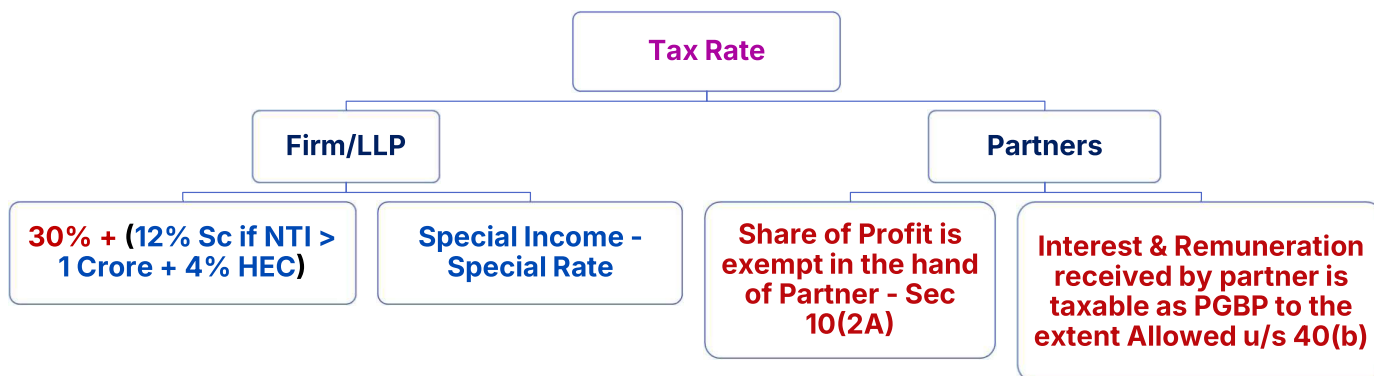


CHAPTER 4 - ASSESSMENT OF FIRM

Firm ka assessment toh ho gaya... ab students ka bhi karo – stress, overthinking aur depreciation sab lag chuka hai



1. Sec 40(b): - Remuneration and Interest to Partners.

<u>Remuneration</u>	<u>Interest</u>
To working partners	To Any partner
To Individual only.	To Any partner
Should be authorized by Deed.	Should be authorized by Deed.
Should not be retrospective.	Should not be retrospective.
Note Below	Rate of Interest should be specified in the deed. Should not exceed 12% p.a.

Note: Maximum Permissible Remuneration: -

<u>On First ₹6 Lacs of Book Profit</u>	<u>Balance Book Profit</u>	<u>In case of Book Loss</u>
1) Book Profit X 90%	60% of Book profit	₹ 3,00,000
2) ₹ 3,00,000		
Whichever is Higher		

2. Book Profit

Net Profit as per PGBP	XXX
Add: Remuneration if debited to P & L A/c.	XXX
Add: Interest over and above 12%	XXX
Less: Current Year & Unabsorbed Depreciation	XXX
Book Profit	XXX

3. Sec 78: Carry forward & Set-off of losses

- ❖ The **losses and unabsorbed depreciation** of the firm can be carried forward **by the firm only**.
- ❖ In the event of a **partner's retirement or death** the firm Shall **not carry forward shares** of retired / deceased partner in the losses of firm. - **Except**
 - Unabsorbed Depreciation
 - Legal heir becomes partner after death of any partner

4. Explanation to Sec 40(b)

Explanation 1

- Where an individual is a partner
- in representative capacity, then
- interest paid on
- individual capacity will not be
- covered by Sec 40(b)

Explanation 2

- Where an individual is a partner
- in personal capacity, then
- interest paid on
- representative capacity will not be
- covered by Sec 40(b)

The above explanation is applicable only for Interest.

5. Assessment of Firm

Partnership Firm **Assessed as Such**

- The firm should be evidenced by an **"INSTRUMENT."**
- **Individual shares** of partners must be **specified** in the instrument
- **A certified copy of the instrument** should accompany the **first return** of income of a firm.

In case the aforementioned condition is **not fulfilled**, or if the firm has violated **Section 144**, **interest and remuneration paid to partners** will be **fully disallowed** in the hands of the firm and **not taxable in the hands of the partner**.

6. Change in constitution of Firm & Succession

<u>Points</u>	<u>Details</u>
Change in Constitution	<ul style="list-style-type: none"> • If one or more partners cease to be partners (excluding demise) or new partners are admitted, and some of the existing partners continue after the change. • All partners continue, but there is a change in their profit-sharing ratio or shares of some of them. • Where a change in the constitution is identified during assessment under section 143 or 144, assessment shall be made on the firm as constituted at the time of assessment -
Succession in a Firm	<ul style="list-style-type: none"> • Succession is deemed to occur when all partners of the predecessor firm change. • In the case of a firm succeeded by another firm, separate assessments will be made on the predecessor firm and the successor firm.

7. Joint & several liability

Where any tax, penalty or other sum payable by the firm for the relevant previous year is due, then **every person being a partner of a firm and the legal representative of deceased partner during the previous year** shall be **jointly and severally liable along with the firm** in respect of such sum.

8. Firm dissolved or business discontinued

Every person who was at the time of dissolution or discontinuance a partner of a firm and the legal representative of deceased partner shall be jointly and severally liable for the amount of tax, penalty or other sum payable by the firm and all the provisions of the Act shall apply accordingly.

9. Points

- ❖ Sec 44AD /44ADA not applicable to LLP, No such restriction for 44AE
- ❖ In case of liquidation of an LLP, where tax due from the LLP cannot be recovered, every person who was a partner of the LLP at any time during the relevant previous year will be jointly and severally liable for payment of such tax unless he proves that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the LLP
- ❖ Even if the firm's taxable income becomes NIL due to exemptions/deductions, the share of profit credited to partners remains exempt in their hands.

10. Sec 78: Carry forward & Set-off of losses

- ❖ The losses and unabsorbed depreciation of the firm can be carried forward by the firm only.
- ❖ In the event of a partner's retirement or death the firm shall not carry forward shares of retired / deceased partner in the losses of firm. - Except
 - Unabsorbed Depreciation
 - Legal heir becomes partner after death of any partner