Finance Act, 1992

Section 16 - Amendment of Section 40

In section 40 of the Income-tax Act, for clause (b), the following clause shall be substituted with effect from the 1st day of April, 1993, namely :-

'(b) in the case of any firm assessable as such, -

(i) any payment of salary, bonus, commission or remuneration, by whatever name called (hereinafter referred to as remuneration) to any partner who is not a working partner; or

(ii) any payment of remuneration to any partner who is a working partner, or of interest to any partner, which, in either case, is not authorised by, or is not in accordance with, the terms of the partnership deed; or

(iii) any payment of remuneration to any partner who is a working partner, or of interest to any partner, which, in either case, is authorised by, and is in accordance with, the terms of the partnership deed, but which relates to any period (falling prior to the date of such partnership deed) for which such payment was not authorised by, or is not in accordance with, any earlier partnership deed, so, however, that the period of authorisation for such payment by any earlier partnership deed does not cover any period prior to the date of such earlier partnership deed; or

(iv) any payment of interest to any partner which is authorised by, and is in accordance with, the terms of the partnership deed and relates to any period falling after the date of such partnership deed insofar as such amount exceeds the amount calculated at the rate of eighteen per cent. simple interest per annum; or

(v) any payment of remuneration to any partner who is a working partner, which is authorised by, and is in accordance with, the terms of the partnership deed and relates to any period falling after the date of such partnership deed in so far as the amount of such payment to all the partners during the previous year exceeds the aggregate amount computed as hereunder :-

(1) in case of a firm carrying on a profession referred to in section 44AA or which is notified for the purpose of that section -	
(a) on the first Rs. 1,00,000 of the book-profit or in case of a loss book-profit, whichever is more;	Rs. 50,000 or at the rate of 90 per cent. of the
(b) on the next Rs. 1,00,000 of the book-profit	at the rate of 60 per cent.;
(c) on the balance of the book-profit	at the rate of 40 per cent.;
(2) in the case of any other firm -	
(a) on the first Rs. 75,000 of the book-profit or in case of a loss whichever is more;	Rs. 50,000 or at the rate of 90 per cent. of the book-profit,
(b) on the next Rs. 75,000 of the book-profit	at the rate of 60 per cent.;
(c) on the balance of the book-profit	at the rate of 40 per cent. :

Provided that in relation to any payment under this clause to the partner during the previous year relevant to the assessment year commencing on the 1st day of April, 1993, the terms of the partnership deed may, at any time during the said previous year, provide for such payment.

Explanation 1 : Where an individual is a partner in a firm on behalf, or for the benefit, of any other person (such partner and the other person being hereinafter referred to as "partner in a representative capacity" and "person so represented", respectively), -

(i) 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;

(ii) interest paid by the firm to such individual as partner in a representative capacity and interest paid by the firm to the person so represented shall be taken into account for the purposes of this clause.

Explanation 2 : For the purposes of this clause, "book-profit" means than as partner in a representative capacity, interest paid by the firm to such individual shall not be taken into account for the purposes of this clause, if such interest is received by him on behalf, or for the benefit, of any other person.

Explanation 3 : For the purposes of this clause, "book-profit" means the net profit, as shown in the profit and loss account for the relevant previous year computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to all the partners of the firm if such amount has been deducted while computing the net profit.

Explanation 4 : For the purposes of this clause, "working partner" means an individual who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner;'.