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RESIDENCE AND SCOPE OF TOTAL INCOME

Question 1

State with reasons, whether the following statements are true or false, with regard to the provisions of the Income-tax Act, 1961:

(a) Only individuals and HUFs can be resident, but not ordinarily resident in India; firms can be either a resident or non-resident. (2 Marks)(May 2007)

(b) Income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fee for technical services is taxable in India irrespective of territorial nexus.

(2 Marks)(Nov 2008)

(c) Mr. X, Karta of HUF, claims that the HUF is non-resident as the business of HUF is transacted from UK and all the policy decisions are taken there. (2 Marks)(June 2009)

The provisions of the Income-tax Act, 1961 relevant for Assessment Year 2010-11 should be taken into consideration while solving the question. Accordingly, the facts given above may be taken as relating to Financial Year 2009-10.

Answer

(a) True

A person is said to be "not-ordinarily resident" in India if he satisfies either of the conditions given in sub-section (6) of section 6. This sub-section relates to only individuals and Hindu Undivided Families. Therefore, only individuals and Hindu undivided families can be resident, but not ordinarily resident in India. All other classes of assessees can be either a resident or non-resident for the purpose of income-tax. A firm can, therefore, either be a resident or non-resident.

(b) True

Explanation to section 9 clarifies that income by way of interest, royalty or fee for technical services which is deemed to accrue or arise in India by virtue of clauses (v), (vi) and (vii) of section 9(1), shall be included in the total income of the non-resident, whether or not the non-resident has a residence or place of business or business connection in India.

(c) True

A HUF is considered to be a non-resident where the control and management of its affairs are situated wholly outside India. In the given case, since all the policy decisions of HUF are taken from UK, the HUF is a non-resident.

Question 2

Miss Charlie, an American national, got married to Mr. Radhey of India in USA on 2.3.06 and came to India for the first time on 16.3.06. She remained in India up till 19.9.06 and left for USA on 20.9.06. She returned to India again on 27.3.07. While in India, she had purchased a show room in Mumbai on 22.4.06, which was leased out to a company on a rent of Rs.25,000 p.m. from 1.5.06. She had taken loan from a bank for purchase of this show room on which bank had charged interest of Rs.97,500 upto 31.3.07. She had received the following gifts from her relatives and friends during 1.4.06 to 30.6.06 :

- From parents of husband	Rs.51,000
- Fro married sister of husband	Rs.11,000
- From two very close friends of her husband, Rs.1,51,000 and Rs.21,000	Rs.1,72,000

Determine her residential status and compute the total income chargeable to tax alongwith the amount of tax payable on such income for the Asst. Year 2007-08. (14 Marks) (May 2007)

The provisions of the Income-tax Act, 1961 relevant for Assessment Year 2010-11 should be taken into consideration while solving the question. Accordingly, the facts given above may be taken as relating to financial year 2009-10. The particulars would be as follows:

Miss Charlie, an American national, got married to Mr. Radhey of India in USA on 2.03.09 and came to India for the first time on 16.03.09 She remained in India up till 19.9.09 and left for USA on 20.9.09. She returned to India again on 27.03.10. While in India, she had purchased a show room in Mumbai on 22.04.09, which was leased out to a company on a rent of Rs.25,000 p.m. from 1.05.09. She had taken loan from a bank for purchase of this show room on which bank had charged interest of Rs.97,500 upto 31.03.10. She had received the following gifts from her relatives and friends during 1.4.09 to 30.6.09:

- From parents of husband	Rs.51,000
- From married sister of husband	Rs.11,000
- From two very close friends of her husband, Rs.1,51,000 and Rs.21,000	Rs.1,72,000

Determine her residential status and compute the total income chargeable to tax alongwith the amount of tax payable on such income for the Asst. Year 2010-11.

Answer

Under section 6(1), an individual is said to be resident in India in any previous year, if he satisfies any one of the following conditions:

(i) He has been in India during the previous year for a total period of 182 days or more, or

(ii) He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the previous year.

If an individual satisfies any one of the conditions mentioned above, he is a resident. If both the above conditions are not satisfied, the individual is a non-resident.

Therefore, the residential status of Miss Charlie, an American National, for A.Y.2010-11 has to be determined on the basis of her stay in India during the previous year relevant to A.Y. 2010-11 i.e. P.Y.2009-10 and in the preceding four assessment years.

Her stay in India during the previous year 2009-10 and in the preceding four years are as under:-

P.Y.2009-10

01.04.2009 to 19.09.2009	-	172 days
27.03.2010 to 31.03.2010	-	5 days
Total		177 days

Four preceding previous years

P.Y.2008-09 [1.4.08 to 31.3.09]	-	16 days
P.Y.2007-08 [1.4.07 to 31.3.08]	-	Nil
P.Y.2006-07 [1.4.06 to 31.3.07]	-	Nil
P.Y.2005-06 [1.4.05 to 31.3.06]	-	Nil
Total		16 days

The total stay of the assessee during the previous year in India was less than 182 days and during the four years preceding this year was for 16 days. Therefore, due to non-fulfillment of any of the two conditions for a resident, she would be treated as non-resident for the Assessment Year 2010-11.

Computation of total income of Miss Charlie for the A.Y. 2010-11

Particulars	Rs.	Rs.
Income from house property		
Show room located in Mumbai remained on rent from 01.05.09 to 31.03.10 @ Rs.25,000/- p.m.		
Gross Annual Value [25,000 x 11] (See Note 1 below)	2,75,000	
Less: Municipal taxes	-	
Net Annual Value (NAV)	2,75,000	
Less: Deduction under section 24		

30% of NAV	82,500		
Interest on loan	97,500	1,80,000	95,000

Income from other sources

Gifts received from non-relatives is chargeable to tax as per section 56(2)(vi) if the aggregate value of such gifts exceeds of Rs.50,000.		
- Rs.50,000 received from parents of husband would be exempt, since parents of husband fall within the definition of relative and gifts from a relative are not chargeable to tax.	Nil	
- Rs.11,000 received from married sister of husband is exempt, since sister falls within the definition of relative and gifts from a relative are not chargeable to tax.	Nil	
- Gift received from two friends of husband Rs.1,51,000 and Rs.21,000 aggregating to Rs.1,72,000 is taxable under section 56(2)(vi) since the aggregate of Rs.1,72,000 exceeds Rs.50,000.	1,72,000	1,72,000
Total income		2,67,000

Computation of tax payable by Miss Charlie for the A.Y. 2010-11.

Particulars	Rs.	Rs.
Tax on total income of Rs.2,67,000		10,700
Add: Education cess@2%		214
Add : Secondary and higher education cess @1%		107
Total tax payable		11,021

Notes –

1. Actual rent received has been taken as the gross annual value in the absence of other information (i.e. Municipal value, fair rental value and standard rent) in the question.
2. If the aggregate value of taxable gifts received from non-relatives exceeds Rs.50,000 during the year, the entire amount received (i.e. the aggregate value of taxable gifts received) is taxable. Therefore, the entire amount of Rs.1,72,000 is taxable under section 56(2)(vi).
3. The increased basic exemption limit of Rs.1,90,000 is available only for resident women. In this case, since the assessee is a non-resident, she cannot avail the benefit of higher basic exemption limit of Rs.1,90,000.

Question 3

Determine the taxability of income of US based company Heli Ltd., in India on entering following transactions during the financial year 2008-09:

(i) Rs.5 lacs received from an Indian domestic company for providing technical know how in India.

(ii) Rs.6 lacs from an Indian firm for conducting the feasibility study for the new project in Finland

(iii) Rs.4 lacs from a non-resident for use of patent for a business in India.

(iv) Rs.8 lacs from a non-resident Indian for use of know how for a business in Singapore.

(v) Rs.10 lacs for supply of manuals and designs for the business to be established in Singapore.

Explain the rate of tax applicable on taxable income for US based company, Heli Ltd., in India.

(7 Marks) (Nov 2009)

> The provisions of the Income-tax Act, 1961 relevant for Assessment Year 2010-11 should be taken into consideration while solving the question. Accordingly, the facts given above may be taken as relating to Financial Year 2009-10.

Answer

A non resident is chargeable to tax in India in respect of following incomes:

(i) Income received or deemed to be received in India; and

(ii) Income accruing or arising or deemed to accrue or arise in India.

In view of the above provisions, taxability of income is determined in following manner:

S. No.	Transaction details	Amount (Rs.)
(i)	Amount received from an Indian domestic company for providing technical know how in India is deemed to accrue or arise in India and is, therefore, taxable in India	5 lacs
(ii)	Conducting the feasibility study for the new project in Finland for the Indian firm is not taxable in India as the income accrues outside India since such study is done for a business outside India.	Nil
(iii)	Income received from a non-resident for use of patent for a business in India is taxable in India as it is deemed to accrue or arise in India.	4 lacs
(iv)	Income received from a non-resident Indian for use of know-how for a business in Singapore. Therefore, since it does not accrue or arise in India nor is it deemed to accrue or arise in India, it is not taxable in India.	Nil

(v)	Income received for supply of manuals and designs for the business to be established in Singapore is not taxable in India, since it does not accrue or arise in India nor is it deemed to accrue or arise in India.	Nil
	Total Income in India	9 lacs

Note –

It is assumed that the income referred to S.No. (ii), (iv) and (v) are received outside India.

In respect of foreign companies, certain 'specified income such as royalty and fees for technical service is taxable @ 10%. However, the rate specified in the DTAA between India and USA may be adopted, if it is more favourable to the assessee. It is presumed that the agreement was entered into on or after 1st June, 2005.