

CHAPTER 1

PROFITS & GAINS FROM BUSINESS & PROFESSION

PART 1

(1) General Chargeability:

As per **Sec 28(i)** "Profits and gains from business & profession which was carried on by the assessee at any time during the P.Y" is charged under PGBP".

This is the **general chargeability** under the head B & P. Further there are certain special charging Secs as well which do not fulfill the conditions of general chargeability, to widen the scope of taxability.

- (2) Whether a particular income will come under the head B & P will be **dependent upon the facts & circumstances** of each case.
- (3) The term "Business" is defined **u/s 2(13)** in an inclusive manner to include **trade, commerce, manufacture or any adventure** in the nature of trade, commerce, manufacture. However, this **definition does not give any substantial test** to identify whether an activity amounts to business or not. We need to rely on the judgements given by the Court to understand the term business.

Definition of Profession:

Sec 2(36): Profession includes '**Vocation**'. **Vocation means occupation requiring skills.**

S.N	PARTICULARS	HEAD	REMARKS
1.	Interest income on deposits made in the bank, which has furnished bank guarantee on the behalf of Assesseees for a tender.	PGBP	K & CO (Delhi): The interest so earned is not an independent Investment Activity. Such deposit so placed are inextricably linked with the activity of business. Therefore, chargeable under the head B & P.
2.	The Assessee let out the P & M during the course of lockout in the factory. Whether the rental income chargeable under IFOS or PGBP?	PGBP	Where the facilities cannot be used by the owner himself on account of some problems in the Company and it is temporarily let out to generate some revenue, then it would amount to business expediency . Therefore, such income shall be come under the head .

3.	Letting out of godowns and provision of warehousing services be subject to tax - "IFHP" or "PGBP"?	PGBP	NDR Warehousing P. Ltd (Mad) Activity was not merely letting out of warehouses but storage of goods with provision of several auxiliary services such as pest control, rodent control and fumigation service to prevent the goods stored from being affected by vagaries of moisture and temperature. Further, service of security and protection was also provided.
4.	Whether let out of immovable property will be chargeable under Income from House Property or PGBP ?	PGBP	Chennai Properties & Investment Ltd (SC)/ Rayala Corporation (P) Ltd. (SC) If it is written in the MOA that the main object of the company is to acquire & let out immovable property and income from such activity is substantial , then income from such activity shall be taxable under PGBP instead of IFHP. [See Note below]

It is clarified that any income from **letting out of a residential house** or a part of the house by the owner shall **not be** chargeable under the head "**PGBP**" and shall be chargeable under the head "Income from **house property**". Therefore, if commercial property is let out then the case law of **Chennai Properties & Investment Ltd** shall apply.

(4) What do you mean by the term "PROFITS AND GAINS"?

Ans. The profits and gains must be **revenue** in nature i.e. all revenue receipts are chargeable to tax. Any trading receipt incidental to business will be chargeable u/s **28(i)**. **Any capital receipt**, like damages for not supplying machinery on time will **not be taxable**, as it is capital receipt [**Saurashtra Cement Ltd (SC)**]

- Profits & gains may arise from **legal or illegal business**.
- Profits may arise in **cash or kind**.
- Profits **u/s 28(i)** must be **Real Profits** i.e. not notional, not anticipated (There are **some exceptions** eg:- **Secs 44AD/44ADA/44AE/44B/44BB/44BBB/44BBA** etc)

(5) The term **carried on by the assessee** means the assessee **controls** the business and need not do all the activities himself. A NR appoints an agent in India, then this agent will carry on the business, but the control of the business is with NR.

- (6) The term **anytime during the P.Y.** means business or profession must be conducted **at least sometime** during the P.Y, if not for the entire year. Further it is not necessary business should be in existence in A.Y.

Sec 29: How to Compute PGBP Income?

1. In accordance with **Sec 30 to Sec 43D**.
2. But before computing PGBP as per Income Tax Act one has to follow **Sec 145**.
3. As per **Sec 145(1)** every assessee covered under the head **B & P or IFOS** can maintain BOA on **Mercantile or Cash** basis **regularly** followed by the assessee.
4. As per **Sec 145(2)** for the purpose of maintaining BOA's on **Mercantile** basis, Assessee has to follow **Accounting standards notified** by the Central Govt. CBDT has notified its own standards known as **"INCOME COMPUTATION & DISCLOSURE STANDARDS"**. (However, only few ICDS have been notified so far).
5. **Sec 145(3)**: If an assessee is **not complying sub sec (1) or (2)** then A.O. has power to invoke Best Judgement Assessment **u/s 144** [Refer Assessment Procedure].

Sec 30 - 37 → Deduction of Expenses & Allowances		
↓		↓
Sec 30 - 36		Sec 37
Specific Dedⁿ	Sector wise Deductions	General Dedⁿ (+)
Available to All	35ABB, 35ABA, 35AD, 33AB, 33ABA,	2 Explanations
Sec 30, Sec 31,	36(1)(vii), 36(1)(viii), 35CCA, 35D, 35DD,	(+)
Sec 32, Sec 36(1)	35E, 35DDA, 35CCC, 35CCD.	Case laws

Special Charging Sections (See Later)

1. As per **Sec 28(va)**, any **amount received** or receivable in cash or kind under an agreement **for not carrying out any activity** in relation to any **business** or **profession** shall be chargeable under the head PGBP.
The payer will get the **deduction** of such fees if TDS is deducted @ 10% **u/s 194J**.
2. As per **Sec 28(iv)**, the value of any benefit or perquisite arising from business or the exercise of a profession, whether—
 - (a) convertible into money or not; or
 - (b) in cash or in kind or partly in cash and partly in kind; (TDS **u/s 194R**).

3. Treatment of amount received from Keyman Insurance Policy

1.	2.	3.
If received by Employer ↓	If received by Employee ↓	If received by Nominees of Employee ↓
Taxed u/s 28 - as PGBP	Taxed u/s 17 - as Salary	Taxed u/s 56 - as IFOS

Sec 28: Special Charging Sec relating to Export Assessments

- Profit** on sale of **Import Licence** under an import & export scheme.
- Any amount of duty of **customs** repaid or repayable as **drawback**.
- Cash assistance** received **against exports** under any scheme of government.

Sec 28: Special Charging Sec relating to Compensation received in Business

- Compensation** received by any person in connection with **termination** or **modification** of terms & conditions of **any contract** relating to **business (not profession)**.

If the compensation is **received by employee** for **termination** or **modification** of terms & conditions of any **contract relating to employment**, then taxable under **IFOS**.

PART 2: DEPRECIATION

Sec 32 → DEPRECIATION			
Sec 32(1)(ii)	Sec 32(1)(iia)	Sec 32(1)(i)	Sec 32(1)(iii)
Normal dep - Block Scheme	Additional dep - Block Scheme	Dep on SLM for Power Generating Units (PGU)	Terminal dep for PGU

Sec 32(1)(ii): - Normal Depreciation under Block Scheme

(1) What do you mean by the term "Ownership"?

It was held by SC in the case of **Mysore Minerals Ltd** the term 'owner' means **beneficial owner and not legal owner. Registration, title is irrelevant** for ownership.

(2) Who shall claim Depreciation in case of Lease & Hire Purchase Transactions?

In case of **lease**, depreciation to be claimed by **lessor** [Cir. No. 9/2001].

In case of **Hire purchase**, dep to be claimed by **Hire purchaser** [Circular of 1943].

ICDS Ltd V/S CIT (SC)

Depreciation shall be allowed to **lessor** even though the asset is **registered** in the name of the **lessee**. As per lease agreements-

- The lessor is the exclusive owner of the vehicle at all points of time.
- The lessor is empowered to repossess the vehicle, in case of payment default.
- The lessor had a right of inspection of the vehicle at all times.
- At the end of the lease period, the lessee was obliged to return the vehicle.

It can be seen that the **proof of ownership lies in the lease agreement** itself, which clearly points in favour of the lessor.

(3) What do you mean by term "Use" for the purpose of Depreciation?

The term 'use' means both **active as well as passive use** i.e. ready for use.

If P&M got ready for the use but **could not be put to use due to some extraneous reasons** [Example shortage of RM] then dep would **be allowable u/s 32**.

Sec 2(11): - Block of Assets (Same Category + Rate)			
Tangible Assets			Intangible Assets Other than Goodwill)
Plant & Machinery 15%	Furniture 10%	Building 10%	25% ↓
@ prescribed rates {Rule 5(1)}			Half dep. is also applicable here
If Assets are used for ≥ 180 days	If Assets are used for <180 days		
↓	↓		
Then dep. @ full Rate	Then dep. @ half Rate		

Notes: -

(1) **Residential** buildings = **5%**, temporary structures = **40%**.

(2) **Motor cars** = **15%**, If it is **used in business** of running them on **hire** then **30%**.

Note: If a **Motor Car** is **purchased & used between 23.08.2019 to 31.03.2020** then the rate would increase by 15% for both motor cars. **Electric Vehicle** = **40%**.

(3) **Mobile phones and EPBAX** will be depreciable at **15%**.

(4) **Computer & its peripherals like scanner, printer etc/Windmills/ Professional Books/ Aircraft/ Pollution Control Equipment** will be depreciated at **40%**.

(5) **Ships** will be depreciated at **20%**.

When Dep rate u/s 32(1) becomes half?

- It becomes half when an asset is **acquired & put to use in that P.Y.** for < 180 days.
- Therefore, if an asset is acquired in one year, but put to use for less than 180 days in next year, then it won't become half in next year.
- This provision is applicable to dep u/s 32(1)(ii)(ia)(i) & not 32(1)(iii).

Sec 43(3) Definition of plant

Plant includes ships, vehicles, books, scientific apparatus and surgical equipment's **but does not include tea bushes, livestock or building, furniture and fittings.**

When depreciation can be claimed under Block Scheme?

(1) The block must be positive on the last day. {Amount column}	&	(2) The Block must not cease to exist on last day. {Quantity column}
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Is it mandatory to claim depreciation?

→ **Yes**, as per **Explanation 5 to Sec 32(1)** it is mandatory to claim depreciation.

Sec 43(6): How to arrive at WDV for next year?

WDV means **Actual Cost as reduced by "depreciation Actually allowed"**

Exception:

In case the Income is **partially** from **Agriculture** & Partially from **Business**, then it is **deemed** that it is **wholly from Business** & the **entire depreciation is deemed to be allowed** for Business. In short **reduce entire depreciation** from Block.

Sec 32(1)(ia) : Additional Depreciation @ 20% **acquires & Install & Use New Machinery or Plant**

Eligible Assessee: engaged in the business of **Manufacture** any article or thing **Generation (OR) Generation & Distribution of power or Transmission of Power.**

Note:

- (1) It is **not allowed** in case of P & M which is **2nd Hand** or any office premises or residential accommodation, ships, aircrafts, road transport vehicle, any P & M which is already allowed as 100% deduction.

- (2) Additional depreciation is also **subject to 50%** if an asset is acquired & put to use for less than 180 days. However, **remaining 50%** would be allowable in the **next year**.
- (3) Like normal depreciation additional depreciation is also **reduced from the Block**.
- (4) Additional Depreciation is **one-time benefit** for that Plant & Machinery.
- (5) **Printing or printing & publishing amounts to manufacture**, therefore eligible for additional depreciation.
- (6) Forklift Truck used in factory is not treated as transport vehicle, so it is eligible for Add. dep.
- (7) If a **power generating** assessee opts for **SLM** then **no additional dep** is allowed.

Sec 43(1): Meaning of Actual Cost:

The term Actual Cost means **actual cost of asset** to the assessee, as **reduced by** that portion which is **met** directly or indirectly **by any person** or authority.

Where an assessee incurs any expenditure for **acquisition of any asset** i.e. which a payment is made to a person in a day, **otherwise than by account payee cheque or account payee draft, ECS or such other prescribed electronic mode, exceeds Rs. 10,000**, such expenditure **shall not form part of AC of the asset**.

Note:

Till the time fixed asset is not put to use capitalize the interest expense and once the asset is put to use then claim as revenue expense **u/s 36(1)(iii)**.

ICDS - V → Tangible Fixed Asset

Admin and General OH's expenses are to be excluded from cost, if they do not relate to a specific Tangible Fixed Asset.	Expenses which are specifically attributable to construction of a project on acquisition of T.A. or bringing it to its working condition, shall be included as a part of cost.
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ICDS - V → Tangible Fixed Asset

Expense incurred on startup & commissioning of the project, incl test run expenses shall be capitalized	Exp. incurred after the plant has begun commercial prodⁿ i.e. prod ⁿ for sale or captive consumption, shall be revenue exp.
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I.C.D.S - IX BORROWING COSTS

If the funds are borrowed specifically for "Qualifying Asset" (Q.A)	If the funds are borrowed generally for "Qualifying Asset" (Q.A)
then the actual borrowing cost incurred during the period for which funds are borrowed for that asset must be Capitalized.	then Borrowing cost shall be computed in accordance with following formula: $A \times \frac{B}{C}$

Where;

A = Borrowing costs incurred during the P.Y, **except borrowing directly relatable** to specific purpose

B = (i) **Average** of cost of 'QA' as appearing in the B/S on **1st & last day of P.Y (OR);**

(ii) in case the Q.A **does not appear** in B/S on **1st day or both** then half of the cost of 'Q.A' (OR)

(iii) in case the Q.A **does not appear in B/S on last day**, then average of cost of Q.A appearing on 1st day and date of put to use

C = **Average** of the amount of **total assets** as appearing in B/S on 1st day and last day

The **Capitalization** of borrowing cost shall **cease** in case of the Qualifying Asset, when such Asset is first **put to use** i.e. it will be available as a rev expense as per **Sec 36(1)(iii)**

Explanations to Sec 43(1): Actual Cost in Special Cases

S.N	MODE OF ACQUISITION	ACTUAL COST
1	Asset acquired for scientific research subsequently brought into business use	NIL (To be done with Sec 35)
1A	SIT converted into Capital Asset	FMV on date of Conversion.
2	Asset acquired by way of gift/will/inheritance	Actual Cost to the previous owner less dep actually allowed to previous owner.
3	Asset acquired with an intention to claim higher depreciation	Amt. determined by A.O. , with the approval of Joint Commissioner (JC) (Normally AO take FMV of such asset)
4	Re-acquisition of asset sold	The WDV at original transfer or the price paid for reacquiring the asset; whichever is less .
4A	Asset purchased and leased back to the same person	The WDV of Previous Owner (Lessee)

5	Building used for private purpose subsequently brought into business use . Note: For Plant, Machinery & Furniture the Actual Cost will remain Actual Cost.	Original Cost Less Notional Dep as per current year rate.
6	Capital asset transferred by holding Co. to 100% subsidiary Co. or 100% Subsidiary Co. to holding Co.	Cost/ WDV to the transferor
7	Transferred by Amalgamating Co to Amalgamated Co.	Cost/WDV to Amalgamating Co.
7A	Transferred by Demerged Co. to Resulting Co.	Cost/WDV to demerged Co.
8	Asset acquired out of borrowed funds	Int after the asset is first put to use shall not form part of actual cost.
9	Asset acquired subject to levy of GST in respect of which input credit is availed.	If input credit is claimed then GST etc shall not form part of Actual Cost
10	Govt Grant, Subsidy or Reimbursement	If related to asset, then reduce from Actual Cost.
11	Asset brought into India by NR for use in his Business or Profession.	Actual cost minus dep calculated at the rate as if the asset was used in India since the date of acquisition.

Sec 2(24)(xviii): Taxation of Grants/Subsidies from Govt.

Any subsidy, grants, cash incentive, duty drawback, waiver etc. by CG or SG or any Authority or Body [other than expl. 10] shall be treated as **Income** under PGBP.

(i) If subsidy received for **acq. an asset**, it shall be **deducted from Actual cost** of asset.

(ii) Any subsidy/grant **received by** trust or institution (**established by CG/SG**) as a Corpus fund from Central Govt shall **not be treated as income**.

(iii) **Not applicable on LPG** subsidy or any other welfare subsidy of the individual.

(A) ICDS - VII Government Grant Recognition of Government Grant

(1)	(2)
Government Grant should not be recognized until , there is a reasonable assurance	Recognition shall not be postponed beyond the date of actual receipt
	

That the person shall comply with the conditions attached.	AND	that grants shall be received .
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Treatment of Government Grants

Where G/G relates to a Depreciable Asset	Where G/G relates to Non Depreciable Asset	Where G/G Cannot be directly attributed to an Asset	Where G/G is receivable as a compensation	For other than (1)(2)(3)(4)
Then, deduct from Actual Cost	Recognized as income over the same period during which the cost of obligation is charged to income	Then, deduct proportionately from Actual cost	Shall be recognized as income of the period in which it is receivable .	Shall be recognized as income based on principle of matching concept .

Refund of Government Grants

Refund in case of (2) / (4) & (5)	Refund in case of Dep Asset
(a) Refundable amount should be first applied against unamortized deferred credit remaining.	(a) Refundable Amt shall be recorded by increasing the Actual cost or WDV of Block.
(b) Excess can be charged to P & L .	

Sec 32(2): Set off and Carry Forward of Unabsorbed Depreciation

Set off against any B & P OR income of any other head except Salaries .	C/F to next years and set off against subsequent year PGBP income (OR) any other income except Salaries .
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Time limit = Infinite years i.e. **No time limit**.

Priority of Set off:- Current year's depreciation, Business Loss & last UAD.

Proviso to Sec 32(1): - Depreciation in case of Amalgamation, etc.

In case of amalgamation, succession, demerger, **compute depreciation as if no amalgamation**, succession, demerger has **taken place**, then **apportion** such depreciation between both of them on the basis of **no. of days** assets **were used** by them.

Sec 32(1)(i): -SLM Depreciation for Power Generating Assessee

Original Cost	1,00,000	Rate = 10% (SLM)
(-) Dep for 3 yrs	(30,000)	
W.D.V.	70,000	
(a) S.P.= 50,000	(b) S.P. = 80,000	(c) S.P. = 1,20,000
Terminal = 20,000 dep u/s 32(1)(iii)	Balancing charge OR Deemed income u/s 41(2) = 10,000	Balancing Charge OR Deemed Income u/s 41(2) = 30,000 [1,00,000 - 70,000]
COA = 50,000 No. Cap Gains (70,000 - 20,000)	COA = 80,000 No Cap Gains (70,000 + 10,000)	COA = 1,00,000 (70,000 + 30,000) CG = 20,000 (120,000 - 20,000)

Sec 50A: CG in case of Sale of Power Generating Asset

Sale consideration	XX
(-) Cost of Asset = Adj WDV**	(XX)
Capital Gains	XX

Note: - Adjusted WDV: -

WDV	XX
(+) Balancing charge u/s 41(2)	XX
(-) T/D u/s 32(1)(iii)	(XX)
Adj WDV = COA	XX

COMPARISON OF SEC 43A V/S SEC 43AA

Sec 43A	Sec 43AA
1. Fixed Asset purchased from outside India + Loan in foreign currency/Foreign Suppliers Credit.	1. Any Gain/Loss other than sec 43A on account of change in foreign exchange rates shall be income or loss as per ICDS VI.
2. Gain/ Loss shall be adjusted in the WDV of the Block of Asset on the date of payment. No adjustment shall be made on 31 st March.	2. Record the transaction as per the rate on date of transaction. Then on 31 st March it has to be reinstated as per the rate prevailing on that date.

	3. Examples of Gain/loss under this sec: a. Monetary and non monetary items; b. Translation of Fin Statement of foreign Operations; c. Forward Contracts; d. Foreign Currency Translation Reserves.
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ICDS - VI EFFECTS OF CHARGES IN FOREIGN EXCHANGES RATES

Initial recognition

(1)	(2)
Should be recorded as per the rate on the date of transaction .	(i) An average rate for a week or a month may be used for all transaction during that period. (ii) If Exchange rate fluctuates significantly then take rate on the date of transaction .

Conversion on last date of Previous Year

Monetary limit		Non-Monetary limit
(1)	(2)	Record as per the rate prevailing on the date of transaction & then revalue on Closing Date.
Shall be converted based on cl Rate .	If closing rate is unrealistic	
	Then report at an amt which is likely to be realised or disburse , such item on the last day of P.Y.	

PART 3: SPECIFIC DEDUCTIONS

Sec 30: - Rent, Rates & Taxes, Repairs and Insurance of **Building**

Owner	Tenant
Rates, Taxes, Revenue Repairs and Insurance ↓	Rent , Rates, taxes, Revenue Repairs and Insurance ↓
Capital Repair , then cost of Capital repair should be added to cost of Bldg & then claim dep on it.	For Capital repair, Tenant will be Deemed owner of the Building and he can also claim dep on Capital repair {Expln 1 to Sec 32(1)}

Notes:

1. **Rates & Taxes** will be allowed on actual **payment basis** as per **Sec 43B**.

Sec 31: - Repairs and Insurance of Plant, Machinery and Furniture

1. Repairs must **not be capital** in nature.
2. **Rent not deductible here**. It is deductible u/s 37(1).

Other Deductions u/s 36(1)

(i) Insurance premium paid against risk of damage of stocks .	(ib) Health Insurance premium paid by employers for employees (other than cash)	(ii) Bonus / Comm. Paid to employees. (Sec 43B). However, where sum represents profits, then not allowed.
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Sec 36(1)(iii): - Interest on Borrowed Capital

Borrowed money	Money must be used for B & P	Interest is paid or payable.
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Notes for Sec 36(1)(iii):

1. Interest on borrowed capital which is used for the payment of **Income Tax is not allowed as deduction**. However, if it is to **pay GST** then it is **allowed**.
2. What is the meaning of Interest?
As per **Sec 2(28A)**, interest means interest payable in any manner in respect of any money borrowed or debt incurred & **includes any service fee** or other charge in respect of money borrowed or debt incurred. {Also Refer **Sec 9(1)(v)**}
3. **S.A. Builders (SC) / Reebok India Company (Delhi)**: The Expression **commercial expediency is of wide import** and includes such expenditure as a prudent businessman incurs for the purpose of his business. If advance is given to the sister concern on account of commercial expediency, then it should be allowed as deduction.
4. **Certain Interest payments are subject to Sec 43B**.

Sec 36(1)(iiia): Discount on Zero Coupon Bonds.

Discount = Redeemable Value - Issue Value.

Such discount will be **allowed as deduction over the life** of zero coupon bond. Life should be **counted in months** and not years. If the bonds are issued for 15 days or more by the company, then take it as a complete month.

Sec 36(1)(iv): **Employer** Contribution to **Recognised Provident fund/ Superannuation Fund** is allowed as deduction {Subject to Sec 43B}.

Sec 36(1)(iva): **ER** Contribution to **Approved Pension Fund** is allowed as deduction {Subject to Sec 43B}. {Contribution $\leq$ 14% of Salary, Salary = Basic +DA in terms}

Sec 36(1)(v): **ER** Contribution to **Approved Gratuity Fund** is allowed as deduction {Subject to Sec 43B}.

Sec 36(1)(va): **Employees** Contribution to **RPF etc** is allowed as deduction to employer if paid on or before the **due date of the Relevant Fund**

Notes:

- ➔ It is pertinent to note that **Employees Contribution** is considered as **Income of Employer** as per sec 2(24)(x) when it is deducted from the salary of Employee. Thereafter when it is paid before the funds due date then it is allowed as deduction to Employer. Therefore, it gets nullified.
- ➔ **Employees contribution** has to be paid on or before 15th of following month.

Sec 36(1)(vi): Allowance for Animals used for B or P (other than SIT)

Deduction = Cost - Sale Value

Note: The **deduction** is available in the **year** in which the animals have become **useless** or they are dead.

Sec 36(1)(vii): - Deduction of Actual Bad Debts

The Debt must be written off as irrecoverable in BOA "for the P.Y."	&	The debt must be taken into income of assessee of year of deduction or earlier P.Y. EXCEPTION: For Banking and money lending business this condition not applicable for loan amt.
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1. **No need to prove** debt has become bad.
2. Bad Debts w/off **shall not include RDD**. {Also refer Sec 36(1)(viia) later}
3. It was held in the case of **T. Veerbhadra Rao K. Koteswara Rao** that where the goods, are **sold by predecessor** on credit basis & subsequently, it has become **bad in the hands of successor**, then deduction is **allowed to successor**.
4. Any income which is **offered for tax** as per **ICDS** without recording the same in the **BOA**, if it becomes bad then it shall be **DEEMED** that such debt is **written off** as irrecoverable and deduction will be allowed.

Sec 36(1)(ix) - Expenditure on promotion of Family Planning amongst Employees only by Companies

Revenue → Fully Allowed	Capital → 1/5 th in 5 Equal Installment
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Note: Unabsorbed Capital Expense shall be treated as UAD.

36(1)(xv) - Securities transaction tax {provided the assessee is trader in securities}
(In Capital Gains STT is not allowed as deduction as per 7th Proviso to Sec 48)

36(1)(xvi) - CTT {provided the assessee is trader in commodities}

Sec 36(1)(xvii): Deduction for Cooperative Society:

Expenditure incurred by a **co-operative society** engaged in the 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.

Sec 36(1)(xviii): Deduction for Mark to Market Loss:

Deduction in respect of **mark to market** loss shall be allowed **only if such loss** is computed in accordance **with ICDS**. Further, as per **Sec 40A(13)**, **no deduction** shall be allowed in respect of M-M loss, if it is **not determined as per Sec 36(1)(xviii)**.

PART 4: SECTORWISE DEDUCTIONS

Sec 33AB - Growing & Manufacturing Tea, Coffee and Rubber in India

Particulars	Time Limit	Quantum
(a) Deposit any amt in NABARD	(a) within 6 months from the end of F.Y OR	(a) Amount deposited OR
	(b) Before due date of return; Whichever is earlier	(b) 40% of PGBP income (Before this dedn (+) setting off of Losses); Whichever is lower

Notes:

- The above amount can be withdrawn in the following circumstances:
 - Closure of business, Dissolution of a firm (**Taxable**).
 - Death of an assessee, Partition of HUF, Liquidation of a company (**Exempt**).
- The **amount withdrawn** from NABARD / Deposit A/c must be **utilized** for the purpose specified in the scheme **in the same P.Y.**

If it is **not utilized** in the year in which it is withdrawn then, it is **deemed to be income** in that year. **{Only 40%/35%/25% will be taxable}**

- (3) If an amount withdrawn from NABARD is **utilized in the same FY** for the specified **purpose**, then **no deduction** shall be allowed again in the year of **actual expenditure** as it is already allowed **u/s 33AB** when it was deposited in NABARD.
- (4) The amount withdrawn from NABARD **should not be utilized for purchasing any prohibited assets** like P & M installed in office or Residential Accommodation or office appliances (Not Being computer).
- (5) Any **asset acquired** under scheme should **not** be transferred or **sold for 8 years**.
Exceptions: If sold to Govt or Local Authority or Succession of Firm to Company.

Income Tax Rules

Rule 8		Rule 7A		Rule 7B			
Income from growing & Mfg of TEA		Income from growing & Mfg of Rubber		Income from growing & mfg of Normal Coffee		Grown, cured & Roasted & mixed etc	
40%	60%	35%	65%	25%	75%	40%	60%
Busi	Agri	Busi	Agri	Busi	Agri	Busi	Agri

Sec 33ABA: Site Restoration Fund

(Prospecting or Extraction OR production of **petrol or natural gas** in India)

deposit any amount with SBI	Time Limit: Before the end of the P.Y.	Quantum Lower of: (a) Amount deposited OR; (b) 20% of PGBP (Before this ded (+) set off of loss)
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Note :- Rest all the provisions are same as **Sec 33AB**

Sec 35: Expenditure on Scientific Research:

Research related to Assessee's Business

Sec 35(1)(i): Rev. Exp → 100% (only last 3 years)		Sec 35(1)(iv): Capital Expenditure → @ 100%	
Pre-Comm.	Post-Comm.	Pre-Comm.	Post-Comm.
Salary(excl Perk)	Any Revenue		

Purchase of material-@ 100%	Exp @ 100%	Asset except Land only. Last 3 years - @ 100%	asset except Land @ 100%
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- ➔ No deduction of **depreciation** shall be allowed.
- ➔ Unabsorbed **CAPEX** will be treated like UAD.

Sec 35(2AB) → 100% of Revenue & Capital Exp, but only Post Commencement

Research related to Assessee's Business:

Company	Mfg of any article / thing (other than XIth Sch. Items) OR Biotechnology	On In house Research & Approved by pres. Authority (+) Agreement	Not Available for Building & Land. But for Bldg claim 100% u/s 35(1)(iv)
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Contribution to Outsiders

{Applicable to both Research & Non Research assessee}

Sec 35(1)(ii)	Sec 35(1)(iii)	Sec 35(2AA)	Sec 35(1)(ia)
Cont to Research Association / college / university etc	Contribution to R.A. / college / university etc	Contribution to National Laboratory or IIT	Contribution to Indian Co indulged in Scientific Research.
Scientific Research 100%	Statistical/social science 100%	100%	100%
All 4 must be Approved.			

Note: -

- The **deduction shall not be denied** merely on the ground that subsequent to payment by assessee the **approval granted is withdrawn**.
- The **deduction** u/s **sec 35(1)(ii)/(ia)/(iii)** shall be **disallowed** if donee fails to **file the statement** of donation to the prescribed authority or fails to **furnish certificate** of donation to donor.

Sec 234G/Sec 271K: Fee/Penalty for Default Relating to Statement or Certificate

Where,

- the assessee referred to in **sec 35(1)(ii)/(iii)/(ia)** **fails** to deliver a **statement** within the time prescribed or furnish a **certificate** prescribed u/s **35(1A)**; or

(b) the institution **fails** to deliver a **statement** within the time prescribed u/s **80G**, or furnish a **certificate** prescribed u/s **80G**,
it shall be liable to pay, by way of fee, a sum of **Rs. 200/-** for every day during which the failure continues. Further as per **sec 271K** AO may direct that a sum not less than **Rs. 10,000** but which may extend to **Rs. 1,00,000** shall be paid by way of penalty.

When Scientific Research Asset ceases to be used for Scientific Research.

Sold after using for Business Purpose	Sold without using for Business purpose
a) Explan 1 to Sec 43(1) shall apply and actual cost to be taken as NIL. b) Sec 50 i.e. CG for Depreciable Asset & Sec 43(6) i.e. WDV of asset will be applicable and STCG will be chargeable to tax.	a) Sec 41(3) : Deemed Income will be applicable and lower of: i) Sale proceeds OR ; ii) Deduction allowed; will be taxable. b) CG as per Sec 48 .

Sec 35ABB/35ABA: Amortisation of Telecom License Fees/Spectrum Fees paid

Pre-commencement Deduction	Post-Commencement Deduction
In the year in which business commences for the amount actually paid over the unexpired period of license.	From the year in which the fees is actually paid over the unexpired period of the license.

- ➔ **No deduction u/s 32 will be allowed.**
- ➔ In case the License is **transferred** later on, then deduction claimed earlier will be **deemed Income along with Capital Gains** implications.

Sec 35D: Amortisation of Preliminary Expenses

Indian Companies Or Resident Non Corporate Assessee		Incurs expenditure on " Specified purpose ".
Before Commencement	(OR) After commencement of business in connection with extension of undertaking (OR) setting up a new unit	

Amount of deduction:

(1) 5% of Cost of project (FA)	(2) 5% of Capital employed [Share cap + Debenture + long Term Borrowings] as on last
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as on last day of PY in which business commences (OR) extension of business is completed.	day of PY in which business commences (OR) extension of business is completed.
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WHICHEVER IS HIGHER

(2) Actual Amt of Expenditure on Specified Purpose.

Note: Deductible Amt = (1) or (2) lower.

Deduction will be allowed in **5 equal installments**

Notes:

1. For **Non-Corporate Assessee's** ignore 5% of Capital Employed and directly compare Actual Preliminary Expense with 5% of COP.
2. **Berger Paints India Ltd (SC):** **Share premium** could **not be part of "capital employed"** in the business of the company".

3. Meaning of Preliminary Expenses:

a) Preparation of feasibility study/project report b) Market Survey Expenses c) Engineering services d) Drafting & printing of MOA/AOA e) Legal fees f) Expenses related to public issue of shares & debentures g) Other expenses notified by CBDT.

In case of expenses mentioned in point (a) to (c) assessee has to furnish a statement of above expenditure within 1 month prior to the due date for furnishing the return of income **u/s 139(1)** to the PDGIT (Systems) or DGIT (Systems) or any person authorised by the PDGIT (Systems) or DGIT (Systems) in the Form No. 3AF.

Sec 35AD: Investment Linked Deduction

- 1) **Cold chain** facility for certain products.
- 2) Warehousing facility for **agriculture products**.
- 3) **Hospital** ≥ 100 beds.
- 4) Housing project for **affordable Housing**.
- 5) Production of **fertilizer**.
- 6) Cross country natural gas or crude or petroleum **oil pipeline**.
- 7) **Building & Operating a Hotel** ≥ 2 stars.
- 8) Housing project for slum **Redevelopment**.
- 9) **Inland container** Depot / container freight station.
- 10) Bee - keeping and production of **honey** and beeswax.
- 11) Warehousing facility **for sugar**.
- 12) Laying and operating a **slurry pipeline** for transportation of **iron ore**.
- 13) Setting up and operating a semi-conductor **wafer fabrication** manufacturing unit.
- 14) Setting up & Operating an **infrastructure facility** in India.

The term infrastructure facility means the following:

- (i) **A Road** including toll road, bridge or rail system.
- (ii) **A highway project** including housing or other activities being integral part of the highway project.
- (iii) **A water supply project**, water treatment system, irrigation project sanitation and sewerage system or solid waste management system.
- (iv) **A port, airport, inland waterway or inland port.**

Notes:

1. **Inland Container Depots** can be treated as Infrastructure Facility and hence deduction u/s 35AD allowed - **CIT v/s CONCOR Ltd**
2. In case of a hotel, assessee is entitled to claim deduction u/s 35AD from the PY in which the operations were commenced even though the application was accepted in the next PY - **Ceebros Hotels Pvt Ltd**
3. The deduction mentioned in 6th & 14th business is available only to **Indian Company or Consortium of Indian Companies.**

Capital Expenditure Eligible for 100% deduction.

Post Commencement	Pre-commencement
Capital Exp incurred wholly or exclusively during the P.Y. in which it is incurred.	Capital Exp incurred wholly and exclusively during the preceding yrs will be allowed, if the amount is capitalized in the BOA on the date of Commencement.

Notes:

1. **No deduction for acquisition of LAND, GOODWILL & FINANCIAL INSTRUMENTS** in pre as well as post.
2. Where an asset is acquired for which payment is made by **other than 4 modes** to a person in a day **exceeding Rs.10,000** then deduction u/s 35AD is not allowed.

Conditions to be satisfied (Also there in Sec 10AA/115BAB/115BAE)

(i) It is not set up by splitting up (OR) reconstruction of a Business already in existence.	(ii) It is not setup by transfer of IInd hand P & M.	(iii) 2 Exceptions to point (ii) (1) 2 nd hand P&M upto 20% is allowed. (2) Imported 2nd hand P & M is allowed provided no dep is allowed earlier.
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No Deduction under any other provisions of the Act

No deduction u/s 10AA (OR) CH VI A	AND	No deduction u/s - 32
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Special Benefits for Hotel Industry

Hotel will get deduction if it **transfers the operations** but continue to own the hotel.

Sec 73A: Set off & Carry forward of Loss

Losses of any specified business u/s 35AD can be set off and c/f **against any other specified business**. Time limit: **Infinite period**.

DEEMED INCOME

Asset is Demolished / Destroyed / Discarded / Transferred. Then, Sale price will Deemed income u/s Sec 28 (No Time Limit)	If an asset is used for non specified purpose before expiry of 8 years then deemed Income is :	
	Deduction allowed earlier	xx
	(-) Depreciation u/s 32(1)(ii)/(iia)	(xx)
	PGBP (Deemed Income)*	xx
	Sub sec (7A) & (7B) introduced by FA, 2014	
Note: Deemed Income not Applicable to "Sick Unit"		

Note: * Later on this amount will become the Actual Cost if the assessee uses such asset for other business or profession.

Sec 35E: Taxation of Mining of Coal, Limestone, Iron, Etc.

Only **Indian Company or Resident Non-Corporate** assessee.

1. **Eligible Assessee:** Engaged in **prospecting/extraction/production of minerals** like coal, limestone, iron, gold, zinc etc.
2. Deduction allowed for expenses incurred on-
 - Any operation of prospecting for any minerals;
 - Development of mine or other natural deposit of any mineral.
3. Such expenditure should be incurred during the **year of commercial production and 4 years** immediately preceding that year.
4. Deduction allowed over a period of **10 years** from the year in which commercial production started. Any Unabsorbed expenditure can be carried forward and be allowed along with instalment of next year (upto 10 years).
5. This deduction is **restricted** to income from **PGBP of mines**.
6. Deduction not allowed on expenses incurred for acquisition of mines/sites or building, P&M, furniture on which depreciation is allowed.

Sec 36(i)(vii): - Prov for Bad debts for Banks/ NBFC

In case of Scheduled Banks Other Non-Scheduled Banks including Coop Banks	In case of public, State Financial, State Industrial Corp./ Foreign Banks/NBFC
1. 8.5% of Total Income before this deduction and deduction under CH VIA.	5% of Total Income before this deduction and deduction under Chapter VI-A.
AND	
2. 10% of Aggregate Average Advances made by Rural Branches	NIL

Notes:

1. **No** deduction u/s **36(i)(vii)** **unless** actual bad debts exceeds provision for Bad Debts.
2. The provision for Bad Debts must be debited to P & L A/c.
3. The actual bad debts must be debited to Provision for Bad Debts A/c.

Sec 36(1)(viii): Transfer to Special Reserves

Applicability: Available for Banks & Public Financial Institutions engaged in providing Long Term Finance for Industrial, Agriculture, Housing & Infrastructure Purpose.

Amount of Deduction [Lower of (1), (2) & (3)]

- (1) Amount **transferred** during the P.Y. to special Reserve A/c u/s **36(1)(viii)** OR;
 (2) **20% of profits** from Above Business (**Before this deduction**) OR;
 (3) **200% of** (Paid up capital & General Reserve) as on the last day of the P.Y.
 (-) the Balance of S/R A/c on the 1st day of P.Y.

Sec 41(4A): Any amount **withdrawn** from the S/R A/C will be **chargeable to the tax**.

Miscellaneous deductions:

Sec 35CCA: Expenditure by way of making payment **for Rural Development** to Associations or Institutions.

Sec 35DD: Amortisation of Amalgamation / Demerger Expenses

Only to Indian Companies	(+)	5 equal Installments.
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Sec 35DDA: Amortisation of expenditure under **VRS i.e. 5 equal installments**.

Sec 35CCC: Expense on **Agriculture Extension** project.

Sec 35CCD: Expense **on Skill Development** project (By Companies excl. Land & Building).

PART 5: GENERAL DEDUCTIONS

Trading losses which are incidental to the operations of the business must be allowed even if it is not specially coded anywhere in the Act.

Sec 37(1): - General Deduction of Expenses

Not specified u/s 30 to 36.	Not personal in nature.	Not capital in nature.	Incurred wholly and exclusively for the purpose of B & P.
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Explanation 1 to Sec 37(1)

Explanation - Following expenses treated as illegal and not allowed as deduction,

- (i) For any purpose which is an offence or prohibited by any law in or outside India; or
- (ii) To provide any benefit or perquisite, whether or not carrying on a business or profession, and acceptance of such benefit or perquisite is in violation of any law or rule or regulation or guideline governing the conduct of such person; or
- (iii) To compound an offence under any law, in India or outside India.
- (iv) To settle proceedings initiated in relation to contravention under such law as may be notified by the Central Government.

Note: CG has notified following laws:

- Securities and Exchange Board of India Act, 1992
- Securities Contracts (Regulation) Act, 1956
- Depositories Act, 1996
- Competition Act, 2002

Circular No. 5/2012/APEX Laboratories (Supreme Court)

Any freebies provided by pharmaceutical sector to doctors shall not be allowed. Further such amount would be taxable in the hands of recipient.

CIT v. Kap Scan and Diagnostic Centre P. Ltd. (P&H): The demanding as well as paying of commission by Medical Practitioner is bad in law. It is not a fair practice and is opposed to public policy and should be discouraged. Thus, commission paid to doctors for referring patients for diagnosis is not allowable as a business expenditure.

Explanation 2 to Sec 37(1)

Any expenditure incurred on the activities relating to CSR referred in Sec 135 of Companies Act, 2013 shall not be allowed as deduction u/s 37(1).

Notes:

- Donation to **PM CARES FUND or PM Relief Fund etc** is **allowed u/s 80G** even if it is CSR. However, donation for **Clean Ganga or Swach Bharat Kosh** **not allowed** if it is spend as **CSR**.
- Expenditure on certain activities which is **otherwise allowable** under any other Sec will **not be disallowed u/s 37(1)**. Ex: Donation to **35(1)(ii)/(iii)** etc. will be allowed.

Treatment of various Penalties:

Compensatory	Penal
Allowed	Disallowed

Notes:

1. **Interest and penalties under Income tax** is **not allowed**.
2. Interest on **GST** is **allowed**.
3. **Penalties** under Direct & Indirect Tax **both** will **not be allowed**.
4. **Secret Commission** shall **not** be **allowed** as deduction.

Premium of Keyman Insurance Policy

CBDT has clarified that premium **paid by firm** for a Keyman Insurance Policy of **a partner**, to safeguard the firm against disruption of business is **allowable u/s 37(1)**.

Dr. T.A. Qureshi v/s CIT(SC)

Losses of illegal business will be allowed as deduction to compute the real profits and gains as **expln 1 to Sec 37(1)** **has nothing to do with case of loss**. It only covers expense.

Sec 37(2B): Any expenditure incurred by an assessee on **advertisement** in any brochure or pamphlet of a **political party** shall be disallowed. However, the same shall be allowed as donation **u/s 80GGB** to Indian Company.

Clarification on Build, Operate and transfer projects:

Expenditure incurred for development of roads/highways in Build-Operate-Transfer (BOT) agreement - **Allowed over life of agreement**.

Shanti Bhushan v. CIT (Delhi): Amount paid for heart surgery can **neither be allowed u/s 31 nor u/s 37(1)**.

Millennia Developers (P) Ltd. (Karnataka): Amount paid to compound an offence is obviously a penalty and hence, does **not qualify for deduction** u/s 37.

CIT v/s Neelavathi & Others (Kar): Since the **payment has been made to police and gundas** to keep them away from the business premises, such a payment is illegal and **not allowable as deduction**.

Orient Ceramics & Industries Ltd (Delhi H.C.): Expenditure incurred **on glow sign boards** displayed at dealers outlets shall be treated as **revenue expenditure** as the life of the asset is very short, there is replacement expenses recurring almost every year and these boards do not bring into existence any asset or advantage of enduring benefit.

Sree Rama Multitech Ltd (SC): **Interest** accrued on **deposit of share application** money with bank is eligible for **set off** against the public issue expenses; such interest is **not taxable** as "IFOS".

CIT v. Priya Village Roadshows Ltd. (Delhi): The **expenditure** incurred **on feasibility study** conducted for examining proposals for technological advancement relating to the existing business can be classified as a **revenue** expenditure, where the project was **abandoned without creating a new asset**.

National Co-operative Development Corporation (SC): The **source of funds** from which expenditure is incurred for the purpose of business is **not relevant** for the purpose of allowability of deduction **u/s 37(1)**.

Mahle Anand Filter Systems Pvt. Ltd. v. ACIT [2023] (SC): When the assessee sought to vacate certain leased premises, disputes arose, and to end the dispute with the lessor, the assessee agreed not to claim the security deposit of Rs. 5.8 crores. The Apex Court held that the amount of Rs. 5.8 crores **could not be treated as revenue expenditure** merely because it was paid in the course of a dispute. It is evident that the character of the amount was of a capital nature and remained so although assessee decided to forgo Rs. 5.8 crores (the security deposit).

Bank of Rajasthan Ltd. vs CIT [2024] (SC):

Whether the interest paid by the banks for broken period on purchase of securities can be claimed as revenue expenditure?

The Apex Court held that as the securities were treated as stock-in-trade, the interest on the broken period cannot be considered as capital expenditure and will have to be treated as revenue expenditure, and thus, allowed as deduction.

PCIT vs. Adadyn Technologies (P.) Ltd. [2024] (SC): The Court held that since the product having been **abandoned**, the assessee shall **not get any enduring benefit**. In substance, assessee has incurred expenditure in these two years to develop a software but due to change in technology, it had to abandon the product. In effect, it had lost money spent on this product.

Accordingly, the Court held that the assessee shall not get any enduring benefit and therefore, the expenditure was to be treated as **revenue in nature**.

Allowability or not of Certain Expenses

1. **Dividend** paid is **not allowed** as deduction.
2. Income tax, wealth tax, surcharge & H&E cess is not allowable as deduction.
3. Provision for **loss of subsidiary** company is not allowable as deduction.
4. Provision for **deferred tax** as per IND AS 12 is not allowable as deduction.
5. Provision for **diminution in the value of investment** is not allowable as deduction.
6. Provision for **unascertained liability** is not allowable as deduction.
7. **Prior period expenses** are not allowable as deduction, but they are allowable if liability to pay crystallized during the PY.
8. **Retrenchment Compensation** -On Closure of entire business - Capital Expense
-On Closure of part of business-Revenue Expense
9. **Share/Debentures issue expenses:**
 - a. IPO/FPO/Right Shares - Capex (Change in Capital) - **Not Allowed**.
 - b. Buy Back/Bonus/Deb & Loan Expense (No Change in Capital) - **Allowed**.
10. Registration fees incurred on increase of authorised capital of Co. - **Not allowed**.

PART 6: DISALLOWANCES

Sec 40A(2): Excess Payment to Specified Person:

Assessee Incurs Expenditure	(+) made payment to Specified person If AO considers to be unreasonable and Excessive	(+) A.O. may disallow Having regard to FMV & Legitimate needs of business.
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If Co. sells goods of Rs 1 lac to director whereby the FMV of goods sold is Rs 1.5 lacs then, A.O. can't invoke **Sec 40A(2)** as it is **applicable only to expense and not income**

Specified Person (Related Party) means the following:

Sr No	Assessee	Relative
1.	Individual	Spouse, Brothers, Sisters, Lineal Ascendant or Lineal descendant
2.	HUF	Member & their relatives
3.	Firm/LLP	Partner & their relatives
4.	Company	Director & their relatives

- | | | |
|----|---------|--------------------------|
| 5. | AOP/BOI | Member & their relatives |
|----|---------|--------------------------|
6. Assessee having substantial interest in any entity. Substantial interest means holding 20% or more at anytime during the PY.
 7. Holding subsidiary are also relatives.

Sec 40A(3): Disallowance for Cash Payment

Assessee incurs expenditure (Revenue)	a	Payment OR Aggregate of Payments	To a person in a single day of a sum exceeding Rs 10,000	By other than "Account payee crossed cheque OR Bank Draft OR ECS or such other electronic mode as may be prescribed"
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1. Such other Electronic Mode would include Credit Card/Debit Card/Net Banking/IMPS/UPI/RTGS/NEFT/BHIM. {Rule 6ABBA}
2. For payment made to road transporters the Limit is Rs 35,000.
3. If the expenditure is claimed as deduction in earlier year on accrual basis & if such expenses is subsequently paid in cash or bearer cheque then deduction allowed earlier shall be withdrawn & taxable as PGBP [40A(3A)].
4. Even Depreciation u/s 43(1) and capital Expenditure u/s 35AD would be disallowed on payment by other than 4 modes (Done earlier while doing Sec 43(1) & Sec 35AD.)

Rule 6DD: Exception to Sec 40A(3)

1. Payment made to RBI/LIC/Banks or Government.
2. Payments by Book entries.
3. Payment to Producers of agriculture produce, forest produce, poultry products, dairy products, fish products, live stock etc.
4. Payment of retirement benefits where such payments is up to Rs. 50,000/-
5. Payment of Salary to an employee who is posted to any other place or ship for 15 days or more other than his normal place of duty + TDS is deducted u/s 192.
6. Payment in a town or village made where banking facility is not available.
7. Payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person.
8. Payment is made by an authorized dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.
9. Payment for purchase of product manufactured or processed without the aid of power in a cottage industry, to the producer of such product.

CBDT Circular

"Fish or Fish Products"	"Producer of Fish / Fish Products"
Would include other marine products such as prawns, crabs, lobsters, etc.	Would include fishermen or headmen of fishermen who sought the catch of Fish.

40A(2) vs 40A(3) the Interlinking:

In case where **both** the above secs are **applicable**, then **first** disallow the excess u/s **40A(2)** and if the balance is more than Rs. 10,000, then disallow u/s **40A(3)**.

Sec 40A(4): Where any payment i.r.o any expenditure is required to be made by an a/c payee cheque/DD etc. in order that such expenditure may not be disallowed **u/s 40A(3)**, then the payment may be made by such mode. No person is allowed to raise, in any suit or other proceeding, a plea based on the ground that the payment was not made in cash.

Sec 40A(7): Provision for Payment of Gratuity is Disallowed

Provision is disallowed **u/s 40A(7)**. However, when **actually paid to employee**, it will be **allowed as deduction**.

Sec 40A(9): Contribution to **Unrecognized Provident Fund** etc. is Disallowed

Sec 40(a)(i): Disallowances on non-deduction or non-payment of TDS w.r.t NR:

- (i) Payments **to N.R.** or Foreign Company of **any sum chargeable to tax in India**, then **deduct tax and deposit** till the due date **u/s 139(1)**.
- (ii) **100% expenditure will be disallowed** if the tax is not deducted during the PY OR after deducting is not paid till the due date specified **u/s 139(1)**.
- (iii) Where in respect of any such sum, where tax has been **deducted in any subsequent year**, or has been **deducted** in the PY but **paid after** the **due date** of filing of return, then it will be **allowed in the P.Y. in which payment is made**.
- (iv) All the aforesaid sums **must be taxable in the hands of the recipient** under IT Act.
- (v) **Circular No. 3/2015 dated 12/02/2015:** Doubts have been raised about interpretation of the term "**other sum chargeable**" i.e. whether this term refers to the **whole sum being remitted abroad** or **only the portion** representing the sum chargeable to IT under relevant provision of the Act. CBDT clarifies that for the purpose of making disallowance **u/s 40(a)(i)** the **appropriate portion** of the sum which is chargeable to tax under the Act shall form the basis of such disallowances & it has to be **determined by A.O.** considering facts & circumstances.

Sec 40(a)(ia): Disallowances on non-deduction or payment of TDS w.r.t Resident:

Deduct	&	Deposit till time specified u/s 139(1) i.e. Due Date of filing of Return.
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- (i) If tax is not deducted or after deducting it is not paid then **30%** will be disallowed.
- (ii) Where in respect of any such sum, where tax has been **deducted in any subsequent year**, or has been **deducted** in the PY but **paid after** the **due date** of filing of return, **then 30%** will be **allowed in the P.Y. in which payment is made.**

Exception to Sec 40(a)(i)/Sec 40(a)(ia)

If any amount **paid/credited** to payee **without deduction** of TDS but such **PAYEE**

- **Furnishes his Income Tax Return**
- Takes such income in his Total Income calculations
- Has **paid the tax** on such income
- **Payer furnishes a certificate** from CA, then it shall be **deemed that the payer has deducted TDS & paid to Govt** on date of furnishing of return by payee & deduction of such expenditure shall be allowed accordingly **(30%/100% disallowed in the current year and will be allowed in the year in which payee files his ROI)**

However, **payer has to pay interest u/s 201(1A)** @ 1% p.m. or part of the month on the amount of TDS not deducted from the date on which the TDS was deductible till the date on which payee furnishes his ROI.

Palam Gas Service [2017](SC): The word payable used in **sec 40(a)** includes **actually paid also**. Accordingly, disallowance **u/s 40(a)(ia)** shall be triggered on both sums payable at the end of PY or paid during the PY. Further **sec 40(a)(ia)** is attracted for both **mercantile as well as cash** system of accounting.

As per **Sec 40(a)(iii)** any payment which is chargeable under the head **Salaries**, if it is payable outside India or to a **Non Resident** and if the **tax has not been paid thereon nor deducted** therefrom under CH XVII-B then the salary expenditure is disallowed.

Other Disallowances:

Sec 40(a)(ii): Income tax (including surcharge, cess) is disallowed.

Sec 40(a)(iia): Wealth tax is disallowed.

Sec 40(a)(iib): Royalty, fees, service charges etc. paid **by State Govt. undertaking to State Govt** is disallowed if it is **exclusively** charged on SG Undertaking.

Sec 40(a)(v): ER paying **tax on Non-monetary perquisites** of Employees is disallowed.

Sec 43B: Certain Deductions Allowed only on Actual Payment

Following deductions [except point (g)] will be allowed only when it is actually paid on or before the due date of filing of return u/s 139(1):

- (a) Tax, duty, cess or fees under any other law OR;
- (b) Employer's contribution to any provident fund or superannuation fund or gratuity fund or any fund for the welfare of Employees OR;
- (c) Bonus or commission payable to Employees OR;
- (d) Interest on any loan or borrowing from public Financial Institutions or state Finance Corp. or State Industrial Investment Corporation or scheduled Bank or Cooperative Banks or notified NBFC OR;
- (e) Any Leave Salary OR;
- (f) Any expenditure which is payable to Indian Railways for use of Railway Assets OR;
- (g) Any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in sec. 15 of the MSMED Act, 2006. (Refer note 7 & 8)

Notes:

- 1) If the payment is not made till due date of filling of return, then it will be allowed in the year of actual payment.
- 2) A bank guarantee given by a company towards disputed tax liabilities does not amount to actual payment and hence it is not allowed as deduction.
- 3) ER Contribution to RPF etc is covered u/s 43B. However, employees contribution shall be paid by 15th of following month.
- 4) Deduction of interest is available only if it is actually paid & not if it is just converted into new Loan or debenture (or any other instrument by which liability to pay is deferred to a future date).
- 5) Any O/S interest which is converted into a loan or debenture (or any other instrument) will be allowed as deduction in the year in which such converted loan etc is actually paid irrespective of nomenclature being loan etc.
- 6) Shasun Chemicals & Drugs Ltd (SC): Where payment of bonus due to employees is paid to a trust and such amount is subsequently paid to the employees before the stipulated due date, the same would be allowable under sec 36(1)(ii).
- 7) Any payment made to Micro & Small enterprise allowed as deduction in current year if payment made within time allowed u/s 15 of MSMED Act otherwise allowed in the year of Actual Payment.
- 8) Time Limit as per Sec 15 of MSMED Act: Where any person purchases goods/ services, from a micro/small enterprise, the payment shall be made before the date

agreed upon between him and supplier in writing. In no case the period agreed upon between the supplier and the buyer in writing shall be **more than 45 days**. If, however, there is no such agreement, the payment shall be made within 15 days of acceptance or deemed acceptance of goods/services.

Fulfil both conditions:	Micro Ent	Small Ent
Investment in P&M or equipment's	Up to Rs. 1 crore &	Up to Rs 10 crore &
AND Turnover	Up to Rs. 5 crore	Up to Rs. 50 crore

PART 7: DEEMED INCOME

Sec 41(1) Recovery of deductions already claimed

If Assessee was **allowed a deduction** in earlier P.Y. by way of expenditure, loss, trading liability & now in the current P.Y. assessee has obtained **a refund** of such expense or there is **remission/cessation** of such trading liability, then such refund /remission shall be taxable as deemed income under PGBP.

Example:

- Refund of Indirect Tax like GST, VAT etc
- SIT destroyed by fire & allowed as trading loss & later on insurance compensation is received by assessee.

Notes:

1. Remission by unilateral act	Assessee has written-off the liability without getting approval of creditor - deemed to be income .
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2. Waiver of Loan:

- Waiver of Loan by Government:** It is included in the definition of Income u/s **2(24)(xviii)** - Always taxable.
- Waiver of Loan by Others:**
 - Working Capital Loan:** Principal Part taxable & Interest part not taxable as deduction was not allowed earlier as per **sec 43B**.
 - Capital loan:** Not Taxable.

Sec 41(4): Recovery of Bad Debts

Recovery of Bad Debts which was allowed a deduction will be deemed to be **business income** irrespective of whether the business exists or not.

Further it was held by Supreme Court in the case of **P.K. Kaimal** that bad debts claimed by Predecessor and **recovered by successor is not chargeable to tax**.

Note:

- We have already done discussion of **Secs 41(2) , 41(3) & 41(4A)** in the chapter of depreciation, Sectorwise deductions (Scientific Research) & Sectorwise deductions (Transfer to Special Reserve) respectively.

2. We will do the discussion of **Secs 41(5)** in the Chapter of Set off & Carry Forward.

PART 8: MISCELLANEOUS PROVISIONS

Sec 14A: Exp Incurred Disallowed in Respect of Exempt Income under this Act

- **No deduction** shall be allowed in the respect of **expenditure** incurred for earning **exempt income** under this ACT.
- A.O. shall determine the amt of expense disallowed in prescribed manner (**Rule 8D**)

Rule 8D: Method for determining amt of expenditure disallowed i.r.t exempt Income

- (i) Amount of Expenditure **directly** relating to exempt income AND;
- (ii) An amount equal to **one percent** of the **annual average** of the **monthly averages** of the opening and closing balances of the exempt investment.

Notes:

1. Disallowance can be made even in those cases where no exempt income has been earned by the assessee during the FY.
2. **CIT vs Kribhco (2012) (Delhi):** The High Court held that **Sec 14A is not applicable for deductions**, which are permissible and allowed under Chapter VIA.

Sec 43D: Interest Income on Bad & Doubtful Debts

In case of public Financial Institutions OR State Financial Corporation OR State Industrial Investment Corp OR Scheduled Bank Or **COOPERATIVE BANKS** or notified NBFC, the Interest on Bad & Doubtful Debts shall be **taxable in the year in which the Int is recovered or credited to BOA whichever is earlier.**

Sec 44AA: Maintenance of Books of Accounts

Specified Profession	
Existing: Keep & maintain BOA if Gross Receipts > 1.5L in All 3 preceding PY's	New: Keep & maintain BOA, if Gross Receipts is likely to be greater than 1.5 lakhs

All the above BOA should be **maintained for 6 PY's** from the end of Relevant AY's.

Specified Professions for Sec 44AA & 44ADA includes:

1. Medical 2. Legal 3. Accountancy 4. Film Artist 5. Technical Consultancy
6. Engineering 7. Architectural 8. Interior Decorator 9. Company Secretary
10. IT Professional 11. Authorised Representative.

All Business and other Non-Specified Professions		
	Co, Firm etc	Individual & HUF
In case of existing business or profession		
1. If PGBP exceeds in any of the last 3 PYs (OR)	1,20,000	2,50,000
2. If Turnover exceeds in any of the last 3 PYs	10,00,000	25,00,000
If business or profession is newly set up		
1. If PGBP is likely to exceed (OR)	1,20,000	2,50,000
2. If Turnover is likely to exceed	10,00,000	25,00,000

Sec 271A :- Penalty for failure to keep & maintain BOA is **Rs. 25,000/-**

Sec 44AB: Tax Audit	
1. In Case of Business the Turnover > Rs. 1 Crore . However, limit shall be Rs. 10 crores instead of Rs. 1 crore in cases where, - (i) Cash receipts during the PY does not exceed 5% of total receipt; AND (ii) Cash payments during the PY does not exceed 5% of total payment. Cheque/draft, which is not account payee , shall be treated as cash .	
2. In Case of Profession the Turnover/Gross Receipts > Rs. 50 Lacs	
3. If an assessee opts for Sec 44AD , then he should not get his BOA audited unless the T/O exceeds Rs. 2cr/3cr in some cases .	
Due Date: One month prior to Due Date of filing of return u/s 139(1).	

Sec 271B: Penalty for failure to get Accounts Audited:

It is 0.5% of Turnover or Rs. 1,50,000 whichever is **lower**.

Sec 43CB: Income from construction contract and service contract		
Construction contract [Sec 43CB + ICDS-III]	Contract for providing Service [Sec 43CB + ICDS-IV]	
Any revenue or cost associated with construction contract shall be recognized as per: POCM (percentage of completion method)	Any profit or gain from service contract shall be computed as follows:	
	If duration of contract is upto 90 days	Project completion method
	If contract involves indeterminate no. of acts over a specific period of time	Straight line method over period
	Otherwise	POCM

For the purpose of POCM, PCM & SLM,

(i) Contract revenue shall include retention money

(Retention money are amt of progress billing which are not paid until the satisfaction of a condition specified in the contract for payment or until defects have been rectified).

- (ii) Contract cost shall not be reduced by any incidental income in the nature of interest, dividend or capital gain.

PART 9: PRESUMPTIVE INCOMES

Sec 44AD: Notwithstanding anything Contained in Sec 28 to Sec 43C

a. "Eligible Assessee"	b. "Eligible Business"
→ Resident Individuals, HUF → Resident Partnership Firm but not an LLP .	Any Business except Sec 44AE & T/O, Gross Receipts, Sales ≤ 2 Cr.
Then Deemed profits = 8% of T/O or such higher sum as claimed by assessee	

Note: Where the aggregate of the **amt received** during the PY, in cash, does **not exceed 5%** of the total turnover or gross receipts then limit of T/O would be **Rs. 3 crores**.

Cheque/draft, which is **not account payee**, shall be **treated as cash**.

Note: Deemed profits would be **6% instead of 8% of Total T/O received during the FY OR received before D/D of return u/s 139(1)**, if it is received by any of the four modes.

Conditions to get covered u/s 44AD:

1. Assessee should **not claim any** Profit Linked Deductions u/s **10AA or CH VIA**.
2. **Sec 44AD is not applicable** for certain assessee:
 - Any profession {Refer 44ADA}
 - Any person earning any income in the nature of commission or brokerage.
 - Any person carrying on any agency business.

Notes:

1. **No PGBP Disallowances** applicable (Same for **Sec 44ADA & 44AE**).
2. **No PGBP Deductions** allowed (Same for **Sec 44ADA & 44AE**).
3. The **WDV** should be calculated normally (Same for **Sec 44ADA & 44AE**).
4. Deduction **u/s 80C to Sec 80GGC can be claimed** (Same for **Sec 44ADA & 44AE**).
5. **UAD is not allowed** but business loss is allowed (Same for **Sec 44ADA & 44AE**).
6. **Salary, remuneration, interest etc** paid to the partner as per **Sec 40(b)** shall **not be deductible**. (Not allowed for **44ADA** also but allowed for **44AE**).
7. Where an assessee **declares profit** for any PY **in accordance** with **sec 44AD** and he **declares** profit for any of the **five consecutive AY's not** in accordance with **44AD**, then he shall **not be eligible** to claim the benefit of **this Sec for 5 AY's** subsequent to the AY relevant to the PY in which the profits have not been declared in accordance with the provisions of **Sec 44AD**. (Same provision also there in **Sec 115BBF - Refer MAT Chapter**). (Not applicable for **Sec 44ADA & 44AE**)

8. The eligible assessee shall be **required to pay Advance tax once by 15th March** of the Financial year. (Same in **sec 44ADA** but u/s **44AE** pay 4 times)

Sec 44ADA: Presumptive Income for Professionals (Override 28 to 43C)

- (i) Applicable to assessee engaged in any specified **profession u/s Sec 44AA(1)**.
- (ii) Whose gross Receipts does **not exceeds Rs. 50 lacs** in a PY. Then Deemed profits are **50% of Gross Receipt or such higher sum as claimed by assessee**.
Where the aggregate of the **amt received** during the PY, in cash, does **not exceed 5%** of the gross receipts then limit would be **Rs. 75 lacs instead of Rs. 50 lacs**.
Cheque/draft, which is **not account payee**, shall be **treated as cash**.
- (iii) Applicable **to resident individual or resident firm (not for HUF and LLP)**.
- (iv) The **restriction of 5 yrs** as applicable in **44AD** is **not applicable** here.
- (v) **Rest all provisions same as Sec 44AD**.

Sec 44AE: Deemed income for Goods Carriage Business (Overrides 28 to 43C)

- (i) This Sec is applicable if the assessee **not own more than 10 Goods Carriage at any time during the PY. (Also Refer Sec 194C later on)**
- (ii) **Light Motor Vehicle:** Deemed Income = **Rs. 7,500 per month** or part of the month per vehicle for no. of months vehicles are owned by the assessee **or such higher sum as claimed by assessee**.
- (iii) **Heavy Motor Vehicle:** Deemed Income = **Rs. 1,000 per ton**, per month or part of the month, per vehicle for no. of months vehicles are owned by the assessee **or such higher sum as claimed by assessee**.
- (iv) Heavy Motor Vehicle = Gross Vehicle weight > 12000 kgs.
- (v) Deduction of **remuneration & interest** paid to partner by Firm is **allowed** as per **sec 40(b)**. (Not allowed in **sec 44AD/ADA**).
- (vi) Pay Advance Tax 4 Times (In **Sec 44AD/ADA** it is only once).
- (vii) If an assessee claims that his actual profits are lower than deemed profits **u/s 44AE**, then

Keep and maintain BOA u/s 44AA	Conduct Tax Audit u/s 44AB
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PART 10: INTERLINKING OF PGBP PROVISIONS

Sections where **Manufacturing or Production is mentioned:**

1. **Sec 32(1)(ia)** - Additional Depreciation.
2. **Sec 35(2AB)** - In house Scientific Research.
3. **Sec 35AD** - Investment Linked Deductions (3 Business).

Sections where **Company** is mentioned:

1. **Sec 36(1)(ix)** - Expenditure on Promotion of Family Planning.
2. **Sec 35(2AB)** - In house Scientific Research.
3. **Sec 35AD** - Investment Linked Deductions (2 Business).
4. **Sec 35CCD** - Expenditure on Notified Skill Development.

Sections where **Indian Company** is mentioned:

1. **Sec 35D** - Amortisation of Preliminary Expenses.
2. **Sec 35E** - Amortisation of Exploration Expenses.
3. **Sec 35DD** - Amortisation of Amalgamation or Demerger Expenses.
4. **Sec 35AD** - Investment Linked Deductions. (2 Business).

Sections where **Amortisation** is mentioned:

1. **Sec 36(1)(ix)/35D/35DD/35DDA** - 1/5th of Capital Expenditure
2. **Sec 35E** - 1/10th.
3. **Sec 35ABB/ABA** - Over the life of License.

Sections where **deduction** is based on **percentage**:

1. **Sec 33AB** - 40% PGBP (before **33AB** & b/f losses).
2. **Sec 33ABA** - 20% PGBP (before **33ABA** & b/f losses).
3. **Sec 36(1)(viiia)** - 8.5%/5 % of GTI & 10% Aggregate Rural Advances.
4. **Sec 36(1)(viii)** - 20 % of PGBP from **36(1)(viii)** Activities OR
200% of (Paid up Capital + GR) on last day - SR A/c on 1st day.
5. **Sec 35D** - Higher of (5% of COP or 5% of CE). Compare with Actual
Exp and then whichever is lower.

Sections where **Lock in** is mentioned:

1. **Sec 33AB/ABA** - 8 years from the end of the PY in which asset was
Purchased.
2. **Sec 35AD** - Do not use for Non-Specified Purpose for a period of 8 Years
from the beginning of the PY in which asset was installed.

Sections where **New Plant & Machinery** is mentioned:

1. **Sec 32(1)(iia)** - Additional Depreciation.
2. **Sec 35AD** - Investment Linked Deductions (2 Exceptions).