

Handbook on FAQ's on House Property under Income-tax Act, 1961

Handbook on FAQ's on House Property under Income-tax Act, 1961



Direct Taxes Committee

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

New Delhi



Handbook on FAQ's on House Property under Income-tax Act, 1961



Direct Taxes Committee
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

© The Institute of Chartered Accountants of India

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form, or by any means, electronic mechanical, photocopying, recording, or otherwise, without prior permission, in writing, from the publisher.

First Edition : February , 2023

Committee/Department : Direct Taxes Committee

Email : dtc@icai.in

Website : www.icai.org

Published by : Direct Taxes Committee on behalf of the
Institute of Chartered Accountants of India,
ICAI Bhawan, Post Box No. 7100,
Indraprastha Marg, New Delhi - 110 002.

Foreword

The Direct Taxes Committee (DTC) of the Institute of Chartered Accountants of India (ICAI) is one of the important Committees of the ICAI which is engaged in the matters related to direct taxes and makes representations to the Government, Central Board of Direct Taxes and at other appropriate forums from time to time on various legislative amendments and issues concerning direct taxes. One of the main activities of the Committee is to disseminate knowledge and honing skills of the membership in the area of direct taxation.

The Institute of Chartered Accountants of India (ICAI) has always been a forerunner in taking initiatives towards educating and supporting the various stakeholders in the field of Direct Taxation in the best possible manner. As a partner in nation-building, the ICAI always strives for smooth execution of the rules, regulations and laws as introduced and amended from time to time by the Government. Through its technical expertise and other resources, ICAI tries its best to let the members keep up to date with regular amendments.

I am happy to note that to guide the members in discharging their obligations in a timely and effective manner the Direct Taxes Committee of ICAI has come out with this publication namely “**Handbook on FAQ’s on House Property under Income-tax Act, 1961**” This Handbook covers the questions in form of FAQ’s related to the Income charged under the head Income from House Property. Section 22 of the Income-tax Act 1961 defined the scope of income charged under this head and sections 23 to 27 of the Act. governs with the provisions relating to computation of income falling under this head. Income from House Property is the only head under Income-tax Act 1961 which is charged on Notional basis instead of real income.

I appreciate and commend the efforts put in by CA. Chandrashekhar V. Chitale, Chairman, Direct Taxes Committee, CA. Raj Chawla, Vice-Chairman, Direct Taxes Committee and all other members of the Committee who have worked sincerely for bringing out this handbook in a timely manner.

I am confident that this publication will be a useful resource for the members.

Date: 06.02.2023

CA. (Dr.) Debashis Mitra

Place: New Delhi

President, ICAI

Preface

Despite the fact that the profession of Chartered Accountancy has diversified in many ways, practice in the area of direct taxation is still one of the important areas for the Chartered Accountants. Our members keep themselves abreast with taxation laws and have attained commanding heights in this area.

Direct Tax is one of the most dynamic subjects for the chartered Accountants. The direct tax laws of the country undergo significant changes every year with the passing of the annual Finance Act. Apart from these major amendments which take place every year, notifications and circulars are issued by the CBDT from time to time to implement the provisions of the Act and clarify issues regarding the meaning and scope of certain provisions. Further, decisions are pronounced by various courts interpreting the provisions of direct tax laws.

In view of such frequent amendments and to provide quick guidance on this matter to the members, this publication/write up would prove to be very useful. We hope, it would enable the members to better understand the said provisions.

Under the aforesaid circumstances, we at the Direct Taxes Committee thought it fit to bring out this brief publication namely **“Handbook on FAQ's on House Property”** as a handy tool to assist the fraternity to make proper compliance of the provisions and procedures in more objective manner

We are sincerely thankful to CA. (Dr.) Debashis Mitra, President, ICAI and CA. Aniket Sunil Talati, Vice-President, ICAI for being guiding force behind all initiatives being taken by the Committee.

We are extremely thankful and appreciate the efforts of our CA Prashanth K L who provided valuable inputs for this publication. We are pleased to place on record our sincere gratitude for the involvements and contributions CA. Cotha S. Srinivas, Central Council Member and all the Committee members and our dear Council Colleagues of ICAI.

We are sure that this effort of DTC of ICAI would go a long way in assisting our members in making utmost compliance of the provisions.

CA. Raj Chawla
Vice-Chairman,
Direct Taxes Committee, ICAI

CA. Chandrashekhar V. Chitale
Chairman,
Direct Taxes Committee, ICAI

Date: 06.02.2023

Place: New Delhi

Handbook on FAQ's on House Property under Income-tax Act, 1961

1. What income is charged to income tax under the head 'Income from house property'?

As per section 22 of the Income Tax Act 1961, the rental income from property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, shall be chargeable to income-tax under the head "Income from house property".

However, income from portions of property occupied for the purposes of assessee's business or profession, the profits of which are chargeable to income-tax is not taxable under the head "Income from house property".

2. What is self-occupied property?

A self-occupied property means a property which is occupied by the taxpayer for his residence (and not for commercial purpose). Whereas up to assessment year 2019-20, if any assessee occupied more than one property, only one could be considered as a self-occupied property and the rest had to be considered as let-out or deemed let out.

However, w.e.f. Assessment Year 2020-21, a person can claim two properties as self-occupied house properties subject to certain conditions (discussed in Q-4).

3. How to compute income from self-occupied property?

Income chargeable to tax under the head "Income from house property" in case of a self-occupied property is computed in following manner:

| Particulars | Amount |
|--|---------------|
| Gross annual value | Nil |
| Less:- Municipal taxes paid during the year | Nil |
| Net Annual Value (NAV) | Nil |
| Less:- Deduction under section 24 | |
| ➤ Deduction under section 24(a) @ 30% of NAV | Nil |
| ➤ Deduction under section 24(b) on account of interest on borrowed capital | (XXXX) |
| Income from house property | (XXXX) |

Handbook on FAQ's on House Property under Income-tax Act, 1961

From the above computation it can be observed that "Income from house property" in the case of a self-occupied property will be either Nil (if there is no interest on housing loan) or negative (i.e., loss) to the extent of interest on housing loan. Deduction in respect of interest on housing loan in case of a self-occupied property cannot exceed Rs. 2,00,000 or Rs. 30,000, as the case may be (discussed in Q 8) in the old regime (Impact of new regime is discussed in Q 88). Deduction of municipal taxes paid during the year will not be allowed in case of self-occupied property.

4. Can a property not used for residence by the taxpayer be treated as self-occupied property?

If the following conditions are satisfied, then the property can be treated as self-occupied and the annual value of a property will be "Nil", even though the property is not occupied by the owner throughout the year for his residence:

- a) The taxpayer owns the property;
- b) Such property cannot actually be occupied by him owing to his employment, business or profession carried on at any other place and he has to reside at that other place in a building not owned by him;
- c) The property mentioned in (a) above (or part thereof) is not actually let out at any time during the year;
- d) No other benefit is derived from such property.

5. Can a partnership firm, company or trust claim benefit of Self occupied Property?

No. The benefit of exemption of self-occupied property is available only to individuals and HUF. The benefit of self-occupied property is not available to a company, partnership firm, trust or other classes of assesses.

CIT V. Hariprasad Bhojnagarwala (2012) 342 ITR 69

6. What will be the tax implications if a person occupies more than one property for his residence? Can he treat all the properties as self-occupied (SOP) and claim gross annual value (GAV) as Nil?

Handbook on FAQ's on House Property under Income-tax Act, 1961

The SOP benefit (i.e., treating property as SOP and claiming GAV as Nil) is available only in respect of one property occupied by the owner for his residence.

However, w.e.f. Assessment 2020-21, a person can claim two properties as self-occupied house properties subject to certain conditions. Thus, from Assessment Year 2020-21 onwards any two houses can be treated as self-occupied properties subject to fulfilment of specified conditions (discussed in Q-4).

7. If any assessee owned three house property which are occupied by him with his family. Is there any tax implication for financial Year 2022-23?

Yes, as already discussed w.e.f., Assessment Year 2020-21, a person can claim two properties as self-occupied house properties. Thus, any two out of the three house properties (as per assessee's choice) shall be treated as self-occupied and the remaining property shall be treated as deemed let-out and will be taxed accordingly.

8. In case of a self-occupied property, how much of interest on housing loan can be claimed as deduction?

In the case of self-occupied property, deduction under section 24(b) cannot exceed Rs.2,00,000 or Rs. 30,000 (as the case may be) in the old regime. (Impact of new regime discussed in Q 88).

If all the following conditions are satisfied, then the limit in respect of interest on borrowed capital will be Rs.2,00,000:

- Capital is borrowed on or after 1-4-1999.
- Capital is borrowed for the purpose of acquisition or construction (i.e., not for repair, renewal, reconstruction) of house property.
- Acquisition or construction is completed within 5 years from the end of the financial year in which the capital was borrowed.
- 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 re-finance of the principal amount outstanding under an earlier loan taken for acquisition or construction of the property.

Handbook on FAQ's on House Property under Income-tax Act, 1961

If any of the above condition is not satisfied, then the limit of Rs. 2,00,000 will be reduced to Rs. 30,000.

Deduction from Assessment Year 2017-18

As per Section 80EE of the Income-tax Act, deduction of up to Rs. 50,000 is allowed to an Individual towards interest on loan taken for acquisition of a residential house property. However, the deduction is allowed subject to certain condition (discussed in Q 86).

Deduction from Assessment Year 2020-21

With an objective to provide an impetus to the 'Housing for all' initiative of the Government and to enable the home buyer to have low-cost funds at his disposal, the Finance (No. 2) Act, 2019 has inserted a new Section 80EEA under the Income-tax Act for those individuals who are not eligible to claim deduction under Section 80EE. An individual can claim deduction up to Rs. 150,000 under Section 80EEA subject to following conditions:

- a) Loan should be sanctioned by the financial institution during the period beginning on 01-04-2019 and ending on the 31-03-2022;
- b) Stamp duty value of residential house property should not exceed Rs. 45 lakhs;
- c) The assessee should not own any residential house property on the date of sanction of loan; and
- d) The assessee should not be eligible to claim deduction under Section 80EE.

Hence, an individual who does not meet the criteria of Section 80EE shall now be eligible to claim deduction under Section 80EEA of up to Rs. 150,000 in addition to deduction under section 24(b).

9. If the assessee has 2 self-occupied properties, is the limit of Rs.30,000/Rs.2,00,000 available per property, or available for both the properties combined?

The limit on deduction is available in aggregate, that is, the limit shall be computed to both the houses. The aggregate of interest deduction cannot exceed the limit of Rs.30,000 or Rs.2,00,000 as the case may be.

10. How to compute income from a property which is self-occupied for part of the year and let out for part of the year?

At times a property may be let-out for some time during the year and is self-occupied for the remaining period (i.e., let-out as well as self-occupied during the year). As per the provisions of Section 23(3), For the purpose of computation of income chargeable to tax under the head "Income from house property", such a property will be treated as let-out throughout the year and income will be computed accordingly. If a single unit of a property is self-occupied for part of the year and let-out for the remaining part of the year, then the Reasonable Expected Rent (ER) for the whole year shall be taken into consideration for the purpose of determining the GAV. The ER for the whole year shall be compared with the actual rent received/receivable for the period it was let out and whichever is higher is considered as the GAV. However, municipal taxes for the whole year is allowed as deduction, provided it is paid by the owner during the previous year.

11. How to compute income from a property, when part of the property is self-occupied and part is let-out?

A house property may consist of two or more independent units, one of which is self-occupied and the remaining are used for any other purpose (i.e., let-out or used for own business). Income from such property will be computed in the following manner:

- a) Part/unit which is occupied by the taxpayer for his residence throughout the year will be treated as an independent property and income from such a part/unit will be computed in the manner as discussed in case of a self-occupied property.
- b) Part/unit which is let out will be treated as an independent property and income from such a part/unit will be computed in the manner as discussed in case of let out property.
- c) Property tax paid and interest on loan shall be bifurcated proportionally between the self-occupied unit and let out unit, and income will be computed after giving effect to this.

12. On what basis should municipal rent, fair rent, standard rent, property tax paid, interest on loan taken, be apportioned between self-occupied unit and let out unit, or between two let-out units?

Handbook on FAQ's on House Property under Income-tax Act, 1961

Municipal rent, fair rent, standard rent, property tax paid, interest on loan taken should be apportioned either on plinth area, or built-up floor area, or any other reasonable basis.

13. How to compute annual value of house property held as 'Stock-in-trade'?

As per Section 23(5), house property held as stock-in-trade which has not been let-out during the year shall be 'Nil' up to 2 years from the end of previous year in which certificate of completion is obtained from the competent authority. If the property has been let out, then it shall be assessable as such. After the concessional 2 years, normal provisions in relation to house property shall be liable.

14. How to compute income from a property which is let out throughout the year?

Income chargeable to tax under the head "Income from house property" in the case of a let-out property is computed in the following manner:

| Particulars | Amount |
|--|---------------|
| Gross annual value | XXXX |
| Less:- Municipal taxes paid during the year | XXXX |
| Net Annual Value (NAV) | XXXX |
| Less:- Deduction under section 24 | |
| ➤ Deduction under section 24(a) at 30% of NAV | (XXXX) |
| ➤ Deduction under section 24(b) on account of interest on borrowed capital | (XXXX) |
| Income from house property | XXXX |

15. How to compute 15. Gross annual value of a property which is let-out throughout the year?

As per Section 23(1), Gross annual value of a property which is let-out throughout the year is determined in the following manner :

Step 1: Compute reasonable expected rent of the property

Step 2: Compute actual rent of the property

Step 3: Compute gross annual value (Higher of Step 1 and step 2)

Handbook on FAQ's on House Property under Income-tax Act, 1961

16. How to compute reasonable expected rent while computing gross annual value of a property which is let-out throughout the year. ?

Reasonable expected rent will be higher of the following:

Municipal value of the property ; or

Fair rent of the property .

If a property is covered under Rent Control Act, then the reasonable expected rent cannot exceed standard rent .

17. What is the meaning of Municipal Value?

For collection of municipal taxes, local authorities make periodic survey of all buildings in their jurisdiction. Such value determined by the municipal authorities in respect of a property, is called as municipal value of the property.

18. What is the meaning of Fair Rent?

It is the reasonable expected rent which the property can fetch. It can be determined on the basis of rent fetched by a similar property in the same or similar locality.

19. What is the meaning of Standard Rent?

It is the maximum rent which a person can legally recover from his tenant under the Rent Control Act. Standard rent is applicable only in case of properties covered under Rent Control Act.

20. How to compute the gross annual value in the case of a property which is vacant for some time during the year?

As per section 23(1)(c), where the property or any part of the property is let out 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 reasonable expected rent than the actual rent so received or receivable (as reduced by the vacant allowance) shall be considered to be the Gross Annual Value of the property. If the expected reasonable rent is more than the rent which would have been receivable if there was no vacancy, then expected reasonable rent would be considered to be the Gross Annual Value of the property.

21. How to compute actual rent while computing gross annual value of a property which is let-out throughout the year?

Actual rent means the rent for which the property is let out during the year. While computing actual rent, rent pertaining to vacancy period is not to be deducted. However, unrealised rent is to be deducted from actual rent if conditions specified in this regard are satisfied (discussed in Q25).

22. If the tenant incurs and bears some repair expenses in connection with the house property, will that be added to actual rent?

If the tenant incurs and bears some repair expenses, the same shall not be allowed as a deduction to the owner, and neither shall it be added to actual rent. That amount shall not be taxable.

Tushar Shantilal Kothari vs. Dy.CIT (I.T.A. No. 1727/Ahd/2010), CIT v. Parbutty Churn Law [1965] 57 ITR 609 (Cal.)

23. What is unrealised rent?

Unrealised rent is the rent of the property which the owner of the property could not recover from the tenant, i.e., rent not paid by the tenant.

24. When should unrealised rent be deducted from actual rent for the year?

If following conditions stipulated by Section 23, read with Rule 4 are satisfied, then unrealised rent can be deducted from actual rent of the year:

- The tenancy is bona fide.
- The defaulting tenant has vacated the property, or steps have been taken to compel him to vacate the property.
- The defaulting tenant is not in occupation of any other property of the taxpayer.
- The taxpayer has taken all steps to recover such amount, including legal proceedings or he satisfies the Assessing Officer that legal proceedings would be useless.

25. Is there any expenses allowable in case of let-out property while computing income chargeable to tax under the head "Income from house property?"

While computing income chargeable to tax under the head "Income from house property" in the case of a let-out property, only following items can be claimed as deductions from gross annual value. In other words, deduction cannot be claimed for any expenditure incurred by the taxpayer other than following:

- Deduction on account of municipal taxes paid by the taxpayer during the year
- Deduction under section 24(a) @ 30% of Net Annual Value.
- Deduction under section 24(b) on account of interest on capital borrowed for the purpose of purchase, construction, repair, renewal or reconstruction of the property.

Note: Only municipal taxes paid by the owner during the year can be deducted, hence, municipal taxes due but not paid during the year cannot be deducted or taxes borne by the tenant cannot be deducted. But municipal taxes due for previous years, which have been paid in the current year, can be claimed as a deduction by the taxpayer.

26. In the case of a let-out property, how much interest on housing loan can be claimed as deduction?

While computing income chargeable to tax under the head "Income from house property" in case of a let-out property, the taxpayer can claim deduction under section 24(b) on account of interest on loan taken for the purpose of purchase, construction, repair, renewal or reconstruction of the property.

In case of a let-out property, there is no limit on the quantum of interest which can be claimed as deduction under section 24(b). However, in case of a self-occupied property, limit is Rs. 2,00,000 or Rs. 30,000, as the case may be.

27. For what purpose interest on borrowed capital allowed u/s 24(b) While computing income chargeable to tax under the head "Income from house property" in the case of a let-out property?

Handbook on FAQ's on House Property under Income-tax Act, 1961

Deduction of interest u/s 24(b) is allowed in computing the tax under the head "Income from House Property" where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital.

28. Can interest paid on loans taken from friends and relatives be claimed as deduction while calculating house property income?

Yes, if the loan is taken for purchase, construction, repair, renewal or reconstruction of the house. However, if the loan is taken for personal or other purposes, then the interest on such loan cannot be claimed as deduction.

29. What is the additional requirement of claiming deduction for interest which is allowable u/s 24(b)?

For interest to be claimable u/s 24(b), in addition to the loan meeting the requirement mentioned in the section (discussed above), a certificate from the person from whom the amount is borrowed stating the interest accrued must be furnished.

30. What are the amounts not deductible from income from house property?

Except for municipal taxes paid, 30% deduction on gross annual value, and interest on housing loan, no other amount can be deductible from income from house property. However, Notwithstanding anything contained in section 24, any interest 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".

31. Whether interest on interest (i.e penal interest) is allowed as deduction u/s 24b?

No, interest on interest is not allowed as deduction u/s 24b for the purpose of computation taxable income from house property.

Akash & Ambar Trust Vs CIT (Cal) 268 ITR 93

32. Whether interest paid on any fresh loan taken for repayment of any earlier loan which was taken for the purpose of house property is allowed as deduction?

Yes, where any fresh loan is taken for repayment of earlier loan and earlier loan was taken for the purpose of house property than interest of fresh loan shall be allowed as deduction.

DCIT Vs M/s. Patton Developers Pvt. Ltd. (ITAT Kolkata) [I.T.A No. 1043/Kol/2014

33. When interest u/s 24b is allowed?

Interest u/s 24b is allowed on due basis. Provided Interest pertaining to pre-construction period is allowed as deduction in five equal annual instalments, commencing from the year in which the house property is acquired or constructed.

34. What is pre-construction period?

While computing income chargeable to tax under the head "Income from house property" in case of a let-out property, the taxpayer can claim deduction under section 24(b) on account of interest on loan taken for the purpose of purchase, construction, repair, renewal or reconstruction of the property.

Deduction on account of interest is classified in two forms, viz., interest pertaining to pre-construction period and interest pertaining to post-construction period.

Post-construction period interest is the interest pertaining to the relevant year (i.e., the year for which income is being computed).

Pre-construction period is the period commencing from the date of borrowing of loan and ends on earlier of the following:

- Date of repayment of loan; or
- 31st March immediately prior to the date of completion of the construction/acquisition of the property.

Interest pertaining to pre-construction period is allowed as deduction in five equal annual instalments, commencing from the year in which the house property is acquired or constructed.

35. How much total deduction of interest is allowed u/s 24(b)?

Thus, total deduction available to the taxpayer under section 24(b) on account of interest will be 1/5th of interest pertaining to pre-construction period (if any) + Interest pertaining to post construction period (if any), subject to the limit of Rs. 2,00,000 or Rs. 30,000, as the case may be

36. Is Interest allowable u/s 24(b) only if the interest has been paid?

No. Interest is allowable on accrual basis u/s 24(b). Interest will be allowable as a deduction irrespective of whether interest has been paid or not in the current financial year.

37. If the interest on housing loan is not due, but has been accrued, is the interest allowable?

As has been stated in the previous question, interest shall be allowable on accrual, and not on due basis or payment basis. Hence, interest accrued, but not due shall still be allowed as a deduction.

38. If an assessee has availed moratorium on his housing loan, whether interest on such housing loan is allowable u/s 24(b)?

If as per the terms of moratorium agreed upon by the parties, if interest continues to accrue during moratorium period, such accrued interest is allowable u/s 24(b).

Further, if the assessee has availed Covid-Moratorium announced by the RBI via Notification No. RBI/2019-20/186, then the interest accrued during moratorium is allowable u/s 24(b).

39. Is brokerage or commission paid for acquiring the loan be eligible as a deduction from income from house property?

As per circular 28/ 20.08.1969, brokerage or commission paid for acquiring loan would not be allowable as a deduction from income from house property.

40. Is interest on unpaid purchase price allowable as a deduction u/s 24(b)?

When the Assessee pays the consideration for house property in instalments, the unpaid purchase price shall be treated as amount borrowed for acquiring/purchasing the property, and any interest paid or payable on the same would be allowable as a deduction u/s 24(b).

Gopi Kishan Purohit vs CIT [2012] 51 SOT

41. Is rental income from sub-letting chargeable to tax under the head "Income from house property"?

Rental income in the hands of owner is charged to tax under the head "Income from house property". Rental income of a person other than the owner cannot be charged to tax under the head "Income from house property". Hence, rental income received by a tenant from sub-letting cannot be charged to tax under the head "Income from house property". Such income is taxable under the head "Income from other sources" or under the head "profits and gains from business or profession", as the case may be.

42. Whether rental income could be charged to tax in the hands of a person who is not a registered owner of the property?

Rental income from property is charged to tax under the head "Income from house property" in the hands of the owner of the property. If a person receiving the rent is not the owner of the property, then rental income is not charged to tax under the head "Income from house property" (E.g. Rent received by tenant from sub-letting).

However in the following cases a person may not be the registered owner of the property, but he will be treated as the owner (i.e., deemed owner) of the property and rental income from property will be charged to tax in his hands:

1. If an individual transfers his or her house property to his/her spouse (not being a transfer in connection with an agreement to live apart) or to his/her minor child (not being married daughter) without adequate consideration, then the transferor will be deemed as owner of the property.
2. Holder of impartible estate is deemed as the owner of the property comprised in the estate
3. A member of co-operative society, company or other association of persons to whom a building (or part of it) is allotted or leased under house building scheme of the society, company or association, as the case may be, is treated as deemed owner of the property.
4. A person acquiring property by satisfying the conditions of section 53A of the Transfer of Property Act, will be treated as deemed

Handbook on FAQ's on House Property under Income-tax Act, 1961

owner (although he may not be the registered owner). Section 53A of said Act prescribes following conditions:

- a. There must be an agreement in writing.
 - b. The purchase consideration is paid or the purchaser is willing to pay it.
5. Purchaser has taken the possession of the property in pursuance of the agreement.
 6. In case of lease of a property for a period exceeding 12 years (whether originally fixed or provision for extension exists), lessee is deemed to be the owner of the property. However, any right by way of lease from month-to-month or for a period not exceeding one year is not covered by this provision.

43. If the land is owned by a different person, and the building is owned by a different person, in whose hands the income from house property is taxable?

Income from house property is taxable in the hands of the owner of the property, irrespective of whether he owns the land on which it is situated. Any income earned by the owner of the land would be chargeable to tax under the head 'income from other sources', or 'Income from Profession and Business' as the case may be.

44. If 2 or more people own a property and share of each co-owner is ascertainable and definite, how will it be taxed?

As per Section 26, Share of each owner in the income of the property will be taxed in his individual assessment according to the nature of occupancy. Deductions available for interest, municipal tax paid, standard deduction, shall be applicable to each co-owner.

45. If 2 or more people own a property and share of each co-owner is not definite, how will it be taxed?

If share of each co-owner is not definite, the income from house property shall be determined and charged to tax in the capacity of an AOP.

46. Under which head is the rental income from a shop charged to tax?

To tax the rental income under the head "Income from house property", the rented property should be building or land appurtenant thereto. Shop

Handbook on FAQ's on House Property under Income-tax Act, 1961

being a building, rental income will be charged to tax under the head "Income from house property".

47. If partnership firm operates in property owned by partner, is it taxable in the hands of the partner if no consideration is received?

If the partner has not derived any benefit from the property, it would be deemed to be used for the partner's own business (as the assessee is a partner in the firm), hence would not be taxable under 'Income from House Property'.

PM Thomas 181 ITR 256(Ker.)

48. Under which head is the rental Income form residential vacant plot is taxable?

Rental Income from Vacant land is taxable under the head IFOS u/s 56(1).

49. Under which head the rental income from a vacant land situated in a municipality area is taxable?

Rental Income from vacant land in a municipality area is taxable under the head IFOS u/s 56(1).

50. What is composite rent and what is the tax treatment of composite rent when the composite rent pertains to letting of building along with other assets?

When the rent received by the owner of the property includes rent in respect of building, as well as rent for other assets and/or consideration for provision of other services, the amount so received is called composite rent.

The tax treatment of composite rent when it pertains to letting of building along with other assets is as follows:-

- a) In a case where letting out of building and letting out of other assets are inseparable (i.e., both the lettings are composite and not separable, e.g., letting of equipped theatre), entire rent (i.e. composite rent) will be charged to tax under the head "Profits and gains of business and profession" or "Income from other sources", as the case may be. Nothing is charged to tax under the head "Income from house property".

- b) In a case where, letting out of building and letting out of other assets are separable (i.e., both the lettings are separable, e.g., letting out of refrigerator along with residential bungalow), rent of building will be charged to tax under the head "Income from house property" and rent of other assets will be charged to tax under the head "Profits and gains of business and profession" or "Income from other sources", as the case may be. This rule is applicable, even if the owner receives composite rent for both the lettings. In other words, in such a case, the composite rent is to be allocated for letting out of building and for letting of other assets.

51. What is the tax treatment of composite rent when the composite rent pertains to letting out of building along with charges for provision of services?

In a case where composite rent includes rent of building and charges for different services (like lift, watchman, water supply, etc.): In this situation, the composite rent is to be bifurcated and the sum attributable to the use of property will be charged to tax under the head "Income from house property" and charges for various services will be charged to tax under the head "Profits and gains of business and profession" or "Income from other sources" (as the case may be).

52. What is the tax treatment of arrears of rent?

The amount received on account of arrears of rent (not charged to tax earlier) will be charged to tax after deducting a sum equal to 30% of such arrears. It is charged to tax under the head 'Income from House Property' in the year in which it is received. Such amount is charged to tax whether or not the taxpayer owns the property in the year of receipt.

53. What is the tax treatment of unrealised rent which is subsequently realised?

Any subsequent recovery of unrealised rent (not charged to tax earlier) shall be deemed to be the income of taxpayer under the head "Income from house property" in the year in which such rent is realized (whether or not the assessee is the owner of that property in that year). It will be charged to tax if the said rent is not charged on due basis, after deducting a sum equal to 30% of unrealised rent.

54. When is the income from house property exempt?

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 : -

- a) 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 as per section 2(1)(1). Examples of this kind of income include renting or leasing of a farmhouse, storehouse or godown.
- b) Income from house property of local authorities is tax-exempted as per Section 10(20).
- c) As per section 13A any income of a political party which is chargeable under the head "Income from house property" or "Income from other sources" or "Capital gains" or any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party subject to the prescribed conditions
- d) Any income earned from a property belonging to an approved scientific research association is exempted from tax under Section 10(21).
- e) Property income of Certified trade union is exempted from tax under Section 10(24).
- f) The annual value of one palace occupied by an ex-ruler of Indian states is free from tax as per Section 10(19A) where other palaces come under taxation.
- g) The annual value of two self-occupied property for own residence is exempted from tax under Section 23(2).
- h) Income from property used for one's own business or profession is also tax-exempted under Section 22.

55. What is Gross annual value of the house property used for own business and profession?

Handbook on FAQ's on House Property under Income-tax Act, 1961

The GAV of the house used for own business or profession is Nil. However, there is no income chargeable to tax under this head from such house property.

56. In whose case, income from House Property is exempt?

Income from house property held by the following shall be exempt

- 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.
- VI. Income from a farmhouse

57. What is TDS on Rent?

The Finance Act, 2017 has introduced section 194-IB providing that Tenant of a property making monthly rent payment exceeding ₹ 50,000 is required to deduct tax at the rate of 5% from the rent payable to a resident landlord (depending upon the Date of Payment/Credit to the Landlord).

Section 194I of the income tax covers TDS on rent. It imposes an obligation for TDS deduction on persons (other than individual/HUF) making rental payments to resident Indians above a specified limit, i.e., Rs.2,40,000 in a year. The rent under this section broadly includes house rent, machine rent, building rent, office rent, furniture rent etc.

Section 195 of the Income tax covers a host of areas on which TDS has to be deducted, including TDS on rent when the landlord is a non-resident. The tenant is obligated to deduct TDS u/s 195 when making rental payment (more on this is discussed later).

This sections were introduced to bring rent under the ambit of TDS provisions as rent is a substantial source of income in India, which was escaping the tax net.

58. Who is responsible to deduct the TDS on Rent of Property u/s 194-IB?

The tenant of the property being an individual or a HUF (not liable to audit u/s 44AB) would have to deduct the TDS and deposit the same in Government treasury.

59. Whether tenant require to procure TAN to report the TDS on rent of Property u/s 194IB?

No, tenant or Payer of the rent on property is not required to procure Tax Deduction Account Number (TAN) to report TDS on rent of Property u/s 194IB. The Tenant is required to quote his or her PAN and PAN of the landlord.

60. Who is liable to deduct TDS on Rent under Section 194I of Income tax Act, 1961?

Any person, other than an individual or a HUF, is responsible for paying to resident in India, any income by way of the rent, amounting in aggregate to more than Rs. 2,40,000 in a financial year. However, individuals and HUF who were covered under section 44AB(a) and (b) in the preceding previous year i.e. whose gross turnover/receipts of the business/profession in the immediately preceding financial year exceed Rs. 1,00,00,000/50,00,000, as the case may be, are also required to deduct tax at source if they are paying rent to resident in India amounting in aggregate to more than Rs. 2,40,000 in a financial year.

61. Under what circumstances there is no need to deduct TDS on rent payable to resident landlord?

TDS on rent is not required to be deducted in the following circumstances when the landlord is a resident:

- The aggregate amount paid / payable during the Financial Year doesn't exceed the threshold exemption limit i.e. doesn't exceed INR 2,40,000.
- The payer / tenant is an individual or HUF who is not liable to tax audit as per section 44 (AB) clause (a) or (b) and the rent payable is not more than Rs. 50,000 per month.
- Rent is paid / payable to a government agency.

Handbook on FAQ's on House Property under Income-tax Act, 1961

- Where the income by way of rent is credited or paid to a business trust, being a real estate investment trust, in respect of any real estate asset, referred to in clause (23FCA) of section 10, owned directly by such business trust
- In case, where payee has applied in Form 13 to AO for non-deduction, being his taxable income including rent below taxable limit, and has obtained certificate thereof.

62. What is the taxability of advance rent received?

Advance rent is the rent received for the months on which rent is not yet due. Advance rent is taxable in the year for which such rent accrues, and not in the year in which it is received if both the years are different.

63. What is the TDS liability on rental payment to non-resident?

If the landlord is a Non-resident, the tenant is liable to deduct tax under section 195 of the Income-tax Act. The rate applicable in this case will be 30% plus education cess at 4% plus surcharge if applicable (if surcharge is not applicable, the tax rate would be 31.20%). It is important to note here that in case of non-residents there is no minimum amount prescribed for applicability of TDS. TDS has to be deducted irrespective of the quantum of amount. NRI can ask for lower deduction or no deduction certificate from IT authorities, provided his total income in India is below exemption limit. The rent proceeds will have to be credited to NRO account of NRI.

Further, the tenant must fill form 15CA and submit it online. If annual payment of rent is above Rs.5,00,000, then tenant needs to obtain Form 15CB from a Chartered Accountant.

64. Whether the loss under the head house property can be carry forward if ROI file belatedly?

Yes, losses computed under the head 'Income from House property' can be set off and carry forwarded even if the return of income for the loss year is belatedly filed. There is no limitation as to carry forward of losses under the head 'Income from House Property' even if the ROI is filed belatedly.

65. Whether loss from house property can be set off against income of any other head

Handbook on FAQ's on House Property under Income-tax Act, 1961

Any loss computed under the head, 'Income from House property' can be set off against income under other heads of income subject to a limit (discussed in question 67). Income earned from winnings, and income earned under the head 'Capital Gains', shall not be eligible for set off against loss from house property.

66. What is the maximum loss that can be set-off against the income from any other heads.

As per section 71, The maximum loss from the head 'Income from house property' that can be set-off against the income from any other head, except income under the heads 'capital gains' and income from winnings, is Rs.2,00,000.

67. Is carry forward and set off of loss from house property allowed?

As per section 71B, where for any assessment year the net result of computation under the head "Income from house property" is a loss to the assessee and such loss cannot be or is not wholly set off against income from any other head of income in accordance with the provisions of section 71 (discussed in question 67) , so much of the loss as has not been so set-off or where he has no income under any other head, the whole loss shall, subject to the provisions of Chapter VI, be carried forward to the following assessment year and—

- i. be set off against the income from house property assessable for that assessment year; and
- ii. the loss, if any, which has not been set off wholly, the amount of loss not so set off,

shall be carried forwarded up to eight assessment years immediately succeeding the assessment year for which the loss was first computed.

68. A house property is owned (ownership) by parents. However, elder son has taken housing loan and paying interest and principal of same. Can elder son claim deduction of interest so paid on housing loan u/s 24, even though no ownership document?

No, the elder son cannot claim the deduction of the interest paid on housing loan u/s 24 since the ownership of the house property is not with the elder son.

69. What is the Tax treatment of rental income where the purchase consideration for the property is paid by husband and the property

is registered in both the husband and wife's name. Will the income from rent will be charged separately?

Or

What is the Tax treatment of rental income where house property is transferred to spouse without or inadequate consideration

As per section 64(1)(iv) If any individual transfers any asset to his or her spouse without consideration or for inadequate consideration then income from such assets which is received by the spouse is assessable to tax in the hands of the transferor.

Provided the above provision is applicable only if relationship of husband and wife should exist at the time of transfer of assets as well as at the time of generating the income

Provided further that the above provision is not applicable if asset is transferred in connection with agreement to live apart.

CIT V.H.L. Gulati [1982] 11 Taxman 167

70. Which ITR form is applicable for the assessee having income from house property?

ITR form 1 is applicable for individuals being a resident (other than 'not ordinarily resident') having total income upto Rs.50 lakh, having Income from Salaries, one house property, other sources (Interest, dividend, etc.), and agricultural income upto Rs.5,000.

71. In which cases ITR form 1 cannot be file by assessee having income from house property?

As per proviso of rule 12(1)(a) an individual who is a resident other than not ordinarily resident is not eligible to file ITR form 1 having income from the house property in the following cases

- i. Where assessee has assets (including financial interest in any entity) located outside India;
- ii. has signing authority in any account located outside India;
- iii. has income from any source outside India;
- iv. has income to be apportioned in accordance with provisions of section 5A;]

Handbook on FAQ's on House Property under Income-tax Act, 1961

- v. has claimed deduction under section 57, other than deduction claimed under clause (iia) thereof;
- vi. is a director in any company;
- vii. has held any unlisted equity share at any time during the previous year;
- viii. is assessable for the whole or any part of the income on which tax has been deducted at source in the hands of a person other than the assessee;]
- ix. has claimed any relief of tax under section 90 or 90A or deduction of tax under section 91
- x. has agricultural income, exceeding five thousand rupees;]
- xi. has total income, exceeding fifty lakh rupees;
- xii. has income taxable under section 115BBDA
- xiii. has income of the nature referred to in section 115BBE;]
- xiv. is a person in whose case tax has been deducted under section 194N or
- xv. is a person in whose case payment or deduction of tax has been deferred under sub-section (2) of section 191 or sub-section (1C) of section 192;

72. Which ITR form is applicable for assessee having only income from more than one house property?

ITR form 2 is applicable for the assessee having income from more than one house property and not having Income under the head Profits and Gains of Business or Profession.

73. If House property is let out outside India, how to calculate income from house property and annual value in India, in the hands of a resident.

In the hands of a resident, house property which is let out outside India shall be chargeable to tax u/s 22 and the annual value shall be the actual Rental income received. The tax shall be subjected to DTAA between India and the country in which the property is situated, if a DTAA exists with the other country.

CIT Vs R. Venugopal Reddiar [1965] 58 ITR 439

74. If the house property let out outside India is chargeable to tax in India, using what rate should it be converted to India Rupees?

As per rule 115, Income accruing or received in foreign currency should be converted into Indian Rupees using the TT Buying rate on the last day of the previous year.

75. Is deduction on payment of municipal taxes allowable if the municipal taxes have been paid to an authority outside India?

Deduction on payment of municipal taxes shall be allowable even if the taxes have been paid outside India.

76. What is the tax treatment of guest houses?

As guest houses satisfy the definition of house property, they are taxable under the head 'Income from House Property' in the hands of the owner/deemed owner of the guest house. However, if the assessee is using the guesthouse for the purpose of his business or profession then income from such property shall not be considered as income from house property.

77. Can a vacant plot of land not let out during the year be said to be deemed to be let out and taxable under other sources?

No, IFOS is applicable only when the assessee lets out the land on hire. Therefore, no income shall be offered to tax with respect to a vacant land **as deemed to be let out. In fact, there is no deeming section of income tax with respect to income from vacant land not let out.**

78. If an assessee having business of purchase/ sale of immovable property (including earning rental income) is earning rental income, will such a rental income from the property be taxable under the head 'Income from House Property' or PGBP?

Such rental income shall be taxed under the head PGBP since it is one of the main businesses of the assessee and section 22 considers only those incomes which are not charged under PGBP.

Chennai Properties and Investments Ltd. v. Commissioner of Income Tax 373 ITR 673 (SC)

79. What is the tax treatment of Income from a property that is situated in India which is taxable in the hands of an NRI?

Handbook on FAQ's on House Property under Income-tax Act, 1961

A NRI receiving income from a house property which is situated in India, is taxable in India. The income is eligible for all deductions in the same manner as applicable to a resident. An NRI can claim standard deduction of 30%, deduction of property taxes paid in India, benefit from an interest deduction of a home loan. Deduction for stamp duty and registration charges paid on purchasing a property can also be claimed under Section 80C.

CIT Vs R.Venugopal Reddiar [1965] 58 ITR 439

80. What is the tax treatment for property not situated in India, in the hands of a non-resident.

Income from property not situated in India shall not be taxable in India in the hands of a non-resident unless the rent is first received in India. If the rent is first received in India, then the income will be taxable in India.

81. What are the responsibilities of the Legal Heir with respect to income earned from assets inherited from the deceased?

Any rental income received after the date of death of owner will be taxable in the hands of the legal heir. The legal heir should include this inherited income while computing their total income. Although there is not tax on inheritance, any income earned from inherited wealth is taxable.

82. When is deduction of municipal taxes allowed for computation of income under the head 'Income from House Property'?

Municipal taxes including service-taxes levied by any local authority in respect of house property is allowed as deduction, if:

- a) Taxes are actually borne by the owner (or deemed owner); and
- b) Taxes have actually been paid to the relevant authorities during the respective year.

Municipal taxes paid for previous years are also allowed as a deduction in the year of actual payment.

83. Is advance Municipal taxes paid allowed as a deduction?

Advance municipal taxes are allowed as a deduction in the year it becomes due and not in the year of payment, as it would not qualify as a tax levied, and liability incurred in the year of payment.

84. Is refund of municipal taxes paid taxable, if it has been allowed as a deduction when computing income from house property?

Refund of municipal taxes by the local authority shall not be chargeable to tax even if it was allowed as a deduction in computation of income from house property.

India Automobiles Ltd 251 ITR 117 (Cal.)

85. If municipal taxes are borne by the tenant, is it chargeable to tax under income from house property?

If Municipal taxes are borne by the tenant, it is neither to be added to the actual rent, nor is it to be allowed as a deduction in the hands of the owner of the property.

Gillanders Arbuthnot & Co.Ltd 142 ITR 598

86. Deduction for interest on housing loan u/s 80EE

Deduction of up to Rs 50,000 shall be allowable to an Individual for interest payable on loan taken for the purpose of acquisition of a house property subject to the satisfaction of all the following conditions:

- a) Loan has been sanctioned by a 'Financial Institution' during the financial year 2016-17;
- b) The amount of loan sanctioned does not exceed Rs 35,00,000;
- c) The total value of residential property does not exceed Rs 50,00,000;
- d) The assessee does not own any other residential house property on the date of sanction of loan;

Where deduction has been allowed under this section, no deduction shall be allowed in respect of such interest under any other provision.

87. What is the restriction on set off of loss from House Property

If the net result of computation of income under the head "Income from House Property" is a loss, then such a loss can be set-off against any other head of income, other than Income under the head Capital Gains. The maximum amount which can be set off is restricted at Rs. 2 Lakh.

However, the loss which couldn't be set off can be carried forward for set-off in subsequent years. It can be carried forward for 8 Assessment years for set-off.

Handbook on FAQ's on House Property under Income-tax Act, 1961

- 88. If an assessee opts for taxation u/s 115BAC (new regime), is interest deduction u/s 24(b) allowed for self-occupied property?**

If the assessee opts for taxation u/s 115BAC, deduction u/s 24(b) shall not be allowed for self-occupied property.

- 89. If an assessee opts for taxation u/s 115BAC (new regime), is deduction for municipal taxes paid and standard deduction (30% of NAV) available?**

Yes, deduction for municipal taxes and standard deduction at 30% of NAV is available with respect to let-out and deemed let-out properties even if the assessee opts for taxation u/s 115BAC (new regime).

- 90. If an assessee opts for taxation u/s 115BAC (new regime), is interest deduction u/s 24(b) allowed for let-out property?**

If the assessee opts for taxation u/s 115BAC, deduction u/s 24(b) shall be allowed for let out property.

- 91. If the ownership of the property is under dispute before the courts, then how will the property be taxed?**

If the ownership of the property is under dispute, it shall be taxed in the hands of the assessee as decided by the Income Tax authorities until a final judgement is delivered.

Keshardeo Chamaria[1937] 5 ITR 246

- 92. If there are more than one separate let out properties, should the house property income be calculated separately for each individual property or by clubbing all the rental receipts in one calculation?**

In case there are more than one property which is let out, the individuality of each such unit shall be maintained and not be merged even if it is let out to the same person. Hence, the calculation will have to be made separately for each of the properties.

- 93. Husband and Wife jointly own a house property in which both have invested equally from individual and independent sources. Can the rental income received be split between the two to be taxed in individual hands?**

Yes, Rental Income received by each co-owner, husband and wife in this context, shall be taxed proportionately and taxed in the hands of both independently as per their share in the said property.

94. Can the payment of stamp duty for the preparation and registration of lease deed be claimed as a deduction from rent received?

No, payments of stamp duty for the preparation and registration of sale deed cannot be deducted from the rent received.

CIT Vs Premnath Motors (Raj) Pvt Ltd [2007] 163 Taxmann 383 (Raj.)

95. In case of self-occupied property, can the assessee get the benefit of standard deduction?

If an assessee has considered/declared a property as a self-occupied property, Gross Annual Value (GAV) of such a property would be NIL. So, the assessee would not be eligible to avail the benefit of standard deduction.

96. What is maximum amount of deduction of interest in case of jointly owned property?

Each co-owner can separately claim a deduction of interest on loan to the maximum of Rs.2 lakhs or Rs.30,000 as the case may be. Effectively, the maximum deduction available would get multiplied by the number of such co-owners.

97. Should non-refundable deposit be included as a part of rent received?

Any non-refundable deposit received from a tenant, in whatever name it may be called, shall be included in the rent received on pro rata basis.

98. Should refundable deposit be included as a part of rent received?

Refundable security received while giving the property on rent shall not be included in the rent received.

99. Deduction of Interest on Loan payable to Non-resident?

As per section 25, interest chargeable under the Income tax Act, which is payable outside India on which tax has not been paid or deducted (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".

100. Is the rent of tower/antenna installed on terrace chargeable to tax under the head Income from house Property?

Handbook on FAQ's on House Property under Income-tax Act, 1961

If an assessee who owns terrace floor of a building gives the same on a license to a telecom company for installing tower/antenna, the license fee is taxable as Income from house property

Niagara Hotels & Builders (P.) Ltd vs CIT [2015]

101. Is the Annual Value of the clubhouse owned by the club chargeable to tax?

In case of Property owned by the club, the Annual Value of the Clubhouse is not chargeable to tax because of Principle of Mutuality.

Chelmsford Club Vs CIT [2000] 109 Taxmann 215 (SC)

102. In case the owner of property is not able to find a tenant and property remains vacant, can addition on account of notional rent be made or not?

In case no rent was derived from property then no annual value can be taken for the purpose of calculating income from house property.

Sachin R. Tendulkar, Mumbai vs DCIT 23(3), Mumbai on 10 August 2018

103. Can the payment made towards Non- Occupancy and Maintenance Charges be claimed as deduction from rent received?

Yes, the payment made towards Non- Occupancy and Maintenance Charges be claimed as deduction from rent received.

Sharmila Tagore vs Joint Commissioner of Income Tax on 14 June, 2004

104. Is rental income from letting out properties held as stock-in-trade is taxable as income from house property or Income from Business or profession?

Rental income from letting out properties held as stock-in-trade is taxable as income from house property.

New Delhi Hotels Ltd, 2014 [Delhi]

105. Whether interest on House building advance taken by the Central Government servants under House Building Advance Rules can be allowed as deduction under section 24(1)(vi) (due or when it is actually paid)

Handbook on FAQ's on House Property under Income-tax Act, 1961

Under section 24(1)(vi) of the Income-tax Act, 1961 where property has been acquired or constructed with borrowed capital, a deduction in respect of amount of interest payable on such capital is allowed in computing the income from house property. Since the word used is 'payable', deduction under section 24(1)(vi) would be on the basis of accrual of interest which would start running from the date of the drawal of the advance. The interest that accrues is to be calculated annually in terms of rule 6 of the House Building Advance Rules on the balances outstanding on the last day of each month.

Circular: No. 363 [F. No. 168/4/82-IT(A-I)], dated 24-6-1983.

106. Whether interest payable on Fresh loan raised to repay original loan taken for constructing/ buying property is admissible as a deduction under clause (vi) of sub-section (1) of section 24

Interest on second loan taken to repay first loan - Where a fresh loan has been raised to repay the original loan if the second borrowing has really been used merely to repay the original loan and this fact is proved to the satisfaction of the ITO, the interest paid on the second loan would also be allowed as a deduction under section 24(1)(vi)

Circular: No. 28, dated 20-8-1969.

107. In case of tenant co-partnership co-operative housing societies - Whether legal ownership in flats can be said to vest in individual members themselves and not in co-operative society

Tenant co-partnership co-operative housing societies - In the case of tenant co-partnership co-operative housing societies, the income from each building should be assessed in the hands of the individual members to whom it had been allotted. For all purposes (including attachment and recovery of tax, etc.) the individual members should be regarded as the legal owners of the property in question - Circular: No. 9, dated 25-3-1969.

108. Under which head Income from Property received by real estate businessman during the period of ownership is taxable.

If an assessee carries on business of purchasing and selling buildings, income received from the buildings so long as they are owned by the assessee will be shown under the head 'Income from house property' and not under the head 'Profits and gains of business'

CIT v. Chugandas & Co. [1965] 55 ITR 17 (SC).

Handbook on FAQ's on House Property under Income-tax Act, 1961

Where assessee-company was formed for purchasing and selling properties, earning of rental income by letting out properties owned by it was chargeable to tax under head 'Income from house property' and not under head 'Profits and gains of business' –

CWT v. Atma Ram Properties (P) Ltd. [2017] (Delhi).

109. Whether deduction u/s 24 is separately allowable to each co-owner

Where each of the co-owners is allocated his share in the income of the joint property, it becomes an income from the house property within the meaning of sections 22 and 23. From that income again each of these owners is entitled to deductions under section 24 individually –

CIT v. Abdullabhai M. Moonim [1981] 132 ITR 642 (Bom.).

110. Rental Income – Income from House Property or Business Income?

Whether rental income from residential property should be assessed under the head "Income from House Property" (HP) or under the head "Profits and Gains from Business or Profession" (PGBP) is a subject of much debate between taxpayers and the Income-tax department. The line of distinction is extremely thin, and the courts have also expressed diverse opinions on facts that appear to be related. It is claimed that no one source of income can be treated as general or specific for the purposes of any of the heads of income under the Act. These heads are mutually exclusive.

However, from various judgement it can concluded that if any property is used as business asset and the exclusive business of the assessee-company or firm is to earn income by way of rental or lease money, then such rental income can be treated only as "business income of the assessee" and not as income from "house property".

Case Law's for reference

145 taxmann.com 353 (Himachal Pradesh)[22-08-2022]

111. Whether Income from paying guest establishment is charged to Income-tax u/h income form House Property or PGBP?

Where owner of the property running the paying guest establishment, than Income form Property is assessable under the head of business.

An Individual would always prefer to show rental income as Income from

Handbook on FAQ's on House Property under Income-tax Act, 1961

Business. Which allows to deduct all the expenses incurred to maintain the property, claim depreciation and not pay notional rent when the property is not let out.

112. Taxability of unsold portion of building in case of real estate developer or builder?

Where any rental income is derived from unsold portion of property constructed by the real estate developer or builder is charged to tax u/h Income from House property.

Sane & Doshi Enterprises, Mumbai vs Jt Cit 17(3)

113. Taxability of income from property given to employees or director for residential purpose

Where any property occupied by employees or its director etc. who are concerned with the promotion of the business of the assessee company to enable them to discharge their functions efficiently, with or without payment of rent and the letting out of the property is subservient and incidental to the main business of the assessee, such an occupation amounts to an occupation and user of the property by the assessee itself for the purposes of its business, even though no business is actually carried on in such premises. Income from such property is not assessable as income from house property.

CIT v. Modi Industries Ltd [1994] 73 Taxman 691 (Delhi)(FB)/CIT Vazir Sultan Tobacco Co. Ltd. [1988] 173 ITR 290 (AP).

