14/03/24

CHAP 3 : UNIT – 2

IFHP

* Conditions for chargeability :-

1) Prop. should consist of any building/land appurtenant thereto
2) Assessee must be the owner of the property
3) use of property
4) Prop. held as stock-in-trade, etc.
   ↳ AV = NIL
   for 2 yrs f/m end of FY in which construction completion certificate is obtained.

* Composite Rent :

- Rent for building + other assets + services provided
- Composite Rent

Separable → Even if composite rent is received → accepted without letting out of other asset → Rent for building → IFHP; Rent for other services → PGBP / IFOS

Inseparable → even if rent fixed separatly → not accepted without other asset → Rent → PGBP / IFOS

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A) Income f/m HP situated o/s India :

→ Resident & OR → whether/not brought to India → taxable

→ NRI & NOR → If received in India → taxable

*) Determination of AV (Sec. 23)

[GAV − Muncipal tax paid = NAV]

1) Property is let out throughout the PY Sec. 23(1)(a)/(b)

GAV = Higher of :-
(a) Expected Rent (ER)
↳ higher of FR & MV
lower of SR & above
(b) Actual Rent (AR)

similar prop in same locality

given by muncipality

Rent control Act

2) L.O prop. is vacant for part of the y̶r̶ Sec. 23(1)(c)

Owing to vacany, Actual Rent is < ER,

GAV = Actual Rent

if ER is < AR, then w.i. higher is taken i.e. AK

③ In case of S.O or Unoccupied Prop. Sec. 23(2)

(a) AV = NIL

- upto 2 SO/unoccupied prop.
- only to Individual/HUF
- no deduction for municipal tax is allowed.

④ HP let-out for part of the year & SO for part of yr
Sec. 23(3)

- Single unit of prop
- ER for whole yr is considered, then compared with AR for letout period
  GAV = higher of ER or AR
- Muncipal tax for whole yr will be allowed

⑤ Deemed to be let-out prop. Sec. 23(4)

- If have >2 props,
  - 2 props → SO/Un-occupied → GAV = NIL
  - remaining → deemed to be letout → GAV = ER
- no need to consider AR, unrealised rent, etc.

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⑥ HP held as stock-in-trade Sec. 23(5)

- whole/part of prop. → not let-out → during whole/part of PY

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AV = NIL

• for 2yrs f/m ~~at~~ end of FY in which construction completion certi. is obtained.

(7) HP, a portion let-out and portion S.O Sec. 23

• treat it as 2 different unit — SO prop. / Let-out prop.

• MV/FR/SR/Prop.tax —— apportioned

UNREALISED RENT
→ AR should not include Unrealised Rent
→ Rule 4 conditions :-
(1) tenancy is a bonafide
(2) defaulting tenant has vacated/steps have been taken
(3) defaulting tenant not occupied any other prop. of assessee
(4) Assessee has taken all reasonable steps to institute legal proceedings for recovery.

PROPERTY TAX
- Condition :
  • borne by assessee
  • actualy paid
- If arrears in tax paid in a yr, amt so paid allowed as deduction.
- tax paid o/s India, also allowable
- If AV= NIL, no deduction

* Deductions f/m AV Sec. 24

30% of NAV — 24(a)

- flat deduction
- n/a if AV = NIL

Int. on borrowed capital — 24(b)

Default T.R u/s 115BAC

No deduction for S.O or unoccupied property.

In 115BAC, Loss on HP can't be set off against any other head of Income.

Under optional Set off upto 2,00,000 against any other head of Income is allowed

Optional T.R

(i) Loan taken on/after 1/4/1999 for acquisition/construction & completed within 5 Yrs f/m end of FY the cap. borrowed — max. ₹ 2,00,000

If NO, then max. 30,000/-

(ii) Loan taken on/after 1/4/1999 for repairs, renewal, reconstruction, etc. — max. ₹30,000

(iii) Before 1/4/1999 — 30,000/-

* ceiling limit for:-
- S.O — 2,00,000
- L.O — no limit

* Int. on accrual basis.

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* Unpaid purchase price would be considered as capital borrowed.

* **Inadmissible Deductions (Sec. 25)**

Int payable o/s India, not deducted if
- tax (TDS) not paid/deducted on Int

and

- no person in India who may be treated as as agent.

* **Arrears of Rent & Unrealized Rent received Subsequently (Sec. 25A)**

(1) ...deemed to be IFHP, included even if assessee is not the owner in that FY

(2) deduction of 30% of arrears of rent / unrealised rent i.e., 24(a) is available

* **Sec. 26 — Treatment of Income f/m Co-owned Prop.**

- Prop owned by 2/more person — shares are definite & ascertainable — Income can't be taxed as Income of an AOP.
- Share Income of co-owner be determined u/s 22-25 & include in individual assessment.
- If S.O by co-owners, AV = nil & Sec. 24(b) deduction is available
- If Let out by co-owners, Income computed as if owned by one owner & then apportioned amongst each co-owner.

* Sec. 27 — Deemed Ownership

(i) Transfer to spouse Sec. 27 (i):
- otherwise than for adequate consideration
- transferor is deemed to be the owner
- Exception — agreement to live apart

(ii) Transfer to minor child Sec. 27 (i):
- otherwise than for adequate consideration
- transferor is deemed to be the owner
- Exception — minor married daughter

\# Cash transferred to spouse/minor child & transferee acquires prop out of such cash, transferor is not deemed owner but clubbing provisions will be attracted.

(iii) Holder of an impartible estate Sec. 27 (ii):

↓

prop. not legally divisible

- holder of such estate deemed to be individual owner of all prop. comprised in estate.
- After Hindu Succession Act, all props. in impartible estate by custom is assessed in status of HUF.

(iv) Member of a co-operative society, etc. Sec. 27 (iii):
- member of " , c/o or AOA to whom building / part thereof is allotted or leased under a House Building Scheme — deemed to be owner although co-op., c/o, AOP is legal owner.

→

(v) Person in possession of a prop. Sec. 27 (iii a)

- take/retain possession - in part performance of contract - shall be deemed owner
- Include :
  - possession of prop. handed over to buyer
  - Sale consi. has been paid / promised to be paid
  - Sale deed has not been executed but other docs, like power of attorney / agree. to sell / will have been executed

(vi) Person having right in a prop. for a period of not < 12 yrs Sec. 27 (iii b)

- acquires any rights, by virtue of any trans, by way of lease for not < 12 yrs, shall be deemed owner.
- Exception - person acquiring rights by way of lease f/m month-to-month or not a period not exceeding 1 yr., will not be deemed owner