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# Income from House Property

**DEFINITION OF HEAD • EXPLANATION OF THE TERMS USED • EXEMPTED INCOMES FROM HOUSE PROPERTY • ANNUAL VALUE • DETERMINATION OF ANNUAL VALUE • LET OUT • SELF-OCCUPIED • DEDUCTIONS OUT OF ANNUAL VALUE • CHART • ILLUSTRATIONS • QUESTIONS**

## **DEFINITION OF THE HEAD [SECTION 22]**

The income from houses, buildings, bungalows, godowns etc. is to be computed and assessed to tax under the head "Income from house property". The income under this head is not based upon the actual income from the property but upon notional income or the annual value of that building.

**House Property Income = Annual Value of Building – Specified deductions u/s 24**

Section 22 of the Income-tax Act says :

The annual value of property consisting of any building or lands *appurtenant* thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head 'Income from house property'.

For income to be taxed as 'Income from house property' the following points should be noted carefully :

**1. Building or Land Appurtenant thereto.** The scope of this head of income is limited to the income from buildings or lands appurtenant (attached or situated in the vicinity of building) to buildings only. Buildings include residential houses, bungalows, docks, warehouses, any block of bricks or stone work covered by a roof etc. Land which is not appurtenant to any buildings does not come within the scope of this section. In otherwords, any rent from such land shall not be taxable as house property income but instead it shall be taxable under the head "Other Sources."

**2. Annual Value.** The meaning of word 'Annual value' is very significant because the annual value of the building or land appurtenant thereto is to be taxed and not the rent received. The annual value is to be determined according to the provisions of section 23 of Income-tax Act. These are discussed later in this chapter.

**3. The Assessee should be the owner of the property.** It is only the owner of the house property who can be taxed under this head of income. The tax under this section is in respect of the legal or beneficial owner and not the occupation or possession of house property'. Therefore, income from subletting, will be chargeable under the head 'Income from other sources' and not under house property'. So only the owner, may be legal or deemed owner, is liable to tax under this head of income, unless the house property is used by him for the purposes of his own business or profession. The question of ownership may be noted in the following cases :

- (i) If the land was taken on lease (long time) and a super-structure constructed, the person who takes land on lease will be treated as its owner.
- (ii) Where the property is mortgaged, it is the mortgager alone and not the mortgagee who can be treated as the owner.
- (iii) Where the property was constructed in the name of partnership, it is the firm which is assessable as owner and not the individual partners.
- (iv) A person whose property is vested in the Custodian of Evacuee Property is not the 'owner' thereof for the purposes of this section.
- (v) Where the assessee takes a building on lease and he is deriving some income by subletting or re-letting, this income will be taxable under the head 'Income from other sources' and not under the head 'Income from house property'.
- (vi) In case houses were constructed by a cooperative building society and allotted or leased out to its members, the member shall be deemed to be the owner of the buildings or part thereof, as the case may be.

In one of the cases, Supreme Court decided that the owner must be a person who can exercise the rights of the owner, not on behalf of the owner but as his own right.

### Deemed Owner of House Property

According to Section 27 of Income-tax Act the assessee in following cases is deemed to be the owner of the house property, though not owner of the house property :

- (i) An individual who transfers otherwise than for adequate consideration any house property to his or her spouse, not being a transfer in connection with an agreement to live apart or to a minor child not being a married daughter, shall be deemed to be the owner of the house property so transferred.
- (ii) The holder of an imitable estate shall be deemed to be the individual owner of all the properties comprised in the estate.
- (iii) A member of a co-operative society to whom a building or part thereof is allotted or leased under a house building scheme of the society, shall be deemed to be the owner of that building or part thereof.
- (iv) A person who is allowed to take or retain possession of any building or part thereof in part performance of contract of the nature referred to in section 53 A of the transfer of property Act, 1882.
- (v) A person who acquires any rights (Excluding any rights by way of a lease from month to month or for a period not exceeding one year) in or with respect to any building or part thereof, by virtue of a transfer by way of lease for a term of not less than 12 years as per section 269 UA (f) (whether originally or by extension).

**4. It is not used for purposes of assessee's business or profession.** Where the assessee is carrying on business or profession in his own house, building or in a portion of it and the income of such business or profession, is taxable under the head 'Profits or gains of business or profession', the annual value in respect of property or portion of it is not taxable under this head of income. As the business is being carried on in the assessee's own premises, so no rent will be allowed as expenditure to the assessee in respect of these premises.

But where the profits of such business or profession are not chargeable to tax, the annual value of the (owned) premises shall be computed and charged under the head 'house property'.

### IMPORTANT POINTS

- (i) **House property held as stock in trade.** Where the house property is held by an assessee as stock in trade in the course of carrying on business of purchase and sale of such house property, it (the house property) shall be assessed under the head house property. Thus, the annual value of such house properties shall be chargeable under the head 'Income from house property'.
- (ii) **House property of partner used by firm.** Where a house property owned by a partner is used by the partnership firm for the purpose of its business or profession, the annual value of such property shall be chargeable in the hands of partner under the head 'Income from house property'. Such a house property cannot be treated as the property used by the partner for his own business or profession.
- (iii) **House property held in the name of business but not actually used for business.** If the house property belongs to business (*i.e.* held in the name of business but is not actually used for the purpose of business) it is to be assessed under the head 'Income from house property' and not under the head 'Income from business or profession.'

**5. Dispute about ownership.** It is the owner who is liable to pay tax on the income of the house property and in case of a dispute about ownership the person who receives rent shall be liable to pay tax till the dispute about ownership is settled.

**6. House Property situated in a foreign country.** In case an assessee who is resident of India owns a house in a foreign country, income from such a house is taxable in India under the head house property. So income from house property in case of not ordinary resident and a non-resident shall be exempted but again it will be taxable in India if it is received or it is payable in India.

#### 7. Cases when rental income from building is not treated as house property income

(i) **Letting out of house property for smooth conduct of assessee's business/profession.** If a person lets out any house property for smooth conduct of his business/profession, the rental income from such house property shall not be treated as house property income rather it shall be treated as income under the head business/profession.

**Example 1.** Quarters let out to the employees of assessee's own business

**Example 2.** Building let out to a Bank, Post Office, Police Station, Excise department or Police department etc.

Similarly, if a person carrying on any business/profession lets out his house property to a Bank, Post Office, Police Station, Excise Department or other department and the main purpose of letting is not to earn rental income but to facilitate its own business/Profession, the rental income shall not be taxable as house property income rather it will be treated as business income of the person.

(ii) **Income from sub-letting of house property.** If a person occupies a building as tenant and lets out full or part of the hired building to another person, it is called sub-letting. The income from sub-letting, if any, is taxable under the head 'income from other source' and not under the head 'house property'. It is so because the person sub-letting the building is not the owner of that building. Such income is calculated as per section 56 after deducting all the expenses relating to sub-let portion.

(iii) **Composite letting out of building along with furniture etc.** If a person lets out building along with furniture, plant, machinery and other facilities etc., for a composite rent and such composite rent can not be separated between (a) rent of building and (b) rent of other items/facilities then such composite rent shall be treated either as income under the head other sources or an income under the head business or profession, if such letting is the business of the assessee.

However, if such composite rent can be split up in parts and rent of building can be separately known, then such rent shall be treated as house property income and rent of other items/facilities shall be taxable as other sourcee income/business or profession income.

(iv) **Income from hotel business/paying guest accomodation.** If a person runs the hotel business or runs the business of providing paying guest accomodation, such rental income shall be taxable as income under the head Business/Profession.

However, if a person has a building in the nature of a hotel and he lets out such building as such to another person for carrying on hotel business, such rental income shall be taxable as 'income under the head house property'.

### **ILLUSTRATION 1**

Mr. Rama Rao had taken a shop on rent at monthly rent of ₹ 2,000. He has sub-let 25% of the area to Mr. D.K. Rai @ ₹ 1,000 p.m. He incurred ₹ 4,000 on repairs of the shop. Calculate his income from sub-letting.

### **SOLUTION**

*Income from other sources : sub-letting*

	₹
Rent Received @ ₹ 1,000 p.m.	12,000
Less : Actual expenses relating to sub-let portion	₹
Rent paid (25% of ₹ 24,000)	6,000
Repairs (25% of ₹ 4,000)	1,000
	<hr/>
Income from sub-letting	7,000
	<hr/>
	5,000

### **Q. No. 1**

Mr. Sudhakar Rao hired a house of 5 rooms at ₹ 5,000 p.m. He paid ₹ 6,000 as Municipal Taxes and spent ₹ 5,000 on the repair of the house. He has sub-let 2 rooms at the rate of ₹ 3,000 p.m. to his friend Mr. Prabhakar Rao. Compute income from sub-letting.

[Hints : Income from subletting ₹ 7,600]

### **EXEMPTED INCOMES FROM HOUSE PROPERTY**

Under section 10 of the Income-tax Act 1961 following incomes from house property are exempted from tax. These incomes are not to be included in the total income of assessee. Hence no tax is payable on such incomes. These incomes are :

1. **Agricultural House Property [Section 2(1)(c)].** Income from such house property which is situated on or in the immediate vicinity of agricultural land which is used for agricultural purposes by cultivator is exempted from tax.

2. **House property held for charitable purposes [Section 11].** Any income from a house property held for charitable or religious purposes e.g., rent from shops owned by a temple is also exempted.

3. **Self-occupied but vacant house [Section 23(3)].** In case an assessee keeps one of his own houses reserved for self-occupation but is living in a rented house elsewhere due to his employment or profession the income from such house is taken to be nil.

4. **House used for own business or profession.** There is no income chargeable to tax under this head from such house property.

5. **Property held by registered trade union [Section 10(24)].** Income from a house property owned by a registered trade union is not to be included in its G.T.I.

**6. Income from house property held by following shall be exempted**

- (i) House property held by a local authority.
- (ii) House property held by a scientific research institution.
- (iii) House property held at a political party.
- (iv) House property held by a university and any other educational institution working for spreading education and not to earn profit.
- (v) House property held by a hospital or medical institution working for the spreading of medical services to people and are not meant for earning profit.

**7. One house property (a palace) owned by a former ruler of Indian states.** Ex-rulers of Indian states may be owning many palaces but only one palace of their choice shall be treated as a self occupied house and shall be exempted.

**8. One self occupied house.** In case assessee owns one residential house, the net annual value of the same shall be taken as nil but in case he owns more than one house, then only one of his choice but normally of higher value shall be treated as a self occupied one and other/others are treated as deemed to be let out.

### In case of a Cooperative Society

Income from following house properties is includable in Gross Total Income but a deduction is allowed from the Gross Total Income.

**1. Income from any other Property [Section 80P(2)(b)].** In case the gross total income of a co-operative society does not exceed ₹ 20,000, any income derived by it from house property and included in its gross total income, the whole of such income is allowed as deduction while computing its total income. Co-operative society in this case should not be a housing society or an urban consumer's co-operative society or a society carrying a transport business.

**2. Letting out of godown by co-operative societies [Section 80P(2)(c)].** If a co-operative society lets out godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of its income derived from letting out of houses or storages etc. is deductible in computing its total income.

### ANNUAL VALUE

The term annual value is very important as calculation of income from house property depends upon correctly calculated annual value. It takes into consideration not only the rent received but also the expected rent a house can fetch under the given situation and not only once but from year to year.

#### Definition of Annual Value [Section 23]

1. For the purposes of section 22, the annual value of any property shall be deemed to be :
  - (a) the sum for which the property might reasonably be expected to let from year to year ; or
  - (b) where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable ; or
  - (c) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable :

Provided that the taxes levied by any local authority in respect of the property shall be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by owner in determining the annual value of the property of that previous year in which such taxes are actually paid by him).

**Explanation.** For the purposes of clause (b) or clause (c) of this sub-section, the amount of actual rent received or receivable by the owner shall not include, subject to such rules as may be made in this behalf, the amount of rent which the owner cannot realise.

The Finance Act 2001 has changed the definition of the, *Annual value* as under :

In case of a let out house property, section 23(1) has defined this term as follows :

1. Where the house property or any part of it is let out, any sum of money received or receivable in the previous year or from year to year shall be treated as annual value.
2. Where any house property is let out and the rent received or receivable is in excess of the sum referred above {in point (1)}, the sum of money so received or receivable shall be treated as annual value.
3. Where a let out house property remains vacant during the previous year or during any part of the previous year and due to vacancy the actual rent received or receivable is less than the sum of money referred above in point (1), the sum of money so received or receivable shall be treated as annual value.

### Different Types of Rental Values

**1. Actual Rent.** It is the rent actually received by the owner of the house property from the tenant. In case tenant pays composite rent i.e. rent of building, plant and machinery, furniture etc. and rent is separable, actual rent is reduced by the amount of rent of plant and machinery, furniture. etc. Balance is actual rent of house property. Any amount of local taxes paid by tenant, cost of repairs borne by tenant or any interest on advance deposit are not to be added.

As per explanation attached to section 23(1) for the purposes of calculating Annual Value the actual rent received or receivable shall not include any amount of unrealised rent if it fulfils certain conditions.

**2. Real Rental Value [RRV].** In case cost of common facilities such as lift and pump maintenance, salary of common gardener and watchman, lighting of common stairs and corridors and water and electricity bills (if included in rent) are borne by the owner and rent includes the cost of these items. Such cost is reduced out of actual rent received and balance is called **Real Rental Value (R.R.V.).**

In case cost of following facilities is borne by the owner it shall be deducted out of actual rent before comparing it with other rental values.

- (a) Lift and pump maintenance charges,
- (b) Swimming pool maintenance charges,
- (c) Salary of common gardener and watchman,
- (d) Lighting of common stairs and corridors
- (e) Water and electricity charges (only if it is mentioned that rent includes them).

In case the cost of facilities is charged separately by owner i.e., over and above the rent, it is treated as a separate source of income. The expenses incurred on such facilities are deducted out of amount so collected and balance (Income/Loss) is taxable under the head, "Income from Other Sources."

In case house property is divided in parts and a part is let out and other part is self-occupied, the fair rental value of the house shall be proportionately increased in following manner :

**Example :** Mr. X owns a house, 2/3rd portion of the house is let out @ ₹ 4,000 p.m. and remaining 1/3rd portion is self occupied for 7 months and let out for 5 months. Calculate its fair rental value.

Rent of 2/3rd portion of house

₹

Fair rental value of full house shall be ₹  $4,000 \times 3/2 =$

4,000 p.m.

6,000 p.m.

### **ILLUSTRATION 2**

Mr. S. Pratihari has constructed a multistory building at Delhi consisting of 40 flats. Each flat is let out @ 1,000 p.m. The municipal authorities have fixed the rental value of this property as ₹ 4,50,000 p.a. The owner bears the following expenses :

- |                                       |             |
|---------------------------------------|-------------|
| (i) Lift maintenance                  | 12,000 p.a. |
| (ii) Pump maintenance                 | 8,000 p.a.  |
| (iii) Salary of Gardener and Watchman | 3,600 p.a.  |
| (iv) Swimming pool expenses           | 9,000 p.a.  |

Compute the Annual Rental Value for the property.

### **SOLUTION**

#### **Computation of Annual Rental Value**

Municipal Rental Value

₹  
4,50,000

Actual Rent ( $40 \times 1,000 \times 12$ )

	₹	₹
Actual Rent ( $40 \times 1,000 \times 12$ )		4,80,000
Less : Lift maintenance	12,000	
Pump maintenance	8,000	
Salary of Gardener and Watchman	3,600	
Swimming pool exp.	9,000	
	<hr/>	<hr/>
	32,600	4,47,400

Whichever is higher is ARV i.e. Municipal Rental Value of ₹ 4,50,000 shall be taken as ARV

### **Q. No. 2**

Compute Annual Rental Value in following case :

- (i) Municipal Rental Value
  - (ii) Actual Rent received
  - (iii) Lift and pump maintenance charges paid by owner
  - (iv) Salary of common gardener and watchman paid by tenants to the owner and actual expenses incurred by the owner during the year are ₹ 4,200
- [Hints : ARV ₹ 48,000 ; Income from other sources ₹ 1,800]

₹  
48,000 p.a.  
50,000 p.a.  
6,000 p.a.  
500 p.m.

**3. Municipal Rental Value (MRV).** For the purposes of levying local taxes the local authority i.e. Municipal Corporation/Committee etc. conducts a periodical survey of the house properties in their local limits. On the basis of such survey the rental values are fixed which serves as the basis for levying tax. The rental value so fixed is called **Municipal Rental Value (M.R.V.).**

**4. Fair Rental Value [FRV].** It is the rental value a house property can fetch. It is based on the rent prevailing for similar type of accommodation in same or similar type of locality. It is based on the principle that rent prevailing in same locality for similar sized property is almost the same. Such rental value is called **Fair Rental Value (F.R.V.).**

**5. Standard Rent [S. RENT].** The rent fixed under Rent Control Act, where so ever applicable, is called **Standard Rent.**

**6. Expected Rental Value (ERV).** The expected rental value shall be determined as under :

A. In case standard rent has not been fixed

- (i) Municipal Rental Value
- (ii) Fair Rental Value
- (iii) Actual Rent Received.

Whichever higher shall be treated as expected rental value.

B. In case standard rent has been fixed

- (i) Municipal Rental Value
- (ii) Fair Rental Value
- (iii) Standard Rent.

In case standard rent has been fixed, the expected rent cannot exceed standard rent. So firstly compare Municipal rental value and fair rent and find out the higher one and the amount so calculated cannot exceed amount of standard rent but if actual rent received is more than standard rent, then actual rental value shall be treated as expected rental value.

In a Supreme Court decision, it has been clearly laid down that the expected rent cannot exceed the standard rent but it can be less than the standard rent. *Balbir Singh v/s MCD (1985) 152 ITR 388(SC).*

### **ILLUSTRATION 3**

From the figures given below calculate the Expected Rental Value in each case separately :

Rental value	Case A	Case B	Case C
	₹	₹	₹
MRV	30,000	30,000	30,000
FRV	36,000	36,000	36,000
Standard Rent	N.A.	33,000	42,000

### **SOLUTION**

#### *Calculation of Expected Rental Value*

A. Standard Rent is not applicable

MRV 30,000  
FRV 36,000

Whichever is higher is ERV 36,000

B. Standard Rent is applicable

MRV 30,000  
FRV 36,000

Whichever is higher 36,000

This figure is more than the Standard Rent which is ₹ 33,000 and the ERV cannot exceed the Standard Rent, as such the Standard Rent of ₹ 33,000 shall be ERV