

Preface

1. ***Author*** has felt when he ***qualified*** as Chartered Accountant (CA) in Year 1985 that ***legal provisions' interpretations*** are ***big challenge*** for legal professionals, govts' officials and public at large ***in India and outside India***.
 2. ***Author*** has ***realized*** that ***something*** should ***be developed to resolve this challenge*** in India and outside India.
 3. ***Author*** has ***started compiling*** Frequently Asked Questions (FAQs) on many subjects where his 100% ***answers are precisely based on Yes or No i.e. white or black nothing is grey***
 4. ***Author*** has ***compiled approximately 150 +(plus) research papers / books with 25 thousand + (plus) pages*** on many prevailing subjects / acts in India and outside India.
 5. ***Author's 1st paper book*** is now ***being published*** under head FAQs on Enforcement Directorate (ED) ***where 571 FAQs are replied*** based on Yes or No i.e. white or black nothing is grey
 6. This ***book*** is also ***containing***
 - (i) Foreign Exchange Management Act (***FEMA***) 1999 and rules / regulations
 - (ii) Prevention of Money Laundering Act (***PMLA***) 2002 and rules / regulations
 - (iii) Fugitive Economic Offenders Act (***FEOA***) 2018 and rules / regulations
 7. This ***book*** is ***published with Sai Kripa and dedicated*** to my father (late) ***Mr. M.R. Agarwal***, Mother ***Mrs. R.D. Agarwal***, wife ***Mrs. Snigdha Agarwal***, daughter ***Ms. Soumya Agarwal***, daughter ***Ms. Sanya Agarwal*** and dedicated team headed by ***Rajat Kumar***
- ***I trust that you will be enriched by reading this book***

With best wishes,
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Author's Profile

Mr. Satish Agarwal (FCA) is heading M/s Satish S Agarwal & Co. Chartered Accountants since 1985 with a team of dynamic young professionals serving clients from various business sectors including public listed companies and government undertakings. Firm was also registered with PCAOB (USA) for undertaking audits and other work of US GAAP.

He is regularly advising on several matters to Institute of Chartered Accountant of India (ICAI) and also to Ministry of Commerce (MoC) for Foreign Trade Agreements (FTAs) and World Trade Organization (WTO) for securing India's best interests.

He is continuously advising on Foreign Investments (FIs) in India and also on Overseas Direct Investments (ODIs) outside India.

He is known for his expertise in incorporating companies in most of countries across the world.

He has written around 150 +(plus) Research papers / books containing 25 thousand +(plus) pages available "freely" on certain portals like:

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Or

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Few out of abovementioned Research papers / books are as under:

- 1. Book on Enforcement Directorate (ED) in India- (Book with 617 pages)***
- 2. Director of Revenue Intelligence (DRI) in India***
- 3. Central Bureau of Investigation (CBI) in India***
- 4. National Investigation Agency (NIA) in India***
- 5. Serious Fraud Investigation Office (SFIO) in India***
- 6. Financial Intelligence Unit (FIU-IND) in India***
- 7. Central Vigilance Commission (CVC) in India***
- 8. Narcotics Control Bureau (NCB) in India***
- 9. Research & Analysis Wing (R&AW) in India***
- 10. Economic Offence Wing (EOW) in India***
- 11. Intelligence Bureau (IB) in India***
- 12. Director General of Income Tax Criminal Investigation (DGITCI) in India***
- 13. National Company Law Tribunal (NCLT) in India***
- 14. Security Exchange Board of India (SEBI) in India***
- 15. Prevention of Corruption (PC) Act, 1988 in India***

16. *Foreign Assets Investigation Unit (FAIU) in India*
17. *Book on International Financial Services Center (IFSC) in India (Book with 290 pages)*
18. *Replacement of Indian Penal Code (IPC) Criminal Procedure (CP) & Evidence Act (EA) in India*
19. *Undisclosed Foreign Income & Asset (UFIA)-Black Money Act, 2015*
20. *Statutory provisions for General Anti Avoidance Rule (GAAR) in India*
21. *Reserve Bank of India (RBI) Act, 1934*
22. *Foreign Exchange Management Act (FEMA) 1999 in India*
23. *Benami Transactions (Prohibition) Amendment Act, 2016 in India*
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55. *Expatriates + Foreign Citizens in India*
56. *Book on Foreign Investments (FIs) by Non-Residents of India (Non-RoI) (Book with 346 pages)*



41 FAQ's on Foreign Tax Credit + Determination of Residential Status (both)

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41 FAQ's on Foreign Tax Credit + Determination of Residential Status (both)

(A) Foreign Tax Credit (FTC) for Resident of India

1. Introduction of FTC provisions under rules 128 of ITR, 1962 for Resident

- (i) Resident of India (Taxpayer) permitted to claim FTC against 100% Incomes tax deducted + tax paid in country or specified territory (both) outside India.
- (ii) Taxpayer permitted to claim FTC where taxpayer already filed Form No. 67 in India in time specified under section 139(1) of Income Tax Act (ITA) 1961 + also in accordance to FTC Rules 128 of Income Tax Rules (ITR) 1962 (both).
- (iii) (a) Taxpayer required to file Form No. 67 through online mode.
(b) Filling of Form No. 67 already post login service enabling registered taxpayer to file online through e-Filing portal.
- (iv) Registered taxpayer at Income Tax (IT) portal required to use valid ID + password + active status of PAN (all) for e-filing of Form No. 67.

2. Comparison between FTC provisions under ITR, 1962 and under ITA, 1961

- (i) (a) FTC Rules framed through delegated powers of Govt. of India.
(b) Hence Income tax provisions under ITA, 1961 to override FTC rules under ITR, 1962 where conflict arises between Income tax provisions and FTC rules.
- (ii) Honorable Delhi High Court already decided order of hierarchy in India through concluded in case of National Stock Exchange Member vs. Union of India (UOI) and Ors. on November 07th, 2005 like:



- 1st (First)*
- (a) *Constitution of India*
- 2nd (Second)*
- (b) *Statutory Laws through parliament or through state legislation Assembly (both)*
- 3rd (Third)*
- (c) *Statutory Laws through delegate legislation in form of rules + regulations + etc. (all) made under IT Act, 1961*
- 4th (Forth)*
- (d) *Statutory Laws through administrative instructions in form of Circulars + Notifications + press releases + etc. (all) made under IT Act, 1961 + ITR, 1962*
- (iii) *Honorable Supreme Court of India already decided order of hierarchy in India through concluded in case of Ispat Industries Ltd. vs. Commissioner of Customs, Mumbai on September 29th, 2006 that provisions of ITA, 1961 be override over provisions of ITR, 1962 where conflict arises between Income tax provisions and FTC provisions.*

3. Comparison bet. Financial year in India and calendar year outside India

- (i) *Taxpayer in India required to compute his 100% global taxable incomes + also to claim 100% FTC (both) based on financial year like commencing from April 01st, 2022 and ending to March 31st, 2023 + to file his return of income (ITR) under section 139(1) up to July 31st, 2023 where calendar year generally being used in most of countries outside India commencing from January 01st, 2022 and ending to December 31st, 2022.*
- (ii) *Taxpayer required to compute effective tax rate based on TDS deposited by his deductee + also on advance tax already paid in 4 installment in India (both).*
- (iii) *Taxpayer permitted to file revised Form No. 67 + revised ITR where other incomes not included + also TDS not deposited (both) for computing final effective tax rate against filling of ITR in India.*



4. 100% or not 100% (fully or partly) incomes offered to tax in India

- (i) Taxpayer in India permitted to claim 100% FTC for foreign tax deducted + foreign tax paid (both) outside India against 100% global taxable incomes offered to tax in India.
- (ii) (a) Taxpayer in India permitted to claim not 100% FTC for foreign tax deducted + foreign tax paid (both) outside India against not 100% incomes offered to tax in India.

(b) Hence taxpayer in India permitted to claim proportionate FTC for foreign tax deducted + foreign tax paid (both) outside India against proportionate incomes offered to tax in India.
- (iii) Double Taxable Avoidance Agreement (DTAA) provisions between India and country outside India not providing any method for computation of incomes + Income tax (both).
- (iv) ITA, 1961 + ITR, 1962 providing method for computation of Incomes + Income tax (both) in India.
- (v) Section 145 of ITA, 1961 providing method for computation of incomes + Income tax (both) in India through already introduced Incomes Computation and Disclosure Standards (ICDS).

5. Meaning (definition) of foreign tax under FTC Rules 128 of ITR, 1962

- (i) (a) 100% Income tax paid by himself + also 100% deducted by deductee (both) outside India be treated FTC in India where tax treaty already signed under section 90 or 90A (any) of ITA, 1961

(b) 100% Income tax paid by himself + also 100% deducted by deductee (both) outside India be treated FTC in India under section 91(iv) of ITA, 1961 where tax treaty not signed under section 90 or 90A (any) of ITA, 1961



- (ii) (a) Taxpayer *permitted* for FTC against amount of *Income tax + Surcharge + Cesses (all)* applicable in India.
- (b) Taxpayer *not permitted* for FTC against amount of *interest + fee + penalty + indirect taxes like GST + VAT + etc. (all)* paid outside India.

6. *Availability of FTC where disputes already existed outside India*

- (i) Taxpayer *not permitted* for FTC where wholly (*100%*) or partly (*not 100%*) both FTC in dispute outside India
- (ii) Taxpayer *permitted* for FTC in *6 month* from end of month in which dispute finally settled + also taxpayer already *furnished evidence of settlement of tax dispute* outside India (*both*).
- (iii) Taxpayer required to *furnish undertaking* that Income tax refund directly or indirectly *not claimed + not refunded (both)* outside India.
- (iv) (a) Tax officials in India + also tax officials outside India (*both*) *permitted to raise dispute for FTC*.
- (b) Hence taxpayer in India not permitted for FTC where dispute *not settled in India + outside India (both)* outside India.
- (v) However taxpayer *permitted to approach* Central Board of Direct Taxes (*CBDT*) for *providing tax relief against allowability of FTC under section 119* of ITA where taxpayer has genuine case for FTC *beside tax dispute not settled* outside India.

7. *Guidelines for FTC against Income tax payable by taxpayer in India*

- *Permitted for 100% FTC* against tax paid by himself + also 100% FTC against tax deducted by deductee (*both*) *on each source of incomes outside India*
- (i) Taxpayer *permitted for 100% FTC or Income tax* payable in India under ITA, 1961 *whichever lower*.
- (ii) (a) Taxpayer *not permitted for 100% FTC or Income tax* payable in India under ITA, 1961 *whichever higher*.



- (b) Hence 100% FTC *not permitted over and above* Income tax payable in India under ITA, 1961 excess FTC be ignored therefore income tax refund *not permitted in India + outside India (both)* against excess FTC.
- (iii) (a) *Permitted for FTC based on* rate of conversion of foreign currency at Telegraphic Transfer Buying Rate (TTBR) available on last day of month *immediately preceding month in which tax already paid + deducted (both)* outside India.
- (b) Hence tax already paid + deducted outside India *be computed equivalent to INR* at rate available from RBI for TTBR on *November 30th 2022* for tax paid + deducted *(both)* during month ending to *December 31st 2022*.

8. **FTC against Minimum Alternative Tax (MAT) under ITA, 1961**

- (i) Taxpayer *permitted for FTC against Income tax payable under section 115JB or 115JC of ITA, 1961 whichever lower.*
- (ii) Taxpayer *not permitted for FTC over and above Income tax payable under section 115JB or 115JC of ITA, 1961.*
- (iii) Hence *FTC over and above Income tax payable under section 115JB or 115JC of ITA, 1961 be ignored* therefore income tax refund *not permitted in India + outside India (both)* against excess FTC.

9. **Mandatory legal documents required for claiming FTC in India**

- (i) (a) Statement or certificate *(any)* of *100% incomes outside be furnished + amount of FTC be declared + also Form No. 67 be filed duly verified by taxpayer.*
- (b) Statement or certificate *(any)* be *issued by deductor located outside India.*
- (ii) Statement or certificate *(any)* be *specified for nature of incomes + also FTC claimed (both) be mentioned in it:*



- (a) From *tax authority* outside India
 - Or*
 - (b) From *deductor for FTC* outside India
 - Or*
 - (c) From *taxpayer* in India
- (iii) *Enclosure of documents duly signed by taxpayer with Form No. 67*
- (a) *Acknowledgement of online payment + bank counter foil + challan for payment of tax (any) where tax paid by taxpayer outside India*
 - (b) *Proof of tax deduction like statement or certificate (any) where tax deducted by deductor outside India*

10. Procedures for filling of Form No. 67 with Income tax portal in India

- (i) *Form No. 67 be filed by taxpayer with attachment of statement or certificate (any) + also duly signed and verified by taxpayer (both) before due date for filling of ITR under section 139(1) of ITA, 1961*
- (ii) *Form No. 67 be filed by taxpayer beside carry forward of loss resulted into Income tax refund against FTC.*

11. Income tax levied by Central Govt. + State Govt. (both) outside India

- (i) *In USA federal's Income tax levied by Central Govt. + also State's Income tax levied by State Govt. (both) where tax treaty between India and USA covering federal's Income tax by Central Govt. (only).*
- (ii) *Taxpayer in India not permitted for FTC against State's Income tax levied by State Govt. in USA.*

12. Judgment of Mumbai Tribunal in Tata Sons for State's Income tax in USA

- (i) *Mumbai Tribunal concluded in case of Tata Sons (2011) 43 SOT 27 that taxpayer entitled for availing beneficial provisions between Indo-US tax treaty and ITA, 1961 in India.*



- (ii) (a) Provisions under *section 91 of ITA, 1961 more beneficial to taxpayer.*
- (b) Hence taxpayer (*Tata Sons*) *permitted for FTC* against federal's Income tax + State's Income tax (*both*) *paid in USA.*
- (iii) (a) *Tata Sons already covered under India-US tax treaty + also India-Canada tax treaty (both).*
- (b) *Tata Sons permitted for FTC* against federal's Income tax + State's income tax paid in USA or *Canada under Indo USA or Indo Canada (any) tax treaty.*
- (iv) (a) *Section 91 of ITA, 1961 not discriminating* between Central Income tax + State's Income tax (*both*) *in USA.*
- (b) *Tata Sons permitted for FTC* against Central Income tax + State's Income tax *paid in USA + Canada (both)* under *section 91* of ITA, 1961 in India
- (v) Hence Mumbai Tribunal's decision in judgment of *Tata Sons be applied for USA + Canada + etc. (all)* where Income tax already levied by Central Govt. + State Govt. (*both*).

13. *FTC not permitted against indirect tax like GST + VAT + Turnover tax + etc.*

- (i) Honorable *Mumbai High court concluded in judgment of K.E.C International Ltd. (2000) 256 ITR 354* that indirect taxes already *permitted* business expenditures *without attracting provisions under section 40(a)(ii) of ITA, 1961* for disallowing of expenses.
- (ii) Taxpayer (*K.E.C International Ltd.*) *not permitted for FTC* against indirect tax *paid* like GST + VAT + Turnover tax + etc. (*all*) already paid outside India.

14. *FTC against place of effective management (POEM) by resident of India*

- (i) Singapore company *permitted for FTC* where Singapore company's POEM *already existed in India.*
- (ii) Singapore company's POEM *treated tax residence of India under section 6 of ITA, 1961.*



- (iii) Singapore company permitted for FTC in India (only). Hence FTC not permitted in Singapore beside actual deductee.
- (iv) Article No. 4 of Indo-US tax treaty already accepting tax residency based on POEM.

15. FTC against penal interest + additional fee + penalty (all) paid outside India

- (i) Taxpayer not permitted for FTC against penal interest + additional fee + penalty (all) paid outside India
- + (plus)
- (ii) Taxpayer not permitted to claim business expenditures in India against penal interest + additional fee + penalty (all) paid outside India under ITA, 1961

16. FTC against exempted incomes earned outside India by Resident of India

- (i) Taxpayer permitted for FTC against exempted incomes earned outside India based on deemed foreign tax.
- (ii) However Form no. 67 not containing details about exempted incomes earned outside India for FTC based on deemed FTC
- (iii) Taxpayer permitted for FTC against exempted incomes earned outside India treating Deemed FTC through filing manual request with Assessing officer (AO).

17. FTC + Set off for Foreign Incomes against Foreign losses

- (i) (a) Taxpayer permitted to set off foreign incomes against foreign losses + also permitted for FTC (both).
- (b) Abovementioned views supported by Judgment of Honorable Supreme Court of India in case of *K. V. A. L. M. Ramanathan Chettiar vs. CIT* [1973] 88 ITR 169
- (ii) (a) Taxpayer required to aggregate 100% foreign incomes + 100% foreign losses + 100% Indian incomes + also 100% Indian losses (all)
- (b) Taxpayer permitted to compute net taxable positive incomes or negative incomes + also permitted for FTC (both).



18. Presumptive taxation outside India + also permitted for FTC in India (both)

- (i) Taxpayer permitted for 100% FTC under section 91 of ITA, 1961 where tax treaty already not signed.
- (ii) Taxpayer permitted for 100% FTC under section 90 or 90A of ITA, 1961 where tax treaty already signed + also permitted to use Income tax rate prescribed in tax treaty (both).
- (iii) Taxpayer not permitted for 100% FTC under section 90 or 90A of ITA, 1961 over and above rate of TDS (withholding tax rate) in tax treaty.
- (iv) (a) Taxpayer required to ignore FTC over and above rate of TDS prescribed in tax treaty
(b) Taxpayer not permitted for 100% FTC where rate of TDS under tax treaty @ 10% but actual TDS @ 15%. Hence Income tax @ 5% (15-10) be ignored therefore income tax refund not permitted in India + outside India (both) against excess FTC.

19. FTC against tax paid through joint return already filed outside India

- (i) Taxpayer in India permitted to compute effective or Average rate of tax paid based on joint return already filed outside India.
- (ii) Taxpayer in India permitted for FTC on effective or average rate of Income tax paid outside India against 100% foreign incomes to be taxed in India + also rate of Income tax applicable in India (both) whichever lower.

20. FTC for diff. characterization of incomes between in India and outside India

- (i) Taxpayer in India permitted for FTC beside different characterization of incomes in India +outside India (both).
- (ii) Taxpayer in India permitted to resolve any dispute about different characterization through invocation of provisions of Mutual Agreement Procedure (MAP)



21. Consequences on taxpayer against not filling of Form No. 67 in India

- (i) Taxpayer mandatory required to file Form No. 67 under rule 128(8) of ITR, 1962 + also to attach Statement or certificate (any) of foreign incomes + FTC (all).
- (ii) Taxpayer not permitted for FTC without filing of Form No. 67 in India.

22. Special Circumstances for not permitting FTC in India

- (i) Where non-compliance already existed against documentations + procedures + also conditions of FTC rules 128 under ITR, 1962 (any).
- (ii) Where payment of taxes not made in accordance to tax treaty if different characterizations of incomes existed between India and outside India.
- (iii) (a) Where excess Income tax paid due to non compliance of any provision like under FATCA in USA.
(b) Taxpayer not permitted for FTC over and above rate prescribed in tax treaty.
(c) Hence excess FTC over and above rate prescribed in tax treaty be ignored therefore income tax refund not permitted in India + outside India (both) against excess FTC.
- (iv) Where FTC claimed against payment of indirect taxes like GST + VAT + local body tax + city tax + church tax + state level taxes + also other taxes (all) not permitted when not covered under tax treaty.



(B) Details be filled in Form No. 67 in India

23. *Part-A includes certain information's*

- (i) Name of Taxpayer*
- (ii) PAN of Taxpayer*
- (iii) Address of Taxpayer*
- (iv) Assessment year of Taxpayer*
- (v) Details of 100% foreign incomes + FTC (both):*
 - (a) Name of country outside India*
 - (b) Source of Incomes outside India*
 - (c) Amount of incomes outside India*
 - (d) Tax paid outside India*
 - (da) Amount of tax paid outside India*
 - (db) Rate of exchange outside India*
 - (e) Tax payable in India under ITA, 1961 against 100% foreign incomes*
 - (f) Tax payable in India under section 115JB or 115JC of ITA, 1961*
 - (g) Amount of FTC paid + deducted (both) outside India under section 90 or 90A of ITA, 1961*
 - (ga) Article No. of tax treaty*
 - (gb) Rate of TDS (withholding tax rate) in tax treaty*
 - (h) Amount of FTC claimed under section 90 or 90A of ITA, 1961*
 - (i) Amount of FTC claimed under section 91 of ITA, 1961*
 - (j) Total of FTC claimed under section 90 or 90A + 91 (both) of ITA, 1961*



24. Part-B includes certain information's

(i) Whether *refund for FTC already claimed in previous financial year like March 31, 2023 due to set off carry forward losses.*

(a) Yes

(b) No

(ii) Whether *FTC already under dispute outside India ?*

(a) Yes

(b) No

25. Part-C verification by taxpayer

26. Part-D attachment of copy of statement or certificate (any) + also proof of payment of FTC (both).



(C) Determination of Residential Status for Resident and Non Resident of India

27. Determination for resident of India under section 6(1) of ITA, 1961

- (i) Resident of India treated when Individual already physically stayed in India for minimum 182 day in India in previous financial year
Or
- (ii) (a) Resident of India treated when Individual already physically stayed in India for minimum 60 day in India in previous financial year
+ (plus)
(b) Resident of India treated when Individual already physically stayed in India for minimum 365 day in 4 preceding to previous financial year
- (iii) Hence 100% global incomes of resident be taxed in India.

28. Additional criteria for determination of resident of India under section 6(1)

- (i) (a) Resident of India treated when Individual + citizen (both) already physically stayed for minimum 182 day in India in previous financial year
or
(b) Resident of India treated when Individual + citizen (both) leaving for employment + leaving crew member on ship (any) + already physically stayed in India for minimum 182 day in previous financial year (both)
- (ii) (a) Now 2nd option abovementioned under para (i)(b) already replaced (substituted) for already physically stayed from minimum 182 day to minimum 60 day in previous financial year
+ (plus)
(b) When Individual + citizen (both) already physically stayed for minimum 365 day in 4 preceding year to previous financial year
- (iii) Hence 100% global incomes of resident be taxed in India.

29. Determination for resident of India from year ending on March 31, 2021

- (i) (a) Now citizen of India + person of Indian origin (any) already living outside India + coming to visit India (both) during previous financial year



+ (plus)

(b) 100% Indian incomes if exceeding 15 lac in previous financial year.

+ (plus)

(c) Already physically stayed in India for minimum 120 day in previous financial year

+ (plus)

(d) Already physically stayed in India for minimum 365 day in 4 preceding to previous financial year.

(ii) Hence 100% global incomes of resident be taxed in India.

30. Deemed Resident of India under section 6(1A) of ITA, 1961

(i) Now concept of deemed resident of India introduced under section 6(1A) applicable from April 01, 2020 and ending to March 31, 2021 (Assessment year 2021-2022).

(ii) (a) Now Citizen of India treated deemed resident in India when 100% Indian incomes if exceeding INR 15 Lac in previous financial year.

beside

(b) Citizen of India not liable for Income tax in certain countries outside India like UAE + etc (all) due to his domicile + residence + other criteria (any) of similar in nature.

(iii) Hence 3 conditions be satisfied for becoming deemed resident of India:

(a) Where individual already citizen of India

+ (plus)

(b) Where 100% Indian incomes if exceeding INR 15 Lac in previous financial year

+ (plus)

(c) Where individual beside not liable for Income tax outside India like UAE + etc. (all)



- (iv) Hence *condition of physical stay in India now not required for becoming deemed resident of India therefore individual be treated deemed resident of India beside not stayed in India even for 1 day during previous financial year.*

31. Deemed Ordinary resident of India under section 6(1A) of ITA, 1961

- (i) Now citizen of India + person of Indian origin (*any*) *be treated deemed ordinary resident of India where 100% Indian incomes if exceeding INR 15 Lac in previous financial year*

+ (plus)

- (ii) Where already physically *stayed* in India in previous financial year for *minimum 120 day instead of 182 day* earlier under *section 6(6) of ITA, 1961.*

+ (plus)

- (iii) Where already treated *resident* of India for *minimum 2 previous financial year* out of 10 preceding to previous financial year.

+ (plus)

- (iv) Where already physically *stayed* in India for *minimum 730 day during consecutive 7* preceding to previous financial year.

- (v) Hence *100% global incomes of deemed resident be taxed in India.*

32. Meaning of Ordinary resident of India under section 6(6) of ITA, 1961

- (i) When individual citizen + *non citizen* of India (*any*) *already not physically stayed in India for minimum 182 day in* previous financial year

+ (plus)

- (ii) When individual already treated *resident* in India for *minimum 2 previous financial year* out of 10 preceding to previous financial year.

+ (plus)

- (iii) Resident already physically *stayed* in India for *minimum 730 days during consecutive 7* preceding to previous financial year.

- (iv) Hence *100% global incomes of ordinary resident be taxed in India*



33. **Meaning of Not Ordinary Resident of India under section 6(6) of ITA, 1961**

- (i) When individual citizen + non citizen of India (any) already not physically stayed in India for minimum 182 day in previous financial year
+ (plus)
- (ii) When individual already treated resident of India for maximum 1 previous financial year out of 10 preceding to previous financial year.
or
- (iii) When individual already stayed in India for maximum 729 day during consecutive 7 preceding to previous financial year.
- (iv) (a) Now citizen of India + person of Indian origin (any) + also having 100% Indian incomes if exceeding INR 15 lac in previous financial year.
+ (plus)
(b) Already physically stayed in India for minimum 120 day be treated not ordinary resident of India
- (v) Hence 100% Indian incomes of not ordinary resident of India be taxed in India therefore 100% global incomes - (Minus) 100% Indian incomes not to be taxed in India.

34. **Meaning of Non Resident of India under section 6(6) of ITA, 1961**

- (i) When individual citizen + non citizen of India (any) already not qualified conditions for becoming resident of India be treated non-resident of India.
- (ii) Hence 100% foreign incomes of non-resident of India not to be taxed in India
- (iii) 100% Indian incomes of non-resident be taxed in India. Hence 100% global incomes – (minus) 100% Indian incomes not to be taxed in India.

35. **Meaning of HUF-Resident of India under section 6(2) of ITA, 1961**

- (i) HUF treated resident of India when control + management of affairs (both) wholly (100%) or partly (not 100%) situated in India during previous financial year.



- (ii) HUF *not treated* resident of India when *control + management of affairs (both)* wholly (100%) *situated outside India* during previous financial year.
- (iii) HUF treated resident or non-resident *based on residential status of Karta* during preceding to previous financial year when *Karta already having control + management of affairs (both)* of HUF in India or outside India (*any*).

36. **Meaning of Control + management of HUF under section 6(2) of ITA, 1961**

- (i) (a) Control + management (*both*) *means de facto control and management.*
 (b) Hence *merely* right to control + manage (*any*) *not treated control + management (both).*
- (ii) Control + management (*both*) *situated* at place where karta + manager + coparcener (*any*) *already residing or directing affair of HUF.*
- (iii) Hence house located in India *without residing or directing affairs of HUF (any) not treated control + management (both)* in India.
- (iv) (a) *Generally karta Control + management of affair of HUF (both).*
 (b) However *coparcener may control + management of affair of HUF (both).*

37. **Meaning of HUF ordinary resident under section 6(2) of ITA, 1961**

- *Karta + manager + coparcener + successive Karta (all) treated ordinary resident*
- (i) Where Karta + etc. (*any*) *already not stayed in India for minimum 2 previous financial year* out of 10 previous financial year to preceding to previous financial year
 + (plus)
- (ii) Where Karta + etc. (*any*) *already physically present in India for minimum 730 day* out of consecutive 7 previous financial year to preceding to previous financial year



- (iii) Abovementioned conditions under para (i) + (ii) both additionally be satisfied for becoming ordinary resident of India with basic conditions for becoming resident already mentioned earlier.

38. Meaning of HUF Not ordinary resident - section 6(2) of ITA, 1961

- (i) Where Karta + etc. (any) already not satisfied conditions mentioned under para 37 (i) + 37 (ii) both be treated not ordinary resident of India.
- (ii) Hence 100% global incomes of HUF not ordinary resident not to be taxed in India.

39. Meaning of Firm + AOP (any) resident of India under section 6(2) of ITA

- (i) Partnership firm + AOP (any) treated resident of India when control + management of affairs (both) wholly (100%) or partly (not 100%) situated in India during previous financial year.
- (ii) Partnership firm + AOP (any) treated non-resident of India when control + management of affairs (both) wholly (100%) situated outside India.
- (iii) Partnership firm + AOP (any) treated resident or non resident based on control + management (both) wholly or partly situated in India or outside India during preceding to previous financial year.

40. Meaning of Control + management of firm + AOP - section 6(2) of ITA, 1961

- (i) (a) Control + management means de facto control + management (both).
- (b) Hence merely right to control or manage not treated control + management (both).
- (ii) Control + management (both) of partnership firm usually vested in partners
- (iii) Control + management (both) of AOP usually vested in principal officer
- (iv) Control + management (both) usually situated at place where partner or principal officer already residing + directing (any) of affair of HUF or AOP



- (v) Partnership firm + AOP (both) can't be ordinarily or not ordinarily resident of India.
- (vi) Residential status of partners of partnership firm + members of AOP (both) not relevant for determining residential status of Partnership firm or AOP.
- (vii) Hence 100% Global incomes of firm + AOP when partner or member (any) resident be taxed in India.

41. Company-Resident of India under section 6(3) of ITA, 1961

- (i) Company treated resident of India in previous financial year
 - (a) Where Indian (domestic) company incorporated in India
 - Or
 - (b) Where company's Place of Effective Management (POEM) in India
- (ii) Meaning (definition) of POEM in India
 - (a) Where Indian company's key management + commercial decisions (both) considered necessary for conducting business of company wholly (100%) or substantially (not 100%) already made in India.
 - Or
 - (b) Where foreign company's POEM wholly (100%) located in India.
 - (c) However foreign company be called non-resident of India when POEM wholly (100%) or partly (not 100%) located outside India.
 - (d) Moreover foreign company be called non-resident of India when even slighted (negligible) POEM already exercised outside India.
- (iii) Generally company can't be ordinarily or not ordinarily resident of India.
- (iv) Hence 100% Global incomes of company (both) be taxed in India.



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