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Accounting & Taxation for Partnership Firms, LLPs & AOPs

J B Nagar Study Circle of WIRC of ICAI

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Partnership Firm

CNK

- Governed by the Indian Partnership Act 1932
- S. 4 - "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm name"
  - Essentials – agency and sharing of profits
  - Sharing of profits need not necessarily be in terms of percentage – fixed share of profits would also suffice – CIT v J K Doshi & Co [1989]176 ITR 371(Bom)
  - Raghunandan Nanu Kothare v. Hormasji Bezonji Bamji AIR 1927 Bom 187 – *partners can agree to share those profits in any way they like. They may agree to share them equally. They may also agree, in my opinion, that one partner is to receive a fixed annual or monthly sum in lieu of a sum varying in accordance with the profits actually earned.*
- Partnership firm is not a legal entity – cannot hold property in its own name – property normally held in the names of the partners
- In absence of specific provisions in Partnership Deed, provisions of Partnership Act apply
- Limit on total number of partners – 50 – under Rule 10 of the Companies (Miscellaneous) Rules 2014
- Death of a partner dissolves the firm in the absence of clause to the contrary in the partnership deed

Accounting by a Partnership Firm

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- Fixed Capital vs Fluctuating Capital – Capital & Current Accounts of partners or only Capital Accounts
- ICAI AS apply to non-company entities - non-company entities are classified into:
  - MSMEs (Micro, Small and Medium Sized Entities)
  - Large Entities
- Large non-company entities must:
  - Follow all Accounting Standards in their entirety
  - Make full disclosures as required under each standard
  - Apply recognition, measurement, presentation, and disclosure requirements fully
- MSMEs - where
  - equity/debt not listed,
  - Not bank/FI/insurance co
  - turnover does not exceed Rs 250 crore,
  - borrowings do not exceed Rs 50 crore,
  - not holding/subsidiary of non-MSME entity

Accounting by a Partnership Firm

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- AS not applicable in their entirety to MSMEs:
  - AS 3 – Cash Flow Statements
  - AS 17 – Segment Reporting
  - AS 20 – Earnings Per Share
  - AS 24 – Discontinuing Operations
- Certain AS not applicable to MSMEs with turnover up to Rs 50 crore and borrowings up to Rs 10 crore:
  - AS 18 – Related Party Disclosures
  - AS 28 – Impairment of Assets
- For certain AS, MSMEs must comply but are given relaxations in disclosure or measurement:
  - AS 10 – Property, Plant and Equipment
  - AS 11 – Effects of Changes in Foreign Exchange Rates
  - AS 15 – Employee Benefits
  - AS 19 – Leases
  - AS 22 – Accounting for Taxes on Income
  - AS 26 – Intangible Assets
  - AS 28 – Impairment of Assets
  - AS 29 – Provisions, Contingent Liabilities and Contingent Assets

Accounting by a Partnership Firm

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- AS 14 (Amalgamations) & AS 27 (Financial Reporting of Interests in JVs) generally not applicable to MSMEs
- In case of certain AS:
  - AS 21 – Consolidated Financial Statements
  - AS 23 – Accounting for Investments in Associates
  - AS 27 – Joint Ventures (Consolidation part)
  - AS 25 – Interim Financial Reporting
- Non-company entities not mandated to prepare consolidated or interim financial statements. These AS apply only if the entity:
  - Is required by law, or
  - Voluntarily chooses to prepare such statements

Accounting by a Partnership Firm

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- ICAI GN on Financial Statements of Non-Corporate Entities – applicable to partnership firms – not applicable to LLPs
  - Applicable to Entities whose turnover exceeds Rs. 5 crores wef FY 2025-26
  - Applicable to all other Entities wef FY 2026-27
- Formats of Financial Statements for Non-corporate Entities
  - If statute mandates format, that format would apply – no format under Partnership Act
  - "Owners Funds" in place of "Equity"
  - Assets bifurcation between current and non-current
  - MSMEs exempt from Cash Flow Statements
  - Tax – Current Tax & Deferred Tax
  - Profit before Partners Remuneration – Partners Remuneration
  - Rounding off permissible
  - Nomenclature can be changed suitably
  - Previous Year Figures to be given
  - Disclosures to be given in notes to accounts

Limited Liability Partnership

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- Governed by Limited Liability Partnership Act 2008
- LLP is a body corporate separate from that of its partners, has perpetual succession – change in partners does not affect existence, rights or liabilities of LLP – s.3
- Comes into existence on incorporation
- Individual or body corporate can be a partner
  - Can karta of HUF or trustee of trust be a partner in LLP?
  - MCA General Circular No. 13/2013 dated July 29, 2013 - only an individual or body corporate may be a partner in a LLP. A HUF cannot be treated as a body corporate for the purposes of LLP Act, 2008. Therefore, a HUF or its karta cannot become designated partner in LLP
  - MCA General Circular No. 2/2016 dated January 15, 2016 - hereby clarified that a HUF or its Karta cannot become partner or designated partner in LLP
  - MCA General Circular No. 37/2014 dated 14 October 2014 - a trustee, being a body corporate of a REIT, InvIT or any other trust set up under SEBI Regulations, is not barred from becoming a partner in an LLP in its own name
- No dissolution of LLP merely due to death of a partner – in case single partner left, 6 months time to add new partner – else unlimited liability
- Audit of accounts required under LLP Act if turnover exceeds Rs 40 lakh or contribution of partners exceeds Rs 25 lakh
- Section 32 of the LLP Act, 2008 read with Rule 23(2) of the LLP Rules, 2009 - monetary value of every partner's contribution must be accounted for and disclosed in the LLP's accounts – valuation by CA, Cost Accountant or approved valuer

Accounting by LLP

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- ICAI GN on Financial Statements of Limited Liability Partnerships
- Similar to that on FS of Non-Corporate Entities
- For AS applicability, classification (similar to companies) Levels I to IV
- All AS applicable to Level I LLPs – turnover exceeding Rs 250 crore or borrowings exceeding Rs 50 crore
- Various exemptions available to lower level LLPs

Taxation of Partnership Firms/LLPs

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- “Firm” has meaning assigned to in Indian Partnership Act and includes an LLP – s.2(23) of ITA 1961, s.2(45) of ITA 2025
- Firm to be assessed as a firm if partnership is evidenced by an instrument and individual shares of partners are specified in that instrument – s.184 of ITA 1961, s.325 of ITA 2025
  - Certified copy of instrument to be filed with return in first year in which status of firm sought, or in year of change
  - In case of non-compliance, no deduction for remuneration or interest to partners – not taxable in hands of partners – s.185 of ITA 1961, s.326 of ITA 2025
  - How does one file certified copy of partnership deed duly certified by all partners with e-filed return of income?
  - Deloitte, Haskins & Sells v ACIT (2025) 478 ITR 21 (Mad) – no prejudice caused to revenue if cumulative tax paid by firm and partners would be same as tax payable by AOP

Taxation of Partnership Firms/LLPs

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- Remuneration and interest to working partners allowed as deduction (subject to limits) and taxable as business income in hands of partners – s.40(b) and s. 28(v) of ITA 1961, s.35(e) and s.26(2)(g) of ITA 1961
  - Remuneration which is not authorised by or is not in accordance with terms of the partnership deed (ITA 1961)
  - Remuneration if it is not authorised by the partnership deed (ITA 2025)
  - Whether CBDT Cir. 739 dated 25.3.1996 still valid?
    - where neither the amount has been quantified nor even the limit of total remuneration has been specified but the same has been left to be determined by the partners at the end of the accounting period, in such cases payment of remuneration to partners cannot be allowed as deduction
    - no deduction under section 40(b)(v) will be admissible unless the partnership deed either specifies the amount of remuneration payable to each individual working partner or lays down the manner of quantifying such remuneration
- Where quantum of remuneration payable to partners has been left undecided in partnership deed to be decided by partners at a future point of time, remuneration paid to partners cannot be allowed as deduction – Sood Brij & Associates v CIT [2011] 15 taxmann.com 76 (Delhi)
- Where deed provides for interest & remuneration to partners but interest & remuneration not charged, could not be compelled to charge interest or remuneration – Dinesh India Co v ACIT [2024] 158 taxmann.com 153 (Surat-Trib.)

Taxation of Partnership Firms/LLPs

- Whether interest income should be considered as part of book profits for purpose of computing allowable remuneration - Md. Serajuddin & Brothers v. CIT [2012] 24 taxmann.com 46 (Cal.), CIT v J J Industries [2013] 35 taxmann.com 103 (Guj), Suresh A Shroff & Co v JCIT [2013] 140 ITD 1 (Mum) – yes, CIT v. Allen Career Institute [2018] 94 taxmann.com 157/403 ITR 375 (Raj.) – no
- Profit on sale of depreciable assets forms part of book profits for purposes of computation of allowable remuneration to partners – Sanjay Distributors v DCIT [TS-1443-ITAT-2026(Mum)]
- Deed amended towards the end of the year to provide for payment of bonus to partners – allowable – J C Bhalla & Co v Addl CIT [2019] 106 taxmann.com 13 (Delhi - Trib.)

Taxation of Partnership Firms/LLPs

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- Share of profit (share in total income of the firm) exempt in the hands of a partner – s.10(2A) of ITA 1961, s.no.2 of Sch III rws 11 of ITA 2025
  - Is share of profit taxable if firm has exempt income and total income is nil?
- TDS at 10% from remuneration and interest to partners – s.194T of ITA 1961, s.393(3) Table s.no.7
- Practical difficulties where TDS deducted but remuneration not taxable
- S.40A(3) not applicable to payment of remuneration to partner in cash – not expenditure – Ratilal & Sons v ITO [2019] 105 taxmann.com 366 (Mum - Trib.)
- Deduction of expenses by partner against remuneration and interest – allowable if incurred for earning such income - CIT v Ramniklal Kothari (1969) 74 ITR 57 (SC)
- Section 14A applicable - Vishnu Anant Mahajan v ACIT [2012] 137 ITD 189 (Ahd - ITAT) (SB) – disallowance in ratio of profit to remuneration & interest – not applicable to depreciation u/s 32
- Whether partner can offer income to tax u/s 44AD/44ADA in respect of remuneration and interest – Anandkumar v ACIT [2021] 430 ITR 391 (Mad) – remuneration and interest is not gross receipts or turnover of business independently carried on by partner, Ranu Gupta v ACIT, ITA No. 2224/Del/2025 dtd 2.6.2025 – no need for separate business or profession
- Whether Partner liable to tax audit if remuneration and interest exceeds specified limit – Perizaad Zorabian Irani v Pr CIT [2022] 139 taxmann.com 164 (Bom) – remuneration is not gross receipts from business or profession

Taxation of Partnership Firms/LLPs

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- Partnership firm can offer income to tax under s.58 (44AD/44ADA of ITA 1961)
  - LLP not eligible
  - Remuneration & interest to partners not allowable against presumptive income of firm in cases of business and profession – only against plying, hiring or leasing of goods carriages
- Tax rate of 30% - surcharge of 12% if income exceeds Rs 1 crore – 4% Education Cess
- Alternate Minimum Tax at 18.5% - s.206(2) of ITA 2025 (s.115JC of ITA 1961)
- On retirement or death of a partner, carried forward losses of the firm attributable to the partner lapse – section 119(1) of ITA 2025 [s.78(1) of ITA 1961]

Introduction of Assets by Partner

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- Section 45(3) – asset introduced by partner into firm – transfer taxable in year of introduction – consideration is amount recorded in books of account
  - Whether provisions of s.50C/50CA apply to such transfer?
  - Nareshbhai Ishwardas Patel v. ITO [2023] 203 ITD 250 (Ahmedabad - Trib.), ACIT v Amartara (P.) Ltd., [2021] 128 taxmann.com 125 (Mumbai - Trib.)
- Do provisions of section 56(2)(x) apply to the partnership firm if immovable property/security introduced by partner into firm at below stamp duty value/rule 11UA value?
  - CIT v Sunil Siddharthbhai 156 ITR 509 (SC) – amount credited to account of partner is not the only consideration for the transfer

Retirement & Dissolution

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- **Retirement of partner/dissolution of firm**
- *Law up to AY 2020-21*
- Distribution of capital asset by firm to partner on retirement or dissolution taxable as capital gains of firm – difference between FMV and book value – s.45(4)
  - CIT v Mansukh Dyeing & Printing Mills [2022] 449 ITR 439 (SC) - revaluation of assets and crediting revalued amount to partners' capital accounts in their profit-sharing ratio, with amount being available for withdrawal, considered in effect "distribution of the assets to partners" - 'transfer' falling under "otherwise" for applicability of S. 45(4)
- Excess amount received by partner over and above capital balance not taxable – Ramona Pinto v DCIT [2024] 464 ITR 305 (Bom)
- *Law effective AY 2021-22*
- Section 9B/s.8 of ITA 2025 – taxation as capital gains/business income of the firm on receipt of capital asset/stock in trade by partner on dissolution/reconstitution of firm (admission/retirement/change in profit shares) – difference between FMV and book value/cost
- Section 45(4)/67(10) of ITA 2025 – taxation as capital gains of firm on receipt of money/capital asset in excess of capital balance in firm by partner on reconstitution of firm
- Section 48(iii)/72 of ITA 2025 – deduction for amount taxable u/s 45(4) attributable to capital asset transferred

Sections 9B/45(4)

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- Rule 6(3) of IT Rules 2026 [Rule 8AA(5) of IT Rules 1962] – Amount taxable u/s 67(10)/ s.45(4):
  - deemed to be CG from transfer of ST capital asset if attributable to:
    - Short-term capital asset
    - Asset forming part of block of assets
    - Self generated asset/goodwill
  - Deemed to be CG from transfer of LT capital asset if attributable to LT capital asset
- Rule 50 of IT Rules 2026 (Rule 8AB of IT Rules 1962) - Attribution of income taxable u/s. 67(10)/s.45(4) to the capital assets remaining with the specified entity, u/s 72/s.48
- Attributable to specific capital assets retained by firm if related to revaluation of those assets
- Not attributable to any specific asset if related to revaluation of asset transferred by firm to partner
- No provision in case of revaluation of stock in trade – double taxation?
- CBDT Circular 14 of 2021 dated 2.7.2021 – Guidelines under s.9B and 45(4)
- Clarified that rule 8AB also applies to capital assets forming part of block of assets
- In case capital asset remaining with specified entity is forming part of a block of assets, amount attributed to such capital asset under rule 8AB shall be reduced from full value of consideration received or accruing as a result of subsequent transfer of such asset by the specified entity, and net value of such consideration shall be considered for reduction from the wdv of such block

Sections 9B/45(4)

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- Situations where section 9B will not apply
  - Where partner is paid money, and not capital asset or stock in trade
  - Where FMV of asset received by partner is same as cost of acquisition
  - Where FMV of asset received by partner does not exceed wdv of block of assets
  - Is wdv of block to be reduced by FMV of asset given in such a case?
- Situations where s.45(4) will not apply
  - Assets distributed to partners on dissolution of the firm – section 45(1) may apply
  - Where outgoing partner is paid only balance due as per his capital & current accounts
  - Where stock-in-trade is given to an outgoing partner – whether taxable even otherwise as business profits?

Conversion of Partnership firm into Company

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- Exemption under section 47(xiii)/s.70(1)(zd) of ITA 2025
  - All assets & liabilities of firm become assets & liabilities of co
  - All partners of firm immediately before succession become share holders of co in ratio of their capitals
  - Partners do not receive any other direct/indirect consideration or benefit from co
  - Aggregate of shareholding of co by partners of firm is not less than 50% of voting power of co and shareholding continues to be as such for period of 5 years from date of succession
- CIT v Texspin Engg & Mfg Works [2003] 263 ITR 345 (Bom)
  - Conversion under Part IX of Companies Act 1956 – properties of erstwhile firm vested in limited company which was different from distribution on dissolution
  - condition for application of section 45(4) of transfer by way of distribution of capital asset not satisfied
  - question of computation of capital gains under section 48 by treating fair market value of assets on date of transfer did not arise
  - there was no transfer of capital asset as contemplated by section 45(1) in absence of existence of party and counter-party and incoming consideration qua transferor
  - Even if transfer, 'full value of consideration' in s. 48 cannot be FMV of capital asset on date of transfer
- What if firm has no immovable property or shares and conversion is at book value?
  - No capital gains payable by firm
  - Partners allotted shares with same value as capital balances

Association of Persons

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- No specific Act governing AOPs
- Limit of 50 members for AOP carrying on business – Rule 10 of the Companies (Miscellaneous) Rules 2014
- Not defined in the Income Tax Act
- S.2(31)/s.2(77) of ITA 2025 – "person" includes …. An association of persons or a body of individuals, whether incorporated or not
- Expln to s.2(31) - For the purposes of this clause, an AoP or a BoI or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains
- S.26/s.24 of ITA 2025 - For property co-owned with definite and ascertainable share, the co-owners shall not be assessed as an association of persons and their income computed separately under this Part as per their respective share shall be included in their total income.
- S.168(1)/s.312(1) – The income of the estate of a deceased person shall be chargeable to tax in the hands of the executor as an individual, if there is only one executor, or as an association of persons, if the executors are more than one
  - PAN application – income tax portal – AJP

Association of Persons

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- CIT v Indira Balkrishna (1960) 39 ITR 546 (SC)
- 3 widows as legal heirs – shares & deposits
- No finding of any act of joint management
- Construe the words in their plain ordinary meaning
- Bear in mind that the words occur in a section which imposes a tax on the total income of each one of the units of assessment mentioned therein including an association of persons
- Meaning to be assigned to the words must take colour from the context in which they occur
- The word "associate" means "to join in common purpose, or to join in an action". Therefore, “AoP“ means an association in which two or more persons join in a common purpose or common action, and as the words occur in a section which imposes a tax on income, the association must be one the object of which is to produce income, profits or gains
- No formula of universal application as to what facts, how many of them and of what nature, are necessary to come to a conclusion that there is an AoP

Association of Persons

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Mohamed Noorullah v CIT (1961) 42 ITR 115 (SC)

- Business carried on by deceased - continued by legal heirs
- Joint receivers appointed, who continued business until business ultimately sold
- None of the partners wanted to break the unity of control of the business or its continuity and the business was of such a nature that it could not be carried on without such consensus.
- Income was the income of a business which was carried on as a single business by the consent of all the parties.
- Mere fact that suit pending for administration of estate of the deceased or for separation of shares of co-heirs did not affect incidence of taxation
- Business was the business of an AoP

Association of Persons

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N V Shanmughan & Co v CIT (1971) 81 ITR 310 (SC)

- Receivers appointed for a partnership business
- The fact that there were three receivers did not make them an "AoP"
- The business was carried on by the receivers on behalf of the erstwhile partners, with their consent. The control and management was in the hands of the receivers and that control and management was a unified one. The receivers had jointed in a common purpose and they acted jointly. When they did so, they acted on behalf of the persons who were the owners of the business. The receivers did not and could not have represented the individual interests of the various owners of the business. The profits were earned on behalf of the persons who had a common interest created by the order of the court and were on that account an "AoP". The existence of a specific or defined interest in the profits did not make the earning any the less by an "AoP". In law the erstwhile partners of the firm carried on the business through their representatives and the profits were earned from a business carried on by an "AoP"

Association of Persons

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G Murugesan & Brothers v CIT (1973) 88 ITR 432 (SC)

- Grandfather settled life interest in house property on grandchildren
- Also bought shares in names of grandchildren
- Income from property and dividends credited in books of grandfather's concern to combined grandchildren's account and then transferred in equal shares to each grandchild's account
- For forming an AoP, the members of the AoP must join together for the purpose of producing an income. An AoP can be formed only when two or more individuals voluntarily combine together for a certain purpose. Hence volition on the part of the members of the association is an essential ingredient.
- Even a minor can join an "association of persons" if his lawful guardian gives his consent
- In receiving dividends from shares, where there is no question of any management, difficult to draw an inference that two or more shareholders functioned as an AoP from mere fact that they jointly own one or more shares, and jointly receive dividends declared. These circumstances do not by themselves go to show that they acted as an AoP.
- In case of an AoP, it is always open to its members to withdraw from the AoP. No one can be compelled to continue as a member of the AoP. No particular form need be observed for withdrawing from an AoP.
- In the case of realisation of dividends, if the individual members of an AoP chose to realise their dividends as individuals, there is an end of the AoP

Association of Persons

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ITO v Ch Atchaiah (1996) 218 ITR 239 (SC)

- There are no words in the present Act (1961) which empower the ITO or give him an option to tax either the AoP or its members individually or for that matter to tax the firm or its partners individually.
- If it is the income of the AoP in law, the AoP alone has to be taxed; the members of the AoP cannot be taxed individually in respect of the income of the AoP.
- Consideration of the interests of the Revenue has no place in this scheme. Where Parliament wanted to provide an option, or a discretion, to the ITO, it has provided so expressly
- The AO can, and he must, tax the right person and the right person alone. By "right person" is meant the person who is liable to be taxed, according to law, with respect to a particular income. The expression "wrong person" is obviously used as the opposite of the expression "right person". Merely because a wrong person is taxed with respect to a particular income, the AO is not precluded from taxing the right person with respect to that income

Association of Persons

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Meera & Co v CIT (1997) 224 ITR 635 (SC)

- Business inherited by widow and 3 children - continued by widow on behalf of herself and the 3 children
- Profits from business were result of business activities carried on jointly by the mother on her own behalf and on behalf of minor children - Did not make a difference that widow and minor sons did not start the business.
- Organised activity jointly carried on to produce income - clear case of a joint business venture of a few individuals
- Rightly assessed in the status of a "BOI"
- When the minors along with their mother formed a body to generate income, the levy of tax under section 4 was on that body. The mother could not insist that the income of the joint venture must be assessed separately on the minors and her, even when a joint business was carried on
- s.2(31)(v) speaks of "an AOP or a BOI". This implies that an "AOP" is not something distinct & separate from a "BOI"
- The latter expression has been added to obviate any controversy as to whether only combinations of human beings are to be treated as a unit of assessment. When several individuals are found to have joined together for the purpose of making profit, the group of individuals may be conveniently described as a "BOI". "An AOP or a BOI, whether incorporated or not", has been brought within the net of taxation with the intention clearly to hit combinations of individuals or other persons engaged together in some joint enterprise.
- The combinations may or may not be incorporated.
- A profit-yielding joint venture has to be taxed as a single unit

Consortium – whether AOP

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- CBDT Instruction No 1829 dated 21.9.1989
- Taxability of non-residents engaged in execution of power projects on turnkey basis
- Likely to be undertaken by consortium of foreign companies
- Separate agreements for supply of materials outside India, for planning, engineering & design services, for execution of civil works at site and for erection, testing, and commissioning of machinery and equipment
- May be entrusted to one or more foreign companies
- Overall co-ordination agreement between Indian PSU and foreign companies to ensure guaranteed performance of all contracts in co-ordinated manner within agreed timeframe
- Nothing contained in overall agreement will be intended to create JV or partnership or AoP between the contracting parties
- Indian customer will not be making any payment under this overall agreement
- Foreign companies forming the consortium will not constitute an AoP under the IT Act – each foreign company will be individually liable for taxation as a separate entity

Consortium – whether AOP

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- Instruction No 1829 withdrawn vide CBDT Instruction No 5 of 2009 dated 20.7.2009 on grounds of misuse
- Assessees rely on the instruction not only for power projects but other projects as well
- Single project is split into various components to be executed by the bidder and its associate concerns
- Consortium of foreign companies is not in existence but is created to take advantage of the instruction
- Most of the profit is loaded in the offshore supply and Indian portion of the contracts barely meets the expenses

Consortium – whether AOP

Van Oord ACZ BV, in re, (2001) 248 ITR 399 (AAR)

- JV agreement with an Indian company for dredging contract in India
- Agreement specifically provided that each party shall bear its own losses and retain all profits
- Both the parties had decided the work that each party would carry out
- In order to constitute an AoP, there will have to be a common purpose or common action and the object of the association must be to produce income jointly. It is not enough that the persons receive the income jointly.
- Both had agreed to execute the job together for better co-operation in their relationship with the Chennai Port Trust
- No control or connection between the work done by the assessee and that done by the Indian party
- The association with the Indian company was not with the object of earning income but for co-ordination in executing the contract
- Not an AoP

Consortium – whether AOP

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Geoconsult ZT GmbH, in re, (2008) 304 ITR 283 (AAR)

- Essentials of an AOP are:
  - (i) Two or more persons
  - (ii) Voluntary combinations
  - (iii) A common purpose or common action with object to produce profit or gains - However, the object to produce profit or gain is no longer a sine qua non with the insertion of the Explanation
  - (iv) Combination in joint enterprise
  - (v) Some kind of scheme for common management
- Agreement amongst members
  - i. each member responsible for fulfilling the obligations under the contract;
  - ii. each member had unrestricted access to any work carried out by the members in connection with the project ;
  - iii. in event of insolvency of any member, other members irrevocably appointed to act for that member in all matters, being jointly and severally responsible on its behalf.
  - iv. Distribution of fees received was in the ratio of 50%, 20% and 30% and each member had to bear its own costs and expenses

Consortium – whether AOP

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Geoconsult ZT GmbH, in re, (2008) 304 ITR 283 (AAR)…..

- Ruling
  - Meeting of minds coupled with common design and common purpose
  - Facts of separate bank accounts & separate billing by members paled into periphery once main incidents of AoP satisfied
  - Demarcation of general tasks and particular tasks entrusted to each member does not in any way affect the integrity of the AoP
  - ultimate division of profits amongst the members of the joint enterprise is not a relevant criterion
  - Held to constitute AoP

Consortium – whether AOP

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Hyosung Corporation, in re, (2009) 314 ITR 343 (AAR)

- Successful bidder for power project in India
- Under bid terms, permitted to assign whole or part of the contract to an independent contractor, subject to approval of customer
- Requested customer to award offshore supply contract to itself, and onshore supply and onshore services contract to an Indian company
- Assessee had overall responsibility for execution of the contracts
- Each performed obligations and received payments independently
- Limited involvement of the assessee in co-ordinating and supervising contracts of the Indian company fell short of the attributes of an AoP
- Instruction reiterated the correct legal position

Consortium – whether AOP

Hyundai Rotem, in re, (2010) 323 ITR 277 (AAR)

- Consortium of 5 foreign and Indian companies awarded contract by Delhi Metro for design, manufacture, supply, testing, commissioning, training and transfer of technology of EMUs
- Each was responsible for different portions of the contract
- Participation percentage for sharing of gross revenues agreed upon
- Consortium leader responsible for collecting and distributing payments
- Scope of work of each member was specifically defined and the work of each member was mutually exclusive to that of the others
- No interchangeability or overlapping of work to any substantial extent
- Could not be treated as an AoP

Consortium – whether AOP

Linde AG, in re, (2012) 349 ITR 172 (AAR)

- Consortium of German & South Korean companies awarded contract by ONGC for design, engineering, procurement, construction, installation, commissioning & handing over of the plant on a lump sum turnkey basis
- The 2 companies came together to bid for the work on a tender being floated for erection and commissioning of a petrochemical complex
- Coming together to make a bid was obviously in furtherance of their respective independent businesses was with a common object.
- The coming together was with a view to earn an income.
- Contract was awarded to the consortium and not to the two members individually. It was for the whole work and a composite contract. No two contracts were entered into with the consortium members.
- Payment was to be made to the consortium for the work.
- This was a case of the 2 companies forming an AoP in respect of the work undertaken by the consortium.
- The internal division of responsibility by the consortium members and the recognition thereof by ONGC or the making of separate payments by ONGC to the two members, could not dislodge the legal position of formation of an AoP by the 2 companies
- Similar view taken in Alstom Transport SA, in re 349 ITR 292 (AAR) – contract design, manufacture, supply, installation, testing and commissioning of signalling/train control and communication systems

Consortium – whether AOP

CNK

Linde AG v DDIT (2014) 365 ITR 1 (Del)

- The expression “AoP” has not been used in any technical sense and has to be construed according to the plain ordinary meaning of the words used
- Given the wide definition of the word “person”, the meaning of the expression “AoP” would also be of wide import
- The condition that the AoP must be formed with the object of producing income, profits or gains is no longer applicable
- The essential condition that an AoP must be one where two or more persons join in common action for a common purpose continues to be applicable and is not diluted in any manner
- For an AoP to be considered a separate taxable entity, following essential features:
  - i. must be constituted by two or more persons ;
  - ii. the constituent members must have come together for a common purpose ;
  - iii. the association must move by common action and there must be some scheme of common management ;
  - iv. the co-operation and association amongst the constituent members must not be perfunctory or merely in form. The association amongst members must be real and substantial and sufficient to treat the association as a separate homogenous taxable entity
  - v. it is necessary that they form a joint enterprise with a greater level of common management
  - vi. An element of mutual agency and joint action for mutual purpose is also necessary

Consortium – whether AOP

CNK

Linde AG v DDIT (2014) 365 ITR 1 (Del)……….

- Mere obligation to exchange information, between independent agencies, for co-ordinating their independent tasks would not result in an inference that the agencies had constituted an AoP
- Under the terms of the contract, the scope of work to be executed by the two companies was separate
- Payments to be made for separate items of work were also specified
- Currency in which payments were to be made was also separately indicated
- In so far as the execution of the work was concerned, even the customer recognised that different items constituting the contract would be performed independently by the two companies
- Consideration for the work performed was to be made directly to the concerned member of the consortium in accordance with the work performed by it
- The two parties had joined together to:
  - (a) bid for the contract ;
  - (b) present a facade of a consortium to the customer for execution of the contract and accept joint and several liability towards the customer for due performance of the contract and completion of the project ; and
  - (c) put in place a management structure for inter se co-ordination and execution of the project

Consortium – whether AOP

Linde AG v DDIT (2014) 365 ITR 1 (Del)……….

- In all other respects, the 2 companies were independent of each other and were responsible for their own deliverables under the contract, without reference to each other
- The facts did not indicate a sufficient degree of joint action between the 2 companies either in execution or management of the project to justify a conclusion that they had formed an AoP
- Facts in Hyundai Rotem similar in all material respects – ought to have been followed

Consortium – whether AOP

CNK

CIT v Oriental Structural Engineers (P) Ltd (2015) 374 ITR 35 (Del)

- JV to undertake projects awarded by NHAI
- The joint venture was formed only to secure the contract, in terms of which the scope of each joint venture partner's task was distinctly outlined
- The entire work was split between the two joint venture partners
- They completed the task through sub-contracts and were responsible for the satisfaction of the NHAI
- Applying principles laid down in Linde's case, not an AoP

Consortium – whether AOP

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Consortium – whether AOP

- CBDT Circular 7 of 2016 dated 7.3.2016
- With a view to avoid tax-disputes and to have consistency in approach while handling these cases, the Board has decided that a consortium arrangement for executing EPC/Turnkey contracts which has the following attributes may not be treated as an AOP

  (a) each member is independently responsible for executing its part of work through its own resources and also bears the risk of its scope of work i.e. there is a clear demarcation in the work and costs between the consortium members and each member incurs expenditure only in its specified area of work.

  (b) each member earns profit or incurs losses, based on performance of the contract falling strictly within its scope of work. However, consortium members may share contract price at gross level only to facilitate convenience in billing.

  (c) the men and materials used for any area of work are under the risk and control of respective consortium members;

  (d) the control and management of the consortium is not unified and common management is only for the inter-se co-ordination between the consortium members for administrative convenience.

- May be other additional factors also which may justify that consortium is not an AOP – same shall depend upon the specific facts and circumstances of a particular case, which need to be taken into consideration while taking a view in the matter
- This Circular shall not be applicable in cases where all or some of the members of the consortium are Associated Enterprises within the meaning of section 92A - AO will decide whether an AOP is formed or not keeping in view relevant provisions of the Act and judicial jurisprudence

Computation of Income - AOP

- Section 35(iii)(f)[s.40(ba) of ITA 1961] – Interest, salary, bonus, commission or remuneration to member not allowable
- If interest paid and received, only net interest paid to be disallowed
- If member in representative capacity:
  - interest paid otherwise than in representative capacity not to be disallowed
  - interest paid in a representative capacity and amounts paid to the person represented to be disallowed
- If member not in representative capacity, and interest received by member on behalf of or for the benefit of any other person, interest not to be disallowed
- No exemption u/s 393(4)/194A of ITA 1961 from TDS on interest paid by AoP to member – no tax payable on interest – included only for rate purposes
- Applicability of TDS u/s 392(192 of ITA 1961), 393(1);Table S No 1(ii)(194-H of ITA 1961) to salary, remuneration or commission

Rates of Tax - AOP

CNK

- Finance Act – same rates applicable to individual, HUF, AoP or BoI – slab rates
- Section 311 (167B of ITA 1961) – Special Rates
- Sub-section (1) – where individual shares of members in the whole or any part of the income are indeterminate or unknown, tax on total income at MMR
- If total income of any member taxable at higher rate, then entire income of AoP/BoI to be taxed at such higher rate
- In case of AoP/BoI where shares of members determinate/known, and:
  - Total income of any member (excluding share of income from AoP/BoI) exceeds maximum amount not chargeable to tax, tax chargeable at MMR
  - If any member's income taxable at higher rate than MMR, portion of income relatable to share of such member taxable at such higher rate and balance at MMR
- Individual shares regarded as indeterminate or unknown if such shares indeterminate or unknown on date of formation of AoP/BoI or at any time thereafter

Rates of Tax - AOP

CNK

- CBDT Circular No 320 dated 11.1.1982 – Section 167A
- Question has been raised whether provisions of s. 167A of the Income-tax Act which provide for charging of tax at MMR on the total income of an AoP where the individual shares of members in the income of such association are indeterminate or unknown, would also apply to income receivable by trustees on behalf of provident funds, superannuation funds, gratuity funds, pension funds, etc., created bona fide by persons carrying on business or profession exclusively for the benefit of the persons employed in such business
- Where income is receivable by the trustees, on behalf of an unrecognized PF or an unapproved superannuation fund, gratuity fund, pension fund or any other fund created bona fide by a person carrying on a business or profession exclusively for the benefit of persons employed in such business or profession are concerned, they will continue to be charged to tax in the manner prescribed by section 164(1)(iv) as hitherto
- In cases of regd societies, trade & professional associations, social and sports clubs, charitable or religious trusts, etc., where the members or trustees are not entitled to any share in the income of the AoP, the provisions of new section 167A will not be attracted and, accordingly, tax will be payable in such cases at the rate ordinarily applicable to the total income of an AoP and not at the maximum marginal rate
- Circular applicable to section 167B (s.167A renumbered to s.167B)

Taxation of Member of AoP

CNK

- Section 309 (67A of ITA 1961) – Computation of member's share in income of an AoP where share of members is determinate and known (other than a company or co-operative society or society)
- Interest, salary, bonus, commission or remuneration paid to a member to be deducted from total income of AoP and balance divided amongst members in proportion in which entitled to share in income
- Interest, salary, bonus, commission or remuneration paid to a member to be added to his share of income, or adjusted against his share of loss
- Share of member in income or loss of AoP to be apportioned under various heads of income in same manner in which income or loss of AoP has been determined under each head of income
- Interest paid by a member for investment in AoP to be deducted from his share in income of AoP under head "Profits & Gains of Business or Profession"

Taxation of Member of AoP

CNK

- JCIT v Sanand Properties (P) Ltd [2026] 488 ITR 337 (SC)
- Assessee joined with RKC to form an AOP for development of a residential housing project.
- Under Clause 7 of AOP agreement, all sale receipts were to be collected by AOP; assessee was entitled to withdraw 35 per cent of gross sale receipts; and all project expenses were to be met from remaining 65 per cent, with balance constituting share of other member.
- Such entitlement was not contingent upon profits of AOP but accrued irrespective of project profitability
- Diversion of income by overriding title
- Amount received constituted taxable business receipt and not exempt share of profit from AOP

Taxation of Member of AoP

CNK

- Section 310 (86 of ITA 1961) – Member's share in income of an AoP
- No income tax payable in respect of share in income of an AoP computed u/s 309/67A
- If AoP chargeable to tax at MMR or higher rate, share not to be included in total income
- Otherwise, share to form part of total income
- If no income tax chargeable on income of AoP, then share of income chargeable to tax
- S.190 (s.110 of ITA 1961) – deduction from income tax on total income, at average rate of income tax on amount on which no tax is payable
- S.206(1)(d) [s.115JB(iic) of ITA 1961] – MAT – specific clause for reduction from book profits wef AY 2016-17 for share of income from AoP on which no tax payable in accordance with section 310 (s.86 of ITA 1961)
- Interest paid on borrowings to invest in AoP - impact of section 310/86 and applicability of section 14/14A

Taxation of Member of AoP

CNK

- Can a member claim set off of share of loss from an AoP against his other taxable income?
- Ganga Metal Refining Co Pte Ltd v CIT (1968) 67 ITR 771 (Cal)
  - JV with other companies
  - Claimed set off of share of loss of JV against its own profits
  - Not same assessee who incurred loss
  - Loss cannot be set off u/s 24(1) or on general principles
  - Similar view taken in Ranjit Kr Banerjee v CIT (1968) 69 ITR 32 (Cal) – URF
  - Followed in CIT vs. Smt. Lalita M. Bhat, (1998) 234 ITR 319 (Bom) – each assessee is separate
  - CIT v D & H Secheron Electrodes Ltd 290 ITR 697 (MP)
- Abida Khatoon v CIT (1973) 87 ITR 627 (AP), CIT v S K S Rajamani Nadar [1977] 109 ITR 258 (Mad)
  - Set off of share of loss in AoP against other income
  - Income tax is single tax on total income and not a collection of distinct taxes on incomes under several heads or on incomes from different sources


Thank you