CONTROVERSIES AND ISSUES IN BUSINESS DEDUCTIONS UNDER CHAPTER IV-D.

By CA. Sunil Talati, M.Com., LL.B, F.C.A.
Past President of ICAI

The word `Business' is define in section 2(13) to include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.

The expression `business', though extensively used in tax-statutes, is a word of indefinite import. In tax statutes, it is used in the sense of occupation or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as a business, there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive and not for sport or pleasure.

Essential characteristics of business:

(A) Continuous and systematic exercise of activity.

(B) Profit Motive

(C) Transaction between two persons

(D) Involves a twin activity

(E) Business includes trade or commerce

(F) Business includes manufacture

(G) Business includes any adventure or concern in the nature of trade, commerce or manufacture

Section 28 of the Income Tax Act deals with an inclusive definition so as to charge Income tax under the head "Profits and gains of business or profession". This includes seven items so as to cover certain types of receipts to be specifically taxed under this head.

Thereafter section 29 deals with the provision so as to clarify as to how income referred to in section 28 shall be computed in accordance with the provisions contained in section 30 to 43D. It can be a book by itself if all the aspects dealing with these are considered in this presentation in this elite gathering in this limited time period. However, it is important to appreciate that on the basis of the provisions made in section 30 to 36 following

expenses are allowable. I am making an attempt to deal with some of the controversies and issues arising during the course of practicing profession or conducting business as under:

Section	Controversies	Issues
Section 30: Rent, Rates, Taxes, Repairs & Insurance of Buildings used for the purpose of the Business	1. Rent of the premises is allowed as deduction. However, notional rent paid by proprietor is not allowed as deduction. But rent paid by him to his partner for using his premises is allowed as deduction. 2. Current repairs if the assessee bears the cost of repairs are allowed as deduction. However, Capital repairs incurred by the assessee are never allowed as deduction whether premises is occupied as a tenant or as a owner. Instead the capital repairs incurred shall be deemed to be a building and depreciation shall be claimed. 3. Any sum on account of Land Revenue, Local Taxes or Municipal Taxes subject to section 43B. as per section 43B deduction shall be allowed only if such sum is actually paid on or before the due date of furnishing or return ; and 4. Insurance charges against the risk of damage or destruction of building is allowed as deduction.	➢ Assessee-company was carrying on its business in a building taken on rent - Consequently, an agreement was entered into between owners, tenant, other occupants and a developer, under which developer was to repair and reconstruct building at its own cost, and, after that certain area was to be handed over to co-owners - Assessee was also given its equivalent portion on condition that it would contribute towards cost incurred on repair and reconstruction - Assessee's share of cost was arrived at Rs. 1.50 crores; said agreement also provided that there would be no increase in rent payable by assessee - On above facts, Assessing Officer held that assessee had secured rights over portion of building on payment of Rs. 1.50 crores which constituted deemed ownership of building - Accordingly, Assessing Officer held expenditure of Rs. 1.50 crores to be capital in nature and disallowed it - Commissioner (Appeals) and Tribunal reversed order of Assessing Officer - Whether since there was no acquisition of a capital asset and occupation of assessee continued in character of a tenancy, expenditure of Rs. 1.50 crores could not be regarded as capital in nature but revenue to be allowable by way of deduction - Held, yes **[CIT Vs. Talathi and Panthaky Associated (P.) Ltd. [2012] 18 taxmann.com 367 (Bom. H.C.)] [In favour of assessee]** ➢ The expenditure on designing, layout and other temporary constructions, to make office functional, was allowable as repairs and maintenance, and was not capital in nature. **[CIT Vs. Armour Consultants (P.) Ltd. [2013] 32 taxmann.com 172 (Madras H.C.)] [In favour of assessee]**
Section 31: Repairs & Insurance of Plant, Machinery & Furniture	1. Current repairs to the plant, machinery and furniture is allowed as deduction. However, capital repairs incurred by the assessee are never allowed as deduction whether plant is leased or is purchased. Instead the capital repairs incurred shall be deemed to be an asset eligible for depreciation. 2. Premium paid for insurance against the risk of damage or destruction of plant, machinery or furniture is allowed as deduction.	➢ Expenditure incurred by assessee towards cost of replacement of machinery could not be regarded as amount paid on account of current repairs allowable under section 31. **[CIT VS. Sree Ayyanar Spinning & Weaving Mills Ltd. [2012] 28 taxmann.com 106 (SC)] [In favour of Revenue]** ➢ Whether section 31(i) limits scope of allowability of expenditure as deduction in respect of repairs made to machinery, plant or furniture by restricting it to concept of current repairs and all repairs are not current

		repairs - Held, yes - Whether to decide applicability of section 31(i) test is not whether expenditure is revenue or capital in nature, but whether expenditure is current repairs - Held, yes - Whether basic test to find out as to what would constitute current repairs is that expenditure must have been incurred to preserve and maintain an already existing asset, and object of expenditure must not be to bring a new asset into existence or to obtain a new advantage - Held, yes - Whether all repairs do not attract section 31(i) even though expenditure is revenue in nature - Held, yes - Assessee manufacturer of yarn replaced old 3 ring frames by new ones and claimed expenditure incurred in said activity as current repairs contending that whole textile mill was a 'Plant' and ring frames were one of 25 machines which constituted one single process and, therefore, replacement of frames be treated as replacement of part of plant/total machinery and not replacement of a machine - Assessing Officer held that each machine including ring frame was an independent and separate machine capable of independent and specific function and, therefore, expenditure incurred for replacement of entire machine would not come within meaning of words 'current repairs' - Whether Assessing Officer was justified in holding so - Held, yes **[*Saravana Spg. Mills (P.) Ltd. Vs. CIT* [2007] 163 TAXMAN 201 (SC)] [In favour of Revenue]** ➢ Section 31 of the Income-tax Act, 1961 - Repair and insurance of machinery, plant and furniture - Assessment year 1995-96 - Whether each machine in a textile mill should be treated independently as such and not as a mere part of entire composite machinery of spinning mill - Held, yes - Whether, therefore, replacement of such an old machine with a new one would constitute bringing into existence a new asset in place of old one and not repair of old and existing machine to be allowed as deduction under section 31 - Held, yes **[CIT Vs. *Sri Mangayarkarasi Mills (P.) Ltd.* [2009] 182 TAXMAN 141 (SC)] [In favour of Revenue]** ➢ Assessee claimed expenditure of Rs. 1,80,85,276 on account of repairs of 40MVA transformer - Assessing Officer found that book value of transformer had been completely exhausted, and therefore, he held that it was a case of making new transformer - He, therefore, held that expenditure was of capital nature and made disallowance therefor - On appeal, Tribunal found that

		expenses were incurred on extensive repairs, consequent to severe damage to an existing business asset and, therefore, it was case of restoration of its existing capabilities and not a case of acquisition of new asset or obtaining any advantage of enduring nature - Tribunal, accordingly, allowed assessee's claim - Whether findings recorded by Tribunal were findings of fact and, therefore, no question of law did arise therefrom - Held, yes **[CIT Vs. Sunflag Iron & Steel Co. Ltd.* [2011] 15 taxmann.com 124 (Bom. H.C.)] [In favour of assessee]**
Section 32: Depreciation	In respect of depreciation of- (i) buildings, machinery, plant or furniture, being tangible assets; (ii) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998, owned, wholly or partly, by the assessee and used for the purposes of the business or profession the following deductions shall be allowed.	➢ Goodwill is an asset under Explanation 3(b) to section 32(1) and, thus, it is eligible for depreciation & Stock exchange membership card is an asset eligible for depreciation under section 32 of the Act.. **[CIT Vs. Smifs Securities Ltd. [2012] 24 taxmann.com 222 (SC)] [In favour of assessee]** ➢ Whether right of membership conferred upon a member under BSE membership card in terms of rules and Bye-laws of BSE, as they stood during relevant assessment years, was a 'business or commercial right' which gave a non-defaulting continuing member a right to access exchange and to participate therein and, in that sense, it was a licence or akin to a licence in terms of section 32(1)(ii) - Held, yes - Whether, therefore, for relevant assessment years, depreciation was allowable on cost of BSE membership card under section 32(1)(ii) - Held, yes. **[*Techno Shares & Stocks Ltd. vs. CIT* [2010] 193TAXMAN 248 (SC)] [In favour of assessee]** ➢ Assessee was engaged in business of hire-purchase and leasing finance - It leased out positive film rolls purchased by it to a firm and claimed depreciation on those film rolls - Assessing Officer allowed such claim - Subsequently, on account of strike in film industry, lessee returned film rolls to assessee and requested for cancellation of lease agreement - Assessee accounted for lease rent as income but same being not recovered were claimed as bad debt - Assessing Officer reopened assessment and disallowed depreciation originally allowed to assessee on ground

		that assessee had claimed lease rent as bad debt in subsequent assessment year and that assessment had become final - Whether film rolls which were kept under forced idleness, were to be deemed to be in use during entire period of year and, therefore, assessee, even though a passive user, was to be deemed to be an active user within meaning of word 'used', as film rolls were kept ready for use - Held, yes - Whether, therefore, assessee was entitled to claim depreciation on said film rolls - Held, yes **[CIT vs. *Heera Financial Services Ltd.* *** **[2008] 169 TAXMAN 192 (MAD. H.C.)] [In favour of assessee]** ➢ Assessee-company claimed depreciation on Tetrapack machine - Assessing Officer disallowed its claim on ground that said machine was lying idle - Commissioner (Appeals) upheld order of Assessing Officer - However, Tribunal accepted assessee's claim on ground that machine was not sold, discarded or demolished and was kept ready for use - Whether since keeping of machine in readiness was a finding of fact, machine would be deemed to have been used within meaning of expression contained in section 32 and, therefore, Tribunal was justified in allowing assessee's claim - Held, yes **[CIT Vs. *Premier Industries (India) Ltd.*2008] 170 TAXMAN 407 (MP H.C.)] [In favour of assessee]** ➢ Non-registration of asset in assessee's name is no bar for allowing depreciation. Whether even in absence of registered sale deed in respect of car parking space, assessee is entitled to claim depreciation on same - Held, yes. **[CIT VS. Indian Sugar Exim Corpn. Ltd. [2012] 26 taxmann.com 323 (Delhi H.C.)] [In favour of assessee]** ➢ *Trial run of plant constitutes 'use' thereof entitling assessee for depreciation in relevant assessment year***.** The trial run of the plant by the assessee constitutes 'use' thereof entitling the assessee for depreciation in the relevant assessment year**. [CIT Vs. Mentha & Allied Products [2010] 326 ITR 297 (ALL. H.C.)] [In favour of assessee]** ➢ Allowance/Rate of - Non-compete fee - Assessment year 2001-02 - Whether since in case of non-competition agreement,

		advantage is a restricted one in point of time and it does not confer any exclusive right to carry on primary business activity, amount paid as non-compete fee does not quality for depreciation under section 32(1)(ii) - Held, yes [**Sharp Business System Vs. CIT [2012] 27 taxmann.com 50 (Delhi H.C.)] [In favour of revenue]**
Section 36(1)(i) Insurance of Stock	The amount of any Insurance premium paid in respect of insurance against risk of damage or destruction of stocks or stores used for the purposes of the business is allowed as discount.	
Section 36(1)(ib) Insurance premium on the health of employees	It is allowed as deduction if following conditions are satisfied : a. The Premium is paid by Cheque by the employer; and b. Premium is paid under the Scheme framed in this behalf by the General Insurance Corporation of India and approved by the Central Government.	➢ Section 36(1)(i) of the Income-tax Act, 1961 - Insurance premium qua insurance of stocks or stores - Assessee, a partnership firm, insured the lives of its partners to provide for liquid cash to pay off outgoing partner or legal heirs of deceased partner to enable surviving partners to continue business without interruption - Assessee paid insurance premia and was entitled to sum assured on maturity of policy or in event of death of partner - Whether it could be said life insurance policies were taken out against risk of damage or destruction to the stocks so that insurance premium paid could be allowed under section 36(1)(i) -Held, on facts, No. **[Khodidas Motiram Panchal VS . CIT [1986] 27 TAXMAN 208 (GUJ. H.C.)] [In favour of revenue]**
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	➢ Assessee-company was a share broker - During relevant assessment year, it had paid commission to tune of Rs. 40 lakhs each to three working directors who were only shareholders of company and owned entire share capital of Rs. 6.5 crores of company - Assessing Officer held that such payment of commission was in lieu of dividend and was not eligible for deduction under section 36(1)(ii) - Assessee claimed that payment of commission was not in lieu of profit or dividend as payment had been made to directors for hard work they had put in improving profits of company - However, facts revealed that steady rise in performance of company was due to improved market conditions and not because of any extra service rendered by directors as no

	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.	evidence had been produced for rendering of extra services - Assessee had not given any convincing reason for not declaring dividend in spite of substantial profit - Moreover, no commission was paid to any employee other than three shareholder directors who were also family members - Whether, on facts, payment of commission of Rs. 1.20 crores to three working directors was in lieu of dividend and same was not allowable as deduction under section 36(1)(ii) - Held, yes. **[Dalal Broacha Stock Broking (P.) Ltd. vs. ACIT [2011] 11 taxmann.com 426 (Mum. ITAT) (SB)] [In favour of revenue]** ➢ Whether ex gratia payment made by assessee-company to its employees over and above limit of 8.33 per cent prescribed under Payment of Bonus Act was allowable as deduction under section 36(1)(ii) - Held, yes. **[CIT VS. *Maina Ore Transport (P.) Ltd.* [2008] 175 TAXMAN 494 (BOM. H.C.)] [In favour of Assessee]** ➢ Bonus or commission - Assessment years 1979-80 and 1980-81 - Assessing Officer disallowed certain sum claimed by assessee-company towards bonus paid to senior staff members - Whether in view of decision of Allahabad High Court in CIT v. Champaran Sugar Co. Ltd. [IT Reference No. 20 of 1990, dated 14-2-2005], Tribunal was correct in holding that payment to senior members of employees who were not entitled to receive bonus under Payment of Bonus Act, was an admissible expenditure - Held, no **[CIT VS. *Champaran Sugar Co. Ltd. (*2006) 154 TAXMAN 177 (H.C. ALL.)] [In favour of revenue]** ➢ Assessee paid certain amounts as bonus to employees, who were also shareholders and promoters of company. The bonus was mainly paid for services rendered by working Directors, who happened to hold a few shares in company - Whether in view of aforesaid legal position, assessee's claim for bonus could not be disallowed by invoking provisions of section 36(1)(ii) - Held, yes **[ACIT VS. Mandovi Motors (P.) Ltd [2010] 8 taxmann.com 225 (Bang. ITAT)] [In favour of Assessee]**

		➢ Bonus or Commission - Tribunal allowed claim of assessee for deduction of ex gratia payment as additional bonus on ground that said payment was made on account of agreement between mills owner's association and employee's union - Whether in absence of any evidence to show that agreement was binding on assessee or to show that ex gratia payment was reasonable or in accordance with any practice prevailing at relevant time, assessee was not entitled to deduction of bonus, which was paid over and above bonus payable under Payment of Bonus Act - Held, yes ***[CIT VS. Mafatlal Fine Spg. & Mfg. Co. Ltd. [*** **[2004] 138 TAXMAN 143 (BOM. H.C.)] [In favour of revenue]** ➢ Section 36 (1)(ii) of the Income-tax Act, 1961 - Bonus or commission - Assessment year 1977-78 - Assessee paid certain sum to its executive staff as commission over and above salary payable to them - Assessing Officer disallowed said commission - On appeal, Tribunal deleted addition holding that payment was clearly for commercial expediency - Whether on facts, Tribunal was justified in its action - Held, yes . **[*Porritts & Spencer (Asia) Ltd. VS CIT* [2008] 175 TAXMAN 533 (PUNJ. & HAR. H.C.)] [In favour of Assessee]**
Section 36(1)(iii) Interest paid on borrowed capital for the purpose of business or profession	***(i) CONDITIONS :*** **<u>As per Supreme Court judgment :</u>** **1.** The sum of money should be borrowed from another assessee. The loan may be borrowed from any Bank, Financial Institution, Govt. , Public, friends or relatives. Loan may be in the form of debentures or deposits etc. Interest on capital or loan to proprietor is not allowed as deduction since the loan is not borrowed from another person. **However, interest paid by firm to its partner on their capital contribution is allowed as deduction.** **2.** Such borrowed money should be used for the purpose of business or profession. But where the amount of loan is used for personal purpose it is not allowed as deduction. E.g. the	➢ Interest paid on borrowed fund for mere extension of existing business, is allowable as deduction under section 36(1)(iii). **[CIT Vs. Monnet Industries Ltd. [2012] 25 taxmann.com 236 (SC)] [In favour of Assessee]** ➢ *Interest paid in respect of borrowings on capital assets not put to use in concerned financial year is allowable as deduction under section 36(1)(*iii *). **[ACIT VS.* Arvind Polycot Ltd. (2008] 299 ITR 12 (SC)] [In favour of Assessee]** ➢ Assessee had a running business of manufacturing and selling of intravenous solutions - It installed new machineries on which production was not started during relevant year - Assessee claimed deduction of interest on borrowings made for purchasing these machineries - Whether assessee's claim was to be allowed u/s 36 (I)(iii)- Held, yes. **[DCIT VS. *Core Health Care Ltd.* [2008]**

	loan is borrowed for the payment of income tax not allowed as deduction. **However, loan is borrowed for payment of dividend or sales tax is allowed as deduction.** 3. The Interest has accrued during the relevant previous year. However, where the interest falls u/s 43B, i.e. where interest is payable to banks or financial institutions, then for claiming deduction such interest should actually be paid on or before the due date of furnishing of return. ***(ii) PROVISO 1 TO 36 (1)(iii). INTEREST ON BORROWING FOR ACQUIRING NEW ASSETS :*** 1. Interest accrued before the commencement of business not allowed ad deduction but has to be capitalized and added to the actual cost of fixed assets acquired out of borrowed capital. 2. Similarly interest accrued after the commencement of business but before the asset is put to use is not allowed as deduction but has to be capitalized and added to the actual cost of the fixed assets acquired out of borrowed capital. 3. Interest accrued after the asset is put to use is allowed as deduction u/s 36(1)(iii) irrespective of the treatment in books of account. ***(iii) OTHER POINTS :*** 1. Where interest is paid outside India without deduction of tax at source can not be allowed as deduction. 2. Income tax department cannot question the need for borrowing and the rate of interest. 3. Interest other than interest on borrowing is allowed as deduction u/s 37 and not under this clause. E.g. Interest on late payment of sales tax etc.	**167 TAXMAN 206 (SC)] [In favour of Assessee]** ➢ Interest paid in respect of borrowings for acquisition of capital assets not put to use in concerned financial year can, be allowed as deduction under section 36(1)(iii)**. [Vardhman Polytex Ltd. vs. CIT [2012] 25 taxmann.com 281 (SC)] [In favour of Assessee]** ➢ Section 36(1)(iii) of the Income-tax Act, 1961, read with Article 7 of DTAA between India and Belgium (Business Profit) - Interest on borrowed capital - Assessee-non-resident company had borrowed money from its shareholders in same ratio as equity shareholding resulting in abnormal debt-equity ratio of 248:1 - Revenue's case was that debt was to be re-characterised as equity and interest payment thereon disallowed - Whether since there are no thin capitalization rules in force, interest payment on debt capital to shareholders could not be disallowed - Held, yes [Para 8] **[DCIT Vs. Besix Kier Dabhol SA [2012] 26 taxmann.com 169 (Bom. H.C.)] [In favour of Assessee]** ➢ Interest paid on bank loan which has been utilized for margin deposits with stock brokers for investment in shares is not an allowable deduction under section 36(1)(iii). Assessee firm engaged in animal feed had sufficient current assets from which it advanced loan to various people and family members without charging interest - On other hand assessee took bank loans and claimed to have employed same for purpose of business - Assessee claimed deduction of interest paid on bank loan - However, a part of bank loan was found to have been utilised for margin deposit with stock broker companies to make investment in shares - Whether interest can be disallowed on amount utilised for margin deposit and not whole of amount taken from bank - Held, yes [Para 5] **[Prakash Narottam Das Gupta Vs. I.T.O. [2013] 33 taxmann.com 48 (Mumbai - Trib.)] [Partly favour of assessee]** ➢ Where assessee had sufficient funds in shape of share capital and share application money out of which it could advance loan to its sister concern, interest paid on borrowed capital would be

		allowed under section 36(1)(iii). **[Venus Records & Tapes (P.) Ltd. vs. ACIT [2013] 33 taxmann.com 49 (Mumbai - Trib.)] [In favour of assessee]** ➢ The Legislature has made no distinction in section 36(1)(*iii*) between the capital borrowed for a revenue purpose and the capital borrowed for a capital purpose. The assessee is entitled to claim the interest paid on borrowed capital provided that the capital is used for business purpose irrespective of what may be the result of using the capital which the assessee has borrowed. Actual cost of an asset has no relevancy in relation to section 36(1)(*iii*). **[Gujarat State Fertilizer & Chemicals Ltd. *v.* Asstt. CIT [2009] 313 ITR 244 (Guj. H.C.)] [In favour of assessee]** ➢ Interest on borrowed capital - Assessment years 1998-99 and 1999-2000 - Whether interest paid by assessee on money borrowed for expansion of its business was to be allowed as a deduction - Held, yes **[CIT VS. *Carborandum Universal Ltd.* [2009] 177 TAXMAN 347 (MAD. H.C.)] [In favour of assessee]** ➢ Section 36(1)(iii) of the Income-tax Act, 1961 - If the total interest-free advances including debit balances of partners do not exceed the total interest-free funds available with the assessee, no interest is disallowable on account of utilisation of fund for non-business purposes and if it so exceeds, the proportionate disallowance can be made. [**Torrent Financiers Vs. ACIT [2001] 73 TTJ 624 (AHD. ITAT)] [In favour of assessee]**
Section 36(1)(iv) Employer's contribution towards recognized Provident Fund or an Approved	Employer's contribution paid towards recognized provident fund or an approved superannuation fund is allowed as deduction subject to Sec. 43B. However, contribution to Non-Statutory Fund or Unapproved Fund is not allowed ad deduction. In case of contribution towards superannuation fund is allowed as deduction u/s 37.	➢ Provident fund, contributions towards recognized - Certain deductions to be allowed only on actual payment', it could be said that employer's contribution to provident fund, etc., paid after expiry of due date under section 36(1)(iv) and (v) but before filing of return under section 139(1), would be allowed as deduction in view of second proviso to section 43B - Held, yes. **[ACIT VS. Viraj Forgings Ltd. [2008] 20 SOT 129 (MUM. ITAT)] [In favour of assessee]** ➢ Payment made to unrecognized PF is prohibited by section

Super Annuation Fund.		40(A)(9) and, consequently, not deductible under section 37(1). **[Wipro Ltd. VS. ACIT [2012] 28 taxmann.com 188 (Bang. ITAT)] [In favour of Revenue]** ➢ Section 40A(9), read with sections 36(1)(iv) and 36(1)(v), of the Income-tax Act, 1961 - Business disallowance - Contribution to employees welfare trust, etc. [Contribution to non-statutory funds] - Whether, where contribution to various non-statutory funds were claimed to have been made as per agreement with workers' union under Industrial Disputes Act, 1947, but there was no evidence of such agreement, amount of contributions were allowable - Held, no [Para 12**]** [**Greaves Cotton Ltd. Vs. ITO** [**2013] 32 taxmann.com 86 (Mumbai - Trib.)] [In favour of revenue**]
Section 36(1)(v) Employer's Contribution paid towards an approved Gratuity Fund.	Any sum paid by the assessee as an employer by way of contribution towards an approved gratuity fund created by him for the exclusive benefit of his employees under an irrevocable trust is allowed as deduction subject to section 43B.	➢ Gratuity fund, contributions towards an approved - Assessee had formulated an employees' gratuity fund, which was duly approved by Commissioner - For relevant assessment year, assessee claimed deduction for incremental liability towards payment of gratuity - Amount was paid by assessee to fund after end of previous year but before due date prescribed for filing return - Lower authorities denied deduction - Whether claim of assessee for deduction was hit by section 36(1)(v) as impugned liability was not incurred, according to assessee itself, during previous year as also by section 43B as amount in question was not paid during previous year - Held, yes. **[ACIT VS ASEA BROWN BOVERI LTD. [2007] 14 SOT 18 (MUM. ITAT)] [In favour of Assessee**] ➢ Section 36(1)(v) of the Income-tax Act, 1961 - Gratuity fund, contribution to - Assessee claimed deduction of an amount which was paid to LIC towards group gratuity fund - Whether merely because payment was made directly to LIC, company could be denied benefit under section 36(1)(v) - Held, no **[CIT VS. Textool Co. Ltd. [2002] 122 TAXMAN 668 (MAD. H.C.)] [In favour of Assessee**] ➢ Section 36(1)(v) of the Income-tax Act, 1961, read with rule 103 of the Income-tax Rules, 1962 - Gratuity fund, contribution to an approved fund - Assessment year 1974-75 - Whether actual

		payment made to an approved gratuity fund is allowable as deduction under section 36(1)(v) - Held, yes - Whether if entire amount is not allowed under section 36(1)(v), balance amount would be allowable as business expenditure under section 37(1) - Held, yes. **[CIT VS. Premier Cotton Spg. Mills Ltd. [2003] 131 TAXMAN 79 (MAD. H.C.)] [In favour of Assessee]**
Section 36(1)(va) Employee's Contribution towards Staff Welfare Scheme.	Any sum received by the assessee from his employees as contributions : 1. to any provident fund or 2. superannuation fund or 3. any fund set up under the provisions of the Employee's State Insurance Act, or 4. any other fund for the welfare of such employee is treated as income in the hands of assessee unless such employee's contribution is credited in employee's account on or before the 'due date' specified under the provisions of any law or terms of contract of service or otherwise. However employer's contribution (not employee's contribution) towards such fund is allowed as deduction subject to section 43B i.e. such contribution is paid on or before the due date of furnishing return.	➢ Section 36(1)(va) of the Income-tax Act, 1961 - Employee's contributions - Assessment year 2002-03 - Whether employees' contribution towards provident fund and ESI would qualify for deduction even if paid after due date prescribed under Provident Fund Act/ESI Act but before due date of filing of return - Held, yes. **[CIT VS *AIMIL Ltd.* [2010] 188 TAXMAN 265 (DELHI H.C.)] [In favour of Assessee]** ➢ Section 36(1)(va) of the Income-tax Act, 1961 - Employee's contributions - Assessment year 2005-06 - Contribution to Employees' State Insurance is allowable as deduction if same is paid before due date of filing return. **[ACIT Vs. Ranbaxy Laboratories Ltd. [2012] 20 taxmann.com 334 (Delhi)] [In favour of Assessee]** ➢ Employes' PF/ ESI Contribution is not covered by Sec. 43B & is only allowable as a deduction u/s36(1)(va) if paid by the "due date" prescribed therein. **[ITO Vs. LKP Securities Ltd. (ITA 638/MUM/2012) *(2013) (ITAT MUM.)*] [This decision is overruled all above decisions u/s 36(1)(va)] [In favour of Revenue]** ➢ ***Due date*" in s. 36(1)(va) for payment of employees' Provident Fund, ESIC etc contribution should be read with s. 43B(b) to mean "*due date*" for filing ROI** - The High Court dismissing the appeal filed by the Department stating that " S. 2(24)(x) provides that the amounts of employees' contribution to PF etc collected by the employer shall be assessed as his income. S. 36(1)(va) provides that the said employees' contribution shall be allowed as a deduction if paid within the "*due date*" specified in the relevant legislation. S. 43(B)(b) provides that any sum payable by the

		assessee as an employer by way of contribution to any provident fund etc shall be allowed if paid before the due date of filing the ROI. The "*due date*" referred to in s. 36(1)(va) must be read in conjunction with s. 43B(b) to mean the "*due date*" of filing the ROI. The AO wrongly proceeded on the basis that the "*due date*" in s. 36(1)(va) is the due date fixed by the Provident Fund authority, whereas read in the context of s. 43B(b) it is the "*due date*" fixed for filing the ROI." **[CIT Vs. M/s Kichha Sugar Company Ltd. (ITA No. 50 of 2009) (UTTARAKHAND H.C.) *(2013)]* [In favour of Assessee]**
Section 36(1)(vii) Bad Debts	***(i) Conditions :*** A deduction will be allowed in respect of any Bad Debt which is written off as irrecoverable in the account of the assessee for the previous year subject to the conditions specified in Sec. 36(2) as follows : **1.** No such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year, or **e.g.** Credit Sale made Rs.50,000 not realized. Rs.50,000 shall be allowed as deduction since sale is treated as income. Advance made for purchase of stocks. Advance forfeited not allowed as deduction since advance money not a part of income. However, deduction can be claimed u/s 37. **1.** Represents money lent in the ordinary course of the business of banking or money lending which is carried on by the assesses ***(ii) Notes*** **1.** Bad Debt can be claimed as deduction by the successor of the business , e.g. conversion of firm into a company.	➢ Where in case of scheduled bank, deduction under section 36(1)(vii) is allowable independently and irrespective of provision for bad and doubtful debts created by it in relation to advances made by its rural branches, subject to limitation that an amount should not be deducted twice under section 36(1)(vii) and 36(1)(viia) simultaneously - Held, yes **[DCIT VS. Karnataka Bank Ltd. [(2012) 25 taxmann.com 235 (SC)] [In favour of Assessee]** ➢ The position in law is well-settled. After 1.4.1989, **it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee**. When a bad debt occurs, the bad debt account is debited and the customer's account is credited, thus, closing the account of the customer. In the case of companies, the provision is deducted from Sundry Debtors. **[T.R.F. Limited Vs. CIT (CIVIL APPEAL NO.5293 OF 2003)(S.C.)] [In favour of Assessee]** ➢ Section 36(1)(vii) of the Income-tax Act, 1961 - Bad debts - Whether after amendment to section 36(1)(vii) it is neither obligatory nor is there any burden on assessee to prove that debt written off by him is indeed a bad debt as long as it is bona fide and is based on commercial wisdom or expediency - Held, yes **[DIT Vs. *Oman International Bank SAOG (*2009) 184 TAXMAN 314 (BOM. H.C.)] [In favour of Assessee]** ➢ Bad debts - Inter corporate deposits - Assessee, engaged in

	2. However Provision for Bad Debt is not allowed deduction. ***(iii) Section 41(4). Recovery of Bad Debt*** Where a deduction has been allowed in respect of a bad debt or part of debt, then, if the amount subsequently recovered on any such debt or part is greater than the difference between the debt or part of debt and the amount so allowed, the excess shall be deemed to be profits and gains of business or profession, and accordingly chargeable to income-tax as the income of the previous year in which it is recovered, whether the business or profession in respect of which the deduction has been allowed is in existence in that year or not.	promotion of telecom services, earned interest income by way of inter-corporate deposit - Due to non-recoverability of some amounts, it treated same as bad debt - Whether since business of assessee was not that of money lending, sum in question could not represent money lent in ordinary course of business and, therefore, claim of assessee did not fall within parameters of provisions of section 36(1)(vii) - Held, yes [Para 13] **[Bharti Televentures Ltd. VS. ACIT [2013] 29 taxmann.com 326 (Delhi H.C.)] [In favour of revenue]** ➢ The assessee is not required to establish that debt has become bad; it is enough if bad debt is written off as irrecoverable in accounts of assessee - Held, yes - where amounts receivable from debtors were taken into account as income in earlier years and were written off as irrecoverable, such amount would be allowed as bad debt - Held, yes - Whether in stock broking business amounts payable to clients is also considered as taken into account under provisions of section 36(2) and any non-recovery can be claimed as bad debt - Held, yes **[HSBC Securities & Capital Markets (India) (P.) Ltd. vs . ACIT [2013] 32 taxmann.com 328 (Mumbai - Trib.) [In favour of Assessee]** ➢ Once interest income has been offered on accrual basis, which has been debited in profit and loss account as business income and same has been written off as irrecoverable in accounts in this year, same has to be allowed as bad debt. **[Jindal Iron & Steel Company Ltd. Vs. DCIT [2013] 33 taxmann.com 96 (Mumbai - Trib.)] [In favour of Assessee]** ➢ Whether after amendment made in section 36(1)(vii) with effect from 1-4-1989, it is not necessary for assessee to establish that concerned debts in fact have become irrecoverable and it is sufficient if said debts are written off as irrecoverable in accounts of assessee - Held, yes. **[KPMG India (P.) Ltd. Vs. ACIT [2013] 33 taxmann.com 251 (Mumbai - Trib.)] [In favour of Assessee]** ➢ Claim for bad debts cannot be disallowed on ground that debts in question have not been established to have become bad. Following deletion of word 'established' in section 36(1)(vii) with

		effect from 1-4-1989, it is not necessary for assessee to establish that debt, in fact, has become irrecoverable. **[DCIT Vs. Ray + Keshavan Design Associates (P.) Ltd. [2013] 33 taxmann.com 40 (Bangalore - Trib.)] [In favour of Assessee]**
Section 36(1)(ix) Family Planning Expenditure incurred by Company	Deduction in respect of *Revenue Expenditure* for promoting family planning amongst its employees is allowed as deduction and in case of *Capital expenditure* , 1/5 of expenditure incurred is allowed as deduction in 5 equal installment.	
Section 36 (1)(xiii) Banking Cash Transaction Tax (BCTT)	Any amount of Banking Cash Transaction Tax (BCTT) paid by the assessee during the previous year on the taxable banking transactions entered into by him. *Explanation*.- For the purposes of this clause, the expressions "banking cash transaction tax" and "taxable banking transaction" shall have the same meanings respectively assigned to them.	
Section 37(1) :	❖ Any amount of expenditure , **not being the nature described in Section 30 to 36 or in the nature of Capital expenditure or personal expenditure laid out or expended wholly and exclusively for the purpose of business & profession** shall be allowed as deduction while computing the income chargeable under the head " Profit and Gains of Business or profession " • ***Decisions relating to Controversies on whether expenditure incurred is in the nature of Capital or not :*** ➢ Expenditure incurred on software development and up gradation includes maintenance, back-up and support services to existing hardware & software is revenue in nature and it does not give any fresh or new benefit**. [in favor of assessee]** **[CIT Vs. N.J. India Invest (P.) Ltd. [2013] 32 taxmann.com 367 (Gujarat H.C.)]** ➢ Payment made to stock exchange for violation of byelaws of stock exchange is allowable as business expenditure. **&** Where no asset had been created by paying license fees for utilization of software, expenditure was allowable as revenue expenditure. **[HSBC Securities & Capital Markets (India) (P.) Ltd. Vs. ACIT [2013] 32 taxmann.com 328 (Mumbai - Trib.)] [in favor of assessee]** ➢ Assessee was engaged in manufacture of mining equipments - It entered into technical assistance agreement with an American company	

	for acquiring know-how - Consideration under said agreement was agreed to be paid in installments - After payment of first installment, dispute arose between parties and know-how was not transferred to assessee - Assessee claimed deduction of above part consideration under section 37(1) - Whether since above agreement entered into by assessee for acquiring know-how which was, in turn, to be used in business of assessee, section 35AB will come into play and section 37(1) had no application - Held, yes [In favour of revenue] [**Drilcos (India) (P.) Ltd. Vs. CIT [2012] 25 taxmann.com 228 (SC)] [in favor of Revenue]** ➢ Assessee-company had incurred expenditure to extent of about Rs. 6.9 crores towards product development - Since assessee was not financially sound and was a loss-making concern, it, instead of claiming entire deduction for said expenses as a revenue expenditure in one year, claimed deduction on a deferred revenue basis . However, for assessment years 1997-98 and 1998-99, Assessing Officer treated claim of assessee as being under section 35D and on that basis, he disallowed expenditure claimed by it as having been incurred in earlier years - On further appeal, Tribunal allowed the claim of deduction of product development expenses stating that the same had been allowed in assessment year 1996-97, its claim was required to be allowed for relevant assessment years also - Whether Tribunal was justified in holding so - Held, yes. **[CIT VS. *Harig Crank Shafts Ltd.* [2008] 173 TAXMAN 152 (DELHI H.C.)] [in favor of assessee]** ➢ Section 37, read with section 115J, of the Income-tax Act, 1961 - Business expenditure - Allowability of - Tribunal in its impugned order held that expenditure incurred by assessee on replacement of machinery was deductible under section 31 and expenditure incurred on purchase of ring frames would be deducted while computing book profit under section 115J - Whether since ring frames replaced were in place of frames which were decades old and replacement of which had become unavoidable, only gain for assessee by such replacement was efficient functioning of frames without intermittent breakdowns, and, therefore, expenditure incurred on that would be deductible under section 37 - Held, yes **[CIT VS. Gitanjali Mills Ltd. [2004] 136 TAXMAN 21 (MAD. H.C.)] [in favor of assessee]** ➢ The character of expenditure shall change merely because it was spent out of a subsidy amount received from Government - Held, no - Assessee was engaged in business of production and distribution of electricity in State of Andhra Pradesh - It received certain amount from Government as subsidy to meet part of expenditure to be incurred for rectification and improvement of power line damaged due to cyclone - It incurred/spent certain amount on current repairs out of subsidy amount and claimed deduction of same - Assessing authority disallowed claim of assessee on ground that amount spent on current repairs was out of subsidy amount received from Government and added back impugned amount to income of assessee treating same as capital expenditure - Whether expenditure incurred by assessee on rectification and improvement of power line was a revenue expenditure, even if it was spent out of subsidy amount received from Government - Held, yes. **[DCIT Vs. A.P. State Electricity Board (2011) 130 ITD 1 (Hyd.) (TM)] [in favor of assessee]** ➢ Assessee-company used to manufacture beer under brand name of 'MMB' - Later on, assessee entered into a technical assistant agreement with 'MMB' whereby MMB granted an exclusive licence to assessee to use its know-how for manufacture of products in lieu of royalty - Whether on facts, payment of royalty was in nature of expenditure incurred for carrying on business with available know-how rather than for accretion to capital base or gain an advantage in capital field of assessee and, therefore, same was allowable as revenue expenditure - Held, yes [Para 15] [In favour of assessee] **[CIT VS. Artos Breweries Ltd. [2013] 33 taxmann.com 144 (Andhra Pradesh)] [in favor of assessee]** ➢ Assessee secured licence to exploit software for purpose of cellular services - As per agreed specification, it had to procure hardware also and, thus, software as well as hardware were made an integral part of a composit arrangement, under which software had such features so

	as to cater to hardware - Whether software expenses would be capital in nature - Held, yes [Para 8] [In favour of revenue] **&** Allowability of - Installation charges - Whether test 'all expenditure necessary to bring such aspects into existence and to put them in a working condition' is a determinative test for installation and other charges needed to effecturate working condition of leased equipment - Held, yes - Whether charges incurred towards installation of plant and machinery reflected in balance sheet under head 'Plant and machinery given on lease' were in capital field - Held, yes [Para 5] [In favour of revenue] **[Bharti Televentures Ltd. VS. ACIT [2013] 29 taxmann.com 326 (Delhi H.C.)] [in favor of Revenue]** ➢ Assessee claimed deduction of a sum expended towards restructuring of term loan - Revenue taking a view that restructuring of such loan would earn enduring benefit to assessee, held it as capital expenditure - However, Tribunal allowed assessee's claim on ground that assessee had already obtained a loan and, therefore, same could not be treated as an asset or as an advantage of enduring nature, and any expenditure incurred on same was to be allowed as business expenditure - Whether, where loan was incidental to assessee's business, any expenditure incurred for restructuring of such loan or for securing borrowing on more advantageous conditions, could not be seen as resulting into benefit of enduring nature, so as to be categorized as capital expenditure - Held, yes **[DCIT Vs. Gujarat Narmada Valley Fertilizers Co. Ltd. [2013] 33 taxmann.com 117 (Gujarat)] [In favour of assessee]** ➢ Allowability of - Installation charges - Whether test 'all expenditure necessary to bring such aspects into existence and to put them in a working condition' is a determinative test for installation and other charges needed to effecturate working condition of leased equipment - Held, yes - Whether charges incurred towards installation of plant and machinery reflected in balance sheet under head 'Plant and machinery given on lease' were in capital field - Held, yes [Para 5] **[In favour of revenue] &** Allowability of - Software expenses - Assessee secured licence to exploit software for purpose of cellular services - As per agreed specification, it had to procure hardware also and, thus, software as well as hardware were made an integral part of a composit arrangement, under which software had such features so as to cater to hardware - Whether software expenses would be capital in nature - Held, yes [Para 8] **[Bharti Televentures Ltd. Vs. ACIT [2013] 29 taxmann.com 326 (Delhi H.C.)] [In favor of revenue]** ➢ Where assessee was engaged in business of printing and it incurred a sum of Rs. 173.44 lakhs for repairs, renovation, restoration and replacement of major parts of a particular machine and replacement resulted in a new or fresh advantage, said expenditure was neither allowable under section 31(1) nor under section 37(1). **[In favour of revenue] [DCIT Vs. Printers (Mysore) (P.) Ltd. [2013] 33 taxmann.com 140 (Bangalore - Trib.)]** ➢ Where assessee was engaged in business of printing and it incurred a sum of Rs. 173.44 lakhs for repairs, renovation, restoration and replacement of major parts of a particular machine and replacement resulted in a new or fresh advantage, said expenditure was neither allowable under section 31(1) nor under section 37(1). **[DCIT Vs. Printers (Mysore) (P.) Ltd. [2013] 33 taxmann.com 140 (Bangalore - Trib.)] [In favour of revenue]** ➢ Non-compete fee paid by assessee to its erstwhile partner as consideration for not setting up any business of similar nature for a period of seven years amounted to capital expenditure and, thus, same was not allowable under section 37(1) [**Sharp Business System Vs. CIT [2012] 27 taxmann.com 50 (Delhi H.C.)] [In favour of revenue]** ➢ Whether test of enduring benefit alone is not conclusive for treating any expenditure as capital expenditure and it is relevant to find out or ascertain as to whether such expenditure results into an advantage of enduring nature to assessee in capital field or revenue field so as to

	decide exact nature of said expenditure and allowability of same under Act - Held, yes - Assessee-company claimed deduction of entire expenses incurred on marketing of newly launched products though in its profit and loss account it claimed only one-tenth of expenses as deduction, treating same as deferred revenue expenditure - Whether nature of expenses was such that they did not result in enduring benefit to assessee and treatment in books of account of assessee could not be said to be conclusive - Held, yes - Whether, therefore, expenditure in question was revenue in nature and was allowable - Held, yes **[ACIT Vs. Medicamen Biotech Ltd. [2005] 1 SOT 347 (DELHI H.C.)] [in favor of assessee]** ➢ Business expenditure - Allowability of - Assessment year 1995-96 - Where what was contemplated as subject-matter of sale between assessee and 'AFPL' was transfer of work-in-progress, which included contracts already negotiated but intended to be entered into by way of formal agreement, consideration paid to 'AFPL' could not be held as capital expenditure [In favour of assessee] **[Alacrity Housing Ltd. Vs. CIT [2012] 21 taxmann.com 47 (Madras H.C.)] [in favor of assessee]** ➢ Assessee obtained premises on lease for 39 years - In terms of lease agreement, assessee demolished existing construction and constructed new building to suit its business at its own expenses - In any circumstances assessee would not be entitled for any compensation on account of putting up new construction and it should be treated as tenant subject to payment of rent lower than rent prevailing - Assessee claimed said construction expenditure as revenue expenditure - Assessing Officer rejected its claim and treated said expenditure as capital expenditure - Whether since asset created by assessee by spending amounts did not belong to assessee but assessee got only business advantage of using modern premises at a low rent, thus, saving considerable revenue expenditure for next 39 years, said expenditure should be treated as revenue expenditure - Held, yes **[CIT VS. Madras Auto Service (P.) Ltd. [1998] 99 TAXMAN 575 (SC)] [in favor of assessee]** ➢ Assessee-company was running a textile mill - It incurred expenditure for replacement of ring frames and balancing machines - Assessing Officer treated same as capital expenditure and disallowed same - In CIT v. Sri Mangayarkarasi Mills (P.) Ltd. [2009] 315 ITR 114 / 182 Taxman 141 (SC) Supreme Court has held that expenditure incurred on replacement of individual machineries in a spinning mill, amounts to bringing into existence not only a new asset, but also an enduring benefit to assessee - Whether in view of this judgment, said expenditure could not be allowed as business expenditure - Held, yes **[In favour of revenue] [R.M. Mohite Textiles Ltd. Vs. JCIT [2012] 20 taxmann.com 63 (Pune. ITAT)] [in favor of Revenue]** • ***<u>Decisions relating to Controversies on whether expenditure incurred is wholly & exclusively for business purpose or not :</u>*** ➢ Where landlord incurred expenditure on construction, compensation paid to him for non-occupation of premises by assessee, in lieu of withdrawing claims by landlord, is allowable as revenue expenditure. **[CIT Vs. UTI Bank Ltd. [2013] 32 taxmann.com 282 (GUJ. H.C.)] [in favor of assessee]** ➢ Where assessee made payment of commission to 'M' for procuring orders of medical equipment and said payment was duly approved by its board of directors, assessee's claim for deduction in respect of same was to be allowed. [**CIT Vs. Medical Technologies Ltd. [2013] 32 taxmann.com 386 (Gujarat H.C.)] [in favor of assessee]**

	➢ Where assessee claimed deduction of distribution expenses and Assessing Officer disallowed expenses to some extent stating that same could not be verified at his end, once Assessing Officer himself had failed to verify entries, there was no reason to disallow distribution expenses. **[CIT Vs. Shree Krishna Enterprises [2013] 31 taxmann.com 413 (Punjab & Haryana H.C.)] [in favor of assessee]** ➢ Where terms of lease deed provided that assessee had no right to transfer or alienate machinery in any form, was obliged to re-deliver equipment upon termination of lease agreement, it was a case of genuine lease transaction and, thus, assessee's claim for payment of lease rent was to be allowed U/S 37(1) of the Act. **[CIT Vs**. **Banswara Syntex Ltd. [2013] 31 taxmann.com 176 (Rajasthan H.C.)] [in favor of assessee]** ➢ Where assessee was a public sector undertaking, claim of provision of salary on basis of impending pay revision (in view of Pay Commission Report) should be allowed. [**TATA Communications Ltd. VS. JCIT [2013] 32 taxmann.com 197 (Mumbai - Trib.)] [in favor of assessee]** ➢ 'Pooja expenses' in temple located inside factory premises is business expenditure. **[CIT Vs. Dalmia Cement (Bharat) Ltd. [2013] 29 taxmann.com 227(Delhi H.C.)] [in favor of assessee]** ➢ Where expenditure was incurred by assessee for acquiring technical know-how for carrying out engineering work to suit requirement of particular client and said know-how could not be used by assessee for project of others, it would be a revenue expenditure eligible for deduction under section 37(1). **[CIT Vs. TTG Industries Ltd. (2012) 24 taxmann.com 129 (Mad.)] [in favor of assessee]** ➢ Whether test of reasonableness of an expenditure is to be understood in light of perception of a businessman and benefit of that expenditure for business as pursued by assessee and not as pursued by Assessing Officer - Held, yes - Whether expenditure incurred for pursuit of business and/or exploitation of a business opportunity can be denied by tax authorities on ground that business decision was imprudent - Held, no - Assessee-company had taken on lease four dozers for its business of extraction and sale of iron ore but during relevant assessment year only one dozer was used for said purpose - Assessing Officer disallowed lease rent paid for three dozers holding that it was not prudent business expenditure - Whether how many dozers were to be engaged was a question which could be best considered by assessee and, as such, revenue could not have gone into question of expediency of expenditure incurred and/or expediency of hiring of 4 dozers - Held, yes - Whether, therefore, entire lease rent paid by assessee for hire of dozers was to be allowed as a business expenditure - Held, yes **[CIT Vs. *Salitho Ores Ltd.* [2010] 194 TAXMAN 410 (BOM. H.C.)] [in favor of assessee]** ➢ Where assessee had not purchased or obtained ownership of technical know-how from foreign company and was only a licensee by which it could use know-how for purpose of its business temporarily for which lumpsum payment had been made, such a case was not covered by provision of section 35AB and, hence, assessee was entitled to deduction under section 37(1) - Held, yes **[SAYAJI INDUSTRIES LTD. Vs. DCIT [2000] 108 TAXMAN 82 (AHD. ITAT)] [in favor of assessee]** ➢ Where Assessing Officer has accepted that expenditures are allowable, he cannot restrict same to extent of revenue earned by assessee in year under consideration. **[Venus Records & Tapes (P.) Ltd. Vs. ACIT [2013] 33 taxmann.com 49 (Mumbai - Trib.)] [in favor of**

	assessee] ➢ Assessee's claim for deduction in respect of insurance premium was rejected by Assessing Officer – On appeal, Commissioner (Appeals) allowed assessee's claim only in respect of premium paid on policy of chief cardiac surgeon –Whether moreover, in view of fact that salaries paid to chairman and managing director were always held to be allowable, it clearly indicated that they were also involved in carrying on business of assessee – Held, yes – Whether, in such a situation, all three persons could be considered as key persons and insurance premium paid on keyman insurance policy taken on their lives qualified for deduction under section 37(1) – Held, yes **[Escorts Heart Institute & Research Centre Ltd. VS. ACIT [[2011] 128 ITD 108 (Delhi)] [in favor of assessee]** ➢ where any liability though relating to earlier years, depends upon making a demand and its acceptance by assessee and has been actually claimed and paid in later previous years, such a liability can be disallowed as deduction merely on basis that accounts were maintained on mercantile system and that it related to a transaction of previous year - Held, No. **[Saurashtra Cement & Chemical Industries Ltd. Vs. CIT [1995] 80 TAXMAN 61 (GUJ. H.C.)] [in favor of assessee]** ➢ Whether club membership fee paid by assessee for its employee is allowable as business expenditure - Held, yes [In favour of assessee] [**[KPMG India (P.) Ltd. Vs. ACIT [2013] 33 taxmann.com 251 (Mumbai - Trib.)] [in favor of assessee]** ➢ Section 37(1), read with section 36(1)(vii), of the Income-tax Act, 1961 - Business expenditure - Allowability of [Bad debts] - Assessment year 2003-04 - Whether, since bad debts arising from advances to suppliers cannot be allowed under section 36(1)(vii), same can alternatively be allowed as business loss [Para 9] **[Matter remanded]** [**Greaves Cotton Ltd. Vs. ITO** [**2013] 32 taxmann.com 86 (Mumbai - Trib.)] [in favor of assessee]** ➢ Business expenditure - Allowability of - Assessment years 1998-99 and 1999-2000 - Assessee with an intention of bringing about improvements in way it did its business, had sought for and obtained reports of consultant for assessment of market attractiveness in terms of gaining global markets; to acquaint it with dealing with global markets, evaluation of assessee's business ability to compete; analysis of future growth trend of business; development of detailed business strategies for assessee to grow in a dynamic business environment, etc. - Whether fee paid by assessee to consultant for aforesaid purposes was to be allowed as a revenue expenditure - Held, yes **[CIT Vs. *Carborandum Universal Ltd.* [2009] 177 TAXMAN 347 (MAD. H.C.)] [in favor of assessee]** ➢ Allowability of [Pre-operational expenditure] - Assessment year 2005-06 - Assessee claimed deduction in respect of rates and taxes - Assessing Officer having found that such expenses pertained to land which had been acquired for power project and none of such power project had commenced business, disallowed claim - Whether since business had not commenced yet, expenditure in question being pre-operational expenditure could not be allowed under section 37(1) - Held, yes [Para 24] **[In favour of revenue][Gujarat Power Corpn. Ltd. Vs. ACIT [2013] 33 taxmann.com 318 (Ahmedabad - Trib.)] [in favor of Revenue]** ➢ Allowability of - Assessment years 1993-94, 1994-95 and 1996-97 - Contribution made to traffic police to regulate traffic would not be allowed as business expenditure under section 37(1) **[In favour of revenue] &** Repairing expenses incurred in leased premises to improve

	ambience of office was revenue in nature **[In favour of assessee] &** Where expenses incurred in foreign exchange were towards technical services rendered outside India and not for development of software outside India, same had to be excluded from turnover for purpose of arriving at deduction admissible under section 80HHE **[In favour of assessee] [CIT Vs. Infosys Technologies Ltd. [2012] 21 taxmann.com 532 (Karnataka H.C.)] [in favor of Revenue]** ➢ Where various banks advanced loans to assessee-company on basis of its assets offered as a security to banks and not on basis of personal guarantee of Managing Director of company, guarantee commission paid to Managing Director would not be deductible under section 37(1) **[In favour of revenue] [CIT Vs. United Breweries Ltd.* [2012] 17 taxmann.com 6 (Kar. H.C.)] [in favor of Revenue]** • ***<u>Decisions relating to Controversies on whether expenditure incurred is in the nature of personal or not :</u>*** ➢ where interest was payable on assessee's personal liability of income-tax which was a direct tax and was not a part of business expenditure, interest paid on late payment of tax was an allowable expenditure, as being an expenditure incurred wholly and exclusively for purpose of business - Held, no **[Saurashtra Cement & Chemical Industries Ltd. Vs. CIT [1995] 80 TAXMAN 61 (GUJ. H.C.)] [in favor of Revenue]** ➢ Business expenditure - Allowability of [Foreign tour of spouse] - Assessment year 2005-06 - Whether, where foreign tour of accompanying spouses of Directors is not for business purposes, same is not allowable as deduction - Held, yes [Para 5] **[Harinagar Sugar Mills Ltd. Vs. ACIT [2013] 32 taxmann.com 294 (Mumbai - Trib.)] [In favour of revenue]** • ***Further, <u>Any expenditure incurred by the Assessee for any purpose which is an offence or which is prohibited by law shall not be allowed as deduction</u> while computing the income chargeable under the head " Profit and Gains of Business or profession ".*** ➢ Assessee violated municipal laws by running shop in a residential premises - He was therefore required to pay certain amount towards annual conversion charges to civic agency for carrying out commercial activities besides one-time charges for parking and registration of commercial property - Assessee claimed said amount as revenue expenditure - Whether amount having been paid for violation of Municipal laws for misuse of property would not be allowable in view of Explanation 1 to section 37(1) - Held, yes [Para 9.1] **[In favour of revenue] [Arun Kumar Gupta (HUF) Vs. ACIT [2012] 27 taxmann.com 230 (Delhi ITAT)] [in favor of assessee]** ➢ Forfeiture of bank guarantee against export entitlements was compensatory in nature and not the Penalty and thus allowable as business expenditure u/s 37(1) in absence of contravention of any provision of law. [**CIT Vs. Regalia Apparels (P.) Ltd. [2013] 32 taxmann.com 237 (Bombay H.C.)] [in favor of assessee]**	
Section 37(2B)	Notwithstanding anything contained in sub section (1), no allowance shall be made in respect of expenditure incurred by an assessee on	➢ Advertisement expenditure - Assessment year 1979-80 - During previous year relevant to assessment year 1979-80, assessee

	advertisement in any souvenir, brochure, tract, pamphlet or the like published by the Political party.	had incurred some expenditure by way of advertisement in souvenir published by Indian National Congress - Whether Tribunal was right in holding that provisions of section 37(2B), inserted by Taxation Laws (Amendment) Act, 1978, with effect from 1-4-1979, are applicable to expenditure incurred after said date only - Held, no - Whether, therefore, advertisement expenditure incurred by assessee was to be disallowed as a business expenditure - Held, yes **[Tea Estates India Ltd. Vs. CIT [2003] 128 TAXMAN 495 (MAD. H.C.)] [in favor of Revenue]**