

Residence and Scope of Total Income

Question 1

Mr. Ramesh & Mr. Suresh are brothers and they earned the following incomes during the financial year 2012-13. Mr. Ramesh settled in Canada in the year 1995 and Mr. Suresh settled in Delhi. Compute the total income for the assessment year 2013-14.

Sr. No.	Particulars	Mr. Ramesh (₹)	Mr. Suresh (₹)
1.	Interest on Canada Development Bond (only 50% of interest received in India)	35,000	40,000
2.	Dividend from British company received in London	28,000	20,000
3.	Profit from a business in Nagpur, but managed directly from London	1,00,000	1,40,000
4.	Short term capital gain on sale of shares of an Indian company received in India	60,000	90,000
5.	Income from a business in Chennai	80,000	70,000
6.	Fees for technical services rendered in India, but received in Canada	1,00,000	----
7.	Interest on savings bank deposit in UCO Bank, Delhi	7,000	12,000
8.	Agricultural income from a land situated in Andhra Pradesh	55,000	45,000
9.	Rent received in respect of house property at Bhopal	1,00,000	60,000
10.	Life insurance premium paid	---	30,000

Answer

Computation of total income of Mr. Ramesh & Mr. Suresh for the A.Y. 2013-14

S. No.	Particulars	Mr. Ramesh (Non-Resident) (₹)	Mr. Suresh (Resident) (₹)
1.	Interest on Canada Development Bond (See Note 2)	17,500	40,000
2.	Dividend from British Company received in London (See Note 3)	-	20,000
3.	Profit from a business in Nagpur but managed directly from London (See Note 2)	1,00,000	1,40,000

4.	Short term capital gain on sale of shares of an Indian company received in India (See Note 2)	60,000	90,000
5.	Income from a business in Chennai (See Note 2)	80,000	70,000
6.	Fees for technical services rendered in India, but received in Canada (See Note 2)	1,00,000	-
7.	Interest on savings bank deposit in UCO Bank, Delhi (See Note 2)	7,000	12,000
8.	Agricultural income from a land in Andhra Pradesh (See Note 4)	-	-
9.	Income from house property at Bhopal (See Note 5)	70,000	42,000
	Gross Total income	4,34,500	4,14,000
	Less: Deduction under chapter VIA-		
	Sec. 80C-Life insurance premium paid	-	30,000
	Sec. 80TTA (See Note 6)	7,000	10,000
	Total Income	4,27,500	3,74,000

Notes:

- Mr. Ramesh is a non-resident since he has been living in Canada since 1995. Mr. Suresh, who is settled in Delhi, is a resident.
- In case of a resident, his global income is taxable as per section 5(1). However, as per section 5(2), in case of a non-resident, only the following income are chargeable to tax:
 - Income received or deemed to be received in India; and
 - Income accruing or arising or deemed to accrue or arise in India.

Therefore, fees for technical services rendered in India would be taxable in the hands of Mr. Ramesh, even though he is a non-resident.

The income referred to in Sl. No. 3,4,5 and 7 are taxable in the hands of both Mr. Ramesh and Mr. Suresh since they accrue or arise in India.

Interest on Canada Development Bond would be fully taxable in the hands of Mr. Suresh, whereas only 50% which is received in India is taxable in the hands of Mr. Ramesh.
- Dividend received from British company in London by Mr. Ramesh is not taxable since it accrues and is received outside India. However, dividend received by Mr. Suresh is taxable, since he is a resident. Exemption under section 10(34) would not be available in respect of dividend received from a foreign company.
- Agricultural income from a land situated in India is exempt under section 10(1) in the case of both non-residents and residents.
- Income from house property-

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	Mr. Ramesh	Mr. Suresh
	(₹)	(₹)
Rent received	1,00,000	60,000
Less: Deduction under section 24 @ 30%	<u>30,000</u>	<u>18,000</u>
Net income from house property	<u>70,000</u>	<u>42,000</u>

The net income from house property in India would be taxable in the hands of both Mr. Ramesh and Mr. Suresh, since the accrual and receipt of the same are in India.

6. In case of an individual, interest upto ₹ 10,000 from savings account with, *inter alia*, a bank is allowable as deduction under section 80TTA.

Question 2

Discuss the correctness or otherwise of the statement- "Income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fees for technical services is to be taxed irrespective of territorial nexus".

Answer

This statement is correct.

As per *Explanation* to section 9, 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.

In effect, the income by way of fee for technical services, interest or royalty from services utilised in India would be deemed to accrue or arise in India in case of a non-resident and be included in his total income, whether or not such services were rendered in India and irrespective of whether the non-resident has a residence or place of business or business connection in India.

Question 3

Mr. David, a Government employee serving in the Ministry of External Affairs, left India for the first time on 31.03.2012 due to his transfer to High Commission of Canada. He did not visit India any time during the previous year 2012-13. He has received the following income for the Financial Year 2012-13:

S.No.	Particulars	₹
(i)	Salary	5,00,000
(ii)	Foreign Allowance	4,00,000
(iii)	Interest on fixed deposit from bank in India	1,00,000

(iv)	Income from agriculture in Pakistan	2,00,000
(v)	Income from house property in Pakistan	2,50,000

Compute his gross total income for Assessment Year 2013-14.

Answer

As per section 6(1), Mr. David is a non-resident for the F.Y. 2012-13, since he was not present in India at any time during the previous year 2012-13.

As per section 5(2), a non-resident is chargeable to tax in India only 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, income from agriculture in Pakistan and income from house property in Pakistan would not be chargeable to tax in the hands of David, assuming that the same were received in Pakistan.

Income from 'Salaries' payable by the Government to a citizen of India for services rendered outside India is deemed to accrue or arise in India as per section 9(1)(iii). Hence, such income is taxable in the hands of Mr. David, even though he is a non-resident. It has been assumed that Mr. David is a citizen of India.

However, allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering service outside India is exempt under section 10(7). Hence, foreign allowance of ₹ 4,00,000 is exempt under section 10(7).

Gross Total Income for A.Y. 2013-14

Particulars	₹
Salaries	5,00,000
Income from other sources (Interest on fixed deposit in India)	<u>1,00,000</u>
Gross Total Income	<u>6,00,000</u>

Question 4

Brett Lee, an Australian cricket player visits India for 100 days in every financial year. This has been his practice for the past 10 financial years. Find out his residential status for the assessment year 2013-2014.

Answer

Determination of Residential Status of Mr. Brett Lee for the A.Y. 2013-14:-

Period of stay during previous year 2012-13 = 100 days.

Calculation of period of stay during 4 preceding previous years (100 x 4=400 days)

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2011-12	100 days
2010-11	100 days
2009-10	100 days
2008-09	<u>100 days</u>
Total	<u>400 days</u>

Since Mr. Brett Lee has been in India for a period more than 60 days during previous year 2012-13 and for a period of more than 365 days during the 4 immediately preceding previous years. Therefore, since he satisfies one of the basic conditions under section 6(1), he is a resident for the assessment year 2013-14.

Computation of period of stay during 7 preceding previous years = $100 \times 7 = 700$ days

2011-12	100 days
2010-11	100 days
2009-10	100 days
2008-09	100 days
2007-08	100 days
2006-07	100 days
2005-06	<u>100 days</u>
Total	<u>700 days</u>

Since his period of stay in India during the past 7 previous years is less than 730 days, he is a not-ordinarily resident during the assessment year 2013-14. (See Note below)

Therefore, Mr. Brett Lee is a resident but not ordinarily resident during the previous year 2012-13 relevant to the assessment year 2013-14.

Note: A not-ordinarily resident person is one who satisfies any one of the conditions specified under section 6(6), i.e.,

- (i) If such individual has been non-resident in India in any 9 out of the 10 previous years preceding the relevant previous year, or
- (ii) If such individual has during the 7 previous years preceding the relevant previous year been in India for a period of 729 days or less.

In this case, since Mr. Brett Lee satisfies condition (ii), he is a not-ordinary resident for A.Y. 2013-14.

Question 5

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 2012-13 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 6

Miss Vivitha paid a sum of 5000 USD to Mr. Kulasekhara, a management consultant practising in Colombo, specializing in project financing. The payment was made in Colombo. Mr. Kulasekhara is a non-resident. The consultancy is related to a project in India with possible Ceylonese collaboration. Is this payment chargeable to tax in India in the hands of Mr. Kulasekhara, since the services were used in India?

Answer

A non-resident is chargeable to tax in respect of income received outside India only if such income accrues or arises or is deemed to accrue or arise to him in India.

The income deemed to accrue or arise in India under section 9 comprises, *inter alia*, income by way of fees for technical services, which includes any consideration for rendering of any managerial, technical or consultancy services. Therefore, payment to a management consultant relating to project financing is covered within the scope of "fees for technical services".

The *Explanation* below section 9(2) has been substituted to clarify that income by way of, *inter alia*, fees for technical services, from services utilized in India would be deemed to accrue or arise in India in case of a non-resident and be included in his total income, whether or not such services were rendered in India or whether or not the non-resident has a residence or place of business or business connection in India.

In the instant case, since the services were utilized in India, the payment received by Mr. Kulasekhara, a non-resident, in Colombo is chargeable to tax in his hands in India, as it is deemed to accrue or arise in India.

2.7 Income-tax

Question 7

Mr. Ram, an Indian citizen, left India on 22.09.2012 for the first time to work as an officer of a company in Germany.

Determine the residential status of Ram for the assessment year 2013-14 and explain the conditions to be fulfilled for the same under the Income-tax Act, 1961.

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 atleast 60 days in the previous year.

In the case of Indian citizens leaving India for employment, the period of stay during the previous year must be 182 days instead of 60 days given in (ii) above.

During the previous year 2012-13, Mr. Ram, an Indian citizen, was in India for 175 days only (i.e 30+31+30+31+31+22 days). Thereafter, he left India for employment purposes.

Since he does not satisfy the minimum criteria of 182 days, he is a non-resident for the A.Y. 2013-14.

Question 8

From the following particulars of income furnished by Mr. Anirudh pertaining to the year ended 31.3.2013, compute the total income for the assessment year 2013-14, if he is:

- (i) Resident and ordinary resident;
- (ii) Resident but not ordinarily resident;
- (iii) Non-resident

	Particulars	₹
(a)	Profit on sale of shares in Indian Company received in Germany	15,000
(b)	Dividend from a Japanese Company received in Japan	10,000
(c)	Rent from property in London deposited in a bank in London, later on remitted to India through approved banking channels	75,000
(d)	Dividend from RP Ltd., an Indian Company	6,000
(e)	Agricultural income from lands in Gujarat	25,000

Answer**Computation of total income of Mr. Anirudh for the A.Y. 2013-14**

Particulars	Resident & ordinarily resident	Resident but not ordinarily resident	Non-Resident
1) Profit on sale of shares of an Indian company, received in Germany	15,000	15,000	15,000
2) Dividend from a Japanese company, received in Japan.	10,000	-	-
3) Rent from property in London deposited in a bank in London [See Note (i) below]	52,500	-	-
4) Dividend from RP Ltd., an Indian Company [See Note (ii) below]	-	-	-
5) Agricultural income from land in Gujarat [See Note (iii) below]	-	-	-
TOTAL INCOME	77,500	15,000	15,000

Notes :

- (i) It has been assumed that the rental income is the gross annual value of the property. Therefore, deduction @30% under section 24, has been provided and the net income so computed is taken into account for determining the total income of a resident and ordinarily resident.

Rent received (assumed as gross annual value)	75,000
Less: Deduction under section 24 (30% of ₹ 75,000)	22,500
Income from house property	<u>52,500</u>

- (ii) Dividend from Indian company is exempt under section 10(34).
 (iii) Agricultural income is exempt under section 10(1).

Question 9

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 10

Mr. Dey, a non-resident, residing in US since 1960, came back to India on 1.4.2011 for permanent settlement. What will be his residential status for assessment years 2012-13 and 2013-14?

Answer

Mr. Dey is a resident in A.Y.2012-13 and A.Y.2013-14 since he has stayed in India for a period of 365 days (more than 182 days) during the P.Y.2011-12 and P.Y.2012-13, 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 2011-12 (A.Y. 2012-13) will be "Resident but not ordinarily resident".

For the previous year 2012-13 (A.Y. 2013-14) 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. 2012-13 – “Resident but not ordinarily resident”

A.Y. 2013-14 – “Resident but not ordinarily resident”

Question 11

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 12

When is an individual and 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 of 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 13

In the previous year 2012-13, 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 2013-14 (Previous Year 2012-13)? 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 in India for 365 days or more, and has been in India for 60 days or more in that year.

In case an Indian citizen leaves India as a member of crew of an Indian ship, the period of stay during the previous year to be read as 182 days instead of 60 days given in (b) above.

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 2013-14.

Question 14

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 assesseees can be either a resident or non-resident for the purpose of income-tax. Firms and companies can, therefore, either be a resident or non-resident.
- (b) **True** : *Explanation* below section 9(2) 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

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(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 15

Miss Charlie, an American national, got married to Mr. Radhey of India in USA on 2.03.2012 and came to India for the first time on 16.03.2012. She remained in India up till 19.9.2012 and left for USA on 20.9.2012. She returned to India again on 27.03.2013. While in India, she had purchased a show room in Mumbai on 22.04.2012, which was leased out to a company on a rent of ₹ 25,000 p.m. from 1.05.2012. She had taken loan from a bank for purchase of this show room on which bank had charged interest of ₹ 97,500 upto 31.03.2013. She had received the following gifts from her relatives and friends during 1.4.2012 to 30.6.2012:

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

Determine her residential status and compute the total income chargeable to tax along with the amount of tax payable on such income for the Asst. Year 2013-14.

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:

- He has been in India during the previous year for a total period of 182 days or more, or
- 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. 2013-14 has to be determined on the basis of her stay in India during the previous year relevant to A.Y. 2013-14 i.e. P.Y. 2012-13 and in the preceding four assessment years.

Her stay in India during the previous year 2012-13 and in the preceding four years are as under :

P.Y. 2012-13

01.04.2012 to 19.09.2012	-	173 days
27.03.2013 to 31.03.2013	-	<u>5 days</u>
Total		<u>178 days</u>

Four preceding previous years

P.Y.2011-12 [1.4.2011 to 31.3.2012]	-16 days
P.Y.2010-11 [1.4.2010 to 31.3.2011]	- Nil
P.Y.2009-10 [1.4.2009 to 31.3.2010]	- Nil
P.Y.2008-09 [1.4.2008 to 31.3.2009]	- Nil
Total	<u>16 days</u>

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 2013-14.

Computation of total income of Miss Charlie for the A.Y. 2013-14

Particulars	₹	₹
Income from house property		
Show room located in Mumbai remained on rent from 01.05.2012 to 31.03.2013 @ ₹ 25,000/- p.m.		
Gross Annual Value [25,000 x 11] (See Note 1 below)	2,75,000	
Less: Municipal taxes	<u>Nil</u>	
Net Annual Value (NAV)	2,75,000	
Less: Deduction under section 24		
30% of NAV	82,500	
Interest on loan	<u>97,500</u>	
	<u>1,80,000</u>	95,000
Income from other sources		
Gifts received from non-relatives is chargeable to tax as per section 56(2)(vii) if the aggregate value of such gifts exceeds ₹ 50,000.		
- ₹ 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	
- ₹ 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 ₹ 1,51,000 and ₹ 21,000 aggregating to ₹ 1,72,000 is taxable under section 56(2)(vii) since the aggregate of ₹ 1,72,000 exceeds ₹ 50,000. (see Note 2 below)	<u>1,72,000</u>	<u>1,72,000</u>
Total income		<u>2,67,000</u>

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Computation of tax payable by Miss Charlie for the A.Y. 2013-14

Particulars	₹
Tax on total income of ₹ 2,67,000	6,700
Add: Education cess@2%	134
Add : Secondary and higher education cess @1%	67
Total tax payable	<u>6,901</u>

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 ₹ 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 ₹ 1,72,000 is taxable under section 56(2)(vii).

Question 16

Determine the taxability of income of US based company Heli Ltd., in India on entering following transactions during the financial year 2012-13:

- (i) ₹ 5 lacs received from an Indian domestic company for providing technical knowhow in India.
- (ii) ₹ 6 lacs from an Indian firm for conducting the feasibility study for the new project in Finland. The payment for the same was made in Finland.
- (iii) ₹ 4 lacs from a non-resident for use of patent for a business in India.
- (iv) ₹ 8 lacs from a non-resident Indian for use of know how for a business in Singapore. Such amount was received in U.S.
- (v) ₹ 10 lacs for supply of manuals and designs for the business to be established in Singapore. No payment for the same was made in India.

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.	Particulars	₹ (in lacs)
(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

(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
(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

Question 17

Mr. Rakesh and Mr. Anish are brothers and they earned the following incomes during the financial year 2012-13. Mr. Rakesh settled in U.K. in the year 1975 and Mr. Anish settled in Surat. Compute the total income for the Assessment Year 2013-14.

S. 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. 2013-14**

Sl. No.	Particulars	Mr. Rakesh Non-Resident (₹)	Mr. Anish Resident (₹)
1.	Interest on U.K. Development Bonds	12,500	20,000

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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 under section 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 VIA-			
	Section 80C- LIC Premium paid	-	25,000
	Section 80TTA- Interest on Saving Bank Account (See Note 4)	5,000	10,000
Total Income		2,42,900	1,55,600

Notes :

- Income from house property**

	Mr. Rakesh	Mr. Anish
Rent received	72,000	48,000
Less : Deduction under section 24 @ 30%	21,600	14,400
	50,400	33,600
- 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.
- 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 assessee.
- Interest received from saving bank deposit with a banking company is allowed as deduction under section 80TTA upto a maximum of ₹ 10,000. This deduction is allowed to both resident and non-resident.

Question 18

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.

EXERCISES

1. *If Anirudh has stayed in India in the P.Y. 2012-13 for 181 days, and he is non-resident in 9 out of 10 years immediately preceding the current previous year and he has stayed in India for 365 days in all in the 4 years immediately preceding the current previous year and 420 days in all in the 7 years immediately preceding the current previous year , his residential status for the A.Y.2013-14 would be -*
 - a) *Resident and ordinarily resident*
 - b) *Resident but not ordinarily resident*
 - c) *Non-resident*
2. *Raman was employed in Hindustan Lever Ltd. He received a salary at ₹ 40,000 p.m. from 1.4.2012 to 27.9.2012. He resigned and left for Dubai for the first time on 1.10.2012 and got salary of rupee equivalent of ₹ 80,000 p.m. from 1.10.2012 to 31.3.2013. His salary for October to December 2012 was credited in his Dubai bank account and the salary for January to March 2013 was credited in his Bombay account directly. He is liable to tax in respect of -*
 - a) *Income received in India from Hindustan Lever Ltd;*
 - b) *Income received in India and in Dubai;*
 - c) *Income received in India from Hindustan Lever Ltd. and income directly credited in India;*
3. *A company, other than an Indian company, would be a resident in India for the P.Y.2012-13 if, during that year, its control and management is situated -*
 - a) *wholly in India*
 - b) *partly in India*
 - c) *wholly or partly in India.*
4. *Income accruing in London 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*

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- c) *both resident and non-resident*
5. *When is an individual said to be "Resident and ordinarily resident" under the Income-tax Act, 1961?*
 6. *Define royalty as per section 9 of the Income-tax Act, 1961?*
 7. *Write short notes on -*
 - a) *Business connection*
 - b) *Income deemed to accrue or arise in India.*
 8. *Discuss the provisions relating to determination of residential status of individuals.*
 9. *When are the following income deemed to accrue or arise in India?*
 - a) *Interest*
 - b) *Fees for technical services.*
 10. *Discuss the correctness or otherwise of the statement – "Income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fees for technical services is to be taxed irrespective of territorial nexus."*
 11. *Explain the term "Business Connection" under section 9(1).*

Answers

1. b; 2. b; 3. a; 4. a.