



INCOME FROM HOUSE PROPERTY

Scheme of the ACT

- Sec.22-Chargeability
- Sec.23-Determination of Annual Value
- Sec.24-Deductions from IHP
- Sec.25-Amounts not deductible from IHP
- Sec.25A,25AA- Unrealised rent realised subsequently
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CHARGEABILITY (Sec.22)



INCOME IS TAXABLE UNDER THE HEAD 'INCOME FROM HOUSE PROPERTY', IF THE FOLLOWING THREE CONDITIONS ARE SATISFIED:

CONDITION 1: The property should consist of buildings or lands appurtenant thereto.

CONDITION 2: The assessee should be the owner of the property

CONDITION 3: The same should not be used by the owner for the purpose of business carried on by him, the profits of which are chargeable to tax.

CHARGEABILITY (Sec.22)

- If the conditions are satisfied, the property income is taxable as income from house property



Meaning of property

- **CONDITION 1:** The property should consist of buildings or lands appurtenant thereto.
- Rental income of a vacant plot(not appurtenant to building) is not taxable u/s 22, but as income from other sources or as profits and gains of business, as the case may be.



'Lands appurtenant thereto'



- The appurtenant lands may be in the form of
 - approach roads to and from public streets,
 - compounds, courtyards , backyards,
 - playgrounds, motor garage, kitchen garden,
 - stable, cattle shed etc.
 - car parking spaces,
 - roads connecting one department with other attached to and forming part of the building.

Meaning of 'building'



- Various courts have interpreted the meaning of the word 'building'
- An incomplete house/ house in ruins without roof or without doors is not building (*Baladin V Lakhan Singh AIR1927 All 214*)
- The word 'building' prima facie means every structure that could in any sense be called a building, even if erected for a merely temporary purpose.

Meaning of 'building'



- Existence of a roof is not always necessary for a structure to be regarded as a building.
- Residential buildings ordinarily have roofs, but there can be non-residential building for which a roof is not necessary.
- A large stadium or an open air swimming pool would be a building as it is a permanent structure and designed for a useful purpose. (*Ghanshiam Das Vs Debi Prasad AIT 1966 SC 1988*)

Ownership



- Income is taxable u/s 22 only if the assessee is the owner. Income from sub-letting is not taxable u/s 22, but as income from other sources u/s 56.
- The word 'owner' means legal owner. Annual value is assessable in the hands of the owner even if he is not in receipt of income or even if income is received by some other person.

Ownership



- There is no necessity that the ownership should extend to the site on which the building stands as well as to the superstructure.
- If a person builds a superstructure on a site belonging to another and taken on lease, he will be the owner of the superstructure and annual value of the superstructure would be taxable in his hands.
(CIT Vs Estate of Omprakash Jhunjhunwala 124 Taxman 111)(Cal)

Deemed owner (sec.27)



The following persons are to be treated as deemed owner of house property:

- If the follg. conditions are satisfied, the individual who has transferred the property would be deemed as 'owner':

CONDITION 1 : The tax payer is an individual

CONDITION 2 : He/she transfers a house property to his/her spouse (Not as part of agreement to live apart) or to his/ her minor child(not being married daughter)

CONDITION 3 : The property is transferred without adequate monetary consideration

Deemed owner



- Consider the following situations:
- X, an individual owns a house property. On 1.4.2013 he transfers his property to his wife without any consideration. Mrs.X receives rental income of Rs.20,000/-pm after 1.4.2013.
- Mr.A gifts a sum of Rs.50 lacs to his wife. Mrs.A purchases a house property with the gifted money and is in receipt of rental income of Rs.20,000/--pm therefrom.

Deemed owner (Sec.27)

- A member of a co-op. society, company or other AOP to whom a building is allotted or leased under the house building scheme of the society, company etc is treated as deemed owner of such property.
- For the purpose of sec.22, the members are treated as deemed owners, though under the general law, the property is owned by the co-op society. Hence the co-op society cannot be assessed u/s 22 (Monarch Citadel P Ltd. V ITO) (10 SOT 293)(Bang.)

Deemed owner (Sec.27)

- A person who has acquired a property under '**power of attorney transaction**' by satisfying the conditions of sec.53A of the Transfer of Property Act, he is deemed as the owner of the property though he may not be the registered owner.
- Sec.53A requires the following conditions:
- 1. There is an agreement in writing between the purchaser and the seller.
- 2. The purchaser has paid the consideration or is ready to pay the consideration.
- 3. The purchaser has taken possession of the property.

Deemed owner (Sec.27)

- Where a person acquires a property under lease for a period of more than 12 years, the lessee is deemed to be the owner of the property.

Applicability of sec. 22 in typical cases

- House property in a foreign country.
 - While computing taxable income, no distinction should be made between a house property situated in India and a house property situated abroad.
(CIT Vs R.Venugopala Reddiar (58 ITR 439)(Mad))
- Disputed ownership
 - The Assessing Officer has prima facie the power to decide whether the assessee is the owner and is chargeable to tax u/s 22, without waiting for the judgment on any suit filed in r/o the property
(Keshardeo Chamaria (5 ITR 246)(Cal.))

Applicability of sec. 22 in typical cases

- Property held as stock-in-trade:
 - As there is a specific head of charge provided for income from house property, annual value of property cannot be taxed under any other head.
 - Even if the property is held as stock-in-trade of a business or the assessee is engaged in the business of letting out property on rent, the annual value is to be taxed u/s 22 only.

Applicability of sec. 22 in typical cases

- **Composite rent**

- In some cases, apart from rent, the owner gets rent of other assets like furniture etc or he charges for different services provided in the building like lift, security, air conditioning etc.

Applicability of sec. 22 in typical cases

- Where the owner gets a composite rent for the property as well as the services rendered to tenants, the composite rent is to be split up:
 - The sum relating to the use of the property is to be assessed as annual value u/s 22.
 - The amount relating to rendition of services, like lift, a/c, supply of water, electricity etc. is charged under “business” or ‘other sources’.

Income from composite letting of building, machinery, plant or furniture

- If an assessee lets on hire machinery, plant or furniture and also building and letting of building is inseparable from letting of machinery, plant or furniture, income from such letting is taxable as 'income from other sources'.
- The letting of plant, machinery or furniture should be inseparable from the letting of the buildings.

Income from composite letting of building, machinery, plant or furniture

- The inseparability is to be construed from the intention of the parties:
 - 1. Is it the intention that the two should be enjoyed together? (it does not matter whether there are one or two leases)
 - 2. Is it the intention to make the letting of the two practically one letting?
 - 3. Would one have been let alone and the lease accepted by the tenant without the other?
 - If the answer to 1 and 2 are yes, and answer to 3 is no, the intention should be construed that the letting would be inseparable. (CIT Vs Sultan Bros P Ltd.(51 ITR 353) (SC))

Income from composite letting of building, machinery, plant or furniture

- Lease of cinema building with furniture & other articles
- Letting of hotel building and furniture(CIT Vs Sultan Bros P Ltd.(51 ITR 353) (SC)
- In these cases, the building and the fixture/furniture were to be used for one purpose and not one separately from the other. Therefore the income would be assessable as 'Other Sources' even if separate rent has been fixed in the lease deed.

Property income exempt from tax

- In the following cases, property income is exempt from tax:
 - Income from farm house- Sec.10(1)
 - Annual value of any one palace of an ex ruler- Sec.10(19A)
 - Property income of a local authority- sec.10(20)
 - Property income of an approved scientific research association- Sec. 10(21)
 - Property income of a university or other educational institution-Sec.10(23C)

Property income exempt from tax (Contd)

- Property income of a hospital or other medical institution-Sec.10(23C)
- Property income of a trade union-Sec.10(24)
- House property held for charitable purposes-Sec.11
- Property income of a political party-Sec.13A
- Property used for own business or profession-Sec.22
- One self occupied property-Sec.23

Computation of income from house property

- Income from a let out property is determined as under:

Gross Annual value	XXX
Less: Municipal taxes	XXX
Net Annual value	XXX
Less: Deduction u/s 24	XXX
-Standard deduction @ 30% u/s.24(a)	XXX
-Interest on borrowed capital 24(b)	XXX
Income from House Property	XXX