



# INCOME FROM HOUSE PROPERTY

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# BASIS OF CHARGE (SEC. 22)



INCOME IS TAXABLE UNDER THE HEAD “INCOME FROM HOUSE PROPERTY” IF THE FOLLOWINGS **THREE CONDITIONS ARE SATISFIED:**

- ▶ 1. The property should consists of **any buildings or lands appurtenant thereto.**
- ▶ 2. The assessee should be the **owner** of the property.
- ▶ 3. The property should **not be used by the owner for the purpose of any business or profession.**

# PROPERTY CONSISTING OF ANY BUILDING AND LAND APPURTENANT

- If the property consists of any building or land appurtenant thereto then it is chargeable to tax u/s 22
- “**BUILDING**” include residential house whether let out i.e let out for office use, music hall dance hall, lecture halls, public auditoriums, etc or self occupied.
- “**LAND APPURTENANT**” is form road to a public streets, courtyard, compounds, playgrounds etc.
- **Income from vacant land would not be taxed under head House Property** because there is no building. It is either taxable under the head income from other sources or income from business depending upon the case.



# PROPERTY SHOULD NOT OCCUPIED BY OWNER FOR HIS OWN BUSINESS OR PROFESSION.

- ▶ Annual value of house property is not chargeable to tax under “Income from House Property” if the owner uses the building for the purpose of carrying business or profession.
- ▶ On the other hand, house property can be let out for residential purposes or for any commercial purposes. Even if the assessee owns and gives houses on rent the annual value of the property will be taxable under house property head.

# Use of the House Property- examples

- ▶ X owns a house property. He uses the property as his office, factory or godown. As the property is used for the purpose of carrying on own business or profession, nothing is taxable under section 22
- ▶ X Ltd. is a manufacturing co. The factory of the co. is situated in Nagpur. Within the factory campus, there is residential colony having 50 quarters for workers. These quarters are given to workers for residential purposes. A nominal rent of Rs. 100 is charged per month from employees. As the purpose of letting out is to run the business smoothly, the residential quarters will be treated as house property used by the assessee for the purpose of its business. Nothing is taxable under section 22.
- ▶ Y Ltd. makes available few rooms in its factory on nominal rent to Government for locating a branch of nationalized bank, post office and central excise office for carrying on its business efficiently and smoothly. Nothing is taxable under section 22.

# ASSESSEE SHOULD BE OWNER OF PROPERTY

- Income is chargeable to tax under the head “Income from House Property” only if the assessee is owner (or deemed as owner) of house property.
- The owner may be individual, firm, company, co-operative society, Association of Persons, etc.

# DEEMED OWNER [Section 27]

► Beside the legal owner, Section 27 provides that the following persons are treated as deemed owner.

## 1. Transfer to a Spouse:

If an individual transferred any house property to his/her spouse **otherwise than for adequate consideration**, then the transferor is deemed as owner of property.

Exception: where a property is transferred to a spouse in connection with an agreement to live apart.

## 2. Transfer to a minor child:

If an individual transferred any house property to his/her minor child **otherwise than for adequate consideration**, then the transferor is deemed as owner of property.

Exception: where a property is transferred to a minor married daughter



# DEEMED OWNER [Section 27]

**3. Holder of an impartible estate (i.e. property which is not legally divisible):** The holder of an impartible estate shall be deemed to be the individual owner of all properties comprised in the estate.

**4. If property is allotted by group cooperative housing society to its members** under the housing building scheme of the society. Similarly for AOP/Company. Then, those members shall be deemed owners for the building or part thereof allotted to them.

**5. If a person has acquired a property under “power of attorney transaction” by satisfying the condition of Sec 53A of Transfer of property Act.**

(i) There is an agreement in writing between purchaser and the seller.

(ii) The purchaser has paid the consideration or he is ready to pay the consideration.

(iii) The purchaser has taken the possession of the property.)

The buyer is deemed to be the owner of the house property although it is not registered his name.



# DEEMED OWNER [Section 27]

6. If a person takes a property on lease for 12 years or more

Exception: where any right by way of lease is acquired from month to month basis or for a period not exceeding one year.

# Applicability of section 22 in certain typical cases:

- ▶ Composite Rent- Apart from recovering rent of the building, in some cases, the owner gets rent of other assets or he charges for different services provided (like lift, security, etc) in the building. The amount so recovered is known as “composite rent”. The tax treatment for the same is as follows:
  - > **Composite Rent is to be Split Up:** Where composite rent includes rent of building and charges for different services( like lift, air conditioning, etc). Rent of property to be included in income from HP and Other rent to be a part of ‘Income from Other Sources’ or ‘PGBP’.
  - > When composite rent is rent of letting out of building and letting out of other assets (machinery, plant or furniture) and the **two lettings are not separable. Such income is taxable as either Business income or Income from Other Sources.**
  - > Where composite rent is rent of letting out of building and letting out of other assets (machinery, plant or furniture) and the **two lettings are separable.** Rent of property to be included in income from HP and Other rent to be a part of ‘Income from Other Sources’ or ‘PGBP’.


# Applicability of section 22 in certain typical cases:

- ▶ House property in a foreign country- A resident assessee is taxable under section 22 in respect of a property situated in a foreign country.
- ▶ When house property is owned by co-owners[Section 26]- If respective shares of co-owners are definite and ascertainable, the share of each such person shall be included in his total income. It may be noted that co-owners are not taxable as an AOP.



# When income from house property is not charged to tax

- ▶ Farm house
- ▶ Property held for charitable purposes
- ▶ House property used for own business or profession
- ▶ House property of registered trade union/local authority
- ▶ Palace of ex-ruler- any one palace in occupation of an ex-ruler



# WHAT IS THE BASIS OF COMPUTING INCOME FROM A LET OUT HOUSE PROPERTY

## Income from a Let Out House Property is determined as under :

	Rs.
Gross annual value	XXX
Less : Municipal taxes	XXX
Net annual value	XXX
Less : Deduction under section 24	
- Standard deduction	XXX
- Interest on borrowed capital	XXX
Income from house property	XXX



# Gross Annual Value

## ► Step 1: Find out Reasonable Expected Rent

- a. Municipal Valuation of the Property
- b. Fair Rent of the Property

Higher of (a) or (b) is generally taken as expected rent.

- ❖ **Standard Rent:** It is the maximum rent which a person can legally recover from his tenant under a Rent Control Act. A landlord cannot legally recover from his tenant more than standard rent, if a property is covered by a **Rent Control Act**.

a)	Municipal Valuation of the Property
b)	Fair Rent of the Property
c)	Higher of (a) or (b)
d)	Standard Rent
e)	Lower of (c) or (d)

## Step II: Find Out Rent Actually Received or Receivable



<b>Rent of the P.Y. for which the property is available for letting out</b>	<b>XXX</b>
<b>Less: Loss due to vacancy</b>	<b>XXX</b>
<b>Less: Unrealized rent if a few conditions are satisfied</b>	<b>XXX</b>
<b>Actual Rent Received/Receivable</b>	<b>XXX</b>



# Calculation of GAV

- ▶ **CASE I : Actual Rent < Expected Rent (due to loss of vacancy)**
  - ▶  $GAV = \text{ACTUAL RENT}$
- ▶ **CASE II: Actual Rent < Expected Rent (because of loss due to vacancy and other factors i.e., unrealized rent)**
  - ▶  $GAV = \text{EXPECTED RENT} - \text{LOSS DUE TO VACANCY}$
- ▶ **NOTE:** For identification of cases, find out the difference between expected rent and Actual Rent received. If such difference is higher than loss due to vacancy, then Case II is applicable otherwise if difference is equal to or less than the loss due to vacancy then Case I shall be applicable.

# Calculation of GAV

- ▶ **CASE III : Actual Rent < Expected Rent (due to other factors i.e., unrealized rent etc. except loss due to vacancy)**
  - ▶  $GAV = \text{EXPECTED RENT}$
- ▶ **CASE IV: Actual Rent > Expected Rent**
  - ▶  $GAV = \text{ACTUAL RENT}$

# Notes

1. If the tenant has undertaken to bear the cost of repairs, the amount spent by the tenant cannot be added to rent received or receivable.
2. A non-refundable deposit will be included in rent received or receivable on pro rata basis.
3. A refundable deposit cannot be included in rent received or receivable.
4. Advance rent cannot be rent received/receivable of the year of receipt.
5. Commission paid by the owner of a property to a broker is not deductible from rental income.
6. Maintenance charges are not included.



# NOTE

- [SECTION 23(5)]
- Where the HP is held as stock-in-trade and it is not let during the whole or any part of the P.Y., the annual value of such property (or part thereof) shall be taken as *NIL*.
- This concession is available only for a period up to 2 years from the end of the F.Y. in which the Certificate of Completion of Construction of the Property is obtained from the Competent Authority.

# When Unrealized Rent shall be excluded

- ▶ It is the rent which the owner could not realise.
- ▶ The following conditions needs to be satisfied:
  1. The tenancy is bonafide.
  2. The defaulting tenant has vacated or steps have been taken to compel him to vacate the property.
  3. The defaulting tenant is not in occupation of any other property of the assessee.
  4. The assessee has taken all legal steps to institute legal proceedings for the recovery of the unpaid rent or satisfies the Assessing Officer that legal proceedings would be useless.

# Municipal Taxes (or taxes levied by any local authority)

- ▶ These are deductible from GAV only if,
  - ▶ These taxes are **borne by the owner**.
- and
- ▶ **Actually paid** by the owner during the P.Y.

## NOTES:

- ▶ In other words, Municipal taxes due but not paid (i.e. outstanding) shall not be allowed as deduction.
- ▶ Municipal taxes paid during the P.Y. are allowable as deduction even if they relate to past years or future years.
- ▶ Even when the property is located outside India, taxes levied by local authority in that country are deductible while calculating annual value of the property.

# Deduction u/s 24

- ▶ **Standard Deduction:** 30% of Net Annual Value is deductible irrespective of any expenditure incurred by the taxpayer.
- ▶ **Interest on borrowed capital** is allowable as deduction, if capital is borrowed for the purpose of purchase, construction, repair, renewal or reconstruction of the property.



# Interest on Borrowed Capital

- ▶ It is deductible on Accrual Basis.
- ▶ It is claimed on yearly basis, even if interest is not actually paid during the year.
- ▶ It is available even if neither the principal nor the interest is a charge on property.
- ▶ Interest on unpaid interest is not deductible.
- ▶ No Deduction for brokerage or commission.
- ▶ Interest on a fresh loan, taken to repay the original loan raised for the aforesaid purposes, is allowable as deduction.
- ▶ In case of Let out property, there is no maximum ceiling of deduction.

# Interest on Pre-Construction Period

► Pre-Construction Period: The period commencing on the date of borrowing and ending on:

a) March 31 immediately prior to the date of completion of construction/date of acquisition.

or

b) Date of repayment of Loan

**whichever is earlier**

► It is available in **Five Equal Instalments** in five successive financial years starting from the year in which acquisition/construction was completed.

# House Property which is part of the year let and part of the year occupied for own residence

- ▶ In this case, period of occupation of property for own residence shall be irrelevant and annual value of such HP shall be determined as if it is let for part of the year.
- ▶ Therefore, expected rent shall be taken for full year but actual rent received or receivable shall be taken only for the period let.
- ▶ Other provisions will remain same.

# SELF-OCCUPIED PROPERTY



**If assessee owns and occupies only one house property for own residential purposes.**

**It is treated as self-occupied property.**

**If two house properties are used by owner for his own residential purposes.**

**Both are treated as self-occupied properties.**

**If more than two properties are used for own residential purposes.**

**Only two properties will be treated as self-occupied properties (at discretion of assessee) and rest will be considered as 'Deemed to be Let Out Property'**

# 1. A House Property is fully utilized throughout the P.Y. for Self-Residential Purposes

Net annual value	Rs. Nil
Less : Deduction under section 24	
- Standard deduction	Nil
- Interest on borrowed capital [Note 1]	XXX
Income from house property	- XXX

# Note 1: Interest on Borrowed Capital on Self-Occupied Property

If the following conditions are satisfied, interest on Borrowed Capital is deductible upto Rs. 2,00,000.

- 1) Capital is borrowed **on or after April 1, 1999** for **acquiring or constructing** a property.
- 2) Acquisition or construction should be completed **within 5 years** from the end of financial year in which the capital was borrowed.
- 3) There is an interest certificate available for the interest payable on the loan.

Maximum Amount deductible is Rs. 30,000 in the following two cases:

- If Capital is borrowed for any other purpose (eg. Reconstruction, repairs or renewals of a HP).
- If one or more of the above conditions are not satisfied.

2. A HP which is not actually occupied by the owner owing to Employment or Business/Profession, carried on at any other Place.

- a) The taxpayer owns one or two HP, which cannot actually occupied by the owner owing to Employment or Business/Profession, carried on at any other Place.
- b) He has to reside at any other place in a building not owned by him.
- c) The property/properties are not let out during whole or any part of the P.Y.
- d) No other benefit is derived from the above property/ properties by the owner.

If above conditions are satisfied, income from HP shall be determined according to SOP Case 1.



### 3. When a part of property is SO and a part is LO

Computed separately for each unit

- 1) Unit self-occupied for residential purposes throughout the previous year: SOP Case 1.
- 2) A house property, which is not occupied owing to business/ profession carried on at any other place: SOP Case 2.
- 3) Let Out units: LO Units Treatments

#### NOTES:

- ▶ Municipal value or fair rent if not given separately, shall be apportioned between let out portion and self-occupied portion on built up area basis.
- ▶ Municipal tax and interest shall also be apportioned on the built up/floor area space.

## 4. When a House is SO for a part of the Year and LO for remaining part of the Year

- ▶ Income will be calculated as the property is LO.

# Interest when not deductible from “Income from house Property” [Section 25]

- ▶ Any interest chargeable under this Act which is payable outside India shall not be deducted if -----
  - (a) tax has not been paid or deducted from such interest, and
  - (b) there is no person in India who may be treated as an agent under section 163.

# Arrears of Rent and Unrealized Rent received subsequently [Section 25A]

- ▶ Taxable in the year of receipt or realization
- ▶ Deduction @30% of rent received/realized available
- ▶ Taxable even if the assessee is not the owner of the property in the financial year of receipt/realisation



# Property owned by Co-owners [Section 26]

## Self-Occupied Property

- ▶ The annual value of the property of each co-owner will be Nil and each co-owner shall be entitled to deduction of ₹ 30,000 or ₹ 2,00,000, as the case may be, on account of interest on borrowed capital.
- ▶ However, if the co-owner owns another self-occupied property, the aggregate interest from the co-owned property and the other self-occupied property cannot exceed ₹ 30,000 or ₹ 2,00,000, as the case may be.

## Let-Out Property

- ▶ The income from such house Property shall be computed as if the property is owned by one owner and thereafter the income so computed shall be apportioned amongst each co-owner as per their specific share.

# Can NAV be negative ?

- ▶ Yes, when municipal taxes paid by the owner are more than GAV

# Can there be loss under the head House Property income?

- ▶ In case of Self-occupied house property, NAV is taken as Nil. Only deduction of interest on borrowed capital is available. Therefore, there may be loss upto maximum of ₹ 30,000 or ₹ 2,00,000, as the case may be.
- ▶ In other cases, loss can be there because of municipal taxes as well as deductions.
- ▶ Deductions u/s 24 can be more than NAV.

# Questions