

Tax Payers Information Series-17

**Assessment of
Income From
House Property**



INCOME TAX DEPARTMENT

Directorate of Income Tax (PR, PP & OL)
Mayur Bhawan, Connaught Circus,
New Delhi-110001

PREFACE


Income from house property is one of the important heads of income under the Income Tax Act. The tax payers have been, in particular, keen to know about the exemptions and deductions available to them on repayment of interest and principal of the loan obtained to purchase the house property, if that house property is let out or self-occupied.

This booklet, brought out under the Tax Payers Information Series, is an attempt to help the taxpayers by explaining the provisions relating to calculation of income from house property in a non legalistic and easy-to-understand language.

The booklet has gone through several editions since 1994 when it was first published by this Directorate. This edition has been updated by Smt. Garima Bhagat, JDIT, Directorate of Infrastructure, New Delhi. Latest provisions as amended upto the Finance Act, 2008 have been incorporated in it.

It is my earnest hope that the booklet, as in the past, shall be found useful by the taxpayers. Any suggestions for its improvement are welcome.

New Delhi
Dated: 4th July, 2008


(Amitabh Kumar)
Director of Income Tax
(PR, PP & OL)

This publication should not be construed as an exhaustive statement of the Law. In case of doubt, reference should always be made to the relevant provisions of the Income Tax Act, 1961, Income Tax Rules, 1962, Wealth Tax Act, 1957 and Wealth Tax Rules, 1957, and, wherever necessary, to Notifications issued from time to time.

INDEX

	Page Nos.
Chapter I	
Introduction	1
Chapter II	
Determination of Income from house property	7
Chapter III	
Computation of Income from self occupied property	17
Chapter IV	
Deductions u/s 80C in Relation to investment in New Residential House Property	20
Chapter V	
Some illustrations	23
Chapter VI	
Provisions Relating to Taxation of income from house properties at a glance	30
Annexure	31

CHAPTER I

INTRODUCTION

Section 4 of the Income tax Act 1961 (Act hereinafter) provides for charge of income tax. However, this section by itself does not create any liability. It has been observed by the Supreme Court in CIT Vs. K. Srinivasan (1972) 83 ITR 346-351 that although section 4 is the charging section, yet income tax can be charged only when the central Act, which normally is the Finance Act, enacts that income tax shall be charged for any assessment year at the rate or rates specified therein.

Every money receipt by a person is not chargeable to tax. Section 14 of the Act specifies five heads of income on which tax can be imposed under the Income tax Act. In order to be chargeable, an income has to be brought under one of these five heads. The heads are (i) salaries (ii) Income from House property (iii) profits and gains of business or profession (iv) capital gains and (v) income from other sources. In the discussion to follow, the relevant provisions of the Act relating to Income from House Property would be considered and how the computation of income from this source is to be made, namely, how the income is to be worked out and what are the deductions to be given for computing the taxable income shall be explained. Sections 22 to 27 of the Act deal with the subject of taxation of income from house property.

Property-the common view

In common parlance, property is understood in wide sense. It is not only the thing which is the subject matter of ownership but is taken to mean 'dominion' or right of ownership or even partial ownership. Lord Longdale in *John v. Skinner* (1836) 5Lg 67-90 (Ch) has described it as the most comprehensive of all the terms which can be used in as much as it is indicative and descriptive of every possible interest which a person can have. However, for purposes of taxation under sections 22 to 27 of the Act, such wider definition of property is not relevant. The income to be taxable should be "Income from House Property".

Section 22 of the IT Act 1961

Section 22 provides for taxation of 'annual value' of a property consisting of any buildings or lands appurtenant thereto, of which the assessee is owner, under the head "income from House Property". Tax imposed under section 22 is a tax on 'annual value' of house property and is not a tax on "House Property". However, if a house property is occupied by a taxpayer for the purpose of business or profession carried on by him (the profits of which are chargeable to income tax), annual value of such property is not chargeable to tax under the head 'Income from House Property'.

In the earlier discussion, the phrase 'lands appurtenant thereto' has also been used. It needs to be clarified in this context that income from letting of vacant plots of land when there is no adjoining building will not be taxed under this head (but will be taxed as income from other sources). The existence of a building is, therefore, an essential prerequisite. Building will, of course, include residential house (whether let

out or self occupied), office building, factory building, godowns, flats, etc. as long as they are not used for business or profession by owner. And the purpose for which the building is used by the tenant is also immaterial. Thus, income from letting out godowns will be taken as income from house property. It does not make any difference at all if the property is owned by a limited company or a firm.

CONDITIONS NECESSARY FOR TAXING INCOME FROM HOUSE PROPERTY

These are:

- The property should consist of any building or land appurtenant thereto
- The assessee should be the owner of the property
- The property should not be used by the owner for the purpose of any business or profession carried on by him, the profits of which are chargeable to tax.

Unless all the aforesaid conditions are satisfied, the property income cannot be charged to tax under the head 'Income from House property'.

'Owner'-concept explained

For the purpose of section 22, the concept hitherto understood even in court decisions has been that the owner has to be a legal owner. Annual value of property is assessed to tax under section 22 in the hands of owner even if he is not in receipt of income or even if income is received by some other person. For instance, if a person makes gift of rental income to a friend or a relative, without transferring ownership of the property, annual value of property is taxable in the hands of the donor, even if rental income is received by the

donee- S. Kartar Singh v. CIT (1969) 73 ITR 438 (Delhi). In other words, for the purpose of section 22, the owner must be that person who can exercise the rights of the owner, not on behalf of the owner but in his own right-RB. Jodha Mal Kuthiala v. CIT [1971] 82 ITR 570 (SC). However, there has been some refinement in the concept of ownership after the decision of the Surpeme Court in the case of CIT v. Podar Cement (P) Ltd. (1997) 92 Taxman 541 (SC)/226 ITR 625 (SC). In this case, the Supreme Court has expressed the view that under common law 'owner' means a person who has got valid title generally conveyed to him after complying with the requirements of law such as the Transfer of Property Act, Registration Act etc. But in the context of Section 22 of the Income tax Act, having regard to the ground realities and further having regard to the object of the Income tax Act, namely, "to tax the income", 'owner' is a person who is entitled to receive income from the property in his own right. The requirement of registration of the sale deed in the context of section 22 is not warranted. In view of this, where a property is handed over to a purchaser to enjoy fruits of that property by the builder, the purchaser is to be treated as 'owner' of that property even though no registered document has been executed in his favour.

Ownership is relevant for the previous year

As tax is levied only on the income of previous year, annual value of property, owned by a person during the previous year, is taxable in the following assessment year, even if the assessee is not owner of the property during the assessment year.

Deemed ownership

In the following situations the ownership shall be deemed for taxing income from house property in view of section 27 of the Act:

- (i) When house property is transferred to spouse (otherwise than in connection with an agreement to live apart) or minor child (not being a married daughter) without adequate consideration (Section 27(i))
- (ii) In the case of holder of an impartible estate (Section 27(ii))
- (iii) A member of a cooperative society, company etc. to whom a building or part thereof has been allotted or leased under a house building scheme (Section 27(iii)). Thus, when a flat is allotted by a cooperative society or a company to its members/shareholders who enjoy the flat, technically the co-operative society/company may be the owner. However, in such situations the allottees are deemed to be owners and it is the allottees who will be taxed under this head.
- (iv) A person who is allowed to take or retain 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, 1882, is deemed as the owner of that building (or part thereof) [Sec. 27 (iia)].
- (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 any such transaction as is referred to in section 269UA(f) [i.e. if a person takes a house on lease for a period of 12 months or

more, is deemed as the owner of that building or part thereof] [Sec. 27 (iiib)].

Persons who purchase properties on the basis of Power of Attorney and under long term leases (12 months & more) are also deemed to be owners. The concept of deemed owner is introduced to prevent misuse like transferring properties in the name of spouse or minor child etc. and for assessment of income in the hands of beneficial owner.

Co-ownership

Section 26 concerns properties which are owned by co-owners. This section provides that where property consisting of building or buildings and land appurtenant thereto is owned by two or more persons and their respective shares are definite and ascertainable such persons shall not, in respect of such property, be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with sections 22 to 25 shall be included in his total income. In such an eventuality, the relief admissible under section 23(2) shall also be separately allowable to each such person [Explanation to Section 26].

□

CHAPTER II

DETERMINATION OF INCOME FROM HOUSE PROPERTY

The determination of 'Annual Value' is important in the context of taxation of income from House Property because though the tax under the head 'Income from house property' is tax on income, yet it is not in that sense a tax on income but upon inherent capacity of such property to yield income and for this 'annual value' is the yardstick. The inherent capacity has been defined as the sum for which the property might reasonably be expected to be let from year to year. It is not necessary, that the property should be actually let. It is also not necessary that the reasonable return from property should be equal to the actual rent realized when the property is, in fact, let out. Where the actual rent received is more than the reasonable return, it has been specifically provided that the actual rent will be the annual value. Where, however, the actual rent is less than the reasonable rent (e.g. in case where the tenancy is affected by manipulation, emergency, close relationship or such other consideration), the latter will be annual value. The municipal value of the property, the cost of construction, the standard rent if any under the Rent Control Act, the rent of similar properties in the same locality are relevant factors for the determination of the annual value. However, if a property is let and was vacant during any part or whole of the year and due to such vacancy, the rent received is less than the notional rent, such lesser amount

shall be the Annual Value. For example, in case of a house, whose municipal valuation is Rs. 24,000/- and actual rent received is Rs. 36,000/- the annual lettable value will be taken at Rs.36,000/-. If the actual rent received is Rs. 18,000/- and municipal valuation is Rs.24,000/-, the annual value would be Rs. 24,000/- for the purpose of the Income-tax Act. Here, if the property was vacant for six months and the rent received is Rs. 18,000/- for six months the Annual Value shall be Rs. 18,000/-.

Where the property is subject to Rent Control Act, its annual value under section 23(1) cannot exceed the standard rent (fixed or determined) under the Rent Control Act unless it is actually let out for a higher amount. Such a view has been expressed by the Supreme Court in the cases of *Dewan Daulat Rai Kapoor v. NDMC* (1980) 122 ITR 700 (SC); *Amolak Ram Khosla v. CIT* (1981) 131 ITR 589 (SC) & *Mrs. Shiela Kaushik v. CIT* (1981) 131 ITR 435 (SC).

Determination of Annual Value of Self-occupied property

In case of one self-occupied house property which has not been actually let out at any time, the annual value is taken as 'nil'. If, one is having more than one house property using all of them for self-occupation, he is entitled to exercise an option in terms of which, the value of one house property as specified by him will be taken at nil. The annual value of the other self occupied house properties will be determined on notional basis as if these had been let out.

Annual Value of one house away from work place

A person may own a house property, say in Bangalore, which he normally uses for his residence. He is transferred to Chennai where he does not own any house property and stays in a rental accommodation. In such case, the house property

in Bangalore cannot be used for self-occupation and notional income therefor would normally have been chargeable although he derives no benefit from the property. To save the taxpayer from hardship in such situations, it has been specifically provided that the annual value of such a property would be taken to be nil subject to the following conditions:

- The assessee must be owner of only one house property.
- He is not able to occupy the house property because of his employment, business etc. being away from place where the property is situated.
- The property should not have been actually let.
- He has to reside at the place of employment in a building not belonging to him [Section 23(2)(b)].
- He does not derive any other benefit from the property not occupied.

Determination of Annual Value of Let out house properties

In respect of a let out house property, the rent received is usually taken as the annual lettable value. When, however, the rent is not indicative of the actual earning capacity of the house, the notional annual value will have to be found and adopted. The standard rent would be the Annual Value in the case of properties, subject to Rent Control Legislation, as mentioned earlier. However, when the actual rent received or receivable is higher than the notional value as calculated above, the higher figure will be taken for the purpose of Income-tax. From the annual value as determined above, municipal taxes are to be deducted if the following conditions are fulfilled:

- The property is let out during the whole or any part of the previous year (There is no such deduction in respect of a self-occupied house property).

- The Municipal taxes must be borne by the landlord. (If the municipal taxes or any part thereof are borne by the tenant, the same will not be deductible).
- The municipal taxes must be paid during the year. (Where the municipal taxes have become due but have not been actually paid, these will not be allowed. The municipal taxes may be claimed on payment basis i.e., only in the year they were paid even if the taxes belonged to a different year).

Amount left after deduction of municipal taxes is net annual value.

Other Permissible Deductions from Annual Value in cases of let out properties (Section 24)

The following deductions are permissible:

- (i) deduction equal to 30% of the annual value, irrespective of any expenditure incurred by the taxpayer (S.24(a)). No other allowance for repairs, maintenance etc. would be allowable.
- (ii) interest on borrowed capital (S. 24(b))

Interest on borrowed capital is allowable as deduction on accrual basis (even if account books are kept on cash basis) if capital is borrowed for the purpose of purchase, construction, repair, renewal or reconstruction of the house property.

The following aspects concerning claim for deduction of interest are to be kept in view:

- (i) The interest is deductible on 'payable' basis i.e. on accrual basis. Hence it should be claimed on yearly basis even if no payment has been made during the year.

- (ii) For claiming interest, it is not necessary that the lender should have a charge on the property for the principal amount or the interest amount.
- (iii) In *Shew Kissan Bhattar v. CIT* (1973) 89 ITR 61 (SC) the Supreme Court has decided that interest payable for outstanding interest is not deductible.
- (iv) Taxpayer cannot claim deduction for any brokerage or commission paid for arranging loan either as a one time arrangement or on periodical basis till the loan continues.
- (v) In terms of circular No. 28 dated 20th August 1969, if an assessee takes a fresh loan to pay back the earlier loan, the interest on the fresh loan would be deductible.
- (vi) Interest on borrowing can be claimed as deduction only by the person who has acquired or constructed the property with borrowed fund. It is not available to the successor to the property (if the successor has not utilized borrowed funds for acquisition, etc). In other words, the relationship of borrower and lender must come into existence before it can be said that any amount or any other money is borrowed for the purpose of construction, acquisition, etc., of house property by one person from another and there must be real transaction of borrowing and lending in order to amount to any borrowing.
- (vii) In case of Central Government employees, interest on house building advance taken under the House Building Advance Rules (Ministry of Works and Housing) would be deductible on the basis of accrual of interest which would start running from the date of drawal of advance. The interest that accrues in terms of rule 6 of the House

Building Advance Rules is on the balances outstanding on the last day of each month - Circular No. 363, dated June 24, 1983.

- (viii) Any interest chargeable under the Act, payable out of India on which tax has not been paid or deducted at source, and in respect of which there is no person in India who may be treated as an agent, is not deductible, by virtue of Section 25, in computing income chargeable under the head "Income from house property".

Interest for pre-construction period

Money may be borrowed prior to the acquisition or construction of the property. In such a case, interest paid/payable before the final completion of construction or acquisition of the property will be aggregated and allowed for five successive financial years starting with the year in which the acquisition or construction is completed. This deduction is not allowed if the loan is utilized for repairs, renewal or reconstruction.

Example:- The assessee took a loan of Rs. 3,00,000/- in April, 1999 from a Bank for construction of a house on a piece of land which he owns at Meerut. The loan carried interest @ 15% p.a. The construction is completed in April 2001 and the house is given on rent from May 2001. Meanwhile he has already incurred liability of interest of Rs. 90,000/- for F.Y. 1999-2000 and 2000-01. Because of the above provision, the assessee can claim a deduction in respect of this interest of Rs. 90,000/- (Over and above the yearly interest) in five equal instalments of Rs. 18,000/- each starting from the assessment year 2002-03.

Benefit for vacancy for the period when the property remains vacant (in cases of let out properties).

If due to vacancy, the annual rent received is lower than the expected rent, then the annual rent realized is taken as the gross annual value. However, this rule will be applicable only, if the decline is only because of the vacancy.

Exclusion of unrealised rent from annual value (Expl. to Section 23(1))

Unrealised rent (which the owner could not realize) shall be excluded from rent received/receivable only if the following conditions are satisfied:

- a. the tenancy is bona fide;
- b. the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property;
- c. the defaulting tenant is not in occupation of any other property of the assessee;
- d. the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfies the Assessing Officer that legal proceedings would be useless.

Unrealised rent subsequently recovered would be taxable in the year of receipt. It has been mentioned earlier that basic requirement for assessment of property income is the ownership of the property. However, in the cases where unrealised rent is subsequently realised, it is not necessary that the assessee continues to be the owner of the property in the year of receipt also. (Section 25AA)

Arrears of Rent (Section 25B)

When the owner of a building receives arrears of rent from such a property, the same shall be deemed to be the income from house property of the year of receipt irrespective of whether or not the assessee is the owner of the property in that year. 30% of the receipt shall be allowed as deduction towards repairs, collection charges etc. (prior to the A.Y. 2002-03, the rate of deduction was 25%). No other deduction will be allowed.

Set off and carry forward of loss in cases of house properties

This matter can be examined under two heads namely:

(A) Where the property has been let out

- In the matter of set off of and carry forward loss from let out properties, two sections are relevant. Sections 70 and 71 provide that loss from one house property can be set off against the income from another house property. The remaining loss, if any, will be set off against incomes under any other heads like salary, business etc. In case the loss does not get wiped out completely, the balance will be carried forward.
- In regard to carried forward losses, Section 71B is to apply. This section provides that where the assessee incurs any loss under the head “Income from house property” and such loss is not fully adjusted under other heads of income in the same assessment year, then from the assessment year 1999-2000 the balance loss shall be allowed to be carried forward and set off in subsequent years (subject to a limit of 8 assessment years) against income from house property. However, only losses pertaining to the assessment year 1999-2000 onwards can be carried forward.

Illustration I

(i) Asst. year 2008-09

‘A’ a salaried employee (salary Rs.1,40,000/-) has two properties which are let out. The loss from one property ‘X’ is Rs. 20,000/-. The income from the other property ‘Y’ is Rs. 14,000/-. The loss from property ‘X’ can be set off against income from property ‘Y’. There will still be loss of Rs. 6000/- in respect of property ‘X’. This can be set off against his salary income.

(ii) Asst. year (as at (i) above)

B’s sources of income/loss are as under:

	Rs.
* Interest income	10,000
* Income from other sources	6,000
Net loss from residential House Property (consequent to payment of interest on funds borrowed for the construction of House after 31.03.1999)	(-) 36,000
Net loss	20,000

This loss of Rs.20,000 would be carried forward for being set off in accordance with the provisions of Section 71B upto 8 years against income from house properties.

(B) Where the house is self occupied

In so far as income from self occupied property is concerned, the same is to be taken as Nil (see next chapter). The only deduction permissible against this Nil income is interest on borrowed capital which can be upto Rs. 30,000 or

Rs. 1,50,000 (see discussion in chapter III). No other deduction for self occupied property is permissible. Hence only the interest claim would be available for set off or carry forward, if the conditions mentioned earlier are satisfied.

Illustration II

(i) Asst. Year 2008-09

A's sources of income are:

		Rs.
*	Salary	1,20,000
*	Interest on loan taken for the construction of a house for residential purpose	30,000

The taxable income for this asstt. year would be Rs. 90,000 on which no tax would be payable.

(ii) If the amount of interest in the above case is say Rs. 1,40,000 and funds had been borrowed for construction of house property for self residence after 31.03.1999, then Rs. 20,000 would be the loss which can be carried forward for being set off from property income, if any, in future upto 8 years. It would not be available for set off against other incomes.

□

CHAPTER III

COMPUTATION OF INCOME FROM SELF OCCUPIED PROPERTY

As mentioned earlier, where a person has occupied more than one house for residential purposes, only one house, as chosen by him will be treated as 'self occupied' and all other houses will be deemed to be let out and the income from such houses would be computed as indicated earlier. In regard to one house treated as used for own residential purposes throughout the year, Section 23 (2) (a) prescribes that annual value of such house shall be taken to be nil, if the conditions mentioned below are satisfied:

- a. the property (or part thereof) is not actually let during whole (or any part) of the previous year; and
- b. no other benefit is derived therefrom

Interest on borrowed capital for self occupied property

The maximum amount of interest permissible in cases of self-occupied property is Rs.1,50,000 (in respect of funds borrowed on or after 01.04.1999). Interest upto Rs.1,50,000 is deductible if the following conditions are satisfied:

- capital is borrowed on or after April 1, 1999 for acquiring or constructing a property;
- the acquisition/construction should be completed within 3 years from the end of the financial year in which capital was borrowed; and

- the person extending the loan certifies that such interest is payable in respect of the amount advanced for acquisition or construction of the house or as refinance of the principal amount outstanding under an earlier loan taken for such acquisition or construction.

In the above context the following further aspects have to be kept in view:

1. If capital is borrowed for any other purpose (e.g. if capital is borrowed for reconstruction, repairs or renewals of a house property), then the maximum deduction on account of interest is Rs.30,000 (and not Rs.1,50,000).
2. There is no stipulation regarding the date of commencement of construction. Consequently, the construction of the residential unit could have commenced before April 1,1999 but, as long as its construction/ acquisition is completed within 3 years, the higher deduction of Rs.1,50,000 would be available. Also, there is no stipulation regarding the construction/acquisition of the residential unit being entirely financed by the loan taken on or after April 1, 1999. It may be so in part. However, the higher deduction upto Rs.1,50,000 can be taken for the loan which has been taken and utilized for construction/acquisition after April 1, 1999. The loan taken prior to April 1, 1999 will carry deduction of interest upto Rs. 30,000 only (CBDT's circular No. 779, dated September 14, 1999).

Rs. 1,50,000 maximum deduction will not be available in the following situations:

- i. if capital is borrowed before April 1, 1999 for purchase, construction, reconstruction, repairs or renewals of a house property;
- ii. if capital is borrowed on or after April 1, 1999 for reconstruction, repairs or renewals of a house property; and
- iii. if capital is borrowed on or after April 1, 1999 but construction is not completed within 3 years from the end of the year in which capital was borrowed.

In the above situations only deduction upto Rs. 30,000 can be claimed.

□

CHAPTER IV

DEDUCTIONS UNDER SECTION 80C IN RELATION TO INVESTMENT IN NEW RESIDENTIAL HOUSE PROPERTY

Deduction under section 80C of the Income tax Act is available for investment in house property subject to the satisfaction of the conditions of that section in regard to qualifying amounts in the following circumstances to the individuals/Hindu undivided families.

Payments made towards the cost of purchase/construction of new residential house property during the previous year are eligible for deduction under section 80C. The following payments qualify for deduction:-

- a. any instalment or part payment of the amount due under any self-financing or other scheme of any development authority, housing board or other authority engaged in the construction and sale of house property on ownership basis; or
- b. any instalment or part payment of the amount due to any company or cooperative society of which the assessee is a shareholder or member towards the cost of the house property allotted to him (it is not applicable if the assessee is not a shareholder or member of the company/cooperative society which provided house to the assessee); or

- c. repayment of the amount borrowed by the assessee from-
 - i. the Central Government or any State Government, or
 - ii. any bank, including a cooperative bank, or
 - iii. the Life Insurance Corporation of India, or
 - iv. the National Housing Bank, or
 - v. any public company formed and registered in India with the main object of carrying on the business of providing long term finance for construction or purchase of houses in India for residential purposes which is eligible for deduction under section 36(1) (viii), or
 - vi. any company in which the public are substantially interest or any cooperative society, where such company or cooperative society is engaged in the business of financing the construction of houses, or
 - vii. the assessee's employer where such employer is an authority or a board or a corporation or any other body established or constituted under a Central or State Act, or
 - viii. the assessee's employer where such employer is a public company or public sector company, or a university established by law or a college affiliated to such university or a local authority or a cooperative society;
- d. stamp duty, registration fee and other expenses for the purpose of transfer of such house property to the assessee.

The following payments are not qualified for the purpose of section 80C :

- a. the admission fee, cost of the share and initial deposit which a shareholder of a company or a member of a cooperative society has to pay for becoming such shareholder or member; or
- b. the cost of any addition or alteration to, or renovation or repair of, the house property which is carried out after issue of the completion certificate in respect of the house property by the authority competent to issue such certificate or after the house property (or any part thereof) has either been occupied by the assessee or any other person on his behalf or been let out; or
- c. any expenditure in respect of which deduction is allowable under the provisions of section 24.

Section 80C provides that in computing the total income of an assessee, deduction shall be provided in respect of various payments/investments made as included in the aforesaid Section subject to a ceiling of Rs.1 lakh on the aggregate amount of such payments/investments.

Section 80C(5) stipulates that in case an assessee transfers the house property referred to above before the expiry of five years from the end of the financial year in which possession of such property is obtained by him, or receives back, whether by way of refund or otherwise, any sum specified above, then no deduction shall be allowed with reference to any of the sums referred to above and the aggregate amount of deductions of income already allowed in respect of the previous year or years shall be deemed to be the income of the assessee of such previous year and shall be liable to tax in the assessment year relevant to such previous year.

□

CHAPTER V

SOME ILLUSTRATIONS

Illustration I

In the context of a residential property, the following information relateable to the asst. year 2008-09 is given for determination of the Gross Annual Value (GAV):

- | | |
|---|----------------------------------|
| (i) Municipal Valuation | Rs. 1,20,000 p.a. |
| (ii) Rent on which property has been let out | Rs. 20,000 p.m. Rs 2,40,000 p.a. |
| (iii) Period for which property remained vacant | 2 months |

The GAV would be Rs. 2,00,000.

In respect of this property, the assessee incurs following expenses during the year 2007-08:

- | | |
|---|------------|
| (A) Municipal taxes (including Rs. 2000 relating to previous year) | Rs. 9,000 |
| (B) Repairs | Rs. 12,000 |
| (C) Interest on money borrowed for construction of the house from Canara Bank | Rs. 28,000 |
| (D) Repayment of Loan for house Construction to Canara Bank | Rs. 24,000 |
| (E) Chowkidar & Mali's pay | Rs. 20,000 |

The other sources of income of A during the previous year are:

(i) Salary	Rs. 1,80,000
(ii) Interest from bank	Rs. 48,000
(iii) Dividends	Rs. 12,000

A has deposited Rs. 24,000 in the Public Provident Fund. Income computation of A inclusive of property income will be as under:

(a) Salary		Rs. 1,80,000
(b) Income from property		
GAV	Rs. 2,00,000	
Less Municipal taxes	9,000	
Net ALV	<u>1,91,000</u>	
Less standard deduction@30%	57,300	
	<u>1,33,700</u>	
Less interest on loan	28,000	Rs. 1,05,700
(c) Income from other sources:		
Bank interest	48,000	
Dividends	<u>12,000</u>	Rs. 60,000
Gross Total Income		Rs. 3,45,700
Less Deduction u/s 80C:		
PPF Contribution	24,000	
Repayment of loan for		
House construction	<u>24,000</u>	Rs. 48,000
Total Income		Rs. 2,97,700
Tax there on :		
On first Rs. 110000	NiL	
On next Rs. 40,000 @ 10%	4,000	
On next Rs. 1,00,000 @ 20%	20,000	
On balance Rs. 47,700 @ 30%	<u>14,310</u>	
Total tax	Rs. 38,310	Rs. 38,310
Add: Education Cess on Income Tax @ 2%		766
Secondary and Higher Education Cess		
on Income Tax @ 1%		<u>383</u>
Total amount chargeable		Rs. 39,459

Note: (i) No standard deduction from Salaries is available from asst. year 2006-07 onwards.

(ii) No deduction under Section 80L is available from asst. year 2006-07 onwards.

(iii) No rebate under Section 88 is available from asst. year 2006-07 onwards.

(iv) Expenses on repairs and salaries of chowkidar and mali are covered by the standard deduction of 30% and no separate deduction for these expenses are permissible.

Illustration II

'A' who works in a Limited Company in Mumbai has a house property in Kanpur. He has come with his family on transfer to Mumbai where he stays in a rented accommodation. He has only one house at Kanpur which remained unoccupied throughout the year 2007-08 since he could not arrange for a suitable tenant. The rent of a similar property in Kanpur will be Rs. 5000/- p.a. The municipal valuation is Rs. 30,000/- and he has paid municipal taxes of Rs. 2,500/-. He had taken a loan of Rs. 2,00,000 for reconstruction of the property and interest payable thereon is Rs. 25,000/-. What will be his income from House Property?

Assessment year 2008-09

Annual value of the House at Kanpur (since the assessee owns only one house which he could not use throughout the year because of his employment at Mumbai). : Nil

Less: Interest on money borrowed : Rs. 25,000

Loss from house property : Rs. 25,000

Note: Only interest on money borrowed for construction, acquisition, repair and reconstruction is allowed in respect of such property, subject to a maximum of Rs. 30,000/- or Rs. 1,50,000/- as the case may be.

Illustration III

Asst. year 2009-10

Mr. A is owner of two house properties, which are let out. The tentative details for the financial year 2008-09 are as follows:

	Property A	Property B
Municipal valuation	60,000	50,000
Fair rent	70,000	60,000
Actual rent received p.m.	SOP	10,000
Municipal tax paid by the owner (including Rs. 1000 of last year)	4000	10,000
Interest on loan taken for the marriage of his daughter (Property B is mortgaged)		20,000
Interest on loan for Renovation	40,000	-
Interest on loan borrowed for construction (started after 01.04.99 and completed before 1.4.2003)		1,60,000

Property B was lying vacant for two months during the year. The assessee has appointed a Caretaker for both the properties and he is paid a salary of Rs. 1000/- per month.

The assessee had another house which was given on rent (upto the A.Y 1999-2000). In 2000-01, it was sold. When it was let out, the assessee could not realize rent of Rs. 25,000 for the A.Ys 1997-98 and 1998-99. However, after a court order, the tenant has now paid the same.

On account of the said court orders, the assessee has also received Rs. 1,00,000/- as arrears of rent for other previous years also.

COMPUTATION OF INCOME FROM HOUSE PROPERTY

Property 'A'

As the house was used for self occupation, the Annual value shall be taken as Nil and no further deduction is allowed, except interest on borrowed capital. However, as the capital was borrowed for renovating the house, maximum deduction available is Rs. 30,000/-. Computation of income will be:

	Rs.
Annual Value	: Nil
Less: Interest on borrowed capital (restrict to Rs. 30,000)	: Rs. 30,000
Net loss	: Rs. 30,000

Property 'B'

Annual value (being the rent received) (on the basis of actual rent received 10,000 x 10)	: 1,00,000
Less: Municipal tax actually paid	: 10,000
Net adjusted annual value	: 90,000
Less: Deduction under section 24	

(i) Deduction u/s 24(a)	:	27,000
(ii) Interest on capital borrowed	:	<u>1,60,000</u>
(iii) Total deduction (i) + (ii)	:	1,87,000
Net loss:	:	97,000
Loss from House Property A	:	30,000
Loss from House Property B	:	97,000
Total loss from house properties A and B	:	1,27,000

Note:

- Annual value of let out property: The annual value will be the actual rent received during the year, as it is higher than the Municipal Valuation and fair rent.
- Municipal Taxes: The deduction is on the basis of actual payment. Therefore, it is immaterial that part of it relates to the earlier years.
- Interest on capital borrowed for construction:
 - In the case of self-occupied property - as the loan was for renovation, the deduction on account of interest is restricted to Rs. 30,000/-
 - In the case of let out house, there is no restriction on the interest to be allowed as deduction. Here, the borrowal may be for repairs, renewals, construction, acquisition etc.
- Interest on the loan borrowed for the marriage of the daughter cannot be allowed as deduction, because the purpose of loan is not for construction, repairs, etc., of the house property.
- Payment of salary to caretaker cannot be allowed as deduction as it is covered in standard deduction @ 30%.

- Unrealised rent: Such rent will be assessed in the year of receipt even if the assessee may not own the house any more. No deduction is available for this income.
- Arrears: Similarly, arrears are also to be assessed in the year of receipt. The only deduction to be allowed from this is at flat rate of 30% towards repairs etc.

Unrealised rent to be treated as : Rs. 25,000
income of this year

Add: Arrears of rent received : Rs.1,00,000

Less: Deduction towards
repairs etc. @ 30% : Rs. 30,000 Rs. 70,000
Rs. 95,000

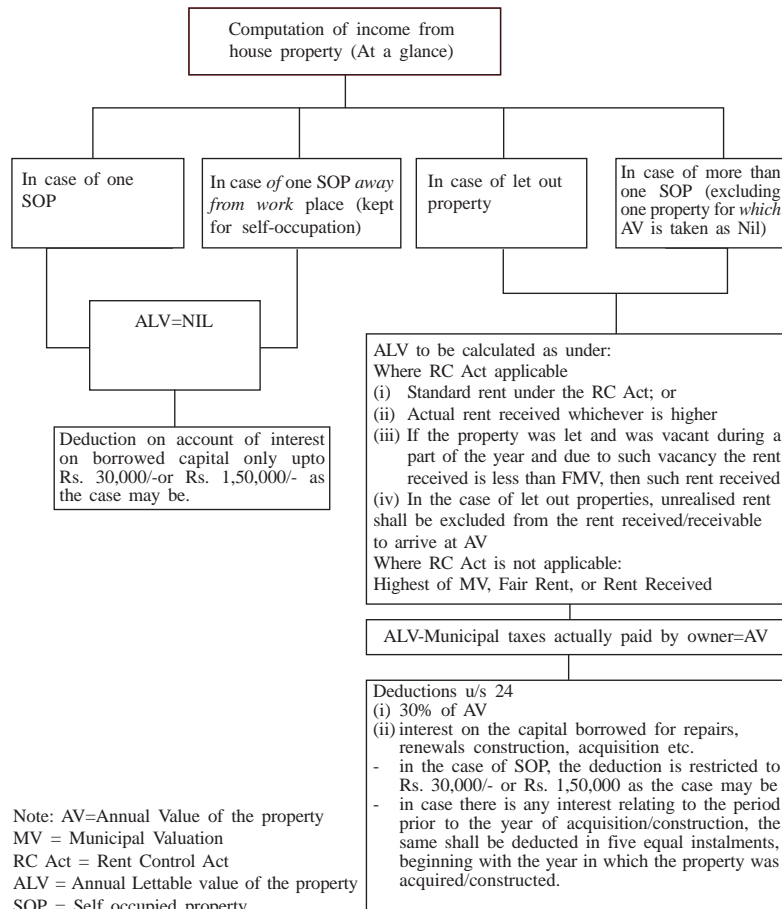
INCOME UNDER THE HEAD HOUSE PROPERTY

Net Loss for the year against properties A and B	:	Rs.1,27,000
Less: Income to be assessed in this year as above	:	<u>Rs. 95,000</u>
Net Loss to be carried forward to next year for being set off as per the provisions of Section 71B	:	Rs. 32,000

□

ANNEXURE

CHAPTER VI PROVISIONS RELATING TO TAXATION OF INCOME FROM HOUSE PROPERTIES AT A GLANCE



Note: AV=Annual Value of the property
MV = Municipal Valuation
RC Act = Rent Control Act
ALV = Annual Lettable value of the property
SOP = Self occupied property

Appendix: Sections 22 to 27 of the Income tax Act 1961 as on today are annexed

Sections of the I.T. Act 1961 concerning computation of Income from House Property (Sections 22 to 27 of the I.T. Act, 1961)

Income from house property

22. The annual value of property consisting of any buildings 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”.

Annual value how determined

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 him) 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.

- (2) Where the property consists of a house or part of a house which-
- (a) is in the occupation of the owner for the purposes of his own residence; or
 - (b) cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him,

the annual value of such house or part of the house shall be taken to be *nil*.

- (3) The provisions of sub-section (2) shall not apply if-
- (a) the house or part of the house is actually let during the whole or any part of the previous year; or
 - (b) any other benefit therefrom is derived by the owner.

- (4) Where the property referred to in sub-section (2) consists of more than one house-
- (a) the provisions of that sub-section shall apply only in respect of one of such houses, which the assessee may, at his option, specify in this behalf;
 - (b) the annual value of the house or houses, other than the house in respect of which the assessee has exercised an option under clause (a), shall be determined under sub-section (1) as if such house or houses had been let.

Deductions from income from house property.

24. Income chargeable under the head "Income from house property" shall be computed after making the following deductions, namely:-
- (a) a sum equal to thirty per cent of the annual value;
 - (b) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital:

Provided that in respect of property referred to in sub-section (2) of section 23; the amount of deduction shall not exceed thirty thousand rupees:

Provided further that where the property referred to in the first proviso is acquired or constructed with capital borrowed on or after the 1st day of April, 1999 and such acquisition or construction is completed *within three years from the end of the financial year in which capital was borrowed*, the amount of deduction under this clause shall not exceed one lakh fifty thousand rupees.

Explanation.-Where the property has been acquired or constructed with borrowed capital, the interest, if any, payable on such capital borrowed for the period prior to the previous year in which the property has been acquired or constructed, as reduced by any part thereof allowed as deduction under any other provision of this Act, shall be deducted under this clause in equal instalments for the said previous year and for each of the four immediately succeeding previous years:

Provided also that no deduction shall be made under the second proviso unless the assessee furnishes a certificate, from the person to whom any interest is payable on the capital borrowed, specifying the amount of interest payable by the assessee for the purpose of such acquisition or construction of the property, or, conversion of the whole or any part of the capital borrowed which remains to be repaid as a new loan.

Explanation.-For the purposes of this proviso, the expression “new loan” means the whole or any part of a loan taken by the assessee subsequent to capital borrowed, for the purpose of repayment of such capital.

Amount not deductible from income from house property.

25. Notwithstanding anything contained in section 24, any interest chargeable under this Act which is payable outside India (not being interest on a loan issued for public subscription before the 1st day of April, 1938), on which tax has not been paid or deducted under Chapter XVII-B and in respect of which there is no person in India who may be treated as an agent under section 163 shall not be deducted in computing the income chargeable under the head “Income from house property”.

Special provision for cases where unrealised rent allowed as deduction is realised subsequently.

- 25A. Where a deduction has been made under clause (x) of sub-section (1) of section 24 as it stood immediately before its substitution by the Finance Act, 2001 in the assessment for any year in respect of rent from property let to a tenant which the assessee cannot realise and subsequently during any previous year the assessee has realised any amount in respect of such rent, the amount so realised shall be deemed to be income chargeable under the head “Income from house property” and accordingly charged to income-tax (without making any deduction under section 23 or section 24 as it stood immediately before its substitution by the Finance Act, 2001) as the income of that previous year, whether the assessee is the owner of that property in that year or not.

Unrealised rent received subsequently to be charged to income-tax.

- 25AA. Where the assessee cannot realise rent from a property let to a tenant and subsequently the assessee has realised any amount in respect of such rent, the amount so realised shall be deemed to be income chargeable under the head “Income from house property” and accordingly charged to income-tax as the income of that previous year in which such rent is realised whether or not the assessee is the owner of that property in that previous year.

Special provision for arrears of rent received.

- 25B. Where the assessee-
- (a) is the owner of any property consisting of any buildings or lands appurtenant thereto which has been let to a tenant; and

(b) has received any amount, by way of arrears of rent from such property, not charged to income-tax for any previous year,

the amount so received, after deducting a sum equal to thirty per cent of such amount, shall be deemed to be the income chargeable under the head "Income from house property" and accordingly charged to income-tax as the income of that previous year in which such rent is received, whether the assessee is the owner of that property in that year or not.

Property owned by co-owners.

26. Where property consisting of building or buildings and lands appurtenant thereto is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with sections 22 to 25 shall be included in his total income.

Explanation.-For the purposes of this section, in applying the provisions of sub-section (2) of section 23 for computing the share of each such person as is referred to in this section, such share shall be computed, as if each such person is individually entitled to the relief provided in that sub-section.

"Owner of house property", "annual charge", etc., defined.

27. For the purposes of sections 22 to 26 -

(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 impartible 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, company or other association of persons to whom a building or part thereof is allotted or leased under a house building scheme of the society, company or association, as the case may be, shall be deemed to be the owner of that building or part thereof;

(iiia) a person who is allowed to take or retain 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, 1882 (4 of 1882), shall be deemed to be the owner of that building or part thereof;

(iiib) 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 any such transaction as is referred to in clause (f) of section 269UA, shall be deemed to be the owner of that building or part thereof;

(iv) taxes levied by a local authority in respect of any property shall be deemed to include service taxes levied by the local authority in respect of the property.

□