

Meaning - Business

- Definition of Business

Sec. 2(13) defines business : “Business includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture .

Meaning - Business

- The definition of business in sec.2(13) is not exhaustive. It covers every facet of activity carried on by a person with a view to earning profits
- Even activities of rendering service to others falls within the scope of the term 'Business'.
- Even isolated transactions can be held to be business if it bears the ingredients of trade. However, a stray activity of a non-businessman would not be business.

BUSINESS INCOME

- INGREDIENTS OF BUSINESS

- ❖ Activity

- ❖ Profit motive

- ❖ Devotion of time

- ❖ Attention

- ❖ labour

Profession

- Sec.2(36) defines: 'Profession includes vocation'
- Not necessarily by acquired educational degree, ability and knowledge
- Can arise out of inborn talent, skills etc

Instances when business income is not taxable under the head 'Profits and Gains of business'

Rental income in case of dealer of property	Rent of house property is taxable u/s 22 even if property held as stock-in trade or if assessee is in business of letting out property
Dividend on shares in the case of dealer in shares	Divd. From Indian co. is not taxable. If dividend recd. from foreign co. or deemed divd., it is taxable as 'Other sources income
Winnings from lotteries etc.	Winnings from lotteries, races etc. are taxable under 'Income from other sources'(Even if derived as regular business activity

Provisions of the IT Act

- Chargeability section Sec.28
- Computation of income
- Deductions Sec.30 to 37
- Deemed income Sec.41
- Inadmissible Sec.40,Sec.40A,43B
- Presumptive Sec.44AD to 44AF

Sec. 28

- Items chargeable to tax u/s 28:
- The profits and gains of business carried on at any time during the PY
- Income derived by a trade, professional or similar association from specific services performed to members.
- Export incentives like profit on sale of import licence, cash assistance recd/ receivable against exports under GOI scheme, duty drawback, profit on transfer of DEPB etc.

Sec. 28

- Value of any benefit or perquisite, whether convertible into money or not, arising from the exercise of business or profession
- Any interest, salary, bonus, commn. or remn. recd. by a partner from a firm.
- Receipts in the nature of non compete fees and exclusivity rights.
- Sum recd. under Keyman Insurance policy along with bonus.
- Sum recd. towards demolition etc. of a capital asset, if the exp, on such capital asset is allowed as dedn u/s 35AD.

Buildings Sec.30

- If the property is tenanted
 - rent paid and
 - cost of repairs (not being capital expenditure), if undertaken by tenant.
- If the property is owned
 - Land revenue
 - Insurance premium
 - Municipal taxes
 - Current repairs

Machinery

Section 31

- Current repairs – which does not change the capacity or enhances its efficiency
- Insurance premium on the machinery

Depreciation Sec.32

- Depreciation is allowable on follg. Assets
- Buildings, machinery, plant or furniture
- W.e.f.1.4.98, intangible assets like know-how, patents, copyrights, trademarks, licences, franchisees or any other business or commercial rights of similar nature

Depreciation Sec.32

- Assets should be owned, wholly or partly by the assessee.
- Assets should be used for the purposes of the business or profession.
- Even trial run would constitute 'user'
- Depreciation is allowable at the rates prescribed on the written down value on the block of assets

Block of Assets

- Sec. 2(11) defines Block of Assets means a group of assets falling within a class of assets comprising
- A) tangible assets being buildings, machinery, plant or furniture;
- B) intangible assets, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or comml rights of similar nature

In respect of which same % of depn, is prescribed

Depreciation Sec.32

- Where the assets is acquired during the previous year and is put to use for business purposes for less than 180 days in the previous year, the deduction allowable will be 50% of the depn. calculated at prescribed rates
- If in a leased/hired building, the assessee incurs any cap exp by way of renovation/extension/improvement to bldg, depn is allowable on such cap exp (Expln 1 to sec.32(1))
- Except above, depn allowable only to lessor
- Whether the assessee claims depn or not, it shall be allowed as dedn

Unabsorbed depreciation

- Where the depreciation cannot be fully allowed in a assessment year, such unabsorbed depreciation will be added to the depreciation of the subsequent A Y and deemed to be part of allowance for that AY and so on for the succeeding AYs

Unabsorbed depreciation

- Carry forward is allowed u/s 32(2)
- Since carried forward depn is deemed as current depreciation, it can be set off not only against business income but also against income under any other head
- Carry forward allowed indefinitely
- Continuance of business not a prerequisite in order to get the benefit of carry forward

Depreciation of Foreign car

- Depn. Is allowable on foreign made motor car
 - If the same is used outside India in the assessee's business carried on in that country
 - If it is used in India for the purpose of business of running it on hire for tourists
 - Where the car is acquired after 31.3.2001 and is used for the assessee's business.

RATES OF DEPRECIATION

Number	Nature of asset	Depn
Block 1	Residential bldg other than hotels & Boarding houses	5%
Block 2	Office, factory, godowns or bldg.s not mainly used for residential purpose	10%
Block 3	Bldgs acqd after 1.9.2002 for installing machinery forming part of water supply project & Temporary erections	100%

RATES OF DEPRECIATION

Number	Nature of asset	Depn
Block 4	Furniture/fittings incl electrical fittings	10%
Block 5	Any P &M (not covered by block 6 to 12) & motor cars put to use on or after 1.4.90	15%
Block 6	Ocean going ships	20%
Block 7	Buses, lorries & taxis used in hiring business	30%

RATES OF DEPRECIATION

Number	Nature of asset	Depn
Block 8	Aeroplanes, Life saving medical equipment	40%
Block 10	Computers including computer software / books/gas cylinders/ plants used by mineral oil concerns/ direct fire glass melting furnace	60%
Block 11	Energy saving device, renewal energy device, rollers in flour mills, sugar works & Steel industry	80%

RATES OF DEPRECIATION

Number	Nature of asset	Depn
Block 12	Air/water pollution control equipments, solid waste control equipments, etc	100%
Block 13	Intangible assets (acqd. After 31.3.98)- know-how, patents, copyrights, trade marks, licences, franchises etc	25%

Additional Depreciation

- Conditions for claim of additional depn
 - Assessee must be engaged in manufacture/ prodn of article or thing
 - New plant and machinery shd be acqd on or after 31.3.2005
 - It should be an eligible plant & Machinery

Additional Depreciation

- Eligible plant and machinery- only new P&M acqd and installed after 31.3.2005
- Addl depn not available in r/o
 - Ships & aircrafts
 - Machinery previously used by any others
 - Machinery installed in office/residence/guest house
 - Office appliances or road transport vehicles

Additional Depreciation

- Rate of additional depn.
- 20% of actual cost of new plant and machinery acqd and installed after 31.3.2005.
- Addl depn is available only in the year in which the new plant and machinery is first put to use.

Section 50

- When the WDV of a block is reduced to zero, though the block of assets does not cease to exist on the last day of the previous year
 - No depreciation is admissible.

Section 50

- If the block of assets ceases to exist or if all assets of the block have been transferred and the block of asset is empty on the last day of the previous year,
 - No depreciation is admissible.
 - The excess or shortfall of the sale consideration over the opening WDV and cost of assets acqd during the year will be the STCG or STCL respectively.

Depreciation Vs Change of ownership

- Change of ownership may take place due to
 - Conversion of firm or sole proprietary concern to company
 - Succession to business other than on death
 - Amalgamation of a company
 - Demerger of a company

Depreciation Vs Change of ownership

- Find out the depn of the PY of the year of change of ownership as if succession, amalgamation etc. has not taken place.
- Depn so determined is to be apportioned between (i) the predecessor and successor or (ii) amalgamating co. and amalgamated co or (iii) demerged and resulting co., in the ratio of number of days for which the assets are used in the year of change of ownership
- Depn to be allowed in the above ratio and the AO has no option.

Depreciation

- With effect from the AY 2002-03, depreciation u/s 32 is to be allowed whether or not the assessee has claimed the dedn for depn.

Tea/coffee/rubber devlpt a/c (sec. 33AB)

- Conditions
 - Assessee must be engaged in tea, coffee, rubber plantation
 - It must make a deposit in special account
 - Deposit must be made within specified time limit
 - Accounts of the assessee should be audited

Sec.33AB

- Deposit
 - Deposit with NABARD in accordance with scheme approved by Tea Board/Coffee Board or Rubber Board or
 - Deposit in the Deposit Account opened in accordance with scheme approved by Tea Board/Coffee Board or Rubber Board.
 - Deposit to be made within 6 months of the end of the PY or before the due date for filing R/I whichever is earlier

Sec.33AB

- Amount of deduction
 - Amount of deposit in special accounts or
 - 40% of the business profits(computed before 33AB dedn and before adjustment of B/Fd losses)

Amount withdrawn from the account is to be utilised only for the purpose specified in the approved scheme.

Site Restoration Fund (Sec.33ABA)

- Conditions
 - Assessee must be engaged in production of petroleum or natural gas in India
 - Assessee must have an agreement with CG
 - It must make a deposit in special account
 - Deposit must be made within specified time limit
 - Accounts of the assessee should be audited

Section 33ABA

- Deposit
 - Deposit with SBI in accordance with scheme approved by Gol in the Ministry of Petroleum and Natural Gas or
 - Deposit in the Deposit Account opened in accordance with scheme approved by Ministry of Petroleum and Natural Gas.
 - Deposit to be made within the end of the PY

Section 33ABA

- Amount of deduction
 - Amount of deposit in special accounts or
 - 20% of the business profits (computed before 33ABA dedn and before adjustment of B/Fd losses)

Amount withdrawn from the account is to be utilised only for the purpose specified in the approved scheme.

Expenditure on scientific research

- Expenditure on scientific research is allowable under sec. 35
- Meaning of scientific research provided in sec.43(4)
- SC. Res. means activity for extension of knowledge in the fields of natural/applied sciences including agriculture and animal husbandry and fisheries

Expenditure on scientific research

Expenditure on research carried on by the assessee

- Revenue exp – if such exp relates to business
- Revenue exp, on sc. res.related to bus.(other than exp on perks to employees), incurred prior to commencement of business (within 3 years before bus. commencement) is allowable in the PY in which the business is commenced

Expenditure on scientific research

Expenditure on research carried on by the assessee

- Contribution made to follg. Institutions, whether related / unrelated to business is eligible for weighted dedn. at 1 ¼ times:
- Approved sc. Res. Association
- Approved university, college or institution
- National Laboratory, or university, or IIT
for the use of research for social science/statistical research

Expenditure on scientific research

- Whole of capital exp. On sc. Res. Related to business is allowable as deduction
 - Cap. exp, on sc. res.related to bus. incurred prior to commencement of business (within 3 years before bus. commencement) is allowable in the PY in which the business is commenced
 - Cap exp on land acqn. not allowable
 - No depn allowable in r/o asset used for res
 - Sale of assets used for sc. res. - discuss

Expenditure on scientific research

- Contribution to National Laboratory / University / IIT is eligible for weighted deduction at $1 \frac{1}{4}$ times the actual contribution - Sec.35 (2AA)

Instances of capital exp specifically allowed under the Act

- Section 35ABB – amortisation of telecom licence fees:
- Exp on acquiring any right to operate telecommunication services either before commencement of business or later at any time during any PY, the payment for which has been actually made
- Allowable in equal instalments over the period starting from the year in which payment has been made and ending in the year in which licence comes to end.
- Where a dedn u/s 35ABB is allowed for any PY no dedn of the same exp is allowable u/s 32 for that PY or any subsequent PY.

Instances of capital exp specifically allowed under the Act

- Section 35AC :Exp on eligible project or scheme
- Dedn is available if the assessee incurs any exp by way of payment to a public sector co./local authority/ instn. Approved by National Committee for carrying out any eligible project or scheme.
- A corporate assessee can also directly incur exp on eligible project & claim dedn., but this option is not available to others

Instances of capital exp specifically allowed under the Act

- Section 35AC
- Eligible project or scheme means project or scheme for promoting the social and economic welfare of the public notified in the Official Gazette on the recommendations of the National Committee.
- Certificate in Form 58A from the donee organisation is a must. In case of direct exp by a Co. form 58B from a CA is to be filed.
- Contributions to these institutions qualify for dedn even if after the date of making the contribution, the approval granted to these instn.s is withdrawn.

Instances of capital exp specifically allowed under the Act

- Section 35AD has been inserted w.e.f. AY 2010-11.
- The dedn is available only in case of specified business
- Specified business should be new business, i.e, not formed by splitting up/reconstn of an existing business. 20% of old machinery permitted.
- Books of accounts should be audited
- 100% of cap exp incurred wholly & exclusively for the specified business is deductible in the PY in which exp is incurred. But exp on land or goodwill or financial instrument not eligible for 35AD.

Section 35 AD

Specified business	Owner of business	Approval if any	Date of commencement of business
Cold chain facility	Any person	Not required	On or after 1.4.09
Warehousing facility for storage of agri produce	Any person	Not required	On or after 1.4.09
Cross-country natural gas/ crude/ petrol oil pipeline network for distn /storage	An Indian co. or consortium of Indian Co.s or an authority/Board/ Corpn established under any Central or State Act	Approved by Petroleum and Natural Gas Regulatory Board	On or after 1.4.07 in case of natural gas pipeline network On or after 1.4.09 for other cases

Section 35 AD

Specified business	Owner of business	Approval if any	Date of commencement of business
Hotel of 2-star or above	Any person	Not required	On or after 1.4.10
New Hospital with at least 100 beds for patients	Any person	Not required	On or after 1.4.10
Developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central Govt	Any person	Not required	On or after 1.4.10

Section 35AD

- An assessee claiming 35AD shall not be allowed dedn u/s 80HH to 80RRB
- No dedn in r/o exp for which dedn claimed u/s 35AD shall be allowed under any other provn of the Act
- Any loss in r/o specified business shall not be set off against other business income.

Instances of capital exp specifically allowed under the Act

- This dedn is available to an Indian co. or resident non-corporate assessee.
- Section 35D- preliminary expenses incurred by a company on preparation of feasibility report, market survey etc., legal charges for drafting agreements, MoA , AoA, registration fees under Companies Act, share issue exp, is deductible
- In 5 equal instalments starting from the year in which business commences

Instances of capital exp specifically allowed under the Act

- Section 35DD amalgamation /demerger exp is allowable
- To an Indian company
- 5 equal instalments starting from the year in which amalgamation or demerger takes place.

Instances of capital exp specifically allowed under the Act

- Section 35DDA – payment made by employer in connection with VRS scheme
- Is allowable in 5 equal instalments

Instances of capital exp specifically allowed under the Act

- Section 35E – available to a corporate assessee and resident assesseees other than companies
- Exp on prospecting of mineral or development of mine/ natural deposits
- Is allowable over a period of 10 years commencing from the year of commercial production.
- For assesseees other than co./co-op society, books of account should be audited.

Deductions u/s 36

- Insurance premium paid in r/o insurance against risk of damage/destruction of stock, stores used for business purposes is allowable as dedn
Sec.36(1)(i)

Deductions u/s 36

- Insurance premium paid by a federal milk co-op society on the lives of cattle owned by members of primary milk co-op society affiliated to it

is allowable as dedn

Sec.36(1)(ia)

Deductions u/s 36

- Insurance premium paid in r/o health insurance of employees by employer in accordance with the scheme of GIC and approved by CG is allowable as dedn
Sec.36(1)(ib)

Deductions u/s 36

- Bonus or commission paid to an employee is allowable subject to follg. conditions:
- Amount paid as bonus/commission should not be otherwise payable as profit or dividend
- Dedn available only if payment made during the PY or on or before due date for R/I
- Section 36(1)(ii)

Deductions u/s 36

- Interest on borrowed capital is allowable as dedn , if the follg conditions are met
 - The assessee must have borrowed money
 - The money so borrowed must have been used for the purpose of business
 - Interest is paid/payable on such borrowing
- Section 36 (1)(iii)

Deduction u/s 36

- Where borrowing is to fund the acqn of a capital asset, the interest relatable to the period till the date the asset is put to use, is to be capitalised.(Expln 8 to sec.43(1))
- While disallowing interest, nexus has to be proved between the borrowed fund and interest free advances
- The SC in SA Builders case held that transfer of borrowed funds to sister concerns on account of commercial expediency does not amount to diversion of borrowed funds for non business.
- Interest on money borrowed for payment of tax- not allowable

Deduction u/s 36

- Discount on zero coupon bonds means the difference between amount recd and amount payable on redemption/ maturity by the issuing company.
- The discount is allowable on pro rata basis over the period commencing from the date of issue till the date of maturity.
- Sec.36(1)(iiia)

Deductions u/s 36

- Employer's contribution to recognised Provident Fund and approved superannuation fund is allowable as deduction
- For claiming the dedn, the scheme should be either framed under the EPF Act or approved by CIT
- Section 36(1)(iv)

Deductions u/s 36

- Employer's contribution towards approved gratuity fund created by him for the exclusive benefit of his employees under an irrevocable trust is allowable as dedn
- Payment to LIC towards Group Gratuity Scheme is deductible
- Limits prescribed are
 - Ordinary annual contn cannot exceed 8.33% of salary of each employee
 - For initial contn of employer, it cannot exceed 8.33% of employees' salary for each year of his past service
- Section 36(1)(v)

Deductions u/s 36

- Contribution recd from employees towards PF or other welfare fund of such employees is allowable as dedn, only if such sum is credited by the employer in the relevant fund on or before the due date under the relevant provisions of law or terms of contract.
- Section 36(1)(va)

Deductions u/s 36

- Any amount of debt or part is allowable as dedn if the follg conditions are satisfied:
- The debt has been taken into a/c in computing the income of assessee for that PY or earlier PY or represents money lent in the ordinary course of banking/money lending business carried on by assessee
- It has been written off as irrecoverable in the accounts of the assessee
- Section 36(1)(vii)

Deduction u/s 36

- Transfer to 'Provision for bad and doubtful debts account' is not write off.
- Bad debts in respect of a discontinued business is not deductible.
- Allowability of bad debts in cases of succession
 - Not deductible in case of dissolution of firm
 - Allowable in cases of dissolution of firm, but business being taken over by a partner
 - Allowable where a firm is converted to a company.

Deduction u/s 36(1)(viiia)

- Who is eligible?
- A scheduled bank(not one incorporated outside India)
- A non-scheduled bank
- A co-op bank other than primary agri credit society / primary co-op agri and rural devpt bank

Deduction u/s 36(1)(viiia)

- How much is deductible?
- A dedn for provn for bad and doubtful debts of an amount
- Not exceeding 7.5% of TI (computed before making this dedn & Chap VIA) and
- Not exceeding 10% of aggregate average advance made by the rural branch of such banks

Deduction u/s 36(1)(viiia)

- A scheduled bank or a non scheduled bank, at its option, shall be allowed a further dedn, in excess of above limits
- Of an amount not exceeding the income derived from redemption of securities.

Deduction u/s 36(1)(viiia)

- Who else is eligible?
- A bank incorporated by / under any foreign laws or
- A public finl instn or
- State Finl Corpn or
- State Indl Invt Corpn
 - Shall be allowed a dedn for RBD of an amt not exceeding 5% of TI (computed before making any dedn under this clause & Chap VIA)

Deductions u/s 36

- Deduction u/s 36(1)(viii)

Specified entity	Eligible Business
A.(i) a Finance corpn as per sec.4A of Companies Act ii) A Finance Corpn which is a public sector company iii) A banking company iv) A co-op bank	The business of providing long term finance for (a) indl or agrl devlpt (b) devpt of infrastructure facility in India (C) constn or purchases of houses for residence in India
B A Housing finance company	The business of providing long term finance for constn or purchases of houses for residence in India
C.Any other finl corpn incl a public co	The business of providing long term finance for constn or purchases of houses for residence in India

Deduction u/s 36(1)(viii)

- Deduction is allowed to a specified entity of not more than 20% of pfts from eligible business computed under the head 'business' before this deduction and carried to special reserve a/c maintained by the entity.
- But if the total of such amount taken to reserve exceeds 200% of paid up capital + gen reserve, the excess amt is not deductible

Deduction u/s 36(1)(viii)

- Where a dedn is allowed in r/o any special reserve, any amt subsequently withdrawn from such reserve shall be deemed to be the profits of business and taxed in the year of withdrawal
- The above provn is applicable even if in the year of withdrawal , the bus is no longer in existence.

Deductions u/s 36(1)(ix)

- Bonafide exp incurred by a corporate assessee for promoting family planning among its employees is allowable
- Any capital exp is deductible in five equal instalments
- If deduction is claimed and allowed u/s 36(1)(ix) , no dedn is available under any other provision of the Act

Advertisement exp u/s 37(2B)

- No dedn is available in respect of exp incurred on advertisement in any souvenir, brochure, tract, pamphlet etc published by a political party

General dedn u/s 37

- Residuary section
- Exp should not be of capital nature
- It should not be personal exp of assessee
- It should have been incurred in the PY
- It should be in r/o business carried on by a
- It should have been expended wholly and exclusively for purpose of business
- It should not have been incurred for any purpose which is an offence/ prohibited by any law

Specific disallowance u/s 40

- Sec 40(a)(i)
- Interest, royalty, fees for technical service paid to a NRI
- Chargeable to tax under IT Act in the hands of the recipient
- If tax is deductible, but not deducted ; or if tax is deducted but not paid into govt. a/c
 - Is not allowable as dedn

Disallowance u/s 40(a)(ia)

- Interest, commission/brokerage, rent, royalty, fees for professional or technical services payable to a resident on which TDS is to be made, but tax has not been deducted/ after deduction, tax has not been paid
 - by due date for filing R/I,
Shall be inadmissible as deduction
 - If the assessee pays the TDS subsequently, deduction for expenditure can be claimed in the AY in which TDS is paid

Disallowance u/s 40(a)(ia)

- However, even in the event of failure of the assessee to deduct TDS as per Chap XVII-B,
 - If the resident payee has furnished R/I u/s 139
 - Has taken into a/c such sum for computing income in such return of income &
 - Has paid the tax due on the income declared in such R/Ithe assessee shall be deemed to have deducted and paid the tax on such sum

taxes

- Securities transaction tax is not deductible 40(a)(ib)- upto AY 08-09. It is deductible w.e.f. AY 09-10
- Fringe benefit tax is not deductible 40(a)(ic)
- Income tax as well as interest, penalty, fine for non payment/ late payment of IT is not deductible sec.40(a)(ii)
- Wealth tax paid is not deductible 40(a)(iia)

Salary payable outside India

- If payment is chargeable under 'Salaries' in the hands of recipient
 - If tax is not deducted/ paid into govt. a/c
 - If salary is payable
 - Outside India to a resident/ non resident
 - In India to a non-resident
- Then no deduction for such salary is allowable

Provident fund payment

- Any payment into a provident fund is not deductible
- If the assessee has not made arrangements to secure that tax shall be deducted at source from any payments made from the fund which are taxable under 'salaries'

Tax on perquisite 40(a)(v)

- Tax of the employee on a non-monetary perk paid by the employer u/s 10(10CC)
- Such tax paid by employer on non-monetary perk is not deductible in computing income of employer

Amounts not deductible in partnership firm 40(b)

- Partner's remuneration
- Salary should be paid to a working partner
- It should be authorised by partnership deed
- Amount of salary cannot exceed the prescribed limits

Partners' remuneration – Sec.40(b)

- Limits prescribed in r/o partners' remuneration:
 - First Rs.3 lacs of BP/loss Rs150000 or 90%
whichever is more
 - on balance Book Profit 60% of BP

Meaning of book profit for sec 40(b)

- Book profit means
 - Net profit shown in P & L account
 - Computed in the manner laid down in Chap IVD(Sec 28 to Sec 44DB)
 - As increased by the aggregate amount of remuneration paid / payable to all the partners of the firm
 - If such amount has been deducted while computing net profit.

Interest on partner's capital

- Should be authorised by partnership deed
- Payment of interest should pertain to the period after the partnership deed
- Rate of interest should not exceed 12%

Amounts not deductible in AOP/BOI sec. 40(ba)

- Any salary, bonus, commission or remuneration paid by AOP/BOI to its members is not allowable
- Any interest paid by AOP/BOI to its members on loan or capital not allowable
- Total income of an AOP/ BOI is taxable at rates applicable to an indl. If no member has income more than max amount which is not chargeable to tax
- In any other case, it is chargeable at max marginal rates

Payment to relatives Sec.40A(2)

- Any expenditure in r/o which payment is made to a relative, is liable to be disallowed
- To the extent such exp is considered to be excessive or unreasonable having regard to the fair market value of such goods, services etc

Sec 40A(3)

- If the assessee incurs any exp which is otherwise deductible while computing business income
- Payment/ aggregate payment made to a person in a day in r/o such exp exceeds Rs.20000
- If payment is made in cash or by bearer cheque
- Then whole of such payment is not allowable as deduction (w.e.f. AY 08-09)

Sec 40A(3A)

- Where an allowance has been made in a assessment year in respect of any liability incurred for any expenditure and
- In any subsequent AY, the assessee makes cash payment in respect thereof,
- the payment so made shall be deemed to be the profits and gains of business or profession of subsequent AY

Proviso to Section 40A (3)

- In the case of payment made for plying, hiring or leasing goods carriages, instead of “twenty thousand rupees”, the words “thirty-five thousand rupees” had been substituted.

Section 40A(7)

- Provision for gratuity fund (for meeting future liability) is deductible only if such gratuity fund is an approved gratuity fund

Contribution to non-statutory funds

- Any contribution made by the assessee as an employer to any unrecognised or non-statutory welfare fund is not allowable as deduction.
- Section 40A(9)

Section 43B

- The following expenses are deductible on payment basis
 - Tax, duty, cess or fee
 - Employer's contribution to PF/ superann. Fund or any other fund for employee welfare
 - Bonus or commission to employees
 - Interest on loan or borrowing from PFI or SFC or state indl. Invt. Corpn.
 - Interest on loan from sch. Bank
 - Any sum payable as leave encashment of employee
- These payments are allowable on accrual basis if the payment is made on or before the due date for filing R/I and the evidence is submitted along with R/I

Section 43B

- Employer's contribution to PF/ESI should be made before the due date for filing R/I but employee's contribution should be made before the due dates under the respective acts
- Interest on O/D facility paid to a bank is deductible on accrual basis and not covered u/s 43B
- Interest is deductible only if it has actually been paid. Interest which has been converted into a loan or borrowing shall not be deemed to have actually been paid.

Deemed income sec.41(1)

- Where a dedn is allowed in r/o any loss, exp or a trading liability in any earlier year
- During the current PY, the assessee receives any refund or some benefit in r/o such trading liability by way of remission or cessation thereof
- Then the amount obtained or the value of benefit accruing to the tax payer shall be deemed to be business profits

Section 41(1)

- Where the assessee who was allowed loss, exp or trading liability is succeeded in business due to amalgamation/ demerger/ constitution of new firm/business by some other person, then the successor will be chargeable to tax in r/o deemed income
- Section 41(1) is applicable even if bus. Not in existence in the year of recovery

Section 41(3)

- Where any capital asset used in scientific research is sold without having been used for other purposes and the sale proceeds together with dedn allowed u/s 35 exceeds amount of cap exp on purchase of asset, such surplus shall be chargeable to tax as bus income in the year of sale

Sec. 41(4)

- Where any bad debt is allowed as deduction u/s 36(1)(vii) and the amount is recovered subsequently, such recovery is chargeable as income in the year of recovery
- It is immaterial if business exists in the year of recovery

Section 41(5) ADJUSTMENT OF LOSS

- Normally business loss cannot be c/fd after 8 years
- But if the bus is discontinued and the bus loss in the year of discontinuance cannot be set off against any other head of income and after discontinuation, there is a receipt which is deemed as bus income, then unabs loss is allowed to be set off against notional income even after 8 years and even if loss return not filed in time.

Maintenance of accounts by certain person (Section 44AA)

- Specified profession means
- Legal, medical, engineering, architectural, accountancy, technical consultancy, or interior decoration or notified professions like authorised representative, film artist, company secretary and information technology.

Maintenance of accounts by certain person (Section 44AA)

1. Person reqd to maintain books of accounts
 - Persons carrying on specified profession, if the gross receipts do not exceed Rs.1.5 lacs
 - Persons carrying on non-specified profession, whose income from business/profn. Exceeds Rs.1.2 lacs or turnover exceeds Rs.10 lacs

Are to maintain such books which enable the AO to compute taxable income.

2. Persons carrying on specified profession, if the gross receipts exceeds Rs.1.5 lacs in all 3 immediately preceding PYs, are to maintain books prescribed by Rule 6F.

Audit of accounts (Section 44AB)

- Who has to get the books audited compulsorily by a Chartered Accountant

Person carrying on business	If the total sales, turnover or gross receipts exceed Rs 40 lakhs
Person carrying on profession	If the gross receipts exceed Rs 10 lakhs

Audit of accounts (Section 44AB)

- Due date for getting accounts audited is 30th September of the AY
- Due date for submission of audit report is 30th September of the AY
- The audit form no. is 3CA/3CB for compulsory audit cases and other cases. The audit report is to be submitted in Form 3CD.

Section 44AD

- Applicable to civil contractors whose turnover does not exceed Rs.40 lakhs
- Minimum amount of presumptive income is 8% or more of gross turnover

Books prescribed under Rule 6F

- A cash book
- A Journal (if books maintained in mercantile)
- A ledger
- Carbon copies of bills issued
- Original bills issued for expenses
 - Books & documents to be kept & maintained in the place of business / profession
 - Books & documents to be kept for 6 years from the end of relevant AY

Audit of accounts (Section 44AB)

- Who has to get the books audited compulsorily by a Chartered Accountant

Person carrying on business	If the total sales, turnover or gross receipts exceed Rs 60 lakhs
Person carrying on profession	If the gross receipts exceed Rs 15 lakhs

Audit of accounts (Section 44AB)

- Due date for getting accounts audited is 30th September of the AY
- Due date for submission of audit report is 30th September of the AY
- The audit form no. is 3CA/3CB for compulsory audit cases and other cases. The audit report is to be submitted in Form 3CD.

Section 44AD

- Applicable to eligible assessee engaged in eligible business:
- Minimum amount of presumptive income is 8% or more of gross turnover

Section 44AD

- Eligible assesseees for the purpose of sec.44AD
- W.e.f 1.4.2011, 44AD provisions not applicable
 - To professionals referred in s.44AA(1) – like engineers, architects, interior decorators
 - Persons earning commission/brokerage
 - Person carrying on agency business

Section 44AD

- Eligible business for the purpose of sec.44AD:
 - Any business except the business of plying /hiring/ leasing goods carriages
 - Any business whose turnover does not exceed Rs.60 lakhs.

Section 44AE

- Applicable to persons carrying on the business of plying, hiring and leasing goods carriages and not owning more than 10 vehicles at any time during the PY
- Minimum amount of presumptive income
 - Heavy goods vehicle Rs.5000 p.m.
 - Other vehicles Rs.4500 p.m.

Common issues in presumptive taxation

- Deductions u/s 30 to 38 are deemed to be allowed
- The assessee who wants to return income lower than presumptive income has to maintain books of accounts and get it audited
- For firms, compute presumptive income less interest, salary to partners . The balance is chargeable to tax
- Deductions u/s 80-C to 80-U shall be allowable to the assessee

Presumptive provisions in respect of Non-residents

- Section 44B
- Applicable to non-resident assessee **engaged in the business of operation of ships**
- The provisions of section 28 to 43A are not applicable
- However, other provisions (like aggregation of income and set off / carry forward and set off of losses are applicable)

Section 44B

- Income u/s 44B is calculated at 7.5% of aggregate of the following:
- The amount paid or payable to the assessee and the amount recd./deemed to be received by the assessee on account of carriage of passengers, livestock, mail or goods
- Demurrage or handling charges are also included in the above.

Section 44BB

- Applicable to non-resident assesseees **engaged in the business of providing services & facilities in connection with supplying plant and machinery on hire for use in the exploration / exploitation of mineral oils.**
- The provisions of section 28 to 43A are not applicable

Section 44BB

- Income u/s 44BB is calculated at 10% of aggregate of the following:
- The amount paid or payable to the assessee for provision of the above facility / service or supplying plant and machinery.
- Where the assessee claims lower profits and gains than that specified in section 44BB, books of a/cs to be maintained and audited and asst. to be done u/s 143(3)

Section 44BBA

- Applicable to non-resident assesseees **engaged in the business of operation of aircraft.**
- The provisions of section 28 to 43A are not applicable
- Income u/s 44BBA is calculated at 5% of aggregate of the following:
- The amount paid or payable to the assessee and the amount recd./deemed to be received by the assessee on account of carriage of passengers, livestock, mail or goods

Section 44BBB

- Applicable to foreign company **engaged in the business of civil construction / business of erection of plant or machinery / testing or commissioning in r/o turnkey project.**
- The provisions of section 28 to 43A are not applicable

Section 44BBB

- Income u/s 44BBB is calculated at 10% of the amount paid or payable to the assessee on account of such civil construction, erection etc.

THANK YOU