

**J.K. SHAH<sup>®</sup>**  
**CLASSES**  
CAFC → INTER CA → FINAL CA

# FINAL CA

**MAY '19**  
**REVISION NOTES**

**DIRECT TAX**

## Part - 2

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UNIT HOLDERS

INTEREST FROM SPV – TAXABLE

NON RESIDENT/FOREIGN CO – 5%(TDS @ 5% U/S 194LBA)

OTHERS – NORMAL RATES(TDS @ 10% U/S 194LBA)

FROM SPV + OTHERS (COMPANY)

-EXEMPT

SECTION 115BBDA - NA

SPV IS NOT LIABLE TO PAY DDT U/S 115 – O IF SPV IS A SPECIFIED DOMESTIC COMPANY

EXEMPT U/S 10(23FD)

RENT FROM PROPERTY OWNED BY REITS

NON RESIDENT/FOREIGN CO – NORMAL RATES%(TDS U/S 195)

OTHERS – NORMAL RATES(TDS @ 10% U/S 194LBA)

LONG TERM CG/SHORT TERM CG AND OTHER INCOME

EXEMPT U/S 10(23FD)

REAL ESTATE INVESTMENT TRUST

INTEREST FROM SPV – EXEMPT U/S 10(23C)

FROM SPV + OTHERS (COMPANY)

- COMPANIES ARE LIABLE TO PAY DDT

- EXEMPT U/S 10(34)

- SECTION 115BBDA APPLICABLE

SPV IS NOT LIABLE TO PAY DDT U/S 115 – O IF SPV IS A SPECIFIED DOMESTIC COMPANY

EXEMPT U/S 10(23FC) [EVEN THOUGH DDT PROVISIONS ARE NOT APPLICABLE]

RENT FROM PROPERTY OWNED BY REITS

EXEMPT U/S 10(23FCA)

LONG TERM CG

TAX @ 10% OR 20% AS PER SECTION 112/112A

SHORT TERM CG COVERED BY 111A

TAX @ 15%

OTHER INCOME

MMR

Other Income

SPECIAL PURPOSE VEHICLE

SPECIFIED DOMESTIC COMPANY MEANS A COMPANY - WHOSE 100% SHAREHOLDING IS WITH REITS (EXCLUDING GOVERNMENT SHARE) AND PROFITS OUT OF WHICH DIVIDEND IS DISTRIBUTED ARE EARNED AFTER ACQUISITION OF 100% HOLDING

UNIT HOLDERS

INTEREST FROM SPV – TAXABLE

NON RESIDENT/FOREIGN CO – 5%(TDS @ 5% U/S 194LBA)

OTHERS – NORMAL RATES(TDS @ 10% U/S 194LBA)

FROM SPV + OTHERS (COMPANY)

-EXEMPT

SECTION 115BBDA - NA

SPV IS NOT LIABLE TO PAY DDT U/S 115 – O IF SPV IS A SPECIFIED DOMESTIC COMPANY  
EXEMPT U/S 10(23FD)

RENT FROM PROPERTY OWNED BY IITS

EXEMPT U/S 10(23FD)

LONG TERM CG/SHORT TERM CG AND OTHER INCOME

EXEMPT U/S 10(23FD)

INFRASTRUCTURE INVESTMENT TRUST

INTEREST FROM SPV – EXEMPT U/S 10(23C)

FROM SPV + OTHERS (COMPANY)

- COMPANIES ARE LIABLE TO PAY DDT

- EXEMPT U/S 10(34)

- SECTION 115BBDA APPLICABLE

SPV IS NOT LIABLE TO PAY DDT U/S 115 – O IF SPV IS A SPECIFIED DOMESTIC COMPANY

EXEMPT U/S 10(23FC) [EVEN THOUGH DDT PROVISIONS ARE NOT APPLICABLE]

RENT FROM PROPERTY OWNED BY IITS

MMR

LONG TERM CG

TAX @ 10% OR 20% AS PER SECTION 112/112A

SHORT TERM CG COVERED BY 111A

TAX @ 15%

OTHER INCOME

MMR

Other Income

SPECIAL PURPOSE VEHICLE

SPECIFIED DOMESTIC COMPANY MEANS A COMPANY - WHOSE 100% SHAREHOLDING IS WITH IITS (EXCLUDING GOVERNMENT SHARE) AND PROFITS OUT OF WHICH DIVIDEND IS DISTRIBUTED ARE EARNED AFTER ACQUISITION OF 100% HOLDING

### 1. Business Trust means

A) Real Estate investment Trust registered under SEBI regulations 2014 + units of Trust are listed on RSE

B) Infrastructure investment Trust registered under SEBI regulations 2014 + units of Trust are listed on RSE

2. Units of business trust received in exchange of shares of SPV by shareholders is a non-taxable transfer [Section 47 (xvii)].

Taxability arises at the time of Transfer of Units.

Cost of units = Cost of Shares [ section 49(AC)]

Holding period = holding period of shares + Holding period of Units

### 3. Tax rate applicable on transfer of units

Long Term Capital Gain – 112A section applies

Short Term Capital gain – 111A section applies

### 4. Holding Period = 36 MONTHS

**TAXATION OF POLITICAL PARTY**

Section 13A of the Income-tax Act, 1961 grants exemption from tax to political parties in respect of their income specified below:



The aforesaid categories of income would qualify for exemption provided additional conditions for availing the benefit of the said section which are as under are met:

- Maintains such books of account and other documents to enable the A.O. to properly deduce its income therefrom
- Maintains a record of each such voluntary contribution (other than electoral bonds) in excess of ₹ 20,000 and the name and address of the contributor
- Audit of accounts of the political party by a chartered accountant
- No donation exceeding ₹ 2,000 to be received otherwise than by an A/c payeecheque/bank draft or use of ECS through a bank account or electoral bond
- Submission of report u/s 29C(3) of the Representation of the People Act, 1951 for the financial year
- Furnishing of return of income for the P.Y. in accordance with section 139(4B)

## ***TAXATION OF ELECTORAL TRUST***

Section 13B provides exemption in respect of voluntary contribution received by an electoral trust approved by the CBDT in accordance with the scheme to be made by the Central Government.

Voluntary contribution received by an electoral trust would be treated as its income under section 2(24), but shall be exempt under section 13B if the trust distributes to a registered political party during the year, 95% of the aggregate donations received by it during the year along with surplus brought forward from any earlier years.

Another condition for availing the benefit under this section is that the electoral trust should function in accordance with the rules framed by the Central Government.

It may be noted that the exemption under section 13B will be available only in respect of voluntary contribution received by an electoral trust. The exemption cannot be claimed in respect of any other income of the electoral trust.

**TAXATION OF SECURITISATION TRUST**

Particulars	Securitisation Trust	Unit Holder
Income earned by Securitization Trust	Exempt under section 10(23DA) <b>Investment fund is liable to deduct TDS u/s 194LBC</b> Time of Deduction – Payment or Credit Whichever is earlier Rate of TDS – <b>Resident Payee</b> Individual/HUF – 25% Other than I/HUF – 30%  <b>Non-resident Payee/Foreign Company –</b> Rates as per Finance Act.	Taxable @ Normal Rates

**Other Points:**

1. Section 115TCA (1) provides that the income accruing or arising to, or received by, a person, being an investor from the securitisation trust, out of investments made in the securitisation trust, shall be taxable in the hands of investor in the same manner as if the investor had made investment directly in the underlying assets and not through the trust.
2. The income paid or credited by the securitisation trust shall be deemed to be of the same nature and in the same proportion in the hands of the investor of the securitisation trust, as if it had been received by, or had accrued and arisen to, the securitisation trust during the previous year.
3. Deemed credit on the last day of the previous year (if amount is not credit or paid)
4. The person responsible for crediting or making payment of the income on behalf of an securitization trust and the securitization trust are required to furnish, to investors and to the prescribed income-tax authority, a statement. Such statement should give details of the nature of the income paid or credited during the previous year and such other relevant details (30<sup>th</sup> June of AY – to Unit Holder) (30<sup>th</sup> November of AY – to Income tax authority)

**TAXATION OF AOP/BOI****Section 40(ba) - In the case of Association of persons or body of individuals, following amounts shall not be deducted in computing the business income**

Any payment of interest, salary, commission, bonus or remuneration made by an association of persons or body of individuals to its members will also not be allowed as a deduction in computing the income of the association or body.

Note – Rent is not covered by 40(ba). Therefore Rent paid is allowed subject to section 40A(2).

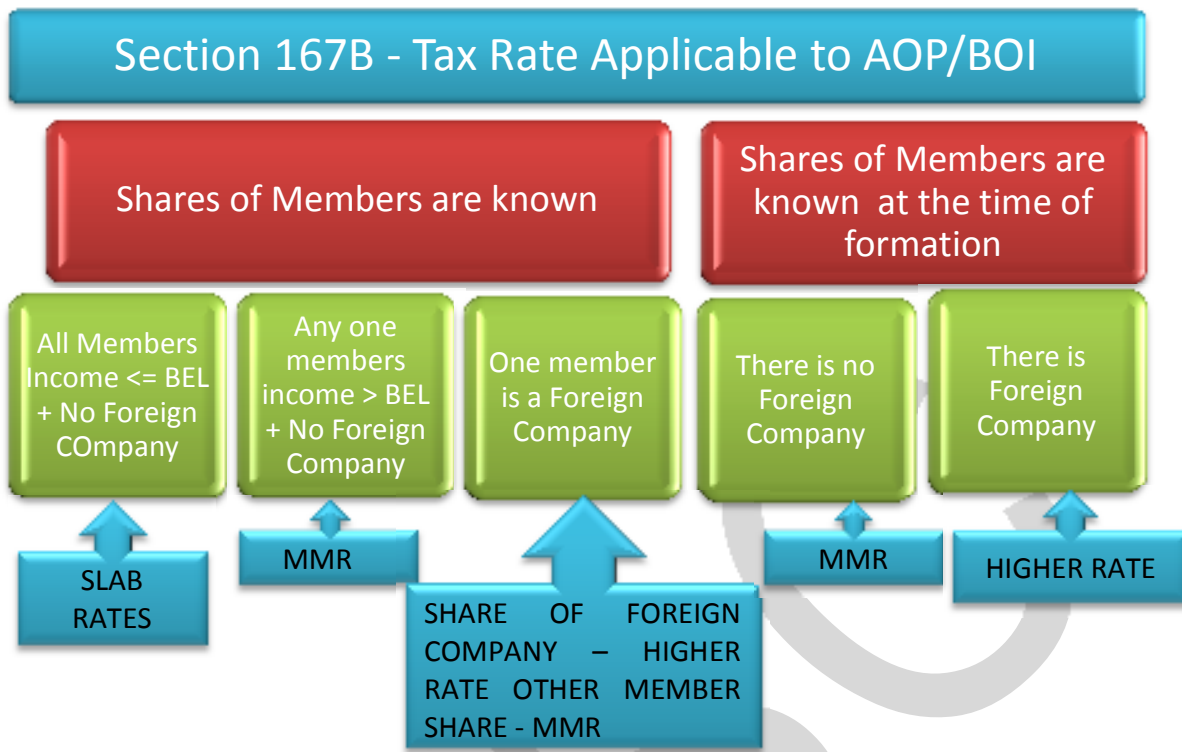
Explanation

**Explanation 1** - Where interest is paid by an AOP or BOI to a member who has paid interest to the AOP/BOI, the amount of interest to be disallowed under clause (ba) shall be limited to the net amount of interest paid by AOP/BOI to the partner.

**Explanation 2** - Where an individual is a member in an AOP/BOI in a representative capacity, interest paid by AOP/BOI to such individual or by such individual to AOP/ BOI otherwise than as member in a representative capacity shall not be taken into account for the purposes of clause (ba).

**Explanation 3** - Where an individual is a member in his individual capacity, interest paid to him in his representative capacity shall not be taken into account.





1. MAXIMUM MARGINAL RATE – 35.88% (30%+15%+4%)
2. HIGHER RATE - 43.684%
3. Special rate income will be taxed at special rate
4. If taxability is covered by situation 1 then for levy of surcharge income amount is to be considered.

Taxation of Member's Share	
If AOP / BOI is taxed at MMR / higher rate	Share of member shall not be included in his total income.
If AOP / BOI is taxed at rates applicable to an Individual. (i.e. normal tax rates)	Share of members shall be included in his total income but subject to rebate u/s 86.
If no Income tax is chargeable on total income of AOP / BOI	Share of members shall be fully charged to tax & NO REBATE u/s 86.

<b><u>Rebate u/s 86</u></b>	
Calculate Total Tax Payable (after giving effect of rebate u/s 87A , surcharge , health and education cess )	XX
<u>Less : Rebate u/s 86</u>	
Tax payable by member * Members share in AOP / BOI u/s 67A / Total income of member (including share from AOP / BOI)	(XX)
Total Tax payable	XX

<b>Section 67A : Method of Computing Share of a Member of AOP / BOI</b>	
<b>Step 1</b>	Total Income of AOP / BOI <u>Less: Remuneration / interest to members</u> Balance to be distributed in PSR
<b>Step 2</b>	Share of member in distributable income Add: remuneration / interest from AOP / BOI  The share of the member in the income or loss of AOP / BOI shall be apportioned under the various heads of income in the same manner in which the income or loss of AOP / BOI has been determined under each head of income.

***TAXATION OF FIRM*****Section 40(b) – Allowability of interest and remuneration to Firm/LLP****Conditions for allowability of interest**

- A) Authorization in partnership deed
- B) Payment of interest shall be accordance with the terms of partnership deed.
- C) Period for which interest is paid shall not preceed the date of authorization
- D) Maximum interest allowed 12%
- E) Partner = Working or Non-Working

**Other Points**

1. Where an individual is a partner in a firm in a representative capacity interest paid by the firm to such individual otherwise than as partner in a representative capacity shall not be taken into account for the purposes of this clause.
2. Where an individual is a partner in a firm otherwise than in a representative capacity, interest paid to him by the firm shall not be taken into account if he receives the same on behalf of or for the benefit of any other person.
3. If amount is utilized to earn Income which is exempt Interest is not allowed as deduction.
4. If partnership authorizes payment of interest only on credit balance in capital account and not on credit balance in current account then interest paid on balance in current account is not allowed as deduction. (Novel Distributing Enterprises v. DCIT (2001) Kerala HC)
5. For disallowance of interest assessing officer cannot invoke section 40A(2). CIT v. Great City Manufacturing Co. (2013) (All)

Conditions for allowability of remuneration

- A) Authorization in partnership deed
- B) Payment of remuneration shall be accordance with the terms of partnership deed.
- C) Period for which remuneration is paid shall not precede the date of authorization
- D) Partner = Working or Non-Working
- E) Maximum Remuneration

In case of Book loss or <b>BOOK PROFIT</b> upto ₹ 300000	₹150000 or 90% of book profit whichever is higher
On the balance of books profits	60%

Book Profit means the net profit as shown in the profit and loss account for the relevant PY, computed in the manner laid down in sections 28 to 44D as increased by the aggregate of the remuneration paid or payable to all partners of the firm if such amount has been deducted while computing the net profits.

**Analysis**

- only Income under the head PGBP is to be considered
- Current year and b/f depreciation is to be deducted
- B/f Losses and Chapter VI-A will not be deducted
- before remuneration and after interest which is deductible.

Section 78(1) – Where a change has occurred in the constitution of a firm, then nothing shall entitle the firm to have carried forward and set off so much of the loss proportionate to the share of a retired or deceased partner as exceeds his share of profits, if any, in the firm in respect of that previous year. However Unabsorbed depreciation is allowed to be carried forward.

Section 28 - Any interest, salary, bonus, commission or remuneration, by whatever name called, due to or received by a partner of a firm from such firm will be deemed to be income from business.(only to the extent it was allowed to partnership firm)

Section 10(2A) – Share in profits received by partners is exempt from tax.

Circular 8/2014 – Even if firm is not liable to pay tax on income because of exemption or deduction. Share in Profits received by partners is exempt u/s 10(2A).

**Assessment as a firm [Sec. 184]**

- a) A firm shall be assessed as a firm, only when the following conditions are satisfied:
- i) The partnership is evidenced by an instrument in writing;
  - ii) The shares of each partner are specified in such instrument;
  - iii) A copy of the partnership instrument as certified by all the partners is enclosed with the return of income in respect of the first assessment year for which the status of firm is claimed;
- b) The firm does not commit any default-as mentioned in sec.144 (empowering the Assessing Officer to make a best judgment assessment).

**Assessment when Sec.184 is not complied with [Sec.185]**

1. Where a firm does not comply with any of the provisions of sec.184 for any assessment year, the firm shall be continued to be assessed as firm for that assessment year.
2. However, in such cases, no deduction shall be allowed in respect of payment of any interest, salary, bonus, commission or remuneration to partners.
3. The amount of interest or salary etc. so disallowed in the hands of the firm shall not be chargeable to tax in the case of respective partners.

**Change in constitution [Sec.187]**

- a) Where at the time of making an assessment u/s.143 or u/s.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. (i.e., single assessment shall be made).
- b) For the purpose of assessment of a firm "change" in constitution of firm would mean the following:
  - i) If one or more 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(s) after the change; or
  - ii) All the partners continue with a change in their respective shares or in the shares of some of them.

Where the firm is dissolved on the death of any of its partners it will not be considered as a change in the constitution of the firm as per point (i) given above. It will be covered under section 189 (discussed later).

**Succession of a firm [Sec.188]**

Where a firm carrying on a business or profession is succeeded by another firm and the case is not covered by sec.187 (i.e., not a change in constitution) then separate assessments shall be made in the following manner:

- a) The predecessor firm shall be liable to be assessed in respect of income of previous year in which the succession took place up to the date of succession. The successor firm shall be liable to tax in respect of the income of that previous year derived after the date of succession.
- b) Liability of successor firm is same as stipulated in sec. 170.

**Joint and several liability of partners for the tax payable by the firm [Sec. 188A]**

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

Note: The liability of the legal representative of a deceased partner cannot exceed the value of estate inherited by him from such deceased partner - Sec. 159(6).

**Dissolution of firm (or) discontinuance of business or profession [Sec. 189]**

- a) Where a firm is dissolved or the business or profession is discontinued, for the purpose of **any proceeding pending** under the Income-tax Act, the firm shall be deemed to be in existence and the proceedings shall be continued accordingly.
- b) For the purpose of **initiating any proceeding** against such firm, the firm shall be deemed to be in existence.
- c) In respect of any tax, interest, penalty or any other sum payable by the firm, all persons who were partners, together with the legal heirs of any deceased partner, during the previous year when dissolution or the discontinuance took place shall be jointly and severally liable to pay any such amount.

**Case Laws****(CIT v. Great City Manufacturing Co)**

Can remuneration paid to working partners as per the partnership deed be considered as unreasonable and excessive for attracting disallowance under section 40A(2)(a) even though the same is within the statutory limit prescribed under section 40(b)(v)?

The Allahabad High Court, therefore, held that the question of disallowance of remuneration under section 40A(2)(a) does not arise in this case, since the Tribunal has found that all the three conditions mentioned above have been satisfied. Hence, the remuneration paid to working partners within the limits specified under section 40(b)(v) cannot be disallowed by invoking the provisions of section 40A(2)(a).

**Rashik Lal and Co., vs. CIT, 229 ITR 458 (SC).**

Where a person is a partner in a partnership firm in his representative capacity as the karta of a HUF, he occupies a dual position. Qua the partnership, he functions in the personal capacity; qua the third parties, in his representative capacity. As regards the firm, such a partner does not act in his representative capacity but only in his personal capacity like any other partner. If any remuneration is paid or commission is given to such a partner, the provisions of sec. 40(b) shall apply. The partner may be under an obligation to hand over the money received by him to the person whom he is representing. That will not change the character of the payment by the firm to its partner or the status of the partner in the firm. The provisions of sec. 40(b) shall clearly apply to such payment

**TAXATION OF INVESTMENT FUNDS**

Particulars	Investment Fund	Unit Holder
Income under the head “Profits and gains of business or profession” of the Investment Fund	<b>Taxable</b> Company or Firm – Rate as per Finance Act Other - MMR	Exempt under section 10(23FBB)
Income, other than profits and gains of business or profession	Exempt under section 10(23FBA)  <b>Investment fund is liable to deduct TDS u/s 194LBB</b> <u>Time of Deduction –</u> Payment or Credit Whichever is earlier <u>Rate of TDS –</u> Resident Payee – 10% Non-resident Payee/Foreign Company – Rates as per Finance Act.	Taxable @ Normal Rates

**Other Points:**

1. Any income accruing or arising to, or received by, a person, being a unit holder of an investment fund, out of investments made in the investment fund shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by, such person had the investments made by the investment fund, been made directly by him.
2. The income paid or credited by the investment fund shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder as if it had been received by, or had accrued or arisen to, the investment fund
3. Deemed credit on the last day of the previous year (if amount is not credit or paid)
4. The person responsible for crediting or making payment of the income on behalf of an investment fund and the investment fund are required to furnish, to unit holders and to the prescribed income-tax authority, a statement. Such statement should give details of the nature of the income paid or credited during the previous year and such other relevant details (30<sup>th</sup> June of AY – to Unit Holder) (30<sup>th</sup> November of AY – to Income tax authority)
5. If in any year there is a loss at the fund level, either current loss or the loss which remained to be set off, such loss shall not be allowed to be passed through to the investors but has to be carried over at fund level to be set off against income of the next year in accordance with the provisions of Chapter VI