CHAPTER 2

RESIDENCE AND SCOPE OF TOTAL INCOME

Question 1

Choose the correct answer with reference to the provisions of the Income-tax Act, 1961:

(i) Income accruing in Japan and received there is taxable in India in the case of -

(a) Resident and ordinarily resident only

(b) Both resident and ordinarily resident and resident but not ordinarily resident

(c) Both resident and non-resident

(d) Non-resident

(ii) A company, other than an Indian company, would be treated as a resident in India for the previous year 2010-11 if, during that year, its control and management is situated:

(a) Wholly in India

(b) Partly in India

(c) Wholly or partly in India

(d) None of the above.

Answer

(i) (a) Resident and ordinarily resident only.

(ii) (a) Wholly in India

Question 2

Discuss the provisions relating to determination of residential status of Hindu undivided family, partnership firm and company.

Answer

Residential status of a HUF:

A HUF would be resident in India if the control and management of its affairs is situated wholly or partly in India during the relevant previous year. If the control and management of its affairs is situated wholly outside India during the relevant previous year, it would be considered as a non-resident.

If the HUF is resident, then the status of its Karta determines whether it is resident and ordinarily resident or resident but not ordinarily resident.

Residential status of a firm:

A firm would be resident in India if the control and management of its affairs is situated wholly or partly in India during the relevant previous year. Where the control and management of the affairs is situated wholly outside India during the relevant previous year, the firm would be considered as a non-resident.

Residential status of a company:

A company is said to be resident in India in any previous year if :

(a) it is an Indian company as defined under section 2(26) ,or

(b) its control and management is situated wholly in India during that year.

Thus, every Indian company is resident in India irrespective of the fact whether the control and management of its affairs is exercised from India or outside. However, a company other than an Indian company, would become resident in India only if the entire control and management of its affairs is in India during the relevant previous year.

Question 3

Mr. Dey, a non-resident, residing in US since 1960, came back to India on 1.4.2009 for permanent settlement. What will be his residential status for assessment years 2010-11 and 2011-12?

Answer

Mr. Dey is a resident in A.Y.2010-10 and A.Y.2011-12 since he has stayed in India for a period of 365 days (more than 182 days) during the P.Y.2009-10 and P.Y.2010-11, respectively.

As per section 6(6), a person will be “Not ordinarily Resident” in India in any previous year, if such person :

(a) has been a non-resident in 9 out of 10 previous years preceding the relevant previous year; or

(b) has during the 7 previous years immediately preceding the relevant previous year been in India for 729 days or less.

If he does not satisfy either of these conditions, he would be a resident and ordinarily resident.

In the instant case, applying the above, the status of Mr. Dey for the previous year 2009-10 (A.Y. 2010-11) will be “Resident but not ordinarily resident”.

For the previous year 2010-11 (A.Y. 2011-12) his status would continue to be Resident but not ordinarily resident since he was non-resident in 9 out 10 previous years immediately preceding the previous year and also had stayed for less than 729 days in 7 previous years immediately preceding the previous year.

Therefore his status for

A.Y. 2010-11 – "Resident but not ordinarily resident"

A.Y. 2011-12 – "Resident but not ordinarily resident"

Question 4

State the activities and operations, income from which is not deemed to accrue or arise in India.

Answer

Explanation 1 to section 9(1)(i) lists out income which shall not be deemed to accrue or arise in India. They are given below:

1. **In the case of a business, in respect of which all the operations are not carried out in India [Explanation 1(a) to section 9(1)(i)]**

   In the case of a business of which all the operations are not carried out in India, the income of the business deemed to accrue or arise in India shall be only such part of income as is reasonably attributable to the operations carried out in India. Therefore, it follows that such part of income which cannot be reasonably attributed to the operations in India, is not deemed to accrue or arise in India.

2. **Purchase of goods in India for export [Explanation 1(b) to section 9(1)(i)]**

   In the case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export.

3. **Collection of news and views in India for transmission out of India [Explanation 1(c) to section 9(1)(i)]**

   In the case of a non-resident, being a person engaged in the business of running a news agency or of publishing newspapers, magazines or journals, no income shall be deemed to accrue or arise in India to him through or from activities which are confined to the collection of news and views in India for transmission out of India.

4. **Shooting of cinematograph films in India [Explanation 1(d) to section 9(1)(i)]**

   In the case of a non-resident, no income shall be deemed to accrue or arise in India through or from operations which are confined to the shooting of any cinematograph film in India, if such non-resident is :

   (i) an individual, who is not a citizen of India or

   (ii) a firm which does not have any partner who is a citizen of India or who is resident in India ; or

(iii) a company which does not have any shareholder who is a citizen of India or who is resident in India.

Question 5

When is an individual/HUF said to be "Resident and ordinarily Resident" under the Income tax Act, 1961?

Answer

Individual – An individual is said to be a resident in India in any previous year if he fulfills any one of the following two basic conditions :

(i) He is in India during the previous year for a period or periods amounting in all to 182 days or more.

(ii) He is in India for a period or periods amounting in all to 60 days or more during the previous year and 365 days or more during 4 years immediately preceding the relevant previous year.

Exception – If an Indian citizen leaves India for the purpose of employment or as a member of crew of an Indian ship or if an Indian citizen or person of Indian origin who is residing outside India comes to India on a visit in a previous year, he would be considered as resident in India in that year only if he has been in India in that year for 182 days or more instead 60 days referred to in, (ii) above.

Resident and Ordinarily Resident: If an individual satisfies any one of the basic conditions and none of the following additional conditions, he will be treated as 'resident and ordinarily resident'.

Additional conditions :

(i) He has been a non-resident in India in 9 out of 10 previous years preceding the relevant previous year ; or

(ii) He has been in India for a period of 729 days or less during 7 previous years immediately preceding the relevant previous year.

Thus in brief, an individual fulfilling any one of the basic conditions and none of the additional conditions will be "Resident and ordinarily resident".

HUF: If the control and management of the affairs of the HUF is wholly or partly situated in India and if the manager of the HUF does not satisfy any of the following two additional conditions, the HUF shall be considered as resident and ordinarily resident –

(i) He has been non resident in India in 9 out of 10 previous years preceding the relevant previous year ; and

(ii) He has been in India for a period of 729 days or less during the 7 previous years preceding the relevant previous year.

Question 6

In the previous year 2010-11, a sailor has remained on ship for a private company owning ocean going ships as follows :

(1) Outside the territorial waters of India for 182 days.

(2) Inside the territorial waters of India for 183 days.

Is he considered to be resident or not for the Assessment Year 2011-12 (Previous Year 2010-11)? Comment.

Answer

An individual is treated as a resident in India in any previous year if he fulfills any of the following two conditions laid down in section 6(1):

(a) He is in India for a period or periods amounting to 182 days or more in that year; or

(b) In the preceding four years, he has been India for 365 days or more, and has been in India for 60 days or more in that year.

In the given case, period of stay in India is more than 182 days. Therefore, the sailor is treated as a resident in India for the Assessment Year 2011-12.

Question 7

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.

(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.

(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.

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

(i) non-resident has a residence or place of business or business connection in India; or

(ii) the non-resident has rendered services 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 8

Miss Charlie, an American national, got married to Mr. Radhey of India in USA on 2.03.10 and came to India for the first time on 16.03.10. She remained in India up till 19.9.10 and left for USA on 20.9.10. She returned to India again on 27.03.11. While in India, she had purchased a show room in Mumbai on 22.04.10, which was leased out to a company on a rent of Rs.25,000 p.m. from 1.05.10 She had taken loan from a bank for purchase of this show room on which bank had charged interest of Rs.97,500 upto 31.03.11. She had received the following gifts from her relatives and friends during 1.4.10 to 30.6.10:

- 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 2011-12.

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.2011-12 has to be determined on the basis of her stay in India during the previous year relevant to A.Y. 2011-12 i.e. P.Y.2010-11 and in the preceding four assessment years.

Her stay in India during the previous year 2010-11 and in the preceding four years are as under :

P.Y.2010-11

01.04.2010 to 19.09.2010	-	172 days
27.03.2011 to 31.03.2011	-	5 days
Total		177 days

Four preceding previous years

P.Y.2009-10 [1.4.09 to 31.3.10]	-	16 days
P.Y.2008-09 [1.4.08 to 31.3.09]	-	Nil
P.Y.2007-08 [1.4.07 to 31.3.08]	-	Nil
P.Y.2006-07 [1.4.06 to 31.3.07]	-	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 2011-12.

Computation of total income of Miss Charlie for the A.Y. 2011-12

Particulars		Rs.	Rs.
Income from house property			
Show room located in Mumbai remained on rent from 01.05.10 to 31.03.11 @ 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)(vil) 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 relatives and gifts from a relative are not chargeable to tax.	Nil	
- Rs.11,000 received from married sister of husband is exempt, since sister-in-law 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)(vii) since the aggregate of Rs.1,72,000 exceeds Rs.50,000. (see Note 2 below)	1,72,000	1,72,000
Total income		**2,67,000**

Computation of tax payable by Miss Charlie for the A.Y. 2011-12.

Particulars	Rs.
Tax on total income of Rs.2,67,000 (see note 3 below)	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)(vii).
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 9

Determine the taxability of income of US based company Heli Ltd., in India on entering following transactions during the financial year 2010-11:

(i) Rs.5 lacs received from an Indian domestic company for providing technical knowhow 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.

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 knowhow 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 knowhow for a business in Singapore. It 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
(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	**9 lacs**

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

Question 10

Mr. Rakesh and Mr. Anish are brothers and they earned the following incomes during the financial year 2010-11. Mr. Rakesh settled in U.K. in the year 1975 and Mr. Anish settled in Surat. Compute the total income for the Assessment Year 2011-12.

Sr. No.	*Particulars*	*Mr. Rakesh*	*Mr. Anish*
1.	*Interest on U.K. development bonds, 50% of interest received in India*	*25,000*	*20,000*

2.	*Dividend from British Company received in London*	*8,000*	*10,000*
3.	*Profit from a business in Mumbai, but managed directly from London*	*10,000*	*12,000*
4.	*Profit on sale of shares of an Indian company received in India*	*50,000*	*80,000*
5.	*Income from a business in Delhi*	*20,000*	*20,000*
6.	*Fees for technical services rendered in India, but received in London*	*1,00,000*	*-*
7.	*Interest on savings bank deposit in SBI, Bangalore*	*5,000*	*15,000*
8.	*Agricultural income from a land situated in Rajasthan*	*25,000*	*25,000*
9.	*Rent received in respect of house property at Bangalore*	*72,000*	*48,000*
10.	*LIP premium paid*	*-*	*25,000*

Answer

Computation of total income of Mr. Rakesh and Mr. Anish for the A.Y. 2011-12

Sl. No.	**Particulars**	**Mr. Rakesh Non-Resident**	**Mr. Anish Resident**
1.	Interest on U.K. Development Bonds	12,500	20,000
2.	Dividend from British Company received in London	-	10,000
3.	Profit from a business in Mumbai but managed directly from London	10,000	12,000
4.	Profit on sale of shares of an Indian company received in India	50,000	80,000
5.	Income from a business in Delhi	20,000	20,000
6.	Fees for technical services rendered in India but received in London	1,00,000	-
7.	Interest on savings bank deposit in SBI, Bangalore	5,000	15,000
8.	Agricultural income from a land in Rajasthan [(Exempt u/s. 10(1)]	-	-
9.	Rent received in respect of House property at Bangalore (See Note 1)	50,400	33,600
	Gross Total income	**2,47,900**	**1,90,600**
	Less : Deduction under Chapter VI-A under section 80C		
	LIC Premium paid	-	25,000
	Total Income	**2,47,900**	**1,65,600**

Notes :

1. **Income from house property**

	Mr. Rakesh	**Mr. Anish**
Rent received	72,000	48,000
Less : Deduction u/s 24 @ 30%	21,600	14,400
	50,400	33,600

2. Dividend received from British company in London, by a non-resident assessee is not taxable income, while the same received by a resident assessee is taxable and not entitled to exemption under section 10(34) of Income-tax Act, 1961.

3. Agricultural income from a land situated in the State of Rajasthan, is exempted under section 10(1) of Income-tax Act, 1961 in case of both non-resident and resident assessees.

Question 11

An individual, who is an Indian resident, is allowed to hold two different citizenship simultaneously. Is the citizenship a determining factor for residential status of an individual?

Answer

Citizenship of a country and residential status of that country are separate concepts. A person may be an Indian national /citizen, but may not be a resident in India. On the other hand, a person may be a foreign national /citizen, but may be a resident in India. The citizenship of an individual has no role in determining the residential status of an individual.

The residential status of resident, non-resident, etc. are determined on the basis of number of days an individual actually stays in India during the previous year.

The provisions of section 6 of the Income-tax Act, 1961 are the determining factor of residential status of an individual.

Question 12

Explain the term "Business Connection" under section 9(1).

Answer

Refer to Page 2.11 of Study Material