PART 1

General Chargeability:

1. As per Sec 26(2)(a) "Profits and gains of any business or profession carried on by the assessee at any time during the tax year" is charged under PGBP".
   This is the general chargeability under the head B & P. Further there are certain special charging Secs as well to cover those cases which do not fulfill the conditions of general chargeability, to widen the scope of taxability under PGBP.
2. Whether a particular income will come under the head Business or Profession will be dependent upon the facts & circumstances of each case.
3. The term "Business" is defined u/s 2(20) 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 Courts under the Income Tax Act 1961 or 2025, to understand the term business.

Definition of Profession:

Sec 2(86): 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 Assessees 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 come under the head PGBP.
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.

What is the treatment of Let Out of Property?

Commercial Property		Residential Property
Chennai Properties & Investment Ltd 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.	Otherwise; IFHP	Always IFHP

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 26(2)(a). 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 26(2)(a) must be Real Profits i.e. not notional, not anticipated (There are some exceptions eg:- Secs 58 & 61 which are Presumptive Incomes)

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 tax year." means business or profession must be conducted at least sometime during the tax year, if not for the entire year.

Sec 27: How to Compute PGBP Income?

1. Compute as per the provisions of Sec 28 to Sec 60 except sec 58.
2. But before computing PGBP as per Income Tax Act one has to follow Sec 276.
3. As per Sec 276(1) every assesse 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 276(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 276(3): If an assessee is not complying sub sec (1) or (2) or AO is not satisified about the correctness or completeness of accounts, then A.O. has power to invoke Best Judgement Assessment u/s 271 [Refer Assessment Procedure].

Deduction of Expenses & Allowances

Specific Deductions		General Deductions
Deductions for All Assessee's	Sector wise deductions	Sec 34 & Case Laws
Sec 28,29,30,31,32 & 33	Sec 44,45,46,47,48,49,50,51 & 52	

Special Charging Sections (See Later)

1. As per Sec 26(2)(h), any sum 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 393(1); Table: Sl.No. 6(iii).
2. As per Sec 26(2)(f), 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 393(1); Table: Sl.No. 8(iv)).

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 26(2)(i) - as PGBP	Taxed u/s 18(1) – as Salary	Taxed u/s 92(2) – as IFOS

Sec 26(2)(e): Special Charging Sec relating to Export Assesses

4. Profit on sale of Import Licence.
5. Duty drawback or Duty Remission.
6. Cash assistance against exports.
7. Any other export incentive.

Note: The definition of Income u/s 2(49) under the Income Tax Act 2025 states that Income includes any sum chargeable to tax u/s 26(2)(e).

Sec 26(2)(b)(iii): Special Charging Sec relating to Compensation received in Business

8. Any compensation or other payment, due to, or received, by any person by whatever name called for any contract relating to business, in connection with termination of management, office, agency or contract, as the case may be, or modification of terms and conditions relating thereto.
If the compensation is due to or received by employee for termination or modification of terms & conditions of any contract relating to employment, then taxable under IFOS u/s 92(2)(j).

Note: Apart from above there are some other charging sections as well which we will learn along with the related concepts.

PART 2: DEPRECIATION

	Sec 33 → DEPRECIATION		
Sec 33(3)	Sec 33(8)	Sec 33(2)	Sec 33(10)
Normal dep - Block Scheme	Additional dep - Block Scheme	Dep on SLM for Power Generating Units (PGU)	Terminal dep for PGU

Sec 33: 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?

Wholly & Exclusive use:

The term 'use' means the asset should be **used wholly & exclusively for the purpose of business or profession.**
The term 'use' means both **active as well as passive use** i.e. ready for use.

Partly use:

Sec 33(3)(b): When any building, machinery, plant or furniture is partly, or not wholly and exclusively, used for the purposes of the business or profession, the deduction shall be restricted to the fair proportionate part thereof as determined by the AO, having regard to the usage of such building, machinery, plant or furniture for the purposes of the business or profession.

Sec 2(17): Block of Assets (Same Category + Rate)

<table>
<tr><td colspan="3">Tangible Assets</td><td rowspan="5">Intangible Assets
(Other than Goodwill)

25%
↓
Half dep. is also applicable here</td></tr>
<tr><td>Plant & Machinery
15%</td><td>Furniture
10%</td><td>Building
10%</td></tr>
<tr><td colspan="3">@ prescribed rates {Rule 25}</td></tr>
<tr><td colspan="2">If Assets are used for ≥ 180 days (Till 3/10/26)
↓
Then dep. @ full Rate</td><td>If Assets are used for <180 days (From 4/10/2026)
↓
Then dep. @ half Rate</td></tr>
</table>

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 EPABX will be depreciable at 15%.
4. Computer & its peripherals like scanner, printer etc/Windmills/ Professional Books/ Aircraft/ Pollution Control Equipment/Life Saving medical equipment will be depreciated at 40%.
5. Ships will be depreciated at 20%.

When Dep rate u/s 33 becomes half?

1. Depreciation becomes 50% when an asset is acquired & put to use in that tax year for less than 180 days.
2. 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.
3. This provision is applicable to normal dep under block, additional dep, SLM dep but not to terminal dep.

Sec 66(17): 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.

Note: In the new Income Tax 2025 all the chapter specific definitions are grouped under one section. Like for PGBP all definitions specific to PGBP are covered u/s 66.

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}

Is it mandatory to claim depreciation?

Yes, as per Sec 33(7) it is mandatory to claim depreciation.

Sec 41(1): How to arrive at WDV for 2nd year?

WDV means Actual Cost less "depreciation Actually allowed under this Act or under Income Tax Act 1961."

Sec 41(10): 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 33(8): Additional Depreciation @ 20% of Actual Cost

Eligible Assessee: engaged in the business of **Manufacture** or production of any article or thing or in the business of Generation, transmission or distribution of **Power.**

Notes:

1. **Assessee acquires and installs the New Machinery or Plant;**
2. **The new machinery or plant is first put to Use by the assessee for the purposes of business;**
3. 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.**
4. It is **not allowed** in case of P & M which is; **2nd Hand (local or imported)** or installed in any office premises or residential accommodation incl guest house, ships, aircrafts, office appliances, road transport vehicle, any P & M which is already allowed as 100% deduction.
5. Forklift Truck used in factory is not treated as transport vehicle, so it is eligible for Additional depreciation.
6. Like normal depreciation additional depreciation is also **reduced from the Block.**
7. Additional Depreciation is **one-time benefit** for that Plant & Machinery.
8. **Printing or printing & publishing amounts to manufacture,** therefore eligible for additional depreciation.
9. If a **power generating** assessee opts for **SLM then no additional dep** is allowed.

Sec 39: Meaning of Actual Cost:

1. The **actual cost** of an asset used for business or profession shall be the actual cost to the assessee, **reduced by** the following:
   (a) Any part of the cost **met by any other person** or authority, directly or indirectly;
   (b) **Goods and Services Tax (GST) in respect of which input tax credit has been claimed and allowed;**
   (c) Excise duty or additional duty under Sec 3 of the Customs Tariff Act, 1975, in respect of which credit has been claimed and allowed under the Central Excise Rules, 1944;
   (d) Any **subsidy, grant or reimbursement** (by whatever name called), relatable to the acquisition of the asset, received directly or indirectly from:
   - Central Government;
   - State Government;
   - Any authority established under any law; or
   - Any other person.
2. The payment or aggregate of **payments exceeding Rs. 10,000 in a day** for acquisition of an asset or part thereof, made to a person in a mode **otherwise than by specified banking or online mode,** shall be excluded from the actual cost of that asset.

3. In a case where the **subsidy,** grant or reimbursement is **not directly relatable** to the asset acquired, but it is related to group of assets; then subsidy etc shall be **reduced proportionately** from all assets.

4. Sec 66(32): "Specified Banking or Online Mode" shall mean transaction by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode, as may be prescribed; Prescribed modes as per Rule 48: Credit Card/Debit Card/Net Banking/IMPS/UPI/RTGS/NEFT/BHIM Aadhar pay or Tier III: Full KYC Central Bank Digital currency wallets, P-CB-DC, wholesale/Cross-border CBDC.
5. 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 32(b).

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.

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. prodⁿ for sale or captive consumption, shall be revenue exp.

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 tax year (T.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 T.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 32(b).

Sec 39(4): Actual Cost in Special Cases		
S. N.	Specified circumstances	Actual cost
1.	Capital Asset transferred by Amalgamating Co to Indian Amalgamated Co.	WDV to Amalgamating Co.
2.	Capital Asset transferred by Demerged Co to	WDV to Demerged Co.

	Indian Resulting Co.	
3.	Stock in trade converted into or treated as Capital Asset	FMV of SIT on date of Conversion.
4.	Asset acquired by way of gift/inheritance	Actual Cost to the previous owner less dep actually allowed to previous owner.
5.	Building used for private purpose subsequently brought into business or profession 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 + Receiver should be Indian Company	WDV to the transferor
7.	Re-acquisition of asset sold	The WDV at original transfer or the price paid for reacquiring the asset; whichever is less.
8.	Asset purchased and leased or hired back to the same person	The WDV of Previous Owner (Lessee)
9.	Asset acquired for scientific research subsequently brought into business use	NIL (To be done with Sec 45)
10.	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. [Take dep rates of respective years]
11.	Where capital asset is acquired under the scheme of corporatisation of a recognised stock exchange approved by the SEBI.	WDV of Previous Owner [To be done in Capital Gains]
12.	(a) Where deduction u/s 46 was allowed or allowable in respect of the capital asset— (i) to the assessee; or (ii) to any person and the assessee acquires or receives such asset through special modes of acquisition from such person.	(a) Actual cost shall be be NIL.
	(b) Where deduction allowed u/s 46 in respect of a capital asset becomes deemed income as per sec 46(9)(b).	(b) Actual cost of the asset as reduced by the depreciation: (i) that would have been allowable had the asset been used for the purpose of business since date of acquisition; and (ii) calculated at the rate in force.

	For the purposes of this sec, "special modes of acquisition" means acquisition— **(a)** by way of a gift or will or an irrevocable trust; or **(b)** upon distribution on the liquidation of a company; or **(c)** by such mode of transfer as is referred to in sec 70(1)(a), (c), (d), (e), (j), (zd), (ze) and (zf).

5. & 6. Irrespective of anything contained in sub-sec (4), other than serial number 8, in a case where the asset is acquired by the assessee, its actual cost shall be such amount as may be determined by the AO with the prior approval of the JC having regard to all the circumstances of the case, where—

(a) the asset was used by any other person for the purposes of his business, before such acquisition; and

(b) the AO is satisfied that the main purpose of the transfer of the asset, directly or indirectly, was to reduce tax liability (by claiming depreciation on enhanced actual cost).

Sec 2(49)(w): 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 Sec 39(1)(d) and (3)] 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.

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.**

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 33(11): 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.

Time limit = Infinite years i.e. No time limit.

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

Sec 33(5): Depreciation in case of Amalgamation, demerger or succession

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 33(2): SLM Depreciation for Generation or Generation and distribution of Power

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 33(10)	Balancing charge OR Deemed income u/s 38 = 10,000	Balancing Charge OR Deemed Income u/s 38 = 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 75: 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 38	XX
(-) T/D u/s 33(10)	(XX)
**Adj WDV = COA	XX

COMPARISON OF SEC 42 V/S SEC 43	
Sec 42	Sec 43
1. Fixed Asset purchased from outside India + Loan in foreign currency/Foreign Suppliers Credit.	1. Any Gain/Loss other than sec 42 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 31st March.	2. Record the transaction as per the rate on date of transaction. Then on 31st 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.

ICDS – VI EFFECTS OF CHANGES 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 Tax 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 tax year	

PART 3: SPECIFIC DEDUCTIONS

Sec 28: Rent, Rates & Taxes, Repairs and Insurance of Building

Owner	Tenant
Rates, Taxes, Revenue Repairs and Insurance ↓	Rent, Rates, taxes, Revenue Repairs if he has undertaken to bear the cost of repair, 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 {Sec 33(6)}

Notes:

1. Rates & Taxes will be allowed on actual payment basis as per Sec 37.
2. If a building is not used wholly and exclusively for business or profession, the deduction allowable u/s 28(1) shall be restricted to the fair proportionate part as determined by the AO based on the extent of business or profession use.

Sec 28: 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 34(1) subject to conditions there.
3. If Plant, machinery or furniture is not used wholly and exclusively for business or profession, the deduction allowable u/s 28(1) shall be restricted to the fair proportionate part as determined by the AO based on the extent of business or profession use.

Sec 29: Employee related deductions

Sec 29(1)(a): Employer Contribution to Recognised Provident fund/ Superannuation Fund is allowed as deduction {Subject to 37}.

Sec 29(1)(b): ER Contribution to Approved Pension Fund u/s 124 is allowed as deduction {Subject to Sec 37}. {Contribution ≤ 14% of Salary, Salary = Basic +DA in terms}

Sec 29(1)(c): ER Contribution to Approved Gratuity Fund is allowed as deduction {Subject to Sec 37}.

Note for Gratuity Fund:

Provision for payment of gratuity as per actuarial valuation is disallowed u/s 29(2)(a). However, when actually paid to employee, it will be allowed as deduction.

Note for all the funds:

Sec 29(3): Employer's Contribution to Unrecognized Provident Fund etc. is Disallowed.

Sec 29(1)(e): Employees Contribution to RPF etc is allowed as deduction to employer if paid *on or before the due date of filing of return u/s 263(1) [FA 2026]*

Note:

It is pertinent to note that Employees Contribution is considered as Income of Employer as per sec 2(49)(o) when it is deducted from the salary of Employee. Thereafter when it is paid before the due date of filing of return u/s 263(1), then it is allowed as deduction to Employer. Therefore, it gets nullified.

Sec 30: Deductions related to Insurance premium

(a)Insurance premium paid against risk of damage of stocks.	(b) Insurance premium paid by Federal milk cooperative society for life of cattle.	(c)Health Insurance premium paid by employer for employees (other than cash)

Sec 31(2): Deduction of Actual Bad Debts

The Debt must be written off as irrecoverable in BOA "for the tax year."	&	The debt must be taken into income of assessee of year of deduction or earlier tax year. EXCEPTION: For Banking and money lending business this condition not applicable for Principal Amt.

1. No need to prove debt has become bad.
2. Bad Debts w/off shall not include Provision for Bad Debts. {Also refer Sec 31(1) later}.
3. It was held in the case of T. Veerbhadra Rao K. Koteshwara 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 u/s 276(2) 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 31(1): 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 VIII.	5% of Total Income before this deduction and deduction under Chapter VIII.
AND	
2. 10% of Aggregate Average Advances made by Rural Branches	NIL

Notes:

1. No deduction u/s 31(2) 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.

Deductions u/s 32:

Sec 32(a): Bonus / Commission paid to employees. Further it will be allowed on actual payment basis u/s 37. However, where sum represents profits or dividends, then not allowed.

Sec 32(b): Interest on Borrowed Capital

Borrowed money	Money must be used for Business or Profession	Interest is paid or payable.

Notes for Sec 32(b):

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(59), 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(5)(a)}**

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 37.

Sec 32(d): Discount on Zero Coupon Bonds.

Discount = Reedemable 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 32(e): Transfer to Special Reserves

Applicability: Available for Banks, Coop banks, PSU & 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 tax year to special Reserve A/c u/s 32(e) 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 tax year.
   (-) the Balance of S/R A/c on the 1st day of tax year.

Sec 38(1)(e): Any amount withdrawn from the S/R A/C will be chargeable to the tax.

Sec 32(g): 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 32(h): 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. As per ICDS loss of only settled derivative is allowed. Further, as per Sec 36(9), no deduction shall be allowed in respect of M-M loss, if it is not determined as per Sec 32(h).

Sec 32(i): - Expenditure on promotion of Family Planning amongst Employees only by Companies

Revenue → Fully Allowed	Capital → 1/5th in 5 Equal Installment

Note: Unabsorbed Capital Expense shall be treated as UAD.

Sec 32(j): 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 32(k): Deduction of STT & CTT:

32(k) – Securities transaction tax **{provided the assesse is trader in securities}** [In Capital Gains STT is not allowed as deduction as per Sec 72(3)(b)]
32(k) – CTT **{provided the assesse is trader in commodities}**

PART 4: SECTORWISE DEDUCTIONS

Sec 44: 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 (Fixed Asset) as on last day of tax year in which business commences **(OR)** extension of business is completed.	2. 5% of Capital employed [Share cap + Debenture + long Term Borrowings] as on last day of tax year in which business commences **(OR)** extension of business is completed.

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 report/project report **b)** Market Survey or any other survey Expenses **c)** Engineering services **d)** Legal charges for drafting any agreement **e)** Legal charges for drafting & printing of MOA/AOA **f)** Fees for Company registration **g)** Expenses related to public issue of shares & debentures, underwriting commission, prospectus related expenses **h)** 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 263(1) to the PDGIT (Systems) or DGIT (Systems) or any person authorised by the PDGIT (Systems) or DGIT (Systems) in the Form No. 5.

Sec 45: Expenditure on Scientific Research:

Research related to Assessee's Business

Sec 45(1)(b): Rev. Exp → 100% (only last 3 years)		Sec 45(1)(a): Capital Expenditure → @ 100%	
Pre-Comm.	Post-Comm.	Pre-Comm.	Post-Comm.
Salary(excl Perk)	Any Revenue	Asset except Land only. Last 3 years - @ 100%	asset except Land @ 100%
Purchase of material-@ 100% Certified by Prescribed Authority	Exp @ 100%		

(i) No deduction of depreciation shall be allowed.
(ii) Unabsorbed CAPEX will be treated like UAD.

Sec 45(2)(i): 100% of Revenue & Capital Exp, but only Post Commencement

Research related to Assessee's Business:

Company	Mfg of any article / thing (other than XIIIth 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 45(1)(a)

Contribution to Outsiders

{Applicable to both Research & Non Research assessee)

Sec 45(3)(a)(i)	Sec 45(3)(a)(ii)	Sec 45(3)(b)	Sec 45(3)(c)
Cont to Research Association (R.A) / college / university etc	Contribution to R.A. / college / university etc	Contribution to Indian Co indulged in Scientific Research.	Contribution to National Laboratory or University or IIT
Scientific Research 100%	Statistical/social science 100%	100%	100%
These 3 should be approved association or company			

Notes:

1. The deduction shall not be denied merely on the ground that subsequent to payment by assessee the approval granted is withdrawn.
2. The deduction u/s Sec 45(3)(a)(i)/ 45(3)(a)(ii)/ 45(3)(b) 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 429/Sec 464: Fee/Penalty for Default Relating to Statement or Certificate

Where,

(i) the assessee referred to in Sec 45(3)(a)(i)/ 45(3)(a)(ii)/ 45(3)(b) fails to deliver a statement within the time prescribed or furnish a certificate prescribed u/s 45(4)(a);or

(ii) the institution fails to deliver a statement within the time prescribed u/s 354(1)(e), or furnish a certificate prescribed u/s 354(1)(g),

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 464 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) Sec 39(4) & its Table S.No. 9, shall apply and actual cost to be taken as NIL. b) Sec 74 i.e. CG for Depreciable Asset & Sec 41(1) i.e. WDV of asset will be applicable and STCG will be chargeable to tax.	a) Sec 38: Deemed Income will be applicable and lower of: i) Sale proceeds OR; ii) Deduction allowed; will be taxable. b) CG as per Sec 72

Sec 46: Investment Linked Deduction for Specified Business

S.N	Nature of Specified Business	Date of Commencement of Business
1.	Laying & Operating Cross country natural gas or crude or petroleum oil pipeline.	For Natural gas pipeline - 1/4/2007 For crude or petroleum oil pipeline - 1/4/2009
2.	Setting up & operating Cold chain facility for certain products.	1/4/2009
3.	Setting up & operating warehousing facility for agriculture products.	1/4/2009
4.	Building & Operating Hospital with atleast 100 beds	1/4/2010
5.	Building & Operating a Hotel of 2 star or above	1/4/2010
6.	Developing & building housing project for slum Redevelopment	1/4/2010
7.	Developing & building housing project for affordable Housing	1/4/2011
8.	Production of fertilizer	1/4/2011
9.	Setting up & operating Inland container Depot / container freight station	1/4/2012
10.	Bee - keeping and production of honey and beeswax	1/4/2012
11.	Setting up & operating warehousing facility for sugar	1/4/2012
12.	Laying and operating a slurry pipeline for transportation of iron ore	1/4/2014
13.	Setting up and operating a semi-conductor wafer fabrication manufacturing unit	1/4/2014

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, inland port or navigational channel in sea.**	1/4/2017

Notes:

1. In case of a hotel, assessee is entitled to claim deduction **u/s 46** from the tax year in which the operations were commenced even though the application was accepted in the next tax year - **Ceebros Hotels Pvt Ltd**
2. The deduction mentioned in **1st & 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 **tax year in which it is incurred.**	**Capital Exp** incurred wholly and exclusively during the pre-commencement 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 not made through **"specified banking or online mode"** to a person in a day **exceeding Rs.10,000** then deduction **u/s 46** is not allowed.

Conditions to be satisfied (Also there in Sec 144 & 201/204 r.w. 205)

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

No Deduction under any other provisions of the Act

No deduction under CH VIII-C **[Profit linked deductions]**	**AND**	**No deduction u/s - 33**

Special Benefits for Hotel Industry

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

Sec 114: Set off & Carry forward of Loss

Losses of any specified business u/s 46 can be set off and c/f against any other specified business. Time limit: Infinite period.

DEEMED INCOME

Sec 46 asset is Demolished / Destroyed / Discarded / Transferred. Then, amt received or receivable will Deemed income u/s 26(2)(k) (No Time Limit)	If an asset is used for non-specified purpose before expiry of 8 years from the beginning of the tax year of purchase; then deemed Income is – Sec 46(9)(a):	
	Deduction allowed u/s 46 earlier	xx
	(-) Depreciation u/s 33 [Normal + Additional if any]	(xx)
	PGBP (Deemed Income) u/s 46(9)(b)*	xx
	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 47: Expenditure on agricultural extension & skill development project

Any expense (excluding land & building) incurred on:

(a) on agricultural extension project by any assessee; or

(b) on skill development project by a Company

Sec 48 & Schedule IX: Growing & Manufacturing Tea, Coffee and Rubber in India

Particulars	Time Limit	Quantum
(a) Deposit any amt in NABARD or deposit A/c	(a) within 6 months from the end of tax year OR	(a) Actual amount deposited OR
	(b) Before due date of return; Whichever is earlier	(b) 40% of PGBP income (Before this dedn (+) setting off of B/f Losses); Whichever is lower

Notes:

1. The above amount can be withdrawn in the following circumstances:
   (a) Closure of business, Dissolution of a firm (Taxable).
   (b) Death of an assessee, Partition of HUF, Liquidation of a company (Exempt).
2. The amount withdrawn from NABARD / Deposit A/c must be utilized for the purpose specified in the scheme in the same tax year.
   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 to incur expenditure in the same tax year for the specified purpose, then no deduction shall be allowed again in the year of actual expenditure as it is already allowed u/s 48 when it was deposited in NABARD.
4. The amount withdrawn from NABARD should not be utilized for purchasing any "specified article or thing" as follows:
   (i) P & M installed in office premises or residential accommodation incl guest house;
   (ii) office appliances (not being computer);

(iii) any P&M whose 100% actual cost already allowed as deduction under PGBP;

5. Any asset acquired under scheme should not be transferred or sold for 8 years from the end of tax year. **Exceptions:** If sold to Govt, Local Authority, Govt Company or Succession of Firm to Company.

Income Tax Rules

Rule 271		Rule 271		Rule 271			
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 49 & Schedule X: Site Restoration Fund
(Prospecting or Extraction OR production of petrol or natural gas in India)

Deposit	Time Limit:	Quantum Lower of:
any amount with SBI	Before the end of the tax year.	(a) Amount deposited OR; (b) 20% of PGBP (Before this deduction (+) setting off of B/f Losses)

Note: Agreement with Central Govt is also required in Schedule X. **Rest all the provisions are same as Sec 48 & Schedule IX.**

Sec 51: 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. If any amount of expenditure is met by any person or authority, then reduce from expense.
5. 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).
6. This deduction is restricted to income from PGBP of all mines.
7. Deduction not allowed on expenses incurred for acquisition of mines/sites or building, P&M, furniture on which depreciation is allowed.

Sec 52: Amortisation of expense for telecommunication services, amalgamation, demerger VRS

Sec 52: Amortisation of Telecom License Fees/Spectrum Fees paid

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

1. No deduction u/s 33 will be allowed.
2. In case the License is transferred later on, then deduction claimed earlier will be deemed Income along with Capital Gains implications.
3. "Actually paid" now also means 'payable in such manner, as prescribed'.

Sec 52: Amortisation of Amalgamation / Demerger Expenses

Only to Indian Companies	(+)	5 equal Installments.

Sec 52: Amortisation of expenditure under VRS i.e. 5 equal installments.

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 34(1): General Deduction of Expenses

Not specified u/s 28 to 33, 44 to 49, 51 & 52.	Not personal in nature.	Not capital in nature.	Incurred wholly and exclusively for the purpose of B & P.

Sec 34(2): Illegal Expenses

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

1. For any purpose which is an offence or prohibited by any law in or outside India; or
2. 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
3. To compound an offence under any law, in India or outside India.
4. 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.

Sec 34(2): Expense on CSR

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 34(1).

Notes:

1. Donation to PM CARES FUND or PM Relief Fund etc is allowed u/s 133 even if it is CSR. However, donation for Clean Ganga or Swach Bharat Kosh not allowed if it is spend as CSR.
2. Expenditure on certain activities which is otherwise allowable under any other Sec will not be disallowed u/s 34(1). Ex: Donation to scientific research association etc. will be allowed.

Treatment of various Penalties:

Compensatory	Penal
Allowed	Disallowed

Notes:

1. Penalties under Income tax & GST is not allowed.
2. Interest on Income Tax is not allowed.
3. Interest on GST is 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 34(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 Sec 34(2) has nothing to do with case of loss. It only covers expense.

Sec 34(2)(c): Advertisement in Brochure etc of a Political Party

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 136 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.

Certain Judicial Updates

Shanti Bhushan v. CIT (Delhi): Amount paid for heart surgery can **neither be allowed u/s 28 nor u/s 34(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 **34.**

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 34(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, 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 tax year.
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/Debentures & Loan Expense (No Change in Capital) – **Allowed.**
10. Registration fees incurred on increase of authorised capital of Co. - **Not allowed.**

PART 6: DISALLOWANCES

Sec 35		Sec 36		Sec 37
35(a)(i)	Income Tax disallowed	Sec 36(2)/(3)	Excess payment to Relatives	Deductions allowed on actual payment
35(a)(ii)	Tax on non monetary perquisites paid by employer (ER)	Sec 36(4) to (7)	Cash payment > Rs. 10,000/35,000	
35(b)(i)	TDS in case of Resident	Sec 36(8)	Overriding other laws for 36(4)	
35(b)(ii)	TDS in case of NR	Sec 36(9)	M-M Losses	
35(c)	TDS on Salary in case of NR			
35(d)	Amt paid by SG Undertaking to SG			

Sec 36(2): Excess Payment to Specified Person

Assessee Incurs **Expenditure**	(+) made payment to **Specified person**	(+) A.O. may disallow
	If AO considers to be **unreasonable and Excessive**	Having regard to **FMV & Legitimate needs of business.**

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 36(2) as it is applicable only to expense and not income

Sec 36(3): Specified Person (Related Party) means the following:

S.N.	Assessee	Relative
1.	Individual	relative
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 tax year.
7. Holding subsidiary are also relatives.

Note:

Sec 2(94): "Relative", in relation to an individual, means the husband, wife, brother, sister or any lineal ascendant (maternal as well as paternal) or descendant of that individual.

Sec 36(4): Disallowance for Cash Payment

Assessee incurs a expenditure (Revenue)	Payment OR Aggregate of Payments	To a person in a single day of a sum exceeding Rs 10,000	Payment made not through "specified banking or online mode"

1. If the expenditure is claimed as deduction in earlier year on accrual basis & if such expenses is subsequently not paid through "specified banking or online mode" then deduction allowed earlier shall be withdrawn & taxable as PGBP [Sec 36(5)].
2. For payment made to road transporters the Limit is Rs 35,000 [Sec 36(6)]
3. Even Depreciation u/s 33 and capital Expenditure u/s 46 would be disallowed if payment is not made through "specified banking or online mode" (Done earlier while doing Sec 33 & Sec 46.)

Rule 26: Exception to Sec 36(4)(5)(6)

1. Payment made to RBI/SBI/LIC/Banking Company/Cooperative Bank or Government.
2. Payments by Book adjustment/Letter of Credit/Bills of exchange.
3. Payment to Producers of agriculture produce, forest produce, animal husbandry, poultry products, dairy products, fish products, horticulture or apiculture products.
4. Payment of retirement benefits to employees 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 + does not have bank account at such place + TDS is deducted u/s 392.
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.

Sec 36(2) vs 36(4): the Interlinking:In case where **both** the above secs are **applicable,** then **first** disallow the excess u/s 36(2) and if the balance is more than Rs. 10,000, then disallow u/s 36(4).

Sec 36(8): Over-riding Provision to protect sec 36(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 36(4) to (7),** 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.

Disallowances u/s 35:

Sec 35(a)(i): Income tax (including surcharge, cess) is disallowed.
Sec 35(a)(ii): ER paying **tax on Non-monetary perquisites** of Employees is disallowed.

Sec 35(b)(i): Amt payable to Resident

Deduct Tax in the same tax year	AND	**Deposit** till time limit specified **u/s 263(1) i.e. Due Date of filing of Return.**

Notes:
1. If tax is **not deducted** in the same tax year or after deducting it is **not paid till the due date of return u/s 263(1),** then **30%** of expenditure will be disallowed in the current tax year.
2. Where tax has been **deducted in any subsequent tax year**, or has been **deducted** in the **current tax year** but **paid after** the **due date** of filing of return, then **30%** will be **allowed in the tax year in which payment is made.**

Sec 35(b)(ii): Amt payable to Non Resident or Foreign Company

Deduct Tax in the same tax year	AND	**Deposit** till time limit specified **u/s 263(1) i.e. Due Date of filing of Return.**

Notes:
1. If tax is **not deducted** in the same tax year or after deducting it is **not paid till the due date of return u/s 263(1),** then **100%** of expenditure will be disallowed in the current tax year.
2. Where tax has been **deducted in any subsequent tax year**, or has been **deducted** in the **current tax year** but **paid after** the **due date** of filing of return, then it will be **allowed in the tax year in which payment is made.**
3. All the aforesaid sums **must be taxable in the hands of the recipient** under IT Act.

4. **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 35(b)(ii)** 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.

Exception to Sec 35(b)(i) & (ii)

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 Return of income)**

However, **payer has to pay interest u/s 398(3)** @ 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 35(b)(i)** includes **actually paid also.** Accordingly, disallowance **u/s 35(b)(i)** shall be triggered on both sums payable at the end of tax year or paid during the tax year. Further **sec 35(b)(i)** is attracted for both **mercantile as well as cash** system of accounting.

As per **Sec 35(c)** 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 or deducted** therefrom under CH XIX-B then the salary expenditure is disallowed.

Sec 35(d): **Royalty,** fees, service charges etc. paid **by State Govt. undertaking to State Govt** is disallowed if it is **exclusively** charged on SG Undertaking.

Sec 37: Certain Deductions allowed only on Actual Payment

Following deductions **[except point (g)]** will be allowed in the tax year only when it is actually paid on or before the due date of filing of return **u/s 263(1):**

(a) **Tax, duty, cess, surcharge or fee** under any other law in force **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 8 & 9)

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. Both Employer & employee contribution shall be allowed as deduction if payment is made up to the due date of filing of return u/s 263(1).
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. If O/S Interest is converted into equity shares then it is allowed as deduction on conversion as the company does not have any future liability to pay - Frontier Information Tech Ltd (Telangana HC)
7. 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 32(a).
8. 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.
9. 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. 2.5 crore &	Up to Rs 25 crore &
AND Turnover	Up to Rs. 10 crore	Up to Rs. 100 crore

PART 7: DEEMED INCOME

Sec 38: Recovery of deductions already claimed

If Assessee was allowed a deduction in earlier tax year by way of expenditure, loss, trading liability & now in the current tax year 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.**

2. **Waiver of Loan:**
   (i) **Waiver of Loan by Government:** It is included in the definition of Income u/s 2(49)(w) – Always taxable.
   (ii) **Waiver of Loan by Others:**
      (a) **Working Capital Loan:** Principal Part taxable & Interest part not taxable if deduction was not allowed earlier as per sec 37.
      (b) **Capital loan** i.e taken for fixed asset etc: Not Taxable.
3. Deemed income is applicable even if business is discontinued.
4. Deemed income is applicable to successor of business also, like amalgamated company etc.

Sec 38: 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.**

Notes:

1. We have already done discussion of **Sec 38** in the chapter of depreciation, Sectorwise deductions (Scientific Research) & Sectorwise deductions (Transfer to Special Reserve) respectively.
2. We will do the discussion of **Secs 38(3)** in the Chapter of Set off & Carry Forward.

PART 8: MISCELLANEOUS PROVISIONS

Sec 14: Exp Incurred is disallowed in respect of Exempt Income

1. **No deduction** shall be allowed in the respect of **expenditure** incurred for earning **exempt income.**
2. A.O. shall determine the amt of expense disallowed in prescribed manner **(Rule 14)**

Rule 14: Method for determining amt of expenditure disallowed i.r.o exempt Income

(i) Amount of Expenditure **directly** relating to exempt income **AND;**

(ii) Amount equal to **one percent** of the **annual average** of the **monthly averages** of the opening and closing balances of the exempt investment.

However the above disallowance cannot exceed the actual expenditure.

Notes:

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

Sec 56: 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 P & L a/c whichever is earlier.

Sec 62: Maintenance of Books of Accounts

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

BOA & other documents should be maintained for 7 years from the end of Relevant tax year.

Specified Professions for Sec 62 & 58 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 tax years (OR)	1,20,000	2,50,000
2. If Turnover exceeds in any of the last 3 tax years	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 441: Penalty by AO, JC(A) or CIT(A) for failure to keep & maintain BOA is Rs. 25,000/-

Sec 63: 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 tax year does not exceed 5% of total receipt; AND
   (ii) Cash payments during the tax year does not exceed 5% of total payment.
   Cheque/draft, which is not account payee, shall be treated as cash.
2. In Case of a Profession Gross Receipts > Rs. 50 Lacs
3. The provisions of this section shall not apply where profits and gains of business or profession, declared by the assessee are as per sec 58(2) or 61(2).
4. Due Date: One month prior to Due Date of filing of return u/s 263(1).

Sec 428(c): Fee for failure to get Accounts Audited: [FA 2026]

Liable to pay by way of fee,--
(i) a sum of Rs. 75,000 for a delay up to one month for which such failure continues; and
(ii) a sum of Rs. 1,50,000 thereafter;

Sec 57: Income from construction contract and service contract

Construction contract [Sec 57 + ICDS-III]	Contract for providing Service [Sec 57 + ICDS-IV]	
Any revenue or cost associated with construction contact 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 58: Presumptive Income for "Eligible Business" (Override 26 to 54)

Who is an "Eligible Assessee" ?

Resident Individuals, HUF or firm but not an LLP.

Which is an "Eligible Business" ?

Any Business except goods carriage business whose turnover, gross receipts does not exceed:

Rs. 2 crore	Rs 3 crore
If cash receipt during the tax year > 5% of total turnover or gross receipts	If cash receipt during the tax year ≤ 5% of total turnover or gross receipts
Note: Cheque/draft, which is not account payee, shall be treated as cash	

How much will be the deemed income ?

6% or profit claimed to have been earned by assessee whichever is higher	8% or profit claimed to have been earned by assessee whichever is higher
6% of Total T/O or gross receipt, received during the tax year OR received before due date of return u/s 263(1), if it is received by "specified banking or online mode".	Otherwise

Provision only applicable for "Eligible Business:

1. Where an assessee declares profit for any tax year in accordance with sec 58 and he declares profit for any of the five consecutive tax years not in accordance with sec

58, then he shall not be eligible to claim the benefit of this Sec for 5 tax years subsequent to the tax year in which the profits have not been declared in accordance with the provisions of Sec 58. (Same provision also there in Sec 194(1) & its Table: Sl. No.2 – Refer MAT Chapter). (Not applicable for Specified Profession & Goods Carriage)

2. Assessee should not claim any Profit Linked Deductions under CH VIII-C.
3. Sec 58 is not applicable for following assessees:
   (i) Any specified profession
   (ii) Any person earning any income in the nature of commission or brokerage.
   (iii) Any person carrying on any agency business.

Common Provision for "Eligible Business"/ "Specified Professions"/ "Goods Carriage Business"

1. PGBP Disallowances not applicable against presumptive income.
2. PGBP Deductions not allowed against presumptive income.
3. The WDV should be calculated normally.
4. Deduction under CH VIII not allowed against presumptive income.
5. UAD is not allowed to set off against presumptive income.
6. Losses are also not allowed to set off against presumptive income.
7. If an assessee claims that his actual profits are lower than deemed profits u/s 58, then

Keep and maintain BOA u/s 62	&	Conduct Tax Audit u/s 63	&	The assessee's total income exceeds the basic exemption limit.

Provision only applicable for "Eligible Business"/ "Specified Professions":

1. Salary, remuneration, interest etc paid to the partner as per Sec 35(e) shall not be deductible against presumptive income. (Not allowed for specified profession also but allowed for Goods Carriage).
2. The eligible assessee shall be required to pay Advance tax once by 15th March of the tax year. (Same in Specified Profession but for Goods Carriage pay 4 times)

Sec 58: Presumptive Income for "Specified Professions" (Override 26 to 54)

Who is an "Eligible Assessee" ?

Resident individual or resident firm (not for HUF and LLP).

Which are the specified Profession ?

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.

What is the limit for Gross Receipts ?

Up to Rs. 50 lacs	Up to Rs. 75 lacs
If cash receipt during the tax year > 5% of gross receipts	If cash receipt during the tax year ≤ 5% of gross receipts
Note: Cheque/draft, which is not account payee, shall be treated as cash	

How much will be the deemed income?

Deemed profits are **50% of Gross Receipt or profit claimed to have been earned by assessee whichever is higher**.

Sec 58: Deemed income for "Goods Carriage Business" (Overrides 26 to 54)

Who is an "Eligible Assessee" ?

An assessee who does **not own more than 10 Goods Carriage at any time during the tax year.**

(Also Refer Sec 393(1); Table: S.N. 6(i) – TDS for contractor later on)

How much will be the deemed income ?

Light Motor Vehicle:	Heavy Motor Vehicle
Rs. 7,500 per month or part of the month per vehicle for no. of months vehicles are owned by the assessee **or profit claimed to have been earned by assessee whichever is higher**	**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 profit claimed to have been earned by assessee whichever is higher**

Notes:

1. Heavy Motor Vehicle = Gross Vehicle weight > 12000 kgs.
2. Deduction of **remuneration & interest** paid to partner by Firm is **allowed** as per **sec 35(e).** (Not allowed for Presumptive Business & Presumptive Profession).
3. Pay Advance Tax 4 Times (In Presumptive Business & Presumptive Profession it is only once).

PART 10: INTERLINKING OF PGBP PROVISIONS

Sections where Manufacturing or Production is mentioned:

1. Sec 33(8) - Additional Depreciation.
2. Sec 45(2) - In house Scientific Research.
3. Sec 46 - Investment Linked Deductions **(3 Business).**

Sections where Company is mentioned:

1. Sec 32(i) - Expenditure on Promotion of Family Planning.
2. Sec 45(2) - In house Scientific Research.
3. Sec 46 - Investment Linked Deductions **(2 Business).**
4. Sec 47 - Expenditure on Notified Skill Development.

Sections where Indian Company is mentioned:

1. Sec 44 - Amortisation of Preliminary Expenses.
2. Sec 51 - Amortisation of Exploration Expenses.
3. Sec 52 - Amortisation of Amalgamation or Demerger Expenses.
4. Sec 46 - Investment Linked Deductions. **(2 Business).**

Sections where Amortisation is mentioned:	
1. Sec 32(i)/44/52	- 1/5th of Capital Expenditure
2. Sec 51	- 1/10th.
3. Sec 52	- Over the life of License.

Sections where deduction is based on percentage:	
1. Sec 48	- 40% PGBP (before 48 & b/f losses).
2. Sec 49	- 20% PGBP (before 49 & b/f losses).
3. Sec 31(1)	- 8.5%/5 % of GTI & 10% Aggregate Rural Advances.
4. Sec 32(e)	- 20 % of PGBP from 32(e) Activities **OR** 200% of (Paid up Capital + GR) on last day – SR A/c on 1st day.
5. Sec 44	- 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 48/49	- 8 years from the end of the PY in which asset was Purchased.
2. Sec 46	- Do not use for Non-Specified Purpose for a period of 8 Years from the beginning of the tax year in which asset was installed.

Sections where New Plant & Machinery is mentioned:	
1. Sec 33(8)	- Additional Depreciation.
2. Sec 46	- Investment Linked Deductions (2 Exceptions).