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**CHARGE OF INCOME FROM HOUSE PROPERTY: DISCOURSE  
WITH REFERENCE TO THE INCOME TAX ACT**

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**ABSTRACT:**

Income tax is imposed upon a person in respect of his income. This paper provides some of the conditions under which the income generated by a citizen of India from the house property owned by him in and outside India, can be taxed. The paper endeavours to state that the registration of sale deed or the effectuation of title of the property in the land records are not necessary constituents for determination of the liability for income tax on an individual and that such a liability commences even without the registration of sale deed.

**INTRODUCTION:**

Income tax is imposed upon a person in respect of his income. In 1886, the first Income tax Act was enacted. An all India Committee was formed in 1921 to reconsider the existing law relating to income tax and to make suggestions for its improvement.<sup>2</sup> On the recommendation of this Committee, the Indian Income Tax Act of 1922 was passed.<sup>3</sup> The Act of 1922 was amended for several times and consequently it became complicated and referred to the Law Commission in 1956 for simplification.<sup>4</sup> Besides, the Central Government appointed a Committee to suggest measures to prevent tax evasion and to minimize the inconvenience to the assessee.<sup>5</sup> On the basis of the recommendation of this committee the present Income Tax Act, 1961 was enacted.<sup>6</sup> The Income Tax Act, 1961 extends to the whole of India. It has come into force on 1<sup>st</sup> April, 1962.

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<sup>2</sup>Kailash Rai, *Taxation Laws* 58 (2015 edn., Allahabad Law Agency, Haryana,).

<sup>3</sup> *ibid.*

<sup>4</sup> *ibid.*

<sup>5</sup> *ibid.*

<sup>6</sup> *ibid.*

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This paper provides some of the conditions under which the income generated by a citizen of India from the house property owned by him in and outside India, can be taxed. The paper endeavours to state that the registration of sale deed or the effectuation of title of the property in the land records are not necessary constituents for determination of the liability for income tax on an individual and that such a liability commences even without the registration of sale deed.

### **INCOME:**

There are certain terms used for explaining the concept of “income from house property”. The meaning of these terms under the Income Tax Act, 1961 are as under:

Section 2(24) of the Income Tax Act, 1961 provides the meaning of “**INCOME**” for the purposes of this Act. It reads the conditions under which income tax will be charged under the head “income from house property”.

### **CONDITIONS FOR THE CHARGE OF INCOME FROM THE HOUSE PROPERTY:**

Section 22 of the Income- Tax Act, 1961<sup>7</sup> states that the income will be chargeable to income- tax under the head “income from house property” if following conditions exist:

#### **1. THERE IS A HOUSE PROPERTY:**

According to Section 22 of the Income Tax Act, 1961, house property means buildings and lands appurtenant thereto.

The lands which are not appurtenant to any building are not included within the meaning of the term “house property”. Following have been held to be lands not appurtenant to the building:

- (a) temporary camps or tents are not building. The reasoning given is that the term building means the structure possessing some “annual value”.
- (b) income from vacant plot of land;
- (c) income from Zamindari
- (d) income from letting shops, stalls appurtenant to the building or in the building;

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<sup>7</sup>Section 22 of the Income Tax Act, 1961: 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.

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- (e) if a building is erected and let out for running a hotel, the income from it is not income from business and is income from house property;
- (f) **where the assessee is running a hotel and lets a fully equipped hotel, the income derived from such letting is income from business.**

However, the term “building or Land appurtenant thereto” includes market consisting of shops, buildings, godowns and open space and therefore income derived by the owner from letting out the shops, buildings, etc. are assessable under the head “income from house property”.

In *Sulstan Bros. v. CIT*<sup>8</sup>, Court held that where a building is erected and let out on lease for the purpose of running a hotel, **the letting of the building cannot be taken as carrying on business and the income is the income from house property and not income from business.**”

The tax levied under Section 22 is a tax on income and not on property.<sup>9</sup>

If the assessee is resident in India and owns house property outside India, the income derived by him from such property outside India will be included in his total income, but if the assessee is a non-resident, the income derived by him from the house property situated outside India cannot be assessed.

## **2. THE ASSESSEE MUST BE OWNER OF THE HOUSE PROPERTY:**

The Assessee becomes liable to pay income tax only if he is the owner of the house property and not the occupier or possessor of it.

In *CIT v. Podar Cement Ltd*<sup>10</sup>, Court held that “A person who is entitled to receive income from the house property in his own right is treated as owner for the purposes of Section 22 of the Income Tax Act, 1961.”

Indian law recognizes only legal ownership and not the beneficial or equitable ownership.

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<sup>8</sup> (1964) 51 ITR 353 SC

<sup>9</sup> *Chelmsford Club v. CIT*, AIR 2000 SC 1092

<sup>10</sup> AIR 1997 SC 2523

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In *Trustees to the Debutter Estate of Sri Iswar Radha Govinda Jew v. CIT*<sup>11</sup>, Court held that “where the house property legally vests in the trustees, trustees should be liable to pay income tax in respect of the income derived from the house property.

In *Official Assignee for Bengal*<sup>12</sup>, Court held that where a person is declared insolvent, his house property vests in the Official Assignee and for the purpose of income tax assessment in respect of income derived from the house property, the Official Assignee is treated as owner of the house property.”

In *Raja P. C. Lal Chowdhary v. CIT*<sup>13</sup>, Court held that **“But a Receiver appointed by a Court for the purpose of managing the house property cannot be treated as “owner” of the house property and he cannot be held liable to pay income tax in respect of the income derived from the house property.”**

On the question of ownership of the property on basis of registration of sale deed, the Bombay and Calcutta High Courts held that if the sale deed is not registered, the buyer cannot be treated as owner of the house property but in view of the Patna High Court even in this condition the buyer should be treated as owner of the house property. The Patna High Court has held that the decisions of the Bombay and Calcutta High Courts have been overruled after the decision of the Supreme Court in *R. B. Lodha Mal Kuthiala v. CIT*<sup>14</sup>.

Hon'ble High Court of Patna observed that: "If there is agreement for sale of immovable property (land and buildings) in favour of the assessee and physical possession thereof has been taken by the assessee and the assessee has collected the rent therefrom, he should be treated as owner of the house property and the income therefrom is assessable in his hands and the fact about the absence of registered deed of conveyance is immaterial." The view expressed by the Patna High Court appears to be more practical and in the interest of justice.<sup>15</sup>

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<sup>11</sup> (1972) 84 ITR Cal.

<sup>12</sup> (1937) 5 ITR 233 Cal.

<sup>13</sup> (1948) 16 ITR 123 Pat.

<sup>14</sup> (1971) 82 ITR 570 SC

<sup>15</sup> *Supra* note 1 at 58.

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In *CIT v. Nawab Mir Barkat Khan*<sup>16</sup>, Court held that “It is to be noted that here the term “owner” indicates to the owner of the house property itself and not to the owner of the annual value of the house property.”<sup>17</sup>

In *S. Kartar Singh v. CIT*<sup>18</sup>, “... the assessee who was a owner of a house property executed a deed of settlement and under the deed gave his father right to receive the income of the house property, **the Court held that the ownership continued to vest in the assessee and therefore the assessee, not this father, was liable to pay income tax** in respect of the income derived from the house property.”<sup>19</sup>

The other conditions under which an assessee is liable to pay income tax on the basis of ownership of the house property are as under held by the judicial decisions:

1. In *CIT v. Madras Cricket Club*<sup>20</sup>, Court held that if an assessee takes the lease of a land and constructs a building thereon, he will be treated as the owner of the building during the period of the lease and liable to pay income tax in respect of the income derived from the building.”
2. In *Ballygunge Bank Ltd. vb. CIT*<sup>21</sup>, Court held that: a person may be assessed as the owner of the house property even if his right of ownership is subject to certain limitations (for example, he has no right to transfer the property).
3. In *Keshardeo Chamaria v. CIT*<sup>22</sup>, Court held that “... a mere existence of a dispute as to the title of the property, even when a suit has been filed, cannot of itself hold up assessment proceedings.” In such a case, the Income Tax Officer has power to decide whether or not the assessee is the owner of the property and his decision will continue to be operative until the suit is disposed of or the dispute is settled.
4. In *New Cotton & Wool Pressing Factory v. CIT*<sup>23</sup>, Court held that, “it is notable that like a company, a firm can also own house property under the Income Tax Act and therefore the income derived from the house property owned by the firm

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<sup>16</sup> (1974) Tax LR 90 AP

<sup>17</sup> *Supra* note 1 at 58.

<sup>18</sup> (1969) 73 ITR 438 Delhi

<sup>19</sup> *Supra* note 1 at 58.

<sup>20</sup> (1934) 2 ITR 209 Mad.

<sup>21</sup> (1946) 14 ITR 409 Cal.

<sup>22</sup> (1939) 7 ITR 394 PC

<sup>23</sup> (1967) 65 ITR 662 Raj.

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is assessable in the hands of the firm and not in the hands of the respective partners of the firm.”

**3. CONDITIONS WHEN ASSESSEE IS DEEMED TO BE THE OWNER OF THE HOUSE PROPERTY:**

The conditions when assessee is deemed to be the owner of the house property are provided by Section 27 of the Act which provides for “Deemed Owner”.

**4. THE HOUSE PROPERTY MUST NOT BE OCCUPIED BY THE ASSESSEE FOR THE PURPOSE OF ANY BUSINESS OR PROFESSION CARRIED ON BY HIM THE PROFITS OF WHICH ARE CHARGEABLE TO INCOME-TAX:**

Section 22 of the Income Tax Act states that the house property must not be occupied by the assessee for the purpose of any business or profession carried on by him the profits of which are chargeable to income-tax. Section 22 of the Income Tax Act does not apply to a case:

- (a) where the owner occupies the house property for the purpose of any business or profession carried on by him, and
- (b) the profits of such business or profession are chargeable to income tax.

Its reason is that in such a condition the house property becomes one of the assets of the business and **since income from the business is taxed in the hands of the owner, it is considered unfair to deal with the house property separately.** This is also implicit from section 10 of the Income Tax Act which provides incomes not included in total income and enlist house property in number of sub-sections to it.

**CONCLUSION:**

The assessee or people of India are subjects of the Government of India. Government taxes the income of its subjects to generate money for the expenditure incurred in efficient working and maintenance of its organs, namely, Legislature, the Executive and the Judiciary.

A State consists of four elements, namely, Population, Sovereignty, Government and Territory. Thus, all the land owned by the subjects of the Government of India is the sovereign property of the Government of India. But Article 300-A of the Constitution of

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India provides right to property and reads: “No person shall be deprived of property save by authority of law.”

Sections 22 to 27 of the Income Tax Act, 1961 provides provisions to tax income generated from “house property”. It do not deprives a person from owning property but taxes income generated from such property in lieu of providing “Right to life and liberty” and other beneficiary measures of a welfare State. Thus, taxing income generated from "house property" which is owned by a subject or citizen of India is justified.



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