

PROFITS AND GAINS OF BUSINESS OR PROFESSION

AMENDMENTS BY THE FINANCE (No.2) ACT, 2014

- (a) Manufacturing companies investing more than ₹ 25 crore in new plant and machinery in any previous year during the period from 1.4.2014 to 31.3.2017 entitled to investment allowance@15% [Section 32AC]

Existing Provisions [Effective from A.Y.2014-15]:

- (i) Section 32AC was inserted by the Finance Act, 2013 w.e.f. A.Y.2014-15 to provide a tax incentive by way of investment allowance to encourage huge investment in plant or machinery.
 - (ii) As per section 32AC(1), a **manufacturing company** is entitled to deduction@15% of aggregate investment in new plant and machinery if it is -
 - (a) engaged in the business of manufacture of an article or thing; and
 - (b) invests a sum of more than ₹ 100 crore in new plant or machinery during the period beginning from 1st April, 2013 and ending on 31st March, 2015.
 - (iii) For A.Y. 2014-15, a manufacturing company was entitled to deduction of 15% of aggregate amount of actual cost of new assets acquired and installed during the financial year 2013-14, if the aggregate cost of such assets exceed ₹ 100 crore.
For A.Y.2015-16, a deduction of 15% of aggregate amount of actual cost of new assets, acquired and installed during the period beginning on 1st April, 2013 and ending on 31st March, 2015, as reduced by the deduction allowed, if any, for A.Y. 2014-15.
 - (iv) The investment allowance@15% under this section is in addition to the depreciation and additional depreciation allowable under section 32(1). Further, the investment allowance would not be reduced to arrive at the written down value of plant and machinery.
- Additional benefit [As per amendment by Finance (No.2) Act, 2014 with effect from A.Y.2015-16]**
- (v) This year, considering that growth of the manufacturing sector is critical for employment generation and development of an economy, the deduction available

under section 32AC has been extended for investment made in plant and machinery up to 31.03.2017.

Further, in order to rationalize the existing provisions of section 32AC and also to make medium size investments in plant and machinery eligible for deduction, new sub-section (1A) has been inserted to provide that deduction under section 32AC would be available if the company, on or after 1st April, 2014, invests more than ₹ 25 crore in plant and machinery in a previous year.

- (vi) Companies which are eligible to claim deduction under the existing combined threshold limit of "more than ₹ 100 crore" for investment made in previous years 2013-14 and 2014-15 shall continue to be eligible to claim deduction under section 32AC(1), even if its investment in the year 2014-15 is below the new threshold limit of investment of ₹ 25 crore.

- (vii) "New plant or machinery" does not include—

- (1) any plant or machinery which before its installation by the assessee was used either within or outside India by any other person;
- (2) any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;
- (3) any office appliances including computers or computer software;
- (4) any vehicle;
- (5) ship or aircraft; or
- (6) any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.

Example

Compute the admissible deduction under section 32AC for A.Y.2014-15 & A.Y.2015-16 in each of the following cases -

Manufacturing company	Investment in new plant and machinery (₹ in crores)	
	P.Y.2013-14	P.Y.2014-15
A Ltd.	80	22
B Ltd.	70	25
C Ltd.	60	30
D Ltd.	75	25
E Ltd.	105	15
F Ltd.	70	30
G Ltd.	70	40

Manufacturing Company	Investment in new plant and machinery		Deduction under section 32AC (₹ in crores)		Under sub-section
	P.Y.2013-14	P.Y.2014-15	A.Y.2014-15	A.Y.2015-16	
A Ltd.	80	22	Nil	15.30	(1)
B Ltd.	70	25	Nil	Nil	-
C Ltd.	60	30	Nil	4.5	(1A)
D Ltd.	75	25	Nil	Nil	-
E Ltd.	105	15	15.75	2.25	(1)
F Ltd.	70	30	Nil	4.5	(1A)
G Ltd.	70	40	Nil	16.5	(1)

(b) Expansion of scope of "specified business" eligible for investment linked deduction under section 35AD

Effective from: A.Y.2015-16

- (i) Under section 35AD, a deduction in respect of the whole of any expenditure of capital nature (other than expenditure on land, goodwill and financial instrument) incurred wholly and exclusively, for the purposes of the "specified business" during the previous year in which such expenditure is incurred is allowed.
- (ii) At present, the following "specified businesses" are eligible for availing the investment-linked deduction under section 35AD as enumerated in clause (c) of sub-section (8) of the said section:-
 - (1) setting up and operating a cold chain facility;
 - (2) setting up and operating a warehousing facility for storage of agricultural produce;
 - (3) laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network;
 - (4) building and operating, anywhere in India, a hotel of two-star or above category as classified by the Central Government;
 - (5) building and operating, anywhere in India, a hospital with at least one hundred beds for patients;
 - (6) developing and building a housing project under a scheme for slum redevelopment or rehabilitation, framed by the Central Government or a State Government, as the case may be, and notified by the Board in accordance with the prescribed guidelines;
 - (7) developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government, as the

case may be, and notified by the Board in accordance with the prescribed guidelines;

- (8) production of fertilizer in India;
 - (9) setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962;
 - (10) bee-keeping and production of honey and beeswax; and
 - (11) setting up and operating a warehousing facility for storage of sugar;
- (iii) The Finance (No.2) Act, 2014 has included two new businesses as "specified business" for the purposes of the investment-linked deduction under section 35AD so as to promote investment in these sectors. They are :-
- (a) laying and operating a slurry pipeline for the transportation of iron ore;
 - (b) setting up and operating a semiconductor wafer fabrication manufacturing unit, if such unit is notified by the Board in accordance with the prescribed guidelines.
- (iv) The date of commencement of operations for availing investment linked deduction in respect of the two new specified businesses shall be on or after 1st April, 2014.
- (c) Capital asset in respect of which deduction under section 35AD has been claimed to be used for "specified business" for a period of eight years
Effective from: A.Y.2015-16
- (i) Under section 35AD, the time period for which capital assets on which deduction has been claimed and allowed, have to be used for the specified business, has not been specifically provided.
 - (ii) In order to ensure that the capital asset on which investment linked deduction has been claimed is used for the purposes of the specified business, sub-section (7A) has been inserted in section 35AD.
 - (iii) Section 35AD(7A) provides that any asset in respect of which a deduction is claimed and allowed under section 35AD shall be used only for the specified business for a period of eight years beginning with the previous year in which such asset is acquired or constructed.
 - (iv) If any asset on which a deduction under section 35AD has been claimed and allowed, is demolished, destroyed, discarded or transferred, the sum received or receivable for the same is chargeable to tax under clause (vii) of section 28. This does not take into account a case where asset on which deduction under section 35AD has been claimed is used for any purpose other than the specified business by way of a mode other than that specified above.
 - (v) Accordingly, sub-section (7B) has been inserted to provide that if such asset is used for any purpose other than the specified business, the total amount of deduction so

claimed and allowed in any previous year in respect of such asset, as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction had been allowed under section 35AD, shall be deemed to be income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which the asset is so used.

- (vi) However, the deeming provision under sub-section (7B) shall not be applicable to a company which has become a sick industrial company under section 17(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, during the intervening period of eight years specified in sub-section (7A).

Example

ABC Ltd. is a company having two units – Unit A carries on specified business of setting up and operating a warehousing facility for storage of sugar; Unit B carries on non-specified business of operating a warehousing facility for storage of edible oil. Unit A commenced operations on 1.4.2013 and it claimed deduction of ₹ 100 lacs incurred on purchase of two buildings for ₹ 50 lacs each (for operating a warehousing facility for storage of sugar) under section 35AD for A.Y.2014-15. However, in February, 2015, Unit A transferred one of its buildings to Unit B.

Examine the tax implications of such transfer in the hands of ABC Ltd.

Answer

Since the capital asset, in respect of which deduction of ₹ 50 lacs was claimed under section 35AD, has been transferred by Unit A carrying on specified business to Unit B carrying on non-specified business in the P.Y.2014-15, the deeming provision under section 35AD(7B) is attracted during the A.Y.2015-16.

Particulars	₹
Deduction allowed under section 35AD for A.Y.2014-15	50,00,000
Less: Depreciation allowable u/s 32 for A.Y.2014-15 [10% of ₹ 50 lacs]	5,00,000
Deemed income under section 35AD(7B)	45,00,000

- (d) **Assessee claiming investment linked deduction under section 35AD not eligible to claim exemption under section 10AA**

Effective from: A.Y.2015-16

- (i) As per section 35AD(3), where any assessee has claimed investment linked deduction under section 35AD, it would not be eligible to claim profit linked deduction under Chapter VIA for the same or any other assessment year.
- (ii) Section 10AA also provides for profit linked deduction in respect of units set-up in Special Economic Zones. However, so far, there was no bar restricting an assessee claiming investment linked deduction under section 35AD from claiming profit linked deduction under section 10AA.

- (iii) Section 35AD has, therefore, been amended to provide that where investment linked deduction has been availed by an assessee on account of capital expenditure incurred for the purposes of specified business in any assessment year, no deduction under section 10AA shall be available to the assessee in the same or any other assessment year in respect of such specified business.

(e) Disallowance of CSR expenditure under section 37

Effective from: A.Y.2015-16

- (i) Section 135 of the Companies Act, 2013 read with Schedule VII thereto and Companies (Corporate Social Responsibility) Rules, 2014 are the special provisions under the new company law regime imposing mandatory CSR obligations.

Mandatory CSR obligations under section 135:

- Every company, listed or unlisted, private or public, having a -
 - net worth of ₹ 500 crores or more [Net worth criterion]; or
 - turnover of ₹ 1,000 crores or more [Turnover criterion]; or
 - a net profit of ₹ 5 crores or more [Net Profit criterion]
 during any financial year to constitute a CSR Committee of the Board;
- CSR Committee has to formulate CSR policy and the same has to be approved by the Board;
- Such company to undertake CSR activities as per the CSR Policy;
- Such company to spend in every financial year, at least 2% of its average net profits made in the immediately three preceding financial years, on the CSR activities specified in Schedule VII to the Companies Act, 2013.

- (ii) As per Rule 4 of the Companies (CSR) Rules, 2014, the following expenditure are not considered as CSR activity for the purpose of section 135:

- Expenditure on activities undertaken in pursuance of normal course of business;
- Expenditure on CSR activities undertaken outside India;
- Expenditure which is exclusively for the benefit of the employees of the company or their families; and
- Contributions to political parties.

- (iii) Under section 37(1) of the Income-tax Act, 1961, only expenditure, not covered under sections 30 to 36, and incurred wholly and exclusively for the purposes of the business is allowed as a deduction while computing taxable business income. The issue under consideration is whether CSR expenditure is allowable as deduction under section 37.

- (iv) **It has now been clarified that for the purposes of section 37(1), any expenditure incurred by an assessee on the activities relating to corporate**

social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence, shall not be allowed as deduction under section 37.

(v) The rationale behind the disallowance is that CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business.

(vi) However, the *Explanatory Memorandum* to the Finance (No.2) Bill, 2014 clarifies that CSR expenditure, which is of the nature described in sections 30 to 36, shall be allowed as deduction under those sections subject to fulfillment of conditions, if any, specified therein.

(f) **Remittance of TDS on payments to non-residents permitted to be made on or before the due date of filing of return of income for avoiding disallowance of related expenditure under section 40(a)(i) during the previous year**

Effective from : A.Y.2015-16

(i) Under section 40(a)(i), interest, royalty, fee for technical services or other sum chargeable under the Act which is payable to a non-resident is not allowable as deduction while computing business income if tax on such payments has not been deducted during the previous year, or after deduction, was not paid within the time prescribed under section 200(1).

(ii) The parallel provision for disallowance of business expenditure in respect of certain payments made to the residents under 40(a)(ia) permits remittance of tax deducted at source on or before the due date for filing of return of income under section 139(1), for claim of deduction during the relevant previous year in which the sum is payable.

(iii) In order to provide similar extended time limit for remittance of tax deducted from payments made to non-residents, section 40(a)(i) has been amended to provide that the deductor shall be allowed to claim deduction for payments made to non-residents in the previous year of payment, if tax is deducted during the previous year and the same is paid on or before the due date specified for filing of return under section 139(1).

(iv) Further, if tax has been deducted in the subsequent year in respect of such remittances to non-residents, or if tax has been deducted in the previous year but paid after the due date for filing return of income under section 139(1), deduction in respect of such remittances would be allowed in previous year in which such tax has been actually paid.

(g) **Expansion of scope of section 40(a)(ia) to cover all expenditure/payments on which tax is deductible under Chapter XVII-B and restriction of quantum of disallowance thereunder to 30% of sum paid**

Effective from: A.Y.2015-16

(i) Under section 40(a)(ia), disallowance is attracted while computing business income in respect of certain payments such as interest, commission, brokerage, rent,

royalty, fee for technical services and contract payments made to a resident, if tax on such payments was not deducted, or after deduction, was not paid within the due date of filing return specified under section 139(1).

(ii) Chapter XVII-B mandates deduction of tax from certain other payments such as salary, directors fee not specifically covered under section 40(a)(ia). In respect of these payments, non-deduction or non-remittance of tax within the prescribed time does not attract disallowance under section 40(a)(ia) while computing income under the head "Profits and gains from business or profession".

(iii) In order to rectify this inconsistency and improve TDS compliance in respect of all payments to residents, disallowance under section 40(a)(ia) has been extended to all expenditure on which tax is deductible under Chapter XVII-B.

(iv) However, at the same time, in order to alleviate the undue hardship caused to assesseees on account of disallowance of 100% of expenditure under section 40(a)(ia), an amendment has been made to restrict the disallowance for non-deduction of tax or non-remittance of TDS on payments made to residents on or before the specified due date to 30% of the sum payable to a resident.

Example

XYZ Ltd. made the following payments in the month of March 2015 to residents without deduction of tax at source. What would be the tax consequence for A.Y.2015-16, assuming that the resident payees in all the cases mentioned below, have not paid the tax, if any, which was required to be deducted by XYZ Ltd.?

	Particulars	Amount in ₹
(1)	Salary to its employees	15,00,000
(2)	Non-compete fees to Mr. X	70,000
(3)	Directors' remuneration	25,000

Would your answer change if XYZ Ltd. has deducted tax on the above in April, 2015 from subsequent payments made to these persons and remitted the same in July, 2015?

Answer

Non-deduction of tax at source on any payment on which tax is deductible as per the provisions of Chapter XVII-B would attract disallowance under section 40(a)(ia). Therefore, non-deduction of tax at source on salary payment on which tax is deductible under section 192 and non-compete fees and directors' remuneration on which tax is deductible under section 194J, would attract disallowance@30% of sum paid under section 40(a)(ia). Therefore, the amount to be disallowed under section 40(a)(ia) while computing business income for A.Y.2015-16 is as follows –

	Particulars	Amount paid in ₹	Disallowance u/s 40(a)(ia) @ 30% of sum paid
(1)	Salary [tax is deductible under section 192]	15,00,000	4,50,000
(2)	Non-compete fees to Mr. X [tax is deductible under section 194J]	70,000	21,000
(3)	Directors' remuneration [tax is deductible under section 194J without any threshold limit]	25,000	7,500
Disallowance under section 40(a)(ia)			4,78,500

If the tax is deducted and paid in the next year i.e., P.Y.2015-16, the amount of ₹ 4,78,500 would be allowed as deduction while computing the business income of A.Y.2016-17.

(h) Speculative transaction to exclude eligible transaction in respect of trading in commodity derivatives carried out in a recognised association, which is chargeable to commodities transaction tax (CTT) [Section 43(5)]

Effective from: A.Y.2014-15

- (i) The Finance Act, 2013 had introduced a new tax called Commodities Transaction Tax (CTT) to be levied on taxable commodities transactions entered into in a recognised association, vide Chapter VII of the Finance Act, 2013.
- (ii) For this purpose, a 'taxable commodities transaction' was defined to mean a transaction of sale of commodity derivatives in respect of commodities, other than agricultural commodities, traded in recognised associations.
- (iii) Section 43(5) defines a "speculative transaction" to mean a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips.
- (iv) The proviso to section 43(5) specifies the contracts and transactions which shall not be deemed to be a speculative transaction.
- (v) Consequent to introduction of CTT, the Finance Act, 2013 had inserted clause (e) in the proviso to section 43(5) to exclude an eligible transaction in respect of trading in commodity derivatives carried out in a recognized association from the definition of "speculative transaction".
- (vi) Thereafter, CBDT issued *Circular No. 3 dated 24-01-2014* explaining the provisions of the Finance Act, 2013, which clarified that the eligible transaction shall include only those transactions in commodity derivatives which are liable to commodities transaction tax.
- (vii) Accordingly, clause (e) of the proviso to section 43(5) has been amended to provide that an eligible transaction in respect of trading in commodity derivatives, carried

out in a recognised association, which is chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013 shall not be deemed as a speculative transaction.

(i) Uniform amount of presumptive income from each goods carriage, whether heavy goods carriage or other than heavy goods carriage [Section 44AE]

Effective from: A.Y.2015-16

- (i) Section 44AE provides for a presumptive taxation scheme in the case of an assessee engaged in the business of plying, hiring or leasing goods carriages and not owning more than ten goods carriages at any time during the previous year.
- (ii) Upto A.Y.2014-15, the amount of presumptive income (per month or part of a month during which the goods carriage was owned by the taxpayer) was as follows:

Heavy Goods Vehicle (HGV)	₹ 5,000
Other than HGV	₹ 4,500

- (iii) The Finance Act, 2014 has amended this provision due to the following two reasons -
 - (1) The last revision was made 5 years back by the Finance (No.2) Act, 2009 and there has been an erosion in the real values of the amount of specified presumptive income due to inflation over the years; and
 - (2) To simplify the presumptive taxation scheme by providing for a uniform amount of presumptive income per month (or part of a month) for all types of goods carriage without any distinction between HGV and vehicle other than HGV.
- (iv) Therefore, with effect from A.Y.2015-16, a uniform amount of ₹ 7,500 per month (or part of a month) would be deemed as the income from each goods carriage, whether HGV or other than HGV, under section 44AE. However, the assessee can claim a higher amount as actually earned from the vehicle(s) as income from the vehicle(s).

Example

Mr. X commenced the business of operating goods vehicles on 1.4.2014. He purchased the following vehicles during the P.Y.2014-15. Compute his income under section 44AE for A.Y.2015-16.

	Type of Vehicle	Number	Date of purchase
(1)	Light Goods Vehicles	2	10.4.2014
(2)	Medium Goods Vehicles	1	15.3.2015
		3	16.7.2014
		1	2.1.2015
(3)	Heavy Goods Vehicles	2	29.8.2014
		1	23.2.2015

Would your answer change if the two light goods vehicles purchased in April, 2014 were put to use only in July, 2014?

Answer

Since Mr. X does not own more than 10 vehicles at any time during the previous year 2014-15, he is eligible to opt for presumptive taxation scheme under section 44AE. ₹ 7,500 per month or part of month for which each goods carriage is owned by him would be deemed as his profits and gains from such goods carriage.

(1) Number of Vehicles	(2) Date of purchase	(3) No. of months for which vehicle is owned	(4) No. of months × No. of vehicles [(1) × (3)]
2	10.4.2014	12	24
1	15.3.2015	1	1
3	16.7.2014	9	27
1	2.1.2015	3	3
2	29.8.2014	8	16
1	23.2.2015	2	2
10	Total		73

Therefore, presumptive income of Mr. X under section 44AE for A.Y.2015-16 is ₹ 5,47,500, being $73 \times ₹ 7,500$.

The answer would remain the same even if the two vehicles purchased in April, 2014 were put to use only in July, 2014, since the presumptive income of ₹ 7,500 per month has to be calculated per month or part of the month for which the vehicle is owned by Mr. X.

SIGNIFICANT NOTIFICATIONS/CIRCULARS

1. Approval of Agricultural Extension Project under section 35CCC: Conditions and Guidelines [Notification No. 38/2013 dated 30.05.2013 (as amended by Notification No. 18/2014 dated 21.03.2014)]

In order to incentivize the business entities to provide better and effective agriculture extensive services, section 35CCC was inserted to provide weighted deduction of a sum equal to 150% of expenditure incurred by an assessee on agricultural extension project in accordance with the prescribed guidelines.

Accordingly, the CBDT in exercise of the powers conferred by section 295 read with section 35CCC(1) of the Income tax Act, 1961, vide Notification No. 38/2013 dated 30.05.2013, prescribed rule 6AAD and 6AAE that contains the guidelines and conditions, for approval of the agricultural extension project. Rule 6AAD has been substituted and Rule 6AAE has been amended by this notification.

(a) Conditions to be fulfilled for approval of agricultural extension project under section 35CCC [Rule 6AAD]:

The agricultural extension project shall be considered for notification if it fulfils all of the following conditions, namely :—

- the project shall be undertaken by an assessee for training, education and guidance of farmers;
- the project shall have prior approval of the Ministry of Agriculture, Government of India; and
- an expenditure (not being expenditure in the nature of cost of any land or building) exceeding the amount of twenty-five lakh rupees is expected to be incurred for the project.

An assessee shall make an application in Form 3C-O to the Member (IT), CBDT for notification of such project under section 35CCC.

(b) Conditions to be fulfilled for claiming weighted deduction [Rule 6AAE]:

- The assessee undertaking agricultural extension project shall maintain separate books of account of such agricultural extension project and get such books of account audited by an Accountant.
- The audit report shall include the comments of the auditor on the true and fair view of the books of account maintained for agricultural extension project, the genuineness of the activities of the agricultural extension project and fulfilment of the conditions specified in the relevant provisions of the Act or the rules.

(iii) The assessee shall not accept an amount exceeding the amount as approved in the notification from the beneficiary under the eligible agricultural extension project for training, education, guidance or any material distributed for the purposes of such training, education or guidance.

(iv) The assessee shall not get any direct or indirect benefit from the notified agricultural extension project except the deduction of the eligible expenditure in accordance with the provisions of section 35CCC of the Act and prescribed rules.

(v) All expenses (not being expenditure in the nature of cost of any land or building), as reduced by the amount received from beneficiary, if any, incurred wholly and exclusively for undertaking an eligible agricultural extension project shall be eligible for deduction under section 35CCC.

However, expenditure incurred on the agricultural extension project which is reimbursed or reimbursable to the assessee by any person, whether directly or indirectly, shall not be eligible for deduction under section 35CCC.

(vi) The assessee shall, on or before the due date of furnishing the return of income under section 139(1), furnish the following to the Commissioner of Income-tax or the Director of Income-tax, as the case may be, namely:—

(a)	the audited statement of accounts of the agricultural extension projects for the previous year along with the audit report and amount of deduction claimed under section 35CCCD(1).
(b)	a note on the agricultural extension project undertaken by it during the previous year and the programme of agricultural extension project to be undertaken during the current year and the financial allocation for such programme; and
(c)	a certificate from the Ministry of Agriculture, Government of India, regarding the genuineness of the agricultural extension project undertaken by the assessee during the previous year.

2. Approval of skill development project under section 35CCCD: Conditions and Guidelines [Notification No. 54/2013, dated 15.07.2013]

In order to encourage companies to invest on skill development projects, section 35CCCD was inserted, to provide for weighted deduction of a sum equal to 150% of the expenditure (not being expenditure in the nature of cost of any land or building) incurred on skill development project notified by the CBDT, in accordance with the prescribed guidelines.

Accordingly, the CBDT has, in exercise of the powers conferred by section 295 read with section 35CCCD(1) of the Income-tax Act, 1961, laid down the guidelines and conditions for approval of a skill development project under section 35CCCD.

S. No.	Particulars								
(1)	<u>Guidelines for approval of Skill Development Project under section 35CCCD:</u> A skill development project shall be considered for notification if it is undertaken by an eligible company and the project is undertaken in separate facilities in a training institute [Rule 6AAF(1)]								
(i)	"Eligible company" means a company, which is - - engaged in the business of manufacture or production of any article or thing specified in the Eleventh Schedule; not being beer, wine and other alcoholic spirits and tobacco & tobacco preparations such as cigars and cheroots, cigarettes, biris, smoking mixtures for pipes and cigarettes, chewing tobacco and snuff or - engaged in providing the following services <table border="1"> <thead> <tr> <th>S. No.</th><th>Particulars</th></tr> </thead> <tbody> <tr> <td>1.</td><td>Accounting services</td></tr> <tr> <td>2.</td><td>Architect services</td></tr> <tr> <td>3.</td><td>Automobile repair or maintenance</td></tr> </tbody> </table>	S. No.	Particulars	1.	Accounting services	2.	Architect services	3.	Automobile repair or maintenance
S. No.	Particulars								
1.	Accounting services								
2.	Architect services								
3.	Automobile repair or maintenance								

4.	Banking, insurance and financial services including ATM installation, maintenance and operations or banking correspondents or insurance agents
5.	Beauty and cosmetology, including hair styling or manicurists or pedicurists
6.	Cable operators or Direct To Home (DTH) services
7.	Cargo Handling and stevedoring services
8.	Construction including painting or woodwork or plumbing or flooring or electrical wiring or installation or maintenance of lifts
9.	Courier services
10.	Design services including fashion or gems and jewellery or apparel or industrial designing
11.	Event management
12.	Facilities management, housekeeping, cleaning services
13.	Fire and safety services
14.	Food processing or preservation services, including post harvesting and post farm gate skills
15.	Health and Wellness services including spa or nutritionists or weight management or health instructors or yoga or gym trainers
16.	Home decor services, landscaping
17.	Hospital and Healthcare services, such as Lab technicians, nursing and other paramedical staff
18.	Hospitality, including culinary skills or catering services
19.	Logistics and Transportation by any mode, including by air, sea, road, rail or pipelines, and related services such as driving or operation of heavy machinery equipment, forwarding agents, packers and movers
20.	Market research services
21.	Media or film or advertising
22.	Mining and extraction of mineral resources, including hydrocarbons
23.	Packaging and Warehousing, including both ambient temperature storage and cold storage, operation of Internal Container Depots and Container Freight Stations
24.	Port and maritime services such as dredging, piloting, tug boat operations, shipbuilding, ship scrapping, bunkering
25.	Power Sector Services, including those required for erection or installation or maintenance of equipment or towers, etc. in generation, transmission or distribution sector projects

	skill development project for the previous year along with the audit report and amount of deduction claimed under section 35CCD(1) to the Commissioner of Income-tax or the Director of Income-tax, as the case may be.
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3. **Disallowance of any sum paid to a resident at any time during the previous year without deduction of tax under section 40(a)(ia) [Circular No.10/2013, dated 16.12.2013]**

Section 40(a)(ia) provides for disallowance of 30% of the sum payable to a resident, on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in section 139(1).

There have been conflicting interpretations by judicial authorities regarding the applicability of provisions of section 40(a)(ia), with regard to the amount not deductible in computing the income chargeable under the head 'Profits and gains of business or profession'. Some court rulings have held that the provisions of disallowance under section 40(a)(ia) apply only to the amount which remained payable at the end of the relevant financial year and would not be invoked to disallow the amount which had actually been paid during the previous year without deduction of tax at source.

Departmental View: The CBDT's view is that the provisions of section 40(a)(ia) would cover not only the amounts which are payable as on 31st March of a previous year but also amounts which are payable at any time during the year. The statutory provisions are amply clear and in the context of section 40(a)(ia), the term "payable" would include "amounts which are paid during the previous year".

The Circular has further clarified that where any High Court decides an issue contrary to the above "Departmental View", the "Departmental View" shall not be operative in the area falling in the jurisdiction of the relevant High Court.

4. **Clarification regarding treatment of expenditure incurred for development of roads/highways in Build-Operate-Transfer (BOT) agreements under the Income-tax Act, 1961 [Circular No. 09/2014, dated 23.04.2014]**

The CBDT has, vide this Circular, clarified the tax treatment of expenditure incurred on development and construction of infrastructural facilities like roads/highways on Build-Operate-Transfer (BOT) basis with right to collect toll - whether the same is entitled to depreciation under section 32(1)(ii) or can be amortized by treating it as an allowable business expenditure under the relevant provisions of the Income-tax Act, 1961.

Generally, the BOT basis projects are entered into between the developer and the government or the notified authority, on the following terms:

- (i) In such projects, the developer, in terms of concessionaire agreement with Government or its agencies, is required to construct, develop and maintain the infrastructural facility of roads/highways which, *inter alia*, includes laying of road, bridges, highways, approach roads, culverts, public amenities etc. at its own cost and its utilization thereof for a specified period.

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(ii) The possession of land is handed over to the assessee (i.e., the developer) by the Government/ notified authority for the purpose of construction of the project without any actual transfer of ownership. The assessee, therefore, has only a right to develop and maintain such asset. It also enjoys the benefits arising from the use of asset through collection of toll for a specified period, without having actual ownership over such asset. Therefore, the rights in the land remain vested with the Government/notified agencies.

(iii) Since the assessee does not hold any rights in the project except recovery of toll fee to recoup the expenditure incurred, it cannot be treated as an owner of the property, either wholly or partly, for purposes of allowability of depreciation under section 32(1)(ii). Thus, claim of depreciation on tollways is not allowable due to non-fulfillment of ownership criteria in such cases.

(iv) Where the assessee incurs expenditure on a project for development of roads/highways, it is entitled to recover cost incurred towards development of such facility (comprising of construction cost and other pre-operative expenses) during construction period. Further, expenditure incurred by the assessee on such BOT projects brings to it an enduring benefit in the form of right to collect the toll during the period of agreement.

The Supreme Court, in *Madras Industrial Investment Corporation Ltd. vs. CIT 225 ITR 802*, allowed the spreading over of liability over a number of years on the ground that there was continuing benefit to the company over a period. Therefore, analogously, expenditure incurred on an infrastructure project for development of roads/highways under BOT agreement may be treated as having been made/incurred for the purposes of business or profession of the assessee and same shall be allowed to be spread during the tenure of concessionaire agreement.

In view of the above, the CBDT, in exercise of the powers conferred under section 119, clarifies that the cost of construction on development of infrastructure facility, being roads/highways under BOT projects, may be amortized and claimed as allowable business expenditure under the Act in the following manner:

(i) The amortization allowable may be computed at the rate which ensures that the whole of the cost incurred in creation of infrastructural facility of road/highway is amortised evenly over the period of concessionaire agreement after excluding the time taken for creation of such facility.

(ii) Where an assessee has claimed any deduction out of initial cost of development of infrastructure facility of roads/highways under BOT projects in earlier years, the total deduction so claimed for the assessment years prior to assessment year under consideration may be deducted from the initial cost of infrastructure facility of roads/highways and the cost so reduced shall be amortised equally over the remaining period of toll concessionaire agreement.

The clarification given in this Circular is applicable only to those infrastructure projects for development of road/highways on BOT basis where ownership is not vested with the assessee under the concessionaire agreement.