# Poem Rules

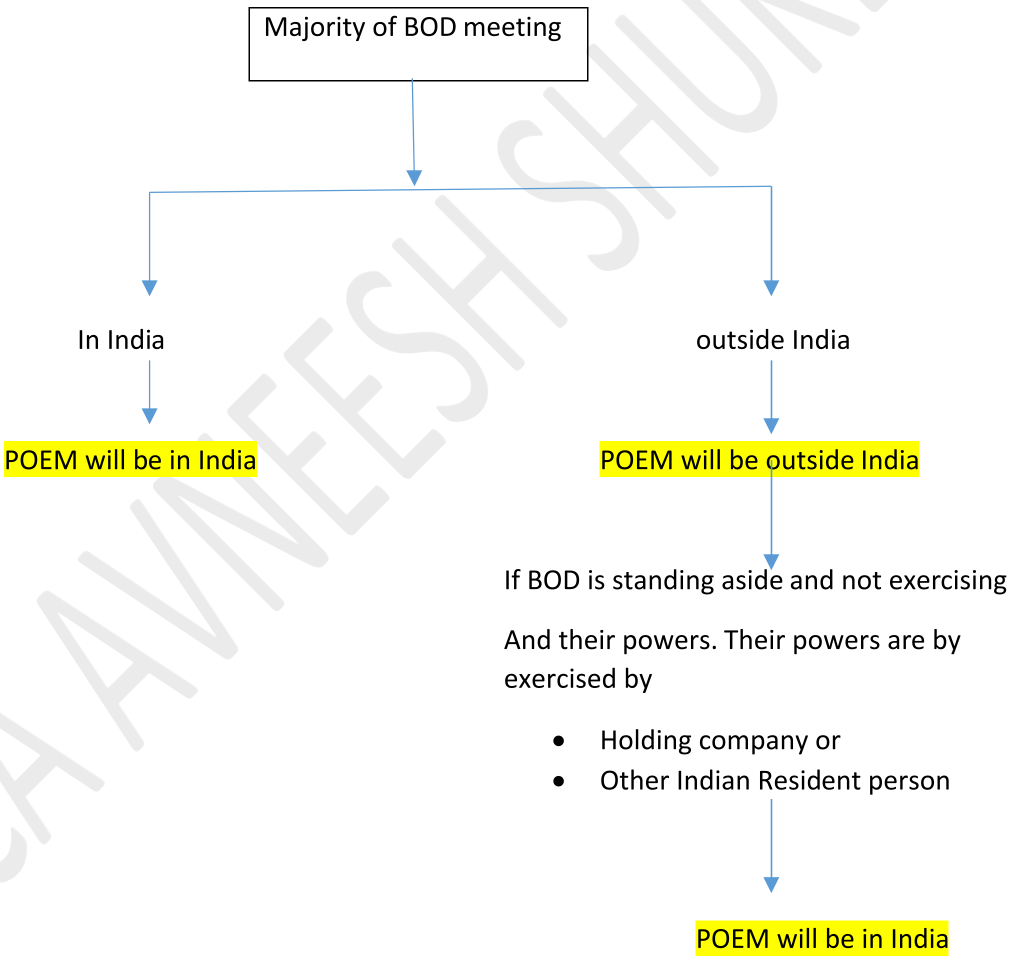
Section 6(3) of Income Tax Act: Company is said to be resident in India in any previous year, if-

(i) It is an Indian company; or

(ii) Its place of effective management (POEM) in that year is in India.

General Exclusion of small companies: Poem Rules are not applicable on the companies having turnover or gross receipts of 50 crores or less.

POEM for companies engaged in ABOI (Active Business outside India):




Notes:

1. If BOD is following general and objective principles of Global policies then it will not considered as BOD is standing aside.

Poem for companies not engaged in ABOI (Active Business outside India):

Step 1: identify person making KMCD (Key management and commercial decision) for whole business of company.

Step 2: Identify place of taking these decisions (more important than 1st step)

| S.No. | Particulars | POEM |
|---|---|---|
| | | |
| 1. | BOD retains and exercise authority to govern company plus<br>Does make KMCD for whole business | Location of regular BOD meeting and decision making |
| 2. | Place of formal meeting and place of decision making by directors are different | Location of decision |
| 3. | BOD delegates authority to senior management etc. | Location of decisions taken by senior management |
| 4. | BOD delegates authority to executive committee | Location of committee members and strategy development /formulation |
| 5. | Meeting through video conferencing | Place where decision maker resides |
| 6. | Circular Resolution | Location of the person having authority and exercising authority to take decision |

Notes:

1. Decisions taken by shareholders

Results in Effective management → Considered for deciding POEM

Do not result in Effective management → not considered for deciding POEM

2. Decisions

To open manufacturing facilities → KMCD

To run that facilities and repairs/maintenance → NOT KMCD

3. POEM will be determined based on facts. Snapshot approach cannot be adopted.
4. No single principle proposal will be decisive.

## Secondary factors for determining POEM:

1. Place where main and substantial activity carried on or
2. Place where accounting records are kept

## Certain facts which are not conclusive evidence that POEM conditions are satisfied:

1. X Ltd. India Completely owns X Ltd. Dubai
2. X Ltd. Dubai has PE In India
3. One or more directors of X Ltd. Dubai reside in India
4. X Ltd. Dubai carries on activities in India and local management relating to activities is in India
5. X Ltd. Dubai has preparatory and auxiliary support function is in India.

## Meaning of Active Business outside India:

| S.no. | Terms | Meaning |
|---|---|---|
| | | |
| 1. | Active Business Outside India | 1. Passive Income ≤ 50% of total<br>2. Assets in India < 50% of total<br>3. Employees resident in India < 50% of total<br>4. Payroll expenses of employees ROI < 50% of total |
| 2. | Passive Income | 1. Income from transaction where both sales and purchase are from AE<br>2.<br>• Dividends<br>• Royalty<br>• Capital Gain<br>• Interest<br>• Rental income |
| 3. | Employees | • Average of number of employee at the beginning and at the end of year<br>• Employees not on payroll of company also included |
| 4. | Payroll | • Salaries |

| | | |
|---|---|---|
| | | • Wages<br>• Bonus<br>• Other employee compensation<br>• Pension<br>• Social cost |
| 5. | Income | Computed as per<br>• Tax law of country of incorporation or<br>• As per books |
| 6. | Value of Assets | Depreciable individually<br>Average of value of asset for tax at the beginning and at the end of year<br><br>Depreciated in block<br>Average of value of asset for tax at the beginning and at the end of year<br><br>Other Asset<br>Book value |

Meaning of Head Office:

Senior management and Direct Support Staff Located at One location

Yes

H.O. will be that location

No

Place where they primarily and predominant located will be H.O. or

Normally returns to travel to other location or

Meets for deciding key strategies and policies

Note:

1. H.O. need not be the place where majority of employee works or where board typically meets.
2. H.O. will be a very important factor in the determination of the company's POEM because it often represents the place where key company decisions are made.

3. Senior Management: who develop and formulate key strategies, policies and ensures or oversees execution or implementation of those policies on regular basis