SaRju pAnDeY
He can be mailed at sarjuvpandey@gmail.com

Allowability of Business Expenditure under section 37

Section 37 of the Income tax Act, 1961 is a **residuary section** for allowability of **business expenditure** and the same is given below:

"37 (1) Any expenditure **not** being expenditure of the nature described in **sections 30 to 36** and **not** being in the nature of **capital expenditure** or **personal expenses** of the assessee, expended **wholly and exclusively** for the purposes of the business or profession shall **be allowed** in computing the income chargeable under the head "Profits and gains of business or profession".

[Explanation.—For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose **which is an offence or which is prohibited by law** shall **not be deemed** to have been incurred for the purpose of business or profession and **no deduction or allowance** shall be made in respect of such expenditure.]"

Condition for allowance under section 37

- Such expenditure should **not be covered** under the specific sections i.e. sections 30 to 36.
- The expenditure should **not be of capital nature**
- The expenditure should be **incurred during the previous year**.
- The expenditure should **not be of personal nature**.
- The expenditure should have been incurred **wholly or exclusively for the purpose of the business or profession.**
- The business should be **commenced.**

Some instances which relate to this section;

No.	Expense	Allowable or disallowable
1.	Regulation fees paid to municipal authority for compounding of offence	Not available for deduction under section 37. As the same was in the nature of penalty.
2.	Payment of protection money to rowdies & police	Should not be allowed. It's illegal.
3.	Refundable deposit with stock exchanges	Not allowed as deduction for expenditure
4.	Penalty paid to NSE Fine or penalty imposed by NSE	Hence cannot be disallowed. Fine or penalty imposed by NSE to its members is regulated by their in house laws and could not be termed as violation of statutory laws.

5.	Foreign tour expenditure of wife	High court has disallowed 50% of foreign tour expenses. As director of the company accompanied by his wife who is not an employee of the company
6.	Expenses covered under section 30 to 36	Could not be allowed due to non satisfying conditions laid down under those respective sections, then the same cannot be allowed under this residuary section.
7.	Convertible debenture expenses	High court decided that expenditure incurred on issue of convertible debentures is to be allowed as revenue expenditure
8.	Expenses incurred on issue of right shares	Expenses incurred on issue of right shares were held as capital expenditure
9.	Expenditure incurred on issue of debentures Whether convertible or non convertible	It is allowable as revenue expenditure.
10.	Fees paid to ROC	Fees paid to the registrar of companies for bringing about change in the memorandum and articles should not be allowed. Fees paid for increasing authorized capital is a capital expenditure.
11.	Bank guarantee	Any payment of bank charges related towards bank guarantee required for purchase of machinery should not be allowed as revenue expenditure
12.	Expenses on issue of shares	Expenditure incurred by a company in connection with issue of shares with a view to increase its share capital is directly related to the expansion of the capital base of the company, and hence is capital expenditure
13.	Training	Further, expenditure incurred for training the personnel of the assessee was allowable as revenue expenditure
14.	Abandoned project	The assessee had incurred expenditure on engaging services of consultants for improving operational efficiencies inextricably linked to the existing business. The project was abandoned, with no new asset to be created. The expenditure held to be revenue expenditure.
15.	Penalty	Compounding fees paid to RTO by a transporter for transporting over dimensional consignments is an allowable business expenditure u/s 37
16.	Corporate membership fees	Revenue expenditure

SaRju pAnDeY
He can be mailed at sarjuvpandey@gmail.com

17.	Keyman insurance policy	Keyman insurance premium paid by the company on the lives of chief cardiac surgeon, chairman, and managing director of company was qualified as deduction under section 37(1). Keyman insurance policy is not confined to a situation where there is a contract on employment. Premium on the keyman insurance policy of a partner of the firm is wholly and exclusively for the purpose of business and is allowable as business expenditure
18.	Foreign exchange loss	Loss claimed by assessee on account of fluctuation in rate of foreign exchange as on date of balance sheet is allowable as expenditure u/s 37(1). Foreign exchange fluctuation losses are allowable on accrual basis
19.	Antivirus software	Expenditure incurred on purchase of anti–virus software is of revenue expenditure
20.	Advance written off	Money advanced to subsidiary company cannot be allowed as deduction on writing off the same
21.	Pooja expenses	This expenditure not related to business and hence not deductible
22.	Premature termination compensation	Amount paid to landlord for premature termination of lease is an expenditure on account of commercial expediency and hence entitled for deduction u/s. 37
23.	Website development expenses	Expenditure on website would not change the fixed capital of an assessee, even though website might provide enduring benefit to assessee, expenditure incurred has to be regarded as revenue expenditure. Business expenses incurred for development of website to promote business activities, and display information and products is allowable as revenue expenditure
24.	Computer software	Expenditure incurred on computer software packages though gives an enduring benefit it does not result in acquisition of any capital asset and constitutes revenue expenditure
25.	Mobile handsets	The amount paid for handsets and for talk time charges were not capital in nature