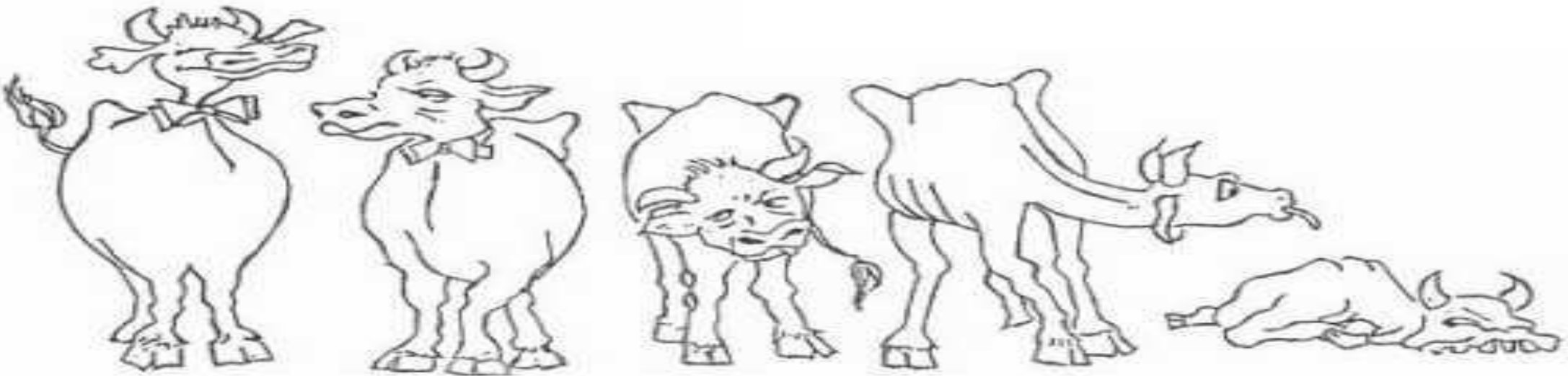


Tax Planning – Profits and gains from business or profession by CMA Niranjan Swain, B.Com, LLB, CS, FCMA





Clarity on Income Tax

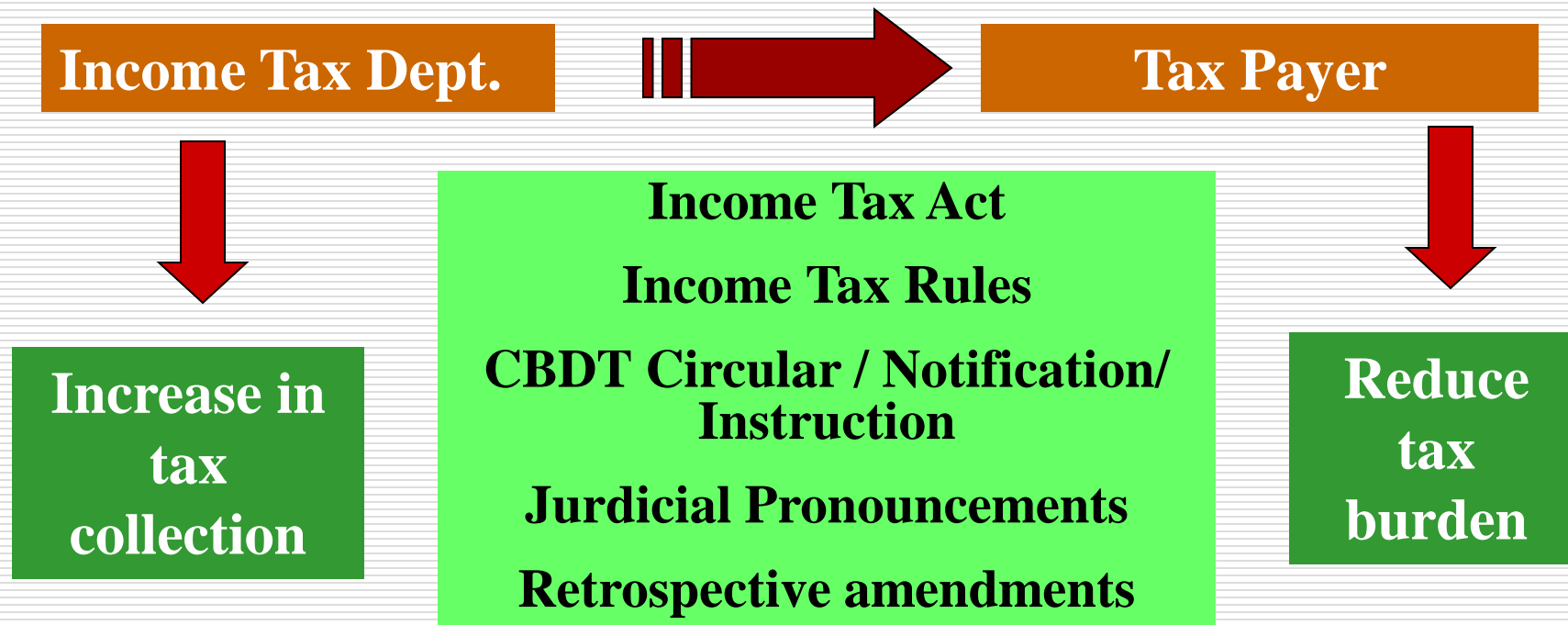
Support from Tax experts & consultants

Harmonizing with Govt official

Compliance by Assessee

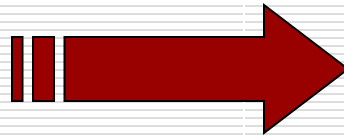
Income Tax Act / Rules

What is the relation?



What is Tax Planning ?

Tax Planning

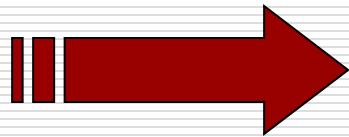


- ❖ Exercise carried out by a corporate tax payer to meet his tax obligations in a proper, systematic and orderly manner
- ❖ availing all permissible
 - exemptions,
 - deductions and
 - relief under the statute as may be applicable in its case

For successful tax planning: -A comprehensive knowledge of Law & tax planning device is not nullified by statutory negation

What is Tax Avoidance ?

Tax Avoidance

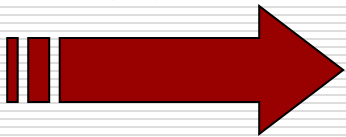


- ❖ Planning to reduce or negating tax liability legally permissible ways
- ❖ Takes into account loopholes of law
- ❖ Tax hedging within frame work of law
- ❖ Intentional tax planning before actual tax liability

It has legal sanction

What is Evasion ?

Tax Evasion:

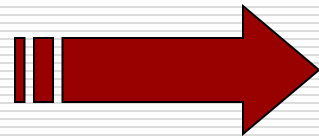


- ❖ Tax liability is illegally avoided
- ❖ Attempted with help of unfair means / methods
- ❖ Tax omission
- ❖ Unlawful / Punishable under law
- ❖ Intentional
- ❑ **Few Examples:**
 - ❖ Mis representation / suppression of facts / providing false information;
 - ❖ failure to record investments in books of account;
 - ❖ claim of bogus expenditure/ expenditure not substantiated by evidence
 - ❖ recording of any false entry in books of account;
 - ❖ failure to record any receipt in books of account having a bearing on total income;
 - ❖ Failure to report any international transaction or deemed international transaction / specified domestic transaction under Chapter X

These are constitute mis reporting of income attracting penalty @200% u/s 270A

Areas of Tax Planning – Income from Business or Profession?

Tax Planning



- **Computation of Taxable Income & determination of tax**
- ❖ **Categorization under source of income**
- ❖ **Claiming deduction of expenses**
- **Tax Compliances**
- **Tax Payments**
- **Management Decisions**

Areas of Tax Planning?

Tax Computation



- Claiming appropriate exemptions.
- Grouping of Income under appropriate Heads of Income
- Claiming deductions under respective heads of income.
- Asset classification for depreciation under section 32.
- Capitalization of Assets
- Claiming deduction in respect of Depreciation / addl. depreciation etc.
- Treatment of Expenses under Ind. AS & GAAP Vs. Income Tax.
- Revenue Vrs. Capital Expenditures

Areas of Tax Planning?

Tax Computation



- Compliance with the provisions of disallowances u/s 40 (a), 40A and 43B
- Presumptive Taxes
- Retiring assets used for scientific research
- Avoidance of Cash Payments
- Transaction with Relatives
- Payment of Certain Liabilities
- Advantage of unabsorbed depreciation.
- Planning for carry forward and setoff of losses
- Claiming Chapter VI A deductions.

Areas of Tax Planning?

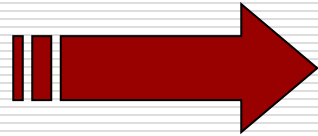
Tax Compliances



- Maintenance of Books of Accounts
- Audits / Tax Audits
- Certifications / Audit certificates
- Filing returns / forms promptly.
- Compliance with various provisions of TDS/TCS.
- Filing Quarterly & Annual returns of TDS.
- Reply to the Tax Authorities
- Timely filling of appeals
- Submission of Rectification Petition
- Submission of Rejoinders
- Appearance before the authorities
- Onus of Claim lies with the Assessee

Areas of Tax Planning?

Tax Payments



- Payment of Advance Tax as per the stipulated schedule.
- Availment of Tax Credit
- Carry forward of Tax Credit
- Avoidance of Interest / Penal Interest
- Avoidance of penalty
- Avoidance of Prosecutions
- Claim of Refund
- Claim of Interest on Interest (payable on Refund)

Meaning of 'Profits'

- (1) **Profits in cash or in kind:** Profits may be realised in money or in money's worth, i.e., in cash or in kind. Where profit is realised in any form other than cash, the cash equivalent of the receipt on the date of receipt must be taken as the value of the income received in kind.
- (2) **Capital receipts:** Capital receipts are not generally to be taken into account while computing profits under this head.
- (3) **Voluntary Receipts:** Payment voluntarily made by persons who were under no obligation to pay anything at all would be income in the hands of the recipient, if they were received in the course of a business or by the exercise of a profession or vocation. Thus, any amount paid to a lawyer by a person who was not a client, but who has been benefited by the lawyer's professional service to another would be assessable as the lawyer's income.
- (4) **Application of the gains of trade is immaterial:** Gains made even for the benefit of the community by a public body would be liable to tax. To attract the provisions of section 28, it is necessary that the business, profession or vocation should be carried on at least for some time during the accounting year but not necessarily throughout that year and not necessarily by the assessee-owner personally, but it should be under his direction and control.

Meaning of Profit

- (5) **Legality of income:** The illegality of a business, profession or vocation does not exempt its profits from tax: the revenue is not concerned with the taint of illegality in the income or its source.
- (6) **Income from distinct businesses:** The profits of each distinct business must be computed separately but the tax chargeable under this section is not on the separate income of every distinct business but on the aggregate profits of all the business carried on by the assessee.
- (7) **Computation of profits:** Profits should be computed after deducting the losses and expenses incurred for earning the income in the regular course of the business, profession, or vocation unless the loss or expenses is expressly or by necessary implication, disallowed by the Act. The charge is not on the gross receipts but on the profits and gains.

Specimen for computing Taxable Income under ICDS framework

Particulars	Amt	Amt
Profit / loss as per profit and loss statement	XXX	
Add/ Less: Adjustments as per ICDS		xxx
Adjusted Income as per ICDS*		XXX
Add/ Less: Adjustments as per the provisions of the Act		xxx
Total Income		XXX

* For any non compliance with ICDS appropriate disclosure should be made.

CMA Niranjan Swain, Advocate & Tax Consultant. Reached at nswain2008@ymail.com

List of Notified ICDS

ICDS	Income Computation and Disclosure Standards	Equivalent AS	Equivalent IND AS
ICDS I	Accounting Policies	AS-1/5	IND AS-1 and 8
ICDS II	Valuation of Inventories	AS-2	IND AS-2
ICDS III	Construction contracts	AS-7	IND AS-11
ICDS IV	Revenue Recognition	AS-9	IND AS-18
ICDS V	Tangible Fixed Assets	AS-10	IND AS-16
ICDS VI	Effects of Changes in Foreign Exchange Rates	AS-11	IND AS-21
ICDS VII	Government Grants	AS-12	IND AS-20
ICDS VIII	Securities	AS-13	IND AS-32
ICDS IX	Borrowing Costs	AS-16	IND AS-23
ICDS X	Provisions, Contingent Liabilities and Contingent Assets	AS-29	IND AS-37

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		Increase in Profit (Rs.)	Decrease in Profit (Rs.)	Net Effect (Rs.)
ICDS I	Accounting Policies			
ICDS II	Valuation of Inventories			
ICDS III	Construction Contracts			
ICDS IV	Revenue Recognition			
ICDS V	Tangible Fixed Assets			
ICDS VI	Changes in Foreign Exchange Rates			
ICDS VII	Governments Grants			
ICDS VIII	Securities			
ICDS IX	Borrowing Costs			
ICDS X	Provisions, Contingent Liabilities and contingent assets			
Total				

- (f) Disclosure as per ICDS:
- i) ICDS-I Accounting Policies
 - ii) ICDS-II Valuation of Inventories
 - iii) ICDS-III Construction Contracts
 - iv) ICDS-IV Revenue Recognition
 - v) ICDS-V Tangible Fixed Assets
 - vi) ICDS-VII Governments Grants
 - vii) ICDS-IX Borrowing Costs
 - viii) ICDS-X Provisions, Contingent Liabilities and contingent Assets

Tax Planning – Categorization of Source of Income –

- ☐ 1. Profits & gains of any business or profession [Sec. 28(i)]
- ☐ 2. Compensation to Management agency [Sec. 28(ii)]: (persons managing business etc)
- ☐ 3. Income of trade or professional association's [Sec. 28(iii)]:
- ☐ 4. Export incentive [Sec. 28(iiia) (iiib) & (iiic)]: An export incentive in form of -
 - ❖ • Profit on sale of import license or duty entitlement pass book. [Sec. 28(iiia)/(iiid)/(iiie)]
 - ❖ • Cash assistance received/receivable by an exporter under a scheme of the Government of India [Sec.28(iiib)]
 - ❖ • Duty draw back (received/receivable) for export e.g. duty drawback, etc. [Sec. 28(iiic)]
- ☐ 5. Value of benefit or perquisite from business or profession [Sec. 28(iv)]: covers contractual or gratuitous – A lawyer received amount from other person who benefited but he is not a client
- ☐ 6. Remuneration to partner [Sec. 28(v)]:

Tax Planning – Categorization of Source of Income –

- ❑ 7. Amount received or receivable for certain agreement [Sec. 28(va)]:
 - ❖ • not carrying out any activity in relation to any business or profession; or
 - ❖ • not sharing any know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provisions for services.
- ❑ 8. Keyman Insurance Policy [Sec. 28(vi)]:
- ❑ 9. Conversion of stock into capital asset [Sec. 28(via)]:
 - ❖ • fair market value determined as per Rule 11UAB as on date of conversion / taken for capitalization is taken as income.
- ❑ 10. Recovery against certain capital assets covered u/s 35AD [Sec. 28(vii)]:

Tax Planning – Categorization of Source of Income – Few Examples

Remission or cessation of liability in respect of any loss, expenditure or trading liability

41(1) Recovery of trading liability by successor which was allowed to the predecessor in assessment

Any liability which is unilaterally written off by the taxpayer from the books of accounts shall be deemed as remission or cessation of such liability and shall be chargeable to tax.

41(2) Amount of sale consideration / insurance compensation / scrap value of depreciable asset in case of power generating units exceeds its WDV shall be chargeable to tax.

41(3) Sale consideration of capital asset used in scientific research

41(4) Recovery of bad debts have been allowed as deduction under Section 36(1)(vii) in earlier years, any recovery of same shall be chargeable to tax.

Tax Planning – Categorization of Source of Income – Few Examples

- 41(4A)** Amount withdrawn from special reserves created and maintained under Section 36(1)(viii)
- 41(5)** Loss of a discontinued business or profession could be adjusted from the deemed business income as referred to in section 41(1), 41(3), (4) or (4A) without any time limit.
- 43AA** Any foreign exchange gain or loss arising in respect of specified foreign currency transactions [subject to Section 43A]
- 43CA** Consideration received for transfer of land or building or both as stock-in-trade is less than the stamp duty value (exceeds 110% of sale consideration)
- 43CB** The profits and gains arising from construction contract or a contract for providing service to be determined on the basis of percentage completion method (ICDS).

Treatment of Other Receipts appeared in Financial Statement

- ❑ Forfeiture of Security deposits / EMD.
- ❑ EMD & Security Deposits Written no more payable.
- ❑ Liquidated damage
- ❑ Insurance claim received against loss of assets / loss of current assets
- ❑ Recovery from employees – Electricity, water charges, house accommodation etc
- ❑ Specified Receipts such as
 - ❖ Royalty in respect of patent developed and registered in India (patentee is resident assessee) – section 115BBF - taxable at 10%
 - ❖ Dividend received by domestic company in excess of Rs.10 lakhs - section 115BBDA taxable at 10%
 - ❖ Income from transfer of carbon credit – Section 115BBG – 10%

Tax Planning – Categorization of Source of Income – Few Examples

Letting out – Income from HP or Business

Chennai Properties and Investments Ltd. v. Commissioner of Income Tax [2015] 373 ITR 673 (SC).

“if a taxpayer is having his/her house property and as part of his/her business he/she is giving the property on rent, the rental income received should be treated as “Business Income” because the taxpayer is having a business of renting his property”.

Rayala Corporation Vs Assistant Commissioner of Income-tax [2016] 386 ITR 500 (SC)

“income from house property received where the taxpayer is into the business of letting out property will be taxed as “Income from Business” and not as “Income from House Property”.

Raj Dadarkar & Associates v. ACIT,[4] Civil Appeal Nos 6455-6460 of 2017 (SC)

“apart from relying on the object clause, the taxpayer would be required to produce or refer any other material to show the conduct of activities as per its constitution documents. Based on the material produced by the taxpayer, the Apex court held that the taxpayer was unable to establish that he was engaged in any systematic or organised activity of providing services to the occupiers of the shops to constitute receipts from them as business income”.

Tax Planning – Categorization of Source of Income – Few Examples

Letting out – Income from HP or Business

CIT Vs Prestige Estate Projects Pvt. Ltd. (Karnataka High Court) Appeal Number : ITA No. 84 of 2010 followed the decision of Commissioner of Income TAX – III vs. Velankani Information System (Pvt) (2014) 265 CTR 250 (Karnataka),

“if assessee is in the business of taking land, putting up commercial building thereon, letting out such building with all furniture as his profession or his business then notwithstanding the fact that he has constructed building and he has also provided other facilities and even if there are two separate rental deeds, it does not fall within the income from house property and as such, question Nos.2 and 3 are answered against revenue and in favour of the assessee.

Tax Planning – Categorization of Source of Income – Few Examples

Interest on FD / deposits – Taxable / reduce from Pre-operative expenses

Bongaigaon Refinery & Petrochemical Ltd., [2001] 251 ITR 329 (SC)

“income derived from house property, guest house, charges for equipment and recoveries from the contractors on account of water and electricity supply during the formation period of the business is not chargeable to tax but had to be adjusted against the project cost; interest income is however taxable.”

Tax Planning – Categorization of Source of Income – Few Examples

Interest on FD / deposits – Taxable / reduce from Pre-operative expenses

Tuticorin Alkali Chemicals and Fertilizers Ltd., Vs CIT, [1997] 227 ITR 172 (SC):

If funds have been borrowed for setting up of a plant and the funds are 'surplus', then by virtue of that circumstances they are invested in fixed deposits, the income earned in the form of interest will be taxable under head 'income from other sources'.

CIT Vs. Bokaro Steel Ltd. [1999] 236 ITR 315 (SC):

If income is earned, whether by way of interest or in any other manner on funds, which are otherwise 'inextricably linked' to the setting up of the plant, such income is required to be capitalized to be set off against preoperative expenses.

Tax Planning – Categorization of Source of Income – Few Examples

Interest on FD / deposits – Taxable / reduce from Pre-operative expenses

**Pr. CIT Vs. Facor Power Ltd.,
[2016] 66 Taxmann.com 178 (Delhi),**

“there is a finding of fact that the money placed in the fixed deposits was inextricably linked with the setting up of the power plant. Thus, the revenue generated on account of interest on Fixed Deposit would be in the nature of a capital receipt and not revenue. This case has been decided on the basis of this principle and not on the basis that the source of the funds was through raising of share capital and not through borrowings.”

Indian Oil Panipat Power Consortium Ltd. Vs. ITO, 181 Taxman 249 (Del.)

“The funds in the form of share capital were infused for a specific purpose of acquiring land and the development of infrastructure. Therefore, the interest earned on funds primarily brought for infusion in the business could not have been classified as ‘income from other sources’. Since the income was earned in a period prior to commencement of business, it was in the nature of capital receipt and hence, was required to be set off against preoperative expenses.”

Tax Planning deduction of Expenses in computation

- ❑ The general considerations applicable to tax planning in the field of business deductions, revolve round their-
- ❑ (a) Allowability.
- ❑ (b) Year of allowability.
- ❑ (c) Amount of allowability (disallowing provisions if any),
- ❑ (d) Carry-forward in future years

❑ The Supreme Court's decision in C.I.T. vs. Gemini Cashew Sales Corporation (1967), 651 T.R. 642 emphasizes the principle that

if the liability to make the payment has arisen during the previous year, it must be appropriately regarded as the expenditure of that year and merely because the payment in respect of the expenditure is made in the subsequent year, the assessee would not be entitled to claim deduction in respect thereof in the subsequent year. As pointed out earlier, this is subject to the provisions of section 43B.

Interest Income Business Income or Income from Other Sources

CIT v. Lok Holdings [2009] 308 ITR 356 (Bom)

Where a real estate developer receives advances from intending purchasers and derives interest income from the bank on deposit of such advances, such interest income is income from business

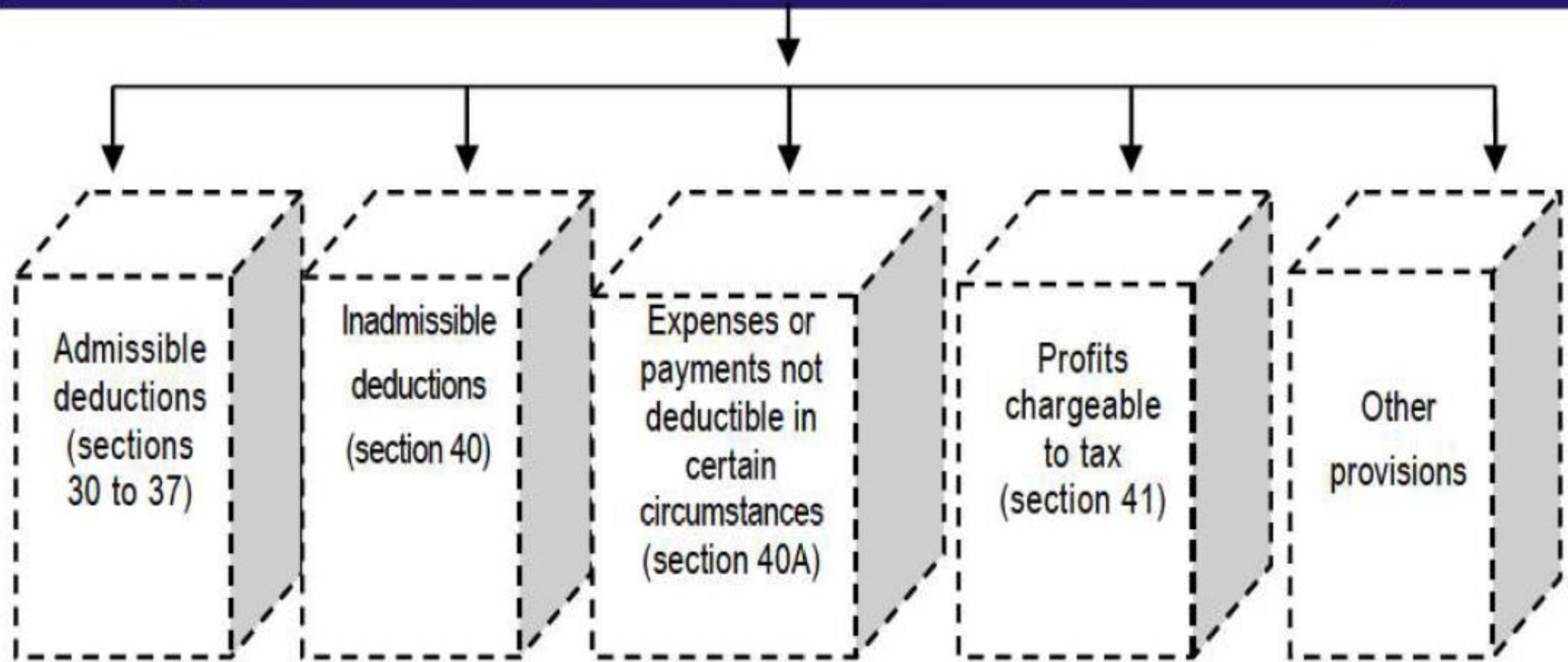
Following **CIT v. Paramount Premium P. Ltd. [1991] 190 ITR 259 (Bom)**,

Distinguishing the case of the Supreme Court in **Tuticorin Alkali Chemicals and Fertilisers Ltd. v. CIT [1997] 227 ITR 172** as relating to a business, which had not commenced during the year.

CIT v. Karnal Co-operative Sugar Mills Ltd. [2000] 243 ITR 2 (SC)

Interest on deposit of money for opening letter of Credit for the purchase of machinery required for setting up its plant in terms of agreement will reduce the cost of machinery.

Computation of income from business or profession (Section 29)



Tax Planning – Fulfill of conditions & categorization of Assets

☐ **Conditions for claiming depreciation**

- ❖ **Condition 1:** Asset must be owned by the assessee.
- ❖ **Condition 2** It must be used for the purpose of business or profession.
- ❖ **Condition 3** It should be used during the relevant previous year.
- ❖ **Condition-4:** Depreciation is available on tangible as well as intang

☐ **Assets which are qualified for depreciation** —

- ☐ ■ **Tangible assets:** Building, machinery, plant or furniture
- ☐ ■ **Intangible assets:** Know-how, patents, copyrights, trade marks, licences, franchises or any other business acquired after or commercial rights of similar nature

Inclusive definitions – few examples

Building / Plant

- ❑ The word ‘buildings’ includes roads, bridges culverts, wells and tube-wells. This is clear from Note 1 to Appendix I to the Income-tax Rules, 1962.
- ❑ The word “plant” is defined under section 43(3) to include ships, vehicles, books, scientific apparatus and surgical equipment used for the purpose of the business or profession but does not include tea bushes or livestock or “buildings or furniture and fittings”.
- ❑ With effect from the assessment year 2004-05, building, furniture or fittings cannot be taken as plant.
- ❑ Building means superstructure only and does not include land. In other words, value of building on which depreciation is allowed does not include the cost of land or site on which the superstructure stands because there cannot be any question of the destruction of the site—*CIT v. London Hotel* [1968] 68 ITR 62 (Bom.) and *CIT v. Alps Theatre* [1967] 65 ITR 377 (SC).

Inclusive definitions – few examples

Instances Article held as Plant

Designs ; drawings ; plans and technical data ; fencing around the refinery process unit ; safe deposit lockers cabinets ; coal tubs ; cast iron pipes ; winding and guiding ropes ; knives and lasts used in the manufacture of shoes ; aircraft engines (which were being dismantled) ; electrical fans and other office appliances ; poles ; cables, conductors and switch-boards for distribution of electricity ; mains, service lines and switchgears in the case of electric supply company ; light fittings, ceiling and pedestal fans ; air-conditioning equipment installed in safe deposit vault by a bank ; electric stoves used for the purpose of business ; dry dock for the use of ship builders and ship repairers and marine engineers ; railway siding used for the purposes of goods manufactured by the factory ; cylinders used for storing of oxygen gas by a concern manufacturing oxygen gas ; winding and guiding ropes; internal telephone system ; cooling coils installed by a sugar manufacturer to facilitate more rapid formation of sugar crystals ; technical know-how in the form of blueprints, technical manuals, research experience, workshop drawings, clearance tables, part lists, manufacturing instruction ; specification for materials, bottles and shells (belonging to soft drink manufacturer) ; tubewell ; weighing machine (used in production of paper) ; wall clock installed in factory; bins/racks/shelves kept in workshop ; shuttering material in construction; lockers, counters, guns, steel equipment, electrical fitting; cooling equipment; bamboo used in business of hiring to customers, underground cables used by the assessee having communication network and exchanges as main apparatus, etc.

Inclusive definitions – few examples

Instances Article held as Plant

- ❑ Peripheral such as printer, scanner, NT server, UPS etc form an integral part of the computer and same therefore depreciable at higher rate. **Expeditors International (India) Pvt Ltd v. CIT (2008) 118 TTJ (Del) 652 / ITO v. Omni Globe Information Technologies India (p) Ltd (2011) 131 ITD 280 (Del) / CIT v. Ram Krishna Varma (2012) 24 taxmann.com 82 (JP), CIT v. Cusmo Films Ltd (2012) 139 ITD 628 (Del) / CIT v. Ushodaya Enterprises Ltd (2012) 19 ITR (Trib) 199 (Hyd) / CIT v. Cactus Imaging India (p) Ltd (2018) 256 Taxman 32 (Mad) / I American Express Services India Ltd v. CIT 92013) 57 SOT 22 (Del)**
- ❑ Software license expenditure which are valid for long term but are part and parcel of computer system are eligible for depreciation at the rate of 60% - **CIT v. Zybus Infrastructure Pvt Ltd (2016) 72 taxmann.com 199 (Ahd)**
- ❑ Any device used along with computer with an integrated function comes within ambit of expression “computer” – **Ushodaya Enterprise Ltd v. CIT (2014) 149 ITD 352 (Hyd)**

Tax Planning – Depreciation on capital Expenditure on Lease Property

Capital expenditure on construction of any structure in a building taken on lease

[Expln. 1 to sec. 32(1)] - If an assessee carries on business or profession in a building not owned by him but in respect of which he holds a lease or other right of occupancy, he is entitled to depreciation in respect of capital expenditure incurred by him on construction of any structure or any work in relation to the building by way of improvement, renovation or extension.

□ **Explanation 1 to section 32(1):** Expenditure on construction of road/bridge by an assessee on leased land provided by a State Government, is qualified for depreciation by virtue of) – **CIT v. Noida Toll Bridge Co. Ltd.** [2013] 213 Taxman 333 (All.).

□ **Non applicable of Explanation 1 to section 32(1):** Where, however, construction is carried out by the owner lessor and expenditure is only reimbursed by the assessee lessee, **Explanation 1** to section 32(1) is not applicable and depreciation is not available to the assessee - **Mother Hospital (P.) Ltd. v. CIT** [2017] 247 Taxman 12 (SC).

□ Depreciation on building constructed on leased land is admissible even if the agreement provides that after the expiry of lease, the building would be handed over to the lessor without compensation— **Y.V. Srinivasamurthy v. CIT** [1967] 64 ITR 292 (Mys.).

Allowability of Depreciation

1.Assets must be used during the previous year

- ☐ Unite Products Ltd. v. ITO [2018]22 SOT 430 (Mum.) ,
- ☐ CIT v. Bharat Alumimium Co. Ltd. [2010]187 Taxman 111 (Delhi),
- ☐ Swati Synthetics Ltd. V. ITO [2010] 38 SOT 208 (Mum.)
- ☐ CIT v. Oswal Agro Mills Ltd, [2011]197 Taxman 25 (Delhi),
- ☐ Sony India (P) Ltd.v CIT [2017] 292 CTR (Delhi) 396,
- ☐ CIT v. Galileo India (P) Ltd [2016] 52 ITR (Trib.) 294 (Delhi).

2.One Asset is ready to use means it is used

- ☐ Whittle Anderson Ltd. v CIT [1971] 79 ITR 613 (Bom.),
- ☐ Capital Bus Service (P) Ltd. v. CIT[1980] 123 ITR 404 (Delhi),
- ☐ CIT v. Viswanath Bhaskar Sathe [1937] 5 ITR 621 (Bom.).
- ☐ CIT v. Refrigeration & Allied industries Ltd [2001] 247 ITR 12 (Delhi),

3. Depreciation is allowable even if not used during the year.

- ☐ Yamaha Motor India (p) Ltd. [2009] 183 Taxman 228 (Mad.)
- ☐ NTPC Ltd v. CIT 2012] 211 Taxman 505 (Delhi).

Trial Run Period – Availing Depreciation

- ❑ Even trial run of a machinery would fall within the ambit of used for the purpose of business; further, the assessee cannot be denied the benefit of depreciation on the ground that the machinery was used for a very short duration for trial run—

CIT v. Ashima Syntax Ltd. [2001] 251 ITR 133 (Guj.),
CIT v. Union Carbide (I) Ltd. [2002] 124 Taxman 859 (Cal.),

Auro food Ltd. v. CIT [2005] 4 SOT 346 (Chennai)—
CIT v. Mentha and Allied Products [2010] 326 ITR 297 (All.),

Jeypore Sugar Company Ltd. v. CIT [2011] 9 taxmann.com 122 (Visakhapatnam-ITAT).

- ❑ depreciation will be allowed even if the plant and machinery was used for trial run and some quantity was manufactured.

Pr. Commissioner of income Tax V/s Larsen & Tourbo Ltd. ,
(SLP dismissed),

- ❑ Section 32 does not contemplate that manufacturing or production should have actually commenced nor does it contemplate that assets should be used for whole of the assessment year. Depreciation would be allowed when the machinery was installed before the end of the financial year and used only for the trial run, though not for the production.

Commissioner of Income Tax V/s Escorts Tractors Ltd,
Delhi High Court [2015] 56 taxmann.com 333 Delhi,

Depreciation

CIT V. Natural Peroxide Ltd. (2003) SOT 321 (Mumb)

Forced idleness of the machinery cannot disentitle the assessee from getting the benefit of allowance.

Vindhyanal Distilleries (P) Ltd. (2005) 147 Taxman 127(MP).

Viswanath Bhaskar Sethe V. CIT 10 ITC 386(Bomb)

Provisions of Sec 32 may be given a wider meaning and embrace passive as well as active user

CIT, New Delhi v. Insilco Ltd. [2009] 179 Taxman 55 (Delhi)

Judgment Applied: *CIT v. Southern Petrochemical Industries Corpn. Ltd.* [2007] 292 ITR 362 (2007) (Mad)

Treatment of machinery spares – Depreciation there on u/s 32

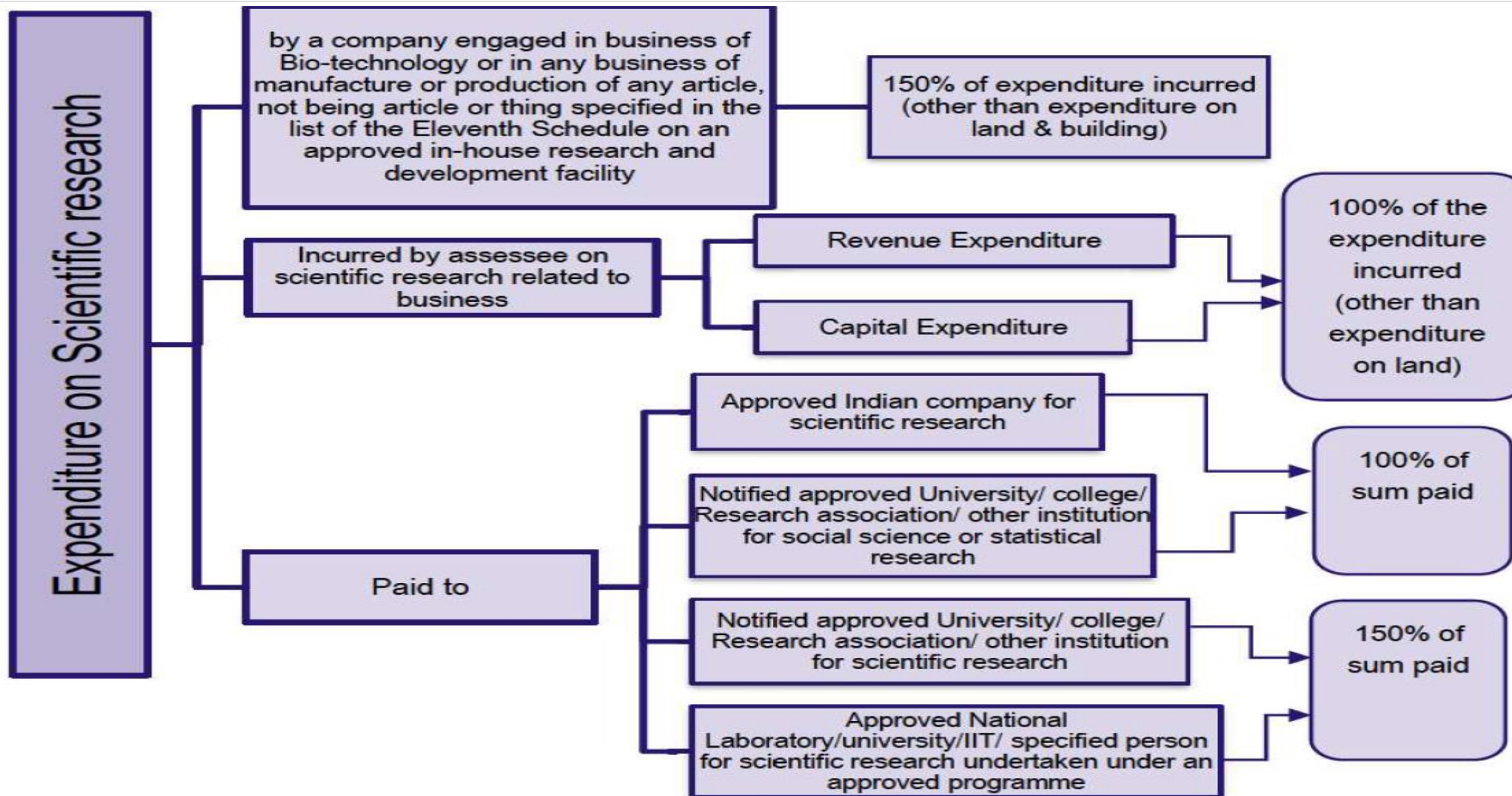
The expression 'used for purposes of business' appearing in section 32 takes into account emergency spares also which even though ready for use are not as a matter of fact consumed or used during relevant period as these are spares specific to a fixed asset and will, in all probability, be useless once asset is discarded. Depreciation u/s 32 is allowable in respect of emergency spares of plant and machinery even though they have not been used during relevant period.

Expenditure on Repair of Assets:

- ❑ The basic test to find out as to what would constitute current repairs is that the expenditure must have been incurred to 'preserve and maintain' an already existing asset, and the object of the expenditure must not be to bring a new asset into existence or to obtain a new advantage—*CIT v. Saravana Spg. Mills (P.) Ltd.* [2007] 163 Taxman 196 (SC).
- ❑ Integrated process of manufacture of yarn in textile mill or for that matter inter-connection among the various machines does not take away the independent identity and distinct function of each machine. It held that each machine in a textile mill should be treated independently as such and not as mere part of an entire composite machinery of the spinning mill. It is ruled out that the deduction either as current repairs or under the residuary head as it termed as a capital expenditure - *CIT v. Sri Mangayarkarasi Mills (P.) Ltd.* [2009] 182 Taxman 141 (SC)
- ❑ Expenditure incurred towards cost of replacement of a machinery cannot be allowed under section 31—*CIT v. Sree Ayyanar Spinning & Weaving Mills Ltd.* [2012] 211 Taxman 534 (SC)
Cost of Improvement / Repair

Claiming capital expenses as deduction in computation

- ❑ Expenditure on road construction is a capital expenditure which is eligible for depreciation. Contribution to outsiders for road construction is deductible if it is advantageous to the assessor's business-
 - ❖ *L. H. Sugar Factory & Oil Mills (P) Ltd. v. CIT*[1980] 125 ITR 293 (SC),
 - ❖ *Panipat Co-operative Sugar Mills Ltd. v. CIT* [1977] 108 ITR 111 (Punj. & Har.),
 - ❖ *D. P. Chairania & Co. v. CIT*[1978]112 ITR 12 (Kar.),
 - ❖ *Hindustan Machine Tools Ltd. v. CIT*[1988] 40 Taxman 43 (Kar.).
- ❑ Expenditure on repairing of an existing road (e.g., expenditure for conversion of metal road into concrete road) is deductible.
 - ❖ *CIT v. Shree Cement Ltd.*[2016] 76 taxmann.com. 130
- ❑ On the other hand, if construction of a road is not advantageous to the assessee's business contribution towards its construction is not an allowable deduction-
 - ❖ *L. H. Sugar Factory & Oil Mills (P) Ltd.v.CIT* [1980]125 ITR 293 (SC).
- ❑ A company must be obliged to construct pipelines for the purpose of its business but under conditions whereby the pipelines ultimately become the property of a municipal corporation rather than the company itself. Although the pipelines undoubtedly constitute tangible assets the expenditure may not be regarded as of a capital nature, since the assets do not belong to the company but to some other person.
 - ❑ *Lakshmiji Sugar Mills Co. P. Ltd. vs. CI T* 82 ITR 376].



Deduction of Bad debt / Trade Receivable Written Off– Sec 36(i)(vii)

☐ Condition of allow ability

- ❖ There must be a debt.
- ❖ Debt must be incidental to Business.
- ❖ Debt must have been taken into account in computing taxable income.
- ❖ Debt must have written off in the books of Accounts.
- *No requirement for charging to statement of P/L – Circular No.19/ 2015 dtd.27th Nov 2015.*
- *No Proof is required to demonstrate the debt had become bad.*
- *Witten off is sufficient to claim deduction.*

☐ Witten off is sufficient to claim deduction.

“After 1.4.1989, for allowing deduction for the amount of any bad debt or part thereof under section 36(1)(vii) of the Act, it is not necessary for assessee to establish that the debt, in fact has become irrecoverable; it is enough if bad debt is written off as irrecoverable in the books of accounts of assessee.”

T.R.F. Ltd. V. CIT (2010) 190 Taxman 391(SC)

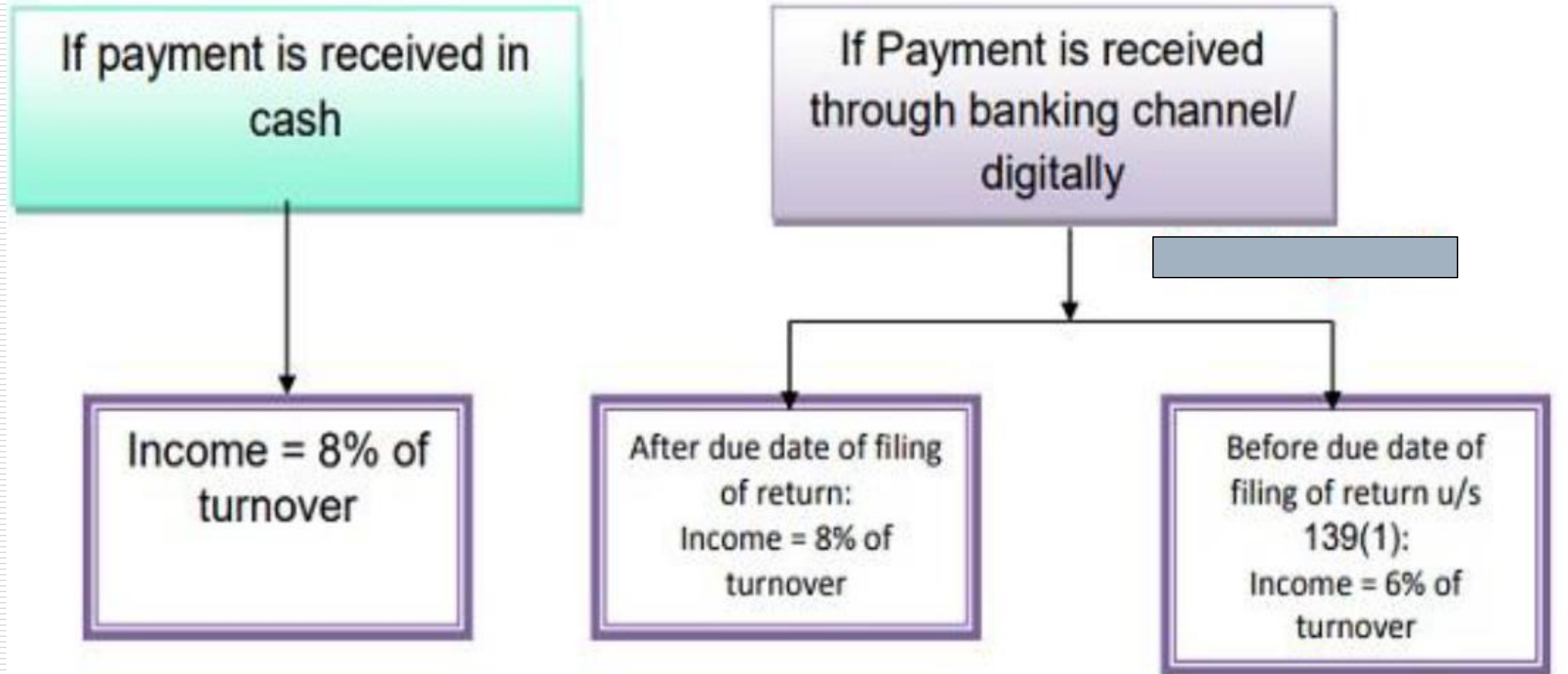
CBDT Circular No.12/2016 dated.30.05.2016

☐ Adjustment of Recovery of Bad debt as Income – Sec.41(4)

Tax Planning - Restrict Cash Transactions

- ☐ **Payment to Political Parties / Electoral Trust:**
 - ❖ *Expenditure on Advertisement Sec 37(2B) – Souvenir, Brochure, Tract, Pamphlet etc published by Political Parties*
 - ❖ *Contribution to political / electoral trust parties – U/s 80GGB/80 GGC – by Cheque only*
- ☐ **Section 40A(3): Payment against expenses accounted during the year / Section 40A(3A): Payment against expenses accounted during past years.**
- ☐ **Payment made in excess of Rs.10,000 otherwise than by Account Payee Cheque / Account Payee Bank Draft / through electronics mode in a banking channel**
- ☐ **Restriction in acceptance cash Loans / deposits – Section 269SS – > Rs.20,000**
- ☐ **Prohibition of loans deposits in cash (Sec 269T) – Limit Rs.20,000**
- ☐ **Restriction of cash transaction (Sec 269T) – Limit Rs.2,00,000**
- ☐ **Disallowance of capital expenditure (Section 35AD & 43(1) – Limit Rs.10,000**
- ☐ **Disallowances of Scientific Research & Rural development Donation – (Section 80GGA) – Rs.2000**

Tax Planning – Increase in income Other than cash transaction



Tax Deduction at Source and timely deposit of TDS / Equalisation Levy / Royalty / Levy

Payment made without deduction of tax at source

- ❑ *When recipient is Non Resident – Section 40(a)(i) - Interest, Royalty, technical fee and other sum (other than salary)*
- ❑ *Salary Payable Outside India Section 40(a)(iii)– Resident or Non Resident / In India to Non Resident*
- ❑ *Non deduction of Equalisation Levy 40(a)(ib) -Salary Payable Outside India without deduction of tax at source-40(a)(iii) Chargeable to tax, paid / payable in India or Outside India*
- ❑ *Dis-allowances of Royalty, licence fees etc in case of State Government Undertakings – Sec 40(a)(iib)*
- ❑ *Provident Fund payment without TDS – 40(a)(iv) –*
- ❖ *Management of the Company to draw attention of the Trust that TDS to be deducted as per provision of IT Act and to be confirmed by the Secretary of the PF Trust: CIT v. Delhi Cloth Mills Co Ltd [1981] 127 ITR 22 (Delhi)*
- ❑ *Any sum payable to a Resident – 40(a)(ia) - Expenses covered under TDS provisions except Sections 192 / 195*
 - ❖ *Salary*
 - ❖ *Interest*
 - ❖ *Dividend*
 - ❖ *Payment to contractor*
 - ❖ *Commission / brokerage*
 - ❖ *Rent*
 - ❖ *Payment on purchase of Immovable property*
 - ❖ *Technical / professional fee, royalty, fees to part time Director*
 - ❖ *Payment of compensation on acquisition of immovable property*

Tax Deduction at Source and timely deposit of TDS / Equalisation Levy / Royalty / Levy

☐ Consequences in TDS default:

❖ *Disallowances of Expenses:*

- *100% disallowances of expenditure / payment to Non Residents & allowable during year of deduction / deposit of TDS*

- *30% disallowances of expenditure / payment to Residents & allowable of balance during the year of deduction / deposit of TDS*

❖ *Assesee in default u/s section 201(1)*

❖ *Levy of Penalty (Sec-271C/ Prosecution 276B / Interest 201(1A) –*

- ☐ No penalty / imprisonment / disallowances if tax deposited by the Payee and Income taken in filling return u/s 139(1).

- ☐ Interest is only Payable.

- ☐ Notification No. 37/2012 dated 12-9-2012, (Rule 31ACB & Form No. 26A for submission of Certificate)

- ❖ *Hindustan Coca cola Beverage (P) Ltd. v. CIT (2007) 163 Taxman 355(SC)*

- ❖ *CIT v. Sahara India Commercial Corporation Ltd (2017) 395 ITR 734 (All)*

- ❖ *Gaziabad Development Authority V. Union of India (2017) 395 ITR 597 (All)*

- ❖ *CIT v. Punjab Infa. Development Board (2017) 394 ITR 216 (P & H)*

Tax Deduction at Source and timely deposit of TDS / Equalisation Levy / Royalty / Levy

- ❑ Disallowability applicable to capital / revenue expenses
- ❑ TDS default u/s 194A for interest, depreciation on interest component capitalized cannot be denied by involving the provisions of section 40(a)(ia)
 - ❖ *Sonic Biochem Exraction (P) V.ITO (2013) 59 SOT 4 (Mumbai)*
 - ❖ *Kawasaki Microelectronics Inc. V.DCIT(2015) taxmann.com 256 (Bang- Trib)*
 - ❖ *SAB Miller India Ltd. V.CIT (2015) 63 taxmann.com 341 (Mumb)*
- ❑ TDS Defaults is applicable on amount paid or payable:
 - ❖ *Palm Gas Service v. CIT [2017] 81 taxmann.com 43 (SC)*
- ❑ Short deductions—not treated as assessee in default u/s 201(1)
 - ❖ *CIT V. S.K.Tekeriwal(2011) 15 taxmann.com 289(Kol Trb)*
 - ❖ *CIT V. chandabhoy & Jassobhoy (2012) 49 SOT 448 (Mumb)*
 - ❖ *UE Trade Corpn (India) Ltd. V. C.I.T.(2012) 54 SOT 596 (Delhi)*
 - ❖ *Three star Grantees(P)Ltd. V. CIT(2014) 49 Taxmann.com 578 (Coachin)*
 - ❖ *C.I.T. V. KK. Builders(P)Ltd. (2015) 62 taxmann.com 187(Patna)*
 - ❖ *C.IT V. Kishore Rao(2016) 387 ITR 196(Kar)*
 - ❖ *Dish TV India Ltd. V. CIT (2017) 86 taxman.com 117(Mumb)*
- Contrary Ruling *CIT V. PVS Memorial Hospital Ltd. (2015) 234 Taxman 46(Ker)*

Tax Planning – Computation of Business Income

Allowable expenditure subject to section 43B -

- ❑ Allowable of expenditure on cash basis or paid by due date of filing return.**
- ❖ Any tax, duty, cess or fee paid under any law in force**
- ❖ Contribution by Employer to any recognized employee's benefit fund:**
- ❖ PF fund, Superannuation fund, Gratuity fund before the due date for depositing those funds or before the due date of filing income tax returns.**
- ❖ Bonus or commission payable to employees-**
- ❖ Interest on borrowings from Public Financial Institutions or State Financial Corporation, Schedule banks etc. (No Govt. Loan / Other Loan)**
- ❖ Leave encashment provided by an employer to his employees**
- ❖ Payment to Indian Railways**

Leave Salary – Allowable on payment basis
Section 43B – Constitutionally Valid

Union of India v. Exide Industries Ltd, [2020] 116 taxmann.com 378 (SC)

- ❑ SC upholds constitutional validity of clause (f) in Section 43B of the 1961 Act is held to be constitutionally valid and operative for all purposes 43B
- ❑ Allowable as deduction of leave encashment on payment basis

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Tax Planning – Computation of Business Income

Allowable of Contribution to PF - subject to section 43B -

- ❑ Employees Contribution to PF / welfare Fund not deductible U/S 36(1) (va), if not paid before statutory due date / even if credited/paid on or before due date of submission of return of income u/s 139(1)

CIT v. South India Corporation Ltd.[2015] 232 Taxman 241(Ker.).

CIT v. Merchem Ltd. [2015] taxmann.com 119(Ker.).

Contrary Rulings:

- ❖ CIT v. Kichha Sugar Co.Ltd [2013]217 Taxman 64(Raj.),
- ❖ CIT v. Hemla Embroidery mills (P) Ltd.[2013] 217 Taxman 207 (Punj. & Har.),
- ❖ CIT v. Ozer Merchant Co-operative Bank Ltd.(2014) SOT 14 (Pune),
- ❖ CIT v. State Bank of Bikaner & Jaipur [2014] 225 Taxman 6 (Raj.).
- ❖ CIT v. Jaipur Vitran Nigam Ltd. [[2015]228 Taxman 214 (Ran.).
- ❖ Sadbhav Engg. Ltd v. CIT[2014] 45 Taxmann.com 333 (Ahd.),
- ❖ CIT v. Magus Customers Dialog (P) Ltd.[2015] 231 Taxman 379 (Kar.)
- ❖ Bihar State Warehousing Corpn. Ltd.v CIT[2017] 393 ITR 386 (Pat.),
- ❖ CIT v. Rajasthan State Ganganagar Sugar Mills Ltd. [2017] 393 ITR 421 (Raj.).
- ❖ CIT v. Rajasthan State Beverage Corpn. Ltd [2017] 84 taxmann.com 173 (Raj.).

Tax Planning – Computation of Business Income

Allowable of Contribution to PF - subject to section 43B

- | | |
|--|---|
| <ul style="list-style-type: none">❑ Contribution to welfare funds have been brought at par with the other duty, cess, fee, etc. and the deduction is allowable to the employer assessee if he deposits the contributions to welfare funds on or before the 'due date' of filing of return of income.
❖ CIT v. Alom Extrusions Ltd (2009) 185 Taxman 416 (SC)❖ Circular No.22/2015 dated.17th Dec 2015 | <ul style="list-style-type: none">❑ Deduction of Gratuity u/s Section 43B v. 40A(7) - Payment made to Gratuity Fund, maintained with Life Insurance Corporation, where assessee has no control over irrevocable trust created exclusively for the benefit of employees, is allowable as deduction
❖ CIT v. Verizon Data Services India (P) Ltd. [2015] 43 ITR (Trib.) 436❖ (Chennai), Narasu's Spinning Mills v. CIT [2016]66 taxmann.com 277(Chennai). |
|--|---|

Key differences between IGAAP, Ind AS & ICDS - Provisions

Particulars	AS 29	Ind AS	ICDS/ Tax impact
Recognition of provisions	<ul style="list-style-type: none"> A provision is recognised only when a past event has created a <u>legal or constructive obligation</u>, an outflow of resources is probable, and the amount of the obligation can be estimated reliably. 	<ul style="list-style-type: none"> A provision shall be recognised when all of the following conditions are met: <ol style="list-style-type: none"> an enterprise has a <u>present obligation as a result of a past event</u>; it is <u>probable</u> that an outflow of resources embodying economic benefits will be required to settle the obligation; and a <u>reliable estimate</u> can be made of the amount of the obligation. 	<ul style="list-style-type: none"> As per ICDS, Provisions shall be recognised if it is <u>reasonably certain</u> that outflow of economic resources will be required. Provision is not discounted to NPV The criteria for recognition of provisions on the basis of the test of 'probable' (i.e. more likely than not criteria) replaced with the requirement of 'reasonably certain'. In the absence of definition and scope of 'reasonably certain' criteria, an ambiguity would arise on assessment of 'reasonably certain' criteria. In the Act, there is no specific provision for recognition of provisions. However, provisions are allowed based on accrued liabilities as per ordinary principles of commercial accounting.

Provision for Warranty is allowed as an expenditure upholding the test of 'probable' warranty obligation in the following judgments.

- Rotork Controls India P. Ltd. (2009) 314 ITR 62 (SC)
- Himalaya Machinery (P) Limited v DCIT 334 ITR 64
- CIT vs. Luk India P. Ltd. 52 DTR 117.
- Siemens Public communication Networks Limited v CIT
- CIT v Indian Transformer Limited. 270 ITR 259

Claiming Expenses based upon Reliable Estimates:

- ❑ Business liability has definitely arisen in accounting year, deduction should be allowed although liability may have to be quantified and discharged at a future date but what should be definite is incurring of liability.

Metal Box Co. of India Ltd. v. Their Workmen [1969] 73 ITR 53 (SC)

BEML v. CIT, [2000] 112 Taxman 61 (SC)

- ❑ The liability would be an accrued liability and would not convert into a conditional one merely because the liability was to be discharged at a future date. There may be some difficulty in the estimation thereof but that would not convert the accrued liability into a conditional one.

Calcutta Co. Ltd. v. CIT [1959] 37 ITR 1 (SC),

- ❑ Provision to qualify for recognition, there must be a present obligation arising from past events, settlement of which is expected to result in an outflow of resources and in respect of which a reliable estimate of amount of obligation is possible and deductible from gross receipt.

Rotork Controls India (P.) Ltd. v. CIT, Chennai. [2009] 180 Taxman 422 (SC)

Claiming deduction of increase in profit due to disallowances under Chapter VIA of Income Tax Act

- ❑ ***Increase in Profit due to disallowances Section 32, 40(a)(ia), 40A(3), 43B– eligible for deduction under Chapter VIA***
- ❖ ***Circular No. 37/2016- Dated: November 2, 2016***
- ❖ ***ITO, Ward 5(1) vs. Keval Construction (Tax Appeal No. 443 of 2012, December 10, 2012), (Gujarat) -***
- ❖ ***CIT -IV, Nagpur vs. Sunil Vishwambharnath Tiwari, (IT Appeal No. 2 of 2011, September 11, 2015) (Mub)***
- ❖ ***Principal CIT, Kanpur vs. Surya Merchants Ltd., (I.T. Appeal No. 248 of 2015, May 03, 2016) (All.)***
- ❑ ***Whether above benefit is available to other expenses disallowed?***

Areas of Tax Planning?

Tax Computation



- **Presumptive Taxes**
- **Avoidance of Cash Payments**
- **Transaction with Relatives – Section 40A(2)**
- **Payment of Certain Liabilities**
- **Advantage of unabsorbed depreciation.**
- **Planning for carry forward and setoff of losses**
- **Claiming Chapter VI A deductions.**

Areas of Tax Planning?

Tax Compliances



- Maintenance of Books of Accounts
- Audits / Tax Audits
- Certifications / Audit certificates
- Filing returns / forms promptly.
- Compliance with various provisions of TDS/TCS.
- Filing Quarterly & Annual returns of TDS.
- Reply to the Tax Authorities
- Timely filling of appeals
- Submission of Rectification Petition
- Submission of Rejoinders
- Appearance before the authorities
- Onus of Claim lies with the Assessee

Areas of Tax Planning?

Tax Payments



- **Payment of Advance Tax as per the stipulated schedule.**
- **Availment of Tax Credit**
- **Carry forward of Tax Credit**
- **Avoidance of Interest / Penal Interest**
- **Avoidance of penalty**
- **Avoidance of Prosecutions**
- **Claim of Refund**
- **Claim of Interest on Interest (payable on Refund)**

Penalty Provisions

Section	Particulars	Quantum of Penalty	Effective From
Sec.271(1) (c)	Concealment of Income	100% to 300% tax sought to be evaded	Upto A.Y 2016-17
Sec.270A	Under reporting (except section 68 to 69D.	50% tax payable on under reporting / 200% in case of misreporting	From A.Y 2017-18
Sec 271 AAC	Sec . 68 to 69D	10% of the tax payable u/s115BBE.	From A.Y 2017-18
		(77.25% for AY 2017-18 / 78% for AY 2019-20)	

A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee.

Reliance Petro products Pvt. Ltd. 322 ITR 158 (SC)

Areas of Tax Planning?

Management decisions



- Selection of type of industry, location of industry etc.
- Corporate mergers / amalgamations.
- Procurement / acquisitions of Fixed assets.
- Make or buy,
- own or lease,
- retain or replace,
- export or domestic sale,
- shut down or continue,
- expand or contract .

Q&A

