

PROFITS & GAINS OF BUSINESS OR PROFESSION

MEANING OF "BUSINESS & PROFESSION"

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|--------------------------------|---|
| BUSINESS – Sec 2(13) | <ul style="list-style-type: none">▪ Business means any "Recurring Economic Activity" done with the objective of earning profit.▪ However "Isolated Activity" (which has an element of trade) can also be termed as 'business' depending on the facts & circumstances of the case.▪ Thus Profit from single venture which has the element of trade may be treated as business.▪ Business includes any Trade, Commerce, Manufacture or any adventure or concern in the nature of TCM. <p>Adventure: Doing an activity for first time without knowing its outcome.</p> |
| PROFESSION | <ul style="list-style-type: none">▪ The term "Profession" has not been defined in the act.▪ In general sense, it means an occupation requiring some degree of learning.▪ The term 'Profession' includes Vocation also [Section 2(36)] <p>Ex: Painter, a sculptor, an author, an auditor, a lawyer, a doctor, an architect & even an astrologer are persons who can be said to be carrying on a profession.</p> |

Note: For the purpose of Income tax, it is Immaterial whether a person is carrying on a 'Business' or 'Profession' or 'vocation'. Profits from all these sources are treated & taxed alike.

MEANING OF "PROFIT"

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| Cash or Kind | <ul style="list-style-type: none">▪ Profits may be realized in money or in money's worth (cash or in kind).▪ Profit is realized in any form other than cash → Cash Equivalent (FMV) of the received item/thing on the date of receipt is taken as value of the Income. |
| Capital Receipt | <ul style="list-style-type: none">▪ Capital receipts are generally not taxable u/h PGBP. |
| Voluntary Receipts | <ul style="list-style-type: none">▪ Voluntary Payment received in the course of a business/profession would be treated as income in the hands of the Recipient. <p>(There should be Nexus between the Business & Payment received).</p> <p>Ex: Any amount paid to a lawyer by a person who was not a client, but who has been benefited by the lawyer's professional service to another would be assessable as the lawyer's income.</p> |
| Application of Profit (use) | <ul style="list-style-type: none">▪ Purpose for which the profits earned in business/profession are use is immaterial. It will be taxed irrespective of the manner & reason of application. |
| Legality | <ul style="list-style-type: none">▪ Even the profit earned from illegal source is taxable. |
| Income from Distinct Businesses | <ul style="list-style-type: none">▪ Tax is chargeable on the Aggregate profits of all the business carried on by the assessee even though the computation of profit is done separately. |
| Computation of Profits | <ul style="list-style-type: none">▪ Tax is levied on the 'profits & gains' & not on gross receipts.▪ Profits should be computed after deducting losses & expenses incurred for earning the income in the regular course of the business/profession unless the loss or expenses is expressly disallowed by the Act. |

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BASIS OF CHARGE - (SECTION 28)

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| <p>1. Profits & Gains of any <u>business or profession</u> carried on at <u>any time</u> during PY by the assessee.</p> <ul style="list-style-type: none">▪ Capital Receipt → Not Taxable. (Subject to certain exceptions)▪ Capital Loss → Not Deductible. |
| <p>2. Compensation for Loss of Office.</p> <p>Any compensation or other payment due to or received by any person in relation to</p> <ol style="list-style-type: none">(a) Termination or Modification of Managing agent's agreement in relation to an Indian Company/any other company in India;(b) Termination or Modification of contract relating to an Agency in India;(c) Vesting of Management of any property or business with Government/their Corporation.(d) Termination or Modification of terms & conditions, of any contract relating to his business. |
| <p>3. Income of Trade/Professional Association from Specific Activities for its Members.</p> <ul style="list-style-type: none">▪ This is an exception to "Principle of Mutuality" since association & its members are treated as Same Person. [Ex: Chambers of commerce, stock brokers' associations etc]▪ As a result, Association performing specific services for its members is deemed to be carrying on business in respect of these services & on this assumption, Income arising from such specific activities is Taxable. |
| <p>4. Export Incentives.</p> <ol style="list-style-type: none">(a) Profit on sale of import entitlements.(b) Cash assistance against exports under any scheme of Government of India.(c) Customs duty or excise re-paid or repayable as drawback.(d) Profit on transfer of Duty Entitlement Passbook Scheme/Duty-Free Replenishment Certificate. |
| <p>5. Remuneration to Partners is taxable in the hands of the Partner to the extent it is deductible to firm.</p> <p>Ex: The allowable rate of interest is 12% p.a. u/s 40(b). Now if a firm pays interest to a partner at 15% p.a, excess 3% paid will be disallowed to firm u/s 40(b). Thus 12% which is allowed as deduction to the firm u/s 40(b) shall be taxed in the hands of partner. Excess interest of 3% which has been disallowed to the firm u/s 40(b) will not be taxed in the hands of the partner again.</p> |
| <p>6. Amount received for Non-Competence Fees are taxable [even if they are capital receipts].</p> <p>Any sum received under an agreement,</p> <ul style="list-style-type: none">▪ For not carrying out any activity in relation to any business or profession.▪ Not to share any know-how, patent, copyright, trade mark likely to assist in the manufacture or processing of goods or provision for services etc. <p>However, the above sub-clause shall not apply to –</p> <ol style="list-style-type: none">(i) Sum received for transfer of 'Right to manufacture/produce' or Right to carry on any business which is chargeable u/h CG).(ii) Sum received as compensation from Multilateral fund of Montreal Protocol on "Substances that Deplete Ozone- layer" in accordance with terms of agreement entered into with Government of India. |
| <p>7. Keyman Insurance Policy (including Bonus) is taxable in the hands of employer if maturity Amount is Received by Employer.</p> |
| <p>8. FMV of Inventory (SIT) on its conversion into Capital Asset → FMV of Inventory on the date of its conversion into capital asset would be taxable as business income.</p> |
| <p>9. Value of Benefit arising from Business/Profession. (Whether Convertible into Money or not). (There should be Nexus between the business & the benefits received).</p> |

**2. (Ds-3 opp Doctors' colony P.N.B building kankarbagh patna)
Income tax by Nitesh Sir**

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10. Sum received or receivable on demolition, destruction or transfer of any Capital Asset
(Except Land/GW/Financial Instrument), whole cost of which was allowed as deduction u/s 35AD.



**3. (Ds-3 opp Doctors' colony P.N.B building kankarbagh patna)
Income tax by Nitesh Sir**

FOLLOWING INCOMES ARE ALSO TAXED U/H "PGBP"

1. **Deemed Income (Section 41):** Items which normally would not have the character of income but are deemed as income as they have been allowed as deduction in the earlier years irrespective of whether the business/ profession is continued or not.
2. **Discontinuation of Business (Section 176):** relates to a situation where the income is earned after discontinuance of business/ profession.

SPECULATION BUSINESS

- **Meaning:** "Speculative transaction" means a transaction in which a contract for purchase or sales of any commodity (including stocks & shares) is **periodically/ultimately settled otherwise than by the Actual delivery or transfer of the commodity/ Scrips** [section 43(5)].
- **Deeming provision:** Where any part of the business of a company consists of purchase & sale of the shares of other companies, such company is deemed to be carrying on speculation business to the extent of such business of the purchase & sale of such shares.
- **However, this Deeming Provision does not apply to the following companies: [To be Read once]**
 1. A company whose GTI consists of mainly income chargeable under the heads "Interest on securities", "Income from house property", "Capital gains" & "IFOS";
 2. A company whose principal business is:
 - (i) Trading in shares; or
 - (ii) Banking or
 - (iii) Granting of loans & advances.Thus, if these companies carry on the business of purchase & sale of shares of other companies, they would not be deemed to be carrying on speculation business. [Explanation to sec 73]
- **Profits/Losses resulting from Speculative Transaction** must be **treated as separate** & distinct from other profits & gains of business & profession because Loss from Speculative Business can be set off only against Profit of Speculative Business & no other business (Section 73).

RELEVANCE OF METHOD OF ACCOUNTING [Section 145(1)]

- Income chargeable u/h '**PGBP**' or '**IFOS**' shall be computed in accordance with the **method** of accounting **regularly followed** by the Assessee.
- If Assessee follows Mercantile System of Accounting → Income will be taxed on "Due" basis.
- *If Assessee follows Cash basis of Accounting → Income will be taxed on "Receipt" basis.*

COMPUTATION OF INCOME FROM BUSINESS [SECTION 29]

According to Section 29, Profits & Gains of any Business or Profession are to be computed in accordance with the provisions contained in sections 30 to 43D.

- Sec 30 to 36 provides Specific Deductions & Allowances.
- Sec 37 provides for General Deductions of Revenue Expenditure NOT Covered by Sec 30-36.
- Sec 40 provides for Inadmissible Deductions.
- Sec 41 states the Receipts which are Deemed Incomes.
- Sec 44 gives Presumptive Income scheme.

A. SPECIFIC DEDUCTIONS [SECTION 30 – 36]

- We know that Profit = Receipts – Expenditures.
- However, there may be some expenditures which are deducted by the Assessee while computing his income, but they are not allowable as deduction under Income Tax Act.
- Section 30 - 36 gives the list of the expenditures which are allowed as deductions while calculating income under this head.
- Let us study each of them in detail.

RENT, RATES, TAXES, REPAIRS & INSURANCE FOR BUILDING [SEC 30]

4. (Ds-3 opp Doctors' colony P.N.B building kankarbagh patna)
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| Nature of Expenditure | Conditions |
|------------------------------|---|
| Rent | Paid by the Tenant for Building occupied by him for his business. |
| Revenue Repairs | Done by Owner/Tenant . [Capital Repairs are not covered in this section] |
| Rates & Taxes | Land Revenue, Local Rates & Municipal Tax [Section 43B will Apply] |
| Insurance Premium | Paid by the owner . |

Points to remember:

- ❖ Premises used partly for Business & partly for other purposes: Proportionate Expenditure of the premises used for Business will be allowed as a deduction.
- ❖ Deduction in case of Subletting of rented premises = Rent paid – Rent recovered from sub-tenant.
- ❖ **No Deduction for Notional Rent:** If the owner uses his own premises for his business, No Notional Rent shall be allowed as deduction.
But if firm runs its business in the premises owned by one of its partners, rent payable to the partner will be an allowable deduction to the extent it is reasonable & is not excessive.
- ❖ Cesses, Rates & Taxes levied by a Foreign Government → Allowed as deduction.

REPAIRS & INSURANCE OF PLANT, MACHINERY & FURNITURE [SEC 31]

| Nature of Expenditure | Conditions |
|------------------------------|-------------------------|
| Revenue Repairs | Done by Owner & Tenant. |
| Insurance Premium | Paid by Owner. |

Points to Remember:

1. Insurance & Repair charges of the Assets which have been discarded (though owned by the assessee) or have not been used for the business during the PY → **Not Allowed as Deduction**.
2. To Claim Deduction u/s 31 → Asset must be used (atleast for 1 day) for assessee's business.
3. Repairs include Renewal or Renovation of an asset but **not its Replacement or Reconstruction**.

DEPRECIATION [SECTION 32]

INCOME TAX PROVISIONS

1. Only WDV Method of charging depreciation is recognized under the Act. However, Power Generation units have option to claim depreciation on SLM.
2. Depreciation is to be claimed on the **BLOCK OF ASSETS & Not on Individual Asset**.
3. Claiming Depreciation is Mandatory. Assessee does not have any option to not claim it.

CONDITIONS FOR CLAIMING DEPRECIATION

1. OWNERSHIP OF ASSET

- Assessee must be the owner of the asset (fully or partly owned).
- Registered ownership is not necessary (It can be a beneficial ownership).
- Type of leases & Availability of depreciation:

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|--|
| Operating lease → Depreciation shall be claimed by the Lessor. Financial lease → Depreciation shall be claimed by the Lessee. |
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- **Hire Purchase** → **Hire purchaser** is entitled to claim depreciation as he gets substantial rights when contract is made.
- To claim depreciation on building, **ownership of land** on which building is constructed is **not necessary**. Land may be lease-hold.

Note: If **Tenant** has incurred any **Capital Expenditure** on construction, renovation, extension of the **building taken on lease/rent**, he can take **depreciation on such capital expenditure**.

2. ASSET MUST BE ACTUALLY USED BY THE ASSESSEE FOR HIS BUSINESS/PROFESSION DURING THE RELEVANT PREVIOUS YEAR

- The asset must be put to use **at any time** during the **previous year**.
 - Even if the asset is used for a **single day** during the year, **full depreciation** shall be allowed **Except for first year of use of asset**.
 - **Use of Asset in 1st year of Asset:** Asset must be used for atleast 180 days to get full depreciation. If it is used for less than 180 days in 1st year, only 50% of the allowable depreciation can be claimed.

Ex: If Assessee acquires the asset in PY 2018-19 on 1 Dec 2018, only 50% of the allowable depreciation can be claimed by the Assessee in PY 2018-19. However, from PY 2019-20, full depreciation can be claimed even if the asset has been used even for a single day in PY 2019-20.

However, if asset is acquired in PY 2018-19 & it is not put to use in PY 2018-19, no depreciation can be claimed for PY 2018-19. Now PY 2019-20 cannot be said to be the first year of asset. Thus 100% depreciation will be allowed in PY 2019-20.

Note: Since in case of **Partition of HUF, Dissolution of Firm, Conversion of firm into Company**, no asset is acquired by the successor & thus the **Provision of 180 days** is **Not Applicable**.

- Use includes **“Passive use”** also [Asset is said to be in use even when it is “kept ready for use”].
- **Used Partly for Business & partly for Personal purposes** → **Depreciation proportionate** to the extent of business is allowed as **deduction u/s 32** & should be deducted from **WDV**.
- **Used Partly for Business & partly for Agricultural purposes** → **Depreciation proportionate** to the extent of business shall be allowed as **deduction u/s 32**, but **100% depreciation** should be **subtracted from WDV**.

Note: Assessee is **engaged** in the **business of Letting** of Assets on Hire: **Depreciation** is allowed to the assessee who has let on hire his building, machinery, plant or furniture **u/s 32**.

Assessee is **NOT engaged** in the **business of Letting** of Assets on Hire: If letting of such assets does not constitute the business of the assessee, **depreciation** of such assets is allowed **u/s 57(ii)**.

3. THE ASSET MUST FALL UNDER THE ELIGIBLE CLASS OF ASSETS

- Class A: Tangible assets.** It included building, machinery, plant or furniture.
- Class B: Intangible assets.** It includes know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature etc.

Points to be considered while forming block of asset:

- Building** includes Roads, bridges & tubewells attached to the building or forming part of it.
- Machinery** → Asset which is directly connected with Production/Manufacture/ processing.
- Furniture** → Asset used for Convenience & Decoration.
- Plant** → Any Asset not falling under any other classification, but which are Essential to carry out the business.

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Includes: Ships, vehicles, books, scientific apparatus & surgical used for business.

Excludes: Tea bushes or livestock etc.; animal, human body or stock- in-trade; Buildings.

However, Theatre buildings, hospital buildings & hotel buildings though specially equipped for business are still buildings & **cannot be treated as plant.**

Points to Remember:

- Assets Ineligible for depreciation [**Land/Personal assets**] will **not** form part of **any block.**
- While calculating Depreciation on Building, **Cost of Land is to be Excluded.**

CONCEPT OF "BLOCK OF ASSETS"

Meaning: Group of assets falling within **Same Class** & having **Same Rate** of Depreciation.

A. STEPS TO DETERMINE BLOCK OF ASSET:

1. Classify assets into (i) Tangible Assets & (ii) Intangible Assets.
2. All the Tangible Assets shall further be classified into
 - (a) Building,
 - (b) Plant & Machinery &
 - (c) Furniture
3. Group the classified assets in each category separately on the basis of Rate of depreciation.
4. Assets having same rate of depreciation should be grouped together.

B. STEPS TO CALCULATE DEPRECIATION: [V. IMP]

1. Find Closing WDV of each block for PY. [**Opening WDV + Additions during year – Sale Value**].
2. Bifurcate Closing WDV of each block into two categories:
 - (i) WDV of the assets used for less than 180 days during PY
 - (ii) Balance WDV. [Note that it is not always equals to WDV of Assets used for > 180 days]
3. Apply Rate of depreciation on (i) Assets used for less than 180 days. [50% Depreciation]
4. Apply Rate of depreciation on (ii) Balance WDV. [100% depreciation (as per the rates)].

RATES OF DEPRECIATION

| | Nature of Asset | (%) |
|------------|--|------------|
| A. | Building | |
| I | Block 1: Residential Building except hotels & boarding houses | 5 |
| | Block 2: Buildings which are not used mainly for residential purposes & not covered by Block (1) above & (3) below (Office, factory, Godowns & other buildings) | 10 |
| | Block 3: Building used for installing P&M of Water supply project/Water treatment system. It should be used for the business of providing Infrastructure facilities. | 40 |
| | Block 4: Any temporary erections (wooden structures) | 40 |
| AII | Furniture - Any furniture & fittings including electrical fittings. | 10 |
| A. | Plant & Machinery | |

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| | | |
|---|--|-----------|
| III | Block 1: Motor cars (Except cars used in business of running them on hire) | 15 |
| | Block 2: Buses, lorries & taxies used in the business of running them on hire | 30 |
| | Block 3: Moulds used in rubber & plastics goods factory | 30 |
| | Block 4: Aeroplanes & Aeroengines. | 40 |
| | Block 5: Pollution control equipments (air/water); Solid waste control equipment etc. | 40 |
| | Block 6: P&M used in semi-conductor industry covering all Integrated Circuits (ICs) | 30 |
| | Block 7: Life saving medical equipments. | 40 |
| | Block 8: P&M in Water supply project/Water treatment system. It should be used for the business of providing Infrastructure facilities. | 40 |
| | Block 9: Oil wells | 40 |
| | Block 10: Renewable Energy Saving Devices | |
| | (i) Windmills & any specially designed devices which run on windmills (including any special devices including electric generators & pumps running on wind energy) installed on or after 1.4.2014 | 40 |
| | (ii) Windmills & any specially designed devices which run on windmills (including any special devices including electric generators & pumps running on wind energy) installed before 1.4.2014 | 15 |
| | Block 11: Computers & computer softwares. | 40 |
| | Block 12: Books (Annual publication/not) owned by assessee carrying on profession | 40 |
| Block 13: Books owned by assessee carrying on business of running Libraries | 40 | |
| Block 14: Any other Plant & Machinery | 15 | |
| A. Ships | | |
| IV | Block 1: Ocean-going ships | 20 |
| | Block 2: Vessels ordinarily operating on inland waters not covered by Block (3) below | 20 |
| | Block 3: Speed boats operating on inland water | 20 |
| B | All Intangible assets | 25 |

Increased ROD for certain Assets [Rule 5(2)]

Any New P&M installed to Manufacture or Produce any Article or thing by using any technology or other know-how developed in -

- (a) Laboratory owned or financed by the government or
- (c) Laboratory owned by a public sector company or a University/recognized institution shall be treated as a part of the block of assets qualifying for **depreciation @ 40**

ADDITIONAL DEPRECIATION [SECTION 32(1)(ia)]

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| Eligibility | The Assessee must be engaged in the business of – (a) Manufacturing or production of any article or thing, or (b) Generation, transmission or Distribution of Power |
| Benefits | Additional depreciation is available @ prescribed rates to the eligible assessee for Investment in New Plant & Machinery. [No Land & Building or OLD P&M] |

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| | | |
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| Ineligible Investments | 1. Ships & Aircrafts 2. Any second-hand P&M (in/out of India) 3. Any P&M installed in office premises, residential house or guest house. 4. Any other office appliances or road transport vehicles. 5. Any P&M whose whole of Actual cost has been allowed as deduction. | |
| Rate | Undertakings set up in any backward area in State of Telangana/West Bengal/Andhra Pradesh/Bihar during 1 April 2015 to 1 April 2020. | 35% of Actual Cost of New P&M |
| | Any other case (other than specified areas of above 4 states) | 20% of Actual cost of new P&M |
| Assets put to use for less than 180 days in 1st PY: If the asset is used for less than 180 days in the year in which the asset is acquired, Additional depreciation will be allowed as: <ul style="list-style-type: none">▪ 1st PY = Restricted to 50% (i.e. 10% or 17.5% as the case may be)▪ Next PY = Remaining 50% that was disallowed in the 1st PY | | |
| ➤ Addition depreciation will be over & above normal depreciation allowed. ➤ It should be reduced from WDV of the asset. | | |

Points to Remember:

- ❖ Additional depreciation is not available to the power generating assessee who claims depreciation on SLM basis. Because Additional depreciation is available only in those cases where normal depreciation is claimed u/s 32(1)ii on the WDV of block of assets.
- ❖ Amount of Depreciation cannot be more than WDV of Block. Therefore, if Normal Depreciation + Additional depreciation > WDV, Depreciation will be restricted to the extent of WDV only.

[Circular No. 15/2016]: **Printing or Printing & Publishing** amounts to **manufacture** & thus an Assessee engaged in such business is **eligible for Additional Depreciation u/s 32(1)(ia)**.

INVESTMENT IN NEW PLANT & MACHINERY [SECTION 32AD]

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|-------------------|---|
| Assessee | Any Assessee who sets up an undertaking or enterprise for manufacture or production of any article or thing, on or after the 1 st April 2015 in specified backward area in Telangana or West Bengal or Andhra Pradesh or Bihar . |
| Investment | Acquires & Installs new plant & machinery during the period beginning on 1 st April 2015 & ending on 31 st March 2020 in the said backward area. New plant & machinery shall not include <ul style="list-style-type: none">(a) Ship or Aircraft(b) Any Second-hand P&M(c) Any P&M installed in office premises, residential house or guest house(d) Any Office appliances including computers or computer softwares(e) Any Vehicle(f) Any P&M whose whole of actual cost has been allowed as deduction. |

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| | |
|--------------------------------|--|
| Deduction | 15% of Actual Cost of New P&M acquired & installed during PY |
| Lock in period | 5 years from the date of installation |
| Withdrawal of deduction | If sold or otherwise transferred within 5 years, the deduction allowed shall be treated as income u/h PGBP Exception: Amalgamation or Demerger or business re organisation u/s 47 (xii), (xiiib) or (xiv). However the lock in will be applicable for the remaining period to the amalgamated or resulting company. |

DEPRECIATION ON SLM BASIS [SECTION 32(1)(i)]

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|---|---|
| Applicability | For Undertakings engaged in Generation, transmission, Distribution of Power. |
| Time to Exercise | Before DD of Filing ROI u/s 139(1) relevant to the PY in which they begin to generate power. The option once exercised shall be Final. |
| Option of SLM → Tangible Assets only | For Intangible Assets, only WDV method shall be applicable. Such undertakings can charge depreciation on tangible assets individually , i.e. SLM or WDV whichever is beneficial for assessee. |
| New Assets used for < 180 days | Newly acquired assets put to use < 180 days → Depreciation is allowable at 50% of ROD; Remaining 50% will be allowed in next AY. |
| Sale in Year of First Use | Profit/Loss arising shall be treated as STCG/STCL. |

TRANSFER OF DEPRECIABLE ASSETS BY POWER SECTOR UNITS

| Conditions | Treatment |
|------------------------|--|
| 1. NSC < WDV | Terminal Depreciation (Loss) = WDV – NSC. It shall be Deductible u/s 32. |
| 2. NSC > WDV but < COA | Balancing Charge (Profit) = NSC – WDV. It shall be Taxable u/s 41(2). |
| 3. NSC > COA | Capital Gain = NSC – Original COA. Balancing Charge (Profit) = Original COA – WDV. It shall be Taxable u/s 41(2). |

EXPENDITURE ON SCIENTIFIC RESEARCH [SECTION 35]

A. SCIENTIFIC RESEARCH CARRIED ON BY ASSESSEE [Related to business]

| REVENUE EXPENDITURE [SEC 35(1)(i)] - [100 % Deduction] | |
|---|--|
| Pre-commencement Period Revenue Expenditure [only of 3 years prior to Commencement] | Only the following expenditures incurred within 3 years immediately preceding the commencement of business will be allowed as deduction: (i) Payment of Salary (excluding perquisites) to research personnel engaged in scientific research. (ii) Purchase of Materials used in scientific research. |
| Post-commencement Period Revenue Expenditure | Any Revenue Expenditure incurred on scientific research will be allowed as deduction |

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| CAPITAL EXPENDITURE [SEC 35(1)(iv) & 35(2)] - [100 % Deduction] | |
|---|--|
| Pre-commencement Period Capital Expenditure [only of 3 years prior to Commencement] | Any Capital Expenditure incurred will be allowed as deduction (Except Cost of Land). |
| Post-commencement Period Capital Expenditure | Any Capital Expenditure incurred will be allowed as deduction (Except Cost of Land). |

Note: Deduction of **Pre-commencement expenditure** shall be allowed **in the year of commencement of business** to the extent certified by the prescribed authority.

EXPENDITURE ON IN-HOUSE RESEARCH BY COMPANY ASSESSEE [SEC 35(2AB)]

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|-------------------|--|
| Assessee | Company only |
| Eligible Business | Bio-technology or any business of manufacture/production of any articles or thing, not being an article or thing specified in the list of the Eleventh schedule. |
| Expenditure | Capital & Revenue Expenditure [Excluding Cost of Land & Building] |
| Deductions | 150% of Capital & Revenue [Except cost of Land & Building] |

PC Note: For Company → Pre-commencement expenditure & cost of Building is not allowed as deduction u/s 35(2AB). Thus, company will not be able to claim 150% depreciation on them.

But they are allowed as deduction @ 100% u/s 35(1) & 35(2). Hence, company will be entitled to claim 100% deduction on Pre-commencement expenditure & cost of Building u/s 35(1)/(2).

Points to Remember:

- ❖ Assessee must incur the expenditure on scientific research. Actual payment is not compulsory.
- ❖ The Assessee is not eligible for deduction by mere transfer of asset from business purpose to scientific research purpose [i.e Merely by transfer entry in books of accounts].
- ❖ **No depreciation** will be admissible on any capital asset cost of which has been allowed as a deduction u/s 35.
- ❖ It is not necessary that the capital asset must be complete in all respect & used for scientific purpose in the PY itself. It is also irrelevant that construction of building is not completed & the building has not been used in PY.
- ❖ No deductions u/s 35(2AB) shall be allowed to company accepting donations u/s 35(1)(iia).
- ❖ **UNABSORBED CAPITAL EXPENDITURE ON SCIENTIFIC RESEARCH:** Treated same as unabsorbed depreciation (can be carried forward for infinite years without any time limit).

B. CONTRIBUTION MADE BY ASSESSEE TO OUSIDER [Related/Not]

| Purpose | Sec | Contribution to whom | Deduction |
|---------------------|-------------|---|------------------|
| Scientific Research | 35 (2AA) | National laboratory/ National university/ IITs/ IIMs | 150% |
| | 35 (1)(ii) | Approved Research association/University/College/ Other institution | 150% |
| | 35 (1)(iia) | Company Registered in India having scientific research as its main business objective. Note: The recipient company <u>cannot claim weighted deduction</u> u/s 35(2AB) but can claim 100% deduction. | 100% |

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| | | | |
|--------------------------------|----------------|---|------|
| Social or statistical Research | 35 (1)(iii) | Approved Research association/University/College/ Other institution | 100% |
|--------------------------------|----------------|---|------|

Note: (a) Recipient shall be approved by prescribed authority & notified in official gazette by CG.
(b) **Deduction** of contribution made shall **not be denied** merely on the ground that the **approval granted** to such institutions **was withdrawn after payment** of such sum by the assessee to them.

SALE OF SCIENTIFIC ASSET [SECTION 41(3)]

- Asset may use scientific research asset for his other business purpose after completion of scientific research [Conversion of scientific research asset into normal business asset] **or**
- Assessee may sell scientific research asset without using it for another purpose after completion of scientific research.
- In both the cases, tax liability could arise.

1. Asset is sold after using it for Business:

- Cost of Acquisition = Nil (Since whole of the cost has been allowed as deduction)
- No Depreciation will be allowed on such asset when it is used for other business.

2. Asset is sold without using it for business:

- Taxable Amount = Lower of (i) Sale Price or (ii) Deduction allowed u/s 35.
- Capital Gain = Excess of Sale price over cost of acquisition.

INVESTMENT IN SPECIFIED BUSINESS [SEC 35AD]

- Only **Capital Expenditures** are covered u/s 35AD [Other than Land/GW/Financial Instrument]

| Nature of Specified Business | Commenced on/after |
|---|---------------------------|
| 1. Setting up & operating a Cold chain facility | 01.04.2009 |
| 2. Warehousing facility for storage of agricultural produce. | 01.04.2009 |
| 3. Affordable Housing project | 01.04.2011 |
| 4. Production of Fertilizer | 01.04.2011 |
| 5. Hospital (at least 100 Beds) | 01.04.2010 |
| 6. Cross country pipeline for petroleum or crude oil, natural gas | 01.04.2007 |
| 7. Hotel (2 Star +) | 01.04.2010 |
| 8. Slum Re-development Housing | 01.04.2010 |
| 9. Setting up & operation ICDs or CFS notified or approved under the customs act, 1962 | 01.04.2012 |
| 10. Bee-keeping & production of honey & bees wax | 01.04.2012 |
| 11. Warehousing facility for storage of sugar | 01.04.2012 |
| 12. Laying & Operating Slurry Pipeline for the transportation of iron ore. | 01.04.2014 |
| 13. Setting & operating Semiconductor Wafer Fabrication Manufacturing unit | 01.04.2014 |
| 14. Developing or maintaining & operating or developing, maintaining & operating a new infrastructure facility. | 01.04.2017 |

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PERMISSIBLE EXPENDITURE FOR DEDUCTION

| | |
|--------------------------------------|---|
| 1. PRIOR PERIOD EXPENSES | If Capitalized in the books of accounts. |
| 2. POST COMMENCEMENT EXPENSES | Any Capital Expenditure incurred during the PY. |

Note: Any Expenditure for Acquisition of any Asset for which the aggregate payments made to a person in a day, **otherwise than by A/c Payee Cheque** or A/c Payee Draft or Electronic clearing system **exceeds Rs. 10,000** would **not** be **eligible** for deduction.

AMORTIZATION OF PRELIMINARY EXPENDITURE [SEC 35D]

| | |
|-------------------------------|--|
| Assessee | (a) Indian Company or (b) Any other person Resident in India. |
| Eligible Expenditure | (a) In case of New companies → Expenses for setting up any business. (b) In case of Existing companies → Expenses for Expansion of Business. <ul style="list-style-type: none">▪ Expenditure on Preparation of feasibility report, Project report, conducting market survey or engineering services relating to the business.▪ Legal charges for drafting any agreement relating to the business.▪ Legal charges for drafting the MOA & AOA of the company.▪ Printing charges of the MOA & AOA of the company.▪ Registration fees of the company.▪ Expenditure on public issue of shares/debenture, underwriting commission, brokerage & charges for drafting, & advertising prospectus. |
| Maximum Limit | 1. INDIAN COMPANY: Higher of 5% of [Cost of Project OR Capital Employed]. 2. Any other Assessee: 5% of Cost of Project. |
| Qualifying Expenditure | (i) Eligible expenditure incurred or (ii) Maximum Limit (whichever is Lower) |
| Deduction | 1/5th of the Qualifying expenditure in 5 successive PYs. |
| Audit | COMPULSORY AUDIT for the years in which expenditure is incurred. |

AMORTIZATION OF COMPENSATION PAID UNDER VRS - SECTION 35DDA

| | |
|-----------------------------|--|
| Eligible Assessee | Any Assessee |
| Eligible Expenditure | Payment of any sum to Employee for his voluntary retirement. |
| Deduction | 1/5th of Expenditure shall be deductible for 5 succeeding PYs . Each Part Payment of VRS is deductible in 5 Instalments . 1 st Instalment is deductible in the PY in which such sum is Actually Paid. |

Note: In case of any **Business Re-organization** → **Deduction** shall be allowed to resulting company (organisation) for **Remaining years**

MISCELLANEOUS DEDUCTIONS - SECTION 36(1)

INSURANCE PREMIUM PAID ON:

(i) Stocks or stores against risk of damage or destruction.

(ia) Lives of the Cattles owned by members of primary milk co-operative society. Premium shall be paid by Federal milk co-operative society.

(ib) Health of Employees → Paid by the **employer** [Any mode other than Cash].

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BONUS OR COMMISSION [Sec 43B will Apply]

(ii) Bonus/commission **PAID** to the Employees by the employer. [not payable as profit or dividend]

Note: Amount paid to the employees as bonus or commission shall not be payable to them as profits or dividends if it had not been paid as bonus or commission.

It is a provision intended to safeguard escaping tax by distributing a part of its profits by way of bonus amongst the members, or employees of their own concern instead of distributing the money as dividends or profits.

(iii) INTEREST ON BORROWED CAPITAL FOR BUSINESS

➤ Interest for the period **after the asset is put to use** is allowed as deduction.

Note: Interest payable for the period before the asset is put to use → Capitalized & added to COA of Asset & thus not deductible u/s 36(1)(iii).

Points to Remember:

- ❖ Interest on own capital is → Not deductible.
- ❖ Guaranteed interest paid to shareholders on paid-up capital → Not Deductible.
- ❖ Interest paid on money borrowed for payment of dividends → Deductible.
- ❖ Interest paid on money borrowed for payment of Tax → Not Deductible.
- ❖ Interest paid by a firm to partners → Deductible; However, Interest paid by AOP to its members → Not Deductible.

AMORTIZATION OF EXPENDITURE ON ZERO COUPON BOND BY ISSUING COMPANY

(iii)(a) Amortization of Discount on a Zero-Coupon Bond is deductible **over the life of such bond**.

Tax Treatment in the hands of Issuing Company

- Discount (Amount payable on Maturity – Issue Price) on ZCB is deductible on Pro rata basis.
- No TDS **u/s 194A** by the payer company.

Tax Treatment in the hands of Investor

- Maturity or redemption of ZCB will amount to **transfer** u/s 2(47)(iva).

EMPLOYER'S CONTRIBUTION towards

(iv) RPF or Approved SF, Subject to section 43B.

(iva) Pension scheme to the extent of **10% of salary** of the employee in PY.

(v) Approved Gratuity Fund subject to Section 43B.

EMPLOYEE'S CONTRIBUTION

(va) Employee's contribution towards RPF/SF/ESIC, if deposited by the employer before DD.

Note: Employee's contribution is **first included** in **total income** of the employer. Then **deduction** is given under this section if the sum received is **deposited before due date of filing ROI u/s 139(1)**.

(vi) ANIMAL ALLOWANCE

- An Allowance for dead/Permanently useless animals which were used in the business.
- **Amount of Deduction** = Purchase Price of animals – Sum realized on sale of death body.
- **When Allowed:** PY in which animal dies or becomes permanently useless for business.

(vii) BAD DEBTS (EXCLUDING PROVISIONS FOR BAD DEBT)

Conditions:

- Debt (Loan) must be incidental to the business.
- Such debt must be **charged as income** in computing the income if the assessee of any PY
- Must be **written off** in books of accounts.
- Debt may be money lent in the ordinary course of banking or money lending business

Second Proviso inserted by FA, 2015:

If whole or part of Debt has been included in the income of PY in which it becomes irrevocable or earlier PYs without recording the same in the books of accounts; such Debt amount shall be allowed in PY in which, it becomes irrevocable and it shall be deemed that such amount has been written off in the accounts.

Other points:

1. In case of succession → Successor is entitled to claim the deduction when a debt originally due to the predecessor is written off as bad debt by the successor in his books of accounts.
2. Recovery of Bad debts is **taxable** as **business income** in the **PY of recovery**. [sec 41(4)]

(ix) EXPENSES ON FAMILY PLANNING

- Any expenditure incurred by the company for promoting family planning amongst employees will be allowed as deduction in the hands of company.

Amount of Deduction will be as follows:

- Revenue Expenditure: Fully allowed in the PY in which it is incurred.
- Capital Expenditure: **1/5th of the expenditure allowed in 5 PY's.**

Note: Treatment of Unabsorbed expenditure is same as treatment of unabsorbed depreciation.

| | |
|--------------|---|
| (xv) | Securities Transaction Tax [STT] paid by the assessee is deductible if the income arising from such a taxable securities transaction is included u/h "PGBP" |
| (xvi) | Commodity Transaction Tax [CTT] paid by the assessee is deductible if the income arising from such a taxable commodities transaction is included u/h "PGBP". |

GENERAL DEDUCTIONS - SECTION 37

- Section 30-36 provides for **Specific deductions** in respect of certain expenditures.
- But still there can be Certain Expenditures which might not get covered in Section 30-36.
- Thus **Section 37** provides for **General deductions**.
- **Only Business Expenditure is Allowable u/s 37.**
- Business losses such as those arising out of embezzlement, theft, destruction of assets, misappropriation by employees etc are allowable u/s 29 as losses incidental to the business.
- Deduction u/s 37 is limited only to the amount actually expended & does not extend to a reserve created against a contingent liability.

CONDITIONS FOR ALLOWANCE U/S 37: Such expenditure shall

1. Not covered in Sec 30 to 36.
2. **Not a capital expenditure** (Only revenue expenditure is deductible u/s 37).
3. Incurred during the PY.
4. It must have been incurred after the business was set up.
5. Incurred wholly & exclusively for business (**Personal Expenditure** is **NOT** deductible).
6. **Legal Purpose only:** Expenditure should not be for any purpose which is an offence, or which

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is prohibited by law.

Points to Remember:

1. There should be Nexus between Expenses & business.
2. Exclusive benefit may or may not be derived by the assessee. Section 37 requires that the expenditure should be wholly & exclusively incurred for purpose of the business. AO cannot question the necessity of the expenditure in allowing the deduction for such expense which was incurred for the purpose of the business but was unnecessary.

Some Important Decisions based on Case Laws:

| Particulars | Deduction u/s 37(1) |
|--|---|
| Penalties imposed for Infraction of Laws | Not Allowed |
| Penalty paid for failure to deduct TDS | Not Allowed |
| Any interest or penalty paid under Direct tax laws | Not Allowed |
| Interest paid to Sales tax Department on Arrears of Sales tax | Allowed |
| Penalty levied under CST Act. | Not Allowed |
| Demurrage paid to port authorities for releasing confiscated goods. | Allowed as it is not a fine. |
| Interest paid under Employees PF & Misc. provision Act, 1952. | Allowed |
| Penalty paid by the assessee (contractor) for non-completion of contract within stipulated time. | Allowed as it is not a fine paid for infraction of law. |

Some Important Circulars:

1. **Expenditure incurred on keyman insurance policy:** Premium paid on the Keyman Insurance Policy is allowable as **business expenditure**.
2. **Expenditure incurred on CSR:** Not deemed to be incurred for Business & thus **not deductible**.
3. **Expenses incurred in providing freebies to medical practitioner:** CBDT noticed that any expense incurred in providing freebies to medical practitioner is in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette & Ethics) Regulations, 2002. Thus value of freebies enjoyed by the aforesaid medical practitioner or professional associations is also **taxable as business income or IFOS**, as the case may be, depending on the facts of each case.

CONTRIBUTION TO POLITICAL PARTIES [SEC 37(2B)]

- Any expenditure on advertisement in any souvenir, brochure, tract, pamphlet published by Political parties is **not deductible**.
- However it can be claimed as deduction **u/s 80GGB & 80GGC** as **"Donations to PP"**.

B. SPECIFIC DISALLOWANCES

INTEREST, ROYALTY, FEES FOR TECHNICAL SERVICES or ANY OTHER SUM (On which Tax is Deductible at Source) [Section 40(a)(i)]

- Payable **out of India** (to any person) or
- Payable in India (**to any NR** or Foreign Company)

| | |
|------------------------------------|--|
| Conditions for Disallowance | (i) Tax is not deducted before the end of the PY. OR (ii) Tax is deducted but not paid before due date of filing ROI u/s 139(1). |
| Consequences | 100 % of such amount paid/payable is disallowed in that PY . |

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| | |
|--|--|
| Deduction or Payment in Subsequent PY | (i) Where tax has been deducted in any subsequent PY OR (ii) has been deducted during the PY but paid after the Due date; then 100% of such sum shall be allowed as deduction in computing the income of the PY in which such tax has been paid. |
|--|--|

It is to be noted that to get deduction of any sum paid on which tax is deductible;

(i) Tax should be **deducted** before the end of PY (i.e before 31st march of the relevant PY) **AND**

(ii) Such deducted tax should be **paid to government before due date of filing ROI** u/s 139(1).

Both the conditions should be satisfied together to get deduction in the relevant PY.

There may exist a situation when tax is deducted after 31st march of the relevant PY but such tax is paid to government before due date of filing ROI. In such case, the amount paid shall be disallowed in the PY since tax has not been deducted before 31st march. However it will be allowed as deduction in next PY. Both the conditions given above goes hand in hand - [Refer case 5 Below]

Ex: For PY 2018-19; Due date of filing ROI u/s 139(1) is 30.09.2019;

| Case | Date of TDS | Date of Payment of TDS | Deductible in PY |
|------|-------------|------------------------|------------------|
| 1 | 26.07.2018 | 2.9.2019 | PY 2018-19 |
| 2 | 31.03.2019 | 13.10.2019 | PY 2019-20 |
| 3 | 16.05.2018 | Not deposited | Not Deductible |
| 4 | 20.04.2019 | 20.7.2021 | PY 2021-22 |
| 5 | 30.04.2018 | 10.05.2018 | PY 2019-20 |

PAYMENTS TO RESIDENT (on which Tax is Deductible at Source) [Sec 40(a)(ia)]

| | |
|---|--|
| Conditions for disallowance | (i) Such tax is not deducted before the end of PY OR (ii) Tax is deducted but not paid before Due Date of ROI u/s 139(1) |
| Consequences | 30% of such amount paid/ payable is disallowed as deduction in that PY. |
| Deduction or payment in Subsequent PY | (i) Where tax has been deducted in any subsequent PY OR (ii) has been deducted during the PY but paid after the said DD, 30% of such sum shall be allowed as deduction in computing the income of the PY in which such tax has been paid. |
| Payment of Tax by Resident Payee of such sum [Sec 201] | <ul style="list-style-type: none">▪ Resident Payee only → If Tax on such income has been paid by the payee by showing such sum as his income in his ROI, then it shall be deemed that Assessee has deducted & paid tax & thus No disallowance under this section.▪ Deemed Date of TDS & Payment of tax → Date of filing ROI by the payee. |

Since date of filing ROI by resident payee is deemed to be the date on which the payer has deducted & paid tax → 30% of such expenditure/payment shall be disallowed u/s 40(a)(ia) in the year in which the said expenditure is incurred. However, 30% of such expenditure will be allowed as deduction in the subsequent year in which ROI is furnished by the resident payee.

- ❖ **INCOME TAX PAID:** on business income is not deductible - Section 40(a)(ii)/(iia)
- ❖ Amount paid by way of **Royalty, License Fee, Service Fee, Privilege Fee** etc. levied exclusively on or appropriated FROM → SG Undertakings; BY → SG is **not deductible**. [Sec 40(a)(iib)]

SALARY PAID OUTSIDE INDIA/ TO NON-RESIDENT [SEC 40(a)(iii)]

- Payment of Salary on which tax has been **neither deducted** before the end of PY **nor paid** before DD of filing ROI u/s 139(1).
 - Payable out of India (to any person) or

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- In India (to any NR)

Example:

| SN | Date of TDS | Date of Payment | PY in which Salary is Deductible |
|----|--------------|-----------------|----------------------------------|
| 1 | 31/07/2018 | 10/11/2018 | 2018-19 |
| 2 | 31/03/2019 | 30/04/2019 | 2018-19 |
| 3 | Not Deducted | 12/05/2019 | 2018-19 |
| 4 | 31/03/2019 | Not Deposited | 2018-19 |
| 5 | Not Deducted | Not Deposited | Not Deductible |

TAX PAID BY EMPLOYER ON NON-MONETARY PERQUISITES [Sec 40(a)(v)]

- Tax paid on non-monetary perquisites by the employer → **Not Deductible to Employer.**
- Such tax will be **exempt** in the **hands of employee** – [Sec 10(10CC)]

DISALLOWANCE IN CASE OF PARTNERSHIP FIRM/LLP [SECTION 40(b)]

A. REMUNERATION TO PARTNER [Salary/Bonus/Commission/by whatever name]

Following payments to partners are **disallowed** in the hands of Partnership firm:

1. Remuneration to **Non- Working Partner.**
2. Remuneration to Working Partner if:
 - (a) **Not Authorized** by Partnership deed.
 - (b) **Not in Accordance with T&C** of partnership deed.
 - (c) For the **period prior** to the date of agreement.
 - (d) Exceeding the limit given below ↓

| Book Profit | Amount of Remuneration |
|---|---|
| Book Loss OR Upto Rs. 3 Lacs of Book Profit | Rs 1.5 Lacs OR 90% of Book Profit [Higher] |
| On the balance of Book Profit [Above 3 Lacs] | 60% of the Book Profit |

B. INTEREST PAID TO PARTNERS

Interest paid to partners is disallowed in following cases:

- (a) **Not Authorized** by Partnership deed
- (b) For the **period prior** to the date of Partnership Deed.
- (c) At a Rate **Exceeding 12% p.a.**

Explanation

- I. Where an Individual is a Partner in the Firm in Representative Capacity.
 - Interest paid by firm to such individual in Individual capacity shall **NOT** be considered.
 - Interest paid by firm to such individual in Representative capacity shall be considered.
- II. Where an Individual is a Partner in the Firm in Individual Capacity
 - Interest paid by firm to such individual on behalf of any other person is not considered.

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PAYMENT IN CASH [OTHER THAN A/C PAYEE CHEQUE ETC] [SEC 40A(3)]

Conditions for Disallowance u/s 40A(3):

1. Assessee incurs any expenditure exceeding Rs. 10,000 which is **deductible** u/h PGBP.
2. A Payment or **Aggregate of Payments** made to **A Person** in **A Day** for **An Expenditure exceeds Rs. 10,000** [Rs. 35,000 in case of payment made for Plying, Hiring, Leasing Goods Carriages].
3. Above Payment is made **otherwise than by A/c payee cheque/draft/Internet Banking**.

Then → **NO DEDUCTION** shall be allowed for such expenditure.

Ex: If for an expenditure of Rs. 32,000 incurred by X Ltd, 4 cash payments of Rs. 8,000 each are made on a particular day to Mr. Y as: (1) Morning at 10 AM; (2) @ 12 Noon; (3) @ 3 PM & (4) @ 6 PM, Entire expenditure of Rs. 32,000 would be disallowed u/s 40A(3), since Aggregate cash payments made during a day to Mr. Y > Rs. 10,000.

Points to Remember:

1. If the expenditure has been allowed as deduction in any earlier PY on accrual basis (if assessee is following accrual basis) & payment for such expenditure has been made in any subsequent PY exceeding Rs. 10,000/35,000 in cash to a person in a day, then such payment shall be deemed to be the income of the PY in which payment is made.

2. Repayment of Loans → Sec 40A(3) doesn't Apply.

But it applies to interest payments since interest is a deductible expenditure.

Exceptions: [In the following cases, NO Disallowance even if amount paid > Rs. 10,000]

| |
|---|
| 1. Payment made to Banks (including Private & Co-operative Bank, Credit Societies & LIC.) |
| 2. Payment made to Government when such payment is required to be made in legal tender. |
| 3. Payment through Banking System . |
| 4. Payment by Book Adjustments against any liability incurred. |
| 5. Payments made to the Cultivator, Grower or Producer of agricultural, forest, animal husbandry or dairy or poultry, fish, horticulture, apiculture products. |

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|---|
| 6. Payment to the producers of goods in cottage industry without the aid of power . |
| 7. Payment made at the place which on the date of payments is not served by bank . |
| 8. Any terminal benefits [Ex: Retirement or gratuity etc.] ≤ Rs. 50,000 . |
| 9. Payment to Employees on temporary posting for a continuous period of 15 days or more if such payment is made after TDS & such employee does not maintain any bank account at such place. |
| 10. Payment made on a day on which Banks were closed due to holiday or strike . |
| 11. Payments made by any person to his commission agent who is required to make payment in cash for goods or services on behalf of such person. |
| 12. Payment made by Authorized Dealer or Money changer against purchase of Foreign currency or Traveller's cheque in the normal course of his business. |

COMPULSORY MAINTENANCE OF BOOKS OF ACCOUNTS - SECTION 44AA

A. SPECIFIED PROFESSIONS

| | |
|--|--|
| GR > Rs. 1,50,000 in All of the last 3 PYs. | Books prescribed u/r 6F. |
| GR ≤ 1,50,000 in Any of the last 3 PYs. | Such books of account & documents which enable AO to compute their taxable income. |

Specified Profession: Specified Profession include persons carrying on Legal, Medical, Engineering, Architectural, Accountancy, Technical consultancy or Interior Decoration or any other NOTIFIED profession. *Authorised representatives, film artists & company secretaries & Information Technology have been notified for this purpose till date.*

B. FOLLOWING PERSON WILL BE REQUIRED TO MAINTAIN SUCH BOOKS OF ACCOUNTS WHICH WILL ENABLE AO TO COMPUTE THEIR TAXABLE INCOME

| |
|--|
| 1. INDIVIDUAL/HUF carrying Non-Specified Business or Profession: <ul style="list-style-type: none">Income > Rs. 2,50,000 OR Sale, T/O or GR > 25,00,000 in ANY ONE of the last 3 PY. |
| 2. OTHER THAN INDIVIDUAL/HUF carrying non – specified profession or business: <ul style="list-style-type: none">Income ≤ 1,20,000 OR Sales, T/O or GR ≤ 10,00,000 in ANY ONE of the last 3 PY. |
| 3. Person showing Lower Income than Income computed on Presumptive basis u/s 44AE. |
| 4. If Sec 44AD(4) is applicable to him & his income exceeds BEL in any of those PY: <ul style="list-style-type: none">If Any assessee is NOT Eligible to claim the benefit of the provisions of Sec. 44AD(1) for 5 AYs subsequent to the PY in which the profit has not been declared on presumptive basis as per 44AD(1) & his Income exceeds BEL during the PY. |

PROVISIONS:

SOME OTHER

[To be Read once]

(i) Place at which books are to be kept & maintained:

- Place where the person is carrying on the profession, or where there is more than one place, at the principal place of his profession.
- However, if he maintains separate set of books for each place of his profession, such books & documents may be kept & maintained at the respective places.

(ii) Minimum period of maintenance of books of A/Cs & other documents:

- Minimum of 6 years from the end of the relevant AY.

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| | |
|--|--------------------------|
| (iii) Books of accounts & documents prescribed in Rule 6F: | [To be Read once] |
| (a) Cash book; Ledgers | |
| (b) Journal, if accounts are maintained on mercantile basis; | |
| (c) Carbon copies of Bills & Receipts issued (serially numbered) for Amount > Rs. 25; | |
| (d) Original Bills & Receipts issued to the person in respect of expenditure incurred by the person, or where such bills & receipts are not issued, payment voucher prepared & signed by the person, provided the amount < Rs. 50. | |
| Where the cash book contains adequate particulars, the preparation & signing of payment voucher is not required. | |
| Additional requirement in case of person carrying on Medical Profession: | |
| (a) Daily case registers in Forms 3C. | |
| (b) Inventory under broad heads of the stock of drugs, medicines & other consumable accessories as on the First & last day of the PY used for his profession. | |

COMPULSORY AUDIT OF BOOKS OF ACCOUNTS [SECTION 44AB]

| Different Taxpayer | Circumstances when audit is compulsory |
|-------------------------------------|--|
| Business Person | If Total Sale, Turnover or Gross Receipt for PY > Rs. 1 Crore. ** |
| Professionals | If his Gross Receipts for PY > Rs. 50 Lacs. |
| Person covered u/s 44AE | If such person claims that his income is LOWER than Income computed on Presumptive basis. (Such Audit have nothing to do with their turnover) |
| Person covered u/s 44AD & Sec 44ADA | If such person claims that his income is LOWER than Income computed on Presumptive basis & his Income Exceeds BEL. |
| Person covered u/s 44AD(4) | If his Income Exceeds BEL. |

**** Requirement of Compulsory Audit u/s 44AB does not apply to a person who declared profit u/s 44AD on presumptive basis & his Total Sales, Turnover, or Gross Receipts ≤ Rs. 2 Crores.**

PRESUMPTIVE INCOME OF ELIGIBLE BUSINESS [SEC 44AD]

| | |
|--------------------------|---|
| Eligible Assessee | <ul style="list-style-type: none">▪ Resident Individual/HUF/Partnership Firm (not being a LLP) &▪ Assessee has not claimed deduction u/s 10A/AA/B/BA, 80HH to 80RRB in the relevant AY.▪ Such assessee should carry any business (other than Negative Listed).▪ Turnover in the PY of such business does not exceed Rs 2 Crores |
| Negative list | <ul style="list-style-type: none">▪ The provisions of Sec. 44AD are NOT applicable to:<ul style="list-style-type: none">(a) Person carrying on specified profession as referred in Sec. 44AA(i),(b) Person earning income in the nature of Commission or brokerage, or(c) Person carrying on any Agency business.(d) Business of plying, hiring, or leasing goods carriages specified u/s 44AE. |
| Income | <ul style="list-style-type: none">▪ Income = 8% of Turnover.▪ However, Income = 6% of Turnover/GR for amount received by A/c Payee cheque/draft/Netbanking during PY or before DD of Filing ROI u/s 139(1) |
| No Deduction | <ul style="list-style-type: none">▪ No Deduction u/s 30 - 38 shall be available. |

**21. (Ds-3 opp Doctors' colony P.N.B building kankarbagh patna)
Income tax by Nitesh Sir**

RANKERS' COMMERCE (KANKARBAGH PATNA)

call: - 9386035411, 7870266699,

| | |
|--------------------------------|--|
| Maintenance of Books | ▪ Not required. |
| Audit | ▪ Not required. |
| Chapter VI-A Deductions | ▪ Deduction u/s 80C to 80U shall be available to the Assessee. |
| Advance Tax | ▪ He is required to pay Advance Tax in 1 installment on/before 15th March. |
| Depreciation | ▪ Depreciation for subsequent PY when he ceases to be eligible assessee for section 44AD → WDV of the Assets shall be computed, as if Depreciation had been allowed in earlier year. |

SECTION 44AD(4): If an eligible assessee declares profit for any PY as per 44AD on presumptive basis & he **does not declare profit on presumptive basis** as per section 44AD(1) **for any of the next 5 consecutive PY**, he **becomes ineligible** to claim the **benefit of presumptive income** as per AD(1) for next 5 Ays subsequent to PY in which profit has not been declared as per 44 AD.

PRESUMPTIVE INCOME OF ELIGIBLE PROFESSIONALS [SEC 44ADA]

| | |
|--------------------------------|---|
| Eligible Assessee | ▪ Resident Person engaged Legal, Medical, Engineering, Architectural, Accountancy, Technical consultancy or Interior Decoration or any other NOTIFIED profession. Authorised representatives, film artists & company secretaries & Information Technology have been notified for this purpose till date & ▪ Gross Receipt does not exceed 50 Lacs. |
| Income | ▪ 50% of Gross Receipt. However, Assessee can declare Higher Income. |
| No Deduction | ▪ No Deduction u/s 30 - 38 shall be available. |
| Maintenance of Books | ▪ Not required. |
| Audit | ▪ Not required. |
| Chapter VI-A Deductions | ▪ Deduction u/s 80C to 80U shall be available to the Assessee. |
| Advance Tax | ▪ He is required to pay Advance Tax in 1 installment on/before 15th March. |
| Depreciation | ▪ Depreciation for subsequent PY when he ceases to be eligible assessee for section 44AE → WDV of the Assets shall be computed, as if Depreciation had been allowed in earlier year. |

Q. Can Assessee declares Lower Income? YES.

1. He will have to maintain books of accounts &
2. If the declared income exceeds BEL, he will have to get his books of accounts Audited.

PRESUMPTIVE INCOME OF TRANSPORT ASSESSEES [SEC 44AE]

**22. (Ds-3 opp Doctors' colony P.N.B building kankarbagh patna)
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RANKERS' COMMERCE (KANKARBAGH PATNA)

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| | | |
|---|--|---|
| Eligible Assessee | ▪ Persons carrying on business of plying, hiring, & leasing goods carriages & not owning more than 10 Goods Carriages at any time during the PY. | |
| Income | Heavy Goods Vehicles | Rs. 10,000 per ton of gross vehicle weight or unladen weight for every month or part of it. |
| | Other than Heavy Vehicles | Rs. 7,500 per ton of gross vehicle weight or unladen weight for every month or part of it. |
| | <i>only for the period during which vehicle is owned by Assessee in the PY.</i> | |
| | ▪ However, assessee can declare higher income. | |
| No Deduction | ▪ No Deduction u/s 30 - 38 shall be available. ▪ However, Salary & Interest paid by firm to partner → Deductible. {Amd} | |
| Maintenance of Books & Audit | ▪ Not required. | |
| Chapter VI-A Deductions | ▪ Deduction u/s 80C to 80U shall be available to the Assessee. | |
| Advance Tax | ▪ He is required to pay Advance Tax in 1 installment on/before 15th March. | |
| Depreciation | ▪ Depreciation for subsequent PY when he ceases to be eligible assessee for section 44AE → WDV of the Assets shall be computed, as if Depreciation had been allowed in earlier year. | |

□

□

**23. (Ds-3 opp Doctors' colony P.N.B building kankarbagh patna)
Income tax by Nitesh Sir**