Profits and Gains of Business and Profession

Basic concepts that one must know

This is the largest head of income
It includes every body from a Panwala having a shop at the roadside to as high as the biggest business owner of the country, Mr. Narayan Murty. This head of income covers the largest number of persons who could be taxed under the act. This includes profits and gains that are earned in practically every business activity known and hence has the widest of the sections and provisions so that most of them are covered under the act.

There are 2 main bodies involved in this head.
The tax paying body which is also known as the assessee and the tax collection body which, is the income tax department

Requirements for claiming a business activity
It includes all activities, which are done with the intention of earning profits and are distinguished from the activities that are done purely for drawing pleasure. Thus in order to include any activity as a business the following conditions are to be satisfied.

1. It should include some kind of trade commerce or manufacture or any adventure in the nature of trade commerce and manufacture.
2. There should be a profit motive
3. The assessee should have an absolute or major control over the activities of the business so that so as to define any activity as business.

What is business?
Business as defined by section 2[17] of the income tax act is ‘’ an activity which includes trade, commerce and manufacture and any adventure in the nature of trade commerce and manufacture.

What is adventure in the nature of trade commerce and manufacture?
It means even a single activity can be also called as a business. So for business definition it is not necessary that the activity should be carried out regularly and continuously. Even if there is an isolated transaction then also it is liable to be called for business.

Rendering of services is also termed as business
Even the rendering of services comes under the preview of business and need not always be a manufacturing and processing activity.

Business cannot be carried out with one self
Business cannot be carried out with own self. It means that there has to be some bilateral relations between two or more persons and business done with self does not make sense and it therefore not entertained under law.

Entire income is not taxable

It means that what ever is the sales of the business is not taxed. Expenses that are legitimate and related to the business are allowed as deduction and then the net income is taxable.

Gross income – Expenses required for earning the income. = Net Income

Basis of charge section 28

This section deals with the various types of businesses that are included in the preview of business and gains.

Pappa ne	**Profits** and gains of business and profession
Chupke se	**Compensation** for termination of a business contract
Sali	**Salary**, allowance perquisites, or interest received by the partner of a partnership firm
Ka	Any amount recd under the **key man** insurance policy including bonus
Ek	**Export** and **Import** benefits
Chumma	**Cash** compensatory support

Legal ownership and beneficial ownership is not relevant. The person taking decision and exercising them would be considered as an assessee for the purpose of assessment.

Expenses incurred before the setting of the business are not allowed except under section 35D of the act.

Distinction between capital and revenue expenses has a different set up in this act and is totally different from accounts. In other words what is an expenditure of capital nature in accounts could be a revenue expenditure in income tax.

The business should be carried on the assessee during the previous year.

Profits & gains of different business professions carried on by the assessee will be charged together. Therefore, if in one business he incurs loss and in another he gets profit then the NET balance will be chargeable to tax.

BASIC PRINCIPLES FOR ARRIVING AT BUSINESS INCOME: -

Deductions allowed from Income
Since there are different types of businesses and each business has different types of expenses and incomes it is practically impossible to mention each and every type of expense under the act hence we follow the general guidelines that will help us in deciding which expenses would be allowed as deduction and which would be disallowed by the act

1. *Personal Expenses of the proprietor are not allowed to be debited to the profit and loss account of the business.*

2. *Expenses in the nature of penalty are not allowed as deduction*

3. *Capital Gains or capital losses, which are incurred in the sale of capital assets, are not allowed as deduction.*

4. *The particular expense should not be disallowed by the income tax act 1961[meaning there are some expenses which are totally disallowed, like advertisements related to political party]*

5. *Expenses of capital nature are not allowed to be debited to the profit and loss account except capital expenditure on scientific research.*

6. *Anticipatory expenses, which are contingent in nature, which depend on the happening or the non-happening of a certain future event, are not allowed. such as reserve for doubtful debts or provision for a pending legal case etc.*

7. *Expense should be incurred in the previous year*

8. *The expense should be related to the business of the assessee. While applying this rule it should be noted that the standard business practices and principles of just and reasonable should be allowed.*

Depreciation and its chargeability under the act [section 32]

Calculation of depreciation in accounts is very much different from the depreciation that is calculated under the income tax act.

Block concept of depreciation

Income tax follows the block concept of depreciation. Under this concept the assets are grouped in one block not on the basis of type of assets but they are grouped on the basis of common rate of deprecation. The following example will make it clear.
If an assessee has the following assets which are of the given value and the rate of depreciation the distinction of the assets as per accounts would be different from that of income tax

Particulars	Amount	Rate of Dep
Motor car Local	135000	20%
Office Building	500000	10%
Delivery vans	450000	25%
Factory building	750000	20%
Furniture	200000	10%
Fittings and Equipments	150000	25%
Motor car Imported	500000	25%

The classification of the assets as per accounts is on the basis of the type of assets whereas in the case of income tax it is on the basis of rate of depreciation.

AS PER ACCOUNTS			AS PER INCOME TAX		
Particulars	*Amt*	*Amt*	*Particulars*	*Amt*	*Amt*
Motor cars and Vehicles			**Block A Rate 10%**		
Motor car local	135000		Office Building	500000	
Motor car Imported	500000		Furniture	200000	700000
Delivery vans	450000	1085000			
Buildings			**Block B Rate 20%**		
Factory buildings	750000		Motor car Local	135000	
Office buildings	500000	125000	Factory building	750000	885000

Furniture and fittings			**Block C Rate 25%**		
Furniture	200200		Delivery vans	450000	
Fittings and Equipments	150000	350000	Fittings & Equip.	150000	
			Motor car Imported	500000	1100000

Some important points of depreciation of assets.
According to the provision of section 32 depreciation is charged the normal rate prevailing for the assets as per the schedule given under the act.

If an asset is purchased and in the <u>first year</u> it is used for 180 days or more in the previous year then the full rate of deprecation has to be provided for that year.
For example is an asset was purchased for Rs 200000 on 1st of august 2001 and if the rate of depreciation is 15% then the amount of depreciation would be Rs 30000 i.e. 15% of 200000 for the full year. Actually the asset was purchased in the month of august 2001 and it was used for eight months from Aug to March 2002 then also deprecation has to be charged for the entire year and not only for eight months.

Similarly if an asset is purchased and in the <u>first year</u> used for less than 180 days in the previous year then half rate of deprecation has to be provided for that year.
For example is an asset was purchased for Rs 200000 on 1st of December 2002 and if the rate of depreciation is 15% then the amount of depreciation would be Rs 15000 i.e. 50% of 30000 for half year. Actually the asset was purchased in the month of December 2001 and it was used for four months from Dec 2001 to March 2002 then also deprecation has to be charged for the six months and not only for four months. **Thus it also means that if the asset is purchased on the last day of the year then also the same would be depreciated for half year even if the asset was used for only one day.**

No depreciation is to be provided in the year of sale. In fact there is no method of calculating deprecation nor profit or loss on sale of individual assets.

The following table shows how to calculate deprecation on assets

Particulars	Amount
Opening WDV of the block of assets	XX
Add purchases of the block	XX
Less Sale value of the block of assets sold during the year	(XX)
Balance	XX
Less Depreciation	XX
WDV at the end of the year	XX

Depreciation is not allowed on land, as land is a non- depreciable asset.

Treatment when the block becomes zero but the assets continue to exist

If the block of assets becomes zero but the block continues to exist then in that case no depreciation is allowed on such block. The amount recovered above the WDV of the block would be treated as the capital gain and would be charged under the head capital gains.

Treatment when the assets gets exhausted and the block continues to exist

If the block of assets gets exhausted or destroyed or diminished then but the WDV of the block continues to exist then in that case no depreciation is allowed on such block. The balance amount that remains is treated as a capital loss under section 45 of the income tax act 1961. this is charged as a capital loss.

CONCEPT OF CAPITAL AND REVENUE EXPENDITURE IS DIFFERENT IN TAX.

Go ahead read the fine print….

Please also note that the concept of replacement and capital expenditure is totally different in the case of accounts and in the case of income tax.
For e.g. If there is a car which has a petrol engine and which is replaced by a diesel engine then in accounts this is termed as a capital expenditure but this a totally revenue expenditure in the case of income tax
Please note that income tax has the following opinion.
Even before replacement there was an engine and now also there was an engine, so the matter is irrelevant whether this is a diesel engine and the previous one was a petrol engine. It has not created a new asset and so this is not considered as a capital expenditure and is merely a replacement and this TREATED AS A REVENUE EXPENDITURE AND ALLOWED TO BE DEBITED TO THE PROFIT AND LOSS ACCOUNT. [**Nathalal Bankatlal Parikh Vs. CIT**]

The fact that the assessee is doing one kind of business does not stop him from claiming the deduction of interest on loan taken for the purpose of other business. **In a case of C.T. Desai Vs CIT** it was decided as follows.
The assessee was engaged in the business of paper manufacturing and he had had taken for developing a garment business then interest on the loan taken for garment business can be allowed as deduction from the business of paper manufacturing even if the business of garment is not started or yet to start or did not start at all.

Replacement of asbestos roof to a concrete roof is considered as a replacement and not a capital expenditure [Dhakeshwari Mills Vs CIT]
Replacement of a low power engine to a high power engine to a ship is considered as a replacement and allowed to be debited to the profit and loss account [Scindia Shipping Vs CIT]

So you can see that what you learn in accounts is totally different in the case of income tax.

EXPENDITURE ON SCIENTIFIC RESEARCH (SEC.35)

The Govt. of India want that there should be more research carried out in our country and so in order to give a boost to research the income tax act also gives a lot of concessions and deductions for any approved research carried out in the country by any assessee. The expenditure of research could be incurred by the assessee himself by setting up his own research centre or, he may contribute his share to any approved research laboratory for any contract research.

IN CASE THE ASSESSEE CARRIES OUT THIS OWN RESEARCH

The deduction for research can be allowed <u>only if the research is related to his business.</u>

In this case any revenue expenditure of **<u>any kind is fully allowed totally in the year in which it is incurred.</u>** This would include purchase of materials, salary paid to scientists, telephone expenses and other expenses related to research.

<u>Any **capital expenditure except on land** incurred on scientific research related to the business carried on by the assessee is fully allowable</u> to be debited to the profit and loss account in the year in which it is incurred.

However, no depreciation is allowable in respect of such asset. If such capital expenditure has been incurred before the commencement of the business the aggregate of the expenditure so incurred within the 3 years immediately preceding the commencement of the business shall be deemed to have been incurred in the previous year in which the business is commenced.

IN CASE THE ASSESSEE DOES NOT CARRY OUT THIS OWN RESEARCH

The deduction for amount donated to any college, university, and national laboratory would qualify for deduction at 1.25 times the amount donated <u>even if the research is not related to his business.</u>

<u>Expenditure on acquisition of patent rights & copyrights (Sec.35A)</u>

If the patents and copyrights are **purchased by the assessee before 1st April 1998** then the patents would be written off over a period of 14 years or the actual expected life of the patent which ever is less.
E.g. If a patent is purchased for Rs.700000 and if the life of the patent is 20 years then the amount written off is 700000/14 =Rs 50000 per year for 14 years even if the life of the patent is 20 years.
On the other hand if the patent is purchased for 700000 but the life of the patent is only

for 5 years then the amount written off on the patent s would be 700000/5=140000 per year.

If the assessee purchases patents after April 1998 then they can be written off under section 32 by way of depreciation as per the block concept, which is discussed above already.

Expenditure on know-how (sec.35AB)

In this case also the deduction is allowed based on the date of acquisition and also the donor of know-how.

If the know how is purchased before April 1998 in that case the following is to be noted
If the know how is obtained from the govt., or any approved institute of the govt., the same is to be written off within a period of three years from the year in which know how is obtained

If the know-how is obtained from any other source then the same is to be written off in a period of six years from the year in which the know how is obtained.

Amortization of preliminary expenses - sec.35D

An Indian co. and other resident assessee are allowed to write off preliminary expenses incurred by them in setting up of a new business or industrial undertaking or extension of existing industrial as follows.
The total amount of the preliminary expenses should not exceed 5% of cost of project or capital employed in the new project. This amount is to be divided into 5 equal installments and each installment is allowed as deduction starting from the year in which the project is started.

OTHER TYPES OF EXPENSES THAT ARE FULLY ALLOWED

The following expenses are fully allowed as deduction and they have been as follows. It means that the Govt. of India will not have any objection on these if they are debited to the profit and loss account if there is nothing against the law in these expenses. Just follow this simple memory key and you will get the entire concept by heart.

MEMORY KEY

Ram	Ram	Ishwar	Ishwar
Ishwar	Bolo	Ishwar	Chalo
Gautam	Esa	Allah	Bolo
Ram	Rahim	David	Follow

Ram Rent and Repairs to building	***Ram*** Rent and repairs to other assets	***Ishwar*** Insurance premium of the business	***Ishwar*** Insurance on the health of employee
Ishwar Insurance premium incurred by a milk cooperative for the members	***Bolo*** Bonus and commission	***Ishwar*** Interest on loan borrowed for business	***Chalo*** Contribution to staff welfare schemes by the employer
Gautam Contribution to gratuity fund	***Esa*** Employees contribution to the provident fund	***Allah*** Allowance for animals	***Bolo*** Bad debts incurred
Ram Risk administration and insurance fund	***Rahim*** Expenses for research and development	***David*** Depreciation on assets used in the business	***Follow*** Family planning expenses of revenue nature

Expenditure on Family planning
If the assessee incurs any expenditure on family planning or promoting family planning among the employees then in that case the treatment is as follows.

CAPITAL EXPENDITURE IN FAMILY PLANNING
In case of capital expenditure other than land, depreciation is allowed to be deduced at 20% on straight-line method for 5 years beginning from the year in which the family planning centre is started. In other words depreciation is not allowed on land used for family planning programme.

REVENUE EXPENDITURE IN FAMILY PLANNING
In case of revenue expenditure entire expenditure is allowed as deduction in each year from which the expenditure is incurred and no amount restrictions are kept.

Stock valuations and income tax

The income tax act does not mention much about stock but only states that the stock method should be consistently followed and should not be changed regularly. How ever if in a particular year there is any change in the method of stock valuation causing an increase in the profit or decrease in the profit is allowed provided that the changed method is consistently followed and that there is no change in the method of valuation. [Delta Plantations Vs. CIT]

Advertisement Expenditure:
All expenditure on advertisement except capital expenditure is allowed as deduction in the previous year but No deduction is allowable for any advertisement expenditure incurred on advertise in any souvenir brochure, pamphlet etc. published by a political party.

Payments made in cash in excess of Rs 20000.
If any payments exceeding Rs.20, 000 are made in cash then the same is not allowed as deduction to the extent of 20% of the amount, which is paid in cash. It means the income tax department insists on all payments in excess of Rs 20000 to be made by a crossed cheque of a demand draft or a banker's cheque. E.g. If there are purchases mad worth Rs 40000 and the payment of the same is made in cash then 20% of 40000 = Rs 8000 will not be allowed as deduction and only 32000 will be allowed as deduction to the assessee. This is because the income tax department wants to curb black money, which is in circulation in the economy. However the same is subject to the exceptions of rule 6 of the act that lays down some exceptions where even if payments are made in excess of Rs. 20000 in cash the same would be allowed as deduction.

Any expenditure incurred on Income Tax proceedings is fully allowable.

Please note that any dividends received on shares are taxable as income from other sources even if the same is the main business of the assessee.
Instances of losses that are allowable from business incomes
Loss of stock in trade due to enemy action, or act of God
Depreciation in currency on foreign currency for purchase of stock
Loss of precious stones, cash, or jewellery while bringing them from or taking to the business premises
Loss of security deposit given for acquiring stock, which could not be recovered
Loss due to confiscation of cash by customs authorities from a smuggler

SOME IMPORTANT CASES IN BUSINESS AND GAINS

Business cannot be carried out by one self and so for a business there is a need for 2 or more persons was decided in the case of Mazagaon dock limited Vs. Commissioner of Income tax 1958- **Supreme court judgment** *

Business also includes an adventure in the nature of trade commerce and manufacture was decided in the case of **Rani Ramesh kumari vs. Commissioner of Income tax – Allahabad court judgment 1959**

It is for the government to prove that a particular income is taxable under the business and gains. **Janki Ram Bahadur Vs commissioner of income tax 1965 <u>Supreme Court judgement</u>**

Where godown being used for storing business goods were requisitioned by government and thereafter business was carried on a smaller scale compensation paid for loss for earning was held as a taxable business in the case of **Manna Ramji Vs. Commissioner of Income tax <u>supreme court judgment 1972</u>**

Where the premises of the business were acquired by the army for bunkers and the compensation was paid by the Govt. of India for loss of business the same was also taxable as held under **Shakir Ali Mohammed Vs. Commissioner of Income tax 1965 <u>supreme court judgment</u>**

Tailoring activity is also considered as a manufacturing activity as under **Kachins tailors Vs. Commissioner of Income tax <u>supreme court judgement 1985</u>**

A company carrying a cold storage activity is also considered as a manufacturing activity and the building of the said cold storage was considered as plant and not a building. Depreciation to be taken for the rate of the plant and not building as this is a special type of building. This was decided in the case of **Delhi cold storage and general mill Vs. Commissioner of Income tax Delhi high court 1979**

Increase in the profit due to the devaluation of the local currency is a trading profit and taxable under the head business and gains as held under **Shamshuddin Vs. Commissioner of Income tax AndraPradesh high court 1973**

If any deposit is given for purchase of the goods and the same is forfeited due to the non fulfillment of the contract then the amount received by the supplier is taxable as a business income as decided in the case of **Laxmi vilas bank Vs. Commissioner of Income tax Bombay high court 1996**

It is not important that the business should be carried out in the Previous year in order to tax the same, Even if the business is discontinued then also the same is taxable under this head.

If the person uses the goods of the business for his personal use then the same is not taxable as there is no profit in this transaction as decided in the case of **Kikabhai Premchand Vs. Commissioner of Income tax 1953- <u>supreme court judgement</u>.**

Normally expenses that are incurred prior to the establishment of the business are not allowed but in some cases like family planning expenses and research expenses they are allowable even if they are incurred before the start of the activity as held under **Raliwolf limited Vs. Commissioner of Income tax Bombay high court 1980**

Expenses which are tainted with illegality are not allowed as deduction as held under **Aziz and Abdul Shakoor Vs. Commissioner of Income tax supreme court judgement *** 1961**

Anticipated losses are not allowed as deduction except one case where the stock is valued at cost or market price whichever is less as held in **Edward Collins and sons limited Vs. Commissioner of Income tax**

If the property is used by the assessee carrying sole proprietorship for the purpose of his business then no deduction for rent is allowed from the income of business but if the partnership firm takes a property from one of its partners and gives rent to the partner who is the owner of the property then the deduction of the same can be claimed under this head as held u nder **Heastie Veitch and co Vs. CTO –1934**

Damages paid for breach of contracts or non-fulfillment of contract is an allowable expense as held under the **central trading agency Vs. Commissioner of Income tax, Allahabad high court 1965**

Salary paid to retired employees who are not working in the business of the company but are having some secret formula of the business to avoid them from joining any other competitor is allowable as held under as **Joshi formalabs Vs. Commissioner of Income tax Rajkot high court 1999**

Expenses paid on construction of temple is allowable as capital expenditure and depreciation could be claimed on the building by the assessee as held in **Atlas cycles Vs. Commissioner of Income tax Punjab and Haryana high court 1991.**

Revenue expenses paid to the Poojari and the expenses paid for maintaining the temple is also an allowable expense under the act as held under **commercial mills Vs. Commissioner of Income tax Gujarat high court 1976**

CASES ON THE CAPITAL AND REVENUE EXPENDITURE ACCOUNTING TREATMENT IS DIFFERENT FROM TAX

If the assessee has occupied a property as a tenant and he as agreed to bear the expenses of repairs then the amount paid on such repairs would be allowable as deduction even if the same are of capital nature or revenue nature as held in the case of **Ram Krishna steel mills Vs. Commissioner of Income tax Delhi high court 1974.**

Similarly if the assessee is the owner of the premises then capital repairs are not allowed as deduction and they have to be capitalized and claimed via depreciation and only revenue repairs are allowed as deduction from the profit and loss account. But for the tenant, capital expenditure as well as revenue expenditure both are allowed as deduction as held under **Goyal oil mills Vs. Commissioner of Income tax Punjab and Haryana high court 1970**

Replacement of worn out cement sheets and also worn out walls by new cement sheets and walls are considered as repairs and not capital expenditure as held in the case of **Gunter merchants Vs. Commissioner of Income tax by AP high court –1978**

Restructuring of the approach roads that lead to the business premises of the assessee to the main road were considered as a current repairs and not capital expenditure as held in **SB Ranjit singh Vs. Commissioner of Income tax Punjab high court 1955**

Replacement of old roof with the new roof are current repairs and not capital expenditure as held under **LH sugar factories Vs. Commissioner of Income tax 1952**

EXAMPLES OF CURRENT REPAIRS

Replacement of transformers and service lines for taking heavy load is a current repair as held under **Commissioner of Income tax Vs. Kanodia storage Allahabad high court 1975.**

Replacement of engine of a van with a new engine is current repairs in the case of **Nathmal Bankatlal Parikh Vs. Commissioner of Income tax AP high court 1980**

Replacement of worn out parts of machinery is current repairs as held in **Athertons West limited Vs. Commissioner of Income tax**

Replacement of petrol engine to diesel engines in vehicles are current repairs and are allowable entirely in the year or incurrence as held in the case of **Commissioner of Income tax Vs. Desai bros. Gujarat high court 1980**

Replacement of body of motor vehicles is current repairs as held in the case of **Sheikhar Pura transport com Vs. Commissioner of Income tax 1961 Punjab high court**

Replacement of boiler in sugar mills is a current repairs **Rama sugar mills Vs. Commissioner of Income tax madras high court 1952**

Replacement of an engine of a ship with a high power engine of bigger capacity is a current repair as held in the case of **Correa bros Vs. Commissioner of Income tax**

CASES OF DEPRECIATION

If a partner brings in some asset as a capital contribution in a partnership firm then the firm can take the depreciation on the asset brought in even if the asset is not yet transferred in the name of the firm and it remains in the name of the partner as held under **Amber Corp. Vs. Commissioner of Income tax Rajasthan high court 1994**

If the asset is kept ready for use but if the same was not used then in that case also the depreciation can be claimed as held in the case of **capital bus service Vs. Commissioner of Income tax Delhi high court 1980.**

The employer or the assessee can claim depreciation on the residential quarters given to the employee for their stay as held in the case of **Delhi Cloth and General mills Vs. Commissioner of Income tax Punjab high court 1966**

Books are plant and machinery is they are related to the operating instructions of handling the said machinery as held in the case of **Elecon Engineering works Vs. Commissioner of Income tax Gujarat high court 1974**

CASES OF INTEREST ON CAPITAL

Whether the father in law gave an interest free loan to the son in law and both of them do not have the intention to repay the interest and the principal it is not allowed as deduction as it is an eye wash transaction, as held in the case of pepsu road transport corp Vs. Commissioner of Income tax punjab and haryana high court 1981

DEPRECIATION RATES FOR VARIOUS ASSETS UNDER SECTION 32
Section 32 of the income tax act provides for the depreciation of various assets and the prescribed rates are given below for single shift.

DEPRECIATION RATES

Residential Building with plinth area over 80 Sq M	5%.
Hotel building and residential buildings with plinth area upto 80 Sq M	20%
Purely temporary construction	100%.
Other Buildings	10%.
New buildings with dwelling units of plinth area not exceeding 80 Sq M acquired after 1-4-99 but before 1-4.2002	40%
Thus, factory building or office building is eligible for depreciation. Note that ‘building’ includes roads, bridges, culverts, wells and tube wells	10%
Furniture in hotels, restaurant, educational institutions, library, cinema houses or furniture used for hire	15%
Other furniture	10%
Motor cars	20%
New Commercial vehicles mean heavy and medium goods vehicles, heavy and medium passenger motor vehicle, but does not include maxi-cab, motor cab, tractor or road roller] acquired on or after 1.4.2001 but before 1.4.2002 and put to use before	50%

1.4.2002 for purpose of business or profession	
Normal machinery	25%
[Specified Pollution control equipment and specified energy saving devises	100%
Computers	60%
Books by professionals or books in library	100%
Ships of all types and includes dredgers tugs barges survey Launch and ships having a wooden hull	25%
% for vessels used in inland waters)	20%
Intangible assets how, patents, copyrights, trade marks, licenses, franchises or any other right of similar nature	25%.

CASES FOR VARIOUS LOSSES AND THEIR ALLOWANCES

The act specifies that all the losses should not be allowed as deduction. It states that for the purpose of deduction there have to be some conditions that have to be satisfied and they are as follows

LOSSES SHOULD

- Be Revenue in nature
- Be incurred in the Previous year
- Be Incidental to the nature of the business of the assessee
- Be real and not notional and imaginary
- Not be restricted under the law

If the loss is not incidental to the business of the assessee then the same is to be disallowed as discussed under the case of **Abdulbhai Abdul Kadar Vs. Commissioner of Income tax supreme court judgement of 1961** where in it was held that lawyer need not advance funds on interest to the clients and if he does and he incurs losses then the same is not allowed.

Loss incurred due to the misappropriation of the funds by the agent is deductible expense as held under **Commissioner of Income tax Vs. Badridas Daga and sons Supreme Court judgement 1958**

Loss due to the embezzlement of cash is an allowable expense as held under **Nainital bank Vs. Commissioner of Income tax 1965 supreme court judgement and Gopi Krishna Vs. Commissioner of Income tax Allahabad court judgement 1991**

Loss due to enemy action is allowable as held under **Annamalai Chettiar Vs. Commissioner of Income tax Supreme Court judgement *** 1972**

Loss of stock due to act of god is also allowable Loss of stock due to white ants is allowable as held in the case of **Hiralal Phoolchand Vs. Commissioner of Income tax Allahabad court**

Loss arising due to the failure of the assessee to take the delivery of the goods as per the contract is allowable as under **RC Jain Vs. Commissioner of Income tax Delhi high court 1973**

Loss of cash due to theft after business hours is allowable as held under **Commissioner of Income tax Vs. Ajit singh Rajasthan high court 1973**

Depreciation of currency kept in the foreign country for payment of the suppliers is allowable as held under **Larsen and Toubro limited Vs. Commissioner of Income tax 1985 Bombay high court**

Loss due to forfeiture of deposit for not supplying of goods is allowable as held under **Narandas Mathuradas Vs. Commissioner of Income tax 1959 Bombay high court**

Loss of precious stones and watches, which were robbed while bringing them to the house of the assessee, are allowable as held under **KTS Mohammed Vs. Commissioner of Income tax-1969 madras high court**

Loss due to negligence, robbery and theft mistake of the employees even during the office hours and after office hours are allowable as held under various cases like **Sarya sugar mills Vs. Commissioner of Income tax and second case of Daga Vs. Commissioner of Income tax <u>supreme court judgement</u> *** 1980**

If a person is engaged in the racing of horses and one of the horses is de-licensed from running in the races the loss due to the same is an allowable as held under **Venkat Reddiar Vs. Commissioner of Income tax madras high court.**

INSTANCES WHERE AMOUNT RECEIVED ARE TAXABLE EVEN AFTER CLOSURE OF BUSINESS

- *Recovery or excess recovery of a deduction that is allowed for any expense*
- *Recovery or excess recovery of a bad debt*
- *Sale of an equipment held for scientific purpose*

In these three instances the amount would be taxable in the hands of the assessee even if the said business was closed down.

Examples of revenue expenditures, which are not normal, but of special nature

Amount spent on construction of a school built for the children of the employee was allowed as revenue expenditure because it was a labour welfare measure as held in the case of **Palani Andavar mills Vs. Commissioner of Income tax madras high court 1977**

Payment to a competitor for not contesting in a tendor is an allowable expense as held under **Damodaran Vs. Commissioner of Income tax Kerala high court 1967**