner of the firm through its Karta. No rent has been charged by the HUF from the firm for use of the premises by the firm. The Assessing Officer, however, has taxed the family on the notional income from property based on municipal valuation. Is this decision justified?

Answer

Under section 22, the annual value of a property is chargeable to tax under the head “Income from house property” in the hands of the owner. However, this section specifically excludes property occupied for the purposes of own business or profession of the assessee, the profits of which are chargeable to income-tax. In *CIT v. Shri. Champalal Jeevraj* (1995) 215 ITR 289

(Mad) it was observed that where the Karta of the HUF is a partner in the firm in his representative capacity and the firm occupied a portion of the house belonging to the HUF, the benefit of exclusion under section 22 was available to the HUF. Accordingly, the annual value of the property shall be 'nil' while computing the total income of the HUF. Therefore, in this case, the action of the Assessing Officer is not correct.

Question 7

'X', an American national, a resident in India during the financial year 2010-11 owned a building located in New York. The same was on rent @ US \$ 12,500 p.m. The Municipal Corporation of New York was paid taxes on such building of US \$ 10,000 on 12.2.2011. Besides the above property, he purchased a piece of land at Delhi for construction of a house. The said land was given on rent for running a dairy farm @ Rs.3,000 p.m. w.e.f. 1.10.2010. The value of one US \$ in Indian rupee throughout the year remained at Rs.46.50.

'X' wants to know his taxable income for assessment year 2011-12.

Answer

For the previous year, Mr. X, an American National, was a resident in India. Accordingly the income received by him by way of rent of the house property located in USA is subject to tax in India. Municipal taxes so paid in the country where the property is situated are also to be allowed as held in the case of *CIT v. R. Venugopala Reddiar* (1965) 58 ITR 439 by the Madras High Court.

The income chargeable to tax will be as under:-

Particulars	Rs.	Rs.
Income from House Property		
House property located in New York.		
Annual rental value being actual rent received of US \$ 12,500 p.m. converted into Indian Rupees @ 46.50	69,75,000	
Less: Municipal taxes paid (US \$ 10,000 X 46.5)	4,65,000	
Net Annual Value (NAV)	65,10,000	
Less: Deduction u/s 24 @ 30% of NAV	19,53,000	45,57,000
Income from other sources		
Rental income from the land located at Delhi given on rent for 6 months		18,000
Total income		45,75,000

Note:

Rent from vacant land is chargeable to tax under the head "Income from other sources".

Direct Tax Laws

As the students are not expected to know the DTAA between India and any foreign country for the purpose of examination, the provisions of DTAA between India and US has not been considered in the above solution.

Question 8

How do you deal with the following issue under the respective provisions of the Income-tax Act?

The assessee, who was deriving income from “house property”, realised a sum of Rs.52,000 on account of display of advertisement hoardings of various concerns on the roof of the building. He claims that this amount should be considered under the head “House Property” and not under “other sources”.

Answer

This question came up for consideration before the Calcutta High Court in *Mukherjee Estate (P) Ltd v. CIT (2000) 244 ITR 1*. It was decided that the assessee let out the roof for advertisement for hoarding and that the income cannot be considered as income from house property as hoardings do not form part of the building. Such income is chargeable under the head “Income from other sources”.

Question 9

State the circumstances, when notional income is charged to tax instead of real income under the head “Income from house property”.

Answer

The circumstances when notional income is charged to tax instead of real income under the head “Income from house property” are as under -

- (i) Where the assessee owns more than one house property for the purpose of self-occupation, the annual value of any one of those properties, at the option of the assessee, will be Nil and the other properties are deemed as let-out properties for which income has to be computed on notional basis by taking the Annual Letting Value (ALV) as the Gross Annual Value (GAV).
- (ii) In the case of let-out property, where the ALV exceeds the actual rent, the ALV is taken as the GAV.

Note – Annual Letting Value is the higher of municipal valuation and fair rent, but restricted to standard rent.