

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.

5.2 Direct Tax Laws

Question 1

People Housing Ltd. is engaged in the business of constructing residential and commercial properties. One of the building properties was included in the closing stock in the Balance Sheet. The said building was let out for a monthly rent as suitable buyers could not be found. All other buildings had been sold by the company. State with reasons whether the income by way of rent from the unsold property is assessable as income from business or income from house property.

Answer

Under section 22, the charging section for "Income from house property", the only exception provided is the income derived from property used/occupied by the assessee for his own business. Therefore, income derived from letting out of house property will always be taxable under the head "Income from house property". Even if the business of the assessee is to own and give houses on rent or to trade in houses, the annual value of the houses owned by him during the previous year would be taxable as "Income from house property". It will be so taxable even if property is held by the assessee as stock-in-trade of his business.

Note – The Gujarat High Court has, however, expressed an alternate view in *CIT v. Neha Builders P. Ltd. (2008) 296 ITR 661*, where it was held that in the case of an assessee engaged in construction and sale of buildings, the same would constitute stock-in-trade of the assessee and any income derived from stock would be assessable as business income.

Question 2

Ankit Private Limited has, in its return of income, claimed a sum of ₹ 40,000 as a deduction on account of payments for stamp duty and registration charges from the income shown under the head "Income from house property". The Assessing Officer disallowed the claim of the assessee company in the assessment order passed under section 143(3). Examine the correctness of the action of the Assessing Officer.

Answer

In the determination of annual value of house property under section 23, what is to be deducted is provided in the section itself. For example, where the property is let-out, the municipal taxes paid by the owner is allowed to be deducted in the determination of the net annual value of the property. Once the net annual value is determined, the deductions which are admissible are specified in section 24, namely statutory deduction @30% of net annual value and deduction in respect of interest on borrowed capital taken for the purpose of acquiring, constructing, renewing or repairing the house property. Thus, the amount spent by the assessee towards stamp duty for drawing up the lease deed and the registration cannot be allowed as deduction in determining annual value of the property.

Therefore, the action of the Assessing Officer in disallowing the deduction in respect of stamp duty and registration charges, is correct.

Question 3

Vishnu has two houses, both of which are self-occupied. The particulars of the houses for the P.Y. 2011-12 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.2012-13 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. 2012-13**

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

Particulars	Amount in ₹	
	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 as a percentage of Municipal Valuation)	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 –

Particulars	Amount in ₹
House I (Self-occupied) [representing interest on borrowed capital restricted to	(1,50,000)

5.4 Direct Tax Laws

₹ 1,50,000, assuming the construction of the house was completed within 3 years from the end of the financial year in which the capital was borrowed]	
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 ₹
House I (Deemed to be let-out)	49,000
House II (Self-occupied) [Loss representing interest on borrowed capital restricted to ₹ 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 ₹ 1,01,000 for the A.Y. 2012-13. 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 4

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

- Anirudh let out his property to Abhinav. Abhinav sublets it. How is subletting receipt to be assessed in the hands of Abhinav.*
- 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

- 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 i.e. owner of the building and the land appurtenant thereto. 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".
- Since, Anish is the owner of the property (Building), in this case, the receipt would be assessable as "Income from house property". The 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 5

Rajesh owns a house in Hyderabad. During the previous year 2011-12, 3/4th portion of the house was self-occupied and 1/4th portion was let out for residential purposes at a rent of ₹12,000 p.m. The tenant vacated the property on February 28th, 2012. The property was vacant during March, 2012. Rent for the months of January 2012 and February 2012 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 ₹ 4,00,000 p.a., fair rent is ₹ 4,40,000 p.a. and standard rent is ₹ 4,80,000. He paid municipal taxes @10% of municipal value during the year. A loan of ₹ 30,00,000 was taken by him during the year 2005 for acquiring the property. Interest on loan paid during the previous year 2011-12 was ₹ 1,48,000. Compute Rajesh's income from house property for the A.Y. 2012-13.

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. 2012-13

Particulars	Amount in rupees	
Unit I (3/4th area – self-occupied)		
Annual Value		Nil
Less: Deduction u/s 24(b)		
3/4th of ₹ 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 ₹ 1,20,000 (1/4th of ₹ 4,80,000) is more than the higher of MV of ₹ 1,00,000 (1/4th of ₹ 4,00,000) and FR of ₹ 1,10,000 (1/4th of ₹ 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		
12,000×9 = 1,08,000	1,08,000	
[The property was let-out for 11 months. However, rent for 2 months i.e. January and February, 2012 could not be realized. As		

5.6 Direct Tax Laws

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 2012, the actual rent would have been 1,20,000 (i.e., 1,08,000 + 12,000), which is higher than the ALV of ₹ 1,10,000. Therefore, in this case, section 23(1)(c) would apply and the actual rent of ₹ 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		
1/4th of (10% of ₹ 4,00,000) = 40000/4 = 10,000		10,000
Net Annual Value(NAV) = (1,08,000-10,000)		98,000
Less: Deductions under section 24		
(a) 30% of NAV = 30% of ₹ 98,000	29,400	
(b) Interest paid on borrowed capital (relating to let out portion) [1/4th of ₹ 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 6

During the financial year 2011-12, Mr. A received a sum of ₹ 1,80,000 (₹ 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 ₹ 1,80,000 be taxable in the assessment year 2012-13 ? 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 ₹ 1,80,000 is received in the previous year 2011-12, the same is taxable in the A.Y.2012-13. Thus, the net sum of ₹ 1,26,000 (i.e. ₹ 1,80,000 – ₹ 54,000) shall be chargeable to tax under the head "Income from house property".

There is no provision in the Income-tax Act, 1961, enabling the assessee to spread over the arrears of rent over the last three years.

Question 7

P, an individual, borrowed ₹ 20,00,000 for repair and reconstruction of his self-occupied house property and paid interest of ₹ 1,60,000 thereon during the financial year 2011-12. What is the amount of interest allowable as deduction under section 24 for the assessment year 2012-13?

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 ₹ 30,000. Therefore, only ₹ 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 ₹ 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 8

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. Hence, the income from the said property shall not be chargeable to tax under the head "Income from house property". Therefore, in this case, the action of the Assessing Officer is not correct.

Question 9

'X', an American national, a resident in India during the financial year 2011-12 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 12.2.2012. 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 @ ₹ 3,000 p.m. w.e.f. 1.10.2011. The value of one US \$ in Indian rupee throughout the year remained at ₹ 46.50.

'X' wants to know his taxable income for assessment year 2012-13.

5.8 Direct Tax Laws

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	₹	₹
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".

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 10

How do you deal with the following issue under the respective provisions of the Income-tax Act, 1961?

The assessee, who was deriving income from "house property", realised a sum of ₹ 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 11

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 to be 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.

Self-examination Questions

1. Discuss the following issues relating to Income from house property -
 - (i) Income earned by residents from house properties situated in foreign countries.
 - (ii) Properties which are used for agricultural purposes.
2. Discuss the provisions regarding taxability of the following –
 - (i) Arrears of rent
 - (ii) Unrealised rent
3. How is the income from house property of a house, which is self-occupied for part of the year and let out for part of the year, computed?
4. In certain cases, persons who are not legal owners of the house property are deemed to be owners for the purpose of charge of income-tax. Discuss the correctness or otherwise of the above statement.
5. Discuss the tax treatment of income from co-owned property.
6. In the following cases, state the head of income under which the receipt is to be assessed and comment.
 - (1) X let out his property to Y. Y sublets it. How is subletting receipt to be assessed in the hands of Y.

5.10 Direct Tax Laws

- (2) X has built a house on a leasehold land. He has let-out the above property and claims income from house property under "Other sources" and deducted expenses on repairs, security charges, insurance and collection charges in all amounting to 40% of receipts.
7. An assessee, who was deriving income from house property, realised a sum of ₹ 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 "Income from house property" and not "Income from other sources". How do you deal with the following issue under the provisions of the Income-tax Act, 1961?
8. Arvind commenced construction of a residential house intended exclusively for his residence, on 1.11.2010. He raised a loan of ₹ 5,00,000 at 16% p.a. for the purpose of construction on 1.11.2010. Finding that there was an over-run in the cost of construction he raised a further loan of ₹ 8,00,000 at the same rate of interest on 1.10.2011. What is the interest allowable under section 24 for A.Y.2012-13, assuming that the construction was completed on 31.3.2012?
9. Ram owned a house property at Chennai which was occupied by him for the purpose of his residence. He was transferred to Mumbai in June, 2011 and therefore, he let out the property w.e.f. 1.7.2011 on a monthly rent of ₹ 8,000. The corporation tax payable in respect of the property was ₹ 2,000 of which 50% was paid by him before 31.3.2012. Interest on money borrowed for the construction of the property amounted to ₹ 12,000. Compute the income from house property for the A.Y.2012-13.
10. X Ltd. had let out the house property owned by it to the employees of its sister concern, Y Ltd. Under what head of income should the income from the house property of X Ltd., occupied by the employees of its sister concern Y Ltd., be assessed? Can X Ltd. claim that such income is not chargeable under the head "Income from house property", on the ground that the property has been occupied for the purpose of its business or profession?

Answers

8. ₹ 1,50,000
9. ₹ 54,500 (assuming the fair rent to be ₹ 8,000 per month)
10. These questions have been answered by the Madras High Court in *CIT vs. T.V. Sundaram Iyengar & Sons Ltd. (2005) 145 Taxman 380 / (2004) 271 ITR 0079*. The High Court observed that in order to claim exemption in respect of income from house property under section 22, the assessee must satisfy two conditions, namely –
- (1) the property or portion thereof must be occupied by the assessee for the purposes of his business or profession; and
 - (2) the profits of such business should be chargeable to income-tax.

The issue under consideration is that in order to avail the exemption under section 22, is it necessary that the property must be –

- (i) in direct occupation of the assessee-company, and
- (ii) used as such for transaction of the assessee's business or profession.

The High Court observed that the term 'occupy' appearing in section 22, when judicially interpreted, means occupation, directly by the assessee himself or through an employee or agent, subservient and necessary for the performance of the duties in connection with the business of the company. The assessee had let out the properties in question to the employees of the sister concern, who were separate and independent assesseees by themselves, which made a vast difference from letting out of properties to the employees of the assessee itself. Therefore, the occupation of the properties in question by the employees of the sister concern could not be construed as an occupation by the employees of the assessee itself, in the absence of any specific provision in law to that effect.

Therefore, the income from the property let out to the employees of the sister concern Y Ltd. should be treated as income from house property of X Ltd. under section 22.