

NR Taxation Adjustments of last 6 attempts

➤ May23:

M/s ABC Inc., a company of Korea, entered into an agreement with XYZ Ltd., an Indian company, for providing setting-up a power plant in Gujarat. The scope of work includes -

- (i) offshore services in the nature of drawing and design of Electrical and networking work; and
- (ii) onshore services in respect of installation of such machinery.

The consideration for aforesaid scope of work was agreed to be 3 crores for offshore services was paid in ABC's bank account in Korea on 1st July 2022 and 2 crores for onshore services 6% debentures for 2 crores were issued on 1st September, 2022 in consideration for onshore services. The consideration was discharged off.

Here, for payment of offshore services of 3 crores are in the nature of fee for technical services. Such income is deemed to accrue/arise in India for M/s ABC Inc. as per section 9(1)(vii). Hence, chargeable to tax in India.

For payment of on shore services of 2 crores being the value of debentures issued by XYZ Ltd. is in the nature of fee for technical services and would be deemed to accrue or arise in India to M/s ABC Inc. under section 9(1)(vii). Hence, it is taxable in India.

For Interest income on debentures accruing to M/s ABC Inc. such income is deemed to accrue/arise in India (2 crores x 6% x 7/12 = 7 lakhs). Hence, taxable in India.

➤ Nov22:

Section 10(6)(vi) - Remuneration received as an employee of the foreign enterprise

The amount of remuneration received, by an individual who is not a citizen of India, as an employee of the foreign enterprise is available as an exemption under section 10(6)(vi).

Condition: Stay should not exceed 90 days, foreign enterprise paying remuneration should not have been engaged in any type of trade or business in India.

Q. Mr. R, a non-resident and German citizen, is employed in a German company. The German company has a PE in India and accordingly the income of the PE is chargeable to tax in India. R visited India during the FY 2022-23 on official work and stayed for 85 days. His salary for that period was 28,00,000 which is **borne by the Indian PE**.

R held 1200 shares of N Pvt. Ltd., an Indian company since 28.11.2016 which he acquired for 15 per share. For acquiring the shares, he remitted USD 50,000 to India on 1.11.2016. He sold these shares on 23.6.2022 for 43 per share.

R also held 2000 equity shares of AG, a German company, which he had acquired for 145 per share in 2019. AG follows April to March as its financial year. He sold all these shares for 615 per share to David, another non-resident, on 26.08.2022. The relevant information of AG as on 31.3.2022 is given below:

- (i) Total value of assets 15 crores.
- (ii) Total value of immovable properties worldwide= 12 crores.
- (iii) Immovable properties held in India (included in (ii) above) - 8 crores. Dividend from AG received in India on 28.06.2022 was - 1,11,000.

You are required to compute the total income taxable in India of Mr. R ignoring the provisions of DTAA between India and Germany, if any.

Exchange rates for 1 USD on the relevant dates is given as hereunder:

Date	Buying Rate (1 US \$)	Selling Rate (1 US\$)
28.11.2016	59	61
1.11.2016	61	64
23.6.2022	74	76

Ans. Computation of Total income of Mr. R for the A.Y. 2023-24

Particulars		
Salary [Salary deemed to accrue or arise in India, since it is paid for services rendered in India as per section 9(1)(ii). Hence, it is taxable in the hands of Mr. R. Exemption u/s 10(6)(vi) would not be available to him, though he stayed in India for a period of not exceeding 90 days during the previous year since he is receiving salary from a German company which is engaged in business and trade in India through a PE in India and such salary is borne by Indian PE] Less: Standard deduction u/s 16(ia)	28,00,000 50,000	 27,50,000
Capital Gains Transfer of 1200 equity shares of N Pvt. Ltd. [Taxable in India, since shares are situated in India] Sale Consideration (1200 x 43 per share/75, being average of 74 (TTBR) + 76 (TTSR)/2 on 23.6.2022) Less: Cost of acquisition (1200 x 15 per share/60, being average of 59 (TTBR) + 61 (TTSR)/2 on 28.11.2016)	\$ 688 \$ 300	
	\$ 388	
Long-term capital gain [\$ 388 x 74, being TTBR on 23.06.2022] (Bank buy, we sell)		28,712
Transfer of 2000 Equity shares of AG [Not taxable in India, since shares of foreign company do not derive its value substantially from assets located in India as value of Indian assets do not exceed 10 crores] (Indirect Transfers)		NIL
Income from Other Sources Dividend received in India from AG [taxable in India, since dividend is received in India]		1,11,000
Gross Total Income/total income		28,89,712
Total income (rounded off)		28,89,710

➤ **May22: (6 marks)**

Q. Ms. Black and Brown S.A., (BnB) a company in Country X, appointed Mr. Lal Singh as an agent in India. Lal Singh habitually maintains in India, stock of goods or merchandise and regularly delivers the same on behalf of various non-resident entities including BnB. BnB does not have a permanent establishment or a fixed place of profession in India. Also, there is no DTAA between India and Country X.

BnB earned the following incomes from India during the FY 2022-23:
Income from delivery of goods by Mr. Lal Singh 2 crores.

Fee for technical services 55 lakhs (After deducting 6 lakhs spent on earning such income)

Long-term capital gains from sale of unlisted debentures of White Ltd., an Indian Company (subscribed in US\$) 14 lakhs (in rupees)

BnB had paid a sum equal to 50 lakhs as tax in Country X in respect of the above- mentioned income earned from India.

You are required to discuss the relevant provisions of Income-tax Act with respect to the taxability of incomes earned by BnB in India and compute the tax payable by BnB on above income

Ans. **Computation of Tax liability of BnB for the A.Y.2023-24**

Particulars	₹
Income from delivery of goods by Mr. Lal Singh, an agent of BnB	2,00,00,000
As per section 9(1)(i) , business profits of a foreign company would be deemed to accrue or arise in India, if such income accrues or arises through or from any business connection in India. In case of BnB, business connection is established, since Mr. Lal Singh acting on its behalf habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on its behalf.	
Fee for technical services (FTS)	55,00,000
FTS would be taxable in the hands of a foreign company, since the FTS has been received in India. Therefore, such FTS would be taxable in the hands of BnB after deducting expenditure on earning such income.	
Long-term capital gains from sale of unlisted debentures of White Ltd. an Indian company , would be taxable in the hands of BnB, since it arises from the capital asset situated in India.	<u>14,00,000</u>
Total Income	<u>2,69,00,000</u>
Tax payable on total income	
Tax on long-term capital gain @10% as per section 112(1)(c)(iii)	1,40,000
Tax on other income@40% on 2,55,00,000	<u>1,02,00,000</u>
	1,03,40,000
Add: Surcharge@2% since total income > ` 1 crore but ≤ ` 10 crore	<u>2,06,800</u>
	1,05,46,800
Add: Health and education cess @4%	<u>4,21,872</u>
Tax liability	<u>1,09,68,672</u>
Tax liability (rounded off)	1,09,68,670

Note - No credit will be available in respect of ₹ 50 lakhs paid as tax in Country X since there is no DTAA with Country X and the provisions of section 91 providing for deduction in cases where there is no DTAA will not apply to BnB, being a foreign company.

It can also be assumed that the agreement for FTS is approved by the Central Government, then FTS would be taxable @ 10% under section 115A.

➤ Dec21: (6 marks)

Deduction u/s 115F: Capital Gains on transfer of foreign exchange assets not to be charged
Where a non resident has transferred a Long term foreign exchange asset and has within a period of 6m after the date of such transfer invested the net consideration in any "Specified Asset" then, Capital Gains shall be exempt if cost of new asset is not less than net consideration. (Relevant for our question)

Specified asset: Shares/Debentures/Deposits of Indian Public company.

Foreign exchange asset:

Any specified asset which assessee has acquired or purchased with or subscribed to in convertible foreign exchange. Rate applicable as per 115C.

Q. The following data is furnished by Mr. Ashish, a non-resident and a person of Indian Origin, for the financial year ended 31-3-2023:

Particulars	Amounts (₹)
Long-term capital gains arising on transfer of specified foreign exchange asset on 31-05-2022 (computed)	8,50,000
Expenditure wholly and exclusively incurred in connection with such transfer (not considered above)	30,000
Interest on deposits held with private limited companies	2,93,000
Interest on Government Securities	1,00,000
Income from Short Term Capital gains u/s 111A	2,00,000
Investment in notified savings certificates of Central Government on 30-3-2023	1,50,000
Investment in shares of Indian public limited companies on 31-12-2023	1,80,000
Tax deducted at source	1,55,000

Compute balance tax payable/refund due for the assessment year 2021 -22 in accordance with special provisions applicable to non-residents.

Ans. Computation of tax payable by Mr. Ashish., a non-resident as per special provisions applicable to non-residents for the A.Y. 2023-24

Particulars	₹
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Capital gains	
Long-term capital gains on transfer of specified asset	8,50,000
Less: Expenditure incurred in connection with such transfer	<u>30,000</u>
	8,20,000
Less: Investment in shares of Indian Public Limited companies [Deduction u/s 115F not allowable, since investment is made after six months from the date of transfer]	<u>Nil</u> 8,20,000
Short-term capital gains u/s 111A	2,00,000
Income from Other Sources	
- Interest on deposits held with private limited companies [deposits with private limited companies are not foreign exchange assets, hence, taxable at normal rates of tax]	2,93,000
- Interest on Government Securities [Not classified as investment income as Government securities are not foreign exchange assets, assuming the same were not acquired in foreign currency]	<u>1,00,000</u>
Gross Total Income	14,13,000
Less: Deduction u/s 80C in respect of NSC	<u>1,50,000</u>
Total Income	<u>12,63,000</u>
Particulars	~
Computation of tax payable/refundable	
LTCG of 8,20,000 taxable@10% [10% of 8,20,000]	82,000
STCG of 2,00,000 [taxable@15%]	30,000
Tax on Interest on Government securities and Interest on deposits held with private limited companies on 2,43,000 {3,93,000 - 1,50,000}, which is less than the basic exemption limit of 2,50,000	<u>Nil</u>
	1,12,000
Add: Health and education cess@4%	<u>4,480</u>
Tax liability	1,16,480
Less: TDS	<u>1,55,000</u>
Tax refundable	<u>38,520</u>

➤ **May21:**

Section 115A: Where total income of a FC/ NR includes any income by way of royalty or fees for technical services other than 44DA Income then it shall be taxable @ 10%. If DTAA provides for lower rate then provisions of DTAA shall apply. For dividend @ 20%, debentures If debt incurred in foreign currency.

Section 115AC: Where total Income of a FC/NR includes any income from GDRs purchased in foreign currency, bonds of Indian company, bonds of public sector company. Tax rate @ 10%.

Q. Cherry Ltd., a non-resident German company, has the following incomes in India during the year ended on 31.03.2023:

(i) Dividend income of 12,50,000 from XY Ltd., an Indian company listed on recognized stock exchange.

- (ii) 8% debentures of 20,00,000 received from X Ltd., an Indian Company, on October 1, 2020, in consideration of providing technical knowhow (date of payment of interest being March 31 every year).
- (iii) Dividend received 5,50,000 on Global Depository Receipts of Y Ltd., an Indian company, issued under a scheme of Central Government against the initial issue of shares of the company and purchased by Cherry Ltd. in foreign currency through an approved intermediary.
- (iv) Business Income of 8,00,000 from a unit established at Mumbai.
- (v) Income by way of royalty (other than referred to in section 44DA) amounting to 10,00,000 received from Z Ltd. an Indian company, in pursuance of an agreement approved by Central government.

As per DTTA between the two countries, such royalty is taxable @12%.

With brief reasons for the treatment of the above incomes, you are required to compute the tax liability of Cherry Ltd. for the Assessment Year 2023-24.

Ans. Computation of total income and tax liability of Cherry Ltd., a non-resident German company, for the A.Y. 2023-24

Particulars	₹
Business Income from a unit established at Mumbai	8,00,000
Income from other sources	
- Dividend income from XY Ltd. an Indian company	12,50,000
- Fees for technical services [would be equivalent to the amount of debentures of 20,00,000 received from an Indian company, issued in consideration of providing technical knowhow	20,00,000
- Interest on Debentures [20,00,000 × 8% × 6/12]	80,000
- Dividend on Global Depository Receipts (GDRs) of Y Ltd. an Indian company, issued under a scheme of Central Government against the initial issue of Y Ltd. and purchased in foreign currency by Cherry Ltd. [5,50,000 × 100/89.6, since tax would have been deducted at source @ 10.4%] Section 196C	6,13,839
- Royalty income received from Z Ltd. an Indian company in pursuance of an agreement approved by Central Government [10,00,000 × 100/89.6, since tax would have been deducted at source @ 10.4%] Section 196C	11,16,071
Gross Total Income/ Total income	<u>58,59,910</u>
Computation of tax liability	
Dividend income of 12,50,000, taxable @20% u/s 115A	2,50,000
Dividend on GDRs of 6,13,839, taxable @10% u/s 115AC	61,384
Royalty income of 11,16,071, taxable @10% u/s 115A, since it is in pursuance of an agreement approved by the Central Government	1,11,607
FTS of 20,00,000, taxable @10% section 115A	2,00,000
Interest on debentures of 80,000, taxable @40%, since debt is incurred in Indian currency, it is not eligible for concessional rate of 20% u/s 115A	32,000
Business income of 8,00,000 [taxable @40%]	<u>3,20,000</u>

	9,74,991
Add: Health and education cess@4%	<u>39,000</u>
Tax liability	<u>10,13,991</u>
Tax liability (rounded off)	10,13,990

➤ Nov20:

POEM Guidelines - The decisions made by a shareholder for sale of all or substantially all of the company's assets, or the modifications of the rights attaching to various classes of shares are decisions typically affecting the existence of the company itself or the rights of the shareholders rather than conduct of company's business from a management or commercial perspective. Such decisions are not relevant for determination of company's place of effective management.

Section 10(15)(ix) - Interest payable to a non-resident, by a unit located in an IFSC, in respect of monies borrowed by it on or after 1-9-2019 is exempt from income tax

Q. W Inc. a company incorporated in Japan, is engaged in development of infrastructure and providing consultancy in the same field. During the FY 22-23, its shareholders met in India for three times. The first two meetings were held to discuss the modifications of rights attached to various classes of shares and the third meeting was held to discuss and decide about sale of companies assets situated in India. It provides the following additional information pertaining to FY 22-23:

- 1) Dividends declared by M Inc., a Japan based Company: Rs. 54,000 (M Inc. holds 70% of its total assets in India)
- 2) FTS received from Govt of India: 4,54,000. The Govt of India utilized such technical services for a development project carried on by it in Nepal.
- 3) Interest received from Ms. O, a unit located in IFSC in respect of monies borrowed by Ms. O: 15,400
(Date of loan 24-12-2022)
- 4) On 26-8-22, W Inc. sold 5,000 equity shares held by it in an Indian Company for Rs. 89 per share. These shares were bought by W Inc. on 28th June, 2009 for Rs. 64 per share. Both the purchase and sale of shares were effected through a recognized stock exchange in India. Fair Market Value of these shares on 31-1-2018 was Rs. 70 per share.

You are required to compute the total income at W Inc. for the AY 23-24.

Ans. W Inc. is a company incorporated in Japan. It would be resident in India, if its place of effective management is in India in that year.

POEM of W Inc. is not in India as per above guidelines and hence, it is a non-resident for A.Y. 2023-24.

Computation of Total income of W Inc. for AY 23-24.

Particulars	Amount
Dividend declared by M Inc., which holds 70% of total assets in India. (As per circular, dividend declared and paid by a foreign company, outside India in respect of shares which derives their value substantially from assets situated in India would not be deemed to be income accruing or arising in India.	NIL

FTS received from GOI (Deemed to accrue/arise in India irrespective of the fact that it is utilized for a project outside India)	4,54,000
Interest received from Ms. O. (As per section 10(15)(ix), interest payable to W Inc., a non resident, by Ms. O, a unit located in an IFSC, in respect of monies borrowed by it on or after 1-9-2019 is exempt from income tax)	NIL
<p>Long term capital gains:</p> <p>Sale consideration (5000*89) = 4,45,000</p> <p>Less: Cost of acquisition, being higher of</p> <p>a. Actual Cost (5,000*64) = 3,20,000</p> <p>b. Lower of</p> <p>3,50,000 (5,000*70) being FMV on 31-1-18</p> <p>4,45,000 (5,000*89) being Full value of consideration</p> <p>There would be no tax on LTCG, since only the gain in excess of 1,00,000 is taxable @10% u/s 112A but here the difference is only 95,000</p>	95,000
Total Income	5,49,000

ALL THE BEST!

CA. DHRUV BANSAL