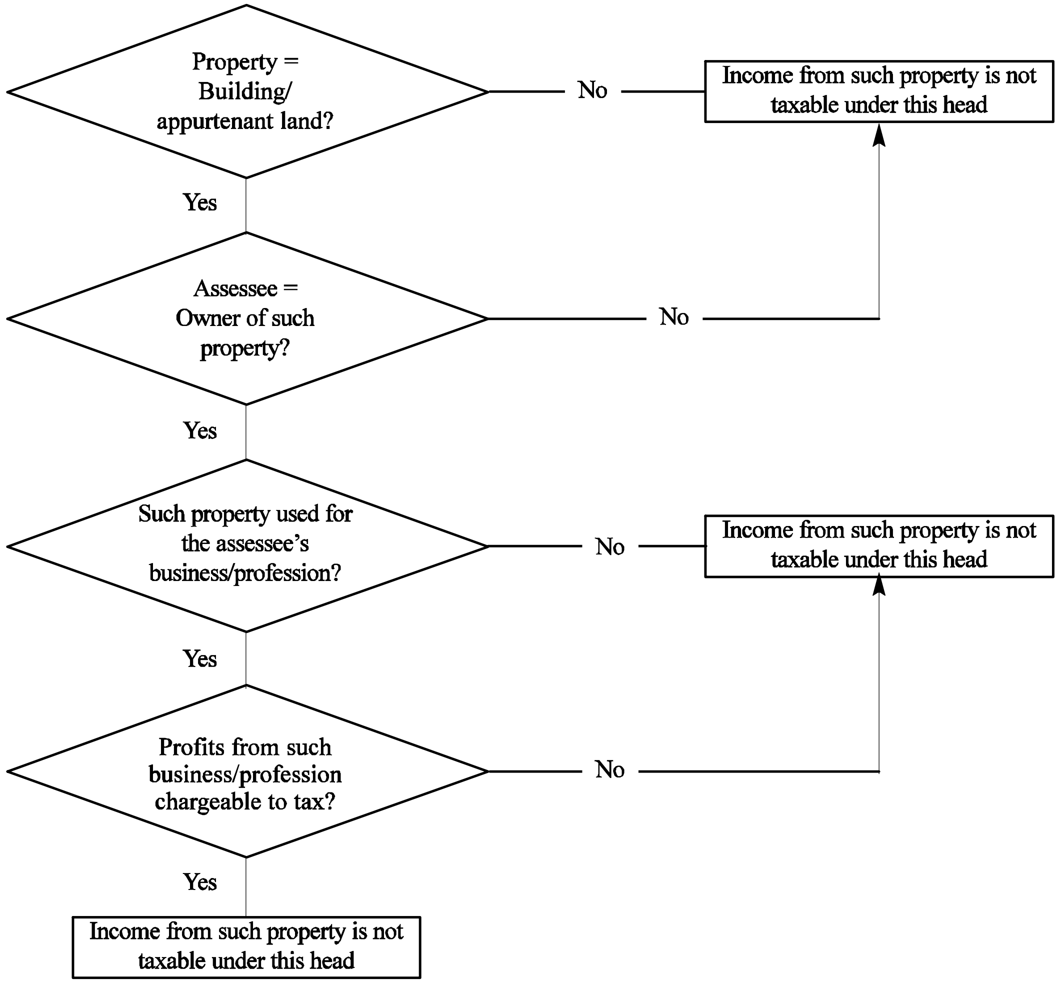
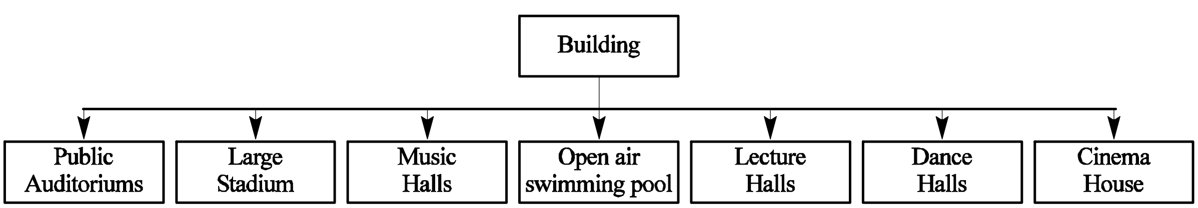
I) Basic conditions for assessing (charging) an income under this head



Note: A. Building/Apartment - Issues

1) **Building / Appurtenant Land :**



2) **Existence of roof-not necessary.**

3) **Incomplete house or house which is in ruins without roof and without doors ? building.**

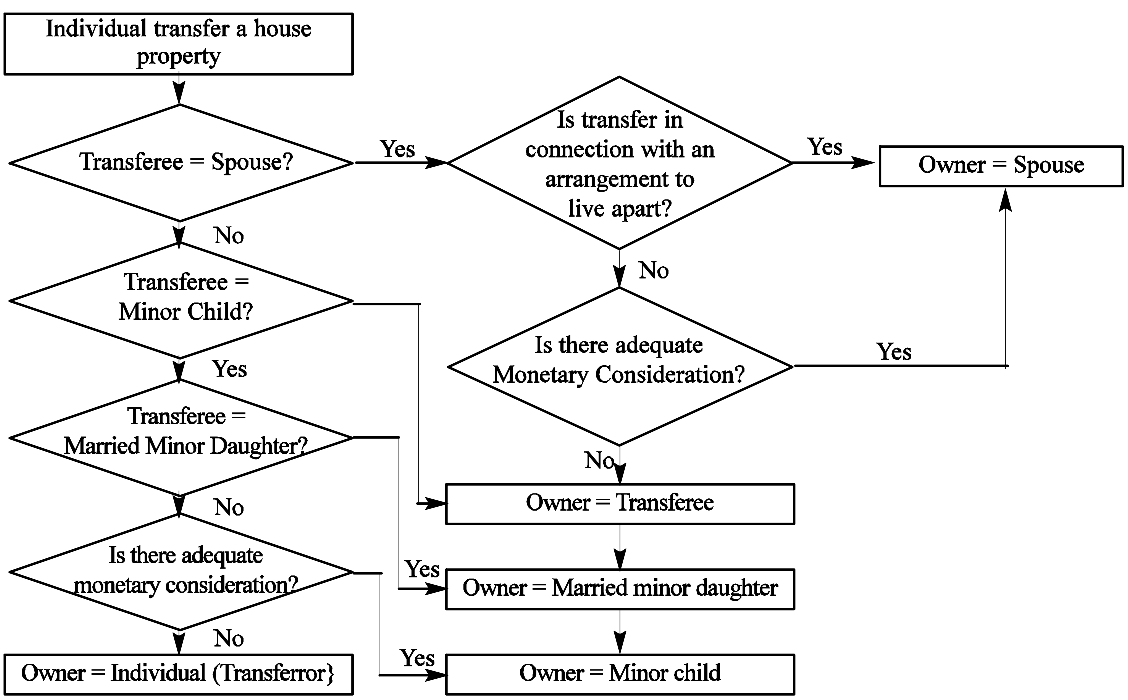
4) (A)

- Appurtenant Land
  - W.r.t. Residential Building
    - + Approach roads to/from public streets
    - + Compounds
    - + Court Yards
    - + Back Yard
    - + Playground
    - + Kitchen-garden
    - + Motor Garage
    - + Stable
    - + Coach-Home
    - + Cattle Shed
  - W.r.t. non Residential Building
    - + Car Parking Spaces
    - + Play Ground for benefit of employees
    - + Road-Connecting one department with another

(B) Ownership:

- Owner
  - Leagal Owner
  - Deemed Owner (Sec. 27)
    - Individual Transferring HP to his spouse/Minor child (in certain cases)
    - Holder of Impartible Estate
    - Member of a co-operative society/company/AOP allotted a house under the house building scheme of the society/ Co-operative/AOP
    - Purchaser under Sec, 53A of Transfer of Property Act.
    - Person who has acquired a right in a building u/s 269UA

Concept of deemed ownershipSec. 27: Individual-transferring to spouse / minor Child:



Holder of Impartible Estate:

Illustration:

ý X- is one of the ex-rulers of a former princely state.

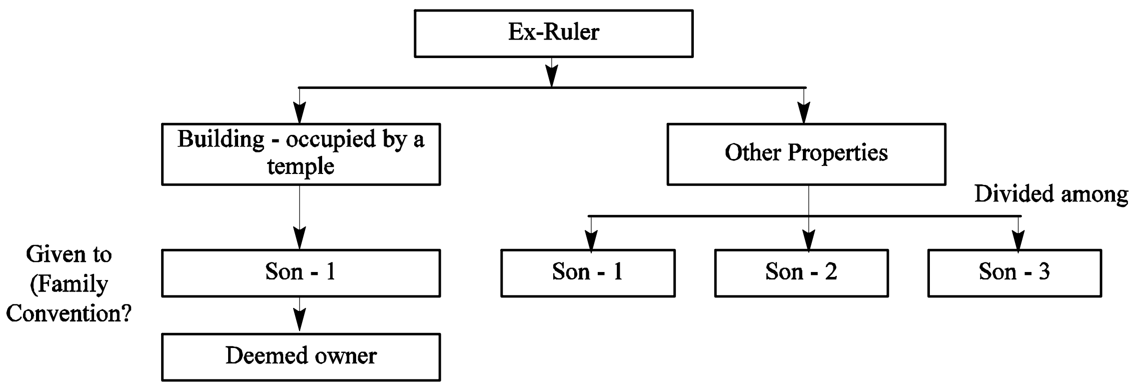
ý He divided all his properties amongst his three sons.

ý However, he could not transfer a building, which is occupied by a temple and which is given to his eldest son (as per family convention).

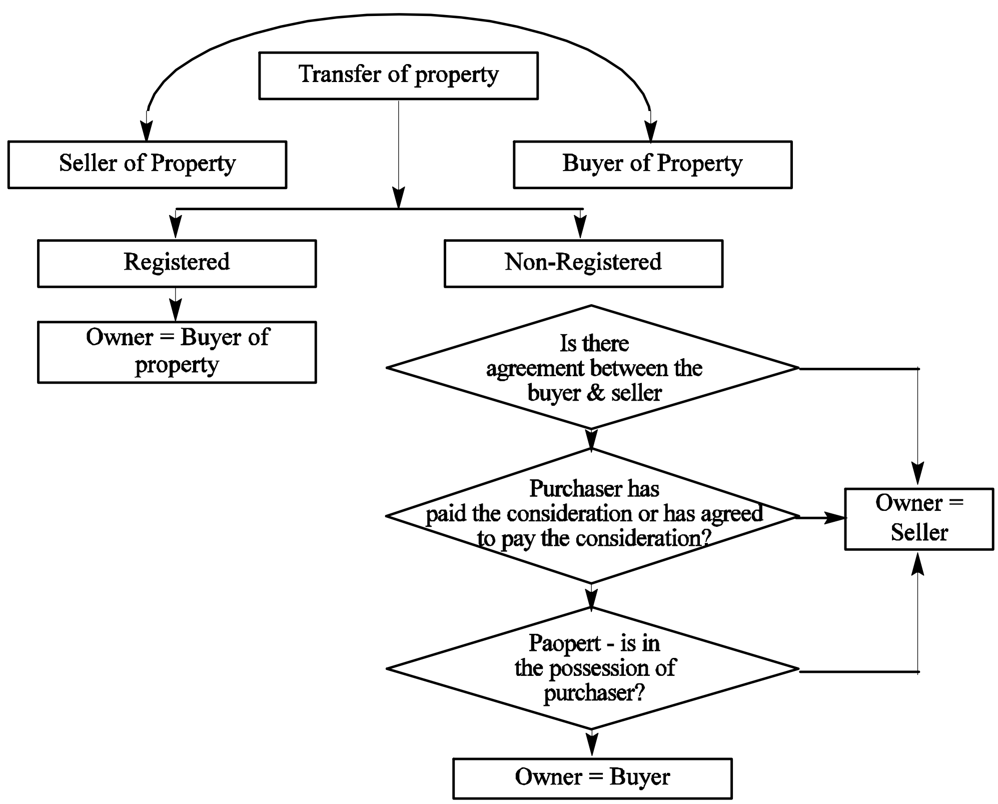
ý All the three brothers along with other family members have right to enjoy the benefit of the property, property is given to the eldest son as it cannot be dividend amongst three brothers as per the family convention.

ý The eldest son is not the beneficial owner of the property. In other words he holds the property as a trustee on behalf of his younger brother.

ý Eldest Son = owner.

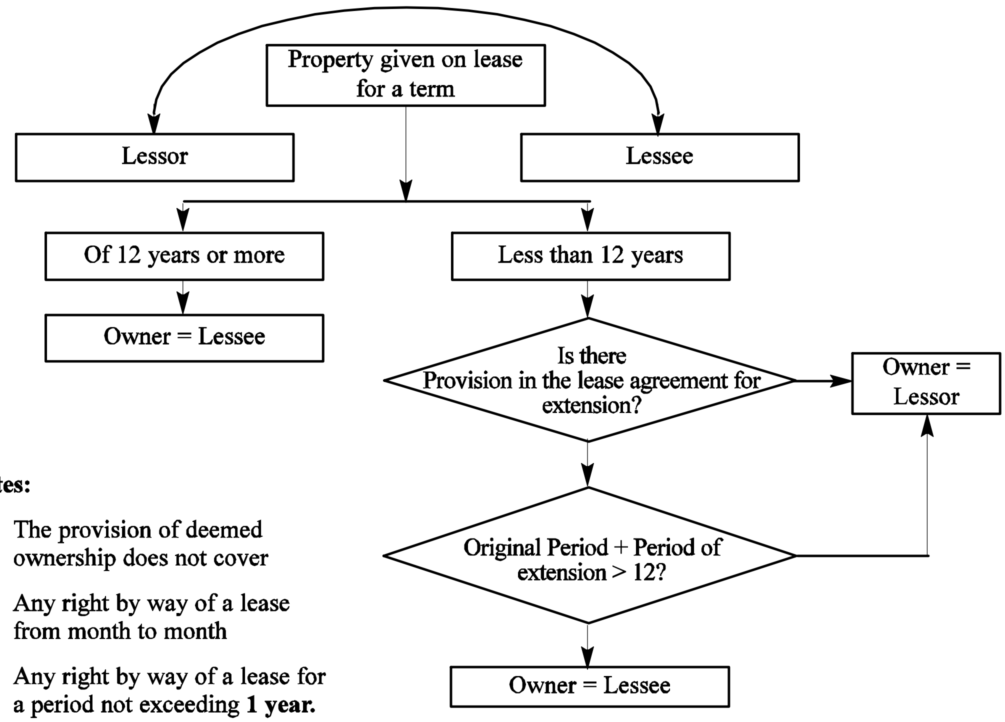


Purchaser under section 53A of transfer of property Act:



Person- acquiring a right in a building under section 269 UA(f) :

Sec. 269 UA(f) covers the case of giving a property on lease for a term of not less than 12 years.



Notes:

(The provision of deemed ownership does not cover

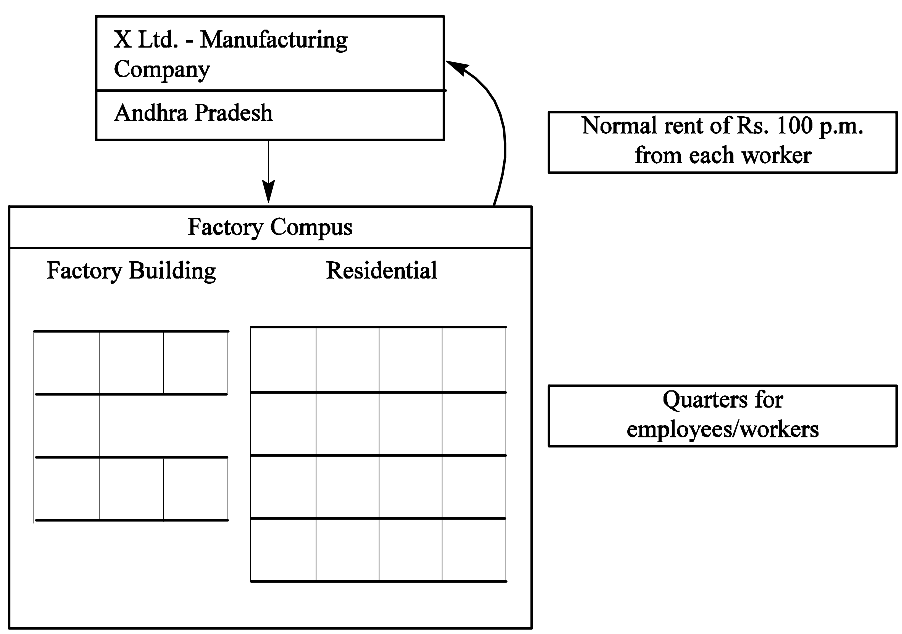
(Any right by way of a lease from month to month

(Any right by way of a lease for a period not exceeding **1 year.**

C) Occupation for business/ profession:

Letting-out incidental & subservient to main business:

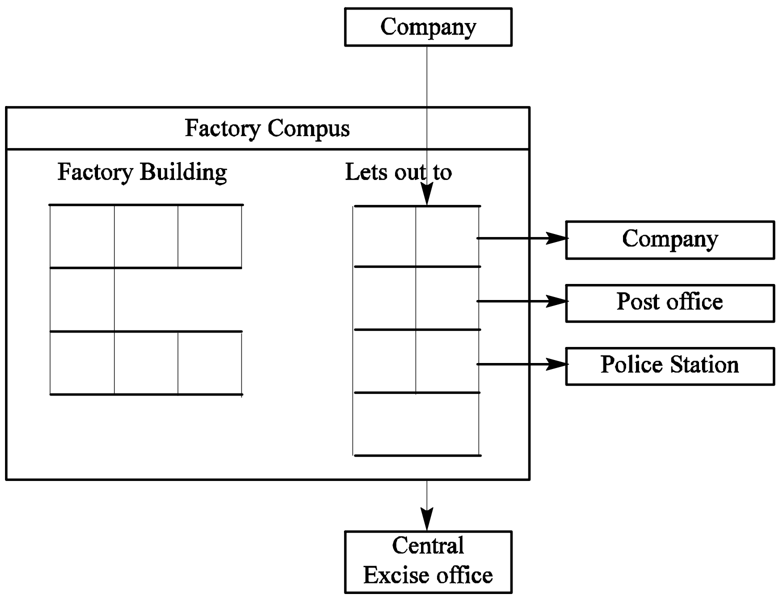
Delhi Cloth and General Mills Ltd vs CIT (Punjab)



Highlights of the judgement

+ Residential quarters will be treated as house property used by the assessee for the purpose of its business. (Reason: Purpose of letting out residential quarter is to run the business smoothly).
+ Accordingly annual value is not chargeable to the u/s 22
+ Recovery of Rs. 100 p.m. from workers will be taken as business receipt.

CIT Vas National News print and paper mills (MP)



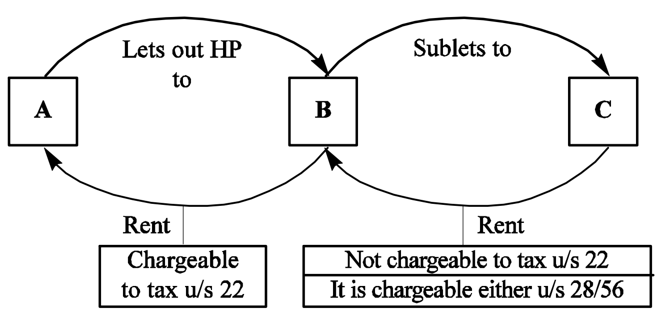
Note: Reason for letting out to bank etc. is to carry on its business efficiently and smoothly.

Conclusions:

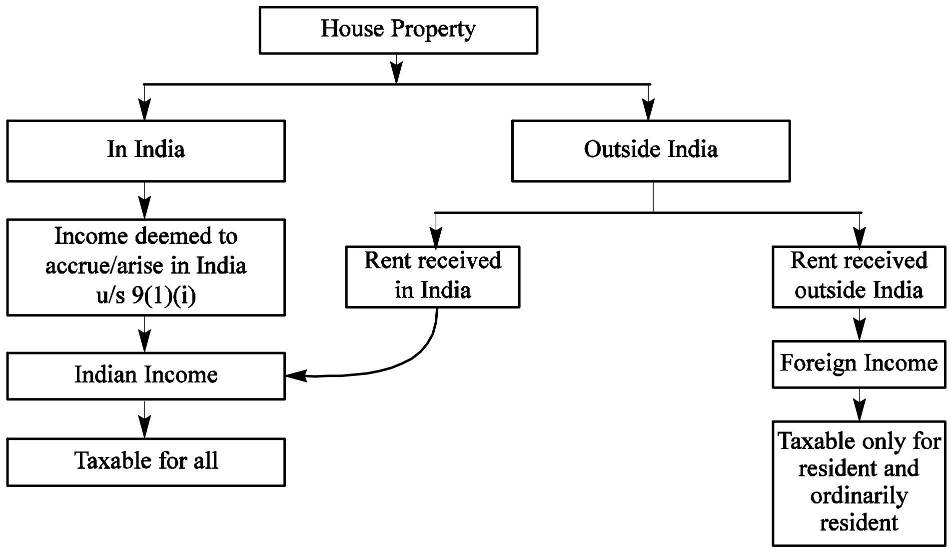
+ Nothing is taxable u/s 22
+ Rent collected being incidental to the business of company is assessable as business income u/s 28.

D. Special Points requiring attention

1. Income from subletting



2. House property



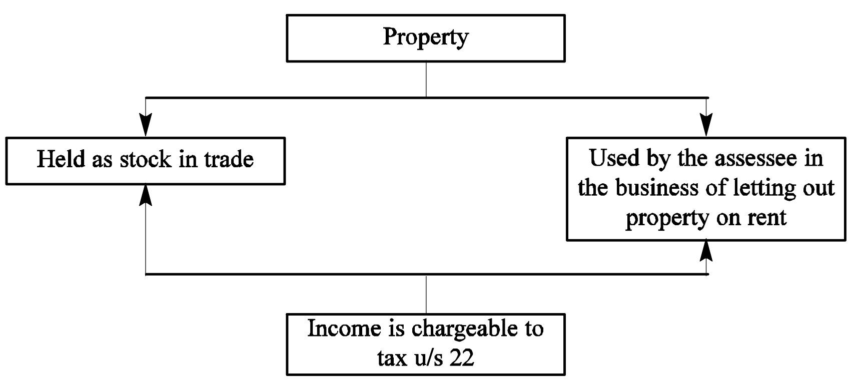
3. Disputed ownership

+ The decision about who is the owner rests with the IT department.
+ Mere existence of dispute as to title cannot hold up an assessment, even if a suit has been filed.
+ General rule

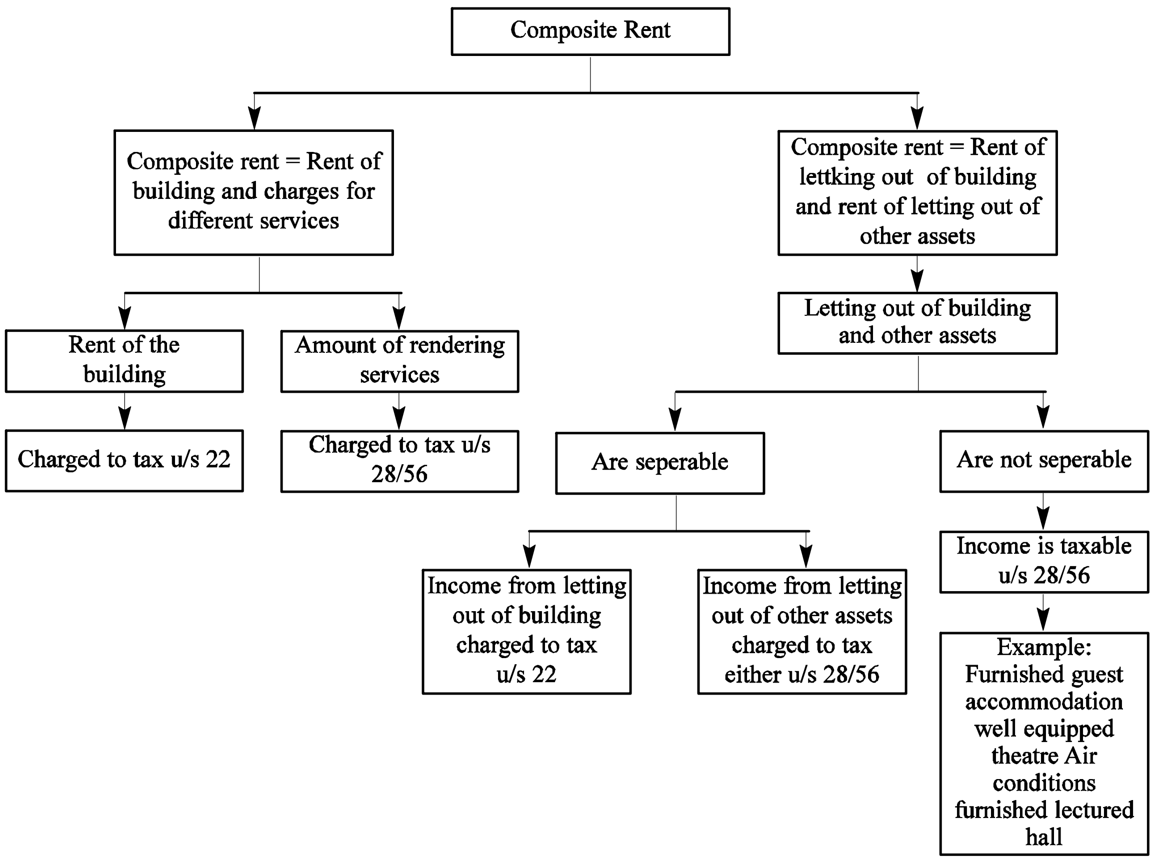
Person in receipt of income
Person enjoying the possession

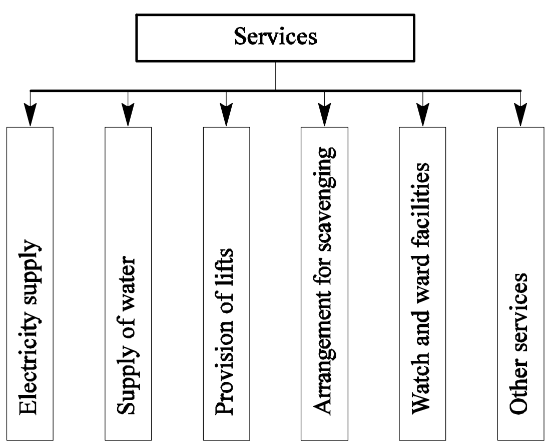
= Owner

4. Property held as stock-in-trade:



5. Composite rent:





6. House property owned by co-owners

+ Not assessed as AOP
+ Share of each such person shall be included in his total income.

7. Principle of mutuality

Club

↓

Provides recreational and refreshment facilities exclusively to its members

(The club is run on "no profit no loss basis"

(The members pay for all their expenses and are not entitled to any share in profits.

(Surplus, if any is used for maintenance and development of club.

(Club owns a House property.

(Annual value of such house property not assessable to tax u/s 22. Chelmsford club Vs CIT (SC)

8. Exempted property income

Exempted property Income

- Income from farmhouse Sec. 2(1A)(c) and Sec. 10(1)
- Annual value of any one place of ex-ruler Sec. 10(19A)
- Property income of local authority Sec. 10(20)
- Property income of an approved scientific research association Sec. 10(21)
- Property income of an educational institution and hospital Sec. 10(24)
- Property income of a trade union Sec. 10(24)
- Hour property held for charitable purpose Sec. (1)
- Property income of a political party Sec. 13A
- Property used for own business/profession Sec. 22
- One self occupied property Sec. 23(2)