



CONTENTS

| | PAGE |
|---|------|
| Profile of Bharatji Agrawal | I-3 |
| Message by Rajesh Bindal | I-4 |
| Foreword | I-5 |
| From the Desk of the Editor | I-7 |
| President's Message | I-11 |
| All India Federation of Tax Practitioners (AIFTP) | I-13 |
| About the Author | I-19 |
| Chapter-heads | I-21 |
| Abbreviations | I-49 |

CHAPTER 1

GENERAL

| | | |
|------------|--|---|
| Q.1 | What is a Partnership? | 1 |
| Q.2 | What is a Limited Liability Partnership (LLP)? | 2 |
| Q.3 | What is the difference between a Partnership and a Limited Liability Partnership? | 2 |
| Q.4 | How to register a Partnership Firm? | 3 |
| Q.5 | How to register a Limited Liability Partnership? | 4 |
| Q.6 | What are the consequences of non-registration of a Partnership Firm? | 4 |
| Q.7 | Can the Partners of an unregistered Partnership Firm <i>sue</i> for enforcing their rights under other Acts? | 4 |
| Q.8 | Who can become a Partner? | 5 |

| | PAGE |
|---|------|
| Q.9 What is the maximum number of Partners a Partnership Firm and a Limited Liability Partnership can have? | 5 |
| Q.10 Can a Hindu Undivided Family (HUF) become a Partner in a Partnership Firm or LLP? | 6 |
| Q.11 Who represents the Hindu Undivided Family in a Partnership Firm? | 6 |
| Q.12 Can a company become a Partner? | 7 |
| Q.13 Can a Trust become a Partner? | 7 |
| Q.14 Can two companies enter into a Partnership? | 8 |
| Q.15 Can two Partnership Firms enter into a Partnership? | 8 |
| Q.16 Can a Partnership deed be amended? | 9 |
| Q.17 Can a Partnership deed be amended retrospectively? | 9 |
| Q.18 Can a Partnership Firm purchase immovable property? | 10 |
| Q.19 Can Partners assign their property to the Partnership Firm? | 10 |
| Q.20 Can a Coparcener enter into a partnership with the Hindu Undivided Family in their individual capacity? | 11 |
| Q.21 Can a Minor be a Partner? | 11 |
| Q.22 Can a Firm be a pass-through entity? | 11 |
| Q.23 Does the doctrine of piercing/lifting/poking the corporate veil applicable to Partnership Firms? | 12 |
| Q.24 Is the principle of 'Substance over Form' applicable to Partnership Firms? | 12 |
| Q.25 Are the provisions of General Anti-Avoidance Rules (GAAR) applicable to Partnership Firms? | 12 |
| Q.26 Are provisions of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, applicable to Partnership Firms? | 13 |

| | PAGE |
|--|------|
| Q.27 Can the principle of mutuality apply to Partnership Firms? | 13 |
| Q.28 Can a Partnership Firm purchase agricultural land? | 13 |
| Q.29 Who is a “person” under the Indian Partnership Act, 1932? | 14 |

CHAPTER 2

OPERATIONAL ISSUES

| | |
|--|----|
| Q.30 Which method of accounting should be adopted by a Partnership Firm? | 15 |
| Q.31 Does the method of accounting have any bearing on Income-tax Act, 1961 (Act)? | 15 |
| Q.32 Can a Partnership Firm start its operations prior to registration of the Firm? | 16 |
| Q.33 What are ‘Book Profits’? | 16 |
| Q.34 How to compute Book Profits under the Income-tax Act, 1961? | 16 |
| Q.35 Can Capital gains form part of Book Profits? | 17 |
| Q.36 Can Income from other sources form part of Book Profits? | 17 |
| Q.37 Will advance money received in the course of business be considered for the purpose of determining “book profits”? | 18 |
| Q.38 What is the limit on remuneration under section 40(b)(v) of the Income-tax Act, 1961? | 18 |
| Q.39 Can the remuneration received by a Partner attract section 40A(2) of the Income-tax Act, 1961? | 19 |
| Q.40 What would amount to excessive remuneration drawn by a Partner? | 19 |
| Q.41 Can a Partner draw a salary? | 20 |
| Q.42 Can salary paid to a partner be disallowed in the hands of the Partnership Firm? | 20 |

| | PAGE |
|---|------|
| Q.43 Can a Firm pay salary to a Hindu Undivided Family (HUF) which is a Partner in the Partnership Firm? | 20 |
| Q.44 Can a Partnership Firm pay commission to its Partners? | 21 |
| Q.45 Can commission paid to a partner be disallowed in the hands of the Partnership Firm under section 40A(2) of the Income-tax Act, 1961? | 21 |
| Q.46 Can a Partnership Firm pay commission to a Hindu undivided family, which is a Partner in the Partnership Firm? | 22 |
| Q.47 Can a Partnership Firm pay bonus to its Partners? | 22 |
| Q.48 Can bonus paid to a partner be disallowed in the hands of the Partnership Firm? | 23 |
| Q.49 Can a Partnership Firm pay interest to its Partners? | 23 |
| Q.50 Can interest paid to a partner be disallowed in the hands of the Partnership Firm? | 23 |
| Q.51 Can a Partnership Firm pay interest on the Partner's current account? | 24 |
| Q.52 Can a Partnership Firm pay interest on the deposits made by the HUF and not by the Individual Partner? | 24 |
| Q.53 Will deduction on payment of interest on partner's capital be allowed where the income is computed on presumptive basis? | 25 |
| Q.54 What is the maximum rate of interest allowed to a Partner? | 25 |
| Q.55 Can a Firm receive interest on loan advanced to a Partner? | 25 |
| Q.56 Can a Partnership Firm set-off interest payable and receivable from a Partner? | 26 |
| Q.57 Can remuneration or salary be disallowed in a best judgment assessment under section 144 of the Income-tax Act, 1961? | 26 |

| | PAGE |
|--|------|
| Q.58 What is the rate of tax applicable to a Partnership Firm? | 27 |
| Q.59 Are provisions of Minimum Alternate Tax (MAT) applicable to a Partnership Firm? | 27 |
| Q.60 Can a Partnership firm be a charitable organization? | 28 |
| Q.61 Can a Partnership firm make donations? | 28 |
| Q.62 Are there any taxes on distribution of profits to the Partners? | 28 |
| Q.63 Are provisions of section 2(22)(e) of the Income-tax Act, 1961 <i>i.e.</i> , deemed dividend applicable to Partnership Firms? | 29 |
| Q.64 Where addition is made in the hands of the Firm on substantive basis, can the same addition be made in the hands of the Partner on protective basis? | 29 |
| Q.65 Can a Partner claim deduction for expenses against remuneration received from the Partnership Firm? | 30 |
| Q.66 Can a Partnership Firm give discounts to its Partners? | 30 |
| Q.67 Whether the provisions of presumptive taxation are applicable to the remuneration and interest received by a Partner? | 30 |
| Q.68 Does a Partner have to pay tax on the share of profits received from the partnership firm? | 31 |
| Q.69 Whether premium paid on keyman Insurance Policy a deductible expense for a Partnership Firm or a Limited Liability Partnership? | 32 |
| Q.70 What is the difference between a Partnership firm/Limited Liability Partnership doing business and a Partnership Firm/Limited Liability Partnership in profession? | 32 |

CHAPTER 3
ISSUES ON RESIDENCY

| | | |
|-------------|--|----|
| Q.71 | How to determine the residential status of a Partnership Firm under the Income-tax Act, 1961? | 33 |
| Q.72 | How to determine the residential status of a Limited Liability Partnership? | 33 |
| Q.73 | How to determine the residential status of a Partnership Firm and a Limited Liability Partnership under the Foreign Exchange Management Act, 1999? | 34 |
| Q.74 | What is a Foreign Limited Liability Partnership? | 34 |
| Q.75 | Can a Non-Resident be a Partner in a Partnership Firm? | 35 |
| Q.76 | Can a Firm have a majority of Non-Residents as Partners? | 35 |
| Q.77 | Can remuneration be paid to Non-Resident Partners? | 36 |
| Q.78 | Can interest be paid to Non-Resident Partners? | 36 |
| Q.79 | What are the regulations on Foreign Direct Investment into a Partnership Firm? | 37 |
| Q.80 | Can the management and control of a Partnership firm/Limited Liability Partnership be outside India? | 37 |
| Q.81 | Are the provisions of Place of Effective Management (PoEM) applicable to Partnership Firms/Limited Liability Partnership? | 38 |
| Q.82 | Can Foreign Firms have Permanent Establishment (PE) in India? | 38 |
| Q.83 | Can the existence of a Partner as an agent of a Firm result in Agency Permanent Establishment? | 39 |

| | PAGE |
|---|------|
| Q.84 Are the provisions of Transfer Pricing applicable to Partnership Firms/Limited Liability Partnerships? | 39 |
| Q.85 What are the situations where Transfer Pricing is applicable to Partnership Firms/Limited Liability Partnerships? | 39 |
| Q.86 Does the residential status of the Managing Partner matter? | 42 |
| Q.87 What are the consequences in change in the residential status of a Partnership Firm/Limited Liability Partnership? | 42 |
| Q.88 Can residents invest in a Foreign Partnership Firm? | 42 |
| Q.89 Whether fee received by Non-resident Partner outside India on behalf of the Partnership Firm situated in India, taxable? | 43 |
| Q.90 Can an unregistered Partnership Firm make an Overseas Direct Investment? | 43 |
| Q.91 Can Partnership Firm/Limited Liability Partnerships make overseas direct investment under the Automatic Route? | 43 |
| Q.92 Can the partners of a partnership firm hold shares of the overseas Joint Venture (JV)/ Wholly Owned Subsidiary (WOS) for and on behalf of the firm? | 43 |
| Q.93 Can a Foreign Firm purchase agricultural land? | 44 |

CHAPTER 4

COMPLIANCES

| | |
|--|----|
| Q.94 Does a Partnership Firm need to acquire a Permanent Account Number (PAN)? | 45 |
| Q.95 When does a Partnership Firm/Limited Liability Partnership have to file its Annual Return? | 45 |

| | PAGE |
|--|------|
| Q.96 How does a Partnership Firm maintain its books of account? | 46 |
| Q.97 Who signs the Income-tax returns of the Partnership Firm? | 46 |
| Q.98 Does a Partnership Firm/Limited Liability Partnership have to be audited? | 47 |
| Q.99 Do Partners in a Partnership Firm have to be Audited? | 47 |
| Q.100 What are the consequences in failure to get the accounts audited? | 48 |
| Q.101 Does a Partnership Firm/Limited Liability Partnership have Advance-tax compliance? | 48 |
| Q.102 Does a Partnership Firm/Limited Liability Partnerships have to Deduct tax at Source? | 48 |
| Q.103 Does a Partnership Firm have to Collect tax at Source? | 49 |
| Q.104 Do Partnership Firms/Limited Liability Partnerships have to prepare a Transfer Pricing Study Report? | 49 |
| Q.105 Does a Partnership Firm/Limited Liability Partnerships require registration under Goods and Services Tax Act, 2017 (GST)? | 50 |
| Q.106 Are there any specific compliances for a Limited Liability Partnership? | 50 |

CHAPTER 5

**REGISTRATION AND INCEPTION OF A PARTNERSHIP FIRM/
LIMITED LIABILITY PARTNERSHIP**

| | |
|--|----|
| Q.107 How is Capital Introduced in a Partnership Firm/Limited Liability Partnership? | 52 |
| Q.108 Is section 68 of the Income-tax Act, 1961 <i>i.e.</i> , Cash credits, applicable on introduction of Capital? | 52 |
| Q.109 Whether “source of source” rule under section 68 of the Income-tax Act, 1961 applicable to Partnership Firm/Limited Liability Partnerships? | 53 |

| | PAGE |
|--|------|
| Q.110 Are provisions of Benami Transactions (Prohibition) Act, 1988 applicable on introduction of Capital in a Partnership Firm? | 54 |
| Q.111 Can there be two Partnership Firms with the same Partners? | 54 |
| Q.112 Whether revaluation of assets on contribution to a Partnership Firm, taxable in the hands of the Partner? | 56 |
| Q.113 What are the tax implications of revaluation of stock-in-trade at the time of introducing stock-in-trade as a capital contribution? | 57 |
| Q.114 What is the advisable number of Partners in a Partnership Firm? | 57 |
| Q.115 Should the Partnership deed have any clause so as to protect itself from dissolution? | 58 |
| Q.116 Does the profit-sharing ratio be as per the Capital Contribution of the Partners? | 58 |
| Q.117 Do all the Partners have to be paid interest according to their Capital Contribution? | 59 |
| Q.118 Do all the Partners have to be paid interest at the same rate? | 59 |
| Q.119 Can a Partner assign their immovable property in the name of the Partnership Firm? | 59 |
| Q.120 Will assignment of immovable property in the name of the Partnership Firm amount to Transfer? | 60 |
| Q.121 Whether assignment of stock-in-trade by a Partner in the name of the Partnership Firm amounts to Sale? | 60 |
| Q.122 Can a share in the partnership Firm be allotted to a Partner without any Capital Contribution? | 60 |
| Q.123 What are Professional Firms? | 61 |
| Q.124 Can a Firm be a Joint Venture? | 61 |
| Q.125 Can a Special Purpose Vehicle be a Partnership Firm? | 61 |

CHAPTER 6

SECTION 9B OF THE INCOME-TAX ACT, 1961

| | | |
|--------------|---|----|
| Q.126 | What is section 9B of the Income-tax Act, 1961? | 63 |
| Q.127 | When was section 9B of the Income-tax Act, 1961 introduced? | 63 |
| Q.128 | Whether section 9B of the Income-tax Act, 1961 passes the test of Constitutional Validity? | 64 |
| Q.129 | Can section 9B of the Income-tax Act, 1961 have retroactive applicability? | 64 |
| Q.130 | When is section 9B of the Income-tax Act, 1961 applicable? | 64 |
| Q.131 | Whether section 9B of the Income-tax Act, 1961 applicable on cash payment? | 65 |
| Q.132 | How to compute 'Capital Gains' or 'Profits & Gains' under section 9B of the Income-tax Act, 1961? | 65 |
| Q.133 | How is Fair Market Value of the asset or stock in trade computed? | 65 |
| Q.134 | What is a specified entity? | 66 |
| Q.135 | Who is a specified person? | 66 |
| Q.136 | Are there any guidelines issued by the Central Board of Direct Taxes for the purpose of section 9B of the Income-tax Act, 1961? | 66 |
| Q.137 | Whether deeming sections like section 43CA, section 50C or section 56(2)(x)(b) applicable to transactions covered under section 9B of the Income-tax Act, 1961? | 66 |
| Q.138 | Whether section 9B of the Income-tax Act, 1961 applicable to distribution of assets without reconstitution or dissolution of the specified entity? | 67 |
| Q.139 | Whether section 9B of the Income-tax Act, 1961 is applicable to payment made to legal heirs of the deceased specified person? | 67 |

| | PAGE |
|---|------|
| Q.140 Who is liable to pay tax under section 9B of the Income-tax Act, 1961? | 68 |
| Q.141 Whether section 9B of the Income-tax Act, 1961 is applicable to distribution of rural Agricultural Land? | 68 |
| Q.142 Can the Assessing Officer assess a Firm after dissolution as per section 189(1) of the Income-tax Act, 1961? | 69 |
| Q.143 Whether deduction claimed under section 29 of the Income-tax Act, 1961 will be applicable to 'Profits & Gains' computed as per section 9B of the Income-tax Act, 1961? | 69 |
| Q.144 Whether Cost of acquisition/Cost of improvement will be applicable as deduction to 'Capital Gains' computed as per section 9B of the Income-tax Act, 1961? | 69 |
| Q.145 How is Capital Gains on transfer of self-generated assets and self-generated goodwill as per section 9B of the Income-tax Act, 1961? | 70 |
| Q.146 Will the Specified entity get the benefit under section 48(iii) of the Income-tax Act, 1961? | 70 |

CHAPTER 7

SECTION 45(4) OF THE INCOME-TAX ACT, 1961

| | |
|--|----|
| Q.147 What is section 45(4) of the Income-tax Act, 1961? | 71 |
| Q.148 When was section 45(4) of the Income-tax Act, 1961 introduced? | 71 |
| Q.149 What is the difference between the erstwhile section 45(4) of the Income-tax Act, 1961 and the new provision? | 72 |
| Q.150 Whether section 45(4) of the Income-tax Act, 1961 passes the test of Constitutional Validity? | 72 |
| Q.151 Can section 45(4) of the Income-tax Act, 1961 have retroactive applicability? | 73 |

| | PAGE |
|--|------|
| Q.152 When is section 45(4) of the Income-tax Act, 1961 applicable? | 73 |
| Q.153 Whether section 45(4) of the Income-tax Act, 1961 applicable on dissolution? | 73 |
| Q.154 Who is liable to pay tax under section 45(4) of the Income-tax Act, 1961? | 73 |
| Q.155 Does section 45(4) of the Income-tax Act, 1961 override section 45(1) of the Income-tax Act, 1961? | 74 |
| Q.156 How are Gains computed under section 45(4) of the Income-tax Act, 1961? | 74 |
| Q.157 Whether revaluation of capital accounts to be considered for the purpose of computation of Capital Gains under section 45(4) of the Income-tax Act, 1961? | 75 |
| Q.158 What are the implications if the Capital account balance is negative? | 75 |
| Q.159 Can self-generated Goodwill or self-generated assets be revalued for the purpose of section 45(4) of the Income-tax Act, 1961? | 75 |
| Q.160 What is self-generated Goodwill and self-generated assets? | 76 |
| Q.161 Whether section 45(4) of the Income-tax Act, 1961 operates exclusive of section 9B of the Income-tax Act, 1961? | 76 |
| Q.162 Whether the Capital Gains under section 45(4) of the Income-tax Act, 1961, Long-term or short-term Capital Gains? | 76 |
| Q.163 What is section 48(iii) of the Income-tax Act, 1961? | 77 |
| Q.164 How are assets revalued? | 77 |
| Q.165 How to claim the benefit of revaluation of assets? | 77 |
| Q.166 Whether depreciation is allowed on the amount of revaluation? | 78 |
| Q.167 How and when to file Form 5C? | 78 |

| | | PAGE |
|--------------|---|------|
| Q.168 | Whether any share of profits is to be considered for the purpose of section 45(4) of the Income-tax Act, 1961? | 78 |
| Q.169 | Whether revaluation of stock in trade is accounted for the purpose of section 45(4) of the Income-tax Act, 1961? | 79 |
| Q.170 | Whether section 45(4) of the Income-tax Act, 1961 is applicable to Slump Sale? | 79 |
| Q.171 | Whether section 45(4) of the Income-tax Act, 1961 is applicable to payments made to the legal heirs of the specified persons? | 79 |
| Q.172 | Whether the specified entity can claim the benefit of deduction under section 54EC and section 54EE of the Income-tax Act, 1961 on Capital Gains under section 45(4) of the Income-tax Act, 1961? | 80 |

CHAPTER 8

**INTERPLAY BETWEEN SECTION 9B &
SECTION 45(4) OF THE INCOME-TAX ACT, 1961**

| | | |
|--------------|--|----|
| Q.173 | When will both provisions be applicable? | 81 |
| Q.174 | Which section will be made applicable first? | 81 |
| Q.175 | What is the impact of 'gains' and 'profits' computed as per section 9B of the Income-tax Act, 1961 on computation under section 45(4) of the Income-tax Act, 1961? | 81 |

CHAPTER 9

ADMISSION OF A PARTNER

| | | |
|--------------|---|----|
| Q.176 | How to admit a Partner? | 82 |
| Q.177 | Can a Partner be admitted at any time during the year? | 82 |
| Q.178 | Does admission of a Partner amount to reconstitution of the Firm? | 82 |

| | PAGE |
|--|------|
| Q.179 Does a 'Retirement cum Admission', where the profit-sharing ratios of other partners remain unchanged, also amount to reconstitution of the Firm? | 83 |
| Q.180 Can the share in a Partnership firm be valued? | 84 |
| Q.181 Are provisions of section 56(2)(x) of the Income-tax Act, 1961 applicable to a share in a Partnership Firm? | 84 |
| Q.182 Do the assets of a Firm have to be revalued upon admission of a Partner? If yes, is there a tax incidence? | 84 |
| Q.183 Is section 9B of the Income-tax Act, 1961 applicable on admission of a Partner? | 84 |
| Q.184 Is section 45(4) of the Income-tax Act, 1961 applicable on admission of a Partner? | 85 |
| Q.185 Do the Partners have to prepare a fresh Partnership Deed every time a new Partner is admitted or will an amendment to the existing deed suffice? | 85 |
| Q.186 Is there any specific compliance for a Limited Liability Partnerships (LLP) on admission of a Partner? | 85 |

CHAPTER 10

RETIREMENT OF A PARTNER

| | |
|---|----|
| Q.187 How does a Partner retire from a Partnership Firm? | 87 |
| Q.188 Can a Partner retire at any time of the year? | 87 |
| Q.189 Who determines the nature of pay-out on retirement? | 87 |
| Q.190 Does retirement of a Partner amount to reconstitution of the Firm? | 88 |
| Q.191 Does retirement amount to dissolution of the Partnership Firm? | 88 |

| | PAGE |
|---|------|
| Q.192 Does a 'Retirement-cum-Admission', where the profit-sharing ratios of other partners remain unchanged, also amount to reconstitution of the Firm? | 88 |
| Q.193 Does a retirement of a Partner where the profit-sharing ratios of other partners remain unchanged, also amount to reconstitution of the Firm? | 88 |
| Q.194 What happens when majority of the Partners retire? | 89 |
| Q.195 Are provisions of section 56(2)(x) of the Income-tax Act, 1961 applicable on sale of a share in a Partnership Firm during retirement of a Partner? | 89 |
| Q.196 Is section 9B of the Income-tax Act, 1961 applicable on retirement of a Partner? | 89 |
| Q.197 Is section 45(4) of the Income-tax Act, 1961 applicable on retirement of a Partner? | 90 |
| Q.198 Do the Partners have to prepare a fresh Partnership Deed every time a Partner is retirement or will an amendment to the existing deed suffice? | 90 |
| Q.199 Can a retired Partner claim rights in subsequent profits? | 90 |
| Q.200 Is there any specific compliance for a Limited Liability Partnership (LLP) on retirement of a Partner? | 90 |
| Q.201 Can section 45(1) of the Income-tax Act, 1961 attract on retirement of a Partner, in the hands of a Partner? | 91 |
| Q.202 Is the non-compete fee received on retirement, taxable under the Act? | 91 |
| Q.203 Whether a sum received for not using the Firm name or brand taxable? | 91 |
| Q.204 What is the tax treatment on sale of stock-in-trade received by a Partner after retirement? | 91 |

| | PAGE |
|--|------|
| Q.205 Whether allotment of retiring partner's share to an existing partner taxable or third person? | 92 |

CHAPTER 11

**EXPULSION, DEATH AND
INSOLVENCY OF A PARTNER**

| | |
|--|----|
| Q.206 What is an expulsion of a Partner? | 93 |
| Q.207 How can a Partner be expelled? | 93 |
| Q.208 Who determines the nature of pay-out on expulsion? | 94 |
| Q.209 What is the journal entry on expulsion of a Partner? | 94 |
| Q.210 Is it necessary that the Partnership Deed to have a clause empowering the partners to expel a Partner? | 94 |
| Q.211 Can the expulsion be challenged before an Authority? | 94 |
| Q.212 What are the consequences of an invalid expulsion? | 95 |
| Q.213 Is section 9B of the Income-tax Act, 1961 applicable on expulsion of a Partner? | 95 |
| Q.214 Is section 45(4) of the Income-tax Act, 1961 applicable on expulsion of a Partner? | 95 |
| Q.215 Do the Partners have to prepare a fresh Partnership Deed every time a Partner is expulsion or will an amendment to the existing deed suffice? | 96 |
| Q.216 Is there any specific compliance for a Limited Liability Partnership (LLP) on the expulsion of a Partner? | 96 |
| Q.217 What are the implications on the death of a Partner? | 96 |
| Q.218 Who determines the nature of pay-out to the legal heirs of the deceased Partner? | 97 |
| Q.219 What are the journal entries required to be passed in case of a death of a Partner? | 97 |

| | PAGE |
|---|------|
| Q.220 Does death of a partner amount to reconstitution of a Firm under section 9B or section 45(4) of the Income-tax Act, 1961? | 97 |
| Q.221 Does death of a partner amount to Dissolution of a Firm for the purpose section 9B of the Income-tax Act, 1961? | 98 |
| Q.222 Will death of a Partner result in two assessments? | 98 |
| Q.223 Does a legal heir have to be brought in as a Partner? | 99 |
| Q.224 Are legal heirs bound by the terms of the Partnership Deed? | 99 |
| Q.225 Can a Partner of the Firm also be the legal heir of a deceased Partner? | 100 |
| Q.226 Does the firm continue till the end of the financial year with the legal heirs or is the firm reconstituted immediately? | 100 |
| Q.227 What happens when there are only two partners and one dies? | 100 |
| Q.228 In case of a Partnership between two partners, can the surviving partner enter into a partnership with the legal heirs of the surviving partner? | 101 |
| Q.229 Whether any ex-gratia payment made to the legal heirs of a deceased Partner for services rendered to the Firm, taxable? | 101 |
| Q.230 Is section 9B of the Income-tax Act, 1961 applicable on the death of a Partner? | 101 |
| Q.231 Is section 45(4) of the Income-tax Act, 1961 applicable on the death of a Partner? | 102 |
| Q.232 Do the Partners have to prepare a fresh Partnership Deed on the death a Partner is expulsion or will an amendment to the existing deed suffice? | 102 |
| Q.233 Is there any specific compliance for an LLP on the death of a Partner? | 102 |

| | PAGE |
|--|------|
| Q.234 What are the implications of being adjudicated as insolvent? | 102 |
| Q.235 Does insolvency of a Partner amount to dissolution of the Partnership Firm? | 103 |
| Q.236 Is a Partner responsible for the act of the firm after his insolvency? | 103 |

CHAPTER 12

RECONSTITUTION OF A PARTNERSHIP FIRM

| | |
|--|-----|
| Q.237 What is reconstitution of a Partnership Firm? | 104 |
| Q.238 Does a change in profit sharing ratio amount to reconstitution of the Firm? | 104 |
| Q.239 Does a change in capital contribution amount to reconstitution of the Firm? | 105 |
| Q.240 Is section 9B of the Income-tax Act, 1961 applicable if payment is made in cash to a Partner? | 105 |
| Q.241 Where all the partners are family members and there is a distribution of asset/share in partnership as per a Deed of Family Settlement, will it amount to reconstitution of the Partnership Firm? | 105 |

CHAPTER 13

DISSOLUTION OF A PARTNERSHIP FIRM

| | |
|---|-----|
| Q.242 What is dissolution of a Partnership Firm? | 107 |
| Q.243 When can a firm be dissolved? | 107 |
| Q.244 What is dissolution by will? | 108 |
| Q.245 Can a Partnership Firm get automatically dissolved, if the partnership was for a fixed tenure? | 108 |
| Q.246 What is dissolution by the Court? | 108 |
| Q.247 Does dissolution of a Firm attract section 9B of the Income-tax Act, 1961? | 109 |

| | PAGE |
|---|------|
| Q.248 Will dissolution of a Firm attract section 9B of the Income-tax Act, 1961 if the payment is made in cash? | 109 |
| Q.249 Does dissolution of a Firm attract section 45(4) of the Income-tax Act, 1961? | 109 |
| Q.250 Does compulsory dissolution attract Income tax provisions? | 109 |
| Q.251 Are partners liable for acts done prior to dissolution? | 110 |
| Q.252 What is the Income-tax incidences in the hands of the Partners upon dissolution of the Partnership Firm? | 110 |
| Q.253 Whether sale of goodwill of the Firm is taxable? | 110 |
| Q.254 Can a warrant for search & seizure be issued in the name the Partnership Firm after its dissolution? | 110 |
| Q.255 Can a Firm waive a loan given to a Partner and <i>vice versa</i> ? What would be the implications under the Act? | 111 |

CHAPTER 14

CONVERSION OF A PARTNERSHIP FIRM

| | |
|---|-----|
| Q.256 Can a proprietary concern be converted into a Partnership? | 112 |
| Q.257 Can a firm be converted into a Company? | 113 |
| Q.258 Can an unregistered Partnership Firm be converted into a Company? | 113 |
| Q.259 What are the consequences of premature transfer of shares of the resultant company? | 113 |
| Q.260 Can a Partnership Firm be converted into a Limited Liability Partnership? | 114 |
| Q.261 What are the tax implications of converting a firm into a Limited Liability Partnership? | 114 |

| | PAGE |
|--|------|
| Q.262 What are the conditions under the Income-tax Act, 1961 for conversion of a Firm/Limited Liability Partnership into a Company? | 115 |
| Q.263 Can Company be converted into a Limited Liability Partnership? | 116 |
| Q.264 What are the conditions under the Income-tax Act, 1961 for conversion of a Company into a Limited Liability Partnership? | 116 |
| Q.265 Whether exemptions/deductions granted to a Partnership Firm be continued after conversion? | 117 |
| Q.266 What are the consequences of a Partnership Firm being sold in a Slump Sale? | 118 |
| Q.267 Is a successor entity entitled to deduction of bad debts incurred by the predecessor entity? | 118 |

CHAPTER 15

SET-OFF AND CARRY FORWARD OF LOSSES

| | |
|--|-----|
| Q.268 What is set-off of losses? | 120 |
| Q.269 What is carry forward of losses? | 120 |
| Q.270 Carry forward of losses in case of a retirement of a Partner? | 120 |
| Q.271 Carry forward of losses in case of a conversion of a Partnership Firm? | 121 |
| Q.272 Where a partnership firm is dissolved and the business is continued by a proprietary concern, will the proprietary concern be entitled to carry forward and set-off the losses of the Partnership Firm? | 121 |
| Q.273 Can the losses of a sole proprietorship concern be carried forward by the legal heirs by forming a Partnership? | 122 |
| Q.274 Can a partner of an unregistered firm set-off her share in losses against her personal income? | 122 |

CHAPTER 16**GIFT IMPLICATIONS**

| | | |
|--------------|---|-----|
| Q.275 | Can a Partnership Firm accept gifts? | 123 |
| Q.276 | Can a Partnership Firm accept gifts from sister concerns/associated enterprises? | 123 |
| Q.277 | Can a Partnership Firm accept grants? | 123 |
| Q.278 | Will Partners gifting other partners be taxable? | 124 |
| Q.279 | Can a Partner bring capital which was received as a gift? | 124 |
| Q.280 | Can a Partnership Firm distribute assets to a partner during the subsistence of the Partnership Firm? | 124 |

CHAPTER 17**LIABILITY AND PROSECUTION**

| | | |
|--------------|--|-----|
| Q.281 | Who is liable for the Income-tax liability of the Partnership Firm? | 125 |
| Q.282 | What will happen if the Firm does not pay tax on time? | 125 |
| Q.283 | Where the Partners of a firm are also directors in a Company, can the Firm be made liable for the tax liability of the Company? | 125 |
| Q.284 | Can a minor be held liable for Income-tax dues? | 126 |
| Q.285 | If the Income-tax liabilities are not paid, can the Income-tax Authorities attach the properties and freeze the bank account of the Partnership Firm? | 126 |
| Q.286 | If the Income-tax liabilities of the Firm are not paid, can the Income-tax Authorities attach the properties and freeze the bank account of the Partner? | 126 |

| | PAGE |
|--|------|
| Q.287 If the Income-tax liabilities of the Partner is not paid, can the Income-tax Authorities attach the properties and freeze the bank account of the Partnership Firm? | 127 |
| Q.288 Who is the 'Principal Officer' of the Partnership Firm? | 127 |
| Q.289 Can other partners other than the Managing Partner be prosecuted by the Income-tax Authorities? | 128 |
| Q.290 Can sleeping Partners be prosecuted by the Income-tax Authorities? | 128 |
| Q.291 Can a minor be prosecuted by the Income-tax Authorities? | 129 |
| Q.292 Can a Partner over the age of 70 be prosecuted under the Income-tax? | 129 |
| Q.293 Can the Offence be compounded? | 130 |
| Q.294 Whether compounding fee would be allowable as deduction? | 130 |

CHAPTER 18

STAMP DUTY IMPLICATIONS

| | |
|--|-----|
| Q.295 Is Stamp Duty applicable on registration of a Partnership Deed? | 131 |
| Q.296 Is Stamp Duty applicable on assignment of a property to a Partnership Firm? | 131 |
| Q.297 Can the assignment of a property attract section 50C or 56(2)(x) of the Income-tax Act, 1961? | 131 |
| Q.298 Is Stamp Duty applicable on assets taken over by a retiring partner? | 132 |
| Q.299 Is Stamp Duty applicable on assets taken over by the legal heirs on death of a Partner? | 132 |
| Q.300 Is Stamp Duty applicable on assets taken over by partners on dissolution of a Firm? | 132 |
| Q.301 Is Stamp Duty applicable on transfer of a share of Partnership? | 132 |

| | PAGE |
|--|------|
| Q.302 Will the distributed assets attract section 43CA or 50C or 56(2)(x) of the Income-tax Act, 1961? | 133 |
| Q.303 Is Stamp Duty applicable on conversion of a Partnership Firm to a Limited Liability Partnership or Company? | 133 |
| Q.304 Can a share in Partnership Firm be settled in a Trust? | 134 |

CHAPTER 19

GOODS & SERVICES TAX (GST) IMPLICATIONS

| | |
|---|-----|
| Q.305 How does a Partnership Firm get its GST registration number? | 135 |
| Q.306 Does a new number have to be obtained on the reconstitution of the Partnership Firm? | 135 |
| Q.307 Does a new number have to be obtained on the conversion of the Partnership Firm to a Limited Liability Partnership or a Company? | 135 |
| Q.308 Who can be liable under recover proceedings under GST? | 136 |
| Q.309 Who can be arrested under GST? | 136 |
| Q.310 Can a sleeping partner be arrested under GST? | 136 |

CHAPTER 20

LABOUR LAW IMPLICATIONS

| | |
|--|-----|
| Q.311 Whether The Payment of Gratuity Act, 1972 is applicable to Partnership Firms? | 138 |
| Q.312 Whether The Payment of Bonus Act, 1965 is applicable to Partnership Firms? | 138 |
| Q.313 Whether The Payment of Wages Act, 1936 is applicable to Partnership Firms? | 139 |
| Q.314 Whether The Minimum Wages Act, 1948 applicable to Partnership Firms? | 139 |
| Q.315 Whether The Factories Act, 1948 applicable to Partnership Firms? | 139 |

| | PAGE |
|---|------|
| Q.316 Whether The Employees' State Insurance Act, 1948 is applicable to Partnership Firms? | 140 |
| Q.317 Whether The Employees Provident Fund and Miscellaneous Provisions Act, 1952 applicable to Partnership Firms? | 140 |
| Q.318 Under which section is payments made to Employee's Provident Fund, deductible? | 140 |
| Q.319 Under which section is payments made to Employer's Provident Fund, deductible? | 141 |
| Q.320 What will the implications of the Four new Labour Codes <i>i.e.</i> , The Code on Wages, 2019; The Code on Social Security, 2020; The Occupational Safety, Health and Working Conditions Code, 2020; and The Industrial Relations Code, 2020 on Partnership Firms? | 141 |

CHAPTER 21

**ASSOCIATION OF PERSONS
AND BODY OF INDIVIDUALS**

| | |
|--|-----|
| Q.321 What is an Association of Persons (AOP)? Who can be members of an AOP? | 142 |
| Q.322 What is a Body of Individuals (BoI)? Who can form a BoI? | 142 |
| Q.323 What is the difference between an AoP and a BoI? | 142 |
| Q.324 What is the manner of taxation of AOP and BOI? | 143 |
| Q.325 Is there any specific provision under the Income-tax Act, 1961 for disallowance of payments made to the members of an AOP? | 144 |
| Q.326 Is there any specific provision under the Income-tax Act, 1961 for computing the share of a member in the Income of an AOP? | 145 |
| Q.327 Does the Ld. Assessing Officer/Department have an option to either assess an AOP or its members? | 145 |

| | PAGE |
|---|------|
| Q.328 What is “Maximum Marginal Rate” (MMR)? | 146 |
| Q.329 When can the members share be considered to be unknown and liable to be taxed at Maximum Marginal Rate? | 146 |
| Q.330 Whether the provisions of section 9B and section 45(4) of the Income-tax Act, 1961 are applicable to AOPs and BOIs? | 147 |
| Q.331 Who are the specified persons in an AOP and BOI for the purpose of section 9B and section 45(4) of the Income-tax Act, 1961? | 148 |

CHAPTER 22

MISCELLANEOUS

| | |
|--|-----|
| Q.332 How is a Limited Liability Partnership wound up? | 149 |
| Q.333 Whether winding up of an LLP/Partnership Firm is akin to dissolution of an LLP/Partnership Firm? | 149 |
| Q.334 Who can file the appeal after dissolution of the Partnership Firm? | 149 |
| Q.335 Can the dissolution of an LLP be challenged? | 150 |
| Q.336 Is there a Tribunal for issues arising out of LLP Act, 2008? | 150 |
| Q.337 Who is liable to repay a loan borrowed by a Partnership Firm? | 150 |
| Q.338 What is the consequence of dishonour of a cheque issued by a Partnership Firm? | 150 |
| Q.339 Can a Partner be a guarantor for the loan availed by the Partnership Firm and <i>vice versa</i> ? | 151 |
| Q.340 Can an action under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) be initiated against the guarantor? | 151 |
| Q.341 As per SARFAESI does Income-tax dues have priority over a secured creditor? | 151 |

| | PAGE |
|--|------|
| Q.342 Is Insolvency and Bankruptcy Code, 2016 (IBC) applicable to Partnership Firms? | 152 |
| Q.343 Can IBC proceedings be initiated against the guarantor? | 152 |
| Q.344 Can an arbitration clause be included in a Partnership deed, so as to refer the disputes to arbitration? | 153 |
| Q.345 Where a Partnership Firm is dissolved can a third party enforce the Arbitration clause in the Arbitration agreement entered between the third party and Partnership Firm? | 154 |
| Q.346 Can a search proceeding at the Partner's residence be considered as a search on the Partnership firm? | 154 |
| Q.347 Can it be contended that the stock found at the premises of a Partner in the course of search was their personal property and did not belong to the Partnership Firm? | 155 |
| Q.348 Can the statement of one partner be retracted by another partner? | 155 |
| Q.349 Can the premises of an erstwhile partner be searched where the search warrant is in the name of the Partnership Firm? | 155 |
| Q.350 Can an addition be made on a Partnership Firm purely on the basis of a confessional statement of a Partner, and without any tangible material or evidence? | 156 |
| Q.351 Where during a search proceeding, a partner surrenders unaccounted money, can the Department continue to make protective additions in the hands of the Partnership Firm? | 156 |
| Q.352 What is the validity of a statement given by a Partner during a survey proceeding? | 157 |
| Q.353 Whether a copy of the Partnership Deed is required to be submitted along with the return of Income? | 157 |

| | PAGE |
|---|------|
| Q.354 What are the consequences on not submitting a copy of the Partnership Deed along with the return of income? | 157 |
| Q.355 What are the implications under the Income-tax Act, 1961 in respect of credits appearing in the books of the Partnership Firm? | 158 |
| Q.356 What are the implications under the Income-tax Act, 1961 in respect of credits appearing in the name of partners in the books of the firm? | 159 |
| Q.357 In a case where receipts from a partner towards capital etc., has been recorded in the books of firm, whether assessment in the hands of partner can be made under section 68 of the Income-tax Act, 1961 on the basis of such credit entries in firm's books? | 159 |
| Q.358 Is it legally required for a firm to explain a source from where the partners had brought the amounts into the firm? | 160 |
| Q.359 Whether unexplained credits in the books of the firm can only be added under section 68 of the Income-tax Act, 1961 in the hands of the firm? | 160 |
| Q.360 Whether in respect of certain deposits appearing in the books of the Partnership firm in the name of its partners, can additions be made both in the hands of partners as well as firm in respect of same deposits? | 161 |

CHAPTER 23

SPECIMENS

| | |
|-------------------------------------|-----|
| A. Draft deed of Partnership | 162 |
| B. Draft deed of Admission | 167 |
| C. Draft deed of Retirement | 169 |

| | PAGE |
|----------------------------------|------|
| D. Draft dissolution deed | 171 |
| E. Draft LLP Agreement | 173 |

CHAPTER 24
CASE STUDIES

| | |
|---|-----|
| Case Study 1: Application of section 45(4) of the Income-tax Act, 1961 (Act) | 182 |
| Case Study 2: Application of section 9B and section 45(4) of the Income-tax Act, 1961 (Act) | 184 |
| Case Study 3: Computation of Capital Gain tax under section 45(4) of the Act Attribution of Profits under section 45(iii) of the Act | 186 |

Appendices

| | |
|---|-----|
| Appendix 1 : Indian Partnership Act, 1932 | 191 |
| Appendix 2 : Limited Liability Partnership Act, 2008 | 214 |
| Appendix 3 : Relevant Sections and Rules of Income-tax | 278 |
| Appendix 4 : Circular No. 14 of 2021, dated July 02, 2021 | 289 |
| List of cases | 297 |
| Subject Index | 307 |