

HOUSE PROPERTY INCOME

[Sec. 22 to Sec. 27]

Basis of Charge: [Sec. 22]

The annual value of a property, consisting of **any building or lands appurtenant thereto**, of which the assessee is the **owner**, shall be chargeable to tax under the head 'Income from house property' after claiming deduction under section 24.

The property should **not be occupied by the owner for the purpose of any business or profession carried on by him**, the profits of which are chargeable to Income-tax.

Analysis of Sec. 22:

The basis of calculating Income from house property is the annual value i.e. the amount which the property might reasonably generate from being let out. Thus, the head 'Income from house property' taxes the inherent capacity of a house property to generate income.

The following **conditions** must be satisfied before the income from the property is taxed under the head 'Income from house property':

(i) The property **must consist of buildings or lands appurtenant thereto**:

- Buildings include residential buildings, factory buildings, offices, shops, godowns and other commercial premises.
- Land appurtenant means land connected with the building like garden, garage, parking area, etc.

NOTE: Income from letting out of vacant land, not appurtenant to a building, shall be taxable under the head 'Profits and gains of business or profession' or 'Income from other sources', as the case may be.

(ii) The assessee must be the **owner of such house property**:

- Ownership includes Deemed Ownership as covered under section 27.
- There is no requirement of a registered deed of conveyance (i.e. sale deed) for a person to be treated as an owner for the purpose of section 22; only requirement is that the assessee must be in exclusive possession of property in his own right. *CIT vs. Poddar Cement Pvt. Ltd. (1997) (SC)*
- If the title of the ownership of the property is under dispute in a court of law, the decision as to who will be the owner chargeable to income-tax u/s 22 will be of the Income-tax Department till the court gives its decision on the matter. *Keshardeo Chamaria (1937) 5 ITR 246 (Cal)*
- Where an assessee sub-lets the house property of which he was a tenant, the income from sub-letting is not covered under the head 'Income from house property', as the assessee is not the owner of such property. Income from sub-letting shall be taxable as 'Income from other sources'.

(iii) The property may be used for any purpose, but it should **not be occupied by the owner for the purpose of his business or profession**, the profits of which are chargeable to income tax.

NOTE: Property may be held as stock-in-trade: Even if the house property is held by the assessee as stock-in-trade, the annual value of the house property will be charged under the head 'Income from house property'.

Exceptions:

(i) **Letting out is supplementary to the main business:** If letting out is supplementary to the main business, the income will be assessed as business income.

(ii) Letting out of building along with other facilities:

Income from letting out of building along with facilities cannot be said to be derived from mere ownership of house property but also because of facilities and services rendered and hence assessable as 'Business income' or 'Income from other sources', as the case may be.

Judicial Decisions:

Chennai Properties and Investments Ltd. v. CIT (2015) 373 ITR 673 (SC)

Income from letting out of properties by a company, whose main object as per its MOA is to acquire and let out properties, and having entire income as per its return of income only from letting out of properties, shall be taxable as its Business income and NOT Income from house property.

Raj Dadarkar and Associates v. ACIT (2017) 394 ITR 592 (SC)

Facts: The assessee was allotted premises which were a bare structure and construct shops and stalls on it to make it fit to be used as a market. The assessee treated income from sub-letting of such shops and stalls as business income. However, the A.O. contended that the same shall be taxable as 'Income from House Property'.

Decision: The Supreme Court held that wherever there is an income from leasing out of premises, it is to be treated as income from house property unless the letting out of the premises itself is the business of the assessee, in which case it can be treated as business income. In this case, the only evidence produced for proving that the letting out is the main business activity was the object clause of the partnership deed which provides that 'The Partnership shall take the premises on rent to sub-let or do any other business as may be mutually agreed by the parties from time to time.' The Supreme Court held the clause to be inconclusive and observed that the assessee had failed to produce sufficient material to show that its entire or substantial income was from letting out of the property. The Supreme Court, accordingly, held that the income is to be assessed as 'Income from house property' on account of lack of sufficient material to prove that the substantial income of the assessee was from letting out of the property.

New Delhi Hotels Ltd. v. ACIT (2014) 360 ITR 0187 (Delhi)

The rental income derived from the unsold flats which are shown as stock-in-trade in the books of the assessee would be taxable under the head 'Income from house property', irrespective whether the deemed rent or the actual rent forms the basis of computation of income.

However, as per Section 23(5), the annual value of house-property held as stock in trade would be treated as NIL for a period of two years from the end of the financial year in which certificate of completion of construction of the property is obtained from the competent authority, if such property is not let-out during such period.

CIT v. Asian Hotels Ltd. (2010) 323 ITR 490 (Del.)

Facts: The A.O. added to the assessee's income, the notional interest @ 18% on the interest-free deposit received by assessee in respect of shops given on rent on the ground that by accepting the interest free deposit, a benefit had accrued to the assessee which was taxable u/s 28(iv).

Decision: The High Court observed that section 28(iv) can be invoked only where the benefit or amenity or perquisite is otherwise than by way of cash but, here, the A.O. has determined the monetary value of the benefit stated to have accrued to the assessee by adding a sum as 18% simple interest on the deposit and

therefore, sec. 28(iv) cannot be applied. Now, Sec. 23(1) brings to tax the possible rent that the property might fetch and certainly not the interest on fixed deposit that may be placed by the tenant with the landlord in connection with the letting out of such property. Thus, the notional interest is neither assessable as 'business income' nor as 'Income from house property'.

CIT v. NDR Warehousing P Ltd (2015) 372 ITR 690 (Mad)

Facts: The assessee engaged in the business of warehousing, handling and transport business claimed income from letting out of buildings and godowns as business income. However, the Assessing Officer assessed such income as 'Income from house property'.

Decision: The Court observed that the assessee's activity was not merely letting out of warehouses but also storage of goods with provision of several auxiliary services. Also, the objects clause of the MOA of the company clearly shows that the company was incorporated with the object of carrying on the business of warehousing and letting/renting of godowns and providing facilities for storage. The P&L A/c of the company shows that its main source of income is storage and maintenance charges or usage charges and also the substantial part of the expenses relate to the salaries of employees engaged in the maintenance and upkeep of the godowns and warehouses. Accordingly, the High Court held that the income from letting out of godowns and provision of warehousing services is taxable under the head "Profits and gains of business or profession" and not under the head "Income from house property".

Property owned by a partner, used in business by the firm in which the assessee is a partner will be deemed that the assessee is using the property for his own business and hence not taxable under 'Income from house property'. [PM Thomas (1990) (Ker.) and CIT v. Mustafa Khan (2005) 276 ITR 601 (All.)]

Property owned by HUF but used by firm in which Karta and the individual members were partners in their **individual capacity**, it was held that it shall **not be treated as occupied for the business** carried on by the HUF. [CIT v Shiv Mohanlal (1993) 202 ITR 60 (All.)]

Rent from letting out of house property to employees or directors to enable them to discharge their duties efficiently shall be considered as **incidental to the main business** of the assessee and therefore, the rent charged, if any, would be treated as **business income** and not 'Income from house property'.

[CIT v Modi Industries (1994) 210 ITR 1 (Del), CIT v Vazir Sultan Tobacco Co. Ltd. (1988) 174 ITR 689 (AP)]

Composite Rent:

The owner of a property may sometimes receive rent in respect of building as well as –

- for other assets like furniture, plant and machinery, or
- for different services provided in the building, such as Lifts, Security, Power backup;

then the amount so received is known as 'composite rent'.

Tax treatment of Composite Rent:

- 1) Where composite rent includes rent of building and charges for different services (lifts, security etc.), the composite rent shall be split up in the following manner –
 - the sum attributable to use of property taxable u/s 22 as 'Income from house property';
 - the sum attributable to use of services taxable under the head 'Profits and gains of business or profession (PGBP)' or under the head 'Income from other sources', as the case may be.

This rule is applicable even if it is difficult to split up the entire amount as above.

- 2) Where composite rent is received from letting out of building and other assets (like furniture)
- *If the two lettings are separable –*
 - Income from letting out of building is taxable under ‘Income from house property’.
 - Income from letting out of other assets is taxable as PGBP or ‘Income from other sources’.
 - *If the two lettings are not separable–*
The rent received is taxable either as PGBP or ‘Income from other sources’.

Income from House Property situated Outside India:

- For Resident and ordinarily resident in India, income from property situated outside India is taxable in India, whether brought into India or not.
- For Non-resident or Resident but not ordinarily resident in India, income from property situated outside India is taxable only if it is received or deemed to be received in India.
- As per Rule 115, Income from house property received in foreign exchange has to be converted into Indian Currency by **applying TT buying rate as on the last day of relevant previous year.**

Cases where Income from house property is NOT chargeable to tax:

Section	Particulars
10(1)	Income from any farm house forming part of agricultural income.
10(19A)	Annual value of any one palace in the occupation of an ex-ruler.
10(20)	Income from house property of a local authority.
10(21)	Income from house property of an approved scientific research association.
10(23C)	Property income of universities, educational institutions, etc.
10(24)	Property income of any registered trade union.
11	Income from house property held for charitable or religious purpose
13A	Property income of any political party.
22	Property used for own business or profession.
23(2)	Two self-occupied or an Un-occupied property of an individual/HUF.

Determination of Annual Value: [Sec. 23]

The annual value of any property, for the purpose of section 22, shall be the sum for which the property might **reasonably be expected to be let** from year to year.

In determining the annual value, the following terms need to be understood first:

Actual Rent received or receivable(as reduced by unrealized rent if conditions of rule 4 are satisfied)

Municipal Value: This is the value as determined by the municipal authorities for levying municipal taxes on house property.

Fair Rent: The rent which can be earned, if similar property in the same locality is let out for a year.

Standard Rent: The maximum rent which a person can legally recover from his tenant under the Rent Control Act.

Annual value is determined in following two steps:

Step 1- Determination of **Gross Annual Value (GAV).**

Step 2 - Deduct from GAV, the municipal tax paid by the owner during the previous year to arrive at **Net Annual Value (NAV)**, which as per Income-tax Act, is the annual value.

1) Where the property is let out throughout the previous year [Sec. 23(1)(a)/(b)]:

Where the property is let out for the whole year, then the **GAV would be** the higher of:

- Expected Rent (ER) [i.e., higher of Fair Rent (FR) or Municipal Value (MV) but restricted to Standard Rent (SR)] or
- Actual rent received or receivable during the year.

Where let out property is vacant for part of the year [Sec. 23(1)(c)]:

Where let out property is vacant for part of the year and the actual rent is lower than the ER owing to vacancy, then the actual rent received or receivable will be the GAV of the property.

2) Self-Occupied house property or Unoccupied property [Sec. 23(2)]:

Where the house property is self-occupied for **own residence** or **unoccupied** throughout the previous year, its Annual Value will be NIL, provided no other benefit is derived by the owner from such property.

Note: The expression ‘**Unoccupied property**’ refers to a property which cannot be occupied by the owner by reason of his employment, business or profession at a different place and he resides at such other place in a building not belonging to him.

- The benefit of exemption of two self-occupied house is available only to an individual/HUF.
- Such house or part thereof is not actually let out during the whole or any part of the previous year.
- No deduction for municipal taxes is allowed in respect of such property.

CIT v. Hariprasad Bhojnagarwala (2012) 342 ITR 69 (Guj.)

The benefit of self-occupation of house property under section 23(2) cannot be denied to a HUF on the ground that it, being a fictional entity, cannot occupy a house property.

3) House property let-out for part of the year and self-occupied for part of the year [Sec. 23(3)]:
ER (Expected Rent) for the whole year shall be compared with the **actual rent for the let out period** and whichever is higher shall be taken as GAV.

- Municipal tax for the whole year is allowed as deduction provided it is paid by the owner during the previous year.
- If a **portion of the property is let out** and a portion is self-occupied, then the income will be computed **separately** for let out and self-occupied portion.

4) More than two house properties for self-occupation: [Section 23(4)]:

[Amended by Finance (No. 2) Act, 2019 w.e.f. A.Y. 2020-21]

- Where the assessee owns more than **two** residential house property, then at the option of the assessee any **two** such properties, may be treated as ‘self-occupied property’ and its annual value shall be taken as NIL and the **other** properties shall be treated as ‘**Deemed let out Properties**’.
- This option can be changed year after year in a manner beneficial to the assessee.
- In case of deemed let-out property, the ER shall be taken as the GAV.
- The question of considering actual rent received/receivable does not arise. Consequently, no adjustment is necessary on account of property remaining vacant or unrealised rent.

5) House property held as stock-in-trade and NOT let out during the whole or part of the year [Section 23(5)]:

Where the assessee held any house property as stock-in-trade and does NOT LET OUT such house property during the whole or part of the previous year, then the ANNUAL VALUE of such property

or part of the property UPTO 2 YEARS from the end of financial year in which the certificate of completion of construction is obtained from the competent authority, shall be taken as NIL.

[Amended by Finance (No. 2) Act, 2019 w.e.f. A.Y. 2020-21]

Treatment of Unrealized rent [Explanation to Section 23(1)]

Unrealized Rent means the rent not paid by the tenant and thus not realized by the owner.

The actual rent received or receivable by the owner shall not include any unrealized rent, subject to the conditions specified in Rule 4 below.

Rule 4: Following **conditions** must be satisfied to claim deduction of unrealized rent:

- (i) The tenancy is *bona fide*;
- (ii) Defaulting tenant has vacated, or steps have been taken to compel him to vacate the property;
- (iii) The defaulting tenant is not in occupation of any other property of the assessee;
- (iv) The assessee has taken all reasonable steps for the recovery of the unpaid rent or satisfies the Assessing Officer that legal proceedings would be useless.

Property Taxes (Municipal taxes):

Property taxes are allowable as deduction from the GAV subject to the following two conditions:

- It should be borne by the assessee (owner); and
- It should have been **actually paid** during the previous year.

POINTS TO NOTE:

- The deduction of municipal taxes will be allowed only in the year of actual payment.
- **Refund of Municipal Taxes is not taxable.**
- **GST paid on Municipal Taxes shall be inclusive in the municipal taxes and thus deductible.**
- In case of **property situated outside India**, taxes levied by local authority of the country in which the property is situated is deductible.

Deductions from Annual value: [Sec. 24]

There are two deductions from annual value. They are –

(a) Standard Deduction of 30%: [Sec. 24(a)]

- Deduction to the extent of 30% of Net annual value (NAV) is allowed as standard deduction while calculating income from the let-out house property or deemed to be let-out property.
- No other expenditure e.g. insurance, repair, ground rent, collection charges, etc. shall be deductible.

(b) Interest on borrowed capital: [Sec. 24(b)]

- Interest payable on loans borrowed for the purpose of acquisition, construction, repairs, renewal or reconstruction can be claimed as deduction.
- Interest will be allowed as deduction on **accrual basis**, even though it is not paid during the financial year.
- **Interest payable outside India without deducting tax at source and in respect of which no person in India is treated as an agent u/s 163 shall not be allowed as deduction. [Sec. 25]**

- Interest payable on a fresh loan taken to repay the original loan raised earlier for the aforesaid purposes is also allowed as deduction.
- Interest on unpaid interest shall not be allowed as deduction.

➤ **Pre-construction Period Interest:**

It is the aggregate amount of interest **from** the date of borrowal of the loan **upto**

- the date of repayment of loan, or;
- the end of the financial year immediately preceding the financial year in which acquisition was made or construction was completed,

whichever is earlier.

It shall be allowed as deduction in **5 equal installments** commencing from the financial year in which the property was acquired or construction was completed.

- Interest relating to the year of completion of construction can be fully claimed in that year irrespective of the date of completion.

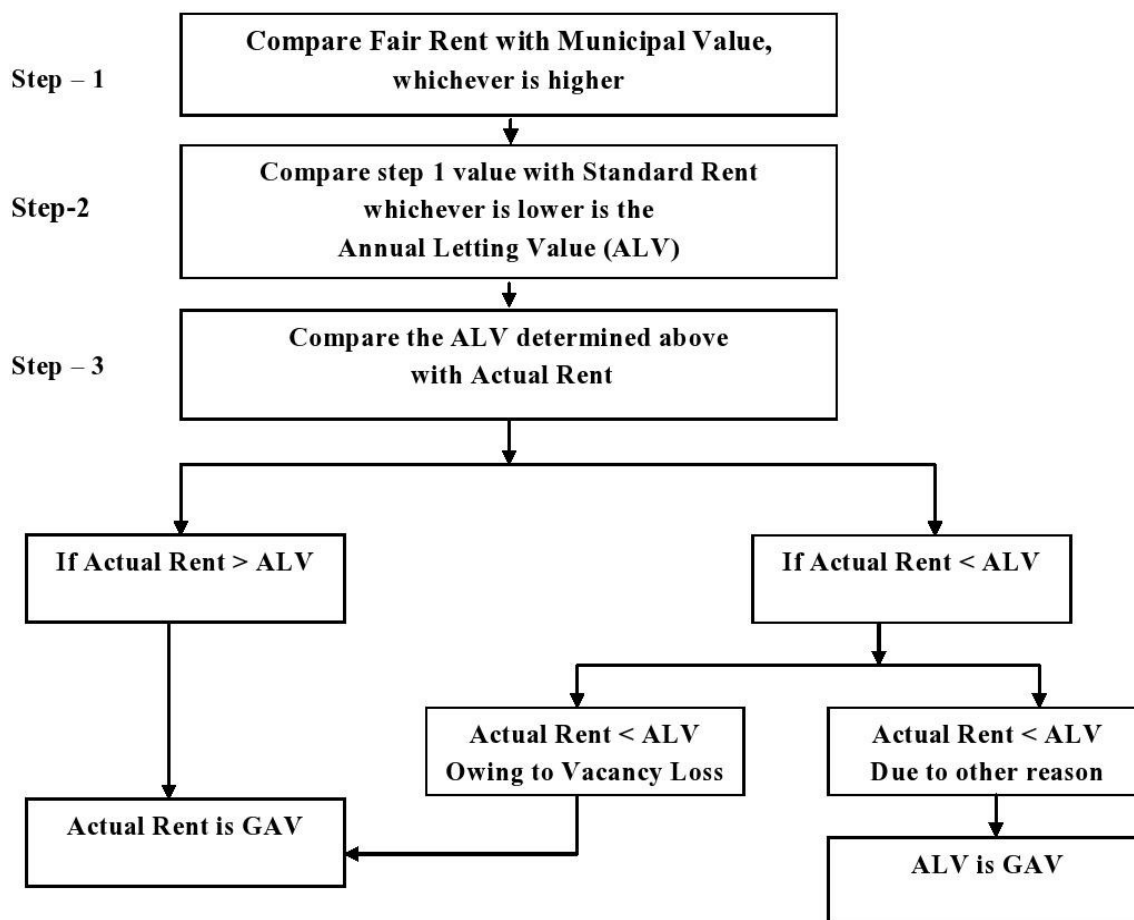
Deduction of Interest on Borrowed Capital for Self-Occupied House property:

[Amended by Finance Act, 2019 w.e.f. A.Y. 2020-21]

In respect of **self-occupied** property, the annual value of which is **NIL**, the assessee will be allowed deduction of interest (including interest of pre-construction period) on borrowed capital under section 24(b) as under:

<p><u>1st Proviso to Sec. 24(b):</u> Actual interest payable in aggregate for one or two self-occupied properties; subject to maximum of ` 2,00,000.</p>	<ul style="list-style-type: none"> ▪ Where the money is borrowed for acquisition or construction of the house property; ▪ on or after 1.4.1999 and ▪ such acquisition or construction is completed within 5 years from the end of the financial year in which the capital was borrowed.
<p><u>2nd Proviso to Sec. 24(b):</u> Actual interest payable in aggregate for one or two self-occupied properties; subject to maximum of ` 30,000.</p>	<ul style="list-style-type: none"> ▪ Where loan is taken (at any time) for repair, renewal or reconstruction of the house property; or ▪ Where loan is taken for house property (for purchase, construction or repair, renewal) before 1.4.99; or ▪ Where the acquisition or construction is not completed within 5 years.
<p><u>3rd Proviso to Sec. 24(b):</u> The total interest deductible under 1st and 2nd proviso in aggregate cannot exceed ` 2,00,000.</p>	

NOTE: The above limit of deduction for Interest on borrowed capital is applicable only for the house property or properties which are treated as Self-Occupied by the assessee. For all other house property (let-out or deemed to be let-out), **there is no limit of amount on deduction** for interest on borrowed capital.

Computation of 'Income from house property' in case of let out property:

	Amount
Gross Annual Value (GAV) [Calculated as per the chart given above]	XX
Less: Municipal taxes (paid by the owner during the previous year)	XX
Net Annual Value (NAV)	XX
Less: Deductions under section 24	
(a) 30% of NAV (irrespective of the actual expenditure incurred)	XX
(b) Interest on borrowed capital (actual; without any limit)	XX
Income from house property	XX

Computation of 'Income from house property' for Self-occupied property:

	Amount
Gross Annual Value (GAV)	NIL
	NIL

Less: Municipal taxes	NIL
Net Annual Value (NAV)	
Less: Deductions under section 24	NIL
(a) 30% of NAV (ignore the actual expenditure incurred)	XXXX
(b) Interest on borrowed capital (limited to ` 30,000 or ` 2,00,000)	
LOSS from house property	XXXX

Arrears of rent and unrealised rent received subsequently: [Sec. 25A]

- Where the assessee had received any **arrears of rent** or had **realized unrealised rent subsequently**, then such rent received or realized (*to the extent it was allowed as deduction in the earlier previous year as per Circular 14/2001*) shall be deemed to be the Income from house property in the year in which it is received or realized.
- It is taxable in the hands of the assessee whether he is the owner of that property or not.
- Deduction of 30% shall be allowed from such arrears of rent or unrealized rent.

Property owned by Co-owners: [Sec. 26]

Where any building and land appurtenant thereto is owned by two or more persons, whose shares are definite and ascertainable, then the income from such property **cannot** be taxed as income of an AOP.

The share of income of each such co-owner should be determined in accordance with sections 22 to 25 and included in his individual assessment.

POINTS TO NOTE:

- Where the house property is self-occupied by each of the co-owners, the annual value of the property of each co-owner will be Nil and each co-owner shall be entitled to a deduction of ` 30,000 / ` 2,00,000, as the case may be, u/s 24(b) on account of interest on borrowed capital.
- In case the house property is let out, the income from such 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.

Deemed ownership: [Sec. 27]

Following persons though not the legal owners of a property are deemed to be the owners for the purpose of sections 22 to 26:

▪ Transfer to a spouse/minor child [Sec. 27(i)]

If an individual transfers any house property to his or her spouse (not in connection with an agreement to live apart) or to a minor child (not being a minor married daughter), otherwise than for adequate consideration, the transferor shall be deemed to be the owner of such property.

▪ Holder of an impartible estate [Sec. 27(ii)]

The holder of an impartible estate shall be deemed to be the individual owner of all properties comprised in the estate.

Example: Bajirao, who is one of the ex-Rulers of a former princely state, has divided all his properties amongst his four sons. However, he could not transfer the building occupied by temple and as per the family convention it was given to the eldest son. The right to enjoy the property is with the four sons along with the other family members. The elder brother is not a beneficial owner of the property but

holding the property only as a trustee on behalf of his younger brothers. Therefore, as per sec. 22, the eldest son will be deemed to be the owner of the property as he is the holder of 'impartible asset'.

▪ **Member of a Co-operative Society, etc. [Sec. 27(iii)]**

A member of a co-operative society, company or other association of persons to whom a building or part thereof is allotted or leased under a House Building Scheme of a society, company or association, shall be deemed to be owner of that building or part thereof allotted to him although the co-operative society, company or association is the legal owner of that building.

Example: A flat is allotted by a cooperative housing society to one of its member Mr. Bhavesh under the house building scheme of the society. In this case, Mr. Bhavesh is deemed to be owner of the property as per section 22.

▪ **Person in possession of a property [Sec. 27(iia)]**

A person who is allowed to take or retain the possession of any building or part thereof in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act shall be deemed to be the owner of that building or part thereof.

▪ **Person having right in a property for a period not less than 12 years [Sec. 27(iiib)]**

A person who acquires any right (*excluding any right by way of a lease which is acquired from month to month basis or for a period not exceeding one year*) in or with respect to any building or part thereof, by virtue of any transaction as is referred to in section 269UA(f) i.e. transfer by way of lease for a period not less than 12 years shall be deemed to be the owner of that building or part thereof.

Example: Mahesh owns a property which is given on lease to Suresh in 2020 for a period of one month and the rent being ` 10,000. Suresh has a right to get renewal of the lease subject to the condition that every time such renewal will be only for one month and only with the mutual consent till the year 2044. In this case, the aggregate period of lease is more than 12 years, but Suresh will not become deemed 'owner' of the property as the property is given on lease from month to month.