

Corporate Residency

Tax → Residential
→ Source

Person { Individual
↳ Corporate

Approaches - Residential Status of Co → Legal approach
↳ Economic approach
↑ Place of incorp.
↓ Place of mgmt.

India → Combination



46 ITA.

Co. - Resident

Foreign Co.

Incorporated

Indian Co.
⇒ Resident

"POEM" of the Co.
is in India

↓
"Control & mgmt.
of the Co."

"CGM → wholly in India" → Co-Resident
of India.

IT ~~Act~~ 1922 → 2015 → FA 2015

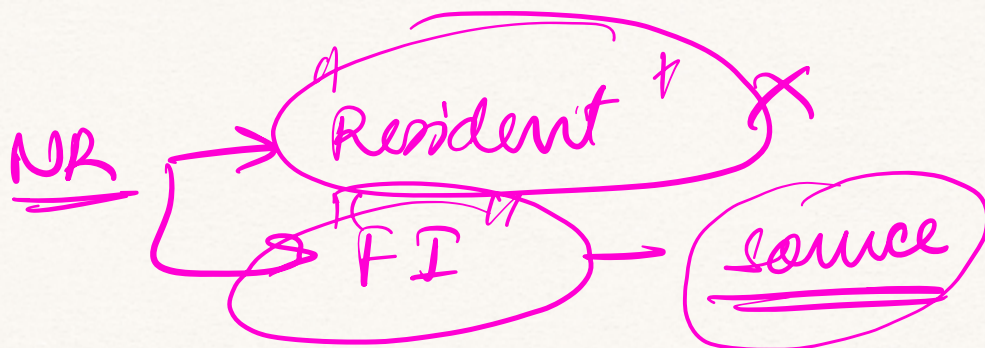
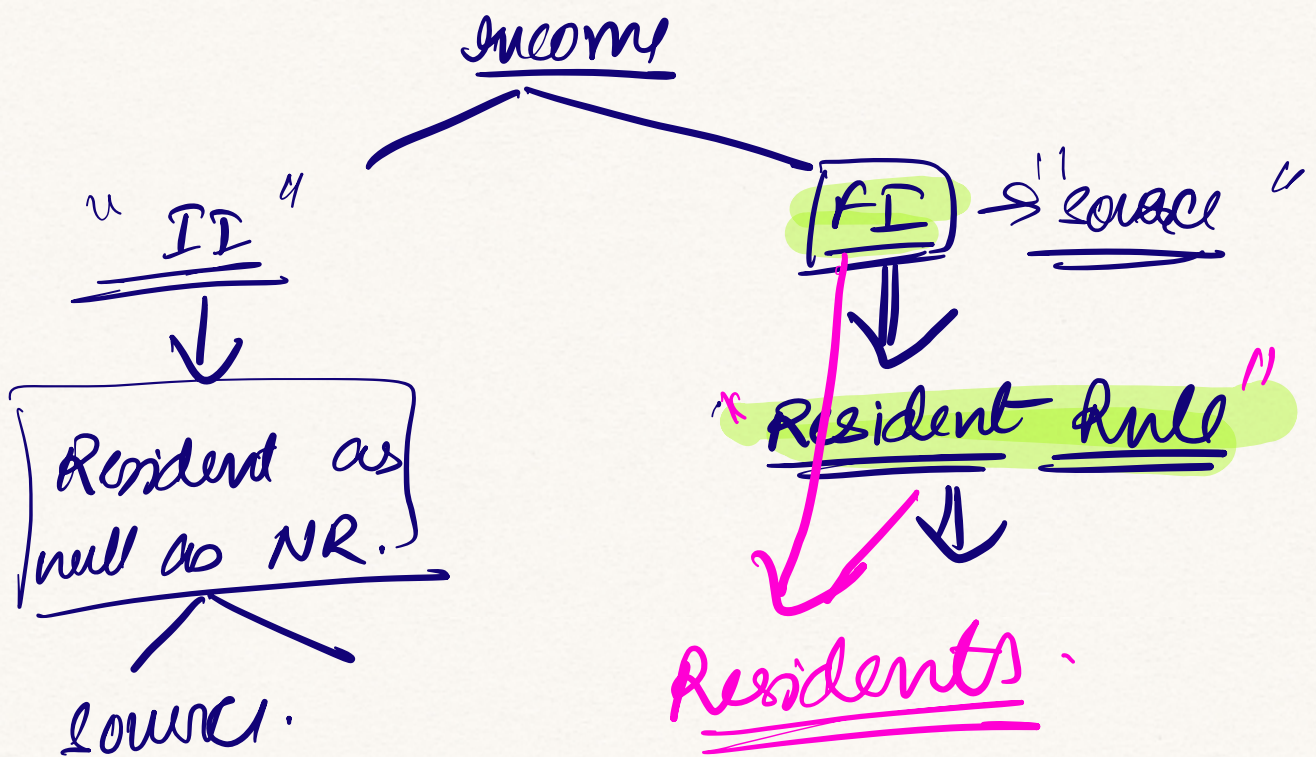
→ "POEM" — in India

Resident in India.

⇒ y do we need Residential status?



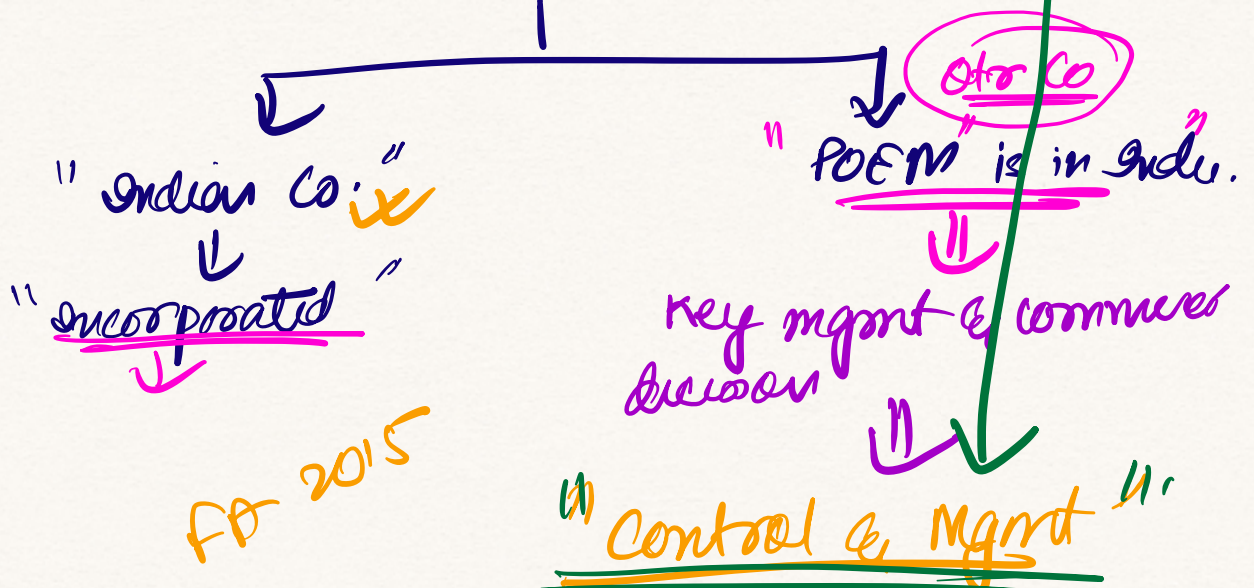
See 5 of The IT ~~Act~~ — scope of Income



		R	NR	
<u>II</u>	→	✓	✓	→ <u>"Source."</u>
<u>FI</u>	→	✓	X	→ <u>"Resident"</u>

ITR 1922 - 44(3)(a) & (b)

Residential status of Co → 46(3)



POEM

- ~~CMA~~

↳ contain

- Shell Co.

↳ tax avoidance.

↳ &

qualification

↳ ent. all recip. &
will acknowledge

↳ align domestic law
with that of DTAA

Tie Breaker rule.

Residential

↳ "ITA 1922" → CM Fed.

↓
ITA 1961

"FA 1958" omitted

↳ s 4(c)(b)

→ deemed

resident if its income arising in
British India exceeded its income of
of Br. Ind. + the sub. year.

1961 → Residential



"Control & Mgmt"



"Common Law test"



"central mgmt & control"



Resident

✓ VVRNM Subbaya Chettian v CIT



"CM test" → Central mgmt & ctrl.



UK

De Beere Consolidated Mines Ltd v Hovey

Calcutta Text Mills Co Ltd v.
Nicholson.

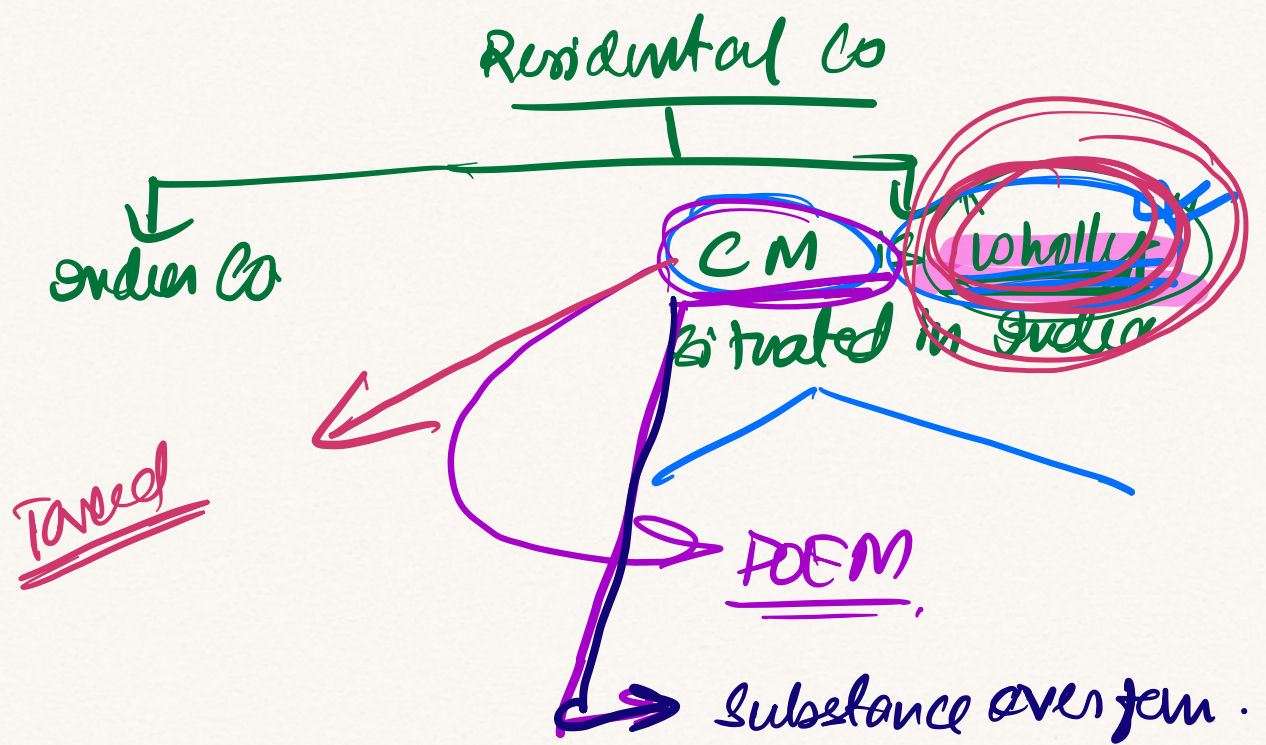
Br. Firm — operating in India
X

India not taxing.

Co. based in no colonies → UK
↓
"rule"

CM → Head & Brain

key issue → $\begin{matrix} \text{Co. paid} \\ \text{fin. mtr.} \\ \text{Disposal of profits} \end{matrix}$



Radha Kuni Holding (P) Ltd V

DIT.

100 shares — 99 shares — "G" — Ind. Res.

1 share — "J" — foreign

shell co. → O/S India Two Haven

↳ operation India

↳ incorporated O/S Ind

↳ BOD → some muth

↓

"WHOLLY" → X Resident

↓

CM Test X → "POEM" test.

POEM

- key mfrnt of commercial decisions.
- necessary & d conduct of an entity as a whole, as
- in substance make.

w.e.f 1 April 2016.

How to determine POEM?

2010
DTC Bill 2010

"POEM" → FA 2015

↳ CBDT - guidelines 2015

Active Business
outside India.

CABOI

Other than
ABOI

AI + PI

✓ (a) Passive Income $\leq$ 50% of TI

✓ (b) Assets located in India $\leq$ 50% of total Assets of CO.

✓ (c) No. of employees resident in India $\leq$ 50% of total no. of employees situated in India.

✓ (d) Payroll exp of above employees in India $\leq$ 50% of total payroll expenses.

"Passive Income" → the 4m mark where both purchased & sales are 4m / 10 A/E
↳ Royalty / Dividend / Cs / Rent / Interest.

