

Income from House Property
Sections 22 to 27

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 two houses—
- (a) the provisions of that sub-section shall apply only in respect of two 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 or houses 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.

(5) Where the property consisting of any building or land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period up to two years from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be *nil*.

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 or, as the case may be, the aggregate of 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 five years from the end of the financial year in which capital was borrowed, the amount of deduction or, as the case may be, the aggregate of the amounts of deduction under this clause shall not exceed two lakh 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 the capital borrowed, for the purpose of repayment of such capital:

Provided also that the aggregate of the amounts of deduction under the first and second provisos shall not exceed two lakh rupees.

Amounts 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 arrears of rent and unrealised rent received subsequently.

25A.

(1) The amount of arrears of rent received from a tenant or the unrealised rent realised subsequently from a tenant, as the case may be, by an assessee shall be deemed to be the income from house property in respect of the financial year in which such rent is received or realised, and shall be included in the total income of the assessee under the head "Income from house property", whether the assessee is the owner of the property or not in that financial year.

(2) A sum equal to thirty per cent of the arrears of rent or the unrealised rent referred to in sub-section (1) shall be allowed as deduction.

Property owned by co-owners.

26. Where property consisting of buildings 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;
- (iii a) 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;
- (iii b) 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) [***]
- (v) [***]
- (vi) 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.

Clubbing of Income

Income of individual to include income of spouse, minor child, etc.

64.

(1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly—

- (i) [Omitted by the Finance Act, 1992, w.e.f. 1-4-1993].
- (ii) to the spouse of such individual by way of salary, commission, fees or any other form of remuneration whether in cash or in kind from a concern in which such individual has a substantial interest :

Provided that nothing in this clause shall apply in relation to any income arising to the spouse where the spouse possesses technical or professional qualifications and the income is solely attributable to the application of his or her technical or professional knowledge and experience ;

- (iii) [Omitted by the Finance Act, 1992, w.e.f. 1-4-1993].
- (iv) subject to the provisions of clause (i) of section 27, to the spouse of such individual from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart ;
- (v) [Omitted by the Finance Act, 1992, w.e.f. 1-4-1993].
- (vi) to the son's wife, of such individual, from assets transferred directly or indirectly on or after the 1st day of June, 1973, to the son's wife by such individual otherwise than for adequate consideration;
- (vii) to any person or association of persons from assets transferred directly or indirectly otherwise than for adequate consideration to the person or association of persons by such individual, to the extent to which the income from such assets is for the immediate or deferred benefit of his or her spouse ; and
- (viii) to any person or association of persons from assets transferred directly or indirectly on or after the 1st day of June, 1973, otherwise than for adequate consideration, to the person or association of persons by such individual, to the extent to which the income from such assets is for the immediate or deferred benefit of his son's wife.

Explanation 1.—For the purposes of clause (ii), the individual in computing whose total income the income referred to in that clause is to be included, shall be the husband or wife whose total income (excluding the income referred to in that clause) is greater ; and where any such income is once included in the total income of either spouse, any such income arising in any succeeding year shall not be included in the total income of the other spouse unless

the Assessing Officer is satisfied, after giving that spouse an opportunity of being heard, that it is necessary so to do.

Explanation 2.—For the purposes of clause (ii), an individual shall be deemed to have a substantial interest in a concern—

- (i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of his relatives ;
- (ii) in any other case, if such person is entitled, or such person and one or more of his relatives are entitled in the aggregate, at any time during the previous year, to not less than twenty per cent of the profits of such concern.

Explanation 2A.—[Omitted by the Finance Act, 1992, w.e.f. 1-4-1993].

Explanation 3.—For the purposes of clauses (iv) and (vi), where the assets transferred directly or indirectly by an individual to his spouse or son's wife (hereafter in this *Explanation* referred to as "the transferee") are invested by the transferee,—

- (i) in any business, such investment being not in the nature of contribution of capital as a partner in a firm or, as the case may be, for being admitted to the benefits of partnership in a firm, that part of the income arising out of the business to the transferee in any previous year, which bears the same proportion to the income of the transferee from the business as the value of the assets aforesaid as on the first day of the previous year bears to the total investment in the business by the transferee as on the said day ;
- (ii) in the nature of contribution of capital as a partner in a firm, that part of the interest receivable by the transferee from the firm in any previous year, which bears the same proportion to the interest receivable by the transferee from the firm as the value of investment aforesaid as on the first day of the previous year bears to the total investment by way of capital contribution as a partner in the firm as on the said day, shall be included in the total income of the individual in that previous year.

(1A) In computing the total income of any individual, there shall be included all such income as arises or accrues to his minor child, not being a minor child suffering from any disability of the nature specified in section 80U :

Provided that nothing contained in this sub-section shall apply in respect of such income as arises or accrues to the minor child on account of any—

- (a) manual work done by him; or
- (b) activity involving application of his skill, talent or specialised knowledge and experience.

Explanation.—For the purposes of this sub-section, the income of the minor child shall be included,—

- (a) where the marriage of his parents subsists, in the income of that parent whose total income (excluding the income includible under this sub-section) is greater ; or

(b) where the marriage of his parents does not subsist, in the income of that parent who maintains the minor child in the previous year, and where any such income is once included in the total income of either parent, any such income arising in any succeeding year shall not be included in the total income of the other parent, unless the Assessing Officer is satisfied, after giving that parent an opportunity of being heard, that it is necessary so to do.

(2) Where, in the case of an individual being a member of a Hindu undivided family, any property having been the separate property of the individual has, at any time after the 31st day of December, 1969, been converted by the individual into property belonging to the family through the act of impressing such separate property with the character of property belonging to the family or throwing it into the common stock of the family or been transferred by the individual, directly or indirectly, to the family otherwise than for adequate consideration (the property so converted or transferred being hereinafter referred to as the converted property), then, notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, for the purpose of computation of the total income of the individual under this Act for any assessment year commencing on or after the 1st day of April, 1971,—

(a) the individual shall be deemed to have transferred the converted property, through the family, to the members of the family for being held by them jointly ;

(b) the income derived from the converted property or any part thereof shall be deemed to arise to the individual and not to the family ;

(c) where the converted property has been the subject-matter of a partition (whether partial or total) amongst the members of the family, the income derived from such converted property as is received by the spouse on partition shall be deemed to arise to the spouse from assets transferred indirectly by the individual to the spouse and the provisions of sub-section (1) shall, so far as may be, apply accordingly :

Provided that the income referred to in clause (b) or clause (c) shall, on being included in the total income of the individual, be excluded from the total income of the family or, as the case may be, the spouse of the individual.

*Explanation .—*For the purposes of sub-section (2),—

"property" includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale thereof and where the property is converted into any other property by any method, such other property.

*Explanation 2.—*For the purposes of this section, "income" includes loss.