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**DIRECT TAX &
INTERNATIONAL
TAXATION**



RG Learning Hub

AN EDUCATIONAL INSTITUTE BY

Rohan Garg





Profit and Gains from Business & Profession

Important Adjustments tested in main Exams

- Compensation for termination/ modification of any business contract even relating to capital asset = **Business Income**
- Expenditure on grant of ISO 9001 certificate= Allowed as **revenue exp** not part of PPE
- Underwriting commission reduced from cost of shares of underwriter
- Amount paid to employee welfare trust= **Disallowed u/s 40A(9)**
- **ICDS prevail over judicial precedents**
- IT Rules + Act prevail over ICDS
- Asset stolen or damaged and no insurance compensation is received and asset is the only asset in the block, WDV becomes NIL since block ceases to exist. Section 50 not attracted since there is no transfer. WDV has no tax treatment and is a capital or dead loss.
- Administration and other general overhead expenses added to cost of asset only if specific to asset
- Exp on test runs of machine prior to production are actual cost of machine. Sale price of product generated during test runs has to be **reduced from actual** cost.
- Expenditure on startup and commissioning, test runs, experimental production shall be capitalized. Expenditure after plant started commercial production = **Revenue Exp.**
- Company converted arrears of interest of 3L on term loan into a new loan. Company paid 1L towards such funded interest during year. **Extra 50000 paid before ROI date.**
1L: Allowed as deduction while 50000= **Not allowed**, as liability does not pertain to CY
- Payment to share broker (Equity shares) without TDS= **Allowed**, since no TDS to be deducted
- Company incurred 25 Lakhs towards purchase of coal for its smelting furnace for which invoice is not available. However, indirect evidence such GIR, online payment towards purchase available. The auditor made adverse remark in their report = **Allowed based on GIR**
- Company did not have any active business carried on by it, incurred CE on scientific research that related to its subsidiary company= **Not allowed**
- 4L and 1L being amounts waived by bank out of principal and interest respectively in one time settlement. The loan was for working capital requirement
4L= Taxable u/s 41(1)
1L= Not taxable since earlier would have been disallowed u/s 43B
- Cash payment to transporter upto 35000 not allowed in case of capital expenditure.
- Purchased a brand new bus and donated to school where the employees children were studying and debited to employee benefits expense = **Allowed as revenue expense**
- Retrenchment compensation paid for closure of entire business = **Capital Expense**

Some Important Judicial Decisions

1. Income from leasing properties is considered as business income if the main objective of the company is to earn rental income from such properties.
2. Interest income received on funds kept as margin money for obtaining bank guarantee to carry on business is taxable under PGBP and not under IFOS.
3. Higher depreciation rate (40%) allowed for computer accessories and peripherals, but not for EPABX and mobile phones i.e. 15% dep. rate for these.

4. Deduction u/s 35AD allowed to a hotel (2 star or above) in the year operations commenced, even if classification (2 star or above category) was granted in the next year by the authority due to inspection requirements.
5. Share premium is not considered as "capital employed" for Sec. 35D.
6. If bonus due to employees is paid to a trust and subsequently paid to employees before ROI date, then deduction is allowable since amount is ultimately paid to employees.
7. Exp. on glow-sign boards is revenue expense
8. Exp. on issue and collection of convertible debentures is treated as revenue expenditure, even for debentures convertible into shares at later date.
9. Feasibility study exp. for existing business projects is classified as revenue exp. where the project was abandoned without creating a new asset.
10. Source of funds is irrelevant for deduction u/s 37; focus is on whether the exp. is for business purposes. Capital receipt may be expended for revenue exp.
11. Sec. 40(b)(v) sets maximum limit of deduction w.r.t. partners' remuneration when calculating business income. If the remuneration is within this limit, Sec. 40A(2)(a) cannot be invoked calling it excessive.
12. Receipt of liquidated damages linked with procurement of capital asset, which lead to delay in coming into existence of profit-making apparatus, is a capital receipt. Amount received by assessee towards compensation for sterilization of profit earning source is not in ordinary course of business. Hence, it is a capital receipt in the hands of the assessee.
13. Whether technical fee paid under a technical collaboration agreement for setting up a joint venture company in India is to be treated as revenue or capital expenditure, where, upon termination of agreement, joint venture would come to an end? **CAPITAL**

Preliminary Expenses [Section 35D]

Max Limit

- Indian company: 5% of (Cost of project or capital employed, whichever is higher)
- Other resident assessee: 5% of Cost of project.

Deduction amount: **[(Actual or above limit) which is lower] in 5 equal installments in 5 years**

Amortisation of exp for Amalgamation/demerger: Only to **Indian com: 1/5th expenditure for 5 years.**

Amortisation of expenditure incurred under VRS [Section 35DDA]: **1/5th expenditure for 5 years.**

- In case of amalgamation/ demerger/ succession of proprietary/ firm into company, remaining deduction shall be allowed to amalgamated/ resulting company

Rates of Depreciation

Buildings	
Buildings for residential purposes except hotels and boarding houses	5%
Buildings for commercial purpose	10%
Buildings acquired on or after 01.09.2002 for installing P/M forming part of water supply project or water treatment system and which is put to use for purpose of business of providing infrastructure facilities including these P/M Purely temporary erections such as wooden structures	40%
Furniture and fittings including electrical fittings	
	10%

Plant & Machinery	
Motor cars	15%
Motors buses, motor lorries, motor taxis used in business of running them on hire	30%
Motor cars other than those used in business of running them on hire, acquired during the period from 23.8.2019 to 31.3.2020 and put to use on or before 31.3.2020 (If used in business of running them on hire: 45% in case of 30%)	30%
<ul style="list-style-type: none"> Moulds used in rubber and plastic goods factories P/M used in semi-conductor industry 	30%
<ul style="list-style-type: none"> Aeroplanes, Aero engines Books Containers made of glass or plastic used as re-fills Computers including computer accessories such as UPS, printers scanners, etc Air/ Water/ pollution control equipments, solid waste control equipment and solid waste recycling and resource recovery systems Life saving medical equipments Renewal energy saving devices including electric vehicle Windmills and specially designed devices 	40%
Ships	20%
Plant & machinery (General rate)	15%

INTANGIBLE ASSETS	25%
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Additional Dep = 20% of actual cost

Cash payment > 10000 in day to a single person= **Disallowed**

Tea/ Coffee/ Rubber Development Account [Section 33AB]

Amount of Deduction:

Amount Deposited or 40% of profits of business before making any deduction under this section, whichever is less. (Above deduction will be allowed before setting off of b/f loss)

Time limit to deposit amount: Before expiry of 6 months from end of FY OR before due date of ROI, whichever is earlier

Apportionment of Income into Taxable Business income and Agriculture income

Income from growing and manufacturing in India	Agriculture income	Business Income
Tea	60%	40%
Rubber	65%	35%
Coffee (Grown and cured)	75%	25%
Coffee Grown, cured, grounded, roasted	60%	40%

Calculation of taxable business Income: [Net Profit as per Income tax Act (before section 33AB) - Deduction u/s 33AB + (Misutilized amount during PY + Amount withdrawn but not utilized during PY + Cost of Asset sold within 8 years)] - Agricultural portion - Business loss = PGBP Income

Imp note: In case **revenue exp** incurred during PY from deposit account, amt of such exp shall be **added to Net profit first** and **then eligible deduction** shall be calculated u/s 33AB.

Site Restoration Fund [Section 33ABA]

Amount of Deduction: **Amount Deposited before end of PY or 20% of profits of business before making any deduction under this section, whichever is less.**

Note: Any amount credited in Site Restoration Account by way of **interest** shall be **deemed as deposit**
Above deduction will be allowed before setting off of B/f loss

Section 36 (Other Deductions)

1. **Insurance premium of stock**

- Insurance on life of **partners** is not allowed
- Premium paid under **keyman insurance policy** is allowed.

2. Insurance premia paid by Federal Milk Co-operative Society on life of cattle owned by member of a co-operative society, being primary society engaged in supply of milk raised by its members to such Federal Milk Co-operative Society. Deduction is admissible without any monetary or other limits
3. Premia paid by employer(not in cash) for health insurance of employees
4. Bonus and Commission to employees other than payable to them as profits or dividends
5. Interest on borrowed capital for purposes of B/P
Interest paid, in respect of capital borrowed for acquisition of new asset (whether capitalised in BOA or not):
Upto the date of put to use of asset: Added to cost of asset
After the date of put to use: P/L A/c
6. Discount on Zero Coupon Bonds amortized over life of bond
 - Life = From date of issue till date of maturity
 - Life converted into number of calendar months
 - 15 days or more = one month, Less than 15 days = Ignore
7. Contribution to employees' recognised provident fund/approved superannuation fund
8. Employer's contribution to account of employee under Pension Scheme referred to in 80CCD up to 10% of salary of employee in PY
Salary includes DA, if terms of employment so provide, but excludes all other allowances and perquisites
9. Amount received by employer as contribution from his employees towards their welfare fund to be allowed only if such amount is credited on or before due date i.e within 15 days from end of month. (Note: Section 43B not apply here)
10. Deduction in respect of animals which have died or become permanently useless.(Deduction = Actual cost of animal - scrap value)

11. Bad Debts:

- Incurred in ordinary course of business is allowed i.e Sales made to customers.
- However Bad debts w.r.t Loan given: Not allowed (Except money lending business)
- Provision for Bad debts: Not allowed (Except banks)

Bad debts should be written off in books with name of debtor and should have been taken into account in computing income of PY or earlier PY. (However, there is no such requirement in law that assessee has to establish that debt has, in fact, become irrecoverable)

Recovery of Bad debts: Taxable in year of receipt of bad debt

Taxable amount: Bad debts recovered in excess of not written off amount.

Taxable only if assessee who claims bad debts and assessee who recovers is same even if business is not in existence.

Imp note: When income has been recognized as per ICDS while it has not been recorded in BOA as per relevant AS, then even if debt has not been written off in BOA, ded for bad debt can be claimed.

Prov for bad debt of Banks (only 1 account in respect of prov for bad and doubtful debts shall be made and such account shall relate to all types of advances, including advances made by rural branches)

Indian Bank [Scheduled/ non scheduled/ cooperative(other than primary agricultural credit society or a primary co-operative agricultural and rural development bank)] = 8.5% of total income computed before deduction under this section and before deduction under CH VI A + 10% of Aggregate average advances made by rural branches

Foreign Bank / State financial corporation/ State industrial investment corporation/ Public financial institution/ NBFC = 5% of total income computed before deduction under this section and before deduction under CH VI A

12. Special deduction to specified entities like bank engaged in eligible business of providing long term finance for development of infrastructure or housing etc
Deduction shall be the least of the following
 - Amount transferred to special reserve
 - 20% of profit derived from eligible business (before this deduction)
 - 200% of PUC and general reserve less aggregate amount carried to Special Reserve account.
 Amount **withdrawal** from special reserve will be **taxable** in the **year** of **withdrawal**
13. Expenses on **family planning** amongst its **employees** by company.
 - Capital expenditure (CE) allowed 1/5th in 5 years.
 - Unabsorbed will be treated in the same way as unabsorbed Dep.
 - CE on family planning will be treated in same way as CE for scientific research for purposes of dealing with P/L on sale or transfer of asset including transfer on amalgamation
14. Deduction of **STT/CTT** paid only if securities/commodities are held as **SIT**.
15. Exp incurred by co-operative society engaged in business of manufacture of sugar for purchase of sugarcane at a price equal to or less than the price fixed or approved by the Government
16. Only **M2M losses** specifically **permitted** under any **ICDS** would be allowable as deduction

Section 37 General Deduction:

1. Advance given to employee and became bad debt: **Allowed** as revenue expense.
2. Advertisement exp in political party publications: **Not allowed** (Deductible in 80GGB for companies).
3. Commission paid to doctors by a diagnostic center for referring patients: **Not allowed**.
4. Contribution to electoral trusts and other donations: **Not allowed**.
5. CSR Expenditure: **Not allowed** (except if it qualifies under sections 30-36).
6. Debenture issue expenses (including convertible debentures): **Allowed**.
7. Discount on the issue of debentures: **Allowed** over the life of debentures.
8. Expenses incurred for obtaining ISO certification: **Allowed**.
9. Expenses incurred on heart surgery of individual assessee: **Not allowed**.
10. Expenses incurred on projects unrelated to existing business, which were abandoned: **Not allowed**.
11. Expenses on glow sign boards: **Allowed**.
12. Freebies provided by pharmaceutical companies to doctors: **Not allowed**.
13. Goods confiscated by customs authorities in foreign due to statutory violations (SIT loss): **Allowed**
14. Keyman insurance policy expenses: **Allowed**.
 - Keyman Insurance Policy is not confined to policy taken for employee but also extends to life of another person who is connected in any manner with business of assessee
 - In case of firm, premium paid by firm on Keyman Insurance Policy of partner is allowed
15. Loss due to theft if incidental to business: **Allowed**.
16. Loss of illegal business allowed from profits of legal business: **Allowed**
17. Non-compete fees: **Allowed**.
18. Payment to consultant for opinion on new business: **Not allowed**.
19. Provision based on fair estimate and reasonable certainty as per ICDS: **Allowed**.
20. Prov for gratuity (even based on actuarial valuation): NA (Only gratuity actually paid is allowed).
21. Provision for loss of subsidiary, deferred tax/income tax, diminution in asset value, or unascertained liability: **Not allowed**.
22. Regularization/compounding fees: **Not allowed**.
23. Securities deposit to landlord and became irrecoverable: **Not allowed**.

24. Share issue expenses (other than preliminary):

- For IPO/FPO/Right issues: **Not allowed.**
- For buyback or bonus issues: **Allowed.**

25. Sponsorship Fees: **Allowed.**

26. Penalties for infraction/ violation/ breach of law: **Not allowed**

27. Penalties for breach of contract: **Allowed**

28. Tax on non-monetary perquisites of employees paid by employers: **Not allowed.**

29. Website development, corporate membership of clubs: **Allowed.**

30. Dividend & DDT: **Not allowed**

31. Secret commission, bribe, payment to gundas: **Not allowed**

32. Provision based on fair estimate and reasonable certainty as per ICDS: **Allowed**

33. Tax, interest and penalties of Direct and Indirect Tax

Income Tax	Indirect Tax (GST, Customs, Sales Tax)
Tax, Advance tax, TDS, Interest (including interest on TDS & advance tax) & Penalty: NOT ALLOWED	Tax, Advance tax, TDS, Interest (including interest on TDS & advance tax): ALLOWED Penalty: NOT ALLOWED

Note: **Fees** for **delayed** filing of **TDS statement** u/s 234E: **Allowed**

Refund of Direct and indirect Tax

- Income tax refund: Not taxable
- GST etc refund: Taxable (net of amount refunded to customers)

34. Exp incurred on abandoned films not treated as Capital Expenditure but will be treated as revenue exp and will be **allowed**

Meaning of Micro and Small enterprise (Medium not covered here):

Type of Enterprise	Investment in P&M		T/O
Micro	≤ Rs. 1 crore	AND	≤ Rs. 5 crores
Small	≤ Rs. 10 crore	AND	≤ Rs. 50 crores

INCOME FROM CONSTRUCTION AND SERVICE CONTRACTS [SECTION 43CB]

Profits and gains from a construction/ service contract are computed on the basis of **Percentage of Completion Method (POCM)** except for the following service contracts:

Condition	Method
If duration of contract is up to 90 days	PROJECT Completion Method
If contract involves indeterminate number of acts over a specific period of time	SLM Basis

COMPULSORY MAINTENANCE OF BOA [SECTION 44AA]

Penalty for **non-maintenance** Section 271A: Rs **25,000**

Period of maintenance: **6 years from end of relevant AY**

Maintenance of BOA by notified profession

Legal, medical, engineering, or architectural profession or the profession of accountancy or technical consultancy or interior decoration or authorized representative or film artist

If gross receipts > 150,000 in all 3 PPY or likely to exceed in current PY (in case of new business)

Maintain prescribed BOA: Cash Book, Journal, Ledger, carbon copies of bills exceeding Rs. 25, Daily case register and stock register (only in medical)

Other case: Maintain such BOA which would enable the AO to compute total income

Maintenance of BOA by other business and profession

Individual/ HUF: Only if Turnover > 25L or PGBP Income > 2.5L in any 1 of 3 preceding PY

Other Persons: Only if Turnover > 10L or PGBP Income > 1.2L or in any 1 of 3 preceding PY

Section 44AB: Tax Audit of BOA

Tax Audit is **compulsory** in the foll. Cases:

1. In case of **business**: If **turnover > 1 crore** in PY

However, limit will be 10 crore instead of 1 crore if:

- Agg. Amount received for sales during PY in Cash/ bearer cheque/ cross cheque is upto 5% of total amount received AND
- Agg. Payment for expenses during PY in Cash/ bearer cheque/ cross cheque is upto 5% of total payment made.

2. In case of **profession**: **Gross receipts > Rs 50 Lakh** in PY

Presumptive Basis of Income [Section 44AD/ 44ADA/ 44AE]

Particulars	44AD	44ADA	44AE
Eligible business/ profession	Total turnover/ gross receipts in the P.Y. upto 2 crores Limit of 2 cr will be 3 cr if aggregate cash receipts in the relevant PY upto 5% of total turnover or gross receipts	Gross receipts upto 50 lakhs in the relevant P.Y Limit of 50L will be 75L if aggregate cash receipts in the relevant PY upto 5% of total turnover or gross receipts	Business of plying, hiring or leasing goods carriages
Presumptive income	8% of total turnover/ sales/gross receipts OR higher income claimed Above limit will be 6% if the sale amount is received through any mode other than cash during the PY or before ROI due date OR such higher income claimed	50% of gross receipts of such profession or higher income claimed	Read Note 1 Below

NOTE 1: For **each heavy goods vehicle** 1,000 per ton of gross vehicle weight or unladen weight, as case may be, for every month or part of a month;

For each vehicle, **other than heavy goods** vehicle: 7,500 per month or part of a month during which such vehicle is owned by assessee OR

An amount claimed to have been actually earned from such vehicle, whichever is higher

Heavy goods vehicle :weight exceeds 12,000 kg

Royalty income of patent developed and registered in India (Sec 115BBF)

- **Taxable** u/s PGBP or IFOS @ **10%** only for **resident** assessee
- **No deduction of any expenditure**
- Applicable only if **atleast 75% of development exp** incurred in India

Income from transfer of carbon credits (Section 115BBG)

- Taxable u/s PGBP or IFOS @ **10%** only for resident assessee
- **No deduction of any expenditure**