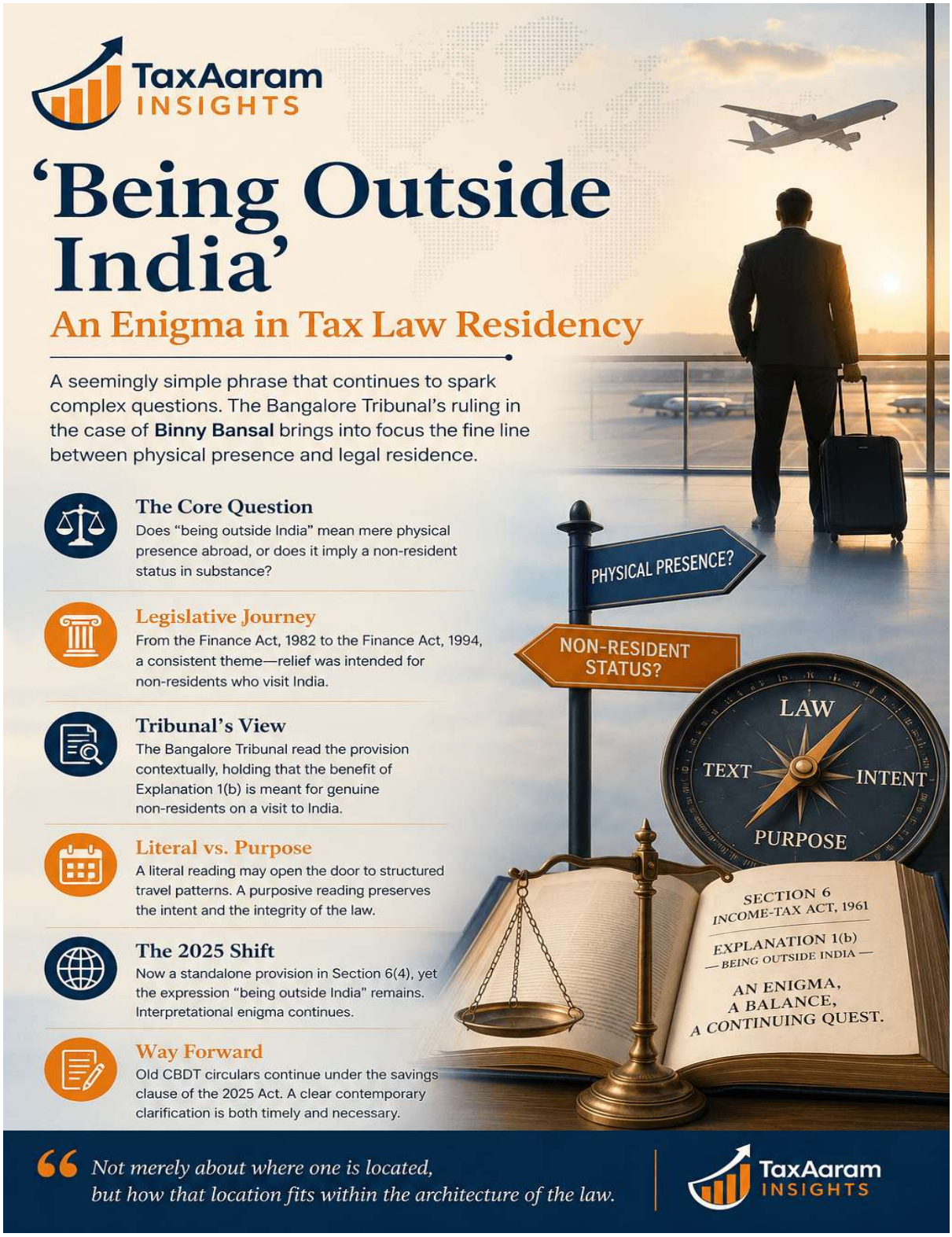
**“Being Outside India” – An Enigma in Tax Residency Law!**



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## Introduction

The determination of residential status under Section 6 of the Income Tax Act often appears mechanical, but disputes arise when statutory language intersects with legislative intent.

It was not until a recent ruling of the hon'ble Bangalore Tribunal in the case of *'Shri Binny Bansal v. DCIT, International Taxation'*, [TS-18-ITAT-2026(Bang.)], that the otherwise simple and plain-looking expression *"being outside India",* belied its simplicity, revealed its true complexity and became the centre of a serious interpretational exercise.

The central issue before the Tribunal was whether the expression "being outside India" should be read literally as mere physical situs or presence outside India, or whether it should be understood in the context of an individual who is already a non-resident.

A literal reading points one way, a purposive reading another. Both carry weight, but each lead to very different consequences. It is this tension, between what the law says and what it appears to seek, that gives the phrase its enduring complexity.

## Statutory Background

Section 6(1)(c) lays down that an individual is a resident in India if he is present in India for 60 days or more in the relevant previous year and has been present in India for 365 days or more in the four preceding years.

Explanation 1(b) relaxes the 60-day condition to 182 days in the case of an Indian citizen or a person of Indian origin who, being outside India, comes on a visit to India.

The controversy lied in the interpretation of the phrase "being outside India" and whether it operates independently of the individual's prior residential status.

## Facts and Controversy in the Case

The assessee, a co-founder of Flipkart, had relocated to Singapore for employment purposes. During the relevant financial year, he stayed in India for 141 days and had spent well over 365 days in India during the preceding four years.

He claimed that Explanation 1(b) applied to him since he was "outside India" and had come on a visit to India. On that basis, the 60-day threshold stood extended to 182 days, and since his stay in India was less than 182 days, he claimed to be a non-resident.

The Revenue rejected this position and held that Explanation 1(b) was not available to him, as he was not a non-resident prior to the relevant year.

**The Tribunal's Resolution of the Enigma**

The hon'ble Tribunal, upheld the Revenue's position that the expression "being outside India" cannot be read in isolation and must be understood in the context of the scheme of Section 6(1)(c). The benefit of the extended threshold is intended for Indian Citizens and Persons of Indian Origin, who genuinely shift their employment outside India, and become non-residents and who make short visits to India in subsequent years.

In substance, the Tribunal accepted that the phrase "being outside India" must be read as referring to a non-resident context, thereby denying the benefit of Explanation 1(b) and holding the assessee to be a resident.

**The Legislative History: ASG's Submissions**

A crucial part of the Tribunal's reasoning is anchored in the legislative history, as highlighted in the submissions of the learned ASG.

The history of Explanation 1(b), as traced in the order, shows a clear pattern of progressive relaxation aimed at non-residents:

The original framework under the Act imposed relatively strict residency conditions, which were found to cause hardship to Indian citizens working abroad who visited India.

The Finance Act, 1982 introduced relief by modifying the stay requirements for Indian citizens rendering services abroad, recognising that short visits to India should not trigger residency.

This was followed by further liberalisation through subsequent amendments, particularly in response to representations from non-resident Indians who needed more time in India for personal and economic reasons.

The Direct Tax Laws (Amendment) Act, 1989 extended the permissible period of stay, specifically to enable non-residents to remain in India longer without losing their non-resident status.

The Finance Act, 1994, as explained in its Explanatory Memorandum, further increased the threshold, again with the objective of facilitating visits by non-residents without adverse tax consequences.

CBDT Circular No. 554 dated 13 February 1990 and Circular No. 684 dated 10 June 1994, both referred to in the proceedings, consistently describe these amendments as measures intended to relax the residential status conditions for non-residents.

The ASG relied heavily on this history to argue that the provision was always intended as a beneficial carve-out for non-residents, and therefore the phrase "being outside India" must be understood in that context.

**Literal Meaning vs Legislative Purpose**

This brings us to the core of the enigma.

If one adheres strictly to the text, "being outside India" refers to a factual state. It does not, by itself, import a legal status of non-residence.

However, if one reads the provision in light of its legislative evolution, it becomes difficult to ignore that every amendment was directed at addressing the concerns of non-residents.

The law, therefore, speaks in one voice through its language and in another through its history.

**A Practical Illustration: Where Literal Interpretation Becomes Vulnerable to Misuse**

The tension becomes clearer when one examines a practical scenario.

Consider an individual who has been a long-time resident in India. He is a person of Indian origin and is naturally an Indian Citizen. He adopts a consistent travel pattern:

He left India on 30th March 2025. So, for FY 2025-26, he fulfilled the literal condition of 'being outside India'. Then he made a visit to India on 1st October 2025, and stayed until 30th March 2026, and left again on 31st March 2026. This cycle is repeated annually.

In each year, his stay in India remains 181 days that is below the threshold of 182 days. On a literal reading, he is "outside India" before each visit and therefore claims the benefit of Explanation 1(b).

If this interpretation is accepted, he would qualify as a non-resident year after year, despite maintaining substantial presence and conducting his affairs in India.

**Impact on the 365-Day Condition**

Such a result raises a more serious concern. It effectively allows the individual to neutralise the 60-day plus 365-day test under Section 6(1)(c).

The 365-day condition in the preceding four years is intended to capture a continuing connection with India. It prevents individuals from avoiding residency merely by restricting their stay in the relevant year.

If Explanation 1(b) is applied in the manner described above, the 60-day condition effectively disappears in a large category of cases. Once that happens, the 365-day requirement loses its practical significance. The statutory design begins to unravel, not because of any ambiguity in numbers, but because of the interpretation of a single phrase.

In this manner, the provision, intended as a relaxation, begins to operate as an instrument of avoidance. This is precisely the concern that underlies the Tribunal's approach, even though the statutory language does not explicitly impose such a limitation.

**Structural Parity and Legislative Intent**

There is a certain balance embedded in the law governing residential status. A person who enters India after being a non-resident does not immediately become fully taxable on global income. The concept of "resident but not ordinarily resident" operates as a transitional category.

A similar logic, in principle, applies in reverse. A long-time resident leaving India at the fag end of the financial year should not be in a position to alter his status to that of a non-resident merely by making his physical situs outside India, in the beginning of the next financial year, and arranging his travel in a particular manner. The requirement of 365 days in the preceding four years serves precisely this purpose.

If Explanation 1(b) is interpreted without regard to this structure, the balance is disturbed. The law would then permit a resident to step out of the tax net far more easily than it permits a non-resident to enter it.

**From Explanation to Substantive Provision: A New Layer of Enigma in the 2025 Law**

An important dimension emerging from the Binny Bansal ruling is the manner in which the Tribunal engaged with the role of an "Explanation" in statutory interpretation, particularly in the context of Explanation 1(b) to Section 6(1)(c).

During the course of arguments, the learned ASG, appearing for the Revenue, specifically contended that an Explanation cannot override or dilute the main charging provision. The submission was that Explanation 1(b) must be read as subordinate to Section 6(1)(c) and cannot be interpreted in a manner that defeats the primary test of 60 days coupled with 365 days in the preceding four years. The emphasis was on the settled principle that an Explanation is meant to clarify or expand the understanding of the main provision, but not to render it otiose or internally inconsistent. This line of reasoning found resonance in the Tribunal's overall approach, which avoided a construction that would allow the exception to swallow the rule.

This aspect assumes greater significance when one examines the structural redesign in the Income Tax Act, 2025.

Under the 2025 framework, what was earlier contained in Explanation 1(b) has now been elevated to a standalone provision in Section 6(4). The legislative choice is noteworthy. The relaxation that was earlier embedded as an Explanation to Section 6(1)(c) is no longer positioned as a clarificatory or ancillary provision. It now stands as an independent, co-equal subsection, operating alongside the primary residence tests.

This shift raises a subtle but important question. If the earlier argument was that an Explanation cannot override the main provision, does that constraint continue to operate with the same force when the very same content is recast as a substantive provision?

The answer is not straightforward.

By placing the provision in a separate subsection, the legislature appears to have accorded it equal normative weight. It is no longer merely interpretative in nature. Consequently, the earlier

doctrinal limitation that an Explanation cannot control or override the main section may not apply with the same rigidity. The provision now has to be harmonised, not subordinated.

At the same time, the language remains unchanged in one critical respect. The expression "being outside India" continues to find place in Section 6(4) of the 2025 law. The legislature has not provided any explicit definition or clarification of this phrase, despite the interpretational controversy highlighted in cases such as Binny Bansal.

This creates a potential tension going forward.

On one hand, the elevation of the provision to a standalone subsection strengthens the argument that it must be given full and independent effect, possibly lending support to a more literal reading. On the other hand, the absence of a defined meaning for "being outside India" leaves room for the same interpretational disputes that arose under the earlier law.

The Tribunal's reasoning in Binny Bansal, particularly its reliance on legislative intent, CBDT Circular No. 554 of 1990, and the Explanatory Memorandum to the Finance Act, 1994, suggests that the provision was always intended to benefit genuine non-residents visiting India. The ASG's contention regarding the limited role of an Explanation was one way of preserving that intent within the earlier structure.

With the structural change in 2025, that safeguard may not operate in the same manner.

The interpretational exercise may therefore shift from questioning the hierarchical position of the provision to examining its substantive scope and purpose. In the absence of legislative clarification, courts may increasingly be called upon to reconcile the literal language with the underlying policy objective, particularly in cases where taxpayers seek to rely on structured travel patterns to claim non-resident status.

**Continuity of Circulars and the Need for Clarity**

Section 536(2)(j) of the 2025 Act ensures that existing CBDT circulars continue to remain in force, provided they are not inconsistent with the new law .

This means that Circular No. 554 of 1990 and Circular No. 684 of 1994 will continue to guide interpretation. Both clearly indicate that the relaxation was intended for non-residents.

However, these circulars were issued when the provision existed as an Explanation. Their application to a standalone subsection may not be entirely straightforward.

Given this background, a fresh and explicit clarification by the CBDT on the meaning of "being outside India" would be both timely and necessary.

**Concluding Reflections**

The expression "being outside India" may appear linguistically unambiguous, yet its application within the framework of Section 6 reveals a far more complex reality.

A purely textual reading suggests that physical situs or presence outside India is sufficient. A contextual reading, supported by legislative history and administrative guidance, points towards a more substantive requirement of a genuine non-resident status. The Binny Bansal ruling reflects a conscious attempt to reconcile this divergence by ensuring that the provision operates in a manner consistent with its purpose, without rendering the statutory framework vulnerable to manipulation.

At the same time, the language of the provision continues to remain open-textured. The transition under the Income-tax Act, 2025, by elevating the provision from an Explanation to a standalone subsection, does not eliminate this ambiguity. If anything, it shifts the interpretational burden from structural hierarchy to substantive meaning, thereby widening the scope for future debate.

The practical illustrations only reinforce this concern. While the law is clearly capable of accommodating genuine cases of individuals who establish their base outside India and make limited visits thereafter, it is equally capable of being stretched, if read literally, to support structured patterns that undermine the residency framework.

There is also an inherent structural balance embedded in the law. Just as a non-resident entering India does not immediately become fully taxable and is afforded a transitional RNOR status, a long-time resident cannot, in principle, step out of the tax net merely by arranging his physical presence outside India at the cusp of a financial year. The 365-day condition in the preceding four years serves as a stabilising check, and any interpretation that dilutes this symmetry risks unsettling the coherence of the residency framework.

In this backdrop, the issue is no longer confined to semantics. It raises a broader question of how far statutory language can be stretched before it begins to erode the very scheme it seeks to implement. The continued relevance of CBDT circulars provides some guidance, but in the absence of a clear and contemporaneous clarification under the new law, uncertainty is likely to persist.

Ultimately, the enigma of “being outside India” lies in this delicate balance between literal construction, legislative intent and practical consequences. Until that balance is more precisely articulated, the phrase will continue to invite interpretation, and with it, inevitable controversy.

**[This Article, authored by our Founder, Shri Mayank Mohanka, FCA has also been published in Taxsutra].**

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