RAMA UNIVERSITY

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FACULTY OF COMMERCE AND MANAGEMENT

COURSE: B.COM VI SEM.

SUBJECT: Corporate Tax Planning

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LECTURE: 17

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LECTURE-17

AMOUNTS EXPRESSIVELY ALLOWED AS DEDUCTION [SECTION 30 TO 37]

A. [Section 30] : Rent, Rates, Taxes, Repairs & Insurance Of Buildings Used for the Purpose Of The Business

Deductions:

In respect of rent, rates, taxes, repairs and insurance for premises, used for the purposes of the business or profession, the following deductions shall be allowed:

a. Where the premises are occupied by the assessee:
   i. as a tenant — the rent paid for such premises; and further if he has undertaken to bear the cost of repairs to the premises, the amount paid on account of such repairs;
   ii. otherwise than as a tenant — the amount paid by him on account of current repairs to the premises;
b. any sum paid (whether as owner or tenant) on account of land revenue, local rates or municipal taxes; However, these are allowable subject to provisions of section 43B i.e. if these expenses are claimed on due basis, the payment of the same must be made on or before the due date of furnishing the return of income under section 139(1) [Ref. Para 6.32];
c. any insurance premium paid (whether as owner or tenant) in respect of insurance against risk of damage or destruction of the premises.

The amount paid on account of the cost of repairs referred to clause (a)(i) above and the amount paid on account of current repairs referred to in clause (a)(ii) above shall not include any expenditure in the nature of capital expenditure. [Explanation to section 30]

B. [Section 31] : Repairs & Insurance Of Plant, Machinery & Furniture

In respect of machinery, plant or furniture used for the purpose of business, the following deductions are allowable:

1. amount paid on account of current repairs,
2. any insurance premium paid in respect of insurance against risk of damage or destruction of the plant and machinery or furniture.

The amount paid on account of current repairs shall not include any expenditure in the nature of capital expenditure.

C. [Section 32] : Depreciation

Depreciation is the diminution in the value of an asset due to normal wear and tear and due to obsolescence. There are different methods for calculation of depreciation under financial accounting. The methods commonly used are:

1. straight line method;
2. written down value method;

The system of claiming depreciation under the Income-tax Act is quite different from financial accounting.

Types of Depreciation Allowance under Income-Tax Act:

The following are the three kinds of depreciation allowance which are allowed under the Income-tax Act:

i. Normal depreciation for block of assets [Section 32(1)(ii)].
ii. Additional depreciation in case of any eligible new machinery or plant (other than ship and aircraft) which has been acquired and installed—
    a. by an assessee engaged in the business of manufacture or production of any article or things or in the business of generation, transmission or generation and distribution of power [Section 32(1)(iia)].
    b. before 1-4-2020 by an assessee engaged in the business of manufacture or production of any article or things which is set up in a notified backward area in the State of Andhra Pradesh or in the State of Bihar or in the State of Telangana or in the State of West Bengal.
iii. Normal asset-wise depreciation for an undertaking engaged in generation or generation

and distribution of power [Section 32(1)(i)].

As already mentioned, two methods are commonly used for allowing normal depreciation. In case of block of assets systems, normal depreciation is allowed on the basis of written down value method whereas, in case of power generating or generating and distributing undertaking, depreciation is allowed on the basis of straight line method on each and every asset separately.

Additional/extra depreciation is allowed @ 20%/35% of the cost of the eligible plant and machinery acquired and installed in the previous year and it is allowed only in first year in which asset is acquired and installed. Such depreciation is, however, deductible while calculating the written down value for the next year.

D. [Section 36] : Other Deductions

Deductions which are specified Under Section 36 include the following:

D1. [Section 36(1)(i)] : Insurance Premium of Stocks

The amount of any premium paid in respect of insurance against risk of damage or destruction of stocks or stores used for the purposes of the business or profession is allowed as deduction. As already explained paid here means actually paid or incurred according to the method of accounting adopted.

D2. [Section 36(1)(ia)] : Insurance Premium of Cattle

The amount of any premium paid by a federal milk cooperative society towards an insurance on the life of the cattle owned by a member of the primary milk co-operative society is allowed as deduction provided such primary society is engaged in supplying milk raised by its members to such federal milk co-operative society.

D3. [Section 36(1)(ib)] : Insurance Premium On The Health Of Employees

It is allowed as deduction if following conditions are satisfied :

The amount of any premium paid by *any mode of payment other than Cash* by the assessee as an employer to effect or keep in force an insurance on the health of his employees under the scheme framed by ..

i. the General Insurance Corporation of India, or
ii. any other insurer approved by IRDA, and approved by the Government of India

is allowed as Deduction. There is no monetary ceiling for this deduction.

D4. [Section 36(1)(ii)] : Bonus Or Commission Paid To Employees

Bonus or Commission paid to an employee is Allowable as Deduction subject to certain conditions:

1. *Admissible only if not payable as Profit or Dividend :* One of the conditions is that the amount payable to employees as Bonus or Commission should not otherwise have been payable to them as profit or dividend. This is provided to check an employer from avoiding tax by distributing his / its profit by way of bonus among the member employees of his/its concern, instead of distributing the sum as dividend or profits.
2. *Deductible on Payment Basis :* Bonus or Commission is allowed as deduction only where payment is made during the previous year or on or before the due date of furnishing return of income u/s 139.
3. However, it can be claimed on Accrual Basis also subject to provisions of section 43B.

D5. [Section 36(1)(iii)] : Interest on borrowed capital

The amount of ***Interest Paid*** in respect of Capital Borrowed for the purposes of Business or Profession is allowed as Deduction.

Interest means interest payable in any manner in respect of any moneys borrowed or debt Incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised. [Section 2(28A)]

For claiming deductions under this sub-clause, the basic requirements are—

A. The money i.e. (capital) must have been borrowed by the assessee;
B. It must have been borrowed by the assessee for his business, profession or vocation; and
C. The assessee must have paid interest on the amount and claimed it as an allowance.

'Paid', as already explained, means actually paid or due, depending upon the method of accounting employed by the assessee.

Interest on borrowing for acquisition of an asset shall not be allowed as Revenue Expenditure:

No such deduction shall be allowed in respect of any amount of interest paid, in respect of capital borrowed for acquisition of new asset (whether capitalised in the books of account or not) and such amount of interest is for the period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use. Hence, such interest shall be added to the cost of the asset.

1. *Interest to financial institutions and interest on any loan or advance from a scheduled bank, is allowed as deduction subject to provisions of section 43B.*
2. *No deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of total income under the Income-tax Act. [Section 14A]*

D6. [Section 36(1)(iv)] : Employer's Contribution to a Recognised Provident Fund (RPF) or Approved Superannuation Fund.

Employer’s contribution paid towards Recognized Provident Fund (RPF) or an Approved Superannuation Fund is allowed as Deduction subject to Section 43B. However, contribution to Non-Statutory Fund or Unapproved Fund is Not Allowed as Deduction. In case of contribution towards Superannuation Fund is allowed as Deduction u/s 37.

"Any sum paid" is to be dealt with reference to section 43B of the Income-tax Act i.e. if such sum is payable at the end of the year it will not allowed as deduction on due basis unless the payment of the same is actually made on or before the due date of furnishing the return of income prescribed under section 139(1). However, if the payment is made subsequent to the due date, it shall be allowed as deduction in the year in which it is paid.

D7. [Section 36(1)(iva)] : Employers' Contribution towards a Pension Scheme.

Any sum paid by the assessee as an employer by way of contribution towards a Pension Scheme, as referred to in Section 80CCD on account of an employee to the extent it does not Exceed 10% of the Salary of the employee in the previous year shall be allowed as Deduction.

Salary for the above purpose includes Dearness Allowance, if the terms of employment so provide, but Excludes all other Allowances and Perquisite.

D8. [Section 36(1)(v)] : Employer's Contribution to an Approved Gratuity Fund.

Any sum paid by the assessee as an employer by way of contribution towards approved gratuity fund, created by him for the exclusive benefit of his employees under an irrevocable trust, shall be allowed as a deduction subject to the provisions of section 43B.

D9. [Section 36(1)(va)] : Employer's Contribution towards Staff Welfare Scheme.

Certain employers were deducting amounts from the Salaries of the employees towards certain Welfare Schemes like PF, ESI, etc. but were not crediting it to the employees' accounts even after long periods. This Section was introduced to check such malpractices. Sum deducted from the salary of the employee as his contribution to any Provident Fund or Superannuation Fund or ESI or any other Fund for the welfare of such employee is now treated as an income of the employer as per section 2(24)(x). However, if such contribution is actually paid on or before the 'Due Date' mentioned below the deduction will be allowed for the same under this clause.

"Due Date" means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant Fund under any Act, Rule, Order or Notification issued thereunder or under any standing order, award, contract of service or otherwise.

D10. [Section 36(1)(vi)] : Allowance in respect of Dead or Permanently Useless Animals

In respect of animals which are used for the purpose of business or profession (not as stock-in-trade) and have died or become permanently useless, the difference between the actual cost of the animals to the assessee and the amount realised (if any) in respect of carcasses or sale of animals is allowable as deduction.

D11. [Section 36(1)(vii)] : Bad Debts

The amount of any Bad Debt or part thereof, which has been written off as irrecoverable in the accounts of the assessee for the previous year, shall be Allowed as a Deduction subject to the provisions of Section 36(2) which are as under:—

1. Such debt or part thereof must have been taken into account in computing the income of the assessee of the previous year or of an earlier previous year, or
2. It represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee.

If there is a bad debt on account of sale made, it will be allowed as a deduction because sale has been treated as income. Similarly, in the case of a money lending business if interest is not realisable it will be allowed as a deduction because it has been treated as income either of current year or earlier year.

If there is any advance given for purchase of raw material and it is forfeited by the creditor, it will not be treated as a bad debt because it has never been treated as income. It will, however, be allowed as a loss u/s 28.

Provision for Bad and Doubtful Debts not eligible for Deduction [Explanation to section 36(1)(vii)]:

Any Bad Debt or part thereof written off as irrecoverable in the accounts of the assessee shall not include any Provision for Bad and Doubtful Debts made in the accounts of the assessee.

D12. [Section 36(1)(viia)] : Provision for Bad and Doubtful Debts relating to Rural Branches of Commercial Banks

- The amount of deduction is given below:

	Amount deductible in respect of provision for bad			
	Scheduled bank [other than a foreign bank] and a non-scheduled bank† [see Note 1]		*Public financial institution, State financial corporation, State Industrial investment corporation [see Note 2]*	*Fo b*
	Up to the assessment year 2002-03	*From the assessment year 2003-04*		
● Total income (computed before this deduction and amount deductible under sections 80C to 80U)	5 per cent of such income	7.5 per cent of such income (8.5 per cent with effect from the assessment year 2018-19)	5 per cent of such income	5 pe of s inc
● Aggregate average advances made by rural branches	10 per cent of such advances	10 per cent of such advances	—	—

D13. [Section 36(1)(viii)] : Amount carried to Special Reserve Credited and maintained by Special Entity.

Deduction under this section is allowed to a *Specified Entity* of an amount not exceeding 20% of the profits derived from *Eligible Business* computed under the head profits and gains of business or profession (before making any deduction under this clause) carried to special reserve account created and maintained by such specified entity.

However where the aggregate of the amount carried to such reserve account from time to time exceeds 200% of the amount of the paid up capital and of general reserves of the specified entity, the excess amount is not deductible.

The Specified Entity and Eligible Business from which the Profits should be derived by the specified entity for the purpose of creating a reserve are as under:

<table>
<tr><th>Specified Entiry</th><th>Eligible Business</th></tr>
<tr><td>(A) (i) A Finance Corporation Specified in Section 4A of the Companies Act, 1956.</td><td rowspan="4">The business of providing long term finance for
a. industrial or agricultural development or
b. development of infrastructure facility in India or
c. development of housing in India</td></tr>
<tr><td>(ii) a Finance Corporation which is a public sector company</td></tr>
<tr><td>(iii) a banking company</td></tr>
<tr><td>(iv) a co-operative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank.</td></tr>
<tr><td>(B) A housing finance company</td><td>The business of providing long-term finance for the construction or purchase of houses in India for residential purpose</td></tr>
<tr><td>(C) Any other financial corporation including a public company</td><td>The business of providing long-term finance for development of infrastructure facility in India.</td></tr>
</table>

D14. [Section 36(1)(ix)] : Expenditure on Promoting Family Planning amongst the Employees.

This deduction is allowed only to company assessees. Any expenditure bona fide incurred by a company for the purpose of promoting family planning amongst its employees is allowable as deduction in the year in which it is incurred.

Where such expenditure or part thereof is of a capital nature, 1/5th of such expenditure shall be deducted for the previous year, in which it was incurred and the balance shall be deducted in four equal instalments during the subsequent four years.

Where the profits of the business are not sufficient to absorb any expenditure (whether revenue or capital) on family planning, the balance shall be treated as unabsorbed expenditure on family planning and its treatment shall be same as of unabsorbed depreciation.

E. [Section 37(1)] : General Deductions

Any expenditure (not being expenditure of the nature described in sections 30 to 36) and not being in the nature of capital expenditure or personal expenditure of the assessee, laid out or expended wholly and exclusively for the purposes of the business or profession, shall be allowed as deduction in computing the income chargeable under the Head "Profits and Gains of Business or Profession".

Conditions for Allowance under Section 37(1) :

1. Such expenditure should not be covered under the specific sections, i.e. sections 30 to 36.
2. Expenditure should not be of capital nature.
3. The expenditure should have been incurred during the previous year.
4. The expenditure should not be of a personal nature.
5. The expenditure should have been incurred wholly or exclusively for the purpose of the business or profession.

Examples of Expenditure Allowable as a Deduction u/s 37(1) :

Remuneration to Employees:

Salary and perquisites paid to the employees of the assessee are allowable as a deduction. However, salary paid to the proprietor of the business is an appropriation of profit and shall not be allowed as deduction. Compensation paid to the employees in connection with the termination of employment on ground of commercial expediency is also allowable. Salary paid by a firm to its partners is allowed as deduction subject to certain limits and conditions.

Payment of Penalty/Damages:

Penalty is normally levied for breach of law and are, therefore, generally not allowable as deduction. However, at times an amount though termed as penalty, is purely compensatory in nature. For example, damages, penalty or interest paid for delay in completion of a contract, though termed as penalty are really in the nature of a compensatory payment and are therefore, allowable as a deduction. However, penalties paid to customs authorities, sales-tax authorities, income-tax authorities, etc for infringement of law are not allowed. Levy for failure to pay sales tax within time is partly compensatory and partly penal, compensatory part is allowable and penal part is disallowable.

Legal Expenses:

All legal expenses, incurred in connection with the business or profession of the assessee, are allowable, irrespective of the result of the legal proceedings. However, legal expenses on criminal prosecution are not deductible, as they are not incidental to the business or profession.

Legal expenses to defend or maintain the title to a capital asset of the assessee's business are allowable, but expenses to acquire a title are not allowable because they are of a capital nature. Similarly, litigation expenses for protecting the trade or business and for protection of assessee's trade mark are allowed. Legal and court expenditure spent for preparation and pursuing income-tax appeals are allowable expense.

Expenditure on Raising Loans:

Expenses of various types incurred in connection with raising of loans, for the purposes of the business, are allowable as a deduction. Therefore, legal charges for obtaining the loans from financial institutions, legal charges for drafting various deeds, brokerage paid for raising loans, stamp and registration charges, shall be allowed as deduction.

Interest:

While Section 36(1)(iii) makes a specific provision for allowing a deduction in respect of interest on money borrowed for the purpose of business, other kinds of interest payments in respect of interest do not fall under that Section. If these payments have been made wholly and exclusively for the purposes of business, they can be allowed u/s 37(1). Some of these could be:

i. interest on deferred payment for purchase of assets;
ii. interest on delayed payment of electricity charges;
iii. interest on purchase price of raw material;
iv. any amount paid 'in lieu of interest' in compromising a dispute with a trade creditor.

Expenditure on Advertisement:

Any expenditure incurred during the previous year on advertisement for the purpose of business and profession shall be allowed as deduction.

Expenditure incurred for sports tournaments organised, which directly result in publicity and advertisement of the assessee and its products, qualify for deduction.

Expenditure incurred on putting up stall in exhibition organised in connection with centenary celebrations of Congress Party was held by the Tribunal to be expenditure on advertisement.

Expenses Allowable under Specific Instructions of CBDT:

1. Diwali and Mahurat expenses.
2. Payment for telephone/telex connection.
3. Payment to Registrar of Companies: The fee paid to the Registrar of Companies are in connection with the company's legal obligations to be discharged under the Company law

and are an essential part of the company's business activities and are therefore, allowed.

4. Annual listing fee: Annual listing fee paid to a stock exchange is allowable.
5. Professional tax by the business assessee.