

Remuneration to partners allowable if deed provides for remuneration computation in accordance with sec. 40(b)(v)

Summary – The Mumbai ITAT in a recent case of Unitec Marketing Services., (the Assessee) held that On harmonious interpretation of provisions of section 40(b)(v) as well as clauses of partnership deed, claim of remuneration paid to partners despite 'quantum' not specified in partnership deed was to be allowed

Facts

- The assessee filed its return of income on 12-9-2014 showing an income of Rs.79.60 lakhs.
- The Assessing Officer noted that assessee had claimed remuneration to partners amounting to Rs. 99.46 lakhs, however, there was no remuneration clause in the Partnership Deed.
- Upon show cause, the assessee firm submitted a deed of rectification of Partnership Deed. It was submitted that due to oversight, the provision of salary and remuneration to partners were excluded in the original Partnership deed and the same were inserted in the deed of rectification of Partnership deed.
- The Assessing Officer observed the rectified partnership deed but submitted that the relevant clause did not specify the amount of remuneration payable to each individual working partner or lay down manner of quantifying such remuneration, which was an important criteria for allowance of deduction under section 40(b)(v). The Assessing Officer also referred to CBDT Circular No. 739 of March 1996, which clearly barred the allowance of deduction if the same had not been quantified nor even the limit of total remuneration, is specified. The Assessing Officer thus disallowed the claim of remuneration which was then added to total income.
- On appeal the Commissioner(Appeals) upheld the order of the Assessing Officer.
- On appeal to the Tribunal:

Held

- The interpretation of the relevant provision contained in the partnership deed of the assessee is an important factor. The relevant clause-6 of the rectification of partnership deed provided that provision for salary/remuneration is computed as provided in section 40(b)(v) or any statutory enactment thereto and the same shall be distributed in their profit sharing ratio. The profit and loss of the business of the firm shall be arrived at after accounting for the said remuneration and interest so payable to the partners as a business expenditure of the firm.
- The provisions of section 40(b)(v) and Circular No. 739, dated 25-3-1996 have been considered. After taking cumulative effect of the facts of the present case, relevant clause of partnership deed and judgments cited by both the parties, it is viewed that a reading of section 40(b)(v) clearly shows

that amount of remuneration which does not exceed the amount specified in the Act is deductible. The Board has provided that either the amount of remuneration payable to each individual should be fixed in the agreement or the partnership agreement deed should lay down the manner of qualifying such remuneration. The circular has to be read along with section 40(b)(v) and has to be made subject to section 40(b)(v). This section does not lay down any condition of fixing the remuneration or the method of remuneration in the partnership deed. All that the section provides is that in case the payment of remuneration made to any working partner is in accordance with the terms of the partnership deed and does not exceed the aggregate amount as laid down in the subsequent portion of the section the deduction is permissible.

- Even otherwise, the remuneration had to be worked out based on certain percentage of the book profit. It is viewed that that the provisions of section 40(b)(v) of the I.T. Act as well as clause of the partnership deed are to be interpreted harmoniously. It is viewed that clause-6 of partnership deed of the assessee specifically contains that the salary/remuneration is to be computed as provided in section 40(b)(v) or any statutory enactment thereto. It has also been quantified that the profit and loss in the business of the firm shall be arrived at after accounting for the said remuneration and interest so double to the partners as the business expenditure of the firm.
- Therefore, keeping in view the above findings, the order of revenue authorities is set aside and the claim of remuneration paid to the partners is allowed.
- In the net result, the appeal filed by the assessee stands allowed.