



RAMA UNIVERSITY

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FACULTY OF COMMERCE AND MANAGEMENT

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LECTURE: 04

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LECTURE-04



MEANING OF TOTAL INCOME IN THE CONTEXT OF RESIDENTIAL STATUS - SEC. 5:

Sec. 5 (1) incidence of tax in case of resident and ordinary resident – the total income of a resident assessee would

consist of:

- income which is received or deemed to be received in India during the accounting year
- income which accrues and arises or is deemed to accrue or arise in India during the accounting year
- income which accrues or arises outside India even if it is not received or brought into India during the accounting year

S. No	Status	Income liable to tax
1	Resident and ordinarily resident	Global or world income
2	Resident but not ordinarily	a) All incomes realised within resident India (i.e., received/deemed to be received and accrued/deemed to accrue in India.) b) Income from business or profession outside India if this business is controlled in or profession set up in India.
3	Non-resident	All income realised within India (i.e., received/deemed to be received and accrued/deemed to be accrued in India.)

Scope and Orbit of Business Connection in the Case of Non-resident

In case of income deemed to accrue or arise in India, scope and ambit of ‘business connection’ of a non-resident can be explained with the help of following illustrative instances:

- Maintaining a branch office in India for the purchase or sale of goods or transacting other business
- Appointing an agent in India for the systematic and regular purchase of raw materials or other commodities or for sale of the non-resident’s goods or for other business purposes
- Erecting a factory in India, where the raw produce purchased locally is worked into a form

suitable for export abroad

- Forming a local subsidiary company to sell the products of the non-resident parent company
- Having financial association between a resident and a non-resident company

The following clarifications regarding applicability of provisions of section 9 are made in respect of certain specified situations:

Non-resident exporters selling goods from abroad to Indian importer:

- No liability will arise on accrual basis to the non-resident on the profits made by him where the transactions of sale between the two parties are on a principal-to-principal basis.
- If the non-resident makes over the shipping documents to a bank in his own country which discounts the documents and sends them for collection to the bankers in India, who present the sight or usance draft to the resident importer and deliver the documents to him against payment or acceptance by the latter, the non-resident will not be liable to tax on the profit arising out of the sales on receipt basis.

Non-resident company selling goods from abroad to its Indian subsidiary:

- In such a case, if the transactions are actually on a principal-to-principal basis and are at arm's length and the subsidiary company functions and carries on business on its own, instead of functioning as an agent of the parent company, the mere fact that the Indian company is a subsidiary of the non-resident company will not be considered a valid ground for invoking Section 9 for assessing the non-resident. Where a non-resident parent company sells goods to its Indian subsidiary, the income from the transaction will not be deemed to accrue or arise in India under section 9, provided that
 - a. the contracts to sell are made outside India,
 - b. the sales are made on a principal-to-principal basis and at arm's length and
 - c. the subsidiary does not act as an agent of the parent company.

Sale of plant and machinery to an Indian importer on instalment basis:

Where the transaction of sale and purchase is on a principal-to-principal basis and the exporter and the importer have no other business connection, the fact that the exporter allows the importer to pay for the plant and machinery, instalments will not, by themselves, render the exporter liable to

tax on the ground that the income is deemed to arise to him in India.

Foreign agents of Indian exporters:

Where a foreign agent of Indian exporter operates in his own country and his commission is usually remitted directly to him and is, therefore, not received by him or on his behalf in India. Such an agent is not liable to income tax in India on the commission.

Non-resident person purchasing goods in India:

A non-resident will not be liable to tax in India on any income attributable to operations confined to purchase of goods in India for export, even though the non-resident has an office or an agency in India for this purpose.

Sales by a non-resident to Indian customers either directly or through agents:

Where non-resident allows an Indian customer facility of extended credit for payment, there would be no assessment merely for this reason provided that

1. the contracts to sell were made outside India; and
2. The sales were made on a principal-to-principal basis

Where a non-resident has an agent in India and makes sales directly to Indian customers, section 9 of the Act will not be invoked, even if the resident pays his agent an overriding commission on all sales to India, provided that

1. the agent neither performs nor undertakes to perform any service directly or indirectly in respect of these direct sales;
2. the contracts to sell are made outside India; and
3. the sales are made on a principal-to-principal basis.

Where a non-resident's sales to Indian customers are secured through the services of an agent in India, the assessment in India of the income arising out of the transaction will be limited to the amount of profit which is attributable to the agent's services, provided that

- (i) the non-resident principal's business activities in India are wholly channelled through his agent,
- (ii) the contracts to sell are made outside India and
- (iii) the sales are made on a principal-to-principal basis.

Where a non-resident principal's business activities in India are not wholly channelled through his agent in India, the assessment in India will be on the sum total of the amount of profit attributable to his agent's activities in India and the amount of profit attributable to his own activities in India, less the expenses incurred in making the sales.
