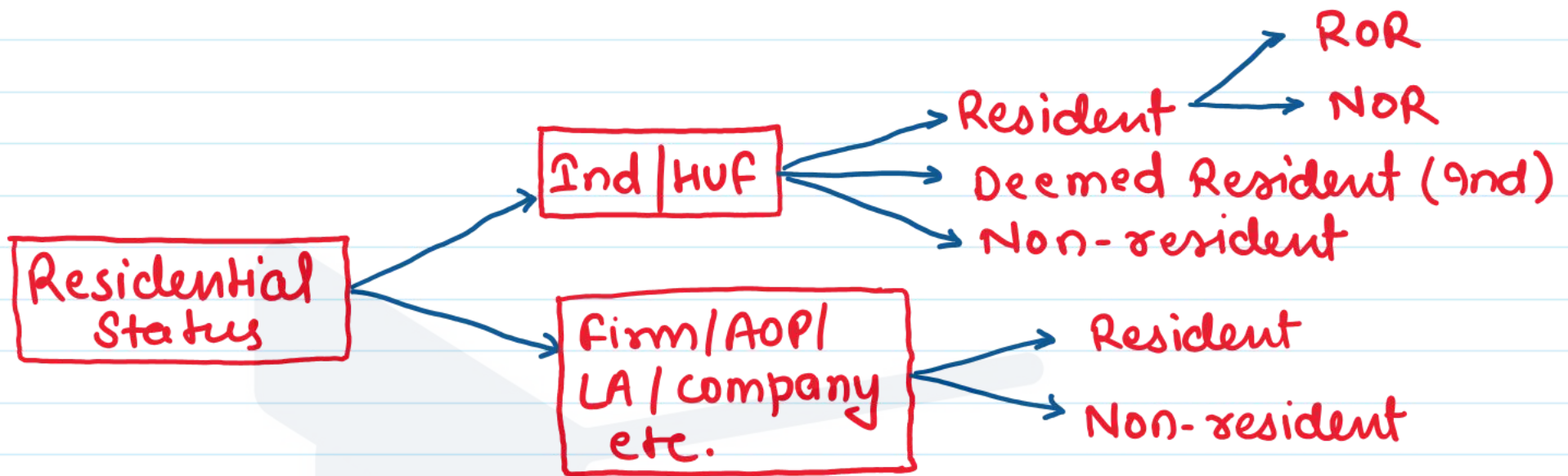


Chapter 3 - Residential Status & Scope of Total Income

Residential Status - means relationship of a person with the country or territory in which he resides.

Scope of total Income - means the nature of Income which are to be included in total Income of a person & accordingly that person is required to pay tax.



Note:

① Residential Status of a person is determined for each previous year. A resident in one year can become non-resident in subsequent year.

TP:1 Residential Status of an Individual [sec 6(1)]

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 two conditions:

- (i) He stays in India for **182 days or more** during the relevant previous year;
- (ii) He stays in India for **60 days or more** during the relevant previous year & also for **365 days or more** during **4 years** preceding the relevant previous year.

If Individual does not satisfy any one of the above two conditions, he is a **non-resident**.

for example:

#	No. of days PY24-25	No. of days 4 PYs.	Residential status
1.	200	0	Resident
2.	181	365	Resident
3.	59	400	Non-resident
4.	170	360	Non-resident
5.	60	365	Resident
6.	183	400	Resident
7.	50	100	Non-resident



② Individual + Citizen of India / person of Indian Origin + visit India + Employment outside India.

Any person who is citizen of India or is a 'person of Indian Origin' and is having business or profession or employment outside India comes on a visit to India, then he shall be considered to be resident in India if he stays in India for **182 days or more** during relevant previous year.

Eg. Mr. Akshay, citizen of India, settled outside India, visit India for 181 days
 ↳ Covered under special category → **Non-resident.**

* **Person of Indian origin** - He or either of his parents or either of his grand parents (including parents of mother) were born in undivided India.

Exception to above point.

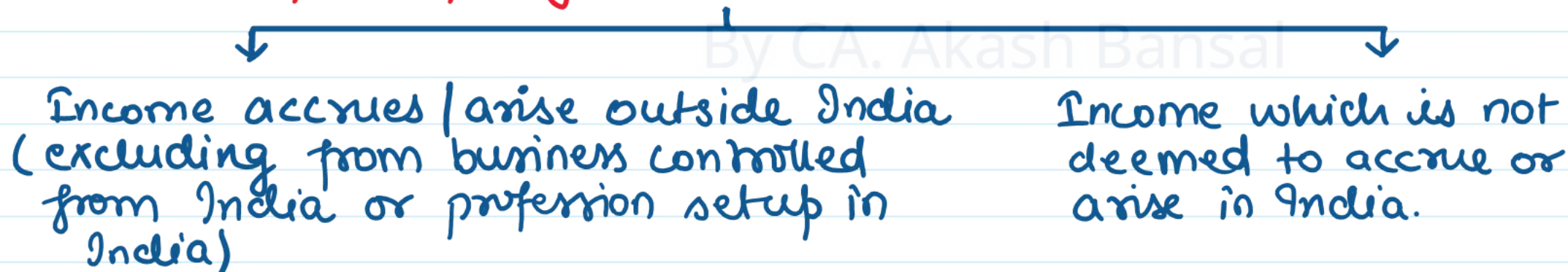
Individual + Citizen of India / person of Indian Origin + visits India + Employment outside India + Indian income > 15,00,000 during PY.

Any person who is citizen of India or is a person of Indian Origin and is having business or profession or employment outside India comes on a visit to India having income other than from **foreign sources exceeding ₹ 15,00,000**, then he shall be considered to be resident in India if:

- (i) He stays in India for 182 days or more during the relevant PY.
- (ii) He stays in India for **120 days or more** during the relevant PY & also for **365 days or more** during 4 years preceding the relevant P.Y.

Note: As per sec 6(6)(c), he will be **NOR.**

* **Income from foreign source -**



Eg. Mr. Alok, Indian citizen, settled outside India, visit India for 169 days during PY 25-26 & 367 days during 4 PYs.

Total Indian Income = 16,00,000

↳ Covered under above point → **Resident but not ordinarily Resident (NOR).**



TP:4 Resident and ordinarily resident (ROR) and Not-ordinarily resident (NOR) [sec 6(6)]

As per section 6(6)(a), an individual who is resident in India shall be considered to be **NOR** if he has complied with **at least one** of the conditions given below

Such individual has during **7 PY** preceding the relevant PY been in India for a period of **729 days or less**

OR Such individual has been **non-resident** in India in **9 years out of 10 PY** preceding the relevant PY.

If not complied with even a single condition, he shall be **ROR**.

Eg. Mr. Bean, stay in India during PY 25-26 - 360 days during 7 PYs - 720 days

↳ Resident but not ordinarily Resident (NOR)

Mr. Bean, stay in India during PY 25-26 - 360 days during 7 PYs - 740 days & NR during 9 PYs out of 10 PYs.

↳ Resident but not ordinarily Resident (NOR)

Mr. Bean, stay in India during PY 25-26 - 170 days during 4 PYs - 366 days during 7 PYs - 728 days NR during 8 PYs out of 10 PYs.

↳ Resident but not ordinarily Resident (NOR)

#HAKK4CA

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TP: 5 Residential status of HUF [Sec 6(2)]

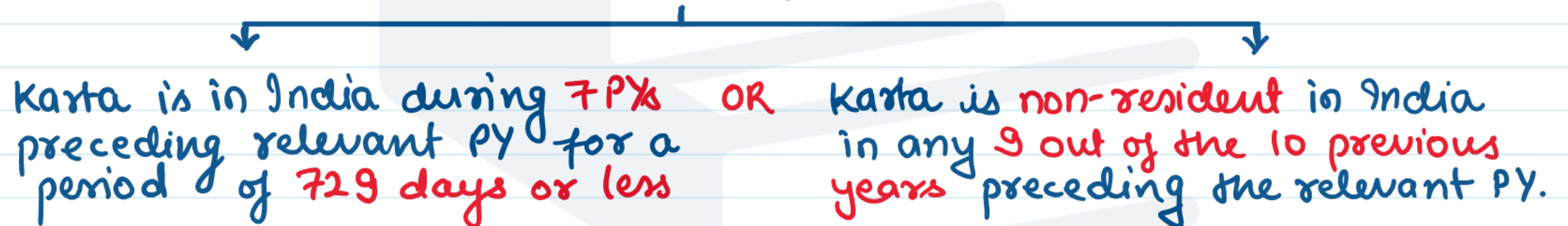
As per section 6(2), if control & management of its affairs is



Note: The expression 'control and management' refers to central control and management and not to the carrying on of day to day business by servants, employees or agents.

Resident and ordinarily resident (ROR) and Not-ordinarily resident (NOR)

If a HUF is resident, it will be considered to be NOR if its KARTA has complied with at least one of the conditions given below:



If Karta has not complied with even a single condition, HUF shall be ROR.

Eg. XYZ HUF, managed from India
Karta X, stay in India during 7 PYs - 720 days

↳ Residential status of HUF - NOR

XYZ HUF, managed wholly outside India
Karta X, stay in India during PY 25-26 - 183 days
during 7 PYs - 720 days

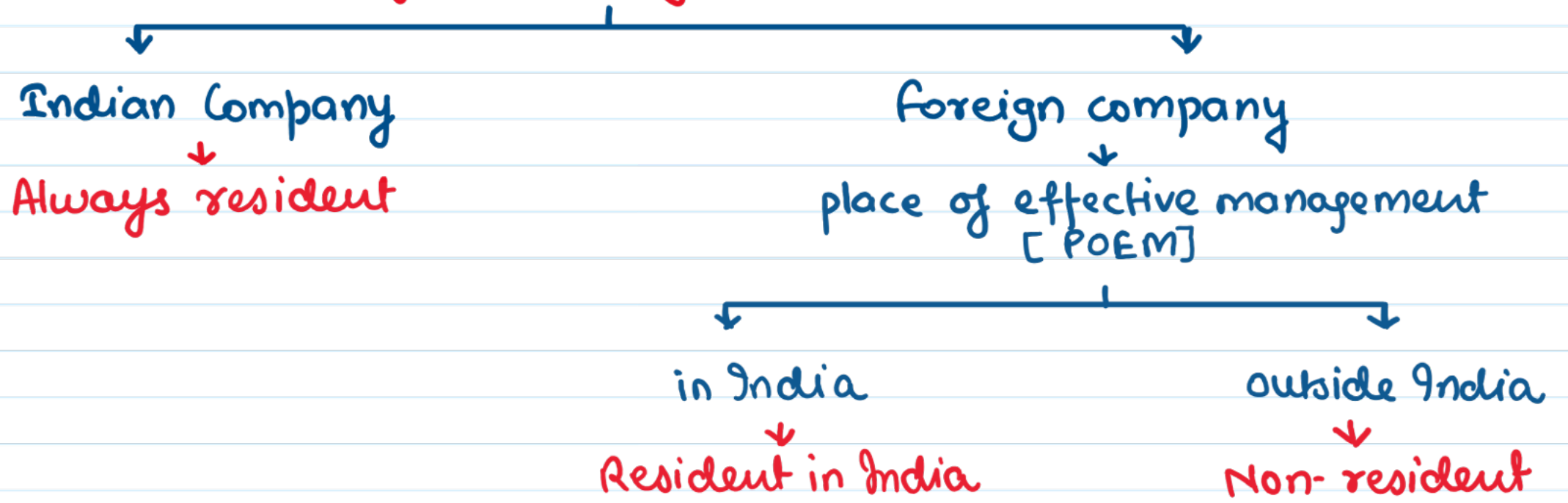
↳ Residential status of Karta X → NOR
Residential status of XYZ HUF → NR

XYZ HUF, managed partly from India
Karta X, stay in India during PY 25-26 - 59 days
during 7 PYs - 730 days
NR during 8 PYs out of 10 PYs.

↳ Residential status of Karta X → NR
Residential status of XYZ HUF → ROR.



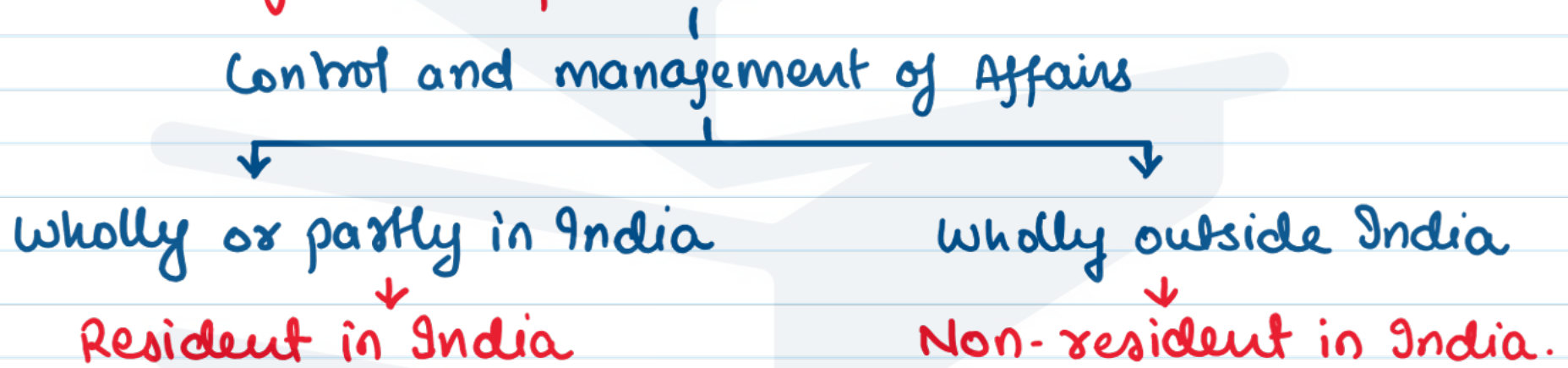
TP:6 Residential Status of a Company [sec 6(3)]



Place of effective management means a place where key management & commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made. [Explanation to section 6(3)]

CA final

TP:7 Residential status of others such as firms, AOP, BoI, Local Authorities and artificial juridical person:

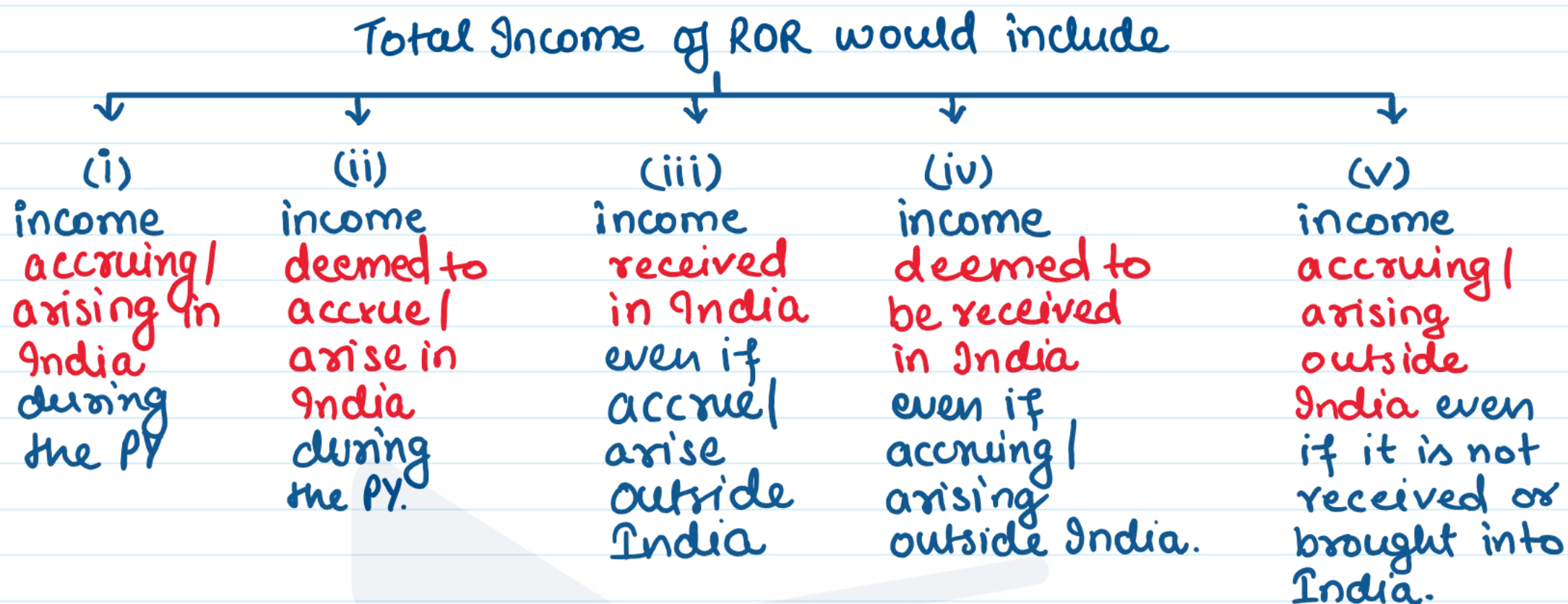


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Scope of Total Income [sec 5]

TP:8 Scope of total Income in hands of ROR [sec 5(1)]

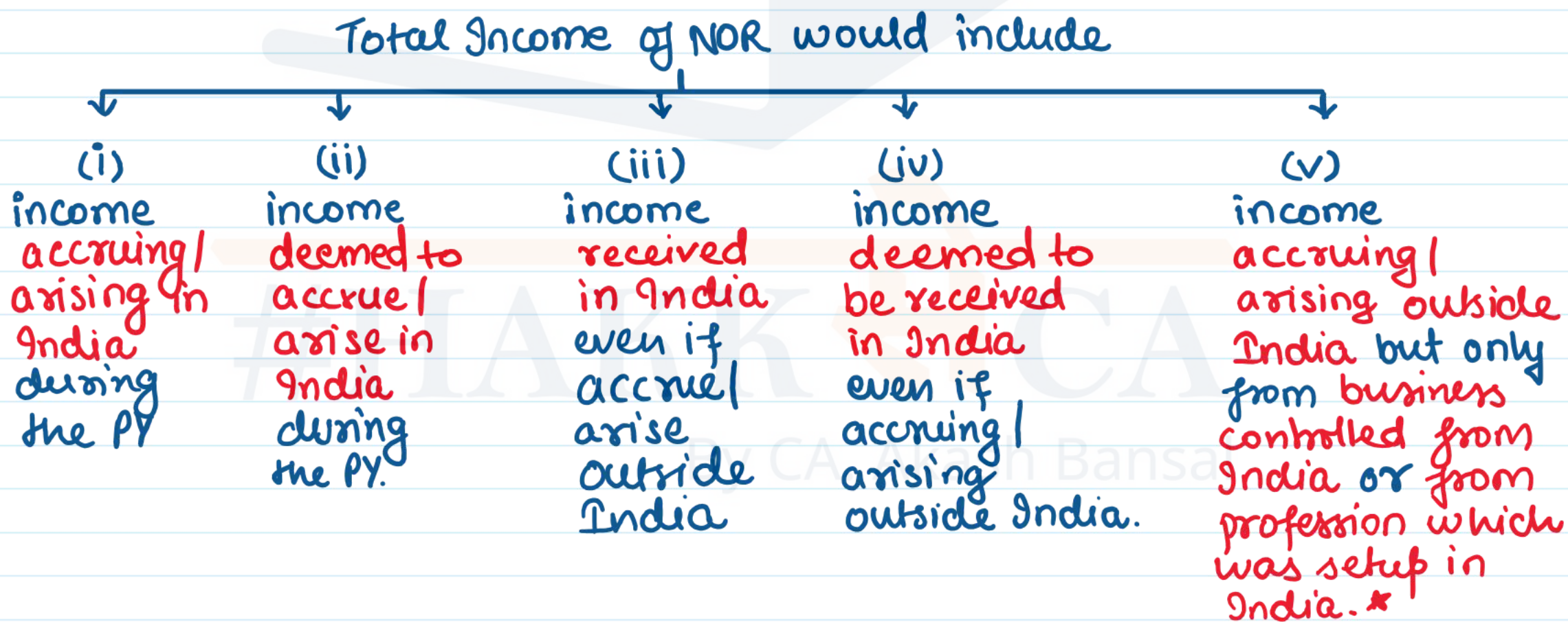


In simple words, ROR has to include his **world income** in his total income in India.

Eg. Mr. Abhinav, ROR during PY 25-26, earned income from HP in Canada

↳ Income accruing outside India → Included in TI in India.

TP:9 Scope of total Income in hands of NOR [sec 5(1)]

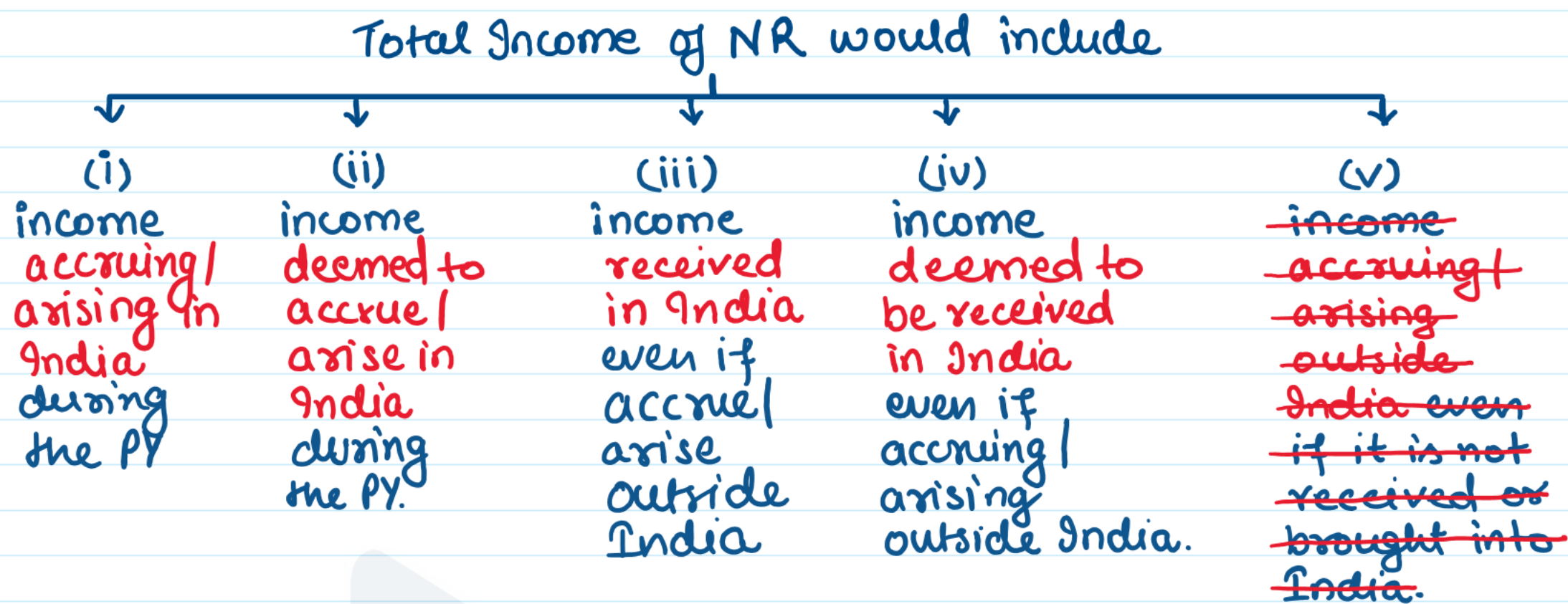


* **Profession set up in India** means that it was originally setup in India and subsequently there was an expansion outside India.

Eg. CA. Akash started his profession in Rajasthan, India & subsequently he opened his branch outside India.



TP:10 Scope of total Income in hands of NR [sec 5(2)]



Eg. Mr. Bhuwan, NR, earned ₹20,00,000 from show in USA

↳ Income accruing outside India → Not included in TI in India.

Clarification: Salary income received by NR seafarers, for services rendered outside India as a crew member on foreign bound ship (Indian flag or foreign flag), into NRE account maintained with Indian Bank shall be included in his total income.

TP:11 Meaning of 'income accruing / arising in India'.

Accrue means 'Right to receive Income'. Eg. salary for the work done will accrue throughout the month.

Due means 'Right to enforce payment'. Eg. salary become due on 31st day of the month.

Receipt means 'Actual receipt of Income'. Eg. Actual credit of salary on 1st day of next month.

By CA. Akash Bansal



TP:12 Meaning of 'Income deemed to accrue/arise in India' [sec 9(1)]

It includes those specific income which actually arise outside India but are deemed to be arising in India so that Indian government can tax those income in India.

① Business connection in India / Property in India / Asset or source in India. [sec 9(1)(i)]

Any income accruing or arising outside India whether directly or indirectly through or from

- | | | | |
|-------------------------------------|--------------------------|---|---|
| ↓ | ↓ | ↓ | ↓ |
| A) Any business connection in India | B) Any Property in India | C) Any asset or source of income in India | D) the transfer of a capital asset situated in India. |

would be deemed to accrue/arise in India.

A) Through or from any business connection in India

Q1. What is business connection?

↳ Removed from new Modules.

It includes

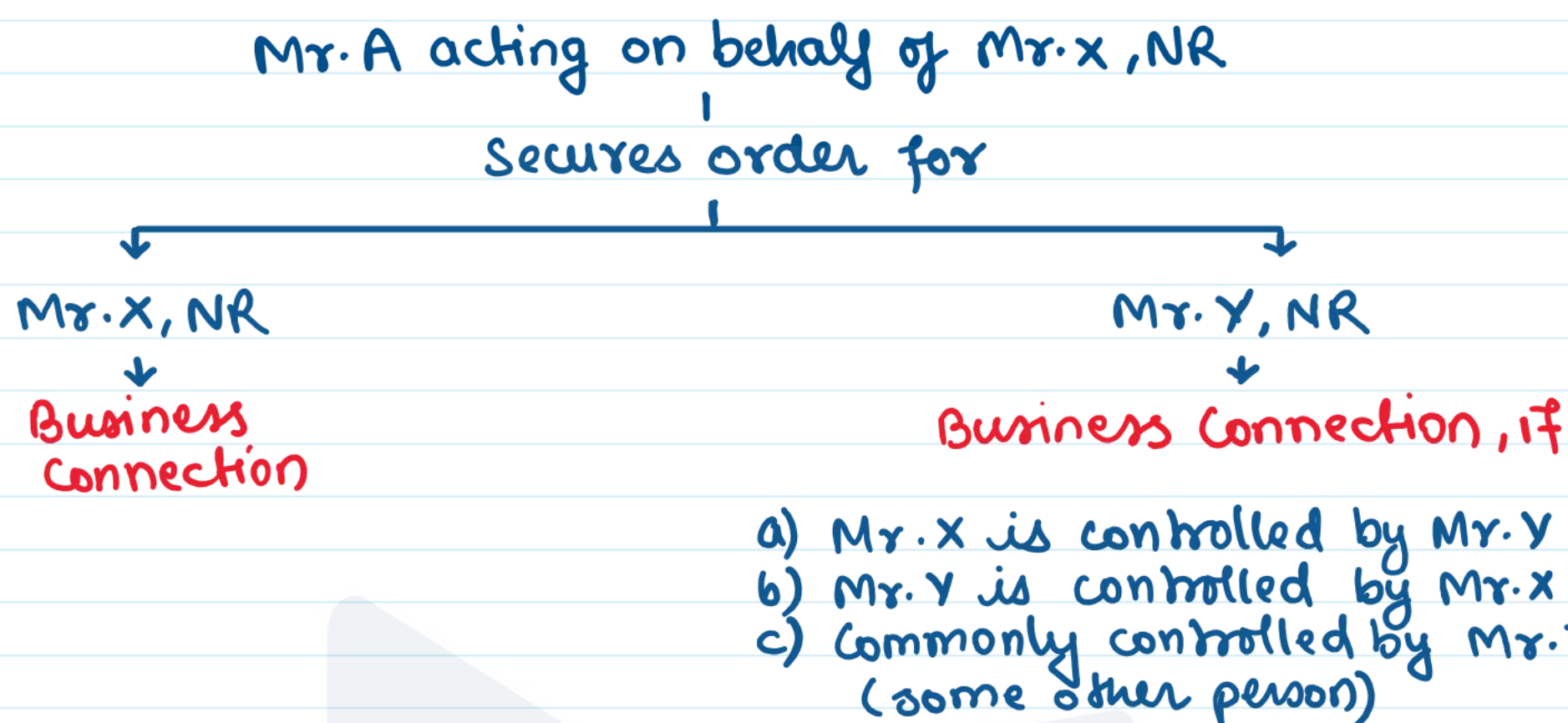
- | | |
|--|---|
| ↓ | ↓ |
| Any business activity carried out through a person on behalf of non-resident | Significant economic presence of a non-resident in India. |

Q2. What are conditions which constitute 'acting on behalf of NR?'

- | | | |
|---|--|--|
| ↓ | ↓ | ↓ |
| i) Must have authority to conclude Contract or play principal role in concluding contract. | ii) maintains stock of goods or merchandise from which he regularly delivers goods or merchandise. | iii) Secures orders in India, mainly or wholly for non-resident. |



Q3. What if agent secures order for other NR, shall it be considered as business connection of other NR?



Q4. What if business is carried out in India through Independent Agents?

↓

No Business connection

Q5. What is meaning of significant economic presence?

↓

means

↓

Nature of transaction

Condition

i) Sell of goods, services or Property by NR in India (including download of data or software)

Aggregate payments from such sell exceeds ₹ 2 crore.

ii) Soliciting of business activities or engaging in interaction with users in India.

The number of users should be atleast 3 lakhs.

Q6. What are transactions NOT treated as business connection in India?

- i) Purchase of goods in India for export,
- ii) Collection of news and views in India for transmission out of India.
- iii) Shooting of cinematograph films in India for display outside India.
- iv) Activities confined to display of rough diamonds in SNZ.

B) & C) Income from property, asset or source of income in India

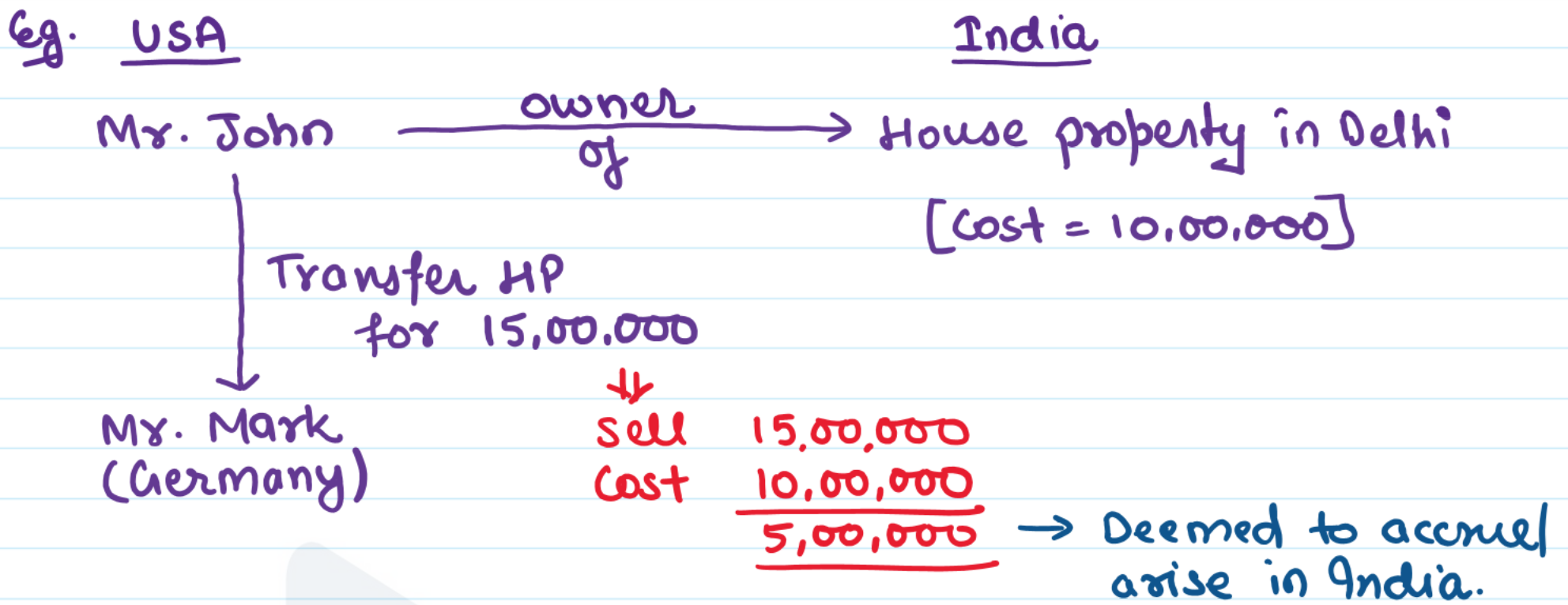
Any income arising from any property, asset or source would be deemed to accrue / arise in India.

Eg. Rent paid outside India for use of machinery situated in India.

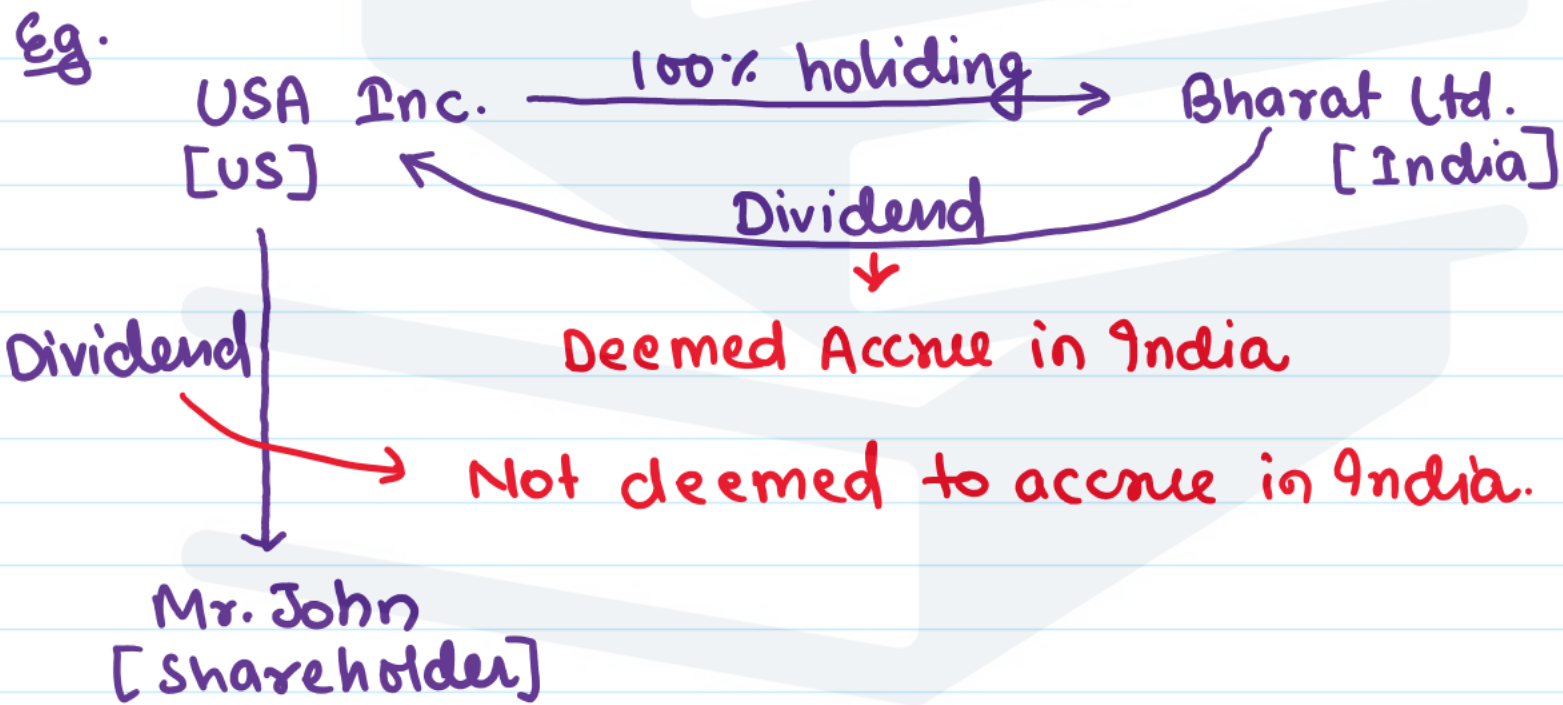


1) Income through transfer of a capital asset situated in India.

Deemed to accrue or arise in India.

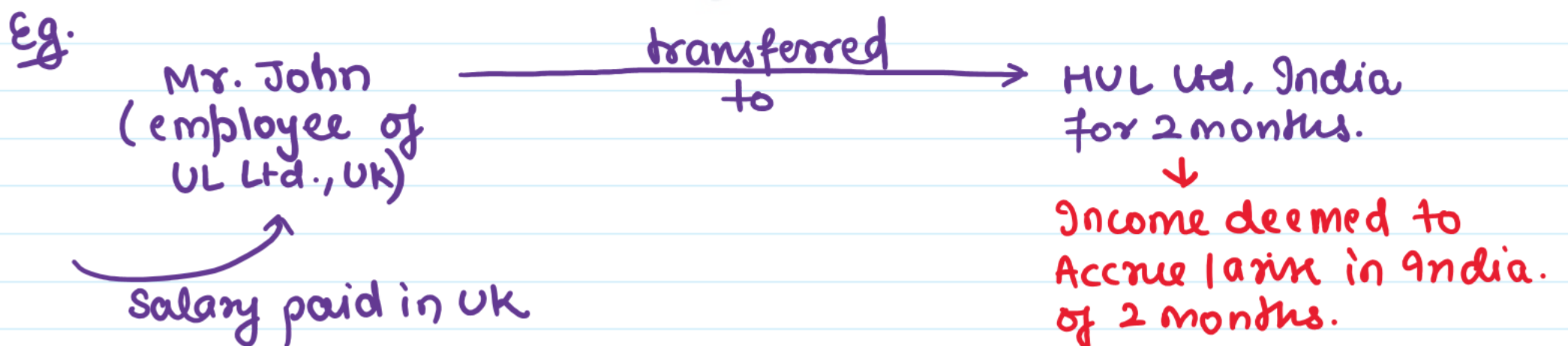


Note: Declaration of Dividend by foreign Co. (whose value is derived from assets in India) outside India is not deemed to accrue/arise in India.



2) Income from salaries earned in India [sec 9(1)(ii)]

Salaries payable for services rendered in India
 ↓
 Deemed to accrue/arise in India
 (even if salaries payable outside India)



Note: Salaries payable for rest period or leave period before or after services rendered in India
 ↓
 regarded as income earned in India.



③ Income from salaries payable by Govt. for services rendered outside India. [Sec 9(1)(iii)]

Salaries payable by the govt. to a citizen of India for services rendered outside India



Eg. Mr. Lokesh, Indian citizen, works for govt. of India, sent to USA for job, received ₹20,00,000 as salary & ₹10,00,000 as allowance outside India.

↳ Income deemed to accrue/arise in India → ₹20,00,000.

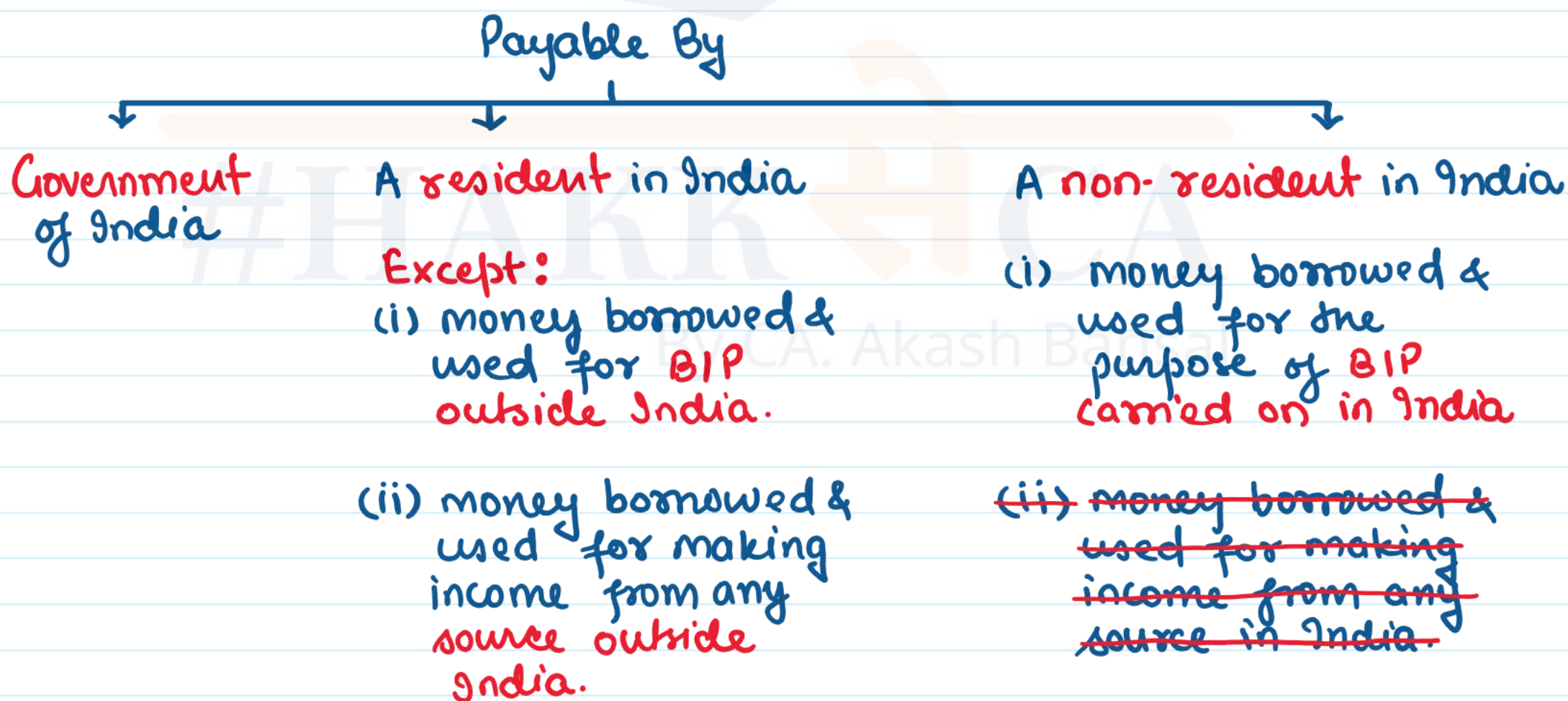
④ Dividend paid by Indian company outside India [sec 9(1)(iv)]

↓
Deemed to accrue/arise in India & taxable in hands of shareholder.

Eg. Ajanta Ltd., an Indian company, paid dividend outside India, ₹15,00,000

↳ Deemed to accrue/arise in India.

⑤ Interest paid outside India [sec 9(1)(v)]

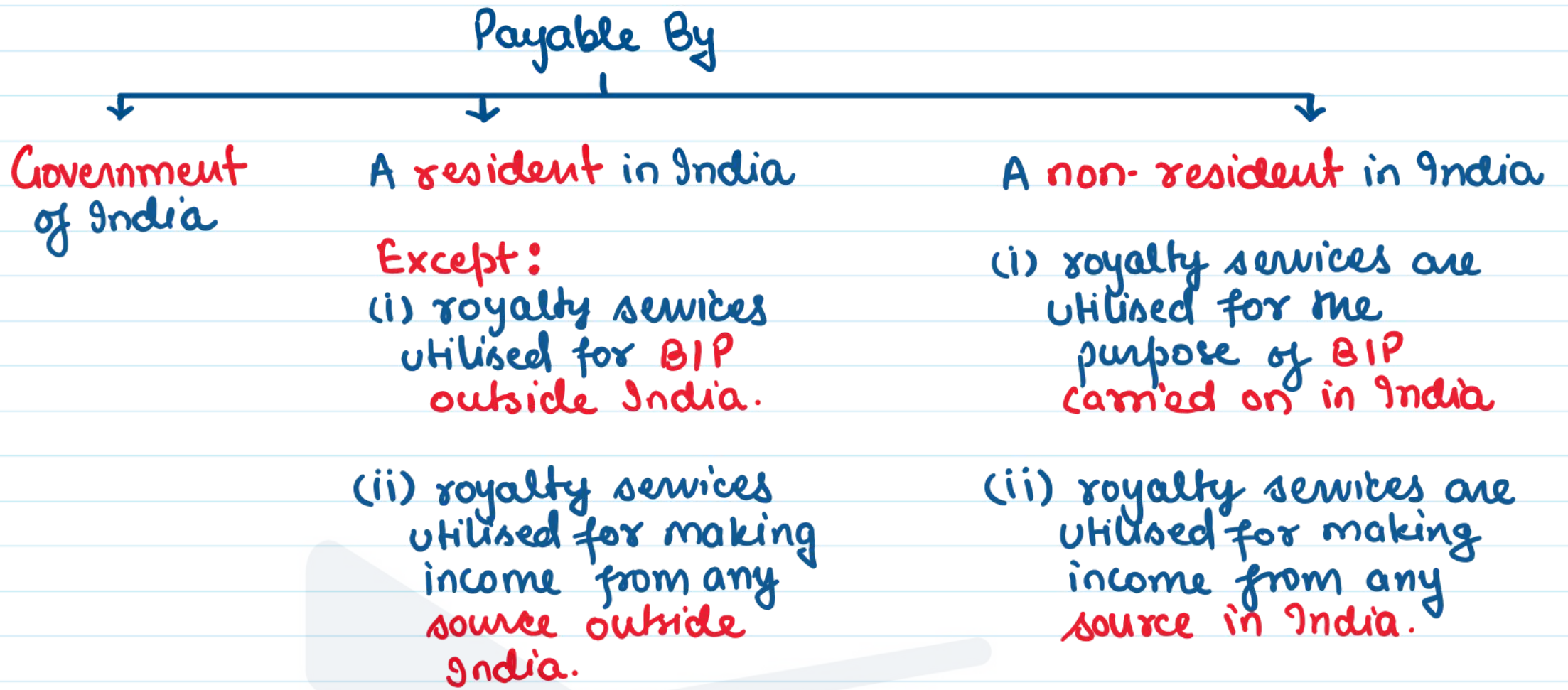


Eg. Mr. Ram, NR, borrowed money from Mr. John outside India, invested such money in shares of Indian company

↳ Interest payable to Mr. John → not deemed to accrue/arise in India.

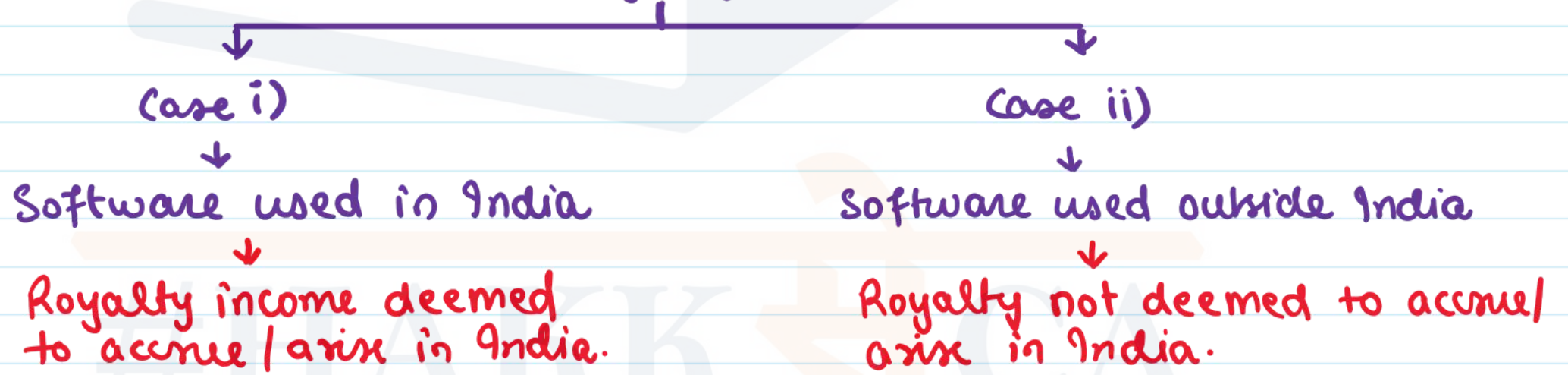


⑥ Royalty paid outside India [sec 9(1)(vi)]

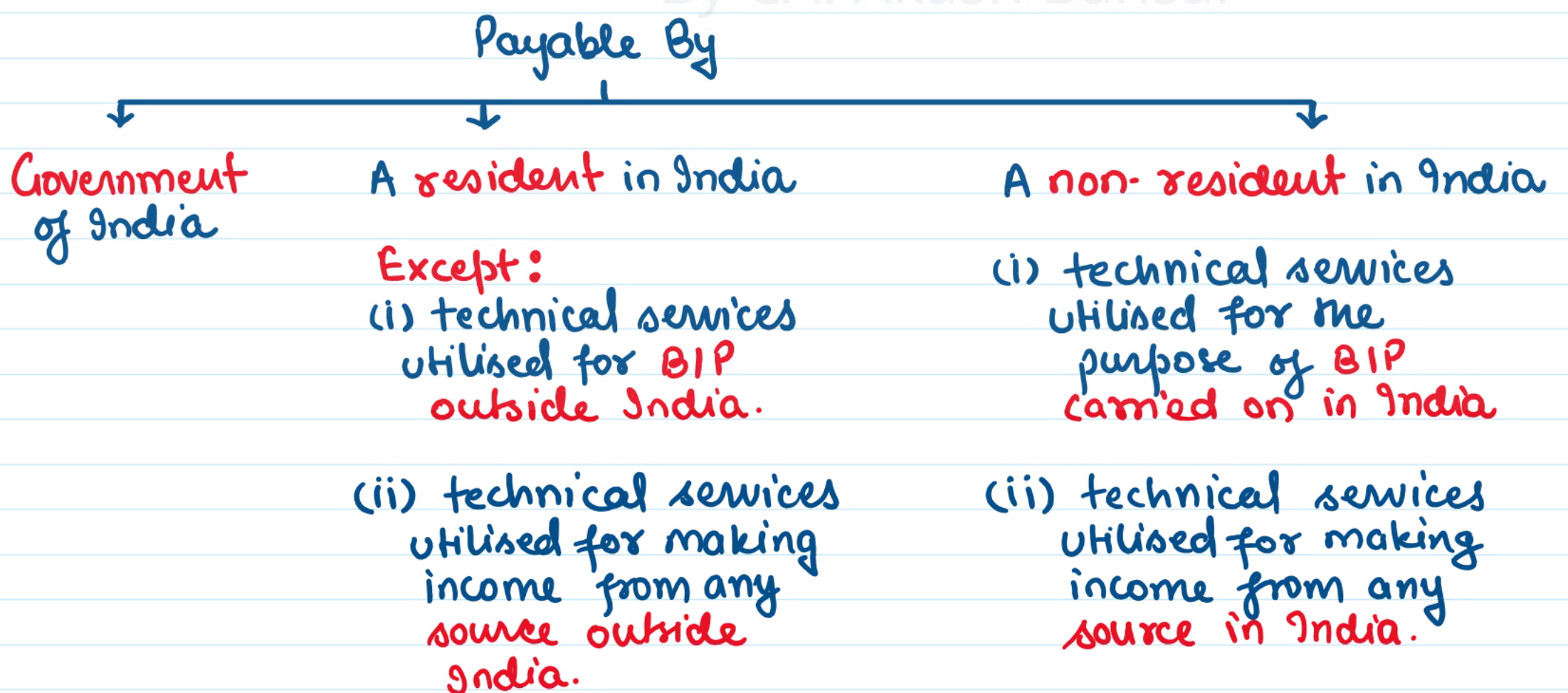


- Note:**
- ① Consideration for use or right to use of computer software is **Royalty**.
 - ② Consideration in respect of any right, property or information is **Royalty**.
 - ③ Lumpsum royalty to NR in respect of computer software supplied along with computer hardware shall **not be deemed to accrue or arise in India**.

Eg. Mr. Avinash, resident, paid royalty to Mr. John, NR, outside India, for acquisition of right to use computer software.



⑦ Fees for technical services paid outside India [sec 9(1)(vii)]





⑧ Money gifted by Indian Resident to NR or Foreign company outside India

Deemed to accrue / arise in India if same is taxable u/s 56(2)(x).

i.e.

Aggregate sum upto ₹ 50,000

Exempt

Aggregate sum exceeding ₹ 50,000

deemed to accrue / arise in India.

Note: Above provision is not applicable where any property is transferred outside India without consideration or for inadequate consideration.

TP:13 Meaning of 'Income received in India'

Directly received in bank account in India

Income received in India

First received outside India & then remitt or transfer in India

Not considered as received in India.

Eg. Mr. Mohan, earned HP Income in Nepal, received money directly in Indian bank a/c

↳ Income received in India.

Eg. Mr. Soham, earned PGBP income in London, received in London & then transferred amount in Indian bank A/c

↳ Income not received in India.

TP:14 Meaning of 'Income deemed to be received in India' [sec 7]

Contribution in excess of 12% of salary to RPF or interest in excess of 9.5% p.a. in RPF.

Contribution by the CG or any other employer in P.Y. under new pension scheme u/s 80CCD(2).

Amount (contri + Int) transferred from unrecognised provident fund to recognised provident fund.



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