

Practical 26

What would have been your answer in sr. no. (iii) of above practical, if Mr. Rajesh habitually plays principle role leading to conclusion of contract entered into by PQR Inc.?

Solution

In view of the amendment made by Finance Act, 2018 in clause (a) of explanation 2 to section 9(1)(i), the activity undertaken by Rajesh on behalf of PQR Inc. (i.e. principle role leading to conclusion of contract entered into by PQR Inc.) would give rise to a 'business connection' in India.

Readers Note:**Practical 27**

Mr. Nayan habitually secures orders in India on behalf of Mr. Karlos, Non-resident. Discuss whether Mr. Karlos is said to have business connection in India under following alternatives:

Alternative 1: Mr. Nayan also secures orders for various non-residents across the globe.

Alternative 2: Mr. Nayan works mainly for Mr. Karlos and his group companies in US, controlled by Karlos.

Solution

Alternative 1: Mr. Nayan under this alternative is nothing but an agent of independent status and therefore, it will not give rise to business connection in India for Mr. Karlos.

Alternative 2: Since Mr. Nayan works mainly for Mr. Karlos and his group companies, he cannot be said to be an agent of independent status. Therefore, dealing through Mr. Nayan in India give rise to business connection in India for Mr. Karlos.

Readers Note:**Practical 28**

A firm of solicitors in Mumbai engaged a barrister in UK for arguing a case before Supreme Court of India. A payment of 5000 pounds was made as per terms of professional engagement. Whether this transaction attract income-tax in India in the hands of barrister in UK under section 9?

Solution

- As per section 9(1)(i), all income accruing or arising, whether directly or indirectly, through or from any business connection in India is deemed to accrue or arise in India. In this case, there was a professional connection between the firm of solicitors in Mumbai and the barrister in UK.
- The expression "business" includes not only trade and manufacture; it includes, within its scope, "profession" as well. Therefore, the existence of professional connection amounts to existence of "business connection" under section 9(1)(i). It was so held by the **Supreme Court in Barendra Prasad Roy v. ITO (1981) 129 ITR 295**.
- Hence, the amount of 5,000 pounds paid to the barrister in UK as per the terms of the professional engagement constitutes income which is deemed to accrue or arise in India under section 9(1)(i). Hence, it is taxable in India.

Readers Note:

Following Explanation 2A shall be inserted after Explanation 2 to clause (i) of sub-section (1) of section 9 by the Finance Act, 2018, w.e.f. A.Y. 2019-20:

Explanation 2A.—For the removal of doubts, it is hereby clarified that the significant economic presence of a non-resident in India shall constitute "business connection" in India and "significant economic presence" for this purpose, shall mean—