



Income Tax Department

Government of India

377. Whether for assessment years subsequent to assessment year 1996-97, no deduction under section 40(b)(v) will be admissible unless partnership deed either specifies amount of remuneration payable to each individual working partner or lays down manner of quantifying such remuneration

1. The Board have received representations seeking clarification regarding disallowance of remuneration paid to the working partners as provided under section 40(b)(v) of the Income-tax Act. In particular, the representations have referred to two types of clauses which are generally incorporated in the partnership deeds. These are :

(i) The partners have agreed that the remuneration to a working partner will be the amount of remuneration allowable under the provisions of section 40(b)(v) of the Income-tax Act; and

(ii) The amount of remuneration to working partner will be as may be mutually agreed upon between partners at the end of the year.

It has been represented that the Assessing Officers are not allowing deduction on the basis of these and similar clauses in the course of scrutiny assessments for the reason that they neither specify the amount of remuneration to each individual nor lay down the manner of quantifying such remuneration.

2. The Board have considered the representations. Since the amended provisions of section 40(b) have been introduced only with effect from the assessment year 1993-94 and these may not have been understood correctly the Board are of the view *that liberal approach may be taken for the initial years. It has been decided that for the assessment years 1993-94 to 1996-97 deduction for remuneration to a working partner may be allowed on the basis of the clauses of the type mentioned at 1(i) above.*

3. In cases 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 in the computation of the firm's income.

4. *It is clarified that for the assessment years subsequent to the assessment year 1996-97, 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.*

Circular : No. 739, dated 25-3-1996.