



CPE HOURS GENERATED
MONTHWISE - 2018

JAN	JUL
20	
FEB	AUG
20	
MAR	SEP
37	
APR	OCT
15	
MAY	NOV
JUN	DEC

From the Chairman's Desk....

Dear Members,

We, as Chartered Accountants, are known for our dedication, both to profession and the society. This determination has earned us the trust of those we serve and hence we are considered as a most elite group amongst the professionals.

The profession has been continuously evolving and new avenues have been opening up for us from time to time. One such new avenue has been the Prevention of Frauds and Fraud Detection. We have planned for a Certificate Course on Forensic Accounting and Fraud Detection (FAFD) which would commence this month.

We Chartered Accountants are compelled to work under pressure of deadlines to accomplish our professional work and after a hectic season a short break from professional work or a break for peace of mind is much required. Therefore our branch is organising a domestic RRC to Munnar to refresh our mind and to enjoy with family. Interested members are requested to register for the same.

I believe, that we as an institution have a huge platform for knowledge sharing through our seminars and workshops. I therefore invite all the members to contribute to the activities of the Branch in every possible manner.

I personally and behalf of the managing committee members convey my best wishes to the students appearing in Final and Intermediate exams.

I would like to conclude by saying these words of Henry Ford:- "If everyone is moving forward together, then success takes care of itself"



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STALL AT CODISSIA - IN AN EDUCATIONAL FAIR



ASSOCIATIONS PRIVATE & PUBLIC FORMATION & TAXATION



MAY | 1



Dr. CA. E. PHALGUNA KUMAR

(M.Com, FCA, ACMA, ACS, LLB, DISA(ICAI), Ph.D.(Eco))

1). What is AOP? How it differs from BOI?

U/sec. 2(31)(v) of IT.Act, the "Person" includes an 'AOP' whether it is incorporated or not, either with or without the object of deriving income, profits or gains. This Explanation is added wef. 1.4.2002.

When two or more persons voluntarily join together in a common purpose or action with or without the object of deriving income, profits or gains it is an AOP (if it is not a Partnership Firm or a Ltd Co.).

CIT Vs. Indira Balakrishna 39 ITR 546 (S.C.)

Murugesan Vs. CIT. 88 ITR 432 (Mad)

It is not necessary that there should be continuous business or continuous existence. Thus it may come into existence even for a single venture.

Before the amendment the decision was:-

Mere Joint purchase and sale of land by more persons will not constitute AOP. CIT Vs. Hara Prashad. 178 ITR 591((P &H)(1989).

In BOI, natural persons only constitute it. In AOP even a Ltd Co can be a participant. AOP is by volition. BOI is by operation of Law.

A father, who was a Proprietor of a Business in Individual capacity, died. He has three minor children. His wife continued the business in her name.

What is the status of Business Income? It shall be assessed as BOI. Meera and Company Vs. CIT. (1887)224 ITR 635 (S.C)

2.) Is Carrying on a Business Necessary for AOP?

Mere investment made jointly cannot make it AOP. For eg., House property Sec. 26 recognises Co-ownership. To be assessed separately.

3) What about Non-profit motive AOP?

Social Clubs, Residents Assns, Charitable Trusts, Funds, Unions, Religious Institutions, Managing Committees all constitute OPs.

4) A Trust for the Benefit of Sole Individual, is it an AOP?

No. The status as per Sec. 161 (rep. Assessee) shall be INDIVIDUAL.

Mrs. Any F Cama Vs. CIT. 237 ITR 82

Balagopal Trust Vs. ACIT (ITAT Mumbai) dt. 3.5.2017.

5. All Joint Ventures are AOPs?

Accounting standard- AS 27. Joint Venture

Four Ltd. Companies started a J.V. for DMRC. The consortium gave the performance guarantee. Profits and losses are being borne by the Individual companies separately. There is no common expenditure. Then it is NOT an AOP.



Hyundai Rottem Co.In Re. 323 ITR.277 (2010) (ARR)

Linde AG Linde Engg.Div. Vs.DCIT.(2014) 365 ITR 1 (Del)

CTCI Overseas Cprpn Ltd Vs.DIT.(2014) 366 ITR 33 (Del)

Four Ltd. Companies started a J.V. for BMRC. The consortium participated in a single Bid. It is a composite contract. Though Profits and losses are being borne by the Individual companies separately, it is an AOP. Alstom Transport SA. In re. 251 CTR. 193 (AAR).(June,2012).

CBDT Circular No. 7/2016 dt. 7.3.2016 clarified that

EPC (Engg, Procurement and Construction) / Turnkey projects, where consortium is only for Coordination, shall NOT be treated as AOP.

6. When a Partnership FIRM can be assessed as AOP ?.

When the Basic conditions of a Firm are not satisfied as per Sec. 184, 185, it shall be assessed as an AOP only. Sec.184 specifies when a Partnership Firm shall be assessed as such.

It is to be assessed as AOP - if its object is illegal or profit sharing ratio is not mentioned in the P.Deed directly or indirectly.

CIT Vs. Karunakaran 170. ITR 426 (Kerala).

If failures as mentioned in Sec.144 Nature are there by a PFirm, then as per Sec. 184(5) it shall be assessed without

giving deduction for interest and remuneration, as per Sec. 40(ba) (as if it is an AOP).

A firm consisting of wife and husband, running a Hotel business, discontinued the business. Then transferred the property by admitting new partners. Held it is in reality a sale. It is assessable as AOP.

Hotel Lucia Drive -in -Restaurant Vs. CIT.48 DTR 44.(Ker.HC.)(2010).

7. How the AOP is assessed ?

As per Sec.167B (1) if the shares are Indeterminate & unknown-MMR.

Sec.167B (2) if the shares are Determinate & known:---

- i) If no individual member is having income above basic limit---- normal rates.
- ii) If any one member is having taxable income-- -MMR
- iii) If a member is having higher than MMR tax rate liability, then to his share apply that higher rate and for the remaining income apply MMR
- iv) EXCEPTION:- In the case of Registered Societies, trade & professional Associations, Social and sports clubs, Charitable & religious trusts etc., where the members or trustees are not entitled to any share in the income of the AOP, the provisions of Sec. 167-B will not be attracted and tax at the ordinary AOP rate is to be applied and not the MMR. Circular No. 320 dt. 11.1.1982. (134 ITR.Statutes.166)



8. How the AOP members are assessed for their share in AOP?

Sec. 67-A. Specifies the method of computing share of members in the income of AOPs.

Sec. 86 provides instances when to tax such income and when not to tax such income. (average rate of tax - rebate U/sec.110 is given).

9. What are the consequences of Dissolution of AOP?

As per Sec. 177 of IT Act, where an AOP discontinues its operations or is dissolved, the Assessing officer shall make an assessment on AOP as if no such discontinuance or dissolution had taken place.

In such a case , all the provisions of the I.Tax Act , including penalties shall apply to such assessment.

Every person who was at the time of such discontinuance or dissolution was a member of the AOP and the Legal representative of any such person who is deceased, shall be jointly and severally liable for the tax, interest and penalty levied.

10. DIFFERENT SITUATIONS:

1. A college is running a Hostel, forming a committee for management.
2. A Swamyji's visit to a town is celebrated by his sishyas in a big way forming a felicitation committee, collecting donations. Released a souvenir.

3. Four persons bought a land of 4 acres together and applied for layout approval. Then they sold it to public .

4. A land owner sold his land through a broker , who developed the land.

5. A land owner entered into a development agreement with a Builder , in which the business conducting clauses are at the discretion of the land owner.

6. If the HUF , to which such gift is made consists of only one coparcener, then the gifted property can be held by the members of the family only as tenants-in-common. i.e., the income arising out of such gifted property can be assessed as income in the hands of AOP.

7 Joint Lessors - give loan and receive Rent + Interest.

- Rent is Taxable Individually.

- Interest is Taxable as AOP.

CIT vs Shiv Sagar Estates (AOP)
(1993) 201 ITR 953(Bom)

8. Partnership Firm taking on Lease a premises & Subletting is liable to be assessed as an AOP.

Gupta Brothers Vs CIT (1994) 76
Taxman 129 (Cal)

9. When the shares of the beneficiaries were determinate and Specific, in the case of a Trust, the House property income of the Trust Properties has to be assessed in the hands of beneficiaries U/sec. 26. But the



Business Income and other Income can be assessed as an AOP at M M R.

CIT Vs T.A.V Trust (2003) 264. ITR.52 (Karnataka)

10. The Lease Rental Income of a Cinema House Constructed on a piece of Land jointly purchased by two persons was held to be assessable in the hands of AOP. M.K. Dar Vs CIT. (1982) 138. ITR. 801 (Allahabad).
11. A minor is mistakenly admitted/taken as a full pledged partner in a Partnership Firm. It shall be assessed as an AOP. Chowdary Brothers Vs CIT. 158. ITR. 224 (A.P)
12. Even if members of AOP have individually admitted their share income and filed the ROI, the Assessing officer can still assess AOP Separately. CIT Vs Ch. Atchiaiah. 218. ITR. 239. (S.C) (1996)
13. Mere Failure to give notice as per Sec. 176(3)- Business Stoppage - Sec. 272A Penalty - will not make a Partnership Firm as AOP.
14. Forced Association of persons on account of inheriting joint property under a will or such other circumstances not being voluntary would not constitute such joint legatees as "AOP" for the purpose of sec. 2 (31).

CIT Vs. Laxmi Pd. And Sons (2009) 316 ITR 330 (Allahabad).

CIT Vs. Govindbhai Mamaiaya. (2014) 367 ITR 498 (S.C.)

15. But the income of the estate of a deceased person shall be chargeable to tax in the hands of the executors, if more than one, then , it shall be assessed as an AOP. Sec. 168(1) (b).
16. In a search it is found through entries that two persons having invested in a illegal business have shared the profits. The H.C. held that the status of AOP need not be proved through an agreement. The business carried on by the members justifies the assessment as AOP.

CIT Vs. George and M.Syed Alavi (2009) 316 ITR 333 (Ker).
17. 65 persons jointly purchased a property and leased it out by a single deed. They are co-owners only, NOT an AOP.

CIT Vs Shiv Sagar Estates 201 ITR 953 (Bombay)
18. CIT Vs. Bangalore TURF club-benevolent Fund-It is a BOI. 145 ITR 323
19. A trust shall be assessed as 'Individual' not as an AOP.

CIT Vs. SAE Head Office Monthly paid Employees Welfare Trust. 271 ITR 159
20. Four persons purchased land and applied for Independent House Construction. But they also constructed shops in the front and sold them. Held they are NOT AOP but Co-owners only. Sangam Towers Vs. ITO 130 TTJ 104 (2009) (Jaipur)

ISSUES IN TAXATION OF PARTNERSHIP FIRMS UNDER INCOME TAX ACT, 1961



MAY | 5



Dr. CA. E. PHALGUNA KUMAR

(M.Com, FCA, ACMA, ACS, LLB, DISA(ICAI), Ph.D.(Eco))

I. GENERAL

1. What are the precautions to be taken while drafting the partnership deed?

Ans). Date and name on stamp papers.
Partners age and address.

W. Partners remuneration, Profit sharing ratio, Death, insolvency and retirement clauses.

2. Whether "INSTRUMENT OF PARTNERSHIP" and "PARTNERSHIP DEED" are identical terms?

Ans) No. Sec. 184 says "copy of Instrument of partnership" to be submitted for getting the P.Firm status. Whereas Sec. 40(b) says the Interest and remuneration as per "P.Deed" only are allowable.

CIT Vs. M.V.Krishnaiah &Anr. 157 ITR. 257 (A. P.)(1985).

3. If profit sharing ratio is not mentioned in "INSTRUMENT OF PARTNERSHIP" what are the consequences?

Ans). Normally it will be assessed as "AOP".

But if there is a word saying profits are to be shared, then equal sharing can be assumed, as per Sec. 253(2) of Indian Contract Act, 1872.

CIT Vs. Kinema Reinforced Plastics 152 ITR 216.(KarnatakAns).

4. If the "INSTRUMENT OF PARTNERSHIP" is silent about the continuation of partnership in case of death of any partner, what are the consequences?

Ans). The Partnership is dissolved. It results into a Change in constitution.

5. If a firm is having different branches at different places and separate books of accounts are maintained for each branch, how to calculate the Book Profit and maximum remuneration payable to working partners?

Ans:) At the end of the year on preparing consolidated P & L a/c.

6. Whether the provisions of section 269SS and 269T apply to loans by partners to the firm?

Ans).. No. Patiram Jain &others Vs. Union of India &Others. 225 ITR. 409 (M.P.) (1997).

But if the Business of Firm is 'Finance', then accepting loans even from partners are covered by Sec. 269 SS & 269T.

7. Is constructing Big malls and letting out "Business" or "H.P".?

Ans:- Chennai Properties &Investments Ltd.(S.C.) (2015) 373 ITR 673.Shreeji Exhibitors Vs.ACIT. (Mumbai ITAT) dt.14.8.15.

II. Partnership Firm Assessed as such:

1. What are the conditions to be satisfied to get the P.Firm assessed as such?

Ans.)-Every Firm for the first Asst. year along with ROI shall file a certified copy of Instrument of partnership, signed by all partners.

In that each partners' profit sharing ratio is mentioned. First of all it should be a Partnership. Sec. 2(23).

2. Whether a firm can be treated as "AOP" if the business carried on by the firm is illegal?

Ans). Yes.

3. "Certified Copy" of Instrument of Partnership as per section 184 of Income Tax Act has to be filed in the First year and in the year of change in constitution.

4. Whether copy of partnership deed should be certified by the partners personally? Can it be certified by the duly authorised person?.

Ans). Yes. A GPA holder can also certify.

5. Whether the Stamp Papers purchased before SIX months can be used for drafting the Instrument of Partnership?

Ans.).Yes. There is no expiry date for stamp papers. For surrender and refund only six months time is there.



6. If the liquor license is there in one partner name, can the firm carry on the business?

Ans). Even if the liquor license is there in one partner name, if the firm is the owner, the firm shall be assessed as P.F.A.S

CIT & Anr Vs.S.B .Pannal Kan & Co 244 CTR 534 (2011) (Karnt)

CIT Vs Hotel new India Prastha 335.ITR.87 (2011) (Ker)

7. Mere letting out of Buildings and godowns can be the business?

Ans). If the assessee firm is letting out godown and the same was not undertaken on a systematic basis as a business activity the recognition of firm could not be continued .

CIT Vs Y.Narayana Murthy (Ded) (2004) 270 ITR.275 (A.P)

The income is taxable as H.P income

CIT Vs Chugandar &Co.551 ITR.1(SC)

8. If after death of a partner -no new deed is entered into what will happen?

Ans). If in the Original P.Deed 'No dissolution clause is there' ,it is not a change in constitution as per Sec.

187. It is a succession. Whenever there is a change in constitution a copy of New Instrument of Partnership shall be filed for the relevant Asst. year as per Sec.

184(4). If it is not done, as per Sec. 185, the Firm cannot claim Sec. 40(b) deductions.

CIT Vs. Paramount Trading Corpn.(2007).288 ITR 21(All)

CIT Vs. Empire Estate (1996).218 ITR 355 (S.C.)

CIT Vs. Ayyanarappan and Co. 236 ITR 410 (S.C.)

9. If the profits are not shared as per deed, what are the consequences?

Ans). The firm cannot be recognized. Then status will be AOP.

Ratanchand Darbarilal Vs CIT (1985) 155.ITR.720 (S.C)

If the wrong sharing is rectified then on this count "Firm" recognition can not be denied.

Doshi Vastralaya Vs CIT (1997) 222 ITR 73(M.P)

10. As per Sec.184 the certified copy of the instrument of partnership shall be filed along with the return of income .Up to how much delay it is permitted?

Ans). Sec 144 Gives time up to 139(4) or 139(5). If the ROI for the first time is filed in response to Sec. 148 notice, then also it can be filed. Analogy is drawn from

CIT Vs. A.N. Arunachalam.208. ITR.481 (Mad).

11. Same partners, with the same profit sharing ratio in two firms, whether the two firms are to be clubbed?

Ans:- The provisions of Sec.184 or 185 are not asking the

A.O to verify the genuineness of the firm. If there are two different businesses ,no clubbing can be done.

CIT Vs Sree RamaKrishna Industries 80 CTR 24(Ker) (1989)

CIT. Vs. Raj Brothers. 252. ITR. 438 (Del)(2001).

12. If a Partnership Firm takes on Lease a premises & Sublets it What is the status of the firm?

Ans.) It is liable to be assessed as an AOP

Gupta Brothers Vs CIT (1994) 76 Taxman 129 (Cal)

13. Can Interest and Remuneration be disallowed in all Assts where Sec. 144 is resorted to?

Ans:- No. Sec. 184(5) applies only when Violations as mentioned in Sec. 144 are there.M/s.Vijay Veer singh Vs.ITO.(ITAT Agra)dt.31.10.14

III. Minor as partner & Attaining Majority Age:

1. If minor by mistake is taken as a partner - what will happen?

Ans). If a minor is admitted/taken as a full



pledged partner in a Partnership Firm, it shall be assessed as an AOP.

Chowdary Brothers Vs CIT. 158. ITR. 224 (A.P)

2. When a minor admitted for the benefit of Firm, through guardian, becomes a major in a partnership firm what will happen?

Ans). There is no change in the constitution of the firm, if the partnership deed is silent .

Basantilal Jain & Co Vs CIT 196 ITR 19 (Gowhathi)1992

CIT Vs Oriental Tin Printing Works 273. ITR. 240 (All) (2005)

Within six months of he becoming major, if he opts to go out, then there is change in constitution.

3. Whether a minor can be made as a working partner? Whether remuneration paid to such minor partner is allowable deduction? Whether remuneration so paid should be clubbed with the income of his parent?

Ans).. No. But he can take remuneration for manual work, or by his skill , talent or Spl. Knowledge he can draw remuneration from Firm. Then as per Sec. 64(1A). clubbing provisions will not apply. **Working in the Firm is different from working for the Firm.**

IV. Computation & Deduction:

1. Under which section of Income Tax Act, the firm is entitled to claim the deduction for interest paid to the partners and remuneration paid to the partners?

Ans). Sec. 36(1)(iii) for interest and Sec. 37(1) for Remuneration.

ACIT Vs. Shri Arunbhai Chimanlal Shah. (ITAT Mumbai) dt. 1.5.15.

2. If the Assessing Officer makes addition to the returned income during the assessment proceedings, whether the firm can claim additional remuneration because of increase in Book Profit?

Ans). It depends on the clause in the P.Deed.

3. Whether additional income declared during

the Survey proceedings forms part of Book Profit? Whether the remuneration can be claimed on such additional income? Whether during the survey proceedings the assessing officer can take an undertaking from the partners that, they shall not claim remuneration on the additional income declared?

Ans:- Additional income can be brought into books of account by crediting the P & L a/c itself. The A.O. cannot take any such undertaking .

4. If there is a change in the constitution of the firm due to death or retirement of any partner in middle of the year, how the Book Profit is to be computed?

Ans). Rather than Turnover basis, on time proportion basis , the total year profits are to be bifurcated before applying sec. 40(b).

5. Whether the maximum rate of interest provided in section 40(b) of Income Tax Act for payment of interest to partners is restricted only for payment of interest on capital balance of partners?

Ans). It applies to capital ,Loan & current a/c balances also, on annual basis.

6. Interest is paid & received by partner from Firm. Sec. 40(b) has to be considered for net interest or gross interest paid?

Ans). It has to be considered on net interest only.

Keshavji Ravji & Co Vs. CIT 183 ITR 1 (S.C.) (1990)

Apsara Cinema Vs. ACIT 44 ITD 253 (46 TTJ 378) (1993).

7. Under what circumstances, the assessing officer can disallow the interest paid on the credit balance of the capital account of the partners even though the interest on the capital claimed as deduction is as per the clause mentioned in the partnership deed and the rate of interest is @ 12%?

Ans). If the partner is having debit balances on which no interest is charged.



If the capital is used for non-business purposes also it can be disallowed.

Munjal Sales Corpn Vs. CIT (A) & Anr. 298.ITR.288(P &H)

Vishnu Anant Mahajan Vs. CIT (137 ITD 189)

8. If the Firm is claiming on all its assets Depreciation only in the Computation, without debiting any amount in the P & L a/c, can the A.O. disallow interest to that extent U/sec. 40(b)?

Ans). No. Accounting policy cannot be questioned by A.O. when it is not mandatory to provide Depn. in the books of accounts.

Swaraj Enterprises Vs. ITO. 132 ITD 488 (Visakha).

Deval Utensils Factory Vs. ITO. 98 TTJ 501 (Pune)

9. A firm is having FIVE partners, who are all working partners. The payment of remuneration is specified in the P/D for all the working partners. However the firm has provided the remuneration only for TWO partners as per the clause mentioned in P/D. Whether the assessing officer can disallow the remuneration on the ground that the remuneration is paid only to TWO partners even though the P/D provides remuneration to all the partners? Similarly lesser interest than specified in the deed can be paid?

Ans). For few partners, lesser amount than specified in the deed can be claimed.

10. Whether the remuneration can be paid to a working partner, who is a partner in the capacity of HUF status?

Ans).- Yes. Though Explanation 1.(ii) of Sec. 40(b) says to an Individual, read with CBDT Circular No.739 dt.25.3.96

Rashiklal & Co Vs. CIT 229 ITR 458 (S.C.)(1998)

K.S.Subbaiah Pillai Vs. CIT . 237 ITR 11(S.C.) (1999).

11. In a partnership firm interest and salary to partners are credited to the capital account of

the partners. Some partners have withdrawn in cash from their capital account in excess of Rs. 10,000/-. Whether this can be disallowed U/s 40A(3)?

Ans). Doubtful. If monthly remuneration is paid directly by cash on a particular day in excess of Rs.10,000/- it can be applied.

12. Whether interest paid to a partner can be disallowed U/s 40A(2)?

Ans). It is a promise by F.Minister in the parliament not to apply.

CIT Vs. Yoganand Textiles 113 CTR. 234 (Guj)(1993).

Chajjed Steel Corpn Vs. ACIT 77ITD 419 (Ahd)(2011)

13. In a firm all the partners borrowed from banks, in their individual capacity but the same amount is directly transferred to firm. Firm credited it to a separate loan a/c. Firm repaid both interest and principal directly to banks. Can sec 40(b) be applied?

Ans). No. It shall be treated as a borrowal by the firm CIT Vs Abdul Rahman & Sons 109.CTR.403 (Guj)(1993)

14. The firm pays interest @ 12%. It can be allowed as admissible deduction only if it is so provided in the P.Deed.
15. Professional firm -following cash system -can it claim Interest and Remuneration on accrual basis?

Ans). No. Claiming partners remuneration and interest without payment is not allowable.

16. HUF-represented by karta is a partner - can individual claim salary with T.D.S provision?

Ans). No. It will be disallowed under Sec. 40(b). It should be claimed without TDS. Then U/sec. 40(b) it will be allowed.

17. Keymann Insurance Policy amount is paid by Firm. Is it allowable?

Ans:-Yes. CBDT Circular No.38/2016 dt.22.11.2016.

M/s. Ramesh Steels. (P & H.H.C) dt .2.2.16

V. Assets Bringing In by partner:

1. Can the Depreciation be claimed on the Assets owned by the Partners, when they are exclusively used by the Firm?

Ans). Yes. Depn. On assets in the name of partners , can be claimed by Firm by treating them as assets of Firm. Sec.14 of PAct permits it.

Mysore Minerals Ltd.Vs. CIT 239 ITR. 775 (1999).

2. Partners - Personal assets like car is taken as partnership firm asset. Expenses and depreciation is claimed during assessment. It is agreed during the course of assessment that car is used for partners personal purpose . So 50% car expenditure and 50% Car depreciation is disallowed . Now at the time of dissolution of Partnership firm, if car has to be transferred to partner , what are the consequences ?

Ans). Only to the extent Depn is allowed the wdv has to be taken to calculate the STCG for transfer of car. Sec. 45(4) will apply.

3. Partners personal car, after 4 years of personal use, is taken by Partnership firm . At what value its cost can be taken?

Ans). Sec. 45(3) will apply. The value that is recorded in the books is the cost. But deliberate enhancement of value can be questioned by A.O.

In Carlton Hotels(P)Ltd Vs.ACIT 122 TTJ 515(2009) it was held that Sec. 50-C overrides Sec. 45(3).

4. For bringing in immovable properties is the Doc. Regn. necessary?

Ans). No .

VI. Assets Taken over by partner:

1. When only two partners are there and if one dies or become insolvent , "Dissolution" is by operation of Law. What will happen?

Ans)-The Sec 45(4) can not be applied, if the business is continued by surviving partner.

CIT Vs Vijayalakshmi Metal industries 256. ITR.540 (Mad)(2002) A.N. Naik Associates 256. ITR 346 (Bomb)

2. If on retirement of a partner , if an asset is given to him, whether Sec. 45(4) can be applied?

Ans). Yes. It falls in the words, distribution of assets on dissolution or "Otherwise". 2018 Amendment of Sec.2(24) states that Inventory also to be at FMV.

M/s.A.N.Naik Associates (265 ITR 346) Mumbai.

3. If only Cash is given to retiring partner in excess of Capital?

Sec. 45(4) will not apply. CIT Vs. Dynamic Enterprises.(Karnataka H.C.) dt 14.11.2013.

It can be treated as Goodwill and can be depreciated.

VII. Change in Constitution :

1. In the partnership deed it is written that in case of death of a partner, his legal heir shall be taken as a partner, now what will happen to c/f losses in case of death of a partner , if his legal heir is taken as partner?

Ans). As per Sec 78(1) b/f loss of firm to the extent of share of the retired or deceased partner shall not be carry forward by Firm.

But if it was a proprietary Business, succeeded by P.Firm, Legal heirs can carry forward the same and can setoff against Firms business income .

CIT Vs Madhukant M.Mehta 247.I.T.R.805 (SC)(2001).

2. To a retiring partner the firm paid an amount in excess of his capital a/c credit balance . It named it as goodwill /goodwill usage expenditure . What are consequences?

Ans):- If it is yearly payment - in the firm hands allowable as Expenditure-----In partner hands taxable .

If it is a lumpsum payment , depreciation can be claimed.

3. Assignment of P.share by retiring partner in favour of one particular person is it a sale?

Ans). Yes . It is .Gain is a capital gain Taxable. Surrender of his share to the firm is not a transfer and it is not taxable Bishamlal Kanodia Vs CIT .257 ITR 449(Del).2002.

Care should be taken in drafting the Reconstitution Deed.

VIII. Dissolution:

1. On Dissolution of a Firm - how to value the Closing Stock?

Ans).-It shall be valued at F.M.V and shall be transferred to partners as a capital Asset. Sec. 28(via).Sec .2(24) Sec. 49.

ALA Firm Vs CIT (1991) 189 ITR 285(S.C)

2. In case of succession by a firm, how to value the Closing Stock?

Ans).- Stock should be valued at FMV.due to ICDS 2

Sakthi trading Co Vs CIT (2001) 250 ITR.871 (S.C) is now overruled.

3. Once the P.Firm goes into the hands of Liquidator, it shall be assessed as AOP.Vatsala Shenoy Vs.JCIT(S.C.) 74 Taxmann.com143. Dt.20.12.2016 confirmed in review on9.2.17

IX. Merger & Demerger:

1. If one Firm splits into two Firms, whether it is change in constitution or dissolution or succession.

Ans). It is dissolution. Held so in ACIT Vs. G.H.Reddy & Associates. 120 TTJ 89 (2009)(Chennai).

2. If two Firms merge into one Firm, what are the consequences?

Ans). It is not a change in constitution as per sec. 187. It is a succession as per Sec. 188.

Anand & Co Vs. ACIT 89 TTJ 428 (Cal) (2004).

X. Partners' personal Assessments:

1. On the land of partners, Firm constructed the building and used it for several years. Now the total property is sold. What are the consequences?

Ans). LTCG is taxable in the hands of partners as they own the land and the Building STCG (if depn is claimed) is taxable in the hands of Firm.

DCIT Vs. South India Pulverising Mills.148 TTJ 649 (2012)(Chennai)

2. If a partner is paying interest on his debit balance in the Firm to the Firm, whether TDS provisions will apply?

Ans):- Yes, if his individual asst. in preceding previous year is a Sec. 44AB case.

3. In the Partners personal Assessment , from the Business Income admitted as per Sec. 28(v), can the partners car expenses and car loan interest be claimed as deduction?

Ans). Yes. If they are wholly and exclusively incurred as per Sec.37(1) Analogy drawn from:-

CIT Vs. Rajendra Prasad Moody 115 ITR 519(SC).(1978)

CIT Vs. Smt. Shanti Devi Jalan 139 ITR 152 (Cal) (1983).

4. Under what circumstances, the Assessing Officer can refuse to allow the exemption U/s 10(2A). for the share profit from the firm in the case of a partner?

Ans): Only when the P.Firm is separately assessed as such , this exemption can be claimed. In other words, if the Firm has not filed the return, exemption cannot be claimed. To avoid double taxation , if in the hands of Firm 40(b) deduction is disallowed, in the hands of Partners as per Sec. 155(1A) it has to be rectified.

5. Can the A.O. apply Sec. 14A for Partners Share of profit?

Ans). No.

Interest paid by partner on borrowed capital ,invested in firm, is fully allowable in spite of Sec.14A,though profit is exempt U/sec.10(2A). Rajasthan warehousing corporation Vs CIT .242.ITR 450(S.C)(2000)

6. What is the due date for filing returns of income in case of partners, if the accounts of partnership firm are audited U/s 44AB of Income Tax Act?

Ans.)- As per Sec. 139(1)-Explanation 2(a).(iii)--- For working partners - 30th September For other partners - 31st July.

7. Partner offers his car for hire , JCB for hire, building for Rent to the Firm. T.D.S is not made by Firm . Such Expenditure is disallowed U/sec. 40(a).(ia).. Again is it taxable in his hands?

Ans):- Yes.

8. If a partner brings in loan, can he charge 18% interest?

Ans.)- No. It is covered by Sec. 40(b).