

#### **THE CHAMBER OF TAX CONSULTANTS**

# TAXATION OF PARTNERSHIP FIRMS - ISSUES

ANISH THACKER

NASHIK – 9<sup>TH</sup> JUNE 2018

#### CONTENTS

COMPUTATION OF BOOK PROFIT

REMUNERATION TO PARTNERS

INTEREST TO PARTNERS

SET OFF OF LOSSES

#### CONTENTS

Contd....

- PRESUMPTIVE TAXATION
- CORPORATION AND PART IX CONVERSION
- RETIREMENT AND SECTION 45(4)
- DISSOLUTION SECTION 45 (4)

#### CONTENTS

Contd....

- INTRODUCTION OF CAPITAL ASSET SECTION 45 (2)
- PARTNERS' REMUNERATION EXPENSE DEDUCTION
- TAX AUDIT FOR PARTNERS

#### COMPUTATION OF BOOK PROFITS

- PROFITS AS PER PROFIT AND LOSS ACCOUNT
  - COMPUTED IN A MANNER PRESCRIBED UNDER CHAPTER IV D
- WHAT IS INCLUDIBLE?
  - CAPITAL GAINS
  - SECTION 50 INCOME
  - FD INTEREST
  - BUSINESS INCOME NOT CREDITED TO THE P AND L A/C
- IS EXPENDITURE NOT DEBITED TO THE PROFIT AND LOSS ACCOUNT DEDUCTIBLE ?
- ARE BROUGHT FORWARDED LOSSES AND UNABSORBED DEPRECIATION REQUIRED TO BE REDUCED ?

#### REMUNERATION TO PARTNERS

- PROJECT COMPLETION METHOD ALLOWABILITY IN YEARS WHERE PROJECT IS ONGOING
- CASH SYSTEM OF ACCOUNTING ONLY AMOUNT ACTUALLY PAID WOULD BE DEDUCTIBLE
- EXCESSIVE OR UNREASONABLE REMUNERATION SECTION 40(b)(v) v/s SECTION 40A (2)
- CHANGE IN CONSTITUTION OF PARTNERSHIP DURING THE YEAR
- REMUNERATION NOT IN ACCORDANCE WITH THE PARTNERSHIP DEED ALLOWABILITY
- APPLICABILITY OF SECTION 40A (3) CASH PAYMENT

#### INTEREST OF PARTNERS

INTEREST ON CURRENT ACCOUNT, LOAN ACCOUNT OF PARTNERS ETC., 'IN ACCORDANCE WITH PARTNERSHIP DEED'

- NO CHARGE OF INTEREST ON PARTNERS' DEBT BALANCE
- DEDUCTIBILITY OF INTEREST PAY BY A PARTNER ON THE DEBIT BALANCE IN HIS CAPITAL ACCOUNT AGAINST OTHER INCOME

DEDUCTIBILITY OF INTEREST ON CAPITAL REPRESENTED BY REVALUTATION OF ASSETS

#### SET OFF OF LOSSES

- SECTION 78 (1) REDUCTION OF BROUGHT FORWARDED LOSSES TO THE EXTENT RETIRING / DECEASED PARTNERS'
- REDUCTION IN SHAPE OF PROFITS FOLLOWED BY RETIREMENT IMPACT
- APPLICABILITY OF SECTION 78 (1) TO UNABSORBED DEPRECIATION?

#### PRESUMPTIVE TAXATION

- DEDUCTION FOR INTEREST AND REMUNERATION
  - AFTER ARRIVING AT PRESUMED INCOME

• SET OFF OF BROUGHT FORWARDED LOSSES AGAINST PRESUMED INCOME OF A SUBSEQUENT YEAR - POSSIBLE

#### CORPORATISATION & PART IX CONVERSION

- SUCCESSION OF FIRM BY COMPANY SECTION 47 (xiii)
- TRANSFER OF CAPITAL ASSET BY A PRIVATE OR UNLISTED PUBLIC COMPANY TO A LLP
  - SECTION 47 (xiii b)
- COST OF ASSET IN THE HANDS OF SUCCESSOR COMPANY FMV ON DATE OF 'CONVERSION'?
  - MAY PREJUDICE TAX NEUTRALITY OF PART IX LIKE ARRANGEMENTS
- PART IX CONVERSION WHETHER RESULTS IN CAPITAL GAINS ?
- CORRESPONDING PROVISIONS OF COMPANIES ACT, 2013

#### RETIREMENT AND SECTION 45(d)

- DOES SECTION 45(4) APPLY TO CASES OF RETIRMENT ?
  - A N NAIK'S DECISION 265 ITR 346 (BOM)
- CONTINUATION OF BUSINESS BY OTHER PARTNERS DOES IT MAKE A DIFFERENCE
- YEAR OF TRANSFER YEAR OF DISTRIBUTION ?
- WITHDRAWAL OF CAPITAL ASSET CAN IT ATTRACT SECTION 45(4)?
- DOES CHANGE IN CONSTITUTION OF A FIRM ATTRACT SECTION 45 (4) ?
- APPLICABILITY OF SECTION 56 (2) (x) TO RETIRING PARTNER

### DISSOLUTION AND SECTION 45 (4)

- NO AMENDEMENT OF 'TRANSFER' u/s 2 (47)
  - IMPACT?
- MEANING OF 'DISTRIBUTION'
- ENTITY IN WHOSE HANDS, CAPITAL GAINS ARE TAXABLE
- DISSOLUTION DUE TO OPERATION OF LAW
  - DEATH / INSOLVENCY
  - TWO PARTNER FIRMS
- APPLICABILITY OF SECTION 45(4) TO TAKEOVER OF FIRM BY A COMPANY
- APPLICABILITY OF SECTION 56 (2) (X) TO PARTNERS

# INTRODUCTION OF CAPITAL ASSET - SECTION 45 (3)

- SECTION 45 (3) APPLICABILITY ONLY TO 'CAPITAL ASSET'
- GAINS TO BE COMPUTED WITH REFERENCE TO 'AMOUNT RECORDED IN THE BOOKS OF ACCOUNT' OF THE FIRM
- INTERPLAY BETWEEN SECTION 50 C / SECTION 50 CA and SECTION 45 (3)
- COST OF 'INTRODUCTED CAPITAL ASSET' IN THE HANDS OF THE FIRM
- CONVERSION TO CAPITAL ASSET FOLLOWED BY INTRODUCTION

## PARTNERS' REMUNERATION — EXPENSE DECUTION

WHAT KIND OF EXPENSE CAN BE CLAIMED ?

- WHETHER EXPENSES CAN BE PROPORTIONATELY DISALLOWED
- DPRECIATION ON CAR / COMPUTER / MOBILE PHONE
- APPLICABILITY OF SECTION 14 A

#### TAX AUDIT FOR PARTNERS

APPLICABILITY OF TAX AUDIT

INTEREST AND REMUNERATION TO EXCEED LIMITS OR ONLY REMUNERATION

DUE DATE OF FILING OF RETURN OF INCOME

#### THANK YOU FOR YOUR PARTICIPATION