

Business Connection

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< EXECUTIVE SUMMARY >

◆ Existence of Business Connection has been a long recognised mode of determining the tax liability of Non-residents. Although the Income Tax Act contained reference to the term “Business connection”, no explicit definition had been assigned to it. However, a welcome change had been incorpo-

rated, by defining the term “Business connection” within the Act and thereby clarifying and restricting the scope of varied interpretations. However, there is a word of caution too. The article below discusses the scenario before the term “Business Connection” was defined and the impact after it being defined.



Existence of Business connection has been a long recognised mode of determining the tax liability of Non Residents. Hitherto, although the Income Tax Act contained reference to the term “Business Connection”, no explicit definition had been assigned to it. The settled view was that the expression ‘Business Connection’ limits of no precise definition. The import and connotation of this expression had been explained by the Supreme Court in its judgment in C.I.T. v. R.D. Aggarwal and Co. and another, [56 I.T.R. 20]. The question whether a non-resident has a ‘business connection’ in India from or through which income, profits or gains can be said to accrue or arise to him within the meaning of section 9 of the Income-tax Act,

The author is a member of the Institute. The views expressed herein are the personal views of the author and do not necessarily represent the views of the Institute.

1961, had to be determined on the facts of each case.

In CIT vs Evans Medical Supplies Ltd, 1959, ITR 418), (Blue Star Engg. Co. (Bom) Pvt Ltd. Vs CIT (1969) 73 ITR 283 it was held that the expression “Business connection” is an expression of wide and indefinite import and is different from the expression “business” as defined under the Act.

In CIT vs Fried Krupp Industries Limited, 1981, 128 ITR 27 it was held that mere purchases from abroad on principal to principal basis do not establish a business connection.

Hence the term was being interpreted differently by different authorities under different circumstances and had been the subject matter of judicial interpretations by various authorities.

Following is an extract from the Circular issued by CBDT in 1969, which was being used as a basis to determine the existence of business connection

(Circular No.23 dated 23-07-1969):
“Some illustrative instances of a non-resident hav-

ing business connection in India, are given below:

- (a) Maintaining a branch office in India for the purchase or sale of goods or transacting other business.
- (b) 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.
- (c) Erecting a factory in India where the raw produce purchased locally is worked into a form suitable for export abroad.
- (d) Forming a local subsidiary company to sell the products of the non-resident parent company:
- (e) Having financial association between a resident and a non-resident company:

3. (1) Non-resident exporter selling goods from abroad to Indian importer.-(i) 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. In all cases, the real relationship between the parties has to be looked into on the basis of an agreement existing between them, but where-

- (a) the purchases made by the resident are outright on his own account;
- (b) the transactions between the resident and the non-resident are made at arm's length and at prices which would be normally chargeable to other customers;
- (c) the non-resident exercises no control over the business of the resident and sales are made by the latter on his own account, or
- (d) the payment to the non-resident is made on delivery of documents and is not dependent in any way on the sales to be effected by the resident. it can be inferred that the transactions are on the basis of principal-to-principal.

(ii) A question may arise in the above type of cases whether there is any liability of the non-resident under section 5(1) (a) of the Income-tax Act, 1961, on the basis of receipt of sale proceeds including the profit in India. 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. Even if the shipping documents

are not discounted in the foreign country, but are handed over in India against payment or acceptance, no portion of the profits will be chargeable to tax under the Income-tax Act, if this is the only operation carried on in India on behalf of the non-resident.

(2) Non-resident company selling goods from abroad to its Indian subsidiary:-(i) A question may arise whether the dealings between a non-resident parent company and its Indian subsidiary can at all be regarded as on a principal-to-principal basis since the former would be in a position to exercise control over the affairs of the latter. 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.

(ii) 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. The mere existence of a "business connection" arising out of the parent subsidiary relationship will not give rise to an assessment, nor will the fact that the parent company might exercise control over the affairs of the subsidiary.

(3) 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 in instalments will not, by itself, render the exporter liable to tax on the ground that the income is deemed to arise to him in India. The Indian importer will not, in such a case, be treated as an agent of the exporter for the purposes of assessment.

(4) Foreign agents of Indian exporters-A foreign agent of Indian exporter operates in his own country and no part of his income arises in India. 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.

(5) 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. Where a resident person acts in the ordinary course of his business in making purchases for a non-resident party, he would not normally be regarded as an agent of the non-resident under section 163 of the Act. But, where the resident person is closely connected with the non-resident purchaser and the course of business between them is so arranged that the resident person gets no profits or less than the ordinary profits which might be expected to arise in that business, the Income-tax Officer is empowered to determine the amount of profits which may reasonably be deemed to have been derived by the resident person from that business and include such amount in the total income of the resident person.

(6) Sales by a non-resident to Indian customers either directly or through agents. —(a) Where a non-resident allows an Indian customer, facilities of extended credit for payment, there would be assessment merely for this reason provided that (i) the contracts to sell were made outside India and (ii) the sales were made on a principal-to-principal basis.

(b) 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 over-riding commission on all sales to Indian, provided that (i) the agent neither performs nor undertakes to perform any service directly nor indirectly in respect of these direct sales and the making of these sales can, in no way, be attributed to the existence of the agency or to any trading advantage or benefit accruing to the principal from the agency, (ii) the contracts to sell are made outside India, and (iii) the sales are made on a principal-to principal basis.

(c) 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 agents services, provided that (a) the non-resident principal's business activities in India are wholly channelled through his agent, (b) the contracts to sell are made outside India and (c) the sales are made on a principal-to-principal basis. In the assessment of the amount of profit, allowance will be made for the expenses incurred including the agent's commission, in making the sales. If the agent's commission fully represents the value of the profit-attributable to his service, it should prima facie extinguish the assessment.

(d) 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 agents activities in India and the amount of profit attributable to his own activities in India, less the expenses incurred in making the sales.

(7) Extent of the profit assessable under section 9. Section 9 does not seek to bring into the tax-net the profits of a non-resident which cannot reasonably be attributed to operations carried out in India. Even if there be a business connection in India the whole of the profit accruing or arising from the business connection is not deemed to accrue or arise in India. It is only that portion of the profit which can reasonably be attributed to the operations of the business carried out in India, which is liable to income-tax.

To constitute a business connection some continuity of relationship between the person in India who helps to make the profits and the person outside India who receives or realises the profits, is necessary. Where all that has happened is that a few transactions of purchases of raw materials have taken place in India and the manufacture and sale of goods have taken place outside India, the profits arising from such sales cannot be considered to have arisen out of a business connection in India. Where, however, there is a regular agency established in India for the purchase of the entire raw materials required for the purpose of manufacture and sale abroad and the agent is chosen by reason of his skill, reputation and experience in the line of trade, it can be said that there is a business connection in India so that a portion of the profits attributable to the purchase of raw materials in India can be apportioned under the explanation (a) to section 9(1)(i).

According to the provisions contained under Section 9(1) of the Income Tax Act, following Incomes are deemed to accrue or arise in India:

Any Income arising directly or indirectly:

- through or from any business connection in India or
- through or from any property in India or
- through or from any asset or source of Income in India or
- through transfer of a capital asset situated in India

Section 9 of the Act brings into its fold the income which arises outside India but is deemed to accrue or arise in India by fiction of law. The section brings to tax income accruing or arising through or from any business

connection, property, asset or source of income or a capital asset situated in India. In order to be taxable, there should be nexus between such income and India by virtue of a business connection.

In the case of GVK Industries Ltd vs ITO 1997 228 ITR 564, the following principals were laid down by the court:

- 1) Existence or non existence of business connection is a mixed question of fact and law and depends on the facts and circumstances of each case
- 2) The expression is too wide to admit any precise definition
- 3) The essence of business connection is the existence of close, real, intimate relationship and commonness of interest between the Indian person and the non resident
- 4) There must be continuity of activity or operations and a stray or isolated transaction is not enough to establish a business connection.

The other notable cases relevant in the matter include the following:

Performing Rights Society Limited vs CIT 06 ITR 11 SC

Carborandum Co 108 ITR 535

In order to remove the ambiguities, Finance Act '2003 has inserted Explanations under Section 9 specifying the definition of Business Connection. The amended provisions are applicable w.e.f. Assessment year 2004-2005.

Accordingly, the term "Business Connection" shall include any business activity, carried out through a person acting on behalf of non resident, who:

- Has and habitually exercises in India an authority to conclude contracts on behalf of non residents, unless the person's activities are limited to purchase of goods or merchandise for the non resident

Or

- Has no such authority, but habitually maintains in India a stock of goods or merchandise from which the person regularly delivers goods or merchandise on behalf of the non resident

Or

- Habitually secures order in India, mainly or wholly for the non resident or for that non resident and other non residents controlling, controlled by or subject to the same common control as that non resident.

However, the above criteria shall not apply if the

non resident carries on business through the following:

- a broker
- general commission agent or
- any other agent having an independent status

and such a person has an independent status and is acting in the ordinary course of business.

A broker, general commission agent or any other agent (agent) shall not be deemed to have an independent status in the following cases:

- The agent works mainly or wholly on behalf of a principal non resident, or
- The agent works on behalf of such non resident and other non residents which are controlled by the principal non resident or have a controlling interest in the principal non resident or are subject to the same common control as the principal non resident.

Where a business is carried on in India by a non resident through an agent satisfying the above criterion, only so much of the income as is attributable to the operations carried out in India shall be deemed to accrue or arise in India.

Henceforth every agent of non-resident will have to examine whether he is a dependent or independent agent. Dependent agent will straightaway imply existence of a business connection. In respect of independent agents, the fact to be considered is whether their activities form an extension of the activities of the non-resident or they are carrying on the activities in the normal course of their business.

Let us further analyse the various elements of the amended provisions. In order for Business Connection to exist, following conditions need to be satisfied:

- The Non resident should carry on a business
- The business should be carried through another person (agent)
- The activities are exercised in India
- The other person (agent) should be acting on behalf of non resident
- The other person (agent) satisfies at least one condition: i.e. The agent
- Has and habitually exercises in India an authority to conclude contracts on behalf of non residents, unless the activities are limited to purchase of goods or merchandise for the non resident

Or

- Has no such authority, but habitually maintains in India a stock of goods or merchandise from which

the agent regularly delivers goods or merchandise on behalf of non resident

Or

- Habitually secures order in India, mainly or wholly for the non resident or for that non resident and other non residents controlling, controlled by or subject to the same common control as that non resident .
- The other person is not an agent of an independent status or if the agent of an independent status, he is not acting in the ordinary course of business .

Agent

Under Section 163 of the Income Tax Act, “agent”, in relation to a non- resident, includes any person in India

- (a) who is employed by or on behalf of the non-resident; or
- (b) who has any business connection with the non-resident; or
- (c) from or through whom the non-resident is in receipt of any income, whether directly or indirectly; or
- (d) who is the trustee of the non-resident;

It also includes any other person who, whether a resident or non-resident, who has acquired by means of a transfer, a capital asset in India .

However a broker in India who, in respect of any transactions, does not deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker shall not be deemed to be an agent in respect of such transactions, if the following conditions are fulfilled, namely:

- (i) the transactions are carried on in the ordinary course of business through the first-mentioned broker; and
- (ii) the non-resident broker is carrying on such transactions in the ordinary course of his business and not as a principal.

Further no person shall be treated as the agent of a non- resident unless the person has had an opportunity of being heard by the Assessing Officer as to his liability to be treated as such.

The agent can be any person

The agent may include the following:

- Individual
- Firm
- HUF
- Association of Person / Body of Individuals
- Company
- Local Authority

- Any other artificial juridical person

The agent may either be a resident or non resident. However ,the activity must be carried out in India through this person.

Authority to conclude contracts in the name of the non resident

The agent should have authority to conclude contracts . The agent may either:

- Enter into contracts in the name of the non resident or
- Conclude contracts which are binding on the non resident, even if those contracts are not actually in the name of the non resident .

For ex. the agent may solicit and receive orders which are sent directly to the godown of the foreign non resident, from which goods are delivered, and the foreign non resident just approves the transaction. The agent may not have the formal authority to finalise the order / contract .

The agent, may also deemed to have an authority if the non resident is not actively involved in the transactions, and it is only the agent who finalises the transactions .

Further it must be noted that the contracts must be related to the operations which constitute business of the non resident .The agent must have legal authority to bind the non resident for business purposes and not only for administrative purposes. (Bikaner Textile Merchants Syndicate Ltd. Vs CIT (1965),58 ITR 169., A P Damodara Shenoy vs CIT (1954) 26 ITR 650.)

Exercise of activities in India

The authority should habitually be exercised by the agent in India . The activity should be carried out in India in order to satisfy the criterion of “creating relationship of business connection “. An agent who is authorised to negotiate all elements and details of a contract in a manner as to be binding on the non resident can be said to exercise this authority in India even if the contract is signed by another person in the state in which the non resident is situated . There is no Business connection in cases where the Non resident is merely doing business with India and not in India. (CIT vs Usha Martin Black (Wire Ropes) Ltd, 1984, 148ITR236.)

Agent Habitually concludes contracts

The agent must habitually conclude contracts. To constitute a business connection, some continuity of relationship between the person in India who helps to

make the profits and the person outside India who receives or realises the profits, is necessary. The presence, which the non resident maintains in India shouldn't be merely transitory in nature. What is habitually will depend on the nature of contract and the business of the non resident. There should be repeated/ constant acts. What is required is an element of continuance and permanence. There should be certain degree of frequency demonstrated by performance of repetitive acts. There should be numerous instances of reiteration. A regular / frequent practice should be exhibited. What is required is continuity between the business of the non resident and the activity carried on in India. This will exclude any stray or isolated/one off transaction. (Biyani & Sons Pvt Ltd vs CIT (1979) 120 ITR 887)

Dependent / Independent status of the agent

In order for the agent to have an independent status, the agent should be independent of the non resident represented both legally as well as economically. Whether a person is independent or not would again depend on the facts and circumstances of each case. There are no hard and fast rules for this. The extent of obligations which the agent has vis a vis the non resident can be a major guiding factor.

In order to decide on the dependency of the agent on the Non Resident, one must consider:

- ❑ Limitation of scope of activities which may be conducted by the agent.
- ❑ Who bears entrepreneurial risk - the agent or the non resident whom the agent represents.
- ❑ Extent to which the agent exercises freedom in conduct of business on behalf of the principal Non resident within the scope of the authority conferred by the agreement. The agent may not be regarded as independent of non resident where agents commercial activity for the non resident are subject to detailed instructions or to comprehensive control by it.
- ❑ Number of principles represented by the agent. Agent may not be independent if the activities are performed wholly or almost wholly on behalf of any one non resident over long periods of time
- ❑ If agent acts for number of principals in ordinary course of business and none of these is predominant in terms of business carried on by agent. (legal dependency may exist if all the principals act in concert to control acts of the agent in course of business).
- ❑ Whether agent's acts constitute an autonomous

business conducted by him in which he bears risk and receives rewards through use of his entrepreneurial skills and knowledge

- ❑ Holding company may exercise control over its subsidiary by virtue of its shareholding. However this may not be the sole relevant factor to decide dependency / independence of subsidiary as agent of holding company unless the same tests as apply to unrelated company are applied.

For Independence to exist, the agent should be responsible to the principal non resident for results of his work. The agent should not be subject to significant control with respect to manner in which work is carried out. Nor will the agent be subject to detailed instruction from principal non resident as to the conduct of work. The principal non resident relies on special skills / knowledge of agent. In case the agent just provides information to ensure smooth running of the agreement and continued good relations with principal, then it won't constitute dependency.

An agent shall not be deemed to be of independent status if the agent works mainly or wholly on behalf of:

- A principal non resident
- The non resident and other non residents controlled by the non resident
- The non resident and other non residents who have a controlling interest in the non resident
- The non resident and other non resident which are subject to the same common control as the non resident

Control means ability to exercise, restrain or direct influence, to regulate, dominate, govern or manage. The non resident should be in a position to influence, regulate or restrain the agent. (Barendra Prasad Roy vs ITO, 1973 91 ITR 82).

Ordinary course of business

In deciding whether or not particular activities fall within or outside the purview of ordinary course of business of an agent, one should examine the business activities customarily carried out within the agent's trade as a broker, commission agent or other independent agent rather than the other activities carried out by that agent. One should compare with the activities which are customary to the agent's trade.

A person cannot be said to act in the ordinary course of his / her own business if in place of the non resident, such person performs activities which economically belong to the non resident rather than to that of his/her own business operations.

In case a commission agent sells goods of the non resident in his own name and also habitually acts in relation to that non resident, as a permanent agent having authority to conclude contracts, he would be deemed to be a permanent establishment since he is acting outside the ordinary course of his own business of a commission agent. (CIT vs Anglo French Textiles (1993)199 ITR 785) .

Quantum of profits chargeable to tax

Where a business is carried out in India through a business connection , as per the criterion listed above, then only so much of the income as is attributable to the operations carried out in India shall be deemed to accrue or arise in India. The income will have to be segregated between what is earned in India and what is earned outside India. If all the operations are not carried out in India, the profits and gains of the business deemed to accrue or arise in India shall be only such profits and gains as are reasonably attributable to that part of the operations which are carried out in India .(Carborandum Co. Vs CIT 1977 108 ITR 335, 343 (SC)) . Practically, segregating the income and the associated expenses may turn out to be a Herculean task in many a cases .

Difference with the provisions of DTAA's

The terms Business Connection and Permanent Establishment used in relation to the Non Residents have different meanings . There may be cases where there is Business connection by virtue of Section 9 of the Act but the non resident may not have permanent establishment in India by virtue of the DTAA . Similarly, even though the activities of an agent may not qualify for being a business connection under the act, they may still result in a permanent establishment by virtue of the DTAA clauses.

As was held in the case CIT Vs Visakhapatnam Port Trust ,1983, 144 ITR 146 ,159, under sub section 2 of section 90 of the Act, the provisions of the Act or of the relevant treaty shall apply, whichever are more beneficial to the assessee . As a result, in case of inconsistency between the two, the assessee may resort to the interpretation which is more beneficial to him and stay outside the ambit of taxation.

Some special situations

The Income tax act contains some special provisions for taxing of non residents . Some of these include the following:

A Profit and gains of shipping business [Sec. 44B]

Profit of non-resident from shipping business is determined by applying a flat rate of 7 1/2% on the following amounts:

the amount payable (whether in or out of India) to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any port in India; including amount by way of demurrage or handling charges or amount of similar nature;

the amount received or considered as received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India, including amount by way of demurrage or handling charges or any other amount of similar nature.

B. Profits and Gains of Business of Exploration etc. of Mineral Oils [Sec. 44BB]

The income of a non-resident assessee from the business of providing services or facilities in connection with, or supplying plant and machinery or hire for use in, the business of prospecting for, or extraction or production of mineral oils in India is computed at a sum, equal to 10% of amount paid or payable (in or out of India) on account of services and facilities provided to or on account of supply of plant and machinery on hire to be used in such business .

C. Profits and Gains of the Business of operation of Aircraft [Sec. 44BBA]

The income of a non-resident from business of operation of aircraft is computed at a sum equal to 5% of the aggregate of the amounts paid or payable to him whether in India or outside India on account of the carriage or passengers, livestock, mail or goods from any place in India.

D Profits and Gains of foreign Companies engaged in the Business of Civil Construction etc. in certain Turnkey Power Projects [Sec. 44BBB]

The income of a foreign company from the business of civil construction or of erection of plant and machinery or testing or commissioning thereof in connection with turnkey power project is computed at 10% of the amount paid or payable to it on account of such civil construction, erection, testing or commissioning.

E. Deduction of head office expenditure- [Sec.

44C]

In the case of a non-resident, no allowance shall be made, in computing the income chargeable under the head “Profits and gains of business or profession”, in respect of so much of the expenditure in the nature of head office expenditure as is in excess of the least of the following:

(a) five percent of the adjusted total income; or

(b) so much of the expenditure in the nature of head office expenditure incurred by the assessee as is attributable to the business or profession of the assessee in India.

F Income by way of royalties, etc., in the case of foreign companies. [44D]

In the case of a foreign company,

(a) the deductions admissible in computing the income by way of royalty or fees for technical services received from Government or an Indian concern in pursuance of an agreement made by the foreign company with Government or with the Indian concern before the 1st day of April, 1976, shall not exceed in the aggregate twenty per cent of the gross amount of such royalty or fees as reduced by so much of the gross amount of such royalty as consists of lump sum consideration for the transfer outside India of, or the imparting of information outside India in respect of, any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process or trade mark or similar property;

(b) no deduction in respect of any expenditure or allowance shall be allowed under any of the said sections in computing the income by way of royalty or fees technical services received from Government or an Indian concern in pursuance of an agreement made by the foreign company with Government or with the Indian concern after the 31st day of March, 1976;

G Income by way of royalties, etc., in the case of foreign companies. [44DA]

In case of income by way of royalty or FTS received by a non-resident or by a foreign company from the Government or from an Indian concern in pursuance of an agreement entered into after 31st March, 2003, earned through a permanent establishment (PE) for business in India or a fixed place of profession, then such royalty or FTS will be taxed at normal rates (and not at the rate of 20%) on net

basis. The expenditure incurred by the PE or the fixed place of profession will be deductible in computing the taxable income except (a) where it is not incurred wholly or exclusively for such PE or fixed place of profession; and (b) where it is head office expenditure not being in the nature of an actual reimbursement.

These special benefits may become inapplicable in many cases by virtue of the amended provisions, because in case existence of business connection is established, then the normal tax rates would apply instead of the special rates. Further, the foreign enterprises who carry out business activities in India through an agent may become liable to pay tax on their income in India and their Indian agent may be treated as their representative assessee.

Conclusion

A welcome change has been incorporated, by defining the term “Business Connection” within the Act and thereby clarifying and restricting the scope of varied interpretations.

However, there is a word of caution too. The main impact of the amendments would be in those cases where the non-resident belongs to a country with which India has signed a DTAA, creation of a business connection will amount to establishment of their “permanent establishment” in India. Accordingly, in such cases, business profits from transactions in India will become liable to tax in India. In cases where there is no DTAA, because creation of a business connection would render any income accruing or arising, whether directly or indirectly, through or from any business connection in India, as liable to tax in India because such income will be deemed to accrue or arise in India.

Under Section 163, an agent who has any business connection with a non-resident may be treated as a representative assessee. As such the foreign enterprises who carry out business activities in India through an agent may become liable to pay tax on their income in India. In such cases, the Indian agent may be treated as their representative assessee.

The amendment may be circumvented by resorting to the provisions of Double Taxation Avoidance Agreements entered into with various countries. The non-resident would always have the option to either choose the provisions of the Act or the DTAA, which ever are more beneficial. In a nutshell, the amendment may not really bring about the desired benefit to the non-residents or their agents. On the contrary it may breed ground for litigation. ■