

Brokerage, legal expenses and bank charges are not deductible while calculating annual rental value of property

Summary – The Mumbai ITAT in a recent case of Ranjeet D Vaswani, (the Assessee) held that Expenses like brokerage, electricity expenses, legal expenses and bank charges are not permissible under section 23 and section 24 while calculating annual rental value

Where interest income was wrongly taken due to clerical error, actual interest income should be computed on basis of TDS certificate

Facts

- In assessment year 2009-10, the assessee earned certain rental income under head house property. While calculating its Annual Value, the assessee claimed certain expenditure on account of brokerage paid, electricity expenses, legal and professional charges and bank charges.
- The Assessing Officer disallowed above mentioned expenses on ground that the Act had explicitly mentioned deductions allowed for calculation of rental income under sections 23 and 24 and these expenses were not covered under it.
- On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer.
- On appeal to the Tribunal:

Held

- The Delhi High Court in *CIT v H.G. Gupta & Sons (P.) Ltd.* [\[1984\] 17 Taxman 287/149 ITR 253](#) has held that the annual value of the property, which is the subject of charge, was originally defined in section 23(1) as 'the sum for which the property might reasonably be expected to let from year to year'. The annual value is thus the sum for which a landlord could let the premises having regard to the conditions of the property and of the prevailing circumstances, as the language suggests the taxes are charged on the artificial or notional income. It is based on the annual value of the property. The authorities under the Act, therefore, have to make the assessment on the basis of the notional annual value. Section 23 lays down how the annual value is to be determined. Section 24 provides that income chargeable under the head "Deductions from Income from house property" shall, subject to the provisions of sub-section (2), be computed after making the deductions specified therein

The Legislature has used the word 'namely' and this shows that the heads of expenditure where for deduction can be claimed are exhaustive. The expenses incurred in providing the proper stamp paper in case of a lease or agreement to lease is by virtue of the provisions contained in section 23

of the Indian Stamp Act, 1899, and is on the lessee or intended lessee, in the absence of an agreement to the contrary. It may be for this reason, that the Legislature did not include such expenses in the permissible deductions under section 23 or section 24. If a particular type of expenditure is not specifically provided to be deductible, deduction, therefore, cannot be claimed from out of the annual value.

Neither section 23 nor section 24 provides for the deduction of the expenses incurred towards the stamp duty or registration charges in respect of the lease. If the view of the Tribunal is accepted that the expenditure incurred has to be deducted from the gross rent in order to arrive at the reasonable annual letting value, then the annual letting value would be different in the first year as compared to the subsequent years, the expenditure incurred on a lease for a period of 5 years towards the stamp duty and registration charges is only in the first year. The annual value of any property is deemed to be the same for which the property might reasonably be expected to let from year to year. It is a notional income to be gathered from what a hypothetical tenant would pay which is to be objectively ascertained on a reasonable basis. The annual value cannot be left to fluctuate when the lease is for a period of 5 years.

- Following the judgment of *H.G. Gupta & Sons (supra)*, the ground of the assessee is dismissed.