

# Profits and Gains of Business or Profession

## Section 28: Chargeability

The following incomes shall be chargeable to tax under this head:

1. **Profits and gains of any business or profession** which was carried on at any time during the previous year.
2. **Export incentives**, which includes-
  - Profits on sale of Import Entitlement Licence.
  - Cash assistance received or receivable against export (i.e., Cash Compensatory Support).
  - Duty drawbacks of customs and central excise duties.
3. Value of any benefit or perquisite arising from any business or profession, whether-
  - convertible into money or not; or
  - in cash or in kind or partly in cash or partly in kind. [Clause (iv)]
4. **Any interest, salary, bonus, commission or remuneration of a partner from his firm** [but only upto the extent to which it is allowed to the firm considering the provisions of the section 40(b)].
5. Income derived by a **trade, professional or similar association** from specific services performed for its members.
6. Any some received under a **key man insurance policy** including bonus on such policy.
7. **Any some received or receivable in cash or in kind under an agreement:**
  - (a) for not carrying out any activity and relation to any business/profession (i.e., non-compete fees); or
  - (b) for not sharing any patent, copyright, etc. (i.e., non-sharing fees),
  - **Provided, such sum, should not be chargeable to tax under the head "Capital Gains".**

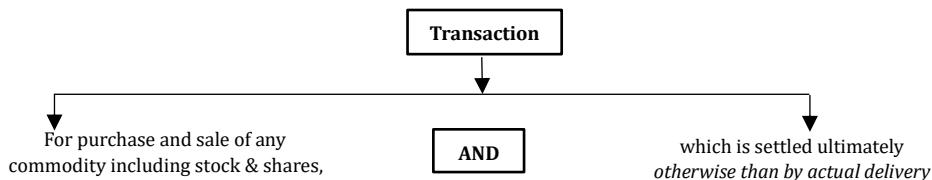
**Ferromatic Milacron India Pvt. Ltd.(2018)(Guj.-HC):**

**Rights acquired by the assessee by payment of non-compete fees is in the nature of an intangible asset and eligible for depreciation u/s 32.**

8.
  - Any compensation or other payment received or receivable,
  - whether revenue or capital,
  - in connection with the termination or modification of the terms and conditions of any contract,
  - relating to his business.
9. Profit and gain arising from conversion of inventory into capital asset. **[Refer to capital gain chapter]**

Explanation: Speculative business shall be deemed to be distinct and separate from any other business.

## Section 43(5): Meaning of Speculation transaction:

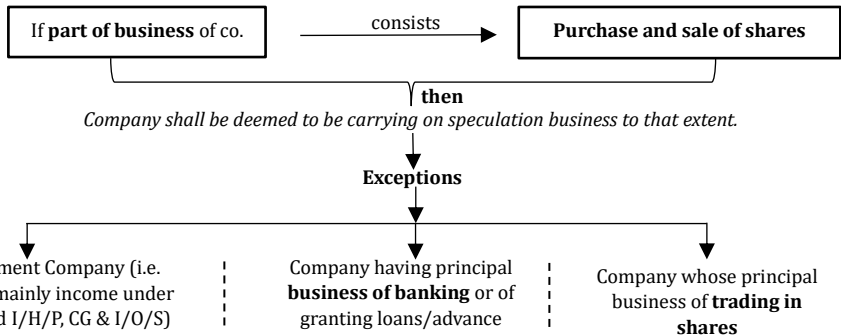


### Transaction not deemed to be speculative transaction:

- a) Hedging contract in respect of raw materials or merchandise or stocks and shares.
- b) Forward contract.

- c) Trading in derivatives through recognised stock exchange.
- d) Trading in Commodity derivatives through RSE on which CTT paid. However, the requirement of charge ability of CTT not applicable in respect of trading in agricultural commodity derivatives from A.Y. 19-20.

#### Explanation to Section 73:



#### Important Ruling: CIT v/s K and Co. (Delhi-HC):

**Is interest income on margin money deposited with bank for obtaining bank guarantee to carry on business, taxable as business income?**

**Facts of the case:** The assessee running a lottery, deposited certain funds with a bank in order to obtain bank guarantee to be furnished to the State Government of Sikkim. Such guarantee enabled the assessee to carry on the business of printing lottery tickets and for conducting lotteries on behalf of the State Government of Sikkim. The funds which were held as margin money, earned some interest.

**Issue:** The issue under consideration is whether such interest income would be taxable under the head 'Profits and Gains from Business or Profession' or under the head 'Income from other sources'.

**High Court's Observations:** The High Court noted that the interest income from the deposits made by the assessee is inextricably linked to the business of the assessee and such income, therefore, cannot be treated as income under the head 'Income from other sources'. The margin money requirement was an essential element for obtaining the bank guarantee which was necessary for the contract between the State Government of Sikkim and the assessee. If the assessee had not furnished bank guarantee, it would not have got the contract for running the said lottery.

**High Court Decision:** The Court, accordingly, held that interest income received on funds kept as margin money for obtaining the bank guarantee would be taxable under the head "Profits and gains of business or profession".

#### Other Important Ruling relating to Section 28: Chargeability under the head "PGBP"

##### Rental Income- Whether assessable as Business Income OR as income from House Property?

On the facts that the assessee company was incorporated with the main object, as stated in Memorandum of Association, is to acquire the properties in the city of Chennai and to let out those properties. The assessee had rented out such properties and the rent received therefrom,

The **Supreme Court**, in the case of **Chennai Properties & Investment Ltd.** arrive at irresistible conclusion that since in this case, letting of the properties is in fact is the business of the company, therefore, ***the rental income shall be treated as “Business income”, not the income from HP.***

It is now, clarified that any income from Letting out of RESIDENTIAL HOUSE or a Part of the House by the owner shall be chargeable to tax under the head House Property and not under PGBP.

### Section 29: Computation of income under the head P/G/B/P:

The profits and gains of business or profession shall be computed as per **sections 30 to 43D**.

### Section 30: Rent, Rates, Taxes, Repairs and Insurance for Building:

| Nature of Expense  | Where the <b>premises</b> are occupied by the assessee as a-  |   |
|--|---|---|
|  | Tenant  | Otherwise as a tenant (owner)   |
| Rent Paid  | Allowed   | -   |
| Amount paid on account of revenue repairs  | Allowed   | Allowed   |
| Amount paid on account of capital repairs  | Not allowed u/s 30<br><b>But, it is Deemed Building as per Explanation to Section 32, hence, depreciation can be claimed.</b> | Not allowed u/s 30<br><b>But, it can be capitalized with cost of building, and depreciation can be claimed.</b> |
| Municipal taxes or local rates paid  | Allowed   | Allowed   |
| Insurance premium paid   | Allowed   | Allowed   |
| <b>Section 43(2): “Paid” means actually paid or payable as per the method of accounting followed for “PGBP”.</b> |   |   |

### Section 31: Repairs and insurance of machinery, plant and furniture:

| Nature of Expense       | Where the machinery, plant & furniture used by assessee were-                      |  |
|-------------------------|--|--|
|                         | Taken on Hire  | In otherwise case (i.e., owner)  |
| Insurance Premium Paid  | Allowed  | Allowed  |
| Cost revenue repairs    | Allowed  | Allowed  |
| Cost of capital repairs | Not allowed u/s 31<br><b>No special provision like Building, hence, DEAD LOSS.</b> | Not allowed u/s 31<br><b>But, capitalized cost of such item, and depreciation can be claimed</b> |
| Rent/Hire charges paid  | Not Allowed u/s 31, but can be claimed as Business Expense u/s 37.                 |  |

### Section 32: Depreciation:

#### A. Conditions to claim depreciation:

- Asset should be used for business/profession purposes (active or passive).
- Assessee should be Owner of such asset (wholly or partly).

### Notes:

1. Deprecation is allowed if assessee is beneficial owner.
2. In case of **Lease**, Depreciation is always claimed by lessor whether it is financial lease or Operating lease [CBDT circular].
3. In case of **Hire Purchase**, assessee gets the ownership only after payment of last instalment but he can claim depreciation from beginning, assuming assessee is the owner from beginning.
4. Depreciation on asset **partially owned** by the assessee shall be allowed to him of his share in asset.
5. In case of stand by machinery and emergency spares, the depreciation shall be allowed even if they are ready for use & not put to use.

**ICDS Ltd (2013)(SC):** Depreciation shall be allowed to lessor even though the asset is registered in the name of the lessee. As per lease agreements-

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

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

### B. Rates of Depreciation (WDV Method)

| S.No. | Assets  | Rate |
|-------|---|------|
| 1     | Building (includes roads, bridges, wells and tubewells)                             |      |
|       | (i) Residential use (except hotels)   | 5%   |
|       | (ii) Other use  | 10%  |
|       | (iii) Temporary or Wooden Structure   | 40%  |
| 2     | Furniture & fittings (include electrical fittings like fans, wires, switches, etc.) | 10%  |
| 3     | Plant & Machinery   |      |
|       | (i) Motor Vehicles  | 15%  |
|       | ➤ Acquired & put to use between 23.08.19 to 31.03.20                                | 30%  |
|       | (ii) Motor Vehicles (Lorries, buses, taxi) used in Hire Business                    | 30%  |
|       | ➤ Acquired & put to use between 23.08.19 to 31.03.20                                | 45%  |
|       | (iii) Ships, Vessels, Speed Boats   | 20%  |
|       | (iv) Aeroplanes, Aeroengines  | 40%  |
|       | (v) Computer & Computer software  | 40%  |
|       | (vi) Books (include annual publication or used in libraries)                        | 40%  |
|       | (vii) Pollution Control Equipment's   | 40%  |
|       | (viii) Windmills & its equipment installed before 01/04/14                          | 15%  |
|       | ➤ Windmills & its equipment installed on or after 01/04/14                          | 40%  |
| 4     | (ix) Renewable Energy Devices (include E-Vehicles)                                  | 40%  |
|       | (x) Oil wells   | 15%  |
|       | (xi) Other P&M  | 15%  |
|       | Intangible assets   | 25%  |

### Notes:

1. **Mandatory to claim depreciation for all assessee.**
2. EPABX and Mobile phone are not computers; hence Depreciation @ 40% is NOT eligible.
3. Intangible assets include know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature but other than goodwill of business and profession.
4. Depreciation rate for computers accessories is 40% i.e. UPS, printer, scanners etc.

5. Depreciation allowed when asset actually put to use & not ready to use.
6. As per Sec. 43(3) plant includes ships, vehicles, books, scientific apparatus & surgical equipment used for business or profession but does not include Tea bushes, live- stock, building, furniture.

**C. Method of Depreciation:**

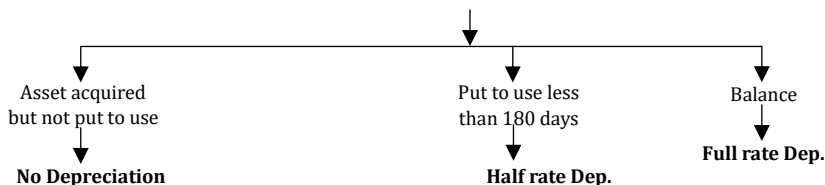
Assessee engaged:

- (i) in the business of generation or generation & distribution of Power; it has option to follow **SLM or WDV method**;
- (ii) in any other business, always follow **WDV method**.

**D. Calculation of depreciation (Block of asset/ WDV method)**

| Particulars  | Amount |
|--|--------|
| Opening WDV of block   | xx     |
| <b>Add:</b> Actual cost of asset acquired during PY  | xx     |
| ➤ Put to use 180 days or more (upto 3 <sup>rd</sup> Oct)   | xx     |
| ➤ Put to use less than 180 days (on or after 4 <sup>th</sup> Oct)  | xx     |
| ➤ Acquired but not put to use  | xx     |
|  | xx     |
| <b>Less:</b> Money Payable [selling price of asset]  | (x)    |
| <b>Less:</b> WDV of assets transferred in slump sale (compute WDV of asset assuming this is only asset in block) | (x)    |
|  |        |
| <b>**WDV of block for the purpose of depreciation</b>  | xx     |
| <b>Less:</b> Depreciation actually allowed   | (x)    |
| <b>Closing WDV of Block</b>  | xx     |

**\*\* WDV of block assets**



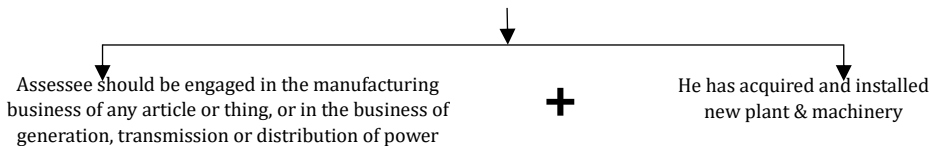
**Notes:**

1. If asset acquired during current PY & not put to use then depreciation shall not be allowed for such asset but that asset should be added to Block of asset.
  2. Actual sale price of asset shall be reduced and not the FMV of asset sold.
  3. If assessee transferred Building then **actual sale price shall be reduce** and NOT SDV. However, if **sec. 50 attract then SDV shall be considered** for computation of capital gain.
  4. Money payable means **sale price or insurance compensation** in respect of asset sold, discarded, demolished or destroyed during the PY and the amount of scrap value.
- **Proviso to Sec. 32(1):**  
Depreciation is restricted to 50% if asset put to use for less than 180 days in the year of acquisition, restriction applies only in the year of acquisition.

**C. Proviso to Sec. 32(1): Depreciation in case of Amalgamation/Demerger/Succession**

In these cases, depreciation is calculated normally & after that it shall be distributed between Amalgamating co./Demerged co./Predecessor **AND** Amalgamated co./Resulting co./Successor in the Ratio of the number of days for which assets were used by them.

## Section 32(1)(ia): Additional Depreciation



Then, Additional depreciation @ 20% of the actual cost shall be allowed as deduction u/s 32 (1)(ii)

## Additional Considerable Points for Additional Depreciation

- If period of use in first year of its acquisition in less than 180 days:
  - 50% additional depreciation will be allowed in this first year itself.
  - Balance 50% additional depreciation will be allowed in the immediately succeeding previous year.
- Additional depreciation **shall not be allowed** in respect of:
  - Second hand plant and machinery (whether was used in India or outside India); or
  - Any machinery or plant installed in any office premises or any residential accommodation; or
  - Any vehicle i.e. road transport vehicles; or
  - Ships or aircraft; or
  - Any plant or machinery, of which 100% cost is allowed as a deduction in any one previous year under the head PGBP.

## Section 43(6): Written Down Value

|  |   |            |
|--|---|------------|
| WDV of the block of assets at the beginning of the previous year [i.e. Actual cost less depreciation actually allowed to him in earlier year(s)] |   | xxx        |
| <b>Add:</b>  | Actual cost of the assets acquired during the previous year   | xxx        |
| <b>Less:</b>   | Moneys payable in respect of an asset of same block which is sold, discarded, demolished or destroyed during the previous year and the amount of scrap value. | xxx        |
| <b>Less:</b>   | Notional WDV (i.e. WDV computed as if the asset was only asset in the block) of asset transferred by way of slump sale  | xxx        |
| <b>W.D.V. of the Block of Assets for the relevant assessment year:</b>   |   | <b>xxx</b> |

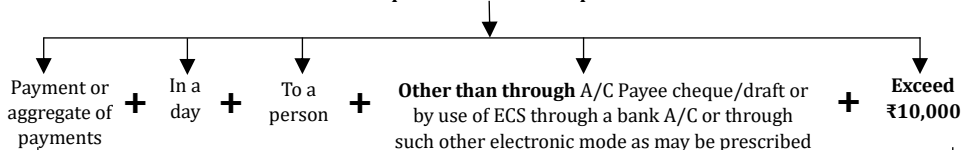


Moneys payable means sale price of the asset and includes any insurance, salvage or compensation payable in respect of the asset.

## Section 43(1): Actual Cost

It means the actual cost of the asset to the assessee, as reduced by that portion of the cost which has been directly or indirectly met by any other person or authority.

If assessee acquires an asset in respect of which



Such expenditure shall be ignored for the purposes of determination of actual cost.

| Particular  | ₹         |
|---|-----------|
| Cost of asset (purchase price)  | xx        |
| <b>Add:</b> Installation charges  | x         |
| Transportation expenses for asset   | x         |
| Trial run/test run expenses   | x         |
| Taxes & duties (if ITC not available)   | x         |
| Interest on loan taken for acquisition of asset (upto the date of asset put to use) | x         |
| <b>Less:</b> Amount received on sale of trial run product                           | (x)       |
| Subsidy/Govt Grants recd. for acquisition of assets                                 | (x)       |
| <b>Actual Cost</b>  | <b>xx</b> |

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

| S.No. | Case   | Actual cost  |
|-------|--|--|
| 1     | Asset previously used for Scientific Research brought into regular business  | Actual cost = NIL (because deduction already claimed u/s 35)   |
| 1A    | Stock converted into Capital asset and used for Business or Profession   | FMV on the date of conversion  |
| 2     | Asset acquired by way of gift/Will/ Inheritance  | Actual cost to the previous owner less depreciation already allowed to him   |
| 3     | Asset acquired with an intention to claim higher depreciation  | Amount determined by A.O., with the approval of Joint Commissioner (JC) (Normally AO take FMV of such asset)   |
| 4     | Re-acquisition of asset sold   | <div style="display: flex; justify-content: space-between;"> <div>           (i) WDV at the time of sale<br/>           (ii) Reacquisition cost         </div> <div>           xx<br/>           xx         </div> </div>  |
| 4A    | Asset Purchased & Leased back to the same person   | WDV of the previous owner (Lessee)   |
| 5     | Building was used for other purpose now brought into business  | <div style="display: flex; justify-content: space-between;"> <div>           Original cost<br/>           (-) Notional dep till at current<br/>           Depreciation rate<br/>           Actual cost         </div> <div>           xx<br/>           xx<br/> <br/>           xx         </div> </div> |
| 6     | Capital asset transferred by holding Co. to 100% subsidiary Co. or 100% Subsidiary Co. to holding Co. [Sec. 47 (iv)/(v)]   | Cost/opening WDV to the transferor company   |
| 7     | Transferred by Amalgamating Co. to Amalgamated Co.   | Cost/opening WDV to the Amalgamating Company   |
| 7A    | Transferred by Demerged Co. to Resulting Co.   | Cost/WDV (at the time of demerger) to demerged Company   |
| 8     | Asset acquired out of Borrowed fund  | Interest upto first put to use form part of Actual Cost.   |
| 9     | GST, Custom duty etc.  | Duty in respect of which ITC claim not allowed forming part of Actual Cost.  |
| 10    | Govt Grant / Subsidy   | If related to any asset then reduce from actual cost.  |
| 11    | Asset brought into India by NR for use in his Business or Profession   | <div style="display: flex; justify-content: space-between;"> <div>           Actual Cost<br/>           (-) Dep. Calculated at the rate in force as if the asset was used in India from date of acquisition         </div> <div>           xx<br/>           xx         </div> </div>                    |
| 12    | Any capital asset acq. under corporatisation of RSE (AOP/BOI to Company)   | Cost/WDV of AOP/BOI  |
| 13    | Actual Cost allowed as deduction u/s 35AD and capital asset transferred to non-specified business after 8 years from the year of acq. or transfer by way of transactions referred in sec.47. | Actual cost for transferee shall be NIL  |

- **Explanation 7 of Sec. 43(6):** In cases where partly income from Business and Partly from Agriculture (Tea, coffee & Rubber Growing & Manufacturing), for the purpose of computing WDV, the depreciation shall be computed as if the entire income of the assessee is "PGBP". The depreciation so computed shall be deemed to have been "actually allowed" to the assessee.

### Section 32(2): Unabsorbed Depreciation

Current Year Depreciation, shall be first set off against PGBP, Balance if any shall be set off against income from any other head, and if balance if any shall be carried forward to next AYs.

In the next years, while adjusting the brought forward unabsorbed depreciation, priority of set off shall be: 1. Current Year Depreciation, 2. Brought forward business loss, 3. Brought forward unabsorbed depreciation.

**Unabsorbed Depreciation can be carried forward infinitely.**

### Section 32(1)(i): Depreciation in case of power generating undertaking

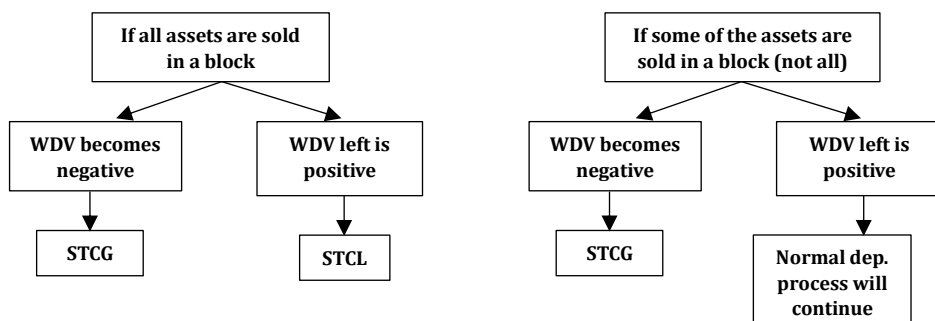
An assessee engaged in the business of generation or generation and distribution of power can claim depreciation according to any one of the following methods-

- SLM on each asset, or
- WDV on block of assets

### Section 32(1)(iii): Terminal Depreciation

When  $SP < WDV$  of asset (under SLM), so the difference is terminal Depreciation. And it shall be allowed in the year of transfer.

### Section 41(2) and Section 50A: Balancing Charge and Capital Gains



- If  $SP < WDV$  = Terminal Depreciation
- If  $COA > SP > WDV$  = Balancing Charge taxable under PGBP i.e.,  $SP - WDV$
- If  $SP > COA > WDV$  =  $WDV - COA$  = PGBP and  $SP - COA$  = STCG

### Section 33AB: Deduction in respect of Tea Development Account, etc

**Conditions For Allowance of Deduction under this Section:**

1. Assessee should engage in the business of growing and manufacturing tea, coffee or rubber in India.
2. He has deposited any amount:
  - **With NABARD:** Under a scheme approved by Tea Board or Rubber Board or



➤ **In Deposit Account:** Opened as per the scheme framed by Tea Board or Coffee Board or Rubber Board with previous approval of the Central Government.

3. Time-limit for deposit: **30<sup>th</sup> September of the relevant assessment year.**

4. Accounts must be audited by the Chartered Accountant and audit report must be furnished one month prior to the due date of submission of ROI.

#### Quantum of Deduction:

Least of the following

Amount deposited

OR

40% of Profit of such business before deduction under section 33AB

#### Withdrawal of Deposit:

Any amount can be withdrawn from NABARD/ Deposit Account **for the purposes\*\* specified in the scheme** of Tea Board / Coffee Board / Rubber Board or in the following circumstances:

- (a) Closure of business
  - (b) Dissolution of firm
  - (c) Partition of HUF
  - (d) Death of an assessee
  - (e) Liquidation of a company
- Amount withdrawn **will be** taxable at the time of receipt.
- Amount withdrawn **will not be** taxable at the time of receipt

\*\* Where amount in the NABARD / Deposit Account is utilised as per the scheme for the purposes of any expenditure, **such expenditure shall not be allowed as a deduction in computing P/G/B/P.**

#### Prohibition of Utilization:

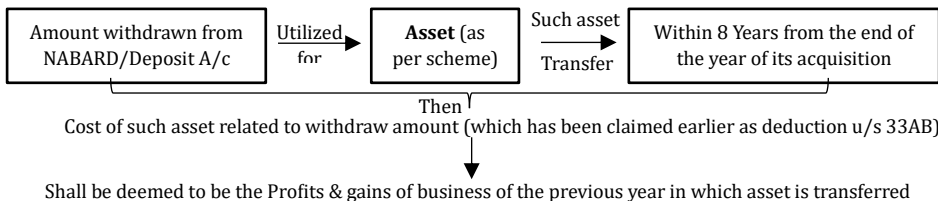
Where any deposited amount with NABARD/ Deposit Account is utilized for the purchase of:

- (i) A machinery or plant to be installed in any office premises or residential accommodation;
- (ii) Any office appliances (not being computers);
- (iii) Any machinery or plant, of which 100% cost is allowed as a deduction in any one previous year:

Then, such mis-utilised amount shall be deemed to be the profits and gains of business of that previous year.

➤ **Amount withdrawn from NABARD / Deposit Account must be utilized in same previous year in which it is withdrawn, in otherwise case,** unutilized amount shall be deemed to be the profit / gain of business of the previous year in which it is withdrawn.

#### Withdrawal of Exemption:



| Activity                      | Tea (Rule 8) |                    | Coffee (Rule 7B) |                    | Rubber (Rule 7A) |                    |
|-------------------------------|--------------|--------------------|------------------|--------------------|------------------|--------------------|
|                               | PGBBP        | Agriculture Income | PGBBP            | Agriculture Income | PGBBP            | Agriculture Income |
| (i) Growing and manufacturing | 40%          | 60%                | 25%              | 75%                | 35%              | 65%                |

|                                    |   |   |     |     |   |   |
|------------------------------------|---|---|-----|-----|---|---|
| (ii) Roasting and grounding (also) | - | - | 40% | 60% | - | - |
|------------------------------------|---|---|-----|-----|---|---|

#### Steps To Remember (As Supported by Aforesaid Rules):

First of all, allow deduction u/s 33AB along with other deductions as allowable under the head PGBP to obtain Net result from such business (i.e., Tea/coffee/rubberactivity)



After that, percentage as prescribed in Rule 8/Rule 7A/Rule 7B **shall be applied** on such Net result.



If assessee has any b/f loss, then, that can be set off from taxable proportion as arrived at by applying the aforesaid % as given in Rule 8/Rule 7A/Rule 7B as the case may be.



**Note:** If, due to any reason, deduction u/s 33AB is withdrawn (like, case of utilization of withdrawn amount in prohibited capital purpose), then, deemed income u/s 33AB will be computed by applying the percentage as given in Rule 8/Rule 7A/Rule 7B, as the case may be, (for the purpose of taxation of income under the head PGBP).

#### Section 33ABA: Deduction for Petroleum & Natural Gas Business

All assessee engaged in business of prospecting extraction & production of natural Gas and Petroleum in India. Deduction Amount is allowed only if some amount is deposited in SBI (site restoration A/C) upto end of PY. Deduction shall be allowed **Lower of the two:**

- (i) Actual amount deposited
- (ii) 20% of PGBP (before this deduction)

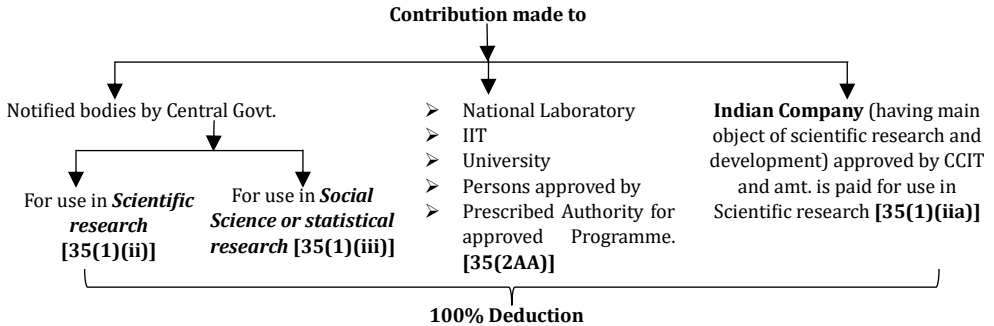
Deposit amount shall be utilised for purpose prescribed by Petroleum & Natural Gas ministry of Govt. of India.

**Rest all the points are same as Section 33AB**

#### Section 35: Expenditure on Scientific Research

| Timing of incurrence  | Section 35(1)(iv)   | Section 35(1)(i)   |
|---|---|--|
|   | Capital expenditure on scientific research (100% deduction) | Revenue expenditure on scientific research (100% deduction)  |
| (1) If incurred during the relevant previous year (whether in case of new business/existing business)   | All capital expenses (other than land)                      | All revenue expenses   |
| (2) If business is newly commenced then expenses incurred during 3 years prior to the date of commencement of the business  | All capital expenses (other than land)                      | <b>Only salary and Material expenses</b> relating to scientific research up to the approved extent (by prescribed authority) |
| Due to deduction u/s 35(1)(iv), business loss cannot be computed, If profit is inadequate, then, same treatment, as of unabsorbed depreciation, will be provided. |   |  |

## Contribution Based Deduction



- An assessee shall not be denied the deduction in respect of any sum paid to an institution to which section 35(1)(ii)/(ia)/(iii)/(2AA) applies, merely on the ground that subsequent to the payment of such sum by the assessee, the approval granted to the such institution has been withdrawn.

(1A) Deduction in respect of any sum paid to the research association, university, college or other institution referred to in section 35(1)(ii)/(ia)/(iii)/(2AA), shall not be allowed, unless such research association, university, college or other institution or company

- (i) **prepares and deliver a statement** for prescribed period in such form (**viz. Form 10BD**) and manner and setting forth such particulars and within such time (**i.e. up to 31<sup>st</sup> May of next financial year**), as may be prescribed, **to the prescribed income-tax authority [viz. Principal DGIT (System)]**;
- (ii) **furnishes to the donor, a certificate specifying the amount of donation** in such manner, containing such particulars and within such time as may be prescribed (viz. in Form 10BE up to 31<sup>st</sup> May of next fin. year).

### Section 35ABB: Expenditure for obtaining a license to operate telecommunication services

| Deduction u/s 35ABB    | If telecommunication license fee has actually been paid before commencement of business | If telecommunication license fee has actually been paid after commencement of business |
|------------------------|---|--|
| Shall begin            | From year of commencement of business   | From year of actual payment of such fee  |
| Shall be allowed up to | the year in which the license comes to an end   |  |
| Quantum of deduction   | License fee paid  | License fee paid   |
|                        | Year of commencement of business to the year in which license expires                   | Previous year of actual payment to the previous year in which license expires          |

- **In case of Amalgamation / Demerger:**  
Outstanding installments (i.e. unavailed benefit) will be allowed to the amalgamated/resulting company (instead amalgamating company/demerged company) from the year of amalgamation/demerger.

### Section 35ABA: Expenditure for obtaining right to use spectrum for telecom services

| Deduction u/s 35ABB    | If spectrum fee has actually been paid before commencement of business | If spectrum fee has actually been paid after commencement of business |
|------------------------|--|---|
| Shall begin            | From year of commencement of business                                  | From year of actual payment of such fee                               |
| Shall be allowed up to | the year in which the spectrum comes to an end                         |   |
| Quantum of deduction   | Spectrum fee paid  | Spectrum fee paid   |
|                        | Year of commencement of business to the year in which Spectrum expires | Previous year of actual payment to the P.Y. in which Spectrum expires |

Under this section, “has actually been paid” means:

- Actual payment of such fees has been made; **OR** it becomes payable in the prescribed manner (Rule 6A\*).
- It may be noted here that- u/s 35ABB, there is no possibility of deduction of payable amount of license fees in any case, but, u/s 35ABA, since meaning of “has actually been paid” provides that **spectrum fees payable in prescribed manner will be treated as “has actually been paid”**, therefore in such a case, deduction u/s 35ABA will be available **even if actual payment of spectrum fees has not been made to the Government.**

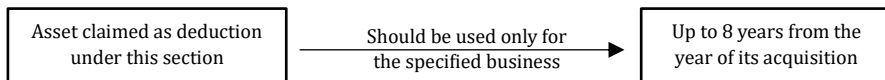
**\* Rule 6A: For the purpose of section 35ABA, the term “payment has actually been made” shall mean,** Where an assessee has opted and been allowed by the Department of Telecom to make deferred payment, the amount which would have been payable by the assessee had he opted for full upfront payment of spectrum fee.

### Section 35AD: Deduction in respect of expenditure on specified business

| <b>(A) Deduction shall be allowed to the assessee who is carrying on the following specified business:</b> |   |
|--|---|
| <b>1</b>   | Setting up and operating cold chain facilities, for specified products.<br>➤ Specified products are- agricultural and forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, floriculture and apiculture and processed food items.<br>➤ Cold chain facility” means a CHAIN OF FACILITIES for storage or transportation under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of specified products. |
| <b>2</b>   | Setting up and operating warehousing facilities for storage of agriculture produce.   |
| <b>3</b>   | Laying and operating cross-country natural gas or petroleum oil pipeline network.   |
| <b>4</b>   | <b>Building and operating, anywhere in India, a hotel of two star or above category as classified by CG.</b><br>➤ Where the assessee builds a hotel of two-star or above category and subsequently, while continuing to own the hotel, transfers the operation thereof to another person, the assessee shall be deemed to be carrying on this specified business.   |
| <b>5</b>   | Building and operating, anywhere in India, a hospital with at least 100 beds for patients   |
| <b>6</b>   | Developing and building a housing project under a government scheme for slum redevelopment or rehabilitation, or for affordable housing.  |
| <b>7</b>   | Production of fertilizer in India.  |
| <b>8</b>   | Setting up and operating an inland container depot or a container freight station.  |
| <b>9</b>   | Bee-keeping and production of honey and beeswax.  |
| <b>10</b>  | Setting up and operating a warehousing facility for storage of sugar.   |
| <b>11</b>  | Laying and operating a slurry pipeline for the transportation of iron ore.  |
| <b>12</b>  | Setting up and operating a semiconductor wafer fabrication manufacturing unit as notified by Board  |
| <b>13</b>  | Developing or/and maintaining & operating a new infrastructure facility (like, road, port, airport, etc.)   |
| <b>(B) Salient Features of Section 35AD:</b>   |   |
| <b>1</b>   | <p><b>Quantum of Deduction:</b><br/>100% Of Capital Expenditure → Allowed in the Year of Its incurrence itself<br/><b>But,</b> if expenditure incurred</p> <div style="text-align: center;"> <pre> graph TD     A["Prior to commencement of business operations"] -- and --&gt; B["which is capitalised in the books"]     A --- C["and"]     B --- C     C --- D["Will be allowed in the year of commencement of business operations"]                     </pre> </div>   |
| <b>2</b>   | <p>Deduction under this section shall not be allowed in respect of:</p> <ol style="list-style-type: none"> <li>Any expenditure incurred on acquisition of any land or goodwill or financial instrument;</li> <li><b>Any expenditure in respect of which:</b></li> </ol>   |

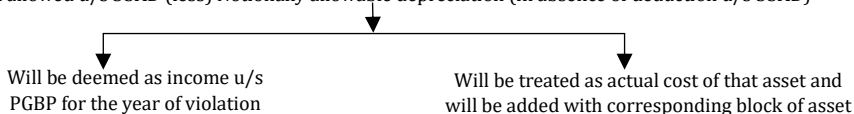
|          |  |
|----------|--|
|          | <b>+</b> In a day <b>+</b> To a person <b>+</b> Other than through A/C Payee cheque/draft or by use of PCS through a bank A/C or through such other electronic mode as may be prescribed <b>+</b> Exceed ₹10,000 |
| <b>3</b> | Conditions for applicability of this section:<br>(i) <b>New business.</b><br>(ii) <b>New P&amp;M</b> (subject to exception of Imported P&M or 20% old block).  |
| <b>4</b> | No deduction in respect of the expenditure allowed to the assessee under this section.   |
| <b>5</b> | If assessee claimed deduction u/s 35AD for any A.Y. then there will be no deduction u/s 80IA to 80RRB & u/s 10AA for the same or any other A.Y.(in respect of such specified business)                           |

### Lock in Period for Retention of Deduction Claimed Asset in the Specified Business



#### If violation, then-

Deduction allowed u/s 35AD (less) Notionally allowable depreciation (in absence of deduction u/s 35AD)

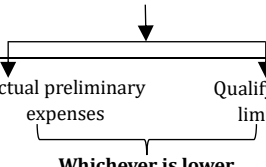


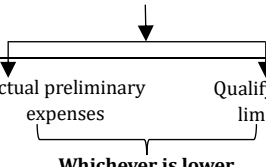
- If asset is sold, destroyed with in the aforesaid lock in period of 8 years, then, **that will not be treated a case of violation, and no consequence will arise.**

But, in such a case, **total amount received as sale consideration or insurance claim, as the case may be, will be taxable under the head PGBP** by virtue of special provisions of **Section 28(vii)**.

### Section 35D: Amortisation of certain preliminary expenses

| Eligible assessee   | Any Resident Person   |                                |               |
|---|---|--------------------------------|---------------|
| Should incurs expenditure on specified purposes- [covers, expense on: project report, feasibility report, Engg. service, market survey, company registration expenses, expense on issue of shares/debenture, Memorandum / Article, etc.]    | Either before commencement of business  | After commencement of business |               |
|   |   | For extension                  | For new unit  |
| Qualifying limit for such expenses:<br><b>= In case of company:</b><br>5% of capital employed<br><b>or</b><br>5% of cost of project<br><b>In case of any other person</b><br>5% of cost of Project<br><b>= Yearly quantum of deduction:</b> | Capital Employed:<br><b>Issued share capital (+) Debenture (+) Long-term borrowings.</b><br>Note: Share premium will not be a part of Capital Employed.<br>Cost of project: Actual cost of fixed assets.<br><b>Figures (of share capital, fixed assets etc.) for capital employed and cost of project will be considered:</b> |                                |               |
|   | In totality   | Only connected from            |               |
|   |   | Such extension                 | Such new unit |



|   |   |   |  |
|---|---|---|--|
| <div>  </div>   |   | As exist on the last day of first year of deduction which is as follows: In case of new business: Year of commencement of business. |  |
| <b>Whichever is lower</b>   |   | <b>In case of Extension:</b> Year of completion of extension.   |  |
|   |   | <b>In case of new unit:</b> Year of start of operations by new unit.  |  |
| Deduction will be allowed in 5 years commencing from  | Year of commencement of business                              | Year of completion of Extension   | Year of start of operations by new unit                |
| In case of Amalgamation / Demerger  | Outstanding Instalment will be allowed to transferee company. |   |  |
| ➤ In case of non-corporate assessee, the assessee is required to furnish the audit report one month prior to the due date of submission of the return of income for the first year. |   |   |  |
| <b>Particulars</b>  | <b>Section 35DD</b>   |   | <b>Section 35DDA</b>                                   |
| <b>Eligible assessee</b>  | Indian Company  |   | Any person   |
| <b>Eligible expenditure</b>   | Expense on Amalgamation or Demerger                           |   | Expense on VRS of his employee                         |
| <b>Quantum of deduction (yearly)</b>  | 20% of such expenditure                                       |   |  |
| <b>Period of deduction</b>  | 5 years*  |   |  |
| <b>Deduction will start from</b>  | Year of Amalgamation or Demerger                              |   | Year of incurrence of such expense.                    |
| <b>In case of Amalgamation Demerger, succession, or conversion before such 5 years*</b>   |   |   | Outstanding instalments will be allowed to transferee. |

## Section 36: Other deductions

- a. Insurance premium of stock
  - Insurance on life of partners is not allowed
  - Premium paid under keyman insurance policy is allowed.
- b. Insurance premia paid by Federal Milk Co-operative Society on life of cattle owned by member of a co-operative society, being primary society engaged in supply of milk raised by its members to such Federal Milk Co-operative Society. Deduction is admissible without any monetary or other limits.
- c. Premia paid by employer (not in cash) for health insurance of employees.
- d. Bonus and Commission to employees other than payable to them as profits or dividends.
- e. Interest on borrowed capital for purposes of B/P Interest paid, in respect of capital borrowed for acquisition of new asset (whether capitalised in BOA or not):
  - Upto the date of put to use of asset: Added to cost of asset
  - After the date of put to use: PL Account
- f. Discount on Zero Coupon Bonds amortized over life of bond
  - Life - From date of issue till date of maturity
  - Life converted into number of calendar months
  - 15 days or more - one month, less than 15 days - Ignore
- g. Contribution to employees' recognised provident fund/approved superannuation fund.
- h. Employer's contribution to account of employee under Pension Scheme referred to in 80CCD up to 14% of salary of employee in PY.  
Salary includes DA, if terms of employment so provide, but excludes all other allowances and perquisites.
- i. Amount received by employer as contribution from his employees towards their welfare fund to be allowed only if such amount is credited on or before due date i.e within 15 days from end of month. (Note: Section 43B not apply here)
- j. Deduction in respect of animals which have died or become permanently useless (Deduction - Actual cost of animal - scrap value)
- k. Bad Debts:
  - Incurred in ordinary course of business is allowed i.e Sales made to customers.

- However Bad debts w.r.t Loan given: Not allowed (Except money lending business)
- Provision for Bad debts: Not allowed (Except banks)

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

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

Taxable amount: Bad debts recovered in excess of not written off amount. Taxable only if assessee who claims bad debts and assessee who recovers is same even if business is not in existence.



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

#### **Rural branch: Branch situated in place which has population of upto 10,000**

Actual Bad debts deduction in case of banks: Total Bad Debt - Provision made

- i. Special deduction to specified entities like bank engaged in eligible business of providing long term finance for development of infrastructure or housing etc Deduction shall be the least of the following
  - Amount transferred to special reserve
  - 20% of profit derived from eligible business (before this deduction)
  - 200% of Paid up capital and general reserve less aggregate amount carried to Special Reserve account.

Amount withdrawal from special reserve will be taxable in the year of withdrawal.
- m. Expenses on family planning amongst its employees by company.
  - Capital expenditure allowed 1/5th in 5 years.
  - Unabsorbed will be treated in the same way as unabsorbed Dep.
  - CE on family planning will be treated in same way as Capital Expenditure for scientific research for purposes of dealing with PL on sale or transfer of asset including transfer on amalgamation
- n. Deduction of STT/CTT paid only if securities/commodities are held as SIT.
- o. Exp incurred by co-operative society engaged in business of manufacture of sugar for purchase of sugarcane at a price equal to or less than the price fixed or approved by the Government.
- p. Only Marked to market losses specifically permitted under any ICDS would be allowable as deduction.

### **Section 37: General Deductions**

| Allowed   | Not allowed  |
|---|--|
| Advance given to employee and became bad debt   | Advertisement exp in political party publications  |
| Debenture issue expenses (including convertible debentures)   | Commission paid to doctors by a diagnostic centre for referring patients   |
| Discount on the issue of debentures   | Contribution to electoral trusts and other donations   |
| Expenses incurred for obtaining ISO certification   | CSR Expenditure  |
| Expenses on glow sign boards  | Expenses incurred on heart surgery of individual assessee  |
| Goods confiscated by customs authorities in foreign due to statutory violations (SIT loss)  | Expenses incurred on projects unrelated to existing business, which were abandoned                               |
| Keyman insurance policy expenses <ul style="list-style-type: none"> <li>➤ Keyman Insurance Policy is not confined to policy taken for employee but also extends to life of another person who is connected in any manner with business of assessee</li> <li>➤ In case of firm, premium paid by firm on Keyman Insurance Policy of partner is allowed</li> </ul> | Provision for loss of subsidiary, deferred tax/income tax, diminution in asset value, or unascertained liability |
| Loss due to theft if incidental to business   | Payment to consultant for opinion on new business  |

| Allowed   | Not allowed   |
|---|---|
| Loss of illegal business allowed from profits of legal business                                       | Provision for gratuity (even based on actuarial valuation) (Only gratuity actually paid is allowed) |
| Non-compete fees  | Freebies provided by pharmaceutical companies to doctors  |
| Provision based on fair estimate and reasonable certainty as per ICDS                                 | Regularization/compounding fees   |
| Share issue expenses (other than preliminary) for buyback or bonus issues                             | Securities deposit to landlord and became irrecoverable   |
| Sponsorship Fees  | Share issue expenses (other than preliminary) for IPO/FPO/Right issues                              |
| Penalties for breach of contract  | Penalties for infraction/ violation/ breach of law  |
| Website development, corporate membership of clubs  | Tax on non-monetary perquisites of employees paid by employers                                      |
| Provision based on fair estimate and reasonable certainty as per ICDS                                 | Dividend & DDT  |
| Tax, Advance tax, TDS, Interest (including interest on TDS & advance, tax)- GST, customs, sales tax   | Secret commission, bribe, payment to gundas   |
| Fees for delayed filing of TDS statement u/s 234E   | Tax, Advance tax, TDS, Interest (including interest on TDS & advance tax) & Penalty                 |
| GST etc refund of direct and indirect tax (net of amount refunded to customers)                       | Penalty- GST, customs, sales tax  |
| Exp incurred on abandoned films not treated as Capital Expenditure but will be treated as revenue exp | Income tax refund of direct and indirect tax  |

### Section 37(2B):

Any expenditure by the assessee on advertisement in any publication (like magazine, etc.) of a political party is **disallowable**.

**But** it may be noted here that **in case of company**, such expenditure is deemed as contribution to political party u/s 80GGB, hence, **company can claim deduction u/s 80GGB in respect of that expenditure**.

| Section 40(a)(i)  | Section 40(a)(ia)   | Section 40(a)(ib)   | Section 40(a)(iii)  |
|---|---|---|---|
| <ul style="list-style-type: none"> <li>➤ Any chargeable sum (except salary)</li> <li>➤ which is payable to</li> <li>➤ a Foreign company or other NR</li> </ul>  | <ul style="list-style-type: none"> <li>➤ Any chargeable sum</li> <li>➤ which is payable** to</li> <li>➤ a Resident</li> </ul> | <ul style="list-style-type: none"> <li>➤ Consideration for specified services</li> <li>➤ which is paid or payable to</li> <li>➤ a non-resident</li> </ul> | Salary payable: outside India; or to a non-resident On which tax at source has not been deducted or paid thereon <b>within the time prescribed under the chapter of TDS</b> |
| On which tax is deductible under chapter of TDS (or on which equalisation levy is deductible), But, (a) such tax (or levy) has not been deducted or (b) after deduction, has not been paid on or before the due date specified in section 139(1).   |   |   |   |
| 100% Disallowance of such sum   | 30% Disallowance of such sum  | 100% Disallowance of such sum   | 100% Disallowance of such sum   |
| <b>Proviso:</b> <ul style="list-style-type: none"> <li>➤ If such tax (or levy, as the case may be) has been deducted in any subsequent year, or</li> <li>➤ has been deducted during the previous year but has been paid after the due date specified in section 139(1),</li> <li>➤ Then such sum shall be allowed in the previous year in which such tax (or levy) has been deposited.</li> </ul> |   |   | If deduction or payment is delayed by one day then such sum shall never be allowed.   |

**A relief has been given u/s 40(a)(i) and u/s 40(a)(ia) on fulfilment of following conditions:**



- Tax is deductible on the aforesaid sum but it is not deducted
- The Payer is not deemed to be an assessee-in-default u/s 201(1) ] **AND**

**Then,**

- for the purpose of section 40(a)(1) and section 40(a)(ia), it shall be deemed that
- the payer has deducted and paid the tax on such amount
- on the date of the furnishing of return of income by such recipient (Payee).

Under the first proviso to section 201(1), **the payer is not deemed to be an assessee-in-default if,-**

|   |   |   |   |   |   |  |
|---|---|---|---|---|---|--|
| Payee has furnished<br>his return of<br>income u/s 139. | + | Payee has taken into<br>account the above income<br>in such return of income. | + | Payee has paid tax due<br>on the income declared<br>in such return of income. | + | Payer furnishes a certificate<br>to this effect from a CA in a<br>prescribed form. |
|---|---|---|---|---|---|--|

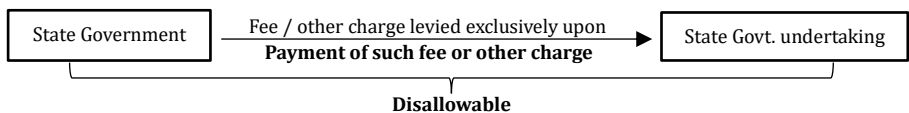
**\*\*The Supreme Court in the case of Palam Gas Service has held that word "Payable" occurring in section 40(a)(ia) includes the case of **paid also**.**

### Section 40(a)(ii):

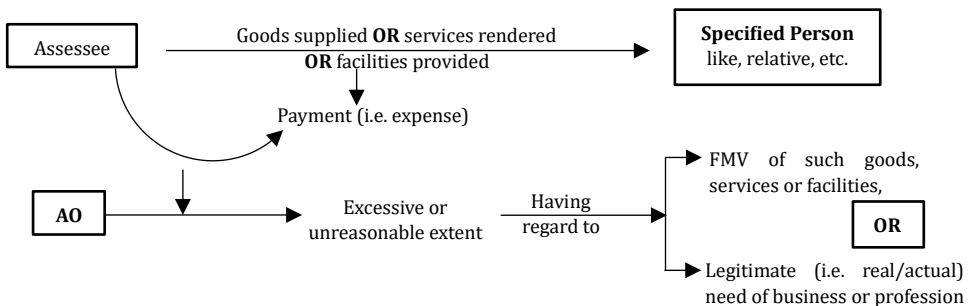
Income tax (including tax paid outside India in respect of which double taxation relief u/s 90, 90A or 91 is available).

Explanation: The term "tax shall include and shall be deemed to have always included **any surcharge or cess, by whatever name called, on such tax.**"

### Section 40(a)(iib):



### Section 40A (2): Payment made to relatives, etc.



### Section 40A (3): Disallowance out of cash expenditure

If an assessee incurs any expenditure in respect of which **Payment or aggregate payments made:**

- To a person (+)  
➤ In a day (+)  
➤ Otherwise, than by A/C Payee cheque or draft or ECS or through such other electronic mode as may be prescribed.
- ₹10,000.**  
**>**  
**(₹35,000, in case of payment to Transport Operator)**

In such a case, **NO DEDUCTION WILL BE ALLOWED** in respect of such amount of expenditure.

**Exceptional Cases (RULE 6DD): In the following cases, no part of the payment shall be disallowed**

Where payment is made:

1. To Government or banks and financial institutions.
2. Through book entry (i.e. Bookish Adjustment).
3. **At a place** (like village) where on the date of such payment **banking facility is not available**.
4. **Against retirement benefit** (like, gratuity) and aggregate of such benefits **does not exceed ₹50,000/**.
5. To his employee on a **temporarily posted place /ship**, where he has not bank account.
6. By an authorized dealer/money changer against purchase of foreign currency in the normal course of his business.
7. **For the purchase of:**
  - Agricultural or forest produce;
  - The produce of animal husbandry (including hides and skins) or dairy or poultry fanning; or
  - Fish or fish products (including crab, lobster and other marine product); or
  - The products of horticulture or apiculture; or
  - Products manufactured or processed without the aid of power in a cottage industry,
  - to the cultivator, grower or producer of such articles, produce or products.

**Explanatory remarks:**

- **Payment to any headman of fishermen would not be liable for disallowance.**
- **Payment to trader or any other middleman (like, hawker) will be liable for disallowance.**

### Section 40A(3A):

If deduction in respect of any expenditure has been claimed in any year on the basis of its incurrence and in any subsequent year assessee did the aforesaid violation in respect of such expenditure, then, such violated amount shall be taxable as income under the head PGBP for the year of such violation.

|                        |  |
|------------------------|--|
| <b>Section 40A (7)</b> | No deduction shall be allowed in respect of Provision For Gratuity in any case (even if it is made as per actuarial valuation).                                      |
| <b>Section 40A (9)</b> | No deduction shall be allowed in respect of contribution made by the assessee to unrecognized or non-statutory welfare fund / trust (like, employees welfare trust). |

### Section 43B: Certain deduction to be only on actual payment

If any sum payable by way of:

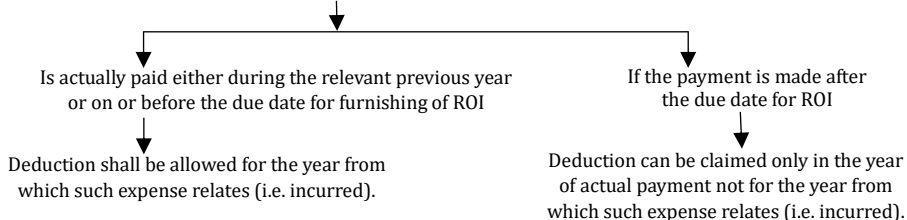
- i. Any **tax, duty, cess, fee** under any law in force;
- ii. Any **bonus or commission** to employees;
- iii. Any **interest** on loan or borrowing or advance from:

- any public financial institution or state financial corporation or state industrial investment corporation or schedule bank or co-operative bank; or
- non-banking financial companies as may be notified by the Central Government in the Official Gazette in this behalf;

iv. **Leave Salary,**

v. **Employer's Contribution** to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of the employees (like NPS); or

vi. Any sum payable to the Indian Railways for the use of railway assets



**Explanation:** For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to a sum received by the assessee from any of his employees to which the provisions of section 2(24)(x) applies (i.e. employee's contribution towards RPF, etc.).

### Explanation to section 43B

- Deduction of any sum, being **interest payable** as referred to in this section.
- **shall be allowed if such interest has been actually paid and**
- *any interest referred to in this section which has been converted into a loan or borrowing or debenture or any other instrument by which the liability to pay is deferred to a future date*
- **shall not be deemed to have been actually paid.**

### Explanatory Remark:

The Board has clarified that if interest payable is converted into loan or debenture or any other instrument by which the liability to pay is deferred to a future date, then, that shall not be allowable in the year of such conversion, but that can be claimed as deduction in the year of actual payment of such amount.

This Finance Act adds one more item to the list in section 43B, the deduction of which shall be allowed on a payment basis. It provides that –

- any sum payable to a micro or small enterprise
- beyond the time limit specified in Section 15 of the Micro, Small and Medium Enterprises Development Act,
- shall not be allowed as a deduction.

### Definition of "micro enterprises" and "small enterprises" under the MSMED Act, 2006:

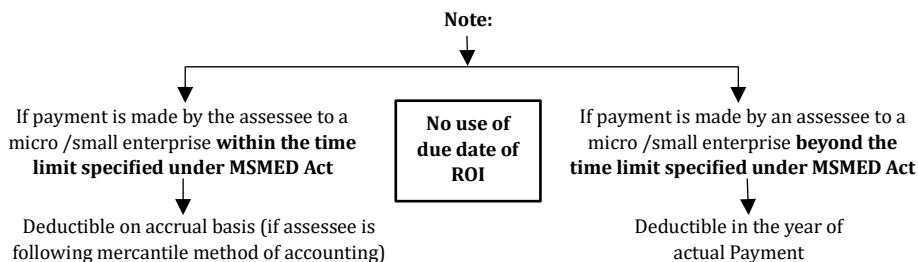
**Micro Enterprise-** Investment in plant and machinery or equipment does not exceed ₹2 crore; (+) Turnover does not exceed ₹5 crore.

**Small Enterprise-** Investment in plant and machinery or equipment does not exceed ₹10 crore; (+) Turnover does not exceed ₹50 crore.

### Time limit / due date of payment specified in Section 15 of the MSMED Act, 2006:

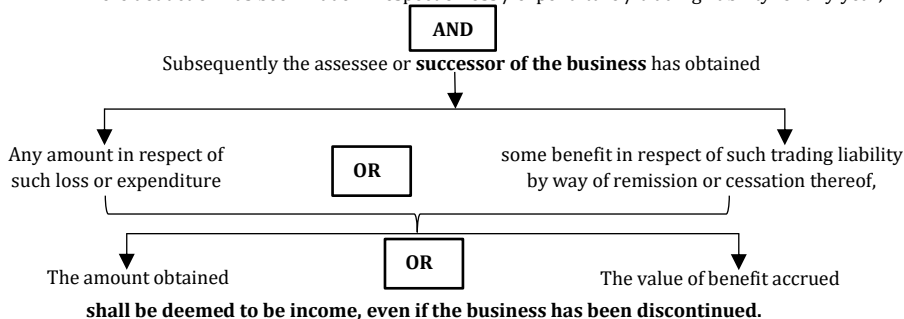
- i. Where the buyer purchases any goods or services from a micro/small enterprise, the buyer shall make payment for the same on or before the date agreed upon between him and the supplier in writing;

- ii. In no case, the period agreed upon between the supplier and the buyer in writing shall exceed forty five days from the day of the actual delivery of goods or the rendering of services; and
- iii. Where there is no agreement on this behalf, the buyer shall make payment within fifteen days from the day of the actual delivery of goods or the rendering of services.



### Section 41(1): Deemed Income

Where deduction has been made in respect of loss / expenditure / trading liability for any year,



- Remission or cessation of a trading liability, which was earlier allowed as deduction, may be affected by a unilateral act (i.e. one-sided act) also. [Explanation to section 41(1)]
- Section 41(1) shall apply on waiver of the working capital loan which was utilised for day-to-day operations, because it amounts to remission of trading liability. [Rollatainers Ltd. (Delhi-HC)]
- Section 41(1) shall not apply on waiver of loan as given to assessee to meet the capital cost of the asset, because it can't be treated as remission of trading liability but that shall be reduced from actual cost of the asset. [Steel Authority of India (Delhi-HC)]

### SECTION 43CA: SDV of L&B held as sit to be taken as Sale Value

- Sale value = SDV Exception: But where SDV is upto 110% of Sale value, then Sale value is to be taken as actual consideration and not SDV.
- If DOA differs from DOR, SDV as on the date of agreement date can be used, provided at least a part of the consideration has been received by specified electronic means (like cheque, bank draft, ECS, credit card, etc.) on or before the date of agreement.
- AO may refer the valuation of the asset to a Valuation Officer (VO) if:
  - assessee claims before AO that SDV > FMV as on the date of transfer and
  - such SDV has not been disputed in any appeal/revision or no reference has been made before any other authority/court/HC.

- If the value determined by  $VO > SDV$ , then  $SDV = FVOC$ .

### SECTION 43CB: Income from Construction and Service Contracts

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

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

For any of above three methods, **contract revenue includes retention money** and **contract cost not to be reduced by any incidental income (int./div./CG)**.

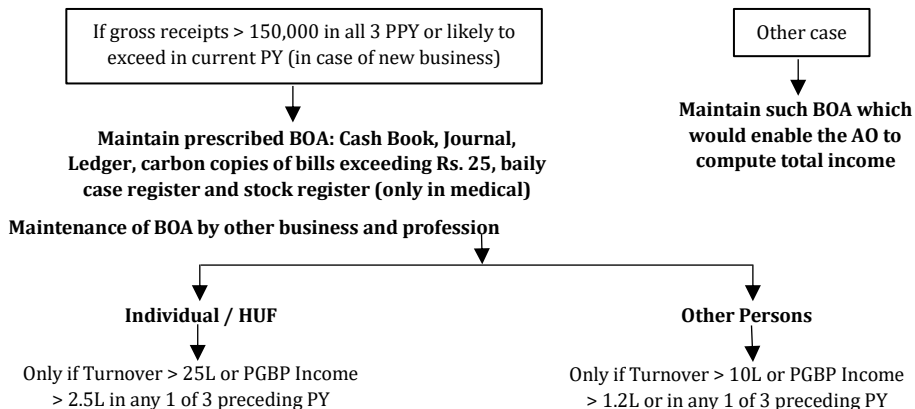
Special Provision in case of income of Public Financial Institutions, Public companies etc. [Section 43b] In case of PFI, scheduled bank or a co-operative bank (other than PACS/ PCARDB) or SFC or SIIC or NBFC, public company, income by way of interest on bad and doubtful debts, shall be chargeable to tax in PY in which it is credited to PL A/c or in PY in which it is actually received by it, whichever is earlier.

### Section 44AA: Compulsory Maintenance of BOA

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

Period of maintenance: 6 years from end of relevant AY

Maintenance of BOA by notified profession Legal, medical, engineering, or architectural profession or the profession of accountancy or technical consultancy or interior decoration or authorized representative or film artist.



### Section 44AB: Tax Audit of BOA

Tax Audit is compulsory in the following cases:

1. In case of business: If turnover > 1 crore in PY However, limit will be 10 crore instead of 1 crore if:

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

Note - Cheque drawn on a bank or a bank draft, which is not account payee, would be deemed to be the payment or receipt, as the case may be, in cash

2. In case of profession: Gross receipts > Rs 50 Lakh in PY.
3. If assessee is covered by 44AD or 44ADA and claims income less than 8% / 6% or 50% of turnover/ gross receipts and his total income is more than basis exemption limit.
4. If assessee covered by 44BB, 44BBB, 44AE and claims income less than profit deemed under these sections.

#### Notes:

- Tax Audit (44AB) not apply to person who derives income referred in 44B & 44BBA
- Audit must be done by CA and report in furnished in form 3CA/ 3CB/ 3CD
- Due date of TAR: 1 month prior to due date of furnishing ROI u/s 139(1)
- Tax audit not apply to persons who declared profit and gains as per 44AD/ 44ADA
- **Revision of TAR:** If there is payment by such person after furnishing of report which necessitates recalculation of disallowance under section 40 or section 43B. The said revised audit report has to be furnished before the end of R.A.Y
- **Penalty for violation of 44AB:** Lower of: 0.5% of total sales, turnover or gross receipts, as the case may be, in business or of the gross receipts in profession, in such previous year; or Rs. 1,50,000 [Section 271B].

### PRESUMPTIVE TAXATIONS

**Section 44AE: Special provision for computing profits and gains of business of plying, hiring or leasing goods carriages (Overriding effect on Section 28 to 43C)**

#### Applicability:

Any Person carrying on business of plying, hiring or leasing goods carriages and not owning more than 10 goods carriages at any time during the previous year.

#### Minimum amount of presumptive income:

- **In case of Heavy goods vehicle:** ₹1,000/- per ton of gross vehicle weight for every month or part of a month of ownership of such heavy goods vehicle.
- **In case of Others:** ₹7,500/- per month or part of a month for a goods carriage.

"Heavy goods vehicle" means any goods carriage, the gross vehicle weight of which exceeds 12000 kilograms.

#### Allowability of deduction u/s 30 to 38:

Deemed to be allowed.

#### Computation of presumptive income in case the assessee is a firm:

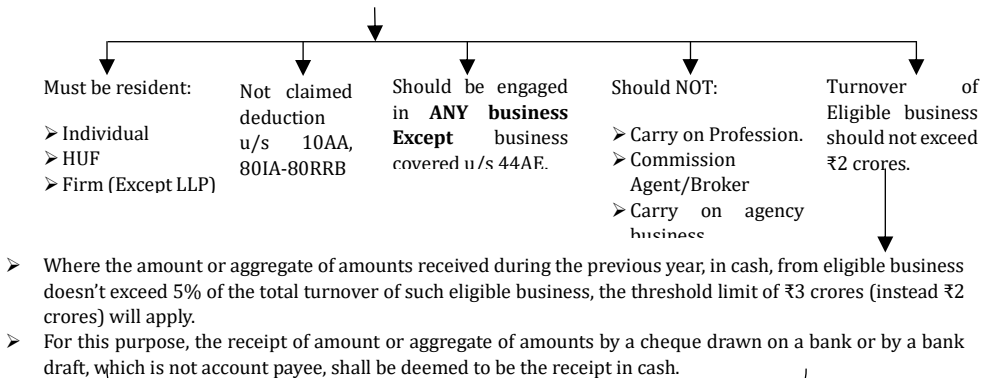
|   |   |
|---|---|
| Compute presumptive income as above   | - |
| <b>Less:</b> Interest and remuneration to partners<br>[Subject to the provision of section 40(b)] | - |
| Income chargeable under the head PGBP:  | - |

#### Option for lesser amount of Income:

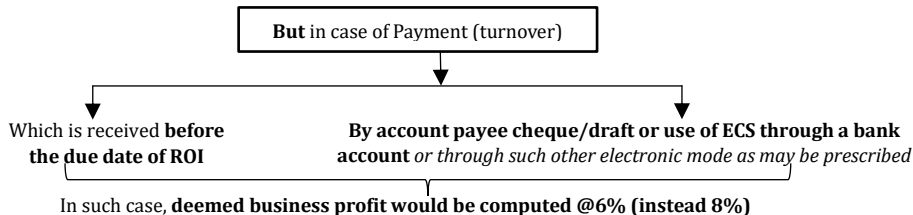
Books of accounts to be maintained u/s 44AA and audit u/s 44AB have to be fulfilled.

## Section 44AD: Special Provisions for Computing Profits & Gains Of business On Presumptive Basis (Overriding effect on Section 28 To 43C)

**Essential conditions for applicability of this section:**



If all above conditions are satisfied then presumptive income will be: **8% of total turnover/gross receipts.**



**Consequences for Adoption of Presumptive Taxation:**

All deductions (including partners Interest & remuneration) are deemed to have been allowed

Required to pay his total Advance tax on or before 15th March

No need to maintain Books (consequently no question to get his accounts audited)

### Option To Declare Lower Income and its Consequences

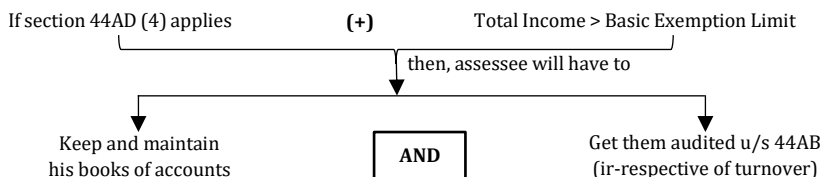
If assessee declares profit for any P.Y. as per this section

**AND**

Declares profit for any of the 5 consecutive subsequent P.Y. not as per this section

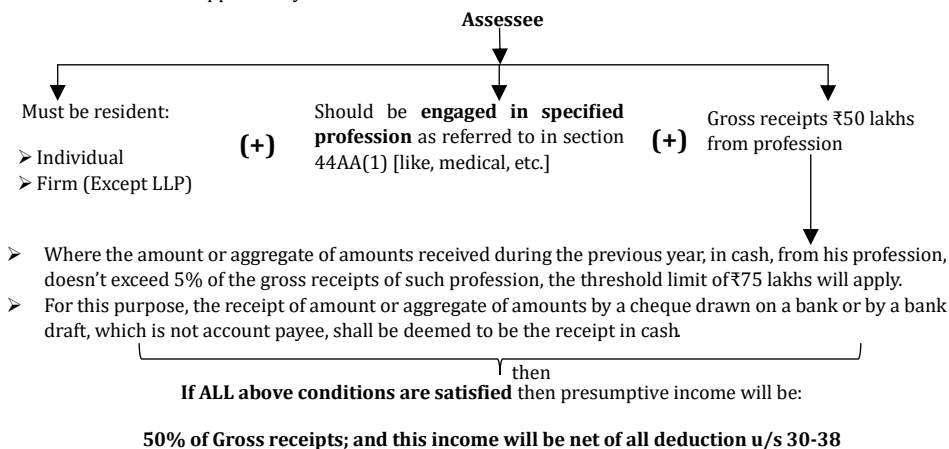
then

He shall not be eligible to claim the benefit of this section in the 5 years subsequent to the previous year in which he did not declare income as per this section. **[Section 44AD(4)]**



**Section 44ADA: Special provision for presumptive income computation of profession (Overriding effect on Section 28 To 43C)**

Essential conditions for applicability of this section:



**Consequences for adoption of presumptive taxation:**

Assessee is required to pay his total Advance tax on or before 15<sup>th</sup> March.

**Option to declare lower income and its consequences:**

