

SYNOPSIS

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**184. Assessment as a firm**

(1) A firm shall be assessed as a firm for the purposes of this Act, if –

(i) the partnership is evidenced by an instrument; and

(ii) the individual shares of the partners are specified in that instrument.

(2) A certified copy of the instrument of partnership referred to in sub-section (1) shall accompany the return of income of the firm of the previous year relevant to the assessment year commencing on or after the 1st day of April, 1993 in respect of which assessment as a firm is first sought.

Explanation: For the purposes of this sub-section, the copy of the instrument of partnership shall be certified in writing by all the partners (not being minors) or, where the return is made after the dissolution of the firm, by all persons (not being minors) who were partners in the firm immediately before its dissolution and by the legal representative of any such partner who is deceased.

(3) Where a firm is assessed as such for any assessment year, it shall be assessed in the same capacity for every subsequent year if there is no change in the constitution of the firm or the shares

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of the partners as evidenced by the instrument of partnership on the basis of which the assessment as a firm was first sought.

(4) Where any such change had taken place in the previous year, the firm shall furnish a certified copy of the revised instrument of partnership along with the return of income for the assessment year relevant to such previous year and all the provisions of this section shall apply accordingly.

(5) Notwithstanding anything contained in any other provision of this Act, where, in respect of any assessment year, there is on the part of a firm any such failure as is mentioned in section 144, the firm shall be so assessed that no deduction by way of any payment of interest, salary, bonus, commission or remuneration, by whatever name called, made by such firm to any partner of such firm shall be allowed in computing the income chargeable under the head “Profits and gains of business or profession” and such interest, salary, bonus, commission or remuneration shall not be chargeable to income-tax under clause (v) of section 28.

### **185. Assessment when section 184 not complied with**

Notwithstanding anything contained in any other provision of this Act, where a firm does not comply with the provisions of section 184 for any assessment year, the firm shall be so assessed that no deduction by way of any payment of interest, salary, bonus, commission or remuneration, by whatever name called, made by such firm to any partner of such firm shall be allowed in computing the income chargeable under the head “Profits and gains of business or profession” and such interest, salary, bonus, commission or remuneration shall not be chargeable to income-tax under clause (v) of section 28.

### **187. Change in constitution of a firm**

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(1) Where at the time of making an assessment under section 143 or section 144 it is found that a change has occurred in the constitution of a firm, the assessment shall be made on the firm as constituted at the time of making the assessment.

Proviso omitted by the Finance Act, 1992, with effect from 1st April, 1993.

(2) For the purposes of this section, there is a change in the constitution of the firm—

(a) if one or more of the partners cease to be partners or one or more new partners are admitted, in such circumstances that one or more of the persons who were partners of the firm before the change continue as partner or partners after the change; or

(b) where all the partners continue with a change in their respective shares or in the shares of some of them:

Provided that nothing contained in clause (a) shall apply to a case where the firm is dissolved on the death of any of its partners.

### **188. Succession of one firm by another firm**

Where a firm carrying on a business or profession is succeeded by another firm, and the case is not one covered by section 187, separate assessments shall be made on the predecessor firm and the successor firm in accordance with the provisions of section 170.

### **188A. Joint and several liability of partners for tax payable by firm**

Every person who was, during the previous year, a partner of a firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable along with the firm

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for the amount of tax, penalty or other sum payable by the firm for the assessment year to which such previous year is relevant, and all the provisions of this Act, so far as may be, shall apply to the assessment of such tax or imposition or levy of such penalty or other sum.

**189. Firm dissolved or business discontinued**

(1) Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the Assessing Officer shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment.

(2) Without prejudice to the generality of the foregoing sub-section, if the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals) in the course of any proceeding under this Act in respect of any such firm as is referred to in that sub-section is satisfied that the firm was guilty of any of the acts specified in Chapter XXI, he may impose or direct the imposition of a penalty in accordance with the provisions of that Chapter.

(3) Every person who was at the time of such discontinuance or dissolution a partner of the firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.

Explanation: [Omitted.]

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(4) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the person referred to in sub-section (3) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

(5) Nothing in this section shall affect the provisions of sub-section (6) of section 159.

**189A. Provisions applicable to past assessments of firms**

In relation to the assessment of any firm and its partners for the assessment year commencing on the 1st day of April, 1992, or any earlier assessment year, the provisions of this Chapter as they stood immediately before the 1st day of April, 1993 shall continue to apply.

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