

Question 15

Mr. Prashant (aged 35 years) is an Australian citizen who is settled in Australia and visits India for 125 days in every financial year since past 11 years. During the F.Y. 2023-24, he visited India for a total period of 200 days. The purpose of his visit was to meet his family members who are settled in India and also for managing his family members who are settled in India and also for managing his business in Sri Lanka through his office in Chennai, India.

During the P.Y. 2023-24, he has the following incomes:

- Income from business in Australia controlled form Australia - ₹ 20,00,000
- Income from business in Sri Lanka controlled form Chennai - ₹ 16,00,000
- Short-term capital gains on sale of shares of an Indian company received in Australia - ₹ 50,000. The shares were sold online from Australia.
- Income from agricultural land in Australia, received there and then brought to India - ₹ 2,00,000 Find out the residential status of Mr. Prashant and compute his total income for Assessment Year 2024- 25.

4 Marks**Answer:****Determination of Residential Status of Mr. Prashant¹**

Mr. Prashant is an Australian citizen who comes on a visit to India for 125 days in every financial year since the past 11 years. During the P.Y. 2022-23, he visited India for 200 days. Since he stayed in India for 182 days or more during the P.Y. 2023-24, he would be resident in India for the A.Y. 2024-25.

An individual is said to be "Resident and ordinarily resident [ROR]" in India in any previous year, if he satisfies both the following conditions:

- He is a resident in at least 2 out of 10 previous years preceding the relevant previous year; and
- His stay in India in the last 7 years preceding the relevant previous year is 730 days or more [Refer Note 1 below for alternate presentation]

First condition

Residential status for P.Y.2022-23 (A.Y.2023-24) - Resident, since he has stayed in India for ≥ 60 days (125 days) in the said P.Y. and ≥ 365 days (500 days, being 125 days \times 4) in the four immediately preceding PYs.

Residential status for P.Y.2021-22 (A.Y.2022-23) - Resident, since he has stayed in India for ≥ 60 days (125 days) in the said P.Y. and ≥ 365 days (500 days, being 125 days \times 4) in the four immediately preceding PYs.

Therefore, he satisfies the first condition of being resident in India in at least 2 out of 10 previous years preceding the relevant P.Y.³

Second condition

Stay in India in 7 immediately preceding PYs = 7×125 days = 875 days $>$ 730 days Since both the conditions are satisfied, he is Resident and Ordinarily Resident (ROR).

In case of ROR, global income would be taxable in India. Accordingly, his total income for A.Y. 2024-25 would as follows:

Computation of Total Income of Mr. Prashant for A.Y.2024-25

| | Particulars | ₹ |
|-----|-----------------------------------|-----------|
| (i) | Income from business in Australia | 20,00,000 |



| | | |
|-------|--|------------------|
| (ii) | Income from business in Sri Lanka | 16,00,000 |
| (iii) | Short-term capital gains on sale of shares of an Indian company | 50,000 |
| (iv) | Income from agricultural land in Australia [would not be exempt, since it is not from an agricultural land in India] | 2,00,000 |
| | Total income | 38,50,000 |

Notes -

(1) Alternative manner of determination of whether Mr. Prashant is ROR/ RNOR - "An individual is said to be "Resident but not ordinarily resident [RNOR]" in India in any previous year, if he satisfies any one of the following conditions:

- He is a non-resident in at least 9 out of 10 previous years preceding the relevant previous year; or
- His stay in India in the last 7 years preceding the relevant previous year is 729 days or less.
- Mr. Prashant does not satisfy either of the above conditions on account of being resident in more than 1 year out of 10 years and stay in India for 875 days in the 7 years preceding the P.Y.2023-24. Hence, he is a Resident and Ordinarily Resident in the P.Y.2023-24.
- (2) In the absence of information relating to whether Mr. Prashant is a person of Indian origin, the above solution has been worked out assuming that Mr. Prashant is not a person of Indian origin.
- However, alternate assumption that Mr. Prashant is a person of Indian origin is also possible since the purpose of his visit was to meet his family members who are settled in India. Accordingly, if it is assumed that he is a person of Indian origin, then, for determining whether he is resident in P.Y.2021-22 and P.Y.2022-23, information relating to his total income (excluding income from foreign sources) for the said P.Y. s is required for ascertaining whether the condition of 120 days in the relevant P.Y. + 365 days in the 4 immediately preceding P. Ys would be attracted in his case. This information is not given in the question. Accordingly, assumptions would have to be made relating to the applicability of this condition.
- It may be noted that the condition of 120 days in the P.Y. + 365 days in the four immediately preceding PYs for a PIO whose total income (other than income from foreign sources) exceed ₹ 15 lakhs for determination of residential status came into effect only from A.Y.2022-23. Therefore, in the previous years prior to that, he would be non-resident irrespective of his total income since the number of days of his stay < 182 days each year.
- In case if it is assumed that his total income (other than income from foreign sources) for the P.Y.2021-22 and P.Y.2022-23 > ₹ 15 lakhs, he would be ROR since he would be resident in 2 out of 10 years immediately preceding the current P.Y. and he stayed for 730 days or more in 7 previous years immediately preceding current P.Y.. In such case, his total income would be same as determined in the above solution.

In case if it assumed that he is a PIO whose total income (other than income from foreign sources) for the P.Y.2021-22 and P.Y.2022-23 ≤ ₹ 15 lakhs, he would be non-resident for P.Y.2021-22 and P.Y.2022-23, since his stay in India is for less than 182 days in those years. In such a case, for P.Y.2023-24, he would be RNOR, since he would be non-resident in all the 10 years immediately preceding the current P.Y.

- In such case, the computation of total income for A.Y.2024-25 would be as follows -
- Computation of Total Income of Mr. Prashant for A.Y.2024-25



| | Particulars | ₹ |
|---------------------|--|------------------|
| (i) | Income from business in Australia controlled from Australia (not taxable in case of RNOR, since it accrues and arises outside India) | - |
| (ii) | Income from business in Sri Lanka (taxable since it is controlled from India) | 16,00,000 |
| (iii) | Short-term capital gains on sale of shares of an Indian company (taxable, irrespective of residential status) | 50,000 |
| (iv) | Income from agricultural land in Australia [would not be taxable in case of RNOR since it accrues and arises outside India] | - |
| Total Income | | 16,50,000 |

Question 16

MTP, Sept'24

Miss Geeta, a citizen of India, got married to Mr. Peter of Australia and left India for the first time on 20.8.2023. She has not visited India again during the P.Y. 2023-24. She has derived the following income for the year ended 31-3-2024:

| | Particulars | ₹ |
|-------|---|-----------|
| (i) | Income from sale of centrifuged latex processed from rubber plants grown in kanyakumari. | 1,50,000 |
| (ii) | Income from sale of coffee grown, cured, roasted and grounded in Colombo. Sale consideration was received in Chennai. | 5,00,000 |
| (iii) | Income from sale of tea grown and manufactured in West Bengal. | 12,00,000 |
| (iv) | Income from sapling and seedling grown in a nursery at Cochin. Basic operations were not carried out by her on land. | 2,00,000 |

You are required to determine the residential status of Miss Geeta and compute the business income and agricultural income of Miss. Geeta for the Assessment Year 2024-25. **6 Marks**

Answer:

Miss Geeta is said to be resident if she satisfies any one of the following basic conditions:

- Has been in India during the previous year for a total period of 182 days or more
(or)
- 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 during the previous year.

Miss Geeta's stay in India during the P.Y.2023-24 is 142 days [30+31+30+31+20] which is less than 182 days. However, her stay in India during the P.Y.2023-24 exceeds 60 days. Since, she left India for the first time, her stay in India during the four previous years prior to P.Y.2023-24 would be more than 365 days. Hence, she is a resident for P.Y.2023-24.

Further, Miss Geeta would be "Resident and ordinarily resident" in India in during the previous year 2023-24, since her stay in India in the last seven previous years prior to P.Y.2023-24 is more than 729 days and she must be resident in the preceding ten years.



Computation of business income and agricultural income of Miss Geeta for A.Y. 2024-25

| Particulars | | Income | Business Income | Agricultural Income |
|-------------|---|-------------------------|-------------------------|-------------------------|
| (i) | Income from sale of centrifuged latex processed from rubber plants grown in Kanyakumari (Apportioned between business and agricultural income in the ratio of 35:65 as per Rule 7A of Income-tax Rules, 1962) | 1,50,000 | 52,500 | 97,500 |
| (ii) | Income from sale of coffee grown, cured, roasted and grounded in Colombo and received in Chennai [See Note 1 below] | 5,00,000 | 5,00,000 | - |
| (iii) | Income from sale of tea grown and manufactured in West Bengal (Apportioned between business and agricultural income in the ratio of 40:60 as per Rule 8 of the Income-tax Rules, 1962) | 12,00,000 | 4,80,000 | 7,20,000 |
| (iv) | Income from sapling and seedling grown in a nursery at Cochin. Basic operations were not carried out on land [See Note 2 below] | <u>2,00,000</u> | _____ - | <u>2,00,000</u> |
| | | <u>20,50,000</u> | <u>10,32,500</u> | <u>10,17,500</u> |

Notes:

- Since Ms. Geeta is resident and ordinarily resident in India for A.Y. 2024-25, her global income is taxable in India. Entire income from sale of coffee grown, cured, roasted and grounded in Colombo is taxable as business income since such income is earned from sale of coffee grown, cured, roasted and grounded outside India i.e., in Colombo.
- As per Explanation 3 to section 2(1A), income derived from sapling or seedlings grown in a nursery would be deemed to be agricultural income, whether or not the basic operations were carried out on land. Hence, income of ₹ 2,00,000 from sapling and seedling grown in a nursery at Cochin is agricultural income.

Question 17

CS Execu. June'19

Manish Garg a non-resident during Financial Year 2023-24 came back to India on 16th July, 2023 for settling in India permanently. Now, for the Financial Year 2023-24 his status is resident and ordinary resident of India for tax purposes. He has reported his income from various sources as under the Financial Year 2023-24.

| | |
|--|-----------|
| Salary received and earned in USA from 1-4-2023 to 15-7-2023 (Gross) | 12,60,000 |
| Salary earned and received in India (computed) | 8,47,000 |
| Dividend from Indian Company received in India | 12,000 |
| Rent received in USA for a property situated in USA | 4,50,000 |

Calculate his gross taxable income for the Assessment Year 2024-25.

Which disclosures he is required to give in out of above given information's in the return form for Assessment Year 2024-25. **4 Marks**

Answer:

Mr. Manish Garg is resident and ordinary resident during the Previous Year 2023-24.

Now Gross Taxable Income of Mr. Manish is as follows:

| Particulars | ₹ |
|--|-----------|
| Salary received and earned in USA from 1-4-2023 to 15-7-2023 (Taxable) | 12,60,000 |
| Salary earned and received in India (Taxable) | 8,47,000 |
| Dividend from an Indian Company Shares received in India | 12,000 |



| | | |
|---|--------------|------------------|
| Rent received in USA for a property situated in USA | = ₹ 4,50,000 | |
| Less: Standard Deduction @ 30% | = ₹ 1,35,000 | 3,15,000 |
| Gross Total Income | | 24,34,000 |

Question 18

CS Execu. June'11

For the Assessment Year 2024-25, Hari is a non-resident in India. From the information given below, find out his income chargeable to tax for the assessment year 2024-25. **6 Marks**

| Particulars | |
|--|----------|
| Royalty received by him outside India from the Government of India | 17,000 |
| Technical fees received from an Indian Company in Germany for advice given by him in respect of a project situated in Iran | 1,17,000 |
| Income from a business situated in Sri Lanka (goods are sold in Sri Lanka, sale consideration is received in Sri Lanka but business is partly controlled in Sri Lanka and partly in India. | 2,17,000 |
| Income received in Nepal from a business connection in India | 3,17,000 |
| Gift in foreign currency from a friend received in India on 20 th January, 2024 | 80,000 |
| Past untaxed profit of 2012-13 brought in India on 10th April, 2023 | 27,000 |

Answer:

Computation of Income of Hari, a non-resident in India, chargeable to tax in India for Assessment Year 2024-25

| Particulars | |
|--|-----------------|
| Royalty received by him outside India from the Government of India | 17,000 |
| Technical fees received from an Indian Company in Germany for advice given by him in respect of a project situated in Iran | 1,17,000 |
| Income from a business situated in Sri Lanka (goods are sold in Sri Lanka, sale consideration is received in Sri Lanka but business is partly controlled in Sri Lanka and partly in India. | 2,17,000 |
| Income received in Nepal from a business connection in India | 3,17,000 |
| Gift in foreign currency from a friend received in India on 20 th January, 2024 | 80,000 |
| Past untaxed profit of 2012-13 brought in India on 10th April, 2023 | Nil |
| Total Taxable Income | 7,48,000 |

Difficulty**Question 1**

MTP April'21

Miss Bhanushali, an American National, got married to Mr. Vikas of India in New York on 3rd February, 2023 and came to India for the first time on 14-02-2023. She left for New York on 11-08-2023. She returned to India again on 20-02-2024.

She received the following gifts from her relatives and friends during 01 -04-2023 to 31-03-2024 in India:

- From parents of husband Rs. 71,000
 - From married sister of husband Rs. 21,000
 - From two very close friends of her husband Rs. 1,41,000 and Rs. 1,21,000 Rs. 2,62,000
- (ii) Determine her residential status and compute the total income chargeable to tax for the Assessment Year 2024-25.



(iii) Will the residential status change if she had returned to India again on 20-01-2024 instead of 20-02-2024?

7 Marks

Answer:

Determination of residential status and computation of total income of Miss Bhanushali (if she returned to India on 20.2.2024)

| Particulars | | Rs. |
|--|-----------------|-----|
| Under section 6(1), an individual is said to be resident in India in any previous year, if he/she satisfies any one of the following conditions: | | |
| (I) He/she has been in India during the previous year for a total period of 182 days or more, or | | |
| (ii) He/she 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/she is a resident. If both the above conditions are not satisfied, the individual is a non-resident. | | |
| Therefore, the residential status of Miss Bhanushali, an American National, for A.Y.2024-25 has to be determined on the basis of her stay in India during the previous year relevant to A.Y. 2024-25 i.e. P.Y.2023-24 and in the preceding four assessment years. | | |
| Her stay in India during the previous year 2023-24 and in the preceding four years are as under: | | |
| P.Y. 2023-24 | | |
| 01.04.2023 to 11.08.2024 | 133 days | |
| 20.02.2024 to 31.03.2025 | 40 days | |
| Total | 173 days | |
| Four preceding previous years | | |
| P.Y.2022-23 [14.2.2023 to 31.3.2024] | 47 days | |
| P.Y.2021-22 | Nil | |
| P.Y.2020-21 | Nil | |
| P.Y.2019-20 | Nil | |
| Total | 47 days | |
| The total stay of Miss Bhanushali during the previous year in India was less than 182 days and during the four years preceding this year was for 47 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 2024-25. | | |
| Computation of total income of Miss Bhanushali for the A.Y. 2024-25. | | |
| Income from other sources | | |
| Gifts received from non-relatives is chargeable to tax as per section 56(2) (x) if the aggregate value of such gifts exceeds Rs. 50,000. | | |



| | | |
|---|--|-----------------|
| -Rs. 71,000 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. 21,000 received from married sister-in-law is exempt, since sister of husband falls within the definition of relative and gifts from a relative are not chargeable to tax. | | Nil |
| - Gift received from two friends of her husband Rs. 1,41,000 and Rs. 1,21,000 aggregating to Rs. 2,62,000 is taxable under section 56(2)(x) since the aggregate of Rs. 2,62,000 exceeds Rs. 50,000. | | 2,62,000 |
| Total Income | | 2,62,000 |

Determination of residential status of Miss Bhanushali (if she returned to India on 20.1.2024)

Yes, the Answer would change, if she had returned to India again on 20.1.2024 instead of 20.2.2024.

In such case, her stay in India during the previous year 2023-24 would be:

| | | |
|---------------|------------|-----------------|
| 01.04.2023 to | 11.08.2023 | 133 days |
| 20.01.2024 to | 31.03.2024 | 71 days |
| Total | | 204 days |

Since she satisfies the condition of stay in India for more than 182 days during the previous year 2023-24, she would become resident in India. She would be a resident but not ordinarily resident in India for A.Y. 2024-25, since her stay in India in the preceding seven years is less than 730 days (it is only 47 days)¹

Question 2

MTP May'20

Simran, a Chartered Accountant, is presently working in a firm in India. She has received an offer for the post of Chief Financial Officer from a company at New York. As per the offer letter, she should join the company at any time between 1st September, 2023 and 31st October, 2023. She approaches you of your advice on the following issues to mitigate her tax liability in India:

- Date by which she should leave India to join the company;
- Direct credit of part of her salary to her bank account in Delhi maintained jointly with her mother to meet requirement of her family.
- Period for which she should stay in India when she comes on leave. **7 Marks,**

Answer:

The following category of individuals will be treated as resident in India only if the period of their stay in India during the relevant previous year is 182 days or more: -

- Indian citizens, who leave India in any previous year, inter alia, for purposes of employment outside India, or
- Indian citizen or person of Indian origin engaged outside India, inter alia, in an employment, who comes on a visit to India in any previous year.



(a) Since Simran is leaving India for the purpose of employment outside India, she will be treated as resident only if the period of her stay during the previous year amounts to 182 days or more. Therefore, Simran should leave India on or before 28th September, 2023, in which case, her stay in India during the previous year would be less than 182 days and she would become non-resident for the purpose of taxability in India. In such a case, only the income which accrues or arises in India or which is deemed to accrue or arise in India or received or deemed to be received in India shall be taxable. The income earned by her in New York would not be chargeable to tax in India for A.Y. 2024-25, if she leaves India on or before 28th September, 2023.

(b) If any part of Simran's salary will be credited directly to her bank account in Delhi then, that part of her salary would be considered as income received in India during the previous year under section 5 and would be chargeable to tax under Income-tax Act, 1961, even if she is a non-resident. Therefore, Simran should receive her entire salary in New York and then remit the required amount to her bank account in Delhi in which case, the salary earned by her in New York would not be subject to tax in India.

(c) In case Simran visits India after taking up employment outside India, she would be covered in the second exception provided above and she will be treated as resident only if the period of her stay during the relevant previous year amounts to 182 days or more. Therefore, when Simran comes India on leave, she should stay in India for less than 182 days during the relevant previous year so that her status remains as a non-resident for the relevant previous year. Moreover, she should not visit India again during the current previous year i.e. P.Y. 2023-24.

Question 3

MTP Oct'18

Mrs. Bhawna and Mrs. Prerna are sisters and they earned the following income during the Financial Year 2023-24. Mrs. Bhawna is settled in Malaysia since 1992 and visits India for a month every year. Mrs. Prerna is settled in Indore since her marriage in 2000. Compute the Gross total income of Mrs. Bhawna and Mrs. Prerna for the assessment year 2024-25:

| Sl. No. | Particulars | Mrs. Bhawna (Rs.) | Mrs. Prerna (Rs.) |
|---------|--|-------------------|-------------------|
| (i) | Income from Profession in Malaysia, (set up in India) received there | 15,000 | |
| (ii) | Profit from business in Delhi, but managed directly from Malaysia | 40,000 | - |
| (iii) | Rent (computed) from property in Malaysia deposited in a Bank at Malaysia, later on remitted to India through approved banking channels. | 1,20,000 | - |
| (iv) | Dividend from PQR Ltd., an Indian Company | 5,000 | 9,000 |
| (v) | Agricultural income from land in Maharashtra | 7,500 | 4,000 |



| | | | |
|--------|--|--------|--------|
| (vi) | Past foreign untaxed income brought to India | 5,000 | - |
| (vii) | Fees for technical services rendered in India received in Malaysia | 25,000 | - |
| (viii) | Income from a business in Pune (Mrs. Bhawna receives 50% of the income in India) | 12,000 | 15,000 |

10 Marks

Answer:

The residential status of Mrs. Bhawna and Mrs. Prerna has to be determined on the basis of the number of days of their stay in India. Since Mrs. Bhawna is settled in Malaysia since 1992, she would be a non-resident for A.Y. 2024-25. Her visit to India for a month every year would not change her residential status. However, Mrs. Prerna would be resident and ordinarily resident for A.Y. 2024-25, since she is settled in India permanently since 2000. Based on their residential status, the gross total income of Mrs. Bhawna and Mrs. Prerna would be determined as follows:

Computation of Gross Total Income of Mrs. Bhawna & Mrs. Prerna for the A.Y. 2024-25

| S. No. | Particulars | Mrs. Bhawna (Non-Resident) (Rs.) | Mrs. Prerna (Resident)(Rs.) |
|---------------------------|---|--|--------------------------------|
| (i) | Income from profession in Malaysia (set up in India) received there (See Note below) | - | - |
| (ii) | Profit from business in Delhi, but managed directly from Malaysia (See Note below) | 40,000 | - |
| (iii) | Rent (computed) from property in Malaysia deposited in a Bank at Malaysia, later on remitted to India through approved banking channels (See Note below) | - | - |
| (iv) | Dividend from PQR Ltd. an Indian Company [Exempt under section 10(34), both in the hands of non-resident and resident] <i>As per amendment dividend u/s 2(22)(a)/(b)/(c)/(d)/(e) from an Indian Company will now be taxable normal rates in the hands of the Shareholder Assessed. Interest Income incurred to earn such income will be allowed as a deduction but only upto 20% of such income. No deduction of commission/remuneration paid to any other person. DDT has been abolished.</i> | 5,000 | 9,000 |
| (v) | Agricultural income from land in Maharashtra [Exempt under section 10(1), both in the hands of non-resident and resident]. | - | - |
| (vi) | Past foreign untaxed income brought to India [Not taxable, since it does not represent income of the P.Y. 2023-24]. | - | - |
| (vii) | Fees for technical services rendered in India, but received in Malaysia (See Note below) | 25,000 | - |
| (viii) | Income from a business in Pune (Mrs. Bhawna receives 50% of the income in India) (See Note below) | 12,000 | 15,000 |
| Gross Total income | | 82,000 | 24,000 |

Note:

As per section 5(1), global income is taxable, in case of a resident. However, as per section 5(2), only the following incomes are chargeable to tax, in case of a non-resident:

- Income received or deemed to be received in India; and
- Income accruing or arising or deemed to accrue or arise in India.



Therefore, income from profession in Malaysia and rent from property in Malaysia received in Malaysia by Mrs. Bhawna, a non-resident, would not be taxable in India, since both the accrual and receipt are outside India.

However, profit from business in Delhi would be taxable in India in the hands of Mrs. Bhawna, even though it is managed directly from Malaysia.

Further, by virtue of section 9(1)(vii), fees for technical services rendered in India would also be taxable in the hands of Mrs. Bhawna, since it is deemed to accrue or arise in India.

The entire income from a business in Pune is taxable in the hands of both Mrs. Bhawna and Mrs. Prerna due to their accrual/deemed accrual in India, even though a part of income from business in Pune is received by Mrs. Bhawna outside India.

Question 4

MTP March'18

Mr. Kunal is an Indian citizen and a member of the crew of a Thailand bound Indian ship engaged in carriage of passengers in international traffic departing from Port Blair on 10th July, 2023. His stay in India in the last 4 previous years (preceding P.Y. 2023-24) is 375 days and last seven previous years (preceding P.Y.203-24) is 729 days:

| Particulars | Date |
|--|--------------------------------|
| Date entered into the Continuous Discharge Certificate in respect of joining the ship by Mr. Kunal | 10 th July, 2023 |
| Date entered into the Continuous Discharge Certificate in respect of signing off the ship by Mr. Kunal | 21 st January, 2024 |

He earned following income during the previous year 2023-24 Dividend from Thailand Company received in Thailand ₹ 30,000.

Short term capital gains on sale of shares of an Indian company ₹ 25,000 Interest on savings account with Post office ₹ 13,000.

Past foreign untaxed income brought to India during the previous year ₹ 5,000 Cash gift received from non-relative ₹ 20,000.

Income from agricultural land in Nepal received there and then brought to India ₹ 18,000

Interest received from a non-resident on moneys borrowed for the purpose of business in Delhi ₹ 1,50,000.

From the above details for the P.Y. 2023-24, compute the total income of Mr. Kunal for A.Y. 2024-25.

10 Marks**Answer:**

In this case, the voyage is undertaken by an Indian ship engaged in the carriage of passengers in international traffic, originating from a port in India (i.e., the Port Blair) and having its destination at a port outside India (i.e., the Thailand port). Hence, the voyage is an eligible voyage for the purposes of section 6(1).

Therefore, the period beginning from 10th July, 2023 and ending on 21st January, 2024, being the dates entered into the Continuous Discharge Certificate in respect of joining the ship and signing off from the ship by Mr. Kunal, an Indian citizen who is a member of the crew of the ship, has to be



excluded for computing the period of his stay in India. Accordingly, 196 days [22+31+30+31+30+31+21] have to be excluded from the period of his stay in India. Consequently, Mr. Kunal's period of stay in India during the

P.Y. 2023-24 would be 169 days [i.e., 365 days - 196 days]. Since his period of stay in India during the P.Y. 2023-24 is less than 182 days, he is a non-resident for A.Y. 2024-25.

Based on the residential status, the total income of Mr. Kunal would be determined as follows

Computation of total income of Mr. Kunal for the A.Y. 2024-25

| S. No. | Particulars | (₹) |
|---|---|-----------------|
| (i) | Dividend from Thailand Company received in Thailand (Note 2) | - |
| (ii) | Short term capital gain on sale of shares of an Indian company | 25,000 |
| (iii) | Interest on savings account with Post office (Note 3) | 9,500 |
| (iv) | Past foreign untaxed income brought to India during the previous year [Not taxable, since it does not represent income of the P.Y.2023-24] | - |
| (v) | Gift received from non-relative [As per section 56(2)(x), cash gifts received from a non-relative would be taxable, if the amount exceeds ₹ 50,000 in aggregate during the previous year] | - |
| (vi) | Income from agricultural land in Nepal received there and then brought to India (Note 2) | - |
| (vii) | Interest received from a non-resident on moneys borrowed for the purpose of business in Delhi (Note 4) | 1,50,000 |
| Gross Total income | | 1,84,500 |
| Less: Deductions under Chapter VIA | | |
| Section 80TTA | | 9,500 |
| (In case of an individual, interest upto ₹ 10,000 from savings account with, inter alia, a post office is allowable as deduction under section 80TTA) | | |
| Total Income | | 1,75,000 |

Notes:

Since the residential status of Mr. Kunal is "non-resident" for A.Y. 2024-25 consequent to his number of days of stay in P.Y. 2023-24 being less than 182 days, his period of stay in the earlier previous years become irrelevant.

As per section 5(2), only the following incomes are chargeable to tax in India, in case of a non-resident:

- Income received or deemed to be received in India; and
- Income accruing or arising or deemed to accrue or arise in India.

Therefore, dividend from Thailand Company received in Thailand and Income from agricultural land in Nepal received there and then brought to India by Mr. Kunal, a non-resident, would not be taxable in India, since both the accrual and receipt are outside India.

- ❖ The interest on Post Office Savings Bank Account, would be exempt under section 10(15) (i), only to the extent of ₹ 3,500 in case of an individual account.



- ❖ As per section 9(1)(v)(c), interest payable by a non-resident on moneys borrowed and used for the purposes of business carried on by such person in India shall be deemed to accrue or arise in India in the hands of the recipient.

Question 5

RTP May '22, PYP May '18

From the following particulars of income furnished by Mr. Ashutosh, aged 65 years, pertaining to year ended 31.03.2024, compute the total income for the A.Y. 2024-25, if he is

(a) Resident and ordinarily resident

(b) Non-resident

10 Marks

| | Particulars | Amount (₹) |
|--------|---|------------|
| (i) | Capital gain on sale of land in Jaipur to Mr. Ramesh, a non-resident, outside India. The consideration is also received outside India in foreign currency | 1,50,000 |
| (ii) | Rent from property in Delhi, let out to a branch of a foreign company. The rent agreement is entered outside India. Monthly rent is also received outside India | 1,20,000 |
| (iii) | Agricultural income from a land situated in Nepal, received in Nepal | 55,000 |
| (iv) | Interest on savings bank deposit in UCO Bank, Delhi | 18,000 |
| (v) | Income earned from business in London which is controlled from Delhi (₹ 35,000 is received in India) | 60,000 |
| (vi) | Gift received from his daughter on his birthday | 55,000 |
| (vii) | Past foreign taxed income brought to India | 37,000 |
| (viii) | Fees for technical services rendered to Shine, Ltd., a foreign company, for business outside India and received also outside India | 12,000 |

Answer:**Computation of total income of Mr. Ashutosh for the A.Y. 2024-25**

| Particulars | Resident and ordinarily resident (₹) | Non-resident (₹) |
|--|--------------------------------------|------------------|
| Capital gain on sale of land in Jaipur to Mr. Ramesh, a non-resident, outside India and received outside India | 1,50,000 | 1,50,000 |
| Rent from property in Delhi, received outside India [₹ 1,20,000 -30% of ₹ 1,20,000 under section 24(a)] | 84,000 | 84,000 |
| Agricultural income from a land situated in Nepal, received in Nepal | 55,000 | - |
| Interest on savings bank deposit in UCO Bank, Delhi | 18,000 | 18,000 |
| Income earned from business in London which is controlled from Delhi | 60,000 | 35,000 |
| Gift received from daughter (Not taxable, since daughter is a relative) | - | - |
| Past foreign taxed income brought to India (Not taxable) | - | - |
| Fees for technical services rendered to Shine, Ltd., a foreign company, for business outside India and received also outside India | 12,000 | - |
| Gross Total Income | 3,79,000 | 2,87,000 |
| Less: Deduction under section 80TTB/80TTA | | |
| [Interest on savings bank account subject to a maximum of ₹ 50,000/₹ 10,000] | 18,000 | 10,000 |
| Total Income | 3,61,000 | 2,77,000 |



Notes -

1. In case of a resident and ordinarily resident, global income is taxable as per section 5(1). However, as per section 5(2), in case of a non-resident, only the following incomes 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, agricultural income from a land situated in Nepal, income earned from business in London which is controlled from Delhi, received outside India and fees for technical services from a non-resident for business outside India is not taxable in case of non-resident.

2. In case of a senior citizen, being a resident aged 60 years or more, interest up to ₹ 50,000 from saving account with, inter alia, a bank is allowable as deduction under section 80TTB while in case of a non-resident, interest upto ₹ 10,000 from saving account with, inter alia, a bank is allowable as deduction under section 80TTA.

Question 6

MTP Nov'23

Miss Asha is an Indian citizen. She is a lawyer by profession. She started her consultancy profession in India in 2020 with the name "New way associates". In May 2022, she got married to Mr. Ram, an American citizen. Mr. Ram came to India for the first time on 1st May 2021 when he joined an MNC in India. He got a promotion and was transferred to Dubai. He left for Dubai on 1st October, 2022. Mrs. Asha accompanied him to Dubai. She started providing consultancy there. Both of them came to India for 3 months from June to August in 2023 to spend time with Asha's family. Following incomes were earned by Mr. Ram and Mrs. Asha during the P.Y. 2023-24.

| | Income of Mr. Ram | ₹ |
|---|---|-----------|
| 1 | Salary from company in Dubai (not liable to tax in Dubai) | 13,00,000 |
| 2 | Long term capital gain on sale of shares of an Indian company | 2,50,000 |
| 3 | Income from house property in Delhi (computed) | 4,60,000 |
| 4 | Dividend from shares of an Indian company | 65,000 |

| | Income of Mrs. Asha | ₹ |
|--|--|-----------|
| | Profit from consultancy profession in Dubai which was set up in India (not liable to tax in Dubai) | 12,00,000 |
| | Profit from consultancy profession in India | 3,00,000 |
| | Long term capital gain on sale of shares of British company, credited to her Dubai bank account | 60,000 |
| | Short term capital loss on sale of listed shares of an Indian company | (42,000) |

Determine the residential status of Mr. Ram and Mrs. Asha and their total income for the A.Y. 2024-25 ignoring the provisions of section 115BAC.

Answer:

Determination of residential status of Mr. Ram

Mr. Ram is an American citizen who comes on a visit to India during the P.Y. 2023-24 for 3 months. He has been in India from 1st May 2021 to 1st October 2022. Since Mr. Ram has been in India for a period of more than 60 days (i.e., 92 days) during the P.Y. 2023-24 and for a period of more than 365 days (i.e., 519 days) during the 4 immediately preceding previous years, he satisfies one of the basic conditions and he is a resident for the A.Y. 2024-25.



Since his period of stay in India during the preceding 7 previous years is less than 730 days (i.e., 519 days), he is a resident but not-ordinarily resident in India during the A.Y. 2024-25.

Since Mr. Ram is a resident but not-ordinarily resident, income which accrues or arises in India, deemed to accrue or arises in India, received in India, deemed to be received in India and income derived from business controlled in or a profession set up in India is chargeable to tax in India in his hands.

Computation of total Income of Mr. Ram for the A.Y. 2024-25

| Particulars of income | |
|---|----------|
| Salary from company in Dubai [Not taxable, since it accrues and arises outside India] | |
| Long term capital gain on sale of shares of an Indian company [Taxable, since it accrues and arises in India] | 2,50,000 |
| Income from house property in Delhi [Taxable, since it accrues and arises in India] | 4,60,000 |
| Dividend from shares of an Indian company [Taxable, since it accrues and arises in India] | 65,000 |
| | 7,75,000 |

Determination of residential status of Mrs. Asha

Mrs. Asha is an Indian citizen who comes on a visit to India during the P.Y. 2023 -24 for 3 months i.e., 92 days. Since she does not satisfy any of the basic conditions of staying in India for 182 days or 120 days during the P.Y. 2023-24, she is not a resident in India as per section 6(1).

Mrs. Asha would be a deemed resident under section 6(1A) if her total income other than the income from foreign sources exceeds ₹ 15 lakhs during the P.Y. 2023-24 as she is an Indian citizen and is not liable to tax in Dubai.

Computation of total Income other than the income from foreign sources of Mrs. Asha

| Particulars of income | (₹) |
|---|-----------|
| Profit from consultancy profession in Dubai which was set up in India [Includible] | 12,00,000 |
| Profit from consultancy profession in India [Includible] | 3,00,000 |
| Long term capital gain on sale of shares of British company [Not includible, since it is a foreign source income] | - |
| Short term capital loss on sale of listed shares of an Indian company [It accrues and arises in India. However, short term capital loss is not allowed to be set off from business or profession income, hence, not includible] | - |
| | 15,00,000 |

Since, total income other than the income from foreign sources of Mrs. Asha does not exceed ₹ 15 lakhs, she would not be a deemed resident. Hence, Mrs. Asha is a non- resident during the A.Y. 2024-25.

Since Mrs. Asha is a non-resident, income which accrues or arises in India, deemed to accrue or arises in India, received in India and deemed to be received in India is chargeable to tax in India in her hands.

| Particulars of income | (₹) |
|--|----------|
| Profit from consultancy profession in Dubai which was set up in India [Not taxable] | - |
| Profit from consultancy profession in India [Taxable, since it accrues and arises in India] | 3,00,000 |
| Long term capital gain on sale of shares of British company [Not taxable, since it accrues and arises outside India] | - |



| | |
|--|----------|
| Short term capital loss on sale of listed shares of an Indian company [Since, it accrues and arises in India, it is allowed to be carry forward to A.Y. 2025-26] | - |
| | 3,00,000 |

Question 7

MTP Nov'19

Mr. Jagdish, aged 61 years, has set-up his business in Thailand and is residing in Thailand since last 20 years. He owns a house property in Bangkok, half of which is used as his residence and half is given on rent (such rent received, converted in INR is ₹ 6,00,000). The annual value of the house in Thailand is ₹ 50,00,000 i.e. converted value in INR. He purchased a flat in Pune during F.Y. 2019-20, which has been given on monthly rent of ₹ 27,500 since 01.07.2022. The annual property tax of Pune flat is ₹ 40,000 which is paid by Mr. Jagdish whenever he comes to India. Mr. Jagdish last visited India in July 2022. He has taken a loan from Union Bank of India for purchase of the Pune flat amounting to ₹ 15,00,000. The interest on such loan for the F.Y. 2023-24 was ₹ 84,000. However, interest for March 2024 quarter has not yet been paid by Mr. Jagdish. He had a house in Jaipur which was sold in May 2019. In respect of this house he received arrears of rent of ₹ 96,000 in Feb. 2024 (not taxed earlier). He also derived some other incomes during F.Y. 2023-24 which are as follows: Profit from business in Thailand ₹ 2,75,000, Interest on bonds of a Japanese Co. ₹ 45,000 out of which 50% was received in India. Income from Apple Orchard in Nepal given on contract and the yearly contract fee of ₹ 5,00,000, for F.Y. 2023-24 was deposited directly by the contractor in Kathmandu branch of Union Bank of India in Mr. Jagdish's bank account maintained with Union Bank of India's Pune Branch. Compute the total income of Mr. Jagdish for Assessment Year 2024-25 chargeable to income tax in India.

7 Marks

Answer:

Stay in India for a minimum period of 182 days in the relevant previous year or, in the alternative, 60 days in the relevant previous year and 365 days in the four immediately preceding previous years is required to qualify as a resident. In this case, since Mr. Jagdish has not visited India at any time during the P.Y. 2023-24, he would be a non-resident for that year.

Computation of Total Income of Mr. Jagdish, a non-resident, for the A.Y. 2024-25

| | Particulars | ₹ | ₹ |
|-----|--|----------|-----|
| (i) | Income from house property | | |
| | Income from house property at Bangkok [Income from house property at Bangkok neither accrues or arises in India, nor is it deemed to accrue or arise in India; and it is also not stated to be received in India. Hence, it is not taxable in India, since he is a non-resident] | | NIL |
| | Income from house property in Pune (taxable in India since it accrues and arises in India) | | |
| | Gross Annual Value of Pune flat (₹ 27,500 × 12) | 3,30,000 | |
| | Less: Municipal taxes (Deduction is not allowable, since no amount has been paid during the previous year 2023-24) | Nil | |



| | | | | |
|-------|--|--------|----------|-----------------|
| | Net Annual Value (NAV) | | 3,30,000 | |
| | Less: Deductions u/s 24 | | | |
| | (a) 30% of NAV | 99,000 | | |
| | (b) Interest due on housing loan (allowable even if not paid) | 84,000 | 1,83,000 | |
| | Arrears of rent received in respect of Jaipur house (taxable u/s 25A, even if he is not the owner of the house property in the P.Y.2023-24) | 96,000 | 1,47,000 | |
| | Less: Deduction@30% | 28,800 | 67,200 | 2,14,200 |
| (ii) | Profits and gains of business or profession | | | |
| | Profit from business in Thailand (not taxable in the hands of a non-resident, since it neither accrues or arises in India nor is it deemed to accrue or arise in India; and it is also not stated to be received in India) | | | Nil |
| (iii) | Income from Other Sources | | | |
| | Interest on bonds of a Japanese company [Only ₹ 22,500, being 50% of ₹ 45,000 is taxable in India, since it is stated to be received in India] | | 22,500 | |
| | Income from Apple Orchid in Nepal [Contract fee directly credited to bank account in India is taxable in India, since it is received in India] | | 5,00,000 | 5,22,500 |
| | Total Income | | | 7,36,700 |

Note:

Contract fee for Apple Orchid has been stated to have been deposited directly by the contractor in the Kathmandu branch of UBI in Mr. Jagdish's bank account maintained with UBI's Pune Branch. Since the deposit is stated to have been made by 4 Rent received is taken as the gross annual value in the absence of information related to expected rent the contractor directly in UBI's Pune branch, the income is received in India and hence, would be taxable in the hands of Mr. Jagdish. The above solution has been worked out accordingly. However, due to the use of the word "in the Kathmandu branch", a view is taken that such receipt is actually received in Kathmandu and subsequently it is remitted to Indian branch, the amount of ₹ 5 lakh would not be taxable in India and hence, the total income would be ₹ 2,36,700.



Multiple Choice Questions

Question 1

MTP Nov '21

Determine residential status of Sandarac (HUF) which carries out its transactions in Malaysia. Its affairs are partly controlled from India. The Karta of HUF, Mr. Sandarac who is from Chennai visits India on 01.06.2023 and leaves to Malaysia on 10.02.2024. He has not visited India for the past 11 years.

- a) Non-resident
- b) Resident but not ordinarily resident
- c) Deemed resident
- d) Resident and ordinarily resident

Question 2

MTP April '21

Mr. Mango, an Indian citizen, lives in New York, USA since the last 10 years. He has a penthouse in Mumbai, given on rent @2,00,000 per month. During the year 2023-24, he came to India for 152 days in aggregate. His total stay in India in the immediately preceding 4 previous years is 366 days. You are, being the tax consultant of Mr. Mango, advise him about his residential status for the A.Y. 2024-25.

- a) Non-Resident
- b) Resident but not ordinary resident
- c) Resident and ordinary resident
- d) Deemed resident

Question 3

MTP April '21

Lister Internationals Inc., a non-resident, engaged in business of selling "Good Z" appoints Mr. Risky as an agent in India for selling such product. Mr. Risky works as an agent for several other persons also including nonresidents aiding them in selling their products. The appointment of Mr. Risky will -

- a) lead to business connection in India as he is not independent agent
- b) lead to business connection in India as he is an independent agent
- c) not lead to business connection in India as he is not independent agent
- d) not lead to business connection in India as he is an independent agent

