Class - B.Com II 1

Subject Income tax

Topic - Residential status of Assessee

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Reference Books - Income tax Law & Accounts - Dr B.K. Agarwal, Nirupam Sahitya Sadan

- Income tax Dr. H.C. Mehrotra, Sahitya Bhawan Pub.

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Residential Status of Assessee

Residential status decide the scope of income. To know, which income should be added in the total income of an assesse, it is compulsory to decide, first, the residential status. Residential status is different from citizenship. A person who is citizen of India, but may be Non-Resident in India in a financial year. It is also to be noted that a person may have different residential status for different sources of income. Residential status may vary year to year.

According to Income tax Act, an assessee may be divided in three categories for residential status.

→ Resident (i.e. Ordinary Resident)

→ Not-Ordinarily Resident

→ Non-Resident

Residential status for An Individual

To decide the residential status of an individual, we have to go through the following conditions

Part A [Basic Conditions] u/s 6(1)

1. He has been in India in previous year for atleast 182 days.
2. He has been in India for atleast 365 days in 4 years just preceeding the previous year and atleast 60 days in India ~~in~~ in the previous year

Note: (i) For Indian citizens who leaves India during previous year as a member of the crew of an Indian ship or for employment purpose, then 182 will be assumed in place of 60 days in condition 2 of Part A

(ii)

(ii) If any indian citizen or person of Indian origin who is already outside India and comes to India in previous year then also 182 days will be assumed in place of 60 days in Cond. 2 of Part A

Part B [~~Other~~ Additional Conditions]

1. He has been Resident in India for atleast 2 years in the 10 years first preceeding the previous year. Resident means ordinary Resident or Not-ordinary Resident.
2. He has been in India for atleast 730 days in 7 years first preceeding the previous year.

Note: (i) His stay in India like for 182 days or 60 days or 365 days is not required as continous stay. ~~He may~~ It is the total stay period in the prescribed time. Like wise, it is not compulsory to stay only at one place in India. He may stay at various places in India even within territorial waters of India.

Residential Status

Resident – If he fulfills atleast one condition from Part A and ~~bothe~~ both the conditions of Part B, he will be assumed Resident in India

Not-Ordinary Resident – If he fulfills atleast one condition from Part A and does not fulfill any one or both the conditions of Part B

Non-Resident – If he does not fulfill anyone condition from Part A, he will be Non-Resident. In such case Part B is meaningless.

Residential status of A Hindu Undivided family

Resident – If the management and Control of such HUF is wholly or partly in India and Karta of HUF is ordinary resident, the HUF will be resident.

Not-ordinary Resident – If the managemt and control of such HUF is wholly or partly in Indai and Karta of HUF is not-ordinary resident, the HUF will be Not-ordinary Resident.

Non-Resident – If the management and control of such HUF is wholly outside India, the HUF will be Non-Resident.

Note: TO decide the residental status of Karta of HUF, the condition of residential status of individual will be applicable

Residential status of ~~of~~ of a firm or other association of persons or Body of Individuals

These are either Resident or Non-Resident. They are not Not ordinary Resident.

Resident: If the management ~~of~~ and control of these is wholly or partly situated in India, these will be Resident in India

Non-Resident :- If the management ~~~~ and control of these is wholly outside India, these will be Non-Resident in India

Residential status of a Company

It may also be either Resident or Non-Resident in India. It will never be Not-ordinary Resident.

Resident : If it fulfills any one or both the conditions from the following, it will be Resident in India.

(i) It is an Indian Company. It means the incorporation of such company is made under Indian Companies Act.

(ii) The effective management and control is wholly from India

Non-Resident : If the company does not fulfill any of the condition from the above. It means neither it is incorporated under Indian Companies Act nor its effective management is wholly in India.