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PGBP

Extra provisions for detailed and comprehensive study

Note: Provisions already given in TaxBook+ are denoted with grey color. Extra provisions are denoted with black color.

93.7 Computation of depreciation for power undertaking following SLM method [S. 32(1), 41(2), R. 5(1A)]

As noted in para 93.2, in the case of assets of an undertaking engaged in generation or generation and distribution of **power**, depreciation is computed at the prescribed % on the actual cost of asset (**SLM method**). Total depreciation cannot exceed the actual cost of the asset. Further, the undertaking can also opt for computation of depreciation as per the normal WDV method in the specified manner.

$$\text{Depreciation} = \text{Actual cost of asset} \times \text{Rate (\% of depreciation)}$$

Concept of Block of Assets does not apply in such case. Depreciation is computed separately for each asset on its actual cost, year on year.

Depreciation is calculated on actual cost, not on WDV.

Total depreciation cannot exceed actual cost of the asset.

Restriction of 50% depreciation in case the asset is put to use for < 180 days applies here as well [see para 93.4].

Additional depreciation is not allowed to power undertaking following SLM method (unless it opts for WDV method) [see para 93.6].

Following is the tax treatment if any building, machinery, plant or furniture is sold, discarded, demolished or destroyed (**other than** in the PY in which it is **first put to use**):

Moneys payable (together with scrap value, if any) is < WDV of the asset	Moneys payable (together with scrap value, if any) is > WDV of the asset
The shortfall referred above is deductible as terminal depreciation [S. 32(1)(iii)].	The excess referred above is treated as under: A: The excess referred above (<i>not exceeding</i> the amount of depreciation claimed) is taxable as balancing charge . It is taxable in the PY in which moneys payable become due even if the business for the purpose of which the asset was being used is no longer in existence. [S. 41(2)] B: The remaining excess, if any, is taxable as capital gains [S. 50A]

ILLUS 93.23 to 93.25: BSES Ltd., an electricity company, is claiming depreciation on straight line method. It acquired a machine on 1.4.2022 at actual cost of Rs. 2,00,000. Rate of depreciation is 10%. Determine the tax treatment for AY 2025-26 if the machine was sold on 1.3.2025 for (A) Rs. 1,00,000, (B) Rs. 1,90,000, (C) Rs. 2,50,000.

Tax treatment for AY 2025-26

Particulars	A	B	C
Moneys payable	1,00,000	1,90,000	2,50,000
Less: Opening WDV (see note)	1,60,000	1,60,000	1,60,000
Shortfall in Case A and Excess in Cases B and C	(60,000)	30,000	90,000
Terminal depreciation u/s 32(1)(iii) = Shortfall	60,000		
Balancing charge u/s 41(2) = Excess (not exceeding amount of depreciation claimed of 40,000)		30,000	40,000
Capital gain = Remaining excess, if any.		-	50,000

Note:

AY 2023-24: Closing WDV = Actual cost of machine of 2,00,000 – Depreciation @ 10% of 20,000 = 1,80,000.

AY 2024-25: Closing WDV = Opening WDV of 1,80,000 – Depreciation @ 10% of 20,000 = 1,60,000.

Solve BYC Question No. B62 in TaxBook* (Practice)

93.9 Actual cost in special cases [S. 43(1)]

Additional situations are given below:

Caption	Situation	Actual cost to the assessee
4: Tax evasion	The following sequence of events is covered: 1: Before the date of acquisition by the assessee, the asset was at any time used by any other person for the purposes of his business or profession. 2: The AO is satisfied that the main purpose of the transfer of such asset is reduction of tax liability by claiming depreciation on an enhanced cost.	AO may determine the actual cost, having regard to all the circumstances of the case.
5: Sale and lease back ¹	The following sequence of events is covered: 1: The asset was at any time used by, say X, for the purposes of his business or profession and depreciation was claimed by X. 2: The asset was acquired from X by, say, Y. 3: Subsequently, X acquires the asset from Y on lease, hire or otherwise.	<i>Actual cost to Y = WDV</i> of the asset at the time of transfer by X. WDV of the asset alone is taken even if it is part of block of assets [<i>Circular 762 of 1998</i>].
6: Asset of NR	The following sequence of events is covered: 1: An asset was acquired outside India by a non-resident . 2: It is brought by him to India and used for the purposes of his business or profession.	<i>Actual cost to assessee = Actual cost – Depreciation</i> (at the rate in force) that would have been allowable had the asset been used in India for the said purposes since its acquisition

Determination of actual cost is left to the AO only in case of #4 above.

104. DISCOUNT ON ZERO COUPON BONDS [S. 36(1)(iiia), R. 8C]

Discount on a zero coupon bond is allowed as deduction on pro rata basis across the life of the bond.

Deduction = Pro rata amount of discount on zero coupon bond amortized across the period of **life** of such bond

Meaning: Zero coupon bond means a bond (as notified) issued by infrastructure capital company/fund, infrastructure debt fund, public sector company or schedule bank, on which no payment and benefit is receivable before maturity or redemption [S. 2(48)].

Computation: Pro rata amount of discount is calculated as per the steps given below.

Step	Computation
1 – Calculate discount	Amount payable on maturity/redemption of the bond – Amount received (or receivable) by the issuer of the bond
2 – Calculate the period of life of bond	Period commencing from the date of issue of the bond and ending on the date of maturity/redemption of such bond. Convert this period into number of calendar months . For this purpose, where the calendar month in which the bond is issued or it matures or is redeemed contains a <i>part</i> of a calendar month: (A) if such part is < 15 days , it is <i>ignored</i> ; (B) if such part is ≥ 15 days , it is increased to <i>one</i> calendar month.
3 – Calculate pro-rata discount p.m.	Discount ÷ Number of calendar months
4 – Deduction for the PY	Pro-rata discount p.m. × Number of calendar months comprised in the PY

¹ Objective is to prevent tax abuse. Assets having nil or low WDV are sold at higher prices (sometimes much higher than the market price) and buyers again claim depreciation on the purchase price. Further, the usage of asset effectively remains with the original buyer on account of lease or hire.

ILLUS 104.1: JKG Ltd., an infrastructure capital company, issued 1 lakh 3-year Zero Coupon Bonds (notified by the Government) on 20.1.2024 at an issue price of Rs. 80 per bond. Face value payable at the time of redemption is Rs. 100 per bond. Compute the deduction available to JKG Ltd. in respect of discount on such bonds.

Particulars	Working	Rs.
Discount	1,00,000 bonds × 20 (100 – 80) discount	20,00,000
Period of life of bond (calendar months)	January 2024 is to be ignored (since period is < 15 days). January 2027 is considered as 1 month (since period is ≥ 15 days)	36
Pro-rata discount p.m.	20,00,000 / 36	55,556
Deduction for PY 2023-24	55,556 × 2 months (Feb – Mar)	1,11,112
Deduction for PY 2024-25 and PY 2025-26 each	55,556 × 12 months	6,66,672
Deduction for PY 2026-27	55,556 × 10 months (Apr – Jan)	5,55,560

Solve BYC Question No. B73 in TaxBook* (Practice)

112. REMUNERATION & INTEREST TO PARTNER OF FIRM (OR LLP) [S. 40(b)]

Representative capacity: Sometimes a partner may be a partner in a firm, not in his individual capacity but on behalf, or for the benefit, of any other person. Such partner is called a 'partner in a **representative** capacity'. In such case, **interest** paid by the firm is treated as under:

- Interest paid by the firm to such individual **otherwise** than as partner in a representative capacity is **not taken** into account for the purposes of section 40(b).
- Interest paid by the firm to such individual as partner in a **representative** capacity and interest paid by the firm to the person so **represented** is **taken** into account for the purposes of section 40(b).

There may also be a situation that though the individual is a partner in a firm in his **individual** capacity (i.e., not as partner in a representative capacity), interest is received by him on behalf, or for the benefit, of **any other** person. Such interest is **not taken** into account for the purposes of section 40(b).

ILLUS 112.3 to 112.5: 1: Shyamal is a partner in a firm on behalf of his HUF. The HUF has contributed Rs. 5 lakh as capital in the firm. The firm has paid interest @ 15% p.a. to Shyamal. – Interest is paid by the firm to Shyamal as partner in a representative capacity. Thus, it will be allowable u/s 40(b) to the extent of 12% p.a., i.e., Rs. 60,000. The balance of Rs. 15,000 will be disallowed in the hands of the firm.

2: In #1 assume that Shyamal has also extended a loan of Rs. 3 lakh to the firm in his individual capacity on which the firm has paid interest @ 15% p.a. to him. – Interest is not paid by the firm to Shyamal as partner in a representative capacity. Thus, it will not be hit by section 40(b). It will be fully deductible in the hands of the firm.

3: Shyamal is a partner in a firm in his individual capacity. His daughter has made a deposit of Rs. 5 lakh with the firm on which the firm has paid interest @ 15% p.a. which Shyamal has received on behalf of his daughter. – In such case, even though interest has been received by Shyamal, it will not be hit by section 40(b) as he is a partner in the firm in his individual capacity and has received interest on behalf of another person. Interest will be fully deductible in the hands of the firm.

113. CONVERSION OF INVENTORY INTO CAPITAL ASSET [S. 28(via), 43(1)]²

An assessee may convert his inventory into a capital asset or may use such capital asset in his business or profession. Tax treatment in such cases is explained below.

#	Situation	Tax treatment
1	When inventory is converted into, or treated as, a capital asset	Business income arises which is = FMV of inventory on the date of conversion [S. 28(via)]
2	When such capital asset is used for the purposes of business or profession	Actual cost of the asset = FMV which was taken into account u/s 28(via) above [S. 43(1)].

² Objective is to discourage the practice of deferring tax payment by converting the inventory into capital asset.

If the inventory converted into capital asset (#1 above) is transferred, capital gains arise (see para 139.2).

115. PAYMENTS ON WHICH TAX IS NOT DEDUCTED OR PAID [S. 40(a)(i)/(ia)/(iii)]

While section 40(a)(ia) has been given in the Book itself, the other two provisions, viz., sections 40(a)(i) and 40(a)(iii) are given below, along with section 40(a)(ia), in a comparative format. You would note that the provisions of sections 40(a)(i) and 40(a)(ia) are largely similar.

Particulars	Section 40(a)(i)	40(a)(ia)	40(a)(iii)				
<i>Payment covered by the provision</i>	<p>Any interest, royalty, FTS or other sum chargeable under the Act (but <i>not salary</i>), which is payable during the PY as follows:</p> <table border="1"> <tr> <td>Outside India ></td> <td>To any person</td> </tr> <tr> <td>In India ></td> <td>To a foreign company or a non-resident (not being a company)</td> </tr> </table> <p>(Tax should be deductible at source from such payment)</p>	Outside India >	To any person	In India >	To a foreign company or a non-resident (not being a company)	<p>Any sum payable to a resident during the PY. (Tax should be deductible at source from such payment)</p>	<p>Any payment which is chargeable under the head 'Salaries', if it is payable: A: outside India, or B: to a non-resident.</p>
Outside India >	To any person						
In India >	To a foreign company or a non-resident (not being a company)						
<i>When is payment disallowed</i>	<p>Disallowance is made in the following 2 situations:</p> <table border="1"> <tr> <td>Tax has not been deducted in the PY</td> <td>OR</td> <td>Tax has been deducted in the PY but has not been paid on or before the due date to furnish return u/s 139(1) for such PY</td> </tr> </table> <p>In such case 100% of such sum is disallowed u/s 40(a)(i)³ and 30% of such sum is disallowed u/s 40(a)(ia).⁴</p> <p>Thus, no disallowance is made in the PY in which the expenditure is incurred if:</p> <ol style="list-style-type: none"> 1. Tax has been deducted and paid in that PY, or 2. Tax has been deducted in that PY and paid by the due date to furnish return of that PY. 	Tax has not been deducted in the PY	OR	Tax has been deducted in the PY but has not been paid on or before the due date to furnish return u/s 139(1) for such PY		<p>Disallowance is made if the tax has not been paid thereon <i>nor</i> deducted therefrom.</p>	
Tax has not been deducted in the PY	OR	Tax has been deducted in the PY but has not been paid on or before the due date to furnish return u/s 139(1) for such PY					
<i>When is disallowance rolled back</i>	<p>Sum that was disallowed as above is subsequently allowed as deduction in the following situations:</p> <table border="1"> <tr> <td>Tax has been deducted in any subsequent PY</td> <td>OR</td> <td>Tax had been deducted in the relevant PY but is paid after the due date to furnish return u/s 139(1) for that PY</td> </tr> </table> <p>In such case, deduction is allowed in the PY in which such tax has been PAID.</p> <p>Thus, disallowance is not permanent. Deduction is allowed when the tax is paid.</p> <p>Such deduction is allowed to the extent of disallowance made earlier, i.e., 100% of sum u/s 40(a)(i) and 30% of sum u/s 40(a)(ia).</p>	Tax has been deducted in any subsequent PY	OR	Tax had been deducted in the relevant PY but is paid after the due date to furnish return u/s 139(1) for that PY		-	
Tax has been deducted in any subsequent PY	OR	Tax had been deducted in the relevant PY but is paid after the due date to furnish return u/s 139(1) for that PY					

³ TDS is a critical mode of realization of tax revenue in case of payments to non-residents who may not be available for assessment later on. Thus, TDS enforcement needs to be strict. For this reason, 100% of the sum of disallowed.

⁴ In case of payment to residents, TDS is only a mode of collection of tax and does not result in the final discharge of tax liability. Moreover, residents are available to be assessed to tax. Hence, disallowance is limited to 30%.

Particulars	Section 40(a)(i)	40(a)(ia)	40(a)(iii)
<i>Deduction allowed even if tax has not been deducted</i> ⁵	As noted above, disallowance is made if tax has not been deducted in the relevant PY. However, there is an exception to this rule. Even if tax (or any part) has not been deducted , deduction can still be claimed if the payee : <ol style="list-style-type: none"> Has furnished his return u/s 139; Has taken into account such sum for computing income in such return, and Has paid the tax due on income declared by him in such return, and the assessee (payer) furnishes a certificate to this effect from an accountant in the prescribed Form. In such case, assessee (payer) is <i>deemed</i> to have deducted and paid the tax on such sum on the date of furnishing of return by payee . Thus, while the sum is disallowed in the year of incurring expenditure, it is allowed in the year of furnishing of return by the payee if the above conditions are satisfied.		-
	Net effect of the aforesaid provision is to allow deduction only when tax is paid, either by the payer or the payee.		-

117. 🌀 PAYMENT BY NON-SPECIFIED MODE > 10,000 [S. 40A(3), R. 6DD]

Disallowance not applicable: Disallowance u/s 40A(3) is not applicable in the following cases:

A. Where payment is not in the nature of expenditure deductible in computing business income. For example:

- Advancing of loan or repayment of principal amount of loan (*not interest*).
- Payment or advance payment by commission agent to the principal for goods received for sale.

B. Following cases and circumstances prescribed as exceptions under Rule 6DD: Certain other exceptions, in addition to those listed in the book, are listed below:

#	Category	Description of payment
4	Through a bank	Payment is made by (i) letter of credit arrangements through a bank; (ii) mail or telegraphic transfer through a bank; (iii) book adjustment from any account in a bank to any other account in that or any other bank; (iv) bill of exchange made payable <i>only</i> to a bank.
5	To cultivator, grower, producer	Payment is made to the cultivator, grower or producer for purchase of (i) agricultural or forest produce; or (ii) produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or (iii) fish or fish products; or (iv) products of horticulture or apiculture. Payment, other than to cultivator, grower or producer, is liable to disallowance (e.g., to a trader, broker or middleman).
6	To producer in cottage industry	Payment is made to the <i>producer</i> for purchase of products manufactured or processed <i>without</i> the aid of power in a cottage industry. Payment, other than to the producer, is liable to disallowance (e.g., to trader, broker or middleman).
7	Of terminal benefit	Payment is made to an employee (or his heir) upon retirement, retrenchment, resignation, discharge or death, on account of gratuity, retrenchment compensation or similar terminal benefit and the <i>aggregate</i> of such sums payable is <i>not</i> > 50,000.
8	Of salary on temporary posting	Payment of salary is made to an employee (<i>after</i> TDS u/s 192 (para 212)) who (a) is <i>temporarily</i> posted for a <i>continuous</i> period of ≥ 15 days in a place other than his normal place of duty or on a ship; and (b) does not maintain any account in any bank at such place or ship.

⁵ Tax cannot be recovered from the payer if it has been paid by the payee. In such case, disallowance would be permanent in the hands of the payer. To avoid such hardship, deduction is allowed to the payer once payee has paid the tax and furnished return.

9	To agent	Payment is made to the agent who is <i>required</i> to make payment in cash for goods or services on behalf of such person.
10	By forex dealer	Payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.

120. SUM RECEIVED AFTER DISCONTINUANCE OF BUSINESS [S. 176]

Sums received after a business is discontinued may go untaxed. To capture such cases, section 176 makes a special provision. It provides that where any business is **discontinued** in any year, any sum received **after** discontinuance shall be *deemed* to be income of **recipient** and charged to tax accordingly in the year of **receipt**.

However, such sum should have been included in the total income of the person who carried on the business had such sum been received before such discontinuance. Thus, if the sum was not taxable in the hands of the assessee, it cannot be taxed in the hands of the recipient.

As a corollary, if a sum was already charged to tax in the hands of the assessee, it should not again be charged to tax in the hands of the recipient upon its receipt after discontinuance of the business. For example, if Rs. 10,000 was charged to tax in respect of sale of goods on credit and this sum was received after the discontinuance of business, it should not again be charged to tax in the hands of the recipient.

